

DEKALB COUNTY BOARD OF ZONING APPEALS RULES

DEKALB COUNTY, INDIANA

WHEREAS, the DeKalb County Board of Zoning Appeals is authorized and required by I.C. 36-7-4-900 series to supervise and make rules for the filing of appeals, the application for variances and special exceptions, the giving of notice, the conduct of hearings and the determination of whether a variance application is for a variance of use or for a variance from the development standards such as height, bulk, or area and the creation, form, recording, modification, enforcement, and termination of commitments; and

WHEREAS, the Board of Zoning Appeals determines that its rules should be organized in a coherent fashion and be made readily available to all applicants and other interested persons,

Now therefore, be it resolved, by the DeKalb County Board of Zoning Appeals, that the following Rules be adopted as required by I.C. 36-7-4-900 series.

RULE 1

DEFINITIONS AND CITATION

- 1.1 **DEFINITIONS:**
These terms shall be defined as follows for the purpose of these rules;
- 1.2 **BOARD - DEFINED:**
Board means the DeKalb County Board of Zoning Appeals.
- 1.3 **CHAIRMAN - DEFINED:**
Chairman means the Chairman of the DeKalb County Board of Zoning Appeals.
- 1.4 **VICE CHAIRMAN - DEFINED:**
Vice-Chairman means the Vice-Chairman of the DeKalb County Board of Zoning Appeals.
- 1.5 **SECRETARY - DEFINED:**
Secretary means the Secretary of the DeKalb County Board of Zoning Appeals.
- 1.6 **DIRECTOR – DEFINED:**
Director means the Director of DeKalb County Department of Development Services.
- 1.7 **ASSISTANT DIRECTOR – DEFINED:**
Assistant Director means the Assistant Director of DeKalb County Department of Development Services.
- 1.8 **ZONING ADMINISTRATOR - DEFINED:**

Zoning Administrator means the Zoning Administrator of DeKalb County Department of Development Services.

1.9 **PLANNING STAFF – DEFINED:**
Planning Staff means the Director, Assistant Director or Zoning Administrator of the DeKalb County Department of Development Services.

1.10 **CITATION:**
These rules shall be cited as the “DeKalb County Board of Zoning Appeals Rules”.

RULE 2

MEMBERS, OFFICERS AND STAFF

- 2.1 The DeKalb County Board of Zoning Appeals shall consist of five (5) members.
- (a) After the initial establishment of the Board, each member shall serve a four (4) year term, consistent with the provisions of Indiana law. The terms for all Board members shall expire on the first Monday in January of the appropriate year, based on their individual date of appointment and the requirements of Indiana law.
 - (b) There shall be no limit to the number of terms, including consecutive terms, which members may serve.
 - (c) A member must be a resident of the jurisdictional area of the Board or a resident of the county who is also an owner of real property located in whole or in part in an unincorporated area of the county.
- 2.2 **ELECTION OF OFFICERS:**
- (a) The officers of the Board are the Chairman and Vice-Chairman.
 - (b) The officers of the Board shall be elected at the first regular meeting of the Board in each year.
 - (c) The person serving as presiding officer of the Board at the last meeting of the preceding year shall entertain nominations for each office chosen under these rules.
 - (d) Whenever a candidate receives a majority vote of the entire membership of the Board, that person shall be declared elected.
 - (e) Each officer elected under these rules shall enter into office immediately upon being declared elected and shall serve until his/her successor is declared elected at the first meeting of the following year, or until the officer is no longer a member of the Board.
 - (f) Whenever any office becomes vacant, the Board shall elect a successor at its next regular meeting to complete the remainder of the unexpired term.
- 2.3 **CHAIRMAN:**
- (a) The Chairman shall preside over all regular and special meetings of the Board.

- (b) The Chairman shall perform the duties normally performed by a presiding officer, including the appointment of committees and ruling on all points of procedure.
- (c) The Chairman may participate in the discussion of all matters before the Board and vote on any question before the Board.
- (d) The Chairman shall sign all official documents on behalf of the Board.

