

ORDINANCE NO. 56-2005

AN ORDINANCE AMENDING ARTICLE XII THE ZONING ORDINANCE FOR THE CITY OF VALPARAISO

WHEREAS, a petition was presented to amend the Zoning Ordinance Article XII; and

WHEREAS, the Plan Commission duly advertised and held a public hearing on the proposed hearing and;

WHEREAS, the general public was given an opportunity to comment on the proposed changes to the ordinances and;

WHEREAS, the Plan Commission voted to recommend the approval of proposed amendment changes by an 8-0 vote on November 22, 2005.

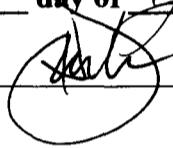
NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Valparaiso as follows:

- 1. That Article XII of the Zoning Ordinance shall be amended as follows:

SEE ATTACHED – Exhibit A

This ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED by the Common Council of the City of Valparaiso, Indiana, by a 5-0 vote of all members present and voting this 19th day of Jan, 2006

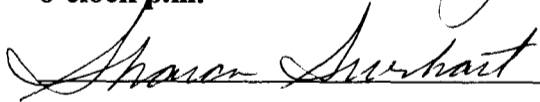


Jon Costas, Mayor

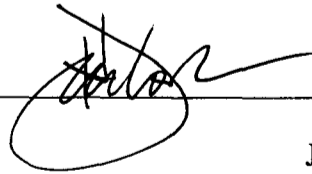
ATTEST:


Sharon Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 19th day of Jan, 2006 at 8:00pm o'clock p.m.


Sharon Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this 19th day of Jan, 2006 at 8:00 o'clock p.m.



Jon Costas, Mayor

Part 2
Article 12

ADMINISTRATION, PERMITS AND ENFORCEMENT

Section 1200 Administration and Enforcement

The provisions of this Ordinance shall be administered and enforced as provided herein.

Section 1201 Planning Director

The Planning Director (City Planner), and/or his designee, shall administer and enforce, or share in the administration and enforcement of the following Articles of this Ordinance:

1 thru 5, 7 through 10, 12 thru 27, and 29 thru the end of the Ordinance.

The Planner shall provide input regarding the issuance and release of Building Permits, Site Permits, and Occupancy Permits. The planner shall have the authority to enter property to make inspections, as required to carry out necessary administration and enforcement.

Section 1202 Building Commissioner

The Building Commissioner, and/or his designee, shall administer and enforce, or share in the administration and enforcement of all of the Articles of this Ordinance.

Notwithstanding the requirements of the State Statutes, the Building Commissioner shall have the authority to grant or deny Building Permits and/or Occupancy Permits and to enter property to make inspections necessary for the administration and enforcement of this ordinance.

Section 1203 City Engineer

The City Engineer (Engineering Director), and/or his designee, shall administer and enforce, or share in the administration and enforcement of the following Articles of this Ordinance:

1 and 2, 4, 6 and 7, 10, 12, 27 and 28, and 34 and 35.

The Engineer shall have the authority to issue or deny Site Permits, and to enter property to make inspections necessary for the administration and enforcement of this ordinance.

Section 1210 Permits

This section pertains to the administration and enforcement of the Building Permit, Certificate of Occupancy, and Site Permit processes.

1. Building Permits It shall be unlawful for any person, company, corporation, or similar entity, to begin any improvement, construction, reconstruction, or repair of any existing or new building or structure, except as provided herein, without first obtaining a Building Permit from the Building Commissioner. Activities requiring a building permit include, but are not limited to:

- a) installation or construction of any roofing or re-roofing, fences or swimming pools (above and in-ground);
- b) installation or construction of a sign (See Article IV), tower, shed, gazebo, shelter, deck, porch, carport, patio, kennel (anchored to ground) garage, or room addition (includes custom built or prefabricated three season rooms or sun rooms);
- c) construction, reconstruction, repair, moving or demolition of any residential, commercial, municipal, recreational, institutional, or industrial building or structure;

- d) alteration or remodeling of an existing building or structure that includes any changes in structural members, stairways, basic construction, type, kind or class of occupancy, light or ventilation, means of ingress and/or egress, or any other change(s) affecting or regulated by the Building Code or this Ordinance, except for minor repairs or changes not involving any of the aforesaid provisions. (See also definition of term Alteration in article II).

