

# ***RULES AND PROCEDURES BOARD OF ZONING APPEALS TOWN OF PORTER, INDIANA***

## **Article I. Authority and Duties**

Section 1. The Town of Porter Board of Zoning Appeals (hereinafter called "Board") exists as a Board of Zoning Appeals under the authority of IC 36-7-4-901 and Section 2 -126 of the Town Code of the Town of Porter, and any amendments thereto. These rules are adopted in accordance with the requirements of IC 36-7-4-916.

Section 2. The duties of the Board shall be those set forth in IC 36-7-4-900 et seq., and such other responsibilities as may be required by state statute or Town of Porter ordinance.

## **Article II. Officers, Members and Employees**

Section 1. The Board shall consist of five voting members, appointed in accordance with IC 36-7-4-902.

Section 2. At its first meeting in each calendar year, the Board shall elect from its voting membership a President and a Vice President. Each shall serve during the period of their membership on the Board for the balance of the calendar year.

Section 3. The Vice President shall have authority to act as President of the Board during the absence or disability of the President.

Section 4. Upon resignation, death or removal of the President or Vice President, the Board shall elect a successor at its next meeting.

Section 5. The Board shall appoint and fix the duties of a secretary, who is not required to be a member of the Board. The secretary shall be charged with such duties as required under state statutes, town ordinance, and these rules.

Section 6. If a vacancy occurs among the members of the Board, the appointing authority shall appoint a member for the unexpired term of the vacating member. The appointing authority may remove a member from the Board for cause under IC 36-7-4-906(f).

## **Article III. Meetings**

Section 1. The regular meetings of the Board shall be the third Wednesday of each month at 6:30 p.m. The location of the meeting shall be in the Town Hall, 303 Franklin Street, Porter, Indiana. If the date of a regular meeting falls on a legal holiday, or if it is impossible to conduct the meeting at that time or place, the President may set an alternate date, time or place for the regular meeting, or may cancel the meeting at a prior meeting with the unanimous consent of the members of the Board who are present, provided that the notice requirements of IC 5.14.-1.5 are complied with.

Section 2. Each case to be publicly heard before the Porter Board of Zoning Appeals shall be filed in proper form; shall be numbered sequentially, and placed on the docket of the Board. The docket numbers shall begin on January 1st of each year. The Clerk-Treasurer shall receive the application and fee, and assign a docket number. The identification of docket numbers shall be as follows: 01-01, shall represent the first petition heard in 2001. The President of the Board of

Zoning Appeals shall review the docket prior to setting an agenda.

Section 3. The President shall determine the agenda for regular meetings. The agenda shall list all items to be considered by the Board at the meeting. The items shall be listed on the agenda in the order in which the petition or other document was filed with the Town Clerk. The Board shall consider no item unless it appears on the agenda. Without exception, cases on a regular meeting agenda must have met all time, documentation and docket requirements. Any petitioner may withdraw any petition or document prior to the meeting at which it was to be considered.

At the direction of the President, the agenda shall be sent by either email or first-class mail to all members of the Board and its attorney, and shall be available for public inspection at the Office of the Town Clerk no less than three (3) business days prior to the scheduled meeting. The President may accept changes to the agenda not later than three (3) calendar days prior to the meeting.

Section 4. The President or two (2) members of the Board upon written request to the secretary may call special meetings. The secretary shall send to all members and its attorney, at least three (3) calendar days before the special meeting, a written notice fixing the time, place, and purpose of the meeting. Written notice is not required if:

- (a) the date, time, place, and purpose of the special meeting are fixed at a regular meeting; and
- (b) all members of the Board are present at that regular meeting.

Section 5. The order of business at regular meetings shall be:

- (a) Call to Order
- (b) Pledge of Allegiance
- (c) Roll Call
- (d) Determination of Quorum
- (e) Consideration of Minutes of Previous Meeting
- (f) Audience Participation
- (g) Old Business and Matters Tabled
- (h) New Business
- (i) Findings of Fact
- (j) Other Business
- (k) Adjournment

Section 6. The President of the Board shall preside over meetings, decide questions of order, and preserve decorum in the meeting room. The Board shall use Robert's Rules of Order as a reference only in its' methods of conducting a meeting. The President shall pronounce the decisions of the Board for purposes of recording in the minutes.

Section 7. No one who is not a member of the Board shall be permitted to address the Board except by request and consent of the President.

