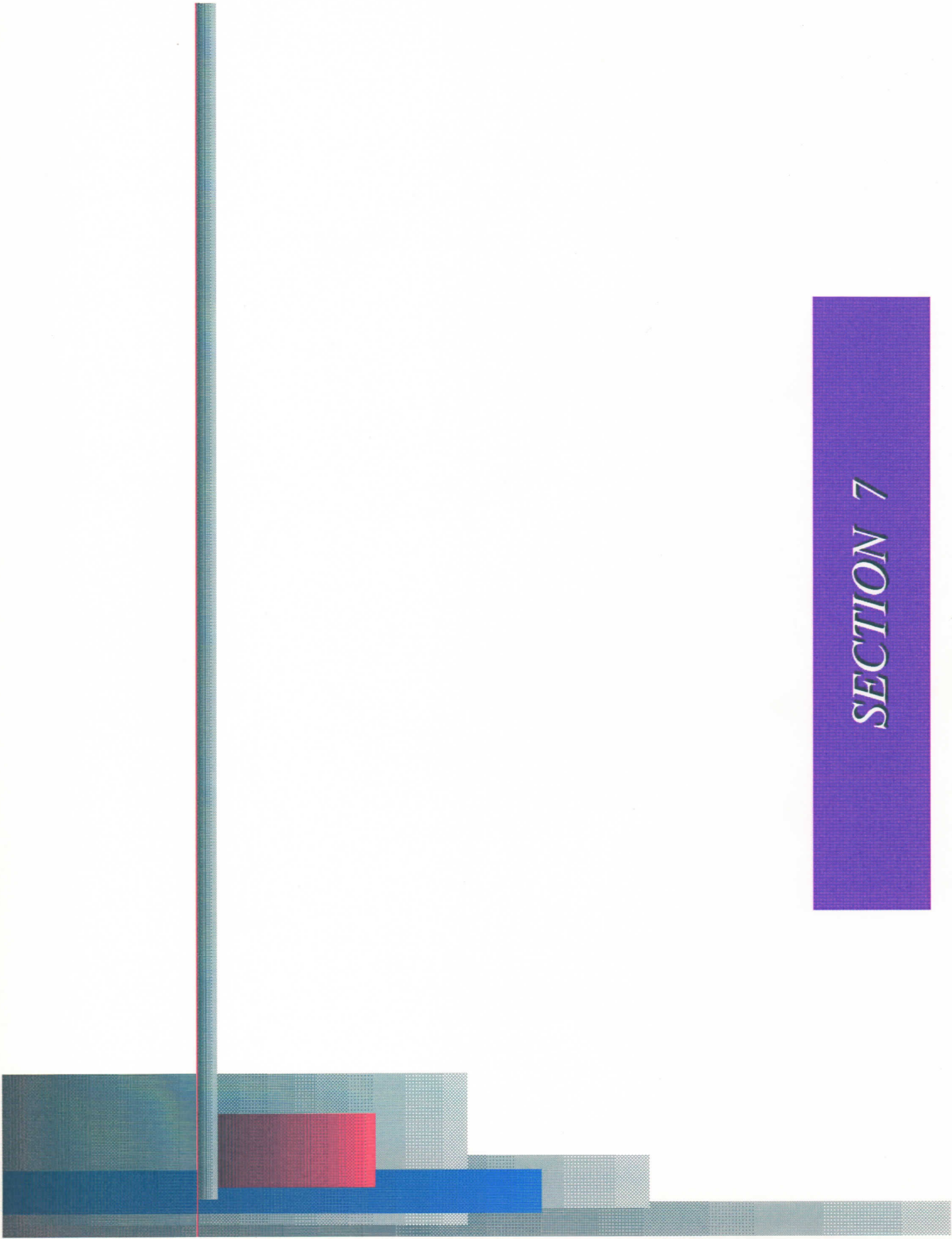


SECTION 7



SECTION 7

Board of Zoning Appeals, Variances,

7.1 Boards of Zoning Appeals: Membership and Jurisdiction

The Board. There is hereby reestablished the Advisory Board of Zoning Appeals to be known as the ADVISORY BOARD OF ZONING APPEALS OF THE TOWN OF WINSLOW, INDIANA.

