

AVON ZONING ORDINANCE

CHAPTER 4. REVISION HISTORY

CHAPTER 4. DEVELOPMENT REVIEW APPROVALS

Ordinance #	Plan Commission Approval Date	Town Council Adoption Date	Description
2008-04	02-25-08	03-13-08	Section 4-10.5 Written Commitment Enforcement
2010-09	06-28-10	07-08-10	Section 8: Development Plan Review
2011-10	05-23-11	06-09-11	Section 7(B) &(D): Waiver Process & Standards
2012-06	01-23-12	03-08-12	HB 1311 Revisions – Appeal Process
2012-23	10-29-12	11-15-12	Judicial Review

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CHAPTER 4. DEVELOPMENT REVIEW APPROVALS

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Section 4-1. Improvement Location Permits

1. Scope

No building or other structure shall be erected, moved, added to, or structurally altered; nor shall any building, structure, or land be established or changed in use without an Improvement Location Permit issued by the Zoning Administrator. An Improvement Location Permit shall be issued only in conformity with the provisions of this Ordinance, or upon written order from the Board of Zoning Appeals deciding an appeal, special exception, or variance.

2. Application for Improvement Location Permit

Applications for an Improvement Location Permit shall be filed in accordance with the requirements of Chapter 3 (Applications & Hearings) of this Ordinance.

- A.** An application for an Improvement Location Permit shall be signed by the owner or agent attesting to the truth and accuracy of all information supplied in the application.
- B.** Each application shall clearly state that the permit shall expire and may be revoked if work has not begun within one (1) year or completed within two (2) years.
- C.** At a minimum, an application for an Improvement Location Permit shall contain the information, plans, and data set forth in Appendix A-2 of this Ordinance.
- D.** An application for an Improvement Location Permit for an industrial use shall be accompanied by a "Certificate of Compliance" subscribed by a registered professional engineer or architect, certifying that the intended use will satisfy the requirements of this Section, the development standards within the particular zoning district, and the provisions of this Ordinance.

3. Action by the Zoning Administrator

Within fifteen (15) business days after the receipt of a complete application, the Zoning Administrator shall either approve or disapprove the application. One set of the plans shall be returned to the applicant by the Zoning Administrator and be marked either "approved" or "disapproved", and the Zoning Administrator's signature on the copy should attest. If the application is approved, the Zoning Administrator shall issue a placard to the applicant. The placard is to be posted in a conspicuous place on the property in question and will attest to the fact that the plans for construction or alteration are in compliance with the provisions of this Ordinance. If disapproved, the Zoning Administrator shall notify the applicant indicating the reasons in writing for the disapproval within five (5) business days.

4. Expiration of the Improvement Location Permit

The work or use authorized by any improvement location permit must be commenced within

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twelve (12) months of the date of issuance of such permit; otherwise the same shall expire and become void. All work so authorized shall be completed within twenty four (24) months from the issuance of the permit and, provided that for good cause shown the Zoning Administrator may extend the work completion time.

5. Failure to Obtain an Improvement Location Permit

The failure to obtain an Improvement Location Permit as required by this Ordinance shall be deemed a violation of this Ordinance and subject to the provisions of Chapter 19 (Enforcement).

6. Limitation on Improvement Location Permits

Improvement Location Permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use or arrangement set forth in such approved application or amendments thereto, and no other use, arrangements, or construction. Any use, arrangement, or construction contrary to that authorized shall be deemed a violation of this ordinance and subject to the provisions of Chapter 19, (Enforcement).

7. Records of Improvement Location Permits

Every Improvement Location Permit issued pursuant to this Section shall be kept on file in the Office of the Zoning Administrator and shall be available as a public record.

Section 4-2. Certificate of Occupancy

1. Scope

It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy shall have been issued by the Zoning Administrator. The certificate of occupancy shall state that the proposed use of the building and/or land conforms to the requirements of this ordinance and that the Zoning Administrator has inspected the property and attested to that fact.

A. This Section is not intended to prevent a single family homeowner undergoing a single room addition to move or store personal property items in the addition prior to the issuance of the permit, provided however, the addition is not used or occupied as a livable space.

2. Application for Certificate of Occupancy

Applications for a Certificate of Occupancy shall be filed with the Zoning Administrator thirty (30) calendar days prior to completion of the improvements to any building or premises. The application shall be in accordance with the requirements of Chapter 3 (Applications & Hearings) of this Ordinance.

3. Change in Use

No change shall be made in the use of land or the use of any building or part thereof, now or hereafter erected, reconstructed, or structurally altered, without a Certificate of Occupancy having been issued by the Zoning Administrator; and no such Certificate shall be issued to make such change unless it is in conformity with the provisions of this ordinance.

4. Change of Occupancy

No persons, firms, or corporations shall move into or occupy any nonresidential structure, new or existing, or the land upon which it is located, without first obtaining a Certificate of Occupancy from the Zoning Administrator.

5. Issuance of Certificate of Occupancy

Certificates of Occupancy may be issued by the Zoning Administrator within ten (10) business days after notification by the applicant that the lawful erection, reconstruction, or structural

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alteration of such building or other improvement of the land shall have been completed and the finding of the Zoning Administrator that such erection, reconstruction, or structural alteration is complete.

6. Temporary Certificate of Occupancy

A Temporary Certificate of Occupancy may be issued by the Zoning Administrator for a period of six (6) months during alterations or partial occupancy of a building or structure pending its completion. A Temporary Certificate of Occupancy may be administratively renewed by the Zoning Administrator for a period not to exceed six (6) additional months. Prior to the expiration of an administratively renewed Temporary Certificate of Occupancy, an appeal to the Board of Zoning Appeals requesting an additional renewal of the Temporary Certificate of Occupancy for a period not to exceed twelve (12) additional months may be filed. The Board of Zoning Appeals may approve or approve with conditions the renewal appeal only upon the determination and written findings that:

- A. The renewal request arises from some condition peculiar to the property involved; and
- B. A strict application of the twelve month limit would constitute an unnecessary hardship if applied to the property for which the appeal is sought.

In no case shall a Temporary Certificate of Occupancy be valid for a period longer than twenty-four (24) months.

7. Failure to Obtain a Certificate of Occupancy

Failure to obtain a Certificate of Occupancy shall be a violation of this ordinance and subject to the provisions of Chapter 19 (Enforcement).

8. Limitation on Certificates of Occupancy

Certificate of Occupancy permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use or arrangement set forth in such approved application or amendments thereto, and no other use, arrangements, or construction. Any use, arrangement, or construction contrary to that authorized shall be deemed a violation of this ordinance and subject to the provisions of Chapter 19 (Enforcement).

9. Records of Certificate of Occupancy

Every Certificate of Occupancy issued pursuant to this Section shall be kept on file in the Office of the Zoning Administrator and shall be available as a public record.

