

ORDINANCE 2009-34

**AN ORDINANCE OF THE TOWN OF AVON
TO AMEND CHAPTER 19 OF THE AVON ZONING ORDINANCE**

WHEREAS, on November 14, 2002, the Council adopted Ordinance 2002-14 to adopt a Revised Avon Zoning Ordinance; and

WHEREAS, The Avon Plan Commission (Commission), in its administration of the Avon Zoning Ordinance, found that an amendment was necessary to adequately administer the Ordinance; and

WHEREAS, the Commission on October 26, 2009, conducted a public hearing on a proposal to amend the subsequent portion(s) of the Avon Zoning Ordinance; and

WHEREAS, after the public hearing, the Commission voted to favorably recommend to the Council the proposed amendment to the text of the Zoning Ordinance; and

WHEREAS, the Council accepts the recommendation of the Commission and has decided to adopt the proposed amendment to the Avon Zoning Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, INDIANA AS FOLLOWS:

Section 1: Chapter 19, Enforcement, be amended and is read as follows:

Section 19-1. Authority

The Zoning Administrator or their authorized designee is hereby designated to enforce the terms and provisions of this Ordinance. The term Zoning Administrator throughout this Ordinance shall be inclusive of their authorized designee.

Section 19.2 Complaints Regarding Violations

Whenever the Zoning Administrator receives a complaint alleging a violation of this Ordinance or has reason to suspect that a violation is occurring, they shall assume the responsibility of investigating the complaint or suspicion and taking whatever action is warranted in accordance with this Chapter.

Section 19-3. Persons Liable

The owner, or occupant of any building, structure, land or part thereof, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance shall be held responsible for the violation, suffer the penalties, and be subject to the remedies provided herein and by law.

Section 19-4. Right of Entry

The Zoning Administrator may enter upon any premises at any reasonable time to make inspections of all building, structure or premises located within the jurisdiction of this Ordinance to determine compliance with the provisions of this Ordinance. All inspections shall be subject to the following standards and conditions.

1. The Zoning Administrator shall furnish to the owner, tenant, or occupant of the building, structure, or premises sought to be inspected, sufficient identification and information to demonstrate that the person is a representative of the Town and the purpose of the inspection.
2. The Zoning Administrator may apply to any court of competent jurisdiction for research warrant or other legal process for the purpose of securing entry to any premises if the owner, tenant, or occupant refuses to grant entry.

Section 19-5. Procedures upon Discovery of Violations

1. Notice to Correct

- A. If the Zoning Administrator finds that any provision of this Ordinance is being violated, he shall provide written Notice to Correct to the persons responsible for such violation.
- B. The Notice to Correct shall appear on a designated form, and shall state the following:
 - i. Date of the Notice to Correct;
 - ii. Date and place the violation was observed;
 - iii. Name and address of property owner or responsible party;
 - iv. Section number in violation;
 - v. The nature of the violation;
 - vi. Name, business address, and phone number of person issuing citation;
 - vii. The action necessary to correct the violation;
 - viii. Any other action available to the Zoning Administrator to remedy the violation;
 - ix. That failure to correct the violation within ten (10) days of the date of the Notice shall cause the owner, occupant, of tenant or violator to be subject to the remedies described in this Chapter;
 - x. That the Notice to Correct shall serve as the only notice of the Civil Violation, and that no further written notice shall be necessary by the Town;
 - xi. Notice that each day is a new violation;
 - xii. Amount of fine for each violation;

- xiii. The location that fines may be paid; and
- xiv. Statement to violator of right to appeal.

C. Service of the Notice to Correct

- i. The Zoning Administrator may issue a notice to the owner, tenant or occupant who commits a civil zoning violation or allows a civil zoning violation to be committed on real estate.
- ii. Service may be perfected through personal service, by certified mail, or by First Class U.S. Mail, to the address of record at the Office of the Auditor, and by placing the citation in a conspicuous place on the subject property.

2. Enforcement without Prior Written Notice

Notwithstanding the provisions of 19-5 (1), in cases where delay would seriously threaten the effective enforcement of this Ordinance or pose a danger to the public health, safety, or welfare, the Zoning Administrator may:

- A. Immediately issue to the owner, tenant or occupant a fine citation as provided for in 19-4 (D).
- B. Immediately issue a stop work order as provided for in 19-3.
- C. Immediately issue notice to correct the violation as provided in 19-4 (C).
- D. Immediately pursue the other remedies provided for 19-4 (E) or by Indiana Law.

3. Stop Work Order

The Zoning Administrator is empowered to issue a Stop Work Order requiring the suspension of land improvement of any kind when any of the following circumstances exist.

