

**RULES OF PROCEDURE
TOWN OF WHITELAND ADVISORY BOARD OF ZONING APPEALS
WHITELAND, INDIANA
(RESOLUTION 2014-01BZA)**

COMPOSITION OF MEMBERSHIP

The composition of the Whiteland Advisory Board of Zoning Appeals (“Board”) shall be in accordance with Indiana Code 36-7-4-902 and all acts amendatory thereto or supplementary thereof, which at the time of adoption of these rules is as follows:

1. Three (3) citizen members appointed by the executive of the municipality, of whom one (1) member must be a member of the Plan Commission and two (2) must not be members of the Plan Commission.
2. One (1) citizen appointed by the fiscal body of the municipality who must not be a member of the Plan Commission.
3. 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 subdivision 1 above.

Additionally, in accordance with I.C. 36-7-4-907, an alternate member may be appointed by the appropriate body to serve in lieu of its appointed regular member who is disqualified from, or otherwise unavailable to participate in, a hearing or decision.

ATTENDANCE

As provided by I.C. 36-7-4-907, any regular member who misses three (3) or more consecutive regular meetings of the Board may be treated as if the member has resigned. It will be at the discretion of the appointing body to appoint a replacement member.

QUORUM AND AUTHORIZATION

A majority of the members of the entire Board constitutes a quorum. No action shall be official, however, unless approved by at least three (3) members of the Board.

MEETINGS

All meetings shall be open to the public, except as otherwise permitted by law.

REGULAR MEETINGS

Regular meetings shall be held on the first Thursday of the month, excluding holidays. A calendar of the regular meetings shall be prepared prior to the beginning of each year. Regular meetings shall be held at 7:00 P.M., at the Whiteland Town Hall, 549 Main Street, Whiteland, Indiana. Regular meetings may be cancelled due to a lack of any agenda items.

SPECIAL MEETINGS

Special meetings shall be held upon call of the chairman, or by written request by two (2) members to the Secretary, or as determined at a regular meeting. The Secretary shall send to all members, at least two (2) days in advance of a special meeting, a written notice fixing the time and place of the meeting.

Only matters included in the call for a special meeting shall be considered, except by unanimous approval of all of the members of the Board.

OFFICERS OF THE BOARD

The Chairman and Vice-Chairman shall be elected at the first meeting held each year.

The Chairman, subject to these rules, shall decide all points of procedure unless otherwise directed by a majority of the members of the Board.

The Vice-Chairman shall serve in the absence of the Chairman.

A temporary Chairman shall be elected in case both Chairman and Vice-Chairman are absent.

The Board may appoint a Secretary and an Attorney. In the absence of an appointment, the Whiteland Clerk-Treasurer will serve as Secretary, and the Whiteland Town Attorney will serve as Attorney.

DUTIES OF THE SECRETARY

The Secretary, subject to the provisions of the Zoning Ordinance, these rules, and the direction of the Board and its Chairman, shall conduct all correspondence of the Board; shall attend all meetings of the Board and all hearings; shall review all applications to see that these rules are complied with; shall keep the dockets and minutes of the Board's proceedings; shall compile all required records; shall maintain the necessary files and indexes and generally supervise all clerical work of the Board.

The Secretary, under the direction of the Chairman, may designate members of the Board to make personal inspections when necessary from time to time. The Secretary or Planning Director or his designated representative may demand from an applicant such additional information and data as may be required to fully advise the Board with reference to the application, whether such information and data are called for by the official forms or not. Any failure or refusal on the part of the applicant to furnish such additional information or data shall be grounds for dismissal of the application by the Board.

MINUTES AND RECORDS

The Board shall keep minutes of its proceedings; keep records of its examinations and other official actions and shall record the vote on all actions taken. All minutes and records shall be filed in the office of the Board and shall be a public record.

APPEALS

An appeal from any order, requirement, decision or determination made by the Planning Director, Building Commissioner, or other official in the enforcement of the Zoning Ordinance, will be reviewed by the Board.

The appeal shall be prepared on the form provided therefore and shall specify the grounds thereof in such a manner that the Board may be fully informed of the facts and elements involved and clear statement of the reasons why the appellant deems the appeal to be justified.

The Planning Director, Building Commissioner, or other official shall, upon request of the Board, submit to the Board the complete record including plans and drawings, leading to the decision being appealed.

Upon receipt of the appeal application, the Secretary shall set a date, time and place for a hearing thereon, and shall notify the appellant of such date, time and place.

Any communication purporting to be an appeal shall be regarded as a mere notice or intention to seek relief and shall be of no force or effect until it is made in the form required.

