



RULES OF PROCEDURE BOARD OF ZONING APPEALS

Article 1 - General Provisions

1. These Rules of Procedure are established in conformity with Indiana Code 36-7-4 *et seq* and all acts amendatory thereof, and in accordance with the provisions of the Zoning Ordinance of the City of Noblesville, Indiana.

2. These Rules are supplementary to the provisions of the Zoning Ordinance of the City of Noblesville, Indiana, as they relate to procedures of the Board of Zoning Appeals.

3. The deliberations, opinions and findings of the Board in matters which may come before it for action are similar to those of a Court. The members of the Board should be free of external influences and pressures, unbiased and unprejudiced concerning the parties, evidence, and arguments presented and submitted before the Board. No person may communicate with a member of the Board before the hearing with the intent to influence the member's action on a matter pending before the Board.

3.1 This rule shall not apply to persons connected with the Board in an official capacity. Pursuant to IC 36-7-4-920, Staff will file with the Board a written statement setting forth any facts or opinions relating to the matter no less than five (5) days before the hearing.

3.2 No member of the Board shall participate in a hearing or decision of the Board concerning a zoning matter in which he has a direct or indirect financial interest.

3.3 No member of the Board shall participate in a hearing or decision of the Board concerning a zoning matter in which he is biased, prejudiced, or otherwise unable to be impartial.

3.4 Upon disqualification, the Board member shall enter his reason on the record. The disqualified Board member shall not participate as a Board member in the hearing, findings of fact, or decision in such petition. The Board member shall leave the room where the hearing is occurring while testimony relating to the petitioner is in progress.

3.5 If a Board member is contacted prior to the hearing by someone with the intent to influence the member's action on a matter pending before the Board, the Board member shall disclose to the other members of the Board the content of such contact during the public meeting.

4. Nothing herein shall be construed to give or grant to the Board the power or authority to alter or change the Zoning Ordinance, including the Zone Map, which authority is reserved to the governing body.

5. The City Attorney shall be consulted in cases where the powers of the Board are not clearly defined.

6. The Office of the Board shall be located in the Noblesville City Hall, 16 South 10th Street, in the City Planning Department.

7. A file of materials and decisions relating to each case shall be kept by the Secretary as part of the records of the Board.

8. The Board of Zoning Appeals shall keep minutes of its proceedings and record the vote on all actions taken. All minutes and records shall be filed in the Office of the Board, and are public record.

Article II - Officers and Duties

1. The officers shall be a Chairman, a Vice-Chairman and a Secretary.

2. The Chairman and Vice Chairman shall be elected at the first regular meeting of the year.

3. The Chairman shall supervise the affairs of the Board of Zoning Appeals. The Chairman shall preside over all hearings and all persons shall abide by the orders and directions of the Chairman. The Chairman shall determine all matters concerning the procedure of each Appeal and petition, and admissibility of evidence. The Chairman shall be an ex officio member of all committees and subcommittees so appointed.

4. The Vice-Chairman, in the absence or disability of the Chairman, shall perform all duties and exercise all the powers of the Chairman. A temporary Chairman shall be elected by the members in attendance at any meeting in case both the Chairman and Vice Chairman are absent.

5.The Board may appoint and fix the duties of a secretary, who is not required to be a member of the Board.

6.The Secretary shall record and maintain permanent minutes of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indication of that fact, keep records of its examinations and other official actions, summarize accurately the testimony of those appearing before the Board, or keep a transcript of all hearings, record the names and addresses of all persons appearing before the Board, publish in a local newspaper public notices of meetings or hearings as required by law and these Rules of Procedure, file said minutes and records in the Office of the Board, which minutes and records shall be a public record and be the custodian of the files of the Board and keep all records.

7. The Planning Director of the Noblesville City Plan Department or her/his designee shall act as the Secretary of the Board.

