

LOCAL LAW # 2 OF 2019

A LOCAL LAW AMENDING THE "CODE OF THE TOWN OF WHITESTOWN AT CHAPTER 200 ENTITLED "THE TOWN OF WHITESTOWN'S ZONING ORDINANCE OF 1980" (LOCAL LAW NO. 1 OF 1981)

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF WHITESTOWN, AS
FOLLOWS:

SECTION I. Purpose:

In accordance with Section 200-39 of the Code of the Town of Whitestown the Town Board desires to amend "The Town of Whitestown Zoning Ordinance of 1980" pursuant to the Municipal Home Rule Law and Section 265 of the Town Law.

SECTION II. Amendments to Town of Whitestown Zoning Ordinance:

The following amendments are hereby adopted with respect to the Town of Whitestown Zoning Ordinance (Local Law No. 1 of 1981):

1. Section 200-3 entitled "Definitions; word usage" be amended as follows:

(A) The definition of "HOME OCCUPATION" be deleted and replaced with the following definition:

"HOME OCCUPATION – any non-residential activity or use, done for hobby or profit as an incidental and secondary use of a residential property and which does not alter the exterior of the property or affect the residential character of the neighborhood."

(B) The following definitions shall be included:

"BED AND BREAKFAST – An owner-occupied residence resulting from a conversion of a one-family dwelling, used for providing overnight accommodations and a morning meal to not more than 10 transient lodgers, and containing not more than five bedrooms for such lodgers."

(C) The definition of "AREA, BUILDING" is hereby deleted.

(D) The following definitions shall be included:

"AREA VARIANCE - This is a variance that allows for the use of land in a way that is not permitted by the dimensional or physical requirements of the zoning law. This type of variance is needed when a building application does not comply with the setback, height, lot, or area requirements of the zoning Code."

"USE VARIANCE - A variance that allows landowners to put their land to a use that is not permitted under the zoning law. This type of variance may be granted only in cases of unnecessary hardship. To prove unnecessary hardship, the owner must establish that the requested variance meets statutorily prescribed conditions.

(E) The definitions of "SIGN", "SIGN, ADVERTISING", "SIGN, BUSINESS", "SIGN, FLASHING" be deleted and replaced with the following definitions:

"SIGN-Any writing, letter work, numerical or pictorial presentation, illustration or decoration, emblem, device, symbol or trademark, flag banner or pennant or any other device, figure or similar character which:

1. Is used to announce, direct attention to, identify, advertise or otherwise make anything known including menu boards;
2. Is visible from the public right-of-way or from adjoining property.

SIGN AREA-The area of a sign shall be equivalent to the total exposed surface devoted to a sign message, including ornamentation, embellishment and symbols, but excluding supporting structures.

SIGN, ADVERTISING

A sign which directs attention to a business, commodity, service or entertainment sold or offered elsewhere other than upon the premises where such sign is located, or to which it is affixed and only incidentally on the premises where such sign is located, or to which it is affixed and only incidentally on the premises if at all.

SIGNS, BUILDING-MOUNTED

Any sign attached to and deriving its major structural support from a building, and including but not limited to the following. Arcade sign, awning sign, canopy sign, cornice sign, façade sign, marquee sign, parapet sign, plaque sign, projecting sign, wall sign, and window sign.

SIGN, BUSINESS

A sign which indicates the name of an individual commercial or industrial business or any corporation with which it is affiliated, but which does not indicate the products, services or entertainment offered by that business.

SIGN, COMMERCIAL ELECTRONIC VARIABLE MESSAGE SIGNS (CEVS)

An electronic sign capable of automatically varying the display.

SIGN, EXEMPT

A sign which may be placed without a Permit but which shall otherwise comply with the applicable provisions of this Chapter. Such signs shall include official traffic signs, posting or trespass notices, and official flag, emblem or insignia of a nation, state or municipality other than in connection with a commercial use. A temporary political sign is exempt.

SIGN, FLASHING

An illuminated sign on which the artificial light is not maintained stationary or at a constant intensity and/or color at all times which such is in use. For the purpose of this Chapter, any revolving, illuminated sign shall be considered a "flashing sign."

