

## BOARD OF ZONING APPEALS

## RULES OF PROCEDURE

**Article I - Meetings:**

- A. Meetings of the Board of Zoning Appeals shall be held one evening per month as scheduled in a calendar published by the Planning Department and approved by the Board at the first meeting of each year.
- B. All meetings shall be held at 5:30 p.m. in the Council Chambers of Showers Center City Hall - Room #115, unless otherwise publicly announced.
- C. All meetings shall adjourn at 9 p.m. and no new cases shall be heard after 8:30 p.m. Any cases remaining shall be rescheduled for hearing at a special meeting to be held within one week of the original meeting.
- D. A majority of the voting membership shall constitute a quorum. No vote of the Board shall be official unless authorized by the affirmative vote of a majority of the total membership of the Board.
- E. All decisions on petitions shall be by roll call. The vote of each member of the Board shall be recorded and placed in the minutes of the meeting as a matter of permanent record.
- F. No member of the Board shall participate in the hearing or decision of the Board involving any matter in which that person is directly or indirectly interested in a financial sense. In the event that any member disqualifies himself or that any member's eligibility is challenged by a member of the public, such fact shall be entered on the records of the Board and shall appear in the minutes of the Board. Members who intend to disqualify themselves from a vote on a particular petition due to direct or indirect financial interest or for any other reason should notify the Planning Department staff of this fact a minimum of five business days prior to the hearing in order to provide staff and the Board of Zoning Appeals Chairperson adequate time to arrange the attendance of an alternate member, if applicable, and to make other arrangements as necessary. Alternate members may act at meetings as specified by the Bloomington Municipal Code.
- G. As soon as possible after a regular meeting a summary of minutes of the proceedings shall be made available to each member of the Board.
- H. All minutes of the proceedings, findings of fact, tape recordings of the hearings and all

exhibits submitted by the petitioners, remonstrators and staff shall be public records and shall be filed in the Planning Department office. These materials shall become a part of the case and all such materials shall be held by the Planning Department for a period of at least one-year. At the end of the one year time period, all materials held by the Board may be placed in a back filing system for preservation of city records.

- I. The final disposition of any request, petition, or resolution before the Board shall be in the form of a motion, adopted according to proper parliamentary procedures. Said motion may be to grant, deny, continue, modify, or table the petitioner's request. Additionally, the members of the Board may attach such conditions to a motion as are deemed necessary for the furtherance of the public health, safety, or convenience, or to achieve consistency with the City Master Plan or Bloomington Municipal Code.

## **Article II - Officers:**

- A. The Board shall, at its first hearing in each year, elect from among its members a chairperson and vice-chairperson.
- B. The chairperson shall preside over Board meetings and shall supervise over the determination of points of order and procedure, and shall be responsible for the signing of all official documents. The vice-chairperson shall have authority to act as chairperson of the Board during the absence or disability of the chairperson. In the case of the death or resignation of the chairperson, the vice-chairperson shall succeed to the chairmanship and a new vice-chairperson shall be elected from the membership.
- C. The Planning Department secretary shall be responsible for supervising the keeping of an accurate and complete record of all Board proceedings, including the keeping of records and minutes, findings of fact, and preservation of all papers and documents of the Board and the maintenance of a current roster with the qualifications of members.
- D. The Board shall request the City Attorney to serve as Counsel for the Board.
- E. The City's Director of Planning or his/her designate shall appear at all meetings and assist the Board presenting factual opinion on significant issues raised by the petition.

## **Article III - Filing of Petitions and Fees:**

- A. All requests to the Board or Hearing Officer shall be by petition and petitioners shall be required to follow these procedures:
  1. All petitioners shall use the uniform petition forms approved by the Plan

Commission, which are available upon request in the Planning Department. 3

2. All petitions shall be filed no later than the deadlines established on the calendar of meetings to be adopted by the Board each year.
3. Filing fees shall be as follows, and shall apply both to petitions to be heard by the Board and to petitions to be heard by the Hearing Officer:

