

154.12. APPEALS**154.12.01 Purpose**

- A. 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. It is not, however, intended as a means to subvert the clear purposes, meanings, or intent of this Code or the rightful authority of the Planning Director to enforce the requirements of this Code. To these ends, the reviewing body should give all proper deference to the spirit and intent embodied in the language of this Code and to the reasonable interpretations of that language by those charged with the administration of this Code.
- B. The filing of an appeal shall stay all proceedings in furtherance of the action appealed from, unless the Planning Director certifies to the Board of Zoning Appeals, after the notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would cause, in his opinion, imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order that may be granted by the Board of Zoning Appeals or by a court of record, on application, of notice to the Planning Director and on due cause shown.
- C. The Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify the order or final decision as in its opinion ought to be made in the premises, and to that end has all the powers of the officer from whom the appeal is taken.

154.12.02 Authority

The Board of Zoning Appeals shall hear and decide appeals from, and review orders, decisions, determinations, or the failure to act, of the Planning Director acting pursuant to his or her authority and duties under this Code and to that end the Board of Zoning Appeals shall have the same powers and be subject to the same standards and limitations as the Planning Director with respect to any order, decision, or determination being appealed.

154.12.03 Parties Entitled to Appeal

Appeals to the Board of Zoning Appeals concerning the interpretation or administration of this Code may be taken by any persons aggrieved or by any officer or bureau of the legislative authority of the city affected by any decision of the Planning Director.

154.12.04 Procedure**A. Application**

An application for appeal to the Board of Zoning Appeals shall be filed not later than thirty (30) days after the action being appealed and shall be in accordance with the requirements of Section 154.01.

B. Action by Planning Director

Upon receipt of a properly completed application for an appeal, the Planning Director shall forthwith transmit to the Board of Zoning Appeals the application together with all the papers constituting the record from which the action appealed was taken.

C. Public Hearing and Notice

The Board of Zoning Appeals shall hold a public hearing on the application in accordance with the requirements of Section 154.01. Notice for the public hearing shall be provided in the manner prescribed by 154.01.

D. Action by Board of Zoning Appeals

Within thirty (30) days after the close of the public meeting, 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 within such thirty (30) days, or such further time to which the applicant may agree, shall be deemed to be a decision denying the appeal.

E. Review by Certiorari

Every decision by the Board of Zoning Appeals shall be subject to review by certiorari. Any person aggrieved by a decision of the Board of Zoning Appeals may present to the Circuit Court of Madison County a petition duly verified setting forth that such decision is illegal in whole or in part and specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the entry of the decision or order of the Board of Zoning Appeals.

154.12.05 Right to Grant Variance in Deciding Appeals

In any case where the application for appeal is accompanied by an application for a variance in accordance with Section 154.08, the Board of Zoning Appeals shall notice, hear, decide to grant or deny, such variance in compliance with the provisions of 154.08.

154.12.06 Conditions and Limitations on Rights Granted by Appeal

In any case where this Code imposes conditions and limitations upon any right, any such right granted by the Board of Zoning Appeals on appeal shall be subject to such conditions and limitations in the same manner and to the same extent as if secured without the necessity of an appeal.

154.13. ENFORCEMENT

154.13.01 Authority

The Planning Director or his authorized representatives are hereby designated to enforce this Code.

154.13.02 Complaints Regarding Violations

Whenever the Planning Director receives a complaint alleging a violation of this Code, he shall investigate the complaint and shall take whatever action is warranted in accordance with this Section 154.13.

154.13.03 Persons Liable

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or

maintains any situation that is contrary to the requirements of this Code may be held responsible for the violation, suffer the penalties, and be subject to the remedies herein provided.

154.13.04 Right of Entry

The Planning Director or his authorized representatives pursuant to this Section 154.13, may make inspections of all buildings, structures and premises located within the jurisdiction of this Code to determine their compliance with the provisions of this Code. Such inspections shall be made between the hours of 8:00 AM and 8:00 PM on any day except Sunday. All inspections shall be subject to the following standards and conditions.

- A. An inspection may take place only if a complaint has been received by the Planning Director pursuant to this Section 154.13, and such complaint, in the opinion of the Planning Director provides reasonable grounds for the belief that a violation exists, or such inspection is undertaken as part of a regular inspection program whereby certain areas of the Town are being inspected in their entirety by the direction of the Planning Director.
- B. The Planning Director or his authorized representative shall furnish to the owner, tenant, or occupant of the building, structure, or premises sought to be inspected, sufficient identification and information to enable the owner, tenant, or occupant to determine that the person is a representative of the Town and the purpose of the inspection.
- C. The Planning Director or his authorized representative may apply to any court of competent jurisdiction for a search warrant or other legal process for the purpose of securing entry to any premises if the owner, tenant, or occupant shall refuse to grant entry.

