

CITY OF BLOOMINGTON



January 8, 2018 @ 5:30
p.m. COUNCIL CHAMBERS
#115 CITY HALL

**CITY OF BLOOMINGTON
PLAN COMMISSION
January 8 @ 5:30 p.m.**

∨ City Council Chambers – 401 N. Morton

ROLL CALL

MINUTES TO BE APPROVED: December 11, 2017

REPORTS, RESOLUTIONS AND COMMUNICATIONS:

- ∅ Election of Officers:
 - Current President: Joe Hoffmann
 - Current Vice President: Darryl Neher
- ∅ Appointment of a Plan Commission Representative to the Board of Zoning Appeals:
 - Current Representative: Darryl Neher
 - Current Alternate: VACANT
- ∅ Appointment of a Plat Committee:
 - Current Representatives:
 - § Roy Aten: Planning and Transportation
 - § Andrew Cibor: Plan Commission
 - § Mike Carter: City Utilities
 - Alternate Representatives:
 - § Dan Backler: Planning and Transportation
 - § Brad Wisler: Plan Commission
 - § Phil Peden: City Utilities
- ∅ Appointment of a Hearing Officer
 - Current: Beth Rosenbarger
 - Current Alternate: Scott Robinson
- ∅ Appointment of a City Plan Commission member as an ex-officio member of the Monroe County Plan Commission
 - Current Representative: Darryl Neher
 - Current Alternate: Isabel Piedmont-Smith

PETITIONS CONTINUED TO: February 5, 2018

PUD-27-17 Public Investment Corporation
2700 W. Tapp Rd.
PUD Final Plan approval and preliminary and final plat approval of a 24-lot subdivision.
Case Manager: Eric Greulich

Per PC Rules, a vote is needed to continue.

SP-34-17 TMC Bloomington LLC
121 E. Kirkwood St.
Site plan approval for a 5-story, mixed-use building with 22 condominium units.
Case Manager: James Roach

SP-41-17 Chi Group USA LLC
408 E. Sixth St.
Site plan approval to allow the construction of a new mixed-use building with 4,700 sq. ft. of commercial space and 8 apartments.
Case Manager: Eric Greulich

****Next Meeting February 5, 2018**

Last Updated: 1/4/2018

**Auxiliary aids for people with disabilities are available upon request with adequate notice.
Please call [812-349-3429](tel:812-349-3429) or e-mail human.rights@bloomington.in.gov.**

PETITIONS:

- RS-29-17** **City of Bloomington**
Amendment to the Plan Commission Rules of Procedure to expand sign posting requirements for all Plan Commission and Plat Committee petitions excepting zoning text amendments and resolutions.
Case Manager: Jacqueline Scanlan
- ZO-45-17** **City of Bloomington**
Amendment to the Unified Development Ordinance to add Business/Professional Office to the list of permitted used in the Medical (MD) zoning district.
Case Manager: James Roach
- ZO-46-17** **City of Bloomington**
Amendments to the Unified Development Ordinance concerning fence standards for corner lots and through lots.
Case Manager: Amelia Lewis
- ZO-47-17** **City of Bloomington**
Amendments to the Unified Development Ordinance concerning sidewalk construction requirements and sidewalk variance standards and procedures.
Case Manager: Jacqueline Scanlan

****Next Meeting February 5, 2018**

Last Updated: 1/4/2018

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RS-29-17 Memo

To: Bloomington Plan Commission

From: Jackie Scanlan, AICP Senior Zoning Planner

Date: December 28, 2017

Re: Amendment to the Plan Commission Rules of Procedure to Expand Sign Posting Requirements

The Planning and Transportation Department proposes to amend the Plan Commission Rules of Procedure for all petitions appearing before the Plan Commission or Plat Committee excepting zoning text amendments and resolutions. The proposal requires all other petitions to post a sign on the property, indicating that a zoning petition has been filed for the property. Under the existing rules, only rezone and plan unit development preliminary plan requests require posted signs.

Mailed notification will continue to be sent to property owners (two properties deep) within 300 feet of the petition site. The addition of posted signs will help other neighbors, including residential and commercial renters, in the area to be aware of petitions. The signs will include the Department phone number, so that anyone interested can call for more information.

The purpose of the amendment is to improve public notification by identifying petition sites on-site so that any passerby can be aware. Signs shall be placed at least 21 days prior to the hearing of the Plan Commission or Plat Committee. The change will require amendment to Article IV(A)(7) of the existing Rules and an addition of Article IV(B)(9).

A draft showing all proposed changes is attached.

CITY OF BLOOMINGTON Last Revised: February 13, 2017

****PROPOSED DRAFT 12/28/17****

PLAN COMMISSION

RULES AND PROCEDURES

Article I. Meetings

- A. The Plan Commission shall hold regularly scheduled meetings at intervals which correspond with the anticipated case load. Each agenda may include cases in preliminary or final hearing.
- B. All meetings shall be held at 5:30 p.m. in the City Hall at the Showers Building unless otherwise publicly announced.
- C. All meetings shall adjourn at 9:30 p.m. and no new cases shall be heard after 9:00 p.m. Any cases remaining to be heard on an agenda at time of adjournment shall be rescheduled for hearing at a special meeting within one (1) week of the original meeting.
- D. Special meetings may be called as provided in by Indiana Code section 36-7-4-307, as amended..
- E. A majority of the voting members shall constitute a quorum. However, no vote of the Commission shall be official unless authorized by a majority of the Commission's membership, and no vote of the Plat Committee shall be official unless authorized by the affirmative vote of two (2) members.
- F. Executive Sessions may be held only with at least forty-eight (48) hours advance notice and in compliance with all requirements of state law, and only such business as permitted by state law may be conducted in such session (certain matters relating to property acquisition, personnel, labor relations, or litigation).
- G. All decisions on petitions, with the exception of those acted upon as part of the consent agenda, shall be by roll call. The vote of each member of the Commission or Plat Committee shall be recorded by the Secretary and placed in the minutes of the meeting.
- H. No member of the Commission or Plat Committee shall participate in the hearing or decision of the Commission or Committee involving any matter in which that person is directly or indirectly interested in a financial sense, other than the preparation and enactment of a Master Plan. In the event that any member disqualifies himself or that any member's eligibility is challenged by a member of the public, such fact shall be entered on the records of the Commission or

Committee and shall appear in the minutes. Members who intend to disqualify themselves from a vote on a particular petition due to direct or indirect financial interest shall notify the staff of this fact a minimum of two (2) business days prior to the hearing in order to provide staff and the Plan Commission President adequate time to arrange the attendance of a substitute member, if applicable, and to make other arrangements as necessary.

- I. As soon as possible a summary of minutes of the proceedings shall be made available to each member of the Commission or Committee.
- J. All minutes of the proceedings, tape recordings of the hearings, and all exhibits submitted by the petitioners, remonstrators and staff shall be public records and shall be filed in the Planning and Transportation Department office. These materials shall become a part of the case and all such materials shall be held by the Planning and Transportation Department for a period of at least one (1) year. At the end of the one (1) year time period, all materials held by the Planning Commission may be placed in a "back filing" system for preservation of city records.
- K. The final disposition of any request, petition, or resolution before the Commission or Plat Committee shall be in the form of a motion, adopted according to proper parliamentary procedures. Said motion may be to grant, deny, continue, forward, modify, or table the petitioner's request; additionally, the members of the Commission may attach such conditions to a motion as are deemed necessary for the furtherance of the public health, safety, or convenience or to achieve consistency with the City Comprehensive Plan or Bloomington Municipal Code. The Plat Committee may impose conditions upon preliminary approval of a plat in accord with Article II(G)(3) of these Rules and Procedures. In all cases, the Plan Commission and Plat Committee shall act to determine the final disposition of a request, petition or resolution; in the absence of a majority vote to determine final disposition, said request, petition or resolution shall be administratively continued to the next regularly scheduled hearing.
- L. No petition shall be heard unless the petitioner is present at the public hearing. In the event that a petitioner is not present at the time their case is called to be heard, that petition will be moved to the end of the agenda. If the petitioner is present after the remaining cases on the agenda have been heard, their case will be heard at that time. If the petitioner is not present, the case will be continued to the next Plan Commission or Plat Committee meeting.

Article II. Officers, Employees, Plat Committee, and Hearing Officer.

