

BOARD OF ZONING APPEALS

154.555 ESTABLISHMENT AND JURISDICTION.

The Board of Zoning Appeals for St. Joseph County, Indiana, is hereby re-established in accordance with Indiana Code 36-7-4-900 et seq. The Board of Zoning Appeals for St. Joseph County, Indiana, shall have exclusive authority over all matters set forth under Indiana Code 36-7-4-900 et seq., within the unincorporated areas of St. Joseph County, Indiana.

(Ord. 51-05, § 8.10.03A, passed 5-10-2005)

154.556 MEMBERSHIP, QUALIFICATIONS AND TERMS.

(A) The membership of the Board of Zoning Appeals, the qualification of its members and the terms of membership shall be in accordance with Indiana Code 36-7-4-900 et seq.

(B) Initial membership of the Area Board of Zoning Appeals for St. Joseph County and the Towns of Lakeville, New Carlisle, North Liberty, Osceola, and Roseland will be prescribed as follows:

(1) Two (2) citizen members appointed by the Area Plan Commission from its membership as follows:

(a) One (1) municipal representative with an initial term of two (2) years;
and

(b) One (1) county representative with an initial term of three (3) years;

(2) One (1) citizen member appointed by the Board of County Commissioners with an initial term of one (1) years;

(3) One (1) citizen member appointed by the County Council with an initial term of one (1) years;

(4) One (1) citizen member appointed by the legislative bodies of the Towns of Lakeville, New Carlisle, North Liberty, Osceola, and Roseland, with an initial term of two (2) years; and

(5) Two (2) citizen members appointed by the County Council who may not be members of the Area Plan Commission, with an initial term of three (3) years.

(Ord. 84-19, passed 10-9-2019)

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154.557 DUTIES AND POWERS.

The Board of Zoning Appeals shall have the duty and power to:

(A) Hear and determine appeals from and review any order, requirement, decision, or determination made by staff, hearing officer or administrative official under this chapter;

(B) Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the Area Plan Commission in relation to the enforcement of this chapter;

(C) Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the Area Plan Commission in relation to the enforcement of those provisions of this chapter requiring the procurement of an improvement location permit or a certificate of occupancy;

(D) Hear, and make a favorable recommendation, unfavorable recommendation or no recommendation to the County Council on all special uses in accordance with the provisions of § 154.563, below;

(E) Hear and determine all variances from development standards of this ordinance; and

(F) Hear and determine all conditional uses.

(Ord. 51-05, § 8.10.03C, passed 5-10-2005)

154.558 CONDITIONS.

(A) The Board of Zoning Appeals, in connection with its making of a favorable recommendation, unfavorable recommendation or no recommendation to the County Council regarding the approval of a special use, may recommend that the County Council impose certain reasonable conditions as a part of the County Council's approval of any special use.

(B) The Board of Zoning Appeals may impose certain reasonable conditions as a part of the approval of any conditional use.

(C) Such conditions may include any reasonable site, development, operational standards, performance standards, requirements, and restrictions (including duration of approval) deemed necessary to ensure compliance with the findings of fact determinations.

(D) The Board of Zoning Appeals, in connection with its approving a variance from development standards (such as height, bulk, or area) of the zoning ordinance, may impose reasonable conditions as part of the Board's approval. *(Ord. 84-11, passed 8-9-11)*

(Ord. 51-05, § 8.10.03D, passed 5-10-2005)

154.559 AMENDMENTS.

The Board of Zoning Appeals, in connection with making a determination on a variance of development standards, may accept amendments to a petition which, in the sole discretion of the Board of Zoning Appeals, are necessary for the Board of Zoning Appeals to make the determination and findings of fact required by § 154.562, below.

(Ord. 51-05, § 8.10.03E, passed 5-10-2005)

154.560 COMMITMENTS.

(A) The Board of Zoning Appeals may recommend or the County Council may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel in the case of a petition for a special use.

(B) The Board of Zoning Appeals may permit or require the owner of a parcel of property to make a written commitment concerning the development of that parcel in the case of a petition for a variance of development standards or conditional use.

