

ORDINANCE NO. 83-22

AN ORDINANCE AMENDING CHAPTERS 1, 3, 4, 7, and 8 OF ORDINANCE NO. _____,
BEING THE UNIFIED ZONING ORDINANCE OF TIPPECANOE COUNTY, INDIANA.

WHEREAS, the General Assembly of the State of Indiana 1983,
has mandated certain changes in the organization, jurisdiction
and authority of Boards of Zoning Appeals; and

WHEREAS, such mandated changes must be made by the local
legislative bodies by ordinance duly adopted prior to January 1,
1984.

NOW THEREFORE BE IT ORDAINED BY THE (COUNTY COMMISSIONERS
OF TIPPECANOE COUNTY; THE CITY COUNCIL OF THE CITY OF LAFAYETTE,
INDIANA; THE CITY COUNCIL OF THE CITY OF WEST LAFAYETTE,
INDIANA; THE TOWN BOARD OF THE TOWN OF BATTLE GROUND, INDIANA;
THE TOWN BOARD OF THE TOWN OF DAYTON, INDIANA) THAT ORDINANCE
NO. _____, BEING THE UNIFIED ZONING ORDINANCE OF TIPPECANOE COUNTY,
IS HEREBY AMENDED AS FOLLOWS:

Section I: That Section 1.2 Definitions of Chapter 1 is hereby
amended by the addition of the following:

"hardship" means a perceived difficulty with regard to one's
ability to improve land stemming from the application of the
development standards of this Ordinance, which may or may not
be subject to relief by means of variance. In and of themselves,
self-imposed situations and claims based on a perceived re-
duction of or restriction on economic gain shall not be con-
sidered hardships. Self-imposed situations include: the pur-
chase of land with actual or constructive knowledge that, for
reasons other than physical characteristics of the property,
the development standards herein will inhibit the desired improve-
ment; any improvement initiated in violation of the standards of
this Ordinance; any result of land division requiring variance
from the development standards of this Ordinance in order to
render that site buildable.

"use variance" means the approval of a use other than that pre-
scribed by the zoning ordinance, an act prohibited by IC 36-7-
4-918.3.

"variance" means a specific approval granted by a Board of
Zoning Appeals in the manner prescribed by this Ordinance, to
deviate from the development standards (such as height, bulk,
area) that the Ordinance otherwise prescribes.

Section II: That Chapter 3-Authorized Uses is hereby amended by
deleting subsection 3.2(b), Section 3.3 Special Exceptions and Section
3.4 Variances; by renumbering Sections 3.5 and 3.6 as Section 3.3 and
3.4; and by substituting the words "section 8.3" for the words
"section 3.3" as they appear at the end of the second sentence of
Section 3.1 Primary Uses.

Sectⁿ III: That Chapter 4-Use Requirements, Subsection (b) of Section 4.1 Height of Structures is hereby amended by substituting the words "section 3.1" for the words "section 3.3" as they appear in the first and last sentences of that subsection.

Section IV: That Chapter 7-Improvement Location Permits, Subsection (a) of Section 7.1 Applicability is hereby amended by substituting the words "section 8.3" for the words "section 3.3" as they appear in the first sentence of that subsection.

Section V: That Chapter 8 is hereby amended to read as follows:

CHAPTER 8 - BOARDS OF ZONING APPEALS; VARIANCES, SPECIAL EXCEPTIONS AND APPEALS; ADMINISTRATION AND ENFORCEMENT

8.1 Boards of Zoning Appeals: Memberships and Jurisdictions

(a) The Area Board. There is hereby reestablished the Area Board of Zoning Appeals to be known as the AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY, INDIANA. The Area Board of Zoning Appeals shall be a continuation of the present Board of Zoning Appeals of Tippecanoe County heretofore established under the area plan law, being Indiana Code section 36-7-4-900, as added by Acts 1981, P.L. 309 Sec. 23.

(1) Membership. The Area Board of Zoning Appeals shall consist of and continue as a seven member board appointed as follows:

Two (2) citizen members appointed by the Area Plan Commission from its membership, one (1) of whom must be a municipal representative and the other must be a county representative.

Two (2) citizen members, who may not be members of any plan commission, appointed by the mayor of the City of Lafayette, Indiana.

One (1) citizen member, who may not be a member of any plan commission, appointed by the mayor of the City of West Lafayette, Indiana.

Two (2) citizen members, who may not be members of any plan commission, appointed by the County Commissioners of Tippecanoe County, Indiana.