Section 4-3. Variances

The variance procedures are intended to provide a narrowly circumscribed means by which relief may be granted from the strict applications of this Ordinance that may result in practical difficulties or unnecessary hardships. Where relief may be more appropriately remedied, if at all, pursuant to other provisions of this Ordinance, the variance procedure is inappropriate.

1. Authority

The Board of Zoning Appeals may authorize, in specific cases, such variances from the terms of this Ordinance as will not be contrary to the public interest and where, owing to special conditions, a strict application of the provisions of this Ordinance would result in practical difficulty or unnecessary hardships.

2. Parties Entitled to Seek Variance

The owner or lessee of a property or other person having a legal or equitable interest in the subject property may file with the Zoning Administrator an application for variance.

3. Procedure for Review and Decision

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A. Application

Applications for a variance shall be filed in accordance with the requirements of Chapter 3 (Applications & Hearings).

B. Action by Zoning Administrator

Upon receipt of a properly completed application for variance, the Zoning Administrator shall transmit the application to the Board of Zoning Appeals together with all other administrative reports and recommendations regarding the proposed application. The application shall be scheduled for a public hearing in accordance with the requirements of Chapter 3 (Applications & Hearings).

C. Notice

Notice of the public hearing shall be provided in accordance with the requirements of Chapter 3 (Applications & Hearings).

- (a) In addition, the Board of Zoning Appeals has determined for purposes of IC 36-7-4-920 that interested parties are all persons with a legal interest in the property and all owners of real property within a distance of six hundred sixty (660) feet or a depth of two (2) ownerships, whichever is less. Such interested parties shall be sent written notice by first class mail, at the applicant's expense, at least ten (10) calendar days before the date of the hearing. Proof of such notice by Affidavit shall be required. If however, the subject matter of the proposal abuts or includes a county line or a county line street, road, or body of water, then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile into the adjacent county, whichever is less, are interested parties who must be sent notice.

D. Action by Board of Zoning Appeals

At the close of the public hearing, the Board of Zoning Appeals shall either approve, approve with supplementary conditions, or disapprove the application. Upon reaching a decision, the Board of Zoning Appeals shall instruct the Zoning Administrator to notify the applicant in writing of its decision. If the application is approved or approved with modifications, the Board of Zoning Appeals shall instruct the Zoning Administrator to issue a variance permit listing the variance allowed and the specific conditions specified by the Board of Zoning Appeals for approval. If the application is disapproved, a petition appealing the decision may be filed with the Hendricks County Court in accordance with the procedure below.

E. Judicial Review

Every decision by the Board of Zoning Appeals shall be subject to Judicial Review as provided for by I.C. 36-7-4-1600 *et al.* Any person aggrieved by a decision of the Board of Zoning Appeals may present to the Hendricks County Court a petition duly verified setting forth that such decision is illegal in whole or in part and specifying the grounds of the illegality. A petition shall be filed for judicial review within 30 days from the date of the vote of the Board of Zoning Appeals.

4. Standards for Variances

A. Variances of Use

The Board of Zoning Appeals may approve or approve with supplementary conditions, a variance of use from the terms of this Ordinance only upon the determination and written findings that the variance will meet each of the following conditions:

- (a) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (b) the use and value of the area adjacent to the property included in the variance will not

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be affected in a substantially adverse manner;

- (c) the need for the variance arises from some condition peculiar to the property involved;
- (d) the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
- (e) the approval does not interfere substantially with the comprehensive plan for the Town of Avon

B. Variance of Development Standards

The Board of Zoning Appeals may approve or approve with supplementary conditions a variance of the development standards (such as height, bulk, or area) of this Ordinance only upon the determination and written findings that:

- (a) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (b) 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
- (c) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

5. Variance Less Than Requested

The Board of Zoning Appeals may grant variance less than or different from that requested when the record supports the applicant's right to some relief but not to the relief requested.

6. Conditions on Variances

The Board of Zoning Appeals may impose such supplementary conditions and limitations concerning the use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of this Ordinance. Such conditions shall be expressly set forth in the order granting the variance. Violation of any such condition shall be a violation of this Ordinance and subject to the provisions of Chapter 19, (Enforcement). In addition to prescribing supplementary conditions, the Board of Zoning Appeals may require the owner of the subject property to make written commitments concerning the use or development of the property.

7. Effect of Grant of Variance

The grant of a variance shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any permits and approvals that may be required by this Ordinances and other ordinances of the Town of Avon.

8. Limitations on Variances

A variance shall be deemed to authorize only the particular construction or development for which it was issued and shall automatically expire and cease to be of any force or effect if such construction or development is beyond the scope so authorized.

9. Expiration of Grant

No variance shall be valid for a period longer than twelve (12) months unless an improvement location permit is issued and construction is actually begun and diligently pursued to completion thereafter. For good cause shown, the Zoning Administrator may extend this time period up to twelve (12) additional months.

10. Judicial Review

Every decision by the Board of Zoning Appeals shall be subject to Judicial Review as provided for by I.C. 36-7-4-1600 *et al.*. Any person aggrieved by a decision of the Board of Zoning Appeals may present to the Hendricks County Court a petition duly verified setting forth that such decision is illegal in whole or in part, and specifying the grounds of the illegality. A petition

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shall be filed for judicial review within 30 days from the date of the vote of the Board of Zoning Appeals.

Section 4-4. Special Exceptions

Special Exceptions are those uses that, because of their unique characteristics and potentially adverse impact upon the immediate area, as well as the Town as a whole, require a greater degree of scrutiny and review of site characteristics and impacts to determine their suitability in a given location. Therefore, the determination of a Special Exception as appropriate shall be contingent upon its meeting a set of development standards.

1. Authority

The Board of Zoning Appeals, in accordance with the procedures and standards set forth herein, may approve, approve with supplementary conditions, or deny an application for a Special Exception.

2. Parties Entitled to Seek Special Exceptions

The owner or lessee of the subject property or other person having a legal or equitable interest in the subject property may file an application for a Special Exception with the Zoning Administrator.

3. Procedure for Review and Decision

A. Application

Applications for a special exception permit shall be filed in accordance with the requirements of Chapter 3 (Applications & Hearings).

B. Action by the Zoning Administrator

Upon receipt of a properly completed application for a special exception permit, the Zoning Administrator shall transmit to the Board of Zoning Appeals the application together with any administrative reports and recommendations subject to the proposed application. The application shall be scheduled for a public hearing in accordance with the requirements of Chapter 3 (Applications & Hearings).

C. Notice

Notice of the public hearing shall be provided in accordance with the requirements of Chapter 3 (Applications & Hearings).

