

# **BARGERSVILLE BOARD OF ZONING APPEALS RULES OF PROCEDURE**

## **Article I: Authority and Duties**

### Section 1 – Authority

The Bargersville Board of Zoning Appeals (“Board”) exists as an advisory board of zoning appeals under the authority of I.C. 36-7-4-901, and the present governing ordinance of the Town of Bargersville regarding same or Ordinance 2015-10, and any amendments hereto. These rules are adopted in accordance with the requirements of I.C. 36-7-4-916.

### Section 2 – Duties

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

## **Article II: Officers, Members, and Staff**

### Section 1 – Membership

The Board shall consist of five (5) voting members. Members shall be appointed in accordance with I.C. 36-7-4-901(h) and I.C. 36-7-4-902. Three (3) citizen members shall be appointed by the executive of the municipality (Town Council President), of whom one (1) must be a member of the Plan Commission and two (2) must not be members of the Plan Commission. One (1) citizen member shall be appointed by the fiscal body of the municipality, who must not be a member of the Plan Commission. One (1) member shall be appointed by the Plan Commission from the Plan Commission’s membership, who must be a county agricultural agent or a citizen member of the Plan Commission other than the member appointed by the Town Council President.

Recognizing that the Board is charged with certain duties and responsibilities to the public and that the full discharge of those responsibilities requires participation in the discussion and voting on the matters before the Board, it is the Board’s policy that regular attendance is expected. In the event that a member is absent for three (3) consecutive regular meetings in any 12-month period, in accordance with I.C. 36-7-4-907(b), that member may be removed from the Board at the discretion of the appointing authority. Should a member inform staff in writing that he/she cannot attend a regular meeting, regardless of whether that meeting is held, it shall be counted as an absence.

### Section 2 – Board Officers and Staff

- A. At its first meeting in each calendar year, the Board shall select from its membership a Chairman and a Vice-Chairman. Each shall serve during the period of his/her membership on the Board until the next election of officers.
- B. The Council employs a Secretary for the Board. The Secretary is not required to be a member of the Board. The Secretary shall be charged with such duties as required under state statutes, town ordinances, and these rules.
- C. The Council may employ such other employees as are necessary for the discharge of the Board’s duties.

### Section 3 – Duties of Board Officers

The Chairman of the Board shall preside over meetings and hearings, decide questions of order, subject to appeal by Board members, and preserve decorum in the meeting room. The Chairman may warn any person present that particular conduct is a breach of courtesy and may order a person expelled from the meeting for disruptive conduct. The Vice-Chairman shall have the authority to act as Chairman of the Board during the absence or disability of the Chairman.

### Section 4 – Replacement of Officers

Upon resignation or replacement of the Chairman or Vice-Chairman as a member of the Board, the Board shall elect a successor at its next meeting.

### Section 5 – Vacancy

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.

### Section 6 – Alternate Members

The appointing authority may appoint an alternate member to participate with the Board at any hearing or decision if a regular member it has appointed has a disqualification due to a conflict of interest or is otherwise unable to participate in the hearing or decision. The alternate member shall have all of the powers and duties of a regular member while participation in the hearing or decision. Alternate members shall be appointed in accordance with I.C. 36-7-4-907(a).

### Section 7 – Communication with the Board

In accordance with I.C. 36-7-4-920, a person may not communicate with any member of the Board prior to the hearing with the intent to influence the member's action on a pending matter before the Board.

## **Article III: Meetings**

### Section 1 – Regular Meetings

The regular meetings of the Board shall be held monthly, on the fourth (4th) Monday of the month at 7:00pm. The location of the meetings shall be in the Bargsville Town Hall. If the date of a regular meeting falls on a legal holiday, or if it is impossible or impractical to conduct the meeting at that time or place, the Chairman may set an alternate date, time, or place for the regular meeting or may cancel the meeting with the consent of the majority of the members of the Board, provided the notice requirements of I.C. 5-14-1.5 are complied with.