(2) Terms of Office. Following adoption of this ordinance, each of the above members shall be reappointed for the balance of the term being served on the present Area Board of Zoning Appeals of Tippecanoe County. Thereafter each member, except those appointed by the Area Plan Commission shall be for a term of four (4) years. The members appointed by the Area Plan Commission shall be for a term of one year. Each term shall expire on the first Monday of the year of termination.

(3) Territorial Jurisdiction. The Area Board of Zoning Appeals shall have jurisdiction over all the land subject to the zoning ordinance, and concurrent territorial jurisdiction with any division of the Area Board of Zoning Appeals herein established.

(4) Subject Matter Jurisdiction. Except where exclusive jurisdiction is herein granted to a division for variances, the Area Board of Zoning Appeals shall have exclusive jurisdiction for (1) variances under the statute and this ordinance in those territories not served by a division having exclusive jurisdiction for variance; (2) special exceptions; (3) appeals as provided by statute, except any appeal from the grant or denial of variance by a division of the Area Board of Zoning Appeals, but including requirements for procurement of building permits or any ordinance adopted under I.C. 36-7-4 or any prior zoning statute, and any other appeals authorized by statute.

(5) Staff. The Staff of the Area Board of Zoning Appeals shall consist of the Executive Director of the Area Plan Commission and such other persons from the staff of the Area Plan Commission as he may direct from time to time to assist him or the Area Board of Zoning Appeals.

(b) The Lafayette Division. There is hereby established a division of the Area Board of Zoning Appeals to be known as the AREA BOARD OF ZONING APPEALS-LAFAYETTE DIVISION. The Area Board of Zoning Appeals-Lafayette Division shall be a continuation of the present Lafayette Board of Zoning Appeals heretofore authorized and continued under Chapter 138 of the Acts of the Indiana General Assembly 1957 and originally established under chapter 174 of the Acts of the Indiana General Assembly 1947.

(1) Membership. The Area Board of Zoning Appeals - Lafayette Division, shall consist of and continue as a five member board appointed as follows: All members shall be appointed by the mayor of the City of Lafayette. All such members shall be residents of the City of Lafayette and shall hold no other elective or appointed office in city government, except that two (2) of such members must be citizen members of the Area Plan Commission.

(2) Terms of Office. Following adoption of this ordinance, each of the above heretofore legally appointed members shall be reappointed for the balance of the term being served on the present Lafayette Board of Zoning Appeals. The two appointments from the Area Plan Commission shall be given terms that correspond to the two remaining unserved terms. Thereafter each member, except those appointed from the Area Plan Commission whose term shall correspond to their membership on the Area Plan Commission, shall be for a term of four (4) years. All terms shall begin and end on the first Monday of January.

(3) Territorial Jurisdiction. The Area Board of Zoning Appeals - Lafayette Division shall have jurisdiction over all the land within the corporate limits of the City of Lafayette, Indiana, subject to the zoning ordinance, and such territorial jurisdiction shall be concurrent with that of the Area Board of Zoning Appeals.

(4) Subject Matter Jurisdiction. The Area Board of Zoning Appeals - Lafayette Division shall have exclusive jurisdiction of variances within the corporate limits of the City of Lafayette, Indiana, but shall have no jurisdiction to hear any special exceptions, or any appeals.

(5) Staff. The staff of the Area Board of Zoning Appeals - Lafayette Division shall consist of the Lafayette Administrative Officer, the City Attorney and such other persons from city government as the Administrative Officer may from time to time direct to assist him or the Area Board of Zoning Appeals - Lafayette Division.

(c) West Lafayette Division. There is hereby established a division of the Area Board of Zoning Appeals to be known as the AREA BOARD OF ZONING APPEALS - WEST LAFAYETTE DIVISION. The present West Lafayette Board of Zoning Appeals heretofore authorized and continued under Chapter 138 of the Acts of the General Assembly 1957 shall terminate as of December 31, 1983, and all records thereof shall be delivered to the Administrative Officer of the City of West Lafayette on said date by said board.

(1) Membership. The Area Board of Zoning Appeals - West Lafayette Division, shall consist of a five member board all of which members shall be residents of the City of West Lafayette, Indiana, shall hold no other elective or appointed office in city government, except for those members who must be citizen members of the Area Plan Commission. Such members shall be appointed as follows:

Three (3) citizen members appointed by the mayor of the City of West Lafayette, Indiana, one (1) of which appointee must be a member of the Area Plan Commission, and two (2) of which appointees must not be members of the Area Plan Commission.

