

**AMENDED AND RESTATED**  
**RULES OF PROCEDURE FOR THE**  
**CITY OF NEW HAVEN**  
**BOARD OF ZONING APPEALS**

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# Section 1

Pursuant to the authority granted to the Board by IC § 36-7-4-916, the Board of Zoning Appeals of the City of New Haven, Indiana, does hereby adopt the following rules of procedure in the administration and conduct of its duties:

Section 1. Definitions. For purposes of these Rules, the following terms shall have the meanings stated, unless a contrary meaning is required by the context or specifically otherwise prescribed:

- 1.1. Board - The New Haven advisory Board of Zoning Appeals
- 1.2. City - The City of New Haven, Indiana.
- 1.3. Department - The Department of Planning and Zoning for the City, or any successor agency thereto.
- 1.4. Interested Parties - The owners of record, according to the Real Estate Master File as maintained by the Auditor of Allen County, Indiana, at the time of the filing of the application or petition involved, of each lot or parcel of real estate within 300 feet of the tract of real estate which is the subject of the appeal, application, petition, or matter upon which a public hearing is to be held before the Board.
- 1.5. Ordinance - The Zoning Ordinance for the City (Chapter 151 of the City of New Haven Code of Ordinances).
- 1.6. Planning Director. The Director of Planning and Zoning for the City. The term includes the roles of Zoning Enforcement Officer, Zoning Administrator, and designated enforcement official.
- 1.7. Rules -The duly adopted Rules of Procedure of the Board.
- 1.8. Staff - The Planning Director and other staff of the City of New Haven Planning Department, who aid the Board in the discharge of its duties.

## Section 2

### Section 2. General Administration of Board Affairs.

#### 2.1. Election and Appointment of Officers - Duties.

##### A. Officers - Election and Duties.

1. Election. At the first meeting of each calendar year, the Board shall, from its membership, elect a chairman and a vice chairman, each to serve in such capacities during the period of their membership on the Board for the balance of the calendar year. Upon resignation or replacement of any officer, as a member of the Board, the Board shall elect a successor at its next regularly-scheduled meeting. In the event both the chairman and the vice-chairman are absent from a regularly scheduled meeting, a temporary chairman shall be elected for that meeting from the membership to chair the meeting. Additionally, the Board may appoint a secretary and such other employees as are necessary for the discharge of its duties. The secretary position may be filled by a member of the Staff, or a member of the Board.
2. Duties of Officers.
  - (a) The Chairman shall preside at all meetings of the Board and shall be responsible for conducting all public hearings held before the Board. The Chairman, subject to these Rules, shall moderate all matters before the Board and shall decide all points of order or procedure, unless otherwise directed by a majority of the Board present. The Chairman shall execute, for and on behalf of the Board, such documents as may require Board approval under the Zoning Ordinance, the Rules or under State law.
  - (b) The Vice Chairman of the Board shall perform the duties of the chairman in the event of absence, disability, or unavailability.
  - (c) The Secretary, by and through the staff, shall keep minutes of the Board's proceedings and record the vote on all actions taken. After the minutes are approved in accordance with 2.5(D), the Secretary shall sign the official minutes. The secretary shall also sign the findings of fact approved by the Board.

- (d) All ministerial duties of the Board not otherwise delegated may be delegated to the Planning Director.

2.2. Filing Procedures and Requirements.

- A. Filing Procedures. All matters to be considered by the Board shall be filed with the Department. For those matters requiring a public hearing, appeals, petitions or applications to the Board shall be made on forms supplied by the Board and shall include the exhibits, material, and information required by and specified on the forms.
- B. Filing Fees. At the time an appeal, petition or application for a matter is filed, the Department shall collect a nonrefundable filing fee adopted under the Rules of Procedure of the New Haven Plan Commission.
- C. Scheduling. An appeal, petition or application for a matter shall not be scheduled for public hearing until the Staff has had a reasonable period of time to determine if the petition or application is complete. In no instance, however, shall such period of time exceed one regularly scheduled cycle of the Board. Incomplete applications shall not be scheduled for public hearing until such time as all exhibits, materials, and information required by the Zoning Ordinance and requested by the Staff is submitted. An appeal, petition or application for a matter will not be scheduled for an upcoming regularly scheduled public hearing unless the appeal, petition or application was filed and complete on or before the filing deadline established by the Board for its yearly calendar.