- (a) In addition, the Board of Zoning Appeals has determined for purposes of IC 36-7-4-920 that interested parties are all persons with a legal interest in the property and all owners of real property within a distance of six hundred sixty (660) feet or a depth of two (2) ownerships, whichever is less. Such interested parties shall be sent written notice by first class mail, at the applicant's expense, at least ten (10) calendar days before the date of the hearing. Proof of such notice by Affidavit shall be required. If however, the subject matter of the proposal abuts or includes a county line or a county line street, road, or body of water, then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile into the adjacent county, whichever is less, are interested parties who must be sent notice.

D. Action by the Board of Zoning Appeals

At the close of the public hearing, the Board of Zoning Appeals shall, in writing, either approve, approve with supplementary conditions, or deny the application. Upon reaching a decision, the Board of Zoning Appeals shall instruct the Zoning Administrator to notify the applicant in writing of its decision. If the application is approved or approved with conditions, the Board of Zoning Appeals shall also instruct the Zoning Administrator to issue

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a special exception permit which shall specify all conditions associated with the special exception approval.

E. Judicial Review

Every decision by the Board of Zoning Appeals shall be subject to Judicial Review as provided for by I.C. 36-7-4-1600 *et al.*. Any person aggrieved by a decision of the Board of Zoning Appeals may present to the Hendricks County Court a petition duly verified setting forth that such decision is illegal in whole or in part, and specifying the grounds of the illegality. A petition shall be filed for judicial review within 30 days from the date of the vote of the Board of Zoning Appeals.

4. Standards for Special Exceptions

A. The Board of Zoning Appeals shall review the particular facts and circumstances of each proposed special exception in terms of the following standards and shall find adequate evidence showing that such use at the proposed location meets each of the following:

- (a) is in fact a use listed as a special exception for the specific zoning district involved;
- (b) will not be detrimental to or endanger the public's health, safety, or general welfare;
- (c) will not be injurious to the use and enjoyment of other property in the immediate vicinity or substantially diminish or impair property values within the specific zoning district;
- (d) will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed special exception shall be able to provide adequately any such services;
- (e) will not create excessive additional requirements at public expense for public facilities and services, nor be detrimental to the economic welfare of the community or result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance; and
- (f) at least one year has elapsed since any denial by the Board of any prior application for a Special Exception that would have authorized substantially the same for all or part of the site, unless the Board determines that conditions in the area have substantially changed.

B. For the purpose of supplementing the above standards, the Board of Zoning Appeals in making its decision, may take into consideration, the extent to which the following facts, favorable to the applicant, have been established by the evidence.

- (a) In what respects the proposed special exception meets the requirements and standards of this Ordinance and its relationship and compatibility to adjacent properties and neighborhoods.
- (b) The method by which the proposed special exception makes adequate provision for public services, provides adequate control over vehicular traffic, provides for and protects designated common open space and furthers the amenities of light and air, recreation and visual enjoyment.
- (c) Whether the proposed special exception is in accordance with the general objectives of the Comprehensive Plan.

5. Supplementary Conditions and Safeguards

The Board of Zoning Appeals may impose such supplementary conditions and limitations concerning the use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of this Ordinance. Such conditions shall be expressly set forth in the order granting the special exception. Violation of any such condition shall be a violation of this Ordinance and subject to the provisions of Chapter 19, (Enforcement). In addition to prescribing supplementary conditions, the Board of Zoning Appeals may require the owner of the subject property to make written commitments concerning the use or development of the property.

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6. No Presumption of Approval

The listing of a special exception within each zoning district shall not constitute an assurance or presumption that such special exception will be approved. Rather, each proposed special exception shall be evaluated on an individual basis, in relation to its compliance with the standards and conditions set forth herein and with the development standards for the district in which it is to be located.

7. Limitations on Special Exceptions

A special exception permit shall be deemed to authorize only the particular use at the particular location for which the special exception was granted. A special exception permit shall automatically expire should, for any reason, the special exception be discontinued or abandoned for a period of twelve (12) months.

8. Effect of Approval

The approval of a proposed special exception shall not authorize the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for such permits or approvals as may be required by the regulations of the Town.

9. Judicial Review

Every decision by the Board of Zoning Appeals shall be subject to Judicial Review as provided for by I.C. 36-7-4-1600 *et al.*. Any person aggrieved by a decision of the Board of Zoning Appeals may present to the Hendricks County Court a petition duly verified setting forth that such decision is illegal in whole or in part, and specifying the grounds of the illegality. A petition shall be filed for judicial review within 30 days from the date of the vote of the Board of Zoning Appeals.

Section 4-5. Appeals

The appeal procedure is provided as a safeguard against arbitrary, ill-considered, or erroneous administrative decisions. It is intended to avoid the need for legal action by establishing local procedures to review and correct administrative errors.

1. Authority

The Board of Zoning Appeals shall hear and decide appeals from, and review:

- A. any order, requirement, decision, or determination, made by an administrative official or staff member under this Ordinance; and
- B. any order, requirement, decision, or determination, made by an administrative board or other body, except the Plan Commission, in relation to the enforcement of this Ordinance.

2. Parties Entitled to Appeal

Any person aggrieved by an order, requirement, decision, or determination made by an administrative official, or staff member under this Ordinance, or any order, requirement, decision, or determination made by an administrative board or other body except the Plan Commission in relation to the enforcement of this Ordinance may take an appeal to Board of Zoning Appeals.

3. Procedure

A. Application

An appeal shall be filed in accordance with the requirements of Chapter 3 (Applications & Hearings). Every appeal must specify, in writing, the grounds under which the appeal is being taken. Failure to do so shall cause the appeal to be deemed incomplete and it shall not

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be processed by the Zoning Administrator and shall be returned to the applicant at the applicant's expense.

B. Action by Zoning Administrator

Upon receipt of a properly completed appeal, the Zoning Administrator shall forthwith transmit to the Board of Zoning Appeals the appeal together with all the documents, plans and papers constituting the record upon which the action appealed from was taken. The appeal shall be scheduled for a hearing in accordance with the requirements of Chapter 3 (Applications & Hearings).

C. Public Hearing and Notice

Notice of the hearing shall be provided in accordance with the requirements of Chapter 3 (Applications & Hearings).

- (a) In addition, the Board of Zoning Appeals has determined for purposes of IC 36-7-4-920 that interested parties are all persons with a legal interest in the property and all owners of real property within a distance of six hundred sixty (660) feet or a depth of two (2) ownerships, whichever is less. Such interested parties shall be sent written notice by first class mail, at the applicant's expense, at least ten (10) calendar days before the date of the hearing. Proof of such notice by Affidavit shall be required. If however, the subject matter of the proposal abuts or includes a county line or a county line street, road, or body of water, then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile into the adjacent county, whichever is less, are interested parties who must be sent notice.

