

**AMENDED GOVERNING RULES, POLICIES, AND PROCEDURES OF THE
HANCOCK COUNTY BOARD OF ZONING APPEALS**

Article I. Authority

1. The Hancock County Board of Zoning Appeals, hereinafter referred to as the Board, was established by the Board of County Commissioners of Hancock County, Indiana, in accordance with the provisions of Chapter 174, Acts of 1947, of the General Assembly of the State of Indiana, and all Amendments thereto.

Article II. Jurisdiction and Purpose.

1. The Board shall have jurisdiction over all land within Hancock County except for those land areas under the jurisdiction of a city or town Plan Commission as defined by description or map in the Hancock County Recorder's Office.
2. The Board's purpose is to conduct public hearings and render decisions on appeals, variances, special exceptions or changes of non-conforming uses and to hear other petitions deemed to fall under its cognizance including appeals from and review of any decision or determination made by the Plan Director, as provided for by the Hancock County Zoning Ordinance. The Board shall enforce the provisions of said ordinance, and promote the health, safety and general welfare of the residents of the County.

Article III. Duties.

1. The Board shall hold meetings, keep minutes, and pursuant to notice, shall conduct hearings, compel the attendance of witnesses, take sworn testimony, and render decisions in writing, all as required by law. When permitting any appeal, variance, special exception or change of a non-conforming use, the Board may impose such conditions and requirements as it deems necessary for the protection of adjacent property and the public interest.
2. The Board may appoint, prescribe the duties, and fix the compensations of such employees as are necessary for the discharge of the duties and responsibilities of the Board. All compensations shall be subject to approval of the County Council. The Board may make contracts for special or temporary services, professional counsel and technical services with such compensation as approved by the County Council.
3. The Board may approve the attendance at a state, regional or national conference of its members or employees, and approve the actual expenses of the attending member or employee provided the amount has been approved by the County Council in the Plan Commission's budget.
4. The Board of Appeals shall not grant a use variance from a district or classification under the zoning ordinance.
5. The Board of Appeals may attach conditions of approval to any variance, special exception, change of nonconforming use, or any other petitions that come before them. In addition to or supplemental to any conditions of approval attached in regard to any petition, the Board

of Appeals may require a written commitment regarding any aspect of the subject petition. The commitment must be in writing and unless modified or terminated in accordance with Indiana law and the terms of the commitment, the commitment is binding on the owner of the parcel in question, the petitioner, and all subsequent owners or other persons who subsequently acquire an interest in the parcel. The commitment shall be in recordable form using the format on file in the office of the Plan Commission Director and if accepted by the Board of Appeals, shall be executed by the petitioner and the owner of the parcel, if they are different individuals, and shall be recorded in the office of the Hancock County Recorder by the Plan Commission Director, after which, it is binding on the petitioner, current owner, subsequent owner, or any other person who acquires an interest in the parcels. However, a commitment is binding on the owner and petitioner who makes a commitment even if the commitment is unrecorded. An unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the subject parcel if the subsequent owner or other person has actual notice of the commitment. The commitment may contain terms providing for its expiration date, if any. A commitment may only be modified or terminated by a decision of the Board of Appeals made at a public hearing after notice of the hearing has been provided in accordance with these rules. Requiring or allowing a commitment to be made does not obligate the Board of Appeals to approve the petition to which the commitment applies.

6. Should any petition be subject to a condition or commitment as set forth above, said condition or commitment must be met before an improvement location permit and/or a building permit may be issued regarding the subject use or structure.

Article IV. Membership and Offices.

1. Hancock County Code of Ordinances §156.007, pursuant to the Indiana Code, governs the composition of the Hancock County Board of Zoning Appeals.

