

Subdivision
Control Ordinance
Article Two
Administration

Administration

2.1 Administrative and Enforcement

- A. **Administrator Defined:** The administrator of this Ordinance shall be the Madison County Planning Director. The Planning Director is hereby authorized and directed to enforce and carry out all provisions of this Ordinance both in letter and spirit, pursuant to state statute.
- B. **Delegation Authority:** The Planning Director is hereby empowered to delegate the duties and the powers granted to, and imposed upon him/her under this Ordinance. As used in this Ordinance, Planning Director shall include any authorized representative(s).
- C. **Inspections:** The Planning Director is hereby empowered to enter or inspect any structure, or premises in the jurisdictional area of this Ordinance to insure compliance with the provisions of this Ordinance. Such inspections shall be carried out during business hours, unless an emergency exists.
- a. Investigations of property may be done by the Planning Director either from a right-of-way without permission of the property owner, or adjacent property (with permission), or from the property suspected of a violation once he/she has presented sufficient evidence of authorization and described the purpose of the inspection to the owner, tenant, or occupant at the time of the inspection.
 - b. In the event that the Planning Director is denied entry to any property necessary to carry out an inspection, he/she may apply to a court of jurisdiction to invoke legal, applicable, or special remedy for the inspection of the property and the enforcement of this Ordinance or any other applicable ordinances adopted under state code. The application shall include the purpose, violation(s) suspected, property address, owner's name if available, and all relevant facts. Additional information may be necessary as requested by the court. Pursuant to applicable regulations and the determination of the court, the owner of the property shall permit entry by the Planning Director.

2.2 Notice of Public Hearing

Within 30 days of the receipt of the proper documents, and after the granting of any required approvals or favorable recommendations by the Technical Review Committee, the Planning Director shall set a date for a public hearing before the Commission. For all public hearings, the petitioner shall provide notice to the public consistent with the requirements of this section. Required public notice shall include the following:

- A. **Notice Sign:** The petitioner shall allow the Plan Commission staff to post on the subject property a sign giving notice of the hearing provided by the Plan Commission office. The sign shall remain on the property until the final decision on the request is made by the Plan Commission.
- B. **Legal Notice:** The Plan Commission staff shall prepare a legal notice consistent with the requirements of IC 5-3-1 for publication in a local newspaper of general circulation specified by the Rules and Procedures of the Plan Commission. The legal notice shall appear in the newspaper no less than 1 time at least 10 days prior to the date of the public hearing. Legal notices shall include each of the following:
- a. The general location of the subject property and a legal description of the land;
 - b. The street or common address of the real estate;
 - c. That the project plans are available for examination at the office of the Madison County Plan Commission;
 - d. That a public hearing will be held and giving the date, place, and hour of the hearing; and
 - e. That written comments on the petition will be accepted prior to the public hearing and may be submitted to the Planning Director.

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- C. **Notice to Interested Parties:** The petitioner shall prepare and distribute written notice of the petition to all property owners within 2 ownerships or 500 feet of the boundaries of the subject property, whichever is greater.
- a. The notice shall contain the same information as the legal notice which is published in the newspaper.
 - b. The distribution and cost of the notice shall be the responsibility of the petitioner.
 - c. The petitioner shall obtain the names and mailing addresses of those to be notified from the Property Transfer Books contained in the Madison County Auditor's Office. The names and addresses of these property owners shall be submitted to the Planning Director at the time of filing for a petition requiring a public hearing as specified by this Ordinance.
 - d. The notices shall be sent to each property owner at least 1 time, and must be postmarked a minimum of at least 10 days before the date of the public hearing. The mailing shall be via certified mail through the United States Postal Service. No other form of mailing shall be accepted
 - e. A copy of the materials provided to each property owner, all certified mail return receipts, and a signed and notarized Affidavit of Notice certifying the correctness of the mailing list shall be provided to the Planning Director a minimum of 3 business days prior to the date of the public hearing.

