

**Section 21-03.11                      General Regulations for Commercial / Mixed Use Districts.**

**(a)    Accessory Uses, Buildings and Structures.**

(1)    Permitted *Accessory Uses, Buildings and Structures*.

*Accessory uses, buildings or structures* shall be permitted in all Commercial / Mixed Use *Districts*, provided, however, that the *primary use* which is supported by the *accessory use, building or structure* is a *permitted use* within the *district* to which a *lot* is zoned.

*Accessory uses, buildings or structures* shall not be permitted on a *lot, out lot*, or main portion of an *integrated center* prior to the erection of the *primary building* on the *lot, out lot* or main portion of the *integrated center*.

By way of example only, some typical *accessory uses, buildings and structures* in the Commercial / Mixed Use *Districts* are: fences, trash containers, recycling containers, drive through facilities, gasoline pump islands and canopies.

(2)    *Development Standards for Accessory Uses, Buildings or Structures in All Commercial / Mixed Use Districts.*

*Accessory uses, buildings or structures* shall comply with all *development standards* of the applicable *district* unless an exception is specifically provided for in this Section.

*Accessory uses, buildings or structures* shall not encroach upon any platted easements unless specifically authorized by the terms of the easement or by written consent of the agency in whose favor the easement is granted.

(3)    *Additional Development Standards for Accessory Uses, Buildings or Structures in any Commercial / Mixed Use District.*

*Accessory uses, buildings or structures* permitted in any Commercial / Mixed Use *district* shall also comply with the following additional *development standards*:

- (A)    Residential Uses – *Accessory uses, buildings or structures* provided for any legally established residential uses located in any Commercial / Mixed Use *district* shall comply with the provisions of Section 21-02.11, (a), (3) – Additional Development Standards for Accessory Uses, Buildings or Structures in any Residential District.

**Section 21-03.11**  
**General Regulations for Commercial / Mixed Use Districts**

---

- (B) Fences (including chain link, solid, architectural screen, lattice-work or masonry):
- i. fences located in a *minimum front yard* or in the *buildable area* of a *lot* located between the front line of the *primary building* and the *minimum front yard* shall not exceed; (Ord. NO. 9653-06)
    - a. thirty-six (36) inches in height above *grade*, if the open space percentage of the fence is equal to or less than seventy (70) percent; or (Ord. No. 9653-06)
    - b. forty-eight (48) inches in height above *grade* if the open space percentage of the fence is greater than seventy (70) percent. (Ord. NO. 9653-06)
  - ii. shall not exceed eight (8) feet in height above *grade* in a required *side yard* or a required *rear yard*; (Ord. No. 9653-06)
  - iii. shall not include any barbed, electric, razor or other similar types of security wire when located between the front façade of the *primary building* and the *front lot line*; and, (Ord. 9760-07)
  - iv. Shall comply with Section 21-01.01 (t) – Clear Sight Area requirements of this Ordinance.
- (C) Trash containers - Trash containers exceeding thirty-six (36) cubic feet shall:
- i. be screened on at least three (3) sides by a *building* wall or a solid-walled enclosure, not less than six (6) feet in height nor more than ten (10) feet in height above *grade*, equipped with an opaque screen gate, and any solid-walled portion of the enclosure shall be provided with *foundation landscaping*;