REQUESTS

Requests for variances and special exceptions shall be prepared on the form provided therefore in such a manner that the Board may be fully informed of all the facts and elements involved and a clear statement of the reasons why the applicant deems the request to be justified and shall include a copy of all necessary drawings, plans, or other documents necessary for the decision making process. If said documents are amended or modified in any way whatsoever after the date of the original application, said amended materials must be submitted to the Planning Director no later than one (1) week prior to the scheduled hearing date.

Upon receipt of the formal written application, the Secretary shall set a date, time and place for a hearing thereon according to the meeting schedule, and shall notify the applicant of such date, time and place.

Any communication purporting to be a request for variance, shall be regarded as a mere notice or intention to seek relief or to proceed and shall be of no force or effect until it is made in the form required.

FEES

Applications, appeals, and petitions shall be prepared on the form provided by the Planning Director, and accompanied by the filing fees stated below. Fees shall be paid to the Clerk-Treasurer of the Town. Applications and petitions shall be accompanied by the appropriate fees listed in the Town of Whiteland Fee Schedule.

DOCKET AND CALENDAR

Each application filed in proper form with the required data shall be numbered serially, docketed, and shall be placed upon the calendar of the Board by the Secretary. The docket numbers shall begin anew on January 1 of each year and shall generally be hyphenated with the number of the year in which the application is filed and initial indicating the type of case, followed by the number of case. Numbering will be sequential.

<u>Petition type</u>	<u>Docket number example</u>
Variances (all types)	12-V-01
Special exceptions	12-SE-01
Administration appeals	12-AA-01
Board resolutions	12-01BZA

Applications shall be initially submitted no later than the filing deadline designated by the meeting calendar, which shall be approximately twenty-five (25) days prior to the date of the hearing, except for good cause at the discretion of the Planning Director. All applications docketed shall be set for hearing at the regular meeting corresponding to the filing deadline.

Applications shall be heard in the order in which they were submitted, except that an application may be advanced for hearing by order of the Board Chairman for good cause shown. Where all applications cannot be disposed of on the day set, the Board may adjourn from day to day, or until the next regular or special meeting, as it may order.

NOTICE

No notice other than that provided for in these rules, the Zoning Ordinance, or state statute shall be required to be given to interested parties for hearings conducted by the Board.

For each application, the applicant shall assume the expense of notification and publication of notice as required by these rules, by Ordinance, or by State Law.

For every application which is to be heard by the Board, Notice shall be given by the applicant in a newspaper published in and of general circulation in Johnson County, Indiana, in the form prescribed by the Board. The applicant shall cause the notice to be published at least ten (10), but not more than thirty (30), days prior to the date set for the hearing, and 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 and filed with the Secretary before the hearing. Such affidavit must specify the City, the time when, and the paper in which the notice was published.

The published public hearing notice shall state, at a minimum:

1. The docket number and general substance of the petition;
2. The general location by address or other identifiable geographic characteristic of the subject property;
3. The name of the petitioner;
4. The date, time, and place of the hearing;
5. That the petition and file may be examined in the office of the Board Secretary;
6. That the legal description of the property is on file in the office of the Board Secretary;
7. that written objections to the proposal that are filed with the secretary of the Board before the hearing will be considered;
8. that oral comments concerning the proposal will be heard;
9. that the hearing may be continued from time to time as may be found necessary.

For all applications or proposals requiring a public hearing, excluding proposed amendments to the text of the Zoning or Subdivision Control Ordinances, the Petitioner shall notify all adjoining legal land owners within two (2) property depths, or 660 feet of the subject property, whichever is satisfied first. Such notice shall be made by certified mail or by certificate of mailing, or personal service at least ten (10) days before the date of the hearing.

The notice to adjoining land owners shall include at least the items of the published notice as well as a detailed summary of the petition, site plans or maps, and any other information necessary to adequately describe the nature of the request. The Planning Director shall determine the information necessary based on the type and scale of the case.

The Petitioner shall also place a notice of the public hearing on-site at least ten (10) days before the date of the hearing. The notice shall remain on-site until final action on the petition has been taken.

The on-site notice shall consist of a sign to be provided by the Planning Director. The sign must be placed on the subject property, within 5' of the right-of-way line of the public street with the most traffic adjacent to the property. The sign text must be visible from the public street. The Planning Director may require additional notices to be posted for properties with greater than 300' of street frontage. A deposit in an amount not to exceed \$50.00 for the sign may be required at the time of filing of the petition, and will be refunded upon return of the sign in good, reusable, condition to the Planning Director within 7 days of the date of final action. If the sign is not returned, or returned in a condition not acceptable to the Planning Director, the deposit shall be forfeited.