### Section 2 – Special Meetings

Special meetings may be called by the Chairman or two (2) members of the Board upon written request to the Secretary. The Secretary shall send to all members, at least three (3) days before the special meeting, a written notice fixing the time and place of the meeting. Written notice is not required if:

- A. the date, time, and place of the special meeting are fixed in a regular meeting;
- B. all members of the Board are present at that regular meeting; and
- C. the Secretary complies with the notice requirements of I.C. 5-14-1.5.

### Section 3 – Cancellation

- A. Whenever there is a lack of business of Board consideration or in the event of natural disaster, snow emergency, or similar causes, the Board may dispense with a regular meeting with the consent of a majority of the members of the Board. In such cases, the staff of the Board shall give notice to all members provided the notice requirements of I.C. 5-14-1.5 are complied with.
- B. Whenever it is determined that a quorum is not available for a regular or special meeting, the Chairman of the Board may dispense with such meeting, and all business scheduled for such meeting will be automatically continued to the next regular or special meeting. In such cases, the staff of the Board shall give written, electronic, or oral notice to the Board members, those having business before the Board, and to the news media.
- C. The Chairman may delegate the polling of the members for their consent to cancel the meeting to the Secretary or the Secretary's designee who may obtain the consents by written, telephonic, or electronic means.

### Section 4 – Minutes and Findings

The Board shall keep minutes of its proceedings and record the vote on all actions taken. The Board shall make written findings of fact in all cases heard by it.

## **Article IV: Conduct of Meetings**

### Section 1 – Quorum

Pursuant to I.C. 36-7-4-910, three (3) voting members of the Board shall constitute a quorum. No business may be transacted and no public hearing may be opened at any meeting of the Board unless a quorum is present.

### Section 2 – Voting

- A. *Majority* – An action of the Board is not official unless it is authorized at a meeting by a majority of the entire membership of the Board.
- B. *Method* – Voting by 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.
- C. *Conflict of Interest* – In accordance with I.C. 36-7-4-909, a Board member may not participate in a hearing or decision concerning a matter in which he/she has a direct or indirect financial interest. For the purposes of these rules, a direct or indirect financial interest shall mean any economic interest. Additionally, a member may not participate if he/she has a disqualifying non-economic conflict of interest. A disqualifying non-economic conflict of interest is any interest in the property or relationship with the parties involved in the matter which would prevent the member from participating in the hearing or decision in a fair and impartial manner. A member shall declare his/her potential conflict of interest, whether or not economic in nature. Such member may disqualify himself/herself or may be disqualified by a majority vote of the remaining Board members. A Board member who is an Interested Party as defined in Article IX Section 3.A shall be declared to have a conflict of interest on that matter. The Board shall enter in its records the name of a member who has a disqualification. A member who determines that he/she has or is determined by the Board to have a conflict of interest shall remove himself/herself from the Board proceedings and leave the chamber during the deliberation of

the subject of such conflict. Such abstention shall not be considered a negative vote. Nothing in this section shall prevent a member of the Board from presenting a petition on his/her own behalf, but member shall not appear before the Board on behalf of others.

- D. *Absentee* – Absentee or proxy voting shall not be permitted. Members must be physically present for the public hearing in order to be eligible to vote on any matter. In the event that a member is absent for all or part of a public hearing or a continued matter, such member is eligible to vote provided that the member listens to the electronic recording or reads a transcript of the proceedings before the vote is taken.

### Section 3 – Order of Business

The order of business at a meeting shall be:

- A. Pledge of Allegiance;
- B. Roll call;
- C. Consideration of minutes of previous meeting(s);
- D. Old business (tabled or continued items);
- E. New business;
- F. Findings of fact;
- G. New business from the floor;
- H. Announcements;
- I. Adjournment

The Chairman may vary the order of business.

### Section 4 – Reconsideration of Vote

Any member of the Board who voted with the majority may call for a reconsideration of any vote at the same meeting of the Board at which it passed, and, if sustained by a majority of the votes, the reconsideration shall be ordered.