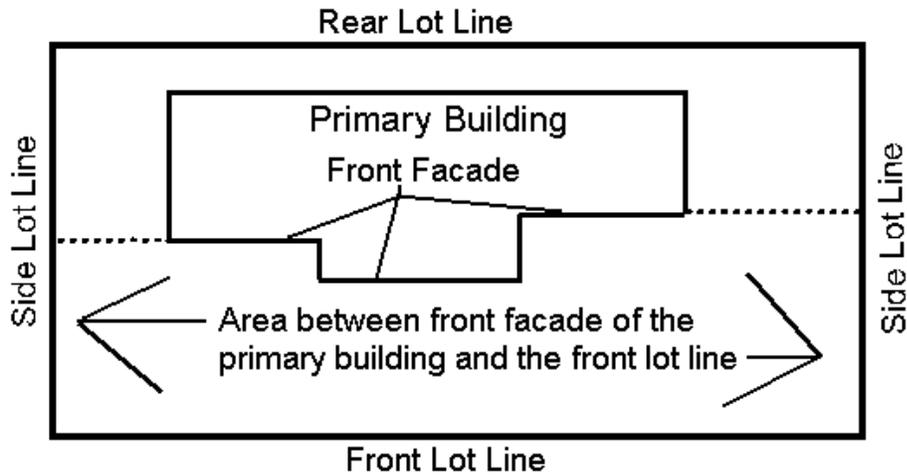


Solid Walled Trash Enclosure with  
Foundation Plantings



Solid Walled Trash Enclosure with  
Opaque Screen Gate

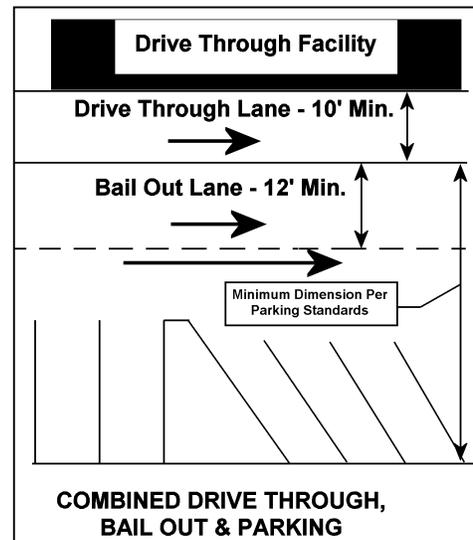
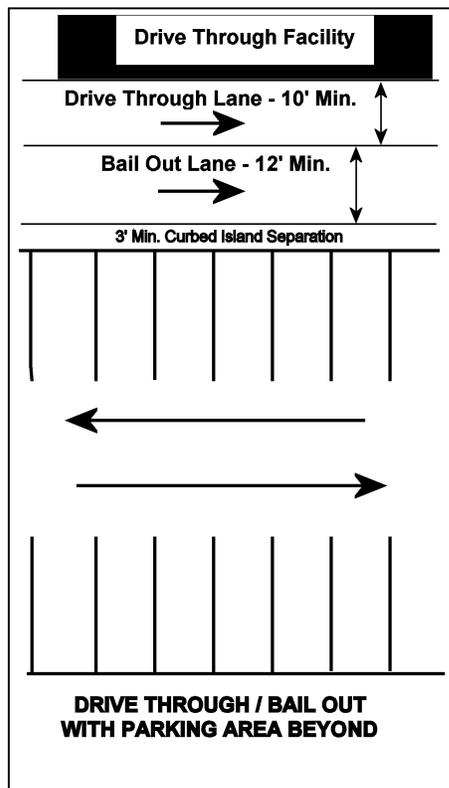
- ii. not be located between the front façade of the *primary building* and the *front lot line*; and,
- iii. not be located in any minimum *front yard*, minimum *side yard*, minimum *rear yard*, minimum *front residential bufferyard*, minimum *side residential bufferyard* or minimum *rear residential bufferyard*.



- (D) *Parking Areas* - shall comply with the provisions of Section 21-07.04 – Off-Street Parking Regulations of this Ordinance.
- (E) *Loading Areas* - shall comply with the provision of Section 21-07.05 – Off-Street Loading Regulations of this Ordinance.
- (F) *Signs* - shall comply with the provisions of Section 21-07.03 – Sign Regulations of this Ordinance.
- (G) *Drive through facilities* - shall be so designed that:
  - i. drive through lanes do not conflict with the safe and efficient flow of traffic into and out of required *parking spaces* or *loading spaces*;
  - ii. drive through lanes have a "bail out" capability for all vehicles which have entered the drive through lane;

**Section 21-03.11  
General Regulations for Commercial / Mixed Use Districts**

- iii. the minimum *drive through facility* standards include:
  - a. a drive through lane with a minimum width of ten (10) feet measured from the furthest point of projection of a drive through facility from the *building* or *structure*; and,
  - b. a "bail out" lane with a minimum width of twelve (12) feet measured from and running parallel to the full length of the drive through lane;



- iv. if a "bail out" lane also serves as an *interior access drive* providing access to *parking spaces*, the "bail out" lane / *interior access drive* shall be limited to a one-way traffic pattern following the direction of the drive through lane;
- v. if a *parking area* is developed beyond the "bail out" lane, the *parking area* shall be separated from the "bail out" lane by a curbed island having a minimum width of three (3) feet;
- vi. provide at least five (5) waiting spaces prior to the first occurrence of any ordering, pick-up or service facility; and,

- vii. provide sufficient room for at least one (1) waiting space after exiting the last pick-up or service facility.

(H) Gasoline Dispensers and Pump Island Canopies.

Gasoline dispensers and pump island canopies shall:

- i. not be located within any minimum *front yard, side yard, rear yard, front residential bufferyard, side residential bufferyard* or *rear residential bufferyard* unless specifically authorized in the "Use of Minimum Yards and Residential Bufferyards" sub-Section of the applicable district; and,
- ii. shall be provided with adequate on-site maneuverability so as to avoid any interference with through traffic on any *public right-of-way*.