(C) Such commitments may include any reasonable site, development, operational standards, performance standards, requirements, and restrictions (including duration of approval) deemed necessary to ensure compliance with the findings of fact determinations.

(D) All such commitments shall be in recordable form and shall be recorded in the office of the St. Joseph County Recorder and shall take effect upon the granting of the special use, conditional use or variance. A recorded commitment shall be binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.

(E) The commitments shall be in substantially the form set forth in Appendix C of this chapter.

(F) A recorded commitment may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing after notice.

(G) The modification or termination of commitments shall be in substantially the form set forth in Appendix D of this chapter.

(H) By recommending, permitting or requiring commitments, the Board of Zoning Appeals does not obligate itself to make a favorable recommendation nor does the County Council obligate itself to approve or deny any request.

(I) This section does not affect the validity of any covenant, easement, equitable servitude, or other land use restriction created in accordance with law.

(Ord. 51-05, § 8.10.03F, passed 5-10-2005)

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154.561 RULES.

(A) The Board of Zoning Appeals shall adopt rules concerning: the filing of appeals; applications for special uses, conditional uses and variances; the giving of notice; the determination of interested parties to receive notice; the conduct of hearings; the creation, form, recording, modification, enforcement and termination of commitments; and, the designation of which specially affected persons and classes of specially affected persons are entitled to enforce commitments.

(B) Rules adopted by the Board of Zoning Appeals shall be printed and made available to all applicants and other interested persons.

(Ord. 51-05, § 8.10.03G, passed 5-10-2005)

154.562 VARIANCE OF DEVELOPMENT STANDARDS.

A variance from any of the development standards of this chapter may only be approved upon the Board of Zoning Appeals making a written determination and adopting appropriate findings of fact, based upon the evidence presented at a public hearing, 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 this chapter would result in practical difficulties in the use of the property.

(Ord. 51-05, § 8.10.03H, passed 5-10-2005)

154.563 SPECIAL USES.

(A) *Statement of purpose.* Certain land uses, while they may be generally appropriate in certain districts and under certain circumstances, may have characteristics and locational impacts which, if inappropriately located, may have a detrimental effect upon other land uses within the district and St. Joseph County. It is therefore recognized that such land uses should be regulated in order to preserve property values, as well as promote the public health, safety, comfort, community moral standards, convenience and general welfare of St. Joseph County.

(B) *Uses permitted by special use.* Only those uses identified in each district as uses permitted by special use shall be permitted by special use in each district.

(C) *Grant of a special use.*

(1) The Board of Zoning Appeals is hereby authorized to hear and make a favorable recommendation, unfavorable recommendation or no recommendation to the County Council on a petition for a special use.

(2) The County Council shall, within 60 days of a recommendation by the Board of Zoning Appeals, vote on the petition for a special use.

(3) All petitions for a special use shall comply with the following requirements:

(a) *Petition for special use.* A petition for special use shall be initially filed with the Board of Zoning Appeals in accordance with the requirements for the filing of a variance, except as such requirements may be modified in this sub-Section. Such petition shall include proposed detailed findings of fact pursuant to division (C)(3)(d), below, in support of the determinations required to be made.

(b) *Waiver of development standards.* A petition for special use may contain a request to waive development standards of the district determined to be inappropriate for the individual special use. The waiver may only be approved if such waiver is specifically requested in said petition and specifically approved at the public hearing. Any development standards which are waived in this manner shall require additional findings as specified in § 154.562, above, for the grant of a variance of development standards.