The Advisory Board of Zoning Appeals shall be a continuation of the present Board of Zoning Appeals of the Town of Winslow heretofore established under the advisory plan law, being Indiana Code, § 36-7-4-902, as added by Acts 1981, P.L. 309, § 23; P.L. 357-1983, § 1; P.L. 3-1990, § 125.

- A. **Membership.** The Advisory Board of Zoning Appeals shall consist of and continue as a five member panel appointed in conformance with Indiana Code as follows:
- i. Three [3] citizens members appointed by the executive of the town, of whom one [1] must be a member of the Advisory Plan Commission and two [2] must not be members of the Advisory Plan Commission.
 - ii. One [1] citizen member appointed by the Town Council who must not be a member of the Advisory Plan Commission.
 - iii. 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 1. above.
- B. **Terms of Office.** Following adoption of this Ordinance, each of the above members shall be appointed for the following terms:
- i. One [1] for a term of one [1] year,
 - ii. One [1] for a term of two [2] years,
 - iii. One [1] for a term of three [3] years, and
 - iv. Two [2] for a term of four [4] years,
 - v. Thereafter, each member, shall be for a term of four [4] years. Each term shall expire on the first Monday of the year of termination. A member of the Advisory Board of Zoning Appeals serves until his successor is appointed and qualified.
- C. **Removal of Members:** The appointing authority may remove a member from the Advisory Board of Zoning Appeals for cause. The appointing authority must mail notice, along with written reasons, if any, for removal, to the member at his/her residence address. A member who is removed may not appeal the removal to a court or otherwise.
- D. **Subject Matter Jurisdiction.** The Advisory Board of Zoning Appeals shall have exclusive jurisdiction for [1] variances under the statute and this ordinance, [2] special uses; [3] special exceptions; [4] contingent uses; [5] conditional uses, [6] uses from terms of the zoning ordinance and the Advisory Board of Zoning Appeals may impose reasonable conditions as a part of its approval. The Advisory Board of Zoning Appeals may also hear appeals as provided by statute, including requirements for procurement of improvement location or occupancy permits or any ordinance adopted under I.C. 36-7-4 or any prior zoning statute, and any other appeals authorized by statute.

- F. **Staff.** The Board of Zoning Appeals may appoint a secretary and such employees as are necessary for the discharge of its duties.

7.2 Board of Zoning Appeals: Rules and Procedures

- A. **Rules and By-Laws.** The Advisory Board of Zoning Appeals shall have sole authority to adopt any and all rules under Indiana Code, § 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 Advisory Board of Zoning Appeals, In general the Board shall adhere to the following in conjunction with any rule or by-laws.
- i. The majority of the members shall constitute a quorum.
 - ii. The Board shall keep minutes of its proceedings, keep records of its finding of facts, record the vote on all official actions.
 - iii. All minutes and records shall be filed in the office of the Board and shall be a public record.
- B. **Officers.** At the first meeting of each year the Advisory Board of Zoning Appeals shall elect a chairman and vice-chairman may act as chairman during the absence or inability of the chairman.
- C. **Facilities and Funding.** The Town of Winslow shall provide suitable facilities for the holding of Advisory 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.
- D. **Filing.** All applications for variances, special uses, and requests for appeals shall be filed by the applicant with the staff of the Advisory Board of Zoning Appeals.
- E. **Hearing.** All hearings required for variances, special uses, and appeals shall be by the Advisory Board of Zoning Appeals. Procedures for public notice setting forth time and place for all hearings by the Advisory Board of Zoning Appeals shall be established by the Advisory Board of Zoning Appeals.

7.3 Appeals

Appeals to the Board of Zoning Appeals concerning interpretation or administration of this ordinance may be taken by any persons affected by any decision of the Administrator. Such appeal shall be taken within 30 days, after the decision, with the Director and with the Board of Zoning Appeals, as notice of appeal specifying the grounds upon which the appeal is being taken. The Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

7.4 Review of Certiorari

Every decision of the Board of Zoning Appeals shall be subject to review by certiorari.

