

HEARING OFFICER

of the
Metropolitan Board of Zoning Appeals
of
Marion County, Indiana

RULES OF PROCEDURE

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RULES OF PROCEDURE

ARTICLE I -GENERAL RULES

1. HEARING OFFICER - A person (who may be an employee of the City of Indianapolis) nominated by the Director of the Department of the Metropolitan Development and appointed by the Metropolitan Development Commission to exercise some of the powers of a Metropolitan Board of Zoning Appeals.

With respect to the matter presented, the Hearing Officer shall act as the Metropolitan Board of Zoning Appeals.

2. TERRITORIAL JURISDICTION - The Hearing Officer shall have jurisdiction throughout Marion County, Indiana --except within the territorial limits of any excluded city that has created a board of zoning appeals pursuant to the provisions of I.C. 36-7-4-901 (g).

3. POWERS OF THE HEARING OFFICER - The Hearing Officer has the power to:

A. Approve or deny variances from the development standards (such as height, bulk or area) of the zoning ordinance.

B. Approve or deny special exceptions of the zoning ordinance.

C. Approve or deny modifications to conditions of a variance grant previously approved by the Hearing Officer, or modifications to an approved site and development plan previously approved by the Hearing Officer.

D. Approve or deny variances of use of the zoning ordinance, only under the following circumstances:

(1) The request is for the expansion of a use currently existing on the property, and

(2) The proposed use is consistent with the recommendations of the Comprehensive Plan, as determined by the Administrator. The Administrator will use the "recommended land use map" from the most recently adopted neighborhood or comprehensive plan for purposes of this section.

4. CATEGORIES OF PETITIONS AND REQUESTS - The Hearing Officer may take action relative to the following matters:

A. Use Variance Petitions -A variance for a use or structure that is not permitted in the zoning district as permitted by 36-7-4-923 (a).

B. Development Standards Variance Petitions -A departure from the provisions of a zoning ordinance relating to frontage, yard, area, coverage, setback, height, size, parking, loading or other requirements of the applicable zoning district.

C. Special Exception Petitions -A special exception to the standard terms, regulations and requirements of zoning district.

D. Approval Petitions - Approvals involving the waiver of the waiting periods before refileing after an adverse decision or the dismissal or withdrawal of a petition.

E. Modification Petitions - Petitions involving the modification or termination of conditions and the modification of an approved site and development plan of a variance or special exception petition. The Hearing Officer may not modify or terminate any commitment.

F. Continuances and other Special Requests.

5. HEARING OFFICER TO DECIDE POINTS OF ORDER - The Hearing Officer, subject to these rules, shall decide all points of order or procedure.

All requests for continuances and special requests for modification of notice requirements shall be considered at the beginning of each public hearing. All other special requests shall be considered at the end of each public hearing.

ARTICLE II - FILING OF PETITIONS

1. WHO MAY FILE - No variance, special exception, modification or approval petition shall be accepted for filing unless signed by the owner of the subject parcel of his or her duly appointed agent or representative.

Any authorization to sign the petition or otherwise act on the owner's behalf with respect to the variance, special exception or approval request shall be in writing, signed by the owner and submitted at the time of filing the petition.

For purposes of this section owner is defined to include:

- A. The person(s) who holds either fee simple title to the property or a life tenant in possession as disclosed in the most recent records of the township assessor;
- B. A contract vendee;
- C. A long-term lessee (but only if the lease is recorded among the records of the County Recorder and has at least twenty-five (25) years remaining before its expiration date at the time of filing the petition).

2. FILING REQUIRED AT LEAST NINETEEN (19) DAYS PRIOR TO HEARING - All petitions to the Hearing Officer shall be filed at least nineteen (19) days prior to the hearing at which they are to be considered.

3. FILING ON BOARD'S FORMS REQUIRED - All petitions to the Hearing Officer shall be made on forms to be supplied by the Board of Zoning Appeals and shall include one copy of the applicable petition, one copy of the legal description of the subject property, and three copies of the exhibits, materials and information required by and specified on said forms. Any communication purporting to be a petition not on forms furnished by the Board or not containing the information called for on said forms, shall be regarded as a mere notice of intention to petition and shall be of no force or effect until it is filed in the form required.