- A. The Commission shall at its first hearing in each year elect from among its members a president and vice-president, and appoint the members of the Plat Committee pursuant to Article II, Paragraph G.
- B. The president shall preside over Commission meetings and on behalf of the Commission shall exercise general supervision over the administration of the affairs of the Commission, including the execution of contracts and agreements, the appointment of committees and representatives, the determination of points of order and procedure, and the signing of all official documents. The vice-president shall have authority to act as president of the Commission during the absence of the president. In the case of the resignation of the president, the vice-president shall succeed to the presidency and a new vice-president shall be elected from the membership.
- C. The Planning and Transportation Director is designated as Secretary and shall be responsible for supervising the keeping of an accurate and complete record of all Commission and Plat Committee proceedings, including the keeping of records and minutes, and the custody and preservation of all paper documents of the Commission and Plat Committee. In the event of the absence of both president and vice-president, the secretary shall preside, provided, however, the first and only item of business to be presented by such presiding officer shall be the election of a chairman pro tempore.
- D. The Commission may appoint and prescribe the duties and fix the compensation of such employees as are necessary for the discharge of the duties and responsibilities of the Commission, and may make contracts for special or temporary services and any professional counsel, subject, however, to annual appropriation for same by the Common Council.
- E. The Commission shall request an attorney from the City Legal Department be assigned to serve as Counsel for the Commission.
- F. The Planning and Transportation Director or their designee shall appear at all meetings and assist the Commission presenting factual opinion on significant issues raised by the petition.
- G. Pursuant to Indiana Code section 36-7-4-701(e), as amended, a Plat Committee is established.
 - 1. The Plat Committee shall consist of three (3) members, one (1) staff member from the Planning and Transportation Department, one (1) staff member from the Utilities Department and the member of the Plan

- Commission who also serves as the City's Engineer, unless another member of the Plan Commission is appointed instead.
2. Plat Committee members shall be appointed by the Plan Commission for a one-year term ending upon completion of the first Plan Commission meeting of the following calendar year.
 3. The Plan Commission shall appoint one (1) alternate for each member of the Plat Committee to serve for a one-year term ending upon completion of the first Plan Commission meeting of the following calendar year. The alternate for the Planning and Transportation Department member shall be an employee of the Planning and Transportation Department. The alternate for the Utilities Department member shall be an employee of the Utilities Department. The alternate for the Plan Commission member shall be a member of the Plan Commission.
 4. The Plat Committee may approve any subdivision of land, including preliminary and final plats. The Plat Committee may impose conditions upon preliminary approval as authorized and limited by Indiana Code section 36-7-4-702, as amended.
 5. The committee shall meet at such times to be determined by the committee, as needed to accommodate caseload; provided, within eight (8) days of receiving an application for preliminary plat approval, the staff shall announce the date for hearing before the Plat Committee.
 6. All petitions considered by the Plat Committee shall be considered in public hearings pursuant to the rules of procedure herein with respect to conduct of hearings, filing of petitions, fees, and notices, except that all plats may be considered by the committee in a single hearing.

All provisions of these Rules and Procedures shall apply to the Plat Committee only if specified therein.

7. The Plat Committee may act only by a vote of a majority of the full membership of the committee. Decisions must be signed by the president and secretary of the Plan Commission.
8. Any applicant or other interested party may appeal a decision of the Plat Committee approving, disapproving or imposing conditions on a preliminary plat, to the Plan Commission. Such appeal shall be filed with the Planning and Transportation Department within five (5) days of the Plat Committee's decision.

9. The Plat Committee shall at its first meeting in each year elect from among its members, a president and a vice president. The president shall preside over committee meetings and shall exercise general supervision over the administration of the affairs of the committee, including the determination of points of order and procedure. The vice-president shall have authority to act as president of the Plat Committee during the absence of the president. In the case of the resignation of the president, the vice-president shall succeed to the presidency and a new vice-president shall be elected from the membership.
 10. The Planning and Transportation Department, may, at its discretion, schedule plats for consideration by the Plan Commission rather than the Plat Committee.
- H. Pursuant to Indiana Code section 36-7-4-923, as amended, an alternate procedure for variance and conditional use is established.
1. A hearing officer is established.
 - (a) The Plan Commission shall appoint two (2) hearing officers. One (1) of the hearing officers shall generally fulfill the duties of the hearing officer, and the other hearing officer shall serve as an alternate in the event that the first is not available or has a conflict of interest.
 - (b) A hearing officer shall be a member of the staff.
 - (c) The Plan Commission may remove a hearing officer from their responsibilities at any time.
 2. The hearing officer may approve or deny:
 - (a) Variances from development standards,
 - (b) Conditional uses,
 - (c) Use Variances;
 3. Hearings conducted by the hearing officer shall be subject to all of the notice, minutes, records, and staff report, rules which apply to the Board of Zoning Appeals.
 4. The hearing officer shall be subject to the same requirements of the state law and the zoning ordinance as the Board of Zoning Appeals, with respect to conflicts of interest and communications with the hearing officer.

5. The hearing officer may, at their discretion, transfer a petition filed under this alternative procedure to the Board of Zoning Appeals if, in the judgment of the hearing officer, the issues involved warrant consideration by the Board or it appears likely that the decision of the hearing officer would be appealed to the Board.
6. The staff may file a written objection to a petition filed for consideration by the hearing officer if:
 - (a) the variance or conditional use sought would be injurious to the public health, safety, morals, and general welfare of the community; or
 - (b) the use or value of the area adjacent to the property included would be affected in a substantially adverse manner.

If such written objection is filed, the petition shall:

- (c) be considered withdrawn; or
- (d) be transferred to the Board of Zoning Appeals if requested by the petitioner.

Such written objection shall be filed not less than twelve (12) days before the hearing, unless new information comes to the staff's attention within twelve (12) days of the hearing.

7. The staff may indicate that it does not object to the approval of the petition if specified conditions are attached. If the applicant does not accept these conditions, the petition shall:
 - (a) be considered withdrawn; or
 - (b) be transferred to the Board of Zoning Appeals if requested by the petitioner.
8. The hearing officer may impose conditions and may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel, as provided in Indiana Code section 36-7-4-1015, as amended. If the applicant for the variance, or conditional use does not accept these conditions or make the commitment, the petition shall:

- (a) be considered withdrawn; or
 - (b) be transferred to the Board of Zoning Appeals if requested by the petitioner.
9. The hearing officer may not modify or terminate any commitment, whether made by the hearing officer or under Indiana Code section 36-7-4-1015, as amended. Commitments made by the hearing officer may be only modified by the Board of Zoning Appeals.
 10. A decision of the hearing officer may be appealed to the Board of Zoning Appeals by an interested person. Any appeal shall be filed with the Planning and Transportation Department within five (5) days of the hearing officer's decision.

Article III. Filing of Petitions, Permits, and Fees

A. All requests to the Commission or Plat Committee shall be by petition and petitioners shall be required to follow these procedures:

1. All petitioners shall use the uniform petition forms approved by the Planning and Transportation Director which are available upon request in the Planning and Transportation Department. No petition shall be accepted until the petitioner has consulted with a staff member who has determined that the petition is presented in proper form with all the required exhibits and supporting documents. Upon such determination staff shall sign the application form and the petition shall be accepted.
2. All petitions shall be filed no later than the deadlines established on the calendar of meetings to be adopted by the Commission each year; provided, these deadlines shall not apply to petitions to be heard by the Plat Committee.

3. Filing fees for petitions shall be as follows:

a. Rezoning Petitions

Rezone to Single family	\$250 + \$25/acre
Rezone to Non-Single Family.....	\$500 + \$50/acre
Rezone to Planned Unit Development	\$1000 + \$100/acre

b. PUD Preliminary Plan Amendment..... \$500 + \$50/acre

c. Plat Approvals

Preliminary	\$300 + \$25/lot
Final	\$300 + \$25/lot
Preliminary and Final together	\$300 + \$50/lot

d. Site Plans/PUD Final Plans

Remodels	\$200
Residential Addition	\$200 + \$25/dwelling unit
Residential New Construction	\$400 + \$25/dwelling unit
Non-Residential/Mixed Use Addition.....	\$200 + \$0.10/square foot
Non-Residential/Mixed Use New Construction	\$400 + \$0.10/s.f.

e. Conditional Uses

Home Occupation.....	\$100
Other.....	\$250

f. Use Variances \$500

g. Variances

Single-Family	\$100
Multi-Family and Non-Residential	\$500

h. Right-of-Way Vacations \$500

i. Letters of Zoning Verification \$100

j. Lot Line Adjustments..... \$100

k. Certificate of Occupancy Inspections \$100

- l. No application fees shall be required for any application by not-for-profit, community service organization.
- m. The Plan Commission may waive the application fee for any proposal which is actively being promoted by a unit of local government or quasi-public organization or which involves a local subsidy.
- n. No refunds shall be permitted after a petition has received a Plan Commission or Plat Committee hearing, whether or not the Plan Commission or Plat Committee has taken action on the petition.

4. Fees associated with City of Bloomington review of building permit applications shall be \$0.14 per square foot of construction. All building permits are applied and paid for, and issued through the Monroe County Building Department. Certain categories of permits do not require this fee payment per the fee schedule contained in the *Monroe County Building Department Construction Permit Fees*. The exemptions contained in this Building Department document are incorporated in this rule. No fee shall be required for City review of any permit application filed by a not-for-profit, community service organization, or a governmental agency. Per the *Interlocal Cooperation Agreement* between the City and the County, the County Building Department shall collect the \$0.14 permit fee and transmit the collected fees to the City of Bloomington Controller's Office on a quarterly basis.

