

Avilla Zoning Ordinance

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Preface

The Avilla Zoning Ordinance was updated through the use of the Unified Zoning Ordinance of Tippecanoe County as its model. The ordinance document has been broken into eight sections which are organized as follows:

The 1st section contains the "enactment" provisions which are necessary for establishing the legal basis of the ordinance in relation to the appropriate enabling legislation as it appears in the Indiana Code.

In addition, section 1 deals with those general aspects of the ordinance which affect its legality and means of enforcement.

Subsection 1.1 provides for a single title by which the ordinance shall properly be known.

Subsection 1.2 explains the public purpose of the ordinance and how it is to be interpreted in relation thereto. It explains how the ordinance relates to other ordinances, regulations or other legal provisions and/or privately agreed obligations so that it does not nullify the effect of the most restrictive rules or highest standards embodied in any of them. The separability statement explains that the nullification of any portion of the ordinance does not constitute the nullification of the other provisions of the ordinance.

Subsection 1.3 explains that nothing related to this ordinance interferes with actions begun before it takes effect nor nullifies actions taken under previous legislation except as specifically provided for in this ordinance.

Subsection 1.4 deals with making clear that this ordinance does not restrict or regulate state or federal conferred rights to employ the power of eminent domain or the use of state or federal, or state or federal agency-owned or occupied properties, or of state or federal institutions. This would also include powers delegated by units of government to private entities such as utilities, etc.

Subsections 1.5, 1.6, and 1.7 set forth the date on which this ordinance becomes effective, the fact that all previous regulations dealing with zoning matters are thereby repealed and supplanted by this ordinance, and establishes the legal basis and procedures for amending this ordinance.

Subsection 1.8 explains the means by which the provisions of this ordinance shall be enforced and violations prevented, stopped, and/or punished.

Subsection 1.9 establishes the person primarily responsible for administering and implementing this ordinance.

The purpose of section 2 is to explain the meaning of the more important terms used in the text of this model zoning ordinance. By making these meanings explicit, the risk of arbitrary administrative decisions through lack of understanding is reduced and fair administration of the ordinance enhanced; also, those preparing applications will have their tasks made easier if the purposes, processes, and requirements of the ordinance are more clearly comprehended.

The 3rd section lists and describes two kinds of districts: 1) "as of right" districts in which a limited range of similar, compatible uses are permitted under the restrictions given for each district and in which a limited number of special uses may also be permitted on application to the Board of Zoning Appeals which may also set further restrictions and conditions, and, 2) "planned development districts" which conditionally allow various mixes of uses provided the development in these districts conforms precisely to a detailed comprehensive development plan agreed by the owner and the plan commission and local legislative body to have been designed to eventuate in a compatible, mutually beneficial arrangements of uses on the land.

This section and its subsections importantly set the stage for the one that follows, "Authorized Uses", describing in detail those uses permitted in each district and the standards which must be met by each of these uses in order for them to be compatible with other uses and, hence, allow them to be permitted.

The "planned development" technique is especially applicable where a variety of mixed, mutually-supportive uses can be made to be compatible through carefully organized design processes or for a site that is environmentally or topographically sensitive. This is a tool for flexible control of complex use arrangements.

The purpose of section 4 is to describe the uses which are permitted, either by right or by special exception, and the conditions under which they are authorized in the districts described in the previous Section.

Subsection 4.1 deals with "primary" as opposed to secondary, ancillary or "accessory" uses. Subsection 4.2 lists those accessory uses which are permitted. Subsection 4.3 deals with the problem of non-conforming uses and structures. It describes the various kinds of non-conformance and the limitations placed on such uses and structures in order to discourage their continued existence. Subsection 4.4 deals with the conditions for allowing garage or yard sales as a temporary use. Finally, the chart which concludes this chapter provides a convenient means of seeing which uses are authorized in each of the districts described in Section 3.

The purpose section 5 is to set forth in detail the development standards and restrictions for those uses which are authorized and on which their continued authorization depends.

The purpose of the 6th section is to deal with development in a more flexible manner, i.e. with proposals which because of their complexity and mixed-use nature would be difficult, if not impossible, to be carried out under the "as of right" requirements of conventional zoning districts. Under the procedures for development in these zones the developer is required to meet the criteria provided in this section exactly in accordance with the details of the plan which he has negotiated with government officials and for which he has received approval. Accordingly, the community is assured that the development will be built exactly as indicated in the plans which were negotiated and approved.

The various subsections deal with the various kinds of planned development districts, the special procedures for securing review and approval of these developments, and with the means by which the community is protected from non-compliance with approved plans.

Section 7 explains the makeup of, jurisdiction of and procedures to be used by the advisory board of zoning appeals. Subsection 7.1 describes the Board's membership, terms of office, area of jurisdiction and

statutory basis. It also explains the Board's relationship to staff support. Subsection 7.2 sets forth the rules and procedures under which the Board shall function. Subsection 7.3 specifies how the Board must deal with requests for special uses. The primary use table found in Section 4 establishes those uses which can be permitted in which specific districts through the grant of special use permits. Subsection 7.4 deals with the manner in which the Board may permit variances from the strict interpretation of the ordinance in cases where a non-economic hardship exists with respect to a condition peculiar to a particular piece of property and not the result of any act of the owner. Subsection 7.5 describes the procedures for appealing decisions of the Board.

The purpose of section 8 is to describe the process for obtaining improvement location permits and the conditions which have to be met in order to obtain them. It also deals with occupancy permits. Issuing such permits is absolutely critical for the implementation of a zoning ordinance with respect to both temporary and permanent improvements to structures, buildings, and land.

Subsection 8.1 explains the applicability of this permit system: the circumstances under which they must be obtained. Subsection 8.2 deals similarly with occupancy permits. Subsection 8.3 explains what drawings and related information must be submitted as part of the permit process. Subsection 8.4 deals with the special provisions for mobile homes. Subsections 8.5 through 8.8 explain what records must be kept, the length of time for reviewing applications, procedures for issuance or denial, how appeals may be made, and when improvement location permits expire.

THE ZONING ORDINANCE
OF
THE TOWN OF AVILLA, INDIANA
Ord. No. ____

AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR THE TOWN OF AVILLA, INDIANA AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 138, INDIANA ACTS OF 1957, AS AMENDED, AND FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH.

WHEREAS, Chapter 138, Article V, Indiana Acts of 1957, as amended, empowers the town to enact a zoning ordinance and to provide for its administration, enforcement, and amendment, and

WHEREAS, the Advisory Plan Commission, the Town Council of Avilla, Indiana, deem it necessary for the purpose of promoting the health, safety, convenience, and general welfare of the community to enact such an ordinance, and

WHEREAS, pursuant to the provisions of Chapter 138, Article VII, Indiana Acts of 1957, as amended, a Board of Zoning Appeals has been created to recommend and to carry out its powers and duties as described under Section 77, Article VII, Chapter 138, Indiana Acts of 1957, as amended, and

WHEREAS, the Advisory Plan Commission has divided all areas of the town into districts and has prepared regulations pertaining to such districts in accordance with an adopted comprehensive plan designed to lessen congestion in public streets; to secure safety from fire, flood, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements, and

WHEREAS, the Advisory Plan Commission has given reasonable consideration, among other things, to the present character of the districts and their peculiar suitability for particular uses, with a view to conserving the value of buildings and lands and encouraging the most appropriate use of land throughout the town, and

WHEREAS, the Advisory Plan Commission has made studies and held public hearings thereon, pursuant to law, and submitted its final report to the town and

WHEREAS, the Advisory Plan Commission has given due public notices of hearings (pursuant to said Chapter 138) relating to zoning districts, regulations, and restrictions, and has held such public hearings, and

WHEREAS, all requirements of Chapter 138, Indiana Acts of 1957, as amended, with regard to the preparation of the report of the Advisory Plan Commission and the subsequent action necessary to enact this ordinance by the town have been met.

NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF AVILLA, INDIANA AS FOLLOWS:

Enactment Provisions and Section 1
General Provisions and Enforcement

1.1 Title

These regulations shall hereafter be known and cited as the Zoning Ordinance of Avilla, Indiana.

1.2 Interpretation, Conflict and Separability

A. In their interpretation and application the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

B. Conflict with Public and Private Provisions

i. **Public Provisions.** The regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, or other provision of law, those provisions which are more restrictive or impose higher standards shall control.

ii. **Private Provisions.** These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirements of these regulations, or the determinations of the Commission in enforcing these regulations, and such private provisions are not inconsistent with these regulations or determinations thereunder, then such private provisions shall be operative and supplemental to these regulations and determinations made thereunder. Private provisions can only be enforced privately unless a public agency such as the Town Council or Plan Commission has been made a party to such agreements.

iii. **Separability.** If any part or provision of these regulations or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or

circumstances. The Town hereby declares that it would have enacted the remainder of these regulations even without any such part, provision or application.

1.3 Saving Provision

This ordinance shall not be construed as abating any action now pending under, or by virtue of, prior existing zoning ordinance, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the Town of Avilla under any section or provision existing at the time of the effective date of this ordinance, or as vacating or annulling any rights obtained by any person, firm, or corporation, by lawful action of the Town of Avilla except as shall be expressly provided for in this ordinance.

1.4 Exclusion

Nothing in this Ordinance or in any rules, regulations or orders issued pursuant to this Ordinance shall be deemed to restrict or regulate or to authorize any unit of government, legislative body, plan commission or board of zoning appeals now or hereafter established, to restrict or regulate the exercise of the power of eminent domain by the State of Indiana or by any state agency, or the use of property owned or occupied by the State of Indiana or any state agency. As used in this section, the term "state agency" shall mean and include all state agencies, boards, commissions, departments, and institutions, including state universities of the State of Indiana.

1.5 Effective Date

This ordinance takes effect _____.

1.6 Repealer

Upon the adoption of this ordinance according to law, the Avilla Zoning Regulations adopted September 1990 as amended and all prior zoning maps are hereby repealed.

1.7 Amendments

For the purpose of providing for the public health, safety, and general welfare, the Town, on recommendation of the Commission, may from time to time amend the text of this ordinance and/or the zoning map(s) incorporated by reference in this ordinance. Public hearings on all proposed amendments shall be held by the Commission and/or the Town in the manner prescribed by law.

1.8 Enforcement, Violation, and Penalties

- A. It shall be the duty of the Administrator to enforce these regulations and to bring any violations or lack of compliance to the attention of the Town Attorney who may file a complaint against the person and prosecute the alleged violation.
- B. Any person may, by suit in a circuit or superior court of the county, enjoin the violation of this Ordinance.
- C. The (Advisory) Board of Zoning Appeals by mandatory injunction in the circuit court of the county against the owner or possessor of the real estate, may require the removal of a structure erected in violation of this Ordinance, or the removal of any use or condition permitted in violation of this Ordinance.
- D. A use that violates this Ordinance shall be treated as if it were a common nuisance, and the owner or possessor of the structure, land, or premises upon which the use is maintained shall be liable for such nuisance.
- E. Any person whether owner or possessor, who shall violate, or who permits or allows a violation, of any of the provisions of this Ordinance, or who fails to comply therewith or with any requirements thereunder, or who shall build, reconstruct, or structurally alter any building in violation of any detailed statement or plan submitted upon which an approval or grant is given under this Ordinance, shall, upon complaint filed in any court of the county and upon judgment finding such violation, be fined not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500.00), and each day that such violation or noncompliance shall be permitted to exist, shall constitute a separate violation.
- F. No Improvement Location Permit or Building Permit required under the Uniform Building Code or this ordinance shall be issued on any property subject to this ordinance in violation of the provisions of this ordinance.
- G. Attorney's Fees. Notwithstanding anything contained in this Ordinance to the contrary or appearing to be to contrary, and in addition and supplementary to other provisions of this Ordinance, if the Board of Zoning Appeals or the Town is required to utilize the services of the Town attorney or any other attorney in investigating a possible violation of this ordinance or enforcing the provisions of this Ordinance pursuant to Section 1.8C, 1.8D or 1.8E, or any other Section, before any board or court (including appeals), and such investigation results in a determination that a violation has occurred or if the Board of Zoning Appeals or Town is successful in its enforcement of the Ordinance by way of suit, appeal or other appropriate proceeding, the respondent, defendant or party investigated for a violation shall pay the Town's reasonable attorney fees and all costs related to the investigation of the violation and/or the enforcement of this Ordinance, unless such attorney fees or costs are specifically waived by the Council of the Town of Avilla.

Section 1 General Provisions and Enforcement

- H. Costs on Appeal. As to any appeal from a decision of the Board of Zoning Appeals, costs may not be allowed against the Board of Zoning Appeals unless it appears to the court that the Board acted with gross negligence or in bad faith in making the decision brought up for review.
- I. The Administrator, his staff or any person or persons assisting the Administrator in the application and enforcement of this Ordinance is hereby authorized to go onto private property for the purpose of conducting inspections required by the Ordinance or any order of the Plan Commission and Board of Zoning Appeals, or required to determine if this Ordinance is being violated, or required to enforce this Ordinance. Such inspection or inspections shall occur at reasonable times and shall be conducted in a manner not to disturb the peace.

1.9 Designation Of The Administrator

The town hereby designates its Plan Commission President as the Administrator for the purposes of implementing this ordinance and has the principal responsibility for enforcing this ordinance.

Section 2
Definitions

2.1 Definitions

Accessory Building. A subordinate structure, the use of which is incidental to that of the dominant use of the primary building or land.

Accessory Use. A subordinate use which is incidental to that of the primary use and is a use other than human occupancy.

Accessory Living Quarters. Living quarters, within an accessory building, which are intended for use, and used by persons employed on the premises. Such quarters have no kitchen facilities, but do have full sanitary facilities, and are not rented or used as separate dwellings.

Acre. A unit of land measure. One acre equals 43,560 square feet.

Actual Construction. Work done which is beyond the preparation stage and into that stage where the changes or additions are made permanent. (See 4.3(c)).

Administrator. The officer appointed by and/or delegated the responsibility for the administration of these regulations by the planning commission. The president of the plan commission or his designate is hereby designated as the Administrator for the purposes of implementing this ordinance and is the town officer referred to herein wherever the term Administrator appears.

Advisory Plan Commission. A planning commission serving a single local government jurisdiction established as defined under the Indiana Code, 36-7-1-2 (1983) as amended. The Avilla Plan Commission is an Advisory Plan Commission.

Air Contaminant. Dust, fumes, gas, mist, smoke, or vapor, either singularly or in combination.

Air Contaminant Source. Any source or emission of air contaminants, whether privately or publicly owned or operated.

Air Pollution. The presence in the outdoor atmosphere of one (1) or more air contaminants in sufficient quantities and of such characteristics and duration to be injurious to human, plant or animal life or property, or that unreasonably interferes with the comfortable enjoyment of life and property.

Alley. A public or private way primarily designed to serve as a secondary access to the side or rear of those properties whose principal frontage is on some other street.

Apartment. A room or suite of rooms in a multi-family structure arranged, designed, used or intended to be used as a single housekeeping unit and includes permanently installed and complete kitchen facilities.

Applicant. The fee simple owner/s of land who makes application to the Avilla Advisory Plan Commission for action by said commission thereby affecting that land. Applicant must be legal owners of piece of land or the legal representative of legal property owners.

Arterial Street. See primary arterial defined in this section.

Automobile Repair, Major. A business engaged in engine rebuilding or the major reconditioning of worn or damaged motor vehicles or travel trailers; collision service, including body, frame or fender straightening or repair and vehicle painting.

Automobile Repair, Minor. A business engaged in incidental repairs, replacement of parts, and motor service to automobiles, but not including any operation included under AUTOMOBILE REPAIR, MAJOR.

Automobile Service Station. A business establishment where gasoline (stored only in underground tank), kerosene, lubricating oil or grease (for operation of automobiles), are offered for sale to the public on the premises, along with minor accessories and service for automobiles (but not including major automobile repairs), and the washing of automobiles where no chain conveyor, blower or steam cleaning device is used. If the dispensing, sale or offering for sale of motor fuel or oil is incidental to the conduct of a public garage, the establishment is a public garage.

Automobile Wrecking Yard. A business establishment where two (2) or more non-operable motor vehicles or vehicle parts are stored in the open and are not being restored to operation; or any land, building or structure used for wrecking or storing of those motor vehicles or parts. Includes the commercial salvaging of any other goods, articles or merchandise.

Balcony. An appurtenance to a structure, with cantilever supports, which is elevated at least six (6) feet off the ground and is partially enclosed by a railing or other acceptable barrier.

Bed and Breakfast: Homestay. A small establishment, having one to three bedrooms for rent to transients as an activity which is subordinate and incidental to the main residential use of the building. These are generally treated as tourist homes.

Bed and Breakfast Inns. Establishments ranging from four to twenty guest rooms and may include restaurants that cater to the general public as well as to overnight guests. These are treated as commercial enterprises.

Billboard. See Sign, Outdoor Advertising.

Block Face. One side of a street between intersections.

Block. A tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways, or boundary lines of municipalities.

Board. The Advisory Board of Zoning Appeals of the town of Avilla.

Boarding Kennel. A place primarily for keeping four or more dogs, or other small animals that are ordinarily kept as pets, and are at least four months old.

Buffer Landscaping. Any trees, shrubs, walls, fences, berms, or related landscaping features required under this ordinance or the Subdivision Regulations to be placed on private property and privately maintained or in public rights-of-way for the purpose of buffering lots from adjacent properties, for esthetic purposes, and/or for creating sound barriers and/or visual privacy.

