

**TOWN OF ZIONSVILLE**  
**ORDINANCE #XX - Draft 2.5 - 7/10/06**  
**ZIONSVILLE CONSERVATION DISTRICT COMMISSION**  
**(Adopted pursuant to IC 36-7-11)**

*WHEREAS*, it is the intent of this ordinance to provide a means to promote the cultural, economic, and general welfare of the public through the preservation and protection of structures of historic, architectural, and cultural interest within the Town of Zionsville; to coordinate these interests with the Town of Zionsville Plan Commission; and

*WHEREAS*, it is the intent of this ordinance to provide for the appointment of a Zionsville Conservation District Commission in order to implement the establishment of conservation districts in accordance with the provisions set forth below,

*NOW, THEREFORE, BE IT ORDAINED* by the Town Council of the Town of Zionsville, Indiana:

**Section 1. Purpose and Definitions**

**1. Purpose:** The purpose of the ordinance is:

- To support and encourage new construction that is compatible with and enhances Zionsville's unique historic and architectural character.
- To support and encourage the preservation, maintenance, and rehabilitation of existing historic and non-historic structures in a manner that complements and reflects the history and character of Zionsville.

**2. Definitions:** The following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed. The word "*shall*" is always mandatory. The word "*person*" includes a firm, partnership, a limited liability company, or a corporation, as well as an individual. Terms not defined in this section shall have the meanings customarily assigned to them.

"*Demolition*" - the complete or substantial removal of any primary residential structure or garage located in an historic district.

"*Conservation District*" - a single building, structure, object, or site or a concentration of buildings, structures, objects, or sites, the boundaries of which are delineated on a map attached in Exhibit A or approved in an ordinance adopted under Section 4 of this ordinance.

"*Interested Party*" - one of the following:

1. The executive of the unit.
2. The legislative body of the unit.
3. The agency having land use planning jurisdiction over a district designated under this ordinance.
4. A neighborhood association, whether incorporated or unincorporated, a majority of whose members are residents of a district designated by an ordinance adopted under this chapter.
5. An owner or occupant owning or occupying property located in a district established under this ordinance.
6. Historic Landmarks Foundation of Indiana, Inc., or any of its successors.
7. The state historic preservation officer designated under IC 14-21-1-19.

"*Conservation District Guidelines*" - criteria which identify local design concerns in an effort to assist

property owners in maintaining the character of the designated district or buildings during the process of rehabilitation or new construction.

"Town" - the Town of Zionsville, Indiana.

## **Section 2. Zionsville Conservation District Commission Establishment and Organization**

- A. Creation:** There is hereby established the Zionsville Conservation District Commission of the Town of Zionsville, Indiana (the "Commission").
- B. Composition:** The Commission shall consist of not less than three (3) nor more than nine (9) voting members. The Town Council shall appoint the voting members. The Town Council may appoint nonvoting, advisory member(s) to the Commission. Commission members shall serve without compensation, except for reasonable expenses incurred in the performance of their duties. At least a simple majority of the members shall be residents of the district. The Town Council shall consult with the Village Residents Association (or its successors) for names of potential members.
- C. Term:** Members shall serve for a term of three (3) years, however, the initial terms of members shall be for one (1) year, two (2) year, and three (3) years in order for the terms to be staggered. The term for nonvoting, advisory members shall be for three (3) years. A vacancy shall be filled within ninety (90) days for the duration of the term.
- D. Commission Administrator:** An Administrator, employed by the Town of Zionsville, shall be designated by the Town Council to serve as the ex-officio administrator of the Commission. The Administrator shall provide staff assistance to the Commission, act as the Commission's Secretary, and issue Certificates of Appropriateness as directed by the Commission.
- E. Officers:** The Commission shall elect from its membership a Chairperson and Vice-Chairperson, both of whom shall serve for one (1) years terms of office. Officers of the Commission may be reelected.
- F. Rules:** The Commission shall adopt Rules of Procedure for the transaction of its business. The Rules of Procedure shall include the time and place of regular meetings, procedures for the conduct of regular meetings, and procedures for the calling of special meetings.
- G. Meetings:** The Commission meetings shall be open to the public in accordance with Indiana's Open Door Law and a public record shall be kept of the Commission's resolutions, proceedings, and actions. The Commission shall hold meetings, at least monthly, except when it has no business pending before it. Special meetings may be called in a manner determined by the Commission's Rules of Procedure and applicable Indiana law.