The certified mail receipts or the certificate of mailing and any unopened returned notices, or the dated signatures of property owners indicating personal receipt of the notice, shall be filed with the Secretary before the hearing, accompanied by an affidavit signed by the applicant verifying that all

persons entitled to receive notice pursuant to these rules and the ordinances of the Town of Whiteland, Indiana, have been properly notified.

The Planning Director may vary the procedure for personal notification, if a departure from the rules above is justified and the intent of this rule is observed.

CONFLICT OF INTEREST

Any member who has a direct or indirect pecuniary interest in, or may directly or indirectly derive a profit from, any action taken upon any appeal or request, or meets the requirements defined by I.C. 36-7-4-909 or I.C. 35-44-1-3 shall be deemed to have a conflict of interest. Also, any member may determine that they have a conflict of interest that could cause the member to be biased, partial, or unrepresentative of the community interest. Such additional conflicts of interest may include, for example, an association to the petitioner or their agent or attorney, proximity of the member's property to the subject property, etc. Any member having a conflict of interest shall announce at the beginning of the meeting and prior to the introduction to the appeal or request the existence of said conflict, and shall thereafter refrain from comment, discussion, or participation regarding the appeal or request, including voting thereon. If possible, such a member shall also notify the Planning Director or Secretary of a conflict of interest upon receipt of the meeting agenda in order to allow sufficient time to arrange for an alternate member to be present with regard to said appeal or request.

ORDER OF BUSINESS

The order of business at all regular meetings of the Board shall be as follows:

1. Roll Call
2. Approval of the minutes of the previous meeting
3. Communications
4. Old business
5. New business
6. Other business

The Chairman may alter the order of business as necessary to conduct an orderly proceeding.

HEARING

The Board shall hold a public hearing on the appeal or request at the date, time and place specified in the notice. Hearings shall be open to the public, and all Board decisions regarding any application shall be made in an open public meeting.

The applicant or other interested persons may appear in person, by agent, or by attorney. In the absence of any personal appearance on behalf of the applicant, the application will be continued to the next regularly meeting for the first occurrence. For subsequent "no-shows", the application may be disposed of in the manner determined by the Board.

At the hearing, the order of presentation of a petition and testimony shall be as follows:

1. Presentation(s) by the Planning Director, Building Commissioner, his/her designated representative, and/or persons presenting information at the request of the Plan Commission.
2. Applicant's initial presentation (maximum 15 minutes).

3. Interested persons' presentations. Speakers representing groups should speak before individuals. Any speaker representing a group may speak up to 5 minutes; any individual may speak up to 2 minutes. The time for all speakers shall be a maximum 20 minutes.
4. Applicant's rebuttal (maximum 5 minutes).
5. Board deliberation and action.

The Board may ask questions of any presenter or speaker at any time. If asked during the timed presentations, the question and response will not count against the speaker's allotted time.

All persons who testify before the Board as to any application shall do so only after being placed under oath by the Board's Counsel, the Board Chairman, or the Secretary.

Persons with questions may raise their questions, addressed to the Commission President, during the interested persons' presentations. The Plan Commission and Planning Director are not obligated to answer any question raised, but may do so to make clarifications or otherwise encourage well-informed and orderly consideration of the case.

A speaker may request additional time for good cause shown. The Chairman may cut short any presentation or testimony that is irrelevant, repetitive, threatening, slanderous, offensive, a personal accusation, or that is otherwise not conducive to an orderly proceeding, provided that the presenter has been admonished at least once.

Every person appearing at hearings shall abide by the order and directives of the Chairman. Discourteous, disorderly, or contemptuous conduct shall be regarded as a breach of the privileges of the Commission and shall be dealt with by the Chairman as he or she deems fair and proper.

ACTION AND DISPOSITION

Following the public hearing or meeting, the Board shall take action as prescribed by the Advisory Planning Law of Indiana (I.C. 36-7-4), by the Zoning Ordinance, or by any other statute or code that requires the action of the Board.

The Board may continue deliberation of an application, generally to the next scheduled regular meeting, but it may be continued to a meeting further in the future or to a special meeting. Continuances of longer than 2 months must be re-noticed by the petitioner. This does not apply to cases continued from meeting to meeting.

The final disposition of any use or development standard variance application or appeal of administrative action shall be in the form of a motion, setting forth the findings and determinations of the Board, together with any modification, condition, specification, or limitation which it makes.

