

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.

SECTION 3 – MEMBERSHIP

- A. Appointments** – 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.
- B. Attendance** – 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. If 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.
- C. 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).
- D. 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.
- E. 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.

SECTION 4 – MEETINGS

All meetings of the Board shall be conducted in accordance with I.C. 5-14-1.5, the Indiana Open Door Law, and any amendments hereto.

- A. 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 Bargersville 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.
- B. 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 the date, time, and place of the special meeting are fixed in a regular meeting; all members of the Board are present at that regular meeting; and the Secretary complies with the notice requirements of I.C. 5-14-1.5.
- C. Cancellation**
 - 1. 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.
 - 2. 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.
 - 3. 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.

ARTICLE II: OFFICERS AND STAFF

SECTION 1 – BOARD OFFICERS

- 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.

- D. 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 2 – DUTIES OF BOARD OFFICERS

- A. **Chairman** – 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.
- B. **Vice Chairman** – The Vice Chairman shall have the authority to act as Chairman of the Board during the absence or disability of the Chairman.
- C. **Secretary** – The Secretary shall certify all official acts of the Board, including the written votes of the Board on all matters for which such vote is required.

ARTICLE III: 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. A member shall declare his/her potential conflict of interest, whether economic in nature or not. Such member may disqualify himself/herself or may be disqualified by a majority vote of the remaining Board members.
 - 1. 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.
 - 2. A Board member who is an Interested Party as defined in Article VII Section 3.B 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.
 - 3. A member who determines that he/she has or is determined by the Board to have a conflict of interest may 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.

4. 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. **Required** – Except as provided in subsection C above, all Board members present shall vote on each matter for which a public hearing is held. An abstention for any other reason shall have the same effect as a negative vote.
- E. **Absentee** – Absentee or proxy voting shall not be permitted.
- F. **Electronic Participation** – Members may electronically participate in meetings pursuant to the virtual meeting attendance policy provided by Town Resolution 2021-09, and as may be amended.

SECTION 3 – ORDER OF BUSINESS

- A. The order of business for regular meetings of the Board shall be as set forth below, except that the Chairman, after consultation with the staff and/or other members of the Board, may alter the order of business for regular meetings if such alteration is construed to promote efficiency and convenience for the Board, petitioners, and the public. The order of business for a regular or special meeting may be otherwise altered and changed after the Chairman has announced the agenda only upon a consenting vote of a majority of the Board present.
 1. Pledge of Allegiance
 2. Roll Call of members
 3. Minutes
 4. Old Business
 5. New Business
 6. Findings of Fact
 7. New Business from the Floor
 8. Announcements
 9. Adjournment
- B. Any docket items that must be automatically continued in accordance with these Rules shall be the first business items considered after Minutes.
- C. The Chairman may swear all witnesses and speakers for all public hearings on the docket at the beginning of the meeting.

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 IV: PUBLIC HEARINGS

SECTION 1 – PROCEDURE

- A. **Docket** – The President shall call the docket number of the item scheduled for public hearing.
- B. **Order of Events** – The order of events shall be as follows:
 1. Background and comments by the Board’s staff

2. Swearing in witnesses
 3. Presentation of request by petitioner
 4. Comments and questions by members of the Board
 5. Opening of public hearing
 6. Comments and questions by members of the audience
 7. Closing of public hearing
 8. Closing comments by petitioner
 9. Discussion and questions by members of the Board
 10. Motion
 11. Vote
- C. *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. 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.
- D. *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 2.E of this article.
- E. *Method of Voting*** – Each motion on a matter requiring a public hearing shall be in accordance with the provisions of Article III Section 2 of these Rules. At the conclusion of the vote, the Secretary shall report the vote and it shall be so recorded. The vote of each member shall become a part of the record on the petition, and the Secretary shall identify the members casting minority ballots. The vote of each member shall be disclosed by any Board officer or the staff to anyone requesting such information.
- F. *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.

