23B.00 U.S. Highway 31 Corridor Overlay Zone

23B.00.01 Purpose, Intent and Authority.

The purpose of the U.S. Highway 31 Overlay Zone is to promote and protect the public health, safety, comfort, convenience and general welfare by providing for consistent and coordinated treatment of the properties bordering U.S. Highway 31 (also known as the Carmel Meridian Corridor) in Clay Township, Hamilton County, Indiana. The Commission and Council, in establishing this zone, are relying on IC 36-7-4-600 et seq. and IC 36-7-4-1400 et seq. This zoning district is, likewise, intended to serve as a tool for implementing the development policies and guidelines set for the Corridor in the Comprehensive Plan. U.S. Highway 31 is a limited access highway and an important business corridor to the City of Carmel and Clay Township. The U.S. Highway 31 Corridor is a premier office location and employment center whose viability, quality, and character are important to the community as a whole, adjacent residents, employees, business owners, and taxing districts. Therefore, it is the further purpose of the U.S. Highway 31 Overlay Zone to preserve the aesthetic qualities of those bordering properties through:

(1) the promotion of coordinated development in the U.S. Highway 31 Overlay Zone;

(2) the establishment of high standards for buildings, landscaping, and other improvements constructed on the properties within the U.S. Highway 31 Overlay Zone which permit innovative site designs and at the same time encourage efficient land usage; and

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1 Section 23B.00 amended per Ordinance No. Z-453-04, §cv-cw.
(3) the establishment of development requirements which will encourage substantial capital investments for the development of those properties and promote the quality, scale, and character of development consistent with the Corridor's existing and planned uses.

23B.00.02 Plan Commission Approval.

A. Development Plan. The Commission shall review the Development Plan (DP) of any proposed use of any Lot or parcel of ground within the U.S. Highway 31 Corridor Overlay Zone prior to the issuance of an Improvement Location Permit by the Department. See Section 24.02: Development Plan.

B. Architectural Design, Exterior Lighting, Landscaping and Signage. To insure the compatibility of the proposed use with adjoining areas, the Commission shall review the Architectural Design, Exterior Lighting, Landscaping and Signage (ADLS) application of any proposed use of any Lot or parcel of ground within the U.S. Highway 31 Corridor Overlay Zone prior to the issuance of an Improvement Location Permit by the Department. See Section 24.03: Architectural Design, Exterior Lighting, Landscaping and Signage.

23B.00.99 Application Procedure.


23B.01 District Boundaries:

The boundaries of the U.S. Highway 31 Overlay Zone are hereby established as follows:

A. Beginning at north right-of-way line of 96th Street and extending to the north right-of-way line of Interstate Highway 465, the boundary shall follow the centerlines of Spring Mill Road on the west and College Avenue on the east.

B. Beginning at north right-of-way line of Interstate Highway 465 and extending to the south right-of-way line of 131st Street, the boundary shall follow the centerlines of the proposed or constructed parallel roads, namely Pennsylvania Street on the east, and Illinois Street (and Meridian Corners Boulevard) on the west.

C. From the south right-of-way line of 131st Street to the south right-of-way line of 146th Street, or the southern boundary of any TIF District that is contiguous to 146th Street, the boundary shall, (unless otherwise shown on the official Zoning Map) include all land that is within six hundred (600) feet of the right-of-way for U.S. Highway 31.

23B.02 Commission Review:²

A. Development Plan. The Commission must approve, approve with conditions, or disapprove the Development Plan (DP) for any tract of land in the U.S. Highway 31 Overlay Zone.

