ORDINANCE 83-57

To Repeal and Reenact Chapters 2.15 and 20.19 Entitled Board of Zoning Appeals and Amend Chapter 20.04 Entitled Definitions of the Bloomington Municipal Code.

WHEREAS, IC 36-7-4 was recently amended to change certain requirements for Boards of Zoning Appeals, and;

WHEREAS, the Bloomington Plan Commission has considered and recommended certain changes in the Bloomington Municipal Code to conform to state law and current practices:

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. The current text of Chapter 2.15 of the Bloomington Municipal Code entitled "Board of Zoning Appeals" shall be repealed and reenacted as follows:

CHAPTER 2.15
ADVISORY BOARD OF ZONING APPEALS

Sections:

2.15.000 Establishment
2.15.010 Appointments
2.15.020 Qualifications
2.15.030 Terms
2.15.040 Procedure--Meetings--Oaths--Attendance
2.15.050 Power and Duties

2.15.000 Establishment. There is hereby created the Advisory Board of Zoning Appeals to review determinations made by the Plan Commission, Plan Department, and Engineering Department and to hear and determine requests for special exceptions and variances.

2.15.010 Appointments. The Board shall consist of five members as follows: three members appointed by the Mayor; one member appointed by the Common Council; and one member appointed by the Plan Commission.

2.15.020 Qualifications. Membership of the Board shall be set up as follows:

(A) Of the three citizen members appointed by the Mayor one must be a member of the Plan Commission and two must not be members of the Plan Commission.

(B) The Common Council citizen appointee must not be a member of the Plan Commission.

(C) The Plan Commission citizen appointee will represent the two mile fringe area and must be a member of the Plan Commission appointed under IC 36-74-214, other than the member appointed by the Mayor and must reside in the two mile fringe area.

2.15.030 Terms. (a)Terms of the members of the Board of Zoning Appeals will be as set out in IC 36-7-4-901, 906.

(b)If a vacancy occurs among the members of the Board of Zoning Appeals, the appointing authority shall appoint a member for the unexpired term of the vacating member. In addition, the appointing authority may appoint an alternate member to participate with the Board in any hearing or decision in which the regular member it has appointed has a disqualification.

(c)The appointing authority may remove a member from the Board of Zoning Appeals for cause as outlined in IC 36-7-4-906(f).

2.15.040 Procedure--Meetings--Oaths--Attendance. (a)Meetings of the Board shall be held on call of the chairman and at such times as the Board may determine. The Board shall hear all petitions addressed to it in public meeting. The chairman, or in his absence, the acting chairman may administer oaths and compel the attendance of witnesses.

(b)Regulations for the Board's decisions are detailed in Bloomington Municipal Code Chapter 20.19.

2.15.050 Powers and Duties. The powers and duties of the Board of Zoning Appeals shall be as set out in Chapter 20.19 of the Bloomington Municipal Code.

SECTION II. The following words shall be added to definitions contained in Section 20.04.01.00 Definitions of Title 20 of the Bloomington Municipal Code.

"Condition of approval" means stipulations or provisions set out by the Board of Zoning Appeals or Plan Commission required as a prerequisite for approval of a petition.

"Commitment" means a recordable written engagement or pledge which may include a site plan, setting forth any binding limitations of use or development attached to a petition for Board of Zoning Appeals approval by the petitioner or as a condition of approval imposed by the Board.

"Development Standards" shall include height, bulk, and density and other standards for development as set out in this title of the Bloomington Municipal Code.

"Improvement Location Permit" shall include building, grading, excavation, foundation, and other permits as set out in Title 17 of the Bloomington Municipal Code.

SECTION III. Chapter 20.19 of the Bloomington Municipal Code entitled "Advisory Board of Zoning Appeals" shall be repealed and reenacted as follows:

Chapter 20.19

ADVISORY BOARD OF ZONING APPEALS

Sections:

20.19.01.00 Composition--Terms of office--Meetings
20.19.02.00 Public hearing on petitions, notice, publication, cost.
20.19.03.00 Required vote for certain actions--Conflicts
20.19.04.00 Reporting of decisions.
20.19.05.00 Powers and duties.
20.19.06.00 Requirements
20.19.07.00 Appeal from Board decisions.

20.19.01.00 Composition--Terms of office---Meetings. The Advisory Board of Zoning Appeals shall be composed and shall conduct meetings as set out in Title 2, Chapter 2.15 of the Bloomington Municipal Code.

20.19.02.00 Public hearing on petitions, notice, publication, cost. Prior to decision on petitions addressed to the Board, the Board shall hold a public hearing thereon, notice of which shall be mailed by the petitioner to the owners of all property deemed by the Board to be affected thereby as set out in rules of procedure of the Board, and advertised ten days prior to the public hearing in a newspaper of general circulation published in the city. The cost of notifying affected property owners and the cost of advertising the notice of the public hearing shall be borne by the petitioner.

20.19.03.00 Required vote for certain actions--Conflicts.

20.19.03.01 Required vote. The concurring majority vote of the entire membership of the Board shall be necessary for action of the Board to be considered official.

20.19.03.02 Conflicts. (a)A person may not communicate with any member of the Board before hearings with intent to influence the member's action on a matter pending before the Board. A member who feels his/her impartiality has been compromised in this manner is allowed to disqualify himself. The staff, however, may file with the Board a written statement setting forth any facts or opinions relating to the matter not less than 5 days before the hearing.

(b)A member of the Board of Zoning Appeals may not participate in a hearing or decision of that Board concerning a zoning matter in which he/she has a direct or indirect financial interest. The Board shall enter in its records the fact that a member has such a disqualification and the name of the alternate member, if any.