(b) **Temporary Uses, Buildings and Structures.**

(1) Permits Required.

A *temporary use, building or structure* which is in compliance with the provisions of this Section, shall be allowed on a *lot or out lot* in any commercial / mixed use *district*. A *temporary use, structure or building* which will be converted into a permanent *primary or accessory use* after the cessation of the *temporary use* shall be required to obtain an *improvement location permit* prior the establishment of the use or the construction of any *structure or building*. A *temporary use, structure or building* which will be removed from the site upon cessation of the *temporary use* shall comply with the regulations contained in this Section, and shall obtain an *improvement location permit*.

(2) Permitted *Temporary Uses, Buildings and Structures*.

By way of example only, permitted *temporary uses, buildings and structures* include: construction trailers, sales offices, mobile offices and *temporary seasonal retail sales*.

(3) Duration.

Except as specifically provided otherwise in this Section, a *temporary use, building or structure* shall be permitted for a period not to exceed one (1) year. Except as specifically provided otherwise in this Section, the *improvement location permit*, if required, may be renewed one (1) or more times by the *Zoning Administrator*, for good cause shown, for an additional period(s) not to exceed a total of three (3) years beyond the original expiration date.

(4) Compliance with *Development Standards*.

Any *temporary use, building or structure* shall comply with all applicable *development standards* and *setback* requirements in the *district* in which the *temporary use, building or structure* is located. Temporary construction trailers, temporary freestanding sales offices, and other temporary uses which shall not be converted into a permanent *primary or accessory use*, shall be exempt from the requirement to provide a hard surfaced *parking area*.

(5) Cessation of Use.

All *buildings, structures* or debris associated with the *temporary use* shall be removed from the site immediately upon completion or cessation of the *temporary use* or expiration of the time period set forth above.

(6) Additional Regulations for *Temporary Seasonal Retail Sales* Uses.

Any *temporary seasonal retail sales* use, *structure* or *building* shall also comply with the following regulations:

- (A) The *use* or *structure* shall comply with all *setback* requirements applicable to *off-street parking spaces* on the site;
- (B) A minimum of three (3) *off-street parking spaces* shall be provided on-site for the *temporary seasonal retail sales* use;
- (C) The location of the *temporary seasonal retail sales* use and its required amount of *parking spaces* shall not interfere with any required *parking spaces* or safe and efficient flow of vehicular and pedestrian traffic around the *parking area* for the permanent *primary use* of the site;
- (D) *Signs* for the *temporary seasonal retail sales* shall comply with the provisions of Section 21-07.03 – Sign Regulations of this Ordinance regarding *temporary signs*; and
- (E) Notwithstanding the provisions above to the contrary, *seasonal retail sales* uses shall not exceed forty-five (45) consecutive days per occurrence nor a total of one-hundred and twenty (120) days during any calendar year.

**Section 21-03.11**  
**General Regulations for Commercial / Mixed Use Districts**

---

**(c) Home Occupations.**

*Home occupations* undertaken in connection with a legally established residential *use* located in any Commercial / Mixed Use *District* shall comply with the provisions of Section 21-02.11, (c) – Home Occupations.

**(d) Performance Standards.**

All *use* in existence prior to the effective date of this Ordinance or established after the effective date of this Ordinance in any Commercial / Mixed Use *District* shall comply with the performance standards of the applicable municipal, state or federal regulations pertaining to: vibration; smoke, dust and particulate matter; noxious matter; odor; noise; heat; glare; or, waste, and shall be subject to enforcement action by the applicable municipal, state or federal agency responsible for monitoring and enforcing such regulations.

**Section 21-03.11**  
**General Regulations for Commercial / Mixed Use Districts**

---

**(e) Zoning Violations in Commercial / Mixed Use Districts.**

The following shall be deemed violations of this Ordinance and shall be enforceable by the City of South Bend as set forth in Section 21-10 – Enforcement of this Ordinance:

- (1) The conduct of any activity in a commercial / mixed use *district* that is not specifically enumerated as a permitted *primary use* or *accessory use* in that *district*, and which activity has not been *legally established* by a currently valid *variance*, *special exception* or other approval grant;
- (2) Failure to comply with *district development standards*, including but not limited to landscaping, paving of *parking areas*, minimum *parking space* requirements, trash dumpster enclosure, fencing or screening requirements; or,
- (3) The failure to comply with the terms, provisions or conditions of: a grant of *variance* or *special exception*; an approval of a *development plan*; an approval of a *conditional use district*; or, other approval grant authorized by this Ordinance.