## **Section 3. Powers and Duties of the Commission**

The powers and duties of the Commission shall be as follows:

- A. The Commission shall be concerned with the following actions before they occur in a district:**
- Any new construction of a primary residential structure or garage subject to view from a public street (note: alleys are not public streets)
  - demolition of any primary residential structure or garage
  - moving of any primary residential structure or garage

The Commission may not consider details of design, renovation, or rehabilitation of the interior of buildings.

**B.** The Commission shall conduct surveys in accordance with the provisions of Section 4 of this Ordinance.

**C.** The Commission shall follow the design guidelines, adopted by the Commission and included in this Ordinance as Appendix A, for architectural review under section 5 of this ordinance. Design guidelines shall be published and made readily accessible to the general public.

**D.** The Commission shall promote public interest in historic preservation by initiating and carrying on a public relations and community education program.

#### **Section 4. Conservation Districts**

**A.** The first district is defined in Exhibit A of this ordinance. All recommendations for the amendment of an existing district or establishment of a new conservation district shall be in the form of a written report. A recommendation for establishing a conservation district may be initiated from either of the following two (2) sources:

1. Based on its survey, the Commission shall draw and submit district maps for Town Council approval.
2. Owners of property in fee simple wishing to establish a district which includes their property may petition the Commission to consider drawing and submitting a map of said property to the Town Council for its approval.

**B.** In order to amend an existing district or establish a new district, the Commission shall first prepare a map in accordance with one (1) of the following:

1. Based on a survey conducted by the Commission; or,
2. Limited to the boundaries of a single property, containing a building(s), structure(s), or site.

**C.** The Commission shall classify and designate on the map all buildings, structures, and sites within each district described on the map as historic or non-historic. The Commission shall classify and designate all historic buildings and structures, based upon their importance or contribution to the district, as one (1) of the following:

1. Outstanding;
2. Notable; or,
3. Contributing.

The Commission may also devise its own system of further classification for historic buildings, structures and sites.

**D.** Before a new district is established and the building and structure classifications take effect, the map setting forth the district's boundaries and building and structure classifications shall be submitted to, and approved by way of an adopted ordinance by, the Town Council.

**E.** The map establishing the boundaries of a district shall be recorded in the Office of the Recorder of Boone County, Indiana.

## **Section 5. Certificate of Appropriateness (COA)**

- A. Certificates of Appropriateness (COA):** Within any conservation district, a COA shall be issued by the Commission prior to: (a) the issuance of any permit for; or, (b) work commenced on, any of the following:
1. The demolition of any building or structure;
  2. The moving of any primary residential structure or garage;
  3. Any new construction of a primary residential structure or garage, or accessory building or structure, subject to view from a street right-of-way or other public access.
- B. Application for a COA:** An application for a COA shall be made in the Office of the Commission or its designee at the Town Hall on forms provided by the Commission and available at said Office. All applications shall be subject to the Rules of Procedure established by the Commission.
- C. Commission Disposition of COAs:** The Commission may approve or deny a COA for any actions covered by this Ordinance. If an application for a COA is approved by the Commission, or is not acted upon by the Commission within thirty (30) days after it was deemed a complete and proper filing, a COA shall be issued. The Commission may grant an extension of the thirty (30) day limit if the applicant agrees with said extension. The Commission shall report its findings for the approval or denial of the COA in written form, and supply the applicant with a copy of its findings. No permits of any kind shall be issued to the applicant until a COA is approved by the Commission.

## **Section 6. Preservation of Historic and Architectural Character Upon Relocation Mandated.**

- A.** An historic building or structure or any part of or appurtenance to said building or structure, may be moved only in a manner that shall preserve the historical and architectural character of the building.
- B.** An historic building may be relocated to another site only if it is shown that preservation on its current site is inconsistent with subsection A., above.

## **Section 7. Appeal Provisions**

The purpose of this section is to afford an interested party the opportunity to arrange for: (a) the acquisition of; or, (b) the preservation of, buildings or structures proposed for demolition.