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

7.5 Variances

- A. The Board of Zoning Appeals may authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in serious practical difficulty. No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or profit of the owner, but only where strict application of the provisions of this ordinance would result in serious practical difficulty.
- B. The Board of Zoning Appeals may grant a variance from the development standards (such as height, setbacks, bulk, and lot area) of the zoning ordinance after completion of the variance procedure.
- C. The Board of Zoning Appeals shall prepare a written finding a fact for each application considered.

7.6 Application and Standards for Variance

- A. A variance from the terms, development standards or permitted uses of this ordinance shall not be granted by the Board of Zoning Appeals unless and until a written application for a variance is submitted to the Administrator and the Board of Zoning Appeals containing:
 - i. Name, address, and phone number of applicants;
 - ii. Legal description of property;
 - iii. Description of nature of variance requested;
 - iv. Site plan depicting all information necessary for the Board's decision;
 - v. Technical information as determined by the Administrator;
 - vi. A narrative statement demonstrating that the requested variance conforms to each of the following standards.
 - a. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
 - b. That a literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
 - c. That special conditions and circumstances do not result from the action of the applicant.
 - d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings.
 - e. A variance shall not be granted unless the Board makes specific a written finding of fact based directly on the particular evidence presented to it

which support conclusions that all of the standards and conditions imposed by Subsection 5 of this section have been met by the applicant.

- B. In passing upon such applications the Board of Zoning Appeals shall consider all the application and prepare a written find of fact. A variance may be approved under this section only upon a determination in writing that:
- i. Whether or not the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - ii. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
 - iii. The need for the variance arises from some condition peculiar to the property involved;
 - iv. 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;
 - vi. The need for the variance is not self-imposed, nor based on a perceived reduction of, restriction or creation of economic gain of the owner.
- C. Applications for a variance shall be filed with the Board of Zoning. Appeals at least twenty-one [21] days prior to a public hearing being held for it consideration.

7.7 Notice of Public Hearing in Newspaper

The petitioner shall also arrange for the publication of a public notice as required by the Zoning Ordinance. Said notice shall include the same information as described in the notice to adjoining property owners below. The notice shall be placed in a newspaper of general circulation in the jurisdictional area of the Board of Zoning Appeals. Said Notice shall run in the paper not less than ten [10] days before noted public hearing. The notice shall run at least one [1] time. The petitioner shall also file with the Administrator a copy of the proof of publication prior to the public hearing.

7.8 Notice to Parties in Interest

At the time a petition is filed for an appeal, variance, special use of any combination thereof, the petitioner shall furnish the Administrator with a complete list of names and last known addresses of adjoining property owners of the subject parcel. The owners shall be identified as recorded in the office of the County Recorder, or as it appears from the authentic tax records of this county. The petitioner shall give due notice to these owners by certified mail with return receipt requested. Notice to adjoining property owners shall include the place, date, and time for the first public hearing of the petition. Notice shall be mailed not less than twelve [12] days prior to said hearing. Return receipts of said notification letters shall be submitted to the Administrator prior to the hearing. Said notification letter shall also state the name and address of the petition letter shall also state the name and address of the petitioner, and name and address of the property. The petitioner shall also, at the guidance of the Administrator, be required to post in a conspicuous place (s) on the subject property, a notice provided by the Administrator explaining the action being sought.

7.9 Action by Board of Zoning Appeals

At the public hearing, the Board of Zoning Appeals shall either approve, approve with supplementary conditions, or disapprove the request for appeal or variance. The Board of Zoning Appeals shall further make a written finding of fact that the reasons set forth in the application

justify the granting of the variance that will make possible a reasonable use of the land, building or structure.

7.10 Procedure and Requirements for Approval of Special Uses

It is recognized that an increasing number of new kinds of uses are appearing daily and that many of these and some other more conventional uses possess character of such unique and special nature relative to location, design, size, method of operation, circulation, and public facilities that each specific use must be considered individually. These specific uses as they are specially permitted under the provisions of this ordinance shall follow procedures and requirements set forth in this ordinance. Special Uses, while requiring special consideration by the Board of Zoning Appeals, shall be deemed permitted uses in the district in which they are provided.