1. The Commission shall hold a public hearing before it decides whether to approve or disapprove a DP. However, no DP is required for additions to existing structures which:
   a. Are attached to the existing structure;
   b. Continue the architectural design of the existing structure, including exterior color and materials; doors and windows, other detailing;
   c. Meet with requirements of the underlying primary zoning district;
   d. Do not exceed twenty percent (20%) of the original gross floor area of the existing structure, applicable from the date of this ordinance, and,

² Section 23B.02 amended per Ordinance No. Z-453-04, §cx-dh; Z-547-10; Z-561-12.
2. The Commission shall review a DP application to determine if the DP satisfies the development requirements specified in Sections 23B.03 through 23B.08. The Commission’s review shall include, but not be limited to, the following items:
   a. Existing site features, including topography and wooded areas;
   b. Zoning on site;
   c. Surrounding zoning and existing land use;
   d. Streets, curbs and gutters, sidewalks, and bicycle paths;
   e. Access to public streets;
   f. Driveway and curb cut locations in relation to other sites;
   g. General vehicular and pedestrian traffic;
   h. Vehicle and bicycle parking facilities and internal site circulation;
   i. Special and general easements for public or private use;
   j. On-site and off-site surface and subsurface storm water drainage including drainage calculations;
   k. On-site and off-site utilities;
   l. The means and impact of sanitary sewage disposal and water supply techniques;
   m. Dedication of streets and rights-of-way, or reservation of land to be sold to governmental authorities for future development of streets and rights-of-way;
   n. Proposed setbacks, site landscaping and screening, and compatibility with existing platted residential uses;
   o. Project signage;
   p. Protective restrictions and/or covenants;
   q. Compatibility of proposed project with existing development within the U.S. Highway 31 Corridor; and,
   r. Consistency with the policies for the Overlay Zone which are set forth in the Comprehensive Plan, including the Thoroughfare Plan.

3. Findings-of-Fact. The Commission shall make written findings concerning each decision to approve or disapprove a DP. The President of the Commission shall be responsible for signing the written findings of the Commission.

B. Architectural Design, Exterior Lighting, Landscaping and Signage. Except as provided in Paragraph (A)(1) above, for all projects in the U.S. Highway 31 Overlay Zone, the Commission shall review and approve the Architectural Design, Exterior Lighting, Landscaping and Signage (ADLS), access to the property, site layout, parking and site circulation, pursuant to Sections 23B.09 through 23B.15.

1. ADLS approval shall be necessary prior to:
   a. The establishment of any use of land;
   b. The issuance of any Improvement Location Permit;
   c. The erection, reconstruction or structural alteration of any building(s) in the U.S. Highway 31 Overlay Zone; or
   d. Any changes in any site improvements.

2. An amendment to an ADLS may be reviewed and approved by a committee of the Commission.
according to the Rules of Procedure. However, any interested party may appeal the decision of the committee directly to the Commission.


C. **Zoning Waiver.** The Commission may, after a public hearing, grant a Plan Commission Waiver of certain Development Requirements of this Chapter, so noted within. Any approval to permit such a waiver shall be subject to the following criteria:

(1) The proposal shall be in harmony with the purposes and the land-use standards contained in this Chapter.

(2) The proposal shall enhance the overall Development Plan, the adjoining streetscapes and neighborhoods, and the overall U.S. 31 Corridor.

(3) The proposal shall not produce a Site Plan or street/circulation system that would be impractical or detract from the appearance of the Development Plan and the U.S. 31 Corridor, and shall not adversely affect emergency vehicle access or deprive adjoining properties of adequate light and air.

(4) The proposal exhibits extraordinary site design characteristics, including, but not limited to: Increased landscape treatment, tree preservation, public art, provisions for bicycles and/or mass transit, reduced surface parking coupled with provisions for above or below ground parking facilities.

In granting a waiver, the Commission may impose such conditions that will, in its judgment, secure the purposes of this Chapter. This Paragraph does not affect the right of an applicant under Indiana law to petition the Board for a variance from development standards, as provided in IC 36-7-4-918.5 and this Zoning Ordinance.

D. **Partial Boundaries & Conflicts.** If a Parent Tract (Tract) is located both inside and outside of the U.S. Highway 31 Overlay Zone, a DP and ADLS in compliance with the US Highway 31 Overlay Zone shall be submitted to the Commission for the entire tract. Wherever there exists a conflict between the requirements of the underlying zoning and those of the U.S. 31 Overlay Zone, the requirements for the U.S. 31 Overlay Zone shall prevail.

### 23B.03 Permitted Uses

All uses which are permitted in the underlying primary zoning district(s), except the uses expressly excluded by Appendix A: Schedule of Uses, are permitted in the U.S. 31 Overlay Zone.

