

**AREA BOARD OF ZONING APPEALS**

**Of**

**ST. JOSEPH COUNTY, INDIANA**

**RULES OF PROCEDURE**

**REV. MAY 11, 2022**

The Area Board of Zoning Appeals (the “Board”) shall act and operate in accordance with Indiana Code § 36-7-4-900 *et seq.*, the St. Joseph County Zoning Ordinance, and various Town Zoning Ordinances, as applicable, and these Rules of Procedure.

ARTICLE I – General Matters

§ 1.01 Regular sessions of the Board shall be held on the second Wednesday of each month beginning at 1:30 p.m. in the Council Chambers, County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana, unless a different time and place are established and proper notice is given.

§ 1.02 Special sessions may be called by the chairman, or by any two (2) members upon written request to the Secretary, who shall notify all members of such meeting by verbal or written notice, provided that the time for any regular or special meeting may be fixed at any duly called session of the Board.

§ 1.03 All sessions of the Board shall be opened to the public.

§ 1.04 The Board shall keep minutes of its proceedings, keep records of its examinations and other official actions, prepare findings and record the vote of all actions taken. All minutes and records shall be filed in the office of the Board and shall be a public record.

§ 1.05 The membership of the Board shall be as provided by the Acts of the Indiana General Assembly and ordinances adopted pursuant thereto.

§ 1.06 At the first meeting of each year, the Board shall elect a chairman and vice-chairman from its members. The vice-chairman shall have authority to act as chairman during the absence or disability of the chairman. Nomination and voting for officers shall be by open voice vote. Upon absence/nonparticipation of both chairman and vice-chairman, the members of the Board present and participating may vote to elect a member to act as chair for the duration until the return of the chairman or vice-chairman.

§ 1.07 The chairman, subject to these rules, shall decide all points of order or procedure, unless otherwise directed by a majority of the Board in session at the time.

§ 1.08 The Zoning Administrator, by virtue of his/her office, shall be appointed as the Secretary of the Board. The County shall appoint an attorney and such employees as are necessary for the discharge of the Board’s duties.

§ 1.09 The Secretary shall be the custodian of the records and shall conduct all official correspondence. The Secretary shall keep an accurate Minute Record of all proceedings of the

Board which shall be presented to the Board at the succeeding meeting for approval. When so approved the Minute Record shall be signed by the chairman and attested by the Secretary. All minutes and records shall be filed in the office of the Board and are public records. The Board shall in all cases heard by it make written findings of fact.

## ARTICLE II – Administrative Matters

§ 2.01 As used herein interested persons shall:

- a. Within the unincorporated areas of St. Joseph County and the Towns, interested parties for these types of actions are those property owners within six-hundred and sixty (660) feet of the boundaries of the property under consideration, the petitioner, and the Staff of the Area Plan Commission.

§ 2.02 Non-refundable filing fees are established as set forth in the applicable ordinance.

§ 2.03 Communication with a member of the Board outside of a regular meeting or special meeting with regard to an application pending before the Board is prohibited. This prohibition includes the applicant, interested party, general public, and other Board members. Information to be shared with the Board members shall be routed through the Secretary and documented in the file prior to dissemination to all other members. Notwithstanding, nothing in these Rules shall be deemed to prohibit the Secretary or the staff from submitting a written statement setting forth any facts or opinions relating to the matter.

§ 2.04 Amendments to these Rules may be made by the Board at any regular meeting upon the affirmative vote of four (4) members. Approved amendments shall be effective immediately, unless otherwise noted.

§ 2.05 The suspension of any Rule may be ordered at any meeting by the unanimous vote of those present.

§ 2.06 All meetings shall terminate automatically if a quorum is not present.

§ 2.07 All questions of order or procedure of the Board not herein provided shall be decided in accordance with Robert's Rules of Order, as revised.

