RULES OF PROCEDURE

WARRICK COUNTY

AREA BOARD OF ZONING APPEALS
(2015)

RULE 2

OFFICERS AND STAFF

2.1 Election of Officers:

(a) The officers of the Board are the Chairman and Vice – Chairman.

(b) The officers of the Board shall be elected at the first regular meeting of the Board in each year.

(c) The person serving as presiding officer of the Board at the last meeting of the proceeding year shall entertain nominations for each office chosen under these rules.

(d) Whenever a candidate receives a majority vote of the entire membership of the Board, that person shall be declared elected.

(e) Each officer elected under these rules shall enter into office immediately upon being declared elected and shall serve until his successor is declared elected and shall serve until his successor is declared elected at the first meeting of the following year, or until the officer is no longer a member of the Board.

(f) Whenever any office becomes vacant, the Board shall elect a successor at its next regular meeting to complete the remainder of the unexpired term.

2.2 Chairman:

(a) The Chairman shall preside over all regular and special meetings of the Board.

(b) The Chairman may participate in the discussion of all matters before the Board, make a motion and vote on any question before the Board.

(c) The Chairman shall sign all official documents on behalf of the Board.

2.3 Vice-Chairman and Chairman Pro Tempore:

(a) The Vice – Chairman shall act as Chairman during the absence or disability of that officer.

(b) The Board shall elect a Chairman pro tempore from among its members if both the Chairman and Vice – Chairman are absent or disabled.

2.4 Executive Director:

(d) The Agenda shall be sent by U.S. Mail or Via E-Mail to all members of the Board and shall be available for public inspection at the Area Plan Commission office no later than two days before any meeting.

3.3 Quorum and Voting:

(a) A majority of the entire membership of the Board constitutes a quorum.

3.4 Regular Meetings:

(a) The Board shall conduct its regular meetings on the 4th Monday of each month at 6:00 P.M. in the Commissioners Meeting Room, 3rd Floor, Courthouse, Boonville, Indiana.

(b) If the date of a regular meeting falls on a legal holiday recognized by Warrick County, or if it is impossible to conduct the meeting at that time or place, the Chairman may set an alternative date, time or place for regular meeting or may cancel the meeting with the unanimous consent of the members of the Board, so long as the Chairman complies with the requirements of the State Open Door Law (IC5-14-1.5).

3.5 Special Meetings:

(a) Special meetings may be called by the Chairman or by any two members of the Board upon written request to the Executive Director.

(b) The notice for the meeting shall specify its purpose. No other business may be considered at that meeting except by unanimous consent of the Board.

(c) The Executive Director shall notify all members of the Board in writing or Via E-Mail not less than two days in advance of any special meeting and shall arrange for all notice required under the State Open Door Law.

(d) The order of business for special meetings shall be:
   (1) Call to order;
   (2) Roll call;
   (3) Determination of quorum;
   (4) The business for which the special meeting was called;
   (5) Adjournment

3.6 Public Hearings:

(a) The Board may conduct a public hearing as a part of any regular or special meeting or at any other place or time if the notice required by state law is given.

(b) In addition to those required by law, the Board, may at its discretion, hold public hearings when it decides that hearings will be in the public interest.

(e) Any person may appear in person or counsel to participate in a discussion of an item before the Board or to present a petition or remonstrance to the Board.

(f) Any person wishing to speak for or against an application must step to the podium and state their name and address. The Chairman may require any person wishing to speak for or against an application to register with the Executive Director.

(g) The Chairman shall determine the admissibility of any evidence before the Board.

(h) The hearing on each item shall be conducted in the following order:

(1) The Chairman reads the application from the Agenda and asks that the petitioner, owners of record or their legal representatives come forward to the podium and state their names for the record.

(2) The applicants must submit to the Executive Director the green return receipts from the certified mailing return receipt requested to the abutting property owners which was a notice of the petition having been filed and the date, time, and place of the public hearing. Any unclaimed certified mail return receipt requested may also be submitted. If return receipt or unclaimed mail has not yet been returned from the Post Office, applicant may submit receipt of mailing of certified mail return receipt requested, provided copies of the Real Estate Transfer Card from County Auditor's Office is also provided as proof of correct mailing per their records. This shall suffice as proof of providing adequate notice and the application shall be considered; however, the applicant must submit to the Area Plan Commission Office any return receipt or unopened, returned certified mail once it is returned to the applicant to be placed in the permanent file. THIS IS IMPORTANT. If the above requirements are not met, the application will be postponed until the next regularly scheduled meeting.