**Conditional Use**..... \$100.00

**Variance from Development Standards**

*Single Family Residential*..... \$50.00 + \$25.00 each additional standard

*Multi-Family Residential and*

*Non-Residential* ..... \$200.00 + \$50.00 each additional standard

**Use Variance**

*Single Family to Multi-Family* ..... \$200.00 + \$2.00/dwelling unit

*Residential to Commercial &*

*Commercial to Less Restrictive Commercial* ..... \$200.00 + \$25.00/acre

*All Other Residential*..... \$100.00 + \$10.00/acre

**Administrative Appeal**..... \$50.00

**Appeal of Hearing Officer Decision**

*By Petitioner for Variance or Conditional Use*..... No additional charge

*By any other Interested Party*..... \$50.00

No application fees shall be required for any application made by not-for-profit, community service organizations or government agencies.

No refunds shall be permitted after a petition has received a BZA or Hearing Officer hearing, whether or not the BZA or Hearing Officer has taken action on the petition.

B. Appeals:

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1. Appeals of administrative decisions or from Hearing Officer decisions shall be filed with the Planning Department on forms available in the Planning Department.
2. Appeals of administrative decisions or from Hearing Officer decisions must be filed with the Planning Department within (14) days of the administrative decision or Hearing Officer decision.
3. Appeals of administrative decisions or from Hearing Officer decisions will be heard de novo by the Board of Zoning Appeals and following the testimony limits noted in Article V of these Rules of Procedures.

**Article IV - Notices:**

A. All petitioners for any BZA or Hearing Officer approval shall inform the persons affected by their petitions (interested parties) by sending a copy notice of public hearing to their residences or the last known address of the property owners at least ten (10) days before the date of the hearing. Such notice may be sent using regular first class mail.

B. Such notice shall state:

1. The general location by address or other identifiable geographic characteristic of the subject property.
2. The name of the petitioner.
3. The times and places the petition has been set for hearing.
4. That the petition and file may be examined in the office of the Planning Department.
5. That the addressee may voice an opinion at the hearing and/or file written comments with the Board and/or Hearing Officer.

6. If the petition is to be considered by the Hearing Officer, the notice shall state that the Hearing Officer may, at his/her discretion, transfer the petition to the full Board and that in such case the hearing would be held at the next regular Board of Zoning Appeals meeting, unless continued, and shall include the date of the next regular Board meeting. 5
- C. 1. Interested parties shall be defined as all persons owning land adjacent and contiguous to the site as well as all persons owning land abutting the aforementioned immediately adjacent property (i.e., "two properties deep"). Notices shall be provided "two properties deep" only if the interested parties are located within 300 linear feet of the subject site. However, notices shall not be provided "two properties deep" if the interested parties property location exceeds 300 linear feet from the subject site for which the petition is being requested. Intervening public rights-of-way shall not be considered in determining what lands are adjacent or contiguous. Where any adjacent or contiguous parcel is owned by a petitioner, the property included in the petition shall be deemed to include said adjacent parcel or parcels owned by a petitioner, and owners of property adjacent and contiguous to said parcel(s) owned by a petitioner but not included in the petition shall be considered interested parties entitled to notice.
2. In order to determine the names and addresses of property owners to whom notice must be sent under this rule, the petitioner or his/her agent shall consult the current Plat Book located in the office of the Auditor of Monroe County, Indiana to determine the name of each adjacent property owner. The petitioner or his/her agent shall then consult the computer located in the office of the Auditor to determine the most current mailing address for each adjacent property owner. A good faith effort shall be made to investigate and resolve any discrepancies or omissions in or among such records in order to determine name and address of the current owner of record. Each notice shall be mailed and postmarked no later than the second business day after the date upon which the name and address of the owner were obtained from the Plat Book and the computer records in the Auditor's office as described above.
3. Proof of notice to interested parties shall be submittal of the following items to the Planning Department in the following manner:
- a. A copy of the Notice of Public Hearing to be mailed to the interested parties.
  - b. A list of interested parties with addresses.

- c. An Affidavit of Notice to Interested Parties in a form approved by the Planning Department including: name of person preparing and mailing the notice; name of petitioner; location of petition; and a statement that notice was mailed at least ten (10) days prior to the Board of Appeals or Hearing Officer public hearing, whichever applies. 6
- d. A plat map showing interested parties' property.