## ARTICLE III – Procedure—Filing--Variances and Special Exception

§ 3.01 All requests for variance and petitions therefor shall be filed with the Board. All requests for special exception shall be filed with the Board. When two separate uses located on the same property require special exceptions/use, they shall be filed in two separate special exception requests.

§ 3.02 Complete submissions shall be filed with the Secretary for the Board as prescribed in the filing schedule adopted by the Board. Submissions will be docketed when all data required has been filed and placed on the calendar.

§ 3.03 A complete submission for variance or special exception shall consist of the following:

1. Completed application form, signed.

2. Site plan showing the location of all existing and proposed structures on the lot, the boundary of the property with dimensions, and any other pertinent data requested in the application
3. If the application is filed by any person other than the legal owner or his/her attorney, written permission of the owner must be filed with the application.

§ 3.04 The staff of the Board shall cause the notices of public hearing to be published in one newspaper of general circulation in St. Joseph County at least ten (10) days prior to the date of public hearing on such petition. The notice of hearing shall include the address, tax parcel number of the subject property and a short summary of the application or petition that has been filed by the petitioner so that interested parties will be aware of the purpose of the public hearing.

#### ARTICLE IV – Procedure—Filing--Administrative Appeals

§ 4.01 The applicant for an appeal of a decision of an administrative official, board or other body (except a plan commission) (the “Administrative Officer”) under or in relation to the zoning ordinance must file a request for an appeal within fifteen (15) days from the date of determination by the Administrative Officer appealed from. Such request shall specify the Administrative Officer making the decision, the date thereof, the decision, and the reasons in detail the applicant believes the Administrative Officer’s decision is in error. Applications for appeal shall be docketed when all data required has been filed and will be placed on the calendar.

§ 4.02 In addition to the information specified in Section 4.01, the request for an appeal of a decision of an Administrative Officer must furnish the names and addresses of the owner of the property involved in the decision, the owners of all property located adjacent to and directly across a street, alley, or railroad right-of-way from, plus interested parties as defined in Article 2.01, and all other person who presented any information to the Administrative Officer prior to his/her determination. All such persons together with the Administrative Officer involved shall be given notice of the appeal and the date, time and place and purpose of the hearing at least ten (10) days prior to the hearing by certified mail (no return receipt).

§ 4.03 Legal notice by publication must be made ten (10) days prior to the date of the public hearing on such appeals, said notice to give the date, time, place and purpose of the hearing. Proof of such notice shall be made in the same manner as is made for other hearing.

§ 4.04 The Administrative Officer shall provide the appellant any additional information which is being conveyed to the Board of Zoning Appeals in preparation for the meeting. The Administrative Officer shall transmit the documents, plans, and papers constituting the record regarding the case to the Board. The Administrative Officer may provide a written report explaining the final decision or action on the case.

§ 4.05 The filing of an appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after the notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would cause, in his or her opinion, imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order granted by the St. Joseph County Circuit or Superior Courts

## ARTICLE V – Procedure—Hearing

§ 5.01 In order for a petition to be heard, the petitioner or their representative must be in attendance to present the petition and answer questions from the Board. If no one is present to represent the petition, the Board may table the petition for the following meeting or dismiss the petition. Any written evidence presented to the Board shall become a part of the files of the Board.

§ 5.02 The Board shall act on a petition in the following order:

