

BY-LAWS & RULES OF PROCEDURE
BUTLER CITY BOARD OF ZONING APPEALS

ARTICLE 1 – GENERAL INFORMATION

A. Name

The name of the Board shall be the Butler City Board of Zoning Appeals (BZA). The BZA is hereby established in accordance with 900 Series of Indiana Code §36-7-4-900 et. seq.

B. Incorporation by Reference

All statues of the State of Indiana and amendments concerning boards of zoning appeals, which are not specifically incorporated in these By-Laws and Rules of Procedure, are hereby incorporated by reference as part of the By-Laws and Rules of Procedure to the Butler City Board of Zoning Appeals.

C. Jurisdiction

The jurisdiction of the Butler City Board of Zoning Appeals shall be the City of Butler corporate limits, as well as the established extra-territorial jurisdictional area.

D. Office Location

The office of the Butler City Board of Zoning Appeals shall be the same location as the office of the Board of Zoning Appeals staff [IC §36-7-4-914].

E. Responsibilities

1. In accordance with IC §36-7-4-918, the BZA shall hear and determine appeals from and review:
 - i. Any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning ordinance;
 - ii. Any order requirements, decision or determination made by an administrative board or other body except a plan commission in relation to the enforcement of the zoning ordinance; and
 - iii. Any order, requirement, decision, or determination made by an administrative board or other body except a plan commission in relation to the enforcement of an ordinance adopted under this chapter requiring the procurement of an improvement location or occupancy permit.
2. The Board of Zoning Appeals shall approve or deny all special exceptions from the terms of the zoning ordinance, but only in the classes of cases or in the particular situations specified in the zoning ordinance. The Board may impose reasonable conditions as a part of its approval.
3. The BZA shall approve or deny variances of uses from the terms of the zoning ordinance. The Board may impose reasonable conditions as a part of its approval. A variance may be approved only upon making written findings of fact.
4. The BZA shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. A variance may be approved only upon making written findings of fact.

ARTICLE 2 – MEMBERSHIP AND OFFICERS

A. Membership

1. The BZA shall consist of five members in accordance with IC §36-7-4-902:
 - a. Three citizen members appointed by the Mayor
 - i. One of which must be on the Plan Commission
 - ii. Two must not be on the Plan Commission
 - b. One citizen member appointed by the Butler Board of Public Works and Safety that is not a member of the Plan Commission
 - c. One member appointed by the Plan Commission from its membership. This member must reside in the unincorporated area included in Butler's extra-territorial jurisdiction and is entitled to participate and vote in all deliberations of the BZA. [IC §36-7-4-903(2)].
2. Members shall serve four-year terms.
3. None of the members of the BZA may hold other elective or appointive office, except the members that are appointed from the Plan Commission.
4. Members must be a resident of the jurisdictional area of the BZA.

B. Vacancy

If a vacancy occurs among the members of the BZA, the appointing authority shall appoint a member for the un-expired term of the vacating member. In addition, the appointing authority may appoint an alternate member to participate with the Board in any hearing or decision in which the regular member it has appointed has a disqualification. [IC §36-7-4-907]

C. Conflict of Interest

A member of the Board of Zoning Appeals may not participate in a hearing or decision of that Board concerning a zoning matter in which he has a direct or indirect financial interest.

D. Officers

1. The BZA shall elect a Chairman and a Vice-Chairman from its membership at its first regular meeting of each year. The BZA may appoint and fix the duties of a Secretary, who is not required to be a member of the Board [IC §36-7-4-912 and IC §36-7-4-913].
2. Duties of Officers
 - a. The Chairman shall preside over each regular or special meeting of the Butler City BZA.
 - b. The Vice-Chairman shall preside over and assume the duties and responsibilities of the Chairman at any meetings at which the Chairman is absent.
 - c. The Secretary shall keep records of all meetings, applications, petitions, and other items of the BZA.

E. Committees

The BZA shall create committees as necessary to conduct business efficiently.

F. Ex-Parte Communication

No person may communicate with any member of the Board before a hearing with the intent to influence the member's action on a matter pending before the Board.

ARTICLE 3 – MEETINGS

A. Regular Meetings

The Butler City Board of Zoning Appeals shall have regular meetings scheduled six times a year on the fourth Monday of every odd numbered month: January, March, May, July, September, and November. The Board of Zoning Appeals shall elect officers at its first meeting in January. Regular meetings may be canceled if no appeals, petitions or applications are filed.