SIGN, FREESTANDING

Any sign supported by upright structural members or by braces on or in the ground and not attached to a building, including, but not limited to the following: Bulletin board sign, outdoor advertising sign, pole or pylon sign or ground sign.

SIGN, IDENTIFICATION

A sign indicating the name and/or address of an occupant. Such sign may be wholly or partly devoted to a readily recognized symbol, trademark, or logo.

SIGN, OUTDOOR ADVERTISING (ALSO "BILLBOARDS")

Any sign on which information is portrayed which directs attention to a business, commodity, service, or entertainment not related to other uses existing or permitted on the lot upon which the sign is located.

SIGN, POLITICAL

A sign related to governmental affairs or social issues. These include, but are not limited to, campaign signs.

SIGN, PORTABLE

Any sign not permanently affixed to the ground nor to a building including any sign attached to or displayed on a vehicle that is used for the expressed purpose of advertising a business establishment, political event, service product, or entertainment when the vehicle is operated or parked so as to attract the attention of the motoring or pedestrian traffic.

SIGNS, REAL ESTATE

Any Sign advertising the sale, rental, or lease of the premises or part of the premises on which the sign is displayed.

SIGN REGULATION

Local laws that regulate the erection and maintenance of signs and outdoor advertising with respect to their size, color, appearance, movement, illumination, and placement on structures or location on its ground.

SIGN, SHOPPING CENTER

A freestanding sign that identifies only the name of the shopping center and the individual enterprises.

SIGN, TEMPORARY

Any sign intended to be displayed for a limited period of time and not to be permanently affixed, attached, implanted, or placed on a building, pole, or in the ground.

SIGN, WINDOW

Any sign attached to the glass area of a window or placed behind the glass of a window so that it can be read from outside.”

2. **Section 200-8** entitled “R-200 Residence District” is amended as follows:

(A) At Section “A” entitled “Permitted principal uses” subsection “(3) R-100 uses with public sewer and water” is deleted.

(B) At Section “B” entitled “Site plan review uses” the following subsection is added:

“(15) R-100 permitted principal uses with public sewer and water.”

3. **Section 200-9** entitled “R-100 Resident District” is amended at “Section B” entitled “Site plan review uses” so as to include:

“(11) Bed and Breakfast”

4. **Section 200-10** entitled "R-80 Residence District is amended at "Section B" entitled "Site plan review uses" so as to include:

"(8) Bed and Breakfast".
5. **Section 200-15** entitled "C-4 Commercial District" is hereby amended at Section "A" entitled "Site plan review uses" so as to include:

"(18) Automobile Body Shop."
6. **Section 200-22** entitled "Land Conservation Overlay District" is deleted in its entirety.
7. **Section 200-22.1** entitled "JR Judd Road Overlay District is deleted in its entirety.
8. **Section 200-26** entitled "Accessory buildings; number, height and location" is hereby amended as follows:
 - (A) Subsection "C" is deleted in its entirety and replaced with the following:

"C. Location. Unattached Accessory buildings in Residential Districts. Accessory Buildings which are not attached to a principal building may be erected within the rear yard in accordance with the requirements set forth on Schedule A attached to this Chapter."
 - (B) Subsection "E" is deleted in its entirety and replaced with the following:

"E. Accessory Buildings in Commercial (Article III) and Manufacturing Districts (Article IV). Non-dwelling accessory buildings shall comply with the front and side yard requirements for the principal building to which they are accessory in accordance with the requirements set forth on Schedule A attached to this Chapter."

(C) Schedule A is hereby amended to establish permissible side and rear set backs for Accessory Buildings.

9. Section 200-27 entitled "Off-street parking and loading" is hereby amended as follows:

(A) The revised charts/schedules attached hereto are hereby adopted.

(B) Section 200-27 (c) (1) is hereby repealed and a new subsection is included to read as follows:

"One recreation vehicle, trailer or mobile home may be parked or stored but not used, provided such recreation vehicle, or trailer is parked or stored within the rear yard of the home, and is at least 5 feet from any property line."