1. The Secretary or the staff shall read the application out loud to the Board.
2. Staff Report
3. The petitioner shall first present the facts and argument in support of their case, in the process supply all the information necessary for a clear understanding and intelligent action by the Board. This presentation shall be limited to ten (10) minutes.
4. Board members may direct questions to the petitioner and/or staff for clarification of the subject matter.
5. The chairman then opens the public hearing and recognizes those who wish to speak on the proposal. These presentations are limited to a total of five (5) minutes per person. In the case of an administrative appeal, these presentations shall be limited to the grounds for appeal specified in the application. Each side shall proceed without interruption by the other
  - a. First shall be those who wish to speak in favor of or ask questions of the petitioner
  - b. Second shall be those who wish to speak in opposition to the petitioner
6. The petitioner may rebut the testimony of those against the proposal. The rebuttal is limited to five (5) minutes.
7. The chairman may summarize arguments and the Board may question further.
8. Board members may direct questions to the staff or seek additional comments from the staff
9. The chairman may call for a motion.
10. In the presentation of a case, the burden shall be upon the petitioner to supply all information, including charts, diagrams and other exhibits necessary for a clear understanding of the problem. The Board may continue the hearing when in its judgment the petitioner has not provided sufficient evidence on which to make a determination.
11. Every person appearing before the Board shall abide by the order and directions of the chairman. Each of those persons who wishes to comment on the petition must address the chairman and be recognized before speaking. Each person must state his/her name and address. 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.
12. The Board, at its discretion, may continue or postpone the hearing of any case on an affirmative vote by a majority of the Board.

## ARTICLE VI – Official Action

§ 6.01 Four (4) members of the Board shall constitute a quorum. No action of the Board shall be official unless authorized by such a majority.

§ 6.02 No member of the Board shall participate in the hearing or decision upon any matter in which he or she has a direct or indirect financial interest. In the event of a conflict, the member shall describe the conflict immediately after the matter is introduced by the presiding officer, leave the room, and take no part in the discussion or decision. The existence and description of the conflict shall be entered in the record.

§ 6.03 Any member of the Board who voted with the majority may call for a reconsideration of any vote at the same meeting of the Board at which it passed and, if sustained by a majority of the votes, the reconsideration shall be ordered.

§ 6.04 The final disposition of any case shall be in the form of a written findings of fact setting forth the findings and determinations of the Board, together with any modification, specification, or limitation which it makes. The written findings of fact shall be submitted for approval at the next regularly scheduled meeting.

§ 6.05 A variance granted by the Board is void unless a building permit or subdivisions (where required) is obtained within six (6) months of the date of approval of the variance and completed within three (3) years from the date of approval, unless specific permission for continuance of the variance is granted by the Board or a reapplication has been submitted.

§ 6.06 If the Board fails to take an official action due to lack of quorum, permitted abstention, recusal, or lack of a majority vote for any action, the matter shall be continued to the next regular meeting. If an official action fails to be acted upon in any two (2) meetings, it shall be considered denied.

§ 6.07 The official actions the Board may take with regards to variances, special uses/exceptions, and administrative appeals are as follows:

1. Special use/exception: All special exceptions/uses will be forwarded to the appropriate legislative body with a favorable, unfavorable or no recommendation as determined by the Board.
2. In the event that a voice vote cannot determine the majority of the quorum, the President may call for a vote by show of hands.
  - a. The Sequence of the vote shall occur as follows:
    - (1) An initial motion of either a favorable recommendation or an unfavorable recommendation shall first be considered by the Board.
    - (2) If the initial motion does not receive the necessary votes for passage, then the alternative of the initial motion shall be considered by the Board.

(3) If the Board cannot reach either a favorable recommendation or an unfavorable recommendation, then the Board may consider a motion to forward the petition without a recommendation.

(4) The Board may consider a motion to table a petition to the next regularly scheduled Board meeting for the sole purpose of obtaining additional information from the petitioner or staff, or at the express request of the petitioner.

3. Variance: The Board may dismiss, continue, approve, or deny an application for a variance.
  - a. Limitations on Reconsideration: A new application involving the same property that was part of a previously dismissed or denied petition for a variance shall not be placed on the Board's agenda for six (6) months from the date it was dismissed or denied.
4. Administrative appeal: The Board may continue, affirm, reverse, or modify a decision, interpretation, order, determination, or action made by an Administrative Officer.

Any petition (for special use/exception, variance, or administrative appeal) may be dismissed by the Board for lack of prosecution, lack of representation, or for lack of jurisdiction.

