ORDINANCE 2015-07

AN ORDINANCE OF THE TOWN OF CUMBERLAND
AMENDING THE CUMBERLAND ZONING ORDINANCE AMENDING SECTION 00-15-153-13.2 AND 00-15-153-13.5 TO ADDRESS CONSTRUCTION WITHIN UTILITY EASEMENTS

WHEREAS, the Town Council of the Town of Cumberland, Indiana has adopted a Zoning Ordinance for the Town that includes regulations for fencing; and

WHEREAS, from time to time this ordinance needs to be amended;

WHEREAS, Town staff identified a need to clarify what construction if any could be done within utility easements, especially drainage easements; and

WHEREAS, on June 22, 2015, the Cumberland Plan Commission conducted a public hearing on the proposed amendments; and

WHEREAS, in considering this proposal, the Cumberland Plan Commission has paid reasonable regard to the comprehensive plan, current conditions and the character of current structures and uses in each district, the most desirable use for with the land in each district is adapted, the conservation of property values throughout the jurisdiction, responsible development and growth, and has certified the proposal with a favorable recommendation to the Cumberland Town Council for the amendments to the Zoning Ordinance; and

WHEREAS, the Cumberland Town Council has reviewed and considered the Plan Commission’s recommendation and has decided to adopt these amendments.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUMBERLAND, INDIANA AS FOLLOWS:

Section 1. The amendments to the Zoning Ordinance attached as Exhibit A are adopted.

Section 2. This ordinance shall be effective immediately upon its adoption.

This ordinance is hereby passed and adopted this 5 day of Aug., 2015.
TOWN COUNCIL OF CUMBERLAND, INDIANA

Joe Siefker, President

Anna Pea, Vice President

Nicole Bell, Member

Brian Gritter, Member

Mark Reynolds, Member

ATTEST:

Erica Salmon, Clerk-Treasurer
by virtue of change of ownership, or for any other reason, be used to satisfy yard, court, or other
open space or minimum lot area requirements for any other building.

B. Location of Required Yards, Courts, and other Open Space

All yards, courts, and other open space allocated to a building or group of buildings shall be
located on the same zoning lots as such building or group of buildings.

C. Yards for Existing Buildings

No yard now or hereafter provided for a building existing on the effective date of this Ordinance
shall subsequently be reduced below, or further reduced if already less than, the minimum yard
requirement of this Ordinance for equivalent new construction.

7. Vision Clearance Areas

No building, structure or improvement, including landscaping, shall be erected, placed, planted or
maintained so as to interfere with a vision clearance area located between the heights of two and one
half (2 1/2) feet and nine (9) feet above the crown of a street, driveway or alley. A vision clearance
area shall be established for all streets whether public or private, in one of the following manners:

(a) on a corner lot, the clear sight triangular area is formed by the street right-of-way lines and the
line connecting points twenty-five (25) feet from the intersection of such streets right-of-way
lines, or in case of a round or cut property corner, from the intersection of the street right-of-way
lines extended; or

(b) on a lot adjacent to an at grade railroad crossing, the clear sight triangular area is formed by the
side lot line coterminous with the railroad right-of-way, the street right-of-way line, and the line
connecting points twenty-five (25) feet from the intersection of such lines, or

(c) on a lot which has a driveway, abuts an alley or which is next to a lot which has a driveway, the
two clear sight triangular areas are formed by the street right-of-way line, both sides of either the
alley right-of-way or of the surface edge of the driveway, and the line connecting points (10) feet
from the intersection of the street right-of-way line and driveway or alley lines extended.

00-15-153-13.2 Obstructions in Utility Easements and Required Yards

1. Obstructions in Utility Easements

A. Structures. No building, structure, fence, wall, or other obstruction shall be erected or allowed
within any utility easement.