The Planning Department shall retain the proof of notice within the petition file.

- D. The Planning Department shall cause a legal notice to be published in a daily newspaper published and distributed in the City (10) days prior to the hearing. The petitioner shall bear the expense of said advertisement.
- E. If the Hearing Officer, at a lawfully convened meeting, transfers a petition to the Board of Zoning Appeals, said petition shall be placed on the agenda for the next regular meeting of the Board. The decision of the Hearing Officer to transfer the petition shall constitute due notice to interested parties.

#### **Article V- Hearings:**

- A. The order of business at regular meetings shall be as follows:
- I. Roll Call
  - II. Approval of Minutes
  - III. Reports, Resolutions, and Communications
  - IV. Hearings
  - V. Discussion, Staff proposals, etc.
  - VI. Adjournment
- B. Limits on Testimony:
1. The general format for each case will be an order and time limit as follows:
    - Staff Report
    - Presentation by Petitioner - 20 minutes total
    - Questions for the Staff and Petitioner by the Board
    - Public Comment 6 5 minutes per speaker
    - Back to the BZA for final action

It will be the responsibility of staff to keep time for each speaker wishing to make comment. Staff will inform both the petitioner and speaker when there are 30 seconds left in their presentation time.

2. All speakers, other than staff, shall sign an attendance sheet provided by the Planning Department. Any person who wishes to speak shall first be sworn by the presiding officer. The form of this oath shall be as follows: 7

From the presiding officer, "Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?"

Speaker, "I do."

3. If further public discussion is warranted in the opinion of the Board of Zoning Appeals, then the time limit may be increased by a majority vote of the Board.
- C. The Planning Department Secretary shall then compile a detailed report of all the hearing proceedings; setting forth in writing a record of the Board's final decisions, including findings of fact, and a record of voting of individual members. These minutes shall be available for any interested party upon request.

#### **Article VI - Docket:**

- A. Each case to be publicly heard before the Board or Hearing Officer shall be filed in proper form, shall be numbered serially and placed on the docket of the Board or Hearing Officer after determination by the Planning Department that a petition has been presented in proper form with all the required exhibits and supporting documents. The docket numbers shall begin anew on January 1 of each year.
- B. The Planning Department shall also determine and identify whether application for variance is for variance of use or variance from development standards.
- C. The identification of docket numbers shall be as follows:
- Home Occupation - HO  
Administrative Appeal - AA  
Development Standards Variance - V  
Use Variance - UV  
Conditional Use ó CU
- D. As soon as a petition is received, it shall be placed on the docket and a date set for its hearing. On such date it shall come before the Board or the Hearing Officer in the regular order of consecutive numbers.

**Article VII - Final Disposition of Petitions:**

- A. The final disposition of any petition before the Board or the Hearing Officer shall be recorded in the minutes of the Board or Hearing Officer. The motion shall restate the findings of the Board or of the Hearing Officer for the record.
- B. The Board or Hearing Officer shall make a decision on any matter it is required to hear at the conclusion of its hearing on that matter. Decision on any matter shall be to approve, deny, or continue the petition.
- C. Final disposition of an administrative appeal shall be in the form of an order either reversing, affirming, or modifying the requirement, order decision or determination appealed from.
- D. Findings of Fact shall be adopted concerning each decision made by the Board or by the Hearing Officer. The Findings of Fact form shall be completed by planning staff and shall accurately reflect the Board's findings on each case heard by the BZA. The Findings of Fact form shall be completed by the Hearing Officer on each case heard by him/her. The Board or Hearing Officer may elect to adopt the findings recommended by the staff without modification or with partial modification, or to adopt findings which conflict with the staff recommendation. In any case, the Board or Hearing Officer's finding shall be reflected on the Findings of Fact form or other written document.
- E. No petition may be withdrawn by the petitioner after a vote has been ordered by the chairperson. No petition which has been withdrawn by the petitioner shall be placed on the docket again for hearing within a period of six months from the date of said withdrawal, except upon motion to permit redocketing adopted by the unanimous vote of all members present at a regular or special meeting.
- F. No zoning petition which has been disapproved by the Board shall again be placed on the docket for hearing within a period of 6 months from the date of the Board's original disapproval, except upon the motion of a member adopted by the unanimous vote of all members present at a regular or special meeting. In all cases involving a rehearing of a zoning petition previously disapproved by the Board, the Board may require the petitioner to demonstrate a material change in circumstances.
- G. Whenever a zoning petition is continued for three consecutive hearings, any further request for continuance requires a majority vote by the Board. If the Board denies such a request for continuance, the petition shall be treated as a denial unless the petitioner elects to formally withdraw the petition within 24 hours.

