

# FULTON/KEWANNA BOARD OF ZONING APPEALS

## *Rules of Procedure*

### **Article I. Authority and Duties**

Section 1. The Fulton/Kewanna Board of Zoning Appeals (hereinafter called "Board") exists as an advisory Board under the authority of IC 36-7-4-901 and Article 10 of the Zoning Ordinance of Fulton County, Indiana, and any amendments thereto. These rules are adopted in accordance with the requirements of IC 36-7-4-916.

Section 2. The duties of the Board shall be those set forth in IC 36-7-4-900 et al., and such other responsibilities as may be required by state statute or Fulton County Ordinance.

### **Article II. Officers, Members and Employees**

Section 1. The Board shall consist of five (5) voting members, appointed in accordance with IC 36-7-4-902.

Section 2. At its first regularly scheduled meeting in each calendar year, the Board shall select from its membership a Chairperson, Vice-chairperson, and a Secretary. Each shall serve during the period of their membership on the Board for the balance of the calendar year.

Section 3. The Vice-chairperson shall have the authority to act as Chairperson of the Board during the absence or disability of the Chairperson. The Secretary shall have the authority to act as Chairperson in the absence or disability of the Chairperson and Vice-chairperson.

Section 4. Upon resignation or replacement of the Chairperson, Vice-chairperson, or Secretary as a member of the Board, the Board shall elect a successor at its next regularly scheduled meeting.

Section 5. The Board shall appoint and fix the duties of an Administrative Secretary, who is not required to be a member of the Board. The Administrative Secretary shall be charged with such duties as required under state statutes, Fulton/Kewanna ordinances, and these rules.

Section 6. If a vacancy occurs among the members of the Board, the appointing authority shall appoint a member for the unexpired term of the vacating member. The Administrative Secretary shall notify the appointing authority in writing when a member has been absent for three (3) consecutive meetings of the Board. Such absences may constitute cause for removal from the Board by the appointing authority under IC 36-7-4-906(f).

Section 7. The Board may appoint such employees as are necessary for the discharge of its duties.

### **Article III. Meetings**

Section 1. The regular meetings of the Board shall be the 1<sup>st</sup> Monday of each month at 7:00 pm. The location of the meeting shall be the Kewanna Town Hall. If the date of a regular meeting falls on a legal holiday, or if it is impossible to conduct the meeting at that time or place, the Chairperson may set an alternate date, time, or place for the regular meeting or may cancel the meeting with the unanimous consent of the members of the Board, provided the notice requirements of IC 5-14-1.5 are complied with.

(1) Whenever it is ascertained that there is no business for the Board of Zoning Appeals consideration, or that a quorum will not be available, the president may cancel a regular meeting by giving written or oral notice to all members, unless objected to by three (3) members of the Board of Zoning Appeals.

Section 2. The Chairperson or two (2) members of the Board, upon written request to the Administrative Secretary, may call special meetings. The Administrative Secretary shall send to all members, at least three (3) days before the special meeting, a written notice fixing the time and place of the meeting. Written notice is not required if:

- (1) The date, time, and place of the special meeting are fixed in a regular meeting;
- (2) All members of the Board are present at that regular meeting; and
- (3) The Administrative Secretary complies with notice requirements of IC 5-14-1.5.

Section 3. The agenda shall list all items to be considered by the Board at the regular or special meeting. The Board shall consider no item unless it appears on the agenda. Any petitioner may withdraw any petition prior to the meeting at which it was to be considered.

The agenda shall be sent by first-class mail to all members of the Board and shall be available for public inspection at the Plan Commission office no later than 10 days before any regular meeting. The agenda shall be posted at the meeting site no later than 2 days before the meeting.

Section 4. The Chairperson of the Board shall preside over meetings and hearings, decide questions of order, subject to appeal by Board members, and preserve decorum in the meeting room. The Chairperson may warn any person present that particular conduct is a breach of courtesy and may order a person expelled from the meeting for disruptive conduct.

Section 5. The Administrative Secretary shall keep minutes of its proceedings and record the vote on all actions taken. The Board shall also make written findings of fact in all cases heard by it.

Section 6. All regular and special meetings shall be opened to the public as required by IC 5-14-1.5, except as provided by law in relation to executive sessions, IC 5-14-1.5.

#### **Article IV. Official Action**

Section 1. A majority of the members of the Board who are qualified to vote shall constitute a quorum. Action of the Board shall not be official unless it is authorized at a regular or properly called special meeting by a majority of the entire membership of the Board.

Section 2. Voting by the Board shall be by roll call vote of the members. All members present shall vote on every question unless they are permitted to abstain by the presiding officer.

Section 3. No member of the Commission shall participate in a hearing or decision of the Board upon any zoning matter in which the member has a direct or indirect financial interest. A member shall declare his or her known conflict of interest. The Board shall enter into its records the fact that the member has such a disqualification, and the name of the alternative member, if any, who participates in the hearing or decision in place of the regular member.

Section 4. In the event a majority vote of the Board cannot be achieved due to absences, permitted abstentions, or disqualifications, the matter shall be rescheduled for the next regular meeting at the request of any Board member, a petitioner or a remonstrator.

Section 5. Any member of the Board who voted with the majority may call for a reconsideration of any vote at the same meeting of the Board at which it passed, and, if sustained by a majority of the votes, the reconsideration shall be ordered.

#### **Article V. Minutes and Records**

Section 1. The Administrative Secretary of the Board shall prepare and maintain minutes of its meetings. The minutes shall include the vote of each member on each question presented or indicated that the member is absent, abstaining with permission, or not voting because of a disqualification.

Section 2. The minutes of the Board meetings and all records shall be filed in the office of the Plan Commission and are public records, as defined by IC 5-14-3.

Section 3. The minutes shall be presented to the Board for approval at the next succeeding regular meeting. When approved, the minutes shall be signed by the Chairperson and attested by the Administrative Secretary.

## **Article VI. Public Hearings**

Section 1. The Board shall hold such public hearings as are required by state statute and Fulton/Kewanna ordinances. The Board may hold additional hearings at such times and places upon such notice as it considers necessary.

## **Article VII. Petition Procedures**

Section 1. The procedures to be followed when a notice of violation and/or fines are appealed before the Board are as follows:

- (1) Any person receiving a notice of violation and/or fines may appeal the violation and/or fine to the Board or to the court of jurisdiction. A written statement from the person in violation shall be submitted to the Plan Director via Certified Mail at least three (3) days prior to the date the fine is due.
- (2) Fines due will be postponed until the Board or court of jurisdiction have made a ruling as to the violation and/or fine. The person(s) shall have thirty (30) days to file for a hearing with the Board or court of jurisdiction. Also the person(s) in violation shall have a maximum of two (2) years to complete the hearing process with the Board. Failure to meet these deadlines will reinstate all fines due by the person(s) in violation.
- (3) No additional notices will be issued by the Plan Commission in the event the person(s) in violation has (have) submitted a written statement of their intention to appeal or go to trial.

Section 2. The petition procedures for development standard variances, use variances and special exceptions are as follows:

- (1) Development Standard Variances: The following procedure applies to Variance Petitions.
  - (a) Submit a Variance application, required supportive information, and application fee at least thirty (30) days prior to the regularly scheduled Board meeting.
  - (b) The Board will then review the variance application and required supportive information, testimony of the petitioner, and testimony of the public at their next regularly scheduled public meeting. The Board may approve, deny or table the petition. The Board may add conditions to an approval. Approvals shall only be granted upon finding of fact that there is a hardship
  - (c) The intensity of the variance may be reduced at the public hearing if approved by the Board.
- (2) Special Exceptions: The following procedure applies to Special Exception Petitions.
  - (a) Submit a Special Exception application, required supportive information, and application fee at least thirty (30) days prior to the regularly scheduled Board meeting.
  - (b) The Board shall then review the Special Exception application, required supportive information, testimony of the petitioner, and testimony of the public at their next regularly scheduled public meeting. The Board may approve, deny or table the petition. The Board may add conditions to an approval.

Section 3. The petition procedures for administrative appeals are as follows:

- (1) Submit a written statement specifying the grounds for the appeal and any applicable supporting material within 30 days of the decision alleged to be in error.
- (2) The administrative official or body from which the appeal is taken shall transmit to the Board all documents, plans and papers constituting the record of action from which the appeal is taken.
- (3) Administrative appeals require public notice in the newspaper per I.C. 5-3-1-2 and 5-3-1-4.
- (4) At their next regularly scheduled public meeting, the Board shall then review:
  - (a) The written statement and supportive material by the petitioner,

- (b) The record of action supplied by the administrative official from which the appeal is taken.
- (c) Testimony of the petitioner, and
- (d) Testimony of the administrative official or body from which the appeal is taken.
- (e) Testimony by members of the public.