2.3 Waivers of Subdivision Regulations

- A. **General Provisions:** Where the Plan Commission finds that extraordinary hardships or practical difficulties may result from the strict compliance with these regulations, or the purposes and intent of these regulations may be served to a greater extent by an alternative proposal, it may grant waivers of the subdivision regulations set forth in this Ordinance so that substantial justice may be done and the public interest served. No waiver shall be granted in relief of mere inconveniences or financial disadvantages of the subdivider.
- B. **Decision Criteria:** The Plan Commission shall not approve any waivers of the subdivision regulations unless it makes written findings based upon the evidence presented to it in each specific case, such that:
- a. The granting of the waiver will not be detrimental to the public safety, health, or welfare;
 - b. The granting of the waiver will not be injurious to the reasonable use and development of other property;
 - c. The conditions upon which the request for waiver is based are unique to the property for which it is sought and are not applicable generally to other property;
 - d. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a hardship to the owner would result if the strict letter of these regulations were carried out; and
 - e. The waiver will not contradict the intent of the Madison County Zoning Ordinance or Comprehensive Plan.
- C. **Public Facility Waiver:** Where the waiver impacts the design, construction or maintenance obligations of public facilities, it shall not be granted unless the appropriate public agency has reviewed and approved in writing the proposed development to the Plan Commission.
- D. **Conflict of Authority:** No waiver of these Subdivision Regulations shall conflict with the powers and duties of the Board of Zoning Appeals.
- E. **Procedure:** The procedure for review of waiver requests is as follows:
- a. At the time of filing a subdivision request consistent with this Ordinance, the petitioner must submit a detailed written statement documenting all waivers requested as part of the petition and reasons

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- for the waiver request(s) consistent with the decision criteria outlined above.
- b. Only those standards specifically described in the waiver request may be reviewed by the Plan Commission.
 - c. Waivers may only be granted in a public hearing, and shall generally be considered at the time the preliminary plat for the proposed subdivision is reviewed by the Commission. The Commission may make reasonable conditions an element of any waiver approval.
 - d. All waiver requests which are granted, and the reasons for approval shall be recorded in the minutes of the Plan Commission. Any conditions imposed by the Commission as part of the waiver approval shall be included in writing on the recorded plat of the subdivision.

2.4 Inspections and Permits

- A. **Notification Required:** The petitioner shall notify the Planning Director 72 hours prior to the planned installation of improvements within the development. The Planning Director will notify the appropriate County departments which shall have the responsibility for inspecting and testing streets, curbs, sub-bases, pavement depth and quality, sidewalks, sewer lines, water lines, utilities, drainage improvements, and any other site improvements to see that they conform to the regulations of this Ordinance, all other applicable construction standards of Madison County, and accepted engineering standards.
- B. **Permits Withheld:** In addition to any other remedy and/or penalties which may be imposed on the petitioner by this Ordinance or by any other Ordinance of Madison County, the Planning Director shall reserve the right to withhold Improvement Location Permits for the lots in a Final Plat if the subdivider has failed to properly install, maintain, or otherwise provide for, all of the public improvements shown on the Final Plat and the Construction Plans.
 - a. A Certificate of Occupancy shall not be issued for any lot until sidewalks and street trees are installed for said lot or a performance bond is posted to the County Commissioners by the petitioner in an amount equal to the cost of installation of the sidewalk and/or trees.
 - b. However, 3 years from the date of the approval of the Final Plat by the Board of County Commissioners, the petitioner is responsible for installing all sidewalks and/or trees shown on the Final Plat, whether all lots in the development are built upon or not.
 - c. The developer shall be responsible for installing sidewalks through any park and open space areas included in the Final Plat and connecting them to existing and/or proposed sidewalks in other areas of the subdivision, or adjacent sidewalk/pedestrian paths in other developments at the time the streets and other public improvements in each phase of construction are completed.