- A. A site is being improved without an Improvement Location Permit or any other permit required by this Ordinance.
- B. A site is being improved in violation of:
 - i. the terms, conditions or provisions of this Ordinance;
 - ii. the terms, provisions, conditions or commitments of a variance;
 - iii. the terms, provisions, conditions or commitments of a special exception permit;
 - iv. the terms, provisions, conditions or commitments of a Planned Unit Development or Development Plan;
 - v. commitments made in connection with a petition for a zone map amendment; or
 - vi. any other development approval granted under this Ordinance.
- C. Procedures for Stop Work Order:
 - i. The Stop Work Order shall be posted on the property in a conspicuous place or personally delivered to the owner, tenant, occupant, or person in charge;

- ii. The Stop Work Order shall state the reason for the stoppage of work, and shall list any and all codes, ordinances, conditions or other requirements being violated.
- iii. The Stop Work Order shall indicate conditions under which construction or other activity may resume.
- iv. The Stop Work Order shall inform the recipient of the recipient's right to meet with the Zoning Administrator or their designee to discuss the conditions under which construction or activity may resume.
- v. The recipient of a Stop Work Order may appeal the decision of the Zoning Administrator or their designee to the Board of Zoning Appeals in accordance with Section 19-9 of this Chapter.
- vi. The Zoning Administrator may bring a cause of action in a court of competent jurisdiction to enforce the provisions of the Stop Work Order or enjoin any activity in violation of this Ordinance.
- vii. Violation of a Stop Work Order shall be considered a violation of the Municipal Code of Ordinances, and shall be subject to enforcement and penalty as contained therein.

4. Appeal of Determination of Violation

- A. The determination that a violation exists may be appealed to the Board of Zoning Appeals.
- B. Any appeal of the determination that a violation exists shall be filed within twenty (20) days of the date of service of the Notice to Correct.
- C. Any appeal of the determination that a violation exists shall be made in accordance with the provisions of Section 19-9 of this Chapter.
- D. A person who timely files such appeal shall be required to pursue such appeal in accordance with the applicable Rules of Procedure.
- E. While such appeal is pending further enforcement action shall be stayed, but fines shall continue to accrue from the original date of service.
- F. If the appeal is withdrawn or denied and the violation remains uncorrected, then the Zoning Administrator may pursue all legal and equitable relief available by law or provided by this Chapter.
- G. If the Board of Zoning Appeals determines that no violation existed at the time of the Notice to Correct, no fines shall be due.

5. Corrections

- A. A person who causes the violation to be corrected shall notify the Zoning Administrator within seven (7) days of the correction that his violation has been corrected.
- B. If the violation is verified by Town staff to have been remedied within twenty (20) days of the date of service of the Notice to Correct, the Zoning Administrator shall have the authority in his discretion to waive any fines, fees, or penalties.

- C. If the violation is corrected more than twenty (20) days after the date of service of the Notice to Correct, the responsible party shall pay all fines, fees or penalties associated with the violation.
- D. Within ten (10) days of the Zoning Administrator's determination that the violation has been corrected he shall notify the violator of the fines and fee due, and the violator shall have thirty (30) days to pay the fines and fees to the Clerk-Treasurer.
- E. Appeal of fine to BZA thirty (30) days from the notice under Section 19-9.
- F. A person who receives notice to correct may elect to file a development review application or variance petition to seek alternative relief for the violation.
 - i. A person who timely files such application or petition shall be required to pursue such application or petition in accordance with the applicable Rules of Procedure.
 - ii. While such application or petition is pending further enforcement action shall be stayed, but fines shall continue to accrue from the original date of service.
 - iii. If the development plan review application or variance petition is withdrawn or denied and the violation remains uncorrected, then the Zoning Administrator may pursue every legal and equitable remedy available by law or this Chapter.
 - iv. Should the applicable development plan review or variance petition resolve the issue and remedy the violation, fines shall not be applicable for the period of time during which the review or petition was pending.

6. Fine

A. First Occurrence of Violation

- i. The monetary fine for the First Occurrence of a violation shall be One Hundred Dollars (\$100.00)
- ii. Each day a violation remains uncorrected shall be a distinct and separate violation and subject to an additional One Hundred Dollar (\$100.00) fine.

B. Recurring Violation(s)

- i. For any recurrence of any violation within a 365-day period from the correction of the First Occurrence, the following fines shall apply for each day the recurrence remains uncorrected:
 - 1. Second Occurrence: \$ 250.00
 - 2. Third Occurrence: \$ 500.00
 - 3. Fourth Occurrence: \$1,000.00
 - 4. Each Occurrence in excess of four (4) \$2,500.00
- ii. Each day a violation remains uncorrected shall be a distinct and separate violation and subject to an additional fine in the amount established in (6)(B)(i) above.

7. Other Remedies Reserved

- A. The seeking of a civil penalty as authorized in this Chapter does not preclude the Zoning Administrator, Plan Commission, or the Board of Zoning Appeals from seeking alternative and additional relief from a court of competent jurisdiction in the same action or from seeking any other relief provided by law in a separate action for the enforcement of this Ordinance.

