

CHAPTER VIII

THE ZONING BOARD OF APPEALS

8.00 CREATION AND MEMEBERSHIP OF ZONING BOARD OF APPEALS

There is hereby created a Zoning Board of Appeals, which shall perform its duties and exercise its powers and jurisdiction as provided by *Act 184 of the Public Acts of 1943*, as amended, and by certain provisions of this ordinance to the end that the objectives of this ordinance are observed, public safety, morals, and general welfare secured, and substantial justice done. The membership of the Board shall be as provided by said act. The members of the Board shall select one of their number as Chairman and one as Vice-Chairman and these officers shall serve for a period of one year or until their successors have been selected.

8.10 ORGANIZATION AND PROCEDURE OF ZONING BOARD OF APPEALS

8.1001 Adoption of Rules of Procedure and Maintenance of Record of Proceedings:

The Zoning Board of Appeals shall adopt rules of procedure consistent with the provisions of *Act 184 of the Public Acts of 1943*, as amended, and other local ordinances as it may deem necessary to the proper performance of its duties and the proper exercise of its powers. The Board shall also keep minutes of its proceedings, showing its decisions, the reasoning on which its decision is based, and the vote of each member upon each decision or question, or if absent or failing to vote indicating such fact, and it shall keep other records of its proceedings and other official actions, all of which shall be filed in the office of the City Clerk and shall be a public record.

8.1002 Public Meetings or Hearings: The Zoning Board of Appeals shall not conduct business unless a majority of the members of the Board is present. The concurring vote of a majority of the members of the Board present shall be necessary to reach a decision on any application, appeal, or other matter being considered by the Board. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board in its rules or procedure may specify. The Chairman, or in his absence the Vice-Chairman or in their absence the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall fix a reasonable time for the hearing of the appeal or application for relief, give due notice thereof to all interested parties, and decide the matter being considered by the Board within a reasonable time, but no later than thirty (30) days from the date of the hearing. Written notice of the

hearing shall be given to all interested parties by personally delivering or mailing at least ten (10) days prior to the date of the hearing a copy of said notice of hearing to said parties. The interested parties shall include, but are not limited to, the appellant and City's zoning official or body whose order, decision, or determination is being appealed, the applicant for the relief being sought, and all owners of real property, according to the last tax assessment roll, within one hundred and fifty (150 feet of the premises which is the subject of the hearing.

8.1003 **Decisions:** The Zoning Board of Appeals shall document the reasoning supporting its decision by stating on the record the grounds and /or findings to support it. In the case of appeals of orders, decisions, or determinations of City's zoning officials or bodies, the Board may reverse or affirm, wholly or partly, or may modify the order, decision, or determination as in its opinion ought to be made in the premises, and to that end it shall have all the powers of the officer or body from whom the appeal was taken and it may issue or direct the issuance of a permit. The decision of the Board shall not become final until the expiration of five (5) days from the date of the entry of such decision. No decision of the Board permitting the erection or alteration of a building shall be valid for a period longer than six (6) months, unless the building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit or within a reasonable time.

8.1004 **Appeals of Decisions:** The decision of the Zoning Board of Appeals rendered in accordance with this ordinance and *Act 184 of the Public Acts of 1943*, as amended, shall be final, unless a person having an interest affected by the decision appeals the same to the Circuit Court for the City of Boonville, Indiana within sixty (60) days of the date of the decision.

8.20 AUTHORITY AND DUTIES OF ZONING BOARD OF APPEALS

The Zoning Board of Appeals shall have the following authority and duties:

8.2001 **Hear and decide applications for variances:** The Board shall hear and decide applications for variances pursuant to and in conformity with *Section 7.30* hereof.

8.2002

Hear and decide the following appeals:

- a. Appeals of orders, requirements, decisions, or determinations of the Zoning Administrator or bodies. The Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this ordinance pursuant to and in conformity with *Section 8.40* hereof.
- b. Other appeals delegated to it by this ordinance: The Board shall act upon all questions arising in the administration of this ordinance when delegated to do so by this ordinance pursuant to and in conformity with *Section 8.40* hereof.