- H. In the case of a petition for variance or conditional use, the Board or the Hearing Officer<sup>9</sup> may permit or require the owner of a parcel of property to make a written commitment concerning use or development of that parcel. The Board or the Hearing Officer may specify the form of any commitment and may also specify the termination date, if any. Such commitment, along with a copy of the site plan, shall be recorded in the office of the Monroe County Recorder and the original shall be filed with the records of application for variance or conditional use. The Hearing Officer may not modify or terminate a commitment, whether such commitment was permitted or required by the Board or by the Hearing Officer. A commitment may be modified or terminated only by the Board after notice and hearing in accordance with these rules. The Board, the City, the property owner, and any adjacent property owners shall be entitled to enforce commitments.

### **Article VIII - Expiration of Order:**

Any variance or conditional use permit granted by the Board of Zoning Appeals or the Hearing Officer shall expire:

- A. In the case of new construction or modifications to an existing structure:
1. Two (2) years after the date granted by the Board or Hearing Officer, unless a building permit has been obtained and construction of the structure or structures has commenced; or,
  2. At the date of termination established by the Board or Hearing Officer as a condition or commitment if different from (1) above.
- B. In the case of occupancy of land which does not involve new construction:
1. Two (2) years after the date granted by the Board or Hearing Officer, unless an occupancy permit has been obtained and the use has commenced; or,
  2. At the date of termination established by the Board or Hearing Officer as a condition or commitment if different from (1) above.
- C. If an appeal by writ of certiorari is taken from an order, variance, or conditional use, the time during which such appeal is pending shall not be counted in determining whether the variance, order, or conditional use has expired under Subsection A(1) of this Article. In other words, if an appeal to the Board of Zoning Appeals ruling is filed, the clock stops as to the time of expiration until a determination is made.

- D. The Board may, upon proper showing in writing prior to expiration, grant extension of variance or conditional use for periods not to exceed two (2) years. Said extension shall run from the original date of expiration rather than from the date of granting the extension and the Board shall make written findings. 10
- E. The Board may renew a variance or conditional use after the expiration date for another two (2) year period. In considering said renewal, the Board shall consider only material changes relevant to the variance or conditional use criteria that have occurred since the variance or conditional use was last granted.
- F. The Hearing Officer may extend or renew a variance or conditional use that was originally granted by a Hearing Officer, subject to all provisions of C and D above.

**Article IX - Miscellaneous Provisions:**

- A. Every person appearing before the Board shall abide by the order and direction of the chairman. Discourtesy, disorderly or contemptuous conduct shall be dealt with as the Board directs.
- B. The Board, at its discretion, may continue or postpone the hearing of any case on an affirmative vote of a majority of the members. In the event that new information is presented by the petitioner, a member of the Board of Zoning Appeals (BZA) may make a motion to continue the case at that time.
- C. Amendments to these rules of procedure may be made by the Board at any regular or special meeting upon the affirmative vote of a majority of the members of the Board.
- D. The suspension of any rules may be ordered at any meeting by a unanimous vote of those present.
- E. A person may not communicate with any member of the Board or the Hearing Officer before the hearing with intent to influence the member or Hearing Officer's action on a matter pending before the Board or Hearing Officer. Not less than five (5) days before the hearing, however, the planning staff may file with the Board or Hearing Officer a written statement setting forth any facts or opinions relating to the matter.