Building. Any roofed structure built for the support, shelter, enclosure, or protection of persons, animals, unmovable or moveable property of any kind (each part of such a structure that is separated from the rest by unbroken party walls is considered to be a separate building for the purposes of this ordinance).

Building Area. The horizontal projected area of the buildings on a lot, excluding open areas or terraces, unenclosed porches not more than one story high, and architectural features that project no more than two feet.

Building Height. The vertical distance measured from the adjoining street centerline to the highest point of the building where the front of the building is contiguous to the street right-of-way (see exhibit 1)

Building Line. The line that establishes the minimum permitted distance on a lot between the front line of a building and the street right-of-way line.

Building Permit. See Improvement Location Permit. (Section II, page 14)

Business. The purchase, sale, or exchange of goods or services, or the maintenance for profit of offices or recreational or amusement enterprises.

Business District. Refers to the HS, LB, GB, & CB districts.

Campground. Any site, lot, field, or tract of land under single ownership, or ownership of two or more people, designed with facilities for short term occupancy and not intended to be occupied year round by recreational vehicles and other camping equipment but not including mobile homes.

Carport. A shelter for no more than two (2) or more vehicles per dwelling unit which is not fully enclosed by walls.

Car Wash. A permanent establishment on which motor vehicles are washed or waxed, either by the patron or by others, using machinery specially designed for such purpose.

Cemetery. Land used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleum and mortuaries.

Certificate of Occupancy. A certificate issued by the Town of Avilla stating that the occupancy

Section 2 Definitions

and use of land, or a building or structure referred to within the certificate, complies with the provisions of this Ordinance and the Avilla Building Ordinance.

Charitable Institution. A non-profit organization, with federal and state tax exempt status, supported mainly from public and private donations which are held in trust to be used for the objects and purposes expressed in the institution's articles, constitution, bylaws, or charter for the promotion of the welfare of others.

Church. A building where persons regularly assemble for religious worship, which is used only for such purpose and/or those activities customarily associated with religious and auxiliary religious activities.

Clinic. An establishment in which patients are admitted for medical or dental study or treatment and in which the services of at least one physician or dentist is provided.

Club. Any association of persons which has been organized for a common, non-commercial purpose.

Cluster Housing. Developments in which dwelling units are clustered close to their access streets or drives in order to permit aggregation of yard space into larger common recreational spaces.

Collector Street. A street intended to move traffic from local streets to arterials . (A collector street serves a neighborhood or large subdivision and should be designed so that no residential properties face onto it and no driveway access to it is permitted except if the property is to be in multi-family use for three (3) or more dwelling units.)

Commission. The Avilla Advisory Plan Commission.

Commission Attorney. The licensed attorney designated by the Commission to furnish legal assistance for the administration of this Ordinance, or as provided by statute.

Condominium. Real estate lawfully subjected to IC 32-1-6 (the Horizontal Property Law) by the recordation of condominium instruments, in which undivided interests in the common areas and facilities are vested in the condominium unit owners.

Cooperative. A building or land in which an individual owns stock in a corporation with the right, through a proprietary lease, to occupy a portion of the land or a part of a building.

County. Noble County, Indiana.

Curb Level. The level of the established curb in front of a building measured at the center of the front of the respective lot.

Cul-de-sac Street. A dead end street that terminates in a circular right-of-way and does not provide more than one access point onto another street, or means of access to lots not fronting the cul-de-sac.

Day Care Center. Any place operated by a person, society, agency, corporation or institution, or any other group wherein are received for pay three (3) or more children under 18 years of age for group care, without transfer of custody, for less than 24 hours per day.

Day Care Home. (See Home Service).

Deck. A perimeter supported open wooden structure added onto a residential unit, with steps and railing or other protective barrier.

Detached Building. A building that has no structural connection with another building.

District. A section of the jurisdictional area of the Town of Avilla for which uniform regulations governing the use, height, area, size

Drive-In Restaurant. An establishment selling foods, frozen desserts, or beverages to consumers, the establishment being designed, intended or used for the consumption of such items on the premises outside of the building in which they were prepared.

Drives, Private. Vehicular streets and driveways, paved or unpaved, which are wholly within private property except where they intersect with public streets within public rights-of-way.

Dump, Open. Any premises, in part or whole, used for the disposal or storage of garbage, sewage, trash, refuse, waste material of any kind, junk, discarded machinery, vehicles, vehicle parts, dead animals or hazardous materials by abandonment, discarding, dumping, and may not be salvaged.

Dwelling. A building or part of a building that is used primarily as a place of abode, but not including a hotel, motel, lodging house, boarding house, or tourist home.

Dwelling Unit. A dwelling or part of a dwelling used by one family as a place of abode.

Easement. An authorization grant made by a property owner for use by another of any designated part of his property for a clearly specified purpose and officially recorded.

Family. One or more persons sharing meals and living as a single housekeeping unit.

Farm. An area used for agricultural operations, including truck gardening, forestry, the operating of a tree or plant nursery, or the production of livestock and poultry.

Fence. A structure, including entrance and exit gates, designed and constructed for enclosure, screening and decorative purposes.

Flood Hazard Areas. Those flood plains which have not been adequately protected from flooding caused by the regulatory flood, and are shown on the zoning map and/or on the Flood Hazard or Floodway-Flood Boundary Maps of the Federal Insurance Administration or maps provided to the Commission from the Indiana Department of Natural Resources.

Section 2 Definitions

Flood Plain. The area adjoining the river or stream which has been or may hereafter be covered by flood water from the Regulatory Flood.

Flood Protection Grade. The elevation of the lowest floor of a building, including the basement, which shall be two feet above the elevation of the regulatory flood.

Floodway. See Regulatory Floodway.

Floodway Fringe. That portion of the flood plain lying outside the floodway, which is inundated by the regulatory flood.

Floor Area, Gross. The sum, in square feet, of the floor areas of all roofed portions of a building, as measured from the exterior walls. It includes the total of all space on all floors of a building. It does not include porches, garages, or space in a basement or cellar when said basement or cellar space is used for storage or other such incidental uses. The gross floor area is generally applied to residential uses. The gross floor area of an underground house applies to the primary unit, and is measured from the interior walls.

Foundation. The supporting structure of a wall or building.

Foundation Skirting. A type of skirting constructed of fire and weather resistant material such as aluminum, treated pressed wood, or other approved materials enclosing the entire undercarriage or foundation of a manufactured housing unit.

Front Line. With respect to a building, means the foundation line that is nearest the front lot line.

Front Lot Line.

1. For an interior or through lot, means the line marking the boundary between the lot and the abutting street or a lake or watercourse; and
2. For a corner lot, means the line marking the boundary between the lot and the shorter of the two abutting street segments.

except as deed restrictions specify otherwise.

Front Yard. The horizontal space between the nearest foundation of a building to the right-of-way line and that right-of-way line, extending to the side lines of the lot, and measured as the shortest distance from that foundation to the right-of-way line. The front yard of a corner lot shall be that yard abutting the street upon which the lot has its least frontage, except as deed restrictions specify otherwise.

Garage, Private. A detached accessory building or portion of a main building, used for the storage of motor vehicles where the capacity does not exceed four (4) four-wheeled vehicles housed in a building to which such garage is accessory.

Garage, Public. Any building or structure, other than a private garage, which is used for storage, repair, rental, greasing, washing, servicing, adjusting or equipping of automobiles or other motor vehicles.

Garage, Truck Repair. A building, other than a public or private garage, used for the care, repair, or equipment of trucks over one (1) ton, or where these vehicles are parked or stored for remuneration, hire or sale.

Garage or Yard Sale. (See 4.4).

General Industrial Use. Manufacturing, processing, extraction, heavy repairing, dismantling, storage, or disposal of equipment, raw materials, manufactured products or wastes, in which some operations, other than transportation, are performed in open or closed area.

Grade. The highest level of the finished surface of the ground adjacent to the exterior walls of the building or structure.

Group Home. A single self-contained home established and operated by the county department of welfare, licensed private child placement agency or licensed incorporated group established for the purpose of receiving and caring for up to eight persons who are attended by house "parents."

Ground Floor Area. The area of a building in square feet, as measured in a horizontal plane at the ground level within its largest outside dimensions, exclusive of open porches, breezeways, terraces, garages, and exterior stairways.

Hardship. A perceived difficulty with regard to one's ability to improve land stemming from the application of the development standards of this Ordinance, which may or may not be subject to relief by means of variance. In and of themselves, self-imposed situations and claims based on a perceived reduction of or restriction on economic gain shall not be considered hardships. Self-imposed situations include: the purchase of land with actual or constructive knowledge that, for reasons other than physical characteristics of the property, the development standards herein will inhibit the desired improvement; any improvement initiated in violation of the standards of this Ordinance; any result of land division requiring variance from the development standards of this Ordinance in order to render that site buildable.

Hazardous Wastes. Any solid or liquid waste with inherent dangers, including but not limited to, toxic chemicals, explosives, pathological wastes, radioactive material, flammable materials likely to cause fires, liquids, semi-liquids, sludges containing less than thirty percent solids, pesticides, pesticide containers, raw animal manure stored in large quantities, septic tank pumpings, and raw or digested sewage sludge.

Height. With respect to a building, means the vertical distance from the lot ground level to the highest point, for a flat roof; to the deck line, for a mansard roof; and to the mean height between eaves and ridges, for a gable, hip, or gambrel roof. See Building Height.

Home Service. Any commercial use conducted entirely within a dwelling and participated in

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solely by the occupants. Such use is clearly incidental and secondary to the use of the dwelling and does not change the character of the dwelling or have any extensive evidence other than a sign. The only commodities or services sold are those produced on the premises. Retail business or trades that are generally licensed shall not be considered home occupations.

Hotel or Motel. A structure, in part or whole, in which more than five (5) guest rooms are provide as temporary accommodations at cost to the public.

Improvement Location Permit. A document issued under Section Nine of this Ordinance permitting a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure within its jurisdiction, or cause the same to be done.

Incinerator or Incineration Operation. The controlled combustion of waste materials in conformance with all applicable local, state, and federal laws and regulations.

Interior Lot. A lot other than a corner lot or a through lot.

Interested Parties. Those parties who are owners of properties adjoining or adjacent to the property for which a zoning change is being sought.

Junk Yard. A place, usually outdoors, where waste or discarded used property other than organic matter, including but not limited to automobiles, farm implements and trucks, is accumulated and is or may be salvaged for reuse or resale; this shall not include any industrial scrap metal yard.

Laboratory, Commercial. A facility devoted to experimental study, testing or analysis with no manufacturing, assembly or packaging of products conducted within the facility.

Light Industrial Use. Manufacturing, processing, extraction, heavy repairing, dismantling, storage, or disposal of equipment, raw materials, manufactured products or wastes, in which all operations, other than transportation, are performed entirely within enclosed buildings and for which all loading and unloading facilities are enclosed.

Light Industrial Park. A tract of land which is planned and developed as a distinctive and attractive unit, featuring landscaped open spaces of generous dimensions and well designed structures to be used for industrial research, light industrial, uses, offices and similar purposes, and for uses necessary to the operation of the tenant industries.

Local Street. A street intended to provide access to other streets from individual properties and to provide right-of-way beneath it for sewer, water, and storm drainage pipes.

Lodging House. A building, not available to transients, less than 5 guest rooms in size, in which lodgings are regularly provided for compensation for persons in addition to the owner occupant. Does not include hotels or motels.

Lot. A tract, plot, or portion of a subdivision or other parcel of land, as recorded in the Noble County Recorder's office, intended as a unit for the purpose, whether immediate or future, of transfer of ownership or of building development.

Lot, Corner. A lot situated at the intersection of two (2) streets, the interior angle of such intersection not exceeding 135 degrees. A lot with streets abutting more than two (2) sides shall also be a corner lot.

Lot Coverage. The percentage of the lot area that is represented by the building area.

Lot, Depth of. The distance, measured in a straight line, between the front and rear lot lines.

Lot, Front of Corner. The part of a lot adjacent to and parallel with the street. The front of a corner lot shall be considered as that part of the lot having the least amount of frontage adjacent to one of the attendant streets. Whenever the footage is the same on both of the streets, either part of the corner lot may be considered as the front of the lot.

Lot Ground Level.

1. For a building having walls abutting (that is, generally parallel to and not more than five feet from) one street only, means the elevation of the sidewalk at the center of the wall abutting the street;
2. For a building having walls abutting more than one street, means the average of the elevations of the sidewalk at the centers of all walls that face streets; and
3. For a building having no wall abutting a street, means the average level of the ground adjacent to the exterior walls of the building.

Lot, Recorded. A lot designated on a subdivision plat or deed, recorded in the Noble County Recorder's Office.

Lot Width. The distance between the side lot lines as measured on the building line.

Maneuvering Aisle. A maneuvering space which serves two or more parking spaces, such as the area between two rows of parking spaces and/or the driveway leading to those spaces.

Maneuvering Space. An open space in a parking area which: 1) is immediately adjacent to a parking space; 2) is used for and/or is necessary for turning, backing or driving forward a motor vehicle into such parking space, but 3) is not used for the parking or storage of motor vehicles.

Manufactured Home. A single-family dwelling unit designed and built in a factory, installed as a permanent residence, which bears a seal certifying that it was built in compliance with the federal Manufactured Housing Construction and Safety Standards Law (1974 (U.S.C. 5401 et seq.), and which also complies with the following specifications:

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1. shall have been constructed after January 1, 1981 and must exceed nine hundred fifty (950) square feet of occupied space per I.C. 36-7-4(d);
2. is attached to a permanent foundation of masonry construction and has a permanent perimeter enclosure constructed in accordance with the One and Two Family Dwelling Code;
3. has wheels, axles and towing chassis removed;
4. has a pitched, shingled roof with a minimum rise of 2/12; and,
5. consists of two (2) or more sections which, when joined, have a minimum dimension of 20' x 47.5' in length or width enclosing occupied space.
6. has aluminum, vinyl, or wooden siding.

Manufactured Housing Subdivision. A parcel of land platted for subdivision and designed or intended for lots to be conveyed by deed, or rented, to individual owners or renters for the occupancy of manufactured houses.

Marquee or Canopy. A permanent roof-like structure that projects from the wall of a building and overhangs the public way.

Medical Office. Any building or portion of a building used or intended to be used as an office for the practice of any type of medicine including chiropractic medicine, dentistry or optometry.

Mineral Extraction. (1) mining or quarrying; and (2) removal of earth materials.

Mobile Home. Any vehicle without motive power designated by the manufacturer or maker with hitch and undercarriage to permit attachment of axles and wheels, and so designed to permit its being used as a conveyance upon public streets and highways and so designed, constructed or reconstructed as will permit the vehicle to be used as a single-family dwelling and not qualifying under the definition of manufactured home.

Mobile Home Park. Same definition described in IC 13-1-7-2, and including land under single ownership, not less than five (5) acres in size on which three (3) or more mobile homes are occupied as residences.

Motor Freight Terminal, Private. A building to which freight is brought by motor truck, and where freight is assembled and sorted for routing for truck shipment.

Nonconforming Use. A building, structure or use of land existing at the time of enactment of this ordinance, which does not conform to the regulations of the district in which it is situated.

Occupied Space. The total area of earth horizontally covered by the structure, excluding garages, patios and porches and other accessory structures.

One and Two Family Dwelling Code, Indiana. The nationally recognized model building code adopted by the Indiana Department of Fire Prevention and Building Safety as mandated by Public Law 360, Act of 1971, and, which includes those supplements and amendments promulgated by this agency.

Open Sales Lot. Land used or occupied for the purpose of buying, selling, storing or displaying merchandise.

Open Use. The use of a lot without a building, or a use for which a building with a floor area no larger than five percent of the lot area is only incidental.

Parking Area. A group of parking spaces, exclusive of any part of a street or alley, designed or used for the temporary parking of motor vehicles.

Parking Garage. A garage, where parking but not repairs are available to the public.

Parking Space. An open space exclusive of maneuvering aisle and driveway for the parking of a motor vehicle.

Party Wall. A wall, starting from the foundation and extending continuously through all stories to or above the roof, which separates a building unit from another unit and is in joint use by each unit.

Permanent Foundation. A structural system for transposing loads from a structure to the earth at a depth below the established frost line without exceeding the safe bearing capacity of the supporting soil.

Permanent Perimeter Enclosure. A permanent perimeter structural system completely enclosing the space between the floor joists of the home and the ground, except for necessary openings, constructed in accordance with the One and Two Family Dwelling Code.

Person. A corporation, firm, partnership, association, organization, unit of government, or any other group that acts as a unit, as well as a natural person.

Pharmacy. A retail store engaged in the sale of prescription drugs, patent medicines, and surgical supplies.

Plat. A map indicating the subdivision or resubdivision of land filed or intended to be filed for record with the County Recorder.

Planned Development. A unified development meeting the requirements for zoning approval under the provisions of Section 6 of this ordinance.

Primary Arterial. A street intended to move through-traffic to and from such major attractors as

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central business districts, regional shopping centers, colleges and/or universities, military installations, major industrial areas, and similar traffic generators within the Town or County; and/or as a route for traffic between communities; a major intra or intercity thoroughfare.

Principal Building. A building in which the principal use of the lot or parcel on which it is located is conducted. Standards recognized by the Indiana Department of Fire Prevention and Building Safety shall be used to determine whether a given structure constitutes one or more buildings in cases where ambiguities exist.

Private Garage. A garage whose principal use is to house motor vehicles for the accommodation of related dwelling units or related business establishments.

Private School. A school other than a public school.

Private Camp. An area of land used or designed to be used to accommodate groups or organized camping parties, including cabins, tents, food service and recreational facilities.

