

RULES OF PROCEDURE
WESTFIELD-WASHINGTON TOWNSHIP BOARD OF ZONING APPEALS

ARTICLE I: JURISDICTION AND RESPONSIBILITIES

1. As set forth in Article 2.3 Authority and Purpose; Jurisdiction and defined in Article 12.1 Definitions of the Unified Development Ordinance, the jurisdiction of the Westfield-Washington Township Board of Zoning Appeals (the “Board”) is all land within Washington Township, Hamilton County, Indiana, and all land incorporated into the City of Westfield, Hamilton County, Indiana (the “Jurisdiction of the Board”).
2. The Board shall act and operate in accordance with I.C. 36-7-4, 900 Series – Board of Zoning Appeals.
3. Article 3.2 Administration; Board of Zoning Appeals of the Unified Development Ordinance sets forth the duties of the Board, as defined by Indiana law (I.C. 36-7-4-900 et seq.), as generally described below:
 - a. Approve or deny all special exceptions from the terms of the Unified Development Ordinance (see Article 10.11) (I.C. 36-7-4-918.2);
 - b. Approve or deny variances of use from the terms of the Unified Development Ordinance (see Article 10.14) (I.C. 36-7-4-918.4);
 - c. Approve or deny variances from the development standards of the Unified Development Ordinance (see Article 10.14) (I.C. 36-7-4-918.5); and
 - d. In accordance with I.C. 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 or hearing officer charged with the duty of enforcing and interpreting the Unified Development Ordinance;
 - ii. an administrative board or other body, except the Plan Commission, in relation to the enforcement of the Unified Development 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. (I.C. 36-7-4-918.1)

ARTICLE II: MEMBERSHIP

1. The Board shall consist of five (5) members (per I.C. 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 I.C. 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 I.C. 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 (I.C. 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 2017 starts on the first Monday in January 2017 and ends on the first Monday in January 2021 (I.C. 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 Jurisdiction of the Board. (I.C. 36-7-4-905)
 6. The appointing authority may remove a member from the Board for cause, pursuant to I.C. 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, then 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. An excused absence(s) shall be considered as a call in to the Director of the Economic and Community Development Department (the "Director") and will be further reviewed by the Director and Chairperson of the Board.
 - b. In the event of removal, the Board member shall receive a mailed notice in accordance with the terms of I.C. 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 Economic and Community Development Department (the "Department") may 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) may 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.
- iii. If a member fails to complete the initial training requirements, if any, then that member may 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 Board may be required to attend at least one (1) planning seminar / conference / workshop offered by the Department, other Governmental offices, local builders' associations, 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 Department.

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 Department.
- 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

The Director shall administratively establish petition filing deadlines for all regular meetings of the Board. Those deadlines shall be published by the Board at or prior to their December meeting each year.

ARTICLE V: DOCKETING

1. Prior to filing, each applicant (a “petitioner”) shall meet with the Department in order to determine whether a petition is for a variance of use, a variance of development standard, a special exception, or an appeal of an administrative decision (collectively, a “petition”).
2. Each petition to be publicly heard before the Board shall be filed with the Department 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 petition receives a docket number it shall be placed on the docket of the Board and a date set for hearing. Petitions 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. Petitions may be required to be reviewed by the Technical Advisory Committee (TAC), at the Director’s discretion. Such petition 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, then 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 (2) 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 (3) 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:

<u>Roll Call</u>	<u>Member</u>
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 I.C. 36-7-4-907 if this section causes the need for an alternate member so that the Board may take action on a petition).
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 petition records shall be maintained in the Department 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 p.m. In the event that docket items or other Board matters have not been acted on by 11:00 p.m. on any meeting day, then 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 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 (I.C. 36-7-4-920, g).

ARTICLE VII: ORDER OF BUSINESS

The order of business at regular meetings shall be:

1. Call to Order
2. Roll Call
3. Approval of Minutes of Previous Meetings
4. Other Business
5. Old Business
6. New Business
7. Reports: Director; other
8. Adjournment

ARTICLE VIII: HEARINGS

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

1. Public notice shall be given in accordance with Article X and with I.C. 5-3-1-2 and I.C. 5-3-1-4.
2. In order for a petition to be heard, the petitioner or their representative shall be in attendance to present the petition and answer questions about it. If no one is present to represent the petition, 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 and are available in the Department.

4. Special Exceptions: In accordance with Article 10.11(D) of the Unified Development Ordinance, 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 be designed, constructed, operated, and maintained so as to: (i) not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted; (ii) not substantially diminish and impair property value within the neighborhood; (iii) be harmonious and appropriate in appearance with the existing or intended character of the immediate vicinity; and (iv) not change the essential character of the area.
 - 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 zoning district.
 - d. Adequate public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools have been or are being provided and the special exception will not result in excessive additional requirements at public expense for such public facilities and services.
 - e. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion and have vehicular approaches are designed as not to create an interference with traffic on surrounding rights-of-way.
 - f. The special exception will be harmonious with and in accordance with the objectives of the Westfield-Washington Township Comprehensive Plan, as amended.
 - g. The special exception will be located in a zoning district where such use is permitted and that all other requirements of the zoning district and the Unified Development Ordinance, and as may be applicable to such use, will be met.
5. Variance of Use: In accordance with Article 10.14(G)(1) of the Unified Development Ordinance, 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 Unified Development 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. Variance of Development Standard: In accordance with Article 10.14(G)(2) of the Unified Development Ordinance, 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 Unified Development Ordinance will result in practical difficulties in the use of the property.
7. Appeals of Administrative Decisions: An appeal of an administrative decision shall be filed and reviewed in accordance with Article 10.3 of the Unified Development Ordinance.