### 23B.04 Special Uses

There shall be no Special Uses permitted in the U.S. Highway 31 Overlay Zone.

### 23B.05

**23B.05.01 Excluded Uses:** See Appendix A: Schedule of Uses.

**23B.05.02 Retail & Service Uses:**

Retail and service uses may be included in one or more buildings within a DP, subject to the following:

A. Retail and Service Uses may comprise up to:

(1) Fifteen percent (15%) of the Gross Floor Area (GFA) of any building; or,

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3 Section 23B.03 amended per Ordinance No. Z-382-02, §b; Z-415-03, §bu.

4 Section 23B.04 amended per Ordinance No. Z-415-03, §bv.

5 Section 23B.05 amended per Ordinance No. Z-415-03, §bw-bx; Z-512-07; Z-530-09, §i.
(2) Up to thirty percent (30%) of the GFA of one building may be retail and service uses, provided that:
   (a) Total square footage of retail and service uses designated in the development plan does not exceed fifteen percent (15%) of the GFA of all buildings combined; or,
   (b) Retail and service uses over fifteen percent (15%) of the GFA of any one building be located on the ground floor or below grade.

B. The Commission may grant a waiver to allow retail and service uses to be located on floors other than ground or below-grade, pursuant to the criteria found in Section 23B.02(C).

23B.05.03 Cultural & Entertainment Uses:

Cultural and Entertainment uses may be included in one or more buildings within a DP, subject to the following:

A. Cultural and Entertainment Uses may comprise up to:
   (1) Fifteen percent (15%) of the Gross Floor Area (GFA) of any building; or,
   (2) Up to thirty percent (30%) of the GFA of one building may be Cultural and Entertainment Uses, provided that:
      (a) Total square footage of Cultural and Entertainment Uses designated in the development plan does not exceed fifteen percent (15%) of the GFA of all buildings combined; or,
      (b) Cultural and entertainment Uses over fifteen percent (15%) of the GFA of any one building be located on the ground floor or below grade.

B. The Commission may grant a waiver to allow cultural and entertainment uses to be located on floors other than ground or below-grade, pursuant to the criteria found in Section 23B.02(C).

23B.06 Accessory Buildings and Uses:

All Accessory Buildings and uses which are permitted in the underlying primary zoning district(s) shall be permitted, except that any attached or detached Accessory Building in any DP/ADLS shall have on all sides the same building proportions, architectural features, construction materials, and in general be architecturally compatible with the Principal Building(s) with which it is associated.

23B.07 Minimum Tract Size:

A. Except as provided in Paragraph C, below, the minimum area covered by a DP within the U.S. Highway 31 Overlay Zone must be 217,800 square feet (5 acres).

B. If a parcel of land or subdivision lot was recorded prior to April 21, 1980 (the “Effective Date”), and said parcel or lot does not contain the minimum area required by this Paragraph, said parcel or lot (“Undersized Lot”) may be used for any use permitted in the U.S. 31 Overlay Zone provided that:
   (1) At the time of recordation of the Undersized Lot or on the Effective Date, the Undersized Lot met the requirements for minimum lot size then in effect for a lot in the underlying primary zoning district(s);
   (2) The owner of the Undersized Lot must include any adjoining vacant land (not separated by a street or public way) owned or owned by an affiliate on or before the Effective Date or at the time of application which, if combined with the Undersized Lot would create a parcel which conforms, or more closely conforms, to the requirements of this Paragraph; and,
   (3) All other requirements applicable to the U.S. 31 Overlay Zone can be met.

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6 Section 23B.07 amended per Ordinance No. Z-547-10.
C.  *Section 23B.07* does not preclude the sale or other transfer of any parcel of land within a Parent Tract after the approval of a Development Plan (DP) for the entire tract. However, the development of the parcel must still conform to the DP for the Parent Tract as approved or amended by the Commission, and all other applicable requirements contained in the Zoning Ordinance.

