

Chapter 46 - ZONING ^[17]

⁽¹⁷⁾ **Cross reference**— Buildings and building regulations, ch. 10; subdivisions, ch. 30

⁽¹⁷⁾ **State Law reference**— Local planning and zoning, IC 36-7-4-101 et seq.; zoning ordinance, IC 36-7-4-600 et seq. (Back)

ARTICLE I. - IN GENERAL

Sec. 46-1. - Interpretation of chapter by Plan Commission.

In interpreting this chapter, the Plan Commission should be guided by its spirit and not be limited only to technical compliance. Situations should be discouraged where technical compliance is achieved through extreme or contrived designs and interpretations.

Sec. 46-2. - Purposes

The primary objective of this chapter is to preserve the natural beauty of the dunes and wooded lands. Additional objectives shall be that adequate light, air, convenience of access, and safety from fire, flood and other danger may be secured; that congestion in the public street may be lessened or avoided; that in the growth of the Town, provision may be made for adequate highway, utility, health, educational, and recreational facilities; that residential areas provide healthy surroundings for family life; that industry and business be recognized in the possible future growth of the Town; and that the public welfare may be promoted. This chapter is made with reasonable regard to existing conditions, the character of buildings erected in each district, the most desirable use for which the land in each district may be adapted and the conservation of property values throughout the Town.

(Ord. No. 121, art. 2, 12-9-1981)

Sec. 46-3. - Rules.

In the construction of this chapter, the rules and definitions contained in this section and section 46-4 shall be applied, except when the context clearly indicates a contrary intent.

(1) The word "building" includes the word "structure," and the word "used" shall be deemed also to include "designed, intended or arranged to be used."

(2) Unless otherwise specified, all distances shall be measured horizontally.

(Ord. No. 121, art. 3, 12-9-1981)

Sec. 46-4. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Auto wrecking. See "Junkyard."

Average finished ground level or grade shall be calculated in accordance with the following. Additional measurements or alternate methodology may be specified in the pursuit of improved accuracy. When determining finished grade, modifications from existing grade should not be extreme and should not be primarily be designed to alter the grade at the structure in order to achieve compliance. Such "contrived compliance" should be discouraged.

Basement means that portion of a building below the first floor joists, the ceiling of which, measured from the bottom of the joists is, on the average, Four feet or less above the level from which the height of the building is measured. If such height is more than Four feet, the area is a story.

Block means the property abutting One side of a street and lying between the Two nearest intersecting streets, or between the nearest such street and railroad right-of-way, unsubdivided acreage, river, or live stream; or between any of the foregoing and any other barrier to the continuity of development.

Board means the Board of Zoning Appeals established by this chapter.

Building means a structure having a roof supported by walls or columns for the shelter, support, or enclosure of persons, animals or chattels.

Building, accessory, means a subordinate building, the use of which is customarily incidental to that of a principal building on the same lot.

Building line means a line established in general parallel to the front street line. Between these Two lines no part of a building shall project, except as otherwise provided by this chapter.

Building, principal, means a building in which is conducted the principal use of the lot on which it is situated.

Bulk. See "Floor area ratio."

Business district means the B-1 Business District.

Commission means the Dune Acres Town Plan Commission.

Density means the number of families residing on, or dwelling units developed on, an acre of land. As used in this chapter, all densities are stated in families per net acre, that is, per acre of land devoted to residential use, exclusive of land in streets, parks, playgrounds, schoolyards, or other public lands and open spaces.

Dwelling means a building or portion thereof arranged or designed to provide living facilities for one or more families. The term "dwelling" shall not be deemed to include a house trailer, a motel, hotel, or tourist home.

Dwelling, single-family, means a building containing only One dwelling unit.

Dwelling unit means a building or portion thereof providing complete housekeeping facilities for One family.

Family means an individual, or Two or more persons related by blood, marriage, or adoption living together as a single nonprofit housekeeping unit in a dwelling unit; or a group of not more than Three persons, who need not be related by blood, marriage, or adoption, living together as a single, nonprofit housekeeping unit in a dwelling unit; in either case exclusive of usual servants.

Floor area means the sum of the gross horizontal areas of the several floors of a building, measured from the exterior faces of exterior walls, or from the centerline of walls separating Two buildings. It includes nonresidential area such as garages, storage areas, and the portion of basements whose mean floor level is not more than Four feet below grade and attic space providing structural head space of at least Seven feet. Floor area shall include the area of basements when used for commercial or industrial purposes.

Floor area ratio (bulk) means the floor area of the building or buildings on a zoning lot, divided by the area of such zoning lot.

Garage, private, means an accessory building or part of a principal building used for the storage of motor vehicles as an accessory use.

Ground floor area means, and consists of, the area of the primary living space projected to the ground.

Height of building means the vertical distance measured from the average finished ground level adjoining the building if it sets back from the street line to the level of the highest point at the roof beams of flat roofs, or roofs inclining not more than One inch to the foot, and to the mean height level of the top of the main plate and highest ridge for other roofs.

Industrial district means the I-1 Industrial District.

Junkyard means the use of more than Two Hundred square feet of the area of any lot whether inside or outside a building, or the use of any portion of that half of any lot that adjoins any street, for the storage, keeping, or abandonment of junk, including scrap metals, rags, paper or other scrap materials, and equipment, for the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

Lot means, when used alone and unless the context of the chapter clearly indicates otherwise, a "zoning lot" as defined herein.

Lot, corner, means a zoning lot at the junction of and abutting on Two or more intersecting streets when the interior angle of intersection does not exceed One Hundred Thirty-Five degrees. Any zoning lot adjoining a curved street at a point where the street boundary describes an arc subtended by the angle of One Hundred Thirty-Five degrees or less shall be considered a "corner lot."

Lot depth means the mean horizontal distance between the front and rear lot lines,

measured in the general direction of the side lot lines.

Lot line, rear, means the lot line generally opposite or parallel to the front street line. If a rear lot line is less than Ten feet long, or the lot comes to a point at the rear, said rear lot line is assumed to be a line at least Ten feet long, lying wholly within the lot, parallel to the front street line or if the front street line.

Lot width means the mean width of a lot measured at right angles to its depth.

Lot, zoning, means a tract of land occupied or to be occupied by a principal building and its accessory buildings, together with such open spaces and yards as are required under the provisions of this chapter for a zoning lot in the district in which such land is situated, and having its principal frontage on a Town roadway with width of no less than Twenty feet or a permanent, exclusive, nonobstructed easement of access or right-of-way to a Town roadway with width of no less than Twenty feet.

Nonconforming use means the use of a building or other structure or of a tract of land which does not conform to the use regulations of this chapter for the district in which it is located, either at the effective date of the ordinance from which this chapter is derived or as a result of subsequent amendments which may be incorporated into this chapter.

Residential district means the R-1 Residence District.

Residential floor area (used in section 46-124) means floor area as defined above which is used for actual residential purposes (designed and used as living space). It may include areas whose mean floor level is not more than Four feet below grade, provided such areas are designed and used as living space. In such areas, space devoted to storage or to the housing of mechanical or central heating equipment or utilities is not to be counted as residential floor area. In calculating residential floor area, the following are not to be included:

- (1) Attic space providing structural head room of less than Seven feet Six inches;
- (2) Uncovered steps;
- (3) Terraces, breezeways and open porches;
- (4) Automobile parking space in a basement or private garage;
- (5) Accessory off-street loading berths, but not to exceed twice the space required by the provisions of this chapter.

Separate ownership means a lot with no lots adjacent to it held by the same owner. Lots with the same rear lot line and frontage on different roads will not be considered "adjacent" for purposes of this definition.

Sign means any device for visual communication which is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge, or insignia of any government or governmental agency, or of any civic, charitable, religious, patriotic or fraternal or similar organization.

Sign, outdoor advertising, means a sign, including a billboard, which directs attention to a business, commodity, service, entertainment or other activity conducted, sold or offered elsewhere than on the premises upon which the sign is located.

Story means that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it. A basement shall be counted as a story if its ceiling, measured from the bottom of the joists, is more than Four feet above the level from which the height of the building is measured, or if it is used for commercial or industrial purposes, or for a dwelling unit by other than a janitor or security guard.

Street means a public thoroughfare which affords principal means of access to abutting property.

Structural alteration means any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any structural change in the roof.

Structure means anything constructed or erected, which requires location on the ground or is attached to something having a location on the ground; including but not limited to buildings, advertising signs, billboards, and poster panels; but not including customary fences, boundary or retaining walls, or driveways.

Trailer means any vehicle or structure, including but not limited to an automobile trailer and trailer coach, mounted on wheels for use on highways and streets; propelled or drawn by its own or other motor power; and designed and constructed to provide for living or sleeping quarters for One or more persons or for the conduct of a business, profession, trade, or occupation, or use as a selling or advertising device. If wheels of a trailer are removed, except for repairs, it is deemed to be a building subject to all the regulations therefor.

Uses permitted means any use permitted by the regulations of this chapter. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

Yard means an open space on the same zoning lot with a building or group of buildings, which open space lies between the buildings or group of buildings and the nearest lot line and is unoccupied and unobstructed, from the ground upward except as may be specifically provided in this chapter. In measuring a yard, the line of a building shall be deemed to mean a line parallel to the nearest lot line drawn through the point of a building or group of buildings nearest to such lot line, exclusive of such features specified as not to be considered in measuring yard dimensions or as being permitted to extend into a yard, and said measurements shall be taken at right angles from the line of the building to the nearest lot lines.

Yard, front, means a yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the principal building.

Yard, rear, means a yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the principal building.

Yard, side, means a yard between the side line of the lot and the nearest line of the principal building and extending from the front to the rear lot line, respectively.

(Ord. No. 121, § 3.2, 12-9-1981; Ord. No. 2000-2, § 1, 10-10-2000)

Cross reference— Definitions generally, § 1-2

Secs. 46-5 – 46-26 - Reserved

ARTICLE II. - ZONING DISTRICTS

Sec. 46-27. - Establishment of districts.

For the purpose of this chapter, the Town is hereby divided into the following districts, the respective symbol for each district being set forth opposite its title:

Symbo l	Title
PK	Town Park District
R-1	Residential District
I-1	Industrial District
NL	Indiana Dunes National
Lakes hore District	
B-1	Business District

Each such district may be designated on the zoning map referred to in section 46-28 and in the text of this chapter by its symbol only.

(Ord. No. 121, § 4.1, 12-9-1981)

Sec. 46-28. - Establishment of district boundaries; zoning map.

(a) The location and boundaries of the said districts are hereby established:

(1) As shown on a map entitled "Dune Acres Zoning Map" dated December 2, 2005; and

(2) As specified in section 46-29 hereof.

(b) The said map, referred to herein as the "zoning map," together with everything shown thereon, and as now or hereafter amended, is hereby adopted and made a part of this chapter. See [Town Map](#) at the end of the chapter.

(Ord. No. 121, § 4.2, 12-9-1981; Ord. No. 2007-6, § I, 12-18-2007)

Sec. 46-29. - Location of district boundaries on zoning map.

(a) Where a district boundary line is shown on the zoning map as following or approximately following a Town boundary line, a section line, a half section line, a property line, a lot line, or a projection of any One of the same, such boundary shall be deemed to be such line or projection.

(b) Where a district boundary line is shown on the zoning map as following or approximately following a street, public utility right-of-way, or railroad, the boundary shall be deemed to be respectively the centerline of such street, or public utility right-of-way, or a line located midway between the main track of such railroad.

(c) Where a district boundary line is shown on the zoning map as separated from but approximately parallel to any Town boundary line, section line, half section line, property line, or lot line, or the projection of any One of the same; or the centerline of any street, or public utility right-of-way; or a line located midway between the main tracks of any railroad, such district boundary line shall be deemed to be parallel to such line or projection, at such distance therefrom as shown on the zoning map.

