CITY OF WESTFIELD / WASHINGTON TOWNSHIP
BOARD OF ZONING APPEALS
RULES OF PROCEDURE

(*Adopted: February 12, 2008*)

Article I: Jurisdiction and Responsibilities

1. The jurisdiction of the Westfield / Washington Board of Zoning Appeals ("Board") shall be the whole of Washington Township, Hamilton County, Indiana, including the corporate City of Westfield.

   (*Generally described and beginning as follows: The intersection of Hamilton-Boone Road and 216th Street (northwest corner of Washington Township) then extending east to and with the intersection of Hinkle Road (northeast corner of Washington Township) then extending south along Hinkle Road connecting to Moontown Road and then connecting to Gray Road to the intersection of Gray Road and 146th Street (southeast corner of Washington Township), then extending west along 146th Street to Hamilton-Boone Road (southwest corner of Washington Township), then extending north along Hamilton-Boone Road to the intersection with 216th Street, which is inclusive of approximately fifty-six (56) square miles and the corporate City of Westfield.*)

2. The Board shall act and operate in accordance with IC 36-7-4, 900 Series – Board of Zoning Appeals;

3. The Board shall:

   a. Approve or deny all special exceptions from the terms of the zoning ordinance (IC 36-7-4-918.2);

   b. Approve or deny variances of use from the terms of the zoning ordinance (IC 36-7-4-918.4);

   c. Approve or deny variances from the development standards of the zoning ordinance (IC 36-7-4-918.5);and

   d. In accordance with IC-36-7-4-918.1, hear and determine appeals (administrative appeals) from and review any order, requirement, decision, or determination made by:

      i. an administrative official, hearing officer, or staff member under the zoning ordinance;

      ii. an administrative board or other body except the Plan Commission in relation to the enforcement of the zoning ordinance; or

      iii. an administrative board or other body except the Plan Commission in relation to the enforcement of an ordinance requiring the procurement of an improvement location or occupancy permit. (IC 36-7-4-918.1)

Article II: Membership

1. The Board shall consist of five (5) members (per IC 36-7-4-902). All Board members must meet appointee criteria to maintain their seat. The membership criterion are as follows:

   a. Three (3) citizen members to be appointed by the City of Westfield Mayor, of whom one (1) must be a citizen member of the Plan Commission and two (2) must not be members of the Plan Commission;

   b. One (1) citizen member to be appointed by the Westfield City Council, who must not be a member of the Plan Commission; and

   c. One (1) member appointed by the Plan Commission. This member shall:

      i. Be from the Plan Commission's citizen membership, other than the citizen member appointed by the Mayor; and

      ii. Not reside within the incorporated area of the City of Westfield (per IC 36-7-4-903).

   d. In the event that a regular Board member is unable to participate in any hearing or decision or has a disqualifying circumstance (as defined in IC 36-7-4-909), the appointing authority may appoint an alternate member to participate with the Board for the impacted hearings or decisions. An alternate member shall have all of the powers and duties of a regular member while participating in the hearing or decision (IC 36-7-4-907).

2. When an initial term of office expires, each new appointment is for a four (4) year term with the terms being staggered such that at least one appointment expires each year. Members who are citizen members are eligible for reappointment. Members who are also Plan Commission citizen members are eligible for reappointment as long as they retain their membership on the Plan Commission. A member serves until a successor is appointed and qualified.

3. Each term, according to its length, begins and ends on the first Monday in January. For example, a four-year term beginning in 2008 starts on the first Monday in January 2008 and ends on the first Monday in January 2012 (IC 36-7-4-906, c).

4. If a vacancy occurs among the membership, then the appointing authority shall appoint a member for the unexpired term of the vacating member.