(A) The Board shall consist of five citizen members to be appointed in accordance with Indiana Code 36-7-4-902(d) as follows:

- (1) One (1) who may not be a member of any plan commission, appointed by the executive of the largest municipality in the county participating in the commission.
- (2) One (1) who may not be a member of any plan commission, appointed by the executive of the second largest municipality in the county participating in the commission.
- (3) One (1) appointed by the Board of Commissioners who is a member of the area plan commission.
- (4) One (1) appointed by the area plan commission from its membership.
- (5) One (1) appointed by the Board of Commissioners who is not a member of any planning commission.

(B) Pursuant to Indiana Code 36-7-4-905, the requirements to serve on the Board of

Zoning Appeals are as follows:

(1) No member of the Board of Zoning Appeals may hold elected office, as defined in Indiana Code 3-5-2-17, or any other appointed office in municipal, county or state government, unless allowed to serve on the plan commission under Indiana Code 36-7-4-902.

(2) A member of the Board of Zoning Appeals must be a resident of the jurisdictional area of the Board or must be a resident of the county and also an owner of real property located in whole or in part of the jurisdictional area of the Board.

(3) At least a majority of the total number of members appointed to the Board of Zoning Appeals must be residents of the jurisdictional area of the Board.

(C) Pursuant to Indiana Code 36-7-4-906(b), the initial terms, beginning January 2, 2023 for the members of the Board of Zoning of Appeals, are as follows:

- (1) Member referenced in (A)(1) – one (1) year;
- (2) Member referenced in (A)(2) – two (2) years;
- (3) Member referenced in (A)(3) – three (3) years;
- (4) Members referenced in (A)(4) and (A)(5) – four (4) years.

(D) Pursuant to Indiana Code 36-7-4-906 (a) and (c), when the initial term of office expires, each new appointment is for a term of four(4) years. Each term expires on the first Monday of January.

- 2. A Chairman shall be elected at the first regular meeting of the Board in each calendar year. The chairman shall preside at all regular and special Board meetings.
- 3. A Vice-Chairman shall be elected in the manner prescribed for the President and shall have the authority to act as Chairman during the absence or disability of the President.
- 4. A Secretary shall be elected in the manner prescribed for the Chairman and Vice-Chairman and shall have the authority to act as President during the absence or disability of the Chairman and Vice-Chairman.
- 5. A Recording Secretary shall be appointed by the Plan Director at such salary as approved by the County Council. The Recording Secretary, subject to the direction of the Chairman and the supervision of the Plan Director, shall record all examinations and other official actions including all important facts pertaining to each meeting and hearing, all resolutions or motions acted upon by the Board, final determination on any question, indicating the names of any members absent or failing to vote. All records shall be public and shall be immediately filed in the office of the Recording Secretary.

Article V. Meetings.

- 1. Meetings shall be at the call of the Chairman and at other times as the Board may determine. The meeting shall normally be devoted to the consideration of petitions for variances,

special exceptions, appeals, changes of non-conforming use or other legitimate request deemed to fall within the Board's authority, and shall be open to the public. Discussions of zoning in general, the introduction of resolutions by the Board, routine business and administration, and policy determination shall be considered as time permits.

2. A majority (three) of the members shall constitute a quorum. No action shall be official unless authorized by a concurring vote of three members.
3. A member of the Board of Appeals is disqualified and may not participate in a hearing concerning any petition coming before the Board of Appeals, if the member is biased or prejudiced or otherwise unable to be impartial, or the member has a direct or indirect financial interest in the outcome of the petition in question. The Board of Appeals shall have entered into its records and minutes the fact that a regular member has a disqualification, the name of the member and that the member did not participate in any fashion or manner in the presentation, discussion, or decision regarding said petition.
4. All Board meetings shall be open to the public.
5. Public hearings shall be held within a reasonable time after the receipt of an application. However, the public hearing shall not be held sooner than ten (10) days after the application's receipt.
6. All meetings of the Board of Zoning Appeals shall be limited to eight (8) regularly scheduled agenda items and no more than eight (8) items of Other Business and/or Violators at the discretion of the Plan Commission Director.
7. The order of business at regular monthly meetings shall be as follows:
 - a. Roll call of members present;
 - b. Approve minutes of previous meetings as required;
 - c. Public hearings on petitions and other business as scheduled by the Plan Director;
 - d. Correspondence and reports;
 - e. Unfinished business;
 - f. New business;
 - g. Adjournment.
8. The order of business at special meetings shall be as follows:
 - a. Roll call of members present;
 - b. Statement of business as scheduled by the Plan Director;
 - c. The special business;