D. Stay Work Pending Appeal

The filing of an appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official or board, from which the appeal was taken, certifies to the Board of Zoning Appeals that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property.

E. Action by Board of Zoning Appeals

At the close of the hearing, the Board of Zoning Appeals shall render a written decision on the appeal. Such decision may reverse, affirm, or modify, in whole or in part, the action appealed from and may include such order or determination as, in the opinion of the Board of Zoning Appeals, is proper to be made in the premises. The failure of the Board of Zoning Appeals to act at the close of the hearing, unless continued, shall be deemed to be a decision denying the appeal.

F. Judicial Review

Every decision by the Board of Zoning Appeals shall be subject to Judicial Review as provided for by I.C. 36-7-4-1600 *et al.*. Any person aggrieved by a decision of the Board of Zoning Appeals may present to the Hendricks County Court a petition duly verified setting forth that such decision is illegal in whole or in part and specifying the grounds of the illegality. A petition shall be filed for judicial review within 30 days from the date of the vote of the Board of Zoning Appeals.

4. Right to Grant Variance in Deciding Appeals

In any case where the appeal is accompanied by an application for a variance in accordance with Section 4-3 of this Chapter, the Board of Zoning Appeals shall notice, hear, decide to grant, or deny such variance in compliance with the provisions of Section 4-3.

5. Conditions and Limitations on Rights Granted by Appeal

In any case where this Ordinance imposes conditions and limitations upon any right, any such

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right granted by the Board of Zoning Appeals on appeal shall be subject to said conditions and limitations in the same manner and to the same extent as if secured without the necessity of an appeal.

Section 4-6. Amendments

This Section is intended to provide standards and procedures for making amendments to the text of this Ordinance and the Zoning Map that are of general significance or application. The amendment process is not intended to relieve particular hardships, nor is to confer special privileges or rights upon any person, but only to make adjustments necessary in light of changed conditions or changes in public policy.

1. Authority

The text of this Ordinance and the Zoning Map may be amended from time to time by the passage of an ordinance duly adopted by the Town Council in accordance with the procedures set forth herein.

2. Parties Entitled to Initiate Amendments

A. Amendment to Text

Amendments to text of this Ordinance may be initiated by adoption of a motion of the Plan Commission or by adoption of a resolution by Town Council.

B. Amendment to Zoning Map

Amendments to the Zoning Map may be initiated by adoption of a motion of the Plan Commission; by adoption of a resolution by Town Council; or by the filing of a petition by at least fifty percent (50%) of the owners of the subject property within the area proposed to be changed or affected by said amendment.

3. Standards for Amendments

The wisdom of amending the text of this Ordinance or the Zoning Map is a matter committed to the sound legislative discretion of the Town Council and is not controlled by any one standard. In making their determination, however, the Town Council shall, in determining whether to adopt or deny, or to adopt some modification of the Plan Commission's recommendation, pay reasonable regard to:

- A.** the Comprehensive Plan, as adopted and amended from time to time by the Town Council;
- B.** the current structures and uses within each zoning district;
- C.** the most desirable use for which the land in each zoning district is adapted;
- D.** the conservation of property values throughout the jurisdiction; and
- E.** responsible development and growth.

4. Procedure for Review and Decision

A petition to amend the text of this Ordinance or the Zoning Map shall be processed in accordance with the procedures set forth below.

A. Petitions

Petitions for amendment to this Ordinance shall be filed in accordance with the requirements of Chapter 3 (Applications & Hearings).

B. Action by the Zoning Administrator

Upon receipt of a properly completed amendment petition, the Zoning Administrator shall transmit to the Plan Commission the petition together with any administrative reports and recommendations subject to the proposed petition. The application shall be scheduled for a public hearing in accordance with the requirements of Chapter 3 (Applications & Hearings).

C. Notice

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Notice of the public hearing shall be provided in accordance with the requirements of Chapter 3 (Applications & Hearings).

- (a) In addition, the Plan Commission has determined for purposes of IC 36-7-4-604 that interested parties are all persons with a legal interest in the property and all owners of real property within a distance of six hundred sixty (660) feet or a depth of two (2) ownerships, whichever is less. Such interested parties shall receive written notice by certified mail, at the applicant's expense, at least ten (10) calendar days before the date of the hearing. Proof of such notice by Affidavit shall be required. If however, the subject matter of the proposal abuts or includes a county line or a county line street, road, or body of water, then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile into the adjacent county, whichever is less, are interested parties who must receive notice.

D. Plan Commission Action

Within sixty (60) calendar days of receipt of the proposed amendment, the Plan Commission shall hold a public hearing on the proposed amendment. Within ten (10) business days after the Commission determines its recommendation, if any, the Commission shall certify, in writing, the proposed petition with a favorable recommendation, an unfavorable recommendation, or no recommendation to the Town Council.

E. Town Council Action

Within ninety (90) calendar days of receipt of Plan Commission recommendation, the Town Council shall vote on the proposed amendment in accordance with Indiana Code 36-7-4-607, as amended, if the petition is for a text amendment, or Indiana Code 36-7-4-608, as amended, if the petition is to amend the Zoning Map.

(a) Map Amendments

Pursuant to Indiana Code 36-7-4-610.5, as amended, if after the adoption of a petition to amend the Zoning Map, Town Council finds that the petition was adopted as a result of a person's material misrepresentation or omission of facts, the Town Council may adopt an ordinance to nullify any change in the Zoning Map that resulted from the misrepresentation or omission. Such an ordinance may be adopted by the Town Council without being referred to the Plan Commission for consideration and recommendation.

5. Written Commitments

In approving a proposed amendment to the Zoning Map pursuant to Section 4-6(2)(B) the Plan Commission may require the owner of the subject property to make written commitments concerning the use or development of the property. Such written commitments shall be recorded in accordance with the provisions of Section 4-10(3).

Section 4-7. Interpretations

The interpretation authority established herein is intended to recognize that the provisions of this Ordinance, though detailed and extensive, cannot, as a practical matter, address every specific situation to which they may have to be applied. Many such situations can be readily addressed by an interpretation of the specific provisions of this Ordinance in light of the general and specific purposes for which those provisions have been enacted. Because the interpretation authority established is an administrative rather than a legislative authority, it is not intended to add to or change the essential content of this Ordinance but is intended only to allow authoritative application of that content to specific cases.

1. Authority

The Zoning Administrator, subject to the procedures, standards, and limitations of this Section

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may, by written order, render interpretations of the provisions of this Ordinance and of any rule or regulation issued pursuant to it.

2. Parties Entitled to Seek Interpretations

The owner or lessee of a property or other person having a legal or equitable interest in the subject property may file with the Zoning Administrator an application for interpretation. Application for interpretations shall not be accepted for solely hypothetical circumstances or where the interpretation would have no affect other than as an advisory opinion.