Article IV. Notices

- A. In the event a request for action by the Plan Commission or Plat Committee is being made by 100% of the property owners directly included in the proposed action, the following requirements for notice must be met:
1. All petitioners for any Plan Commission or Plat Committee approval shall inform interested parties of the proposal by notice sent to the residence or the last known address of the interested parties. Petitioners shall prepare the notice in a form specified by the Planning and Transportation Department and mail by regular first class delivery said notice not less than twenty-one (21) days before the date of the initial Plan Commission or Plat Committee hearing. The Planning and Transportation Department shall verify that the notice is properly distributed by the petitioner not less than twenty-one (21) days before the date of the initial Plan Commission or Plat Committee hearing. If adequate notice in accordance with these rules is not given to the interested parties and this fact is confirmed by staff prior to Plan Commission action, such petition may be continued to a later date to allow proper notice to all interested parties.
 2. Such notice shall state:
 - a. The general location by address or other identifiable geographic description of the subject property or area;
 - b. A summary of the subject matter contained in the proposal and/or a description of the proposed change in the zone maps, where the proposal involves a change to the zone maps;
 - c. The name of the petitioner;

- d. The times and places the petition has been set for hearing;
 - e. That the petition and file may be examined in the office of the Planning and Transportation Department;
 - f. That the addressee may voice an opinion at the hearing and/or file written comments with the Commission or Plat Committee; and
 - g. That the hearing may be continued from time to time as may be found necessary.
3. ***Interested parties*** shall be defined as all persons owning land adjacent and contiguous to the property included in the petition or proposal and, all persons owning land abutting the aforementioned immediately-adjacent property owners (i.e, notice shall be provided “two (2) properties deep”) but not to exceed three hundred (300) linear feet from the subject parcel(s) for which a petition or proposal is being requested. Intervening public rights-of-way shall not be considered in determining what property is adjacent and contiguous. Where any adjacent or contiguous parcel is owned by a petitioner, the property included in the petition shall be deemed to include said adjacent parcel or parcels owned by a petitioner, and owners of property adjacent and contiguous to said parcel(s) owned by a petitioner but not included in the petition shall be considered interested parties entitled to notice.
 4. In order to determine the names and addresses of property owners to whom notice must be sent under this Rule, the staff shall consult either the current Plat Book and computerized ownership records located in the Office of the Auditor of Monroe County, Indiana or the Monroe County, Indiana Geographic Information System to determine the name and address of each adjacent property owner. A good faith effort shall be made to investigate and resolve any discrepancies or omissions in or among such records in order to determine name and address of the current owner of record. Each notice shall be mailed and postmarked no later than the fifth business day after the date upon which the name and address of the owners were obtained from the Plat Book and the computer records in the Auditor's office as described above or as gained from the Monroe County, Indiana Geographic Information System.
 5. The manner in which notice must be sent to interested parties shall be as follows:
 - a. Required notices to interested parties shall be sent by regular first class mail.

- b. Proof that notice has been mailed shall be sufficient proof of notice under these rules regardless of actual receipt.
- c. Proof of notice shall consist of submittal of the following items to the Planning and Transportation Department in the following manner:
 - (1). A copy of the Notice of Public Hearing to be mailed to the interested parties.
 - (2). A list of interested parties with addresses.
 - (3). An Affidavit of Notice to Interested Parties in a form approved by the Planning and Transportation Department including: name of person preparing and mailing the notice; name of petitioner; location of petition; and a statement that notice was mailed at least twenty-one (21) days prior to the initial public hearing of the Plan Commission or Plat Committee.
 - (4). A copy of the map indicating interested parties' property as generated by the Planning and Transportation Department.

The Planning and Transportation Department shall retain the proof of notice within the petition file.

- d. Appearance at any hearing on a petition or proposal, in person or by representative, shall waive any defect in notice unless the alleged defect is raised at the beginning of the hearing.
6. The Planning and Transportation Department shall cause a legal notice to be published in a daily newspaper published and distributed in the county ten (10) days and prior to the initial hearing. Said notice shall serve as a legal advertisement for continued public hearings. The petitioner shall bear the expense of said advertisement.
7. ~~For change of zone and planned unit development preliminary plan the Planning and Transportation Department~~ All petitioners for any Plan Commission or Plat Committee approval (excepting zoning text amendments and resolutions) shall post a sign or signs on the subject property in a location clearly visible to passing traffic. The staff will determine sign locations with not less than one sign placed on the property per street frontage per block. Signs, of a design approved by the Plan Commission, shall be available in the City Planning and Transportation Department. Signs shall be placed at least 21 days prior to the hearing of the Plan Commission or Plat Committee. The petitioner shall purchase the signs required for this notice at a price reflecting replacement cost.

- B. In the event a request for action by the Plan Commission or Plat Committee is being made by less than 100% of the property owners directly included in the proposed action, or in the event the Plan Commission or the Common Council are the proponents of the action, the following requirements for notice must be met:
1. All petitioners for any Plan Commission or Plat Committee approval (other than the Plan Commission or Common Council) shall inform interested parties of the proposal by notice sent to the residence or the last known address of the interested parties. Petitioners shall prepare the notice in a form specified by the Planning and Transportation Department and shall mail said notice not less twenty-one (21) days before the initial Plan Commission or Plat Committee hearing date. The Planning and Transportation Department shall verify that the notice is properly distributed by the petitioner not less than twenty-one (21) days before the date of the Plan Commission or Plat Committee hearing. If adequate notice in accordance with these rules is not given to the interested parties and this fact is confirmed by staff prior to Plan Commission action, such petition may be continued to a later date to allow proper notice to all interested parties.
 2. In any case where a proposal to change the zone maps is initiated by the Plan Commission or by the Common Council, other than a proposal to repeal and replace the zone maps for the entire planning jurisdiction, notice shall be given to interested parties by the staff. Such notice shall be postmarked at least twenty-one (21) days prior to the initial hearing on the proposal.
 3. Such notice shall state:
 - a. The general location by address or other identifiable geographic description of the subject property or area.
 - b. A summary of the subject matter contained in the proposal and/or a description of the proposed change in the zone maps, where the proposal involves a change to the zone maps.
 - c. The name of the petitioner.
 - d. The times and places the petition has been set for hearing.
 - e. That the petition and file may be examined in the office of the Planning and Transportation Department.
 - f. That the addressee may voice an opinion at the hearing and/or file written comments with the Commission or Plat Committee.

- g. That the hearing may be continued from time to time as may be found necessary.
4. Interested parties shall be defined as owners of property within the area included in the petition or proposal who are not petitioners, owners of property adjacent and contiguous to the property included in the petition or proposal, and all persons owning land abutting the aforementioned immediately-adjacent property owners (i.e, notice shall be provided “two (2) properties deep”) but not to exceed three hundred (300) linear feet from the subject parcel(s) for which a petition or proposal is being requested. Intervening public rights-of-way shall not be considered in determining what property is adjacent and contiguous.
5. In order to determine the names and addresses of property owners to whom notice must be sent under this Rule, staff shall consult either the current Plat Book and computerized ownership records located in the Office of the Auditor of Monroe County, Indiana or the Monroe County, Indiana Geographic Information System to determine the name of each adjacent property owner and address. A good faith effort shall be made to investigate and resolve any discrepancies or omissions in or among such records in order to determine name and address of the current owner of record. Each notice shall be mailed and postmarked no later than the fifth business day after the date upon which the name and address of the owner were obtained from the Plat Book and the computer records in the Auditor's office as described above or as gained from the Monroe County, Indiana Geographic Information System.
6. The manner in which notice must be sent to interested parties shall be as follows:
 - a. Required notices shall be sent by certified mail with return receipt requested to all owners of property within the area included in the petition or proposal, other than those who have signed the petition or application requesting Plan Commission or Plat Committee approval except as otherwise provided in Paragraph 6(c) herein.
 - b. Required notices to all other interested parties shall be sent by regular first-class mail.
 - c. It shall be the duty of the staff to examine the file within the three (3) business days prior to the initial hearing to determine whether all required proof of service (as set forth in Paragraph 7 and/or 6(d) of this Rule) has been filed, and to advise the Plat Committee at its

hearing, or the Plan Commission at its initial hearing of any omissions or deficiencies in such proof of service. In any case where a notice has been sent by certified mail with return receipt requested in accordance with these rules, but no signed return receipt has been received by the sender on or before the date of the initial hearing, or where the notice is returned to the sender for any reason, Staff shall promptly make a good faith attempt to obtain delivery by reasonable alternative means which shall include:

- (1) Re-sending notice by certified regular mail with return receipt requested, where a new address is located, or
- (2) where the reason for non-delivery appears to be something other than incorrect address, leaving the notice at the residence of the person to be served, along with mailing a copy of the notice to that address by first class mail; or, where the owner is not a resident of the City of Bloomington, mailing by first class mail.

- d. Except as provided in 6(c) above, proof that notice has been mailed in accordance with Paragraph 7 shall be sufficient proof of notice under these rules regardless of actual receipt. In situations addressed by 6(c) above, proof of notice shall be adequate if it is shown that the second attempt at notice was mailed (and left at the residence, where applicable) at least ten days prior to the final hearing. Such proof shall be by affidavits in substantially the same form as Paragraph 7(a), detailing the manner in which a new address was obtained (where applicable) and the manner in which notice was sent and left at the residence (where applicable). Proof shall also include postmarked certified mail receipts and signed return receipts where used. Provided, however, the Plan Commission or Plat Committee may at its discretion continue a final hearing and require further attempts at notice to non-petitioning property owners whose property is included in the petition or proposal.
- e. Appearance at any hearing on a petition or proposal, in person or by representative, shall waive any defect in notice unless the alleged defect is raised at the beginning of the hearing.

