

ARTICLE 3

ADVISORY BOARD OF ZONING APPEALS

SECTION 300 - Board of Zoning Appeals

The Dearborn County Advisory Board of Zoning Appeals shall consist of five (5) members who shall be appointed and serve in accordance with Indiana Code Sections 36-7-4-900 et seq.

- (1) All members shall serve four (4) year terms and shall be appointed as follows:
 - a. Three citizen members appointed by the Board of County Commissioners, of whom one (1) must be a member of the Plan Commission and two (2) must not be members of the plan commission;
 - b. One (1) citizen member appointed by County Council, who must not be a member of the plan commission;
 - c. One (1) member appointed by the Plan Commission from the Plan Commission's membership, who must be a county agricultural agent or a citizen member of the Plan Commission other than the member appointed under subsection (a) above.

- (2) **Powers and Duties** - For the purpose of this order the Dearborn County Board of Zoning Appeals shall have the following duties:
 - a. To hear and to determine appeals from and review any decision or determination made by the Planning Director or staff designated by the Director;
 - b. To hear and to determine conditional uses to the terms of this ordinance;
 - c. To authorize variances from the zoning ordinance.

- (3) **Rules of Procedure** - The Board of Zoning Appeals shall adopt rules for the administration of the affairs of the Board and for the conducting of public hearings recording of minutes and the retaining and administration of public records. The following include minimum procedures:
 - a. At the first meeting of each year the Board shall elect a Chairman and a Vice-Chairman from its members.
 - b. Appoint a Secretary, who is not required to be a member of the board, and establish the Secretary's duties.
 - c. All meetings shall be open to the public.
 - d. The Board shall keep minutes of its proceedings showing the vote of each member for each question, or if absent, or if failing to vote, indicating such.
 - e. The board shall keep records of its examinations and other official actions, all of which shall be of public record and be immediately filed in the office of the Plan Commission.

- (4) **Conflict of Interest** - A member of the Board of Zoning Appeals may not participate in a hearing or decision of the board concerning a zoning matter in which he has a direct or indirect financial interest. The Board shall enter in its records the fact that a regular member has such a disqualification and the name of the alternative member, if any, who participates in the hearing or decision. The Board of County Commissioners shall appoint any participating alternate member.
- (5) **Findings and Decisions** - All decisions of the Board on all matters within their jurisdiction and authority shall be in writing and be supported by specific findings of fact on each material element pertaining to the matter under consideration.
- (6) **Quorum** - A majority of members of the Board shall constitute a quorum, which shall mean a minimum of three (3) members. The action of the Board of Zoning Appeals is not official, unless it is authorized by a majority of the entire membership, which shall mean a minimum of three (3) votes from the members present at the properly called meeting.

SECTION 305 – Appeals

Appeal to the Board of Zoning Appeals may be taken by any person, or entity claiming to be injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal, or decision of the Planning Director or designated staff. Such appeal shall be made within thirty (30) days of written receipt of the decision by filing with the Plan Commission office an application for a notice of appeal specifying the grounds upon which the appeal is being sought. Public notice of such appeal shall be given to any and all parties of record at least ten (10) days prior to the public hearing. The Planning Director shall transmit to the Board of Zoning Appeals all the papers constituting the record from which the action appealed from was taken.

SECTION 310 – Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed from, unless the Planning Director or designated staff, from whom the appeal is taken, certifies to the Board of Zoning Appeals that by reason of facts stated in the application, a stay would, in the staff's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order from the proper court of record.

SECTION 315 – Conditional Use Requirements

Within each zoning district in this Ordinance, certain uses are identified as Conditional Uses. These uses require approval from the Board of Zoning Appeals. A Conditional Use Permit runs with the land and is transferable to any future owner of the land, but is not transferable to a different property.

Prior to the initiation of a public hearing by the Board of Zoning Appeals, all Conditional Use applications involving multi-family dwelling unit development proposals shall be presented to the Plan Commission for its review. In these cases, Applicants are strongly encouraged to submit all relevant and applicable portions of a Concept Development Plan, as referenced in Article 5, Section 520 of this order. Multi-family Conditional Use applications that are not submitted with these materials and supporting data shall be reviewed from the perspective of the “maximum allowable use.” Once a submittal in this scenario has been determined to be complete, the Plan Commission shall review the contents of the application to evaluate its impacts relative to the following: the County Comprehensive Plan, the criteria and terms of this Section (315), and the criteria and terms of Article 10. All Plan Commission recommendations and findings shall be forwarded to the Board of Zoning Appeals for its consideration and final action.

1. The Board shall have the power to authorize conditional uses so long as the conditional use:
 - a. Will not endanger the public health, safety, morals, comfort, or general welfare.
 - b. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and shall not change the essential character of the same area.
 - c. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
 - d. Will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
 - e. Will not generate traffic on the existing street network that will cause congestion or unsafe ingress and egress within the neighborhood as a result of the development, unless evidence is provided that improvements can be made to minimize or relieve the impacts.
 - f. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, dust, fumes, glare or odors.