10. Section 200-28 entitled "Signs" is deleted and a Section entitled "Signs" is adopted to read as follows:

200-28 Signs

A. Purpose

The general purpose of this section is to regulate signage with a comprehensive system of reasonable, effective, consistent, and content-neutral standards. This section is further intended to:

1. Preserve and enhance the Town as an aesthetically attractive environment that promotes residential and business activities;
2. Encourage signage that is compatible and appropriate with surrounding buildings, landscaping, and other site features;
3. Establish signs that aid residential and business uses while not concealing or

- obstructing adjacent land uses or signs;
4. Establish sign size in relation to the scale of the lot and building frontage along the street on which the sign is to be placed;
 5. Lessen the confusion and visual clutter caused by proliferation, improper placement, illumination, animation, and excess height and area of all signs that also compete for the attention of pedestrian and vehicular traffic;
 6. Curtail the size and number of signs to the minimum reasonably necessary to convey the desired message or identify a commercial or non-commercial establishment or event; and
 7. Protect the public from the dangers of unsafe signs and require signs to be located, constructed, installed, and maintained in a safe and satisfactory manner.

B. Applicability

1. Generally

This section shall apply to any sign in any district, unless otherwise stated in this section or this Code.

2. Permit Required

No person shall install or display any sign without the prior issuance of a sign permit, unless the sign is exempt from permit requirements as provided in Section 200-28.B. 3.

3. Signs Not Requiring a Permit

The following signs are exempt from the issuance of a sign permit, and do not require a permit, provided they comply with the applicable conditions and limitations listed in this section.

a. Name and Address Identification Signs

One sign indicating the address, number, and/or name of occupants of the subject premises conforming to 911 requirements that does

not exceed two square feet in area per side and does not include any commercial advertising or other identification.

b. **Integral Signs**

Names of buildings, dates of erections, monumental citations, commemorative tablets, and the like, when carved into stone, concrete or similar materials, or made of bronze, aluminum, or other permanent-type construction and made an integral part of the structure.

c. **Window Signage**

Signs and decals affixed or painted on windows or door glass panels , provided window signage does not cover more than 50 percent of any one window panel.

d. **Flags**

Up to two flags may be displayed per property. Such flags shall be no larger than three by five feet if hung from a building, and no larger than five by seven feet if hung from a pole.

e. **Directional and Warning Signs**

Any sign commonly associated with and limited to information and directions necessary to navigate the property, including signs marking entrances, private drive signs, handicapped parking signs, parking areas, one-way drives, rest rooms, security and warning signs, and pickup and delivery areas. The maximum size of each directional or warning sign shall be two square feet.

f. **Signs Accessory to Parking Area**

Signs designating entrances or exits to or from a parking area are limited to one size for each exit and entrance. Such signs shall be limited to a

maximum size of four square feet. In addition, each parking area is allowed one sign per street frontage to designate identity and restrictions for parking.

g. Public Signs

Signs of a non-commercial nature, in the public interest, and erected by or on the order of a public official in the performance of his public duty (e.g. safety signs, danger signs, trespassing signs, traffic signs, memorial plaques, signs of historical interest, et. al).

h. Garage or Yard Sale Signs

Signs and advertising garage sales or yard sales shall be installed no more than two days prior to the sale and shall be removed within one day after the close of the garage or yard sale. Such signs shall not be affixed to any structure, tree, pole, or nature vegetation.

i. Signs Located Inside Buildings

Signs located inside a building, except that any sign located within five feet of any window shall not have any flashing or moving lights that would produce any glare or distraction for any passing motorist, excluding temporary holiday lights.

j. Yard Signs

Yard signs communicating a message or idea are permitted on a property provided such signs comply with the following:

- (1) Yard signs are allowed during the sale or lease of a property;
- (2) Yard signs shall be limited to two per property;
- (3) Yard signs shall be limited to six square feet in area within residential zoning districts, and 16 square feet in area within all other zoning districts;

- (4) No person shall post any yard sign upon public or private property without permission of the property owner.
- (5) Yard signs shall not be permitted on any utility pole, lighting pole, or other similar structure; and
- (6) Yard signs shall be removed within five calendar days following any meetings, event, closing of a sale or lease, or decision for which they were posted. In no case shall any yard sign remain for longer than nine months.

k. Street Signs

Street name signs shall be installed at all intersections. For new development applications, at the discretion of the Town Board, the developer shall install street and traffic control signs, devices, and markings. The number and type of signs, devices, and markings shall conform to the current Town regulations.