### Article VIII. Appearances

Section 1. The petitioner or the petitioner's agent must appear in person or by counsel to present a petition or remonstrance to the Board and for the Board to consider the case. If no person appears on behalf of a petition, the petition may be tabled until the following meeting or dismissed under Section 2 of this Article.

Section 2. The Board's Administrative Secretary or staff must be informed prior to the meeting if the petitioner requests a time extension. The Chairperson will determine whether the petitioner's reasons warrant an extension. If the petitioner or the petitioner's agent fail to appear at the meeting for which the extension was given without sufficient reason, the petition may be dismissed.

### Article IX. Order of Business

Section 1. The order of business at a regular meeting shall be:

- (1) Call to Order;
- (2) Roll Call and determination of quorum;
- (3) Consideration of minutes of previous meeting;
- (4) Old Business (tabled or continued items);
- (5) New Business;
- (6) Report of Officers and Committees;
- (7) Public Comments;
- (8) Adjournment.

Section 2. The order of business for special meetings shall be:

- (1) Call to Order;
- (2) Roll Call and determination of quorum;
- (3) The business for which the special meeting was called;
- (4) Adjournment.

Section 3. The Board shall act on each petition and subsets of the petition in the following order:

- (1) The Board Chairperson shall open the public hearing and introduce the appeal and may request a report from the Plan Director on the matter. The Chairperson shall then allow the petitioner, or his representative, to present the appeal. The Board shall not take action on an appeal if the petitioner or an agent of the petitioner is not present. The presentation of the appeals shall be limited to a maximum of 10 minutes, unless otherwise permitted by the Board. The chairperson, subject to appeal by the Board, may limit the testimony to new information pertinent to the petition presented.
- (2) If there are any questions by the Board, they may ask the petitioner or the staff prior to the opening of the public hearing.
- (3) Being no objections otherwise, the Chairperson will open the public hearing.
- (4) The Chairperson will recognize persons interested in speaking in favor of the granting of the appeal. Those persons will be given a maximum of 10 minutes to speak unless otherwise permitted by the Board. The Chairperson, subject to appeal from the Board, may limit testimony to information pertinent to the petition presented.
- (5) The Chairperson will then recognize persons interested in speaking in against of the granting of the appeal. Those persons will be given a maximum of 10 minutes to speak unless otherwise permitted by

- the Board. The Chairperson, subject to appeal from the Board, may limit testimony to information pertinent to the petition presented.
- (6) Statements by a group representative of an area or interest in the matter shall be given by a representative of the group. Additional comments by members of that group will only be heard if they represent another point of new information.
  - (7) The Chairperson may permit the petitioner to answer any questions or offer rebuttal to comments made by the public. The petitioner will be given a maximum of 10 minutes to do so unless otherwise permitted by the Board. The Chairperson, subject to appeal from the Board, may limit testimony to information pertinent to the petition presented.
  - (8) The Chairperson may permit additional comments from the public as necessary to clarify any issues. Those persons will be given a maximum of 10 minutes to do speak unless otherwise permitted by the Board. The Chairperson, subject to appeal from the Board, may limit testimony to information pertinent to the petition presented.
  - (9) The Chairperson will entertain a motion to close the public comments.
  - (10) The Chairperson will then allow the Board to discuss and question the appeal and the facts presented and entertain motions for approval, denial or the tabling of the appeal.
  - (11) The Chairperson will entertain a motion to close the hearing, and if approved, will close the hearing.
  - (12) The voting by the Board shall be by roll call except the Chairperson, who shall vote last.
  - (13) A majority vote by at least 3 Board members is required to act on a case.

Section 4. The Board may continue any item that has not been dismissed, from one meeting to another without further public notice provided that an announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the minutes.

Section 5. Persons wishing to remonstrate a petition before the Board may do so in writing to the Plan Commission Office or present their statement during the public hearing. Written remonstrances will be presented by the Plan Director to the Board at their regular meeting.

Section 6. Persons wishing to submit signed petitions in favor or against an appeal before the Board may do so by submitting it to the Plan Commission Office or the Board during the public hearing. Petitions should include the street addresses of the persons signing it.