Article III - Meetings

1. Regular meetings of the Board shall be held on the first Monday of every month at 6:00 o'clock P.M., local time, in the City Hall Council Chambers, located at 16 South 10th Street, Noblesville, Indiana, provided that if said day shall fall on a legal holiday the Board may, by unanimous consent of the members, fix an alternative day, time and place for the holding of a regular meeting without requiring an amendment to these rules.

2. Regular meetings may be canceled by the Chairman when there are no cases pending. Notification must be given to members, however, not less than twenty-four (24) hours prior to the time set for such meetings.

3. Special meetings of the Board shall be held at the call of the Chairman, written request of two members, or as may be determined at a regular meeting. All members shall be notified of the time and place of special meetings by first class United States mail. Only matters included in the call for a special meeting shall be considered, except upon the unanimous approval of all members of the Board.

4. All meetings shall be open to the public.

5. A majority of the total membership of the Board shall constitute a quorum. No action shall be binding unless approved by a majority of the Board at a regular or duly called special meeting.

6. A quorum of the Board shall be present for the transaction of any business.

7. An application may not be withdrawn by the petitioner after the vote has been ordered by the Chairman. No application which has been withdrawn by the petitioner shall again be considered by the Board within a period of three (3) months from the date of said withdrawal, except upon the motion of a member, and adopted by the unanimous vote of all members at a regular or special meeting.

8. Once an item has been denied, it may not be placed back on the agenda until one (1) year has passed, except upon the motion of a member, and adopted by the unanimous vote of all members at a regular or special meeting.

Article IV - Order of Business

1. All meetings of the Board shall proceed as follows:

1.1 Roll call and declaration of quorum.

1.2 Approval of minutes of previous meeting(s).

1.3 Approval of findings of fact of previous meeting(s).

1.4 Communications/reports of committees.

1.5 Call of agenda cases and hearing of requests for continuances.

1.6 Old business.

1.7 New business.

1.8 Miscellaneous.

1.9 Adjournment.

2. An informational session may be called, and while this session is open to the public, no arguments will be heard from the petitioners or the remonstrators.

Article V - Powers and Duties

1. The Board shall hear and rule on the following types of requests:

1.1 Appeals of the Director's/Historic Preservation Commission's decisions.

1.2 Variances from the Development Standards of the Zoning Ordinance.

- 1.3 Land Use Variances as identified by State Statutes.
- 1.4 Conditional and Contingent Uses as identified in the Zoning Ordinance.
- 1.5 Make interpretations of the wording of the Zoning Ordinance.
- 1.6 The Board shall, in accordance with the Zoning Ordinance, determine all questions concerning the exact location of a district boundary line(s).

Article VI - Procedures on Appeals

1. The Board of Zoning Appeals shall hear and determine all Appeals from and review of the following:
 - 1.1 Any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the Zoning Ordinance.
 - 1.2 Any order, requirement, decision, or determination made by an administrative board or other body except a Plan Commission in relation to the enforcement of the Zoning Ordinance.
 - 1.3 Any order, requirement, decision, or determination made by an administrative body or other body except a Plan Commission in relation to the enforcement of an ordinance adopted under Title 36 requiring an Improvement Location Permit or Compliance Permit.
2. Appeals shall be filed with the Board after the decision of the Planning Director or administrative official.
3. Appeals shall be prepared on the form provided thereof and shall specify the grounds of the Appeal in such a manner that the Board may be fully informed of all facts and elements involved, and a clear statement of the reasons the applicant deems to justify the Appeal. The application shall be accompanied by the required filing fee.
4. Copies of documents, plans and papers constituting the Appeal shall also be filed at the same time of the filing of the application and shall be not less than twenty-eight (28) days prior to the first Monday meeting date.