B. Landscaping. Any trees, bushes, decorative vegetation or other plant material, excluding turf,
("landscaping") within any utility easement, if permitted by this Zoning Ordinance or the
easement holder, shall be installed and maintained in such a manner that it does not interfere
with or impede the use and purpose of the easement. Any landscaping within any drainage
easement shall be installed and maintained in such a manner that the original grade of the
easement is not disturbed.

C. Damage. Locating any landscaping or structure in a utility easement is done at the owner's
risk and with the understanding that such landscaping may be damaged or destroyed by the
Town or the easement holder in the course of using or maintaining the easement, at no cost or
liability to the Town.

2. Permitted obstructions in Required Yards.
The following shall not be considered to be obstructions when located in the required yards specified.

A. All Yards
   1. Open porches, patios, terraces, and decks not over eighteen (18) inches above the average grade, but not including permanently roofed-over porches, patios, terraces, and decks, provided, however, such porches, patios, terraces, and decks shall not extend more than two (2) feet into the required yards.
   2. Residential window awnings attached to the principal dwelling, but not projecting more than three (3) feet out, and at least seven (7) feet above the average level of the adjoining ground.
   3. Steps, four (4) feet or less above grade which are necessary for access to a permitted building.
   4. Chimneys projecting eighteen (18) inches or less into the yard;
   5. Arbors, trellises, flag poles, fountains, sculptures, plant boxes, and other similar ornamental objects.
   6. Overhanging eaves and gutters projecting three (3) feet or less into the yard.
   7. Any other structure, or item specifically permitted by this Zoning Ordinance or by any approval issued by any board, commission, or authorized Town representative.

B. Front Yards
   A. One-story bay windows projecting, three (3) feet or less into the yard.
   B. Down spouts projecting not more than six (6) feet into the yard.

C. Side and Rear Yards
   A. Air conditioning units and compressors.
   B. One-story bay windows projecting, three (3) feet or less into the yard.

D. Rear Yards
   A. Enclosed, attached, or detached off-street parking spaces.
   B. Accessory sheds and similar buildings or structures for domestic or agricultural storage, provided that such buildings or structures shall be no nearer than five (5) feet to the rear lot line, and no nearer than ten (10) feet to any principal building.
   C. Balconies and breezeways.

00-15-153-13.3 Accessory Uses and Structures

1. Accessory uses and structures are allowed in the various districts, subject to any particular limitations therein, and provided they shall be:
   A. incidental to the principal use or structure;
   B. operated and maintained under the same ownership and on same lot as the principal use or structure;
   C. subordinate in height, area, purpose, and location to the principal use or structure;
   D. located at least ten (10) feet away from the principal use or structure; and
   E. compatible in style and materials with the principal use or structure.

Where authorized by this Ordinance, wireless communication service facilities may be considered an accessory use.
No fence, wall, or like structural barrier shall be erected or allowed on a public street, highway, alley or other public right-of-way. Fences, walls, or like structural barriers erected or placed in such areas shall be a violation of this Ordinance, subject to the provisions of Article 20 (Enforcement), and may be summarily removed by the Town of Cumberland.

D. Utility Easements

No fence, wall, or like structural barriers is permitted within a utility easement. See also Section 00-15-153-13.2.

4. Construction and Maintenance Requirements

A. Construction

(a) All fences shall be designed and constructed in conformity with the wind, stress, foundation, structural, and other requirements of the Building Code and other ordinances of the Town of Cumberland.

(b) All fences, walls, and like structural barriers shall meet the vision clearance requirements set forth in Section 4-13-1(7) above.

(c) All fence posts and support framework shall be located on the side of the fence facing the fence owner's property, and the fence's finished side shall face the exterior of the lot.

(d) All chain link fences must be a minimum of nine (9) gauge.

(e) All fences that completely enclose a lot or portion thereof shall have at least one gate access.

(f) No fence shall be constructed of a material or in a manner obviously intended to inflict great bodily harm should a person or animal attempt to climb or scale it. Such material includes, but is not limited to, electrically charged wires or other electrical conduit, broken glass, razor blades, and sharp or ragged metal spikes or spears. Barbed wire may be permitted pursuant to Paragraph 6 of this Section.