3. Procedure for Review and Decision

A. Application

Applications for an interpretation shall be filed in accordance with the requirements of Chapter 3 (Applications & Hearings).

B. Action on Application

Within ten (10) business days following the receipt of a properly completed application for interpretation, the Zoning Administrator shall inform the applicant in writing of his interpretation, stating the specific precedent, reasons, and analysis upon which the determination is based.

C. Records

A record of all applications for interpretations shall be kept on file in the office of the Zoning Administrator. The Zoning Administrator shall keep an up-to-date listing of his decisions, by address, regarding the applications for interpretation. Such listing shall be part of the public record.

D. Appeal

Appeals from interpretations rendered by the Zoning Administrator may be taken to the Board of Zoning Appeals pursuant to Section 4-5 of this Chapter.

4. Standards for Interpretations

The following standards shall govern the Zoning Administrator, and the Board of Zoning Appeals on appeals from the Zoning Administrator, in issuing interpretations.

- A.** Any term defined in Chapter 20 (Definitions) of this Ordinance shall be interpreted as therein defined;
- B.** No interpretation shall permit any use in any zoning district unless evidence shall be presented that demonstrates that the use will comply with the general district regulations established for that particular zoning district;
- C.** No interpretation shall permit any use in a particular zoning district unless such use is determined to be substantially similar to other uses permitted in the particular zoning district;
- D.** Where a proposed use is most similar to a use permitted only as a special exception, then any interpretation permitting such use shall be conditioned on the issuance of a special exception permit for such use pursuant to Section 4-3 of this Chapter; and
- E.** No interpretation shall permit the establishment of any use that would be inconsistent with the statement of purpose of the zoning district in question.

5. Effect of Favorable Interpretations

No interpretation finding a particular use to be permitted or permitted as a special exception shall authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any permits and approvals that may be required by this Ordinance and ordinances of the Town.

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6. Limitations on Interpretations

Subject to an extension of time granted by the Zoning Administrator, no use interpretation shall be valid for a period longer than twelve (12) months from the date of issue. A use interpretation finding a use to be either permitted or a special exception shall apply only to the particular use for which it was issued.

Section 4-8. Development Plans

The Avon Town Council has determined that before development and redevelopment may go forward in certain designated zoning districts, the review and approval of a development plan is required

1. Purpose

The development plan review process is designed to promote the safe and efficient use of land, to protect property values, and to ensure for an orderly and harmonious development pattern within the Town that is in accordance the Comprehensive Plan.

2. Authority

- A. The Plan Commission shall have exclusive authority to review and approve or disapprove those development plans specifically assigned to the Plan Commission for review by this Ordinance.
- B. The Zoning Administrator shall have the exclusive authority to review and approve or disapprove those development plans specifically assigned to the Zoning Administrator by this Ordinance.
- C. Any development proposed which is not specifically assigned to either the Plan Commission or Zoning Administrator for review and approval or disapproval shall be presented to the Zoning Administrator, at which time the Zoning Administrator shall determine whether the body responsible for review will be the Plan Commission or Zoning Administrator, or whether review of the proposed development is not required.
 - (a) Any determination of the Zoning Administrator may be appealed to the Board of Zoning Appeals in accordance with the provisions of Section 4-5 of this Chapter.

3. Scope of Application

- A. Plan Commission review of development plans shall be required for:
 - (a) Secondary review of any non-residential portion of any Planned Unit Development District, in accordance with Chapter 5, Section 8 of the Avon Zoning Ordinance.
 - (b) Improvements within any Institutional Use District either:
 - (1) Not included on the approved Institutional Use District Master Plan; or
 - (2) Exceeding the approved parameters of the Institutional Use District Master Plan by more than ten percent (10%)
 - (c) new construction;
 - (d) redevelopment of existing sites;
 - (e) conversion of an existing structure or site requiring external site improvements;
 - (f) The addition or removal of any:
 - (1) Vehicular access point to any existing public right-of-way;
 - (2) vehicular access point to any internal private drive not shown on a previously-approved Development Plan;
 - (3) Drive-Through service lane;
 - (4) Loading dock;
 - (5) Outdoor storage or sales area exceeding fifteen percent (15%) of the under-roof area of the associated structure;
 - (6) Sidewalk, multi-use path or other pedestrian conveyance shown on any Town

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connectivity plan (ex. Thoroughfare Plan, Bicycle and Pedestrian Master Plan); and

- (7) Parking spaces or paved surface parking area of more than ten percent (10%) of existing spaces or area;
- (g) additions or expansions of any existing use or structure by more than thirty-five percent (35%) of its current size; and
- (h) Change in architectural materials, lighting, or reduction of site landscaping.

B. Zoning Administrator review of development plans shall be required for all:

- (a) Additions or expansions of any existing use or structure by less than thirty-five percent (35%) of its current size;
- (b) The addition or removal of any:
 - (1) Outdoor storage or sales area comprising less than fifteen percent (15%) of the under-roof area of the associated structure;
 - (2) Sidewalk, multi-use path or other pedestrian conveyance internal to the site and not shown on any Town connectivity plan; and
 - (3) Parking spaces or paved surface parking area of less than ten percent (10%) of existing spaces or area;
- (c) The Zoning Administrator shall determine that the requested modifications do not adversely impact the purpose or intent of the overall development prior to approval of any requested Zoning Administrator review.
 - (1) Should the Zoning Administrator fail to find there is no adverse impact, the petitioner may submit for full review by the Plan Commission under the terms of this Chapter.
- (d) Such minor modifications authorized by the Zoning Administrator shall be reported, in writing, to the Plan Commission at the next regular meeting of the Plan Commission.

C. Development in the following districts shall be subject to Development Plan Review:

- (a) R-1 Single Family Residential District (non-residential uses only)
- (b) R-2 Single Family Residential District (non-residential uses only)
- (c) R-3 Single Family Residential District (non-residential uses only)
- (d) R-4 Multiple Family Residential District
- (e) R-5 Multiple Family Residential District
- (f) MHP Mobile Home Park District
- (g) C-1 Neighborhood Commercial District
- (h) C-2 General Commercial District
- (i) C-3 Highway Commercial District
- (j) C-4 Transitional Office District
- (k) SC Shopping Center Commercial District
- (l) I-1 Transitional Industrial District
- (m) I-2 Light Industrial District
- (n) I-3 Heavy Industrial District
- (o) I-4 Industrial Park District
- (p) IUD Institutional Use District (as established in Section 4-8(3)(2));
- (q) PUD District (as established in Section 4-8(3)(1))

4. Parties Entitled to Approval of a Development Plan

The owner or lessee of a property or other person having a legal or equitable interest in the subject property may file an application for development plan approval with the Zoning Administrator.