(c) *Basis of review of a special use.*

1. In reviewing a special use petition with regard to compliance with the required findings of fact, the Board of Zoning Appeals and County Council shall give consideration to the particular needs and circumstances of each special use application and shall examine the following items as they relate to the proposed use:

- a. Topography and other natural site features;
- b. Zoning of the site and surrounding properties;
- c. Driveway locations and street access;
- d. On-site and off-site accommodations for vehicular and pedestrian circulation patterns;
- e. Amount, location and design of parking areas and loading areas;
- f. Building character, including height, intensity, materials and architecture;
- g. Landscaping, screening and buffering of adjacent properties;

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h. Compatibility of the proposed use, site design and architecture with the district in which the use is proposed to be located;

i. Extent to which the proposed use, site design and architecture comply with the regulations and development standards that would be applicable if the site were zoned to a business/commercial district or industrial district of this chapter which would permit the proposed use as a primary use;

j. Open space and other site amenities; and,

k. Availability and adequacy of streets, sanitary facilities, potable water, storm water management system and other utilities.

2. The Board of Zoning Appeals and the County Council shall find that the above items are dealt with appropriately by the petition for special use such that divisions (C)(3)(d) and (C)(3)(e), below, are complied with.

(d) *Findings of fact for a special use.* A special use may only be granted upon making a written determination and adopting appropriate findings of fact, based upon the evidence presented at a public hearing, that:

1. The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;

2. The proposed use will not injure or adversely affect the use of the adjacent area or property values therein;

3. The proposed use will be consistent with the character of the district in which it is located and the land uses authorized therein; and,

4. The proposed use is compatible with the recommendations of the St. Joseph County Comprehensive Plan.

(e) *Requirements for the grant of a special use.* The grant of a special use shall comply with the following requirements:

1. The proposed use shall conform to all development standards of the applicable zoning district (unless a waiver of such development standards is requested as part of the special use petition and approved as set forth above); and

2. The proposed use shall conform to all conditions or commitments attached to the grant of the special use; and

3. The proposed use shall comply with the site plan that was approved by the County Council as part of the grant of the special use. (*Ord. 61-19; 7-9-19*)

(f) *Requests for modification of the site plan.* Site plans that were included in a petition of a special use that received approval from the County Council can be modified by a request in writing to the Executive Director detailing the extent of the change or changes. The Executive Director may request additional documentation that would be needed to determine whether the proposed changes qualify as Minor Modifications or Major Modifications and outlined below. (Ord. 61-19; 7-9-19)

1. *Minor modifications.* Minor modifications to a special use site plan which has already received approval from the County Council which do not involve the designation of additional land uses; or an encroachment into any drainage easement, regulated drain setback or floodplain, may be authorized by the Executive Director without a public hearing in its continuing administration of the special use if, in the determination of the Executive Director, the requested minor modifications do not adversely impact the purpose or intent of the overall development. (Ord. 61-19; 7-9-19)

2. *Major modifications.* If the Executive Director determines that the proposed modification does not meet the criteria above or is of such a nature as to adversely impact the purpose or intent of the overall development the petitioner shall be required to file a new petition for special use. (Ord. 61-19; 7-9-19)

154.564 CONDITIONAL USES.

(A) The Board of Zoning Appeals shall have the power to approve conditional uses, with or without conditions or commitments, if the Board of Zoning Appeals determines that:

- (1) The public convenience and welfare will be substantially served;
- (2) The nature, location, size and site layout of the conditional use will be compatible with the immediate area;
- (3) Adequate water, sanitary, ingress/egress, drainage and other necessary facilities have been or are being provided to assure safe and sanitary conditions in the vicinity of the request;
- (4) The proposed conditional use does not conflict with the Comprehensive Plan or any other plan duly adopted by St. Joseph County; and
- (5) The proposed use will not be unduly detrimental to the surrounding area.

(B) As part of its approval of a conditional use, the Board of Zoning Appeals may impose reasonable conditions regarding the location, site design, and other features of the proposed building, structure, use or site development as are reasonably related to the purposes of this chapter.

(Ord. 51-05, § 8.10.03J, passed 5-10-2005; Ord. 68-09, § 9, passed 8-11-2009)

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154.565 OTHER POWERS.

The Board of Zoning Appeals shall exercise all powers conferred on it by State law, local ordinance, or rule in the manner so prescribed. This subchapter shall not be construed as a limitation on such powers.

(Ord. 51-05, § 8.10.03K, passed 5-10-2005)