No permit shall be issued for any work or project until an application has been submitted in accordance with the provisions of this Ordinance, showing that the construction proposed is and/or will be in compliance with the provisions of this Ordinance and with the Building Code(s).

A record of all Building permits shall be kept in the office of the Building Commissioner and copies of the permits shall be furnished upon request to a person or persons having a proprietary or tenancy interest in the property involved.

Note that for many activities, a Site Permit will be required before the Building Permit can be issued.

2. **Certificates of Occupancy** It shall be unlawful to use, or permit the use, of any land, building or structure for which a Building Permit is/was required, and to use, or permit to be used, any building or structure hereafter altered, extended, erected, remodeled or moved, until the Building Commissioner shall have issued a Certificate of Occupancy stating that the completed project complies with the provisions of this and all other pertinent ordinances. **Note that the issuance of a final inspection “green tag” (inspection card) does not constitute issuance of a Certificate of Occupancy.**

- a) Certificate of Occupancy. No Certificate of Occupancy for any building or structure, erected, altered or repaired after the adoption of this Ordinance, shall be issued unless such building or structure was erected, altered or repaired in compliance with the provisions of this ordinance and the Building Code. It shall be unlawful to occupy any such building or structure unless a full, partial or temporary Certificate of Occupancy has been issued by the building Commissioner.
- b) Certificates for Existing Buildings Certificates of Occupancy shall be issued for existing buildings, structures, or parts thereof, or existing uses of land if after inspection it is found that such buildings, structures, or parts thereof, or such use of land, comply with the provisions of this and all other pertinent ordinances.
- c) Temporary Certificates The Building Commissioner may issue a temporary Certificate of Occupancy provided that the temporary Certificate of Occupancy shall not remain in force more than 15 days (except for weather related conditions) after the building or structure is fully completed and ready for occupancy, and provided further that such building, structure and/or site is in conformity with the provisions of this Ordinance, the Building Code and all other pertinent ordinances. A request for a temporary Certificate of Occupancy shall be submitted on a form prepared by the Building Commissioner and assessed the fee established in the Municipal Code.
- d) Partial Certificates of Occupancy The Building Commissioner may issue a partial Certificate of Occupancy for part of a building, structure or site prior to the occupancy of the entire building, structure or site, provided that such portions of the building, structure or site are in conformity with the provisions of this Ordinance, the Building Code and all other pertinent ordinances. Partial Certificates of Occupancy will not be issued on one and/or two family dwellings.
- e) Records of Certificates A record of all Certificates of Occupancy shall be kept in the office of the Building Commissioner and copies of such Certificates of Occupancy shall be furnished upon request to a person or persons having a proprietary or tenancy interest in the property involved.

- f) Certificates for Accessory Buildings to Dwelling Accessory buildings or structures to dwellings shall not require a separate Certificate of Occupancy, but rather may be included in the Certificate of Occupancy for the principal dwelling, building or structure on the same lot when such accessory buildings or structures are completed at the same time as the principal use.
- g) Application for Certificates Certificates of Occupancy shall be applied for in writing to the Building Commissioner on forms provided by the Building Commissioner. The Certificate shall be issued if it is found that the building, structure or site, or part thereof, complies with the provisions of this or other pertinent ordinances. If such Certificate is refused for cause, the applicant therefore shall be notified of such refusal and the cause thereof.
- h) Certificates for Nonconforming Buildings and Uses Reference is made to Article V, Section 545.