- d. Adjournment.
9. In the conduct of public hearings the Chairman shall:
 - a. Request the Plan Director to present the petition, with a brief background and graphic illustrations;
 - b. Recognize the petitioner, clarify the petition as required so all present understand, and swear in the petitioner.
 - c. Recognize those appearing on behalf of the petitioner.
 - d. Recognize those appearing against the petitioner, including any questions about the petition.
 - e. Allow presentations, questions/comments, and rebuttal as follows:
 - Seven (7) minutes for the petitioner to present their case;
 - Seven (7) minutes for attendees to question/comment;
 - Three (3) minutes for government/public elected officials to comment;
 - Three (3) minutes for the petitioner to answer questions and offer rebuttal.
 - f. Ask the Board members if there are any questions regarding the petition.
 - g. Call for any motions from Board Members regarding the petition and call for a vote on any such motions.
 - h. Call for a vote, announce the decision, and unless the decision is unanimous, announce how each member voted.
 10. In reaching a decision on a petition, the Board shall recognize its responsibility to promote the health, safety, and general welfare of the residents of the entire county. It shall recognize that the burden of proof for a variance, special exception, change of non-conforming use, appeal or other legitimate petition lies with the petitioner and that all decisions must be based on an analysis of the fact and consideration of the remonstrances as presented at the hearing, and the requirements of the Zoning Ordinance.
 11. Hearsay testimony on behalf of the petitioner and/or the remonstrator(s) may be given, but the weight to be given to such undocumented testimony will rest solely within the judgment of each member of the Board. Therefore, all interested persons, including the Petitioner, are urged to document, in writing, any support there may be for their respective position(s) and to submit all supporting documentation according to the timeline set forth herein.

Article VI. Petitions

1. Unless otherwise waived by the Plan Director, any potential petitioner wishing to file a petition for consideration by the Board shall schedule and participate in a meeting, to be held either electronically or in person, with a staff member of the planning department to review the proposed petition and necessary steps for filing. An agent of the potential petitioner may schedule and participate in the meeting on the potential petitioner's behalf. All petitions to the Board shall be filed with the office of the Plan Director on forms provided by the Plan Commission at least fifteen (15) days prior to the date of the hearing. A legal notice of the public hearing shall be published by the petitioner in a newspaper of general circulation within Hancock County at least ten (10) days prior to the hearing at the expense of the petitioner. Notice of such hearing shall be served by the petitioner to abutting property owners at least ten (10) days prior to the hearing. Proof of such advertising and notification of abutting property owners shall be filed with the office of the Plan Director prior to the hearing. Notice of such hearing shall be in the form and compliant with the provisions of Section 156.101 of the Hancock County Code of Ordinances. Any notice of hearing that does not comply with Section 156.101 or the terms of these Governing Rules, Policies, and Procedures, will result in the petition being automatically continued to the next regular scheduled public hearing of the Board. In addition, any notice of hearing shall contain the following language:

Petitioner and all members of the public wishing to provide documents or other written information for consideration by the Hancock County Board of Zoning Appeals (Board) regarding a petition shall provide to the Plan Director any and all such documents intended to be considered by the Board no later than 12 o'clock noon on the Monday before the petition is scheduled for hearing. No further documents, including visual or written presentations, videos, illustrations, written evidence, or written testimony of any kind will be accepted or considered at the hearing if not provided to the Plan Director in a timely manner as set forth above.

