

ARTICLE EIGHT
BOARD OF ZONING APPEALS

- 801 CREATION: There is hereby created a Board of Zoning Appeals consisting of five members who shall be appointed and serve in accordance with Title 36, Article 7, Chapter 4, Series 900 of the Indiana Code.
- 802 RULES: The Board of Zoning Appeals shall adopt rules, which may not conflict with the zoning ordinance or IC 36-7-4-900 series concerning:
- 802.01 the filing of appeals;
- 802.02 the application for variances and special exceptions;
- 802.03 the giving of notice;
- 802.04 the conduct of hearings; and
- 802.05 the determination of whether a variance application is for a variance of use or for a variance from the development standards (such as height, bulk, or area).
- 803 MINUTES AND RECORDS: The Board of Zoning Appeals shall keep minutes of its proceedings, keep records of its examinations and other official acts, and shall record and vote on all actions taken. All minutes and records shall be filed in the Office of the Zoning Administrator and shall be a public record.
- 804 APPEALS: A Board of Zoning Appeals shall hear and determine appeals from and review:
- 804.01 any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning ordinance;
- 804.02 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; or
- 804.03 any order, requirement, decision, or determination made by an administrative board or other body except a plan commission in relation to the enforcement of an ordinance adopted under this chapter requiring the procurement of an Improvement Location Permit or Certificate of Occupancy.
- 805 SPECIAL EXCEPTIONS: A Board of Zoning Appeals shall approve or deny all special exceptions from the terms of the zoning ordinance, but only as specified in the zoning ordinance. The Board may impose reasonable conditions as a part of its approval.

805.01 A Special Exception shall be approved if, and only if, it is found to meet the following criteria:

- A. the zoning ordinance authorizes the special exception request and the request conforms to all general regulations of this Ordinance;
- B. the proposed use shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the performance standards herein;
- C. the proposed use shall be sited, oriented, and landscaped so that the relationship of its buildings and grounds to adjacent buildings and properties does not impair health, safety, or comfort, and does not adversely affect values of adjacent properties;
- D. the proposed use shall produce a total environment effect which is consistent with, and not harmful to, the environment of the neighborhood;
- E. the proposed use shall organize vehicular access and parking to minimize conflicting traffic movement on adjacent streets;
- F. in the case of a change in nonconforming use, the proposed use shall be equally appropriate or more appropriate to the district than the existing or former non conforming use; and
- G. the proposed use shall promote the objectives of this Ordinance and shall be consistent with the Comprehensive Plan.

806 VARIANCES - USE: A Board of Zoning Appeals shall approve or deny variances of use from the terms of the zoning ordinance. The Board may impose reasonable conditions as a part of its approval.

806.01 A Variance of Use may be approved under this section only upon a determination in writing that:

- A. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- B. 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. the need for the variance arises from some condition peculiar to the property involved;
- D. 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. the approval does not interfere substantially with the Comprehensive Plan.

807 VARIANCE - DEVELOPMENTAL STANDARDS: A Board of Zoning Appeals shall approve or deny variances from the developmental standards (such as height, bulk, or area) of the zoning ordinance.

807.01 A variance may be approved under this section only upon a determination in writing that:

- A. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- B. 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
- C. the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. However, the zoning ordinance may establish a stricter standard than the “practical difficulties” standard prescribed by this section.

808 CONDITIONAL USE: Petitions for approval of a conditional use consistent with the provisions set forth in Section 522 herein may be considered provided that any related developmental standards issues are approved separately.

808.01 The Board of Zoning Appeals may approve a Conditional Use only upon a determination in writing that:

- A. The zoning ordinance authorizes the conditional use request and the request conforms to all regulations of this Ordinance;
- B. the approval will not be injurious to the public health, safety, morals and general welfare of the community;
- C. the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- D. the proposed use shall promote the objectives of this ordinance and shall be consistent with the comprehensive plan.

809 FLOODPLAIN VARIANCE: Petitions for variances to the provisions set forth in Section 402 herein may be considered provided any terms and conditions imposed by the Department of Natural Resources shall be incorporated into the issuance of any local permit.