Professional Office. An office used by members of a recognized profession including but not limited to architects, artists, dentists, engineers, lawyers, musicians, physicians, surgeons or pharmacists, and realtors or insurance agents and brokers.

Public Improvement. Any drainage ditch, street, highway, parkway, sidewalk, pedestrian-way, tree, lawn, off-street parking area, lot improvement, or other facility for which the local government may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which local government responsibility is established. (All such improvements shall be properly bonded.)

Public Utility. Any person, firm or corporation duly authorized to furnish electricity, gas, steam, telephone, telegraph, water or sewerage systems and cable television to the public under public regulation. See Utility.

Railroad Right-of-Way. A strip of land with tracks and auxiliary facilities for track operation, but not including depots, loading platforms, stations, train sheds, warehouses, car shops, car yards, locomotive shops or water towers.

Rear Lot Line. For an interior or corner lot, this means the lot line that is opposite the front lot line and farthest from it, except that for a triangular or other irregularly-shaped lot it means the line ten feet long, parallel to the front lot line, and wholly within the lot, that is farthest from the lot line.

Rear Yard. A yard as defined herein, encompassing the horizontal space between the nearest foundation of a building to a rear lot line and that rear lot line, extending to the side lines of the lot, and measured as the shortest distance from the foundation to the rear lot line. The rear yard of a corner lot shall be that yard at the opposite end of the lot from the front yard.

Recreation Space, Developed. Real estate devoted to recreational purposes which contains Commission-approved site improvements, including but not limited to shelters, swimming pools, tennis courts, lakes and playground fixtures among others.

Recreation Space Undeveloped. Real estate devoted to recreational purposes which is void of buildings and /or structures and under common ownership by a government and /or private entity for the use and enjoyment of a community of individuals.

Recreational Vehicle. A portable vehicular structure designed as a temporary dwelling for travel and vacation uses which:

1. is identified on the unit by the manufacturer as a travel trailer or a motor home; and
2. of a size that is street legal;

or:

1. is a structure mounted on an automobile or truck; and
2. is designed to be used for sleeping and human habitation.

Refuse Pickup Station. An area where facilities are located for the temporary storage of refuse. These areas may serve as a convenient point for refuse if contained in approved containers and removed to a final disposal site on a regular basis.

Regulatory Flood. That flood having a peak discharge which can be equalled or exceeded on the average of once in a one hundred (100) year period, as calculated by a method and procedure which is acceptable to and approved by the Indiana Natural Resources Commission; this flood is equivalent to a flood having a probability of occurrence of one percent (1%) in any given year.

Regulatory Floodway. The channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to efficiently carry and discharge peak flow of the regulatory flood of any river or stream and, is that area covered by floodwaters in significant downstream motion or covered by significant volumes of stored water during the occurrence of the regulatory flood.

Residential District. Those districts, R-1, R-2, R-3 and MH as described under Section 3, Districts.

Sanitary Landfill. A method of disposing of refuse on land without creating nuisances and hazards to public health, safety or welfare. Such refuse is confined to the smallest practical volume, covered with a layer of suitable cover at the conclusion of each day's operation (or at more frequent intervals as necessary) and is operated in compliance with all federal and state environmental regulations and this Ordinance.

Scrap Metal Yard. A general industrial use established independent or ancillary to and connected with another general industrial use, which is concerned exclusively in new and salvaged metal pipes, wire, beams, angles, rods, machinery, parts, filings, clippings, and all other metal items of every

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type, and which acquires such items incidental to its connection with the other general industrial use or by purchase, consignment or bailment which stores, grades, processes, melts, cuts, dismantles, compresses, cleans, or in any way prepares said items for reuse by the connected other general industrial use or for sale and shipment and use in other industries or businesses including open hearth, electric furnaces and foundry operations; such an establishment shall not include junk yards, dumps, or automobile graveyards. The storage, dealing in or the permitting of the accumulation of significant quantities of combustible, organic or nonmetal scrap materials such as wood, paper, rags, garbage, bones and shattered glass on the premises of such an establishment will disqualify it from being classified as a scrap metal yard, and the same will be classified as either a junk yard, a sanitary fill or refuse dump depending on the content of the accumulated matter.

Section. A unit of a manufactured home at least ten (10) feet in width and thirty (30) feet in length.

Setback. A line parallel to and equidistant from the relevant lot line (front, back, side) between which no buildings may be erected as prescribed in this ordinance.

Side Lot Line. Any lines separating two lots other than front or rear lot lines.

Side Yard. The horizontal space between the nearest foundation of a building to the side lot line and that side lot line, unoccupied other than by architectural appurtenances projecting not more than twenty-four (24) inches into that space; steps or terraces not higher than the level of the first floor of the building; and open lattice-enclosed fire escape, fireproof outside stairways and balconies projecting not over twenty-four (24) inches into that space.

Sign. A visual device or structure used for advertising, display or publicity purposes.

Sign, Outdoor Advertising. A structural poster panel or painted sign, either freestanding or attached to a building, for the purpose of conveying information, knowledge, or ideas to the public about a subject unrelated to the activities on the premises upon which it is located.

Sign, Portable. A free-standing, on-premise advertising device which is designed to be moved from one location to another and is not permanently affixed to the ground or to a structure, or is only affixed by means of tiedown straps or stakes;

Solid Waste Disposal Facility. The meaning set forth in Indiana Code 36-9-30-2, and includes a facility operated under Indiana Code 36-9-33.

Special Use. The authorization of a use that is designated as such by this ordinance as being permitted in the district concerned if it meets special conditions, and upon application, is specifically authorized by the Advisory Board of Zoning Appeals. Refer to Section 7.3.

Stairs, Exterior. A perimeter supported stairs, either built beside, or protruding away from, the attendant structure which extends to the second floor of the building. The stairs may lead directly to the second floor doorway, or to a landing.

Story. The portion of a building included between the surface of any floor and the surface of the above floor. If there is no floor above, then the space between any floor and the ceiling above it. Any portion of a building used for human occupancy between the topmost floor and the roof shall be considered a story. A basement shall not be counted a story unless the height of the surface of the first floor above the average elevation of the finished lot grade at the front of the building exceeds four (4) feet. (see exhibit 2)

Story, Half. A story under a gable, hip or gambrel roof, the wall plates of which on at least two (2) opposite exterior walls are not more than two (2) feet above the floor of such story.

Street. A right-of-way that is purchased by a governmental unit or is established by a recorded plat and publicly maintained to provide the principal means of access to abutting property.

Structural Change. A substantial change in a supporting member of a building, such as a bearing wall or partition, column, beam, or girder, or in an exterior wall or the roof.

Structure. Anything constructed or erected that requires location on or in the ground or attachments to something having a location on or in the ground.

Subdivision. The division of a parcel of land into two (2) or more lots, parcels, sites, units, plats, or interests for the purpose of offer, sale, lease, or development, either on the installment plan or upon any and all other plans, terms, and conditions, including resubdivision.

Support System. A combination of footings, piers, caps, plates, and shims which support the manufactured home. Footings transmit loads to the soil at or below the surface and the frost line. Piers and caps are between the footing and the frame, and exclude plates and shims. Plates and shims are the cushion of wood, or other approved materials, and are used to fill the gap between the top of the pier caps and the frame of the home.

Swimming Pool. any vessel containing water and used for recreational purposes, located either above or in the ground, diameter greater than six (6) feet and built to maintain a water level greater than twenty-four (24) inches in depth.

Tavern. An establishment primarily engaged in the retail sale of drinks such as beer, wine and other alcoholic beverages for consumption on the premises.

Through Lot. A lot fronting on two parallel or approximately parallel streets and includes lots fronting on both a street and a watercourse or lake.

Tourist Home. See Bed and Breakfast: Homestay.

Town Council. The Town Council of Avilla, Indiana.

Trade or Business School. A secondary or higher education facility teaching usable skills that prepare students for jobs in a trade, business or vocation.

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Use. The employment or occupation of a building, structure or land for a person's service, benefit or enjoyment.

Use Variance. The approval of a use other than that prescribed by this zoning ordinance. Changes of allowed uses are not permitted by this ordinance except by zoning map amendment.

Utility. Any persons authorized to furnish electricity, gas, steam, telephone, telegraph, cable television or transportation service or water to the public.

Utility Facility. An electric or gas utility substation, public transit facility, railroad, electric substation, public utility substation of oil or gas metering, telephone exchanges or other communications equipment, structures, water or sewage pumping stations.

Variance. A specific approval granted by the Advisory Board of Zoning Appeals in the manner prescribed by this Ordinance, to deviate from the development standards (such as height, bulk, area) that the Ordinance otherwise prescribes. Refer to section 7.4 of this ordinance.

Water, Public. Safely potable water for which a fee is paid, distributed to the user through a system of pipes and equipment owned privately, cooperatively, corporately or publicly.

Yard. A space on the same lot with a principal building that is open and unobstructed except as otherwise authorized by this ordinance.

Zoning Map. The maps incorporated by reference into this Ordinance.

Section 3
Districts

3.1 Kinds Of Districts: Establishment

The Town of Avilla is divided into the following districts:

- A. **Agriculture Districts**, designated "A," are established to include substantial areas where little or no urbanization has occurred or is likely to occur in the near future.
- B. **Flood Plain Districts**, designated "FP" are established to include lowland areas adjacent to lakes and ponds, and areas that are within the flood plains of rivers or creeks and are thus subject to inundation and damage from flood waters up to the elevation of the regulatory flood.
- C. **Residence Districts**, designated "R1," are established to include areas for low to medium density single-family residences with a density of 4 dwelling units or less per gross acre.
- D. **Residence Districts**, designated "R2," are established to include areas for low to medium density single-family residences within the incorporated and rural unincorporated areas of the Avilla Planning jurisdiction with a density of 1 dwelling unit per gross acre.
- E. **Residence Districts**, designated "R3," are established to include areas for relatively high density single-family, two-family, and multi-family residential development with a density of 8 dwelling units or less per gross acre.
- F. **Residence Districts**, designated "MH," are established to include areas for the establishment of manufactured or mobile home communities and are appropriate to the existing and potential development of the surrounding area, while establishing an attractive residential environment.
- G. **Highway Service Districts**, designated "HS," are established to include areas that are close to interstate interchanges and intersections of two state highways and are appropriate to the limited shopping and service needs of those locations.
- H. **Local Business Districts**, designated "LB" are established to include areas that are close to residential areas and appropriate to meeting their shopping and service needs.
- I. **General Business Districts**, designated "GB," are established to include areas that are appropriate to all kinds of business, services and light industrial uses.
- J. **Central Business District**, designated "CB," is established to include the town's core business area.
- K. **Industrial Districts**, designated "I," are established to include most of the existing

industrial facilities and areas best suited for future industrial use because of location, accessibility and other conditions.

- L. **Planned Development Districts**, designated "PD-R," "PD-C," "PD-I," and "PD-REC," are established for the purposes and under the conditions set forth in Section 6 hereof.

3.2 Boundaries: In General

- A. The boundaries of the districts established by section 3.1 are as shown on the zone map which is a part of this Ordinance, and hereafter known as the Official Zoning Map for the Town of Avilla. Said Official Zoning Map shall hereafter be kept in the custody of the President of the Plan Commission of Avilla, Indiana. Except as provided by section 3.3, such boundaries and the Official Zoning Map shall be changed only by amendment to the Official Zoning Map. Upon such amendment the Town of Avilla shall within (5) days of passage of such amendment, certify a copy of such amendment to the Avilla Plan Commission President, who shall immediately change the Official Zoning Map in accordance with such amendment. The Plan Commission President shall cause the Official Zoning Map to show the ordinance number and date of adoption of all such amending ordinances.
- B. When the exact boundaries of a district are uncertain, they shall be determined by use of the scale of the zoning map.
- C. When the maps are caused to be changed by amendment the change shall be to the center of any and all abutting rights-of-way.
- D. If the boundary line of a district divides a lot having frontage on a street so that the front part of the lot lies in one district and the rest of the lot lies in another, use requirements and restrictions that apply to the front part of the lot apply to the entire lot.

3.3 Boundaries: Flood Plain Districts

The boundary of an FP District may be changed if the Indiana Natural Resources Commission, after investigating the land involved, determines (1) that the requested change would not endanger the public welfare, and (2) that the elevation of such land is at or above the elevation of the regulatory flood. Such determination shall be made in writing upon the request of the applicant who shall provide the Indiana Natural Resources Commission with a scale drawing identifying the location, dimensions and elevations related to the USGS datum of the land.

If the land within the boundary of an FP District is certified by a Registered Land Surveyor or Registered Professional Engineer as having an elevation at or above the regulatory flood elevation, as determined by the Indiana Natural Resources Commission, that area of land so certified will be removed from the FP designation and will become zoned as the adjacent areas on the zoning map. Should the adjacent areas contain more than one zoning district, the line dividing those existing districts shall be extended through the land so removed from the FP

District. Should an area, certified as having natural ground elevation at or above that of the regulatory flood, be adjacent to no district other than flood plain (i.e., surrounded by flood plain), it will be designated A, Agriculture, until or unless the legislative body alters that designation by ordinance. However, in the case of islands created by fill material only those islands located in the floodway fringe will be redesignated. Islands created in the floodway will still be considered part of the floodway. However, in no case shall an area derive A, Agriculture zoning from its adjacency to land removed by certification from the FP district if the area also abuts another zoning classification. It shall derive its zoning from the adjacent district.

Buildings permitted on lands within one hundred (100) feet of the FP District shall be required to comply with the flood protection grade as established by the Indiana Natural Resources Commission.

All lands, within the flood plain having an elevation below that elevation determined by the Indiana Natural Resources Commission to be the regulatory flood elevation for that location shall be in the FP District.

3.4 Subdivisions, Cluster Developments, Planned Developments, Condominiums and Zero Lot Line Developments

The subdivision of land pursuant to the requirements of the Avilla Subdivision Ordinance shall be permitted in these districts: A, FP, R1, R2, R3, MH, CB, GB, and I. The intended principal use of each of the proposed lots within a proposed subdivision shall govern the specific district or districts appropriate to the land to be subdivided, as per 4.1 of this ordinance.

However, the following classifications of subdivisions shall only be permitted in R1, R2, R3 or MH districts: major subdivisions intended entirely for residential use, and any portions of major subdivisions intended for residential use;

Planned Developments shall be permitted only in these districts: PD-R, PD-C, PD-I, and PD-REC , as per Section 6.2 of this ordinance. In order to provide greater design flexibility, and to encourage innovative land development techniques and a more efficient use of land, the design and development of uses within these districts may deviate from the standards prescribed by the Avilla Subdivision Ordinance and sections 5.1 through 5.14 of this ordinance.

Condominiums, as defined and regulated in IC 32-1-6 (the Horizontal Property Law), cluster developments, zero lot line developments and all developments of the minimum sizes specified in Section 6.2 of this ordinance and larger shall be considered for zoning purposes to be Planned Developments, and consequently shall be permitted only in these districts: PD-R, PD-C, PD-I, and PD-REC, as per Section 6.2 of this ordinance.

Section 4
Authorized Uses

4.1 Primary Uses

Primary uses are authorized in the districts established by or under section 3.1 as shown by an "X" in the table at the end of this section. Where the use is designated for the district with an "S", the use is permitted in that district only if a special use has been approved under section 7.3.

4.2 Accessory Uses

Accessory uses such as the following are authorized in all districts subject to the provisions of any and all recorded restrictive covenants running with the land:

- Bird Baths and bird houses
- Accessory buildings
- Curbs
- Driveways
- Fences and Hedges*
- Lamp posts
- Mail boxes
- Name plates
- Parking spaces
- Private swimming pools enclosed by a 5-foot high fence, 5-foot vertical enclosure, or pool covering able to support the weight of individuals integral with an inground pool
- Public utility installations for local service (such as poles, lines, hydrants, and telephone booths)
- Retaining walls
- Trees, shrubs, plants and flowers
- Walks

* Provided that, in any residence district, ornamental fences and hedges shall not exceed three feet in height except that open chain link fences may be erected to four feet in height, or as provided in section 5.7.

4.3 Nonconforming Uses and Structures

A. **Intent.**

Within the districts established by this ordinance or by amendments that may later be adopted, there may exist:

- i. Nonconforming lots;

- ii. Nonconforming structures;
- iii. Nonconforming uses of land;
- iv. Nonconforming uses of land and structures in combination; and
- v. Nonconforming characteristics of use.

These were lawful before this ordinance was passed or amended, but they are prohibited, regulated or restricted under the terms of this ordinance or may be under future amendments hereto. It is the intent of this ordinance to permit these nonconforming uses to continue until they are removed but not to encourage their survival. It is further the intent of this ordinance that nonconforming uses shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses which are prohibited elsewhere in the same district. [Note: Illegal uses existing at the time this ordinance is enacted shall not be validated by virtue of its enactment.]

B. Incompatibility of Nonconforming Uses.

Nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the districts in which such use is located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.

C. Avoidance of Undue Hardship.

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building or development on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried on diligently. Actual construction is hereby defined as work done which is beyond the preparation stage and into that stage where the changes or additions are made permanent.

D. Single Nonconforming Lots of Record.

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this ordinance notwithstanding limitations imposed by other provisions of this ordinance. Such lots must be in separate ownership or included in a subdivision of record in the office of the County Recorder at the time of

passage of this ordinance. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lots shall conform to the regulations for the district in which such lots are located. (Also see Section 5.3(c)). Variances of requirements listed in Section 5 of this ordinance, other than lot area or lot width shall be obtained only through action of the Board of Zoning Appeals as provided in Sections 7.4. [Note: This section shall apply only to single-family residences.]