(d) Where a dimension is indicated on the zoning map, such dimension shall control. However, in the absence of a dimension being indicated on the zoning map, distances shall be determined by using the map scale.

(e) Questions concerning the exact location of district boundary lines shall be determined by the Plan Commission, which determination may be reviewed on appeal by the Board of Zoning Appeals, in accordance with rules and regulations which may be adopted by the Board and with the provisions of this section.

(f) All areas within the Town which are not indicated on the Zoning map as being included in any district shall be deemed to be included in the R-1 District.

(g) All property annexed to the Town after the effective date of the ordinance from which this chapter is derived shall upon annexation be included in the R-1 district, unless otherwise designated by the Plan Commission.

(h) Although not so shown on the Zoning Map, the entire area of Lake Michigan within the Town shall be deemed to be included in the PK District. All land created by fill in Lake Michigan adjacent to the Town shall be within the Town and assume the zoning district of the area it extends.

(Ord. No. 121, § 4.3, 12-9-1981)

Secs. 46-30 – 46-46 – Reserved

ARTICLE III. - GENERAL REGULATIONS

Sec. 46-47. - Applicability.

Except as may be specifically provided elsewhere in this chapter, the regulations in this article shall apply.

(Ord. No. 121, art. 5, 12-9-1981)

Sec. 46-48. - Scope of controls.

No building or structure shall be erected, converted, moved, reconstructed, structurally altered, or enlarged, nor shall any land, building, or structure be used, designed or arranged for use for any purpose or in any manner not specifically permitted by these regulations in the district in which such land, building, or structure is located.

(Ord. No. 121, § 5.1, 12-9-1981)

Sec. 46-49. - Zoning lot.

Every building erected after the effective date of the ordinance from which this section is derived shall be located on a zoning lot as herein defined; and there shall be no more than One principal building on One such lot. In an Industrial District all contiguous land owned by a single owner and used as part of a planned industrial development, such as a steel plant, shall be deemed a zoning lot and all buildings thereon may, for the purposes hereof, be considered accessory to a principal building or plant located on land outside of but adjoining the Town.

(Ord. No. 121, § 5.2, 12-9-1981)

Sec. 46-50. - Height.

No building or structure shall be erected, reconstructed, enlarged, or structurally altered to exceed the height limit hereafter designated for the district in which such building or structure is located.

(Ord. No. 121, § 5.3, 12-9-1981)

Sec. 46-51. - Area and yards.

(a) No building or structure shall be erected, nor shall any existing building or structure be altered, enlarged, or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner except in conformity with the yard, lot, area, and building location regulations hereinafter designated for the district in which such building or open space is located.

(b) No yard or other open space provided about any building, for the purpose of complying with the provisions of these regulations, shall be considered as a yard or open space for any other building; and no yard or other open space on One lot shall be considered as a yard or open space for a building on any other lot.

(c) All yards required by these regulations shall be open and unobstructed to the sky, except as hereinafter provided.

(Ord. No. 121, § 5.4, 12-9-1981)

Sec. 46-52. - Buildings to be moved.

Any building or structure, which has been wholly or partially erected on any premises, located either within or outside of the Town, shall not be moved to or be placed upon any other premises in the Town until an Improvement Location Permit shall have been secured as provided in section 46-275. Any such building or structure shall fully conform to all the requirements of this chapter applicable in the zoning district within which it is proposed to locate such building or structure.

(Ord. No. 121, § 5.5, 12-9-1981)

Sec. 46-53. - Removal or addition of soil, sand, or other material.

The use of land for the removal or addition of topsoil, sand, gravel, vegetation, or other material from or to such land is not permitted in any district, but this regulation shall not prohibit the normal removal of soil or adding of fill for the construction of an approved building or structure after an Improvement Location Permit and a building permit for such building or structure have been issued as required by this chapter, nor shall this regulation prohibit the removal of soil as required to construct drainage ditches. This regulation is not intended to prohibit the use of fill to raise the elevation of land in the industrial and business districts.

(Ord. No. 121, § 5.6, 12-9-1981)

Sec. 46-54. - Time of construction of accessory buildings.

No accessory building or structure shall be occupied or used prior to the construction of the principal building to which it is accessory.

(Ord. No. 121, § 5.7, 12-9-1981)

Sec. 46-55. - Disqualification of member.

A member of the Plan Commission or of the Town Council may not participate in a hearing or decision of that Commission concerning a zoning matter in which the member has a direct or indirect financial interest. The Commission shall enter in its records the fact that its member has such a disqualification.

(Ord. No. 121, § 5.8, 12-9-1981)

Sec. 46-56. - Underground utilities and changes to existing service.

(a) All utilities for new construction and exterior changes to existing utility service shall be placed underground including gas and oil tanks and their service lines.

(b) All utility service upgrades shall have the utility lines buried under the ground in conformance with the standards of the National Electrical Code or other applicable national standards pertaining to that utility.

(Ord. No. 118, § 205, 10-31-1978; Ord. No. 121, § 5.9, 12-9-1981)

Sec. 46-57. - Interpretation of regulations; abrogation and greater restriction.

(a) *Minimum requirements.* In their interpretation and application, the regulations of this chapter shall be considered to be minimum provisions necessary to carry out the purposes of this chapter.

(b) *Other ordinances and private agreements.* Except as otherwise specifically provided, this chapter is not intended to interfere with, abrogate, or annul any other ordinance, regulation, or other provision of law, or any easement, covenant, or other private agreement or legal relationship; provided, however, that whenever this chapter imposes restrictions on use or bulk different from those imposed by comparable provisions of any other statute, ordinance, regulation, or other provision of law, whichever provisions are more restrictive, or impose higher standards, shall control; and provided that whenever this chapter imposes greater restrictions on use or bulk than any easement, covenant, or other private agreement or legal relationship, this chapter shall control.

(Ord. No. 121, § 5.10, 12-9-1981)

Secs. 46-58 – 46-86 – Reserved

ARTICLE IV. - SITE PLANNING

Sec. 46-87. - Review of architectural and landscaping plans.

(a) A permit for the erection or structural alteration of any structure or building shall not be issued until the architectural plans for such building or structure and the landscaping plans for the premises on which it is to be located are submitted to the Plan Commission for review and said Commission has approved such plans. In addition to architectural plans, plot plans and planting plans, the materials submitted shall include front elevations of all structures plus elevations or perspective drawing of proposed structures and of existing structures which may be affected by the proposed construction. In reviewing the plans, the Plan Commission shall take into consideration, among other things, the appropriateness of the architecture to the district and particularly of the design of structures in the immediate vicinity. In general, the architectural design shall avoid the bizarre or the simulation of nonarchitectural object, but it need not be limited to a single type or architectural style. The landscaping of a lot shall blend with the landscaping on adjacent lots. The Plan Commission shall have the right to require a building setback greater than the minimum required by this section where such greater setback is necessary to produce a harmonious development of the district.

(b) The Plan Commission may obtain a review of all plans by an advisory committee, One member of which must be an architect and may require that plans be changed to comply with the recommendation of the reviewing body, provided that such changes will not violate any of the provisions of this chapter. Such a review may be particularly necessary for construction involving small lots, elevated sites, high structures, and for plans for major changes in contour lines which might adversely affect the neighboring owner.

(c) A permit for the erection or structural alteration of any structure or building requiring the installation of a private sewage disposal system shall be issued and valid only upon the furnishing of a true copy of a permit from the state or Porter County Health Department approving the design, location, installation and operation of a private septic disposal system.

(Ord. No. 121, § 6.15, 12-9-1981; Ord. No. 90-3, § 1, 7-28-1990)

Sec. 46-88. - Request for issuance of permit; waiving of requirements.

(a) Prior to the request for the issuance of an Improvement Location Permit as required in section 46-275, an applicant shall schedule and meet with the Building Commissioner or their designee and a member of the Plan Commission for the purpose of familiarizing the applicant with the provisions of the Town zoning and building chapters, the provisions of sections 46-88—46-91, and to discuss siting the improvements so as to minimize the destruction of or intrusion into the natural features of the site.

(b) Any applicant who proposes improvement to any site of a cost of less than Fifty Thousand dollars (\$50,000.00) may, at the time of the application, request that the Plan Commission waive the requirements of sections 46-88—46-91. The Plan Commission may in the event of such request waive the requirements of sections 46-88—46-91 by

majority vote, if they believe that the proposed improvements to the site do not pose a substantial alteration of the topography or of the natural features of the site.

(Ord. No. 2000-1, § I, 7-11-2000)

Sec. 46-89. - Site inspection before issuance of permit.

Except as provided herein, prior to the issuance of an Improvement Location Permit as provided in section 46-275, the following shall take place:

- (1) The owner shall stake and tape the boundaries of any proposed improvement on the site. In addition, at least One stake shall be placed at or closely approximate to the boundary of the improvements closest to the road access to the site designating the base floor elevation as defined in this chapter.
- (2) The owner shall submit to the Plan Commission the following documents:
 - a. A topographical survey at Two-foot intervals in elevation of the whole site showing the following:
 1. The existing elevations of the site.
 2. The proposed elevations of the site once the improvements have been placed thereon and the finished grade is established.
 3. The proposed location of the improvements.
 4. The trees proposed to be removed with a diameter of Four and One-half inches or greater at Four feet above existing grade, so that the Commission may make an informed decision regarding removal of trees under section 46-275(a).
 - b. A drawing of the cross-section of the proposed driveway construction used to gain access to the site at Ten-foot intervals showing the proposed fill, cuts, and retaining walls.
 - c. A narrative of the proposed methods of retaining sand and other excavated materials on site which narrative shall identify the approximate number of yards to be so stored. The narrative shall also identify the amount in cubic yards of sand or other excavated materials to be removed from the site. The sand removed from the site shall be retained within the Town. The owner shall identify the proposed methods of retaining the sand and other excavated materials on the site to which such material is removed.
 - d. A written rendition of the accommodations the owner proposes to insure that the improvements will minimize the loss of any natural features of the property such as dunes, trees, and ground cover like Pennsylvania sedge.
 - e. The written documentation of how and to what extent the owner will reintroduce or replace trees or ground cover to help restabilize the site following construction.
 - f. A written documentation of the method or methods the owner proposes to employ to:

1. Prevent erosion immediately after excavation of the site and during the construction period;
2. Restore disrupted areas; and
3. Provide adequate surface runoff in order to prevent increased runoff on surrounding property.

(3) The Plan Commission shall inspect the site with the owner, the owner's contractor, and architect within Ten days following the submission of the documents set forth in subsection (2) of this section. Unless other arrangements are agreed upon between the owner and Plan Commission, the inspection shall take place at 9:00 a.m. on the last Saturday within the Ten-day period following document submission.

(Ord. No. 2000-1, § II, 7-11-2000)

Sec. 46-90. - Compliance with standards.

Owners shall receive an Improvement Location Permit for the construction of improvements proposed in the information furnished to the Plan Commission set forth in section 46-89(2)a—f, if such information shows that the proposed improvements will be constructed in a manner that complies with the following standards:

- (1) The location and size of all improvements comply with the standards set forth in the ordinances of the Town.
- (2) No more than Seventy percent of the site is disturbed for access, improvement location, septic field installation, and lawn before any mitigation steps are taken and no more than Thirty-Five percent of the site is so disturbed after mitigation is completed. All mitigation shall take place within Six months of the issuance of an occupancy permit. Such mitigation shall include, but is not limited to replacing or reintroducing trees, dune grass, ground cover or other plantings indigenous to the Town.
- (3) Such information provides for the excavated materials on the site with no erosion or run off onto surrounding property and/or provides for the prompt removal for some or all excavated material to another site and that such removed material when placed in the Town will not run off onto the surrounding owners' property.
- (4) Such information provides for unsupported slopes not to exceed the natural repose of sand and all supported slopes to be of a sufficient type and quality of material to properly retain slopes exceeding the natural repose of sand without expected replacement for not less than Fifty years.
- (5) Such information provides that no more than Twenty-five percent of the height or Ten percent of the volume of any dune above street grade may be lost by redistribution of material within the site or removal of material from the site. These measurements shall be determined by using the average street level of any street or streets adjacent to the site and the height shall be measured to the highest point of land of the site. This provision shall not affect sites which are not at least Ten feet above the average street level adjacent to the site.