3. Site Permits It shall be unlawful for any person, company, corporation or similar entity to begin any clearing, grading, excavation, fill, land disturbing activity, or construction of any site improvement, except as provided herein, without first obtaining a Site Permit from the City Engineer. Activities requiring a site permit include, but are not limited to:

- a) tree removal in excess of (G)(1) or (G)(2) in Section 3140 of Part IV, Article XXXI of this Ordinance.
- b) any excavation, fill, or earthmoving involving an earthwork quantity greater than 10 cubic yards.
- c) construction, paving, or re-paving of any driveway, private street, parking lot, sidewalk or path.
- d) construction of any paved surface greater than 100 square feet in area.
- e) construction or installation of any sewer, pipe, swale, or ditch for drainage purposes, except footing tiles or roof drainage interior to a structure.
- f) installation of any exterior lighting for any site or use except single-family, duplex, or three-plex units.

4. Façade Improvement Permits (within special overlay districts) It shall be unlawful for any person, company, corporation or similar entity, to begin any improvement, construction, repair or substantial maintenance of any building façade visible from a public Right-of-Way without first obtaining a Façade Improvement Permit from the Planning Director. **Note that the issuance of a façade Improvement Permit does not constitute issuance of a Building Permit. Any improvement requiring a Building Permit will still be required to obtain said permit prior to construction.** Activities requiring a Façade Improvement Permit include, but are not limited to:

- a) Installation of any siding or any change in building materials on an existing building façade;
- b) Any replacement of doors or windows regardless of existing size, shape or type;
- c) Painting or repainting any building façade a color that presently does not exist as the primary color of the existing façade;
- d) Alterations or cosmetic changes, repairs or maintenance that changes in any way the appearance of any façade visible from a public right-of-way;

A façade improvement permit will not be required for cleaning, repainting of a façade the same color or maintenance not affecting the appearance of the facade.

Any façade change effecting 25% of the façade or greater will require compliance with any overlay design standards regulating design within the district.

No permit shall be issued for any work or project until an application has been submitted in accordance with the provisions of this Ordinance, showing that improvements proposed is and/or will be in compliance with the provisions of this Ordinance and with any Overlay standards or Building Codes.

Where appropriate the Erosion Control Permit, the Right-of-Way Cut Permit, and/or the Sanitary Sewer Permit may be incorporated into the Site Permit Process and form at the discretion of the City Engineer.

Section 1215 **Applications**

Applications for permits or Certificates of Occupancy shall be in writing on forms provided by the Building Commissioner and/or City Engineer.

Supporting data shall be furnished with the applications for permits. The supporting data shall be sufficient to allow the reviewer to make an informed decision as to whether the project will meet the requirements of this and other pertinent ordinances, standards, or statutes.

Supporting data may include but is not limited to:

- | | |
|--|----------------------|
| a) building plans | f) access plans |
| b) site and drainage plans and details | g) soils reports |
| c) utility plans | h) landscaping plans |
| d) erosion prevention plans | i) lighting plans |
| e) sediment control plans | j) restoration plans |

Supporting data shall be prepared by appropriate design professionals as required by this or other ordinances or state statutes.

Applications for permits shall be signed by the individuals who will be responsible for the prosecution and completion of the work.

Section 1220 **Fees**

1. The amount of the fees for Building Permits, inspections related to Building Permits, and Certificates of Occupancy, shall be established by the Common Council, and shall be sufficient to cover the cost of inspection and supervision resulting from the administration and enforcement of this Ordinance.

Fees shall be collected by the Building Commissioner at the time of application. The fees shall be deposited in the General Fund of the City of Valparaiso.

2. There shall be no separate or additional fees charged for the Site Permit, except that the fees for Erosion Control Permits, Right-of-Way Cut Permits, Sanitary Sewer Permits and related fees as established by the provisions of the pertinent existing ordinances may be collected under the umbrella of a Site Permit.

Section 1225 **Permit Term and Validity**

1. The term and length of permit validity for Building Permits is set by the Building Code.

2. For a Site Permit:

- a) if the work is not started within three months of the date of issuance, the permit shall be null and void
- b) if there is a lull of 6 months or greater in the prosecution of the work, the City Engineer may declare the permit null and void.

