

# Rules of Procedure – Board of Zoning Appeals

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*Randolph County BZA*

## Article I – Meetings

### Section 1. Regular Meetings:

Regular meetings of the Board shall be held on the Third Monday of each month, provided however the January meeting shall be held on the Fourth Monday and the February meeting shall be held on the Fourth Monday thereof, and provided, further that there shall be no regularly scheduled Board of Zoning Appeals meeting for the month of December. The scheduled starting time shall be at 7:00 P.M. or at the discretion of the presiding officer may be delayed for one half hour or as is necessary to benefit a petitioner(s) or appellant(s) cause. (As Amended 5/18/87, 11/16/87, and 1/24/94)

### Section 2. Special Meetings:

Special meetings may be held upon call of the Chairman, written request by two members or as determined at a regular meeting. All members shall be notified of the time and place of a special meeting. Public notice of special meetings shall be published in accordance with IC 5-14-1.5.

### Section 3: Quorum and Official Action:

A majority of members shall constitute a quorum. No action, however, is official unless authorized by a majority of the Board at a regular or properly called special meeting, **except as otherwise provided herein with regard to a continuance of a hearing or scheduling a special meeting.** (As amended 3/27/00.)

### Section 4: Meetings Open to the Public:

All meetings shall be open to the public.

### Section 5: Minutes, Records, and Member Participation:

The Board shall keep minutes of its proceedings showing the vote of each member in every question or if absent or failing to vote indicating such fact. The Board shall keep records of all other official action, and all minutes and records shall be filed in the office of the Board and shall be public record. No member of the Area Planning Commission, Board of Zoning Appeals, City Councilor, or Board of County Commissioners shall participate in the hearing or decision of such commission, board or council upon any zoning matter, other than the preparation and enactment of an overall or comprehensive plan, in which he is directly or indirectly interested in a financial sense. In the event of such disqualification, such fact shall be entered on the records of the commission, board, or council and the remaining member, of the commission, board, or council shall choose an elector to act as a member of such commission, board, or council in the hearing and determination of the particular matter or matters in which the disqualification occurs.

## Article II – Officers and Employees

### Section 1. Officers:

The Board shall at its first regular meeting in each year elect from its members a Chairman and Vice Chairman. The Vice-Chairman shall serve in the absence of the Chairman. A Temporary Chairman shall be elected in the absence of both the Chairman and Vice-Chairman.

Section 2: Employees:

The Board may appoint and prescribe the duties of a Secretary and a Zoning Administrator and may appoint other employees as are necessary for the discharge of its duties, all in conformity to and compliance with salaries and compensations theretofore fixed by the County Officials.

**Article III – Appeals**Section 1. Board Review:

An appeal from any order, requirement, decision, or determination made by the Executive Director in the enforcement of the Zoning Ordinance will be reviewed by the Board.

Section 2. Filing Appeal:

The appeal shall be filed with the Board within fifteen (15) calendar days after the decision of the Zoning Administrator. (Amended 5/18/87)

Section 3. Complete Record:

The Zoning Administrator shall, upon request of the Board, submit to it the complete record, including plans and drawings, leading to the decision appealed from. (Amended 5/18/87)

Section 4. Hearing Date:

Upon receipt of the appeal the Board shall, at its next meeting set a date for a hearing thereon, and shall inform the appellant(s) of such date.

Section 5. Notice of Appeal:

Any communication purporting to be an appeal or petition shall be regarded as a mere notice of intention to seek relief and shall be of no force or effect until it is made in the form required.

Section 6. Stay of Work Order:

When an appeal is taken, the Executive Director shall notify the Board whether or not an order has been issued to discontinue or stay the work affected by the appeal, in accordance with Section 81 of Chapter 174 Acts of 1947. In case the Executive Director informs the Board that no action has been taken to preserve and protect life or property, the Board, under the provisions of Section 80 of said Act shall consider, and if necessary issue a restraining order staying the work, or request the Circuit Court to issue such order.

**Article IV – Hearings**Section 1. Hearings Required:

Subject to the provisions of Chapter 174, Acts of the General Assembly, State of Indiana, 1947 public hearing shall be held on all appeals from decisions of the Executive Director and as further required by the regulations of the Zoning Ordinance.

