

# **RULES OF PROCEDURE: TOWN OF PLAINFIELD ADVISORY BOARD OF ZONING APPEALS**

## **I. Membership, Organization and Meetings**

### **1. Membership of the Board**

- a. The *Board* shall be made up of five (5) members as follows:
  - (1) Three (3) citizen members appointed by the President of the Town Council, one (1) of whom must be a member of the *Plan Commission* and two (2) of whom must not be members of the *Plan Commission*.
  - (2) One (1) citizen member who must not be a member of the *Plan Commission* appointed by the Town Council.
  - (3) One (1) member appointed by the *Plan Commission* from the *Plan Commission's* membership (other than the member appointed pursuant to subsection a. (1), above).
- b. Initial membership on the Board shall be as follows:
  - (1) One (1) for a term of one (1) year.
  - (2) One (1) for a term of two (2) years.
  - (3) One (1) for a term of three (3) years.
  - (4) Two (2) for a term of four (4) years.
- c. *Board* membership shall be for a term of four (4) years. Each term expires on the first Monday of January of the first, second, third, or fourth year, respectively, after the year of the member's appointment.
- d. No member of the *Board* shall hold other elective or appointive office except as permitted by Section 1., a., above.
- e. An appointing authority may appoint an alternate member to participate with the *Board* in any hearing or decision in which the regular member of that appointing authority has a conflict of interest.

**2. Officers of the Board**

At their first regularly scheduled meeting of each calendar year, the *Board* shall select from its membership a Chairman and Vice Chairman.

The Chairman shall preside at all meetings and, in his or her absence or disability, the Vice Chairman shall preside.

The *Board* shall elect a Chairman Pro Tempore from among its members if both the Chairman and Vice Chairman are absent or disabled.

If any office becomes vacant, the Board shall elect a successor at its next regular meeting to complete the remainder of the unexpired term.

**3. 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.

**4. 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 by a majority of the entire membership of the *Board*.

All voting shall be by roll call, except in the case of a unanimous vote.

**5. Vacancies**

If a vacancy occurs among the membership of the *Board*, the appointing authority shall appoint a member for the unexpired term of the vacating member.

**6. Secretary**

The *Board* may appoint a *Secretary* and such employees as are necessary for the discharge of the *Board's* duties.

The *Secretary* shall:

- a. Keep a complete and accurate record of all proceedings and votes of the *Board*;
- b. Prepare the agenda of all meetings following consultation with the Chairman;

- c. Provide notices of meetings to the *Board* members;
- d. Arrange for all required legal notices for hearings of the *Board*;
- e. Attend to the correspondence of the *Board*;
- f. Record, file, and assume all responsibility for custody and preservation of all papers and documents of the *Board*;
- g. Prepare, publish, and distribute reports, ordinances and other material relating to *Board* activities; and,
- h. Perform other duties normally carried out by a *Secretary*.

If the *Secretary* is absent at any meeting, the Chairman shall appoint a temporary *Secretary*.

**7. Regular Meetings**

The *Board* shall hold its regular meeting on the third Monday of each month at 7:00 p.m. in the Plainfield Municipal Building, Plainfield, Indiana. If the third Monday of the month is a holiday as recognized by the Town of Plainfield, or if it is impossible to conduct the meeting at that time or place, the regular monthly meeting shall be scheduled for the third Thursday of the month.

**8. 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.

**9. Executive Session**

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

**10. 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.

**11. Minutes**

The *Board* shall maintain minutes of all meetings, including the record of the vote on all actions taken. The minutes of any *Board* meeting shall be filed with the Department of Planning and Zoning and maintained as public records.