One (1) citizen member appointed by the Common Council of the City of West Lafayette, Indiana, who cannot be a member of the Area Plan Commission.

One (1) citizen member appointed by the Area Plan Commission, which member must be a member of the Area Plan Commission, but not the same member appointed by the mayor of the City of West Lafayette, Indiana. If the Area Plan Commission is unable to make this appointment by reason of the fact that there is no other citizen member other than the member appointed by the mayor, who is then serving on said Area Plan Commission and who is a resident of the City of West Lafayette, Indiana, the appointment of this citizen member shall be made by the Common Council of the City of West Lafayette, Indiana, and then need not be a member during the term appointed of the Area Plan Commission.

(2) Terms of Office. The mayor of the City of West Lafayette, Indiana shall designate as to each of the two nonmembers of the Area Plan Commission which appointee shall serve an initial one (1) year and a two (2) year term. The member appointed by the Common Council shall be appointed for an initial three (3) year term, and any appointment made in lieu of the Area Plan Commission shall be for an initial four (4) year term. Thereafter, all appointments shall be for a four (4) year term. All appointments of members from the Area Plan Commission shall be for their term on the Area Plan Commission. All terms shall begin and end on the first Monday of January.

(3) Territorial Jurisdiction. The Area Board of Zoning Appeals - West Lafayette Division shall have jurisdiction over all the land within the corporate limits of the City of West Lafayette, Indiana, subject to the zoning ordinance, and such territorial jurisdiction shall be concurrent with that of the Area Board of Zoning Appeals.

(4) Subject Matter Jurisdiction. The Area Board of Zoning Appeals - West Lafayette Division shall have exclusive jurisdiction of variances within the corporate limits of the City of West Lafayette, Indiana, but shall have no jurisdiction to hear any special exceptions, or any appeals.

(5) Staff. The staff of the Area Board of Zoning Appeals - West Lafayette Division shall consist of the West Lafayette Administrative Officer, the City Attorney and such other persons from city government as the Administrative Officer may from time to time direct to assist him or the Area Board of Zoning Appeals - West Lafayette Division.

8.2 Boards of Zoning Appeals: Rules and Procedures

- (a) Rules and By-Laws. The Area Board of Zoning Appeals shall have sole authority to adopt any and all rules under Indiana Code section 36-7-4-916 and any and all by-laws concerning organization, selection of officers, forms for applications, filing requirements, other than as to place of filing as herein provided for, procedures, notices for and conduct of meetings. Upon adoption of such rules and by-laws they shall be applicable to the Area Board of Zoning Appeals and all divisions thereof.
- (b) Facilities and Funding. The Area Plan Commission shall provide suitable facilities for the holding of Area Board of Zoning Appeals hearings and the storage of its recorded documents and accounts, and in its annual budget to provide sufficient funds for the functioning of said Board and its staff. The legislative body of the respective cities having divisions of the Area Board of Zoning Appeals shall provide suitable facilities for the holding of their division's hearings and the storage of its records, documents and accounts, and in its annual budget to provide sufficient funds for the functioning of said division and its staff.
- (c) Filing. All applications for variances in the cities of Lafayette and West Lafayette, Indiana, shall be filed by the applicant with the staff of the appropriate Lafayette division or West Lafayette division. It shall be the duty of the respective Administrative Officer to file the original or copy with the Area Board of Zoning Appeals within three (3) days from receipt thereof from the applicant. A certified copy of all decisions made thereon shall be transmitted to the Area Board of Zoning appeals as provided in Indiana Code section 36-7-4-919 (f); all other applications for variances, special exceptions, and requests for appeal shall be filed by the applicant with the Area Board of Zoning Appeals.
- (d) Hearings. All hearings required for variances, special exceptions and appeals shall be by the Area Board of Zoning Appeals, or where appropriate, a division thereof. As per section 8.2(a), procedures for public notice setting forth time and place for all hearings by the Area Board of Zoning Appeals and all divisions thereof shall be established by the Area Board of Zoning Appeals.