E. Nonconforming Lots of Record in Combination.

If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance and no portion of said parcel shall be used or sold in a manner which diminishes compliance with the lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this ordinance.

F. Nonconforming Uses of Land.

Where, at the time of adoption of this ordinance, lawful uses of land exist which would not be permitted by the regulations imposed by this ordinance, the uses may be continued so long as they remain otherwise lawful, provided:

- i. No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.
- ii. No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this ordinance.
- iii. If any such nonconforming uses of land are discontinued or abandoned for more than one year (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this ordinance and the Avilla Unsafe Building Ordinance for the district in which such land is located.
- iv. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land.

Section 4 Authorized Uses

G. Nonconforming Structures.

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not now be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, bulk, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions.

- i. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
- ii. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than 50 percent of the fair market value of the building immediately prior to the damage, it shall not be reconstructed except in conformity with the provisions of this ordinance.
- iii. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

H. Nonconforming Uses of Structures or of Structures and Land in Combination.

If a lawful use involving individual structures, or if a structure and land in combination, exists at the effective date of adoption or amendment of this ordinance that would not now be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- i. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- ii. A nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.
- iii. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.
- iv. When a nonconforming use of a structure, or structure and land in combination is discontinued or abandoned for more than one year (except when government

action impedes access to the premises), the structure or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.

- v. Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

I. Repairs and Maintenance.

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent of the current replacement cost of the nonconforming structure and market value of real estate, or nonconforming portion of the structure, whichever the case may be, provided that the cubic content existing when it became nonconforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

4.4 Garage or Yard Sale

- A. As used herein "garage or yard sale" is defined as a public or private sale conducted by the owner or occupier of a premise, and conducted within a residence, garage, other accessory buildings or outside thereof, which sale is of six or more items of personal property owned or in the possession of the owner or occupier of the premises, which personal property was not acquired by the owner or occupier for the purpose of resale.
- B. A garage or yard sale may be conducted two times in any one calendar year on any premises located in any R1, R2, or R3 zone, but no such sale shall be conducted for more than five (5) consecutive days.
- C. Such garage or yard sale shall only be conducted during the hours from sunrise to sunset.
- D. All personal property exhibited for sale outside any structure during such garage or yard sale shall be removed from the outside and placed within a structure immediately following the last day of such sale. All signs erected for such garage or yard sale shall likewise be removed within 48 hours following the last day of such sale.

CHART OF PERMITTED USES, SECTION IV

DISTRICTS IN WHICH PERMITTED

* "x" = normal use

"s" = special use

Primary Use	R1	R2	R3	MH	HS	LB	GB	CB	I	A	FP
RESIDENTIAL USES											
Rental Apartment			X			X		X			
Boarding or Lodging house			X				X				
Dwelling, single-family	X	X	X							X	
Dwelling, two-family			X							X	
Dwelling, multi-family			X					X			
Mobile home (1)				X							
Nursing home			X								
Manufactured home	X	X	X	X						X	
Group home		S	S	S		S		S		S	
AGRICULTURAL USES											
Artificial Lake of 3 or more acres	S	S	S	S	S	S	S		S	S	X
Commercial greenhouse							X			X	
Farm							S			X	X
Feed/Grain Mill							S		S	S	
INDUSTRIAL USES											
Bottled gas storage & distribution					X		X		X	S	
Industry, general									X		
Industry, Light							X		X		
Junk yard									S		
Recycling center							X		X		
Liquid Fertilizer storage& distribution (commercial)									S	S	
Manufacturing, storage or use of explosives									S		
Mineral extraction, borrow pit, topsoil removal & storage areas									S	S	S
Petroleum tank farm (commercial)									S		
Communication relay tower							X		X	S	
Scrap metal yard									X	S	
Slaughter house									S	S	
Truck terminal							S		X		

Other uses not specified							s		s		
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CHART OF PERMITTED USES, SECTION IV

DISTRICTS IN WHICH PERMITTED

Primary Use	R1	R2	R3	MH	HS	LB	GB	CB	I	A	FP
PUBLIC FACILITIES											
Airport										S	
Church or temple	X	X	X			X	X	X		X	
Governmental offices						X	X	X		X	
Kindergarten or day care center	S	S	X		X	X	X	X	X	S	
Penal or correctional institution					S	S	S	S	S	S	
Police station or fire station	S	S	X		X	X	X	X	X	X	
Public library or museum		S	S			X	X	X		S	
Public Park	X	X	X		X	X	X	X	X	X	X
Public or private swimming pool	X	X	X		X	X	X	X		S	
Public or commercial sanitary fill, refuse dump, garbage disposal plant, or trash transfer station									S		
Public or commercial sewage disposal plant					S		S		S	S	S
Parking lot or parking garage (2)					X		X	X			
School: public, parochial, private	X	X	X		X	X	X	X		X	
Telephone exchange or public utility substation	S	S	S		X	X	X	X	X	X	
Trade or business school					X	X	X	X	X		
Post Office					X	X	X	X	X		
BUSINESS USES: APPLIANCES											
Electric appliance service and sales					X	X	X	X			
Radio, TV & music service and sales					X	X	X	X			
Satellite dish sales and service					X	X	X	X			
Other similar uses					X	S	X	X			
BUSINESS USES: AUTOMOBILE SERVICES											
Car wash					X	S	X				
Automobile sales and service					X		X	X			
RV and camper sales and service					X		X	X			
Motor vehicle repair					X		X	X			
Gasoline station, with repair					X		X	X			

Gasoline station without repair					x	s	x	x			
Other similar uses					x		x	x			

CHART OF PERMITTED USES, SECTION IV

DISTRICTS IN WHICH PERMITTED

Primary Use	R1	R2	R3	MH	HS	LB	GB	CB	I	A	FP
BUSINESS USES: CLOTHING SERVICES											
Dressmaking shop						X	X	X			
Dry cleaning & laundry establishment						S	X	X			
millinery shop						X	X	X			
Self-service laundry					X	X	X	X			
Shoe repair shop						X	X	X			
Tailor and pressing shop						X	X	X			
Other similar uses						X	X	X			
BUSINESS USES: FOOD SALES & SERVICE											
Baker - Retail						X	X	X			
Dairy - Retail						X	X	X			
Delicatessen					X	X	X	X			
Drive-in					X		X				
Grocery, including convenience store					X	S	X	X			
Meat market						X	X	X			
Restaurant, w/o alcoholic beverage					X	X	X	X			
Restaurant, with alcoholic beverage							X	X			
Roadside food sales stand					X	S	X	X		X	
Wholesale produce terminal							X		X		
Other similar uses					S	S	X	S			
BUSINESS USES: PERSONAL SERVICES											
Barber shop						X	X	X			
Beauty shop						X	X	X			
Health spa or fitness center (3)						X	X	X			
Other similar uses						X	X	X			
BUSINESS USES: RECREATION											
Bait sales							X	X		S	
Billiard room (3)							X	X			
Bowling alley (3)							X	X			
Country club or golf course	S	S	S			S	S			X	S

CHART OF PERMITTED USES, SECTION IV

DISTRICTS IN WHICH PERMITTED

Primary Use	R1	R2	R3	MH	HS	LB	GB	CB	I	A	FP
BUSINESS USES: RECREATION (CONT.)											
Dancing, aerobic, gymnastic studio (3)						X	X	X			
Lodge or private club						S	X	X			
Night club, Bar, Tavern (3)							S	S			
Outdoor commercial recreational enterprise					S	S	S	S		S	S
Private recreational development	S	S	S		S	S	S	S		S	S
Private camp										S	S
Riding stable and trails										S	S
Theater, indoor (3)						S	X	X			
Theater, outdoor							S			S	
Campground(4)					S					S	S
Other similar uses					S	S	S	S		S	
BUSINESS USES: RETAIL SALES											
Liquor store						S	X	X			
Apparel shop						X	X	X			
Department store					X	X	X	X			
Drugstore					X	X	X	X			
Flower shop (5)					X	X	X	X			
Gift shop					X	X	X	X			
Hardware store					X	X	X	X			
Jewelry store					X	X	X	X			
Newsdealer					X	X	X	X			
Record shop					X	X	X	X			
Antique shop					X	X	X	X			
Stationery and book store					X	X	X	X			
Sporting goods					X	X	X	X			
Furniture store					X	X	X	X			
Other similar uses					S	X	X	X			

CHART OF PERMITTED USES, SECTION IV

DISTRICTS IN WHICH PERMITTED

Primary Use	R1	R2	R3	MH	HS	LB	GB	CB	I	A	FP
BUSINESS USES: MISCELLANEOUS											
Boat sales, service and storage					X		X	X		S	S
Cemetery or crematory										S	
Clinic			S		X	X	X	X			
Commercial facility for breeding & raising non-farm fowl & animals							S			X	
Farm equipment, sales & service							X	X		S	
home service	S	S	S			X		X		S	
hospital					X	X	X	X			
hotel, motel, bed & breakfast inns					X		X	X			
Kennel, boarding							S			X	
Building trades contractors							X			S	
mortuary							X	X	X		
Outdoor advertising sign, billboard					X		X		X		
Bus station					X		X	X			
Photographic studio					X	X	X	X			
Sales barn for livestock sale										S	
Tourist home or bed and breakfast: homestay			X			X	X	X		S	
Veterinary hospital, including boarding							X	X		S	
Warehouse							S		X		
Wholesale business							X		X		

FOOTNOTES:

- (1) Permitted only as a temporary use subject to the requirement of section 9.5 for R1, R2, and R3 districts but are permitted in conjunction with development and/or placement of mobile home parks.
- (2) Parking lots & parking garages as primary uses are also subject to the landscaping requirements in section 5.13(f) (iii & iv) for required accessory parking lots.
- (3) Only if conducted in a noise-proof building.
- (4) Only if the plans have first been approved by the Indiana Board of Health. Campgrounds are also permitted in FP zones only if also approved by the Indiana Department of Natural Resources, but shall be permitted within a regulatory floodway.
- (5) Including a greenhouse not larger than two (2) thousand square feet in area.

Section 5
Use Requirements and Restrictions

5.1 Height of Structures

- A. Except as otherwise provided by this section, no structure may be erected or changed so as to make its height greater than thirty-five (35) feet if it is in an R1, R2, R3, MH, HS or LB District, fifty (50) feet if it is in a A district, or seventy-five (75) feet if it is in a CB or I District.
- B. In a GB District, a business or light industrial structure may be erected or changed to a height not greater than seventy-five (75) feet. In a CB or I District, a business or industrial structure may be erected or changed to any height. This height exception does not extend to signs permitted for these uses.
- C. An agricultural structure may be erected or changed to any height necessary for its operation.
- D. The following structures may be erected or changed to any height not greater than thirty-five (35) feet when permitted in an R1 or R2 District:

List of Types

- Churches or temples (excluding signage)
 - Public Libraries or museums
 - Schools
 - Government Buildings
- E. Spires, church steeples, chimneys, cooling towers, elevator bulkheads, fire towers, scenery lofts, penthouses for mechanical equipment, stacks, tanks, water towers, transmission towers for electric lines, and necessary mechanical appurtenances may be erected or changed to any height that is not otherwise prohibited elsewhere in this ordinance.

5.2 Maximum Lot Coverage: Residential Uses

The residential buildings on any lot may not exceed in coverage the following percentages of total lot area:

Maximum Lot Coverage

District	R1	R2	R3	MH	LB	CB*	A
Percentage of Coverage	30%	25%	40%	40%	25%	60%	25%

*There is no maximum lot coverage if the entire first story contains non-residential uses.

5.3 Minimum Lot Size: Residential Uses

A. Except as provided for in 5.3(c), a lot on which a dwelling is erected or changed may not be smaller in area, in square feet per dwelling unit, than that prescribed for it in the following table. ("Changed" shall mean "increased in number of dwelling units contained therein," but shall not be construed to mean only refurbished, rehabilitated or expanded in size.)

Lot Size In Square Feet And District

Dwelling Type	R1	R2	R3	MH	LB	CB	A
Single-family	9,600**	20,000**	6000	5000	6000	--	43,560 (1 acre)
Two-family	--	--	3000	--	--	--	43,560 (1 acre)
Multi-family	--	--	2,000*	--	--	800	--

* This figure applies for each of the first three dwelling units - add 1,000 square feet for each additional unit.

** In addition, single-family dwellings must also be connected to public sewer.

B. Except as provided for in 5.3(c), a lot on which a dwelling is erected or changed may not be smaller in width, in linear feet, than that prescribed for it by the following table. ("Changed" shall mean "increased in number of dwelling units contained therein," but shall not be construed to mean only refurbished, rehabilitated or expanded in size.)

Lot Width In Feet and District

Kind of Dwelling	District						
	R1	R2	R3	MH	LB	CB	A
Single-family	75'	150'	60'	*	60'	--	150'
Two-family	--	--	60'	--	60'	--	100'

Section 5 Use Requirements and Restrictions

Multi-family -- -- 70' -- 70' * --

* Lot width for these categories will be determined on a case by case basis as directed by the Avilla Plan Commission.

- C. A single-family dwelling may be located on any lot in any district in which single-family dwellings are permitted if the lot was in separate ownership or included in a subdivision of record in the office of the County Recorder at the time of the passage of this ordinance, even though the lot does not have the minimum lot width or the minimum lot area, or both, specified for the district by this ordinance.

5.4 Minimum Lot Size: Other Uses

A lot on which one of the following uses is located may not be smaller in area than the area prescribed for that use opposite it in the following table:

Minimum Lot Sizes By Use

Use	Minimum Lot Area
Airport	80 acres
Cemetery or crematory*	20 acres
Clinic	15,000 sq. ft.
Commercial facilities for raising and breeding nonfarm fowl and animals	1 acre
Residential units in excess of 300 ft. from public sewer	1 acre
Junk yard	10 acres
Kindergarten or day care center	110 sq. ft. per child
Penal or correctional institution**	320 acres
Police station or fire station	15,000 sq. ft.
Private camp or campground	5 acres
Public or commercial garbage disposal plant	5 acres
Public or commercial sanitary fill, refuse dump or trash transfer station	10 acres
Riding stable	20,000 sq. ft. plus 5,000 sq. ft. for every horse over four

*Does not apply to old town or city cemeteries.

**Does not apply to a town, city, or county jail

5.5 Standard Setbacks

- A. In any district except the CB district, where there is no such requirement, minimum depth of front yard for a lot abutting a street shall be as follows:

Zoning District	Minimum Front Yard
A	85 feet
R1, R2, R3, MH	25 feet from property line
GB, LB	25 feet
HS, I	30 feet from property line

Along a local street in a residence district or business district other than CB, where fifty percent of lots in that block face are occupied by principal use buildings, minimum depth of front yard for that block face shall be the average depth of front yard for those buildings, provided that such front yard shall be no less than 10 feet. But buildings to be removed to make way for a new building shall not be included when calculating average depth of front yard to be applied to the new building.

A through lot has a front yard on each abutting street.

For any corner lot, these front yard setback standards shall also apply to the side yard(s) abutting an arterial or local street.

Where a lot does not abut a street, minimum depth of front yard shall be 25 feet, measured from a designated front lot line.

For any accessory building, minimum depth of front yard shall be the same as for the principal use building.

- B. Minimum depth of rear yard, in feet, for primary and accessory building shall be as follows:

Zoning District	Residential Use		Nonresidential Use	
	Primary	Accessory	Primary	Accessory
R1, R2, R3, A	30	10	30	10
LB, MH	15	15	15	15
GB, HS	15	15	15/40*	15/40*
CB	0	0	0	0
I	--	--	15/40*	15/40*

* Where rear lot line abuts a residential district.

Section 5 Use Requirements and Restrictions

- C. Minimum depth of side yard, in feet, for primary or accessory buildings shall be as follows:

Zoning District	Primary Residential Use	Primary Nonresidential Use
R1, R2, R3, , A	5	5
MH	10	10
LB, GB, HS	--	0/10*
CB	--	0
I	--	0/30*

* Where side lot line abuts a residential district.

5.6 Setbacks: Accessory Buildings in Residential Districts

- A. In a residential district, an accessory building may be located no closer to a side lot line than five (5) feet and no closer to the front lot line than the minimum front yard for a principal building.
- B. If an interior lot abuts a corner lot or an alley separating them and the front yards of the two lots are perpendicular to each other, an accessory building on the rear lot line of the corner lot may be located no closer to the street abutting the interior lot than the principal building on the interior lot.

5.7 Setbacks: Vision Clearance at Intersections

At the street intersection of each corner lot, the triangular space determined by the two lot lines at that corner and by a diagonal line connecting the two points on those lot lines that are twenty-five (25) feet respectively from the corner shall be kept free of any obstruction to vision between the heights of two and one-half (2 1/2) and twelve (12) feet above the established grade.

5.8 Setbacks: Uses Allowed As Special Uses

When permitted by grant of special use per Section 8.3, the following uses are subject to the special setbacks prescribed, in feet, by the following table. If no figure appears for a front yard setback, the standard setback prescribed by Subsection 5.6 applies.