B. Maintenance

Every fence shall be maintained in a structurally sound and safe condition at all times. Every fence shall be maintained in a good and presentable condition, free of clutter, debris, damage or missing elements. Every damaged or missing element of any fence shall be repaired or replaced immediately.

5. Enforcement

A. Any fence, wall, or like structural barrier erected, enlarged, expanded, altered, relocated, maintained, or repaired contrary to this Section shall be deemed a violation of this Ordinance and shall be subject to the provisions of Article 20 (Enforcement).

B. Subject to the requirements of Article 19 (Nonconforming Lots, Uses and Structures) any fence lawfully existing at the time this Ordinance is adopted that does not conform to this Section may be continued so long as it otherwise remains lawful. Notwithstanding the foregoing, the following fences, due to the public safety risk they pose, shall be immediately removed or immediately brought in full compliance with this Section upon adoption of this Ordinance:

(a) Nonconforming barbed wire or electrically charged fences, and
(b) Dilapidated or deteriorated fences.

6. Special Regulations for Barbed Wire Fences
Memo

To: Town Council
From: Christine Owens, Director of Planning & Development
Date: 7/24/2015
Re: Zoning Amendment – Construction within Utility Easements

During a recent Plan Commission meeting, construction within drainage easements was discussed. At that time it was determined the Zoning Ordinance needed to be updated to adequately address the issue as well as construction within all utility easements. Section 00-15-153-13.2 adds a new section entitled “Obstructions in Utility Easements” that expressly prohibits structures within utility easements. It does however allow some landscaping under certain instances that may be acceptable. Section 00-15-153-13.2 expressly prohibits fences, walls, and similar structures within utility easements and references back to Section 00-15-153-13.2.

Should you have any questions, please feel free to contact staff at (317) 894-6202 or planner@town-cumberland.com.
MEMORANDUM

TO:        ANDREW KLINGER, TOWN MANAGER
            CUMBERLAND TOWN COUNCIL

FROM:      CUMBERLAND ADVISORY PLAN COMMISSION

DATE:      JULY 23, 2015

RE:        ZONING TEXT AMENDMENT CASE # ZA 15-02

The Cumberland Plan Commission certifies to you the following report on the Zoning Ordinance Amendment (ZA 15-02) initiated by Town of Cumberland staff.

Staff is requesting a technical amendments to the Zoning Ordinance amending Section 00-15-153-13.2 and Section 00-15-153-13.5 addressing construction within utility easements.

The Plan Commission held a public hearing for the amendment at their regular meeting on Wednesday, July 22, 2015. The Plan Commission's recommendation to the Cumberland Town Council is favorable by a vote of 5 to 0. The Plan Commission's Findings of Fact are attached.

Cumberland Plan Commission
Town of Cumberland, Indiana

By:

Belinda Heller, President

Christine Owens, Secretary

CJO

Enclosures
FINDINGS OF FACT FOR A ZONING MAP AMENDMENT
ADVISORY PLAN COMMISSION
TOWN OF CUMBERLAND, INDIANA

CASE NUMBER: ZA 15-02
CASE NAME: Construction within Utility Easements

1. The amendment pays reasonable regard to the intent of the Comprehensive Plan.

2. The amendment pays reasonable regard to the character of current structures and uses in each district.

3. The amendment pays reasonable regard to the most desirable use for which the land in each district is adapted.

4. The amendment pays reasonable regard to the conservation of property values throughout the jurisdiction.

5. The amendment pays reasonable regard to responsible development and growth.

DECISION

It is therefore the decision of the Cumberland Advisory Plan Commission that zoning petition ZA 15-02 be sent to the Cumberland Town Council with a favorable recommendation.

ADOPTED THIS 22ND DAY OF JULY 2015.

[Signature]
President

[Signature]
Secretary

This instrument was prepared on July 24, 2015 by:

[Signature]
Director of Planning & Development,
TOWN OF CUMBERLAND