4. REQUIRED FINDINGS OF FACT - At the time of filing a petition, proposed detailed written findings of fact shall be filed. The Hearing Officer must adopt Findings of Fact in a decision to approve or deny a variance or special exception petition, including any modification petition to modify conditions, site plans or other development plans.

Any other interested party may file proposed findings of fact at any time prior to the hearing, or in initial testimony at a hearing.

5. SPECIFYING OF REQUEST REQUIRED - All variance, special exception, modification and approval petitions must specify the ordinance(s) and development, performance or other standards and regulations, conditions or approvals sought by the petitioner to be modified or approved. A mere recitation in the petition that development is, or will be "per plan filed" is insufficient to modify any standards or regulations of the applicable ordinance(s) that are not expressly referred to in the petition.

6. FILING FEES -

- A. FEE SCHEDULE** - In order to compensate for the expense of advertising and processing, a fee shall be paid by the applicant at the time of filing in accordance with the fee scheduled adopted by and delineated in the Metropolitan Board of Zoning Appeals' Rules of Procedure, Article II, 6.
- B. REFUND FOR SINGLE- AND TWO-FAMILY VARIANCE OF USE PETITIONS** – The Administrator, upon request, may refund to the applicant up to \$280.00 of a paid filing fee for a granted variance of use for an individual single- or two-family dwelling use that was not appealed to a Division of the Metropolitan Board of Zoning Appeals.
- C. WAIVER FOR GOOD CAUSE** - The Hearing Officer may at any time **for good cause** shown, or upon the Hearing Officer's own motion, waive or modify the applicable filing fee to not less than fifty (\$50.00) dollars, and transfer a filing fee.
- D. REFUND OF FEES OF WITHDRAWN OR TRANSFERRED PETITIONS** - The Administrator of the Division of Planning may, upon request and for good cause shown, refund the applicable filing fee if the petition is withdrawn prior to the publishing or mailing of any public notice. The Administrator may, upon request and for good cause shown, refund all except one hundred (\$100.00) dollars of the applicable filing fee if the petition is withdrawn prior to any public hearing. The request shall be in writing and received within 90 days of withdrawal.
- The Administrator may, upon request and for good cause shown, transfer the applicable filing fee of the petition if the transfer occurs prior to any public hearing. The request shall be in writing and received within 90 days of the transfer.
- E. DEPARTMENTAL FEE WAIVER** – For all departments of the City of Indianapolis, all fees outlined above shall be waived for projects in which:
- (1) a department is the applicant or petitioner and the project will be located on property owned by the department or the City of Indianapolis; or
 - (2) the Department of Metropolitan Development or the Commission is the applicant or petitioner.
- F. STATE FEE WAIVER** – For all departments of the State of Indiana, all fees outlined above shall be waived for projects in which a department is the applicant or petitioner and the project is located on property owned by the department or the State of Indiana.
- G. MAINTENANCE OF FUNDS** – All monies from any filing fees for petitions and other activities to defray administrative costs shall be directed to the Metropolitan Board of Zoning Appeals' nonreverting fund to maintain said receipts.

ARTICLE III - DOCKETING OF PETITIONS

- 1. DOCKETING BY ADMINISTRATOR** - Each petition filed in proper form shall be numbered and docketed by the administrator for hearing before either the Hearing Officer or one of the Divisions of the Board.
- 2. DOCKET NUMBERS** - The docket number shall begin anew on January 1st of each year, and for all petitions shall be hyphenated with the numbers of the year, the initials "HOV" and the number that indicates the sequence the petition occupies among the petitions filed.
- 3. ORDER OF HEARING PETITIONS** - On the date set for hearing special exceptions, variances, modification and approval petitions shall come before the Hearing Officer in the regular order of their consecutive numbers and in the order enumerated above. Provided, however, petitions redocketed following a continuance from a previous hearing by the Hearing Officer or petitions redocketed following a special request, shall be heard at the beginning of the public hearing before the regularly docketed petitions.