5. None of the members of the Board may hold other elective or appointive office, except for those appointed from the Plan Commission citizen membership. All members must reside within the bounds of Washington Township, including Westfield. (IC 36-7-4-905)

6. The appointing authority may remove a member from the Board of Zoning Appeals for cause, pursuant to IC 36-7-4-906.

a. In addition, if a member of the Board has three (3) unexcused absences (i.e. regular or special meeting) of the Board in any calendar year, that member becomes disenfranchised and shall no longer be considered a viable member of the Board. Such circumstances shall result in the appointing authority appointing a different person in the vacated seat.

   i. An excused absence(s) shall be considered as a call in to the Director of Community Development ("Director") and will be further reviewed by the Director and Chairperson of the Board of Zoning Appeals.

b. In the event of removal, the Board member shall receive a mailed notice in accordance with the terms of IC 36-7-4-906 (f). The appointing authority shall mail notice of the removal, along with written reasons for the removal, to the members at their address. A member who is removed may, within thirty (30) days after receiving notice of the removal, appeal the removal to the circuit or superior court of the county.

c. Any member of the Board that knowingly violates any rule, procedure, City Code, State Statute or law shall be subject to removal under the terms of Section (7) (b) above.

7. Training, Seminars, and Continuing Education

a. Training

   i. The Community Development Department (CDD) will conduct introductory training for all newly appointed members during the initial ninety (90) days of a new member(s) term.

   ii. Each new member(s) will be required to complete and receive a certificate stating the completion of the introductory course in order for that member to continue as a member of the Board of Zoning Appeals.

   iii. Should a member fail to complete the initial training requirements, that member shall be removed as prescribed under this Article II, Item 6. Such circumstances shall result in the appointing authority appointing a different person in the vacated seat.

b. Seminars / Conferences / Workshops

   i. Each member of the BZA shall be required to attend at least one (1) planning seminar / conference / workshop offered by the CDD, other Governmental Offices, Local Builders Association, American Planning Association or local universities regarding planning and zoning principals and how they affect local planning, during each term of service.

   ii. These events shall be fully reimbursable (if a cost is involved) upon proof of completion by the member in attendance through the CDD.

c. Continuing Education

i. Each new member shall become a member of the American Planning Association (APA) and Indiana Chapter of the American Planning Association (APA-IN) through the CDD.

ii. With your membership you are encouraged to participate in Programs and Services for Appointed Officials with the American Planning Association online in the following areas:

1. Live Audio Conference Series
2. Training Resource Center
3. Chapter Workshops
4. Planning and Land Use Law
5. Ethics Training

Article III: Officers

1. The Board shall, at its first regular meeting in each year, elect from its members a Chairperson, a Vice-chairperson, and a Pro-tempore. The Chairperson shall preside at all meetings. The Vice-chairperson shall have the authority to act as Chairperson of the Board during the absence or disability of the Chairperson. The Pro-tempore shall have the authority to act as Chairperson of the Board during the absence or disability of both, the Chairperson and Vice-chairperson.

2. The Director shall be permanently appointed as Secretary of the Board.

3. The Director shall be responsible for providing a recording secretary to take and transcribe meeting minutes.

Article IV: Filing

1. The Director shall administratively establish application filing deadlines for all regular meetings of the Board of Zoning Appeals. Those deadlines shall be published by the Board at their December meeting each year.

Article V: Docketing

1. Prior to filing, each applicant shall meet with the CDD Planning Staff in order to determine whether an application is for a variance of use, a variance of standard, a special exception, or an administrative appeal.

2. Each case to be publicly heard before the Board shall be filed with the CDD in proper form with the required data, numbered serially and placed on the docket of the Board. The docket numbers shall include the year and begin anew on January 1 of each year.

3. As soon as the case receives a docket number it shall be placed on the docket of the Board and a date set for hearing. Cases shall come before the Board in the regular order of their consecutive numbers unless otherwise ordered by the Director or changed by the Board at the beginning of the meeting.

4. Cases may be required to be reviewed by the Technical Advisory Committee (TAC), at the Director's discretion. Such cases shall not come before the Board until reviewed by TAC.