2.3. Standing to File Applications.

- A. Signatories. An appeal from an order, requirement, decision or determination according to IC § 36-7-4-918.1 must be signed by an aggrieved party by the matter appealed. An application for a contingent use, variance, or a special exception (or reconsideration under Section 2.4) shall be signed by the applicant and the owner(s) of record of the real estate which is the subject matter of the application. Any person(s) having the requisite degree of standing, under Indiana law, to apply for an appeal, contingent use, variance, or special exception, shall also be permitted to file such an application.
- B. Proof of Interest. An application for a contingent use, variance, or special exception use is submitted by a person or entity other than the owner of record of the subject real estate, the applicant shall describe, on the application, the nature of the applicant's interest in the real estate and shall attach to the application a copy of the instrument(s) by which the applicant acquired such interest.

2.4. Reconsideration. Within one year of a denial of a petition, the Board may not reconsider a substantially similar proposal on the same site without a change in the circumstances or conditions that induced the prior denial. Applications for reconsideration shall be filed in accordance with Rule 2.2. If, in the opinion of the Planning Director, an applicant makes a reasonable showing of a change in the circumstances or conditions inducing the prior denial, then Staff shall schedule the petition for a public hearing before the Board. At the hearing, the applicant shall demonstrate to the Board's satisfaction that there has been a change in the circumstances or conditions inducing denial, in addition to any other prerequisites for approval of the given petition established by statute or the Ordinance.

2.5. Meetings of the Board.

- A. Regular Meetings. Designated public hearings of the Board shall be held at the time and place designated in the annual public meeting calendar published by the Staff. In the event the regular hearing date falls on a legal holiday, such meeting shall be scheduled according to meeting dates adopted by the Board.
- B. Special Meetings. Special meetings of the Board may be called by the Chairman or by two (2) members of the Board upon written request to the Secretary. The Secretary shall send to all members of the Board, at least two (2) days in advance of the special meeting requested, a written notice fixing the time and place of the meeting, unless otherwise so notified at a regular meeting.
- C. All Meetings and Hearings Public. All regular or special meetings and hearings of the Board shall be open to the public and shall comply with the Indiana Open Door law, IC § 5-14-1.5-1, *et seq.*
- D. Minutes. The Board shall keep minutes of its proceedings. In addition to stating the date, time, and place of each meeting and reflecting the business conducted, the minutes shall also show the names of all Board members and Staff present, indicating the late arrival or early departure of the Board members and Staff. Minutes shall include the vote of each Board member and voting on every question, whether or not a final decision is rendered. The disqualification of any member from voting on a particular matter shall be noted in the minutes. The name of any alternate member appointed under IC § 36-7-4-907 shall also be recorded in the minutes. The minutes of each meeting shall be approved (or amended and approved) at the next regular meeting. The approved minutes shall be official when executed in accordance with Rule 2.8. Copies of the minutes of the previous meeting shall be submitted to Board members prior to the next regular meeting.

- E. Recording of Meetings. The Board may record the proceedings of each meeting to substantiate and clarify the official minutes of the Board.
  - F. Records. The Board shall keep in its records all material relevant to each agenda item, including but not limited to, required documents for the petitioner or applicant as part of the application; any data or evidence presented by either the applicant or petitioner and the supporters thereof or by remonstrators at the public hearing; completed Findings of Fact; and any correspondence received by the Board pertinent to the item. All records shall be kept with the Board's office at the Department of Planning Services and shall be a matter of public record, open for inspection during business hours.
  - G. Quorum Required/Recess of Meeting. All meetings shall terminate automatically if a quorum is not present. A majority of the members of the Board shall constitute a quorum. A majority of the quorum shall decide the issue, a tie vote being considered a vote to recess. A recessed meeting shall not be considered a special meeting, although the Secretary shall be required to notify any members of the Board who were not in attendance at the regular meeting of the date, time and place of such recess.
  - H. Robert's Rules of Order. The Board shall use *Robert's Rules of Order*, as a reference only in conducting a meeting. Otherwise, the Chairman shall decide matters of order and decorum.
- 2.6. Indecisive Vote. In any case where a vote of the Board does not result in official action, the petition or application involved shall automatically be recessed and reviewed at the Board's next regularly scheduled meeting.
- 2.7. Zoning Enforcement Officer - Succession to Duties. The Zoning Enforcement Officer, Zoning Administrator, or designated enforcement official shall be the Planning Director. Where the Zoning Enforcement Officer/Zoning Administrator is prescribed by the Ordinance to perform any act or duty on behalf of the Board, and if the Planning Director is unavailable, absent, or for any reason unable to perform such act or duty, then it shall be performed by a member of Staff designated by the Planning Director.
- 2.8. Execution of Documents.
- A. Minutes, records of votes, written Findings of Fact, and decisions of the Board shall be signed by the Secretary, or the officer presiding at the meeting when the action took place.
  - B. Unless there is a provision to the contrary in these Rules or under Indiana law, any other document which must be executed by the Board shall be signed by the Board's Chairman or Vice-chairman.