**(f) Additional Development Standards.**

(1) Additions Along a *Legally Established Nonconforming Setback*.

The *minimum front yard, minimum side yard or minimum rear yard* for any *legally established nonconforming building* having a *setback* which is less than that which is required by this Ordinance shall be allowed to expand one (1) or more times along such *legally established nonconforming setback* provided the applicant can demonstrate that:

- (A) all other applicable *development standards*, except the one (1) *legally established nonconforming building setback* to be expanded upon, are in compliance with the requirements of the *district*;
- (B) a minimum of two (2) of the other applicable *development standards* will be brought into compliance with the requirements of the *district*; or,
- (C) a minimum of four (4) of the other applicable *development standards* will be reduced as to their extent of non-conformity by the maximum extent feasible given site constraints and such that, in the determination of the *Zoning Administrator*, conditions on the *lot* will be improved.

For the purposes of this sub-Section, other applicable *development standards* shall include the following sub-Sections of each *district*: Use of *Minimum Yards* and *Residential Bufferyards*; *Maximum Building Height*; *Landscaping*; *Lighting*; *Signs*; *Parking*; *Loading*; *Greenway Conneciton*; and, *Outdoor Operations*.

The provisions of this sub-Section shall not be applicable to any *lot* which includes a *side residential bufferyard* or a *rear residential bufferyard* (i.e., abuts a residential *district* on along a *side lot line* or a *rear lot line*).

(2) Additional Front Setback Provisions.

(A) *Public Streets*

In the case where the *thoroughfare plan* does not include a *proposed right-of-way*, or where the *existing right-of-way* is greater than the *proposed right-of-way*, the *existing right-of-way* line shall be used for *setback* measurement.

Section 21-03.11  
General Regulations for Commercial / Mixed Use Districts

---

(B) *Public Streets and Private Streets*

i. The minimum *front yard* and minimum *building setback* from the *right-of-way* line of a *private street* shall be the same as for a *local public street* in the applicable commercial / mixed use *district*.

ii. The *setback* provisions of this Ordinance are subject to the following modification:

In any *block* in any commercial / mixed use *district* contained in this Ordinance in which an existing *front yard setback* is established by existing, legally established *buildings* or *structures* on more than sixty percent (60%) of the total number of *lots* within the same *block face* fronting on the same *public street*, the minimum required *front yard setback* for any new *building*, *structure* or addition along such *block face* shall be the average of such established *front yards* if such dimension is less than the minimum *front yard setback* established by this Ordinance.

iii. Any development permitted within a required *front yard* shall be those specified in the "Use of Minimum *Yards* and *Residential Bufferyards*" sections of the applicable Commercial / Mixed Use *District*.

(3) Setback Regulations for Laterally-Supported Extensions.

Notwithstanding any *setback* regulations of this Ordinance to the contrary, laterally-supported extensions, such as:

(A) Canopies, sills, belt courses, eaves, cornices, bay windows, roof overhangs or other ornamental features, may extend:

i. a maximum of twelve (12) inches into any *minimum front yard*, *minimum side yard* or *minimum rear yard*; or,

ii. for a *building* with a *setback* of less than three (3) feet, a maximum of twelve (12) inches into a *public right-of-way*, subject to the upon approval of the Board of Public Works.

- (B) Open or enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers may extend:
  - i. a maximum of five (5) feet into any *minimum front yard*, *minimum side yard* or *minimum rear yard*; or,
  - ii. for a *building* with a *setback* of less than three (3) feet, a maximum of three and one-half (3 ½) feet into a *public right-of-way*, subject to the upon approval of the Board of Public Works.
  
- (4) Height Regulations for Roof Mounted or Roof Piercing *Structures*.

The following regulations shall apply to the roof mounted or roof piercing structures in any Commercial / Mixed Use *District*:

- (A) Parapet walls may exceed the maximum *building height*, provided such parapet wall do not exceed four (4) feet in height above the roof line; and,
  
- (B) Roof mounted or roof piercing chimneys, cooling towers, elevator bulkheads, mechanical penthouses, stacks, stage towers, scenery lofts, water towers, radio or television antenna, ornamental towers, cupolas, domes, steeples and spires, may exceed the maximum *building height*, provided such structures do not exceed twenty-five (25) feet in height above the roof line.

**Section 21-03.11**  
**General Regulations for Commercial / Mixed Use Districts**

---

**(g) Requirements for All Private Streets and Private Alleys.**

See Section 21-01.01 (u) – Requirements for All Private Streets and Private Alleys.