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 which a public hearing is required, after the petition is introduced by the Chairperson, then a report by the Department will be given.
 - b. After being recognized by the Chairperson, each speaker will step up to the podium 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. A representative on behalf of the petition shall first present the facts and arguments in support of the petition. (10 minutes)
 - d. Comments and questions from the Board and Department shall be withheld 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 the petitioner or their representative, shall then follow. Speakers should present new points and not repeat previous speakers. (3 minutes per individual speaking)
 - f. A representative on behalf of the petition shall then receive reasonable time for rebuttal (5 minutes). There shall be no time allotted for a rebuttal to the rebuttal.

8. Failure of the petitioner, or their representative, to appear in order to make the request referred to in Article IX, Item 6 above shall result in the public notice being deemed ineffective. If the petitioner chooses to proceed with the subject request, then it will become necessary for public 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 a petitioner to re-file such petitions shall be preserved, providing no final disposition of the prior request has been granted. Such petition shall again be subject to the payment of filing fees.
10. Postponed/continued petitions involving the same property that was the subject of a petition 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 public notice of a public hearing to be held by the Board must be met:

1. Interested Parties: Public notice in accordance with this article and with I.C. 5-3-1-2 and I.C. 5-3-1-4 and due notice to interested parties. Interested parties shall be:
 - a. The owners of real property adjacent to the property subject of the petition to a depth of two (2) ownerships of no direct or indirect financial or other interested to the petitioner or property owner, or six hundred and sixty (660) feet, whichever is less; and
 - b. Additional parties deemed advisable by the Director.

A list of the interested parties' last known address shall be obtained from the Hamilton County Auditor, Office of Transfers and Mapping. The list of interested parties should be obtained and dated no earlier than ninety (90) days prior to the postmarked date of the mailed public notice. 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.

2. Certified Mailing: A petitioner shall mail a copy of legal notice to interested parties in accordance with the following:
 - a. Notice Content: Such notice shall be in a form approved by the Department and shall include:
 - 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;
 - iii. Petitioner's docket number;
 - iv. The name of the petitioner and petitioner's representative(s);

- v. The time and place for which the hearing has been set;
 - vi. That the petition and file may be examined in the office of the Department;
 - vii. That the addressee may voice an opinion at the hearing and/or file written comments with the Department; and
 - viii. That the hearing may be continued from time to time as may be found necessary.
- b. Certified Mail and Timing: Required notices to interested parties shall be sent by certified mail with proof of mailing and postmarked at least ten (10) days prior to the public hearing. The Department will advise the Board at the public hearing of any omissions or deficiencies in such public notice.
 - c. Appearance at any public hearing, in person or by their representative, shall waive any defect in notice unless the alleged defect is raised at the beginning of the hearing.
 - d. The party requesting the public hearing shall bear the cost of and responsibility for mailed notice to interested parties.
3. Newspaper Legal Notice: The Department shall cause a legal notice to be published in a newspaper qualified to publish legal notices as established by Council (newspaper) at least ten (10) days prior to the public hearing. The Department shall bear the cost of and responsibility for newspaper notice and posting the notice at the meeting location.
4. Posting on Property: For all petitions that require a public hearing, the petitioner shall post a sign or signs on the subject property in a location clearly visible to passing traffic.
- a. The Department shall determine sign locations with not less than one (1) sign placed on the property per street frontage per block.
 - b. Signs shall be posted on the subject property at least ten (10) days before the public hearing.
 - c. Signs shall be provided by the Department and made available in the office of the Department.
5. Affidavit of Notice of Public Hearing: The petitioner shall deliver a copy of the mailed notice and a signed affidavit, verifying that the notices were mailed and the public notice sign(s) was posted on the subject property. The affidavit shall include proof that notice has been mailed consisting of the postmarked certified mail receipts and a copy of the list of interested parties from the Hamilton County Auditor, Office of Transfers and Mapping. Said affidavit and attachments shall be filed in the office of the Department at least four (4) calendar days prior to the public hearing.
6. City Website: The Department shall cause notice and the public hearing agenda to be posted on the official City of Westfield web site.

7. Meeting Posting: For all meetings, other than public hearings, of the Board, a forty-eight (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 PETITIONS

1. The final disposition of petitions 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 petitions that are heard.
2. The Board may dismiss a petition for lack of representation by the petitioner, or petitioner's representative, or lack of jurisdiction. If a petition is dismissed for lack of representation, then the petitioner may re-file in accordance with these rules.
3. A petitioner may request to withdraw a petition under "Other Business" on the agenda. A petition may not be withdrawn after all items in "Other Business" have been completed.
4. A petition that has been withdrawn by the petitioner or a petition that has received an adverse decision shall not be placed on the docket for consideration until six (6) months after the date of the decision.
5. In all petitions, 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. Such commitment shall be made and memorialized in accordance with Article 10.6 of the Unified Development Ordinance.
 - a. By permitting or requiring commitments, the Board does not obligate itself to approve or deny any request.
 - b. Conditions imposed on the granting of a petition are not subject to the rules applicable to commitments.
 - c. Commitments do not affect the validity of any covenant, easement, equitable servitude or other land use restriction created in accordance with the law.
 - d. Appeals to a decision made by the Board of Zoning Appeals shall follow the process prescribed in I.C. 36-7-4, 1000 Series – Remedies and Enforcement.

ARTICLE XII: AMENDMENTS

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 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 17th day of July, 2016. This approval repeals any prior rules of procedure.



Robert Smith, Esq., Chairman

Date

7.12.16

Daniel A.

Dave Schmitz, Vice-Chairman

Date



Ken Kingshill, Member

Date

7/12/16



Martin Raines, Member

Date

7/12/2016

Bill Sanders, Member

Date

Attested by:



Matthew S. Skelton, Director
Economic and Community
Development Department

7/12/16

Date