## **Article V: Public Hearings**

### Section 1 – Public Hearings

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

### Section 2 – Authority of Presiding Officer

The Chairman may determine the amount of time to be allowed for the presentation of proposals, objections, rebuttal, and the Chairman may limit or terminate repetitive comments.

### Section 3 – Swearing In

The Chairman may swear all witnesses and speakers for all public hearings on the docket at the start of the meeting.

### Section 4 – Order of Events

The Board shall act on petitions in the following order:

- A. A person wishing to speak for or against an application must register that person's name and address with the Secretary prior to the start of that public hearing.
- B. Swearing in of witnesses, if not previously sworn.
- C. The Chairman, Secretary, Board attorney, and/or staff may give background and comments regarding the application.
- D. The petitioner and/or their representative(s) shall present facts relating to the proposal.
- E. The Chairman shall open the public hearing.
- F. Persons who have registered with the Secretary shall then present their support or objections.
- G. The Chairman shall close the public hearing.
- H. The petitioner may then present rebuttal.
- I. Board members may direct questions to any petitioner, proponent, or opponent following any presentation or at any time.
- J. Upon conclusion of questioning and discussion, the Chairman shall entertain a motion to vote thereon.

#### Section 5 – Time Guidelines

The petitioner and any representatives may present the petition or application collectively for up to 15 minutes. Members of the public wishing to speak regarding the petition or application may present collectively up to 15 minutes as part of the public hearing. The petitioner may then respond to public comments and questions from the Board for a 10-minute period. The presiding officer may also monitor comments under Section 6 of this article.

#### Section 6 – Limitation on Comments

After all public comments have been heard under the rules of this section, the presiding officer shall declare the public hearing closed. Additional public comment shall not be permitted after the close of the public hearing subject to Section 6. Any motion which has been made and seconded is open for discussion by the Board members, but such motion is closed to discussion by the public unless the presiding officer specifically allows such discussion. Board members may ask questions of the petitioner and/or members of the audience during this discussion period. The presiding officer shall have the authority to limit discussion by the public or the Board members.

#### Section 7 – Re-Opening of Public Hearing

If a case with a public hearing is continued, the Chairman may reopen the public hearing for the consideration of new evidence.

### **Article VI: Disposition of Petitions**

#### Section 1 – Motion

The final disposition of any petition duly filed and brought before the Board shall be in the form of a motion, properly adopted, specifically setting forth such disposition.

#### Section 2 – Dismissal

- A. *Want of Prosecution* – The Board may dismiss a petition if the petitioner or authorized representative does not appear to present and speak in favor of such petition or if such petition has been improperly filed as required by these Rules.

- B. *Lack of Jurisdiction* – The Board shall dismiss a petition if it finds it has no jurisdiction over the subject matter thereof.

### Section 3 – Withdrawal

- A. *Without Prejudice* – Any petition may be withdrawn without prejudice provided a written request for withdrawal signed by the petitioner or an authorized representative is received by the Board’s staff at least 14 days before the scheduled public hearing or otherwise at the discretion of the Board.
- B. *With Prejudice* – Any request for withdrawal made less than 14 days before the scheduled public hearing may be granted or denied by the Board. Such request may be made in writing or orally at the Board meeting and must state the reasons for the request. If the Board votes to permit withdrawal, the petition shall not again be placed on the docket for public hearing within a period of three (3) months from the date of the originally scheduled public hearing, except upon a motion duly adopted by a majority of the members of the Board to permit such re-docketing.
- C. *Not Permitted* – No petition may be withdrawn after a motion has been made and seconded and a vote has been ordered by the presiding officer.