B. Special Meetings

All other meetings of the BZA, which are not regular meetings, shall be designated as special meetings. All notices required by the Open Door Law of the State of Indiana shall be complied with in calling a special meeting.

1. The Chairman, BZA Staff, or two members of the BZA upon written request to the Secretary may call special meetings. The Secretary shall then send to all members, at least three days before the special meeting, a written notice fixing the time and place of the meeting and specifying the subject matter of the meeting. A written notice of a special meeting is not required if the date, time, and place of the special meeting have been announced at a regular meeting.
2. An applicant/petitioner may request a special meeting. An applicant/petitioner-requested special meeting shall only be held on the fourth Monday of an even-numbered month (February, April, June, August, October, or December). The applicant/petitioner shall pay the fee established in the City of Butler fee schedule for calling a special meeting.

C. Place of Meeting

The Butler City Board of Zoning Appeals shall meet in the Butler City Hall Council Chambers at 7 PM. The Chairman can change the place of the meeting provided that notice of said change is given to all members, all interested parties, and the public.

D. Notice of Meetings

Notice of meetings shall be given to all members of the BZA in person, by telephone, by fax, or by regular United States mail. News media entitled to notice shall be notified by United States mail, fax, telephone, or e-mail. All notices that are required to be posted shall be posted in the Butler City Hall, Butler Post Office, and Butler City Utility Building. The Secretary shall be responsible for publishing meeting notices (NOT hearing notices) in the newspaper as required.

E. Minutes of Meetings

The Board shall keep minutes of each meeting. These minutes shall be presented to the Board at the next regular succeeding meeting for approval. When approved, the minutes shall be signed by the Secretary and kept in the office of the BZA in a minute book.

F. Order of Business

The following order of business shall be followed at all meetings of the BZA.

1. Call to Order
2. Roll Call
3. Approval of Minutes
4. Applications/Petitions/Appeals/Public Hearings
5. Old Business
6. New Business
7. Adjournment

G. Quorum and Official Action

A quorum consists of a majority of the entire membership of the BZA [IC §36-7-4-910]. Action is not official unless authorized at a regular or special meeting by a majority of the entire membership of the BZA.

H. Late Night Meeting Policy

It shall be the policy of the Board to conclude all Board meetings at or before 10:00 pm. In the event that agenda items or other Board matters have not been acted on by 10:00 pm on any meeting day, the meeting shall be recessed and reconvened the following evening, in the same location at 7:00 pm, unless otherwise announced. All items or matters not acted on during the recessed meeting may be acted on during the reconvened meeting without further advertisement. The above notwithstanding, the Board may extend any meeting beyond the hour of 10:00 pm with a vote of at least 3/4 of all members present provided a quorum of the Board exists.

ARTICLE 4 – THE FILING OF APPEALS

A. Hearing of Appeals

1. The BZA shall hear appeals as spelled out in Article 1 of these By-Laws and Rules of Procedure.
2. An appeal filed with the BZA must
 - a. Include a written statement of the action from which the appeal stems.
 - b. Include the name and/or title of official or board from which the appeal stems.
 - c. Be filed within 30 days of the date of issuance of the administrative order, requirement, decision, or determination.
3. For the purpose of administrative appeals, the BZA has all the powers of the administrative party from which the appeal stems.
4. The Board shall review the whole record, or copies of the action from which the appeal is taken, and then render its decision after its deliberation of the issue.
5. The Board may reverse, affirm or modify the order, requirement, decision, or determination from which the appeal stems.