(3) The Executive Director reports on whether or not all return receipts have been submitted and the Chairman determines if the petition is to proceed, proof being furnished of proper notice.

(4) The Executive Director gives a staff report and explains the size of the parcel being considered and its general location; explains the nature of the case and provided to the Board any information felt relevant to the consideration of the petition.

(5) The petitioner presents facts relating to the case. The Board's guideline is to limit the presentation to twenty (20) minutes.

(6) The Board members direct questions to the petitioner. There is no time limit on this phase of the hearing.

(7) The Chairman asks for remonstrators. The Board's guideline is to limit the remonstrance to twenty (20) minutes and no repetitive comments will be entertained.

RULE 5

5.1 Variance

(1) A person requesting a variance must submit an application to the Board of Zoning Appeals at the Area Plan Commission Office. The application must be filed within such time and in such form as prescribed by the office of the Area Plan Commission in the document, Instructions for Variance Application.

(2) The Board shall consider the following factors in relation to the Variance request,

a. That a Variance is a means of relief which is available only when some peculiar circumstance as to SIZE OR SHAPE of the parcel of land (and sometimes its LOCATION is such that literal application of the provisions of the Article would impair the owner's rights to some reasonable use of the property. A VARIANCE shall not be granted unless, in the first place, there are such peculiar circumstances.

b. That the circumstance which cause the HARDSHIP must be peculiar to the property in question, or to such a small number of properties that they clearly constitute marked exceptions to the property in the neighborhood. If the circumstances cited as a basis for applying for the Variance are common to the property in the neighborhood the VARIANCE shall not be granted.

c. That after establishing the peculiar circumstance applying to the property in question, it is next necessary to show that the VARIANCE is required in order to preserve a substantial property right of the petitioner. It is of no moment whatever that the denial of the Variance might deny to the property owner some opportunity to use his property in a more profitable way or to sell it at a profit than is possible under the terms of the Article. The owner is entitled only to a reasonable use of his property.

d. That any alleged hardship is not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of this Article.

e. That the REGULATIONS to which the Variance is sought shall be modified as little as possible so that the substantial intent and purpose of the regulations shall be preserved. The granting of the VARIANCE should be made subject to such conditions as will constitute to this end.

f. That the VARIANCE will not result in substantial determent to adjacent property or the surrounding neighborhood, and will not be materially detrimental to the public welfare.

3. After a public hearing on the variance, the Board shall act on the petition.

4. No variance may be granted except on a finding of all the following factors:

(a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;

(2) Special Uses As Secondary Classifications

Special uses are secondary classifications. If an application is approved by the Board of Zoning Appeals the special use designation shall be placed on the zoning map in addition to its primary zoning classification.

(3) Special Use Designations

The following uses are subject to the requirements of this chapter:

SU-1 Commercial and private non-commercial recreational areas, uses and facilities including country clubs, social centers, swimming pools, golf courses, and golf driving ranges.

SU-2 Riding stables, dude and guest ranches and riding trails, fair ground, riding academy, or stable.

SU-3 Borrow pit and earth storage areas.

SU-4 Commercial baseball or athletic fields, stadium or racetrack, auditoriums, or arenas.

SU-5 Commercial facilities for the sale of livestock, animal breeding, research laboratory and confined feeding operations.

SU-6 Gun clubs, skeet shoots or target ranges and paint ball facilities (indoor & outdoor).

SU-7 Airports or heliports.

SU-8 Electronic message boards and/or signs with flashing, moving, rotating or intermittent lights or animated messages.

SU-9 Hospitals. (Note: Nursing homes, convalescent or custodial care centers would be uses allowed within the classification.)

SU-10 Cemeteries, mausoleums, columbaria or crematoria.

SU-11 Public parks or public recreational facilities.

SU-12 Home occupations.

SU-13 Mineral extraction, storage, and processing, and/or oil/gas productions.

SU-14 Temporary Mobile Offices.

SU-15 Colleges, universities and schools (public and private) and libraries.

SU-16 Accessory living quarters clearly complementary to main use and not for rental purposes.

B. After receipt of the application, the Board of Zoning Appeals shall conduct a public hearing pursuant to I.C. 36-7-4 for which twenty-one (21) days prior notice has been given by the applicant by certified mail, return receipt requested, to (i) abutting surface property owners; (ii) in the case of a SU-13 Application if there are two (2) or more owners of the surface of the subject property, to the owners of the surface of the subject property, unless such owners have signed the SU-13 Application, and (iii) to the public by legal advertisement. Also, no less than ten (10) days prior to the hearing, a notice containing the date, time, place and purpose of the hearing must be posted conspicuously on the property by the petitioner.

