
Zoning Ordinance
Article Eleven

Board of Zoning Appeals

Board of Zoning Appeals

11.1 Establishment and Membership

Pursuant with IC 36-7-4-901, the Madison County Board of Commissioners establishes the Advisory Board of Zoning Appeals of Madison County which shall conduct business consistent with all requirements of the Indiana Code and this Ordinance.

The Board of Zoning Appeals (BZA) shall consist of and continue as a 5 member Board. Members shall be appointed pursuant to IC 36-7-4-902 and 906. Alternate Board of Zoning Appeal members may be appointed consistent with IC 36-7-4-907. 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.

11.2 Territorial Jurisdiction

The Board of Zoning Appeals shall have jurisdiction over all the land subject to the Madison County Zoning Ordinance.

11.3 Powers and Duties

The Board of Zoning Appeals shall have exclusive subject matter jurisdiction for:

- A. Variances;
- B. Special Uses (Special Exceptions); and
- C. Administrative Appeals.

11.4 Rules and Procedures

- A. Rules and Procedures: The Board of Zoning Appeals shall have sole authority to adopt any and all rules under Indiana Code Section 36-7-4-916 and any and all procedures concerning organization, selection of officers, forms for applications, filing requirements, procedures, notices for and conduct of meetings, and public hearings.
- B. Facilities and Funding: Madison County shall provide suitable facilities for the holding of Board of Zoning Appeals meetings and hearings and for the storage of its records, documents, and accounts; and in its annual budget shall provide sufficient funds for the functioning of the Board and its staff.
- C. Filing: All applications for variances, special exceptions, and requests for administrative appeal shall be filed by the applicant with the Planning Director in the form prescribed by the Board.

11.5 Hearings

- A. The Board shall fix a reasonable time for the hearing of administrative appeals, special exceptions, and variances.
- B. A person may not communicate with any member of the Board before the hearing with intent to influence the member's action on a matter pending before the Board.

11.6 Notice of Public Hearing

For all public hearings, the petitioner shall provide notice to the public consistent with the requirements of this Ordinance.

11.7 Appeals

Every decision of the Board of Zoning Appeals shall be subject to review by a writ of certiorari as prescribed in IC 36-7-4-1000 series. Such appeals shall be presented to a court of jurisdiction within 30 days of the Board's decision.

11.8 Special Uses

There shall be no cases or application therefore, nor any particular situation in which this Ordinance authorizes special uses without the approval of the BZA. Further, no decisions on previous applications shall serve to set a precedence for any other application before the BZA.

- A. The Board may grant a special use approval for a use listed as such in the appropriate zoning district in this Ordinance if, after a public hearing, it makes findings of facts in writing, that:
 - a. the proposal will not be injurious to the public health, safety, morals, and general welfare of the community;
 - b. the requirements and development standards for the requested special use as prescribed by this Ordinance will be met;
 - c. granting the special use will not subvert the general purposes served by this Ordinance and will not permanently injure other property or uses in the same district and vicinity; and
 - d. the proposed use will be consistent with the character of the zoning district in which it is located and the Madison County Comprehensive Plan.
- B. When considering a special use the Board of Zoning Appeals may examine the following items as they relate to the proposed use:
 - a. topography and other natural site features;
 - b. zoning of the site and surrounding properties;
 - c. driveway locations, street access, and vehicular and pedestrian traffic;
 - d. parking amount, location, and design;
 - e. landscaping, screening, and buffering;
 - f. open space and other site amenities;
 - g. noise production and hours of operation;
 - h. design, placement, architecture, and building material of the structure;
 - i. placement, design, intensity, height, and shielding of lighting;
 - j. traffic generation; and
 - k. general site layout as it relates to its surroundings.
- C. The Board may impose such reasonable conditions upon its approval as it deems necessary to find that the criteria for approval in Section 11.8(A) above will be served.
- D. The Board may require the owner of the property to make written commitments concerning the use or development of the property as specified under IC 36-7-4-921 and have such commitments recorded in the Madison County Recorder's Office.
- E. Unless otherwise specified by the Board, special use approvals shall be limited to, and run with, the applicant at the location specified in the petition. The Board may also limit special uses to a specific time period and for a specific use.
- F. A use authorized as a special use may not be expanded, extended, or enlarged unless reauthorized by the Board under the procedures set forth in this section for granting a special use.
- G. Approvals granted by the Board expire after 1-year from the date of approval, if not commenced. The Board may grant 1-year extensions.
- H. Any petition denied by the Board shall not be reheard for 1-year.

11.9 Development Standards Variances

- A. The Board may grant a variance from the development standards of this Ordinance (such as height, bulk, area) if, after a public hearing, it makes findings of facts in writing, 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

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- in a substantially adverse manner; and
 - c. the strict application of the terms of this Ordinance will result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.
- B. The Board may impose such reasonable conditions upon its approval as it deems necessary to find that the criteria for approval in Section 11.9(A) above will be served.
 - C. The Board may require the owner of the property to make written commitments concerning the use or development of the property as specified under IC 36-7-4-921 and have such commitments recorded in the Madison County Recorder's Office.
 - D. A developmental standards variance granted by the Board and shall run with the parcel until such time as: (a) the property conforms with the Ordinance as written, or (b) the variance is terminated.
 - E. Approvals granted by the Board must be commenced within 1-year from the date of approval. The Board may grant 1-year extensions of this requirement.
 - F. Any petition denied by the Board may not be reheard for 1-year.

