RULES OF PROCEDURE: TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS

I. Board of Zoning Appeals Meetings

1. Regular Meetings

The *Board* shall hold its regular monthly meeting on the second Tuesday of the month at 6:30 p.m. in the Zionsville Town Hall, (1100 West Oak Street, Zionsville, Indiana). If the second Tuesday of the month is a holiday as recognized by the Town of Zionsville, or if it is impossible to conduct the meeting at that time or place, the regular monthly meeting shall be scheduled for the first Wednesday following the second Tuesday of the month.

2. Special Meetings

Special meetings of the *Board* may be called by the Chairman or by two (2) members of the *Board* upon written request to the *Secretary*. The *Secretary* shall send to all members, at least three (3) days before the special meeting, a written notice fixing the time and place of the meeting.

Written notice of a special meeting shall not be required if (i) the date, time and place of a special meeting is fixed at a regular meeting; and (ii) all members of the *Board* are present at the regular meeting.

3. Executive Session

The *Board* may meet in Executive Session pursuant to I.C. 5-14-1.5-6.1.

4. Public Meetings

All meetings of the *Board,* except legally constituted executive sessions, shall be open to the public who shall have the right to give testimony during the public hearing portion of the meeting, in accordance with these Rules of Procedure.

5. Minutes

The *Board* shall maintain minutes of all meetings, including the record of the vote on all actions taken.

II. Filing of Petitions for Administrative Appeal, Variance of Use, Variance of Development Standards or Special Exception

1. Who May File

Petitions for an administrative appeal. variance of use, variance of development standards or special exception may be initiated by a *Petition* signed by all of the owners of the land involved in the *Petition.*

An Owner may be represented by an *Authorized Agent.* An *Authorized Agent* shall file a written statement with the Department, signed by the Owner on a form acceptable to the Department, at the time of filing a *Petition.*

2. Filing Deadline

Petitions for public hearing before the *Board* shall be filed with the *Secretary* no later than 3:00p.m. on a date which is at least 30 days prior to the initial hearing before the *Board* at which the *Petition* is to be considered.

3. Form of Filing

All *Petitions* to the *Board* shall be on forms provided by the *Board.* In addition, site plans, surveys, legal descriptions, building elevations, sign details, proposed commitments and any other relevant supporting documentation shall be of a usable scale and quality.

4. Findings of Fact

The *Board* shall, in all cases heard by the *Board,* make written *Findings of Fact* in support of the *Board's* decision. The *Petitioner* shall, at the time of filing of the *Petition,* file proposed detailed written *Findings of Fact.*

5. Specifying of Request

All *Petitions* shall specify the appeals, variances or exceptions requested. Any items, even if indicated on the proposed plans, shall not be considered a part of the request presented to the *Board* for its consideration unless such items are specified in the *Petition.*

III. Docketing of Petitions, Order of Hearings, Investigation of Petitions

1. Docketing by Secretary

Each *Petition* filed in proper form pursuant to the guidelines established by the *Board* shall, within ten (10) days of filing, be numbered and docketed by the *Secretary* for an initial hearing by the *Board.* Such *Petitions* shall be numbered consecutively in the order of their filing according to the type of *Petition.*

2. Order of Hearings

On the date of the public hearing, the *Board* shall hear *Petitions* in the order of their numbers as follows:

a. Continued Petitions

(1) Special Exceptions
(2) Variance of Development Standards
(3) Variance of Use
(4) Administrative

Appeals b. Initial Hearing Petitions

(1) Special Exceptions
(2) Variance of Development Standards
(3) Variance of Use
(4) Administrative Appeals

The *Board* may, in its discretion and at a public hearing, change the order in which *Petitions* shall be heard at the public hearing.

IV. Notice Requirements for Petitions for Administrative Appeal, Variance of Use, Variance of Development Standards, or Special Exception

Notice of all *Petitions* for administrative appeal, variance of use, variance of development standards, or special exception for public hearing before the *Board,* or before any hearing officer, shall be given to all interested parties or property owners in the following manner:

1. Notice by Publication

Notice, in a form approved by the *Secretary,* shall be published by the *Petitioner* in accordance with LC. 5-3-1 at least ten (10) days prior to the date of the public hearing.

2. Notice by Mailing

Notice, in a form approved by the *Secretary,* shall be mailed to each interested party.

Notice by mailing shall be given by certified mail, return receipt requested, at least ten (10) days prior to the date of the hearing.

3. Interested Parties

a. Interested parties for a *Petition* for administrative appeal, variance of use, variance of development standards, or special exception shall include:

(1) All owners of property within the area included in the *Petition* who are not *Petitioners;* and,

(2) All owners of adjoining parcels to a depth of one (1) ownership surrounding the perimeter of the area included in the *Petition.*

In the case of property which has been submitted to the Horizontal Property Law (I.C. 36-1-6), designated common areas shall be deemed one ownership and notice to the co-owners of such common area may be given to the association of co-owners.

