

RULES AND PROCEDURES

Clark County Advisory Board of Zoning Appeals

Article 1: Authority and Duties

1. Statutory Authority.

- a. The Clark County Board of Zoning Appeals (BZA) exists as an advisory board of zoning appeals under the authority of IC 36-7-4-100 et seq. The BZA shall have jurisdiction over all land within the unincorporated areas of Clark County and the Town of Borden.
- b. These Rules and Procedures are adopted in accordance with the requirements of IC 36-7-4-916.

2. BZA Powers and Duties.

- a. The BZA shall have those powers and duties as set forth in Indiana Code and the Clark County Unified Development Ordinance (UDO) with regards to, but not limited to, appeals, special exceptions, variances from development standards, and variances of use.

3. Delegation of Authority to Administrator.

- a. The BZA shall delegate ministerial authority to the Administrator pursuant to IC 36-7-4-913.
- b. The BZA shall delegate authority to its employees to perform ministerial acts in all cases except where final action of the PC or a BZA is required by law.

Article 2: Membership and Duties

1. BZA Membership.

- a. **Composition.** The BZA shall consist of five (5) members as prescribed by IC 36-7-4-902(a).
- b. **Terms.** In accordance with IC 36-7-4-906, each member shall be appointed for a term of four (4) years, expiring on the first Monday of January of the fourth year. In addition, a member of the BZA serves until their successor is appointed.
- c. **Election of Officers.** Pursuant to IC 36-7-4-912 and IC 36-7-4-913, the BZA shall, at its first meeting in each year, elect from among its members a Chairman, Vice Chairman and Secretary. Vacancies in offices shall be filled immediately by regular election procedure.
- d. **Qualifications for Citizen Members.**
 - i. All citizen members appointed to the BZA shall meet the qualification set forth by IC 36-7-4-905 as amended.
 - ii. Qualification Statement.
 - (a) The Administrator shall be responsible for providing the qualification statement form to citizen members as required.

- (b) Each citizen member, newly appointed or reappointed, shall complete and sign a qualification statement form prior to serving as a member of the BZA.
- (c) A qualification statement must be completed and signed annually prior to the first BZA meeting or BZA action.
- (d) If any changes occur or was inaccurate, each citizen member is responsible for providing an updated statement immediately.
- (e) Failure of a citizen member to provide a qualification statement shall not disqualify said member from the BZA or affect any participation or vote of the member in the official action of the BZA.
- e. **Certification.** The respective appointing authorities shall certify their appointments. The certifications shall be sent to and made a part of the records of the BZA.
- f. **Alternate Members.** In accordance with IC 36-7-4-907(a), the appointing authority may appoint an alternate member (who meets the same requirements as the disqualified member, including residency) to participate with the BZA in any hearing or decision if the regular member has a disqualification or is otherwise unable to participate in the hearing or decision. An alternate member shall have all of the powers and duties of a regular member while participating in the hearing or decision.
- g. **Removal of Members.** In accordance with IC 36-7-4-906(f) and IC 36-7-4-907(b), an appointed member may be removed from the BZA by the respective appointing authority prior to the end of their term for failure to appear at three (3) consecutive, regularly scheduled BZA meetings.

2. Member and Staff Duties.

- a. **Chairman.** The Chairman shall preside over BZA meetings, supervise over the determination of points of order and procedure, and be responsible for the signing of all official documents. The Chairman shall have the privilege of discussing all matters before the BZA and of voting thereon. The Chairman may make or second a motion before the BZA.
- b. **Vice Chairman.** The Vice Chairman shall have authority to act as Chairman of the BZA during the absence or disqualification of the Chairman.
- c. **Secretary.** The Secretary shall be responsible for conducting roll call and attesting to all official documents. In the event that both the Chairman and Vice Chairman are absent or disqualified from a meeting or a public hearing, the Secretary shall serve as Chairman for that meeting or public hearing.
- d. **Recording Secretary.** A Recording Secretary may be used for keeping and transcribing minutes of regular or special meetings of the BZA.
- e. **Administrator.** The Administrator shall have the principal responsibility for the administration and enforcement of the UDO except where final action of the BZA is required by law. These duties shall include, but not be limited to:
 - i. **Clerical & Technical Assistance.** Providing clerical and technical assistance as may be required by the BZA, Checkpoint Agencies, Committees, County Commissioners, or other body in the execution of its duties as established by the UDO and Indiana Code.
 - ii. **BZA Applications.** Receiving, processing docketing, and referring all appropriate applications to the BZA.

iii. **Record Keeping.** The Administrator shall be responsible for supervising the management and maintenance of an accurate and complete record of all proceedings, petitions, hearings, and meetings of the BZA, including the keeping of records and minutes, findings of fact, and preservation of all papers and documents of the BZA and the maintenance of a current roster with the qualifications of members. Copies of such record of any hearing may be ordered by any party, and the cost thereof, shall be paid by the party ordering such copy(ies) in accordance with the adopted fees.

