

# **DANVILLE BOARD OF ZONING APPEALS**



## **Rules of Procedure**

Adopted 7/13/98  
Amended 4/20/22

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**RULES OF PROCEDURE  
DANVILLE BOARD OF ZONING APPEALS**

**Article I. Authority and Duties**

**Section 1.** The Danville Board of Zoning Appeals (hereinafter called “Board”) exists as an advisory board of zoning appeals under the authority of IC 36-7-4-901 and Section 8 of the Danville Zoning Code and any amendments thereto. These rules are adopted in accordance with the requirements of IC 36-7-4-916.

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

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

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

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

**Section 3.** The vice-chairman shall have the authority to act as chairman of the Board during the absence or disability of the chairman.

**Section 4.** Upon resignation or replacement of the chairman or vice-chairman as a member of the Board, the Board shall elect a successor at its next regularly scheduled meeting.

**Section 5.** The Board shall appoint and fix the duties of a secretary, who is not required to be a member of the Board. The secretary shall be charged with such duties as required under state statutes, ordinances, and these rules.

**Section 6.** If a vacancy occurs among the members of the Board, the appointing authority shall appoint a member for the unexpired term of the vacating member. In addition, the appointing authority may appoint an alternative member to participate with the Board in any hearing or decision if the regular member it has appointed has a disqualification under IC 36-7-4-909 or is unavailable to participate in the hearing or decision. An alternative member shall have the powers and duties of a regular member while participating in the hearing or decision.

**Section 7.** The appointing authority may remove a member from the Board of Zoning Appeals for cause. The appointing authority must mail notice of the removal, along with written reasons for the removal, to the member at his/her residence. 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 Hendricks County. The court may, pending the outcome of the appeal, order the removal or stay the removal of the member.

**Section 8.** The Board may appoint such employees as are necessary for the discharge of its duties.

### **Article III. Meetings**

**Section 1.** The regular meetings of the Board shall be the third Wednesday of each month at 7:00 PM. The location of the meeting shall be in the Danville Town Hall located at 49 North Wayne Street, Danville, Indiana 46122. If the date of a regular meeting falls on a legal holiday, or if it is impossible to conduct the meeting at the that time or place, the chairman may set an alternate date, time, or place for the regular meeting or may cancel the meeting with the unanimous consent of the members of the Board, provided that the secretary complies with the notice requirements of IC 5-14-1.5.

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

- a) The date, time, and place of the special meeting are fixed in a regular meeting;
- b) All members of the Board are present at that regular meeting; and
- c) The secretary complies with the notice requirements of IC 5-14-1.5.

**Section 3.** Electronic meetings in accordance with IC 5-14-1.5-3.5 (a) Subject to subsections (b) through (j) below, a member may participate in a Meeting by any electronic means of communication that (1) allows all participating members to simultaneously communicate with each other, and (2) allows the public to simultaneously attend and observe the Meeting.

(b) A member who participates in a Meeting by an electronic means of communication (i) shall be considered present for the purposes of establishing a quorum, and (ii) may participate in any final action taken at the Meeting only if the member can be seen and heard.

(c) A technological failure, as defined in Ind. Code 5-14-1.5-3.5(c), does not prevent the Board of Zoning Appeals or committee from conducting a Meeting or affect the validity of actions taken if the sum of the members physically present at the Meeting and the members participating by electronic communication without technological failure satisfy the quorum and (if final action is taken) the applicable voting requirements.

(d) The memoranda prepared under Ind. Code 5-14-1.5-4 must include the information required by Ind. Code 5-14-1.5-3.5(e).

(e) All votes taken during a Meeting conducted under the Electronic Meeting Policy must be taken by roll call vote.

(f) At least 50% of the members must be physically present at each Meeting.

(g) A member may not attend more than four (4) Board of Zoning Appeals Meetings in a calendar year by means of electronic communication, unless such participation is due to (i) military service, (ii) illness or other medical condition, (iii) death of a relative, or (iv) an emergency involving actual or threatened injury to persons or property.