(6) Except for sites with frontage on Lake Michigan, the number of trees with a diameter of Two inches at Four feet above ground level shall not average less than One tree for every Two Thousand square feet of site for sites of Twenty-one Thousand square feet or less, and Fifteen Hundred square feet of site for sites of greater than Twenty-One Thousand square feet. Sites with frontage on Lake Michigan shall have One such tree for each Five Thousand square feet of site.

(7) That reasonable provisions have been made for excavated ground cover to be preserved during the construction and utilized on the site to stabilize disturbed soils following establishment of final grade. Any ground cover not so utilized shall be made available to stabilize any other exposed or eroding dune area in the Town as directed by the Building Commissioner.

(Ord. No. 2000-1, § III, 7-11-2000)

Sec. 46-91. - Permit approved by Town Council.

(a) In the event that the applicant's site plan and documents do not comply with the requirements set forth in section 46-90, the Plan Commission may still approve the site plan and issue a Improvement Location Permit if the Plan Commission, by a majority vote, determines that the owner has utilized best efforts to comply with the requirements aforesaid, but because of unusual circumstances the economic utilization of the site cannot be achieved by complying with those requirements. The approval or disapproval of the site plan shall be made by the Plan Commission at its next regular meeting following the site inspection unless by mutual agreement with the owner such action is deferred to a date and time certain.

(b) If the site plan is not approved by the Plan Commission, the Commission shall indicate in writing the specific reasons for the nonapproval. Such writing shall be delivered to the owner. The owner may always request a variance of any requirement before the Board of Zoning Appeals for the Town.

(c) If the site plan is approved, the owner shall be bound to perform in accordance with the submissions by the owner set forth in section 46-89. To bind the owner to comply with those submissions prior to the issuance of the Improvement Location Permit, the owner shall post with the Clerk-Treasurer of the Town a performance bond, cash, or letter of credit approved by the Town Attorney guaranteeing compliance with the site plan and other submissions made by the owner. The amount of the performance bond, cash, or letter of credit shall be the lesser of Ten percent of the estimated cost of all improvements proposed or Seventy-Five Hundred dollars (\$7,500.00).

(d) The performance bond, cash, or letter of credit shall be released by the Building Commissioner for the Town upon inspection of the site after all improvements have been made thereon as proposed by the owner and the owner has performed in accordance with the submission set forth in section 46-89. If Six months from the issuance of the occupancy permit the Building Commissioner does not believe that the owner has substantially complied in all material respects with the submission made to the Plan Commission under the above, then the Building Commissioner shall give the owner notice of the default and a Sixty-day opportunity to cure the default so noted by the Building Commissioner. The Building Commissioner may cause a forfeit of the performance bond, cash or letter of credit and may cause any part or all to be retained by the Town, if the owner does not cure the reason for the default within the Sixty-day

notice period. The owner shall have the right to appeal the decision of the Building Commissioner to the Board of Zoning Appeals.

(Ord. No. 2000-1, § IV, 7-11-2000)

Secs. 46-92 – 46-110 – Reserved

ARTICLE V. - RESIDENCE DISTRICT

Sec. 46-111. - Applicability.

In the R-1 Residence District, the regulations in this article shall apply.

(Ord. No. 121, art. 6, 12-9-1981)

Sec. 46-112. - General description.

The R-1 Residence District is established as a district in which the principal use of land is for single-family dwellings. In expansion of the purposes of this chapter, these regulations for the R-1 Residence District are specifically intended to:

- (1) Encourage the construction of, and the continued use of land for single-family detached dwellings;
- (2) Prohibit commercial and industrial use of land and prohibit any other use that would substantially interfere with development or continuation of single-family detached dwellings in this district;
- (3) Discourage existing uses that would not be permitted as new uses under the provisions of this article;
- (4) Discourage any use that would generate traffic on minor streets other than normal traffic to serve residences on those streets;
- (5) Discourage any use that because of its character or size would create requirements and costs for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for single-family dwellings.

(Ord. No. 121, § 6.1, 12-9-1981)

Sec. 46-113. - Uses permitted.

The following uses are permitted in this district:

- (1) Single-family detached dwellings, each of which shall be occupied by no more than One family. Change of occupancy from One family to another may not occur more often than every Thirty days, with no more than Four changes from One family to another in any calendar year.
- (2) Community centers, libraries, museums, parks, playgrounds, athletic fields and swimming pools, fire stations, government office buildings; provided that such uses shall be permitted only if carried on, or authorized by the government of the Town.
- (3) Incidental uses, as specified in section 46-114

(Ord. No. 121, § 6.2, 12-9-1981)

Sec. 46-114. - Incidental uses.

In addition to the principal uses listed, it is the intent of this section to permit the following uses customarily incidental to such principal uses; any of the following uses is permitted on the same lot with the principal use to which it is incidental:

(1) *Accessory uses.*

a. . Private garage and boathouse the capacity of which shall not exceed Three cars and/or Two boats. No off-street parking space incidental to a dwelling may be used to store for a period exceeding Two weeks a:

- i. Junked/unlicensed vehicle.
- ii. Truck over a One and One-half ton rating.
- iii. Motor homes.
- iv. Recreational vehicle.
- v. Camper.
- vi. Utility trailer.
- vii. Boat trailer with or without boats.

2. The Plan Commission reserves the right to prohibit additional items that arise from residents' complaints.

b. Private greenhouse, vegetable, fruit, or flower garden, from which no products are sold or offered for sale on the premises.

c. Children's playhouse or playground equipment.

d. Shed, tool room for storage of equipment used in grounds or building maintenance or home occupation, but not including stable, chicken house or other building to house agriculture livestock.

e. Shelter for customary domestic pets, but not including horses, poultry, or agricultural livestock, and not more than Three dogs or cats that are Four months of age or older.

f. Private swimming pool and bathhouse.

g. Statuary, trellises, barbecue stove or similar ornamental or landscaping features.

(2) *Home occupations.*

a. There is permitted in a dwelling any occupation customarily incidental to the principal use as a dwelling, subject to the following limitations:

- 1. No person other than Two members of the immediate family occupying such dwelling is employed;

2. No stock in trade is openly displayed or sold outside the residence;
3. No alteration of the principal building changes the character thereof as a dwelling;
4. No sign is displayed;
5. No more than Twenty percent of the area of One story of the building is devoted to the home occupation;
6. The activity generated does not interfere with the neighbors' peaceful enjoyment of their property, and does not change the residential character of the community;
7. The activity does not generate traffic or parking in excess of driveway capacity.

b. The following are examples of customary home occupations, provided however, that any such occupation shall be subject to all the foregoing limitations imposed on home occupations and shall also be subject to any limitation specifically imposed herein on such occupation:

1. Dressmaker, seamstress, tailor.
2. Music teacher, provided not more than Four pupils shall receive instruction and/or practice on any musical instrument at any One time.
3. Artist, sculptor.
4. Author.
5. Treatment of patients by physician, dentist, or licensed drugless physician, provided such treatments shall be given only in emergencies.
6. Consultation with clients by lawyer, architect, engineer, and similar professions, provided such consultations shall take place only in emergencies.
7. Minister, rabbi, priest.

(3) *Signs.* The following signs incidental to a principal use permitted in this district are permitted, provided such signs shall be nonmoving and nonflashing, and any source of illumination, when permitted, shall not be exposed:

- a. For each single-family detached dwelling One nonilluminated nameplate, not exceeding One square foot in area, giving only the name of the occupant and/or the house. On a lot having frontage on more than One street, a single-family residence may have One such nameplate facing each such street.
- b. Signs established by, or in accordance with the requirements of, the Town.

(Ord. No. 121, § 6.3, 12-9-1981)

Sec. 46-115. - Lot area and width.

Each single-family detached dwelling hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than Seventeen Thousand square feet and a width of not less than One Hundred Twenty feet; provided, however, that on a lot that:

- (1) Has an area of not less than Twelve Thousand square feet and a width of not less than Eighty feet;
- (2) Corresponds to a record lot shown on a plat or deed recorded prior to October 1, 1960;
- (3) Was held in separate ownership on October 1, 1960; or
- (4) A lot and fraction thereof that:
 - a. Is not less than One Hundred feet wide and has an area of not less than Fifteen Thousand square feet; and
 - b. Was held in separate ownership on April 14, 1969;

a single-family detached dwelling may be erected, provided that all other requirements of this section are met. Each permitted building or structure other than a single-family detached dwelling, together with accessory buildings, shall be located on a lot having an area of not less than Forty Thousand square feet and a width of not less than Two Hundred feet.

(Ord. No. 121, § 6.4, 12-9-1981)

Sec. 46-116. - Floor area ratio.

The combined floor area ratio of the principal building and all accessory buildings shall not exceed Two-tenths (0.20).

(Ord. No. 121, § 6.5, 12-9-1981)

Sec. 46-117. - Front yard.

Each lot shall have a front yard not less than Twenty-five feet between the house and the edge of the paved road or the edge of the road right-of-way, whichever is closer.

(Ord. No. 121, § 6.6, 12-9-1981)

Sec. 46-118. - Side yards.

Each lot shall have Two side yards, One on each side of the principal building.

- (1) *Lots having a width of One Hundred Twenty feet or more.* On lots having a width of One Hundred Twenty feet or more, the side yards shall total not less than Fifty feet with each side yard no less than Fifteen percent of the total width of the lot.
- (2) *Lots having a width of One Hundred feet to One Hundred Twenty feet.* On lots having a width of One Hundred to One Hundred Twenty feet, the sum of the widths

of the Two side yards shall be not less than Thirty-five feet, nor shall the width of any side yard be less than Fifteen percent of the width of the lot, nor shall the width of the side yard on the street side of a corner lot be less than Twenty-five feet from any structure to the edge of the road or road right-of-way.

(3) *Lots less than One Hundred feet wide.* On lots having a width of less than One Hundred feet, the sum of the widths of the Two side yards shall not be less than Thirty-five percent of the width of the lot, nor shall any side yard be less than Ten feet wide, nor shall the width of the side yard on the street side of a corner lot be less than Twenty-five feet.

(Ord. No. 121, § 6.7, 12-9-1981)

Sec. 46-119. - Rear yard.

Each lot shall have a rear yard not less than Thirty-five feet in depth.

(Ord. No. 121, § 6.8, 12-9-1981)

Sec. 46-120. - Height limits.

No principal building shall exceed Two and One-half stories, nor shall it exceed Thirty feet in height. No building or structure accessory to a single-family detached residence shall exceed One story, nor shall it exceed Twenty feet in height; and no building or structure accessory to any use other than a single-family detached residence shall exceed Two stories, nor shall it exceed Twenty-five feet in height.

(Ord. No. 121, § 6.9, 12-9-1981)

Sec. 46-121. - Location and construction of individual private wells.

(a) Individual private wells shall be located at least Twenty-five feet from property lines; Fifty feet from all septic tanks; approximately One Hundred feet from all disposal fields and other sewer lines; Thirty feet from any vitrified tile sewer lines; and shall not be located within any floodplain.

(b) All abandoned wells shall be sealed in a manner that will render them watertight.