2. A "Notice of Hearing" sign, provided by the Plan Commission, shall be posted by the petitioner on the property within fifteen (15) feet of the road easement and clearly visible from the road or street for at least ten (10) days prior to the hearing. Failure to comply with the above requirements shall be grounds for continuing the petition until the next regularly scheduled public hearing of the Board.
3. All petitions filed with the Board shall be accompanied by the required filing fee.
4. All petitions must include the following items:
 - a. Name and address of the petitioner and the notarized signature of the petitioner.
 - b. Affidavit of Notice of Public Hearing including the list of property owners notified by certificate of mailing.
 - c. The legal description of the property.
 - d. The date the property was purchased by the petitioner.

- e. A statement as to the purpose of the petition.
- f. Location of the property by road numbers and how the property is zoned.
- g. Seven copies of a plat map or accurate drawing, drawn to scale, of the property, including location, dimensions of the property, all buildings, setbacks, parking areas, the location of septic systems and wells, if applicable, and the proposed changes.

Article VII. Final Disposition of Petitions.

- 1. The Board may dismiss an appeal for want of prosecution of the lack of jurisdiction.
- 2. No petition may be withdrawn by the petitioner after a vote has been ordered by the Chairman.
- 3. No request, petition, or appeal which has been decided adversely against the petitioner shall again be placed before the Board for consideration within a period of one (1) year from the date of the decision previously rendered. The Plan Director shall make the determination as to whether a subsequent request, petition, or appeal filed within the one (1) year period by a petitioner is substantially different than the original request, petition, or appeal that was decided adversely against the petitioner. If found by the Plan Director that the subsequent request, petition, or appeal is not substantially different, then the request, petition, or appeal may not be scheduled for a hearing before the Board.
- 4. No appeal concerning a decision of the Plan Director shall be heard by the Board unless filed with the Board within thirty (30) days after the final disposition or decision has been made by the Plan Director.
- 5. Any order, special exception, or variance granted by the Board shall automatically expire after one year, except as otherwise provided by the Board unless any necessary improvement location permit is issued within sixty (60) days after the Board's approval. The Board may grant extensions or renewals for a period of time as determined by the Board to be appropriate.

Article VIII. General

- 1. Every person appearing before the Board shall abide by the order and direction for the Chairman. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privilege of the Board and shall be dealt with as the Chairman deems fair and proper.
- 2. The Board reserves the right to impose time restrictions for presentations by petitioner, remonstrator, or any interested municipal or governmental entity.
- 3. The Board reserves the right to continue any petition, if during the course of the hearing, the Board receives new information by either testimony, or in any other format which it deems significant and which it is believed additional time is needed in order to properly evaluate and assimilate.

4. Prior to hearing a petition before the Board, an inspection of the property involved in said petition shall be made by either Board members, the Plan Director, or a combination of the two (2). The results of the inspection shall be presented at the hearing. The results as presented will be included as part of the minutes of the hearing.
5. A member of the Board who misses three (3) consecutive regular meetings of the Board, may, at the discretion of the appointing authority, be treated as if the member had resigned.
6. Amendments to these Governing Rules, Policies and Procedures may be made by the Board at any regular or special meeting upon the affirmative vote of a majority of the members. Any amendment to the governing rules must be presented at least thirty (30) days prior to voting on the amendment. The suspension of any rule or procedure may be ordered at any meeting by a unanimous vote of those present.
7. The Board may allow members to participate in hearings electronically, if either: (a) the Board has adopted and adheres to an electronic meeting policy consistent with IC 5-14-1.5-3.5 or (b) the Board adheres to IC 5-14-1.5-3.7 should the state or county be under a declared disaster emergency.

ATTEST: Vice President: 
Michael Long, Vice President

11-21-24
Date

ATTEST: Secretary: 
Lacey Willard, Secretary

21 NOV 2024
Date

Gregg\MUNICIPAL\Hancock County BZA\Amended BZA Governing Rules -