

City of Auburn Board of Zoning Appeals

Rules and Procedures

Article 1 Name, Purpose, Powers, and Jurisdiction

- 1.1 Name: The name of the Board shall be the City of Auburn Board of Zoning Appeals. Its office shall be located in the Auburn City Hall at 210 South Cedar Street, Auburn, Indiana 46706.
- 1.2 Purpose: The City of Auburn Board of Zoning Appeals is an Advisory Board of Zoning Appeals formed under the authority of Indiana Code 36-7-4-900 series. All statutes of the State of Indiana and amendments concerning boards of zoning appeals, which are not specifically incorporated in these Rules and Procedures are hereby incorporated by reference. The purpose of the Board is to hear appeals and grant or deny special exception uses, variances of use, or variances of development standards from the Unified Development Ordinance.
- 1.3 Powers and Duties: The powers and duties of the City of Auburn Board of Zoning Appeals are specific and set out in Indiana Code 36-7-4-901 as amended from time to time.
- A. In accordance with Indiana Code 36-7-4-918.1, the City of Auburn Board of Zoning Appeals shall hear and determine appeals from and review:
- i. Any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning components of the Unified Development Ordinance; or
 - ii. Any order, requirement, decision, or determination made by any administrative board or other body except a plan commission in relation to the enforcement of the zoning components of the Unified Development Ordinance; or
 - iii. Any order, requirement, decision, or determination made by an administrative board or other body except a plan commission in relation to the enforcement of this chapter requiring the procurement of an improvement location or occupancy permit.
- B. The City of Auburn Board of Zoning Appeals shall approve or deny all special exception uses from the terms of the Unified Development Ordinance, but only in the particular situations specified in the Unified Development Ordinance. The Board may impose reasonable conditions as part of its approval. A special exception use may be approved only upon making written findings of fact.
- C. The City of Auburn Board of Zoning Appeals shall approve or deny variances of use from the terms of the Unified Development Ordinance. The Board may impose reasonable conditions as part of its approval. A variance of use may be approved only upon making written findings of fact.
- D. The City of Auburn Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, setbacks, or coverage) of the Unified Development Ordinance. The Board may impose reasonable conditions as part of its approval. A variance from development standards may be approved only upon making written findings of fact.

1.4 Jurisdiction: The jurisdiction of the Board of Zoning Appeals shall be the City of Auburn corporate limits and the Extra-Territorial Jurisdiction as established in the recorded *Inter-Local Cooperation Agreement Between DeKalb County and The City of Auburn, Indiana Regarding Planning, Zoning, Subdivision Control, Permitting, and Enforcement Jurisdiction*, as amended.

Article 2 Meetings

2.1 Regular Meetings: The City of Auburn Board of Zoning Appeals shall meet on the fourth Tuesday of each month and begin at 6:00 PM. The Board of Zoning Appeals shall elect officers at its first regularly scheduled meeting of each year. Regular meetings may be canceled if there is no business.

2.2 Special Meetings: All other meetings of the City of Auburn Board of Zoning Appeals, which are not regular meetings, shall be designated as special meetings. All notices required by the Open Door Law of the State of Indiana [IC 5-14-1.5] shall be complied with in calling a special meeting.

A. The Chairman, Board of Zoning Appeals Staff, or two (2) members of the Board of Zoning Appeals upon written request to the Secretary may call a special meeting. The Secretary shall contact Staff, and Staff shall give notice of the special meeting to all members, at least seventy-two (72) hours before the special meeting. The notice shall include time, place, and subject matter of the meeting. The notice may be delivered in person, by phone, by email, by text, by fax, or by regular United States mail. This notice shall not be required if the date, time, and place of the special meeting has been fixed at a regular meeting.

B. An applicant may request a special meeting. The applicant shall pay the fee established in the City of Auburn fee schedule for calling a special meeting. Staff shall work to coordinate a time that will allow for adequate notice, but works with the applicant's timeframe and ensures satisfactory member attendance.

2.3 Place of Meeting: The City of Auburn Board of Zoning Appeals meetings shall take place in the Auburn City Hall at 206 East Ninth Street, Auburn Indiana. The Chairman or Staff may change the date, time, or place of a regular meeting provided that notice of said change is given to all members, interested parties, and the public.