3. Notwithstanding the limitations of 1 and 2 above, Building and Site Permits shall remain in full force and effect under the responsibility of the applicant until such time as:

- a) the work is determined to be completed and in conformance with the requirements of the permit, or
- b) a follow-up permit is issued for the work remaining to be completed.

The transfer of ownership of the site shall not terminate the applicant's responsibilities under the permit(s) until a) or b) above is satisfied.

Section 1230 **Release of Permit**

1. Final Inspection

The recipient of any Building Permit shall notify the Building Commissioner immediately upon the completion of the work authorized by such permit for a final inspection and the issuance of an Occupancy Permit. The issuance of a final inspection "green tag" (inspection card) does not constitute the issuance of a Certificate of Occupancy.

The recipient of any Site Permit shall notify the office of the City Engineer upon the completion of the work. The Engineer shall perform an inspection of the subject site to verify the satisfactory completion of the work. If the work is completed and meets the requirements of the plans, Standards and Ordinances, the permit shall be released. If the work is not completed and/or does not meet the requirements of the plans, Standards or Ordinances, the applicant shall be notified of the deficiency (ies).

2. Follow-up Permit

A Building and/or Site Permit may also be released if a "follow-up permit" is issued for the work remaining to be completed under the original permit.

Section 1235 **Enforcement**

When determined necessary the provisions of the ordinance may be enforced through one or more of the following actions:

The Building Commissioner, Planning Director or City Engineer may initiate enforcement actions 1 or 2 below for violations of sections of this ordinance under their purview as listed in Sections 1201, 1202 and 1203.

1. Stop Work Orders

- a) The Building Commissioner may post a stop work order per the provisions of chapter 150 of the Municipal Code for any work not conforming to the requirements of this ordinance or the Building Code. The stop work order may be lifted only after the work has been made to conform with this ordinance.
- b) The Planning Director and/or City Engineer may post a stop work order for any work not conforming to the requirements of the sections of this Ordinance under their purview.

2. Fines For Violations

In addition to any and all other remedies set forth in this ordinance for a violation thereof, the Building Commissioner and/or City Engineer may, for any violation of this ordinance, levy a fine against the violator(s) of up to \$50.00 for each occurrence, each day being a separate occurrence. The Building Commissioner and/or City Engineer shall notify the violator(s) of such fine, in writing, on a form approved by the Board. The violator shall pay the levied fine through the Local Ordinance Violations Bureau. The Building Commissioner and/or City Engineer may levy a fine for each and every day that the violation is continued.

3. Withhold Permits

The Building Commissioner or the City Engineer, may refuse to issue Building Permits or Site Permits to any applicant who is in violation of this ordinance and has received notification of that violation. The permits may be for sites other than those where the violations have occurred. The Building Commissioner or the City Engineer, may withhold issuance of the permits until the violations are corrected.

4. Revocation of Surety

In the event that other enforcement remedies listed herein do not cause the correction of the violation(s) the Commission, acting on the recommendation of the Building Commissioner, Planning Director and/or City Engineer may initiate a claim upon any bond or surety posted with the application or with the contractor's registration. The Commission may seek recovery of any costs associated with the correction of the violation(s) along with any fines levied and not paid.

5. Court Action

In addition to any and all other remedies set forth in this ordinance for a violation thereof, the Building Commissioner, Planning Director and/or City Engineer may, for any violation of this ordinance, levying a fine against the violator(s) of up to the maximum amount allowed according to the Local Ordinance Violations Bureau for each occurrence, each day being a separate occurrence. The Building Commissioner, Planning Director and/or City Engineer shall notify the violator(s) of such fine, in writing, on a form approved by the Board. The violator shall pay the levied fine through the Local Ordinance Violations Bureau. The Building Commissioner, Planning Director and/or City Engineer may levy a fine for each and every day that the violation is continued.