8.2003

Interpret the zoning map: The Board shall hear and decide applications to interpret the zoning map in such a way as to carry out the intent and purpose of the zoning plan by determining the use of uses permitted: (1) where the street layout on the ground varies from the street layout as shown on the zoning map; and, (2) where a lot held in single ownership at the time of the passage of this ordinance is divided into two or more zoning districts or classifications.

8.30 VARIANCES

8.3001

VARIANCES ALLOWED: In order for the Zoning Board of Appeals to consider an application for a variance, at least one of the following two conditions must exist:

1. The application for the variance must allege that by reason of the exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographical conditions or other extraordinary situation of the land or building or of the use of property immediately adjoining the property in question, the literal enforcement of this ordinance would cause undue or unnecessary hardship or would involve practical difficulty as applied to the property for which the variance is sought; provided, however, that the Board shall not grant a variance on a lot if the owner or members of his immediate family own or owned adjacent land which could, without undue hardship, be included as part of the lot.
2. The application for the variance must allege that for reasons other than those set forth in condition number one (1) the strict application of the terms of this ordinance would cause undue or unnecessary hardship or would involve practical difficulties as applied to the property for which the variance is sought and a request is made to vary such regulations or requirements so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done.

8.3002 **Variations Prohibited:** Under no circumstances shall the Zoning Board of Appeals grant a variance to allow a use not permissible under the terms of this ordinance in the district involved or any use expressly or by implication prohibited by the terms of this ordinance in said district. In other words, use variances are hereby specifically prohibited.

8.3003 **Standards for Granting Variance:** The Zoning Board of Appeals, after public hearing, may vary or modify the terms and requirements of this ordinance if, and only if, the following facts, circumstances, or conditions exist:

1. At least one of the two conditions set forth in *Section 7.3001* does in fact exist.
2. The grant of the variance will not be injurious to the public health, safety, and general welfare, and will not be contrary to the intent and purposes of this ordinance.
3. The use or value of the land or area adjacent to the property which is the subject of the variance will not be adversely affected.
4. The need for the variance arises from some condition peculiar to the property involved and does not exist in similar property in the same district. In other words, the hardship, inconvenience, or difficulty is unique and is not shared by neighboring properties in the same district or zone.
5. The hardship or difficulty found to exist in standard number one was not created by an action of the applicant and either existed at the time of the adoption of the requirement from which the variance is requested or is necessary as a result of some governmental action such as condemnation, etc.
6. The granting of the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property owners in the same vicinity and district but which is denied to the property in question.
7. The granting of a variance would be a minimum departure from the strict application of the provisions of this ordinance which afford relief. In other words, the variance will be the minimum necessary to permit a reasonable use of the land and buildings.
8. The variance being sought does not essentially alter the character of the surrounding area.

The burden of showing that the foregoing standards have been met falls upon the applicant seeking the variance. When granting or denying the variance, the Zoning Board of Appeals shall base its decision on findings as to each of these standards.

8.3004 **Variations Granted with Conditions:** In granting any variance, the Zoning Board of Appeals may prescribe appropriate and reasonable conditions and safeguards which shall be in conformity with all the following requirements:

1. The condition or safeguard must be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will use the land or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
2. The condition or safeguard must be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
3. The condition or safeguard must be necessary to meet the intent and purposes of this ordinance, be related to the standards established in this ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

A violation of such conditions or safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and shall be punishable under *Section 9.10 of Title IX* of this ordinance.

8.40 APPEALS TO THE ZONING BOARD OF APPEALS

Appeals to the Zoning Board of Appeals may be taken by any person aggrieved or by any officer, department, or bureau of the City affected by any decision of the Zoning Administrator. Such appeals shall be taken within a reasonable time of the aggrieved action, but not exceeding thirty (30) days from the time of such action, by filing with Zoning Administrator and with the Zoning Board of Appeals an appeal or notice of appeal specifying the grounds of appeal. The Board of Appeals all papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator from whom the appeal is taken certifies to the Zoning Board of Appeals after the appeal or notice of appeal if filed with him, that by reason of facts stated in a certificate to the Zoning Board of Appeals a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record upon application, on notice to the Zoning Administrator, showing good cause for a stay of proceedings.