2.4 Notice of Meetings: Notice of meetings shall be given to all members of the Board of Zoning Appeals in person, by phone, by e-mail, by text, by fax, or by regular United States mail. News media entitled to notice shall be notified by United States mail, fax, phone, or e-mail. All notices that are required to be posted shall be posted in the Auburn City Hall. Staff, on behalf of the Secretary, shall be responsible for providing meeting notices in a timely manner for publication in the newspaper and/or posting as required.

2.5 Minutes of Meetings: The Board of Zoning Appeals shall keep minutes of its proceedings and record the vote on all actions taken. These minutes shall be presented to the Board of Zoning Appeals at a subsequent meeting for approval. All minutes and records are public record and shall be maintained in the office of the Board.

2.6 Meeting Packets: Staff shall distribute meeting packets including agendas, applications, supporting material, and other necessary meeting information to the Auburn Board of Zoning Appeals members prior to the meeting.

2.7 Order of Business: The following order of business shall be followed at meetings of the Board of Zoning Appeals.

- A. Call to Order
- B. Roll Call
- C. Confirmation of Quorum
- D. Approval of Minutes
- E. Agenda Modification
- F. Old Business – Public Meetings / Public Hearings
- G. New Business – Public Meetings / Public Hearings
- H. Other Business
- I. Reports
- J. Adjournment

2.8 Quorum and Official Action: A majority of the City of Auburn Board of Zoning Appeals that is qualified to vote, three (3) members, shall constitute a quorum [IC 36-7-4-910]. Action of the City of Auburn Board of Zoning Appeals is not official unless authorized at a regular or special meeting by a majority of the entire membership of the City of Auburn Board of Zoning Appeals [IC 36-7-4-911].

2.9 Late Night Meeting Policy: It shall be the policy of the City of Auburn Board of Zoning Appeals to conclude all meetings at or before 10:00 PM. In the event that agenda items or other Board matters have not been acted on by 10:00 PM on any meeting day, the meeting shall be recessed and reconvened the following evening, in the same location at 6:00 PM, 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 of Zoning Appeals may extend any meeting beyond the hour of 10:00 PM with a vote of at least three-fifths (3/5) of all members present.

2.10 Onsite Inspections: Onsite inspections of property involved in an application before the City of Auburn Board of Zoning Appeals shall not be considered a regular meeting or a special meeting. Onsite inspections shall be for fact finding. No notice is required. No official action or informal votes shall take place.

Article 3 Membership and Officers

- 3.1 Membership: The Board of Zoning Appeals membership shall be consistent with the provisions of Indiana Code 36-7-4-902 and Indiana Code 36-7-4-905, as amended from time to time.
- A. The Mayor shall appoint three (3) citizen members. One (1) shall be a member of the Plan Commission; two (2) shall not be members of the Plan Commission.
 - B. City Council shall appoint one (1) citizen member and that member citizen shall not be a member of the Plan Commission.
 - C. The Auburn Plan Commission shall appoint one (1) of its members that represents the Extra-Territorial Jurisdiction.
 - D. Alternate Member: The respective appointing body may appoint an alternate member to participate on the City of Auburn Board of Zoning Appeals in any hearing or decision if the regular member it has appointed has a disqualification or is unavailable to participate in the hearing or decision.
- 3.2 Vacancies: If a vacancy occurs among the Board of Zoning Appeals members who are appointed, then the appointing authority shall appoint a member for the unexpired term of the vacating member.
- 3.3 Terms and Removal: Terms of Board of Zoning Appeals members shall be consistent with the provisions of Indiana Code 36-7-4-906.
- A. The term of office of a member shall be four (4) years.
 - B. None of the members of the Board of Zoning Appeals shall hold other elective or appointive officers, except as detailed in Membership.
 - C. The appointing authority may remove a member from the Board of Zoning Appeals for cause. The appointing authority shall mail notice of the removal, along with written reason for removal, to the member at the member's mailing 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 DeKalb County. The court may, pending the outcome of the appeal, order the removal or stay the removal of the member.
- 3.4 Meeting Attendance: Members of the City of Auburn Board of Zoning Appeals shall forfeit their membership for missing more than four (4) regularly-scheduled meetings in any calendar year or for missing three (3) consecutive regularly-scheduled meetings [36-7-4-907].
- 3.5 Officers:
- A. Election of Officers: The City of Auburn Board of Zoning Appeals shall elect a Chairman and Vice-Chairman from the members of the Board of Zoning Appeals at the beginning of its first regular meeting of each year. The Board of Zoning Appeals may appoint and fix the duties of a Secretary, who is not required to be a member of the Board [IC 36-7-4-913].
 - i. The person serving as the Chairman at the last meeting of the preceding year shall entertain nominations or ask the Board of Zoning Appeals Attorney to entertain nominations for each office specified in these Rules and Procedures.
 - ii. Whenever a candidate receives a majority of the vote of the entire membership of the Board, that person shall be declared elected.

