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## BOARD OF ZONING APPEALS RULES OF PROCEDURE

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The Board of Zoning Appeals of Evansville-Vanderburgh County ("Board") is established by the Evansville Zoning Code and the Vanderburgh County Zoning Code (collectively, the "Zoning Code"). The appointment and terms of members shall be in accordance with I.C. 36-7-4-900 et. seq.

The following rules are adopted in accordance with I.C. 36-7-4-916. If anything in these rules conflicts with the Zoning Code, the latter shall prevail.

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### ARTICLE I.

#### Meetings

1. Regular meetings of the Board shall be held on the 3rd Thursday of each month at 3:00 p.m. in the Civic Center, Room 301 unless another date, time or place is published.
2. 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.
3. A majority of members of the Board shall constitute a quorum. No action, however, is official unless authorized by a majority of members of the Board at a regular or properly called special meeting.
4. All meetings shall be open to the public.
5. The Board shall keep minutes of its proceedings showing the vote of each member on every question, or if absent or failing to vote, so indicating. The Board shall keep records of all other official action, and records shall be filed in the office of the Board and shall be a public record.

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### ARTICLE II.

#### Ethics

1. No member of the Board shall participate in the hearing or decision upon any zoning matter in which he is directly or indirectly interested in a financial sense. In the event of such disqualification, such fact shall be entered on the records.
2. A person may not communicate with any member of the Board before the hearing with the intent to influence the member's action on a matter pending before the Board. Not less than five days before the hearing, however, the staff of the Evansville-Vanderburgh County Area Plan Commission ("Area Plan Commission") may file with the Board a written statement setting forth any facts or opinions relating to the matter.

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### ARTICLE III.

#### Officers and Employees

1. The Board shall, at its first regular meeting in each year, elect from its members a Chairman and a Vice Chairman. The Vice Chairman shall serve in the absence or disability of the Chairman. In the absence or disability of the Chairman and Vice Chairman at any duly convened meeting, a majority of the remaining members present shall designate a member to serve as Chairman at that meeting.
2. The Board may appoint and prescribe the duties of a Secretary or such employees as are necessary for the discharge of its duties.

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## ARTICLE IV.

### **Powers and Duties**

The Board shall have the following powers and it shall be its duty to:

1. Hear and determine appeals from and review:
  - A. Any order, requirement, decision or determination made by an administrative official or staff member under the Zoning Code.
  - B. Any order, requirement, decision or determination made by an administrative board or other body except the Area Plan Commission in relation to the Zoning Code.
  - C. Any order, requirement, decision or determination made by an administrative board or other body except the Area Plan Commission in relation to the enforcement or any ordinance requiring the procurement of an improvement location permit or occupancy permit.
2. Hear and decide all special uses that are filed for public hearing.
3. Hear and decide all variances to the terms of the Zoning Code upon which the Board is required to act.

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## ARTICLE V.

### **Docket**

1. Each case to be publicly heard before the Board shall be filed in proper form with the required data and within the time as prescribed by the instructions furnished to the applicant. The case will then be serially numbered and placed on the docket of the Board. Docket numbers shall include the year and shall begin anew on January 1 of each year.
2. When a case receives a docket number, it shall be placed on the agenda for hearing.

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## ARTICLE VI.

### **Notice of Public Hearing**

1. In accordance with I.C. 36-7-4-919 and 36-7-4-920 and the Zoning Code, public hearings shall be held on all administrative appeals and applications for special uses and variances.
2. A legal notice of public hearing shall be prepared by the Board and advertised in a newspaper of general circulation in the County not less than ten (10) days prior to the date of the hearing. The Appellant or Petitioner shall assume the cost of said notice.
3. The Appellant or Petitioner shall also serve notice to owners of property abutting the affected area by certified mail, return receipt requested, not less than twelve (12) days prior to the date of the hearing advising the location and nature of the subject appealed or petitioned, and the date, place and time of the public hearing.
4. The Appellant or Petitioner shall then provide the Board with a complete list of the above-mentioned owners, together with their last known address, proof of service and a copy of the letter of notification.

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## ARTICLE VII.

### Conduct of Hearings

#### 1. General

- A. At a public hearing before the Board, the Appellant or Petitioner shall present all necessary relevant information in support of the petition, and the Appellant or Petitioner shall have the burden of proof.
- B. Comments from the staff of the Area Plan Commission and any governmental organization or agency may then follow.
- C. Comments from those in opposition to the petition shall then be heard.
- D. The Appellant or Petitioner shall receive reasonable time for rebuttal.
- E. To maintain orderly procedure, a person making a presentation shall proceed with the presentation without interruption by another party to the proceeding; however, comments and questions from the Board may be interjected at any time during any presentation for clarification of the subject matter.
- F. Upon completion of testimony at any hearing provided by these rules, the Board shall either rule on the petition or take the matter under advisement and continue the matter to a subsequent date for ruling.
- G. Every person appearing before the Board shall abide by the orders and directions of the Chairman. The Chairman shall have the discretion to impose time limits on any presentation.
- H. Discourtesy, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Board and shall be dealt with as the Board directs.

