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Fountain County, Indiana

Fountain County Board of Commissioners

Ordinance 2024-1
An Ordinance for Driveway Controls
November 2024

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Section 1: Basic Provisions

1:01 Title

This Ordinance and all Ordinances supplemental or amendatory hereto shall be known as the Driveway Ordinance of Fountain County and may be cited as such and will be referred to herein as “this Ordinance”.

1.02 Overview

Adopting a consistent design standard for driveway design is essential to creating functional, safe, and efficient driveways in Fountain County. The standards are necessary to ensure safe movement and uniform approaches to common driveway requirements. The standards in this document detail the requirements that driveways must conform to.

1.03 Purpose

The purpose of this Ordinance is to provide minimum standards for the best practices in driveway design, prevent unsafe driveways, and establish common standards for Fountain County driveways.

1.04 Authority

The Fountain County Highway Department, as hereinafter defined, is hereby authorized to issue Driveway permits, and collect permit and incidental fees, perform inspections, order or otherwise compel correction of violations of this Ordinance, and is otherwise authorized to perform all actions necessary for administration and enforcement of this Ordinance.

1.05 Severability

Should any section, paragraph, sentence, clause, or phase of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of said Ordinance shall not be affected thereby and shall remain in full force and effect.

1.06 Effective Date

This Ordinance shall apply to all Fountain County, Indiana as of the date from and after its adoption and approval by the Commissioners as stated herein and any publication as required by law.

1.07 Repeal

The provisions of any prior or hereby inconsistent with any provisions of this Ordinance are hereby superseded and repealed.

1.08 Citation Reference

Any reference to specific provisions of Indiana Code or Indiana Administrative Code, and Standard Specifications, and AASHTO shall also include subsequent amendments.

1.09 Conflicting Provisions

Whenever there is a difference between standards or provisions specified herein and those contained in other regulations, resolutions or ordinances of the County or State, the most restrictive standards shall govern and the governing body of the most restrictive standards shall be the governing authority of said standards.

1.10 Authority to Inspect and Copy Records

- A. The Highway Department reserves the right to inspect driveways and ensure adherence to the approved Engineering designs.
- B. The driveway construction shall comply with this Ordinance, all other relevant local Ordinances, and the approved Engineering Standard Drawing designs.
- C. The Fountain County Highway Department may inspect driveway work.
- D. The property owner shall permit the Highway Department to collect evidence and/or exhibits, and to routinely inspect, investigate complaints, and copy any or all records relative to the enforcement of this Ordinance.

1.11 Waiver

A. General

Where the Plan Commission finds that unnecessary hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these driveway regulations so that substantial justice may be done and the public interest served, provided that the waivers shall not have the effect of nullifying the intent and purpose of these regulations, and further provided the Plan Commission shall not approve waivers unless it shall make findings based upon the evidence presented to it in each specific case that the following apply:

1. The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other nearby property.
2. The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable generally to other property.
3. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship or practical difficulty to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out.

B. Conditions

In approving waivers, the Plan Commission may require conditions to, in its judgment; secure substantially the objectives of the standards or requirements of these regulations.

C. Procedures

A petition for any waiver shall be submitted in writing by the applicant at the time when a driveway permit is filed for consideration by the Plan Commission. The petition shall state fully the grounds for the application and all of the facts relied upon by the petitioner.

1.12 Appeals

Pursuant to IC 36-7-4-1016, any person aggrieved by a final decision of the Fountain County Plan Commission under this Ordinance may present to the Court of competent jurisdiction, a petition, duly verified, setting forth that such decision is illegal in whole or in part and specifying the grounds of illegality. The petition shall be presented to the court within thirty (30) days after the entry of the decision of the Plan Commission.

1.13 Amendments

For the purpose of providing for the public health, safety, and general welfare, the County, on recommendation of the Plan Commission, may from time to time amend the provisions imposed by these driveway regulations. All amendments shall be considered and adopted in compliance with any applicable Rules of Procedure adopted by the Plan Commission of Fountain County.

Section 2: Application, Submittal, Review & Approval

2.01 Permit Denial, Modification, and Revocation

A driveway construction permit may be denied, modified, or revoked for the following reasons. The reasons include, but are not limited to:

1. After review of an application and plan submittal, the Fountain County Highway Department may deny a permit for Driveway Construction (new construction, repair or alteration of roads) for which it has authority. The driveway plan submittal does not address the demands and limitations of the site.
 2. The owner failed to demonstrate that the proposed driveway can be designed, located, constructed, maintained, and operated in compliance with all of the provisions of this Ordinance.
 3. False information was submitted in the application.
 4. Information submitted in the driveway permit application is found to be incomplete or erroneous.
 5. The inspections of the phased work do not pass due to incorrect construction, or failure to build to approved engineering standard drawing designs.
 6. The owner failed to respond to a request for a revised plan submittal or for additional information within thirty (30) days.
- A. If an application is denied, the owner shall be advised, in writing, of the basis for the denial, the right and procedure for appeal, the deadline for appeal, and the opportunity for a fair hearing.
 - B. If a permit is revoked or modified, the owner shall be advised, in writing, of the basis for the modification or revocation, the right and procedure for appeal, the deadline for appeal, and the opportunity for fair hearing.