SECTION 2 – CONDUCT

- A. *Representation*** – The petitioner may appear in person, by agent, or attorney, and present any supporting witnesses, evidence, statements, and arguments in favor of the request. Failure of the petitioner to appear may result in dismissal of the petition pursuant to Article V Section 2 hereof. Remonstrators and persons in favor of the request may appear in person, by agent, or by attorney, and present witnesses, evidence, statements, and arguments. Any person interested in any petition shall have the right but shall not be required to enter a written statement or other presentation in the public hearing.
- B. *Board Participation*** – The Board members shall be provided adequate opportunity to examine witnesses and question any evidence, statements, and arguments in the interest of a fair public hearing.
- C. *Identification*** – All persons wishing to be heard on any matter in a public hearing must stand before the Board and provide their names and addresses for the record.

- D. **Commentary Addressed to Board** – All commentary at a public hearing shall be addressed to the Board through its presiding officer. Such commentary shall not be permitted between opposing parties without the consent of the presiding officer.
- E. **Authority of Presiding Officer** – The presiding officer shall have the authority to prohibit repetitious, irrelevant, or immaterial testimony and shall have authority to limit the length of testimony by each speaker deemed appropriate to a fair public hearing.
- F. **Orderly Conduct** – Every person appearing before the Board shall abide by the order and direction of the presiding officer. Discourteous, disorderly, or contemptuous conduct shall not be tolerated, and the presiding officer may take such action as is deemed necessary to prevent such conduct, specifically including but not limited to requiring the offensive person(s) to depart the meeting, summoning law enforcement personnel, or adjourning the meeting.

ARTICLE V: DISPOSITION OF PETITIONS

SECTION 1 – MOTIONS

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 any petition. Such a motion duly seconded and adopted shall continue the petition to the time specified in the motion. In the case of petitions involving a public hearing, 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 Section VII 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 VI: FILING PROCEDURES

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 required by applicable ordinances and/or as requested by staff. Any communication purporting to a petition not on the prescribed forms or not containing the information required shall be considered incomplete and shall not be docketed. Petitions which are deemed complete by staff will be added to the Board agenda.
- 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 application. Any supplemental materials submitted by the petitioner after the filing deadline may be provided to the Board at staff's discretion. Such submissions may result in a staff recommendation for a continuance.
- 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.** The Zoning Administrator shall determine 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 VII of these rules.
- E.** 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.

SECTION 2 – FILING DEADLINES

The staff shall prepare, no later than the first day of December of each year, a schedule of the filing deadlines for the ensuing year. Such schedule shall provide for adequate time for the staff to review the proposal, offer advice to the Board, and shall provide adequate time for issuances of required notices. Any application which is not complete at the time of the filing deadline shall not be docketed.

SECTION 3 – ELIGIBLE APPLICANTS

The owner(s) of property included in any petition before the Board must consent to the filing of the application. Such consent may be evidenced by the owner's signature on the application or by signature of a person having power of attorney authorizing such signature, including a copy of the power of attorney. In the case of property which is being purchased under a land contract, the signatures of both the contract purchasers and the contract sellers or their duly authorized agents shall be required.

ARTICLE VII: NOTICE REQUIREMENTS

SECTION 1 – CONTENTS

Any notice of public hearing required by state or local law shall contain the information required by applicable law. Notice must reflect the most recent application filed, including any supplemental information filed pursuant to Article VI Section 1 above which changes the original application.

SECTION 2 – 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. 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 3 – MAILED NOTICE

The petitioner shall provide mailed notice to Interested Parties in accordance with this section.

- A. Method of Notice** – The petitioner shall give notice of any matter requiring public hearing or action by the Board to all Interested Parties, as defined in Article VII Section 3.B, by letter verified by a certificate of mail from the U.S. Postal Service sent at least fifteen (15) calendar days before the Board meeting. In addition, the staff shall place a public notice sign on the subject property at least ten (10) days before the public hearing. No mailed notice is required for administrative appeals.