For the purpose of notice requirements contained in this subsection a., where any immediately adjoining parcel owned by the *Petitioner*, subject property of the *Petition* shall be deemed to include the immediate} adjoining parcel owned by the *Petitioner.*

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where any immediately adjoining parcel is a dedicated right-of-way. railroad right-of-way or private alley or street, the subject property of the *Petitioner* shall be deemed to include the portion of the right-of-way or private street that is contiguous and adjacent to the parcel owned by the *Petitioner.*

b. In determining the name and address of legal title owners, the records of the Boone County Auditor, or the appropriate office designated in an adjoining county, at a point in time within fourteen (14) days of the date of filing, shall be deemed to be the true names and addresses of all persons entitled to receive notice.

4. Affidavit of Notice

Petitioner shall file an Affidavit of Notice with the *Secretary,* in a form as specified by the *Board.* indicating compliance with all notice requirements of these Rules, prior to the public hearing. Copies of all "Receipt for Certified Mail" (white slips) shall be filed with the Affidavit of Notice. The originals of the "Domestic Return Receipts" (green cards) shall be filed with the *Secretary* upon the later of (i) the public hearing or (ii) receipt by the *Petitioner.*

5. Defective Notice

If proper notice has not been given, a *Petition* may be continued until a later date to allow time for un-notified persons to prepare for the public hearing. Personal appearance shall waive any defect in notice unless the defect in notice is timely raised at the beginning of the public hearing on the *Petitioner's Petition.*

V. Conduct of Public Hearings

I. Time Allowed and Procedure for Hearing of Petitions

In order to provide all interested parties with a fair hearing, *Petitioners* and remonstrators shall be afforded a reasonable amount of time for the presentation of evidence, statements and argument at the public hearing of every *Petition* before the *Board.* The order of the presentation of evidence, statements and arguments shall be as follows:

a. *Petitioners* and persons appearing in support of a *Petition* shall be allotted a total of fifteen (15) minutes to present evidence, statements and arguments in support of the matter being considered.

b. Remonstrators and persons appearing in opposition to a *Petition* shall then be allotted a total of fifteen (15) minutes to present evidence. statements and arguments in opposition to the matter being considered.

c. The *Petitioner* shall then have a total of five (5) minutes for rebuttal, which shall include only evidence, statements and argument in rebuttal of remonstrators' evidence, and a brief closing statement.

d. Remonstrators shall then have a total of five (5) minutes for rebuttal, which shall include only evidence, statements and argument in reponse to *Petitioner's* rebuttal of remonstrators' evidence, and a brief closing statement.

At the conclusion of remarks by any party, the *Board* shall have the right to ask questions pertaining to the evidence, statements and argument presented. Time involved in responding to questions by the *Board* by either the *Petitioners* or remonstrators shall not be considered for purposes of calculating equal time for presentation.

The presiding officer shall have authority to cut off repetitious and irrelevant testimony and to extend the time allotted to *Petitioners* and remonstrators, but shall make reasonable efforts to allow equal time for *Petitioners* and remonstrators.

2. Testimony

All persons giving testimony to the *Board* regarding any pending *Petition* shall be deemed to have been given under oath. A person giving testimony shall state their name and address for the record prior to beginning testimony.

3. Orderly Conduct

All persons appearing at a public hearing shall act in an orderly and courteous manner. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges extended by the *Board* and shall be dealt with by the presiding officer as is deemed fair and proper.

4. Continuances

Requests for continuances by *Petitioners* or remonstrators shall be considered at the beginning of each public hearing agenda prior to calling the first *Petition* for public hearing listed on the agenda.

A continuance request may be made in person or in writing and shall:

a. specify the date to which the continuance is requested; and

b. indicate whether it is the first request made by the party for a continuance of the hearing on the subject *Petition.*

If a first request for a continuance is requested in writing and filed with the *Secretary,* at least one week prior to the date of the public hearing, with a copy of the request being sent to the *Petitioner* (in the case of a Remonstrator's request) or to all those entitled to receive notice (in the case of a Petitioner's request), the *Petition* shall be considered continued to the next regularly scheduled meeting of the *Board.* Such written request shall include the date of the next regularly scheduled meeting of the *Board.*

Continuances may be granted by motion of the *Board* at the hearing upon a showing of good cause (e.g., the need for additional time for negotiation between *Petitioners* and remonstrators which will reasonably increase the likelihood of agreement between the parties; the unforeseeable need for additional information; or, the unforeseeable absence of a key witness) and provided that the non-requesting party does not suffer a significant hardship because of the grant of a continuance (e.g., presence of remonstrators at the hearing who would be inconvenienced by having to reappear; or, additional expense incurred by *Petitioner* as a result of time delay).