(a) The Administrator shall prepare a detailed report of all BZA hearing proceedings; setting forth in writing a record of the BZA's final decisions and a record of voting of individual members.

f. **Attendance of Meetings.** BZA members are expected to attend all meetings of the BZA. To ensure a quorum, members shall notify the Administrator at their earliest convenience if they are not able to attend a scheduled meeting either entirely or in part. Members who fail to appear at meetings may be subject to removal from the BZA (see Article 2: Removal of Members)

Article 3: Checkpoint Agencies.

1. Checkpoint Agency Review.

i. The Checkpoint Agency Review committee established by the PC may be utilized by the BZA for review of petitions as needed.

Article 4: Meetings and Hearings, General.

1. Meetings and Hearings.

a. **Meeting Schedule.** Regular meetings of the BZA shall be published annually, including the date, time, and location.

b. **Special Meetings.** Special meetings of the BZA may be called by the Chairman or by two (2) members of the BZA upon request (written or electronic) to the Administrator.

i. **Notice to BZA Members.** The Administrator shall send to all members, at least three (3) days before the special meeting, a notice (written or electronic) fixing the time and place of the meeting. Notice of a special meeting is not required to be provided to all BZA members if:

(a) the date, time, and place of a special meeting are fixed in a regular meeting; and

(b) all members of the BZA are present at that regular meeting.

c. **Open Door Law.** All meetings, as set forth in IC 5-14-1.5-2, will comply with Indiana Open Door Law as required.

d. **Public Records.** All minutes of the proceedings, findings of fact, recordings of the hearings, plans, maps and all other exhibits submitted by the petitioners, remonstrators, and Administrator shall be public records and shall be filed in the Administrator's office. These materials shall become a part of the case and all such materials shall be held by the Administrator for a period of at least one year. At the end of the one-year time period, all materials held by the BZA may be placed in a 'back filing' system for preservation of records, all in accordance with the Indiana Access to Public Records Act.

2. Actions and Decisions.

Application Type	Staff	Checkpoint Agencies	BZA
Special Exception	Review and Make Staff Recommendations to BZA	Optional as Needed	Final Decision: <ul style="list-style-type: none"> • Approve (with or without conditions) • Disapprove
Variance of Use	Review and Make Staff Recommendations to BZA	Optional as Needed	Final Decision: <ul style="list-style-type: none"> • Approve (with or without conditions) • Disapprove
Variance of Development Standards	Review and Make Staff Recommendations to BZA	Optional as Needed	Final Decision: <ul style="list-style-type: none"> • Approve (with or without conditions) • Disapprove
Appeal	Review and Provide Information to BZA	N/A	Final Decision: * <ul style="list-style-type: none"> • Affirm Staff's Decision (with or without conditions) • Reverse Staff's Decision (with or without conditions) • Modify Staff's Decision (with or without conditions)

*Decision of the BZA may be appealed to the Circuit or Superior Court of the Clark County.

- a. **Official Action.** Action of the BZA is only considered official when taken by a majority of the full membership of the BZA at a regular or special meeting.
- b. **Voting.**
 - i. A quorum is a majority of the full membership of the BZA who are qualified to vote.
 - ii. All decisions shall be by voice vote unless the Chairman deems it necessary for a roll call vote. The vote of each member of the BZA shall be recorded in the minutes of the meeting.
 - iii. A majority vote of the full membership of the BZA who are qualified to vote, whether present or not, shall be required to pass a motion.
 - iv. When a vote of the BZA results in a tie or where a vote of the BZA does not result in official action, the matter may be resolved by:
 - (a) A different motion to reconsider the matter and followed by a re-vote; or
 - (b) Re-docketing the matter for the next regularly scheduled meeting of the BZA.