Article VI: Meetings

1. The regular meetings of the Board shall be the Tuesday following the second Monday of each month at 7:00 P.M. in the meeting room of Westfield City Hall, 130 Penn Street, Westfield, Indiana, unless a different time and place are established and given proper notice. When the Tuesday following the second Monday of each month is a legal holiday, the meetings shall be held on the Wednesday following the second Monday of each month. All meetings of the Board are open to the public. Petition filing deadlines for regular meetings are as established administratively by the Director.

2. Special meetings may be called by the Secretary, as determined at a regular meeting, or by two members of the Board upon written request to the Secretary. The Secretary shall send to all members a written notice of the time, date and place at least three days before the meeting. This written notice is not required if all members are present at a regular meeting when the time, date and place for the special meeting are fixed.

3. A majority (three (3)) of the members of the Board shall constitute a quorum. No action at a regular or properly called special meeting is official, however, unless authorized by a majority of the entire Board.

4. Decisions of the Board shall be by roll call vote of the members. The first roll of each meeting shall be called in alphabetical order of the members' last names. Each successive roll shall be called in the same order as the immediately preceding roll except that the member who voted first in the immediately preceding roll shall vote last. For example:

Roll Call	Member
1st	1,2,3,4,5;
2nd	2,3,4,5,1;
3rd	3,4,5,1,2;

and so on, until the meeting is adjourned.

5. No member of the Board shall participate in the hearing or decision upon any matter in which the member is directly or indirectly interested in a financial sense (i.e., conflict). In the event of a conflict, the member shall describe the conflict immediately after the matter is introduced by the presiding officer, leave the room, and take no part in the discussion or decision. The existence and description of the conflict shall be entered in the record. All members present shall vote on every question unless prevented by

conflict or excused by the presiding officer. (See IC 36-7-4-907 if this section causes the need for an alternate member so that the Board may take action on a case).

6. Abstentions shall be justified in writing, for the record.

7. The Director (or designee) shall take and transcribe a record of all proceedings (minutes) of the Board showing the vote of each member on each question presented, or indicating that the member is absent or not voting, which shall be presented to the Board at the next regular succeeding meeting for approval. When approved, the record shall be signed by the Chairperson and attested by the Secretary. All minutes and case records shall be maintained in CDD and shall be a public record.

8. It shall be the policy of the Board to conclude all Board meetings at or before 11:00 o'clock p.m. In the event that docket items or other Board matters have not been acted on by 11:00 o'clock p.m. on any meeting day, the meeting shall be recessed and reconvened on the same day of the following week, in the same location, at 7:00 p.m. 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 11:00 o'clock p.m. on a vote of a majority of all members present provided a quorum of the Board exists.

9. No person may communicate with any member of the Board before a hearing with intent to influence the member's action on a matter pending before the Board (IC 36-7-4-920, g).

Article VII: Order of Business

1. The order of business at regular meetings shall be:

    a. Call to Order
    b. Roll Call
    c. Approval of Minutes of Previous Meetings
    d. Other Business
    e. Old Business
    f. New Business
    g. Reports: Director; other
    h. Adjournment

Article VIII: Hearings

Subject to the provisions of IC 36-7-4-920, public hearings shall be held on all matters as noted above in Article I, and as further required by the zoning ordinance. The Board shall fix a reasonable time for such hearings.

1. Public notice shall be given in accordance with Article X and with IC 5-3-1-2 and IC 5-3-1-4.

2. In order for a petition or appeal to be heard, the petitioner appellant, or an agent or representative for the petitioner or appellant, shall be in attendance to present the petition or appeal and answer questions about it. If no one is present to represent the petition or appeal, then the Board shall dispose of the petition in accordance with Article XI.

3. Administrative rules are established by the Director for procedures such as filing petitions or appeals and are available in the Department.