2.5 Technical Review Committee

- A. **Committee Intent:** The Madison County Technical Review Committee (also known and referred to in this Ordinance as the “TRC” and “the Committee”) is hereby formed for the purpose of providing technical review of certain types of petitions and applications. The intent of the Technical Review Committee is to provide efficiency in the work load of the Plan Commission as well as applicants by establishing a body to make determinations regarding petitions for which the only criteria is consistent with the applicable adopted standards of Madison County. Further, the TRC shall provide for efficiency in the approval process of petitions determined by the Plan Commission and County Commissioners by providing an initial examination and report based on all applicable adopted requirements of Madison County. All approval processes and actions of the Technical Review Committee shall be consistent with the requirements of Indiana Law.
 - a. Approval Authority: The Technical Review Committee shall have the authority to approve the following types of petitions and applications:
 - 1. **Subdivision Construction Plans,**
 - 2. **Final Subdivision Plats,** and

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3. **Replats** as specified in section 1.8B of this Ordinance.
 - b. **Review Authority:** The Technical Review Committee shall have the authority to review **Preliminary Subdivision Plats**, forwarding comments to the Madison County Plan Commission.
 - c. **Appeal Rights:** All decisions of the Technical Review Committee may be appealed to the Plan Commission following the procedure outlined in this Article.
- B. Committee Structure:** The Planning Commission staff shall also serve as the staff for the Technical Review Committee. They shall distribute all appropriate materials and keep all necessary files and meeting records. The organization of the Technical Review Committee shall be as described below:
- a. The Technical Review Committee shall, at a minimum, consist of the following members:
 1. The Planning Director and other staff of the Plan Commission as determined by the Planning Director;
 2. a member of the staff of the local Soil and Water Conservation District his/her appointee;
 3. the County Engineer his/her appointee ;
 4. member of the Plat Book Maintenance Department;
 5. the County Surveyor his/her appointee;
 6. a member or appointee of the County Drainage Board as determined by the Drainage Board; and
 7. a member of the staff of the Madison County Health Department.
 - b. Members of the Committee shall either be present at the time of the scheduled Committee meeting or submit written comments regarding each specific petition to the Planning Director prior to the appropriate meeting.
 1. Each committee member shall only comment on the aspects of each petition that directly relate to their area of expertise regarding the applicable adopted standards of Madison County.
 2. If no comments are received from a member of the committee it shall indicate that they have no objection to any aspect of the applicable petition, and therefore grant their individual approval.
 3. The Planning Director shall determine the action taken on each petition by the Committee based on the comments of the Committee members.
 - c. The Planning Director shall oversee the operation of the Technical Review Committee and shall make the final determination regarding any specific aspect of a petition on which members of the Technical Review Committee disagree. In cases of disagreement and at his/her discretion, the Planning Director may forward any petition before the Technical Review Committee to the Plan Commission for a determination on the request.
 - d. All petitions which are not approved by the Technical Review Committee and not forwarded to the Plan Commission shall be tabled and placed on the agenda for the next appropriate Committee meeting.
 1. Prior to that meeting the petitioner shall address the comments of the Committee, making appropriate modifications to the application materials.
 2. The petitioner shall provide appropriate copies of the revised materials prior to the next Committee meeting based on the adopted calendar of meeting and filing dates.
 3. The petitioner may withdraw any petition following the review of the Technical Review Committee by submitting a notice of such withdrawal in writing to the Planning Director. Any petitions which are withdrawn and are subsequently re-filed shall be considered a new petition and shall be subject to all applicable requirements for new petitions established by this Ordinance.
- C. Attendance Required:** Either the petitioner or a representative of the petitioner shall be required to attend all Technical Review Committee meetings at which time their petition shall be reviewed. If either the petitioner or their representative is not present, the petition shall automatically be tabled and

placed on the agenda for the next appropriate TRC meeting.