## **Article IV. Official Action**

Section 1. A majority of the members of the Board who are qualified to vote shall constitute a quorum. Action of the Board shall not be official unless it is authorized at a regular or special meeting by a majority of the entire membership of the Board.

Section 2. Decisions of the Board shall be by roll call vote of the members. All members present shall vote on every question unless they are permitted to abstain by the presiding officer; or in the case of a matter requiring official action of the Board of Zoning Appeals, have disqualified themselves because of a conflict of interest as defined under Section 3 of the Article.

Section 3. No member of the Board shall participate in a hearing, discussion or decision of the

Board upon any matter requiring official action of the Board of Zoning Appeals, in which the member has a direct or indirect financial interest.

Section 4. In the event a majority vote of the Board cannot be achieved due to absences, permitted abstentions, or disqualifications, the matter shall be rescheduled for the next regular meeting.

## **Article V. Minutes and Records**

Section 1. 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 presented or indicate that the member is absent, abstaining with permission, or not voting because of a disqualification.

Section 2. The minutes of Board meetings and all records shall be filed in the office of the Town Clerk and are public records, as defined by IC 5-14-3.

Section 3. The minutes shall be available in draft form no later than fifteen (15) days after the regular Board meeting.

Section 4. The draft minutes shall be presented to the Board for approval at the next succeeding regular meeting. When approved, the minutes shall be signed by the President and attested by the secretary.

Section 5. Recommendations from the Board to the Town Council, which require Town Council action, shall be requested to be placed on the Council agenda for the third regular meeting after the Board meeting. The Chairman of the BZA or his designee shall provide all relevant information concerning the recommendation, to the Town Council members along with a copy of the approved and signed final minutes and approved and signed Findings of Fact.

## **Article VI. Filing of Petitions**

Section 1. A petitioner who seeks to obtain a developmental standards variance, use variance, or other matter under the jurisdiction of the Board shall file a petition with the Office of the Clerk-Treasurer on behalf of the Board. Ten (10) copies of the petition, application, and associated information must be filed at least ten (10) calendar days prior to the next regular Board meeting, at which it is to be considered.

Section 2. All petitions not initiated by the Board itself shall be accompanied by a non-refundable filing fee in an amount established by the following schedule:

<u>Use Variance</u>	<u>\$250</u>
<u>Developmental Standards Variance</u>	<u>\$100</u>
<u>Special Meeting</u>	<u>\$500 per petition</u>
<u>Public Hearing Sign</u>	<u>\$30 (\$20 refundable deposit)</u>

Section 3. If the petitioner is not the owner of the property, which is the subject of the petition, he or she must submit a signed affidavit from said property owner authorizing the petitioner to file the petition on their behalf.

Section 4. The Board may require additional information, data, statistics or plats beyond those established by statute or ordinance, which are deemed necessary for intelligent determination by the Board.

Section 5. If the Board finds that the petition is in good order with sufficient information, it shall set a time for a public hearing on the matter and shall provide public notice in accordance with IC 5.3.1.

Section 6. The petitioner shall prepare the legal advertisement of the public hearing for the approval of the Board and shall bear the expense of the advertising costs.

Section 7. The petitioner shall notify by certified letter all persons deemed by state statute and the Board to be interested parties, pursuant to Article VII. Prior to the commencement of the public hearing, the petitioner shall provide proof that he or she has complied with this requirement.

## **Article VII. Notice Requirements**

Section 1. A notice of a public hearing required by state statute or town ordinance shall contain as a minimum the following information:

- (a) Docket number and the substance of the matter to be heard.
- (b) General location by address or other identifiable geographic characteristic of the property.
- (c) Name of the person, agency or entity initiating the matter to be heard.
- (d) Time, date, and place of the hearing.
- (e) Statement that the petition may be examined at the Office of the Town Clerk.
- (f) Statement that any person may offer verbal comments at the hearing or may file written comments prior to or at the hearing.
- (g) Any other information, which may be required by law to be contained in such notice.

Section 2. For the purposes of a developmental standards variance or use variance, interested parties are determined to be all persons with a legal interest in the property and all owners of record of real property contiguous to the property which is the subject of the petition, including the property that is across the street or alley from it. Such parties are to be given written notice by certified mail, mailed at least ten (10) days prior to the public hearing.