4. A special exception use may be approved only upon the determination in writing that:

   a. The establishment, maintenance, or operation of the special exception will not be detrimental to or endanger the public health safety morals or general welfare.

   b. The special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property value within the neighborhood.

   c. The establishment of the special exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

   d. Adequate utilities, streets drainage and other necessary facilities have been or are being improved.

   e. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion.

   f. The special exception will be located in a district where such use is permitted and that all other requirements set forth, applicable to such special exception, will be met.

5. A variance of use may be approved only upon a determination in writing that:

   a. The approval will not be injurious to the public health, safety, 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 need for the variance arises from some condition peculiar to the property involved;

   d. 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

   e. The approval does not interfere substantially with the comprehensive plan.

6. A variance of development standards may be approved only upon a determination in writing that:

   a. The approval will not be injurious to the public health, safety, 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; and

   c. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

7. Regarding administrative appeals (Article I, 3, d), the following shall apply:

   a. An appeal filed with the Board must specify the grounds of the appeal and must be filed within 30 days of the date of issuance of the administrative order, requirement, decision or determination.

   b. For this purpose, the Board has all the powers of the administrative party from which the appeal is taken.

   c. The Board shall review the whole record, or certified copies, of the action from which the appeal is taken and then render its decision after its deliberation of the issue.

   d. The Board may reverse, affirm or modify the order, requirement, decision or determination from which the appeal is taken.

Article IX: Conduct of Hearings

1. Public hearings shall be conducted according to the following procedure. Please note the time limitations for each hearing segment.

   a. For any petition or appeal for which a public hearing is required, after the petition or appeal is introduced by the Chairperson, a staff report will be given.

   b. After being recognized by the Chairperson, each speaker will step up to the podium, sign in and state his/her name and address. The Chairperson or the Board's legal counsel will then issue the following oath to each speaker: "Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth and nothing but the truth so help you God?"

   c. The petitioner or appellant or their representative shall first present the facts and arguments in support of the case. (10 minutes)

   d. Comments and questions from the Board and staff shall be held until the end of the initial presentation.

e. The official public hearing shall then be opened. Supporting comments from organized groups, committees, and individuals, other than petitioner or appellant, shall then follow. Speakers should present new points and not repeat previous speakers. (3 minutes per individual, 5 minutes per group)

f. The petitioner or appellant shall then receive reasonable time for rebuttal. There shall be no time allotted for a rebuttal to the rebuttal. (5 minutes)

g. To maintain orderly procedure, each side should proceed without interruption by the other side.

h. After the discussion of the case has concluded, the Board shall consider a motion on the case.

2. In the presentation of a case:

   a. The burden shall be upon the petitioner or appellant to supply all information, including charts, diagrams and other exhibits necessary for a clear understanding of the case.

   b. Statements to the Board made by the petitioner or appellant at the meeting regarding anticipated methods of operation, siting or other details relevant to the decision shall be binding agreements between the petitioner or appellant and Board and shall be reflected in the minutes of that meeting.

   c. Drawings, displays, or documents presented at the meeting by the petitioner or appellant illustrating such details shall also be binding agreements, shall become part of the public record and shall be entered into the case file. Large format drawings, displays or documents shall be submitted to the CDD, within 24 hours of the hearing, in a format of no larger than 11x17 inches, or electronically.

3. Every person appearing before the Board shall abide by the orders and directions of the Chairperson. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Board and the Chairperson may remove individuals from the meeting for inappropriate behavior.

4. The Board, at its discretion and on an affirmative vote of a majority of the Board, may continue or postpone the hearings of any case when, in its judgment, the petitioner or appellant has not provided sufficient evidence on which to make a determination.

5. The Director, at his/her discretion, may continue or postpone the hearings of any case when, in his/her judgment, the petitioner or appellant has not provided sufficient evidence on which to make a determination.

6. Applicants shall be entitled to one postponement/continuance to the first regular Board meeting following the meeting advertised by public notice. Such postponement/continuance must be requested in writing or shall be requested in person by the applicant, or their representative, at the scheduled meeting prior to the introduction of the petition within the Other Business section of the agenda. Written requests for postponement/continuance shall be delivered to the Department at least one week prior to the advertised hearing date.