(Ord. No. 121, § 6.10, 12-9-1981)

Sec. 46-122. - Suitability of the land.

Land with an elevation less than Four feet above the highest ground water level is deemed unsuitable for residential building; provided, however, that land with an elevation of between Two and Four feet above such highest ground water level may comprise not more than Ten per cent of the minimum lot area of a residential lot.

(Ord. No. 121, § 6.11, 12-9-1981)

Sec. 46-123. - Off-street parking.

See section 46-156 et seq.

(Ord. No. 121, § 6.12, 12-9-1981)

Sec. 46-124. - Minimum residential floor area.

Every dwelling unit shall contain not less than One Thousand square feet of ground floor residential area, and not less than Fifteen Hundred square feet of total residential area.

(Ord. No. 121, § 6.13, 12-9-1981)

Sec. 46-125. - Septic tanks.

Septic tanks and disposal fields shall be located and installed in accordance with the laws of the state and the county.

(Ord. No. 121, § 6.14, 12-9-1981)

Secs. 46-126 – 46-134 – Reserved

ARTICLE VI. - SUPPLEMENTARY AND INTERPRETATIVE PROVISIONS FOR RESIDENTIAL DISTRICTS

Sec. 46-135. - Yard requirements.

Except as may be otherwise specifically provided in this chapter, the regulations in this chapter shall be subject to the following supplementary provisions and interpretations:

(1) *Accessory buildings in required side and rear yards.* A building accessory to a single-family dwelling may be located in any required side or required rear yard, other than the required side yard on the street side of a corner lot; provided that:

1. Such building does not exceed Twelve feet in height;
2. It is set back from any lot line at least Two-thirds of its height; and
3. The floor area of all such buildings on the lot does not exceed Fifteen percent of the area of the lot.

Accessory buildings constructed at the same time may be located in pairs or groups in the required rear yard along the common side or rear lot line. Any building having any part or any wall in common with a dwelling or being attached to a dwelling by a breezeway or roofed passageway shall be considered a part of such dwelling and shall not be considered an accessory building.

(2) *Bay windows.* Bay windows, including their cornices and eaves, may project into any required yard not more than Two feet, provided, however, that the sum of the lengths of any such projections on any One wall does not exceed One-fourth of the length of such wall.

(3) *Chimneys.* Chimneys may extend into any required yard not more than Two feet.

(4) *Corner and through lots.* Any building or structure located on a lot having frontage on Two or more streets shall be located so as to comply with the regulations governing front yards on each such street; provided, however, that any provision specifically controlling yards on corner lots within a particular district shall control.

(5) *Porches and decks.* No porch or deck, whether enclosed or unenclosed, shall project into any required yard; provided, however, that the roof over entrance doorways may extend not more than Three feet into any required yard.

(6) *Projecting architectural features.* Eaves, windowsills, cornices and other architectural features may project into any required yard, provided, however, that such features shall not project more than One foot into any required yard.

(7) *Swimming pools.* A private swimming pool accessory to a single-family dwelling, and may be located in a required side or rear yard, provided, however, that no part of such pool shall be nearer than Twenty feet to any property line, and

that such pool conforms to this Code.

(8) *Terraces and patios.* A surfaced terrace or patio of no more than an average height of Twelve inches above ground may project into any yard and shall not be considered in determination of yard size or lot coverage, provided, however, that such terrace or patio is unroofed and without walls, parapets, or any form of enclosure other than an open guard railing not over Three feet high, and provided further that such terrace or patio shall not project into any yard to a point closer than Eight feet to any lot line.

(9) *Walls and fences.* The building line and yard requirements of these regulations shall not apply to retaining walls or other walls or fences not over Five feet high; except that on a corner lot there shall be no fence, wall structure, shrubbery, planting, or other obstruction to vision having a height greater than Three feet above the curb level for a distance of Twenty-five feet from the intersection of the front and side street lines.

(Ord. No. 121, § 10.1(2)(a)—(d), (f), (g), (i)—(k), 12-9-1981; Ord. of 9-14-1988)

Sec. 46-136. - Determining average finished grade.

Average finished grade shall be calculated as follows:

(1) Generate a scaled drawing including the building foundation, existing topography, and proposed topography for the site. Contour lines must be at Two-foot intervals or less.

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Finished Grade

(2) Place spot elevations at Ten-foot intervals along the building footprint. Spot elevations will also be taken at each corner. Spot elevations will use the finished grade topography.

(3) Add all of the spot elevations together, then divided by the total number of spot elevations taken along the building footprint.

Calculations for Average Finished Grade:

<u>Sum of node elevations</u>	=	$\frac{A+B}{+C...}$ $\frac{R+S}{+T}$	=	Average Finished
Number of nodes		20		Grade

The overall finished grade can be compared to the basement floor elevation and the

bottom of joist elevation. This can also be used to determine the maximum allowable height of the house.

(Ord. No. 2007-6, § I, 12-18-2007)

Secs. 46-137 – 46-145 – Reserved

ARTICLE VII. - NONCONFORMING USES

Sec. 46-146. - Generally.

(a) Except as may be otherwise specifically provided in this chapter, the regulations in this chapter shall be subject to the supplementary provisions and interpretations in this section.

(b) Any use of any land, building, or structure, if such use existed lawfully on the effective date of the ordinance from which this chapter is derived; and if such use is located in a district in which it would not be permitted as a new use under the regulations of this chapter, is declared to be a nonconforming use and not in violation of this chapter at the effective date of the ordinance from which this chapter is derived; provided, however, that a nonconforming use shall be subject to, and the owner shall comply with, the following regulations:

(1) *Continuance.* Except as otherwise specifically provided in this section, any legal nonconforming use may be continued.

(2) *Extension of nonconforming uses.* A nonconforming use shall not be extended or enlarged. Such prohibited extension or enlargement shall include, without being limited to, the following:

a. If any portion of such nonconforming use is in a building:

1. The nonconforming part of a building or structure may not be expanded or enlarged.

2. Extension of such use to any area or building outside such building;

3. Extension of such use within such building to any portion of the floor area not previously used for such nonconforming use; provided, however, that such use may be extended throughout any part of such building that was manifestly designed for such use on the effective date of the ordinance from which this section is derived.

b. If any portion of such nonconforming use is not in a building, the use of any additional land on which no substantial operations were conducted at the effective date of the ordinance from which this section is derived.

(3) *Repair and alteration of nonconforming uses.* Normal maintenance and repair and incidental alteration in a building or structure occupied by a nonconforming use is permitted if it does not extend such use. Specifically the nonconforming part(s) of a building or structure shall not be structurally altered or enlarged; provided, however, that nothing in this section shall be deemed to prevent the strengthening or repair of a building (other than a damaged building that comes within the provisions of subsection (b)(4) of this section), if such strengthening or repair is necessary to restore the building to a safe condition or to improve sanitary conditions within the building.

(4) *Damage or destruction of nonconforming uses.* If any building or structure in

which there is a nonconforming use is damaged to the extent of Fifty percent or more of its real value, it shall not thereafter be used or reconstructed to be used for any use except One complying with the provisions of this chapter for the district in which it is located.

(5) *Moving building containing nonconforming use.* Any building or structure in which there is a nonconforming use shall not be moved unless it is moved to a district in which the use for which the building or structure was designed is permitted by this chapter. Moreover, if any building or structure in which there is a nonconforming use is moved any distance whatsoever, such building or structure shall thereafter be used only in compliance with the provisions of this chapter for the district in which it is located.

(6) *Change of nonconforming use.* A nonconforming use shall not be changed to any other use except One that would be permitted as a new use in the district in which such use is located.

(7) *Discontinuance of nonconforming use.* If active operations are not carried on with respect to a nonconforming use during a continuous period of Six months, the building, structure or land where such use previously existed shall thereafter be occupied and used only for a use that would be permitted as a new use in the district in which such building, structure or land is located. Intent to resume active operations shall not affect the foregoing.

(Ord. No. 121, § 10.2, 12-9-1981; Ord. No. 2007-6, § I, 12-18-2007)

Secs. 46-147 – 46-155 – Reserved

ARTICLE VIII. - OFF-STREET PARKING AND LOADING ^[18]

⁽¹⁸⁾ **Cross reference**— Traffic and vehicles, ch. 34

Sec. 46-156. - Generally.

(a) *Intent.* Except as may be otherwise specifically provided in this chapter, the regulations in this chapter shall be subject to the supplementary provisions and interpretations in this section. It is the intent of this section to require that all buildings, structures, and uses of land be provided with a sufficient number of off-street parking spaces to meet the needs of persons employed at or making use of such buildings, structures, or land uses, as well as sufficient off-street loading and unloading spaces to meet the needs of such buildings, structures, and land uses.

(b) *Plan of required parking and loading areas.* No application for any Improvement Location Permit in any district shall be approved unless it is accompanied by a plot plan showing the open area designated as being reserved for off-street parking and loading, as well as the arrangement of such spaces within such area; provided, however, that this requirement may be waived if the Plan Commission determines that the proposed construction, enlargement, or structural alteration manifestly does not require any additional off-street parking or loading spaces.

(c) *Improvement Location Permit and certificate of occupancy.* No Improvement Location Permit shall be issued unless the area and arrangement of off-street parking and loading spaces, as shown on the plan accompanying application for such permit, comply with all requirements of this chapter. No certificate of occupancy shall be issued unless off-street parking and loading spaces, as required by this chapter and as indicated on any such plan previously approved, have been provided.

(d) *Requirements applicable to both parking and loading facilities.* In addition to other requirements of this chapter, off-street parking and loading spaces shall be provided in accordance with the following requirements:

(1) *Access near street corners.* No entrance to or exit from any off-street parking area with Ten or more spaces or any off-street loading space shall be located within Fifty feet of the intersection of any Two street lines.

(2) *Screening and floodlighting.* Any part of any off-street parking area with Ten or more spaces, and any loading berth, located in or within Fifty feet of any R-1 or PK district, shall be screened by a wall or planting from all properties within such R-1 or PK district, including those, if any, across a street. If floodlighting is used, it shall be arranged so as to eliminate any glare of lights toward nearby property in an R-1 district.

(3) *Fractional measurements.* When application of requirements for off-street parking or loading spaces results, in a particular case, in the requirement of a fractional space, any fraction up to and including One-fourth shall be disregarded, and any fraction over One-fourth shall be considered to require One additional space.

(4) *Continuing character of obligation.* The provision of off-street parking and loading spaces as required by this chapter shall be a continuing obligation so long as the use to which such spaces are accessory shall continue. It shall be a violation of this chapter to reduce or cause the reduction of the number of spaces below the minimum required by this chapter, and it shall be a violation of this chapter to continue such use after any such reduction shall have taken place.

(5) *Change of use or enlargement of structure.* When the intensity of use of any building, structure, or land shall be increased through addition of floor area, seating capacity, employees, or other units of measurement specified herein for required parking or loading facilities, such facilities shall be provided for such more intense use. Moreover, no Improvement Location Permit or certificate of occupancy, where required for such change of intensity, shall be issued unless such facilities are, respectively, arranged for and provided. If the use of any building, structure, or land shall be changed to a new use, parking and loading facilities shall be provided as required for such new use, and no certificate of occupancy for such changed use shall be issued unless such facilities are provided.

(6) *Joint facilities.* Nothing in this section shall be construed to prevent the joint use of off-street parking or off-street loading spaces for Two or more uses if the total of such spaces when used together is not less than the sum of the requirements for the various uses, computed separately in accordance with the requirements of this section.

