

TITLE XI. BOARD OF ZONING APPEALS

Section 11.01 Membership and Procedures:

A Board of Zoning Appeals is hereby established in accordance with Indiana Code 36-7-4-900 et. seq., as amended. The present members of the Town of Cedar Lake Board of Zoning Appeals are designated as members of the Board of Zoning Appeals created herein.

- A. The Board of Zoning Appeals (BZA) shall consist of five (5) members appointed by the Town Council in accordance with state law.
- B. Meetings shall be held at the call of the Chairperson or the Town Administrator, as established by rules of procedure or by ordinance.
- C. All meetings of the BZA shall be open to the public. The BZA shall maintain a record of its proceedings, which shall be filed in the office of the Town Clerk-Treasurer, and shall be a public record.

Section 11.02 Powers:

The Board of Zoning Appeals shall have all the powers provided in Indiana Code 36-7-4-900 et. seq., as amended. In the exercise of these powers, the Board of Zoning Appeals may impose such conditions as it may deem advisable in the furtherance of the purposes of this Zoning Ordinance.

Section 11.03 Rules of Procedure:

- A. The Board of Zoning Appeals shall adopt rules of procedure which may not conflict with the Zoning Ordinance concerning:
 - 1. The filing of Appeals;
 - 2. The application for Variances and Special Uses;
 - 3. The giving of notice;
 - 4. The conduct of hearings;
 - 5. The determination of whether a Variance application is for a Variance of use or a Variance from the development standards (such as height, bulk, or area).
- B. The Board of Zoning Appeals may also adopt rules providing for:
 - 1. The allocation of cases filed;
 - 2. The fixing of dates for hearings;
 - 3. The general conduct of the business of the Board of Zoning Appeals.
- C. Prior to the determination of an Appeal or decision on a Special Use or Variance, the Board of Zoning Appeals shall fix a reasonable time for a hearing. Public notice shall be provided as required by the rules of the Board of Zoning Appeals.

Section 11.04 Meetings:

The meetings of the Board of Zoning Appeals shall be held at the call of the Chairman or Town Administrator or at such times as the Board may determine. The Board of Zoning Appeals shall keep

minutes of its proceedings and record the vote on all actions taken. All minutes and records shall be filed in the Office of the Town Clerk-Treasurer and are public records. The Board of Zoning Appeals shall make written findings of fact in all cases heard by it.

Section 11.05 Interpretations:

The Board of Zoning Appeals shall have the power to hear and decide, in accordance with the provisions of this Ordinance, applications for interpretations of this Ordinance, and may make decisions on any other questions on which the BZA is authorized to pass. In exercising all of its powers, the BZA shall apply the standards of this Section.

- A. **Text Interpretations:** The BZA may hear and decide upon requests for the interpretation of the provisions of this Ordinance. In deciding text interpretations, the BZA shall be governed by the following rules:
1. Text interpretations shall be narrow and address only the situation to be interpreted, be based on a thorough reading of this Ordinance and not have the effect of amending this Ordinance.
 2. Records shall be kept of all interpretations.
- B. **Map Interpretations:** When there is any question as to the location of any boundary line between Districts, upon a request for an interpretation of the zoning map, the BZA shall establish the boundary based upon the map and all available information relating thereto and shall establish the boundaries, in accordance with Section 3.03, to carry out the intent and purposes of this Ordinance and the Comprehensive Plan.

Section 11.06 Appeals:

- A. **Administrative decisions:** Upon application, unless otherwise specified by this Ordinance, the BZA shall hear and decide appeals from and review any order, requirements, decision or determination made by the Town Administrator or other official or body charged with the administration of this Ordinance. For this purpose, the Board of Zoning Appeals has all the powers of the official, officer, board or body from which the Appeal is taken. Any person aggrieved, or any officer, department or Council of the Town may make an appeal to the BZA. The grounds of every appeal shall be stated in writing as part of the application.
- B. **Record:** The Town Administrator shall transmit to the BZA all the papers constituting the record upon which the action being appealed was taken.
- C. **Stay:** An appeal stays all proceedings from furthering the action being appealed unless the Town Administrator certifies to the BZA that a stay would, in their opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order.
- D. **Public Notice:** The BZA shall fix a reasonable time for hearing the appeal and publishing a newspaper notice not less than ten (10) days before the hearing. Notice shall also be mailed by certified mail to all property owners abutting or directly across a public or private street from the subject property. The petitioner shall be responsible for publishing and mailing public notices, pursuant to the Board of Zoning Appeals Rules of Procedure and shall pay the costs of such notification. The Town Administrator shall be responsible for posting public notice pursuant to the Rules of Procedure. The petitioner shall be responsible for returning the affidavit of public notice and proof of published and mailed notice to the Town Administrator. Failure to submit the

affidavit of public notice and proof of published and mailed notice by the deadline may result in the petition being continued to the agenda for the following month.

- E. **Decision:** Following the public hearing, the BZA shall decide the matter within a reasonable time. The BZA may reverse or affirm, wholly or partly, or may modify the order requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the Town Administrator and may issue or direct the issuance of a permit. The Board of Zoning Appeals shall file in the Office of the Town Clerk-Treasurer, a copy of its decision within five (5) days after making any decision.