The final disposition of applications for approval of special exception use applications, or other applications that the Board is authorized to act upon, shall be in accordance with the requirements set forth in the Zoning Ordinance and Subdivision Control Ordinance of the Town of Whiteland, Indiana. The Board may impose reasonable conditions as a part of an approval.

The final disposition of any appeal before the Board shall be in the form of an order either reversing or modifying the requirement, order, decision or determination appealed from and granting the appeal, or affirming the order and denying the appeal. The Board may dismiss an appeal for lack of prosecution or lack of jurisdiction. When an applicant has failed to appear at the scheduled public meeting, the case may be dismissed for lack of prosecution.

All decisions of the Board, on matters heard in public hearing shall be by recorded vote. The vote of each member shall be a matter of permanent record.

An application may not be withdrawn by the applicant after the vote has been called for by the Chairman unless a majority of the members of the Commission agree to the withdrawal.

No cause which has been withdrawn by the applicant shall again be placed on the docket for consideration by the Board within a period of six (6) months from the date of the said withdrawal, except upon the motion of a Board member, and adopted by the unanimous vote of all Board members present at a regular or special meeting.

Indiana Code 36-7-4-1600 et seq. provides a thirty (30) day opportunity for persons to file a petition for judicial review after a Board decision. If such petition is filed, any work being done pursuant to the decision must cease until the petition for review is processed. Therefore, any work done pursuant to the Board's decision within that 30-day appeals period is at the sole liability of the petitioner/applicant.

REHEARINGS

No rehearing of any decision by the Board shall be had except on motion by a member of the Board to reconsider the vote, which motion is seconded and duly passed. Such rehearing shall be held within thirty (30) days after such a motion is made, seconded and duly passed.

No motion for a rehearing shall be entertained except upon written request for rehearing, and then not unless new evidence is submitted which could not reasonably have been presented at the original hearing.

If rehearing is granted, the case shall be docketed as a new application, and new notices shall be issued in accordance with the notice provisions of these rules.

COMMUNICATIONS WITH BOARD MEMBERS

Informal requests for advice, or moot questions, will not be considered by the Board. Any advice, opinion, or information given by any Board member, the Secretary, or any other official or employee of the Town of Whiteland, shall not be binding on the Board. In accordance with I.C. 36-7-4-920(g), communication with any member of the Board before the hearing with intent to influence the member's action on a matter pending before the Board, with the exception of the report prepared by the planning staff, is prohibited. If such communication occurs, the Board member shall refuse to entertain any discussion on the case and may refer the person to the planning staff. The Planning Director and staff are authorized to answer questions regarding the codes, to provide professional interpretations of the Comprehensive Plan, to provide general assistance, and other duties, but the decisions of the Board are not bound by any staff advice, interpretations, or opinions.

DOCKET AND MINUTES

The Secretary or Planning Director shall maintain a docket, in which shall be entered the number of the application; the name of the applicant; short description by street number, road or otherwise, of the premises; the nature of the application; and the final disposition of the cause has been disposed of. All continuances, postponements, dates of sending notices, and other steps taken and acts done shall be noted on the docket.

The Secretary or Planning Director shall maintain a record of the minutes, in which shall be recorded the decision relating to each application together with the vote of each member of the Commission present, those absent being so marked, together with other actions of the Commission, and including a record of the transactions at hearing. The docket and the minutes may be combined in one hard copy file for the convenience of public review.

The Board shall keep minutes of its proceedings, keep records of its examinations and other official actions, and shall record the vote on all actions taken.

All minutes and records shall be filed in the office of the Board and shall be a public record. The Secretary shall provide copies of all monthly minutes to each Board member.

Regularly scheduled meetings of the Board may be recorded. If recorded, the audio or video tapes or digital files of each meeting shall be retained for five (5) years from the date of the meeting and shall be a public record.

All exhibits, whether submitted by a petitioner or other speaker, shall become the property of the Board and shall remain and become a part of the case in which the exhibits were submitted.

PRIOR RULES

Any rules which may have been previously passed, setting forth the procedures and duties of the Board of Zoning Appeals, are hereby repealed.

AMENDMENTS

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

These Rules of Procedure of the Board of Zoning Appeals are hereby approved by the affirmative vote of the majority of the members of said Board at a meeting of the Board held on the ___ day of _____, _____.

WHITELAND ADVISORY BOARD OF ZONING APPEALS
WHITELAND, INDIANA

SO APPROVED THIS ___ DAY OF _____, _____.

Juanita Emery

Leslie Beeson

Scot Ford

Byron Temple

Richard Hill, Chairman

ATTEST: _____
Michelle R. Richards, Secretary