

Chapter 12

THE BOARD OF ZONING APPEALS

12.01 Continuance - Authority of Board: The Board of Zoning Appeals (Board) is continued in accordance with the provisions of IC Section 36-7-4-901h and amendments thereof.

12.02 General: In accordance with state law, the Town Council shall appoint a Board of Zoning Appeals. The Board of Zoning Appeals may adopt rules to govern its procedure. The Board of Zoning Appeals shall hold meetings, keep minutes, and pursuant to notice, shall conduct hearings, compel the attendance of witnesses, take testimony, and render decisions in writing, all as required by law. When permitting any Variance, Special Exception, Appeal, change of a non-conforming use, or other provision as provided by this Ordinance, the Board may impose such conditions and requirements as it deems necessary for the protection of adjacent property and the public interest. Any person filing an appeal or proceeding with the Board shall assume any cost of public notice that is required.

12.03 Members and Terms of Office

The Churubusco Board of Zoning Appeals shall consist of and continue as a five (5) member board appointed as follows:

Three (3) citizen members appointed by the Town Council, of whom one (1) must be a member of the Plan Commission and two (2) must not be members of the Plan Commission.

One (1) citizen member appointed by the fiscal body of the municipality, who must not be a member of the Plan Commission.

One (1) citizen member appointed by the Plan Commission who must be a member of the Plan Commission other than the member appointed by the executive of the municipality. (Please see I.C. 36-7-4-902)

The original members of the Board shall serve for the following terms: One (1) for one (1) year; one (1) for two (2) years; one (1) for three (3) years; and two (2) for four (4) years:

Upon the expiration of the term of an original member of the Board, his successor shall serve for a term of four (4) years. Members of the Board shall be taxpayers and residents of the Town and its two (2) mile jurisdictional area.

12.04 President and Secretary

The President of the Board shall be elected by the Board members in the first meeting of each year. The office of President shall be limited to one (1) year and no President shall serve more than four (4) consecutive terms. The President or acting President may administer oaths and compel the attendance of witnesses. The Department's staff member(s) present at the meeting shall serve as the Secretary who shall keep its records and files. In the event the President and Vice-president are absent and a quorum of members are present, the Secretary, without voting privileges, may preside administratively so that the meeting can go forward as planned. The Board may select or appoint other such officers as it deems necessary.

12.05 Meetings

Meetings of the Board shall be held at the call of the President, provided that whenever three (3) or more members of the Board request the President to summon a meeting of the Board, the President shall call a meeting; provided further that the Secretary of the Board shall keep minutes of its proceedings and official actions, and shall keep records of its examinations and findings, and shall file the same in the office of the Board or such other public place within the City where public records are filed; provided further that the presence of three (3) members of the Board shall constitute a quorum for transacting business and taking official action; provided further that the concurring vote of at least three (3) members of the Board shall be necessary to affect a ruling of the Board

At any meeting of the Board or at any hearing held by the Board, any interested person may appear and be heard either in person or by representative agent or attorney.

12.06 Removal and Vacancies

The Town Council shall have the power to remove any member of the Board from office for cause and after a public hearing. Vacancies on the Board shall be filled for the unexpired term of the member whose place has become vacant.

12.07 Variances

A. The Board of Zoning Appeals shall have the power to authorize Variances from the development standards (such as height, bulk, setback requirements, etc.) of this Ordinance. The Board of Zoning Appeals may attach such conditions to the Variances as it deems necessary to assure compliance with the purpose of this Ordinance. A Variance may be permitted if all the following requirements are met:

1. Literal enforcement of the Ordinance would result in an unnecessary hardship with respect to the property.
2. Such unnecessary hardship results because of unique characteristics of the property.
3. The Variance would not change the land use of the property or the character of the neighborhood.
4. The Variance observes the spirit of this Ordinance, produces substantial justice and is not contrary to the public interest.