Section 11.07 Variance of Use:

- A. The Board of Zoning Appeals shall consider and hear all requests and applications for Variances of Use from the terms of the Zoning Ordinance, as amended from time to time. The Board of Zoning Appeals may impose reasonable conditions as part of its approval. A Variance of Use hereunder may only be approved upon a specific determination in writing that:
1. The approval will not be injurious to the public health, safety, morals and general welfare of the community;
 2. The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner;
 3. The need for the Variance arises from some condition peculiar to the property involved;
 4. 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
 5. The approval does not interfere substantially with the Comprehensive Plan of the Town.
- B. Pursuant to the requirements of Indiana Code 36-7-4-918.6, as amended, when the Board of Zoning Appeals considers an application for a Variance of Use, the Board shall, after public hearing, make one of the following recommendations: FAVORABLE, UNFAVORABLE, or NO RECOMMENDATION. This Recommendation shall then be filed with the Town Clerk-Treasurer. The Town Council shall give notice as required by Indiana Code 5-14-1.5-5, as amended from time to time of its intentions to consider the application for Variance of Use at its first regular meeting after the Board of Zoning Appeals files its Recommendation regarding the same. An application for Variance of Use is granted or denied when the Town Council votes on the application. The Town Council shall vote on an application for Variance of Use within ninety (90) days after the Board of Zoning Appeals makes its Recommendation. In the event the Town Council does not vote to deny application for Variance of Use within ninety (90) days after the Board of Zoning Appeals makes its Recommendation, then an application would be approved. In the event the Town Council approves an application for Variance of Use, the Town Council shall make its determination in writing, considering all the criteria for the determination described herein.

Section 11.08 Variances from Development Standards:

The Board of Zoning Appeals shall approve or deny Variances from the development standards (such as height, bulk, or area) of the Zoning Ordinance. A Variance hereunder may only be approved upon a specific 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.

Section 11.09 Procedure in Application for Variance:

Approval of any Variance, whether by the Board of Zoning Appeals or the Town Council, shall be made only upon the specific written determinations required in Sections 11.06 B and 11.06 E, together with the procedures and guidelines stated hereafter, namely:

- A. A non-conforming use of neighboring lands, buildings, or structures in the same Zoning District, and a permitted use of lands, buildings or structures in other Zoning Districts shall not be considered grounds for approval of a Variance. Any other Variance granted in the same general area shall not constitute grounds for approval of another similar Variance.
- B. The Variance shall be the minimum Variance that will make possible a reasonable use of the land, building or structure, equivalent to, but not exceeding the use of, similar lands, buildings or structures permitted generally in the same Zoning District.
- C. The Board of Zoning Appeals and/or Town Council, as applicable, shall determine whether each of the requirements has been met. In granting any Variance from Development Standards, and in recommending any Variance of Use, the Board of Zoning Appeals shall prescribe conditions and safeguards to assure conformity with the purpose of this Ordinance. In granting any Variance of Use, the Town Council shall prescribe conditions and safeguards to assure conformity with the purposes of the Zoning Ordinance. Violation of such conditions and safeguards, when made part of the terms under which a Variance is granted by the Board of Zoning Appeals and/or the Town Council, shall be deemed a violation of this Zoning Ordinance.
- D. Any approved Variance shall become void if:
 - 1. The Variance is not exercised within ninety (90) days after being granted;
 - 2. Any structure or characteristic of use permitted by Variance is moved, removed or discontinued.
- E. A request for Variance may be initiated only by the property owners, and none other.

Section 11.10 Special Uses.

The requirements for reviewing a Special Use, including the standards that form the basis of the determination, are listed in Section 9.03.

Section 11.11 Public Hearings:

Upon the filing with the Board of Zoning Appeals of an Appeal or an application for Special Use or Variance, a reasonable time and place shall be established for public hearing and notice shall be given as follows:

- A. Submit a completed legal advertisement notice form to two (2) newspapers of general daily circulation in the Town for one (1) publication in each newspaper at least ten (10) days prior to the scheduled public hearing date;

- B. Obtain a certified list of the adjacent property owners to the property involved in the application or appeal, and either hand-deliver or mail by certified mail, return receipt requested, a copy of the completed legal advertisement notice form to each adjacent property owner, as defined hereinafter. In the event an adjacent property owner owns more than one (1) parcel of property, as indicated on the certified list, then that adjacent property owner shall receive separate notices for each parcel owner, to be mailed separately, with proof of separate mailing required. Hand-delivered notices must be accompanied by signatures and date of verification of delivery. Notification to the adjacent property owners must be made to each adjacent property owner at least ten (10) days prior to the date of the public hearing.
1. The notice shall state the name of the Applicant and legal owner of the property. For example, in the event the property is held in a Trust; then the legal notice shall state the name of the bank and trust number. The legal notice shall also include the nature of the request, namely appeal, special use permit, variance, and the like.
 2. Adjacent property owners are defined by the Lake County Assessor's office.
 3. Proof of publication of advertisement in the newspapers, as well as providing the certified list of adjoining property owners and proof of notice to the adjoining property owners must be submitted to the designated Town Official or Representative at least twenty-four (24) hours prior to the public hearing.
 4. Notice shall also be mailed to the Town Clerk-Treasurer and to each member of the Town Council.

Section 11.12 Appeal to Court:

Each decision of the Board of Zoning Appeals or the Town Council is subject to review by Certiorari. Each person aggrieved by a decision of the Board of Zoning Appeals or Town Council may present to the Circuit or Superior Courts of Lake County, a Verified Application setting forth that the decision is illegal in whole or in part, and specifying the grounds of the illegality. The aggrieved person shall present the application to the Court within thirty (30) days after the date of the decision of the Board of Zoning Appeals or Town Council.