5. Procedure for Review and Decision

A. Application

Applications for development plan approval shall be filed in accordance with the requirements of Chapter 3 (Applications & Hearings).

B. Pre-Application Meeting

- (a) Prior to the filing of a development plan application, the petitioner shall schedule a pre-application meeting with the Zoning Administrator or his designee in accordance with the schedule published by the Plan Commission.
- (b) The purpose of the pre-application meeting shall be to:
 - (1) acquaint the petitioner with the development plan review process and the requirements for submittal,
 - (2) identify impacted utility and emergency service providers;
 - (3) identify the need for either a Traffic Impact Study or Traffic Impact Analysis; and
 - (4) identify the need for any additional information.
- (c) The pre-application meeting is intended only for the above purposes; neither the petitioner nor the Town is bound by any decisions made during a pre-application meeting.
 - (1) Failure by the Town to identify the need for a TIS / TIA shall not eliminate ability of Town or Plan Commission to require TIS / TIA at later date.
 - (2) Failure by the Town to identify an impacted utility or emergency services provider shall not eliminate the ability of the impacted provider to request review and issue comments at a later date.

C. Technical Advisory Committee (TAC)

Submittal to the Town of Avon Planning and Building Department shall not be considered complete without an affidavit of submittal to any public or private utility or emergency service provider having facilities within the subject site or otherwise impacted by the proposed development.

- (a) The Town of Avon Department of Planning and Building will maintain a list of utility and service providers with facilities within the Town's planning and zoning jurisdiction;
- (b) The petitioner shall be responsible for the distribution of a full set of development plans to the listed utility and service providers unless specifically released in writing by the impacted agency;.
- (c) The petitioner shall be responsible for providing proof of distribution to the identified utility and service providers;
- (d) The petitioner shall be responsible for the payment of any fees assessed by the utility or service provider for the review of the submitted plans.
- (e) Avon Planning & Building will be responsible for soliciting comments on the submittal from the impacted utility or service provider for inclusion in the petition file.

D. TAC Review Meeting

The Zoning Administrator shall meet with the applicant or project representative to discuss the proposed project, the reviews of the various departments and the comments of the impacted utility and service providers.

The goal of this meeting will be to allow the applicant to discuss his project with the Zoning Administrator, staff and impacted utilities and emergency services providers (TAC) prior to the review of the Plan Commission and revise the Development Plan if necessary pursuant to

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the comments provided.

A detailed report of this meeting shall be forwarded with the application.

Participation in this meeting shall not remove the ability of any party to request additional meetings to address unresolved issues or review responses to requested revisions.

E. Public Hearing and Notice

Upon completion of the Staff Review Meeting, the application shall be scheduled for a public hearing in accordance with the requirements of Chapter 3 (Applications & Hearings). Notice of the public hearing shall be provided in accordance with the requirements of Chapter 3 (Applications & Hearings).

In addition, the applicant shall provide notice to the owners of all parcels of land joining or adjacent to the subject property to a depth of two (2) ownerships or six hundred sixty (660) feet, which ever is less, at least ten (10) calendar days before the date of the hearing. The notice shall be provided at the applicant's expense and proof of such notice by Affidavit shall be required.

F. Decision of Plan Commission

Following a public hearing, the Plan Commission shall, in writing, either approve, approve with supplementary conditions, or disapprove the application. Upon reaching its decision, the Plan Commission shall instruct the Zoning Administrator to notify the applicant in writing of its decision. If the application is approved or approved with modifications, the President and the Secretary of the Plan Commission shall sign and date a copy of the complete approved plan and this copy shall become the official approved Development Plan. The complete approved plans shall include references to all variances or special exceptions obtained as well as any recorded written commitments.

(a) Supplementary Conditions and Safeguards

The Plan Commission may impose supplementary conditions on the approval of the Development Plan in order to achieve the purposes and objectives of this Ordinance. Such conditions shall be expressly set forth and made part of the Development Plan and shall become a part of the written findings of fact of the Plan Commission. Violation of any such condition shall be a violation of this Ordinance and subject to the provisions of Chapter 19 (Enforcement).

(b) Special Studies Required

The Plan Commission may require additional information in order to make its decision. Therefore, it may request of the applicant or the Zoning Administrator additional studies or to seek expert advice. The cost of such additional studies or advice shall be the responsibility of the applicant.

(c) Commitments

In addition to prescribing supplementary conditions, the Plan Commission may require the owner of the subject property to make written commitments concerning the use or development of the property. See Section 4-10 for more information regarding written commitments.

(d) Effect of Approval

The approval of a Development Plan shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any permits and approvals that may be required by this Ordinance and any other ordinance or law. A State Plan Release from the State

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Building Commissioner or the State Fire Marshall may also be required for multiple family, commercial, and industrial projects, as well as any building that is to be occupied by the public. (Refer to the Indiana Department of Fire and Building Services for more information).

(e) Limitations of Approval

The approval of a development plan shall be deemed to authorize only the particular construction or development for which it was approved and shall automatically expire and cease to be of any force or effect if such construction or development is beyond the scope so authorized.

(f) Pre-Construction Meeting

Prior to the issuance of an Improvement Location Permit, the petitioner shall participate in a pre-construction meeting to determine whether or not all conditions of the Plan Commission's approval of the development plan have been met. Those required to be present at the pre-construction meeting shall, at a minimum, include the Petitioner, the Zoning Administrator, the Building Commissioner, the Town Planner, the Town Engineer, and the Fire Marshall. The Zoning Administrator may invite additional staff or departments to the pre-construction meeting as he determines appropriate.

(g) Expiration of Approval

The applicant shall have twelve (12) months from the date of approval to obtain an Improvement Location Permit. Should the applicant fail to obtain an Improvement Location Permit within the twelve (12) month period, the Development Plan approval shall become void. The Plan Commission may, for good cause shown, extend this period up to six (6) additional months.

6. Judicial Review

Every decision by the Plan Commission shall be subject to Judicial review as per I.C. 36-7-4-1600 *et al.* Any person aggrieved by a decision of the Plan Commission may present to the Hendricks County Court, a petition duly verified setting forth that such decision is illegal in whole or in part and specifying the grounds of the illegality. A petition shall be filed for judicial review within 30 days from the date of the vote of the Plan Commission.

7. Development Standards

A. A Development Plan under this Section shall be required to meet:

- (a) the development standards set forth in the zoning district in which the use is or is proposed to be located;
- (b) All applicable Overlay Districts;
- (c) the standards of the Subdivision Control Ordinance;
- (d) the applicable requirements of Chapter 13 (Specific Use Requirements);
- (e) Chapter 14 (Performance Standards);
- (f) Chapter 15 (Off-Street Parking and Loading);
- (g) Chapter 16 (Landscaping and Screening)
- (h) Chapter 17 (Floodplain Regulations);
- (i) Chapter 18 (Signs);
- (j) All storm water management, erosion control and soil conservation, and technical specifications of The Town of Avon; and
- (k) All applicable recommendations of the Town of Avon Comprehensive Plan and all associated components of the Comprehensive Plan (ex. Thoroughfare Plan, Gateway Plan, etc...).