B. Conditions of Variances:

1. The petitioner shall provide a site plan, photographs and/or such other documentation to assist in the clarification of the petitioner's request for a Variance.
2. If an Improvement Location Permit and/or Building Permit is not secured within six (6) months of the granting of the Variance, the Variance becomes null and void. The applicant must secure another Variance prior to the issuance of another Improvement Location Permit and/or Building Permit.
3. The Variance is only good for one (1) set of Improvement Location Permit(s) and/or Building Permit(s) for which the Variance was granted. The Improvement Location Permit and/or Building Permit(s) is good for one (1) year from the date it is obtained. If any further expansion, extension, enlargement, addition, alteration or structure is needed, then the applicant must receive a new Variance.
4. A Variance granted by the Board of Zoning Appeals shall run with the land until such time as:
 - a. the use of the Variance ends, or
 - b. the property conforms with the Ordinance as written.
5. Where an owner has failed to comply with any condition and/or commitment permitted or required by the grant of Variance, the 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.
6. Any Variances granted prior to this Ordinance are subject to the current provisions of this Ordinance.
7. In addition to the conditions specified above, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, and all standards as specified in the

Flood Plain Ordinance (please see Chapter 8).

12.08 Special Exceptions

A. The Board of Zoning Appeals shall have the power to authorize Special Exceptions, and to attach such conditions to the Special Exceptions as it deems necessary to assure compliance with the purpose of this Ordinance. This may include prohibiting or limiting such things as signage, area, screening, outside lighting, hours of operation, etc. A Special Exception may be permitted if all the following requirements are met:

1. The Special Exception shall be listed as such in the listing associated with the chapter for the district requested.
2. The Special Exception shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the Environmental Performance Standards of Chapter 2, Section 2.10.
3. The Special Exception shall produce a total visual impression and environment which is consistent with the environment of the neighborhood.
4. The Special Exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.
5. The Special Exception shall preserve the purpose of this Ordinance.

B. Conditions of Special Exceptions:

1. The petitioner shall provide a site plan, photographs, and/or such other documentation to assist in the clarification of the petitioner's request for a Special Exception.
2. If an Improvement Location Permit and/or Building Permit is not secured within six (6) months of the granting of the Special Exception, the Special Exception is null and void. The applicant must secure another Special Exception prior to the Issuance of another Improvement Location Permit and/or Building Permit.
3. The Special Exception is only good for one (1) set of Improvement Location Permit(s) and/or Building Permit(s) for which the Special Exception was granted. If any further expansion, extension, enlargement, addition, alteration or structure is needed, then the applicant must receive a new Special Exception.
4. If a Special Exception ceases or is discontinued at the site for a twelve (12) month period during which time it is not succeeded by the same specifically approved Special Exception, then the authorization is void and another Special Exception is required.
5. A Special Exception may be terminated by the Board of Zoning Appeals, upon filing of an application therefore by an interested person or the Administrator, and upon 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.
6. All Special Exceptions shall be approved for the originating applicant for a specific

location, and may not be transferred to any other location by that applicant. Should the property upon which the Special Exception be sold or conveyed to a different ownership, a new Special Exception will be required.

7. Any Special Exceptions granted prior to this Ordinance are subject to the current provisions of this Ordinance.

12.09 Appeals: The Board shall hear, review, and determine appeals from:

- A. Any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the Zoning Ordinance.
- B. Any order, requirement, decision, or determination made by an administrative board or other body, except a Plan Commission, in relation to the enforcement of the Zoning Ordinance.
- C. Any order, requirement, decision, or determination made by an administrative board or other body, except a Plan Commission, in relation to the enforcement of an ordinance requiring the procurement of an Improvement Location Permit.
- D. All appeals from a decision of the Board of Zoning Appeals shall be made pursuant to I.C. 36-7-4-1001 through 36-7-4-1020, as amended. The person aggrieved by a decision of such Board of Zoning Appeals shall present the petition provided for in I.C. 36-7-4-1003, as amended, to the Court within thirty (30) days after the entry of the decision of the Board of Zoning Appeals.

12.10 Home Occupations: A commercial or professional activity, regardless of whether engaged in for profit, conducted by one or more residents in his, her, or their dwelling, or structure accessory thereto, and is clearly incidental and secondary to the use of the principal structure for dwelling purposes, and is located within a residentially or agriculturally zoned district may be classified as a Home Occupation.

A. General Restrictions and Limitations: Home occupations shall be permitted as an accessory use to a permitted residential use in any residentially or agriculturally zoned district subject to the requirements of this Section.

1. Home occupations shall be entirely operated from an enclosed, four-walled structure, provided that all doors (including garage doors greater than four (4) feet in width) shall be kept closed during use of the structure for a home occupation, except during incidental use for ingress and egress.

