

# **FOUNTAIN COUNTY BOARD OF ZONING APPEALS**

## **RULES OF PROCEDURE**

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Revised:

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## ARTICLE 1- BASIC PROVISIONS

- 1.01- Authority:** The Fountain County Board of Zoning Appeals (“the Board”) exists under the authority of IC 36-7-4-901 and Article 4 of the Zoning Ordinance of Fountain County (the “Ordinance”).
- 1.02- Duties:** The duties of the Board shall be those set forth in IC 36-7-4-900 et seq., and other such responsibilities as required by statute or the Ordinance.
- 1.03- Composition:** See 4.01 of the Ordinance.
- 1.04- Eligibility:** See 4.02 of the Ordinance.
- 1.05- Terms:** See 4.03 of the Ordinance.
- 1.06- Vacancies:** See 4.04 of the Ordinance.
- 1.07- Absences:** See 4.05 of the Ordinance.
- 1.08- Quorum:** See 4.06 of the Ordinance.
- 1.09- Official Action:** See 4.07 of the Ordinance.
- 1.10- Officers:** See 4.08 of the Ordinance.
- 1.11- Docketing:** Matters before the Board shall be docketed as follows:

Each case will be identified first with the calendar year first, and then by the type of matter before the Board:

- AP- Appeal
- VU- Variance of Use
- VD- Variance of Development Standard
- SE- Special Exception; or
- MI- Miscellaneous

and then finally, the case will be serially numbered, beginning anew each year. For example, 2025-AP-001.

**1.12- Impartiality and Conflicts of Interest:** The Board will decide matters fairly and impartially. A member may not participate in a hearing or decision if they member has: 1) a direct or indirect financial interest in the outcome of the case; and 2) a familial relationship with a party to the appeal.

**1.13- Ex parte communication:** No person, firm, corporation, other entity, including but not limited to the parties on appeal, shall not contact any Board member orally or in writing, in advance of the public hearing, on a matter pending before the Board, except that

the Bord understands that such communications may be permitted when a Board member also serves in a staff role for the county, so long as such communication is solely related to that role.

## **ARTICLE 2- MEETINGS AND PUBLIC HEARINGS**

**2.01- Regular Meetings:** Regular meetings shall be held on the third Tuesday of each month at 6:00 p.m. or as agreed upon by the majority of the Board. The Board may set an annual schedule of meetings for the calendar year in advance. The location of the meetings shall be at the Fountain County Courthouse or as agreed by the majority of the Board. Meeting may be rescheduled or cancelled by the chair or staff when there is no business to consider, no appeals pending, or if no quorum will be present. Notice will be given to the Board as soon as reasonably practicable. The Board will provide public notice as required by IC 5-14-1.5.

**2.02- Special Meetings:** Special meetings may be held upon call of the Chairman, written request by two members, or as determined at a regular meeting. All members shall be notified of the time and place of a special meeting. Public notice of special meetings shall be published in accordance with IC 5-14-1.5.

**2.03- Public Hearings:** The Board shall hold public hearings as required by state statute or the Ordinance. The Board may hold additional hearings at such times and places upon such notice as it considers necessary.

**2.04- Minutes and Records:** The Secretary of the Board shall prepare and maintain minutes of its meetings. The minutes shall include the vote of each member on each question or issue presented or indicate that the member is absent, abstaining or not voting because of disqualification. The minutes and all records of the Board shall be filed in the office of the Fountain County Advisory Plan Commission and are public records as defined by IC 5-14-3. The minutes shall be presented to the Board for approval at the next regular meeting. When approved, the minutes shall be signed by the chairman and attested to by the secretary.

**2:05- Setting matters for hearing:** Once a case receives a docket number, it shall be scheduled for hearing as soon as practicable, allowing sufficient time to obtain the record and give proper notice.

## ARTICLE 3- APPEALS

**3.01- Timeframe for Filing an Appeal:** Any appeal of a permit, order, requirement, decision, or determination subject to BZA review (“appealable action”) must be filed within 30 days of the date the permit, order, requirement, decision, or determination is filed in the public record and publicly noticed.

A permit, order, requirement, decision or determination is not considered final, and the 30-day appeal period does not begin until the permit, order, requirement, decision or determination has been:

1. Filed with the county planning/zoning office in the ordinary course of record-keeping, and
2. Publicly noticed in a manner reasonably calculated to inform affected parties, consistent with applicable law and BZA rules.

If no such filing or notice exists, the Board may consider appeals made in good faith that are filed within 30 days of the appellant discovering the permit, order, requirement, decision or determination.