(7) *Mixed uses.* In the case of mixed uses, the total requirements for off-street parking and loading space shall be the sum of the requirements of the various uses computed separately in accordance with the requirements of this section, and no part of the off-street parking or loading area required for any use shall be included as a part of an off-street parking or loading area similarly required for any other use or uses, unless the Board of Zoning Appeals determines that One or more of such uses will be generating a demand for parking spaces primarily during periods when the other use or uses is not or are not in operation, in which case the Board may reduce the total parking spaces required by not more than Fifty percent of the parking spaces required for that use with the least requirement.

(8) *Location in yards.* No off-street parking or loading area except for a driveway, not to exceed Twenty feet in width, shall be located within any required front yard, nor within any required side yard on the street side of a corner lot.

(e) *Off-street parking requirements.* Except as may be otherwise specifically provided in this section, off-street parking spaces, open or enclosed, shall be provided for any use in accordance with the following requirements:

(1) *Areas counted as parking spaces.* Areas which may be counted as open or enclosed off-street parking spaces include any private garage, carport, or other area available for parking, other than a street or a driveway, except that a driveway within a required front yard for a single-family residence may count as required parking spaces.

(2) *Location and ownership of required accessory parking areas.* The off-street parking facilities required by this section shall be on the same lot or parcel of land as the use to which they are accessory, provided, however, that if the Board of

Zoning Appeals shall determine that practical difficulties prevent the establishment of such facilities upon the same lot or parcel, such facilities may be provided on another lot or parcel if such facilities will nevertheless lie within Four Hundred feet of such use. In all cases, such parking spaces shall conform to the regulations of the district in which they are located; and in no event shall such parking spaces be in the R-1 or Park districts, unless the uses to which such spaces are accessory are permitted in such district. Such spaces located on another lot or parcel of land shall be in the same ownership as the property occupied by the use to which such spaces are accessory, and the owner shall be bound by deed restrictions filed of record in the office of the recorder binding the owners and their heirs and assigns to maintain the required number of spaces so long as the use to which such spaces are accessory shall continue.

(3) *Access to required spaces.* Unobstructed access from a street to required spaces shall be provided. Such access shall consist of at least One Nine-foot lane for parking areas with Five spaces or less, at least One Ten-foot lane for parking areas within from Six to Twenty spaces, and at least Two Ten-foot lanes for parking areas with over Twenty spaces.

(4) *Size of required spaces.* In order to provide room for standing area and for maneuvering, Three Hundred square feet of land area shall be included in a parking area for each required parking space. Such area shall be in addition to any entrance and exit roadways (except in the case of single-family residences, as provided in subsection (e)(1) of this section.

(5) *Drainage and surfacing.* All open parking areas shall be properly drained and all such areas shall be provided with a well-maintained, dustless surface except those accessory to a single-family residence.

(6) *Number of spaces required.* The number of off-street parking spaces for any use, shall be as provided in the following list:

<i>Use</i>	<i>At Least One Parking Space for Each</i>
Residence	One-fourth dwelling unit
Church, public building, library, community and recreational building, place of public assembly	Two Hundred square feet of floor area, but not less than One space for each Five seats, where provided
Retail sales establishment personal or household service establishments	One Hundred square feet of floor space devoted to such use
Office building, bank, governmental building	Two Hundred square feet of floor space devoted to such use
Medical or dental office or clinic	Two employees other than doctors or dentists, plus Five spaces for each doctor or dentist
Theater, restaurant, soda fountain	Two seats
In the B-1 District, any use not included in this list	One Hundred square feet of floor space devoted to such use
Wholesale, manufacturing, and industrial plants	Two employees, plus adequate space to park all company-owned or leased vehicles, including

	automobiles, trucks, tractors, trailers, and similar vehicles
Terminal facilities, such as railroad stations	Two employees, plus adequate space to park all owned, leased, or operated vehicles, plus adequate space to serve the public as patrons and visitors, as determined by the Board of Zoning Appeals
Schools	Two staff members or employees, plus One space for each classroom, plus additional spaces that may be required for any place of public assembly.

(7) *Uses not mentioned.* If the number of spaces required for any permitted use is not listed in this section, spaces shall be provided for such use in accordance with the requirement for the most similar listed use. The Secretary of the Plan Commission shall have authority to determine the requirement applicable to any such use, subject to review, on appeal, by the Board of Zoning Appeals.

(f) *Off-street loading requirements.* Except as may be otherwise specifically provided in this section, off-street loading spaces shall be provided for any use in accordance with the following requirements:

(1) *Location of required accessory loading spaces.* Off-street loading facilities required by this section shall in all cases be on the same lot or parcel of land as the use to which such spaces are accessory. In no case shall the required off-street loading spaces be part of the area used to satisfy the off-street parking requirements of this section.

(2) *Access to required spaces.* Unobstructed access, at least Ten feet wide, to and from a street shall be provided. Such access may be combined with access to parking facilities. Such access shall be so arranged that it will not be necessary for trucks or trailers-trailers to back into or out of any street.

(3) *Size of required spaces.* For each off-street loading space required, a space free and clear of all obstruction, at least Ten feet wide, Fifty feet long, and Fourteen feet high, shall be provided.

(4) *Number of spaces required.* The number of off-street loading spaces required for a use shall be as provided in the regulations for the zoning district in which such use may be located.

(5) *Uses not mentioned.* If the number of off-street loading spaces required for a permitted use is not specified in the regulation for the zoning district in which such use may be located, and if such use is similar to One or more uses for which the minimum number of spaces is specified, spaces shall be provide as required for the most similar use. If, however, such use is not similar to any listed use, the Plan Commission shall have authority to determine the requirement applicable to any such use, subject to review, on appeal, by the Board of Zoning Appeals.

(Ord. No. 121, § 10.3, 12-9-1981; Ord. of 8-17-1988)

Secs. 46-157 – 46-165 – Reserved

ARTICLE IX. - PARK DISTRICT

Sec. 46-166. - Applicability.

In the Town PK Park District, the regulations in this article shall apply.

(Ord. No. 121, art. 7, 12-9-1981)

Sec. 46-167. - General description.

The PK Park District is established as a district in which the predominant use of land is for parks, open spaces, and outdoor recreational facilities. Promoting the purposes of this section, these regulations for the PK Park District are specifically intended to:

- (1) Encourage the continued use of land for community recreational facilities and parks;
- (2) Encourage the preservation of the natural topography of the dunes;
- (3) Provide open spaces between residential districts and areas devoted to industry and business;
- (4) Prohibit residential, business, and industrial uses of land, to prohibit particularly commercial recreation uses of the land, and to prohibit any use that would diminish the value of land in this district for serving the needs of the Town for parks and open spaces.

(Ord. No. 121, § 7.1, 12-9-1981)

Sec. 46-168. - Uses permitted.

The following uses are permitted in this district:

- (1) Community centers, libraries, museums, playgrounds, parks, and athletic fields, provided such uses are carried on by the Town government;
- (2) Parks, open spaces, provided that no buildings or structures, other than fences not over Five feet high, shall be erected in such parks and open spaces.

(Ord. No. 121, § 7.2, 12-9-1981)

Sec. 46-169. - Height and yard requirements.

- (a) Each lot shall have yards on all sides, and each of such required yards shall have a depth of at least Fifty feet.
- (b) No building shall exceed Two stories, nor shall it exceed Thirty feet in height.

(Ord. No. 121, § 7.3, 12-9-1981)

Sec. 46-170. - Floor area ratio.

The combined floor area ratio of all buildings on a lot shall not exceed One-tenth.

(Ord. No. 121, § 7.4, 12-9-1981)

Secs. 46-171 – 46-188 – Reserved

ARTICLE X. - BUSINESS DISTRICT

Sec. 46-189. - Applicability.

In the B-1 Business District, the regulations in this article shall apply.

(Ord. No. 121, art. 8, 12-9-1981)

Sec. 46-190. - General description.

The B-1 Business District is established as a district in which the principal use of land is for commercial and service uses to serve the residential district. In expansion of the purposes of this section, these regulations for the B-1 Business District are specifically intended to:

- (1) Encourage the construction of, and continued use of the land for local commercial and service uses;
- (2) Prohibit residential, heavy commercial, and industrial use of the land, and to prohibit any other use that would substantially interfere with the development or continuation of the commercial structures in the district;
- (3) Discourage any use which, because of its character or size, would interfere with the use of land in the district as a shopping and service center for the residential district;
- (4) Prevent the harmful effect of traffic congestion by limiting the intensity of use and by regulating motor vehicle access and parking, and truck loading and unloading.

(Ord. No. 121, § 8.1, 12-9-1981)

Sec. 46-191. - Principal uses.

(a) *Uses permitted.* The following uses are permitted in this district:

- (1) Retail sales of merchandise including apparel, food, beverages, drugs, cosmetics, household supplies, furniture, floor coverings, draperies, electric appliances, stationery, books, office supplies, photographic equipment and supplies, flowers and plants, hardware, garden supplies and small equipment, jewelry, art goods, antiques, pets, toys, music and musical instruments, tobacco products.
- (2) Personal and household service establishments including barber and beauty shops, laundry and cleaning pickup stations, tailor, dressmaker, and pressing shops, shoe, watch, jewelry and appliance repair shops.
- (3) Offices and office buildings, banks, savings and loan institutions.
- (4) Medical and dental offices and clinics for the outpatient treatment and care of

human beings, including auxiliary laboratory facilities.

(5) Governmental office buildings, fire stations, police stations including temporary retention facilities, post office, library, museum, community buildings.

(6) Restaurants, soda fountains.

(7) Incidental uses, as specified in section 46-192

(8) Churches.

(b) *Uses prohibited.* It is the intention of this section to permit in this district only those uses listed in subsection (a) of this section. All other uses, including but not limited to the following, are prohibited:

(1) Wholesale sales of merchandise of any kind including but not limited to merchandise permitted to be sold at retail in the district.

(2) Sale of automobiles, trucks, trailers, mobile homes, farm equipment, construction equipment, or any other heavy equipment or machinery.

(3) Sale of lumber, construction materials, fuel, farm feed and supplies, animals other than pets.

(4) Sale of secondhand furniture (except antiques), secondhand clothing, auction sales of any kind.

(5) Warehouse, freight terminal, truck terminal, freight trailer storage, refrigerator lockers.

(6) Junkyard, junkyard, scrap paper or metal collection or storage.

(7) Dwellings, apartments, churches, public or parochial schools, trailer courts, tourist homes, hospitals, nursing homes, penal institutions, funeral homes, hotels.

(8) Outdoor advertising signs.

(9) Service garage, filling station, auto repair and painting, auto parts sales establishments, auto laundry, battery and tire repair.

(10) Drive-in theaters, service of food or drink to autos, sales or service of any kind directly to customers remaining in autos except for drive-in bank windows and the service delivery of previously purchased merchandise.

(11) Tinsmith, blacksmith, upholstery or furniture repair shop, plumbing shop.

(12) Industry or manufacturing of any kind except for baking for on-premises sales only, or for incidental manufacturing customarily accessory to permitted uses, such baking or manufacturing to employ not more than Ten persons in any One establishment.

(13) Outdoor storage or display of any merchandise, except Christmas trees.

(Ord. No. 121, § 8.2, 12-9-1981)

Sec. 46-192. - Incidental uses.

In addition to the principal uses listed, it is the intent of this article to permit the following uses customarily incidental to such principal uses; any of the following uses is permitted on the same lot with the principal use to which it is incidental:

(1) *Accessory uses.*

- a. *Storage of vehicles.* Storage of customer, client, or operator-owned vehicles.
- b. *Storage of goods.* Storage of supplies, stock and merchandise within a completely enclosed building.
- c. *Manufacture and repair.* Manufacturing and repair facilities incidental to principal use, subject to the following limitations:
 1. Floor space so used shall not exceed Twenty-five percent of the total floor space devoted to the principal use;
 2. No motive power other than electricity shall be used;
 3. No motor used on any machine for manufacturing or repair shall exceed One horsepower; and
 4. All operations shall be conducted so that no dust, odor, smoke, noise, vibration, heat or glare created by such operation is perceptible from any boundary line of the lot on which the principal use is located.

(2) *Signs.* Signs incidental to a permitted principal use shall be permitted in this district, subject to the following limitations: The total area of all exterior signs on any lot shall not exceed One square foot for each lineal foot of street line at the front of such lot, nor shall the total area of any single sign exceed Two Hundred square feet. For any sign consisting of silhouette letters or other irregular shapes, the area of the sign shall be taken as the area of the circumscribing rectangle. Any sign designed to be read from Two opposite directions shall be considered to be Two signs of equal area. No sign shall be located within Fifty feet of the R-1 or PK districts, if visible from such district. No sign, other than directional signs for parking lots, shall project into any required front yard more than One foot. The subject matter of any sign shall be limited to the name of the establishment, or the name of the operator or proprietor of the establishment, or a description or enumeration of the merchandise sold or the services rendered. Pennants, streamers, and other moving or fluttering eye catching devices shall not be deemed to be permitted signs and any such representation on signs is prohibited, and the source of any illumination shall not be directly visible. Provided, however, that in an integrated shopping center in which there is a street line Five Hundred feet or more in length, there is permitted in addition to the signs permitted heretofore, One sign not to exceed Three Hundred square feet in area for each full Five Hundred feet of street line, on which sign may be displayed only the name of the shopping center. The design of all signs shall be approved by the Plan Commission.

(Ord. No. 121, § 8.3, 12-9-1981)

Sec. 46-193. - Lot area.

Each principal building hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than Twenty-five Thousand square feet.

(Ord. No. 121, § 8.4, 12-9-1981)

Sec. 46-194. - Floor area ratio.

The combined floor area ratio of the principal building and all accessory buildings on a lot shall not exceed Thirty-five One-hundredths, nor shall the total ground area occupied by all buildings on a lot exceed Twenty-five per cent of the total area of the lot.

(Ord. No. 121, § 8.5, 12-9-1981)

Sec. 46-195. - Front yard.

Each lot shall have a front yard with a depth of not less than Twenty-five percent of the depth of the lot; provided, however, that no such front yard shall be less than Thirty feet in depth.

(Ord. No. 121, § 8.6, 12-9-1981)

Sec. 46-196. - Side yards.

Each lot shall have Two side yards, One on each side of the principal building. The width of each such side yard shall not be less than Twenty-five feet; provided, however, that on a corner lot, the side yard on the street side shall be equal in width to the required setback from the front street line.

(Ord. No. 121, § 8.7, 12-9-1981)

Sec. 46-197. - Rear yard.

Each lot shall have a rear yard not less than Twenty feet in depth.

(Ord. No. 121, § 8.8, 12-9-1981)

Sec. 46-198. - Height limits.

No building or structure shall exceed Two stories, nor shall it exceed Thirty feet in height.

(Ord. No. 121, § 8.9, 12-9-1981)

Sec. 46-199. - Off-street parking.

Except as specifically provided in this section, off-street parking shall be provided in accordance with the requirements of section 46-156 et seq. Off-street parking provided for an establishment in this district shall not be more than 150 feet therefrom. Off-street parking provided for an establishment to meet these minimum requirements shall not be separated from such establishment by a public street.

(Ord. No. 121, § 8.10, 12-9-1981)

Sec. 46-200. - Off-street loading.

Off-street loading shall be provided in accordance with the requirements of section 46-156 et seq. and with the following minimum requirements: At least One loading dock for each Ten Thousand square feet or fraction thereof of floor space devoted to retail sales use, and at least One loading dock for each Forty Thousand square feet of floor space devoted to other uses, and at least One loading dock for each separate building.

(Ord. No. 121, § 8.11, 12-9-1981)

Sec. 46-201. - Review of architectural and landscaping plans.

(a) A permit for the erection or structural alteration of any structure or building shall not be issued until the architectural plans for such building or structure and the landscaping plans for the premises on which it is to be located are submitted to the Plan Commission for review and said Plan Commission has approved such plans. In addition to architectural plans, plot plans and planting plans, the materials submitted shall include front elevations of all structures plus elevations or perspective drawings showing proposed structures and all existing structures within Five Hundred feet of the proposed structure and on the same side of the street. In reviewing the plans, the Plan Commission shall take into consideration, among other things, the appropriateness of the architecture to the district and particularly the appropriateness of the design to structures in the immediate vicinity. In general, the architectural design shall avoid the bizarre or the simulation of nonarchitectural objects, but it need not be limited to a single type or architectural style throughout a district. The landscaping of a lot shall blend with landscaping on adjacent lots or be so designed that landscaping on adjacent undeveloped lots could later blend with that on the applicant's lot. The Plan Commission shall have the right to require a building setback greater than the minimum requirement by this article where such greater setback is necessary to produce a harmonious development of the district.

(b) A permit for the erection or structural alteration of any structure or building requiring the installation of a private sewage disposal system shall be issued and valid only upon the furnishing of a true copy of a permit from the state or Porter County Health Department approving the design, location, installation and operation of a private septic disposal system.

(Ord. No. 121, § 8.12, 12-9-1981; Ord. No. 90-3, § 2, 7-28-1990)

Secs. 46-202 – 46-225 – Reserved

ARTICLE XI. - INDUSTRIAL DISTRICT

Sec. 46-226. - Applicability.

In the I-1 Industrial District, the regulations in this article shall apply.

(Ord. No. 121, art. 9, 12-9-1981)

Sec. 46-227. - General description.

The I-1 Industrial District is established as a district in which the principal use of land is for industrial uses. These regulations for the I-1 Industrial District are specifically intended to:

- (1) Encourage the development of industries that are compatible with nearby residential and business districts;
- (2) Require the provision of facilities and operation of industries to minimize noise, glare, air pollution, water pollution and fire and safety hazards in the industrial district;
- (3) Prohibit the use of land for residences and commercial establishments.

(Ord. No. 121, § 9.1, 12-9-1981)

Sec. 46-228. - Uses permitted.

The following uses are permitted in this district, provided the operation of such uses complies with all performance standards and other limitations specified by this article:

- (1) Industrial uses, including manufacturing, processing, fabrication, assembly, freight handling, and similar operations.
- (2) Fire station.
- (3) Truck terminal.
- (4) Railroad line trackage, railroad spur trackage, rail yards, railroad freight station, and railroad passenger station.
- (5) Electric transformer station.
- (6) Sewage pumping station, water pumping station.

(Ord. No. 121, § 9.2, 12-9-1981)

Sec. 46-229. - Performance standards.

Land and/or buildings in this district shall not be used or constructed to be used for any use permitted by section 46-228, unless the operation of such use complies with all the following performance standards:

- (1) *Noise.* Sound levels shall be measured with a sound level meter and associated octave band filter manufactured and calibrated according to standards

prescribed by the American Standards Association. Measurements shall be made using the flat network of the sound level meter. Impulsive type noises shall be subject to the performance standards hereinafter prescribed provided that such noises shall be capable of being accurately measured with such equipment. Noises capable of being so measured shall be those noises which cause rapid fluctuations of the needle of the sound level meter with a variation of no more than plus or minus Two decibels. Noises incapable of being so measured, such as those of an irregular and intermittent nature, shall be controlled so as not to become a nuisance to adjacent uses. At no point on the boundary of a residence or business district shall the sound pressure level of any individual operation or plant (other than noises produced by the operation of motor vehicles, and other facilities used for the transportation of personnel, material and products; the construction and maintenance of buildings and facilities including site preparation; warning devices and safety signals) exceed the decibel levels in any One of the designated octave bands shown hereafter.

Octave Band Cycles Per

Second

Maximum Permitted in

Decibels Along Commercial District Boundaries

Maximum Permitted in

Decibels Along Residential

District Boundaries

Twenty to Seventy-five	Seventy-nine	Seventy-two
Seventy-six to One Hundred Fifty	Seventy-four	Sixty-seven
One Hundred Fifty-one to Three Hundred	Sixty-six	Fifty-nine
Three Hundred One to Six Hundred	Fifty-nine	Fifty-two
Six Hundred One to Twelve Hundred	Fifty-three	Forty-six
Twelve Hundred One to Twenty-four Hundred	Forty-seven	Forty
Twenty-four Hundred One to Forty-eight Hundred	Forty-one	Thirty-four
Above Forty-eight Hundred	Thirty-nine	Thirty-two

(2) *Vibration.* Machines or operations (other than the operation of motor vehicles and other transportation facilities) which cause vibrations perceptible to a human being at the boundary of any residential or business district are prohibited.

(3) *Smoke and particulate matter.*

a. *Standard and limitations.*

1. No stack shall emit more than Fifteen smoke units during any One hour, nor shall smoke of a density in excess of Ringelmann No. 2 be emitted, provided that during a single One hour period in each Twenty-

Four hour day, each stack may emit up to Thirty smoke units when blowing soot or cleaning fires, and during such cleaning of fires, smoke of a density of Ringelmann No. 3 may be emitted, but not for longer than Four minutes each period.

2. No emission of smoke or particulate matter shall exceed a density of Ringelmann No. 2, except for a plume consisting entirely of condensed steam. For the purposes of grading the density of emissions, the Ringelmann Chart published and used by the United States Bureau of Mines shall be employed.

3. The rate of emission of particulate matter from all sources within the boundaries of any lot shall not exceed a net figure of One pound per acre of lot area during any One hour, computed in accordance with the procedure set forth in subsection (3)b of this section.

4. The emission from all sources within any lot area of particulate matter containing more than Ten percent by weight of particles having a particle diameter larger than Forty-Four microns is prohibited.

5. Dust and other forms of air pollution borne by the wind from such sources as storage areas, yards, roads, and so forth within lot boundaries shall be kept to a minimum by appropriate landscaping, paving, oiling, or other acceptable means.

6. In addition to the performance standards specified herein, the emission of smoke or particulate matter in such manner or quantity as to be detrimental to or endanger the public health, safety, comfort, or welfare is hereby declared to be a public nuisance.

b. *Method of computing net rate of emission of particulate matter.*

1. The rate of emission of particulate matter from all sources within the boundaries of any lot shall not exceed the net figure in pounds per acre of lot area prescribed in the regulations for the district in which the lot is located after deducting from the gross hourly emission per acre the correction factors set forth in the appropriate table incorporated hereafter for height, velocity, and temperature of emission. The method for determining the total net rate of emission of particulate matter within the boundaries of any lot shall be as follows:

i. Determine the maximum emission in pounds per hour from each source of emission within the lot boundaries and divide each figure by the number of acres of lots area thereby obtaining the gross hourly rate of emission in pounds per acre for each source of emission.

ii. From each gross hourly rate of emission derived in subsection (3)b.1.i of this section, deduct the appropriate correction factor (interpolating as required) for height, velocity and temperature of emission as set forth in the tables which follow-thereby obtaining the net rate of emission in pounds per acre of lot area for each source of emission.

iii. Add together the individual net rates of emission derived in subsection (3)b.1.ii of this section, to obtain the total net rate of emission within the boundaries of the lot. Such total shall not exceed the number of pounds per acre of lot area during any One hour prescribed as maximum for the district in which the lot is located.