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- (1) Where the Comprehensive Plan or other associated plan makes a recommendation for the future use of a subject site that is in conflict with the uses permitted by-right in the existing Zoning District, this provision shall not be construed as to deny the use as allowed by the District.
- (2) Where the Comprehensive Plan or other associated plan makes a recommendation that conflicts with a standard or specification of the underlying zoning district, the terms of the underlying district shall govern.
- (3) A petitioner may request a waiver from the Plan Commission to allow non-compliance with any provision of the Comprehensive Plan as per Section 4-8 (10).
 - i. A waiver shall not be granted from any Development Standard of this or any other Chapter of the Town of Avon Zoning Ordinance – relief from the development standards of this ordinance must be sought through the Board of Zoning Appeals through the Variance process.

B. Building Materials

In order to protect the integrity of Avon’s major corridors and promote variation and interest in the built environment, all new buildings and building additions:

- (a) abutting U.S. Highway 36 as measured perpendicular to U.S. Highway 36 for a depth of six hundred and sixty (660) feet from the right-of-way line,
- (b) abutting Highway 267 and Dan Jones Road as measured perpendicular to those roads for a depth of six hundred and sixty (660) feet from the right-of way line (where no right-of-way has been defined, the thoroughfare plan shall be used to determine the appropriate right-of-way width), and
- (c) abutting 100 North, 100 South, 200 North and 200 South as measured perpendicular to those roads for a depth of six hundred and sixty (660) feet from the right-of way line (where no right-of-way has been defined, the thoroughfare plan shall be used to determine the appropriate right-of-way width),

shall use brick, stone, dryvit or stucco materials on all its exterior walls, except the rear exterior wall, (and excluding windows, doors, roofing, fascia and soffit) which shall include at least two (2) architectural features or at least two (2) colors and textures. Appropriate architectural features may include, but shall not be limited to, cornice or bay windows, balconies, marquees, canopies, and the like. The use of these building materials shall constitute a minimum of sixty percent (60%) of each exterior wall facing the aforementioned highways and roads and a minimum of thirty percent (30%) of each side exterior. The Plan Commission may approve alternative building materials and/or architectural designs, as listed below in “D”.

C. Building Orientation

All buildings or building additions shall be designed so that its front exterior wall faces U.S. Highway 36, Highway 267, Dan Jones Road, County Road 100 North, or County Road 100 South. Where a building is located on a corner lot which fronts on more than one of the aforementioned roadways, each exterior wall facing such roadways shall have a front or front-like façade. No off-street loading docks, dumpsters, or outside storage shall face Highway 36, Highway 267, Dan Jones Road, County Road 100 North or County Road 100 South.

D. Waivers of Standards

- (1) The Plan Commission may approve a waiver of Development Standards as a component of a Development Plan Review for the following standards:
 - (a) Chapter 4, Section 8 (7)(B) Building Materials and (7)(C) Building Orientation;

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- (b) Chapter 14, Section 15 Outdoor Lighting;
 - (c) Chapter 15, Section 7 Off-Street Parking Requirements (exceeding 15% of required spaces);
 - (d) Chapter 16, Section 3 Alternative Landscaping Plan;
 - (e) Chapter 23, Section 15 Landscaping and Section 18 Architectural Design Requirements;
 - (f) Chapter 24, Section 15 Architectural Design Requirements;
 - (g) Chapter 25, Section 5 Architectural Standards.
- (2) Procedure:
- (a) Each waiver request shall be specified in the Development Plan Review submittal, and shall be listed in the required Legal Notice required by the Rules of Procedure;
 - (b) Any submittal including a waiver request shall also contain exhibits depicting the development of the site in accordance with the standard(s) from which the Waiver is requested;
 - (c) Each waiver request shall be acted upon by the Plan Commission membership prior to a final action on the full Development Plan Review;
 - (d) Conditions may be associated with the approval of a requested Waiver, and such conditions shall then become conditions of any overall approval;
- (3) Findings for Waivers:
- (a) To grant a waiver of the listed standards, the Plan Commission shall find that:
 - (i) The proposed alternative demonstrates consistency with the recommendations of the Comprehensive Plan and all related land use plans (ex. Thoroughfare Plan, Bicycle & Pedestrian Master Plan, etc...)
 - (ii) That the proposed alternative demonstrates consistency with the intent of the applicable Zoning District and/or Overlay District;
 - (iii) That the proposed alternative demonstrates consistency with both the existing built environment and the built environment that would be required under the terms of the ordinance were the waiver not granted; and
 - (iv) That the proposed alternative represents an improvement, increase, advance, or expansion beyond the terms of the applicable standard.

8. Criteria for Review

Every application shall be considered on the basis of its meeting the requirements of this Ordinance and the utility and functional aspects of its design. In making its decision, the Plan Commission shall evaluate the Development Plan against the following criteria.

- A.** The arrangement of the structure(s) on the site with respect to how well it:
 - (a) allows for the safe and effective use of the proposed development;
 - (b) creates innovative and efficient environments and the utilizes individual building designs which achieve an enhanced relationship between the development and the land
 - (c) is compatible with development on adjacent property; and
 - (d) considers off-site utilities and services and minimizes potential impacts on existing or planned municipal services, utilities, and infrastructure.
- B.** The architectural style of a project and its type, arrangement, and use of building materials to enhance the built environment of Avon.

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- C. The arrangement of open space and landscape improvements on the site with respect to how well it:
 - (a) creates a desirable and functional environment for patrons, pedestrians, and occupants;
 - (b) preserves unique natural resources where possible; and
 - (c) respects desirable natural resources on adjacent sites.
- D. The management of traffic in a manner that creates conditions favorable to the health, safety, conveniences, and harmonious development of the community including:
 - (a) that the design and location of proposed street and highway access points minimize safety hazards and congestion;
 - (b) that the capacity of adjacent streets and highways are sufficient to safely and efficiently accept the traffic proposed to be generated by development;
 - (c) that the pedestrian circulation for the site minimize safety hazards for both pedestrians and vehicular traffic; and
 - (d) that the internal traffic circulation and the points of egress and ingress are compatible with existing and planned streets and adjacent developments.
- E. Parking lots or garages with respect to how well they:
 - (a) are located, designed, and screened to minimize adverse visual impacts on adjacent properties; and
 - (b) provide perimeter parking lot screening and internal landscaped islands as required by Article 15 (Off-Street Parking and Loading).
- F. Landscaping Design with respect to how well it meets the requirements of Chapter 16 (Landscaping and Screening) by:
 - (a) creating a lucid transition to adjoining lots and developments;
 - (b) screening incompatible uses;
 - (c) minimizing the visual impact of the development on adjacent sites and roadways; and
 - (d) utilizing native plant materials selected to withstand the climate of the Town and individual site climates.
- G. Site illumination with respect to how it has been designed, located and installed so as to minimize adverse impacts to adjacent properties. See Section 14-15 for lighting regulations.
- H. Provision of site development features such as vehicle and pedestrian connectivity, elements of site character, and innovative storm water management techniques consistent with the recommendations of the Town of Avon Comprehensive Plan shall be a review criteria for approval of a proposed Development Plan. .
- I. The grading, drainage, and erosion control measures proposed for the site with respect to how well they meet the requirements of the Subdivision Control Ordinance and the Storm Drainage, Erosion and Sediment Control Ordinance.