Section 2. Public Notice:

In all appeals to the Board and applications for Special Exceptions and Conditional Uses, a legal notice of public hearing shall be prepared by the Board and advertised in a newspaper of general circulation in the County of Randolph not less than ten (10) days prior to the date of the hearing. The appellant(s) or petitioner(s) shall assume the cost of said notice and shall submit proof of publication.

Section 3: Notice to Surrounding Property Owners:

The appellant(s) or petitioner(s) shall serve notice to owners of property abutting the affected tract, parcel or building. This notice shall be by certified mail, return receipt requested, not less than ten (10) days prior to the scheduled hearing date. This notice shall advise the affected property owners of the date, time and location of the hearing. The notice shall also include, but is not limited to, the reason and subject of the hearing and the general location of the affected tract, parcel, building, or use being petitioned or being appealed. (Amended 5/18/87)

Section 4: Identification of Surrounding Property Owners:

The appellant(s) or petitioner(s) shall provide, to the Board, a complete list of names of the abutting property owners and their last known address, which were served a notice of the public hearing and be able to furnish proof of serving that notice of providing a written waiver of the notice signed by the abutting property owner not being served in the above prescribed manner.

**Article V – Conduct of Hearings**Section 1. Speaking Order:

At a public hearing before the Board, the petitioner(s) shall first present the facts and arguments in support of the case and those who oppose the Petitioners shall follow. To maintain orderly procedure each side shall proceed without interruption by the other.

Section 2. Presentation of Petition:

In the presentation of case the burden shall be upon the petitioner(s) to supply all information necessary for a clear understanding of the problem. The Board may continue the hearing when in its judgment the petitioner(s) has not provided sufficient evidence on which to make a determination.

Section 3: Conduct:

Every person appearing before the Board shall abide by the order and directions of the Chairman. Discourtesy, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Board and shall be dealt with as the Board directs.

Section 4.4: Majority and Quorum:

At any meeting of the Board which has scheduled a petition for the Board to determine, whether the meeting is an initial meeting or one continued for any reason, and only four (4) members of the Board are eligible to vote on the petition are present, the petitioner may request a continuance of the meeting and such continuance shall be granted. The meeting shall be continued to the next regularly scheduled meeting, provided however, that the Board may call a special meeting if the petitioner presents a sufficient reason(s) and need for a special meeting. A special meeting hereunder shall be called by an affirmative vote of a majority of the members present and eligible to vote.

- It shall be the duty of the member of the Board presiding at any meeting when only four (4) Board members are present and eligible to vote to explain the purpose of this rule and the provisions hereof.
- Once the petitioner elects to proceed hereunder and so states on the record, the hearing shall commence as all other petitions before the Board.
- In the event that all Board members are present, and only four (4) members are eligible to vote, this rule shall have no application, and the hearing shall proceed as otherwise provided by Board rules.
- This shall be known as "Rule 4.4" and a copy of the same shall be distributed with each BZA information packet given to a petitioner. (Amended 3/27/00)

Section 5. Continuance:

The Board, at its discretion, may continue or postpone the hearings of any case on an affirmative vote of a majority of the members present.

Section 6. Exparte Communication:

In as much as the deliberations, opinions and findings of the Board in all matters which may come before it for action are similar to that of a court, and the minds of its several members should be unbiased and free to act upon the evidence and arguments submitted at the hearings upon matters pending before said Board, no member of the Board shall hold conversation with any person, except a person connected with the Board in an official capacity, concerning the merits of any matter pending before it, at any time before final action thereon, except in open meetings of said Board and shall so advise any person attempting to engage in such conversation.

**Article VI – Docket**Section 1. Applications:

Each case to be publicly heard before the Board shall be filed in proper form with the required data. The case **will** then be serially numbered and placed on the docket of the Board. Docket numbers shall include the year and shall begin anew on January 1 of each year.

Section 2. Docket Numbers:

The identification of docket numbers shall be as follows:

- A - Appeal from determination of the Executive Director (Other than Variance)
- V - Variance
- SP - Special Exception
- CU - Conditional Use

Section 3. Order of Business:

When a case receives a docket number it shall be placed on the hearing docket and a date set for hearing. Cases shall come before the Board in regular order or by consecutive numbers unless otherwise ordered by the Board.