2.4 VICE--CHAIRMAN AND CHAIRMAN PRO TEMPORE:

- (a) The Vice Chairman shall act as Chairman during the absence or disability of the Chairman.
- (b) The Board shall elect a Chairman pro tempore from among its members if both the Chairman and Vice Chairman are absent or disabled.
- (c) Sign all official documents on behalf of the Board, which required or otherwise delegated by the Chairman;

2.5 SECRETARY:

- (a) The Board shall appoint a Secretary. The Secretary may be a member of the staff of the Department of Development Services.
- (b) The Secretary is not an officer of the Board and holds the position until they are removed by the Board, resigns or as necessary for the discharge of duties.
- (c) The Secretary shall perform the following tasks:
 - (1) Keep a complete and accurate record of all proceedings and votes of the Board;
 - (2) Responsible for transcribing the minutes from any meeting held by the Board;
 - (3) Prepare the agenda of all regular and special meetings following consultation with the Planning Staff;
 - (4) Provide notice of meetings to Board members;
 - (5) Record and file all bonds and contracts and assume all responsibility for custody and preservation of all papers and documents of the Board;
 - (6) Prepare, publish and distribute reports, ordinances and other material relating to Board activities;
 - (7) Sign all official documents on behalf of the Board, which required or otherwise delegated by the Chairman; and
 - (8) Perform all other duties normally carried out by a secretary.

2.6 PLANNING STAFF:

- (a) The Planning Staff shall perform duties relevant and related to the Planning and Zoning Department of DeKalb County.
- (b) The Planning Staff are not officers of the Board and holds the position until they are removed by the Plan Commission, resigns or as necessary for the discharge of duties.

- (c) The Planning Staff shall perform the following duties:
- (1) Process applications for appeals, variances or special exceptions and arrange for all required legal notices for hearings of the Board;
 - (2) Be responsible for the custody and preservation of the official file for each zoning petition. This file shall include, but not be limited to, the following: the application of the petition, any correspondence by the petitioner or interested parties, all documents presented as evidence at the hearing, the proof of legal notification to adjacent property owners and the legal notification as published in the newspaper, the official minutes of the hearing, the findings of fact of each voting member, and the record of vote.
 - (3) Shall prepare a staff report for each petition to be brought before the Board. The staff report shall contain, but not be limited to, the facts of the case, the appropriate findings of fact questions to be considered, and any recommended conditions of approval. The agenda and staff report for each petition shall be filed with the Board and made available to the public.

RULE 3

MEETINGS AND PUBLIC HEARINGS

3.1 APPLICATIONS:

Rule 3 shall apply to all public hearings required by State Law or by the Unified Development Ordinance and to all regular and special meetings of the Board.

3.2 GENERAL RULES:

- (a) No action taken by the Board is official unless authorized by a majority of the membership of the Board at a regular meeting or properly called special meeting.
- (b) All meetings at which official action is taken shall be open to the general public, in accordance with the Open Door Law. (I.C. 15-14-1.5)
- (c) The agenda shall list items to be considered by the Board at the regular or special meeting. No item shall be considered by the Board unless it is properly designated on the agenda. However, the Board may withdraw an item from the agenda by a majority vote of the members of the Board. Any petitioner may withdraw their petition prior to the meeting at which it was to be considered.
- (d) The agenda shall be sent by U.S. Mail, email or be hand-delivered to all members of the Board and shall be available for public inspection at the Board's office no later than five days before any regular meeting.

3.3 MEETINGS:

- (a) The Board shall conduct regular meetings on the second Monday of every month at 6:00 PM in the Commissioners Hearing Room or at the time and place indicated by the agenda. If the date of a regular meeting falls on a legal holiday recognized by DeKalb County, or if it is impossible to conduct the regular meeting at that time or place, the regular meeting shall be scheduled for the following day. A scheduled

regular meeting may be canceled with a unanimous consent of the members of the Board or if there is no business to conduct, subject to the State Open Door Law (I.C. 15-14-1.5).