## Section 3

Section 3. Public Hearings - Conduct and Procedure. Subject to the provisions of IC § 36-7-4-920, the following Rules shall, where applicable, govern the procedure for conducting all public hearings held before the Board, which the Board is required to hold by State law or under the provisions of the Ordinance:

3.1. Notice.

- A. Notice of all appeals, petitions, applications or matters required to be heard by the Board at a public hearing shall be given by the Staff as follows:
  1. By publication in accordance with IC § 5-3-1;
  2. To the applicant, petitioner, or appellant in writing, by means of regular United States mail, postage prepaid, addressed to the applicant, petitioner or appellant at the address they provided in their filing.
  3. In addition, Staff is directed to send courtesy notices to all Interested Parties, in writing, addressed to them at their last known address as listed on the Real Estate Master File maintained by the Auditor of Allen County, Indiana.
- B. Written notice of a public hearing shall be published at least ten (10) days before to the date of such hearings. Such notice shall contain a general description of the real estate involved and the nature of the appeal, application, petition, or matter to be heard, as well as the date, time, and place of the hearing.
- C. The Staff may, but is not required to, give such additional notice as, according to sound discretion, may be deemed necessary or advisable under the facts and circumstances of a particular appeal, application, petition, or matter to be heard by the Board.
- D. A public hearing that has been legally advertised and noticed to be held at a given meeting may start later than the stated time if prior items on the agenda are running late, but no in no case may it start earlier than the advertised time.
- E. The Staff shall also post a notice of the public hearing on or near the property, which is the subject of the hearing. The notice shall be posted at least eight (8) days prior to the date of the hearing.

- F. The Board shall post a copy of the agenda at the entrance to the location of the meeting, prior to the meeting, pursuant to IC 5-14-1.5-4(a).
- G. Additionally, public notice of the date and times of any regular or special public hearing (not agenda) shall be posted at the principal office of the Department pursuant to IC 5-14-1.5-5.
- H. Notice of an executive session of the Board shall be given on any matter where the Board is permitted to conduct an executive session pursuant to IC 5-14-1.5-6.1 by posting notice of such executive session according to IC 5-14-1.5-5.

3.2. Evidence.

- A. Applicants and remonstrators may submit evidence at the initial public hearing before the Board. Evidence may be accepted by the Board at the initial public hearing without regard to the formal rules of evidence controlling trial courts in the State of Indiana. The Board may refuse to accept or consider evidence which is repetitive in nature. All evidence submitted pertaining to a request before the Board shall be included as part of the file and official record for the request.
- B. The Board shall not receive additional evidence, either written or through oral testimony, once the public hearing on a given matter is concluded, unless: (1) the Board continues the matter and requests additional written evidence to be submitted before its next meeting; or (2) the public hearing is reopened by a vote of a majority of the quorum of the Board present at the hearing. During its deliberations, any member of the Board may ask either an applicant or remonstrator to clarify any evidence already placed in the record by that party.
- C. Pursuant to IC 36-7-4-920, no person may communicate with any member of the Board before the public hearing with intent to influence the member's action on a matter pending before the Board. However, the Staff may file a written report and recommendation with the Board not less than five (5) days before the hearing.