**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 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 Department of Planning and Zoning no later than 3:00 p.m. on the day of the Filing Deadline set forth below:

<u>Type of Petition</u>	<u>Filing Deadline*</u>
Administrative Appeal	30 days
Variance of Use	30 days
Variance of Development Standards	30 days
Special Exception	30 days

\* NOTE: The Filing Deadline shall mean the number of 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 Department of Planning and Zoning. 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 Director**

Each *Petition* filed in proper form pursuant to the guidelines established by the Department of Planning and Zoning shall, within fifteen (15) days of filing, be numbered and docketed by the *Director* 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 Hearing**

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.

#### **3. Investigation of Petitions**

Upon assignment of a number and hearing date, the *Director* shall distribute a copy of the *Petition* and relevant supporting documentation to the members of the *Technical Advisory Committee* for review and comment pursuant to the Rules of Procedure for the *Technical Advisory Committee* for the Town of Plainfield.

#### **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 shall be published by the *Board* in accordance with I.C. 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 *Director* in accordance with the requirements of I.C. 36-7-4-604, shall be mailed to each interested party.

Notice by mailing shall be given by certified mail at least fifteen (15) days prior to the date of the hearing.

##### **3. Posted Notice on Subject Property**

Notice of all *Petitions* for public hearing before the *Board*, on a form prescribed by the *Board*, shall be posted at least fifteen (15) days prior to the date of the hearing in a conspicuous place on the subject property. In the case of a subject property having frontage in excess of five hundred (500) feet, one (1) notice shall be posted for each five hundred (500) feet of frontage and such notices shall be located with approximately equal in spacing along such street frontage. In the case of a subject property having more than one (1) street frontage, posted notice as described herein shall be provided along each street frontage.

##### **4. 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 two (2) ownerships or six-hundred (600) feet, whichever is less, 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. The second ownership shall be deemed to be only the first tier of condominium units located within the common area.

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

- b. In determining the name and address of legal title owners, the records of the Hendricks 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.

#### **5. Affidavit of Notice**

*Petitioner* shall file an Affidavit of Notice, in a form as specified by the Department of Planning and Zoning, indicating compliance with all notice requirements of these Rules, prior to the public hearing. Copies of all "Receipt for Certified Mail" (white slips) and the originals of the "Domestic Return Receipts" (green cards) shall be filed with the Affidavit of Notice.

#### **6. 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 hearing in which the *Petition* is to be heard while the *Board* is considering requests of continuances and prior to the calling of the first *Petition* for public hearing.

## V. Conduct of Public Hearings

### 1. 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. *Staff* of the *Board* shall be given a reasonable time by the *Board* to introduce the matter being considered and for the presentation of evidence, statements regarding the matter being considered.
- b. *Petitioners* shall be allotted a total of fifteen (15) minutes to present evidence, statements and arguments in support of the matter being considered.
- c. 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.
- d. 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.
- e. 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' or the *Staff's* 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 shall make reasonable efforts to allow equal time for *Petitioners* and remonstrators.

### 2. Testimony

Any person giving testimony to the *Board* regarding any pending *Petition* shall be placed under oath and shall first 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*.

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 if re-notification of interested property owners shall be required for any continued hearing.

Continuances granted for periods of time in excess of two months shall require re-notification of interested property owners.

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

The *Board* may elect to not begin the hearing on any matter after 10:00 p.m., local time. If a hearing on a *Petition* has not been called for by the presiding officer prior to 10:00 p.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. Secretary's or Director's Written Report**

Nothing in these Rules of Procedures shall be deemed to prohibit the *Secretary* or the *Director* 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. The written report may also contain an opinion of the proposed pending *Petition* and a report from the Technical Advisory Committee or Design Review Committee. A copy of such statement shall be made available to the *Petitioner* and all remonstrators of record, if any.

**8. 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.

**9. 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 *Staff* and any 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

### Dismissal of Petitions

- a. The *Board* may dismiss a *Petition* for lack of prosecution when the *Petitioner* has failed to appear. 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.

