

10.3 Town of Plainfield Advisory Board of Zoning Appeals

A. Establishment.

The Town of Plainfield Advisory Board of Zoning Appeals is hereby re-established in accordance with Indiana Code 36-7-4-900 et seq.

B. Membership, Qualifications and Terms.

The membership of the *Board of Zoning Appeals*, the qualification of its members and the terms of membership shall be in accordance with Indiana Code 36-7-4-900 et seq.

C. Duties and Powers.

1. The *Board of Zoning Appeals* shall have the duty and power to:
 - a. Hear and determine appeals from and review any order, requirement, decision, or determination made by *Staff*, hearing officer or administrative official under this Ordinance.
 - b. Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the *Plan Commission* in relation to the enforcement of this Ordinance.
 - c. Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the *Plan Commission* in relation to the enforcement of those provisions of this Ordinance requiring the procurement of an *Improvement Location Permit* or a *Certificate of Zoning Compliance*.
 - d. Hear, and approve or deny, all special exceptions in accordance with the provisions of Article 10.3, C., 5., below.
 - e. Hear, and approve or deny, all variances from *Development Standards* of this Ordinance. A variance from *Development Standards* may be approved only upon written determination that:
 - (1) the approval will not be injurious to the public health, safety, morals and general welfare of the community;
 - (2) 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,
 - (3) the strict application of the terms of this Ordinance would result in an unnecessary hardship in the use of the property.
 - f. Hear, and approve or deny, all variances of use from the terms of this Ordinance. A variance of use may be approved only upon written determination that:
 - (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
 - (3) The need for the variance arises from some condition peculiar to the property involved;
 - (4) 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,
 - (5) The approval does not interfere substantially with the comprehensive plan.
2. Conditions.

The *Board of Zoning Appeals* may impose reasonable conditions as a part of its approval of any special exception or variance from the terms of this Ordinance.
3. Commitments.

The *Board of Zoning Appeals* may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel in the case

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of a petition for a special exception, variance from the terms of this Ordinance or a variance of *Development Standards*. All such commitments shall be in recordable form and shall be recorded in the office of the Hendricks County Recorder and shall take effect upon the granting of the special exception or variance. Unless modified by a decision of the *Board of Zoning Appeals*, a recorded commitment shall be binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.

The commitments required by the *Board of Zoning Appeals* shall be in substantially the form set forth in Exhibit "C" of this Ordinance.

A commitment may be modified or terminated only by a decision of the *Board of Zoning Appeals* made at a public hearing after notice.

The modification or termination of commitments shall be in substantially the form set forth in Exhibit "D" of this Ordinance.

By permitting or requiring commitments, the *Board of Zoning Appeals* does not obligate itself to approve or deny any request. This Section does not affect the validity of any covenant, easement, equitable servitude, or other land use restriction created in accordance with law.

4. Rules

The *Board of Zoning Appeals* shall adopt rules concerning: the filing of appeals; applications for special exceptions and variances; the giving of notice; the determination of interested parties to receive notice; the conduct of hearings; the determination between use variances and *Development Standards* variances; the creation, form, recording, modification, enforcement and termination of commitments; and, the designation of which specially affected persons and classes of specially affected persons are entitled to enforce commitments.

5. Special Exceptions

a. Statement of Purpose.

Certain land uses have characteristics and locational impacts which, if inappropriately located, may have a detrimental effect upon other land uses within the Town. It is therefore recognized that such land uses should be regulated in order to preserve property values, as well as promote the public health, safety, comfort, community moral standards, convenience and general welfare of the Town of Plainfield.

b. Uses Permitted by Special Exception.

Only those uses identified in each individual zoning *District* as uses permitted by special exception shall be permitted by special exception in each zoning *District*.

c. Grant of a Special Exception.

The *Board of Zoning Appeals* is hereby authorized to grant Special Exceptions to permit uses designated as uses permitted by special exception in each zoning *District* subject to the following requirements:

(1) Form of Filing - A petition for Special Exception shall be filed with the *Board of Zoning Appeals* in accordance with the requirements for the filing of a variance, except as such requirements may be modified in this Article. Such petition shall include proposed detailed Findings of Fact pursuant to Article 10.3, C., 5., c., (3), below, in support of the determinations required to be made by the *Board of Zoning Appeals*.