- C. If a permit has been revoked, the following shall occur for a new permit to be issued:
 1. The owner shall provide, as necessary, a revised driveway site plan.
 2. The proposed driveway shall comply with the requirements of this Ordinance, and any relevant Ordinances.
 3. If a permit is revoked, construction may not proceed or must cease immediately, until a new permit is issued.

2.02 Petition for Review

- A. The Plan Commission shall hear appeals incidental to the issuance, modification, denial, and revocation of driveway permits if, within thirty (30) days following the date of receipt of an issued driveway permit, driveway permit modification, notice of driveway permit denial or notice of driveway permit revocation, any person aggrieved by such action files a petition for review concerning such action with Plan Commission.
- B. The petition for review shall state:
 1. The name, address, and telephone number (if applicable) of the person making the request;
 2. Identify the interests of the petitioner, which is affected by the driveway permit issuance, denial, modification, or revocation;
 3. Identify any persons whom the petitioner represents;
 4. State with particularity the reasons for the request;
 5. State with particularity the issues proposed to be considered;
 6. Include proposed terms or conditions, which in judgement of the petitioner would be appropriate to carry out the requirements of this Ordinance governing such driveway permits.
- C. Upon receipt of a petition for review, the Highway Department shall arrange a time and place for a hearing and shall give the petitioner written notice of the scheduled hearing. Such hearing shall be held as soon as practical after receipt of the petition.
- D. At such hearing, the petitioner shall be given an opportunity to show evidence why the permit should not be modified, denied, or revoked. The Highway Department or agent shall be given an opportunity to show the reasons for the modification, denial, or revocation. At the conclusion of the hearing, the Fountain County Plan Commission shall sustain or overrule the original ruling depending upon its findings as to compliance with the provisions of this Ordinance. All proceedings of such hearing, including the findings and decision of the Plan Commission, shall be summarized, reduced to writing, and entered as a matter of public record in the office of Fountain County Highway Department.

Section 3: Driveway Standards

3.01 Driveway Classifications

The terms driveways will be used and include all of the following classifications:
Driveway Classifications are as follows:

- A. Field Entrance (only for access to agricultural field)
- B. Residential Entrance
- C. Commercial Major/Minor/Sub-Minor Entrance
- D. Construction/Temporary Drive
- E. Utility Pull-off Drive
- F. Public Road Approach/Private Road Approach

3.02 Driveway Design Standards

Driveway designs shall adhere to the following design standards for all classifications, unless noted in the standard:

General Standards:

- A. A driveway is not permitted to cross a limited access rights-of-way or a non-access easement.
- B. The entire expense of constructing driveways, mailbox approaches, utilities, and other private improvements shall be borne by the Property Owner(s).
- C. All driveways and approaches shall be so constructed that they shall not interfere with drainage of, or cause erosion to, the highway.
- D. All water must be directed away from the roadway to side ditches or other swales.
- E. The right of way area adjacent to or between two approaches may be graded at the permittee's expense, subject to the drainage requirements of Fountain County.
- F. All disturbed areas shall be seeded or sodded within 30 days of completion to prevent erosion. This work may be deferred until growing season upon installation of erosion control measures at the Fountain County Highway Department's discretion.
- G. The construction of such driveways and approaches shall not interfere with any existing structure or any county highway right of way without specific written permission from the Highway Department and any owner of the structure.
- H. Concrete headwalls or any other concrete, brick or other solid structures will not be permitted in the right of way.
- I. All entrances and approaches shall be constructed with adequate sight distance in both directions along the highway to allow safe access to the highway without interfering with traffic on the highway.

- J. No entrance or approach shall be constructed where it will interfere with or prevent the proper location of highway signs.
- K. If the driveway has a loose aggregate surface, it is the permittee's responsibility to keep the highway pavement free from the loose aggregate at all times during construction.
- L. Permitted work must be completed within one (1) year after the permit is issued; otherwise, the permit will expire and a new permit will be required.
- M. Permittees and Property Owner(s) shall bear all expenses of keeping approaches, culverts, and drainage in proper and adequate repair.
- N. The permittee may not plant flowers, shrubs, or trees within the right of way. Existing plantings in the right-of-way creating a potentially dangerous condition as determined by the Highway Engineer shall be removed by permittee.
- O. During construction of any drive, the approach must have sufficient aggregate during construction to prevent damage to the edge of existing pavement.
- P. Permittee will be responsible for costs incurred by the Highway Department to repair the existing road or public improvements if damaged.