Minimum Setbacks In Feet By Use

Use	Front	Side	Rear
Bottled gas storage & distribution	300'	300'	300'
Cemetery or crematory	50'	50'	--
Clinic	--	10'	30'
Commercial facilities for raising & breeding nonfarm fowl & animals	100'	100'	100'
Junk Yard	300'	150'	150'
Kindergarten or day care center	20'	15'	--
Liquid fertilizer storage & distribution	300'	300'	300'
Mineral extraction, borrow pit or top soil removal and their storage areas	150'	150'	150'
Outdoor theater	100'	40'	40'
Outdoor commercial recreational enterprise	40'	40'	--
Penal or correctional institution	100'	100'	100'
Petroleum tank farm	300'	300'	300'
Private recreational development	40'	40'	--
Private camp or campground	100'	40'	40'
Public or commercial sanitary fill, refuse dump, garbage disposal plant or trash transfer center	300'	300'	300'
Public or commercial sewage disposal plant	300'	300'	300'
Riding stable	100'	100'	100'
Sales barn for livestock sale	300'	300'	300'

5.9 Buffering: Minimum Distances from Residential District

- A. A mineral extraction area, borrow pit, or topsoil removal area (including storage area), penal or correctional institution, public or commercial sewage disposal plant, sales barn for livestock sale, truck terminal, or wholesale produce terminal may not be located closer to an R1, R2, R3 or MH District than three hundred (300) feet. A junk yard may not be located closer to such a district than thirteen hundred twenty (1320) feet.
- B. A parking area or loading berth for any of the following uses may not be located closer to a residential district than the distance, in feet, listed opposite it in the following table:

Minimum Distance in Feet From a Residential District

Use	Parking Area	Loading Berth
Airport	25'	100'
Commercial facilities for raising and breeding nonfarm fowl & animals	25'	100'
Commercial greenhouse	--	50'
Junk yard	1320'	1320'
Mineral extraction, borrow pit, or topsoil removal, and their storage areas	--	300'
Outdoor commercial recreational enterprise	25'	50'
Penal or correctional institution	300'	300'
Private recreational development	25'	--
Sales barn for livestock sale	50'	100'
Truck terminal	100'	100'
Wholesale produce terminal	100'	100'

5.10 Buffering: Fences and Walls

The following uses shall be fenced or walled as respectively prescribed by the following table:

Use Category	Enclosure
Airport or heliport (where located at ground level)	6'0" fence
Artificial lake of three or more acres, if accessible to public	6'0" fence
Drive-in	6'0" fence
Kindergarten or day care center (play area only)	4'0" fence
Junk yard	Solid wall or solid painted fence sufficient to hide from view
Mineral extraction, borrow pit, topsoil removal, and their storage areas	6'0" fence
Private commercial storage	6'0" fence

Outdoor commercial recreational enterprise	6'0" fence
Outdoor theater	8'0" solid opaque fence
Private swimming pool	5'0" fence
Public or commercial sewage disposal plant	6'0" solid opaque fence
Wholesale produce terminal	6'0" fence

5.11 Buffering: Screen Planting Abutting Residential Use

Tight screen planting, effective at all times to block the view from abutting residential uses, shall be provided for the following uses in accordance with the following table, the dimensions of the screen to be the minimum five years after the use is established.

Screening Of Uses

Use	Screen
Commercial facilities for raising and breeding nonfarm fowl and animals	6'0" high; 3'0" wide
Mineral extraction, borrow pit, topsoil removal, and their storage areas	8'0" high; 3'0" wide
Public or commercial sanitary fill, refuse dump, garbage disposal plant or trash transfer station	8'0" high; 6'0" wide
Truck terminal	6'0" high; 6'0" wide
Wholesale produce terminal	6'0" high; 6'0" wide

* Screens for other non-residential uses will be decided on a case by case basis as determined by the Avilla Plan Commission.

5.12 Entrances

- A. This subsection limits the number of entrances to an arterial street or a state or federal highway. However, it does not apply to entrances for emergency use only.
- B. Each of the following uses, for which special uses are prescribed by section 4.1, is limited to one entrance:

Use List

- Artificial lake of three or more acres
- Clinic
- Commercial facility for raising and breeding nonfarm fowl and animals
- Country club or golf course
- Junk yard

Section 5 Use Requirements and Restrictions

Mineral extraction, borrow pit, topsoil removal,
and their storage areas
Outdoor theater
Penal or correctional institution
Private recreational development
Private camp or Campground
Public or commercial sanitary fill, refuse dump,
garbage disposal plant or trash transfer station
Public or commercial sewage disposal plant
Railroad right-of-way and uses essential to
railroad operation
Riding stable
Sales barn for livestock sale
Telephone exchange or public utility substation
Tourist home or bed and breakfast
Truck terminal
Wholesale produce terminal

- C. Each of the following uses, for which special uses are prescribed by section 4.1, is limited to two entrances:

Use List

Airport
Cemetery
Outdoor commercial recreational enterprise

5.13 Minimum Off-street Parking and Loading Requirements

A. **Purpose.**

In order to reduce traffic problems and hazards by eliminating unnecessary on-street parking, every use of land must include on-premises parking sufficient for the needs normally generated by the use, as provided for in this subsection. Parking spaces or bays contiguous to the street, required by subdivision or other town ordinances, are in addition to and not in place of the spaces so required.

B. **Applicability.**

No new building or structure shall be constructed or used in whole or in part, and no building or part thereof shall be altered, enlarged, reconstructed or used, and no land shall be used unless off-street parking is provided in accordance with the following conditions:

- i. No existing off-street parking spaces shall be eliminated by the replacement or enlargement of an existing building or structure, if such elimination reduces the number of spaces under the minimum.
- ii. Enlargements or alterations which result in an increase in the ground coverage or the usable floor area of a building or structure shall require additional off-street parking spaces in accordance with the provisions of this subsection, but only to the extent that such increase exceeds 5% of the ground coverage or 15% of the floor area existing at the time this subsection becomes effective.
- iii. Changes in the use of existing buildings, structures, or of land shall require additional off-street parking spaces in accordance with the provisions of this subsection, but only to the extent of such change.
- iv. Restoration of an existing building or structure that has been damaged or destroyed by fire or other disaster shall be permitted without conforming to the requirements of this subsection if said restoration or rebuilding complies with the following requirements:
 - The restoration of the building does not increase the ground coverage that was occupied by the structure being replaced by more than 5%,
 - The restoration does not increase the usable floor space by more than 15% over that which was in the building being replaced,
 - The restoration does not reduce the number of parking spaces that were available to the subject structure and only if such restoration does not reduce the number of spaces below the minimum requirement for the use in question.
- v. Buildings, structures, or land uses, in existence, or structures or uses for which improvement location permits have been issued at the time this ordinance becomes effective shall not be subject to the requirements of this subsection except as provided above.
- vi. Parking spaces are not required around the boundaries of the historic properties/buildings as described in the Avilla Comprehensive Plan.
- vii. Minimum off street parking does not apply to the following downtown areas:
 - East Albion Street from Main Street to VanScoyoc or Baum Street.
 - Main Street from Washington Street to Adams Street.

C. **Required Parking Spaces.**

- i. Parking spaces shall be provided as follows:

Parking Requirements by Use

Uses	Required Parking Spaces
Airport or heliport	1 per 2 employees plus 1 per based or daily transient aircraft
Artificial lake of 3 acres or more	1 per 2 users
Automobile, RV and camper sales	1 per 400 sq. ft. of gross floor area
Motor vehicle repair	1 per 200 sq. ft. of gross floor area
Banks, business offices, professional offices, similar business uses, post office and similar service uses	1 per 200 sq. ft. of gross floor area
Boarding or lodging house	1 per occupant plus 2 for the resident owner
Bowling alley	3 per lane
Cemetery or crematory	1 per 2 employees plus 1 per 4 seats in chapel, if provided
Church or temple	1 per 2 seats in main auditorium
Clinic	1 per employee plus 3 per doctor for patients
Communication relay tower	1 plus 1 per 3 employees
Country club or golf course	1 per 2 employees plus 3 per golf hole
Dancing, aerobics or gymnastics	1 per 200 sq. ft., of gross studio floor area
Department store, antique shop, apparel shop, flower shop, drugstore, hardware store, stationery and book store, newsdealer, record shop, photo studio, barber shop, beauty shop, health spa or fitness center, bakery, restaurant, delicatessen, liquor store, meat market, grocery (including convenience stores), roadside food sales stand, electrical appliance shop, radio-TV shop, dress-maker, millinery, tailor and pressing shop, drycleaning and laundry establishment, billiard room, night club, furniture and large appliance sales	1 per 200 sq. ft. gross floor area
Greenhouse (commercial), facilities for raising or breeding nonfarm fowl or animals (commercial)	1 per 2 employees plus 1 per 125 sq. ft. of sales area
Home service	1 in addition to residence requirement
Hospital	1 per 4 beds plus 1 per doctor plus 1 per 3 employees plus 1 per hospital vehicle
Hotel or motel	1 per 3 employees plus 1 per sleeping room
Industrial uses generally	1 per employee on largest shift
Junk Yard or recycling center	1 per employee
Kindergarten or day care center	1 per 2 employees plus 1 per 5 children

Self-service Laundry	1 per 2 washing machines
Mortuary	1 per 3 seats in main auditorium
Nursing home	1 per 7 persons plus 1 per employee on largest shift
Outdoor commercial recreational use	1 per employee plus 1 per 500 sq. ft. of use area
Penal or correctional institution	1 per 3 employees plus 1 per 10 inmates (capacity)
Police station or fire station	1 per employee on largest shift
Private club or lodge	1 per 6 active members
Private recreational development	1 per 2 customers or members
Private camp or campground	1 per camp site plus 1 per cabin plus 1 per employee
Public library or museum	2 per 1,000 sq. ft. gross floor area
Public or commercial sewage disposal plant	1 per employee on largest shift
Bus station	1 per 10 seats in waiting room plus 1 per 2 employees of connected retail use
Residential use, including apartments	2 per dwelling unit
Riding Stable	1 per 5,000 sq.ft.
School	1 per staff member plus 1 per 5,000 sq. ft. plus 1 per 4 students enrolled if a high school
Shopping center	
25,000 to 400,000 sq. ft. gross leasable area	4 per 1,000 sq. ft. gross leasable area
400,000 to 600,000 sq.ft. gross leasable area	4.5 per 1,000 sq. ft. gross leasable area
600,000 sq. ft. and over gross leasable area	5 per 1,000 sq.ft. gross leasable area
Public swimming pools	1 per 100 sq.ft. of pool area
Telephone exchange or public utility substation	1 per employee
Theater (indoor)	1 per 2 seats
Theater (outdoor)	1 per 2 employees
Tourist home or bed and breakfast	1 per employee plus 1 per guest bedroom
Trade or business school	1 per 3 students and staff
Truck terminal	1 per 2 employees plus 4 for customers
Veterinary hospital or clinic or boarding kennel	1 per 3 animal spaces (cages or pens)
Wholesale produce terminal	1 per 2 employees

- ii. Drive-up services, including but not limited to bank teller, photo pick-up, car washes fast food order and pick-up, shall provide waiting space for queuing of vehicles awaiting use of drive-up windows. The requirements are: two (2) twenty (20) foot car-length waiting

spaces for each drive-up lane (including the space where the transaction takes place), plus one additional space per drive-up lane for outside transaction area for multiple drive-up windows. Drive-up waiting space requirements are in addition to any off-street parking requirement.

D. General Regulations.

- i. Parking spaces may not be located in the required front yard except in business and industrial districts.
- ii. Two or more buildings or uses may collectively provide the required off-street parking in which case the required number of parking spaces shall be not less than the sum of the requirements for the several individual uses computed separately. This provision applies to buildings having space occupied by two or more uses.
- iii. When determination of the number of off-street parking spaces required by subsection C. results in a requirement of a fractional space, any fraction of one-half or less may be disregarded while a fraction in excess of one-half shall be counted as one parking space.
- iv. Every company car, truck, tractor and trailer normally stored at a business site shall be provided with off-street parking space. Such space shall be in addition to the parking requirements of subsection C.

E. Off-Site Parking Facilities.

Required parking for a non-residential development may be located off-site under certain circumstances. Requests for variances allowing the substitution of off-site for on-site parking must meet the following requirements:

- i. The off-site parking shall be located so that it will adequately serve the use for which it is intended. In making this determination the following factors, among other things, shall be considered:
 - a. Proximity of the off-site parking facilities;
 - b. Ease of pedestrian access to the off-site parking facilities;
 - c. The type of use the off-site parking facilities are intended to serve, i.e. off-site parking may not be appropriate for high turnover uses such as retail.

- ii. A written agreement shall be drawn to the satisfaction of the Town Attorney and executed by all parties concerned assuring the continued availability of off-site parking facilities for the use they are intended to serve.

F. Development Standards.

Each parking area shall comply with the standards as hereinafter set forth:

i. Design.

- a. Parking spaces and maneuvering aisles shall have the minimum dimensions set forth in the following table.

Minimum Parking Space and Aisle Dimensions for Parking Areas (in feet)

Angle of Parking	Width of Parking Space	Length of Parking Space	Maneuvering Aisle (1-way)	Maneuvering Aisle (2way)
76-90	9'	18'	22'	22'
61-75	9'	18'	18'	22'
46-60	9'	18'	17'	22'
0 -45	8'	22'	12'	22'

Measurement of parking space width and length, aisle width and parking angle shall be made as per the following diagram:

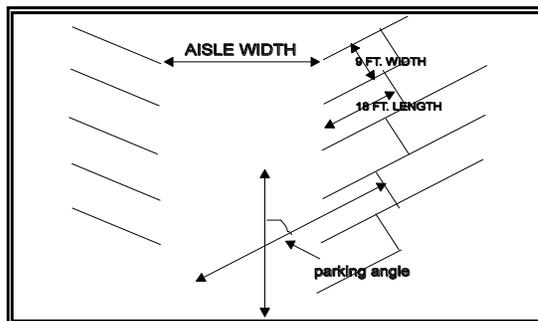


Figure 5-1: Parking

Space Measurements

- b. Driveways shall be arranged for the free flow of vehicles at all times, and all maneuvering spaces and aisles shall be so designed that all vehicles may exit from and enter into a public street by being driven in a forward direction, except that residential and employee parking spaces may back-in from alleys. See Figure 5-1.
- c. Each required off-street parking space shall be designed so that any motor vehicle may proceed to and from said space without requiring the

Section 5 Use Requirements and Restrictions

moving of any other vehicle or by passing other vehicle or by passing over any other parking space, except where the parking area is limited to employees.

- d. On any parking area in any district, all paved portions of all parking spaces and maneuvering aisles shall be set back five (5) feet from any wall of a building, and five (5) feet from any private or public way, or any lot line of any land in residential districts or used for residential purposes.

ii. **Construction.**

- a. All required parking spaces, maneuvering aisles, and driveways except in A & FP districts and on farms in any district, shall be constructed in a manner that will provide for satisfactory disposal of surface water by grading and drainage in such a manner that no surface water shall drain onto any lot in other ownership and such surfaces shall be well maintained.
- b. Parking areas in all districts shall be provided with curbing, wheel stops, or other devices to prevent motor vehicles from being parked or driven within required setback areas or onto the required landscaped open space.
- c. In any parking area, which is of a durable, dustless, all weather surface, the surface shall be painted, marked or otherwise delineated so that each parking space is apparent.

iii. **Landscaping.**

Landscaping may be required in construction of parking areas as approved and determined on a case by case basis by the Avilla Plan Commission.

iv. **Screening.**

Screening of any parking area which abuts residential districts or uses or is in close proximity to a public or private way may be required in construction as approved and determined on a case by case basis by the Avilla Plan Commission. Other requirements regarding the use of screening include:

a. **Lighting.**

All artificial lighting used to illuminate a parking area, maneuvering space or driveway shall be arranged and shielded so as to prevent direct glare

from the light sources into any public street or private way or onto adjacent property.

b. **Other Uses.**

Where appropriate and recommended by the Avilla Plan Commission, landscaped earth berms may be used to help in screening or separating uses for other useful purposes.

G. **Off-Street Loading.**

There shall be provided off-street loading berths not less than the minimum requirements specified in this subsection in connection with any building or structure which is to be erected or substantially altered, and which requires the receipt or distribution of materials or merchandise by trucks or similar vehicles.

i. **Location.**

All required off-street loading berths shall be located on the same lot as the use to be served, and no portion of the vehicle shall project into a street or alley. No permitted or required loading berth shall be located within twenty-five (25) feet of the nearest point of intersection of any two streets, nor shall it be located in a required front yard, or side yard adjoining a street. Some uses are also subject to Section 5.8 and/or 5.9.

ii. **Size.**

Off-street loading berths for over-the-road tractor-trailers shall be at least fourteen (14) feet in width by at least sixty (60) feet in length with a sixty (60) foot maneuvering apron, and shall have a vertical clearance of at least fifteen (15) feet.

For local pick-up and delivery trucks, off-street loading berths shall be at least twelve (12) feet in width by at least thirty (30) feet in length with a thirty (30) foot maneuvering apron, and shall have a vertical clearance of at least twelve (12) feet.

iii. **Access.**

Each required off-street loading berth shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movements. Sufficient area for maneuvering into and out of loading berth must also be provided.

iv. **Surfacing.**

All open off-street loading berths shall be improved with a compacted base not

less than six (6) inches thick, or equal, surfaced with not less than two (2) inches of asphaltic concrete or some comparable all-weather, dustless material.

v. **Space Allowed.**

Space allowed to any off-street loading berth shall not, while so allocated, be used to satisfy the space requirements of any off-street parking areas or portions thereof.

vi. **Off-street Loading Space Requirements.**

One off-street loading berth shall be provided for every 10,000 square feet of gross floor area but no more than a total of two spaces up to 40,000 square feet of gross floor area, one space for each additional 40,000 square feet up to 160,000 square feet, and one space for every 80,000 additional square feet.