7. Proof of notice shall be in the following form:

- a. For notice to non-petitioning owners, one or more notarized, sworn affidavits stating the manner in which the affiant(s) obtained the names and addresses of the property owners required to be notified,

and stating the date upon which such names and addresses were obtained. Said manner shall be in accordance with Paragraph 5 of this Rule. In the case where the affidavit relates to a second attempt pursuant to Paragraph 6(c) of this Rule, the manner of obtaining a new name and/or address, if any, shall be in accordance with said Paragraph 6(c) and 6(d). Said affidavit(s) shall also include the list of names and addresses thus obtained, keyed to a map showing the petitioned property and surrounding property; and, said affidavit(s) shall also show that notice in the required form was sent to the names and addresses on said list, the date upon which said notice was sent (which shall be not later than the second business day after the names and addresses were obtained in accordance with Paragraph 5 of this Rule), and the manner in which said notice was sent, which shall be in accordance with Paragraph (6) of this Rule. All affidavits shall be made upon personal knowledge. The affidavits required by this provision shall be filed with the Planning and Transportation Department not later than three (3) business days prior to the initial hearing.

- b. Proof of compliance with these notice requirements shall also include the original receipts for certified mail stamped by the United States Post Office with the date of mailing, whenever these rules require that notice be sent by certified mail. The receipts shall be filed with the Planning and Transportation Department simultaneously with the affidavits required by Paragraph 7(a) above.
- c. Proof of notice sent by regular first class mail shall consist of submittal of the following items to the Planning and Transportation Department in the following manner:
 - (1) A copy of the Notice of Public Hearing to be mailed to the interested parties.
 - (2) A list of interested parties with addresses.
 - (3) An Affidavit of Notice to Interested Parties in a form approved by the Planning and Transportation Department including: name of person preparing and mailing the notice; name of petitioner; location of the petition; and a statement that notice was mailed at twenty-one (21) days prior to the initial public hearing of the Plan Commission or Plat Committee.
 - (4) A copy of the plat map indicating interested parties' property.

The Planning and Transportation Department shall retain the proof of notice within the petition file.

- d. In all cases where notice is required to be sent by certified mail with return receipt requested, proof of compliance with these notice requirements shall also include filing with the Planning and Transportation Department the original, signed return receipts showing the date and to whom delivered. Where the staff is responsible for giving notice, the return receipts shall be placed in the file as they are received. Where any other person is responsible for giving notice under these rules, that person shall file the return receipts with the Planning and Transportation Department at least three (3) business days prior to the initial hearing.

Provided, however, signed receipts which are received by the person responsible for giving notice later than three (3) days before the initial hearing shall be filed with the Planning and Transportation Department as they are received but in no event later than three (3) days before the final hearing. Provided further, where any notice required to be sent by certified mail with return receipt requested is returned to the sender for any reason, the person responsible for sending notice shall promptly notify the Planning and Transportation Department of that fact and shall also provide the returned envelope to the Planning and Transportation Department.

8. The Planning and Transportation Department shall cause a legal notice to be published in a daily newspaper published and distributed in the county ten (10) days prior to the initial hearing. Said notice shall serve as a legal advertisement for both public hearings. The petitioner shall bear the expense of said advertisement.
 9. All petitioners for any Plan Commission or Plat Committee approval (excepting zoning text amendments and resolutions) shall post a sign or signs on the subject property in a location clearly visible to passing traffic. The staff will determine sign locations with not less than one sign placed on the property per street frontage per block. Signs, of a design approved by the Plan Commission, shall be available in the City Planning and Transportation Department. Signs shall be placed at least 21 days prior to the hearing of the Plan Commission or Plat Committee. The petitioner shall purchase the signs required for this notice at a price reflecting replacement cost.
- C. In the event a proposal is initiated by either the Plan Commission or the Common Council, the following requirements must be met:
1. The Plan Commission shall give notice of all hearings by publication.

2. The notice by publication shall comply with Indiana Code section 36-7-4-604 and Indiana Code section 5-3-1, as amended. Such notice shall state:
 - a. The time and place of the hearing(s);
 - b. The geographic areas (or zoning areas in a specified geographic area) to which the proposal applies;
 - c. A summary prepared by the Plan Commission of the subject matter contained in the proposal (the entire text of the ordinance is not required);
 - d. If the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of these penalty or forfeiture provisions;
 - e. The place where a copy of the proposal is on file for examination before the hearing;
 - f. The written objections to the proposal that are filed with the secretary of the Commission before the hearing will be considered;
 - g. That oral comments concerning the proposal will be heard; and
 - h. That the hearing may be continued from time to time as may be found necessary.
3. An additional notice shall be provided to all interested parties at least ten (10) days before the date set for the hearing.
 - a. An interested party for purposes of this subsection is any person whose property is located in an area that the proposal plans to:
 - (1) Rezone;
 - (2) Subject to a new overlay; and/or
 - (3) Change the permitted or conditional uses.
 - b. The notice required by this subsection shall be given via United States mail, postage prepaid. The mailing shall be sent to the address listed on the tax records for the affected

property and postmarked at least ten (10) days prior to the preliminary hearing on the matter.

- c. If the notice given via the United States mail is returned, an additional notice shall be affixed to the affected property.
4. If the subject matter of the proposal abuts or includes a county line (or a county line street or road or county line body of water), then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile into the adjacent county, whichever is less, are interested parties who must receive notice under the above subsection (C)(3).
5. Proof that notice has been mailed in accordance with this Rule shall be sufficient proof of notice. In situations addressed by 3(c) above, proof of notice shall be adequate if it is shown that the second attempt notice was affixed to the affected property.
6. Appearance at any hearing on a petition or proposal, in person or by representative, shall waive any defect in notice unless the alleged defect is raised at the beginning of the hearing.
7. Proof of notice shall be in the following form:
 - a. A notarized, sworn affidavit stating the manner in which the staff obtained the names and addresses of the interested parties, and stating the date upon which such names and addresses were obtained.
 - b. A notarized, sworn affidavit stating the date upon which the required mailing was postmarked.
 - c. A notarized, sworn affidavit stating the date upon which notice given via U.S. mail was returned and the date upon which the notice was affixed to the affected property.
 - d. All affidavits shall be made upon personal knowledge and shall be kept on file in the Planning and Transportation Department with the file associated with the proposal.

Article V. Hearings. Except as expressly provided herein, these provisions shall apply only to Plan Commission hearings, but not to Plat Committee hearings.

- A. The order of business of regular meetings shall be as follows:

- I. Roll Call
- II. Approval of Minutes
- III. Reports, Resolutions, and Communications
- IV. Consent Agenda
- IV. Cases (Preliminary and final hearings)
- VI. Discussion, Staff Proposals, etc.
- VII. Adjournment

1. Consent Agenda: A consent agenda shall be developed by staff in advance of the Plan Commission meeting. Each item within the consent agenda shall be individually numbered and included within the Plan Commission packet. The consent agenda shall be presented by the Plan Commission President after the *Reports, Resolutions, and Communications* section of the agenda. The President shall ask if there is anyone from the public in attendance to speak against any consent agenda petition. Items shall be removed from the consent agenda at the request of any member of the Plan Commission. Items not removed from the consent agenda shall be adopted by general consent without debate. Removed items shall be taken up for consideration in accordance with the order they appear in the Plan Commission's packet.

B. Limits on Testimony:

1. The general format for each case will be an order and time limit as follows:

Staff Report

Presentation by Petitioner- 20 minutes total

Questions for the Staff and Petitioner by the Plan Commission

Public Comment - 5 minutes per speaker

Back to the Plan Commission for final action

2. It will be the responsibility of staff to keep time for each speaker wishing to make public comment. Specifically, a five (5) minute time clock must be displayed inside the meeting room and within full view of each presenter.

If a spokesperson for another local government board or commission wishes to address the Plan Commission, the Plan Commission shall allow up to ten (10) minutes of public comment. Upon unanimous vote of the Plan Commission, the same privilege may also be extended to a spokesperson for a neighborhood association or similar group of people wishing to make public comment.

It shall be the responsibility of the staff to publish speaking rules and make them available as handouts for the public. Speaking rules shall also be posted on the doors of the Council Chambers.

3. Thereafter, further public discussion and inquiry by the Commission shall be at the sole discretion of the presiding officer of the Commission unless these rules are modified by a majority vote.

C. Preliminary and Final Hearings:

1. Preliminary Hearings:

- a. The purpose of the preliminary hearing shall be the exchange of information, and to allow the most thorough consideration of all sides of a controversy. All parties are encouraged to provide the Commission with written copies of their statements or position papers.
- b. Any petitioner withholding information from the Commission or other interested parties will be denied the right to rely on such information at the final hearing.
- c. Preliminary hearing cases shall always be forwarded to the next regularly scheduled Plan Commission meeting for a final hearing, unless the Plan Commission votes to forward the case to a different hearing date or to waive a second hearing. A Plan Commission vote is recommended, but not required, to forward cases from the preliminary hearing to the next regularly scheduled Plan Commission meeting for final hearing.

2. Final Hearings:

- a. The final hearing shall be for the purpose of final disposition and decision of the merits of each petition.
- b. In the event that the Commission feels that issues have been adequately aired and the case has received sufficient review, the final hearing may be waived by a majority vote and the petition may be acted upon at the first hearing. No final hearing shall be waived unless both the legal notice and the notices to interested parties have specified that such waiver is requested.