11.10 Floodplain Standards Variances

- A. The Board may grant a variance from the Flood Hazard Area Standards of this Ordinance only if, after a public hearing, it makes findings of facts in writing, that:
 - a. there exists a good and sufficient cause for the requested variance;
 - b. the strict application of the terms of this Ordinance will constitute an exceptional hardship to the applicant; and
 - c. the granting of the requested variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- B. The Board of Zoning Appeals may only issue a variance to the terms and provisions of the Flood Hazard Area Standards of this Ordinance subject to the following conditions:
 - a. No variance for a residential use within a floodway subject to FH-01(G)(a) and (b) of Article 6 of this Ordinance may be granted;
 - b. Any variance granted in a floodway subject to FH-01(G)(a) and (b) of Article 6 of this Ordinance will require a permit from the Indiana Department of Natural Resources;
 - c. Variances to the Building Protection Standards of FH-01(H) of Article 6 of this Ordinance may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade;
 - d. Variances may be granted for the reconstruction or restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological and Cultural Sites, Structures, Districts, and Objects;
 - e. All variances shall give the minimum relief necessary and be such that the maximum practical flood protection will be given to the proposed construction; and
 - f. The Board of Zoning Appeals shall issue a written notice to the recipient of a variance or exception that the proposed construction will be subject to increased risks to life and property and could require payment of increased flood insurance premiums.
- C. The Board may impose such reasonable conditions upon its approval as it deems necessary to find that the criteria for approval in Section 11.10(A) and (B) above will be served.

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- D. The Board may require the owner of the property to make written commitments concerning the use or development of the property and have such commitments recorded in the Madison County Recorder's Office.
 - E. A floodplain standards variance granted by the Board and executed in a timely manner as described in this section shall run with the parcel until such time as: (a) the property conforms with the Ordinance as written, or (b) the variance is terminated.

11.11 Use Variances

The Madison County Board of Zoning Appeals shall under no circumstances grant a variance or take any action to establish a use on any property within its jurisdiction that is neither a listed permitted use nor a listed special use in the district in which it is located as established by Article 3 of this Ordinance.

11.12 Special Use and Variance Execution and Termination

- A. If the Board grants a special use or variance, it shall direct the applicant to apply for an Improvement Location Permit. If such application complies with all established requirements and this Ordinance, an Location Improvement Permit for the execution of the approved variance or special use shall be issued.
- B. A special use or variance ceases to be authorized and is terminated if an Improvement Location Permit for the execution of the approval has not been obtained within 1 year of the date the variance or special use is granted. The variance or special use shall also be terminated if the approved construction has not been completed and approved by the Planning Director as being consistent with all written commitments or conditions, the requirements of this Ordinance, and all applicable permits within 2 years of the date the special use or variance is granted.
- C. A variance or special use may be terminated by the Board of Zoning Appeals under the following procedure:
 - a. Upon determination by the Planning Director that possible grounds for termination exist, the matter shall be placed on the Board of Zoning Appeals agenda for a public hearing.
 - b. At the public hearing the variance or special use shall be terminated if a finding is made by the Board that one or more of the following is true:
 - 1. the execution of the approval is not consistent with any requirement of this Ordinance,
 - 2. the execution of the approval is not consistent with any condition of approval,
 - 3. the execution of the approval is not consistent with any written commitment, or
 - 4. the approved was the result of fraud or the misrepresentation of facts.
 - c. No special use or variance may be reviewed by the Board of Zoning Appeals for the same cause more than once in any 1 year period.

11.13 Administrative Appeals

- A. The Board may grant an appeal of any decision, interpretation, or determination made by the Planning Director, other Plan Commission staff members, or any other administrative official or board charged with the duty of enforcing and interpreting this Ordinance.
- B. The Board shall only grant an appeal of such an administrative decision based on a finding, in writing, that the decision of the administrative person or board was inconsistent with the provisions of this Ordinance.
- C. The approval of an administrative appeal may be terminated by the Board of Zoning Appeals under the following procedure:
 - a. Upon determination by the Planning Director that possible grounds for termination exist, the matter shall be placed on the Board of Zoning Appeals agenda for a public hearing.
 - b. At the public hearing the approval shall be terminated if a finding is made by the Board that the approved was the result of fraud or the misrepresentation of facts.

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- c. No administrative appeal may be reviewed by the Board of Zoning Appeals for the same cause more than once in any 1 year period.
- D. If an administrative appeal is granted, the Board may refund any application fees which have been paid to the County by the applicant in petitioning for the appeal. In no way shall this provision be interpreted as providing the applicant with the ability to seek the refund of any other fees or costs associated with the appeal or the application which is the subject of the appeal.

11.14 Exclusion

Nothing in this Ordinance shall be deemed to restrict or regulate the power of eminent domain by the State of Indiana or by any state agency. Nor shall they be deemed to authorize any unit of government, legislative body, plan commission, or board of zoning appeals to restrict or regulate the power of eminent domain by the State of Indiana or a state agency.

As used in this section, the term “state agency” shall mean and include all agencies, boards, commissions, departments, and institutions, including state educational institutions of the State of Indiana.