5. Upon receipt of the properly filed Appeal application form and other necessary documentation, the Secretary of the Board shall assign a case number and place it on the calendar of the Board for hearing within sixty (60) days. Applications for Appeals shall be assigned for hearing in the order in which they are received. Said application may be filed with an accompanying application for a request for a Variance.
6. The Planning Director shall, upon request of the Board, submit to it the complete record, including plans and drawings, leading up to the decision from which it is appealed.
7. Filing the Appeal application form with the Planning Director and the Board shall stay all proceedings in furtherance of the action appealed from, unless the Planning Director certifies to the Board that, by reason of the facts stated in the Appeal application, a stay would, in his opinion, cause imminent peril to life or property. In this event, proceedings cannot be stayed other than by a restraining order granted by the Board or by a court of record on application, and on notice to the Planning Director and due cause shown.
8. Upon Appeal, the Board may reverse, affirm, or modify the order, requirement, decision, or determination from which it is appealed.

Article VII - Procedures on Variances from Development Standards

1. A request for a Variance may be filed by any aggrieved person where there may be practical difficulties or particular hardships under the strict letter of the Zoning Ordinance relating to the use, construction, or alteration of buildings, structures, or uses of land.
2. Variances shall be filed with the Board on a form provided thereof and not less than -twenty-eight (28) days prior to the first Monday meeting date. The application shall be accompanied by the required filing fee.
3. Supportive documentation such as site plans, engineer's reports and other necessary papers as may be deemed necessary by the Board or staff shall accompany the application in order to aid in the Board's decision.
4. Upon receipt of the properly filed Variance application form and other documentation, the Secretary of the Board shall assign a case number and place it on the calendar of the Board for hearing within sixty (60) days. Applications for requests for Variances shall be assigned for hearing in the order in which they are received. An application for a Variance may accompany a request for an Appeal.

5. The Board of Zoning Appeals shall either approve or deny Variances from Development Standards. A Variance may be approved only upon the determination in writing that:

5.1 The approval will not be injurious to the public health, safety, morals and general welfare of the community;

5.2 The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner; and

5.3 The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

Article VIII - Procedures on Land Use Variances

1. A request for a Land Use Variance may be filed by an owner of the property.

2. Land Use Variances shall be filed with the Board on a form provided thereof and shall specify the type of Land Use Variance to be sought and a statement of all details involving the use. The application must be filed at least twenty-eight days prior to the first Monday meeting date. The application shall be accompanied by the required filing fee.

3. Supportive documentation such as a site plan, engineer's report, and other papers as may be deemed necessary by the Board or staff shall be filed with the application.

4. Upon receipt of the application and necessary documentation, the Secretary of the Board shall assign a case number and place it on the calendar of the Board for hearing within sixty (60) days. Applications for Land Use Variances shall be assigned for hearing in the order in which they are received.

5. A Land Use Variance shall be approved only upon the determination in writing that:

5.1 The approval will not be injurious to the public health, safety, morals and general welfare of the community;

5.2 The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

5.3 The need for the Variance arises from some condition peculiar to the property involved;

5.4 The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the Variance is sought; and

5.5 The approval does not interfere substantially with the Comprehensive Plan.

Article IX - Procedures on Conditional Uses

1. A request for a Conditional Use shall be signed by the owner of the property.

2. Conditional Uses shall be filed with the Board on a form provided thereof and not less than twenty-eight (28) days prior to the first Monday meeting date. The application shall be accompanied by the required filing fee.

3. Supportive documentation such as a site plan, engineer's report and other papers as may be deemed necessary by the Board or staff shall accompany the application.

4. Upon receipt of a properly filed application for a Conditional Use and other necessary documentation, the Secretary of the Board shall assign a case number and place it on the calendar of the Board for hearing within sixty (60) days. An application for Conditional Use shall be assigned for hearing in the order in which it is received.

5. A Conditional Use may be approved only upon the determination in writing that:

5.1 The proposed Conditional Use is located in a district in which such use is permitted.

5.2 The requirements set forth in the Conditional Use section of the ordinance will be met.

5.3 The Conditional Use is consistent with the spirit, purpose and intent of the Zoning Ordinance, will not substantially and permanently injure the appropriate use of neighboring property and will serve the public convenience and welfare.