8.3 Special Exceptions

- (a) There shall be no classes of cases or application therefor, nor any particular situation in which this Ordinance authorizes either special uses, contingent uses or conditional uses.
- (b) The Area Board may grant a special exception for a use in a district if, after a hearing under section 8.2(d), it makes findings of facts in writing, that:
- (1) section 3.1 authorizes a special exception for that use in that district; and
 - (2) the requirements and development standards for the requested use as prescribed by this Ordinance will be met; and

- (3) Granting the exception will not subvert the general purposes served by this Ordinance and will not, because of traffic generation, placement of outdoor lighting, noise production or hours of operation, materially and permanently injure other property or uses in the same district and vicinity.
- (c) The Area Board may impose such reasonable conditions upon its approval as it deems necessary to find that (b) (3) above will be served.
- (d) The Area Board may permit or require the owner of the parcel or property to make a written commitment concerning the use or development of the parcel as specified under IC 36-7-4-921.
- (e) The granting of a special exception under subsection (b) is unnecessary for a use authorized by section 3.1 if that use existed on the date this Ordinance, or pertinent amendments to it, were passed. However, this subsection shall not authorize the expansion of such a use if it involves the enlargement of a building, structure, or land area.
- (f) A use authorized by special exception may not be expanded, extended, or enlarged unless reauthorized by the Area Board under the procedures set forth in this Ordinance for granting a special exception.
- (g) A special exception, granted for a specific use under subsection (b) or authorized by subsection (e) ceases to be authorized and is void if that use is not established within a twelve-month period of the date the special exception was granted, or if that use is discontinued at that site for a twelve-month period during which time it is not succeeded by the same use specifically authorized as a special exception.
- (h) A special exception may be terminated by the Area Board of Zoning Appeals, upon filing of an application therefore by an interested person or a member of the staff, or an Administrative Officer, and upon a finding at a public hearing, with notice to the property owner, that the terms of this Ordinance, or conditions of approval or commitments have not been complied with.
- (i) To be eligible for the granting of a special exception under this section, a person must first receive a determination from the Administrative Officer that a special exception is required for the intended use or for the expansion, extension, or enlargement of a use under (f) above. The Administrative Officer shall file a report of determination (in a form prescribed by the Area Board) with the Commission which body shall determine how the granting of the special exception would affect the purposes served by this Ordinance in furtherance of the Comprehensive Plan. Within thirty (30) days of the date on which it received the application, the Commission shall report its determination to the Area Board, for action by it as authorized by subsection (b). If the Area Board grants the special exception, it shall direct the applicant to apply for an improvement location permit under section 7.1. If such application complies with this ordinance and all other applicable codes and ordinances, the Administrative Officer shall issue the improvement location permit for the use authorized by special exception.

8.4 Variances

- (a) A Board may grant a variance from the development standards (such as height, bulk, area) of the zoning ordinance if, after a public hearing, it makes findings of facts in writing, that:
- (1) the Area Plan Commission or its Executive Committee has determined that the variance application is not for a use variance, i.e. a variance from a use district or classification per I.C. 36-7-4-916 and 918.3; and,
 - (2) the approval will not be injurious to the public health, safety, morals, and general welfare of the community.

3. Other... variance... code...
included in the variance will not be affected in a substantially adverse manner; and,

- (4) the strict application of the terms of this Ordinance
- a) is being applied to a situation that is not common to other properties in the same zoning district; and
 - b) will result in an unusual and unnecessary hardship. This situation shall not be self-imposed, nor be based on a perceived reduction of or restriction on economic gain.
- (b) A Board may permit or require the owner of a parcel of property to make written commitment concerning the use or development of that parcel or may impose conditions upon that grant of variance.
- (c) A variance granted by a Board shall run with the parcel until such time as: (1) the use of the variance ends, or (2) the property conforms with the Ordinance as written.
- (d) Where an owner has failed to comply with any condition and/or commitment permitted or required by the grant of variance, a Board may authorize such action as it may deem appropriate to obtain compliance by the owner with the condition or commitment of the grant, or with the terms of this Ordinance in the same manner as if the variance had not been granted.

8.5 Appeals

- (a) A decision of an Administrative Officer enforcing this Ordinance may be appealed to the Area Board of Zoning Appeals by any person who is adversely affected by the decision.
- (b) On an appeal under subsection (a), the Area Board of Zoning Appeals may make any decision that an Administrative Officer might have made.
- (c) All appeals from the decisions of the Area Board of Zoning Appeals, or from a decision concerning variances of any division of the Area Board of Zoning Appeals shall be made pursuant to Indiana Code section 36-7-4-1000 - 36-7-4-1020. No appeal from the decision of a division of the Area Board of Zoning Appeals, over which such division has jurisdiction, shall be made to the Area Board of Zoning Appeals.