- (b) Special Meetings: Special meetings may be called by the Chairman, by written request of two members to the Secretary or by the Planning Staff, who shall provide all members with proper notice. The notice of such a meeting shall specify the date, time and place and the purposes of the meeting.

3.4 PUBLIC HEARINGS:

- (a) The Board shall keep minutes of its proceedings and record the vote of all actions taken.
- (b) All minutes and records constitute a public record and shall be filed in the office of the Board.
- (c) The Board shall, in cases heard by it, prepare written findings of fact as required by law.

3.5 APPEARANCES:

- (a) The petitioner or the petitioner's agent/representative must appear in person or by counsel to present a petition to be heard by the Board. If no one appears on behalf of a petitioner, the petition may be tabled until the following meeting or dismissed. The Board may dismiss a petition for lack of prosecution or undue delay.
- (b) The Planning Staff must be informed prior to the meeting if the petitioner requests a continuance of the hearing date and time. The Planning Staff will determine whether the petitioner's reasons warrant a continuance.

3.6 ORDER AND COURTESY:

The Chairman shall preserve order and may warn any member or other person(s) present that particular conduct is a breach of courtesy. If any member persists in this conduct following the warning the Board may vote to censure the offending member. If any other person present persists in this conduct following the warning, the Chairman may order that person to be expelled from the meeting.

3.7 EVIDENCE:

The Chairman shall determine the admissibility of any evidence before the Board in accordance with applicable law. It is understood that formal rules of evidence do not apply in Board hearings.

3.8 ORDER OF BUSINESS:

The order of business at a regular meeting shall be:

- A. Call to Order
- B. Roll Call (of the Board members, Secretary, and staff and the determination of quorum)
- C. Consideration of Minutes
- D. Old Business (any tabled or continued petitions or other items of business)

- E. New Business (all new petitions and business items)
- F. Reports of Planning Staff, Officers and/or Committees
- G. Comments from the Public in Attendance
- H. Adjournment

The order of business for special meetings shall be:

- A. Call to Order
- B. Roll Call (of the Board members, Secretary, and staff and the determination of quorum)
- C. New Business (for which the special meeting was called)
- D. Adjournment

3.9 PRESENTATIONS:

- (a) The recommended order for the Board to follow when acting on a petition is:
 - (1) The Chairman calls for the Public Hearing of the petition and reads the application.
 - (2) The Planning Staff may present a staff report to the Board.
 - (3) Board members may direct questions to the Planning Staff
 - (4) The petitioner or its agent/representative shall present facts relating to the case. These presentations or comment may have a time limit determined at the hearing.
 - (5) Board members may direct questions to the petitioner or its agent/representative.
 - (6) The Chairman shall recognize those who wish to speak for or against the petition These presentations or comment may have a time limit determined at the hearing. Any person wishing to speak for or against an application must state their name and address before speaking at the microphone.
 - (7) The petitioner or its agent/representative may rebut the testimony of those comments for or against the petition. These presentations or comments may have a time limit determined at the hearing.
 - (8) Those persons for or against the petition may rebut. These presentations or comments may have a time limit determined at the hearing.
 - (9) Planning Staff may read any written statements or memorandums.
 - (10) The Chairman shall conclude the public hearing and call for a motion after appropriate deliberations by the Board. Findings shall be made as set forth in Rule 4.4.

3.10 CONTINUANCES:

The Board may continue any item from one meeting to another.

- (a) If a petition is continued to the next regular meeting and if proper notice was given by the petitioner in compliance with the applicable notice requirements, no renotification is required. However, any continuance which is granted to a Special Meeting or for a time period in excess 1 regularly scheduled meeting shall require re-notification consistent with the provisions of these Rules and the applicable requirements of the DeKalb County Unified Development Ordinance.
- (b) Petitions will be dismissed if the continuance has been inactive for more than 2 regularly scheduled meetings, unless good cause is shown.
- (c) Generally, any party requesting a continuance should notify the Director, Assistant Director and/or Zoning Administrator of the request prior to the date of the public hearing on the matter. The Director, Assistant Director and/or Zoning Administrator shall inform the Chairman of all such requests prior to the start of the meeting. The Chairman may seek the approval of the Board to alter the agenda in order to hear all requests for continuance prior to any other business in order to expedite the meeting.