(h) A member may not attend more than four (4) Meetings of any specific committee in a calendar year by means of electronic communication, unless such participation is due to (i) military service, (ii) illness or other medical condition, (iii) death of a relative, or (iv) an emergency involving actual or threatened injury to persons or property.

(i) A member may attend two consecutive Meetings by electronic communication and shall physically attend at least one Meeting between each set of two Meetings that he or she attends by electronic communication, unless the absence is due to (i) military service, (ii) illness or other medical condition, (iii) death of a relative, or (iv) an emergency involving actual or threatened injury to persons or property.

(j) A member who plans to attend a Meeting by any electronic means of communication must, except in the case of a Meeting called to deal with an emergency, notify the Board of Zoning Appeals Chairman (if a Board of Zoning Appeals Meeting) or the relevant committee chair at least seven (7) days before the Meeting so that arrangements may be made for such participation.

**Section 3.** The agenda shall list all items to be considered by the Board at the regular or special meeting. The items shall be listed on the agenda in the order in which the petition or other document was filed with the secretary. The Board shall not consider an item unless it appears on the agenda. Any petitioner may withdraw any petition prior to the meeting at which it was to be considered. The agenda shall be sent by first class-mail or hand delivered to all members of the Board and shall be available for public inspection at the office of the Danville Plan Commission no later than seven (7) days before any regular meeting.

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

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

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

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

**Section 2.** Voting by the Board shall be by roll call vote of the members. All members present shall vote on every question unless they are disqualified pursuant to Section 3 of this Article IV or are permitted to abstain by the presiding officer.

**Section 4.** No member of the Board shall participate in a hearing or decision of the Board upon any zoning matter in which the member has a direct or indirect financial interest. A member shall declare his or her known conflict of interest. The Board shall enter into its records the fact that the member has such a disqualification, and the name of the alternative member, if any, who participates in the hearing or decision in place of the regular member.

**Section 5.** In the event a majority vote of the Board cannot be achieved due to absences, permitted abstentions, or disqualifications, the matter shall be rescheduled for the next regular meeting at the request of any Board member, a petitioner, or a remonstrator.

**Section 6.** Any member of the Board who voted with the majority may call for a reconsideration of any vote at the same meeting of the Board at which it passed, and, if sustained by a majority of the votes, the reconsideration shall be ordered.

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

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

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

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

#### **Article VI. Public Hearings**

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

**Section 2.** The secretary of the Board shall swear in all persons wishing to address the Board during a public hearing.

#### **Article VII. Appearances**

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

**Section 2.** Motions or requests for continuance by an interested party must be filed at least seven (7) days prior to the public hearing. The secretary of the Board may continue each petition one (1) time without express authority of the Board. However, should an emergency occur within the seven (7) day period prior to the public hearing, a sworn statement setting out

the emergency may be filed, and a continuance may be granted by the secretary of the Board for a good cause shown. Should the petitioner of the petitioner's agent fail to appear at the meeting following the continuance without sufficient reason, the petition may be dismissed or denied.

## **Article VIII. Order of Business**

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

- a) Call to Order;
- b) Roll Call and Determination of Quorum;
- c) Consideration of Minutes of Previous Meeting;
- d) Oath Administered by Secretary;
- e) Old Business (tabled or continued items);
- f) New Business;
- g) Report of Officers and Committees;
- h) Communications, Bills, and Expenditures; and
- i) Adjournment.

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

- a) Call to Order;
- b) Roll Call and Determination of Quorum;
- c) Oath Administered by Secretary;
- d) The Business for Which the Special Meeting Was Called; and
- e) Adjournment.