### Section 4 – Continuance

- A. *Requests* – Any person may request a continuance in writing prior to the public hearing and/or orally at the beginning of the public hearing. The person requesting such continuance shall be required to show good and sufficient cause for such continuance, and it shall be within the discretion of the Board to grant or deny such request.
- B. *Motion by Board* – Any member of the Board may at any time move to continue the public hearing of any petition. Such a motion duly seconded and adopted shall continue the public hearing to the time specified in the motion. The Board may include in the motion specific instruction for re-advertising and/or re-notification of Interested Parties. If such re-notification is required, the petitioner may be required to pay the costs associated therewith.
- C. *Automatic* – In the event that the Board does not achieve the required three (3) votes to approve or deny a petition, such vote shall be declared indecisive, and the petition shall be continued automatically. Before declaring a petition continued on this basis, the presiding officer shall call for another motion.
- D. *Improper notice* – If proper notice under applicable laws and Article IX of these Rules has not been given, the Board shall continue the petition to allow time for proper notice to be given.

### Section 5 – Re-Docketing

No petition which has been denied by the Board shall again be placed on the docket for public hearing within a period of one year from the date of such decision, unless the Board finds that there is a substantial change in the petition or circumstances affecting the petition, in which case the matter may again be placed on the docket only if a motion to permit re-docketing is duly adopted by the Board.

## **Article VII: Appeal Procedure**

Every petitioner for an appeal from the Zoning Administrator’s decision shall complete an application form supplied by the Board. Any required filing fee must be paid at the time of submitting the appeal. The Board may require the petitioner to submit any additional information it deems relevant for

consideration. Any appeal of an administrative decision shall be filed with the Board within thirty (30) days following such decision.

## **Article VIII: Filing Procedure**

### **Section 1 – Applications**

- A. Each petition to the Board shall be on application forms prescribed by the staff and shall be accompanied by such information and exhibits as specified on such forms and/or required by applicable ordinances.
- B. The application must be filed with the Board on or before the appropriate filing deadline, and the required filing fee must be paid at the time of submitting an application. No application shall be accepted until it is reviewed for completeness. Supplemental information may be submitted up to seven (7) days following the filing date. Thereafter, any additional information submitted shall result in an automatic continuance of the petition to the Board's next meeting.
- C. Petitioners must submit proposed findings of fact at the time of application to the Board. These findings shall use the decision criteria as prescribed in the Zoning Ordinance in accordance with the Indiana Code.
- D. A notarized letter of consent is required for any petition if the applicant does not own the property involved.

### **Section 2 – Classification of Applications**

- A. Petitioners may apply for variances of use, variances from development standards, or a special exception. Separate application forms are required for each classification of application the Board is empowered to consider. The type of variance will be classified in accordance with the definitions in the Zoning Ordinance.
- B. The Zoning Administrator shall make a determination as to the type of variance required in each case. The petitioner may appeal that decision to the Board; however, the petitioner shall apply for the type of variance determined by the planning director along with the appeal. If the Board upholds the appeal, the variance may be considered under the other classification, provided that adequate notice has been given in accordance with Article IX of these rules.

## **Article IX: Notice Requirements**

### **Section 1 – Publication**

When the Board is required by law to publish in a newspaper of general circulation a notice prior to any public hearing of the Board, the petitioner shall cause such notice to be published one time at least fifteen (15) days prior to the date of the hearing. Newspaper publication shall be by legal publication in the Daily Journal. Proof of such publication shall be submitted by the petitioner and kept with the records of such public hearing. Newspaper publication must contain the place, date, and time of the hearing; the address or legal description of the property; and the reason for the petition.

### **Section 2 – Mailed Notice**

- A. *Method of Notice* – The petitioner shall be required to give notice to Interested Parties, as defined in Article IX Section 3.A. Notice to interested parties shall be provided via verified certificate of mailing listing the names and addresses of the Interested Parties notified or

certified mailing from the U.S. Postal Service at least ten (10) days before the date set for the hearing and must contain the place, date, and time of the hearing; the address or legal description of the property; and the reason for the petition.

- B. No mailed notice is required for administrative appeals.