7. Subsequent postponement/continuance requests or requests for a postponement/ continuance to a meeting beyond the meeting referred to in paragraph "5" above shall be made to the Board in person by the applicant, or their representative.

8. Failure of the applicant, or their representative, to appear in order to make the request referred to in paragraph "6" above shall result in the applicant's notice being deemed ineffective. If the applicant chooses to proceed with the subject request, it will become necessary for notice to be served again as originally required for Board hearings.

9. Postponement/continuation of Board requests to a date more than six (6) months beyond the original noticed meeting shall not be granted. The Board shall dismiss such pending requests. The right of applicants to re-file such applications shall be preserved, providing no final disposition of the prior request has been granted. Such application shall again be subject to the payment of filing fees.

10. Postponed/continued cases involving the same property that was the subject of a case which has been dismissed by the Board shall not be placed on the docket for consideration within a period of six (6) months after the date of dismissal.

Article X: Notice

The following requirements for notice must be met:

1. Public notice in accordance with this article and with IC 5-3-1-2 and IC 5-3-1-4 and due notice to interested parties (as defined in the zoning ordinance) and additional parties if deemed advisable by the Director, shall be given at least 10 days before the date set for the hearing.

2. Certified Mailing:

    a. All petitioners or appellants shall inform interested parties of the petition or appeal by sending a copy of legal notice to the residence of the last known address of the interested parties, with such notice being postmarked at least 10 days before the date of the public hearing.

    b. Such notice shall state:

        i. The general location by address or other identifiable geographic description of the subject property or area;

        ii. A summary of the subject matter contained in the petition or appeal;

        iii. Case number of the petition or appeal;

        iv. The name of the petitioner or appellant;

        v. The time and place for which the hearing has been set;

vi. That the application and file may be examined in the office of the CDD;

vii. That the addressee may voice an opinion at the hearing and/or file written comments with the CDD; and

viii. That the hearing may be continued from time to time as may be found necessary.

c. Interested parties shall be defined per the Zoning Ordinance as described under WC 16.04.210, Definitions.

d. In order to determine the names and addresses of property owners to whom notice must be sent, the applicant or the applicant's agent shall consult with the County Mapping and Transfers Office, Hamilton County, Indiana, for a list of parties requiring notification per the zoning ordinance. A good faith effort shall be made to investigate and resolve any discrepancies or omissions in or among such records in order to determine the name and address of the current owner of record. Each notice shall be mailed and postmarked no later than the 10 days before the public hearing date.

e. The manner in which notice must be sent to interested parties shall be as follows:

i. Required notices to interested parties shall be sent by certified mail with return receipt requested (or an acceptable alternative accepted by the Director and approved by the Board) and postmarked at least 10 days before the public hearing. City staff will advise the Board at the Public Hearing of any omissions or deficiencies in such notice.

ii. Proof that notice has been mailed shall consist of the postmarked certified mail receipts and shall be sufficient proof of notice under these rules regardless of actual receipt by the intended recipient. Said receipts and a copy of the mailing list from the County Mapping and Transfers Office must be filed in the office of CDD four (4) calendar days prior to the public hearing.

iii. Appearance at any hearing, in person or by representative, shall waive any defect in notice unless the alleged defect is raised at the beginning of the hearing.

f. The party requesting the hearing shall bear the cost of and responsibility for mailed notice to interested parties.

2. Newspaper Legal Notice:

a. The City staff shall cause a legal notice to be published in a newspaper qualified to publish legal notices as established by Council (newspaper) at least 10 days before the public hearing.

b. The CDD shall bear the cost of and responsibility for newspaper notice and posting the notice at the meeting location.