- A.** If the Commission denies an application for a COA for the demolition of a building, structure, or site, a demolition permit may be issued by the applicable agency(ies) and a building, structure, or site may be demolished, but only after the property owner satisfactorily has demonstrated to the Commission that the building, structure, or site is incapable of earning an economic return on its value, as documented in writing in accordance with the guidelines in Appendix A
- B.** Notice of the proposed demolition shall be given for a period fixed by the Commission, but shall be not less than sixty (60) days, nor more than one (1) year, under the conditions as set forth in Appendix A.
- C.** The Commission may approve a COA at any time during said notice period under subsection B. above. If the COA is approved by the Commission, a demolition permit shall be issued without

further delay by the applicable agency(ies), and demolition may proceed.

### **Section 8. Relationship with the Town of Zionsville Zoning Ordinance**

All real estate lying within the boundaries of a conservation district shall be subject to the requirements of both the conservation district and the applicable zoning district(s) of the Town of Zionsville Zoning Ordinance. In the event of a conflict between the requirements of the conservation district and the requirements of the zoning district(s), the more restrictive requirements shall apply.

### **Section 9. Interested Parties**

- A. An interested party has the right to restrain, enjoin, or enforce by restraining order or injunction, temporarily or permanently, any person from violating a provision of this Ordinance or an Ordinance adopted pursuant to this Ordinance.
- B. The interested party is not required to allege or prove irreparable harm or injury to any person or property to obtain relief under this section.
- C. The interested party bringing an action under this section shall not have to post a bond unless the court, after a hearing, determines that a bond shall be required in the interest of justice.
- D. The interested party that brings an action under this section is not liable to any person for damages resulting from bringing or prosecuting the action.
- E. An interested party which obtains a favorable judgment in an action under this section may recover reasonable attorney fees and court costs from the person against whom judgment was rendered.
- F. An action arising under this section shall be brought in the Circuit Court or any Superior Court of Boone County, and no change of venue from the County shall be permitted in the action.
- G. The remedy provided in this section is in addition to other remedies available at law or in equity.

### **Section 10. Enforcement, Penalties, and Judicial Review**

- A. Any person, whether as principal, agent, owner, lessee, tenant, contractor, architect, engineer, or otherwise, who violates any provision of this Ordinance shall be subject to a fine as follows for each offense:
  - 1. not less than ten dollars (\$10.00) nor more than twenty-five hundred dollars (\$2,500.00) for demolition; and,
  - 2. not less than ten dollars (\$10.00) nor more than three hundred (\$300.00) for any other offense.
- B. Each day of the existence of any violation of this Ordinance shall constitute a separate offense.
- C. The erection, construction, demolition, or moving, of any building, structure, or appurtenance which is commenced, continued, or maintained contrary to any provisions of this Ordinance is hereby declared to be: (a) a nuisance; (b) in violation of this Ordinance; and, (c) unlawful. The Town may institute a suite for injunction in the Circuit Court or any Superior Court in Boone

County, Indiana to restrain any person or governmental unit from violating any provision of this Ordinance and to cause such violation to be prevented, abated, or removed.

- D. The remedies provided for in this section shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.
- E. Any person or party aggrieved by a decision or action taken by the Commission shall be entitled to a judicial review hereof in accordance with IC 4-22-1.

### **Section 11. Severability**

It is hereby declared to be the intention of the Town Council of the Town of Zionsville, Indiana, that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any such section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance because the same would have been enacted without the incorporation into this Ordinance of such unconstitutional or invalid section, paragraph, sentence, clause, or phrase.

### **Section 12. Expiration**

This Ordinance shall expire on \_\_\_\_\_, 2006, but in no case later than two (2) years and three hundred sixty-four (364) from the date this Ordinance was adopted.

*Section 12. Expiration – alternate version to check w/ HLF1*

*This ordinance shall become permanent three (3) years after the date the ordinance is adopted unless a majority of the property owners in the district object to the commission. The objections must be received by the commission not earlier than one hundred eighty (180) days or later than sixty (60) days before the third anniversary of the adoption of the ordinance.*

**(NOTE: italicized text is still being researched – 7/10/06)**