2. Such use shall not occupy a total floor area greater than the amount of square footage represented by twenty percent (20%) of the total square footage of the principal structure whether operated from within the dwelling or in an accessory structure. For the purposes of this section, "total floor area of the dwelling" shall not include basements or cellars (whether finished for habitation or not), garages (whether attached or detached), attics, or other non-habitable portions of the residence. For the purposes of this section, the total floor area occupied by the home occupation activity shall include the total floor area of any room or rooms, where the home occupation is conducted or supplies, material, inventory, or equipment is stored.

3. The use of the property for an accessory home occupation shall be clearly incidental and subordinate to its principal use as a residence by its occupants, and shall not dominate or cause variations in the residential character of the property, principal structure, or surrounding neighborhood.

4. There shall be no visible evidence of the home occupation, including but not limited to alterations to the exterior of the residence which changes the character thereof as a residence, exterior displays, or the outdoor storage of materials or equipment used in the home occupation. For the purpose of this section, "outdoor storage" shall include not only equipment or materials generally used in the occupation, but also the accumulation of used, discarded, or worn-out materials or manufactured products, any of which may or may not be reusable or saleable.

5. Parking generated by the conduct of the home occupation shall be provided off-street and in conformance with this Zoning Ordinance. The conducting of the home occupation shall in no way result in the parking of any motorized vehicle, other than those owned and registered in the name of the residents, either upon the lot upon which the home occupation is conducted, or the adjoining public or private street, overnight or longer.

6. The home occupation shall comply with the requirements of the General Performance Standards of Chapter 2. In no case shall any equipment or process be used which creates visual or audible interference in any radio or television receiver located off the lot on which such home occupation is conducted, or which causes fluctuation in line voltage beyond the property line of the lot upon which the home occupation is conducted.

7. The use of any tool or equipment powered by electricity, gasoline or diesel engine, or high pressure gas shall not be used before 7:00 A.M. or after 7:00 P.M. of any day.

8. Permitted home occupations shall be limited to those occupations conducted entirely by mail or telephone, those occupations in which the offered goods or services are delivered directly to a location other than the property where the home occupation is located, or those occupations where items are picked up from the customer at a location other than the property where the home occupation is located, the work performed, and then returned to the customer at the customer's location. Note: Home occupations requiring customer visits to the location of the home occupation for the purpose of receiving the goods or services offered may be permitted by the Board of Zoning Appeals as a Special Exception.

9. Persons who are not residents of the dwelling where the home occupation is being conducted, and who are engaged either as employees, subcontractors, independent contractors, or otherwise in the home occupation, shall not exceed one (1).

10. Signage: Non-illuminated Home Occupation wall sign not exceeding two (2) square feet wall-mounted on the dwelling; and, if allowed with the Special Exception, one (1) non-illuminated yard sign not exceeding six (6) square feet in size per face. Other restrictions may apply. See Chapter 11, Signs.

B. Home Occupation Permits: No building or structure or part thereof shall hereafter be used for the purposes of a home occupation without first having applied in writing to the Plan Commission's designated Administrator for a home occupation permit to do so, and the required permit is issued. Blank forms shall be provided by the Administrator for the use of those who apply for a home occupation permit as required by this Ordinance.

Note: In those instances where a Special Exception is required, the home occupation permit shall not be issued until after the Special Exception has been granted by the Board of Zoning Appeals.

C. Home Occupations Permits Non-Transferable: All home occupation permits shall be approved for the originating applicant for a specific location, and may not be transferred to any other location by that applicant. Should the property upon which the home occupation is conducted be sold or conveyed to a different ownership or resident, a renewal of the home occupation permit will be required.

D. Revocation of Home Occupation Permit: Upon a finding that an approved home occupation permit has become unsuitable or incompatible with the residential nature of the property or neighborhood where it is located through non-compliance with any of the requirements of this Ordinance, the Board of Zoning Appeals reserves full authority to revoke the Home Occupation Permit. The Board, or its designee, shall notify the property-owner that such an action is imminent, that the property-owner will have thirty-five (35) days in which to prepare a response to the violations specified in the letter-of-intent to revoke the Home Occupation Permit, and that the Board shall schedule the matter for a

public hearing at the next available regular meeting date following the thirty-five (35) day notice period, at which time, all interested citizens will be given the opportunity to be heard. Said notice to the property-owner of the intent to revoke the Home Occupation Permit shall be delivered by either the United States Mail or through personal service. The public hearing shall be advertised in accordance with State Law and the Rules and Procedures of the Board of Zoning Appeals.