9. Performance Guarantee

The applicant may also be required to furnish a Performance Guarantee or an Irrevocable Letter of Credit based upon an amount determined by the Plan Commission at the recommendation of the Zoning Administrator. The applicant shall be responsible for notifying the Zoning Administrator of completion of all work covered by the Performance Guarantee and, if upon inspection, the Zoning Administrator determines that all installations are in conformance with the approved plan, then he shall release the Performance Guarantee. However, a Performance Guarantee for landscaping will be held for one (1) year from the issuance of the permanent Certificate of Occupancy to insure survival of the required landscaping.

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10. Waivers

A. Eligibility

A petition may include a request for waiver from the requirement of site improvements or features identified as required by the Comprehensive Plan.

- (a) Any petition seeking a waiver shall specify in writing the component of the Comprehensive Plan requested to be waived.

B. Findings

- (a) The requested waiver shall demonstrate compliance with all the following ;
- (b) Innovation in the use of site design, site access design, site circulation design, building orientation, building materials and/or landscaping which will enhance the use or value of area properties;
- (c) The proposed development will not be hazardous to the public health, safety, morals or general welfare;
- (d) Strict compliance with the recommendations of the Town of Avon Comprehensive Plan will result in development of the real estate which is undesirable when compared with the proposed development;
- (e) The proposed development is consistent with and compatible with other development located in the area, and
- (f) The proposed development is consistent with the intent and purpose of the Town of Avon Comprehensive Plan.

Section 4-9. Temporary Use Permits

1. Authority

The Zoning Administrator is authorized by this Ordinance to issue a temporary use permit for uses specifically authorized in particular zoning districts as temporary uses as set forth in Chapter 13 (Specific Use Requirements).

2. Application

An application for a temporary use permit shall be filed in accordance with the requirements of Chapter 3 (Applications & Hearings).

3. Action of the Application

Within ten (10) business days following the receipt of a properly completed application for a temporary use permit, the Zoning Administrator shall inform the applicant in writing of his decision. A temporary use permit will not be issued until the Zoning Administrator is satisfied that the use allowed by the temporary use permit will not adversely affect the public health, safety or general welfare of the Town of Avon or immediate neighborhood.

4. Appeals

Appeals from the decision of the Zoning Administrator can be made to the Zoning Board of Appeals pursuant to Section 4-5 of this Chapter.

5. Conditions

The Zoning Administrator may require that certain conditions relating to the public health, safety or general welfare be complied with before the issuance of a temporary use permit.

Section 4-10. Written Commitments

The Avon Town Council, Plan Commission, or Board of Zoning Appeals may, when authorized by this Ordinance, require or permit the owner(s) of a parcel of property to make written commitments concerning the use or development of that property in connection with a Map Amendment, a Planned

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Unit Development District, a Development Plan, a Variance, or Special Exception.

1. Form

The commitments shall be reduced to writing in recordable form and signed by the owners(s) of the real estate. The commitments required or made under this Ordinance shall substantially be in the form set forth in Appendix C. The Zoning Administrator shall approve the form of the commitments prior to their submission.

2. Application

The commitments shall run with the land, and be binding on the Owner of the subject real estate, subsequent owners of the subject real estate and any person or entity acquiring an interest therein. An unrecorded commitment is binding on the owner(s) of the subject real estate. An unrecorded commitment is binding on subsequent owners of the subject real estate and any person or entity acquiring an interest therein only if the subsequent owners of the subject real estate and any person or entity acquiring an interest therein has actual notice of the commitment.

3. Recordation

The commitments shall be reviewed by the Town Attorney and recorded by the Zoning Administrator in the Office of the Recorder of Hendricks County, Indiana and shall take effect upon approval of the particular development review approval. Proof that such commitments were recorded shall be kept in the official records of the Plan Commission. Written Commitments shall be recorded within thirty (30) calendar days of the development plan approval.

4. Modification and Termination

The commitments may be modified or terminated only with the approval of the owner or owners of the real estate subject to the commitments, and the Town Council, the Avon Plan Commission or the Avon Board or Zoning Appeals, as the case may be, after a public hearing. Commitments made or required in connection with a Map Amendment or a Planned Unit Development shall terminate if the zone map applicable to the parcel is changed.

5. Enforcement

A. Commitments made or required in connection with this Ordinance may be enforced, jointly or independently, by:

- (a) the Avon Plan Commission or the Avon Board or Zoning Appeals, as the case may be;
- (b) the Avon Zoning Administrator; and
- (c) any owner or owners of the real estate subject to the commitments; and any owner or owners of the real estate who received notice on the original zoning amendment or planned unit development, including subsequent purchasers of the real estate owned by such persons for so long as any such person or persons is an owner of record of the real estate which was originally subject to a notice requirement.

B. In the event it becomes necessary to enforce a commitment or commitments made or required in connection with this Ordinance in court, and the owner of the real estate is found to be in violation of a commitment or commitments, the owner shall pay all reasonable costs in connection with the enforcement of the commitment or commitments, including attorney fees.

C. In the event signed written commitments are not returned in accordance with Section 4-10.3 of this ordinance, the Town shall have the following remedies:

- (a) Revocation of Map Amendment;
- (b) Injunctive relief in accordance with Section 4-10.5 of this ordinance;
- (c) Waiver of Modification of commitments in accordance with Section 4-10.4 of this ordinance.

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- D. The procedure to revoke a Map Amendment as permitted in Section 4-10.5(C) of this ordinance shall be the same as the Map Amendment and requires a public hearing.

Section 4-11. Waivers

The Avon Plan Commission may in connection with a Development Plan, Preliminary Plat or Final Plat approve a request for a waiver of provisions of the Avon Subdivision Control Ordinance under the criteria and procedure provided for in Chapter 3 of the Subdivision Control Ordinance.