

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.
 - i. Each of the five (5) Board members must be:
 1. A resident of an unincorporated area of the county; or
 2. A resident of the county who is also an owner of real property in whole or part in an unincorporated area of the county. In this scenario, at least a majority of the total number of citizen members appointed to the board of zoning appeals must be residents of the unincorporated area of the county.

A citizen member of the Board of Zoning Appeals may not hold:

1. An elected office (as defined in IC 3-5-2-17); or
 2. Any other appointed office in municipal, county, or state government; except for membership on the Plan Commission as permitted or required in IC 36-7-4-902.
- d. In accordance with IC 36-7-4-907, if a vacancy occurs among the members of the board of zoning appeals, the appointing authority shall appoint a member for the unexpired term of the vacating member. In addition, the appointing authority may appoint an alternate member to participate with the board in any hearing or decision if the regular member it has appointed has a disqualification under IC 36-7-4-909 or is otherwise unavailable to participate in the hearing or decision. An alternate member shall have all of the powers and duties of a regular member while participating in the hearing or decision.

- (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 developmental standard variances and use 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) **Disqualifications and Conflicts of Interest** - A member of the board of zoning appeals is disqualified and may not participate in a hearing of the board concerning a zoning decision, as described in IC 36-7-4-1016, if:
- a. The member is biased or prejudiced or otherwise unable to be impartial; or
 - b. The member has a direct or indirect financial interest in the outcome of the zoning decision.

In the event of a disqualification, the appointing authority may select or designate an alternate member to participate with the board in a hearing or decision. An alternate member has the same powers and duties of a regular member while participating in a zoning decision or hearing.

The board of zoning appeals shall enter in its records:

- a. The fact that a regular member has a disqualification that qualifies under IC 36-7-4-223; and
- b. The name of the alternate member, if any, who participates in the hearing in place of the regular board member.

A member of the board of zoning appeals may not directly or personally represent another person in a hearing before that board concerning a zoning decision or a legislative act.

A member of the board of zoning appeals may not receive any mileage or compensation for attendance at a meeting if the member is disqualified under this section from participating in the entire meeting.

- (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 preserve the purpose of this Ordinance, and shall not interfere substantially with the Comprehensive Plan.

SECTION 320 – Developmental Standard Variance Requirements

The Board of Zoning Appeals shall have the power to approve or deny variances from the developmental standards of the zoning ordinance. Developmental standards include setbacks, lot dimensions, lot coverage, minimum/maximum sizes and heights of structures; where buildings, yards, parking lots, driveways, signs, and lighting may be placed on properties; and other zoning ordinance requirements. A variance runs with the land and is transferable to any future owner of the land, but is not transferable by an owner or 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 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 developmental standard variance shall demonstrate:
 - a. That the approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, morals, and general welfare of the community;
 - b. That the approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner;
 - c. That the approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which is defined as a significant development limitation that:
 - i. Arises from conditions on the property that do not generally exist in the area (i.e., the property conditions create a relatively unique development problem);
 - ii. Precludes the development or use of the property in a manner, or to an extent, enjoyed by other conforming properties in the area;
 - iii. Cannot be reasonably addressed through the redesign or relocation of the development/building/structure (existing or proposed); and
 - iv. May not be reasonably overcome because of a uniquely excessive cost of complying with the standard.

SECTION 322 – Use Variance Requirements

The Board of Zoning Appeals shall have the power to approve or deny variances of use from the terms of the zoning ordinance. A use variance allows a land use that is not specifically identified as a permitted use or conditional use in the zoning district where a particular property is located. A use variance runs with the land and is transferable to any future owner of the land, but is not transferable by an owner or applicant to a different site.

The Board may impose reasonable conditions or written commitments as part of its approval. In addition, a use variance may be appropriate if the literal enforcement of the 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 use 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;
 - 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

That the approval does not interfere substantially with the Comprehensive Plan.

SECTION 325 - Conditions and Safeguards

In granting an Applicant's request, the Board may require written commitments or prescribe any reasonable conditions—including the establishment of time limitations. Failure to comply with any commitment or condition established by the Board shall be considered a violation and shall be governed by Article 6 of this Ordinance.

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 commitments, 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.

Final action of the Board of Zoning Appeals in accordance with:

- a. The 900 series of IC 36-7-4; or
- b. IC 36-7-4-1015

is considered a zoning decision and is subject to judicial review in accordance with the 1600 series of IC 36-7-4.

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 Written Commitments

The Board of Zoning Appeals shall keep the minutes of its proceedings and records regarding the vote on its actions. All minutes (including findings of fact), voting accounts, and other documentation pertaining to a case item or cause number shall be filed in the Dearborn County Department of Planning & Zoning and are considered public records. (Please refer to IC 36-7-4-915)

The Board of Zoning Appeals may allow, or require, the owner of a parcel of real property to make a commitment concerning the use and development of that parcel. Commitments associated with a Board of Zoning Appeals decision shall be subject to the requirements set forth in IC 36-7-4-1015, including:

- a. A commitment must be in writing;
- b. A commitment shall be recorded in the Dearborn County Recorder's Office. After a commitment is recorded, it is binding on a subsequent owner or any other person who acquires an interest in the parcel;
- c. Unless a written commitment is modified or terminated in the manner prescribed by the Indiana Code, the commitment is binding upon the owner of the parcel (see IC 36-7-4-1015);
- d. A commitment may contain terms providing for its own expiration.

The allowance or requirement of a commitment does not obligate the Board of Zoning Appeals to approve an application to which the commitment relates.