2. Allowance for height of emission.¹

<i>Height of Emission in Feet Above Grade</i>	<i>Particulate Matter Correction (in Pounds Per Hour Per Acre)</i>
Fifty	Zero
One Hundred	Six One-hundredths
One Hundred Fifty	One-tenth
Two Hundred	Fifteen One-hundredths
Two Hundred Fifty	Two-tenths
Three Hundred	Twenty-six One-hundredths
Three Hundred Fifty	Thirty-three One-hundredths
Four Hundred	Four-tenths
Four Hundred Fifty	Forty-six One-hundredths
Five Hundred	Fifty-two One-hundredths
Five Hundred Fifty	Six-tenths
Six Hundred	Seven-tenths

3. Allowance for velocity of emission.¹

<i>Exit Velocity (Feet Per Second)</i>	<i>Particulate Matter Correction (in Pounds Per Hour Per Acre)</i>
Zero	Zero
Ten	One-tenth
Twenty	Two-tenths
Thirty	Three-tenths
Forty	Four-tenths
Fifty	One-half
Sixty	Six-tenths
Seventy	Seven-tenths
Eighty	Eight-tenths

¹Interpolate for intermediate values not shown in table.

(4) *Odors*. No emission of odorous gases or other odorous matter shall be allowed in such quantities as to be offensive at the boundaries of any residential or business district.

(5) *Toxic gases*. No industrial operation shall emit such quantities of noxious, toxic, or corrosive fumes or gases in such place or manner as to cause injury, detriment, nuisance, or annoyance to any person or to the public or to endanger the

comfort, repose, health or safety of any such person or the public, or in such manner as to cause or have a natural tendency to cause injury or damage to business or industrial property.

(6) *Glare and heat.* Any manufacturing process producing intense glare or heat shall be performed within an enclosure or in such manner as not to create a public nuisance or hazard within the boundaries of any residential or business district. Open floodlights shall be shielded in an appropriate manner. This restriction shall not apply to activities of a temporary (such as the construction or maintenance of buildings and facilities) or emergency nature.

(Ord. No. 121, § 9.3, 12-9-1981)

Sec. 46-230. - Lot area.

A zoning lot in the Industrial District shall consist of all contiguous land owned by a single owner; provided, however, that no such lot shall have an area of less than Five acres. In the Industrial District (though in no other district) it is permissible to erect more than One principal building on a zoning lot.

(Ord. No. 121, § 9.4, 12-9-1981)

Sec. 46-231. - Lot width.

Each lot shall have a width of not less than Two Hundred feet measured along the building line.

(Ord. No. 121, § 9.5, 12-9-1981)

Sec. 46-232. - Yards.

Each lot shall have yards on all sides not less than Fifty feet in depth.

(Ord. No. 121, § 9.6, 12-9-1981)

Sec. 46-233. - Setbacks from residential or business districts.

A properly landscaped and maintained strip or undisturbed natural strip not less than Three Hundred feet wide shall separate all industrial activity in the I-1 Industrial District from any boundary of a residential or business district.

(Ord. No. 121, § 9.7, 12-9-1981)

Sec. 46-234. - Height limits.

With the exception of chimneys no building or structure shall extend above a line starting at ground level at the nearest point on the boundary of a residential or business district and extended toward the building or structure at an angle of Six degrees above the horizontal.

(Ord. No. 121, § 9.8, 12-9-1981)

Sec. 46-235. - Floor area ratio.

The combined floor area ratio of all buildings shall not exceed One-fourth.

(Ord. No. 121, § 9.9, 12-9-1981)

Sec. 46-236. - Incidental uses.

In addition to the principal uses listed, it is the intent of this article to permit the following uses customarily incidental to such principal uses; any of the following uses is permitted on the same lot with the principal use to which it is incidental:

(1) *Accessory uses.*

- a. Accessory storage of materials; provided that all storage areas must be within buildings or be screened by walls or plantings so that they cannot be seen from the boundaries of any residential, business or park district from a vantage point or point of sight at an elevation no greater than the elevation of the storage yard.
- b. One dwelling unit for a caretaker.
- c. Gate house.
- d. Security guard's post.
- e. Offices.
- f. Parking areas.
- g. Walls and fences not more than Ten feet high, except where necessary to comply with subsection (1)a of this section.

(2) *Signs.* Signs incidental to a permitted principal use shall be permitted in this district, subject to the following limitations: The total area of all exterior signs on any lot shall not exceed One square foot for each lineal foot of street line at the front of such lot, nor shall the total area of any single sign exceed Two Hundred square feet. For any sign consisting of silhouette letter or other irregular shapes, the area of the sign shall be taken as the area of the circumscribing rectangle. Any sign to be read from Two opposite directions shall be considered to be Two signs of equal area. No sign shall be located within Fifty feet of an R-1 or PK district if visible from such district. The subject matter of any sign shall be limited to the name of the establishment or the name of the operator or proprietor of the establishment, or a description of the products produced or processed on the premises. Flashing signs, intermittent illumination, or animated representation on a sign is prohibited, and the source of any illumination shall not be directly visible.

(Ord. No. 121, § 9.10, 12-9-1981)

Sec. 46-237. - Access to industrial district.

Access to the I-1 Industrial District shall be from U.S. Highway 12, or from the westerly boundary of the industrial district. No access to the industrial district shall be provided from Mineral Springs Road or from any business or residential district or from any public park within the Town except as may be permitted by special act of the Plan Commission.

(Ord. No. 121, § 9.11, 12-9-1981)

Sec. 46-238. - Off-street parking.

Off-street parking shall be provided in accordance with the requirements of section 46-156 et seq.

(Ord. No. 121, § 9.12, 12-9-1981)

Sec. 46-239. - Off-street loading.

Off-street loading shall be provided in accordance with the requirements of section 46-156 et seq. and also with the following minimum requirements: For each freight terminal of industrial use, which has an aggregate gross floor area of Twenty-five Thousand square feet or more, arranged, intended, or designed for such use:

<i>Square feet of aggregate gross floor area devoted to such use</i>	<i>Required number of loading spaces</i>
Twenty-five Thousand but less than Forty Thousand	One
Forty Thousand but less than One Hundred Thousand	Two
One Hundred Thousand but less than One Hundred Sixty Thousand	Three
One Hundred Sixty Thousand but less than Two Hundred Forty Thousand	Four
Two Hundred Forty Thousand up to and including Three Hundred Twenty Thousand	Five
For each additional Ninety Thousand	One additional

(Ord. No. 121, § 9.13, 12-9-1981)

Secs. 46-240 – 46-256 – Reserved

ARTICLE XII. - ENFORCEMENT ^[19]

⁽¹⁹⁾ **Cross reference**— Administration, ch. 2

Sec. 46-257. - Enforcement officer.

The Plan Commission is hereby designated and authorized to enforce this chapter.

(Ord. No. 121, § 11.1, 12-9-1981)

Secs. 46-258 – 46-274 – Reserved

ARTICLE XIII. - IMPROVEMENT LOCATION PERMIT

Sec. 46-275. - Generally.

(a) *When permit required.* No building or structure shall be erected or modified ("modified" is defined as "reconstructed, enlarged, moved, or structurally altered") nor shall any excavation or grading for any buildings or structures be done, nor trees removed, unless authorized by an Improvement Location Permit issued by the Plan Commission. No such permit shall be issued unless such building or structure as erected or modified will be in full conformity with all present provisions of this chapter with this exception: If the building or structure was in full conformity with the provisions of this chapter at the time it was constructed or modified but violates the present chapter, an Improvement Location Permit may be issued for modifications provided such modifications do not in and of themselves violate the present provisions of this chapter in any way. Any Improvement Location Permit issued in violation of the provisions of this chapter shall be null and void and of no effect, without the necessity of any proceedings for revocation or nullification thereof, and any work undertaken pursuant to such permit shall be in violation of this section.

(b) *Application for permit.* Each application for an Improvement Location Permit shall be in writing and shall be accompanied by plans in triplicate, drawn to scale, showing the actual shape and dimensions of the plot to be built upon, the exact sizes and locations of the buildings and accessory buildings then existing, and the lines including height above ground level within which the proposed building or structure is to be erected, enlarged, or moved, the existing and intended use of each building or structure or part thereof, information on off-street parking and loading as required by section 46-156(b) and such other information with regard to the plot and neighboring plots as may be necessary to determine compliance with the provisions of this section. After final action on such application, One copy of the application and accompanying plans shall be returned to the applicant, One copy shall be retained by the Secretary of the Plan Commission as a permanent record, and the third copy shall go to the Building Commissioner.

(c) *Issuance of permit.* Improvement Location Permits may be issued by the Secretary of the Plan Commission, except that an Improvement Location Permit for any use requiring the approval of the Board of Zoning Appeals, according to the provisions of this section, shall be issued only after authorization by the Board of Zoning Appeals.

(d) *Expiration and extension of permit.* Every Improvement Location Permit shall expire at the end of One year from the date of issue. Prior to such expiration, the owner or applicant may, however, apply for a new permit from the Plan Commission or apply to the Board of Zoning Appeals for an extension of the original permit, and the Board of Zoning Appeals may by good reason shown extend such permit for a reasonable period, subject to such conditions as the Board may deem necessary.

(e) *Fees.* Every application for an Improvement Location Permit shall be companied by payment of a fee of Fifty dollars (\$50.00), which payment shall be retained by the Town even though the permit applied for is not granted. Such fee shall be in addition to other payments that may be required by other provisions of this section.

(f) *Validity if regulations change.* If the applicable regulations are changed after issuance of a valid Improvement Location Permit in such a way as to make nonconforming the use for which the permit was granted, and if no substantial work has been undertaken on the structure or foundations, such Improvement Location Permit shall be invalid. However, if all footings have been installed before the effective date of the changed zoning regulations, and if construction is continuing at that time, the proposed use may be completed as authorized by the Improvement Location Permit. This provision shall also determine validity of any permit for a use made nonconforming by the passage of this section.

(Ord. No. 121, § 11.2, 12-9-1981; Ord. of 9-1-1982; Ord. of 8-17-1988)

Sec. 46-276. - Certificate of occupancy.

(a) *When required.* A certificate of occupancy shall be required for:

- (1) Occupancy or use of a building constructed, reconstructed, enlarged, moved, or structurally altered.
- (2) A change in the use of any building or structure.
- (3) Occupancy or use of land, or change in the use of land except to any use which is primarily agricultural.

No such occupancy, use or change of use shall be undertaken until a certificate of occupancy therefor has been issued, and no such certificate shall be issued unless the proposed occupancy is in full conformity with the regulations of this chapter and the Building Commissioner has notified the Secretary of the Plan Commission that the final inspection has been made and the finished construction approved.

(b) *Application.* Each application for a certificate of occupancy shall be in duplicate and in writing and shall include a precise description of the occupancy or use to be undertaken plus such other information as may be necessary to determine compliance with the provisions of this chapter. An application for a certificate of occupancy shall be accompanied by a plot plan showing the exterior size, shape and location of the structure or structures, a statement of the precise use to be made of the structures, and a statement that such use will comply at all times with applicable performance standards. One copy of such application, together with a copy of the certificate issued, if any, shall be retained by the Secretary of the Plan Commission.

(c) *Issuance.* Certificates of occupancy may be issued by the Secretary of the Plan Commission, except that a certificate of occupancy for any use requiring the approval of the Board of Zoning Appeals, according to the provisions of this chapter, shall be issued only with the authorization of the Board of Zoning Appeals. Every certificate of occupancy for a use for which a variance has been granted by the Board shall contain a detailed statement of such Special Use Permit or variance and of the conditions, if any, to which it is subject.

(d) *Fees.* Every application for a certificate of occupancy shall be accompanied by payment of a fee of One Hundred dollars (\$100.00), which payment shall be retained by the Town even though the certificate applied for is not granted. Such fee shall be in addition to other payments that may be required by other provisions of the chapter.

(e) *Termination.* A certificate of occupancy shall be deemed to authorize, and is required for, both initial and continued occupancy and use of the building, structure or land to which it applies, and it shall continue in effect so long as such building or land is used for the use authorized by such certificate and is in compliance with all regulations of this chapter. Ten days after the service of notice of any violation of any of the regulations of this chapter with respect to any building or structure or the use thereof or of land, the certificate of occupancy shall be required for any further use of such building, structure or land.