7.11 Contents of Application for a Special Use Permit

An application for a Special Use permit shall be filed with the Administrator and the Board of Zoning Appeals by at least one owner or lessee of property for which such Special Use is proposed. At a minimum, the application shall contain the following information:

- A. Name, address, and phone number of applicant.
- B. Description of existing use.
- C. Zoning district.
- D. Description of proposed Special Use.
- E. A narrative statement evaluating the effects of such use upon adjoining property; a discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the Comprehensive Plan;
- F. Any other information deemed necessary by the Administrator which shall include but not be limited to:
 - i. a legal description of the real estate involved;
 - ii. location and size of all existing and proposed buildings and structures;
 - iii. location and dimensions of building lines, right-of-way lines, setbacks, regulated drains and public and private easement (existing and proposed);
 - iv. layout of drives and other traffic and drainage features on opposite side of street or adjacent properties;
 - v. location of septic facilities, sanitary sewer lines and all utilities existing and proposed and connection plans for sanitary sewer facilities including details if necessary;
 - vi. location of parking and loading areas, traffic access and circulation, open space, landscaping, refuse and service areas, signs, turning radii, and proposed vehicle and projected turning paths from turning radius templates.
 - vii. vicinity map showing also property boundaries and zone districts map showing all property boundaries and zone districts within a 1/4 mile radius of the property.

7.12 General Standards Applicable to all Special Uses

The Board shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that use at the proposed location:

- A. Is in fact a Special Use as established under the provisions of Section 4 and appears on the Permitted Uses table in Subsection 4.1 for the zoning district involved;
- B. Will the use be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or the zoning ordinances;
- C. Will the use be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the same area;
- D. Will not be hazardous or disturbing to existing neighboring uses;
- E. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately and such services;
- F. Will not create excessive additional requirements at public expense for public facilities and services and will not detrimental to the economic welfare of the community;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have vehicular approaches to the property which shall be so designed as not to create and interference with traffic on surrounding public thoroughfares;
- I. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

7.13 Supplementary Conditions

The granting any Special Use, the Board may impose reasonable conditions and safeguards in conformity with this ordinance. Violations of such conditions, when made a part of the terms upon which the Special Use is granted, shall be deemed a violation of this ordinance.

7.14 Notice of Public Hearing in Newspaper

The petitioner shall also arrange for the publication of a public notice as required by the Zoning Ordinance. Said notice shall include the same information as described in the notice to adjoining property owners above. The notice shall be placed in a newspaper of general circulation in the jurisdictional area of the Board of Zoning Appeals. Said Notice shall run in the paper not less than ten [10] days before noted public hearing. The notice shall run at least one [1] time. The petitioner shall also file with the Administrator a copy of the proof of publication prior to the public hearing.

7.15 Action by the Board of Zoning Appeals

Within 45 days after the public hearing required in Subsection 7.13 the Board shall in writing either approve, approve with supplementary conditions as specified in Subsection 7.12, or disapprove the application as presented. If the application is approved or approved with modifications, the Board shall instruct the Administrator in writing to issue a Special Use permit listing the specific conditions specified by the Board for approval. If the application is disapproved by the Board, it shall notify the applicant in writing who may then seek relief through the Town Council. Appeals from Board decisions shall be made in the manner specified in Subsection 7.4.

7.16 Expiration of Special Use Permit

A Special Use approval shall be deemed to authorize only one particular use, and said approval shall automatically expire if, for any reasons, the use has not commence within one year.

7.17 Construction Requirements

Any person to whom is granted Special Use approval who fails to commence construction within 12 months after such permit is issued, or who fails to carry to completion the total Development Plan thereof within three [3] years after such construction is begun, whichever is later, or who fails to conform to the provisions of the Development Plan supporting data finally approved by the Board and upon the basis of which such approval was issued, may be required by the Board upon its own motion, and shall be required by the Board upon written petition of any person, deeming himself aggrieved, to show cause why such approval should not be withdrawn and such permit revoked.