4. Prohibited Signs

The following signs are prohibited.

a. Glaring Signs

Signs with light sources or that reflect brightness (such as mirrors) to the extent that they constitute a hazard or nuisance. This includes signs with fluorescent text, graphics, or background, as well as holographic signs.

b. Obstructive Signs

Any sign or other advertising device that obstructs free and clear vision of an intersection or traffic approaching the intersection or a road or driveway.

c. Posters and Handbills

Any exterior sign affixed to any structure, tree, pole, or natural vegetation except in designated community areas or as otherwise permitted by this Chapter.

d. Strings of Light

Any devices including lights that outline property lines, sales areas, or any portion of a structure and are intended to advertise or draw attention to a business or commercial activity, except as follows:

- (1) Lights used temporarily as holiday decorations;
- (2) Temporary lights or other devices associated with an approved Town permit; and
- (3) Strings of lighting used to delineate an area of outdoor dining, provided such lighting was approved as part of Site Plan Review.

e. Vehicle Signs

Any sign displayed on a parked vehicle or trailer where the primary purpose is to advertise a business not on or near the same premises.

f. Signs in the Public Right-Of-Way

Any sign in, on, or above a public right-of-way that in any way interferes with normal or emergency use of that right-of-way without entering into a revocable license agreement with the Town.

g. Streamers

No sign shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners or other similar moving, fluttering,

or revolving devices. Animated or moving signs may be permitted as part of Site Plan Review.

h. Obscene, Indecent, or Immoral Signs

There shall be no signs or pictures of an obscene, indecent, or immoral character such as will offend morals or decency in accordance with constitutional standards.

i. Abandoned Signs

Any unused abandoned sign, including any pole or structure such sign, shall be removed within six months following the conclusion or termination of the reason for the sign. If an existing sign pole or structure is expected to be used for future use of an existing building, then such structure may remain; however, the copy, text, icon, or any messages on such sign shall be removed. A sign that advertises a defunct business or product so that the content of the sign is no longer appropriate for the purpose(s) for which the sign permit was issued shall render the sign permit null and void and the sign shall be removed in accordance with the direction of the Code Enforcement Officer.

5. Unsafe Signs

- a. Any sign found to be unsafe or derelict upon inspection by the Code Enforcement Officer shall be repaired or made secure by the permit applicant of record.
- b. The Code Enforcement Officer shall give notice by certified mail, return receipt requested to such person to repair or remove such unsafe or derelict sign within five days of receipt of said notice.

- c. If the sign is not repaired, made secure, or removed within said time period, or within such additional time as the Code Enforcement Officer may allow, the permit issued for said sign shall be revoked and the sign shall be ordered removed by the Code Enforcement Officer.
- d. If a sign is found to be a source of imminent peril to persons or property, the Code Enforcement Officer shall cause the sign to be immediately removed without notice to the permit applicant of record or property owner.

C. General Sign Standards

1. Permanent Sign Standards

The following standards apply to all permanent signs unless specifically exempted in other parts of this section or by a variance. In some instances, the following standards are minimum requirements and the sign(s) may be subject to additional requirements elsewhere in this section.

A. Allowed Area

The following rules shall apply in determining the size of all signage on a single parcel of land.

- (1) The aggregate area of all signs and the maximum area of any one sign shall not exceed that allowed in the Table entitled Maximum Size for Signs that follows.
- (2) Sign areas of all signs and the maximum area of any one sign shall not exceed that allowed in Table A, Maximum Size for Signs that follows.