### 2. Withdrawal of Petitions

No *Petition* may be withdrawn by the *Petitioner* after a vote has been ordered by the presiding officer. A *Petition* which has been properly withdrawn by the *Petitioner* may be heard at the next regular meeting of the *Board* upon republication of the legal notice and re-notification of interested property owners.

Any *Petition* which has been withdrawn by the *Petitioner*, and which has not been set for hearing at the next regular meeting as described above, shall not be re-filed for consideration within a period of three (3) months from the date of said withdrawal, 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.

### 3. 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, or special exception by the *Board*; zone map change by the Town Council; or, development plan approval for either development incentives or architectural review by the *Plan Commission*, shall again be included in a *Petition* for either a variance of use, variance of development standards or special exception within six (6) months 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* shall be provided to adjoining property owners at least ten (10) days prior to the date of consideration of the special request by the Town Council, *Plan Commission* or the *Board*.

No variance of use, variance of development standards or special exception *Petition* which has been the subject of a prior denial by the *Board* shall be granted except upon adoption of an additional finding that a substantial change in the particular circumstances which induced the prior denial has occurred. It shall be the responsibility of the *Petitioner* to prepare and submit, at the time of filing, a detailed written finding of fact reflecting the substantial change in circumstances. Any such *Petition* filed without the additional finding shall be deemed incomplete and shall not be docketed for public hearing.

**4. 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*.

**5. Letter of Grant or Denial**

Following final action on a *Petition* by the *Board*, the *Director*, within five (5) *Business Days* after such action, shall notify the *Petitioner* of the final decision by sending the *Petitioner* a letter of grant or denial. If the letter is a letter of grant, the letter shall include all conditions imposed.

**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:

## BZA Rules of Procedure

---

- 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 Plainfield Advisory 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 Department of Planning and Zoning are open to the public for the transaction of business for the entire period of its normal operating hours.
- DIRECTOR** - The Director of the Department of Planning and Zoning of the Town of Plainfield.
- 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 Plainfield Zoning Ordinance, or these Rules of Procedure, in support of a decision made by the *Board*.
- PLAN COMMISSION** - The Town of Plainfield 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 Department of Planning and Zoning for public hearing by 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 filed with the Department of Planning and Zoning for public hearing by the *Board*.
- SECRETARY** - The *Secretary* of the *Board* as duly appointed by the *Board* in accordance with I.C. 36-7-4-913.
- STAFF:** The *Secretary* of the *Board*, the *Director* of the Department of Planning and Zoning, any employee of the *Board*, or any attorney or agent of the *Secretary* of the *Board* or the *Director* of the Planning and Zoning Department.
- TECHNICAL ADVISORY COMMITTEE** - A committee of technical consultants established to provide the *Director* with technical assistance in the review of plans for compliance with the provisions of the Town of Plainfield Zoning Ordinance, the Town of Plainfield Subdivision Control Ordinance and other applicable rules and regulations of federal, state or local agencies.

**X. Adoption**

The foregoing Rules of Procedure of the Town of Plainfield Advisory Board of Zoning Appeals, were adopted by the affirmative vote of the undersigned members of the Board of Zoning Appeals on the 5th day of January, 1998, with an effective date of the 1st day of February, 1998, and amended by Resolution No. 99-001 on the 16th day of December, 1999 and by Resolution No. 1-2006 on the 17<sup>th</sup> day of April 2006. The effective date of these Rules of Procedure, as amended, shall be the 1<sup>st</sup> day of May, 2006.

**Town of Plainfield  
Advisory Board of Zoning Appeals**

\_\_\_\_\_  
Rick Matrana, Chairman

\_\_\_\_\_  
Kevin Cavanaugh

\_\_\_\_\_  
Steve Blevins

\_\_\_\_\_  
Gregory Monnett

\_\_\_\_\_  
Dennis Gibbs

ATTEST: \_\_\_\_\_  
Richard A. Carlucci, Secretary  
Town of Plainfield  
Advisory Board of Zoning Appeals