#### 2. Continuance

- A. The Board may, at its discretion, continue the hearing when, in its judgment, there has not been provided sufficient evidence on which to make a determination.
- B. The Board also may continue the hearing when the Petitioner proposes a change in the relief requested in the petition, which change, if granted, would constitute or allow a different special use or a greater variance or relaxation of the requirements of the Zoning Code.
- C. If the hearing is continued or postponed under paragraph B of this subsection, the Petitioner shall readvertise and serve new notices on abutting property owners in the manner provided in Article VI of these Rules.
- D. Readvertisement cost shall be paid by the Petitioner.

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## ARTICLE VIII.

### Variance

1. A person requesting a variance must submit an application to the Board of Zoning Appeals at the Area Plan Commission office. The application must be filed within such time and in such form as prescribed by the office of the Area Plan Commission in the document Instructions for Variance Application. If site review is required for permitting purposes for the proposed property use or development, no variance application may be filed without first applying for site review approval and completing the site review meeting.
2. After a public hearing on the variance, the Board shall act on the petition.
3. No variance may be granted except on a finding of all the following factors:
  - 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 strict application of the terms of the Zoning Code will result in practical difficulties in the use of the property.
  - D. The variance is not a variance of the use of the property.
  - E. The Petitioner's property is not located in a Planned Unit Development.
  - F. The need for the variance is not created by the Petitioner and arises from some condition peculiar to the property involved.
4. The Board may not grant a variance from the use district or classification. The granting of a variance is by resolution of the Board.

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## ARTICLE IX.

### Appeals

1. An appeal filed with the Board must specify the grounds of the appeal and must be filed within such time and in such form as prescribed by the office of the Area Plan Commission in the document Instructions for Filing an Appeal.
2. The administrative official, administrative board, or other body from whom the appeal is taken shall, on the request of the Board, transmit to it all documents, plans, and papers constituting the record of the action from which an appeal was taken.
3. Upon appeal, after a public hearing, the Board may reverse, affirm, or modify the order, requirement, decision or determination appealed. For this purpose, the Board has all the powers of the official, officer, board or body from which the appeal was taken.
4. Within five working days after its decision is made, the Board shall file in the office of the Board a copy of its decision.

## ARTICLE X.

### Special Uses

1. Certain uses are necessary to the life and economic health of the community, but have characteristics of operation that do not readily permit classification in the usual residential, commercial or industrial districts.
  - A. Because of the various types of uses and locations requiring this special consideration, the specific conditions under which each use may be permitted must be considered.
  - B. These uses are specifically listed in Section 153.134 of the Zoning Code.
  - C. Conditions for the approval of a special use are enumerated in Section 153.132 of the Zoning Code.
2. Special uses are secondary classifications.
  - A. If a special use is approved by the Board, the special use designation shall be placed on the zoning map in addition to its primary zoning classification.
3. Filing
  - A. A person desiring a special use classification must submit an application to the Board at the Area Plan Commission office. The application must be filed within such time and in such form as prescribed by the office of the Area Plan Commission in the document Instructions for Filing an Application for a Special Use.
4. After a public hearing, the Board shall make its determination for approval, denial or modification of the special use classification based on the following criteria:
  - A. Whether the specific site is an appropriate location for the use.
  - B. Whether the use as developed will adversely affect the surrounding area.
  - C. Whether there will be a nuisance or serious hazard to vehicles, pedestrians or residents.
  - D. Whether adequate and appropriate facilities will be provided for proper operation of the use.
  - E. Whether the use is in harmony with the Evansville and Vanderburgh County Comprehensive Plan.
  - F. Whether the use is essential or desirable to the public convenience and welfare.
5. The Board's approval or modification of a special use classification may include whatever reasonable conditions, limitations or temporary uses necessary for the protection of the public interest, including but not limited to the following:
  - A. Greater front, side and rear yards than the minimum for the area.
  - B. More off-street parking and screening.
  - C. Modification of exterior design or materials.
  - D. Limitations on the lot coverage and occupancy of the building or structure.
  - E. Limitations on signs and sign coverage.
  - F. Time limitations.
6. To protect the public interest and to ensure compliance with requirements to be included in the site plan, the Board may require whatever evidence and guarantees are necessary to assure compliance with conditions, limitations and temporary uses.

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## ARTICLE XI.

### **Time Limitation**

1. The denial of a petition for a variance, special use or an appeal by the Board or the withdrawal of such a petition by the Petitioner shall prohibit the Board from hearing a petition for a variance, special use, or an appeal for the subject property or a part thereof for 12 months from the date of denial or withdrawal.
2. An exception may be made to Article XI (1) above upon a unanimous vote of all members of the Board present and voting, and sufficient to constitute a quorum, at the time the matter is brought to be heard.

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## ARTICLE XII.

### **Final Disposition of Cases**

1. All decisions of the Board on matters heard in public hearing shall be made by recorded vote. The vote of each member shall be a matter of permanent record.
2. The Board shall in all cases heard by it, make written findings of fact which, when approved by the Board, shall be filed in the offices of the Board to be made available for public inspection.
3. Every decision of the Board shall be subject to exclusive review by certiorari under I.C. 36-7-4-1002 et seq.

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## ARTICLE XIII.

### **Amendments**

Amendments to these Rules of Procedure may be made by the Board at any regular meeting upon the affirmative vote of a majority of the members. The suspension of any Rule of Procedure may be ordered at any meeting by unanimous vote of those present.