3.3. Hearing Procedure.

- A. Petitioners. Petitioners, applicants, and persons appearing in support of such matter being heard by the Board shall first have fifteen (15) minutes for the presentation of evidence, statements, and argument in support of the matter being considered. A reasonable additional time shall then be allowed for any questions which Board members may have of the petitioner, applicant, or other persons. However, if the matter being considered by the Board is an appeal of a stop work order or other allegation of a violation of the Ordinance,

the Planning Director (or a designated member of the Staff) shall be required to first present evidence of the alleged zoning violation.

- B. Remonstrators. Remonstrators and persons appearing in opposition to the matter shall then have twenty (20) minutes for the presentation of evidence, statements, and argument in opposition to the matter being considered. A reasonable additional time shall then be allowed for any questions which Board members may have for remonstrators or any other persons.
- C. Rebuttal. The petitioner or applicant shall then have five (5) minutes for rebuttal, which shall include only evidence, statements, and argument in rebuttal of the remonstrators' evidence and a brief closing statement.
- D. Continuances. Upon the request of one of its members, and upon an affirmative vote of a majority of the Board members present, the Board may continue a hearing to allow for the submission of additional evidence, testimony, studies, documents, or statements from any individual, organization, governmental body, or other entity who by reason of its training, practical experience, special knowledge, or expertise may aid the Board in understanding any materials or information accompanying or effecting the petition or application.
- E. Orderly Conduct. Orderly conduct shall be required of every person appearing before the Board or attending a meeting of the Board. All persons shall abide by these Rules and the direction of the Chairman. Interruptions, discourteous, disorderly or contemptuous conduct shall be regarded as breach of the privileges of the Board and shall be dealt with as the Board or the Chairman directs. All persons recognized by the Chair shall rise and identify themselves by name and address before addressing the Board.

#### 3.4. Continuances.

- A. Appearance Required. The applicant, petitioner, or appellant, or their attorney or attorney-in-fact with proper power of attorney must be present in order for a public hearing to be held as scheduled. However, written appearances by those making the presentation, as well as those either supporting or remonstrating against the application will be accepted prior to or during the public hearing. Failure of the petitioner to appear will result in the petition being tabled and rescheduled for the next meeting, unless the Board on its own motion, or those remonstrating against it, object to the tabling, in which case the Board may vote to dismiss the petition for lack of prosecution. Public announcement of this change or dismissal at the originally scheduled meeting shall be deemed sufficient notice to all parties.

- B. Applicant. An applicant may not be granted a continuance of a public hearing which has been duly scheduled prior to the hearing upon which there has been notice issued or published unless a verified, written request, signed by the applicant, the applicant's attorney or attorney-in-fact with proper power of attorney and demonstrating good cause for such requested continuance, is filed with the Zoning Enforcement Officer no less than seven (7) days before such scheduled hearing.
- C. Remonstrator. A remonstrator may not be granted a continuance of a public hearing which has been duly scheduled, upon which there has been notice issued or published, unless a verified, written request signed by the remonstrator, the remonstrator's attorney or attorney-in-fact with proper power of attorney showing both that the requesting party is in fact a remonstrator, and that good cause exists for such requested continuance, is filed with the Zoning Enforcement Officer no less than seven (7) days before such scheduled hearing.
1. In the event such a request for a continuance of a public hearing is so timely filed, and in the opinion of the Planning Director good cause has been shown, the Planning Director may grant the continuance requested. If the request is granted, the Staff shall attempt to notify all known affected parties, and the Board shall announce the granting of the continuance at the scheduled public hearing.
  2. A request for continuance shall not be granted, however, unless such request shall be accompanied by a continuance fee, paid by the party in cash, or by check or money order made payable to the Clerk of the City of New Haven, in a sum equal to the actual cost incurred for all newspaper publication of legal notices of the public hearing subject of the continuance, plus seventy-five (75) cents for each notice letter previously mailed to property owners or persons or governmental units or agencies having a probable interest in the public hearing which is the subject of the continuance; the purpose of the continuance fee being to require the party requesting such continuance to bear the costs of any notice to be republished and/or reissued for the continued and rescheduled public hearing.
  3. Unless the written consent from all known adverse parties, or their representatives, and the consent of the Planning Director are obtained, there shall be granted in any matter filed with the Board, only one (1) continuance for the remonstrators, collectively, and only one (1) continuance for the applicant/petitioner, upon which there has been a public hearing scheduled following issuance or publication of notice. If such written consent is so obtained and the request for continuance is granted, the public hearing shall then be rescheduled and notices

republished and reissued for the next regularly-scheduled meeting of the Board.