**Article VII – Powers and Duties**Section 1. Powers:

The Board shall have the following powers and it shall be its duty to:

- a) Hear and determine appeals from and review any order, requirement, decision or determination made by the Executive Director in the enforcement of this ordinance.
- b) Hear and decide on permits for Special Exceptions, Conditional Uses, Development Plans, or other uses upon which the Board is required to act under, this Ordinance.
- c) Authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to public interest, where owing to special conditions, fully demonstrated on the basis of the facts presented, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship and so that the spirit of this Ordinance shall be observed and substantial justice done.

Section 2. Modifications to Appeals:

In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from as in its opinion ought to be done in the premises, and to that end shall have all the powers of the Executive Director from whom the appeal is taken.

Section 3. Appeals:

Every decision of the Board shall be subject to review by certiorari. (IC 36-7-4-1003 and as amended.)

**Article VIII – Reserved****Article IX – Conditional Use Application**

Any person, as defined by the Zoning Ordinance, who makes application for a Conditional Use permit shall comply with all statutory requirements, all applicable provisions of the Zoning Ordinance and all applicable provisions of these Rules of Procedure.

Applicant shall obtain the application forms from the Board's Office. The same shall be returned to and completed as instructed by the Director.

The Director shall develop the application form for a Conditional Use, and update the same from time-to-time to comply with Indiana law.

**The applicant, shall, include with the properly completed Conditional Use Application, a plan of operation for the conditional use. The Plan of Operation shall include but not be limited to, the relevant matters set forth in Article XIII of the Zoning Ordinance, definition of Plan of Operation.**

Upon the receipt of a Conditional Use Application, the Director shall review the same. The Director may, after review thereof, request additional information relevant to the Plan of Operation prior to accepting the same for filing. If the applicant elects not to amend or modify its application as requested by the Director, the Director shall, at the hearing on such petition, inform the Board of the requested modifications or amendments and reasons therefore, and the Board may act upon the same as provided by Article XI of the Zoning Ordinance.

Applicant shall at the conclusion of the hearing on the petition for Conditional use or at any time prior thereto, but after which evidence has been presented, present to the Board a prepared Findings of Fact for a Conditional Use Permit Any remonstrator may present proposed Findings of Fact for Denial of a Conditional Use Permit provided petitioner has presented all or part of petitioner's evidence.

A part of the Application for Conditional Use Permit shall include this Rule of Procedure.  
(Adopted 3/27/2000)

**Article X – Final Disposition of Cases**Section 1. Final Disposition:

The final disposition of any appeal before the Board of Zoning Appeals shall be in the form of an order either reversing or modifying the requirement, order, decision, or determination appealed from and granting the appeal, or affirming the order and denying the appeal. The Board may dismiss an appeal for want of prosecution or for lack of jurisdiction.

Section 2. Vote:

All decisions of the Board, on matters heard in public hearings, shall be made by record vote. The vote of each member shall be a matter of permanent record.

Section 3. Case Withdraw:

A case may not be withdrawn by the petitioner(s) after the vote has been ordered by the Chairman. No case which has been withdrawn by the petitioner(s) shall again be placed on the docket for consideration by the Board within a period of three (3) months from the date of said withdraw, except upon the motion of a member, and adopted by the unanimous vote of all members present at a regular or special meeting.

#### Section 4. Adverse Decision on Appeal:

An appeal which has been decided against the petitioner(s) shall not again be placed on the docket for consideration by the Board within a period of six (6) months from the date of the decision previously rendered except upon the motion of a member adopted by the unanimous vote of all members present at a regular or special meeting thereof.

#### Section 5. No Additional Submittals:

Whenever the Board hears any matter, petition, or notice of intention or acts thereon, it shall thereby waive any requirement as to form of petition and data required except in so far as the Board shall otherwise designate at such time.

## **Article XI – Amendments**

#### Section 1. Amendments and Suspensions:

Amendments to these Rules of Procedure may be made by the Board of Zoning Appeals at any regular meeting upon the affirmative vote of five (5) members. The suspension of any rule of procedure may be ordered at any meeting by unanimous vote of those present.

#### Section 2. History:

These Rules of Procedure of the Board of Zoning Appeals were approved by the affirmative vote of five (5) members of said Board at the regular meeting of the Board held on the 12th day of May, 1975.