Encroachment Standards:

- A. Fountain County hereby consents to Property Owner's Encroachment described in this permit to be located upon the County's right-of-way effective upon approval of the work covered by this permit.
- B. The Property Owner(s) and his successors and assigns, including subsequent property owners, assumes responsibility for all maintenance of the encroaching improvement. If a driveway has a loose aggregate surface, it is the Property Owner's responsibility to keep the highway pavement free from the loose aggregate at all times.
- C. Alterations of any drive or change of use of the property will require a new permit if it impacts the entrance of the drive or the classification or use of the drive. For example, if a driveway was used for residential but is later converted to a commercial drive, then a new permit would be required. If a driveway was widened, but the main entrance remains unchanged, then no permit is required.
- D. It is mutually understood and agreed that consent to the Encroachment does not create in the Property Owner or his successors and assigns any right, title, or interest in and to the County's right-of-way upon which said Encroachment is or may hereafter be located, and the Property Owner hereby specifically waives any right, title, and interest in and to that portion of the real

estate owned or controlled as right-of-way which the Property Owner might have acquired, or might hereafter acquire by any means of adverse possession.

- E. In consideration of the County's consent to the Encroachment on the right-of-way, Property Owner agrees to maintain the Encroachment improvements, including the culvert pipe, end sections, and drainage ditches impacted by the permitted work, in a manner which does not interfere with the use of the right-of-way for its dedicated purpose. Property Owner further agrees to maintain that portion of the private improvement within the right-of-way in good condition in substantial compliance with the standard details and specifications published at the time of the work and in such a manner as to prevent obstruction, interference, or degradation of the roadway, or negatively impact the traffic thereon or the flow of runoff water to or within any roadside ditch.
- F. In consideration of the County's consent to the Encroachment on the right-of-way, the Property Owner does hereby certify, acknowledge, and affirm that Fountain County, Indiana, shall not be responsible or liable for any loss occasioned by the removal, alteration, or destruction (in whole or in part) of the installation of the Encroachment over, above, and/or located upon or within the right-of-way, whether during the lawful exercise of the County's right and duties in regard to the maintenance, repair, or improvements to or upon said right-of-way or on other occasions and whether caused in whole or in part by the negligence of the County or its employees, agents, contractors, or representatives. The County and its employees, agents, contractors, officials, and other representatives are hereby released from financial responsibility for any and all losses the Property Owner incurs arising out of, related to, or associated with the Encroachment.
- G. Land Owner and successors and assigns and successor owners in interest shall indemnify Fountain County, Indiana, and hold the County harmless from any and all liability, damages, expenses, and costs, including reasonable attorney fees, arising out of or related to damages to property or injury to persons, including death, which result from, relate to, or arise in connection with the Encroachment within the right-of-way. In the event it becomes necessary for Fountain County to enforce this indemnification and hold harmless provision, the Property Owner shall pay all reasonable costs the County incurs in the enforcement thereof and in the enforcement of this Encroachment Agreement, including reasonable attorney fees. The Property Owner and successors and assigns and successor owners in interest to the Real Estate shall have an affirmative duty to inform all third parties with whom each negotiates for a possible sale, lease, assignment, mortgage, or transfer of the Property of the existence of this Encroachment Agreement and the obligations hereunder.
- H. When County-controlled right-of-way is transitioned to control by another governmental agency, such as an annexation or a transition from rural to urban service districts in Fountain County, permittee's obligations under this encroachment agreement shall be transferred to such governmental agency.

- I. Property Owner shall be responsible to modify or remove private improvements covered by this encroachment to the Highway Engineer's satisfaction in the event the County constructs or causes to be constructed improvements within its right-of-way that are in conflict with the County work.

Section 4: Permits

4.01 Permits

An owner shall comply with the standards for obtaining permits required for planned work. The owner or owner's agent shall obtain a written permit signed by the Highway Department prior to new construction or repair or alteration of a driveway.

Any plans for driveway work construction shall require an application and the design. The application and design shall be submitted to the Highway Department for review. The design shall include a basic outline of the proposed driveway location and path, and construction details.

Design plans for Residential Drives, Field Entrances, and Construction/Temporary Drives shall be simple drawings showing the layout of the driveway, its location on the property, relative location of the property lines, buildings, and other entrances or drives on the property. The Fountain County Highway Department shall inform the owner whether a culvert is required. Refer to Fountain County Standard Drawings for driveway design standards.