§ 6.08 All decisions of the Board shall be oral vote of the members with the presiding officer voting last. All members present shall vote on every question unless excused from voting by majority of the members present.

§ 6.09 No petition may be withdrawn by the petitioner after the oral vote has been made by the Board. No petition which has been withdrawn by the petitioner shall again be placed on the docket for consideration by the Board until a period of three (3) months has passed since the date of said withdrawal, except upon the motion of a member adopted by the unanimous vote of all members present at a regular meeting of the Board.

§ 6.10 As a courtesy to petitioners, the Board shall allow a petitioner, prior to their petition being read by the Secretary, to table their petition administratively, without Board action, by approaching the Secretary (if occurring at the meeting where the petition is to be heard) or informing ABZA staff (if prior to the meeting) of their intention to table. This administrative tabling is available up to two (2) times for a petition. Once a petition has been administratively tabled two (2) times, consecutively or in total, if the petitioner wishes to continue to table their petition they must make the request to the Board during the hearing on their petition, which the Board may grant or deny at its sole discretion.

## ARTICLE VII – Electronic Meeting Participation

§ 7.01 A member who is not physically present at a meeting may participate in a meeting by any electronic means of communication that: (1) allows all participating members of the governing body to simultaneously communicate with each other; and (2) allows the public to simultaneously attend and observe the meeting (other than a meeting in executive session). Examples of electronic communication which meet these requirements include, but are not limited to: Zoom, Google Meet, WebEx, etc.

§ 7.02 A member who participates in the meeting by an electronic means of communication shall be considered present for purposes of establishing a quorum, and may participate in final action taken at the meeting if the member can be both SEEN and HEARD. For a member to participate in final action their participation must be by a means which includes video as well as audio.

§ 7.03 At least fifty percent (50%) of the members must be physically present at a meeting. There is no limit on the number of meetings that may include participation by members electronically.

§ 7.04 Members who wish to participate in a meeting electronically, other than at a meeting called to deal with an emergency under Ind. Code § 5-14-1.5-5(d), must notify the Chair at least forty-eight (48) hours prior to the meeting so that arrangements may be made for the member's electronic participation.

§ 7.05 All votes taken during a meeting in which there are members participating electronically must be taken by audible roll call.

§ 7.06 The minutes of a meeting where member(s) participated electronically must state the name of each member who was physically present, each member who participated electronically, and was absent; and must identify the electronic means of communication used by the participating member and the public attendees/observers.

§ 7.07 A member may not attend more than fifty percent (50%) of the meetings of this body in a calendar year electronically, unless their electronic participation is due to one or more of the following: (1) military service; (2) illness or other medical condition; (3) death of a relative; or (4) an emergency involving actual or threatened injury to persons or property.

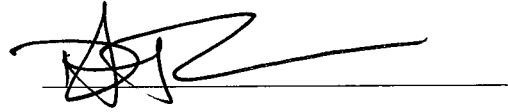
§ 7.08 A member may attend two (2) consecutive meetings (a “set” of meetings) by electronic communications; a member shall physically attend at least one (1) meeting between "sets" of meetings attended electronically, unless the electronic participation is due to: (1) military service; (2) illness or other medical condition; (3) death of a relative; or (4) an emergency involving actual or threatened injury to persons or property.

§ 7.09 Members may NOT participate electronically in a meeting where the intent is to take final action to: (1) adopt a budget; (2) make a reduction in personnel; (3) initiate a referendum; (4) establish or increase a fee; (5) establish or increase a penalty; (6) use eminent domain; or (7) establish, raise, or renew a tax.

These Rules of Procedure of the Area Board of Zoning Appeals approved by the affirmative vote of six members of said Board at the regular meeting of the Board held on the 11<sup>th</sup> day of May, 2022. This approval repeals any prior rules of procedure.



Abby Wiles, AICP  
Secretary of the Board



DJ Tavernier  
Chairman of the Board