ARTICLE 5 – THE FILING OF APPLICATIONS AND PETITIONS

A. Variance Petitions

1. Petition for a variance of use or a variance from development standards shall be made on forms provided by the BZA.
2. Applicable plans and/or drawings shall be submitted with petition.
3. Applicable fees shall be paid.
4. After petition is found to be complete, it shall be placed on the agenda of the next regularly scheduled BZA meeting that is 21 or more days away.
5. Petitioner is responsible for giving Notice of Hearing to interested parties and publishing a Notice of Hearing in the local newspaper in accordance with Article 7.
6. A variance of use may be approved only after a public hearing has been held and the BZA determines in writing all of the following:
 - a. The approval of the use variance will not be injurious to the public health, safety, convenience, comfort, 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 in a substantially adverse manner;
 - c. The approval of the use variance will not alter the land use characteristics of the district;
 - d. The approval of the use variance will not impair the adequate supply of light and air to adjacent property;
 - e. The approval of the use variance will not increase the hazard from fire, flood, and other dangers;
 - f. The approval of the use variance will not increase the congestion in public streets;
 - g. That the need for the use variance arises from some condition peculiar to the property involved;
 - h. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
 - i. The approval does not interfere substantially with the comprehensive plan adopted under the 500 series of this chapter.
7. A variance from development standards may be approved only after a public hearing has been held and the BZA determines in writing all of the following:
 - a. The approval of the variance will not be injurious to the public health, safety, convenience, comfort, 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 in a substantially adverse manner;
 - c. The approval of the variance will not alter the land use characteristics of the district;
 - d. The approval of the variance will not impair the adequate supply of light and air to adjacent property;
 - e. The approval of the variance will not increase the hazard from fire, flood, and other dangers;
 - f. The approval of the variance will not increase the congestion in public streets;
 - g. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.
8. It is the petitioner's responsibility to present evidence to the Board on each of the findings required for the variance.

B. Special Exceptions

1. Application for approval of a special exception shall be made on forms provided by the BZA.
2. Applicable plans and/or drawings shall be submitted with the request.
3. Applicable fees shall be paid.
4. After the application is found to be complete, it shall be placed on the agenda of the next regularly scheduled BZA meeting that is 21 or more days away.
5. The applicant is responsible for giving Notice of Hearing to interested parties and publishing a Notice of Hearing in the local newspaper in accordance with Article 7.
6. A special exception use shall be approved only upon the determination that
 - a. When required, a development plan has been submitted, reviewed, and approved by the Butler City Plan Commission;
 - b. The proposed special exception development is consistent with the purpose of the zoning district and the City's Comprehensive Plan.
 - c. The proposed special exception development is in harmony with all adjacent land uses.
 - d. The proposed special exception development will not alter the character of the district; and
 - e. The proposed special exception development will not substantially impact property value in an adverse manner.

ARTICLE 6 – HEARINGS

A. Hearings

1. Public hearings shall be held for petitions for variances, special exception applications, and as otherwise required by Indiana Code and Butler City Zoning Code.
2. The petitioner shall be in attendance to present the application/petition, evidence and support thereof, and answer questions about the application/petition. The petitioner must present evidence on each required finding. If no one is present to represent the application/petition, the BZA shall dispose of the application/petition in accordance with Article 8.
3. No person may represent a petitioner at a hearing except an attorney.

B. Conduct of Hearings

1. Public hearings shall be conducted according to the following procedure. To maintain orderly procedure, each side should proceed without interruption by the other side. After being recognized by the Chairman, each speaker will stand up, state his/her name and address for the record and state whether they support, oppose, or are neutral about the application/petition.
 - a. For any application/petition for which a public hearing is required, the Chairman shall open the public hearing, introduce the application/petition, and ask the BZA staff to comment on the required documentation.
 - b. The Chairman shall request the applicant/petitioner present the application/petition. The applicant/petitioner shall first present the facts and arguments in support of the case. (15 minutes)

- c. The Chairman shall ask for BZA Staff comments on the application/petition.
 - d. The Chairman shall ask for comments and questions from the BZA.
 - e. The hearing shall then be opened for comments from others, if there are others present.
 - i. Supporting comments from organized groups, committees, and individuals, other than the applicant/petitioner, shall then follow. Speakers should try to present new points and not repeat previous speakers. (5 minutes)
 - ii. Opposing comments shall then be heard. Speakers should try to present new points and not repeat previous speakers. (5 minutes)
 - iii. The BZA reserves the right to question any speaker at the end of his or her presentation.
 - iv. These steps may be waived if no one is present at the hearing.
 - f. The applicant/petitioner shall then receive time for rebuttal. (5 minutes)
 - g. Once the public comment portion of the hearing is completed, the BZA Chairman shall give the BZA an opportunity to ask final questions or give comments, after which the chairman shall close the hearing. The BZA shall deliberate the application/petition and shall have the right to ask questions to clarify information.
2. In the presentation of a case:
 - a. The burden shall be upon the applicant/petitioner to supply all information required to address each finding.
 - b. Statements to the BZA made by the applicant/petitioner at the meeting that are relevant to the decision shall be binding agreements between the applicant/petitioner and Board and shall be reflected in the minutes of that meeting.
 3. Every person appearing before the Board shall abide by the orders and directions of the Chairman. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Board and shall be dealt with as the Chairman directs.
 4. The Board may continue or postpone any hearing when it needs more time to deliberate. The Board, at its discretion and on an affirmative vote of a majority of the Board, may continue or postpone a hearing upon request of any party.
 5. Continuation of hearings to a date more than six (6) months beyond the initial public hearing shall not be granted. The Board shall dismiss such pending requests. The right of applicants/petitioners to re-file such applications shall be preserved, providing no final disposition of the prior request was granted. Such applications/petitions shall again be subject to the payment of filing fees.