809.01 The Board of Zoning Appeals may consider issuing a variance to the terms and provisions of this Ordinance provided the applicant demonstrates that:

- A. there exists a good and sufficient cause for the requested variance;
- B. the strict application of the terms of this Ordinance will constitute an exceptional hardship to the applicant; and
- C. the granting of the requested variances will not increase flood heights, create additional threats to the public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

809.02 The Board of Zoning Appeals may issue a variance to the terms and provisions of this Ordinance subject to the following standards and conditions:

- A. no variance or exception for a residential use within a floodway subject to Section 402.06 A or 402.06 B may be granted;
- B. any variance or exception granted in a floodway subject to Section 402.06 A or 402.06 B will require an approval from the Department of Natural Resources;
- C. variances or exceptions to the Building Protection Standards of Section 402.07 may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade;
- D. variances or exceptions may be granted for the reconstruction or restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological and Cultural Sites, Structures, Districts, and Objects;
- E. all variances shall give the minimum relief necessary and be such that the maximum practical flood protection will be given to the proposed construction; and
- F. the Board of Zoning Appeals shall issue a written notice to the recipient of a variance or exception that the proposed construction will be subject to increased risks to life and property and could require payment of increased flood insurance premiums.

810 **PROCEDURE:** An appeal filed with the Board of Zoning Appeals must specify the grounds of the appeal and must be filed within such time and in such form as may be prescribed by the Board of Zoning Appeals by rule.

810.01 The administrative official, hearing officer, administrative board, or other body from whom the appeal is taken shall, on the request of the Board of Zoning Appeals, transmit to it all documents, plans, and papers constituting the record of the action from which the appeal is taken.

- 810.02 Certified copies of the documents, plans, and papers constituting the record may be transmitted for purposes of Section 809.01.
- 810.03 Upon appeal, the Board may reverse, affirm, or modify the order, requirement, decision, or determination appealed from. For this purpose, the Board has all the powers of the official, officer, board, or body from which the appeal is taken.
- 810.04 The Board shall make a decision on any matter that it is required to hear under the 900 series either:
- A. At the meeting at which that matter is first presented; or
 - B. at the conclusion of the hearing on that matter if it is continued.
- 810.05 Within five days after making any decision, the Board of Zoning Appeals shall file in the Office of the Zoning Administrator a copy of its decision.
- 809.06 If the variance, exception, use, or appeal petitioned for is granted, an Improvement Location Permit may be applied for up to twelve months from the date of approval. An extension of time may be granted by the Zoning Administrator for good and sufficient cause.
- 811 HEARINGS: The Board of Zoning Appeals shall fix a reasonable time for the hearing of administrative appeals, exceptions, uses, and variances.
- 811.01 Public notice in accordance with IC 5-3-1-2 and IC 5-3-1-4 and due notice to interested parties shall be given at least 10 days before the date set for the hearing by certified mailed as required by rule.
- 811.02 The party taking the appeal, or applying for the exception, use, or variance, may be required to assume the cost of public notice and due notice to interested parties. At the hearing, each party may appear in person, by agent, or by attorney.
- 811.03 The Board shall by rule, determine who interested parties are, how notice is to be given to them, and who is required to give that notice.
- 811.04 The Planning Department staff, if any, may appear before the Board at the hearing and present evidence in support of or in opposition to the granting of a variance or the determination of any other matter.
- 811.05 Other persons may appear and present relevant evidence.
- 811.06 A person may not communicate with any member of the Board before the hearing with intent to influence the member's action on a matter pending before the Board. Not less than 5 days before the hearing, however, the

staff (as defined by ordinance), if any, may file with the Board a written statement setting forth any facts or opinions relating to the matter.

811.07 The Board may require any party adverse to any pending petition to enter a written appearance specifying the party's name and address. If the written appearance is entered more than 4 days before the hearing, the Board may also require the petitioner to furnish each adverse party with a copy of the petition and a site plan of the property involved.

812 COMMITMENTS: In the case of a petition for a special exception, conditional use or a variance from the terms of the zoning ordinance, the Board may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel.

812.01 The Board may:

A. Adopt rules governing the creation, form, recording, modification, enforcement, and termination of commitments; and

B. adopt rules designating which specially affected persons and classes of specially affected persons are entitled to enforce commitments.

812.02 Commitments shall be recorded in the Office of the Tipton County Recorder and take effect upon the granting of the exception, use, or variance. Unless modified or terminated by the Board, a commitment is binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel. A commitment is binding on the owner of the parcel even if it is unrecorded; however, an unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment. A commitment may be modified or terminated only by a decision of the Board made at a public hearing after notice as provided by rule.

812.03 By permitting or requiring commitments, the Board does not obligate itself to approve or deny any request.

812.04 Conditions imposed on the granting of an exception, use, or variances are not subject to the rules applicable to commitments.

812.05 This section does not affect the validity of any covenant, easement, equitable servitude, or other land use restriction created in accordance with law.

813 HEARING OFFICER: In accordance with IC 36-7-4-923, the Plan Commission may authorize a hearing officer who has the power of a Board of Zoning Appeals to approve or deny a variance for developmental standards or a special exception.

813.01 The hearing officer may be a Board member, a staff member, or other person.

813.02 All hearing officer rules and proceedings shall be in accordance with IC 36-7-4-924.