3.11 REDOCKETING AFTER DISAPPROVAL:

No petition may be redocketed after an adverse decision unless it is substantially different in facts and circumstance. An adverse decision may be appealed for judicial review within thirty (30) days after the date of the decision.

3.11 PROCEDURAL RULES:

The most recent edition of Robert's Rules of Order shall govern the conduct of all meetings and public hearings except to the extent that it conflicts with these rules or any applicable law.

3.12 GENERAL:

In as much as the deliberations, opinions and findings of this Board in all matters which may come before it for action, are similar to that of a court, and the minds of its several members should be unbiased and free to act upon the evidence and arguments submitted at the hearing upon matters pending before said Board, no member of this Board shall hold conversation with any person concerning the merits of any matters pending before it, at any time before final action thereon, except in open meetings of said Board and shall so advise any person attempting to engage in such conversation. In accordance with I.C. 36-7-4-920, no person connected with a pending matter before the Board shall communicate with any Board member before a hearing with intent to influence the members' action. This rule shall not apply to any person connected with this Board in any official capacity.

3.13 CONFLICT OF INTEREST:

A member of the Board may not participate in a hearing or decision of that Board concerning a matter in which the member is biased or prejudiced or otherwise unable to be impartial or has direct or indirect financial interest. The Board shall enter in its record the fact that a regular member has a conflict and the name of the alternate member, if any, who participates in the hearing or decision in place of the regular member. The member(s) with the conflict shall remove themselves from the room during that hearing.

Any member with a conflict should notify the Director, Assistant Director or Zoning Administrator prior to the hearing, shall notify the members of the Board prior to the beginning of any hearing on the matter or shall do so as soon as the conflict becomes apparent. The conflict shall be entered in the Board's records. Any member with a conflict who does not excuse him/herself may be removed from the proceeding by a 2/3 vote of the Board.

RULE 4

VARIANCES AND SPECIAL EXCEPTIONS, APPEALS NOTICE AND PROCEDURE

4.1 APPLICATIONS:

- (a) Every petitioner for an appeal, variance, or special exception shall complete an application supplied by the Board.
- (b) The Planning Staff may require the petitioner to submit any additional information deemed relevant for consideration by the Board, including written proof that the petitioner is the agent of the property owner or owners if the petitioner is not the sole owner of the property.

4.2 FILING REQUIREMENTS:

- (a) Every petition for an administrative appeal, special exception, or variance shall be filed with the Planning Staff consistent with the Calendar of Meeting Dates and Filing Deadlines.
- (b) Any administrative appeal to the Board shall be filed with the Board within five (5) days following the decision of the Planning Staff.
- (c) The Planning Staff shall determine if an application for a Variance is a Use Variance or a Development Standards Variance in the terms of the Unified Development Ordinance.

4.3 NOTICE REQUIREMENTS;

- (a) Notice will be given to applicants or others interested in hearings before the Board in accordance with these rules.
- (b) For each application, the applicant shall assume the expense of notification and publication of notice as required.
- (c) For all applications for an Appeal, Variance, or Special Exception, notice shall be given in a newspaper of general circulation in DeKalb County, in the form prescribed by the Board, for every application which is to be heard by the Board of Zoning Appeals. The notice is to be published at least ten days prior to the date set for the hearing, and the proof of publication must be made by an affidavit of the publisher and attached to a copy of the notice taken from the paper in which it was published. Such affidavit must specify the county, the time when, and the paper in which the notice was published.
- (d) For all applications for a Variance and Special Exception, the petitioner shall notify all abutting and adjoining legal property owners and those property owners within a

300 foot radius of the petitioned property by Certificate of Mailing through the United States Postal Service to each property owner at least one time and must be postmarked at a minimum of 14 days before the date of the public hearing. Standard, Regular or First Class mail is not acceptable form of notice. Said notice must inform the interested party what type of petition has been filed with the Board, and state the time, date, and place of the public hearing. The Planning Staff or BZA may also require that additional property owners or interested parties be notified if, in their judgment, such notification is in the public interest or substantially affects the property owner.

- (e) The proof of mailing from the Certificate of Mailing and proof of publication for the legal advertisement must be submitted to the Board Office prior to the hearing or the petition may be removed from the agenda.

4.4 RULES OF PROCEDURES FOR FINDINGS OF FACT:

- (a) Any interested party appearing at a hearing may file proposed findings of fact with the Board and shall do so if requested by the Board.
- (b) Planning Staff may be designated to prepare Proposed Findings of Fact and/or Conditions and Commitments during deliberations of the Board. These may be presented to the Board for vote to adopt or reject either alone or together with a motion to approve or deny the pending petition. No proposed Findings of Fact are final until adopted by vote of the Board. In event Proposed Findings of Fact either alone or together with a motion to approve or deny fails to pass, then the Board shall cause another set of Proposed Findings of Fact and/or Conditions and Commitments to be prepared and submitted for vote. This process shall continue until the Board by majority vote adopts a set of Proposed Findings of Fact and a decision is made by the Board to approve or deny the petition.
- (c) The Board shall make Findings of Fact to support its decision either to approve or deny the petition.
- (d) In event the Board cannot come to a decision on making Findings of Fact or in the event of a tie vote, the Petition shall be deemed to have failed.
- (e) The form of a motion may be as follows:
 - (1) Motion to approve: I move the proposed Findings of Fact be adopted by the Board and that the Special Exception/Variance be approved, OR
 - (2) Motion to deny: I move the proposed Findings of Fact be adopted by the Board and that the Special Exception/Variance be denied, OR
 - (3) Motion to continue: I move the petition be continued.

RULE 5

AMENDMENTS AND SUSPENSION

5.1 AMENDMENTS:

These rules may be amended by a two-thirds (2/3) vote of the membership of the Board.

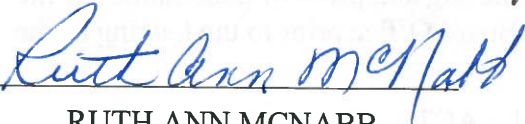
5.2 SUSPENSION:

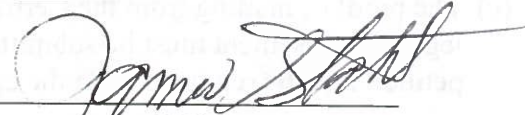
These rules or any portion of them may be suspended by a two-thirds (2/3) vote of the membership of the Board. No suspension shall continue beyond the adjournment of the meeting at which the motion to suspend was passed.

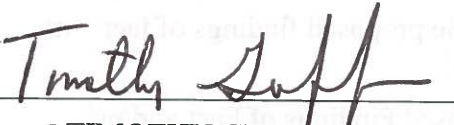
5.3 EFFECTIVE DATE:

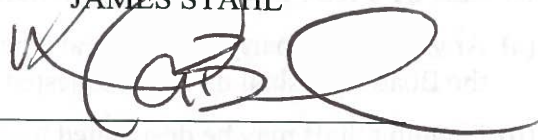
These rules shall enter into effect immediately upon the approval by the Board.

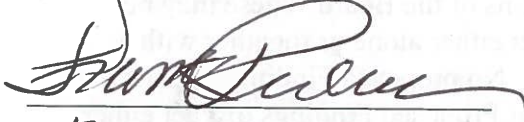
PASSED BY THE BOARD OF ZONING APPEALS OF DEKALB COUNTY, INDIANA ON
THE 8 DAY OF JANUARY 2018.


RUTH ANN MCNABB


JAMES STAHL


TIMOTHY GRIFFIN


MATT BECHDOL


FRANK PULVER