### Section 3 – Interested Parties

- A. *Definition* – For purposes of I.C. 36-7-4-920(b), interested parties are:
  - 1. Any person with a legal interest in property subject to a petition before the Board;
  - 2. Town of Bargersville Department of Development; and
  - 3. All property owners within 600 feet or two property owners (whichever is greater) of the affected property
- C. *Determining Interested Parties* – The names and addresses of interested parties may be determined from the Johnson County Auditor’s Office/Mapping Department’s most current records. Highways, county roads, streets, alleys, creeks, rivers, ponds, or other natural elements are not a boundary for notification.
- D. If the petitioner is unable to give due to an interested party, the petitioner must execute the affidavit under the penalties of perjury stating the reasons for the failure to give notice. This affidavit shall be attached to or filed with the affidavit of notice form.

### Section 4 – General Public Notice Sign

Planning staff shall cause such notice to be placed on the subject property in accordance with the time periods established by the applicable law. When bound by two street fronts, the sign shall be placed on the street with the highest thoroughfare classification. Proof of such placement of the sign shall be obtained by the staff and kept in the appropriate file. In the event that matters before the Board are continued, planning staff shall place the notice sign on the subject property.

### Section 5 – Proof of Notice

- A. An affidavit of notice form must be completed in ink or typed. The names and addresses of those sent notice need to be listed on the form, the form must be notarized, and a copy of the notice to interested parties must be attached to or filed with the form.
- B. If the affidavit of notice (including either green cards and receipts or certificate of mailing) and proof of newspaper publication are not filed with the Board on or before the Monday preceding the Board meeting, the petition will automatically be continued to the next monthly meeting.

## **Article X: Board Records**

### Section 1 – Responsibility

It shall be the duty of the staff of the Board to maintain all Board files and records, including the official minutes of all meetings.

### Section 2 – Minutes

The staff shall prepare an accurate record of all public hearings and official actions of the Board, and the minutes representing such record shall be made publically available within a reasonable time after such public hearing or action.



Section 3 – Recordings

The recording Secretary may make electronic recordings of the Board’s proceedings. Such recording products shall remain on file in the Board’s office for a period not less than one year from the date of the public hearing or determination, whichever is later. Such recordings shall not be removed from the Board’s office other than by the Board or pursuant to an order of a court of competent jurisdiction. Interested parties may listen to such recordings in the Board’s office and may copy such recordings, under the supervision of the Board’s staff. The Board’s staff may also send recordings electronically upon request.

Section 4 – Board Case Files

The staff shall maintain a file for each petition placed on the docket of the Board. Such files shall contain, as a minimum, the application form and supporting materials and any exhibits pertinent to the decision, conditions, or other material related to the binding effects of the Board’s action.

Section 5 – Public Records

The records and files of the Board shall be made available to the public under the provisions of I.C. 5-14-3, the Indiana Access to Public Records Law, and any amendments thereto. The planning director is hereby designated as the officer responsible for determining which documents of the staff and Board are public records. Any person may file a written objection to a decision of the director under this section. Upon receipt of such objection, the director shall consult the Board Chairman and Board attorney who shall decide whether a requested document is a public record.

**Article XI: Amendments**

Amendments to these rules of procedure may be made by the Board at any 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 quorum.

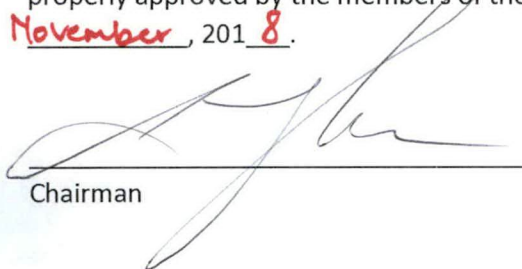
**Article XII: Severability**

If any section, clause, provision, or portion of these Rules shall be held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section, clause, provision, or portion of these Rules.

**Article XIII: Certificate of Adoption**

All rules heretofore adopted by the Bargersville Board of Zoning Appeals are hereby expressly repealed, as of the effective date of these rules. These rules do not affect forms in use now or in the future. The Secretary and Town Counsel may determine and modify such forms as they deem necessary.

These Rules of Procedure of the Bargersville Board of Zoning Appeals of Bargersville, Indiana, were properly approved by the members of the Board at a meeting held on the 26 day of November, 2018.

  
Chairman

Attest:  
  
Secretary