3. Single Hearing Cases. The following case types may be reviewed by the Plan Commission in one (1) hearing:

- a. All preliminary plats which are in full conformance with Title 20 Unified Development Ordinance and all final plats which are in full conformance with approved preliminary plats and with Title 20 Unified Development Ordinance.
 - b. Any preliminary or final plat referred by the staff to the Plat Committee.
 - c. Final Plans for planned unit developments which are in essential compliance with approved Preliminary Plans and which have been filed within 18 months of the date of preliminary approval by the Common Council.
 - d. Site Plans which are in essential compliance with Title 20, Section 20.09.120 "Site Plan Review" of the Bloomington Municipal Code, as amended.
4. Findings:

The minutes of the Commission shall indicate action taken and the reasons therefore and shall be furnished to any interested party upon request; provided, however, decisions upon applications for subdivision approval shall be in the form of written findings and decisions of the Plan Commission or Plat Committee. All decisions must be signed by the president and secretary of the Plan Commission, and a copy of any decision by the Plan Commission disapproving a preliminary subdivision plat must be provided to the applicant. All decisions of the Plat Committee shall be provided to interested parties, pursuant to Article II(G)(5) of these Rules and Procedures.

Article VI. Docket

- A. Each case to be publicly heard before the Commission or Plat Committee shall be filed in proper form, numbered serially, and placed on the docket of the Plan Commission or Plat Committee. The document numbers shall begin anew on January 1 of each year.
- B. No case shall be placed on the docket until the petitioner has consulted with a staff member who has determined that the petition has been presented in proper form with all the required exhibits and supporting documents.

C. The staff may schedule the case for hearing before the Plan Commission or Plat Committee at its discretion, taking into account the magnitude of required review or coordination, or the desirability of modifying the petition, but subject to any time limits in these Rules, the Subdivision Control Ordinance, the Zoning Ordinance, or state law. Prior to each regularly scheduled Plan Commission hearing, the staff shall determine the estimated time length for each petition. Where it is evident that discussion on petitions would likely occur after 9:00pm, the staff shall have the authority to limit such petitions and forward them to the next regularly scheduled meeting of the Commission. Furthermore, for petitions characterized by a high degree of complexity and public interest, staff and the Commission shall strongly consider skipping monthly meeting cycles in order to allow for more timely consideration of other petitions which have been filed.

D. The identification of docket numbers for both Plan Commission and Plat Committee cases shall be as follows:

Adoption of or amendment to a Master Plan	MP
Adoption of or amendment to a Zoning Ordinance	ZO
Approval of Plat or Replat.....	DP
Resolutions.....	RS
Site Plan	SP
Planned Unit Development.....	PUD

Article VII. Final Disposition of Petitions

A. The final disposition of any petition shall be recorded in the minutes of the Commission or Plat Committee. Following a vote against a petition, the Commission or Plat Committee president shall restate the position of the Commission for the record.

B. The Commission or Plat Committee may dismiss a case for lack of prosecution or lack of jurisdiction. When a petitioner or their representative has failed to appear at two (2) consecutive meetings, the case may be dismissed for lack of prosecution at a subsequent meeting after notice to the petitioner.

C. No petition may be withdrawn by the petitioner after a vote has been ordered by the presiding officer. No petition which has been withdrawn by the petitioner shall be placed on the docket again for hearing within a period of three (3) months from the date of said scheduled meeting, except upon motion to permit redocketing, adopted by the affirmative vote of a majority of the members of the Commission or Plat Committee.

D. No zoning petition which has been disapproved by the Commission and rejected by the Common Council, either by lack of action or by vote, shall again be placed on the docket

for hearing within a period of one (1) year from the date of the Commission's original disapproval. (Indiana Code section 36-7-4-609, as amended)

Article VIII. Miscellaneous Provisions

- A. Every person appearing before the Commission or Plat Committee shall abide by the order and direction of the president. Discourtesy, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Commission or Committee and shall be dealt with as the Commission or Committee directs.
- B. No case shall be continued at the request of the petitioner unless such request has been made to the Planning and Transportation Department not later than noon, one (1) week before the scheduled hearing, and the request has been noted on the agenda before it is distributed. If the petitioner requests that a case be continued prior to the above referenced deadline, the Planning and Transportation Department, at its discretion, may act as agent for the Commission or Plat Committee and may approve such requests without formal Commission or Committee vote. Such staff approval shall be noted on the agenda. However, any request for continuance that occurs after the above-mentioned deadline requires a majority vote by the Commission or Committee. Similarly, if a petition is continued for three (3) consecutive hearings, any further request for continuance, even within the above-referenced deadline, requires a majority vote by the Commission or Committee. If the Commission or Committee denies such a request for continuance, the petition shall be treated as denied on the merits unless the petitioner elects to formally withdraw the petition within twenty four (24) hours.
- C. Amendments to these rules of procedures may be made by the Commission at any regular or special meeting upon the affirmative vote of a majority of the members of the Commission.
- D. The suspension of any rules may be ordered at any Plan Commission meeting by a unanimous vote of those present.

ZO-45-17 MEMO:

To: City of Bloomington Plan Commission

From: James Roach, AICP, Development Services Manager

Date: December 29, 2017

Re: Amendment to the Unified Development Ordinance to add Business/Professional Office to the list of permitted used in the Medical (MD) zoning district.

The Planning and Transportation Department recommends that a new use be added to the Medical (MD) zoning district in the Unified Development Ordinance (UDO); Business/Professional Office.

Rationale for Proposed Ordinance

The *2002 Growth Policies Plan (GPP)* has specific guidance for properties listed as ‘Public/Semi-Public/Institutional.’ This future land use category includes all the land currently zoned MD surrounding the current IU Health Bloomington Hospital location. The GPP notes that ‘Public/Semi-Public/Institutional’ is designed to provide adequate land to support compatible government, non-profit and social service land use activities. The GPP did not anticipate the relocation of IU Health Bloomington Hospital and provided for land area to support a use that will soon not be in the area.

The current MD zoning district follows the guidance of the GPP to provide adequate land for the hospital and ancillary private users with a very limited list of permitted uses. Medical Clinics and general medical offices are permitted, but business and professional offices are not in order to ensure adequate space was available for Medical users in the future.

The UDO, in the district intent for the MD district, states the following:

20.02.530 - Medical (MD)—District intent.

- The MD (medical) district is intended to be used as follows:
 - Provide for the location and regulation of hospital uses and associated medical facilities.
 - Ensure that medical land uses do not negatively impact adjoining residential land uses through control of lighting, noise, traffic congestion, and spill-over parking.

- Encourage the continuation of Bloomington Hospital's medical care and related services to the entire community, regardless of ability to pay, by ensuring that Bloomington Hospital meets its long-term space utilization needs.
- Plan commission/board of zoning appeals guidance:
 - Bloomington Hospital is encouraged to expand without encroachment into established neighborhoods such as McDoel Gardens and Prospect Hill.
 - Proposals for new or expanded medical facilities should be scrutinized in recognition of community interest, public health needs, and impacts on Bloomington Hospital so long as Bloomington Hospital continues to provide its current level of community service.
 - Encourage proposals that further the growth policies plan goal of sustainable development design featuring conservation of open space, mixed uses, pervious pavement surfaces, and reductions in energy and resource consumption.

Bloomington Hospital no longer has “long term space utilization needs” in this area and much of the purpose of this district will soon be obsolete.

The 2018 draft Comprehensive Plan anticipates the relocation of the hospital, but that document has not yet been adopted. The 2018 Comprehensive Plan categories the area around the current Bloomington Hospital as a “Mixed Urban Residential” area with focus on creating an “Urban Village Center” with additional guidance from a future “Focus Area” study.

The plan says this about “Urban Village Center” (page 90):

The Urban Village Center is a neighborhood-scaled, mixed-use node that serves as a retail, business, and service destination for neighborhood residents. Urban Village Centers are found in several districts throughout Bloomington. They should be designed to serve the neighborhood adequately while also balancing usage from surrounding areas. First floor uses are mostly retail oriented, with upper floors focusing on residential and *office* uses.”

On page 90, the plan states that within “Urban Village Centers”, “Residential uses should be limited to multifamily development on floors above street level *office* and retail uses.”

On page 37, the plan also states that “The ...IU Health Hospital site on W. 2nd Street... offer(s) opportunities for creative development, including opportunities within arts and tourism.”

Details of the future “Focus Area” study for the hospital site are found on page 99:

W. 2nd Street/Former Bloomington Hospital

Background and Intent: The IU Health Bloomington Hospital is expected to vacate the original hospital site in or around 2020 or 2021. This change will present a redevelopment challenge and opportunity. The hospital site encompasses nearly an entire large city block, and with adjacent supportive professional offices and parking lot, the Focus Area encompasses a much larger expanse. Because of the challenges and opportunities presented by this move, a detailed Focus Area plan will be developed in a process that includes a community charrette with an urban planner and other forms of deep public participation. Once the plan is completed, it shall serve as the primary planning policy document for redevelopment of this Focus Area. Until that time, land use policy shall defer to the underlying districts.

Land Development Approvals: Until a Focus Area plan is developed, land development activity is not encouraged. The Focus Area plan will better define the intent and context in order to identify the most appropriate development theme. However, in the interim, locations should utilize the underlying Land Use District designations within this chapter and apply the Maintain development theme for approvals. Furthermore, the aforementioned principles of Sustainability and Livability or Lifetime Community should be used to coordinate and attract investments and interests.

In recent years, the Board of Zoning Appeals and the Plan Commission have seen a handful of use variance requests to permit various non-permitted uses to re-use existing buildings in the MD district. The vast majority of these requests have been for business/professional office. The Department can not anticipate what the new zoning for the current MD area might be after the completion of the UDO update process, which has not begun, but we do anticipate that any new non-residential zoning districts in this area would permit this use. This use is currently permitted in the CG, CL, CA, CD, BP, and IG districts.