Section 7. On each appeal for a Development Standard Variance, a Use Variance, or a petition for Special Exception, the Board will complete the appropriate Findings of Fact form as per requirements of the Zoning Ordinance. For an appeal to be approved, at least 3 members must find that all requirements for that request have been met. The Plan Director will keep all signed Findings of Fact forms in the case file.

## **Article X. Appeal Procedure**

Section 1. Every petitioner for an appeal of a development standard variance, use variance, or special exception an administrative determination shall complete an application form supplied by the Board. The Board may require the petitioner to submit any additional information it deems relevant for consideration.

### Section 2.

- (1) Every petition for an appeal of a determination by the Board shall be filed with the Administrative Secretary no later than 30 days after the determination.
- (2) Any appeal of an administrative decision shall be filed with the Board within 30 days following such decision.

## **Article XI. Notice Requirements**

Section 1. For the purpose of IC 36-7-4-920(b), any person with a legal interest in property subject to a petition before the Board or the owner of any abutting property is an interested party. Interested parties are further defined as

follows: Interested parties for a Development Standard Variance or Special Exception petitions specific to residential use will be adjoining property owners; streets and alleys are not to be used as a divider. Interested parties for Special Exception petitions for business/commercial use, will be four (4) property depths or fifteen hundred (1500) feet, whichever is less.

Section 2. Adequate notice is given under these rules if:

- (1) The legal notice of public hearing is sent via certified return receipt requested mail at least 25 days prior to the public hearing to all interested parties, and the receipts of said action are included in the application's supportive information to the Board; or
- (2) Signatures written on a form supplied by the Plan Commission are presented with the application's supportive information to the Board. The signature of any person on the form is not to be construed as a waiver or consent to the petition, but merely evidence that the person has received notice of the hearing.
  - (a) The form shall state the date, time, and place of the hearing, the name of the petitioner, and a brief description of the variance or special exception requested.
  - (b) If the petitioner cannot obtain the signature of an interested party because the party is not a resident of Fulton/Kewanna, is unable for some other reason to sign the form, or refuses to sign the form, the petitioner must notify the Administrative Secretary of the failure to obtain the signature at least 10 days before the hearing and execute a statement under penalty of perjury stating the reasons for the failure to obtain the signature.
  - (c) The Administrative Secretary shall, at least 5 days before the hearing, send a copy of the notice by first-class mail to any interested party whose signature the petitioner has not been able to obtain.
  - (d) The completed form must be filed with the Board before it may act on the petition.
- (3) The personal appearance at the hearing also shall constitute evidence of notice.
- (4) The Board shall give legal notice at least 10 days prior to the public hearing in accordance with IC 5-3-1, with this notice stating the date, time, and place of the hearing, the name of the petitioner, and a brief description of the property subject to the petition.

Section 3. The person appealing a decision or applying for a development standard variance, use variance, or special exception is required to assume the costs of public notice and due notice to interested parties.

## **Article XII. Commitments**

Section 1. The Board may require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel.

Section 2. For the purposes of IC 36-7-4-921(b), the Board or any person claiming to be adversely affected by any commitment is entitled to enforce the commitment.

Section 3. A commitment shall be created by the owner of the property by affixing his or her signature to a written statement of the terms of the commitment. The signed commitment shall be attached to the petition and entered into the minutes of the Board by the Administrative Secretary.

Section 4. A commitment may be modified or terminated only by a decision of the Board made at a public hearing after notice is given in accordance with the requirements set forth in Article X of these Rules.

Section 5. If any person fails to abide by a commitment, that person commits a violation of the zoning ordinance. The commitment shall be enforced in accordance with the provisions of the zoning ordinance.

**Article XIII. Amendments**

Amendments to these rules of procedure may be made by the Board at any regular or special meeting upon the affirmative vote of a majority of the members of the Board. The suspension of any rule may be ordered at any meeting by a two-thirds (2/3<sup>rds</sup>) vote of the quorum.

**Article XIV. Repeal**

All previous rules and regulations heretofore adopted by the Fulton/Kewanna Board of Zoning Appeals are hereby expressly repealed, as of the effective date of these rules. Rules of Procedure of the Fulton/Kewanna Board of Zoning Appeals, Indiana, approved by the affirmative vote of three members of said Board at the regular meeting of the Board held on the 7<sup>th</sup> day of April 2008.

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Chairperson

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Secretary

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Attest: Heather Redinger, Administrative Secretary  
April 7<sup>th</sup>, 2008