3. Posting on Property:

a. For all petitions that require a public hearing, the applicant shall post a sign or signs on the subject property in a location clearly visible to passing traffic.

i. The City staff shall determine sign locations with not less than one sign placed on the property per street frontage per block.

ii. Signs shall be posted on the subject property at least 10 days before the public hearing.

iii. Signs shall be available in the CDD office.

4. The CDD shall cause notice to be posted on the official City of Westfield web site.

5. For all meetings, other than public hearings, of the Board, a 48-hour notice shall be made by posting the meeting time and location at the entrance of the building where the meeting will occur. No other notice shall be required.

Article XI: Final Disposition of Cases

2. The final disposition of cases shall set forth the findings and determinations of the Board, together with any modification, specification or limitation it makes. The Board shall make written findings of fact for all cases that are heard.

3. The Board may dismiss a case for lack of representation by the petitioner or lack of jurisdiction. If a petition or appeal is dismissed for lack of representation and a postponement/continuation in accordance with Article IX has not been granted by the Board, then the case may be dismissed and the petitioner or appellant may re-file in accordance with these rules

4. A petitioner or appellant may request to withdraw a case under "Other Business" on the agenda. A case may not be withdrawn after all items in "Other Business" have been completed.

5. A case that has been withdrawn by the petitioner or appellant or a case that has received an adverse decision shall not be placed on the docket for consideration until 6 months after the date of the decision.

6. Regarding special exceptions (Article I, 3, a), variances of use (Article I, 3, b), and variances of development standards (Article I, 3, c), the Board may impose reasonable conditions to the property of the petition or appeal as a part of its approval. Regarding

administrative appeals (Article I, 3, d), the Board may reverse, affirm or modify the order, requirement, decision or determination from which the appeal is taken.

7. In all cases:

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

   i. Commitments shall be recorded in the office of the Hamilton County Recorder and take effect upon the approval of the petition or appeal. Unless modified or terminated by the Board, a commitment is binding on:

      i. The owner of the parcel;

      ii. A subsequent owner of the parcel; and

      iii. A person who acquires an interest in the parcel.

      A commitment is binding on the owner of the parcel even if it is unrecorded; however, an unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment. A commitment may be modified or terminated only by a decision of the Board made at a public hearing after notice as provided by these rules.

   j. By permitting or requiring commitments, the Board does not obligate itself to approve or deny any request.

   k. Conditions imposed on the granting of a petition are not subject to the rules applicable to commitments.

   l. Commitments do not affect the validity of any covenant, easement, equitable servitude or other land use restriction created in accordance with the law.

   m. Appeals to a decision made by the Board of Zoning Appeals shall follow the process prescribed in IC 36-7-4, 1000 Series – Remedies and Enforcement.

Article XII: Amendments

1. Amendments to these Rules of Procedure may be made by the Board upon submission and after review by Mayor's Office, City Council, City Attorney and Director of Community Development and further presented to the Board membership at a regular meeting or special meeting upon the affirmative vote of a majority of the members of the Board. Approved amendments shall be effective immediately, unless otherwise noted.

Article XIII: Adoption and Suspension of Rules of Procedure

1. The Board shall adopt Rules of Procedure for the conduct of meetings of the Board.

2. Adoption of the Rules shall be by majority vote of the Board members present and voting at a regular scheduled meeting where at least four (4) members are present.

3. The Board may suspend the Rules of Procedure by unanimous vote of the members present at the meeting.

4. The Board shall not suspend the Rules of Procedure beyond the duration of the appeal being heard for which the suspension of Rules occurs.

These Rules of Procedure of the Board of Zoning Appeals of Westfield Washington Township, Hamilton County, Indiana, approved by the affirmative vote of five (5) members of said Board at the regular meeting of the Board held on the 12th day of February, 2008. This approval repeals any prior rules of procedure.

Chairman — Date: 4/15/08

Craig Woods
Vice-Chairman — Date: 4-15-08

Members:

Member — Date: 4-15-2008

Member — Date: 4-15-2008

Member — Date: 4/15/08

Attested by:
Director Community Development — Date: 4/15/08