**3.02- Guidelines for Determining whether an Appealable Action Has Occurred:**

1. When an appeal is filed and there is ambiguity or a dispute about whether appealable action has occurred, the Board of Zoning Appeals shall first determine whether a permit, order, requirement, decision, or determination exists.
2. The zoning administrator, or any other issuing authority, must provide documentary evidence of the permit, order, requirement, decision, or determination, including the date of filing in the public record.
3. If no such documentation is produced, the Board may determine that no valid permit, order, requirement, decision, or determination exists, and therefore the time period for filing an appeal has not begun.
4. Appeals filed in good faith, based on reasonable belief that a appealable action has occurred (including but not limited to commencement of construction, official correspondence, or public statements), may be accepted by the Board until the threshold question of whether a valid permit, order, requirement, decision, or determination exists is resolved.

**3.03- Interested Parties:** An “interested party” shall include any property owner and/or resident whose land is located within 600 feet of the boundary line of any parcel included in the permit area subject to the appeal, as well as any additional individual or entities as determined by the Board in accordance with Indiana law.

**3.04- The Record on Appeal:** The Zoning Administrator shall, upon request of the Board, submit to it the complete record, including but not limited to, plans and drawings, leading to the decision appealed from.

**3.05- Hearing Procedures:** All appeal hearings should be conducted as follows:

- a- Anyone wishing to submit comments in writing may do so by delivering those comments to the Zoning Administrator by 4:00 p.m. at least 24 hours prior to the hearing (excluding weekends and holidays). Those comments will be distributed to the Board and will become part of the official record in the case.
  - b- Each person that wishes to speak or present at the hearing will sign in upon arrival;
  - c- The Chair will start the public hearing and note the time for the record;
  - d- The Chair will ask staff to frame the request and to present staff opinion. The Board may ask the staff questions.
  - e- All speakers/presenters will take an oath administered by the chair to swear or affirm under penalties of perjury that they will testify truthfully.
  - f- Appellant (the party who initiated the appeal), or Appellant's agent/attorney will present its request and facts related to the case. The presentation is limited to fifteen (15) minutes. The Board may then ask questions, with no time limit on the Board's questions.
  - g- Public comments against the Appellant/in remonstrance or in support of Appellant shall be limited to a cumulative total of thirty (30) minutes per side. Within that cumulative total, an individual may speak for up to three (3) minutes and a group or committee may speak for up to five (5) minutes per group/committee. Speakers should coordinate to present new points and not merely repeat prior speakers. The Chair may limit redundant, immaterial and irrelevant testimony. The Board may ask questions of any speaker, with no time limit on the Board's questions.
- Remonstrators shall speak first and then those in support of the Appellant.
- h- Appellant will be given up to five (5) minutes to present a rebuttal presentation to any public remonstrance. If no remonstrance is presented, then no additional time will be given to Appellant. The Board may ask questions of the Appellant, with no time limit on the Board's questions.
  - i. The Board may, at its sole discretion, extend any of the time limits noted above.
  - j- The Board may ask questions of staff, the Appellant, legal counsel, other Board members or any other speaker and ask for clarification from any speaker.
  - k. The Board may discuss the matter and then following conclusion of any discussion and questioning, the Chair shall close the meeting and note the time for the record. No further testimony will be accepted after the hearing is closed.



1. The Board will then discuss the appropriate findings of fact and render its decision for the record.

m. Exhibits tendered to the Board will be made part of the record. The Board may, at its discretion, characterize exhibits as substantive (those containing evidence to be considered by the Board) and demonstrative (a summary of evidence to be considered by the Board). All exhibits must be tendered to the Board by 4:00 p.m. at least 24 hours prior to hearing (excluding weekends and holidays.) The Chair will decide whether evidence is admissible and can be overruled by a majority of the Board present at the hearing.

### **3.06- Conduct:**

a- The Appellant, any remonstrators or supporters may appear in person, by agent or attorney and present any supporting witnesses, evidence, statements and arguments in favor of the request.

b- The Board members shall be provided adequate opportunity to examine witnesses and question any evidence, statements and arguments.

c- All speakers must address their comments to the Board through its Chair.

d- The Chair shall have the authority to conduct the meeting in a way that is harmonious and fair. Every person that appears shall be courteous and follow the direction of the Chair.

### **3.07- Continuances/ Withdrawals:**

a. Continuances: The Board may continue any matter from one meeting to another. No additional notice shall be required for the continued consideration of any docketed items except what is required by state statute.

The Appellant is allowed one continuance as of right without penalty, explanation or additional fee.

An appeal may be continued for good cause as determined by the majority of the Board. Appellant must provide at least five (5) days' notice of an as of right continuance. For cause continuances must be noticed as soon as practicable.

b. Withdrawals: Any Appellant may withdraw its appeal prior to the time the Chair orders that a motion may be made on the appeal.

**3.08- Final Disposition:** The final disposition of any appeal before the Board shall be in the form of an order either: 1) reversing; 2) modifying; or 3) affirming the appealed order, requirement, decision, or determination.

Within five (5) days after making the order, the Board shall file in the office of the Board a copy of its decision in accord with IC 36-7-4-919.