(Ord. No. 121, § 11.3, 12-9-1981; Ord. of 8-17-1988)

Secs. 46-277 – 46-286 – Reserved

ARTICLE XIV. - BOARD OF ZONING APPEALS

Sec. 46-287. - Generally.

(a) *Creation.* An advisory Board of Zoning Appeals, hereinafter referred to as the "BZA," is hereby created in accordance with IC 36-7-4-902.

(b) *Membership.* Each division of the advisory Board of Zoning Appeals consists of Five members as follows:

(1) Three citizen members appointed by the executive of the municipality or county, of whom One must be a member of the Plan Commission and Two must not be members of the plan commission.

(2) One citizen member appointed by the fiscal body of the municipality or county, who must not be a member of the Plan Commission.

(3) One member appointed by the Plan Commission from the Plan Commission's membership, who must be a county agricultural agent or a citizen member of the Plan Commission other than the member appointed under subsection (b)(1) above.

(4) Citizen members must be Town residents as defined in section 1-2 and cannot hold other Town Commissioner offices.

(c) *Terms; vacancies.* The terms shall expire on the first day of January. If a vacancy occurs, by resignation or otherwise, among the members of the BZA, that person will be replaced as described in IC 36-7-4-907(a) for the unexpired term.

(d) *Officers.* At the first meeting of each year, the BZA shall elect a Chair and Vice-Chair from its members. The Vice-Chair shall have authority to act as Chair during the absence or disability of the Chair.

(e) *Quorum.* A majority of the entire membership of the BZA shall constitute a quorum. No action of the BZA is official, however, unless authorized by a majority of the entire membership of the BZA.

(f) *Employees.* The BZA may appoint and fix the compensation of a Secretary and such employees as are necessary for the discharge of its duties, all in conformity to and compliance with salaries and compensations theretofore fixed by the Town Council.

(g) *Offices.* The Town Council shall provide suitable offices for the holding of hearings and the preservation of records, documents, and accounts.

(h) *Appropriations.* The Town Council may appropriate funds to carry out the duties of the Board of Zoning Appeals, and the Board of Zoning Appeals shall have the authority to expend, under regular Town procedure, all sums appropriated to it for purposes and activities authorized by this chapter.

(i) *Compensation.* The members of the BZA shall serve without salary.

(j) *Rules and procedures.*

(1) *Hearings.* The BZA shall hold a public hearing after due notice, on every appeal or other matter referred to said BZA or upon which it is required to pass under the terms of this chapter. Notice of such hearing shall be mailed to the applicant or appellant and to the owners of such property as the BZA may deem to be affected by such application or appeal; such notice shall also be given by publication as provided in IC 5-3-1-2 and 5-3-1-4. Costs of notification shall be borne by the applicant or appellant.

(2) *Applications.* Every appeal or application shall state the specific provision of this chapter which is involved, and shall state precisely the interpretation which is sought, the use for which a Special Use Permit is sought, or the details of the variance which is sought and the special circumstances affecting the particular lot which are cited as justifying such variance, as the case may be.

(3) *Meetings.* Meetings of the BZA shall be held at the call of the Chair and at such other times as the BZA may determine.

(4) *Records.* The BZA shall keep minutes of its proceedings, keep records of its examinations and other official acts, and shall record the vote on all actions taken. All such records shall be a matter of public record.

(5) *Disqualification of interested parties.* A member of the Board of Zoning Appeals may not participate in a hearing or decision of that BZA concerning a zoning matter in which he or she has a direct or indirect financial interest. The BZA shall enter in its records the fact that a member has such a disqualification.

(6) *Other rules and procedures.* The BZA shall adopt such other rules concerning the filing of appeals and applications, giving of notice and conduct of hearings as shall be necessary to carry out its duties under the terms of this chapter.

(k) *General powers and duties.* The BZA shall:

(1) Hear and determine appeals as outlined in IC 36-7-4-918.1.

(2) Permit and authorize exceptions to the district regulations only in the classes of cases or in particular situations as specified in this chapter.

(3) Hear and decide special exceptions to the terms of this chapter upon which the BZA is required to act under this chapter.

(4) Authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.

(l) *Judicial review.* All decisions and findings of the BZA, on appeal or upon application for a variation, shall be subject to judicial review as provided by law.

(Ord. No. 121, § 11.4, 12-9-1981; Ord. No. 2007-6, § I, 12-18-2007)

Sec. 46-288. - Variances.

(a) *Purpose and conditions.* In order that the spirit of this chapter may be observed and substantial justice done, the Board of Zoning Appeals shall, except as provided in subsection (b) of this chapter, upon appeal vary the terms of this chapter upon making a finding of fact that, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship. No such variance shall be granted by the BZA unless it finds:

(1) That there are special circumstances or conditions, which shall be fully described in the findings of the BZA, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the effective date of the ordinance from which this chapter is derived, whether or not such action is in violation of this chapter;

(2) That, for reasons fully set forth in the findings of the BZA, the circumstances or conditions so found are such that strict application of the provisions of this chapter would deprive the applicant of the reasonable use of said land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the BZA is the minimum variance that will accomplish the relief sought by the applicant;

(3) That the grant of the variance will be in harmony with the general purposes and intent of this chapter, and will not be injurious to the neighborhood or otherwise injurious to the public health, safety, morals and general welfare of the Town; and

(4) That the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

(b) *Use variances.* The Board of Zoning Appeals shall not issue any variance authorizing the establishment within any district of any use not permitted in such district by this chapter.

(c) *Conditional variances.* In granting any variance, the BZA shall prescribe any conditions applying thereto that it may deem necessary or desirable to carry out the general purposes of this chapter or preserve the neighborhood or general welfare from injury.

(Ord. No. 121, § 11.5, 12-9-1981)

Sec. 46-289. - Appeals.

(a) *Scope of appeal.* An appeal may be taken to the Board of Zoning Appeals by any person, firm, corporation, officer, board, or bureau affected by a decision of the Plan Commission concerning the interpretation of this chapter. Such appeal shall be taken within such time as may be specified by the BZA by general rule. Such appeal shall be taken by filing with the Plan Commission and with the BZA a notice of appeal, specifying the grounds thereof. The form of such notice may be specified by the BZA by general rule.

(b) *Staying of proceedings.* When an appeal from the decision of the Plan Commission

has been taken and filed with the Secretary of the Plan Commission and with the Board of Zoning Appeals, all proceedings and work on the premises concerning which the decision was made, shall be stayed unless the Plan Commission shall certify to the BZA that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings or work shall not be stayed except by a restraining order which may be granted by the BZA or by a court of record, on application, on notice to the Secretary of the Plan Commission and to the owner of the premises affected, and on due cause shown.

(c) *Decisions.* Shall be handled as required in IC 36-7-4-920.

(Ord. No. 121, § 11.6, 12-9-1981; Ord. No. 2007-6, § I, 12-18-2007)

Sec. 46-290. - Amendments.

This chapter may from time to time be amended as provided, at such time, by applicable laws of the state.

(Ord. No. 121, § 11.7, 12-9-1981)

Sec. 46-291. - Filing fees.

Any petition to the BZA for any appeal or variance filed by, or on behalf of, the owner or owners of the property affected, and any petition to the Town Council, except a petition from the Plan Commission, shall be accompanied by a filing fee of Seventy-Five dollars (\$75.00), no part of which shall be refundable.

(Ord. No. 121, § 11.8, 12-9-1981; Ord. of 7-22-1988)

Sec. 46-292. - Penalties and right of injunction.

(a) *Penalties.* A person who violates any provision of this zoning chapter shall upon conviction be fined not less than One Hundred dollars (\$100.00) or more than Twenty-five Hundred dollars (\$2,500.00). A separate offense shall be deemed committed on each day that such violation shall be permitted to exist.

(b) *Common nuisance.* The Town Council hereby declares buildings erected, razed or converted, or land or premises used in violation of any provision of this chapter to be common nuisances, and the owner of any such building, land or premises shall be liable for maintaining a common nuisance.

(c) *Injunction.* The Plan Commission or the Board of Zoning Appeals may institute a suit for injunction in the circuit court of the county to restrain an individual or a governmental unit from violating the provisions of this chapter. The Plan Commission or the BZA may also institute suit for a mandatory injunction directing an individual or a governmental unit to remove a structure or building erected in violation of the provisions of this chapter. If the Commission or the BZA is successful in its suit, the respondent shall bear the costs of the suit. A change of venue from the county shall not be granted in such a case.

(Ord. No. 121, § 11.9, 12-9-1981; Ord. No. 2007-6, § I, 12-18-2007)

Town Map

(Zoning Map is on the next page)

NOTES

All measurements herein are referenced from Surveyor's records and Porter County Plat Book 12, "Dune Acres".

Townships 37 North, Range 6 West of the Second Principal Meridian, including the Town of Dune Acres, all in Westchester Township, Porter County, Indiana, being described more particularly as:

Town Parks A, B, and C lie within the boundary authorized by Congress with Public Law 89-761 of Nov. 5, 1966. However, as long as these lands remain protected by the Town and dedicated as public park, IDNL will not seek acquisition.

Legal Description of the Town of Dune Acres

Town of Dune Acres

A parcel of land being part of Sections 14, 15, 21, 22, 23, and 27 in Township 37 North, Range 6 West of the Second Principal Meridian, including the Town of Dune Acres, all in Westchester Township, Porter County, Indiana, being described more particularly as:

beginning at the intersection of the South water's edge of Lake Michigan and the East line of the Town of Dune Acres (also being the North and South centerline of said Section 14);

thence South along said East line and its projection of Dune Acres (being the West line of the Town of Porter) to the Northwest corner of the West $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 14 to the North line of Dune Acres; thence East along said North line to the East line of said Section 14 in the office of the Recorder of Porter County, Indiana;

thence East along the North line of said Dune Acres 5th Subdivision and the West $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Dune Acres 5th Subdivision and the East line of said West $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$;

thence South along said East line 1919' to the South line of Dune Acres 5th Subdivision and the South line of said Section 14, being the North line of Section 23;

thence West along said line to the East line of the West one-half of the West one-half of said Section 23, being the East line of the Town of Dune Acres;

thence South along said East line to a line 175' North of and parallel with the centerline of the Chicago, South Shore and South Bend Railroad, being the East line of said Section 27, said line being the common town limit between Dune Acres and Burns Harbor;

thence North 4700' along said common town limit line, being the West of said Sections 27 and 22 to the North line of the Southeast $\frac{1}{4}$ of Section 21, being the South line of the Town of Dune Acres; thence East along the North line of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 21 to the Northwest corner of said Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, to the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$;

thence South 1319.4' along said town limit, being the West line of said Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$;

thence West along said town limit, being the South line of the North $\frac{1}{4}$ of the South $\frac{1}{4}$ of said Section 21, a distance of 2831.4' to Lake Michigan;

thence North along said town limit, being the East line of the Town of Dune Acres and the point of beginning.

Land Area

Town of Dune Acres
2,11 Sd. Meas. (1,351 ± Acres)
National Lakeshore property within Town limits
(111 Sd. Meas. (7,782 ± Acres))
Town property Area 1 (not incl. Town Parks "B" & "C")
0.42 Sd. Meas. (287 ± Acres)
Town property Area 2 (not incl. Town Park "A")
0.23 Sd. Meas. (148 ± Acres)
Town Park "A"
150 Acres [PLAT BOOK 12, "Dune Acres"]
Town Park "B"
180 Acres [PLAT BOOK 12, "Dune Acres"]
Town Park "C"
255 Acres [U.S. Dept. of Interior Map]