ARTICLE 7 - NOTICE

A. Notice to Interested Parties

1. All petitioners/applicants shall inform interested parties as defined herein of the petition or appeal by
 - a. Sending a copy of the Notice of Hearing by certified mail, return receipt requested to the residence or the last known address of the interested parties, with such notice being postmarked at least 21 days before the date of the public hearing, (This procedure shall be used for variances of use and special exceptions, and may be used for variances from development standards) or

- b. Hand delivering a copy of the Notice of Hearing to the interested party and obtaining a dated signature from the interested party of receipt of the Notice at least 10 days before the date of the public hearing. (This procedure may be used for variances from development standards only.)
2. Interested parties shall be defined as all contiguous properties with the assumption that railroad rights-of-way and public rights-of-way do not exist.
3. Such notice shall state:
 - a. The name of the applicant/petitioner.
 - b. The location by address or other identifiable geographic description of the subject property or area.
 - c. A summary of the subject matter contained in the petition or appeal.
 - d. The time and place that the application/petition has been set for hearing.
 - e. That the application/petition and file may be examined in the office of the BZA.
 - f. That the addressee may voice an opinion at the hearing and/or file written comments with the Board.
 - g. That the hearing may be continued from time to time as necessary.
4. In order to determine the names and addresses of interested parties the applicant/petitioner shall consult the most current records of the Transfer Office of the DeKalb County Auditor.
5. Proof that notice has been mailed shall be filed in the office of the BZA three (3) days prior to the public hearing. Failure to provide proof of notice 3 days prior to the hearing will result in the hearing being cancelled. Proof shall consist of the original US Postal Service Certified Mail Receipts stamped by the US Post Office with the postmark, any return receipts (green cards) received, and/or any envelopes that were returned to sender as “undeliverable.”
6. Appearance by any person at any hearing on an application/petition, in person or by representative, shall waive any defect in notice unless the alleged defect is raised at the beginning of the hearing.

B. Notice in Local Newspaper

1. The applicant/petitioner shall cause a Notice of Hearing to be published in a local newspaper, preferably the Butler Bulletin, at least ten (10) days before the public hearing. Said Notice of Hearing shall be at the expense of the applicant/petitioner. BZA Staff must approve said Notice of Hearing before publication.

ARTICLE 8 - FINAL DISPOSITION OF CASES

A. Final Disposition

The final disposition of cases shall set forth the findings and determinations of the Board, together with any modifications, specifications or limitation it makes.

B. No Shows

The Commission may dismiss an application/petition if no one shows up to present it. If an application/petition is dismissed for this reason, the applicant/petitioner may re-file. Such application/petition shall again be subject to the payment of filing fees.

C. Withdraw of Petitions

1. An applicant/petitioner may not withdraw a case after a motion has been made concerning the application/petition.
2. An applicant/petitioner that has received an adverse decision may re-file the application/petition 12 months after the date of the decision and only if there has been a change of circumstances. Said change of circumstances must be specified in the re-filed application/petition.

ARTICLE 9 - AMENDMENT

A. Amendment

These By-Laws and Rules of Procedure may be amended by a majority of the membership at any regular meeting or special meeting of the Butler City Board of Zoning Appeals. Any amendment of these By-Laws and Rules of Procedure shall be attached hereto and made a part hereof by the Secretary.

Adopted by the Butler City Board of Zoning Appeals on the _____ day of _____, 2004.

Amy Schweitzer, Secretary