- D. **Meeting Record:** The Planning Director shall make written documentation of the comments and findings of the Technical Review Committee for each petition and make those written findings available to the petitioner within 3 business days of the Commission's review. The written documentation shall consist of the following:
- a. a letter to the petitioner stating the action taken by the Committee, and
 - b. a list of any outstanding comments made by the members of the TRC, including references to appropriate sections of adopted, applicable requirements of Madison County, the State of Indiana, and/or the Federal government.
- E. **Decision Criteria:** In all cases, the Technical Review Committee shall only consider the applicable adopted requirements of this Ordinance, the Madison County Zoning Ordinance, any adopted Madison County construction or improvements standards, any adopted standards of the Madison County Drainage Board, and any other adopted and applicable standards of Madison County, the State of Indiana, and/or the Federal government.
- a. In all cases in which the TRC has approval authority and a petition conforms to the applicable standards, that petition shall be approved.
 - b. In no case shall any petitioner be required to make any modifications to any petition based solely on the opinions or other undocumented and/or unadopted standards of any member of the Committee. This shall not be interpreted as prohibiting any committee member from providing comments which express their professional opinions regarding a petition being forwarded to the Plan Commission.
- F. **Appeal Procedure:** Any applicant may appeal the decision of the Technical Review Committee to the Plan Commission. Applicants seeking relief from specific development standards or other requirements of the Zoning Ordinance which are unrelated to the Committee's interpretation of the applicable requirements shall be required to obtain variance approval from the Board of Zoning Appeals.
- a. The applicant shall be required to provide the Planning Director with written notice of the appeal within 60 days of the date of the Committee decision.
 - b. The Planning Director shall place the appeal on the agenda for the next appropriate Plan Commission meeting consistent with the adopted Calendar of Meeting and Filing Dates.
 - c. Public notice for the meeting shall be required, consistent with the provisions of this Ordinance.
 - d. The Plan Commission shall consider the provisions of this Ordinance and all other applicable standards in deciding the appeal.

2.6 Commercial and Industrial Subdivisions

It is recognized by this Ordinance that the development of commercial and industrial subdivisions is required by the nature of the marketing of such projects to deviate from the standard procedure used for residential subdivisions.

- A. **Review Emphasis:** In reviewing commercial and industrial subdivisions, the initial emphasis of the Commission shall be on street lay out and block arrangement.
- B. **Procedure:** The subdivider shall follow the procedure for Major Subdivisions provided in Article 4 of this Ordinance, but in terms of lot arrangement shall only be required to show two defined lots and a block layout.
- a. The subdivider shall prepare Construction Plans and the Final Plat for only the lots identified, and shall re-plat the approved preliminary plat as additional lots become necessary.
 - b. All commercial and industrial preliminary plats shall expire within 10 years of the date of preliminary plat approval by the Plan Commission.

2.7 Violations and Penalties

- A. **Violations:** A failure to comply with any of the requirements of this Ordinance, including violations of conditions and safeguards established in connection with the granting of waivers, as well as subdivision

approval, shall constitute a violation of this Ordinance.

- B. **Legal Proceedings:** The Plan Commission, Plan Commission attorney, the Board of Zoning Appeals, the Planning Director, or any designated enforcement official may bring to the attention of the Planning Director and/or County Attorney a violation of the provisions of this Ordinance in order to initiate legal proceedings pursuant to statute.
- C. **Mandatory Injunction:** The Plan Commission, the Board of Zoning Appeals, the Planning Director or any designated enforcement official may request the County Attorney to bring an action for a mandatory injunction directing any person to remove a structure and/or to discontinue working in violation of the provisions of this Ordinance pursuant to state statute.
- D. **Common Nuisance:** Any structure erected, raised or converted, or land or premises used in violation of any provision of this Ordinance or of the requirements thereof, is hereby declared to be a common nuisance and as such may be abated in such a manner as nuisances are now or may hereafter be abated under existing law.
- E. **Fines:** Any person who violates this Ordinance shall, upon conviction, be fined not less than \$25 nor more than \$2000.00 for each offense. For the purposes of this Ordinance, each day a violation of terms of this Ordinance exists shall constitute a separate offense.
- F. **Person in Violation:** Any person who attempts, commits, participates in, assists or maintains a violation of this Ordinance may be found guilty and suffer the penalties herein provided.
- G. **Remedy for Failure:** The remedy provided in this section for failure to comply with any of the requirements of this Ordinance, whether civil, criminal or otherwise, shall be cumulative and shall be in addition to any other remedy provided by law. The civil penalty hereinafter described shall be used in preference to the criminal penalty on all violations except in the case of repeated, malicious, willfully prolonged or flagrant violations.
- H. **Assurance of Discontinuance:** For all violations, the Planning Director may accept an assurance of discontinuance of any act or violation. Such assurance shall specify a time limit in which the act or violation shall be discontinued.

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