5.14 Signs

A. **Purpose.**

The purpose of this subsection is to permit such signs that will not, by their reason, size, location, construction, or manner of display, endanger the public safety of individuals, confuse, mislead, or obstruct the vision necessary for traffic safety, or otherwise endanger public health, and morals; and to permit and regulate signs in such a way as to support and complement land-use objectives set forth in the zoning ordinance.

B. **Exempt signs.**

The following types of signs shall be exempted from the requirements of this subsection:

- i. Signs not exceeding one square foot in area and bearing only property numbers, post box numbers, and names of occupants of premises or home service.
- ii. Flags and insignia of any government.
- iii. Legal notices, identification information, or directional signs erected by or by order of governmental bodies.
- iv. Integral decorative or architectural features of buildings, except letters, trademarks, logos, moving parts or moving lights.
- v. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter, including logos.

C. **On-Premise Signs.**

- i. In any district, except as noted, the provisions of this subsection shall be applied to effect the safety of motorists and facilitate traffic movement.
 - a. No sign shall be erected or maintained at any location where, by reason of its position, wording, illumination, size, shape, or color, it may obstruct, impair, obscure, interfere with the view of, or be confused with any authorized traffic control sign, signal, or device.
 - b. No sign shall contain or make use of any phrase, symbol, shape, form, or character in such a manner as to interfere with, mislead, or confuse moving traffic.
 - c. No exterior sign shall be permitted to display revolving or rotating lighting or illumination, nor any illumination which simulates or displays motion.
 - d. Except as permitted in subsection viii., Portable Signs are prohibited.
 - e. All signs not expressly exempted or permitted by this ordinance are prohibited.
- ii. In all districts, the provisions of this subsection shall apply.
 - a. No part of any sign which is attached to the exterior wall of a building shall be erected to a height above the roof or parapet line of such building.
 - b. No illuminated sign shall be permitted within fifty feet of property in any residence district unless the illumination of such sign is so designed that it does not reflect or shine light onto such property.
 - c. No part of any free-standing sign shall be erected to a height greater than that specified for other structures in the district in which the sign is located; rooftop sign structures shall not extend more than six feet above the roof line nor shall such sign structures extend beyond or overhang any exterior wall of the building upon which they are secured.
 - d. The minimum setback of free-standing signs from street rights-of-way shall not be less than those given below. Setbacks shall be measured to the nearest point of the sign to the edge of the right-of-way.

Minimum Sign Setbacks

Area of Sign per Face	Minimum Setback
5 square feet or less	2 feet
5 to 14.9 square feet	10 feet
15 to 49.9 square feet	20 feet
50 to 99.9 square feet	30 feet
100 or more square feet	50 feet

- e. The area of a sign shall be determined by the smallest circle, triangle, or rectangle that can be used to enclose the sign, exclusive of supporting members that bear no message.
 - f. No free-standing sign shall be erected or maintained on or within any easement or right-of-way, public or private, without special permission in writing from that person or persons entitled to give such permission.
- iii. In any residence district, the provisions of this subsection shall apply.
- a. Multi-family developments may display identification signs indicating nothing other than name and/or address of the premises and/or the name of the management. Such sign shall not exceed nine square feet in area.
 - b. Nonresidential uses are permitted one bulletin board or identification sign, indicating nothing other than name and/or address of the premises, and schedule of services or other information relevant to the operation of the premises. Such sign shall not exceed twelve square feet in area unless erected along an abutting street or road having a speed limit in excess of 40 miles per hour; then the area of such sign shall not exceed 30 square feet.
 - c. For each use listed in paragraphs a. and b. eligible to display a sign, only one sign per street frontage shall be permitted, except that uses occupying extended frontages shall be permitted one such sign per five hundred (500) feet of frontage.
- iv. In any business district, except as herein provided, the provisions of this subsection shall apply.

- a. Multi-family developments shall be subject to the provisions of subsection iii.
- b. Signs shall be permitted as accessory uses for nonresidential uses according to the number and net area of signs set forth below:

Business Use Signs and Sign Area

District	Number of Signs	Net Sign Area (each sign)
HS	3	60 sq. ft.
LB	2	30 sq. ft.
GB & CB	3	40 sq. ft.

No building-mounted sign shall project over a lot line and no sign shall project into a required yard more than two feet.

- v. In any industrial district, each business or industrial use shall be permitted identification signs on the lot only as incidental uses, not to exceed two such signs or a total net area of three hundred square feet.
- vi. To encourage design excellence, the maximum sign areas for business and industrial signs, as set forth in paragraphs iv. and v. above, may be increased by the percentages as provided for herein. A separate bonus is granted for compliance with each of the criteria and the area is cumulative, but the percentage increase is based on the original sign area limitation.
 - a. Free-standing signs may be increased as follows:
 - Twenty percent (20%) when the sign is constructed of solid wood and is approved by the Town of Avilla's Building Inspector.
 - Ten percent (10%) when a directory sign utilizes uniform coloring and lettering for all establishments listed in the directory, except the one (1) major facility.
 - Twenty percent (20%) when the sign is installed in a landscaped planter having an area four (4) times the area of the resultant sign and the entire design is approved by the Town of Avilla's Building Inspector.
 - Ten percent (10%) if the sign is not designed or used with illumination.

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- Five percent (5%) if the sign face is made from unbreakable material.
- b. Wall or facade signs may be increased as follows, but only if the projection of the sign does not exceed twelve (12) inches:
- Ten percent (10%) when all the lettering and background are uniform in style and color for signs in a shopping center or for any three (3) consecutive separate establishments.
 - Ten percent (10%) if the sign is not designed or used with illumination.
 - Ten percent (10%) if the wall sign is the only sign identifying the establishment or its principal product. This bonus provision is not applicable in Local Business Districts (LB), Central Business (CB) Districts, and for stores in a shopping center.
 - Ten percent (10%) if the sign is designed to contain only the identification of the establishment without advertisement of any products sold on the premises.
 - Five percent (5%) if the sign face is made from unbreakable material.
- vii. In any agriculture district, the provisions of this subsection shall apply:
- a. Agricultural uses shall be permitted one (1) sign not to exceed thirty (30) square feet.
 - b. Industrial uses shall be permitted a maximum of two (2) signs not to exceed a combined area of one hundred (100) square feet.
 - c. Business uses shall be permitted two (2) signs not to exceed thirty (30) square feet each.
 - d. Other nonresidential uses shall be permitted, one bulletin board or identification sign, indicating nothing other than name and/or address of the premises, and schedule of services or other information relevant to the operation of the premises. Such sign shall not exceed twelve square feet in area unless erected along an abutting street or road having a speed limit in excess of 40 miles per hour; then the area of such sign shall not exceed 30 square feet. Only one sign per street frontage shall be

permitted, except that uses occupying extended frontages shall be permitted one such sign per five hundred (500) feet of frontage.

- e. Residential uses are subject to the provisions of subsection iii.
- viii. The signs permitted by this subsection shall be allowed in any district.
 - a. One "For Sale" or "For Rent" sign not more than twelve square feet in area for each dwelling unit, garage, or other quarters where appropriate.
 - b. One sign, not more than twelve square feet in area, for construction and development, giving the name of the contractors, engineers, or architects, shall be permitted but only during the time that construction or development is actively underway.

Also, one (1) portable sign on premise, not in excess of the number or size provisions of subsection iv.b may be permitted by the Town of Avilla's Building Inspector up to, but not to exceed, forty-five (45) days, if the portable sign is being used in lieu of a permanent sign, or during the period while commercial construction or remodeling is actively underway, to be removed when the permanent sign is erected in the first case, or when construction is completed under that Improvement Location Permit in the second case.

- c. For an event of public interest sponsored by a church, governmental agency, school, political organization, or charitable organization, one (1) portable sign not over fifty (50) square feet in area, placed on the premises on which the event will take place or no farther than the nearest intersection shall be permitted; such sign shall not be erected more than thirty (30) days before the event in question and shall be removed immediately after such event. Also, directional signs, may be permitted not more than three (3) square feet in area, showing only a directional arrow and the name of the event of public interest; such signs shall not be erected more than fourteen (14) days before the event in question and shall be removed immediately after such event.
- d. For each real estate subdivision that has been recorded in accordance with the subdivision regulations, one sign, not over fifty (50) square feet in area, advertising the sale of property in such subdivision shall be permitted, but only when located in some portion of the subdivision being advertised for sale. Such sign shall not encroach upon any required yard. Such sign may be illuminated, but no flashing, intermittent or animated illumination is permitted. Such sign shall be maintained only during such time as some portion of the land advertised for sale remains unsold. Those signs remaining on site over one (1) year

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must have expressed permission by the Avilla Plan Commission in order to remain. This permission shall be renewed on a yearly basis.

- e. Political advertisement signs, on private property, may be erected no more than forty-five (45) days prior to the election and are to be removed within five (5) days after said election.
- f. For each major entrance to a real estate subdivision one (1) sign containing the name of the subdivision only shall be permitted. Such sign shall not exceed twenty (20) square feet and shall have a maximum height of six (6) feet. In addition, such sign shall comply fully with subsection 5.7 **Setbacks: Vision Clearance at Intersections** and subsection 5.14(c) ii.f., but shall not be subject to subsection 5.14(c) ii.d.

D. Outdoor Advertising Signs.

- i. Outdoor Advertising signs shall be allowed in the zoning jurisdictions of HS, GB, and I Districts only, as authorized by or under Section 4.1.
- ii. Outdoor advertising signs shall be separated by one thousand (1,000) feet in all directions, and pertaining to the Interstate and limited access highways, no outdoor advertising sign may be located adjacent to or within five hundred (500) feet of an interchange, at-grade intersection, or rest area; said five hundred (500) feet shall be measured from the right-of-way line.
- iii. No outdoor advertising sign shall be permitted if it is located within three hundred (300) feet of land that has been platted for residential use or is zoned R1, R2, R3, or PDR.
- iv. No outdoor advertising sign structure shall contain more than two facings and no facing shall display more than two (2) signs.
- v. The maximum area for any one sign shall be 1000 square feet and the maximum width 25 feet and maximum length of 60 feet, exclusive of any border, trim, ornamental base, apron, supports, embellishments, and other structural members, if the exclusions do not exceed 20 percent of the sign area. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the area affected.

5.15 Restrictions Along Streams

- A. The following buildings and structures are the only ones that may be erected within a floodway fringe: recreational apparatus and unenclosed shelters; parking spaces,

detached unenclosed carports and the driveways serving them; water wells and fountains, and transmission lines for water, sewer, gas, oil, electric, telephone and cable television; fences; mailboxes; bridges and public and private streets.

- B. When required by the Indiana Department of Natural Resources or the Army Corp of Engineers, buildings or structures may be erected within a regulatory floodway or wetland only if a permit to construct in a regulatory floodway or wetland has been issued. Notwithstanding, where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, or other provision of law, those provisions which are more restrictive or impose higher standards shall control.
- C. Water wells, water lines, and sewage facilities located within a flood plain shall be constructed to eliminate contamination of or by, floodwater.

5.16 Water Pollution

County, State, and Federal guidelines and provisions shall prevail in consideration of discharge or disposal of liquid or solid wastes into public waters. County, State, and Federal regulations must be referred to and adhered. Plans and specifications for proposed sewage and other waste treatment and disposal facilities must be approved by the Indiana Department of Environmental Management and/or the State Board of Health, and any other Indiana department or agency authorized to review and approve such facilities.

5.17 Industrial Restrictions

The following provisions apply to all industrial uses.

Provisions regarding industrial restrictions for smoke, particulate matter, odor, toxic materials, glare and heat, vibration, noise, fire hazards, and detonation materials must follow county, state, and federal guidelines. In development of industrial uses, appropriate county, state, and/or federal agencies must be contacted.

A. **Smoke.**

County, State, and Federal guidelines shall prevail in regard to the emission of smoke.

B. **Particulate Matter.**

County, State and Federal guidelines, used to regulate the emission of particulate matter from all sources, shall prevail.

C. **Odor.**

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No light or general industrial use may release an unreasonably objectionable odor that is detectable in the neighborhood. Odors released from all industrial uses that are of an objectionable nature will be reviewed by the Avilla Plan Commission.

D. Toxic Materials.

County, State, and Federal guidelines for the emission of toxic and nontoxic materials shall prevail. In the emission of toxic and nontoxic materials county, state and federal agencies that regulate such conditions will take precedence.

E. Glare and Heat.

No light or general industrial use may cause heat at the lot line so intense as to be a public nuisance or hazard. Heat and glare from such uses that are objectionable will be reviewed by the Avilla Plan Commission.

F. Vibration.

County, State and Federal guidelines should be followed in the consideration of vibrations caused by any industrial use. In matters where vibrations become a nuisance and/or hazard, appropriate government agencies that regulate industrial vibration will be contacted.

G. Noise.

At no boundary of a residence or business district may the sound pressure level of any light or general industrial use be such that causes objections by nearby uses. Noise from all industrial uses shall be under the control of the appropriate county, state, or federal agency.

H. Fire Hazards.

The storage, utilization or manufacture of flammable liquids or materials which produce flammable vapors or gases shall be permitted in accordance with the rules and regulations of the State Fire Marshall. A certificate of compliance, issued by the State Fire Marshall's Office, stating that the plans and specifications for a light or general industrial use comply with the rules and regulations of the State Fire Marshall shall accompany the application for an Improvement Location Permit.

I. Detonation Materials.

No activity involving the storage, use or manufacture of materials that decompose by detonation may be carried on except in accordance with the rules issued by the State Department of Fire Prevention and Building Safety.

These materials include primary explosives such as lead azide, lead styphnate, fulminates, and tetracene; high explosives such as TNT, RDX, HMX, PETN, and picric acid; propellants and their components, such as dry nitrocellulose, black powder, boron hydrides, hydrazine and its derivatives; pyrotechnics and fireworks such as magnesium powder, potassium chlorate, and potassium nitrate; blasting explosives such as dynamite and nitroglycerine; unstable organic compounds such as acetylides, tetrazoles, and ozonides; strong oxidizing agents such as liquid oxygen, perchloric acid, perchlorates, chlorates, and hydrogen peroxide in concentrations greater than thirty-five percent; and nuclear fuels, fissionable materials and products, and reactor elements such as uranium 235 and plutonium 239.

J. **Exceptions.**

Subsections A. through I. do not apply to:

- i. site preparation or construction, maintenance, repair, alteration, or improvement of buildings, structures, equipment, or other improvements on or within the lot line;
- ii. the operation of motor vehicles or other facilities for the transportation of personnel, materials or products;
- iii. conditions beyond the control of the user such as fire, explosion, accident, failure, or breakdown;
- iv. safety or emergency warning signals or alarms necessary for the protection of life, limb or property; or
- v. processes for which there is no known means of control.

Research shall be promptly conducted to discover methods of control leading to the installation of protective equipment.

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Section 6
Planned Developments

6.1 Intent of Districts

The purpose of these regulations are to provide greater design flexibility in the development of land when consistent with the Comprehensive Plan and intent of the Zoning Ordinance. The use of Planned Development Zoning Classifications shall be encouraged when the use of such regulations promotes a harmonious variety of uses, and /or provides for an economy of shared services and facilities, and/or are compatible with surrounding areas and/or foster the creation of attractive, healthful, efficient and stable environments for living, shopping or working.

The Planned Development regulations and procedures may apply to the redevelopment of presently developed lands, or the development of open or vacant lands, and may apply to parcels of relatively small size as well as large-scale developments and their relationship with other surrounding uses and the overall characteristics of the area in which located.

Planned Development regulations are intended to encourage innovations in land development techniques so that the growing demands of the community may be met with greater flexibility and variety in type, design and layout of sites and buildings and by the conservation and more efficient use of open spaces and other amenities generally enhancing the quality of life.

Planned Development projects should also encourage a more efficient use of land which reflects the changes in the technology of land development so that resulting economies may accrue to the benefit of the community at large.

In furtherance of the purpose and intent of a Planned Development, the provisions of Sections 5.1 through 5.14 inclusive of this Ordinance shall not be applied, or be applicable, to or in a Planned Development District.

6.2 Classifications of Planned Development

Upon preliminary review of a Planned Development proposal by the President of the Plan Commission as provided by this Ordinance, such proposal shall be identified by the general character of the dominant use of the development. Such proposals shall be classified by the following designations:

A. **"PD-R" - Planned Development - Residential**

Any development consisting of not less than three (3) acres in which more than 80 percent of the interior floor area of all buildings to be included in the development are used for residential purposes or those accessory purposes customarily related to residential use.

B. "PD-C" - Planned Development - Commercial

Any development consisting of not less than four (4) acres in which all of the interior floor area of all buildings to be included in the development is to be used for commercial purposes.

C. "PD-I" - Planned Development - Industrial

Any development consisting of not less than five (5) acres in which more than 80 percent of the interior floor area of all buildings to be included in the development are used for industrial or manufacturing purposes or such accessory uses customarily relating to industrial uses with the balance of such interior floor areas, if any, being intended for such commercial uses as reasonable relate to the support or convenience of the intended industrial uses or their occupants.

D. "PD-REC" - Planned Development - Recreation

Any development consisting of not less than five (5) acres in which the principal activity, whether conducted within or outside of a building or other structures, relates to recreation, amusement, the exhibition of sports events, the conduct of games and athletics, or the provision of open space for any passive or active endeavor. In these districts, such commercial structures or uses as reasonably relate to the principal activity of the development shall also be permitted.