Zoning District	Building Mounted Sign	Free-standing sign	Window Signs (% of window area)	Portable Signs All	Total Square Footage of all signs
R-200		24			24
R-100		24			24
R-80		16			16
M-H	100	100		6	¼ SF per LF of Building Length
C-1	100	100		6	¼ SF per LF of Building Length
C-2	100	100	30%	6	½ SF per LF of building length
C-3	200	200*	30%	6	½ SF per LF of building length
C-4	200	200*	30%	6	1 SF per LF of building length
E-L-M	200	200*	30%	6	1 SF per LF of building length
LM	200	200*	30%	6	1 SF per LF of building length
M-1	200	200*	30%	6	1 SF per LF of building length
FP	100	100		6	¼ SF per LF of Building Length
PD	100	100		6	¼ SF per LF of Building Length

None allowed if no size provided

*Shopping Center can double this

B. Area

The area of a sign shall be equivalent to the total exposed surface devoted to a sign message, including ornamentation, embellishment and symbols, but excluding supporting structures.

Listed below are additional are definitions and specifications.

(1) Single-Faced Signs

The area of a sign with one sign face shall be calculated as the total area of the face. In the case of cutout letters, displays, symbols, statuaries or logos, the area will be calculated as that area which can be enclosed with a rectangle, series of attached rectangles, or other geometric shapes.

(2) Double-Faced Signs

The area of a sign with two sign faces shall be calculated as one sign face only as long as the sign faces are identical and parallel.

(3) Angled Signs

If the angle between the two faces is greater than 30 degrees, the sign area shall be calculated by adding the area of the two faces. If the angle is less than 30 degrees, the sign area shall be calculated in the same manner as for double-faced signs. Angled signs may be used for real estate signs only.

(4) Multi-faced (Three or More) Signs

The sign area shall be computed as the sum of the area of all sign faces.

(5) **Multiple Signs**

Whenever more than one sign is hung continuously or placed on a freestanding or projecting structure, the combination of signs shall be considered as one sign for the purpose of computing sign area and determining the number of signs on a parcel.

C. **Height**

The maximum height for any freestanding sign and supporting structure is not to exceed 20 feet. Height is measured from the average grade of the base of the sign to the top of the highest point of the sign. In no case shall any sign exceed the height of any building for which signage is provided.

- (1) Freestanding signs in residential zones shall not exceed five feet in height.
- (2) Roof-mounted signs shall not extend beyond the roofline.

D. **Location**

- (1) No sign shall be placed so as to impede the visibility of motorists or pedestrians.
- (2) Signage may be mounted on any side of a building.
- (3) Except for approved sandwich board signs, no sign structures shall be built or placed on the sidewalk, curb or area between sidewalk and curb, or public right-of-way except for approved sandwich board signs.
- (4) Except as provided in this subsection, freestanding signs shall be installed a minimum of six feet from the street right-of-way and five feet from the side lot line.

E. Illumination

The following rules and standards shall apply in establishing the type of illumination that may be used for signs.

- (1) The source of a sign's illumination (bulb or direct lamp image) shall not be visible from any street, sidewalk or adjacent property. This shall not preclude the use of neon sign elements.
- (2) The light from any illuminated sign shall be shaded, shielded, or directed so that the light intensity or brightness will not be disruptive to residential property or create a distraction to a motorist.
- (3) No sign shall have or contain blinking, flashing, fluttering or intermittent lights or other devices that create a change in color, brightness, direction or intensity of lighting. This provision does not apply to electronic variable message signs.
- (4) In residential districts, only indirect lighting may be used on the adjacent lot.
- (5) Projecting signs located over sidewalks or public ways shall be placed not less than 8.5 feet from the travel way to the base of the sign. The projecting edge of the sign shall be at least two feet back from any curb line. Neon may be used in sign text only, not as an architectural feature.

F. Landscaping

Freestanding signs shall be landscaped at their base extending a minimum of one foot beyond the edges of the sign, in plain view. Landscaping shall consist of shrubs, flowers, small trees or dry landscaping materials including but not limited to, decorative rock, railroad ties, bark chips and other decorative materials. A landscaping plan for permanent freestanding signs shall be approved at the time the sign application is approved.