- iii. Each officer elected under these rules shall enter into office immediately upon being declared elected and shall serve until the successor is declared elected at the first meeting of the following year, or until the officer is no longer a member of the Board.
- B. Vacancy: Whenever any office becomes vacant, the Board shall elect a successor at its next regular meeting to complete the remainder of the unexpired term.
- C. Compensation: All voting members shall receive compensation on a bi-annual schedule per the City of Auburn salary ordinance.
- D. Duties of Each Officer:
 - i. The Chairman shall preside over each regular or special meeting of the City of Auburn Board of Zoning Appeals, shall perform duties normally performed by a presiding officer including the appointment of committees, ruling on all points of procedure, and signing all official documents on behalf of the Board of Zoning Appeals.
 - ii. The Vice-Chairman shall preside over and assume the duties and responsibilities of the Chairman at any meetings at which the Chairman is absent. The Board of Zoning Appeals shall elect a temporary Chairman from among its members if both the Chairman and Vice-Chairman are absent.
 - iii. The Secretary, in conjunction with the Staff, shall keep records of all meetings, applications, and other items of the City of Auburn Board of Zoning Appeals. The Secretary, in conjunction with the City of Auburn Clerk-Treasurer, shall keep track of all money received and disbursed by the City of Auburn Board of Zoning Appeals [IC 36-7-4-915 and IC 36-7-4-917].

3.6 Conflict of Interest:

- A. A member of the Board of Zoning Appeals is disqualified and may not participate in a hearing or decision of the Board concerning a zoning matter in which the member:
 - i. Is biased or prejudiced or otherwise unable to be impartial; or
 - ii. Has a direct or indirect financial interest in the outcome of the hearing of the decision.
- B. The Board of Zoning Appeals shall enter in the Board's records the fact that a regular member has such a disqualification and the name of the alternate member, if any, who shall participate in the hearing or decision in place of the regular member. Any alternate member shall be appointed by the same appointing authority of the disqualified member.
- C. If the Chairman disqualifies himself and the Vice-Chairman is absent or unavailable, the Chairman shall have the power to appoint another member of the Board as temporary Chairman for the purpose of conducting the hearing. The temporary Chairman retains his or her right to vote.

3.7 Voting:

- A. Each member of the City of Auburn Board of Zoning Appeals shall have one (1) vote.
- B. Decisions of the Board of Zoning Appeals shall be by voice vote unless a paper ballot is requested by a member of the Board of Zoning Appeals. In the case of a paper ballot vote, the Chairman shall disclose the vote of each member when announcing the decision.
- C. All members present shall vote on every matter unless prevented by conflict.

3.8 Ex-Parte Communication: No person may communicate with any member of the Board of Zoning Appeals before a hearing with the intent to influence the member's action on a matter pending before the board.

Article 4 Hearings

4.1 Required Hearings: Public hearings shall be held as required by Indiana Code and the City of Auburn Unified Development Ordinance for any administrative appeal, special exception use, use variance, development standards variance, and other applications as necessary.

4.2 Filing Deadline and Agenda Placement: At the last meeting of each year, the Board of Zoning Appeals shall adopt a meeting schedule and filing deadlines for the coming year. An applicant who seeks a recommendation from or the approval of the Board of Zoning Appeals shall file the appropriate application with the Board of Zoning Appeals. Upon receipt of such an application, payment of filing fees, and confirmation that all the necessary information is included, Staff shall place the application on the agenda of the Board of Zoning Appeals meeting.

4.3 Meeting Attendance: In order for an application to be heard at a Public Hearing, the applicant or agent for the applicant shall be in attendance to present the application, evidence and support thereof, and answer questions about the application. If no one is present to represent the applicant, then the Board may dispose of the application in accordance with *Article 5: Final Disposition of Cases*.