The *Board* may, at any time, in its discretion, continue the hearing of any *Petition.*

On its own motion, *Board* may determine re-notification of interested property) owners shall be required for any continued hearing.

Neither *Petitioners* nor remonstrators shall be granted more than two (2) requests for continuance of a *Petition* unless, in the determination of the *Board of Zoning Appeals,* a significant hardship can be demonstrated by the requesting party. If a significant hardship cannot be demonstrated, the *Petition* shall be heard as scheduled.

5. No Hearing After 10:00 p.m.

The *Board* may elect to not begin the hearing on any matter after 10:00p.m., local time. If a hearing on a *Petition* has not been called for by the presiding officer prior to 10:00p.m., local time, such *Petition* may be continued until the next regularly scheduled meeting of the *Board.*

Any hearing which has been called for by the presiding officer prior to 10:00 p.m., local time, may be completed.

6. Contacting Board Members Regarding Pending Petition Prohibited

No person shall contact any member of the *Board* in advance of a public hearing on any pending *Petition* with intent to influence the *Board* member's action on such *Petition.*

A written request for continuance as provided for by these rules shall not be construed to be a prohibited contact of a *Board* member.

A contact with a *Board* member who is also a member of the Town Council shall not be construed to be a prohibited contact provided that: (i) all contact is limited to that member's official duties as a Town Council member; and (ii) the *Board* member who is also a member of the Town Council reports on the substance of such contacts to the other members of the *Board* during the public hearing.

7. Points of Order

The presiding officer of the *Board* shall, subject to these Rules of Procedure, decide all points of order or procedure, unless otherwise directed by a majority of the members of the *Board* present.

8. Secretary's Written Report

Nothing in these Rules of Procedure shall be deemed to prohibit the *Secretary* from submitting a written report, stating any facts concerning the physical characteristics of the area involved in the *Petition,* together with a recital of surrounding land use and public facilities available to service the area, or other pertinent facts. A copy of such statement shall be made available to the *Petitioner* and all remonstrators of record, if any.

9. Disqualification of Board Member in Case of Personal or Financial Interest

A member of the *Board* who has some personal, direct or indirect financial interest in any *Petition* presented shall: disqualify himself or herself insofar as the particular *Petition* is concerned; not sit as a member of the *Board* during the hearing of the particular *Petition;* and, not participate as a member in the *Board's* hearing or decision in such *Petition.*

In the case of a conflict of interest, the *Board* shall enter into its records the fact that a regular member has such a disqualification and the name of the alternate member, if any, who participates in the decision or hearing in place of the regular member.

10. Amendments

Requests to amend any *Petition* may be filed in writing prior to or at the beginning of any hearing, or may be made orally) at the hearing. Any remonstrators present shall have the right to be heard on any objections they may have to such proposed amendment and may request a continuance of the hearing to allow time to study the proposed amendments. It shall be within the discretion of the *Board* to grant or deny requests for such continuances and to require re-notification. In making this determination, consideration shall be given to whether or not the remonstrators have had sufficient time to adequately review these new amendments or supporting documents. Provided, however, any proposed amendment to change the use or to include more development standards variances shall be redocketed and readvertised.

VI. Final Disposition of Petitions

1. Quorum and Official Vote

A majority of the entire membership of the *Board* constitutes a quorum. Action of the *Board* is not official unless it is authorized at a regular or properly called special meeting by a majority of the entire membership of the *Board.*

2. Indecisive Vote

When a vote of the *Board* does not result in an official action of the *Board* as set forth in section 1. above, the petition shall be automatically redocketed and heard at the next regularly scheduled meeting of the *Board.*

3. Compliance with Indiana Code

In the event that Rule VI., I. and VI., 2., noted above are in contravention with IC 36-7-4-910 and IC 36-7-4-911, the Indiana Code provisions, as amended from time to time, shall prevail.

4. Dismissal of Petitions

a. The *Board* may dismiss a *Petition* for lack of prosecution when the *Petitioner* has failed to appear at two (2) meetings. The *Board* may dismiss a *Petition* for lack of jurisdiction.

b. Any *Petition* which has been dismissed by the *Board* for lack of prosecution shall not again be filed for consideration within a period of three (3) months from the date of the dismissal, except upon motion to permit re-filing adopted by a majority vote of all members of the *Board* at a regular or special meeting, for good cause shown.

5. Withdrawal of Petitions

Prior to the issuance or publication of notice for any public hearing to be conducted by the *Board,* a *Petition* may be withdrawn by the *Petitioner* upon request made in writing. If the request for the withdrawal is received prior to the issuance or publication of notice, the staff shall not place the item on the agenda for the public hearing at which it was to be considered.