G. Structural and Safety Considerations

- (1) All exterior signs shall be designed to withstand a minimum wind load of 80 miles per hour. The Code Enforcement Officer may require structural signs to be designed by a New York Licensed Professional Eengineer with plans complete with required information and professional stamps.
- (2) All electrical service for sign lighting shall be provided with underground or hidden devices. All such devices, as well as signage using electrical devices, must comply with the State Electrical Code, and a permit must be obtained to that effect.
- (3) Exposed reflective type bulbs, incandescent lamps or other illuminating devices that exceed 40 watts shall not be used on the exterior surface of any sign so as to expose the face of the bulb, light or lamp to any public street or adjacent property.
- (4) Guy wires can only be used after special review and approval by the Code Enforcement Officer,
- (5) All parts of any electric, illuminated or transparent sign shall be of metal or other materials that are not readily combustible.
- (6) Freestanding signs must be anchored in concrete unless the structure is sufficiently small to allow alternative means of anchoring.
- (7) Wall-mounted and projecting signs shall be directly secured by metal anchors, bolts, supports, stranded cable or braces, in such a manner as to assure that the sign remains securely attached.
- (8) All structural components shall be compatible with surrounding design and architectural feature.

H. Electronic Variable Message Signs

Electronic variable message signs (CEVMS) shall be spaced so that the message from only one sign at a time is identifiable to a motorist. These signs shall have a maximum daytime brightness of 5,000 candelas per square meter (cd/m²) and a maximum brightness of 280 cd/m². The display on a EVMS may not update more than one time every six seconds.

I. Outdoor Advertising Signs

Outdoor advertising signs (i.e., billboards), shall be granted a permit only upon compliance with the following provisions.

- (1) Outdoor advertising signs (i.e., billboards), shall be permitted in the Commercial, Manufacturing and Special Districts, only subject to Site Plan Review by the Planning Board.
- (2) Outdoor advertising signs shall be no closer to one another than 1,000 feet in any direction.
- (3) All outdoor advertising signs shall be a minimum of 10 feet from any property line plus the height of the sign and not less than 50 feet minimum for the front yard setback. All other setbacks shall conform to the minimum building setback requirements.
- (4) No sign shall extend above the roof line of any building(s) within 50 feet of the sign.
- (5) No outdoor advertising sign shall exceed 300 square feet in sign area.

- (6) No outdoor advertising sign shall be mounted on a building's rooftop.
- (7) The name of the person(s) erecting and maintaining an outdoor advertising sign shall be plainly marked on such sign.
- (8) All application plans for outdoor signs shall be by a stamped New York State Professional Engineer.
- (9) All permit shall be renewed by the Code Enforcement Officer for a five-year term, provided the sign meets all conditions of this Code and of the permit conditions under which the outdoor advertising sign was erected.
- (10) The owner of the property on which an outdoor advertising sign is locate, which is in existence on the effective date of this Code, shall, within six months of the effective date of this Code, apply for a permit for each sign. Failure to submit a complete application shall constitute a violation of these Regulations.
The Code Enforcement Officer shall issue a permit, subject to appropriate conditions, as if the subject of the application were a new sign. If the sign does not conform, the Code Enforcement Officer may issue a permit providing for bringing the sign into conformity within a stated period of time, or if that is not possible, for removal of the sign after a reasonable amortization period. The amortization period shall not exceed five years unless the applicant provides dollars-and-cents proof satisfactory to the Code Enforcement Officer, that a longer amortization period is required to permit the applicant reasonable time to recoup his/her investment.

J. Temporary Signs

1. General Requirements

- (A) Temporary signs, except as exempted in this Code, shall require a permit.
- (B) Signs exempt from permitting requirements shall meet all the regulations applicable thereto stated in this section.
- (C) A permit for such a sign shall expire 90 days after issuance thereof and may not be renewed.
- (D) Permits for such signs in no event shall authorize more than one sign.
- (E) Banners and promotional signs are not allowed for a duration greater than 10 days.

(2) Removal

In the event such temporary signs have not been removed upon expiration of the permit, the Code Enforcement Officer shall cause the signs to be removed, the cost of which is to be charged to the applicant.

10. Section 200-31 entitled "Home occupation" is hereby amended as follows:

- A. At Section (C) entitled "Major home occupation" at subsection "(F)", the word "and" shall be deleted and replaced with the word "or";
- B. At Section C entitled "Major home occupation," a new subsection shall be included that shall read as follows:

"(3) Major Home Occupations are not permitted in R-80 Residential Districts."
- C. To include a new Section "D" entitled "Prohibited home occupations" so as to read as follows:

(D) Prohibited Home Occupations.