4.4 Conduct of Hearings:

- A. Public Hearings shall be conducted according to the following procedure. The Board of Zoning Appeals may set time limitations for each hearing segment depending on the level of interest in the project and the number of people wishing to speak. To maintain orderly procedure, each side should proceed without interruption by the other side. After being recognized by the Chairman, each speaker giving testimony to the Board shall state his/her name and address for the record and state whether they support or oppose the application.
 - i. For any application for which a Public Hearing is required, the Chairman shall open the Public Hearing and introduce the application.
 - ii. The Chairman shall ask for the Staff Report on the application.
 - iii. The Chairman shall request the applicant present the application. The applicant shall present the facts and arguments in support of the case. Comments and questions from the Board of Zoning Appeals concerning the initial presentation shall be held until the end of the initial presentation.
 - iv. The Chairman shall ask for comments and questions from the Board of Zoning Appeals.

- v. The hearing shall then be opened for comments from the public.
 - (a) Supporting comments from organized groups, committees, and individuals, other than the applicant shall then follow. Speakers should try to present new points and not repeat previous speakers.
 - (b) Opposing comments shall then be heard. Speakers should try to present new points and not repeat previous speakers.
 - (c) The Board of Zoning Appeals reserves the right to question any speaker at the end or his/her presentation or at the end of the Public Hearing.
 - vi. The applicant shall then receive time for rebuttal. In its discretion or upon request, the Board of Zoning Appeals may permit the opposition to address new information presented in the rebuttal.
 - vii. Once the Board of Zoning Appeals has no final questions, the Public Hearing shall be closed.
 - viii. After the Public Hearing is closed, the Board of Zoning Appeals shall discuss and deliberate the application and shall have the right to ask questions to clarify information.
- B. In the presentation of a case:
- i. The burden shall be on the applicant to supply all information, including charts, pictures, diagrams, and other exhibits necessary for a clear understanding of the request.
 - ii. Statements to the Board of Zoning Appeals made by the applicant at the meeting regarding anticipated methods of operation, siting, or other details relevant to the decision shall be binding agreements between the applicant and the Board of Zoning Appeals and shall be reflected in the minutes of the meeting.
 - iii. Drawings, displays, or documents presented at the meeting by the applicant illustrating details shall also be binding as to their content and representation if the application receives approval. Said documentation shall be noted in the meeting minutes and shall be maintained with the case file.
- C. Every person appearing before the Board of Zoning Appeals shall abide by the orders and directions of the Chairman. Discourteous, disorderly, or contemptuous conduct shall be regarded as a breach of the privileges of the Board of Zoning Appeals and shall be dealt with as the Chairman directs.
- D. The Board of Zoning Appeals may continue or postpone any hearing when it needs more time to deliberate. The Board of Zoning Appeals, at its discretion and on an affirmative vote of a majority of the Board of Zoning Appeals, may continue or postpone a hearing upon request of any party.
- E. Postponement/continuation of hearings to a date more than six (6) months beyond the initial Public Hearing shall not be granted. The Board of Zoning Appeals 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 was granted. Such applications shall again be subject to the payment of filing fees.

Article 5 Final Disposition of Cases

5.1 Final Disposition:

- A. The final disposition of cases requiring Board approval shall set forth the findings and determinations of the Board, together with any modification, specification, condition, limitation, or commitment it makes in the Board of Zoning Appeals minutes.

5.2 No Show: The Board may dismiss an application if no one shows up to present the request. If an application is dismissed for this reason, the applicant may re-file. Such application shall again be subject to the payment of filing fees.

5.3 Withdraw of Application: An applicant may not withdraw a case after a motion has been made concerning the application.

5.4 Re-file: An applicant that has received an adverse decision may re-file the application twelve (12) months after the date of the decision and only if there has been a change of circumstances. The change of circumstances shall be specified in the re-filed application.

Article 6 Notice

6.1 Legal Notice: The Board of Zoning Appeals Staff shall author a Notice of Public Hearing. Such notice shall state:

- A. The name of the applicant.
- B. The location by address or other identifiable geographic description of the subject property.
- C. A summary of the subject matter contained in the application.
- D. The date, time, and place that the application has been set for hearing.
- E. That the application and file may be examined in the City of Auburn's Building, Planning, and Development Department.
- F. That the addressee may voice an opinion at the hearing and/or file written comments with the Board of Zoning Appeals.
- G. That the hearing may be continued from time to time as necessary.