Text of Amendment

20.02.540 – Permitted Uses

Add “Business/Professional Office”

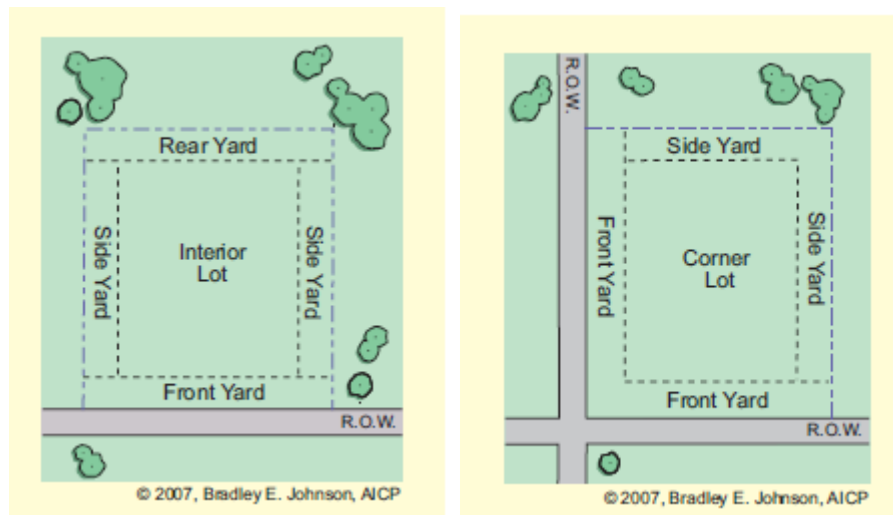
ZO-46-17 MEMO:

To: Plan Commission
From: Amelia Lewis, Zoning and Long Range Planner
Date: January 8, 2018
Re: Amendments to the Unified Development Ordinance concerning fence standards for corner lots and through lots

The Planning and Transportation Department proposes to amend 20.05.046, FW-01 Fence and Wall Standards in the Unified Development Ordinance (UDO). Currently, fences forward of the front wall of the building are not permitted to exceed 4 feet in height.

Currently, the UDO counts any street facing property line as a front yard. Lots with two or more street frontages have two front yards. Property owners with corner lots are prohibited from building fencing exceeding 4 feet in height along any of the street facing frontages.

This regulation was added to the UDO in 2006 and was primarily written to prevent tall privacy fences from being placed adjacent to sidewalks negatively impacting the pedestrian experience and to prohibit tall fences from blocking views to front doors and enhancing the public realm along street facing frontages.



This is a common variance request as well as a common enforcement issue the Department faces. Since 2007, there have been 15 approved variances for fences in front yards, 4 were denied and 3 were withdrawn. Since 2016 there have been 5 UReport complaints.

The proposed amendment would make a distinction between front yards on corner lots between the primary front, where people typically enter a building, and the secondary front, the non-addressed side which functions as a side yard, but is still along a public street.

The existing regulations for the primary front yard would remain the same in order to keep the pedestrian realm along streets open.

On the secondary front, the non-addressed portion of the lot, fences up to eight (8) feet in height would be permitted up to the building setback line or the build-to-line, whichever applies. This would ensure the fences maintain a distance from the sidewalk and adjacent street while still providing the ability to place a fence in a functioning side yard.

Alternative options were considered such as a flat setback distance from a property line or opacity standards for fences over 4 feet. The Department chose the building setback line or the build-to-line as the secondary front yard setback line for fences as the UDO permits a building at this spot on the lot, a fence would not be more intrusive than a wall at this location. This change will not solve all problems or prevent any variance requests, but will allow for some additional options for property owners.

Proposed Amendment:

20.11.020 Defined Words

Lot, Interior: Any lot, the side property line of which abuts the rear property line of one (1) or more lots, and which is not separated by ~~an alley or any other public way~~ a public street.

Secondary Front Building Wall: The non-addressed side of the building elevation which fronts a public street where access to a structure is available, but is not the primary entrance to the structure.

~~20.05.046 FW-01 [Fence and Wall Standards, General]~~

~~(d) Maximum Height:~~

- ~~(a) Behind the front building wall of the primary structure, fences and walls shall not exceed a combined height of eight (8) feet.~~
- ~~(b) Forward of the front building wall of the primary structure, fences and walls shall not exceed four (4) feet in height.~~
- ~~(c) Where no primary structure exists on the parcel, fences and walls shall not exceed four (4) feet in height.~~

20.05.046 FW-01 [Fence and Wall Standards, General]

(d) Maximum Height:

(1) Interior Lots

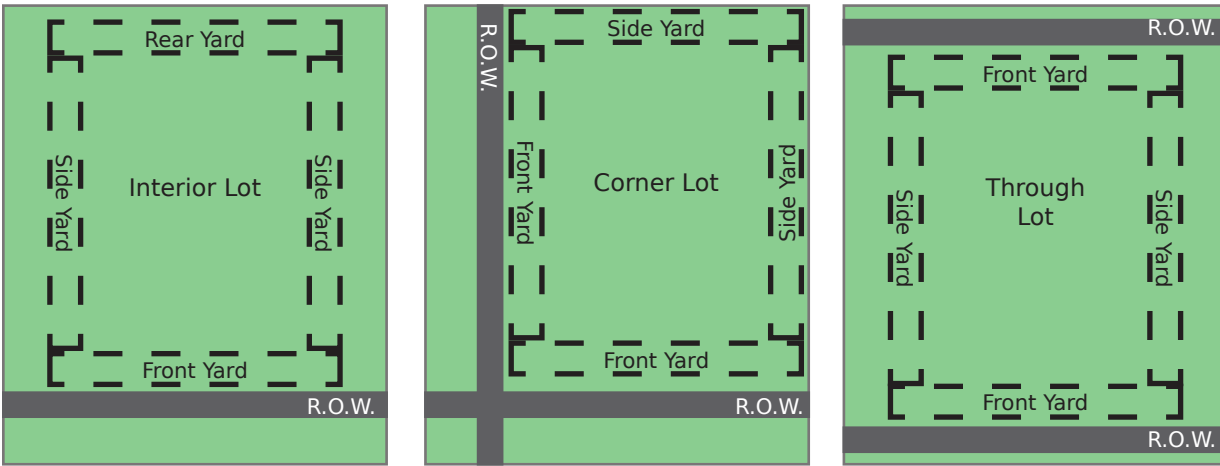
- (A) Behind the front building wall of the primary structure, fences and walls shall not exceed a combined height of eight (8) feet.
- (B) Forward of the front building wall of the primary structure, fences and walls shall not exceed four (4) feet in height.

(2) Corner Lots: In the case where the structure has two front building walls, one frontage shall be the considered a secondary front building wall.

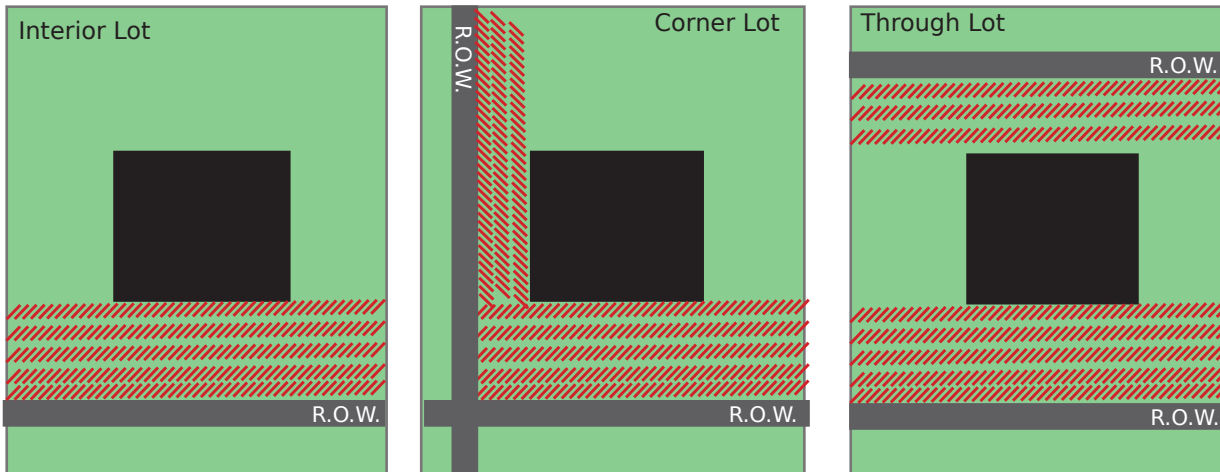
- (A) Fences and walls along the front setback of the front building wall shall abide by 20.05.046(d)(1).

- (B) Fences and walls along the lot frontage of the secondary front building wall, shall not exceed four (4) feet forward of the build to line or the building setback line, whichever applies.
 - (C) Behind the build to line or front building setback line, on the secondary front building wall, fences and walls shall not exceed eight (8) feet in height.
 - (D) Any disputes as to the secondary front building wall shall be determined by the Planning and Transportation Director.
- (3) Through Lots: For the purposes of these regulations, fences on the lot frontage of the secondary front building wall are treated like rear property lines.
- (4) Where no primary structure exists on the parcel, fences and walls shall not exceed four (4) feet in height.