SECTION 320 – Dimensional Variance Requirements

The Board of Zoning Appeals shall have the power to hear and decide on applications for a variance of dimensional requirements. Variance is defined as a departure from dimensional terms of the zoning regulation pertaining to building setbacks, lot frontage requirements, the height, width, or location of structures, and the size of bufferyards and open spaces requirements. The Board shall not possess the power to grant a variance to permit a use of land, building or structure, which is not permitted by the zoning regulation in the zone in question, or to alter the density requirements in the zone in question. Density is defined as the number of units or square footage of a building per net acre of land developed. A variance runs with the land and is transferable to any future owner of the land, but is not transferable by the applicant to a different site.

A variance may be appropriate by reason of exceptional narrowness, shallowness or unusual shape of a site on the effective date of these regulations or amendment thereof or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of that site. In addition, a variance may be appropriate if the literal enforcement of the dimensional terms of the zoning regulations would deprive the applicant of reasonable capacity to make use of the land in a manner equivalent to the use permitted other landowners in the same zone.

1. An appeal to the Board requesting a variance shall demonstrate:
 - a. That the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - b. That the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
 - c. That the need for the variance arises from some condition peculiar to the property involved which are not applicable to other lands, structures or buildings in the same district;
 - d. That 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
 - e. That the special conditions and circumstances do not result from the actions of the applicant.

SECTION 325 - Conditions and Safeguards

In granting a conditional use or variance, the Board may prescribe any reasonable conditions as well as establishing a time limit within which the request shall be started or completed or both. Failure to comply with any condition established by the Board shall be considered a violation and shall be governed by Article 6 of this Ordinance. Any condition imposed by the Board shall be recorded in the office of the County Recorder and shall be binding on the owner, subsequent owner, or any person who acquires interest in the property.

SECTION 330 - Action by Board of Zoning Appeals

The Board of Zoning Appeals shall hear and decide upon any appeal or application within sixty (60) days of filing. The Board of Zoning Appeals, shall approve, approve with conditions, or disapprove the request. Further, the Board shall make a finding that the reasons set forth in an application justify the granting of the request that will make possible a reasonable use of the land, building, or structure. If the request is disapproved, the board shall state the reasons for disapproval in writing. The minutes of the meeting shall serve as the required written notification of the decision of the Board. Appeals from Board decisions shall be to the appropriate court of jurisdiction as provided by law.

SECTION 335 - Contents of Application

An application shall be filed with the Planning Department by at least one owner or owner by contract (option) or lessee with written permission of the owner of property for which such application is proposed. If, after the initial public hearing, additional information is needed beyond the minimum information required by the application, the Board can require the applicant to submit a Site Plan as detailed in Article 23 of this Ordinance or any other needed information as necessary.

SECTION 340 - Specific Standards Applicable to Conditional Uses

The Board shall consider the criteria for conditional uses as set forth in each zoning district.

SECTION 345 - Procedure for Hearing Notice

Upon receipt of an application, the Board shall establish a time and place for a hearing, and publish notice of the hearing in a newspaper of general circulation in the County at least 10 days before the date set for the hearing. In addition, all adjoining property owners shall be notified by certified mail that is postmarked and mailed at least ten (10) days in advance of the hearing. The applicant shall be responsible for supplying the names and addresses of all adjoining property owners and shall pay all the costs of notification. Records maintained by the County Assessor's Office shall be used as the official record to determine the identity and address of property owners.

SECTION 350 - Expiration of Permit

Conditional uses and variances shall be authorized only for the specific request and are not transferable to another property or use without approval from the Board through a subsequent public hearing. In addition, all permits granted by the Board shall expire within one (1) year of approval by the Board unless the Board otherwise states a time period. The action or use requested and approved by the Board must be substantially underway (See Article 27) within the time period specified or the permit will expire and a subsequent hearing will be needed or an extension requested to the Planning Director.

SECTION 355 – Official Record and Certificate of Land Use Restriction

The Official Record of action taken by the Board of Zoning Appeals and any conditions or restrictions adopted or imposed shall be filed in the form of a Certificate of Land Use restrictions with the County Recorder's office as permitted by IC 36-7-4-921.

Filing shall occur within 30 days of the date upon which the final action to impose or adopt the restriction is made. The certificates shall be completed by the Planning Department and filed with the Recorder. The County Recorder shall index the certificates by property owner and, if applicable, name of subdivision or development. The Dearborn County Plan Commission office shall maintain the files of conditions or restrictions, which require certificates. When all conditions or restrictions have been complied with or a restriction reflected on the certificate is amended (which requires a new certificate), the Planning Department shall release the previous certificate in the same manner as releases of encumbrances upon real estate. Certificates of Land Use Restrictions shall be filed in the Dearborn County Recorder's Office for Variances, Conditional Uses, and other items requiring recording of restrictions.