Section 1236 **Appeals**

An applicant subjected to an enforcement action under Section 1235, sub-sections 1, 2, 3 or 4 above, may appeal the enforcement action through the Board. The appeal shall conform with the normal process for petitions coming before the Board.

Section 1240 **Board of Zoning Appeals**

1. Creation of Board of Zoning Appeals. A Board of Zoning Appeals is hereby established in accordance with Indiana Code 36-7-4-900, et seq., and all acts amendatory thereto.
2. Composition and Appointment. The Board of Zoning Appeals shall be composed of five (5) members, all of whom shall be residents of the City of Valparaiso. Each member shall serve a term of four (4) years, and said term shall expire on the first (1st) Monday of January on the fourth (4th) year after the member's appointment. Members of the Advisory Board of Zoning Appeals shall be appointed as follows:
 - a. Three (3) citizen members appointed by the Mayor, of whom one (1) must be a member of the Plan Commission and two (2) must not be members of the Plan Commission.
 - b. One (1) citizen member appointed by the Common Council of the City of Valparaiso who must not be a member of the Plan Commission.
 - c. One (1) citizen member appointed by the Advisory Plan Commission who must be a member of the Advisory Plan Commission other than the member appointed under (a).

If a vacancy occurs among the members of the Advisory Board of Zoning Appeals, the Mayor shall appoint a member for the unexpired term of the vacating member. In addition, the Mayor may appoint an alternate member to participate with the Board in any hearing or decision in which the regular member has a direct or indirect financial interest. The Board shall note in the official minutes of the meeting the fact that a regular member has disqualified himself and shall also indicate the name of the alternate member who participated in the hearing and the decision.

3. Organization. At the first (1st) meeting of each year the Board shall elect a chairman and vice-chairman from its members. It may appoint and fix the compensation of a recording secretary and such employees as are necessary for the proper discharge of its duties, all in conformity to and in compliance with salaries and compensation theretofore fixed by the Common Council.
4. Meetings and Records. All meetings of the Board shall be open to the public. The chairman shall preside at all meetings, except that during the absence or disability of the chairman, the vice-chairman shall have the authority to act as chairman. The Board shall keep minutes of its proceedings, keep records of all examinations and other actions, prepare written findings of fact and record the vote of each member

voting upon each question. All minutes and records shall be filed in the office of the Board and shall be of public record.

5. Rules and Regulations. The Board shall adopt such rules and regulations as it may deem necessary to effectuate the provisions of this Ordinance.
6. Quorum. The majority of the members of the Advisory Board of Zoning Appeals shall constitute a quorum. No action of the Board of Zoning Appeals shall be official, however, unless authorized by the affirmative vote of the majority of the entire membership of the Board of Zoning Appeals.
7. Powers and Duties of the Board of Zoning Appeals. The Advisory Board of Zoning Appeals shall have the following powers and it shall be its duty to:
 - A. **Appeals.** Hear and determine from and review any order, requirement, decision or determination made by the Building Commissioner or any other administrative official, hearing officer or staff member. Hear and determine appeals from and review any order, requirement, decision or determination made by an administrative board or other body except the Plan Commission in relation to the enforcement of the Zoning Ordinance. Hear and determine appeals from and review any order, requirement, decision or determination made by an administrative board or other body except the Plan Commission in relation to the enforcement of this Ordinance concerning the issuance and procurement of improvement location or occupancy permit.
 - B. **Special Exceptions.**
 - 1) hear and approve or deny all requests for special exceptions, special uses, contingent uses and conditional uses from the terms of the Zoning Ordinance but only in the classes of cases as the Advisory Board of Zoning Appeals has been specifically authorized to grant by the Zoning Ordinance. A special exception can be granted only upon the written finding that the following criteria have been met:
 - a.) Excessive vehicular traffic is not generated on minor residential streets;
 - b.) Vehicular parking or traffic problem is not created;
 - c.) Appropriate access road, drives, walks, utilities, drainage facilities and other necessary facilities have been or will be installed;
 - d.) The proposed use will make a substantial contribution to the neighborhood environment and not infringe on the rights of properties in the vicinity of the excepted use;
 - e.) The requirements of the district in which the use is to be located shall be complied with.
 - 2) The Board may impose reasonable conditions as part of its approval. In determining the conditions to be imposed, the Board shall take into consideration the intent of this Ordinance and may impose reasonable conditions that:
 - a.) Abate or restrict noise, smoke, dust or other elements that may affect surrounding property;
 - b.) Establish setback, side and front yard requirements necessary for orderly expansion and to prevent traffic congestion;
 - c.) Provide for adequate parking, ingress and egress to public streets or roads;
 - d.) Provide adjoining property with a buffer or shield from the view of the proposed use if such use is considered to be detrimental to adjoining property;
 - e.) Tend to prevent such use from changing the character and established pattern of the development of the community;
 - f.) Time limits, which the proposed use shall be started and completed or both.