- B. Interested Parties** – In accordance with I.C. 36-7-4, Interested Parties are hereby determined to be the following:
1. Any person with a legal interested in property subject to a petition before the Board.
 2. The Town of Bargersville Department of Development is an interested party for all petitions requiring a public notice.
 3. All property owners within 600 feet or two property owners (whichever is greater) of the affected property.
- C. Subject Property** – For the purposes of this Article, *subject property* is defined as follows:
1. The entire lot or parcel involved in the request; and
 2. All adjoining property which is in the same ownership as the parcel involved in the request.
- D. Adjoining Property** – For the purposes of this Article, *adjoining property* is defined as follows:
1. All property which has any contiguous boundary with the subject property; and
 2. All property which would be contiguous if it were not separated from the subject property by a street, railroad right-of-way, easement, alley, runway, or similar feature.
- E. Property Owners** – For the purposes of this Article, *property owners* shall be defined as follows:
1. The names and addresses of owners of record of real property as listed on the record of the Mapping Department of the Auditor of Johnson County.
 2. If property is subject to the Horizontal Property Law (I.C. 32-1-6), the owner of each condominium unit within the area defined in subsection B shall be entitled to notice.
 3. If the area defined in subsection B is common open space associated with a Horizontal Property Regime, subdivision, PUD, or similar entity, notice may be given to the association of owners as set forth in the recorded covenants or condominium documents.
- F.** The petitioner shall be responsible for notifying Interested Parties set forth in this Article, which shall be reviewed by staff.
- G.** 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. If 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 VIII: 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 & FINDINGS

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 available within a reasonable time after such public hearing or action to all members of the Board. After approval by the Board, such minutes shall be made publicly available.

The Board shall make written findings of fact in all cases heard by it.

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 until minutes for the meeting are approved, at which time recordings shall be destroyed. Meetings may also be livestreamed and recorded to online video platforms (e.g., YouTube) on official Town channels for public viewing and participation. These recordings may be accessed at any time via the official Town channel on the operating platform.

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 IX: FEES

SECTION 1 – PAYMENT REQUIRED

In no case shall the Board act on any petition for which applicable fees have not been paid in full. No part of any fee paid pursuant to this Article shall be returnable to the petitioner, unless the staff determines that the fee was charged in error.

SECTION 2 – WAIVERS

Nothing herein shall be construed to require a fee for actions initiated in the public interest by the Board. Filing fees shall be waived for petitions filed by any local taxing authority.

ARTICLE X: AMENDMENTS AND SUSPENSION

SECTION 1 – AMENDMENTS

Amendments to the Rules of Procedure may be made by the Board at any regular or special meeting upon the affirmative vote a majority of the members of the Board, provided, however, that the proposed amendment shall have been presented in writing at a previous regular meeting of the Board.

SECTION 2 – SUSPENSION OF RULES

The suspension of any rule of procedure herein may be authorized by the Board at any regular or special meeting upon the unanimous vote of those present, provided, however, that no rule which is required to comply with state or local law may be so suspended.

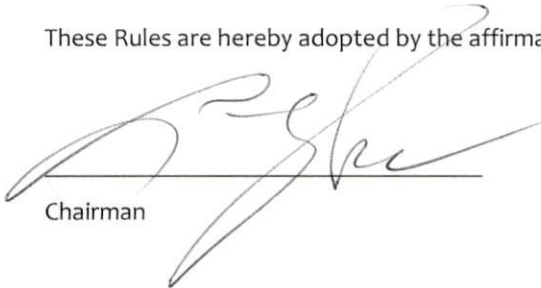
ARTICLE XI: SEVERABILITY

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 XII: 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 are hereby adopted by the affirmative vote of the Board this 22nd day of August, 2022



Chairman

Attest:


Secretary