6.2 Publication: The Board of Zoning Appeals Staff shall cause the Notice of Public Hearing to be published in *The Star* or other local newspaper ten (10) days or more before the Public Hearing. The date of the Public Hearing shall not be counted in the ten (10) days.

6.3 Adjacent Property Owners

- A. The applicant shall inform *adjacent property owners* of the proposal by sending a copy of the Notice of Public Hearing with the US Post Office's Certificate of Mailing Service with such notice being postmarked at least ten (10) days before the Public Hearing date. The date of the Public Hearing shall not be counted in the ten days. Adjacent property owners shall be defined as all contiguous properties with the assumption that public rights-of-way do not exist.
- B. Addresses for adjacent property owners shall be obtained by Staff through the DeKalb County property owner records.
- C. Appearance at any hearing on an application, in person or by representative, shall waive any defect in notice unless the alleged defect is raised at the beginning of the hearing.

D. Proof of adjacent owner notification shall be provided to the Board of Zoning Appeals Staff at least five (5) days prior to the Public Hearing. Proof shall consist of the original or a copy of the US Postal Service Certificate of Mailing receipts stamped by the US Post Office with the postmark and/or the original or copies of any envelopes that were returned to sender as “undeliverable.” The postmarked receipts shall be sufficient proof of notice under these rules regardless of actual receipt by the intended recipient.

6.4 Interested Parties:

A. Some Board of Zoning Appeals cases have an impact to more than just adjacent property owners. This may include tenants or property owners within a certain distance of the subject property. Staff shall use discretion to determine if there are other interested parties, and if so, who those other interested parties are. Staff shall inform interested parties of the proposal by sending a copy of the Notice of Public Hearing by regular US Post Office mail or by hand delivery at least ten (10) days before the Public Hearing date. The date of the Public Hearing shall not be counted in the ten (10) days.

6.5 Notice for Other Meetings: For all other meetings of the Board of Zoning Appeals, a notice shall be posted in Auburn City Hall giving the meeting time and location. This notice shall be posted at least forty-eight (48) hours before the meeting occurs. No other notice shall be required.

6.6 Cost of Notice: The applicant requesting a Public Hearing shall bear the cost of the newspaper notice and notice to all adjacent property owners by paying the fee established in the City’s fee schedule.

Article 7 Staff and Committees

- 7.1 Committees: Committees may be created for purposes and terms, which the Board approves, and in accordance with the following:
- A. Each committee shall be composed of less than a majority of members of the City of Auburn Board of Zoning Appeals.
 - B. The Chairman shall appoint a chair for each committee who shall be responsible for all official business of the committee.
 - C. Non-member residents and special resource people may be appointed to serve on committees.
- 7.2 Staff: The Board of Zoning Appeals Staff shall be the Department of Building, Planning, and Development of the City of Auburn.

Article 8 Budget

- 8.1 Budget: The City of Auburn Board of Zoning Appeals, by and through its Staff, shall work with the City of Auburn Clerk-Treasurer to prepare an annual budget and submit the same to the City Council at budget time.

Article 9 Amendment and Conflicting Statutes

- 9.1 Amendment: These Rules and Procedures shall be amended by two-thirds (2/3) of the membership at any regular meeting or special meeting called for the purpose of amending the Rules and Procedures of the City of Auburn Board of Zoning Appeals.
- 9.2 Powers and Duties: The powers and duties of the City of Auburn Board of Zoning Appeals are contained in State Statutes enacted and promulgated by the State of Indiana. If any statute of the State of Indiana conflicts with these Rules and Procedures, then the provisions of said statute shall control unless said Rules and Procedures create a stricter provision than those contained in said statutes. If the State Statutes, which are incorporated in these Rules and Procedures, are amended by the legislature, then these Rules and Procedures shall be automatically amended to conform to the provisions of said statutes. The Chairman of the Board of Zoning Appeals shall have the Rules and Procedures reviewed regularly by legal counsel in order to keep them current.
- 9.3 Incorporation by Reference: All statutes of the State of Indiana and amendments concerning Board of Zoning Appeals, which are not specifically incorporate in these Rules and Procedures are hereby incorporated by reference as part of the Rules and Procedures of the City of Auburn Board of Zoning Appeals.

Adopted by the City of Auburn Board of Zoning Appeals on this 25th day of June, 2019.

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Table of Amendments

BZA Approval Date	Article Affected	Brief Description of Changes
2019-June 25		Initial Adoption