### 23B.08 Height and Yard Requirements

The purpose of this Section is to provide site design requirements that align buildings along the edges of a parcel, towards the public right-of-way of the U.S. 31 Corridor, and, where applicable, the I-465, Pennsylvania Street, Pennsylvania Parkway, Meridian Corners Boulevard, and Illinois Street Corridors. It is the intent of these regulations to orient new buildings with their longest axis parallel to the adjoining highway or street to create a sense of enclosure along the streets, with parking located to the rear, and, if necessary, to the side of a building.

**23B.08.01 Build-To Lines:**

A. Except as allowed in *Paragraph B* below, all Principal Buildings shall be located on the U.S. 31 Corridor Build-to Line, defined in *Paragraph C* below.

B. For Development Plans on Through Lots with two or more Principal Buildings (buildings), up to one-half (½) of the buildings may be placed on the Pennsylvania Street, Pennsylvania Parkway, Meridian Corners Boulevard, and Illinois Corridor Build-to-line instead of the U.S. 31 Build-to Line.

C. Dimensional requirements for Build-to-lines shall be measured from the highway or street Right-of-way line:

1. U.S. 31 Corridor and I-465: Ninety (90) feet
2. Pennsylvania Street, Pennsylvania Parkway, Meridian Corners Boulevard, and Illinois Corridors: Twenty (20) feet.

D. Principal Buildings that are also located adjacent to any arterial or parkway (e.g. 96th Street or 116th Street) shall be sited consistent with the Building Setback Line of the underlying zoning.

**23B.08.02 Minimum Side and Rear Yards:**

A. Adjacent to any residential use or zone: Forty-five (45) feet.

B. Adjacent to business use or business zone: Fifteen (15) feet.

**23B.08.03 Building Height:** As specified in the underlying primary zoning district(s), except as follows:

A. **Minimum Building Heights:**

1. All uses along U.S. 31 and I-465: Thirty-eight (38) feet and three (3) occupiable floors.

2. All uses along Pennsylvania Street, Pennsylvania Parkway, Meridian Corners Boulevard, and Illinois Street Corridors, or adjoining arterial/parkway: Twenty-six (26) feet and two (2) occupiable floors.

B. **Maximum Building Heights:** As specified in the underlying primary zoning district(s), except as follows:

1. **B-5 District** - Between I-465 and 131st Street: Eighty (80) feet, except that the maximum height may not exceed forty percent (40%) of the distance from any residential use or zone.

2. **B-6 District** - All uses, between I-465 and 131st Street: One hundred fifty (150) feet, except that the maximum height may not exceed forty percent (40%) of the distance from any residential use or zone.


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*Section 23B.08 amended per Ordinance No. Z-382-02, §c-f; Z-453-04, §di-dj; Z-530-09, §i.*
23B.08.04 Minimum Parcel Width:
For all uses, the parcel width shall equal or exceed that amount which is one-half (½) the depth of the parcel. However, if a parcel of land or subdivision lot was recorded prior to April 21, 1980 (the “Effective Date”), and said parcel or lot does not contain the minimum width required by this Paragraph, said parcel or lot (“Undersized Lot”) may be used for any use permitted in the U.S. 31 Overlay Zone provided that:

A. At the time of recordation of the Undersized Lot or on the Effective Date, the Undersized Lot met the requirements for minimum lot width then in effect for a lot in the underlying primary zoning district(s);

B. The owner of the Undersized Lot must include, up to the minimum parcel width, any adjoining vacant land (not separated by a street or public way) owned, or owned by an affiliate, on or before the Effective Date or at the time of application which, if combined with the Undersized Lot, would create a parcel which conforms, or more closely conforms, to the minimum parcel width requirements of this Paragraph, and

C. All other Development Requirements applicable to the U.S. 31 Overlay Zone can be met.

23B.08.05 Minimum Gross Floor Area:
A. All buildings shall have a minimum of fifteen thousand (15,000) square feet of gross floor area, excluding the floor area of any basement or any accessory building(s). Accessory Buildings permitted need not meet this minimum floor area requirement. The intent of this minimum gross floor area requirement is to preclude small, freestanding buildings and uses not in character with the Corridor.

B. Distribution of Gross Floor Area,
1. All uses along U.S. 31 and I-465:
   a. Maximum First floor GFA: Forty percent (40%);
   b. Maximum Second floor GFA: Thirty-five percent (35%).