8.6 Administrative Officers

The Tippecanoe County Building Commissioner is designated the Administrative Officer in Tippecanoe County, the Executive Director of the Area Plan Commission is designated the Administrative Officer in the Towns of Dayton and Battle Ground, and the City Engineers of the cities of Lafayette and West Lafayette are designated as Administrative Officers in their respective cities; they have the principal responsibility for enforcing this Ordinance, each within his own specified jurisdiction.

8.7 Enforcement

- (a) Any person may, by suit in a circuit or superior court of the county, enjoin the violation of this Ordinance.
- (b) The Area Board of Zoning Appeals by mandatory injunction in the circuit court of the county against the owner or possessor of the real estate, may require the removal of a structure erected in violation of this ordinance, or the removal of any use or condition permitted in violation of this ordinance.
- (c) A use that violates this Ordinance shall be treated as if it were a common nuisance, and the owner or possessor of the structure, land, or premises upon which the use is maintained shall be liable for such nuisance.

(d) Any person whether owner or possessor, who shall violate, or permits or allows a violation, of any of the provisions of this Ordinance, or who fails to comply therewith or with any requirements thereunder, or who shall build, reconstruct, or structurally alter any building in violation of any detailed statement or plan submitted upon which an approval or grant is given under this Ordinance, shall, upon complaint filed in any court of the county and upon judgment finding such violation, be fined not less than ten dollars (\$10.00) and not more than three hundred dollars (\$300.00), and each day that such violation or noncompliance shall be permitted to exist, shall constitute a separate violation.

8.8 Exclusion

Nothing in this Ordinance or in any rules, regulations or orders issued pursuant to this Ordinance shall be deemed to restrict or regulate or to authorize any unit of government, legislative body, plan commission or board of zoning appeals now or hereafter established, to restrict or regulate the exercise of the power of eminent domain by the State of Indiana or by any state agency, or the use of property owned or occupied by the State of Indiana or any state agency. As used in this section, the term "state agency" shall mean and include all agencies, boards, commissions, departments, and institutions, including Purdue University and other state educational institutions of the State of Indiana.

8.9 Saving Provision

This Ordinance shall not be construed as abating any action now pending under or by virtue of any preexisting ordinance, or as discontinuing, abating, modifying or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of a participating jurisdiction under any section or provision existing at the time of the effective date of this Ordinance, or of vacating or annulling any rights obtained by any person, firm or corporation, by lawful action of the participating jurisdictions or administrative bodies thereof, except as shall be expressly provided for in this Ordinance.

8.10 Severability

If any section, subsection, paragraph, subparagraph, clause, phrase, word, provision, or portion of this Ordinance shall be held to be unconstitutional or invalid by any court of competent jurisdiction, such holding or decision shall not affect or impair the validity of this Ordinance as a whole or any part thereof that is severable from or other than the section, subsection, paragraph, subparagraph, clause, phrase, word, provision or portion so held to be unconstitutional or invalid.

8.11 Effective Date

This Ordinance shall be effective from and after January 2, 1984.

Section VI: That references to Chapters 3 and 8 in the Table of Contents are hereby amended to read as follows (page numbers to be assigned at next printing):

CHAPTER 3 - <u>AUTHORIZED USES</u>	
Sec. 3.1 Primary Uses	
Sec. 3.2 Accessory Uses	
Sec. 3.3 Nonconforming Uses	
Sec. 3.4 Garage or Yard Sale	
CHAPTER 8 - <u>Boards of Zoning Appeals; Variances, Special Exceptions and Appeals; Administration and Enforcement</u>	
Sec. 8.1 Boards of Zoning Appeals: Memberships and Jurisdictions	

- Sec. 8.2 Boards of Zoning Appeals: Rules and Procedures. .
- Sec. 8.3 Special Exceptions
- Sec. 8.4 Variances.
- Sec. 8.5 Appeals.
- Sec. 8.6 Administrative Officers.
- Sec. 8.7 Enforcement.
- Sec. 8.8 Exclusion.
- Sec. 8.9 Saving Provision

Enacted on this 3rd day of October, 1983

BOARD OF COMMISSIONERS
OF THE COUNTY OF TIPPECANOE

BY: _____
Bruce V. Osborn, President

Eugene R. Moore
Eugene R. Moore, Member

Sue M. Reser
Sue M. Reser, Member

ATTEST:

Sarah S. Brown
Sarah Brown, Auditor