1. Whether the specific site is appropriate location for the uses;

2. Whether the use as developed will adversely affect the surrounding area;

3. Whether there will be nuisance or serious hazard to vehicles, pedestrians, or residents;

4. Whether adequate and appropriate facilities will be provided for proper operation of the uses;

5. Whether the use is in harmony with the Warrick County Comprehensive Plan and;

6. Whether the use is essential or desirable to the public convenience and welfare.

C. The Board of Zoning Appeals approval or modification of a special use classification may include whatever reasonable conditions, limitations, or temporary uses necessary for the protection of the public interest including the following:

1. Greater front, side, and rear yards than the minimums for the area;

2. More off-street parking and screening;

3. Modifications of exterior design or materials;

4. Limitations on the lot coverage and occupancy of the building or structure;

5. Limitations on signs and sign coverage; and

6. Time limitations.

D. To protect the public interest and to ensure compliance with requirements to be included in the site plan, the Board of Zoning Appeals may require whatever evidence and guarantees are necessary to assure compliance with conditions, limitations, and temporary uses.

I. All SU-18 Special Uses shall be subject to the following requirements:

1. Commercial site plan meeting the requirements for review by the Site Review Committee, including a surveyor certification of the exact location of tower from property lines; center lines of abutting streets or right-of-way; distance to the nearest residential district, residence, or recorded residential subdivision.

2. Structural plans including elevation and plan views showing height above grade level and dimensions is required in addition to site plan.

3. Information regarding the number of antennas that the proposed new tower or structure is designed to or can safely accommodate.

4. Evidence demonstrating that no existing tower or structure can accommodate applicant's proposed antenna, either because there are no existing towers or structures meeting the applicant's engineering requirements within the geographic area that the antenna is intended to service, or if there are towers or structures in the geographic area, evidence that such structures do not have sufficient height or structural strength to meet the applicant's engineering requirements. This section shall not be interpreted to mandate, but rather only to encourage co-location.

5. The set back requirements from any residentially dwelling property or undeveloped residentially district or recorded residentially subdivision shall a distance of two (2) feet for each foot of height of the tower or three hundred (300) feet whichever is greater.

6. Wireless communications facilities that include towers are not permitted in residential districts. However, in these districts, commercial telecommunications antennas attached to existing buildings or structures are permitted on any property with a commercial use or an institutional use such as church, park, library, government, school, hospital, utility or similar use. Commercial antennas mounted on roofs, walls, and existing structures may be approved by Site Review Committee, providing the antennas meet the requirements of the district in which they are located and do not exceed the building height by more than twenty (20) feet.

7. The use of a wireless telecommunications facility by more than one wireless telecommunications provider (co-location) is encouraged, and when new towers are necessary, construction should accommodate multiple users. Co-location of antennas on a single tower antenna attached to existing structures/buildings, or replacement towers to be constructed at the site of a current tower are permitted uses and will not be subject to the Special Use permitting process.

8. Each operator of a telecommunications facility must send to the Area Plan Commission a copy of any notice sent to the FCC of intention to cease operations. All abandoned or unused towers and associated

8.1. Final Disposition of Case:

(1) All decisions of the Board on matters heard in public hearings shall be made by record vote. The vote of each member shall be a matter of permanent record.

(2) The Board shall in all cases heard by it make written findings of fact which, when approved by the Board, shall be filed in the office of the Area Plan Commission to be made available for public inspection.

(3) Every decision of the Board shall be subject to exclusive review by certiorari under I.C. 36-7-4-1002 et seq.

RULE 9

9.1 Amendments:

These rules may be amended by a majority vote of the membership of the Board.

9.2 Suspension:

These rules or any portion of them may be suspended by a majority vote of the membership of the Board. No suspension shall continue beyond the adjournment of the meeting at which the motion to suspend was passed.

9.3 Effective Date:

These Rules shall enter into effect immediately upon the adoption of this Resolution.

ADOPTION

Rules of Procedure of the Board of Zoning Appeals of Warrick County, Indiana, approved by the affirmative vote of 6 members of said Board at the regular meeting of the Board held on the 26 day of January, 2015.

Chairman

ATTEST:

Executive Director