1. If a *Petitioner* wishes to withdraw a *Petition* after notice of the public hearing has been published, the *Petitioner* shall submit a written request to the *Board* or its staff prior to the public hearing, or at the public hearing prior to the receipt of evidence or testimony on the *Petition.*
The decision to accept the withdrawal shall be made at the public

hearing when the *Petition* was to be considered, and shall be at the discretion of the Board. If the withdrawal of the *Petition* is approved by the *Board,* the *Petitioner* shall not re-file a substantially similar request within a period of six (6) months from the date of said withdrawal.

2. No *Petition* may be withdrawn by the *Petitioner* after the *Board* has received any evidence or testimony regarding the *Petition* at the public hearing scheduled on the *Petition.*

6. Re-Filing Following Adverse Decision

No parcel of ground, or part of a parcel, which has been the subject of an adverse decision of a *Petition* for variance of use, variance of development standards, special exception by the *Board,* zone map change by the Town Council, or development plan approval by the *Plan Commission,* shall again be included in a *Petition* for either a variance of use, variance of development standards or special exception for a substantially similar request, absent a substantial change in circumstances involving the development, within one (1) year from the date of the adverse decision, unless the body making the adverse decision, by an official vote at a public hearing, decides for good cause shown, to allow the re-filing.

Written notice of a special request to include a parcel subject to an adverse decision in another *Petition,* as noted above, shall be provided to:

1. adjoining property owners; and,

2. the applicable of either the Secretary of the *Board* or the *Plan Commission*

at least ten (10) days prior to the date of consideration of the special request by the Town Council, *Plan Commission* or the *Board.*

7. Findings of Fact

The *Board* is required to enter written *Findings of Fact* in support of its determinations. Such *Findings of Fact* may be entered at the initial public hearing or, at the *Board's* discretion, the hearing on the *Petition* may be continued until the next regularly scheduled meeting of the *Board* for the adoption of the *Findings of Fact.* If a *Petition* is continued for the adoption of *Findings of Fact,* no further testimony need be taken by the *Board* prior to adoption of the *Findings of Fact.*

8. Notification of Grant or Denial

Following final action on a *Petition* by the *Board,* the *Secretary,* within thirty (30) days after such action, shall notify the *Petitioner* of the final decision by sending the *Petitioner:*

I. a letter of grant or denial: and,

2. a copy of the approved findings of fact.

If the *Petition* was granted. the letter shall include all commitments or conditions imposed, and shall incorporate the approved *Findings of Fact* into the grant.

VII. Waiver of Rules

The *Board* shall have the right to waive any portion of these Rules of Procedure upon their own motion, or upon request of any interested party, for good cause shown. provided, however, the *Board* may not waive any portion of these Rules beyond the minimum requirements established by Statute.

VIII. Amendments

Amendments to these Rules of Procedure may be made by the *Board* upon the affirmative vote of a majority of the members of the *Board.*

IX. Definitions

As used in these Rules of Procedure, the following terms shall have the following meanings:

AUTHORIZED AGENT- Any party duly authorized in writing by the Owner of a subject parcel to act on the Owner's behalf with respect to a *Petition* for administrative appeal, variance of use, variance of development standards or special exception.

BOARD- The Town of Zionsville Board of Zoning Appeals established pursuant to the Advisory Planning Law of the State of Indiana.

BUSINESS DAY- A day when the offices of the Town of Zionsville are open to the public for the transaction of business for the entire period of its normal operating hours.

FINDINGS OF FACT- A written statement, based upon the evidence presented at a public hearing and the requirements of I.C. 36-7-4-900 et seq., the Town of Zionsville Zoning Ordinance, or these Rules of Procedure, in support of a decision made by the *Board.*

PLAN COMMISSION-The Town of Zionsville Plan Commission established pursuant to the Advisory Planning Law of the State of Indiana.

PETITION- An application for administrative appeal, variance of use, variance of development standards or special exception filed with the for public hearing before the *Board* in compliance with all applicable state laws, local ordinances and rules of procedure.

PETITIONER -The Owner of a parcel or the Owner's duly *Authorized Agent,* attorney or representative who makes an application for an administrative appeal, variance of use, variance of development standards or special exception filed for public hearing before the *Board.*

SECRETARY- The *Secretary* of the *Board* as duly appointed by the *Board* is accordance with I.C. 36-7-4-913.

Adoption

The foregoing Rules of Procedure of the Town of Zionsville Board of Zoning Appeals are hereby adopted by the affirmation vote of the undersigned members of the Board of Zoning Appeals this 8th day of January, 2013. The effective date of these Rules of Procedure shall be the 8th day of January, 2013.

Town of Zionsville
Board of Zoning Appeals

Larry Mitchell

Gregory Morical

Jay Parks

Stephen Shanke

Al Wopshall

ATTEST:

Wayne DeLong, AICP, Secretary
Town of Zionsville
Board of Zoning Appeals