2. All uses along Pennsylvania Street, Pennsylvania Parkway, Meridian Corners Boulevard, and Illinois Street Corridors, or adjoining arterial/parkway:
   a. Maximum First floor GFA: Sixty percent (60%);

23B.08.06 Maximum Parcel Coverage and Density:
A. Maximum Parcel Coverage shall be sixty-five percent (65%) of any parcel covered by a DP.

B. Maximum Floor Area Ratio (F.A.R.) shall be 0.70, with the F.A.R. being calculated by dividing the total gross floor area of a building or buildings on any parcel by the area of such parcel.

23B.08.07 Waivers:
The applicant may request a Plan Commission Waiver to the dimensional and quantitative standards of this Section 23B.08, by not greater than thirty-five percent (35%), consistent with requirements set forth in Section 23B.02(C).

23B.09 Architectural Design Requirements

In reviewing the architectural design of building(s) proposed to be built in the U.S. Highway 31 Overlay Zone, factors to be considered by the Commission shall include but not be limited to the following:

A. Context: All buildings shall be designed with respect to the general character of the U.S. 31 Corridor and, particularly, with due consideration to buildings located on lots that abut the project site.

B. Materials: A minimum of three materials shall be used for building exteriors, from the following list: stone, brick, architectural pre-cast (panels or detailing), architectural metal panels, glass, and ornamental metal. Large

8 Section 23B.09 amended per Ordinance No. Z-511-07; Z-530-09. §i.
expanses of glass are allowed, up to seventy percent (70%) of the façade area. The building may not be constructed entirely of a metal and glass curtain wall. Stucco or EIFS may also be applied as trim details, but shall not exceed ten percent (10%) of the overall non-window façade area. Concrete block is not allowed as an exterior finish material.

C. Footprint: All buildings shall be designed with a minimum of eight external corners, in order to eliminate box buildings.

D. Roof: Modulation of the roof and/or roof line will be required in order to eliminate box-shaped buildings. Parapets must be fully integrated into the architectural design of the building and provide seamless design transitions, including exterior materials, between the main building mass, mechanical penthouses and other roof structures. Should they be used, partial parapets shall have a return that extends inward to at least the first structural bay, or twenty-five (25) feet, whichever is greater.

Sloped roofs shall not exceed one hundred (100) feet without a change in roof plane, or gable or dormer. Sloped roofs shall be either standing seam metal or dimensional shingles.

E. Exhibits. The following architectural exhibits shall be provided to the Commission in addition to normal submission requirement of any DP or ADLS application, as required by Chapter 24:

1. A Site Plan showing the proposed building and neighboring buildings, including buildings across U.S. 31.

2. Perspective computer-enhanced color renderings showing the proposed building, signage, parking areas (shown loaded) and any displays within the context of the actual existing site conditions, including how it will look from any adjoining residential areas, as well from as three locations, whose distance is no less than three hundred (300) linear feet away nor more than one thousand (1000) linear feet away (from the property line), along U.S. 31:

   a. U.S. 31 Southbound lane
   b. Immediately across the highway, from approximately first floor level
   c. U.S. 31 Northbound lane

F. Waivers:

The applicant may request a Plan Commission Waiver to the dimensional and quantitative standards of this Section 23B.09 by not greater than thirty-five percent (35%), consistent with requirements set forth in Section 23B.02(C).

23B.10 Landscaping Requirements. See Chapter 33: Commercial Development Landscape Ordinance.

23B.11 Public Art

Public art that is included as part of a Development Plan shall be displayed in a location that is visually accessible to the public and visible from either U.S. Highway 31, Pennsylvania Street, Range Line Road, or Illinois Street/Meridian Corners Boulevard.

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9 Section 23B.10 amended per Ordinance No. Z-365-01; Z-380-09, §i; Z-558-12; Z-577-13.
23B.12 Parking Requirements.10

A. Except as provided in Paragraph B, there shall be no (0) parking between the U.S. 31 right-of-way and the front build-to line of the building.

(1) The required number of parking spaces is established in Chapter 27: Additional Parking & Loading Regulations, depending upon the zoning and intended land use.