(2) Waiver of Development Standards - A petition for Special Exception may contain a request to waive *Development Standards* of the zoning *District* determined to be inappropriate for the individual Special Exception Use. The *Board of Zoning Appeals* may approve such a waiver only if such waiver is specifically requested in said petition and specifically approved by the *Board of Zoning Appeals*. Any *Development Standards* which are waived in this manner shall require additional

- findings by the *Board of Zoning Appeals* as specified in Article 10.3, C., 1., e., above, for the grant of a variance of *Development Standards*.
- (3) Findings of Fact - The *Board of Zoning Appeals* may grant a Special Exception only upon making a written determination and adopting appropriate Findings of Fact, based upon the evidence presented at a public hearing, that:
- (a) The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;
 - (b) The proposed use will not injure or adversely affect the adjacent area or property values therein; and,
 - (c) The proposed use will be consistent with the character of the *District*, land uses authorized therein and the Town of Plainfield Comprehensive Plan.
- d. Conditions for the Grant of a Special Exception.
The grant of a Special Exception shall be subject to the following conditions:
- (1) The proposed use shall conform to all *Development Standards* of the applicable zoning *District* (unless a waiver of such *Development Standards* is requested as part of the Special Exception petition and approved by the *Board of Zoning Appeals* as set forth above).
 - (2) The proposed use shall conform to all conditions attached to the grant of the Special Exception by the *Board of Zoning Appeals*. Such conditions may include any reasonable site, development, operational standards, performance standards, requirements, and restrictions deemed necessary to ensure compliance with the Findings of Fact determinations. The grant of a Special Exception may be for a limited period of time, as specified by the *Board of Zoning Appeals*.
- e. Basis of Board of Zoning Appeals Review.
In reviewing a Special Exception petition and making a determination as to compliance with the required findings of fact, the *Board of Zoning Appeals* shall give consideration to the particular needs and circumstances of each Special Exception application and shall examine the following items as they relate to the proposed use:
- (1) Topography and other natural site features;
 - (2) Zoning of the site and surrounding properties;
 - (3) Driveway locations and street access;
 - (4) On-site and off-site accommodations for vehicular and pedestrian circulation patterns;
 - (5) Amount, location and design of off-street parking areas and off-street loading areas;
 - (6) Building character, including height, intensity, materials and architecture;
 - (7) Landscaping, screening and buffering of adjacent properties;
 - (8) Compatibility of the proposed use, site design and architecture with the *District* in which the use is proposed to be located;
 - (9) Extent to which the proposed use, site design and architecture comply with the regulations and *Development Standards* that would be applicable if the site were zoned to a Commercial *District* or Industrial *District* of this Ordinance which would permit the proposed *use* as a *primary use*;
 - (10) Open space and other site amenities; and,
 - (11) Availability and adequacy of streets, sanitary facilities, potable water, storm water management system and other utilities.
- f. Amendments to Approved Special Exceptions.
The *Director* is hereby authorized to approve minor amendments or *Accessory Buildings, Structures or Use* additions to sites which are the subject of a Special Exception grant through the *Improvement Location Permit* process and without a public hearing if, in the determination of the *Director*, the requested minor amendments or *Accessory Buildings, Structures or Use* additions:
- (1) do not constitute an expansion of the *Primary Use* authorized by the Special Exception grant;

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- (2) do not adversely impact or alter the purpose or intent of the *Special Exception Use* authorized by the *Board of Zoning Appeals*;
- (3) do not adversely impact the Findings of Fact made by the *Board of Zoning Appeals*;
- (4) do not include a substantial increase in intensity of any *Special Exception Use*;
- (5) utilize site design and architectural features which are consistent and compatible with the existing *Improvements* authorized for the *Special Exception Use*; and,
- (6) comply with the *Development Standards* of the *District* in which the *Special Exception Use* is located or with the terms and conditions of any waiver authorized by Article 10.3, C., 5., c., (2) and granted by the *Board of Zoning Appeals*.

If the Director determines that a request for minor amendments or *Accessory Buildings, Structures or Use* additions to a *Special Exception Use* does not comply with the requirements set forth above, the *Director* shall deny the request. In the event of a denial by the *Director*, the petitioner shall have the right to appeal said denial to the *Board of Zoning Appeals* under Article 10.3, C., 1., a., above, or file a petition for a *Special Exception* under Article 10.3, C., 1., d., above.

Minor amendments or *Accessory Buildings, Structures or Use* additions to a *Special Exception Use* shall be reported, in writing, to the *Board of Zoning Appeals* at the next regular meeting of the *Board of Zoning Appeals*.

6. Other Powers

The *Board of Zoning Appeals* shall exercise all powers conferred on it by State law, local ordinance, or rule in the manner so prescribed. This Article shall not be construed as a limitation on such powers.