Lot Type and Yard Classification

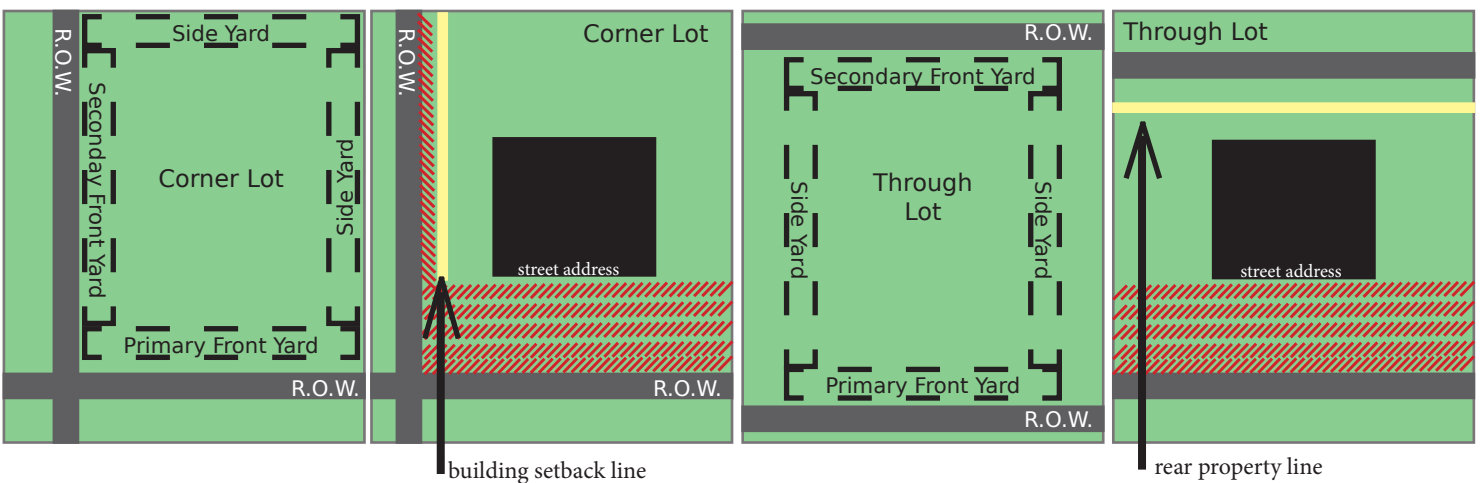


Existing Fence Regulations



Fences in the red area can not exceed 4 feet in height.

Proposed Fence Regulations



The regulations for interior lots will remain the same. The proposed amendment would make a distinction on corner lots between the primary front, where people typically enter their house, and the secondary front, the non-addressed side which functions as a side yard, but is still along a public street. The existing regulations for the primary front yard would remain the same. On the secondary front, the non-addressed portion of the lot, fences up to eight (8) feet in height would be allowed up to the building setback line or the build-to-line, whichever applies. This would ensure the fences maintain a distance from the sidewalk and adjacent street while still providing the ability to place a fence in a functioning side yard.

ZO-47-17 Memo

To: Bloomington Plan Commission

From: Jackie Scanlan, AICP Senior Zoning Planner

Date: December 28, 2017

Re: Amendments to Unified Development Ordinance Concerning Sidewalk Construction Requirements and Determinate Sidewalk Variance Standards and Procedures

The Planning and Transportation Department proposes to amend the regulations related to requirements to construct new sidewalks, as well as the variance procedures related to sidewalk and determinate sidewalk variances.

Sidewalk installation is currently required for all new:

1. Subdivisions
2. Commercial/Industrial development on vacant lots
3. Commercial/Industrial additions to existing development
4. Residential development on vacant lots, both single-family and multifamily
5. Multi-Family additions to existing development
6. Home Occupations

The current regulations are sometimes onerous for single-family home construction on existing legal lots of record and the variance criteria appear to be more applicable to a city that is primarily developing greenfield subdivisions. In Bloomington, the sidewalk requirement is most necessary in new subdivisions, commercial development, and multifamily development, and no changes are proposed for those situations. Currently, infill single-family home construction on existing lots requires building sidewalks along any street frontage, even in areas where there are no existing sidewalks and no future sidewalk connection is planned or realistically anticipated. The intent of the regulation was to help the pedestrian network expand incrementally, but the reality of the application of the regulation is that owners of existing lots of record are required to build sidewalk even with no connection to existing or proposed pedestrian infrastructure. This creates the 'sidewalk to nowhere' effect where a city block contains only one 50-60 foot long swath of sidewalk.

The Department presented the amendment to the Bicycle and Pedestrian Safety Commission at its December meeting. A quorum was not present, but those in attendance were supportive of the amendment.

The changes proposed are described below.

1. The Department proposes to exempt ‘*new single-family residences built on existing legal lots of record on non-classified (neighborhood) streets and additions to existing single-family residential structures*’ in a new *Applicability* section added to the *Alternative Transportation* section of the Unified Development Ordinance Chapter 5.
2. The Department proposes to strike language from the *Home Occupation* section that currently requires that bicycle and pedestrian facilities be installed when a property has received a home occupation approval. This triggers sidewalk construction on single-family properties similar to the infill situation mentioned above. The intent of regulation related to Home Occupations is to retain the residential character of the property. While any property can install bicycle parking racks, the Department is comfortable making this optional, as opposed to mandatory.
3. The Unified Development Ordinance contains two sets of findings of fact applicable to sidewalks.

The first set is found in 20.09.135(c). The findings listed are the three findings listed for any development standards variance (findings (1) through (3)), plus two additional findings.

- (1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and*
- (2) *The use and value of the area adjacent to the property included in the development standards variance will not be affected in a substantially adverse manner; and*
- (3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the development standards variance will relieve the practical difficulties.*
- (4) *That the topography of the lot or tract together with the topography of the adjacent lots or tract and the nature of the street right-of-way make it impractical for construction of a sidewalk as required by Section 20.05.010(b)(3); and*
- (5) *That the pedestrian traffic reasonably to be anticipated over and along the street adjoining such lot or tract upon which the new construction is to be erected is not and will not be such as to require sidewalks to be provided for the safety of pedestrians.*

This set of findings applies in situations where a development triggers sidewalk installation, and a property owner is requesting not to install sidewalk, at all. The Department proposes to strike 20.09.135(c) from the UDO, and to use the more general Development Standards variance findings (numbers (1) through (3) above) found in 20.09.130 instead. The Department believes that facts related to (4) and (5) can easily be included in (1) through (3) when applicable, and are not necessary to be stand-alone findings that must be met in each case.

The second set of findings related to sidewalks is found in 20.09.135(d). The findings are the three findings listed for any development standards variance (findings (1) through (3)), plus three additional findings.

- (1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and*
- (2) *The use and value of the area adjacent to the property included in the development standards variance will not be affected in a substantially adverse manner; and*
- (3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the development standards variance will relieve the practical difficulties; and*
- (4) *The adjacent lot or tracts are at present undeveloped, but it appears that at some future date these lots or tracts will be developed, increasing the need for sidewalks for the protection and convenience of pedestrians; and*
- (5) *The location of the lot or tract is such that the present pedestrian traffic does not warrant the construction of sidewalks, but it appears that in the future the pedestrian traffic may increase; and*
- (6) *Uniformity of development of the area would best be served by deferring sidewalk construction on the lot or tract until some future date.*

This set of findings applies in situations where a development triggers sidewalk construction, and a property owner is requesting to forestall sidewalk installation until some future date. The Department proposes to strike 20.09.135(d) from the UDO, and to use the more general Development Standards variance findings (numbers (1) through (3) above) found in 20.09.130 instead. The Department proposes to add a new section to the UDO to provide guidance when considering practical difficulties for determinate sidewalk variance requests.

While not to be included as separate findings of fact, items to consider when determining the practical difficulties or peculiar conditions associated with a determinate sidewalk variance include, but are not limited to:

- (1) *That the topography of the lot or tract together with the topography of the adjacent lots or tract and the nature of the street right-of-way make it impractical for construction of a sidewalk, or*
- (2) *That the pedestrian traffic reasonably to be anticipated over and along the street adjoining such lot or tract upon which new construction is to be erected is not and will not be such as to require sidewalks to be provided for the safety of pedestrians.*

- (3) *The adjacent lot or tracts are at present developed without sidewalks and there is no reasonable expectation of additional sidewalk connections on the block in the near future; or*
 - (4) *The location of the lot or tract is such that a complete pedestrian network is present on the other of the street on the same block; or*
 - (5) *Uniformity of development of the area would best be served by deferring sidewalk construction on the lot or tract until some future date.*
4. The Department proposes to add a *Commitment* section to the UDO, requiring that a Zoning Commitment be recorded in cases when a Determinate Sidewalk Variance is granted. Recording a Zoning Commitment will allow future owners to know that a variance was granted and sidewalk installation may be required at some time in the future.