(2) There shall be an appropriate number of parking spaces reserved for use by handicapped individuals, per State and Federal requirements.

(3) Direct, articulated pedestrian access shall be provided from the street to the building’s primary entrance.

(4) A bicycle parking area should be provided for each building.

(5) Above grade, structured parking facilities shall have on all sides architectural features that are compatible with the principal building(s) with which they are associated.

B. Waivers:

The applicant may request a Plan Commission Waiver to the dimensional and quantitative standards of this Section 23B.12, by not greater than thirty-five percent (35%), consistent with requirements set forth in Section 23B.02(C).

23B.13 Lighting Requirements.11

A. A Site Lighting Plan shall be submitted along with any DP or ADLS plan. The Site Lighting Plan shall include the type, standards, layout, spread & intensity of all site lighting, including:

(1) parking lot and service/storage area lighting;

(2) architectural display lighting;

(3) security lighting;

(4) lighting of pedestrian and bicycle ways;

(5) architectural and landscape lighting.

B. All site lighting shall be coordinated throughout the project and be of uniform design, color and materials.

C. The maximum height of light standards shall not exceed the building height proposed, or twenty-five (25) feet, whichever is less. However, when light standards abut or fall within ninety (90) feet of a residential use, they shall not exceed fifteen (15) feet.

D. All exterior architectural, display, decorative and sign lighting shall be generated from concealed, low level light fixtures.

E. The average illumination for site lighting shall be a maximum of three (3) footcandles.

F. All site lighting shall be designed to not exceed 0.3 footcandle at the property line in business or manufacturing districts, and 0.1 footcandle at the property line of adjoining residential uses.

G. Waivers:

The applicant may request a Plan Commission Waiver to the dimensional and quantitative standards of this Section 23B.13, by not greater than thirty-five percent (35%), consistent with requirements set forth in Section 23B.02(C).

10 Section 23B.12 amended per Ordinance Z-530-09, §i.
11 Section 23B.13 amended per Ordinance Z-530-09, §i.
23B.14 Bicycle and Pedestrian Access

The DP shall include specific provisions for incorporating pedestrian and bicycle access, circulation and amenities into the development. Such bicycle and pedestrian access considerations shall include linking pedestrian and bicycle facilities to adjacent development, the overall U.S. 31 Corridor, and, the Carmel community’s overall system of bicycle and pedestrian trails and routes.

23B.15 Access to Individual Tracts

As U.S. Highway 31 is a limited access highway, and as access to individual tracts along this highway is either not in existence or not clearly defined in many cases, access roads will need to be built. In order to preserve the aesthetic benefits provided by the greenbelt, access roads shall be provided at the rear of all tracts, whenever possible. Access roads to contiguous tracts shall be coordinated so as to form one main access road serving adjoining developments. These roads should be designed so as to funnel traffic onto major arterial roads rather than into residential areas and roads that may adjoin or be near this Overlay Zone. Bicycle and pedestrian access shall likewise be coordinated with vehicular access, greenbelt design and parking.

23B.16 Other Requirements

23B.16.01 Outside Storage of Refuse:

Unenclosed storage of refuse (whether or not in containers) or display of merchandise shall not be permitted on any project. All refuse shall be contained completely within the Principal Building or Accessory Building. Any Accessory Building for refuse storage shall be:

A. Designed to include a roof structure; and,

B. Architecturally compatible with the Principal Building.

23B.16.02 Loading and Unloading Areas:

Loading and Unloading Berths or Bays shall be designed as specified in the underlying primary zoning district(s), except that any Loading and Unloading Berth or Bay shall not be oriented to U.S. Highway 31. Loading and Unloading Berths or Bays oriented toward any other public right-of-way, shall be landscaped/screened using masonry wall(s), plant material, or a combination thereof, subject to Commission approval.

23B.16.03 Additions to Existing Residential:

Uses and Detached Buildings accessory to single-family dwelling units are permitted provided that the use and/or structure meets the requirements of the underlying primary zoning district. Additionally, any detached structure:

A. Must be of compatible architectural design with the Principal Building;

B. Must be set back a minimum of thirty (30) feet from the right-of-way line nearest to and running most parallel with U.S. Highway 31; and be accompanied by the minimum applicable perimeter buffer per Section 26.04: Perimeter Buffering.