Design plans for classifications of Commercial Major/Minor/Sub-Minor Entrance, Public Road Approach/Private Road Approach, and Utility Pull-off Drive shall be designed by a Professional Engineer and shall follow the Fountain County Driveway Standards. Refer to Fountain County Standard Drawings.

Section 5: Fee Schedule

5.01 Fee Schedule

A permit fee in the amount specified in the Fountain County Fee Schedule will be submitted with the driveway permit application.

Field Entrance	\$25 each	No permit is required
Residential Entrance	\$25 each	
Commercial Major/Minor/Sub-Minor Entrance	\$150 each	Permit bond required
Construction/Temporary Drive	\$25 each	
Utility Pull-off drive	\$150 each	
Public Road Approach/Private Road Approach	\$400 each	Permit bond required

Section 6: Enforcement

6.01 Enforcement

This Ordinance shall be enforced as follows:

- A. Any person found to be in violation of any provision of this Ordinance, or any conditions of a driveway permit, shall be served with a written order either in person or certified or registered mail by the Highway Department. This order shall state the nature of the violation and provide a reasonable time limit unless the Highway Department deems an emergency exists, not to exceed 60 days, for the correction of any violation of this Ordinance.
- B. Whenever the Highway Department finds that an emergency exists which requires immediate action, the Highway Department may issue an order describing the existence of such an emergency and require that such action be taken as they deem necessary to meet the emergency. Such order shall be effective immediately.
- C. The Highway Department may issue an order to stop work when:
 1. Construction of a driveway has begun without permit.
 2. Construction of a driveway is in violation of the permit issued.
 3. Any other conditions exist that may result in the revocation of a permit, as listed in Section 2 of this Ordinance.
- D. An owner or owner's agent, upon receipt of an order, shall comply with the order and the provisions of this Ordinance.
- E. Any person who shall continue any violations of this Ordinance beyond the time limit provided for correction of any violations of this Ordinance or who performs any act prohibited herein or shall fail to perform any duty lawfully enjoined or who shall fail, neglect, or refuse to obey any lawful order given by the Fountain County Highway Department shall be punished for the first offence by a fine of not more than \$100 and for the second and each subsequent offense of not more than \$200. Each day a violation of this Ordinance continues shall constitute a separate offense for which a separate fine may be levied. The petitioner may request a variance to the

standards through the appeal process. Fines will be suspended during this process, until a remedy is agreed upon between the petitioner and the County Highway Department.

6.02 Remedies

- A. The Highway Department may bring actions in the Fountain County Court for mandatory and injunctive relieve for the enforcement of and to secure compliance with any order or orders made by the Highway Department or to otherwise provide for the enforcement of this Ordinance.
- B. Any such action for mandatory or injunctive relief may be joined with an action to recover the penalties, costs and expenses provided in this Ordinance. In the event any legal action is necessary to enforce this Ordinance, the Highway Department may seek recovery of costs and expenses reasonably incurred to enforce the provisions of this Ordinance including, but not limited to, reasonable attorney's fees.

6.03 Methods of Appeal

Appeal of Notice of Violation. The person or entity receiving a notice of violation has the right to appeal the Highway Department's determination to the Plan Commission. In order to appeal the determination, the person must file a written appeal with the Secretary of the Plan Commission, including a statement which states all facts which supports the appeal. This statement must be mailed or delivered to the Secretary within thirty (30) days of the receipt of the notice of violation.

Hearing on Appeal. Upon receipt of a timely filed appeal, the Secretary of the Plan Commission will notify Plan Commission President of such receipt, and the President will schedule a public hearing on the appeal and conduct the appeal hearing within 30 days of the receipt of the timely filed appeal. The Secretary will provide written notice of the hearing to the party filing the appeal and to the Highway Department. At the hearing, the party appealing the notice of violation may be represented by an attorney, may present evidence which supports the appeal, and may present any legal authority in support of the appeal. After the party filing the appeal concludes this presentation, the Highway Department will be afforded the opportunity to respond to the appeal and present evidence and authority supporting the Highway Department's determination that a violation exists or existed at the time of the issuance of the notice. The Plan Commission will make findings and conclusions supporting its decision on the appeal within 10 days of the hearing, and the Secretary of the Plan Commission will mail copies of its decision to the party appealing the determination and to the County Highway Department.

Appeal of Commission: The party filing the appeal may appeal the decision of the Plan Commission by filing with a court of competent jurisdiction a petition for review within 30 days of the party's receipt of the Plan Commission's decision.

Adopted this ____ day of _____, 2024.

Board of Commissioners, Fountain County, Indiana

Name, President

Name

Name

Attest: _____
Name, Title