20.19.04.00 Reporting of decisions. (a)The Board shall cause to be made a detailed report of all its proceedings, setting forth in writing its findings, a vote of each member participating therein and the absence of a member or his failure to vote.

(b)A record of the Board's final decision including findings of fact shall be recorded separately and in addition to the records of the votes of its individual members. Such records immediately following the Board's decision shall be filed for public inspection in the Planning Departmnnt Office.

20.19.05.00 Powers and duties.

20.19.05.01 Appeals from administrative decisions. To hear and determine appeals from and review:

(1) any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning ordinance;

(2) any order, requirement, decision, or determination made by an administrative board or other body except a Plan Commission in relation to the enforcement of the zoning ordinance; or

(3) any order, requirement, decision, or determination made by an administrative board or other body except a Plan Commission in relation to the enforcement of an ordinance adopted requiring the procurement of an improvement location or occupancy permit.

20.19.05.02 Special Exceptions. The Board of Zoning Appeals shall approve or deny all special exceptions from the terms of the zoning ordinance but only in the classes of cases or in the particular situations specified in the zoning ordinance. The Board may impose reasonable conditions as a part of its approval.

20.19.05.03 Variances of use. The Board of Zoning Appeals shall approve or deny variances of use from the terms of the zoning ordinance. The Board may impose reasonable conditions as a part of its approval.

20.19.05.04 Variances from development standards. The Board of Zoning Appeals shall approve or deny variances from the development standards of the zoning ordinance.

20.19.06.00 Requirements for approval.

20.19.06.01 Appeals. An appeal to the Board may be taken by any person aggrieved by any decision of the zoning administrator or any other official or body made in the course of enforcement of this title. Such appeal must specify the grounds of the appeal and must be filed within ten working days after said decision has been made.

20.19.06.02 Granting Special Exceptions. The Board may grant special exceptions if it finds in each individual case that the following conditions are present:

(a) The use or value of the area adjacent to the property will not be adversely affected;

(b) The exception is consistent with regulations outlined in Chapter 20.11.

20.19.06.03 Granting Variances. (a)Variances of use or variances from strict application of the development standards and provisions of this title may be granted by the Board upon determination in writing that the following criteria are met:

(1) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

(2) the need for the variance arises from some condition peculiar to the property involved;

(3) the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought;

(4) the approval does not interfere substantially with the comprehensive plan; and

(5) the approval will not be injurious to the public health, safety, morals, and general welfare of the community.

(b)In consideration of these criteria it will be taken into account that conditions peculiar to the property involved do not apply generally in the district, and the aforesaid conditions are such that denial of variance would deprive the applicant of any reasonable use of his land. Mere loss in value shall not constitute unnecessary hardship.

(c)All variances, if granted, shall be only for the specific proposal applied for at the time of Board approval unless stated otherwise as a commitment or condition of approval. Specifics shall include, but are not limited to site plan, use, architectural quality, and scale of operation.

20.19.06.04 Variances in flood hazard areas. Variances to the terms of the regulations for flood hazard areas may be granted only upon the issuance of a permit or a letter of recommendation from the Indiana Department of Natural Resources. Any such variance shall give the minimum relief necessary, and be such that the maximum practical flood protection will be realized. The Board shall issue a written notice to the recipient of such a variance that the proposed construction will be subject to increased risks to life and property and could require payment of excessive flood insurance premiums.

20.19.06.05 Commitments. (a)In the case of a petition for a special exception or variance from the terms of the zoning ordinance, a Board of Zoning Appeals may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel.

(b)Commitment shall be recorded in the office of the County Recorder and take effect upon the granting of the exception, use, or variance. Unless modified or terminated by the Board of Zoning Appeals, a commitment is binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel. A commitment is binding on the owner of the parcel even if it is unrecorded; however, an unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment. A commitment may be modified or terminated only by a decision of the Board made at a public hearing after notice as provided by rules of procedure adopted by the Board.

(c)By permitting or requiring commitment, a Board of Zoning Appeals does not obligate itself to approve or deny any request.

(d)Conditions imposed on the granting of an exception, use, or variance are not subject to the rules applicable to commitments.

20.19.06.06 Proof of approval. It shall be the responsibility of the applicant to provide proof of variance, special exception, or conditional use approval when applying for location improvement or occupancy permits. Minimum proof shall be docket number and date of approval.

20.19.07.00 Appeal from Board decisions. Any person jointly or severally aggrieved by any decision of the Board may proceed in the manner prescribed in IC 36-7-4-1003.

SECTION IV. This ordinance shall be in full force and effect on January 1, 1984 after its passage by the Common Council and approval by the Mayor.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 16 day of November, 1983.

Katherine Dilcher
KATHERINE DILCHER, President
Bloomington Common Council

ATTEST:

Patricia Williams
PATRICIA WILLIAMS, City Clerk

PRESENTED by me to the Mayor upon this 17th day of November, 1983.

Patricia Williams
PATRICIA WILLIAMS, City Clerk

SIGNED and APPROVED by me upon this 18 day of November, 1983.

Tomilea Allison
TOMILEA ALLISON, Mayor
City of Bloomington

SYNOPSIS

This ordinance, submitted by the Plan Commission, would repeal and reenact text of Chapters 2.15 and 20.19 of the Bloomington Municipal Code and add definitions to Chapter 20.04 so that these sections will conform to recently adopted state statute changes. Other minor revisions will enable the City to more closely monitor variances and special exceptions at the time applicants submit requests for building permits.