Article X - Procedures on Hearings

1. At the time of the hearing, the applicant may appear on his own behalf or be represented by his counsel or agent.
2. Any application filed with the Board by the necessary deadline and unsupported by the site plan, engineer's report, or other necessary documentation as may be deemed necessary by the Board or staff shall be held in abeyance until after the filing of such documentation and continued until the next meeting.
3. Any supplemental data in connection with a previously filed application offered by the applicant at a hearing or a meeting to be acted upon in connection with such application shall, in the discretion of the Director of Planning and Development and/or the Board of Zoning Appeals, be cause to delay a requested or scheduled hearing or decision date.
4. Any application filed with the Board must also have on file the certificate of mailing, a list of the property owners, a copy of the notice of public hearing that was sent and an affidavit.
5. The applicant or his representative may make an initial statement outlining the nature of the request prior to introducing evidence.
6. Evidence shall be presented in the following order:
 - 6.1 The Chairman may give a restatement of the case if the applicant's or his representative's initial statement needs clarification.
 - 6.2 The Staff presents evidence and offers recommendation
 - 6.3 The Board members examine the Staff.
 - 6.4 The applicant presents evidence.
 - 6.5 The Board members examine the applicant's witness(es).
 - 6.6 The objector presents evidence.
 - 6.7 The Board members examine the objector's witness(es).
 - 6.8 The applicant cross-examines the objector's witness(es) and the objector cross-examines the applicant's witness(es).
 - 6.9 The rebuttal by the applicant.

7. A presentation should be completed in twenty (20) minutes. The Chairman may increase the length of time for a presentation if requested by the applicant or his representative.

8. A Continuance may be granted at the discretion of the Board in any case for good cause shown and to any interested party who has entered his appearance as follows:

8.1 New cases - first time on the agenda: Continuances may be granted upon request.

8.2 Continued cases: All cases, which have previously appeared on the agenda of the Board, constitute continued cases. A request for a further continuance will be considered upon application thereof by the party, or his representative, at the time the case is called.

9. The Chairman may entertain a motion from the Board to dismiss a case for want of prosecution or failure of the applicant to appear. In the absence of a motion by the Board, the Chairman shall rule.

9.1 In cases that are dismissed for want of prosecution, the applicant will be furnished written notice.

a. The applicant shall have seven (7) days from the date of notice of dismissal to apply for reinstatement of the case. In such cases, the applicant must file a written request with the Secretary of the Board. Reinstatement shall be at the discretion of the Chairman for good cause shown, and upon paying of the filing fee.

b. In all cases, reinstatement in the above manner will call for the cases to be docketed and readvertised in the usual manner prescribed for new cases.

10. The Board shall not be bounded by the strict rules of evidence, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence.

11. An applicant or objector, or his agent or attorney, may submit a list of the persons favoring or opposing the application. Such list will be accepted as an exhibit, if it contains nothing more than a brief statement of the position of the

person favoring or opposing the application, together with the signatures of the persons subscribing to such statement.

12. The Chairman shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board.

13. The Board may continue a matter from meeting to meeting and no notice other than the notices required for the first meeting at which a matter is considered need be given, either by the Board or the applicant.

14. Discourtesy and disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Board and shall be dealt with as the Chairman may deem proper.

Article XI - Notices for Hearings

1. The Secretary of the Board shall give due notice of the place and time for the application to be published in a newspaper of general circulation in the City of Noblesville not less than seventeen (17) full days before the date of the hearing thereon. Petitions for Appeals, Variances from Development Standards, Land Use Variances and Conditional Uses will be required to assume the cost of published notice of hearings held on such petitions.

2. All petitions for Appeals, Variances from Development Standards, Land Use Variances and Conditional Uses shall, except as hereinafter provided, give notice by mail not more than thirty (30) days, nor less than seventeen (17) full days prior to the date set for the hearing upon their application by the Board to the owners of property adjacent to the subject property to a depth of two properties or 660 feet, whichever is less.

3. Applicants from the floodway fringe requirements, as set forth by the Department of Natural Resources, are required to give notice by mail to surrounding property owners as described above.