4. An applicant or remonstrator may also request a continuance either less than the seven (7) days prior to the public hearing or at the public hearing. The Board shall consider the continuance request at the public hearing. The Board, in its discretion may either grant or deny the request for a continuance. The reasons for granting such a continuance may include, but are not limited to, allowing for the submission of additional evidence; providing an opportunity for the applicant and remonstrators to meet; or allowing for the presence of additional persons of interest.

3.5. Withdrawal and Dismissal. Except for a dismissal by the Board under Rule 3.4(A), only the applicant may request a withdrawal or dismissal under the following situations:

- A. Prior to the Public Hearing. After the issuance of public notice, but before the beginning of the public hearing on matter under consideration, and specifically before testimony has been taken on the matter, the applicant may request the matter be withdrawn or dismissed in writing. It shall be up to the discretion of the Board to accept such a request upon an affirmative vote by a majority of the entire Board.
- B. During the Public Hearing. Once the public hearing on the matter has begun, the applicant may not be permitted to withdraw or dismiss the application. The Board shall allow the completion of the testimony on the matter and make a decision on the merits.

3.6. Variance Determination. A proposal seeking to reduce a minimum dimensional or numerical standard of the Ordinance (e.g. minimum setbacks, square footage of a lot or structure, or required parking spaces), or to increase a maximum dimensional or numerical standard of the Ordinance (e.g. maximum height or area) shall be considered a request for a development standards variance and shall only be approved in conformity with IC§ 36-7-4-918.5. A proposal seeking the Board's approval of a usage of land not otherwise permitted as of right in the applicable zoning district, or as a special use or contingent use, shall be considered a request for use variance and shall only be approved in conformity with IC§ 36-7-4-918.4. A request to allow an accessory use on a parcel without an existing primary, permitted use shall be considered as a use variance.

3.7. Conditional Approval. The Board may establish reasonable conditions as a part of its approval of special exceptions, contingent uses, or variances pursuant to IC § 36-7-4-918.2, 918.4 and 918.5. The Board may amend or alter prior conditions of approval if the applicant makes a reasonable showing of a change in the

circumstances or conditions inducing the prior conditions of approval; provided, however, that no application seeking to amend, change, or alter any conditions imposed by the Board may be filed until sixty (60) days after the Board's decision imposing the conditions becomes final and non-appealable. At the hearing, the applicant shall demonstrate to the Board's satisfaction that there has been a change in the circumstances or conditions inducing the prior condition of approval, in addition to any other prerequisites for approval of the given petition established by statute or the Ordinance.

- 3.8. Use and Development Commitments. The Board may require or accept a written commitment from the owner of the subject parcel of property in cases of a Special exception, Contingent Use, Use Variance, or Variance from Development Standards, in accordance with IC § 36-7-4-1015. The form of the commitment shall be in a form acceptable to the Board's legal counsel and duly recorded in the office of the Allen County Recorder. At the time of approval of the petition, the Board may establish the parties having the right to enforce the written commitment. These parties may include the Board, owners of property adjacent to the subject parcel, neighborhood associations, or any other party specifically identified by the Board at the time of approval who demonstrated to the Board's satisfaction that they have an interest in ensuring compliance with the commitments made by the owner. Any termination or modification of the Commitment shall be approved by the Board.
- 3.9. Proposed Findings. In any case where the Board is required to make findings of fact, the applicant or any remonstrator may submit to Staff draft or proposed findings of fact which they propose or suggest that the Board make in such a zoning case. If a party wishes to submit proposed or draft findings of fact for the Board's consideration at the public hearing of any zoning matter, then the applicant or the remonstrator shall file their respective proposed or draft findings of fact by 12:00 p.m. seven days prior to the Board's scheduled public hearing.

## Section 4

### Section 4 Appeals under IC § 36-7-4-918.1.

- 4.1. Right to Appeal. Any party, applicant, or petitioner who is aggrieved by an order, requirement, decision or determination under IC § 36-7-4-918.1, involving a matter which is within and under the jurisdiction of the Board, by virtue of State law, the provisions of the Ordinance, or under the provisions of the Rules, is entitled to appeal that order, requirement, decision or determination to the Board. The public hearing upon such requested appeal shall be conducted by the Board on a de novo basis.