6.3 Organization of Proposals

Any person, corporation, partnership or association having an ownership interest in a proposed development, or any group of owners united in interest, acting jointly, and in pursuance to an agreement to carry out the proposal in separate ownership may propose a Planned Development District in accordance with the procedures hereinafter established, where such individual owner or group of owners in making such proposal intends to act as developer or sponsor of the development if the zoning change is adopted and indicates the requisite capabilities to carry out such proposal. A parcel, or site proposed for Planned Development need not be under single ownership where the proposed development consists of a group of structures or improvements capable of being developed separately but in accordance with a single, unitary plan, and in which the separate owners have given their expressed intentions to enter into such private agreements between or among themselves as will facilitate their mutual enterprise, and assure its completion as planned to the satisfaction of the Plan Commission.

6.4 Filing Procedure

A. The authorization of a Planned Development shall be subject to the procedures expressed herein:

- B. Submission of a petition and all other documents required for rezoning for the appropriate PD classification, which petition shall be signed by the owner or owners of all real estate involved in the petition for the Planned Development, or which petition shall have attached thereto the notarized consent of all such owners to the filing of such Petition, and to the change to a PD classification of their real estate included.
- C. The petition, which shall include a preliminary plan and plat for any area proposed for development as a Planned Development shall be filed with the Plan Commission President. The preliminary plan and plat shall include:
- i. Proposed layout of streets, open space and other basic elements of the plan.
 - ii. Identification of location and types of structures and their use categories within the area, including proposed densities of said uses.
 - iii. Proposals for handling traffic, parking, water supply, sewage disposal, storm drainage, tree preservation and removal, landscaping, lighting, signage and other pertinent development features.
 - iv. The condominium declaration (if applicable), a document creating an owners' association and any covenants to be made a part of the Planned Development as well as the order and estimated time of development.
 - v. If applicable, a statement of the proposed order of development of the major elements of the project, including whether the development will be accomplished in phases, and, if so, the order and content of each phase.
- D. The preliminary plan shall be presented at a scale ratio not to exceed 100' = 1". The preliminary plan may include any additional graphics which will explain the features of the development. It shall also be provided to the following checkpoint agencies for their review and comment:
- Superintendent of Utilities
 - Noble County Surveyor
 - County Soil and Water Conservation District (If plan is over 5 acres in size and/or contains suspected wetlands)

6.5 Preliminary Plan Hearing

- A. The petition shall then be heard by the Plan Commission as a petition for zoning map amendment and subject to the procedures applicable thereto. The Plan Commission may recommend approval or disapproval of the plan and may impose any reasonable condition(s) with its affirmative recommendation. If disapproval is recommended, the

Section 6 Planned Developments

application shall not be certified to the Council of the Town of Avilla. If approval is recommended, the preliminary plan shall be documented as "Approved Preliminary Planned Development" and be signed by the President and Secretary of the Plan Commission. One copy shall be permanently retained in the office of the Plan Commission.

- B. The approved preliminary Planned Development shall then be certified to the Council of the Town of Avilla for adoption as a Planned Development District pursuant to the laws governing proposals to change zoning maps. Upon adoption by the legislative body, the petitioner shall prepare the final detailed plan.

6.6 Approval Of Final Detailed Plan

- A. Before any development takes place, the petitioner shall file with the Plan Commission one set of the final detailed plan specifying the location, composition, and engineering features of all lots, storm drainage, sanitary sewage, water supply facilities, public or private streets, recreation facilities, site perimeter treatment, landscaping, plat and other site development features including locations of buildings. The petitioner shall also file all signed and notarized documents pertaining to restrictive covenants, condominium declaration and/or the creation of a homeowners association, along with financial assurance for the satisfactory installation of all public improvements in the form of bonds or such other assurances as are required in the normal procedures of platting pursuant to the provisions of the Avilla Subdivision Ordinance. The Plan Commission shall then approve said final detailed plans by resolution duly adopted, upon an affirmative finding that the final detailed plan is consistent with the Approved Preliminary Planned Development as adopted and passed by the Council of the Town of Avilla upon rezoning. Having so once approved the final detailed plan, the Plan Commission shall have no further authority to review or act thereon, except as to enforcement, except as to an amendatory ordinance, and except as hereafter provided for.
- B. The Approved Preliminary Plan may provide for development of the property involved in phases. If such phasing is included as a part of the approval of the preliminary plan, the petitioner may submit partial final detailed plans which correspond to the phases involved. Such partial final detailed plans, when approved, shall be treated in the same manner as approved final detailed plans for an entire Planned Development.
- C. The approved final detailed plan or phase thereof shall be signed by the President and Secretary with one copy permanently retained in the office of the Plan Commission following recordation as specified in section 6.8.
- D. Unless extended by the Plan Commission pursuant to section 6.11 (A), approval of the first phase of the final detailed plan shall be obtained within two (2) years and approval of

the balance of the final detailed plan shall be obtained within five (5) years after adoption of the Planned Development District by the Council of the Town of Avilla.

- E. In the event that approval of a final detailed plan is not timely obtained, the Plan Commission may initiate an amendment to the zoning map relating to said land.
- F. In the exercise of continuing jurisdiction, the superintendent of utilities or president of the plan commission may from time to time approve only minor modifications of the approved Final Detailed Planned Development in a manner consistent with the approved Preliminary Planned Development. Such modifications shall not include any increase in density, any lessening of aesthetic treatments, any alteration of frontage or building location, any change in type of use, or any change in access points.
- G. Approval of a final detailed plan shall expire after a period of five (5) years from the approved phasing of the preliminary plan unless the development is 50 percent (50%) completed in terms of public improvements including streets, parks, walkways, utility installations and sanitary sewers. Determination of the amount of completion shall be made by the Plan Commission upon a recommendation of the Superintendent of Utilities. Following expiration of the final detailed plan, the Town of Avilla shall declare the bond to be in default and cause all public improvements to be installed according to the final detailed plans.

6.7 Covenants and Maintenance

- A. All covenants shall be set forth in detail and shall provide for a provision for the release of such restriction by execution of a document so stating and suitable for recording all of the owners of property in the area involved in the petition for whose benefit the covenant was created.
- B. The Commission may require the recording of covenants for any other reasonable purpose, including, but not limited to, imposing standards for development of property in a Planned Development. Such development standards may include, but are not limited to, requirements as to the following:
 - i. Lot area.
 - ii. Floor area.
 - iii. Ratios of floor space to land space.
 - iv. Area in which structures may be built. ("Buildable area")
 - v. Open space.

Section 6 Planned Developments

- vi. Setback lines and minimum yards.
 - vii. Building separations.
 - viii. Height of structures.
 - ix. Signs.
 - x. Off-street parking and loading space.
 - xi. Design standards (including landscaping requirements).
 - xii. Phasing of development.
- C. Adequate provision shall be made for a private organization with direct responsibility to, and control by, the property owners involved to provide for the operation and maintenance of all common facilities including private streets jointly shared by such property owners if such facilities are a part of the Planned Development, and, in such instance legal assurances shall be provided and recorded which show that the private organization is self-perpetuating.
- D. Common facilities which are not dedicated to the public shall be maintained to standards assuring continuous and adequate maintenance. Common facilities not dedicated to the public shall be operated and maintained at no expense to any governmental unit.
- E. All private streets shall be maintained by the aforementioned private organization in such a manner that adequate access is provided at all times to vehicular traffic so that fire, police, health, sanitation, and public utility vehicles can serve the properties contiguous or adjacent thereto, and so that said vehicles will have adequate turning area. All streets and roadways not dedicated to the public shall be operated and maintained at no expense to any governmental unit.

6.8 Recording

All approved Final Detailed Planned Development Plans and Plats, owners association documents, condominium declarations, and required covenants and modifications thereof shall be recorded in the Office of the Noble County Recorder within two (2) years after approval, but before any development takes place.

Failure to so record shall automatically void the approval of the Final Detailed Planned Development.

6.9 Permit

An improvement location permit shall be issued for a Planned Development District upon full compliance with the approved Final Detailed Planned Development.

6.10 Construction

- A. No construction or installation work shall be done on any public improvements until the petitioner has notified the appropriate Governmental Inspector(s) of his intention to begin such work, in order that inspections may be made as the work progresses.
- B. All development shall be in conformity with the approved and recorded Final Detailed Planned Development and any material deviations from the approved and recorded Final Detailed Planned Development shall be subject to appropriate enforcement action as provided for in this ordinance.

6.11 Extensions, Abandonment, and Expiration

- A. Extensions of the time for accomplishing any matters set forth herein may be granted by the Plan Commission at a public hearing for good cause shown.
- B. Upon the abandonment of a development authorized under this section (abandonment shall be deemed to have occurred when no improvements have been made pursuant to the approved Final Detailed Planned Development for twenty-four (24) consecutive months), or upon the expiration of five (5) years from the approval of a Final Detailed Planned Development for a development which has not been completed, an amendment may be initiated as provided by law to the zoning map so that the land will be zoned into a category or categories which most nearly approximate its then existing use or such other zoning category or categories which the legislative body deems appropriate.

6.12 Limitation of Rezoning

The Plan Commission shall not initiate any amendments to the zoning map concerning the property involved in a Planned Development before completion of the development as long as the development is in conformity with the approved Final Detailed Planned Development and is proceeding in accordance with the time requirements imposed herein.

Section 6 Planned Developments

Section 7
Board of Zoning Appeals, Variances,
Special Uses and Appeals

7.1 Boards of Zoning Appeals: Membership and Jurisdiction

The Board. There is hereby reestablished the Advisory Board of Zoning Appeals to be known as the ADVISORY BOARD OF ZONING APPEALS OF THE TOWN OF AVILLA, INDIANA. The Advisory Board of Zoning Appeals shall be a continuation of the present Board of Zoning Appeals of The Town of AVILLA, INDIANA heretofore established under the advisory plan law, being *Indiana Code*, 36-7-4-900, as added by Acts 1981, P.L. 309 -23.

A. **Membership.** The Advisory Board of Zoning Appeals shall consist of and continue as a five member board appointed as follows:

Four (4) citizen members appointed by the Town Council of the Town of Avilla, of whom one (1) must be a member of the Advisory Plan Commission and three (3) must not be members of the Advisory Plan Commission, *but one (1) must be a resident outside of the corporate limits but within the jurisdictional area.*

One (1) citizen member appointed by the Advisory Plan Commission who must be a member of the Advisory Plan Commission other than the member appointed by the Town Council of the Town of Avilla.

B. **Terms of Office.** Following adoption of this Ordinance, each of the above members shall be reappointed for the balance of the term being served on the present Advisory Board of Zoning Appeals of The Town of Avilla. Thereafter each member, except those appointed from the Advisory Plan Commission shall be for a term of four (4) years. The members appointed from the Advisory Plan Commission shall be for a term of one year. Each term shall expire on the first Monday of the year of termination but shall continue until such replacement has been appointed.

C. **Territorial Jurisdiction.** The Advisory Board of Zoning Appeals shall have jurisdiction over all the land subject to the zoning ordinance.

D. **Subject Matter Jurisdiction.** The Advisory Board of Zoning Appeals shall have exclusive jurisdiction for (1) variances under the statute and this ordinance except it shall have no jurisdiction to grant a variance from a use district or classification; (2) special uses; (3) appeals as provided by statute, including requirements for procurement of improvement location or occupancy permits or any ordinance adopted under I.C. 36-7-4 or any prior zoning statute, and any other appeals authorized by statute.

Section 6 Board of Zoning Appeals, Variances, Special Uses and Appeals

7.2 Board of Zoning Appeals: Rules and Procedures

- A. **Rules and By-Laws.** The Advisory Board of Zoning Appeals shall have sole authority to adopt any and all rules under *Indiana Code*, 36-7-4-916 and any and all by-laws concerning organization, selection of officers, forms for applications, filing requirements, other than as to place of filing as herein provided for, procedures, notices for and conduct of meetings. Upon adoption of such rules and by-laws they shall be applicable to the Advisory Board of Zoning Appeals.
- B. **Facilities and Funding.** The Town of Avilla shall provide suitable facilities for the holding of Advisory Board of Zoning Appeals hearings and the storage of its recorded documents and accounts, and in its annual budget to provide sufficient funds for the functioning of said Board and its staff.
- C. **Filing.** All applications for variances, special uses, and requests for appeal shall be filed by the applicant with the president or his/her designate board member of the Advisory Board of Zoning Appeals.
- D. **Hearings.** All hearings required for variances, special uses, and appeals shall be by the Advisory Board of Zoning Appeals. As per section 7.2 (a), procedures for public notice setting forth time and place for all hearings by the Advisory Board of Zoning Appeals shall be established by the Advisory Board of Zoning Appeals.

7.3 Special Uses

Special uses, also called special exceptions, contingent uses, or conditional uses are approvals granted to an applicant to use land in a district for a purpose other than that generally permitted outright in that district. The permission is granted by the board of zoning appeals, provided that the specific application of the use will not prove injurious to the public interest.

- A. There shall be no classes of cases or application therefor, nor any particular situation in which this Ordinance authorizes either special exceptions, contingent uses or conditional uses.
- B. The Advisory Board may approve a special use in a district if, after a hearing under section 7.2 (d), it makes findings of fact as recorded in the Board meeting minutes, that:
 - i. section 4.1 authorizes that special use in that district; and
 - ii. the requirements and development standards for the requested special use as prescribed by this Ordinance will be met; and

- iii. granting the special use will not subvert the general purposes served by this Ordinance and will not, because of traffic generation, placement of outdoor lighting, noise production or hours of operation, materially and permanently injure other property or uses in the same zoning district and vicinity.
- C. The Advisory Board may impose such reasonable conditions upon its approval as it deems necessary to find that (b) (3) above will be served.
- D. The Advisory Board may permit or require the owner of the parcel of property to make a written commitment concerning the use or development of the parcel as specified under IC 36-7-4-921.
- E. The approval of a special use under subsection (B) is unnecessary for a use authorized by section 4.1 if that use legally existed on the date this Ordinance, or pertinent amendments to it, were passed. However, this subsection shall not authorize the expansion of such a use if it involves the enlargement of a building, structure, or land area.
- F. A special use approved by the Advisory Board may not be expanded, extended, or enlarged unless reapproved by the Advisory Board under the procedures set forth in this Ordinance for approving a special use.
- G. A special use, approved under subsection (B) or authorized by subsection (E) ceases to be authorized and is void if that use is not established within a twelve-month period of the date the special use was approved, or if that special use is discontinued at that site for a twelve-month period during which time it is not succeeded by the same specifically approved special use.
- H. A special use may be terminated by the Advisory Board of Zoning Appeals, upon filing of an application therefore by an interested person or the Plan Commission, and upon a finding at a public hearing, with notice to the property owner, that the terms of this Ordinance, or conditions of approval or commitments have not been compiled with.
- I. For a special use to be eligible for a public hearing by the Advisory Board under this section, an applicant must first receive a determination from the President of the Plan Commission that a special use is required for the intended use or for the expansion, extension, or enlargement of a use under (F) above. If the Advisory Board grants the special use, it shall direct the applicant to apply for an improvement location permit under section 9.1. If such application complies with this ordinance and all other applicable codes and ordinances, the Superintendent of Utilities or Plan Commission President shall issue the improvement location permit for the approved special use.

7.4 Variances

A variance is a means of solving the problems created by attempting to apply the general terms

Section 7 Board of Zoning Appeals, Variances, Special Uses and Appeals

of zoning ordinance to fit the land which is regulated. Variances prevent problems caused by applying general legislation to specific situations.

- A. The Advisory Board may grant a variance from the development standards (such as height, bulk, area) of the zoning ordinance if, after a public hearing, it makes findings of fact as recorded in Board meeting minutes, that:
 - i. the Advisory Plan Commission has determined that the variance application is not for a use variance, i.e. a variance from a use district or classification per Section 7.1(D); and
 - ii. the approval will not be injurious to the public health, safety, morals, and general welfare of the community; and
 - iii. the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
 - iv. the strict application of the terms of this Ordinance (a) is being applied to some condition peculiar to the property involved that is not common to other properties in the same zoning district; and (b) will result in an unusual and unnecessary hardship. This situation shall not be solely self-imposed, nor be based on a perceived reduction of or restriction on economic gain.
- B. The Advisory Board may permit or require the owner of a parcel of property to make written commitment concerning the use or development of that parcel or may impose conditions upon that grant of variance.
- C. A variance granted by The Advisory Board of Zoning Appeals shall run with the land until such time as: (1) the use of the variance ends, (2) the property conforms with the Ordinance as written, or (3) the ownership changes.
- D. Where an owner has failed to comply with any condition and/or commitment permitted or required by the grant of variance, the Advisory Board may authorize such action as it may deem appropriate to obtain compliance by the owner with the condition or commitment of the grant, or with the terms of this Ordinance in the same manner as if the variance had not been granted.

7.5 Appeals

- A. A decision of the Avilla Plan Commission and/or the Plan Commission President enforcing this Ordinance may be appealed to the Advisory Board of Zoning Appeals by any person who is adversely affected by the decision provided that the appeal is based on grounds

that proper legal procedure was not observed or that the decision constitutes a misinterpretation or misapplication of the ordinance.

- B. On an appeal under subsection (A), the Advisory Board of Zoning Appeals may uphold or reject any decision that the Plan Commission President might have made.
- C. All appeals from a decision of the Advisory Board of Zoning Appeals shall be made pursuant to Indiana Code 36-7-4-1001 through 36-7-4-1020. The person aggrieved by a decision of such Board of Zoning Appeals shall present the petition provided for in Indiana Code 36-7-4-1003 to the Court within thirty (30) days.