4. Said notice shall be addressed to said owners at their last and usual place of residence, provided, however, that the mailing of such notice to said owners at the address shown on the property tax records of Hamilton County, Indiana, shall be sufficient, and provided further, that in the event any such owner be a corporation, the giving of such notice, either at the address shown on the property tax records of Hamilton County, Indiana, or to the resident agent of such corporation, shall be sufficient.

5. Notice addressed to any one of two or more partners, to any one of two or more joint tenants, tenants in common, or tenants by the entireties shall be sufficient.
6. All applicants shall furnish the Board with a list of the names and addresses of all such owners to whom such notice has been given, the certificate of mailing, a copy of the notice which was sent to the surrounding property owners and a signed affidavit that after a diligent search of the records of Hamilton County, Indiana, said list contains the names and addresses of all owners of real estate affected within, contiguous to, or directly across the street from such area proposed to be discussed by said proceedings.
7. For the purpose of these rules, the term "legal owners" and "owners" shall be defined as being such person or persons in whose name is vested the legal title of real estate as may be shown by the records of Hamilton County, Indiana, including the transfer books in the Office of the Auditor of Hamilton County, Indiana, and their heirs, executors, administrators, trustees, successors and assigns as may be shown by affidavit, deed and other instruments of conveyance.
8. Such term shall not be interpreted as having reference to contract purchasers, lessees, tenants and other similar classes of persons.
9. No advertisement required by law shall be published by the Board giving notice of an application for an Improvement Location Permit or a petition for appeal until said applicant or petitioner supports his application or petition by site plan, survey, or other supportive data as required by the Board or staff.
10. A standard sign furnished by the Planning Department may be installed on property subject to a hearing. The aforementioned sign is to be installed two (2) weeks prior to the date of the public hearing by the staff of the Planning Department.

Article XII - Decisions

1. Final decisions or recommendations shall be made within forty-five (45) days from the date of the hearing.
2. The Board shall conduct its deliberations and vote on all matters in public session at the meeting in which evidence is concluded, unless the Board considers additional time for deliberation necessary.
3. A concurring vote of three (3) members of the Board shall be necessary to reverse or modify any order, requirement, decision, or determination of the Planning Director,

or to grant any Variance from the Development Standards, Land Use Variance, or Conditional Use.

4. All deliberations of the Board shall be conducted, and all of its decisions shall be made at a meeting that is open to the public.

5. All decisions of the Board shall be made at a public meeting by motion made and seconded, and by the Secretary polling the membership by a roll call vote. The motion, which decides the issue, shall be in the form of findings of fact and shall state the reasons for the findings by the Board. If conditions are imposed in the granting of the application, such conditions shall be included in the motion.

6. The minutes of the case shall be acknowledged as to accuracy by the Chairman and Secretary, and shall be a part of the public record of the Board.

7. Written notice of the decision of the Board shall be given to the applicant, the Planning Director and other interested parties as soon as possible after the decision is reached.

8. Unless otherwise specified by the Board, any order or decision of the Board authorizing a Variance from the Development Standards, a Land Use Variance and Conditional Use shall expire if the applicant fails to obtain an Improvement Location Permit and fails to begin construction or operation within one (1) year from the date of the decision, except as otherwise stated in the Zoning Ordinance.

9. The Applicant shall sign and return the Acknowledgement of Variance document prepared by the Planning and Development Department staff within 60 days of the date of the decision. If such document is not returned, the approval shall expire at the end of the 60 day period.

Article XIV - Amendment of Rules

1. These Rules may be amended by an affirmative majority vote of all members of the Board.

2. The proposed amendment must be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

The foregoing rules and regulations of the City of Noblesville Board of Zoning Appeals specifically repeal the Rules of Procedure adopted by the Board previously, and any amendments thereto. These rules are hereby adopted by an affirmative vote of the Board on the 5th day of December, 2011.

By: _____
Mike Field, Chairman

Attest: _____
Sarah Reed, Secretary