3. Petitions.

- a. **Commitments.** Pursuant to IC 36-7-4-1015, the BZA may permit or require the owner of a parcel of property to make a written commitment concerning use or development of that parcel. Such commitment shall be binding upon the owner and all successors and shall be recorded in the Office of the Clark County Recorder by the petitioner. Any such commitment shall be subject to the approval of the BZA and its counsel as to form and terms with a template that can be provided by the Administrator.
- b. **Prior Code Violation Resolution.** A permit application may not be filed for a property that has a previously documented and unresolved code violation until the violation has been resolved. However, the Administrator may allow the filing of a permit application if it is shown that it will directly contribute to the resolution of the violation.
- c. **Continuance/Tabling.** A continuance may be requested for sufficient cause by the petitioner, an interested party, or a member of the BZA. It shall be within the discretion of the BZA to grant or deny

any request for continuance. Re-notification shall not be required if a petition is continued at a properly noticed public hearing/meeting to a specified future hearing/meeting date of the BZA.

- i. **Continuance Request by the Petitioner.** A request for continuance by the petitioner may be filed in writing prior to the BZA's hearing/meeting or made orally at the beginning of the BZA meeting when the agenda is considered. A continuance shall be granted if the full BZA membership, who are qualified to vote, is not present. However, the petitioner shall be prepared to move forward with their petition until the continuance request is granted by the BZA.
 - ii. **Continuance Request by an Interested Party.** A request for continuance by an interested party may be filed in writing prior to the BZA's hearing/meeting or made orally at the beginning of the BZA meeting when the agenda is considered. The interested party shall be prepared for the petition to move forward until the continuance request is granted by the BZA.
 - iii. **Continuance Request by a Member of the BZA.** A member of the BZA may make a motion of continuance for consideration by the BZA.
- d. **Withdrawal of Petitions.** No petition may be withdrawn by the petitioner after a vote has been ordered by the Chairman presiding at the meeting.
 - e. **Dismissal of Petitions.** The BZA may dismiss a case for want of prosecution or for lack of jurisdiction.

Article 5: Meetings and Hearings, Conduct and Procedures

1. Orderly Conduct.

- a. Every person appearing before the BZA shall abide by the order and direction of the Chairman. Discourteous, disorderly, or contemptuous conduct shall be regarded as a breach of the privileges and the Chairman (or presiding member) may remove any person from the meeting who disrupts the meeting, displays discourtesies, or displays disorderly or contemptuous conduct towards the members or any other person in attendance.
- b. The Chairman (or presiding member) may terminate any repetitious or irrelevant presentation. Every person appearing before the BZA shall abide by the order and directions of the Chairman.

2. Contacting Members.

No person (including applicants, remonstrators, and others) may communicate with any member of the BZA before a hearing with the intent to influence the member's action on a matter pending before the BZA. All communication about a petition must go through the Administrator so that it can be made a part of the public record and be distributed to the membership.

3. Time Periods.

The BZA, by majority vote at any meeting, shall have the authority to extend the time periods specified in these Rules and Procedures.

4. Agenda and Minutes.

- a. The Administrator shall prepare an agenda for each meeting and may limit petitions to a reasonable number as determined by the Administrator.
- b. The Administrator shall provide (mail or electronically transmitted) the agenda, and all supporting materials, to all BZA members at least five (5) days prior to the meeting.
- c. A summary of minutes of the proceedings shall be made available to each member of the BZA before the next scheduled regular meeting.

5. Filing Petitions.

- a. Any person who wishes to file a petition that requires a public hearing before the BZA must file the petition with the Administrator, unless the BZA is the sponsor of the petition.
- b. All petitions must be received by the deadlines outlined in the BZA Application Packet. The Administrator shall review the petition for technical conformity with the UDO and state law prior to assigning a case number and placing the petition on the agenda.

6. Site Visit. Members shall have the right to inspect land involved in any petition to be heard by the BZA either individually or jointly. No more than three (3) members shall inspect the subject land at any one (1) time.

7. Order of Business.

- a. The order of business at regular meetings shall be as follows:
 - i. Call to order;
 - ii. Consideration and signing of minutes of previous meeting;
 - iii. Hearing of agenda items;
 - iv. Reading of Rules;
 - v. Old business, including re-docketed or continued petitions;
 - vi. New business, grouped by similar petitions or by consecutive case numbers;
 - vii. Reports, Resolutions, and Communications; and
 - viii. Adjournment.