4.2. Appeal Procedure.

- A. The party, applicant, or petitioner so aggrieved shall file an appeal within thirty (30) days after the date of the order, requirement, decision or determination. The appeal shall set forth the nature of the matter involved and describe the reasons why such decision is felt to have been erroneous, arbitrary, capricious, illegal, or contrary to State law or the provisions of the Ordinance or the Rules, as the case may be. Such written request shall be verified and signed by the aggrieved party, applicant, or petitioner. A public hearing upon such appeal shall then be set for the next regularly-scheduled meeting of the Board following the established filing date deadline.
- B. Any written request which is not so timely filed shall not thereafter be accepted for filing; and the party, applicant or petitioner otherwise aggrieved shall be construed as having forever waived the right to appeal such decision.
- C. The party, requesting such appeal shall also be required to pay the filing fee imposed under the Rules of Procedure adopted by the Plan Commission.
- D. Pursuant to IC 36-7-4-919, the administrative official or board from whom the appeal is taken shall provide to the Board all documents relating to the decision prior to the public hearing.

4.3. Notice. The Planning Director shall then be required to furnish notice of such appeal hearing in accordance with Rule 3. 1.

4.4. Hearing.

- A. If the appeal is from a decision or determination made by an administrative official or board as described in IC 36-7-4-918.1, the appellant shall present to the Board the reasons for the appeal and why the decision should be reversed or modified, followed by those in support of the appeal will be given time to address the Board. The administrative official or representative of the administrative board who made the decision being appealed will then be given time to speak, followed by those in support of such decision. Otherwise, the public hearing on the appeal shall be conducted according to Rule 3 above.
- B. If the appeal involves an appeal of the issuance of a stop work order or other allegation of a violation of the Ordinance, the administrative official or representative of the board who made such decision shall present to the Board the reasons for such decision, followed by those in support of the decision. Then the appellant who is challenging the stop work order or allegation of violation shall present its position to the Board, followed by those in support of the appeal. Otherwise, the public hearing on the appeal shall be conducted according to Rule 3 above.

- 4.5. Action by the Board. Following such public hearing, the Board shall either affirm, reverse, or modify the decision of the Planning Director from which the appeal had been taken. Such action by the Board shall be considered a final decision from which a further appeal may be prosecuted, in accordance with State law. The Board may dismiss an appeal for lack of jurisdiction. The Board shall make findings or other written record of its decision on the appeal according to IC 36-7-4-919(f).

## Section 5

### Section 5. Miscellaneous Provisions.

- 5.1. Severability. If any part, parts, section, sections, provision, clause, or portion of the Rules shall be adjudged invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the Rules as a whole, or any other part, section, clause, provision, or portion of them.
- 5.2. Savings Clause. The enactment of the Rules shall not affect or prevent the consideration by the Board of any matter, application, or petition currently pending before it.
- 5.3. Headings. Headings are for convenient reference only and do not affect the express terms and provisions of the Rules.
- 5.4. Repeal. All previous rules heretofore adopted by the Board are hereby expressly repealed as of the effective date of these Rules.
- 5.5. Suspension of Rules. The Board shall have the right to suspend these Rules, or any portion thereof, except where otherwise controlled by state statute or the Ordinance, at any meeting, upon a majority approval of all Board members present.
- 5.6. Amendment. The Board shall have the right to amend these Rules, or any portion thereof, from time to time, at any regular or special meeting, provided that all amendments are approved by a majority of the Board.
- 5.7. Citation to Indiana Code. Any citation to a section of the Indiana Code in these Rules shall be deemed to reflect to any amendment, recodification or replacement of that section.



**WHEREFORE**, the above Rules are approved by the affirmative vote of all members of the Board in attendance at the regular meeting on \_\_\_\_\_, 2020. These Rules are to become effective immediately and their formal adoption and implementation shall be considered a revocation of any prior Rules and amendments thereto.

**APPROVED BY:**

\_\_\_\_\_  
\_\_\_\_\_, **Chairman**

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, **Secretary to the Board**

**DATED:** \_\_\_\_\_, 2020.