- B. Pursuant to Indiana Code 36-1-6-2, as amended, where a condition exists on real property in violation of this Ordinance, the Zoning Administrator shall:
 - i. provide notice to all owners, occupants or tenants of his intention to enter upon the property; and
 - ii. enter onto the subject property and take the appropriate action to bring the property into compliance.
- C. If the Zoning Administrator takes action under this Section, the Town may collect from the owner, occupant or tenant the Town's expenses.

8. Legal Fees

- A. In the event that a violation of this Ordinance is determined to exist by a court of competent jurisdiction, the respondent shall bear the costs of the enforcement action, including reasonable attorney fees.

Section 19-6. Violations Defined

The failure to comply with the terms and provisions of the Avon Subdivision Control Ordinance, Zoning Ordinance or any decision or ruling of the Plan Commission, Board of Zoning Appeals or Town Council on any zoning matter is a violation under this chapter.

Section 19-7. Revocation of Development Review Approvals

1. Authority

- A. The Zoning Administrator may, in accordance with this Section, revoke any approval granted by an appointed body at a previous public hearing; including, but not limited to any development review approval, variance, special exception, plan review or any other approval, under the following circumstances:
 - i. It is determined that said approval was obtained without adhering to the applicable procedures within the appropriate section of the Zoning Ordinance, including but not limited to:
 - 1. Failure to properly notify adjoining property owners as required by statute;
 - 2. Failure to demonstrate consent of owners of included properties as required by statute;
 - 3. Any other failure to satisfy a statutory provision of the applicable approval procedure as specified within the Town of Avon Zoning Ordinance.
 - ii. It is determined that said approval was obtained on the basis of factual errors in the submittal.
 - iii. It is determined that said approval was obtained on the basis of falsified information.
- B. The Zoning Administrator may, in accordance with this Section, revoke any approval granted administratively, including but not limited to any improvement location permit, sign permit, or certificate of occupancy, for any off the reasons listed in Section 19-7 (1) (A).

2. Appeal

- A.** Any party aggrieved by the revocation of any approval by the Zoning Administrator may appeal the decision to revoke the approval.
 - i. The board or body responsible for the applicable approval and the original hearing shall conduct any public hearing related to any proposed revocation in accordance with the Rules of Procedure applicable to that board or body.
 - ii. Any revocation of an approval granted administratively may be appealed to the Board of Zoning Appeals in accordance with Section 19-9 of this Chapter.

3. Procedure

- A.** The Zoning Administrator shall cause a written copy of the official revocation of the approval to be delivered to the holder of the approval within ten (10) calendar days from the Administrator's decision.
 - i. Service may be perfected through personal service, by certified mail, by First Class U.S. Mail, or by placing the citation in a conspicuous place on the subject property.
- B.** The holder of the approval may appeal the decision of the Administrator to the Board of Zoning Appeals in accordance with Section 19-9 of this Chapter.

4. Result of Revocation

No person may continue to make use of land or buildings in the manner authorized by any approval after the approval has been revoked in accordance with the provisions of this Chapter.

5. Records

A record of any decision to revoke any review shall be added to the original petition file.

Section 19-8. Common Nuisance

Pursuant to Indiana Code 36-7-4-1012, as amended, any structure, land, or premises found to be in violation of this Ordinance is hereby declared to be common nuisance. Any owner or possessor of said structure, land, or premises shall be, in addition to any other fine or civil penalty, liable for maintaining a common nuisance.

Section 19-9. Appeals of Zoning Administrator Decisions

All decisions of the Zoning Administrator may be appealed to the Board of Zoning Appeals in accordance with the procedures and standards for appeals of administrative decisions set forth in Chapter 4, Section 4-5 (Appeals).

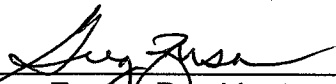
Section 19-10. Private Remedies Reserved

Nothing in this Chapter shall be interpreted to prevent any person entitled to relief in law or equity by reason of a violation of the provisions of this Ordinance from bringing an appropriate action to secure relief.


Section 2: This ordinance shall be effective immediately upon its adoption.

This ordinance is hereby passed and adopted this 5TH day of OCTOBER, 2009.

TOWN COUNCIL OF AVON, INDIANA



Greg Zusak, President

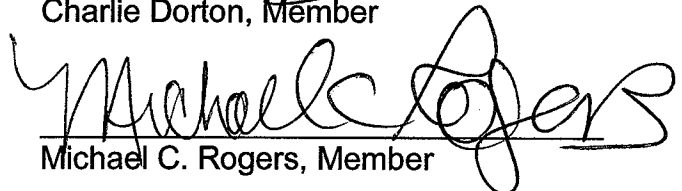


Beverley Austin, Vice President

Nicole Gordy, Member

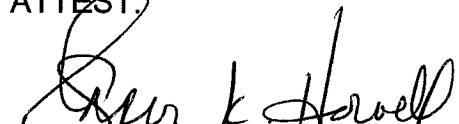


Charlie Dorton, Member



Michael C. Rogers, Member

ATTEST:



Sharon Howell, Clerk-Treasurer