C. **Use Variances.** Approve or deny variances of use from the terms of the Zoning Ordinance. Variance of use may be granted only upon determination by the Board in writing that:

- 1) Approval will not be injurious to the public health, safety, morals and general welfare of the community;
- 2) The use and values of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- 3) Need for the variance arises from some condition peculiar to property involved;
- 4) The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought;
- 5) The approval does not interfere substantially with the Comprehensive Plan; and
- 6) The Board may impose reasonable conditions upon its approval in the same manner as in Paragraph b. above.

D. **Variance from Development Standards.** The Board shall approve or deny requests for variance from the development standards (such as height, bulk or area). A variance from the development standards may be approved only upon a determination of the Board in writing that:

- 1) The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- 2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and,
- 3) The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

E. **Conditional Use.** The Board may approve reasonable conditions upon its approval set forth in d. above.

8. Procedure Before the Board of Zoning Appeals.

A. **Administration Review.** Appeals to the Board may be taken by any person aggrieved or by any officer of the City affected by any decision of the Building Commissioner or any other administrative board, hearing officer or staff person where it is alleged there is an error in any order, requirement, decision or determination by said Building Commissioner in enforcing the Zoning Ordinance.

An appeal filed with the Board must specify the grounds of the appeal and must be filed within thirty (30) days from the date of the ruling being appealed from, and must be in such form as is prescribed by the Board or by the City Planning staff.

In exercising its powers, the Board may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from as in its opinion ought to be done in the premises, and to that end shall have all the powers of the Building Commissioner or other administrative board or other body appealed from.

B. **Variances and Exception.** Application for a variance or special exception shall be in such form as is prescribed by the Board or by the City Planning staff.

The applicants shall include a dimensional sketch plat of the proposed special exception or variance showing the existing conditions, utility and street facilities, and the use of the proposed site and boundaries of the proposed site and adjoining properties. All requests for a special exception or variance must be accompanied by public notice in accordance with the provisions of Burns Indiana Code 5-3-1-1, et seq., and due notice to interested parties as determined by the Board of Zoning Appeals shall be given at least ten (10) days before the date set for the hearing. The party requesting the variance or special exception shall be required to assume the cost of public notice and due notice to interested parties.

Commitment. In the case of a petition for a variance, special exception, conditional use, the Board may require or permit the owner of a parcel of property to make a written commitment concerning the use and development of the parcel. The commitment shall

be on a form prescribed by the Board and shall be enforceable by the Board of Zoning Appeals for the City of Valparaiso or by those other persons specified by the Board in the commitment. The commitment shall be recorded in the Office of the Recorder of Porter County. Unless modified or terminated by the Board after public hearing, the commitment after recording shall be binding on the owner of the parcel and on every subsequent owner or any other person acquiring an interest in the parcel. The commitment does not affect the validity of any covenant, easement, equitable servitude, or other land use restriction created in accordance with the law.