20.05.051 HO-01 [Home Occupation; General]

- a. Certificate of Zoning Compliance: No person shall conduct a home occupation in a dwelling in any zoning district without having first received a Certificate of Zoning Compliance. Such Certificate of Zoning Compliance shall not be transferable to any other person, nor shall this Certificate of Zoning Compliance be valid at any address or for any home occupation other than the one appearing on the Certificate of Zoning Compliance.
- b. Conditional Use Approval: In residential districts, a Conditional Use approval by the Board of Zoning Appeals or the Hearing Officer shall be required for home occupations prior to the issuance of a Certificate of Zoning Compliance.
- c. Site Plan Review:
 - (1) *Residential Districts*: An approved home occupation in a residential district shall be treated as a single family dwelling unit for purposes of Site Plan review. ~~Upon approval of a home occupation request, the petitioner shall be required to install bicycle and pedestrian facilities in compliance with Section 20.05.010: AT-01 [Alternative Transportation; General] and Section 20.05.011 AT-02 [Alternative Transportation; Bicycle Parking Standards; General] of this Unified Development Ordinance.~~
 - (2) *Nonresidential Districts*: A home occupation in a nonresidential district that meets all of the standards of *Section 20.05.051* shall be treated as a single-family dwelling unit for purposes of Site Plan review. ~~Upon approval of a home occupation request, the petitioner shall be required to install bicycle and pedestrian facilities in compliance with Section 20.05.010 of this Unified Development Ordinance. A home occupation that does not meet the standards of Section 20.05.051 shall be treated as a commercial use and subject to Site Plan review.~~

20.09.130 Development Standards Variance

- (a) Intent: The purpose of *Section 20.09.130; Development Standards Variance* is:
 - (1) To outline the process by which petitions for variances from the development standards of the Unified Development Ordinance are considered;
 - (2) To provide a mechanism to approve those petitions that will not be contrary to the public interest, where, owing to special conditions, literal enforcement of the Unified Development Ordinance will result in practical difficulties, and so that the spirit of the Unified Development Ordinance shall be observed and substantial justice done.
- (b) Applicability:
 - (1) The Board of Zoning Appeals or Hearing Officer, in accordance with the procedures and standards set out in *Chapter 20.09: Processes, Permits and Fees*,

may grant variances from the development standards applicable to the zoning district in which the subject property is located.

- (2) *Effect of Approval of Variances from the Development Standards:* The grant of variances from the development standards authorizes the development and establishes the terms of use. Variances from development standards are also subject to Site Plan requirements, all necessary permits and approvals, and other applicable requirements. All required permits must be obtained before any grading, construction, or use commences.

(c) Exceptions:

- (1) *Subdivision Control:* It is not within the jurisdiction of the Board of Zoning Appeals or Hearing Officer to grant Development Standards Variances of Chapter 20.06: *Subdivision Types* or Chapter 20.07: *Design Standards*.

(d) Application: Refer to application requirements found at *Section 20.09.030: Applications; General*.

(e) Findings of Fact: Pursuant to IC 36-7-4-918.5, the Board of Zoning Appeals or Hearing Officer may grant a variance from the development standards of the Unified Development Ordinance if, after a public hearing, it makes findings of fact in writing, that:

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and
- (2) The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner; and
- (3) The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.

(f) Determinate Sidewalk Variance Considerations: While not to be included as separate findings of fact, items to consider when determining the practical difficulties or peculiar conditions associated with a determinate sidewalk variance include, but are not limited to:

- (1) That the topography of the lot or tract together with the topography of the adjacent lots or tract and the nature of the street right-of-way make it impractical for construction of a sidewalk, or
- (2) That the pedestrian traffic reasonably to be anticipated over and along the street adjoining such lot or tract upon which new construction is to be erected is not and will not be such as to require sidewalks to be provided for the safety of pedestrians.
- (3) The adjacent lot or tracts are at present developed without sidewalks and there is no reasonable expectation of additional sidewalk connections on the block in the near future; or

- (4) The location of the lot or tract is such that a complete pedestrian network is present on the other of the street on the same block; or
- (5) Uniformity of development of the area would best be served by deferring sidewalk construction on the lot or tract until some future date.

(g) Commitment for Determinate Sidewalk Variance: Upon approval of a determinate sidewalk variance, the Planning and Transportation Department staff shall prepare a Zoning Commitment pursuant to *20.09.110 Commitments; Variance and Conditional Use* indicating that the determinate sidewalk variance was approved and that future installation of sidewalk may be required. The petitioner shall record the Zoning Commitment in the Monroe County Recorder's Office before a Certificate of Zoning Compliance is issued.

(f) (h) Signature: The findings of fact shall be signed by the Chair of the Board of Zoning Appeals or the Hearing Officer.

(g) (i) Notification: The staff shall furnish the petitioner with a copy of the decision of the Board of Zoning Appeals or Hearing Officer.

(h) (j) Duration:

- (1) Unless otherwise specified at the time of approval, any Development Standards Variance granted by the Board of Zoning Appeals or Hearing Officer shall expire:
 - (A) In cases where new construction or modifications to an existing structure are required, three (3) years after the date that the Development Standards Variance was granted, unless a Building Permit has been obtained and construction of the structure or structures has commenced; or
 - (B) In cases where new construction or modifications to an existing structure are not required, three (3) years after the date that the Development Standards Variance was granted, unless a Certificate of Occupancy has been obtained and the use commenced; or
 - (C) At the date of termination as established by the Board of Zoning Appeals or Hearing Officer as a condition or commitment if different from Subdivision 20.09.130(h)(1)(A) or Subdivision 20.09.130(h)(1)(B) above.
- (2) If an appeal by writ of certiorari is taken from an order granting a Development Standards Variance, the time during which such appeal is pending shall not be counted in determining whether the Development Standards Variance has expired under Subdivision 20.09.130(h)(1)(A), Subdivision 20.09.130(h)(1)(B), or Subdivision 20.09.130(h)(1)(C) above.

~~20.09.135 Sidewalk and Determinate Sidewalk Variances~~

(a) ~~Intent: The purposes of this section are:~~

- ~~(1) To outline the process by which petitions for a sidewalk variance and a determinate sidewalk variance are considered;~~
- ~~(2) To provide a mechanism to approve these petitions that will not be contrary to the public interest, where, owing to special conditions, literal enforcement of Section~~

~~20.05.010(b)(3) will result in practical difficulties, and so that the spirit of Section 20.05.010(b)(3) shall be observed and substantial justice done.~~

~~(b) Applicability: The board of zoning appeals or hearing officer, in accordance with the procedures and standards set out in Chapter 20.09: Processes, Permits and Fees, may grant sidewalk variances and determinate sidewalk variances.~~

~~(c) Findings of Fact for Sidewalk Variance: Pursuant to Indiana Code 36-7-4-918.5, the board of zoning appeals or the hearing officer may grant a variance from Section 20.05.010(b)(3) of the Unified Development Ordinance if, after a public hearing, it makes findings of fact in writing, that:~~

- ~~(1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and~~
- ~~(2) The use and value of the area adjacent to the property included in the development standards variance will not be affected in a substantially adverse manner; and~~
- ~~(3) The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the development standards variance will relieve the practical difficulties.~~
- ~~(4) That the topography of the lot or tract together with the topography of the adjacent lots or tract and the nature of the street right of way make it impractical for construction of a sidewalk as required by Section 20.05.010(b)(3); and~~
- ~~(5) That the pedestrian traffic reasonably to be anticipated over and along the street adjoining such lot or tract upon which the new construction is to be erected is not and will not be such as to require sidewalks to be provided for the safety of pedestrians.~~

~~(d) Findings of Fact for Determinate Sidewalk Variance: Pursuant to Indiana Code 36-7-4-918.5, the board of zoning appeals or the hearing officer may grant a variance from Section 20.05.010(b)(3) of the Unified Development Ordinance if, after a public hearing, it makes findings of fact in writing, that:~~

- ~~(1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and~~
- ~~(2) The use and value of the area adjacent to the property included in the development standards variance will not be affected in a substantially adverse manner; and~~
- ~~(3) The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the development standards variance will relieve the practical difficulties; and~~
- ~~(4) The adjacent lot or tracts are at present undeveloped, but it appears that at some future date these lots or tracts will be developed, increasing the need for sidewalks for the protection and convenience of pedestrians; and~~
- ~~(5) The location of the lot or tract is such that the present pedestrian traffic does not warrant the construction of sidewalks, but it appears that in the future the pedestrian traffic may increase; and~~

~~(6) Uniformity of development of the area would best be served by deferring sidewalk construction on the lot or tract until some future date.~~

~~(e) Notification: The staff shall furnish the petitioner with a copy of the decision of the board of zoning appeals or hearing officer.~~

~~(f) Duration: Unless otherwise specified at the time of approval~~

~~(1) In the event that the board of zoning appeals or hearing officer authorizes a determinate variance, such variance shall continue in effect until the date at which the board of zoning appeals or hearing officer shall set to reconsider variances granted under the authority of this section. All such variances which were granted by the board of zoning appeals or hearing officer shall expire at that time unless an extension is granted. Should no extension be applied for, or the board of zoning appeals or hearing officer denies such application for extension, the owner of the lot or tract shall be required to construct a sidewalk on the lot or tract at that time.~~

~~(2) Any person who has been granted a determinate variance by the board of zoning appeals or hearing officer and subsequently transfers to another party any recordable interest in the lot or tract shall cause such conveyance to be made subject to the variance and cause the variance to be noted on the instrument of conveyance to be recorded.~~

Definitions

Variance, Determinate Sidewalk: A temporary variance from sidewalk construction requirements that may be rescinded by the City at any time if there is a change to the characteristics or context that justified the variance related to the property or surroundings.