Section 3. The Office of the Porter County Assessor shall be the sole source for the names of property owners of record to be notified. The petitioner shall ascertain the names as they appear on the real estate tax assessment rolls. A copy of this list of names and certified mail receipts (white tickets) shall be provided to the Town Attorney's office at least ten (10) days prior to the date of the public hearing.

Section 4. Certified mail receipts (white tickets), or signatures of all interested parties on a form approved by the Board shall be considered evidence that notice has been given. Personal appearance at the hearing also shall constitute evidence of notice.

Section 5. In addition to the notification requirements above, the petitioner is required to post a sign, supplied by the town, which announces the date, time, place, and purpose of a public hearing. Said sign must be continuously posted for at least ten (10) days immediately prior to the public hearing, in a prominent place on the property, legible from the street fronting said property.

Section 6. An affidavit, supplied by the town, must be submitted as part of the application process, which affirms that the petitioner has complied with the notification requirements stipulated in Sections 2 and 5.

## **Article VIII. Conduct of Public Hearings**

Section 1. The Board shall hold such public hearings as are required by state statute and Town of Porter ordinances. The Board may hold additional hearings at such times and places upon such notice as it considers necessary.

Section 2. The Town Attorney shall determine if the petitioner has complied with the proper notification requirements, and the Town Planner shall determine if proper petition filing has occurred including that all fees have been paid, before the commencement of the public hearing on a petition.

Section 3. At a public hearing before the Board, the petitioner, property owner, or agent for the petitioner or property owner shall first present the facts and arguments in support of the case. Comments and questions from the Board members may be interjected during the presentation for clarification of the subject matter. The President shall then call for proponents of the petition followed by opponents to the petition. Each of those persons who wish to comment on the petition must address the President and be recognized before speaking. Each person must state his or her name and address. The President may limit a speaker's time to assure an opportunity for all speakers to comment.

Section 4. The President shall close the public hearing after the Board has adequately heard from all interested persons. The President shall then read all written comments on the petition received by the Board.

Section 5. The petitioner may summarize arguments and the Board may question further. The Board shall then consider the petition.

Section 6. In the presentation of a case, the burden shall be upon the petitioner to supply all information, including charts, diagrams and other exhibits necessary for a clear understanding of the problem. The Board may continue the hearing when in its judgment the petitioner has not provided sufficient evidence on which to make a determination.

Section 7. Every person appearing before the Board shall abide by the order and directions of the President. Discourteous, 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.

Section 8. The Board, at its discretion, may continue or postpone the hearings of any case on an affirmative vote of a majority of the Board.

## **Article IX. Final Disposition of Cases**

Section 1. The final disposition of any case shall be in the form of a judgment setting forth findings and determinations of the Board, together with any modification, specification or limitation, which it makes.

Section 2. The Board may dismiss a case for lack of prosecution or lack of jurisdiction. When a petitioner has failed to appear at two consecutive public meetings, the petition may be dismissed for lack of prosecution.

Section 3. Following any public hearing, a petitioner may not withdraw the matter to come before the public hearing without the approval of the Board.

Section 4. A case that is withdrawn by the petitioner shall not be again placed on the docket for consideration within a period of six (6) months after date of withdrawal.

**Article X. Reconsideration**

The Board may not further consider for one year from the date of rejection, the same petition which has been previously rejected by the Board.

**Article XI. Staff Review**

Upon petition for a use variance, the President, shall cause a review by the Technical Advisory Committee. The Technical Advisory Committee determination shall be reported to the Board prior to the public hearing.

**Article XII. Standing, Formal, and Ad Hoc Committees**

Section 1. The President, with the approval of the Board, may establish such committees as deemed to be necessary and desirable. The purposes and terms of such committees shall be specified at the time of their establishment.

Section 2. The President shall appoint members of committees.

**Article XIII. Amendments**

Amendments to these rules of procedure may be made by the Board at any regular or special meeting upon the affirmative vote of a majority of the members of the Board. The suspension of any rule may be ordered at any meeting by the unanimous vote of the members present.

**Article XIV. Repeal**

All previous rules and regulations heretofore adopted by the Town of Porter Board of Zoning Appeals are hereby expressly repealed, as of the effective date of these rules.

Rules of Procedure of the Town of Porter Board of Zoning Appeals of Porter County, Indiana, approved by the affirmative vote of all members of said Board of Zoning Appeals at the regular meeting of the Board held on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary