

ARTICLE 3

ADVISORY BOARD OF ZONING APPEALS

SECTION 300 - Board of Zoning Appeals

The Town of St. Leon Advisory Board of Zoning Appeals shall consist of five (5) members who shall be appointed and serve in accordance with Indiana Code Sections 36-7-4-900 et seq.

- (1) All members shall serve four (4) year terms and shall be appointed as follows:
 - a. Four (4) citizen members appointed by the St. Leon Town Council, of whom one (1) must be a member of the Plan Commission and three (3) must not be members of the plan commission;
 - b. One (1) member appointed by the Plan Commission from the Plan Commission's membership, who must be a citizen member of the Plan Commission other than the member appointed under subsection (a) above.
 - i. Each of the five (5) Board members must be:
 1. Each member of the Commission must be a resident of the Town, or otherwise meet the requirements set forth in the 200 series of IC 36-7-4.

A citizen member of the Board of Zoning Appeals may not hold:

1. An elected office (as defined in IC 3-5-2-17); or
 2. Any other appointed office in municipal, county, or state government; except for membership on the Plan Commission as permitted or required in IC 36-7-4-902.
- (2) **Powers and Duties** - For the purpose of this order the Town of St. Leon Board of Zoning Appeals shall have the following duties:
 - a. To hear and to determine appeals from and review any decision or determination made by the Planning Director or staff designated by the Director;
 - b. To hear and to determine special exceptions from the zoning ordinance;
 - c. To authorize variances from the zoning ordinance.

- (3) **Rules of Procedure** - The Board of Zoning Appeals shall adopt rules for the administration of the affairs of the Board and for the conducting of public hearings recording of minutes and the retaining and administration of public records. The following include minimum procedures:
- a. At the first meeting of each year the Board shall elect a Chairman and a Vice-Chairman from its members.
 - b. Appoint a Secretary, who is not required to be a member of the board, and establish the Secretary's duties.
 - c. All meetings shall be open to the public.
 - d. The Board shall keep minutes of its proceedings showing the vote associated with each agenda or action item.
 - e. The board shall keep records of its examinations and other official actions, all of which shall be of public record and be filed in the office of the Plan Commission.
- (4) **Disqualifications and Conflicts of Interest** - A member of the board of zoning appeals is disqualified and may not participate in a hearing of the board concerning a zoning decision, as described in IC 36-7-4-1016, if:
- a. The member is biased or prejudiced or otherwise unable to be impartial; or
 - b. The member has a direct or indirect financial interest in the outcome of the zoning decision.

In the event of a disqualification, the appointing authority may select or designate an alternate member to participate with the board in a hearing or decision. An alternate member has the same powers and duties of a regular member while participating in a zoning decision or hearing.

The board of zoning appeals shall enter in its records:

- a. The fact that a regular member has a disqualification that qualifies under IC 36-7-4-223; and
- b. The name of the alternate member, if any, who participates in the hearing in place of the regular board member.

A member of the board of zoning appeals may not directly or personally represent another person in a hearing before that board concerning a zoning decision or a legislative act.

A member of the board of zoning appeals may not receive any mileage or compensation for attendance at a meeting if the member is disqualified under this section from participating in the entire meeting.

- (5) **Findings and Decisions** - All decisions of the Board on all matters within their jurisdiction and authority shall be in writing and be supported by specific findings of fact on each material element pertaining to the matter under consideration.
- (6) **Quorum** - A majority of members of the Board shall constitute a quorum, which shall mean a minimum of three (3) members. The action of the Board of Zoning Appeals is not official, unless it is authorized by a majority of the entire membership, which shall mean a minimum of three (3) votes from the members present at the properly called meeting.

SECTION 305 – Administrative Appeals

1. The Board of Zoning Appeals shall have the power to consider administrative appeals from any order, requirement, decision, grant or refusal made by the Board Designee, or his representatives, charged with the administration and enforcement of this Ordinance.
2. The Board of Zoning Appeals shall establish procedures for applications, public notice, hearings, and other procedures as may be prescribed from time to time by the Board in its “Rules of Procedure.”

SECTION 310 – Variances

1. General
 - a. The Board of Zoning Appeals shall have the power to approve or deny variances from the requirements of this Ordinance. In approving an application for variance, the Board may attach such conditions to the variance as it deems necessary to assure compliance with the purpose of this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.
 - b. A variance may be permitted if the granting of same will not be contrary to the public interest and, where, owing to special conditions, a literal enforcement of this Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance shall be observed and substantial justice be done.

2. Development (Dimensional) Variance Standards

No variance shall be granted by the Board of Zoning Appeals in any case unless the Board finds specifically that:

- 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; and
- c. The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

3. Use Variance Standards

The Board of Zoning Appeals shall consider applications for variances from the permitted uses of this Ordinance. As to each variance that is granted, the Board may impose such conditions on the approval of the variance as it may deem advisable. Use variances granted by the Board of Zoning Appeals are not transferable from the owner of property petitioning for the use variance to subsequent property owners. In no case shall an existing non-conforming use of neighboring land or structure in the same district, or permitted or non-conforming use of lands or structures in other districts, be considered grounds for the issuance of a use variance. A use variance may be approved under this section only upon a determination that:

- 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 need for the variance arises from some condition peculiar to the property involved;
- d. The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which variance is sought; and
- e. The approval does not interfere substantially with the Comprehensive Plan.

4. Application

Application for variances shall be filed with the Town Board Designee in such form as may be prescribed from time to time by the Board of Zoning Appeals in its "Rules of Procedure."

5. Public Hearing

- a. The Board of Zoning Appeals shall hold a public hearing on each application for a variance. At least ten (10) days prior to the date set for such hearing, public notice of the time, date and place thereof, advising the location and nature of the subject appealed or petitioned, shall be given publication in a newspaper of general, daily, circulation in Dearborn County and, in addition, actual notice of such hearing shall be given to all parties interested in such hearing as specified in the Board's "Rules of Procedure." The applicant shall be responsible for supplying the names and addresses of all adjoining property owners and shall pay all the costs of notification. Records maintained by the County Assessor's Office shall be used as the official record to determine the identity and address of property owners. Said legal notice shall specifically refer to a commonly known street address of the parcel, if previously assigned.
- b. The applicant shall also serve notice to property owners within six hundred (600) feet of the affected area, or two (2) property owners, whichever is greater, by certificate of mailing, in a form provided by the Board, not less than ten (10) days prior to the date set for such meeting, advising the location and nature of the subject appealed or petitioned, and the date, place and time of the hearing, or have notice served as specified in the Board's "Rules of Procedure." The applicant shall provide the Board with a complete list of the above mentioned owners, together with their last known addresses, from the County Auditor's office, along with proof of notice served, and shall assume the cost of said notice. The applicant shall certify, by notary public, that notification of surrounding property owners has been accomplished as required.

SECTION 320 – Special Exceptions

The Board shall have the power to authorize a special exception if the following requirements are met:

1. The use shall be specifically identified as a special exception in this Ordinance for the zoning district in question;
2. The special exception can be served with adequate utilities, access roads, drainage and other necessary facilities;
3. The special exception shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with any and all design development standards for the use identified in this Ordinance;
4. The special exception shall be sited, oriented and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and property;
5. The special exception shall produce a total visual impression and environment which is consistent with the environment of the neighborhood;
6. The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood;
7. The special exception shall preserve the purpose of this Ordinance, and shall not interfere substantially with the Comprehensive Plan.

SECTION 325 - Conditions and Safeguards

In granting an Applicant's request, the Board may require written commitments or prescribe any reasonable conditions—including the establishment of time limitations. Failure to comply with any commitment or condition established by the Board shall be considered a violation and shall be governed by Article 6 of this Ordinance.

SECTION 330 - Action by Board of Zoning Appeals

The Board of Zoning Appeals shall hear and decide upon any appeal or application within sixty (60) days of filing. The Board of Zoning Appeals, shall approve, approve with conditions or commitments, or disapprove the request. Further, the Board shall make a finding that the reasons set forth in an application justify the granting of the request that will make possible a reasonable use of the land, building, or structure. If the request is disapproved, the board shall state the reasons for disapproval in writing. The minutes of the meeting shall serve as the required written notification of the decision of the Board. Appeals from Board decisions shall be to the appropriate court of jurisdiction as provided by law.

Final action of the Board of Zoning Appeals in accordance with:

- a. The 900 series of IC 36-7-4; or
- b. IC 36-7-4-1015

is considered a zoning decision and is subject to judicial review in accordance with the 1600 series of IC 36-7-4.

SECTION 335 - Contents of Application

An application shall be filed with the Planning Department by at least one owner or owner by contract (option) or lessee with written permission of the owner of property for which such application is proposed. If, after the initial public hearing, additional information is needed beyond the minimum information required by the application, the Board can require the applicant to submit a Site Plan as detailed in Article 23 of this Ordinance or any other needed information as necessary.

SECTION 345 - Procedure for Hearing Notice

Upon receipt of an application, the Board shall establish a time and place for a hearing, and publish notice of the hearing in a newspaper of general circulation in the County at least 10 days before the date set for the hearing. In addition, all adjoining property owners shall be notified by certified mail that is postmarked and mailed at least ten (10) days in advance of the hearing. The applicant shall be responsible for supplying the names and addresses of all adjoining property owners and shall pay all the costs of notification. Records maintained by the County Assessor's Office shall be used as the official record to determine the identity and address of property owners.

SECTION 350 - Expiration of Permit

Conditional uses and variances shall be authorized only for the specific request and are not transferable to another property or use without approval from the Board through a subsequent public hearing. In addition, all permits granted by the Board shall expire within one (1) year of approval by the Board unless the Board otherwise states a time period. The action or use requested and approved by the Board must be substantially underway within the time period specified or the permit will expire and a subsequent hearing will be needed or an extension requested to the Planning Director.

SECTION 355 – Official Record and Written Commitments

The Board of Zoning Appeals shall keep the minutes of its proceedings and records regarding the vote on its actions. All minutes (including findings of fact), voting accounts, and other documentation pertaining to a case item or cause number shall be filed in the Town of St. Leon Department of Planning & Zoning and are considered public records. (Please refer to IC 36-7-4-915)

The Board of Zoning Appeals may allow, or require, the owner of a parcel of real property to make a commitment concerning the use and development of that parcel. Commitments associated with a Board of Zoning Appeals decision shall be subject to the requirements set forth in IC 36-7-4-1015, including:

- a. A commitment must be in writing;
- b. A commitment shall be recorded in the Town of St. Leon Recorder's Office. After a commitment is recorded, it is binding on a subsequent owner or any other person who acquires an interest in the parcel;
- c. Unless a written commitment is modified or terminated in the manner prescribed by the Indiana Code, the commitment is binding upon the owner of the parcel (see IC 36-7-4-1015);
- d. A commitment may contain terms providing for its own expiration.

The allowance or requirement of a commitment does not obligate the Board of Zoning Appeals to approve an application to which the commitment relates.