154.13.05 Procedures Upon Discovery of Violations

- A. If the Planning Director finds that any provision of this Code is being violated, he shall provide written notice to the persons responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The notice shall also state what action is available to the Planning Director and that an appeal of his decision may be taken. Additional written notices may be provided at the Planning Director's discretion.
- B. Notwithstanding the foregoing, in cases where delay would seriously threaten the effective enforcement of this Code or pose a danger to the public health, safety, or welfare, the Planning Director may seek enforcement without prior written notice by invoking any penalties or remedies authorized in this Section 154.13.

154.13.06 Penalties and Remedies for Violations

- A. Violations of the provisions of this Code or failure to comply with any of its requirements, including failure to obtain any permits, inspections, or violations of conditions and safeguards established in connection with the grants of variances, conditional uses, planned unit developments shall constitute a common and public nuisance.
- B. Any person, firm, corporation, partnership, limited liability company, agent or any employee or contractor of same who violates any provisions of this Code shall be subject to a fine of not more than two thousand five hundred dollars (\$2,500.00) per day per occurrence as set forth in this Section.

- C. The Planning Department may set forth a schedule of fines or penalties for violations of the Code, which shall become effective upon approval by the Commission, adoption by the Council, and publication as required by law; provided however, such schedule shall not limit the fines imposed by the Plan Commission or the Town Council.
- D. Any person, firm, corporation, partnership, limited liability company, agent or any employee or contractor of same who violates this Code and as received at least one (1) written notice pursuant to Section 154.13.05 may be fined by the Planning Department in accordance with its schedule of fines or penalties.
- E. The Planning Department or the Plan Commission shall not issue any additional approvals, reviews or permits to any person, firm, corporation, partnership, limited liability company, agent or any employee or contractor of same who owes any fees, fines or penalties pursuant to this Code.
- F. In addition, any person convicted of violating this Code shall pay all reasonable costs and expenses related to adjudicating the offense.

154.13.07 Separate Offense

Each day a violation of this Code continues after receipt of a notice of violation pursuant to this Section 154.13 shall be considered a separate offense.

154.13.08 Revocation of Development Approvals

An improvement location permit, certificate of occupancy, building permit, or any other development approval may be revoked by the Planning Director in accordance with this Section 154.13 if the recipient of the approval fails to develop or maintain the property in accordance with the plans submitted, the requirements of this Code, or any additional requirements lawfully imposed in connection with the issuance of the approval. Before a development approval can be revoked, the Planning Director shall undertake the following procedures:

A. Notice and Opportunity to Comment

The Planning Director shall cause a written notice of intent to revoke the development approval to be delivered to the recipient of the approval at least ten (10) working days prior to the date of the proposed revocation. The notice of intent to revoke the approval shall inform the recipient of the alleged reasons for the revocation and of his right to obtain a hearing on the allegations. The notice shall also inform the approval holder of the alleged grounds for the revocation.

B. Hearing

If the development approval holder desires a hearing, the Planning Director shall set a date for a public hearing.

C. The Planning Director Decision

After the expiration of the ten (10) working day notice and comment period, or within ten (10) working days of the close of the public hearing, the Planning Director shall, by written order, render his decision on the proposed revocation. The written order shall contain a statement of the specific reasons and findings of fact that support his decision.

D. Notification of Decision

The Planning Director shall send his decision within five (5) working days to the development approval holder and any other person(s) previously requesting notification.

E. Evidence

The burden of presenting sufficient evidence to the Planning Director to conclude a development approval should be revoked for any of the reasons set forth in this Section 154.13 shall be upon the party proposing the revocation.

F. Result of Revocation

No person may continue to make use of land or buildings in the manner authorized by any development approval after the approval has been revoked in accordance with the provisions of this Section 154.13.

G. Records

A record of all written notices of the intent to revoke a development approval shall be kept on file in the office of the Planning Director in accordance with the Indiana Revised Code. At least once a year, the Planning Director shall make public a listing of his decisions, by address, regarding the written notices of the intent to revoke a development approval.

154.13.09 Appeals

A decision of the Planning Director or his authorized representatives may be appealed to the Board of Zoning Appeals pursuant to Section 154.12 of this Code.

154.13.10 Private Remedies Reserved

Nothing in this Section 154.13 shall be interpreted to prevent any person entitled to relief in law or equity by reason of a violation of the provisions of this Code from bringing an appropriate action to secure relief.