8. Presentations on Petitions.

- a. The order of presentations on any petition or application heard by the BZA shall be as follows:
 - i. Presentation of staff report, if any, by Administrator;
 - ii. Presentation by Petitioner, limited to fifteen (15) minutes;
 - iii. Questions, if any, by BZA members;
 - iv. Presentation by Interested Parties, limited to three (3) minutes per Interested Party;
 - v. Questions, if any, by BZA members;
 - vi. Presentation by others at discretion of Chairman, limited to one (1) minute per person at the discretion of the Chairman;
 - vii. Additional questions, if any, by BZA members of all speakers; and
 - viii. Official action by BZA on petition.
- b. Any person or party speaking shall state his/her name and address prior to making a presentation.
- c. Any party may appear in person or by representative (person, agent, attorney, etc.) at BZA meetings. A representative may testify to the facts that he has particular knowledge of that relate to the issues of

the petition. In so testifying, the representative shall be subject to cross-examination and questions by the BZA.

- d. Written comments submitted to the BZA prior to a meeting or hearing shall be read or outlined to the BZA by the Administrator prior to official action.
- e. No rebuttal time shall be allotted to the Petitioner, Interested Party(ies)/Person(s), and said person(s) cannot reserve any unused presentation time for rebuttal.

9. Conflict of Interest. During presentation and discussion of the subject petition, a member who has a conflict of interest shall not sit as a member of the BZA, nor vote on the particular petition. In accordance with IC 36-7-4-909, a member of the BZA shall have a conflict of interest with regard to a petition if:

- a. The member is biased or prejudiced or otherwise unable to be impartial; or
- b. The member has a direct or indirect financial interest in the outcome of the decision.

Article 6: Interested Parties and Public Notice

1. Interested Parties. Interested parties shall include all abutting properties. If there are less than five (5) abutting properties, the petitioner must notify the five (5) closest property owners. If the subject property abuts a county roadway along a County line, the petitioner must notify two (2) properties in depth or one-eighth (1/8) of a mile (whichever is less), in the adjoining county in addition to the abutting property owners in Clark County.

2. Notice.

- a. Except for a petition initiated by the BZA or County Commissioners to repeal, amend, or replace all or part of the UDO, all petitioners shall serve notice to interested parties at their own expense by the following methods as outlined in the BZA Application Packet:
 - i. Publish one (1) legal notice in the newspaper(s) at least ten (10) days prior to the Hearing;
 - ii. Send legal notice via Certified Mail or Certificate of Mailing to all Interested Parties and postmarked at least ten (10) days prior to the hearing; and
 - iii. Post on-site notification sign(s) in a conspicuous place on the subject property (at least every five hundred (500) feet) and at least ten (10) days prior to the date of the public hearing.
 - iv. The petitioner must submit proof of notice as outlined in the BZA Application Packet.

Article 7: Amendments and Suspension of Rules and Procedures

- 1. Amendment of Rules and Procedures.** Amendment to these Rules and Procedures may be made by the BZA only upon the affirmative vote of a majority of the full membership of the BZA.
- 2. Proposed Amendments.** Any amendment to these Rules and Procedures must be provided to all BZA members (mailed or electronically transmitted) at least fourteen (14) days prior to voting on the amendment.
- 3. Suspension of Rules or Procedure.** The suspension of any rule or procedure may be ordered at any meeting of the BZA by a majority vote of the quorum present.

- 4. **Severability.** If any article, section, subsection, sentence, clause, phrase, or portion of these Rules shall for any reason be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereunder.
- 5. **Priority of Laws.** These Rules may be used as a guide by the BZA and all interested parties. However, applicable state laws and county ordinances should be consulted if necessary. In the event that any provisions of these Rules conflict with applicable state law or county ordinance, the state law and county ordinance shall supersede these Rules. State law shall have priority, then county ordinance, and finally, these Rules.

Article 8: Adoption and Amendment History for Rules and Procedures

- 1. The BZA Application Packet, as amended, is hereby incorporated into the Rules and Procedures by reference.
- 2. The official record of these Rules and Procedures for the BZA shall be kept on file at the Clark County Planning Office.
- 3. All previous rules and regulations heretofore adopted by the Clark County Board of Zoning Appeals are hereby expressly repealed as of the effective date of these Rules.
- 4. Adopted and Effective as of:
 - a. November 18, 2020
- 5. Amended.
 - a. Reserved.

Attest:

_____ , Chairman:	_____	_____
		Date
_____ , Vice Chairman:	_____	_____
		Date
_____ , Secretary:	_____	_____
		Date