The following uses, because of their potential for impacts on the surrounding residential area, shall not be permitted as home occupations:

- (a) Retail Sales: On-site sales of goods or merchandise contained on the property to members of the general public who came to the property;
- (b) Health Practitioner or Beauty Care Provider: Any medical, dental, hair stylist, or similar service, treatment, or activity that provides services on site to non-resident visitors. The general management office of such a business can be considered a home occupation provided no services are rendered on premise and it meets the other applicable requirements;
- (c) Auto repair or motorized implement repair, and/or the painting of vehicles, trailers or boats;
- (d) Dance, music, or other types of instruction (if more than four students are being instructed at one time);
- (e) Private schools with organized classes;
- (f) Motor vehicle towing operation;
- (g) Welding shops;
- (h) Nursing homes; and
- (i) Any other home occupation that, in the sole opinion of the Code Enforcement Officer, will have negative impacts on the neighborhood.

D. That "Schedule A" attached to the "The Town of Whitestown Zoning Ordinance of 1980" be amended to include home occupations in R-200 and R-100 Residence Districts.

12. Article VII entitled "Supplementary Regulations" is amended so as to include the following:

200-34.1 Prohibited Uses

The following uses and types of operations are specifically excluded in all zoning districts:

(A) The operation of stockyards, slaughter houses and rendering plants.

13. Section 200-38 entitled "Board of Appeals." 13 amended at Section "(5) Jurisdiction" at subsection "(b) Variance" including "[1] Area Variance" and "[2] Use Variance" are deleted and replaced with the following:

"(b) Variance. On an appeal from a determination of the Code Enforcement Officer and in conformity with law, to vary the requirements as they apply to a particular lot. No application for a variance shall be acted on until the required public hearing has been held. The Board of Appeals shall prescribe appropriate conditions and safeguards to carry out the requirements of this subsection and shall not grant any variance unless it shall make a finding of fact based upon the evidence as presented to it in each specific case as specified below:

[1] Area variance. This is a variance involving dimensional deviations from the standards set forth in this chapter. Because of exceptional narrowness, shallowness, shape or area of the specific parcel or because of extraordinary topographic conditions or other physical conditions or location of the specific parcel, the strict application of the provisions of this chapter actually prohibit or unreasonably restrict the use of the land or building for which such variance is sought, that the granting of the variance is necessary of the reasonable use of the property and that the variance granted by the Board is the minimum variance that will provide for the reasonable use of the property. An area variance may be granted if the Zoning Board of Appeals finds that the benefit to the applicant if the variance is granted outweighs the potential detriment to the health, safety, and welfare of the neighborhood or community by such grant, having considered the following:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance;
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
3. Whether the requested area variance is deemed to be substantial;

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

[2] Use variance. This is a variance which permits a use of land which is prohibited by this chapter. The granting of a use variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the owner, which conditions are peculiar to such land or building and do not apply generally to land or buildings in the vicinity or neighborhood and have not resulted from any act of the applicant subsequent to the adoption of this chapter. Unnecessary hardship is the test for a use variance.

A use variance may be granted if the Zoning Board of Appeals finds that the applicable zoning regulations and restrictions have caused unnecessary hardship to the applicant, as evidenced by the existence of all of the following:

1. The applicant cannot realize a reasonable economic return, provided that lack of return is substantial, as demonstrated by competent financial evidence;
2. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of other properties in the district or neighborhood;

3. The requested use variance, if granted, will not alter the essential character of the district or neighborhood; and
4. The alleged hardship has not been self-created.

[3] In any case, the granting of the variance will be in harmony with the intent spirit and purpose of this chapter and will not permit a use of the property in question for any purpose not permitted in the district in which such property is located or otherwise be injurious to the neighborhood."

SECTION III. Zoning Map Amendment:

The official zoning map of the Town of Whitestown as referenced in Section 200-5 entitled "Zoning Map" is amended as reflected thereon, so as to include but not limited to a change in the zoning of the parcels set forth on "Exhibit A" attached hereto.

SECTION IV. Effective Date:

This local law shall take effect upon the filing in the Office of the Secretary of State.