**Section 3.** The Board shall act on a petition in the following order:

- a) Any person wishing to speak for or against a petition must register their name and address and be sworn in by the secretary;
- b) The chairman or the secretary shall read the petition and describe the location of the affected area;
- c) The chairman or the secretary shall present a staff report, if any;
- d) The petitioner shall present facts relating to the case, with up to ten (10) minutes being available for the presentation;
- e) The chairman shall recognize those who have registered against the proposal to present objections, with up to a total of ten (10) minutes being available for the presentation of objections;
- f) The chairman shall then recognize the proponents for the purpose of rebuttal for that amount of time remaining from the ten (10) minute presentation which was saved for rebuttal. The total presentation and rebuttal period shall not exceed ten (10) minutes;
- g) Board members may direct questions to any petitioner, proponent, or opponent following any presentation; and
- h) Upon conclusion of questioning and discussion, the chairman shall entertain a motion to conclude the public hearing or conclude debate on the motion.

**Section 4.** The Board may, on its own motion at any time, continue any item that has not been dismissed. No further public notice shall be required provided that an announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the minutes.

**Section 5.** A petition, which has been withdrawn by the petitioner, shall not be placed on the docket for consideration within a period of twelve (12) months after the date of withdrawal.

**Section 6.** A petition, which has been decided adversely to the petitioner, shall not be placed on the docket for reconsideration until twelve (12) months after the date of the decision previously rendered.

### **Article IX. Filing Procedure**

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

**Section 2.** Every petition for a variance or a special use shall be filed with the secretary no later than thirty (30) days prior to the date of its consideration by the Board.

**Section 3.** An appeal from an administrative decision shall be filed with the Board no later than thirty (30) days from the date of such administrative decision.

### **Article X. Notice Requirements**

**Section 1.** The Board shall give legal notice of all public hearings in accordance with IC 5-3-1. The notice of a public hearing as required by state statute or town ordinance shall contain as a minimum the following information:

- a) Docket number and the substance of the matter to be heard;
- b) General location by address or other identifiable geographic characteristics of the property;
- c) Name of the person, agency, or entity initiating the matter to be heard;
- d) Time and place of the hearing;
- e) Statement that the petition may be examined at the office of the Danville Plan Commission;
- f) Statement that any person may offer verbal comments at the hearing or may file written comments prior to or at the hearing; and
- g) Any other information required by law to be contained in such notice.

**Section 2.** For the purpose of IC 36-7-4-920(b), interested parties are determined to be all persons with a legal interest in the property and all owners of real property within a distance



of six hundred sixty (660) feet or a depth of two (2) ownership's, whichever is less. Such parties are to receive written notice by certificate of mailing.

**Section 3.** If the subject of the petition abuts or includes a county line, or a county line street or road, or a county line body of water, all owners of real property to a depth of two (2) ownership's or one-eighth (1/8) of a mile into the adjacent county, whichever is less, shall be determined to be interested parties and entitled to receive written notice by certificate of mailing.

**Section 4.** The person appealing a decision or applying for a variance or special use is required to assume the costs of public notice and due notice to interested parties.

### **Article XI. Commitments**

**Section 1.** The Board, pursuant to IC 36-7-4-921, may require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel.

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

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

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

**Section 5.** If a person fails to abide by a commitment, that person commits a violation of the Danville Zoning Ordinance. The commitment shall be enforced in accordance with the provisions of the Danville Zoning Ordinance.


### **Article XII. Amendments**


**Section 1.** Amendments to these Rules of Procedure may be made by the Board, at any regular or special meeting, upon the affirmative vote of a majority of the members of the Board. The suspension of any rule may be ordered at any meeting by a two-thirds (2/3) vote of the quorum.

### **Article XIII. Repeal**

**Section 1.** All previous rules and regulations heretofore adopted by the Danville Board of Zoning Appeals are hereby expressly repealed, as of the effective date of these rules.

The Rules of Procedure of the Danville Board of Zoning Appeals of Danville, Indiana.  
Approved by the affirmative vote of members of said Board at the regular meeting of the Board  
held on the 20<sup>th</sup> day of April 2022.

Signed:   
Kevin A. Tussey, President

Attest:   
Gary D. Eakin, Secretary