C. Waivers:

The applicant may request a Plan Commission Waiver to the dimensional and quantitative standards of this Section 23B.16.03, by not greater than thirty-five percent (35%), consistent with requirements set forth in Section 23B.02(C).

23B.16.04 Perimeter Fences. Perimeter Fences shall be permitted for privacy, buffering and screening purposes and shall be identified on the DP. When used, perimeter fences shall be constructed of wood and masonry materials, be solid as viewed from any angle and shall be at least eight feet (8") in height. Primarily cedar fences are permitted; however, twenty-four inch (24") wide red brick or stone columns shall be incorporated into the

12 Section 23B.16 amended per Ordinance No. Z-365-01; Z-511-07; Z-530-09, §i.
fence design at least every twenty-six feet (26’). Alternatively, metal fencing with landscaping is permitted such that 100% landscaping screen is achieved within three (3) years. All fences shall be properly maintained and repaired, as necessary.

23B.17 Reservation of Land for Pending State Highway Improvements.\textsuperscript{13}

A. In addition to the development requirements specified in Sections 23B.03 through 23B.08, a DP must reserve for acquisition by the State of Indiana all land that the State expects to need for pending improvements to U.S. Highway 31, as shown on plans developed for the Indiana Department of Transportation by the consulting firm Bernardin, Lochmueller and Associates for the Major Investment Study (1997), or, as shown on plans from the Parsons Transportation Group prepared for the Environmental Impact Study. An applicant must notify in writing the Commissioner of the Indiana Department of Transportation (INDOT) of any proposed DP that includes land within the projected right-of-way for those pending improvements.

B. Whenever an applicant believes that the reservation of such land as required by Paragraph A would result in the loss of all reasonable and beneficial use of or return from the applicant’s property, then the applicant may request an Economic Hardship Exception from the terms of Paragraph A, pursuant to the Plan Commission’s Rules of Procedure.

C. Upon receipt of a request for an Economic Hardship Exception, the Commission shall hold a public hearing on such request. The hearing may not be held until at least ninety (90) days after the applicant has notified the Commissioner of INDOT of the proposed DP as described above in Paragraph A. In determining whether to grant an Economic Hardship Exception, the Commission may consider the following criteria:

1. the applicant's knowledge of the State’s plans at the time of acquisition;
2. the current level of economic return on the property, including the date of purchase, the purchase price, income from the property, any remaining mortgage debt, real estate taxes, and recent appraisals of the property;
3. any recent offers for sale or purchase, including offers to purchase which the State itself may have made;
4. the feasibility of profitable alternative uses for the property; and,
5. whether the State can reasonably be expected to provide just compensation to the applicant for any taking of the applicant’s property within one (1) year from the date of the Commission’s decision.

D. An applicant for an Economic Hardship Exception must prove, by clear and convincing evidence, both:

1. that the existing use (if any) of the applicant’s property is economically infeasible; and,
2. that, if the terms of Paragraph A are applied to the property, the sale, rental, or rehabilitation of the property will not be possible, resulting in the property not being capable of earning any reasonable economic return. The Commission’s decision must be in writing and must contain the factual findings that constitute the basis for its decision, consistent with the criteria in Paragraph C.

\textsuperscript{13} Section 23B.17 amended per Ordinance No. Z-453-04, §dk-dn.
## Chapter 23B: U.S. Highway 31 Corridor Overlay Zone

### Amendment Log

<table>
<thead>
<tr>
<th>Ordinance No.</th>
<th>Docket No.</th>
<th>Council Approval</th>
<th>Effective Date</th>
<th>Sections Affected</th>
</tr>
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<td>Z-289</td>
<td></td>
<td></td>
<td>6 December 1993</td>
<td></td>
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<tr>
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<td></td>
<td></td>
<td>3 September 1997</td>
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<td>7 June 1999</td>
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<td>1 May 2000</td>
<td></td>
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<td>76-01a OA</td>
<td>November 5, 2001</td>
<td>November 27, 2001</td>
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<td>38-02 OA</td>
<td>July 15, 2002</td>
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