Section 8
Improvement Location Permits

8.1 Applicability

A. No special use may be approved under section 7.3, no change in an FP District may be made under section 3.3, and no other change in the use of land (except an agricultural use) that involves a change in any structure on or in any land, or in the condition of the land, may be made unless the Plan Commission or Superintendent of Utilities on application, issues an improvement location permit authorizing the change.

B. The filing fees for improvement location permits shall be as follows:

For each application for an improvement location permit, the sum of three (3) cents per square foot of the improvement shall be paid to and collected by the Building Commissioner. An electrical permit application, and a plumbing permit application, shall each be ten (10) dollars, payable to the Superintendent of Utilities.

8.2 Certificate of Occupancy

Within ten days after the completion of the change authorized by the improvement location permit, the Plan Commission President or his designee shall inspect the premises and, if the change conforms to this ordinance and the improvement location permit has been obtained, he shall issue a certificate of occupancy.

8.3 Site Plan and Construction Drawings

A. In addition to all other required applications, information and permits from other governmental agencies, a person who applies for an improvement location permit under section 8.1 must furnish the Plan Commission with plans drawn to scale showing:

- i. the location and legal description of the land concerned;
- ii. the location and size of all buildings and structures already on the land and those to be erected, including parking, signage, landscaping, and screening;
- iii. the size of all entrances to and exits from the land, including all adjacent streets and highways;
- iv. detailed drawings showing all construction and materials; and
- v. elevations of all buildings to be constructed.

Plans so furnished shall be kept by the Plan Commission as permanent records.

- B. As a condition of issuing a permit, the Plan Commission may require changes to the landscape plan, the relocation of any structures or buildings, or of any entrance or exit, or the inclusion of entrances or exits not shown on the plan, or the deletion of any entrance or exit, if the requirement is necessary in the interest of the public welfare or to an appropriate balancing of the interests of persons in the district and vicinity concerned.

8.4 Mobile Homes

- A. Mobile homes shall be permitted as temporary uses only, subject to section 4.1 and the Primary Use Table and this section.
- B. In the event that a single family home has been destroyed by fire, explosion, act of God, or the public enemy and an improvement location permit has been issued for its replacement or reconstruction, the property owner may make application for an improvement location permit for a mobile home to be placed on the same property for a period not to exceed one (1) year. No extensions of time shall be permitted.
- C. Application procedures and requirements shall be the same as for any other improvement location permit.
- D. Placement of the mobile home shall be subject to all use requirements and restrictions applicable to a single family home.
- E. In addition to all other requirements, the property owner shall post a one thousand dollar (\$1,000.00) cash bond in favor of the Town of Avilla to be held by the Town Clerk or the County Auditor. Said cash bond shall be returned without interest upon removal of the mobile home and the issuance of a certificate of occupancy for the constructed or reconstructed single family home. Said cash bond may be drawn on by the Council of the Town of Avilla, at the Council's discretion upon the advice of the Plan Commission President, that the property owner has failed to remove the mobile home either at the end of one (1) year or within one (1) week of the issuance of the certificate of occupancy for the constructed or reconstructed single family home, whichever occurs first. Said cash bond may be used to defray expenses incurred by the Town for the removal of the mobile home and/or legal costs directly associated with the enforcement of this ordinance.
- F. Section 8.4 is not intended nor should it be construed to limit the damages, legal or equitable, that the Town of Avilla may seek in the enforcement of this ordinance, nor should section 8.4 be construed as authorizing any violation of this ordinance and/or the subdivision ordinance and the designated uses of respective parcels of real estate.

8.5 Records

Section 8 Improvement Location Permits

A record of each improvement location permit and each certificate of occupancy shall be kept by the Superintendent of Utilities. Upon request, a copy shall be furnished to any person having a proprietary or possessory interest in the premises concerned.

8.6 Issuance or Denial

The Administrator shall accept only a complete application and issue the improvement location permit or deny the application together with a statement of reasons for the denial within a period of eight working days following its submittal.

8.7 Appeals

A decision of the Superintendent of Utilities under section 8.7 may be appealed to the Advisory Board of Zoning Appeals subject to the provisions of section 7.5.

8.8 Expiration

An improvement location permit shall be valid for a period of one (1) year at which time it shall expire, unless work authorized by the improvement location permit is proceeding and inspections have been made by an official town inspector, the Superintendent of Utilities, in which case it shall remain in full force and effect.

APPENDIX
REQUIRED FORMS AND CERTIFICATES
EXHIBITS

FORM ONE

**NOTICE OF PUBLIC HEARING ON PROPOSED
INITIAL OR REPLACEMENT ZONING ORDINANCE**

NOTE: The plan commission must publish a notice of the public hearing in a newspaper of general circulation within the municipality

NOTICE IS HEREBY GIVEN THAT THE plan commission of Avilla, Indiana, on the _____ day of _____, 19____, at _____ p.m. at the Council in the Town Hall inisions of the ordinance may be filed with the Plan Commission before such hearing, will be heard at the specified time and place and will be considered. Oral comments concerning the proposal will also be heard. Said hearing may be continued fro Avilla, Indiana, will hold a public hearing on a proposed zoning ordinance for the Town of Avilla.

The geographic areas to which the proposed ordinance applies are: _____

_____.

The following is a summary of the subject matter contained in the proposed ordinance:

_____.

Written objections or comments to the provm time to time as may be necessary.

A copy of the proposed ordinance is available for public inspection in the Office of the Town Clerk in the Town Hall.

Avilla Plan Commission of
Avilla, Indiana

By: _____
Secretary

FORM TWO

NOTICE OF PUBLIC HEARING ON ZONING ORDINANCE TEXT AMENDMENT

Public notice is to be published at least ten days prior to the date set for the hearing in a newspaper of general circulation in the county.

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Avilla Plan Commission of Avilla, Indiana will hold a hearing on a proposed amendment to the text of Ordinance No. _____, the Zoning Ordinance of Avilla, Indiana. The hearing will be held on the ____ day of _____, 19____, at _____p.m. in the _____, Avilla, Indiana. Interested parties may voice an opinion upon hearing date and/or file written comments concerning the amendment.

The proposed amendment was initiated by the Avilla Plan Commission. The amendment would do the following:

This amendment would apply to the following geographic area:

The proposed amendment may be examined in the office of the Plan Commission located in the Avilla Town Hall in Avilla, Indiana.

Avilla Plan Commission of
Avilla, Indiana

By: _____
Secretary

FORM THREE

TRANSMITTAL OF TEXT AMENDMENT TO LEGISLATIVE BODY

RESOLUTION

Resolution No: _____

Passed: _____

A RESOLUTION RECOMMENDING THAT THE AVILLA TOWN COUNCIL OF THE TOWN OF AVILLA, INDIANA, APPROVE A PROPOSAL INITIATED BY THE COMMISSION TO AMEND THE TEXT OF THE ZONING ORDINANCE TO

WHEREAS, The Plan Commission of the Town of Avilla did on _____ hold a legally advertised public hearing on an amendment to the text of Chapter _____ of the Code of Laws of the Town of Avilla, Indiana, which is the zoning ordinance of said town until all objections and remonstrances were heard; and

WHEREAS, This amendment was initiated by the Plan Commission; and

WHEREAS, said request did propose that said ordinance be amended to

NOW, THEREFORE, BE IT RESOLVED, That the Plan Commission of Avilla, Indiana, certifies that said commission makes a favorable recommendation to the Town Council of Avilla, Indiana, that the attached ordinance amending the text of the zoning ordinance be adopted.

President, Plan Commission

Secretary, Plan Commission

FORM FOUR

PETITION TO AMEND THE ZONING MAP

This form is used when a person requests a change in the zoning ordinance map. The forms usually supplied to the petitioner by the Plan Commission office which keeps various forms on file for public distribution. (A zoning map change may also be initiated by the Plan Commission or by a legislative body which requires the Plan commission to prepare the petition.) The form is completed by the petitioner(s) and filed with the secretary of the Plan Commission, who in turn submits the petition to the Commission for review at a public hearing and recommendation to the appropriate legislative body.

Avilla Plan Commission

Date Submitted:

Docket/Case No.:

1. Owner:

Address:

Phone:

2. Record of Ownership:

Deed Book

Page

Purchase Date

3. Legal Description:

4. Common Address of Property Involved:

5. Proposed Zoning Change:

From the _____ District to the _____ District, for the property shown outlined in red on the map attached hereto, which is made a part of this petition.

6. State How the Proposed Change will not adversely affect the Surrounding Properties.

7. Has the owner contacted adjoining property owners?

FORM FIVE

CHECKLIST FOR ZONING MAP CHANGE APPLICATION

The checklist below is used to assist in making decisions concerning the granting of rezoning applications.

YES	NO
-----	----

- | | | |
|---|-------|-------|
| 1. Will the rezoning fulfill a public need for that type of land use? | _____ | _____ |
| 2. If "yes" to #1 above, should the rezoning be done in the area requested, or would the public interest be better served by rezoning another area of the community? | _____ | _____ |
| 3. Does the rezoning conform to the future land use map in the comprehensive plan? | _____ | _____ |
| 4. will the new land use complement the present and future traffic flows or would the rezoning cause an adverse impact? | _____ | _____ |
| 5. Can adequate off-street parking be provided if the rezoning request is granted? | _____ | _____ |
| 6. Have the adjacent landowners been fully informed of the rezoning request? | _____ | _____ |
| 7. Have the potential inconveniences and nuisances (such as noise, neon lights, odors, etc.) of the rezoning request on adjacent landowners been adequately considered? | _____ | _____ |
| 8. Are there adequate public utilities and services available to the land if rezoned? | _____ | _____ |
| 9. If not, will the local government have to pay the cost of installation? | _____ | _____ |
| 10. Can it be assured that this is not spot zoning, a violation of precedents, or arbitrary and capricious? | _____ | _____ |
| 11. Is it really needed, or is it merely for the convenience of the applicant? | _____ | _____ |

FORM SIX

NOTICE OF PUBLIC HEARING ON AMENDMENT TO ZONING MAP

NOTICE IS HEREBY GIVEN THAT THE _____ Plan Commission, of Avilla, Indiana, on the _____ day of _____, 19____, at _____ p.m. at the Council in the Town Hall in Avilla, Indiana, will hold a public hearing on a proposed amendment to the Zoning Ordinance of Avilla, Indiana.

The proposed amendment involves consideration of a change of the zoning classification from the _____ District to the _____ District for the following described property:

Written suggestions or objections to the provisions of said amendment may be filed with the Secretary of the Commission, or before such meeting and will be heard by the Plan Commission at the time and place specified. Said hearing may be continued from time to time as may be necessary.

Interested persons desiring to present their views upon the proposed amendment, either in writing or verbally, will be given the opportunity to be heard at the above mentioned time and place. Copies of the petition may be examined at the Avilla Town Hall, Avilla, Indiana.

Avilla Plan Commission of
Avilla, Indiana

By: _____
Secretary

FORM SEVEN

ORDINANCE TO AMEND THE ZONING MAP

ORDINANCE TO AMEND THE ZONING MAP OF THE TOWN OF AVILLA, INDIANA,
FROM _____ ZONE TO _____ ZONE ON PREMISES COMMONLY
KNOWN AS _____.

SECTION 1. Be it ordained by the Twon Council of the Town of Avilla, Indiana, that the Zoning Ordinance adopted on the _____ day of _____ of the year _____, be amended so as to include in the _____ the following described real estate located in the Town of Avilla, Indiana, to-wit:

SECTION 2. All buildings or uses permitted and placed upon said describe real estate shall fully conform with all the provisions of the Town of Avilla's Zoning Ordinance and shall have obtained the proper permits.

SECTION 3. This ordinance shall be in full force and effect from and after its passage by the Town Council of the Town of Avilla, Indiana, thereto.

Action by Council: _____
Date: _____

President

FORM EIGHT

**APPLICATION FOR APPEAL
AVILLA ZONING BOARD OF APPEALS**

1. APPLICANT: _____

ADDRESS: _____ PHONE: _____

2. OWNER OF THE PROPERTY INVOLVED: _____

OWNER'S ADDRESS: _____

3. PREMISES AFFECTED:

LOT NO. _____ STREET NO. _____

LEGAL DESCRIPTION (FROM DEED OR ABSTRACT)

4. DATE LOT OF RECORD: _____ PRESENT ZONING CLASSIFICATION _____

5. TYPE OF APPEAL: (CHECK THE APPROPRIATE RESPONSE)

_____ (a) REQUEST FOR AN APPEAL FROM THE DECISION OF THE ZONING OFFICER.
(ATTACH A COPY OF SAID DECISION OF RULING.)

_____ (b) REQUEST FOR A SPECIAL EXCEPTION, SPECIAL USE, CONTINGENT USE,
CONDITIONAL USE

_____ (c) REQUEST FOR A VARIANCE OF DEVELOPMENT STANDARDS

6. STATE EXPLANATION OF REQUESTED APPEAL: (STATE WHAT YOU WANT TO DO AND CITE THE ARTICLE AND SECTION OF THE ZONING ORDINANCE WHICH APPLIES AND/OR CREATES THE NEED FOR THIS APPEAL.)

7. STATE REASONS SUPPORTING THE APPEAL:

8. PRESENT USE OF THE PROPERTY:

9. DESCRIBE THE PROPOSED USE OF THE PROPERTY:

10. ARE THERE ANY RESTRICTIONS, LAWS, COVENANTS GOVERNING THE PROPERTY WHICH WOULD PROHIBIT ITS USE FOR THE PURPOSE SPECIFIED IN THIS APPLICATION? IF ANSWER IS "YES", ATTACH A COPY.

11. HAS THERE BEEN ANY PREVIOUS APPEAL FILED IN CONNECTION WITH THIS PROPERTY? IF ANSWER IS "YES", GIVE THE DATE AND THE DECISION OF THE APPEAL.

FORM NINE

APPLICATION FOR IMPROVEMENT LOCATION PERMIT

AVILLA, INDIANA

Application No.: _____ Date Filed: _____

Applicant: _____

Address of Applicant: _____

Owner (if other than applicant): _____

Address of Owner: _____

Location of Property: Lot No.: _____ In _____ Subdivision

Street Number (if available): _____

Other Description: _____

Date Lot of Record: _____ Zoning Classification: _____

To Permit Construction of: _____

(Fee of \$ _____ to accompany this application)

Owner

Agent

NOTICE

**Post this permit in a conspicuous location on the premises until
a certificate of occupancy is issued.**

**If any changes or deviations are made from the original application,
a new permit is required.**

FORM TEN

CERTIFICATE OF OCCUPANCY

Improvement Location Permit Number: _____

CERTIFICATE OF OCCUPANCY Number: _____

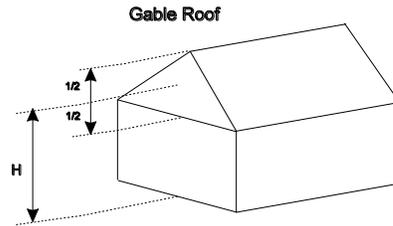
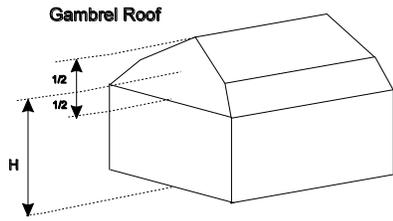
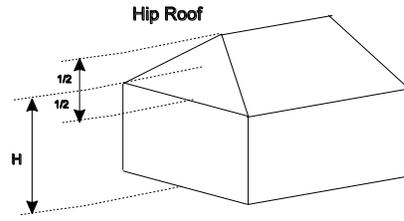
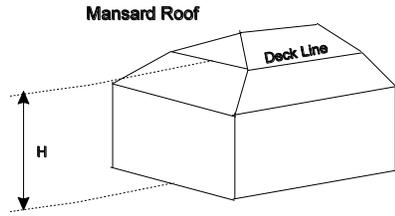
Issued: _____, 19_____

Issued To: _____

This certifies that the action or work for which an Improvement Location Permit was issued for the premises identified as Lot Number _____ in _____ Subdivision, address _____, or other description as follows: _____, has been inspected and found to be in compliance with the applicable laws of the State of Indiana, and ordinances of _____.

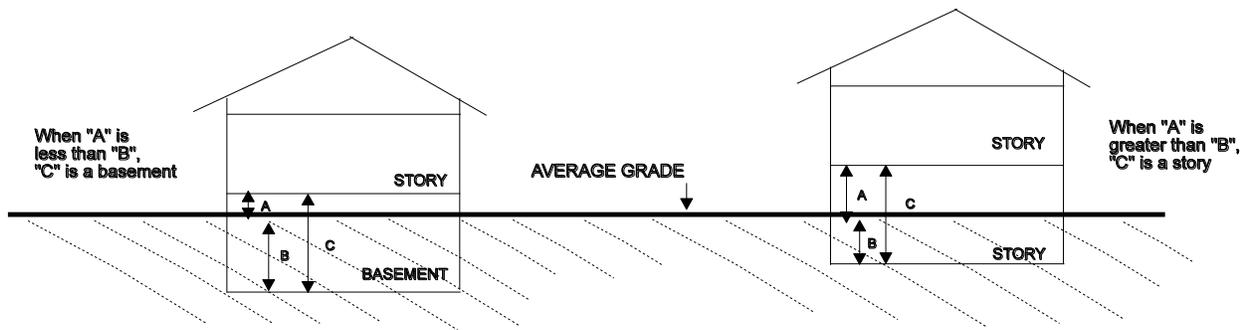
Title: _____

Exhibits



H= Height of Building

Building Height Exhibit 1



Basement & Story Exhibit 2