ARTICLE IV - NOTICE

- 1. NOTICE REQUIREMENTS** - Notice of all petitions to be heard by the Hearing Officer shall be given to all interested parties of property owners, in the following manner:
 - A. NOTICE BY PUBLICATION** - Notice by publication shall be given by the Hearing Officer in the prescribed form, in two (2) newspapers of general circulation in Marion County at least (10) days before the hearing.
 - B. ADDITIONAL NOTICE BY PETITIONERS TO OWNERS OF ADJOINING LAND, NEIGHBORHOOD ORGANIZATIONS AND AFFECTED CITY-COUNTY COUNCILORS –**
 - (1) Additional notice, on a form prescribed by the Metropolitan Development Commission, shall be given by the petitioner, by registered, certified or first class mail at least ten (10) days before the date of hearing, to the owners of all adjoining parcels of land.

However, the Indianapolis Department of Public Works or its successor and the Indiana Department of Highways or its successor shall not constitute a property owner requiring notice if the property is right-of-way, used for street purposes, except for interstate right-of-way, in which case notice shall be sent of the Indiana Department of Highways or its successor.
 - (2) For purposes of notice requirement of this paragraph, where any of such adjacent parcels of land are owned by petitioner, the subject property shall be deemed to include any land owned by petitioner adjacent to the land described in the petition.
 - (3) In the case of property that is subject to I.C. 32-25, each condominium unit shall be deemed one property ownership and the common area designated in the appropriate condominium instruments shall be deemed one property ownership, and notice to the co-owners of such common area may be given to the association of co-owners set forth in the condominium instruments recorded in the Office of the Recorder of Marion County, Indiana.
 - (4) Additional individual notice may be required of the petitioner by the Hearing Officer at the time of docketing the petition.

- (5) For the purpose of determining names and addresses of legal title owners, the records in the office of the Assessors of Marion County (and the similar office designated for ownership records by each County adjoining Marion County) that list the current owner of record at a point in time within fourteen (14) days of the date the notice shall be sent, shall be deemed to be the true names and addresses of persons entitled to notice and if notice is sent to such persons for the purposes of the hearing before the Hearing Officer, such notice shall be deemed proper.
- (6) Such notice shall state:
 - (a) the docket number and substance of the petition;
 - (b) the general location (by address of other identifiable locational or geographic characteristic) of the subject property (this does not require the identification of any real property by metes and bounds);
 - (c) the name of the petitioner;
 - (d) the time and place said petition has been set for hearing; and
 - (e) that the petition and file, including the legal description of the subject property, may be examined in the offices of the Hearing Officer.
- (7) Such notice shall also be sent in the same manner to each neighborhood organization whose boundaries include all or some part of the subject property, as delineated upon the Neighborhood Organization Map of the Department of Metropolitan Development (a copy of which is on file in the Division of Planning of the Department of Metropolitan Development and incorporated herein by reference). The Neighborhood Organization map shall be maintained as provided for in the Metropolitan Development Commission's Rules of Procedure. For purposes of such notice, the names, address, and boundaries of the Neighborhood Organization Map shall be deemed the true names, addresses and boundaries thereof.

The list of those neighborhood organizations entitled to notice shall be provided to the petitioner by the staff of the Commission.

- (8) Such notice shall also be sent in the same manner to each City-County Councillor whose District includes all or some part of the subject property as well as the At-Large City-County Councillors.

The list of those City-County Councillors entitled to notice shall be provided to the petitioner by the staff of the Commission.

C. NOTICE ON SUBJECT PROPERTY - Notice, on a form prescribed by the Metropolitan Board of Zoning Appeals, shall be posted at least ten (10) days before the date of hearing. Said notice shall be located in a conspicuous place on the subject property along each public street frontage, except Interstate highways. Said notice shall remain posted until resolution of the petition. Such notice shall not be located within any public right-of-way, unless authorized by the Administrator. The Administrator may require a nominal; refundable deposit for said notice. Deposit shall be refunded upon return of said notice within 60 days of petition resolution.

D. ADDITIONAL NOTICE For Tall Structures And Development In Noise Sensitive Areas - The petitioner applying for a petition involving a structure regulated under IC 8-21-10 shall provide evidence to the Hearing Officer that notice was delivered to any public use airport located within the distance described in IC 8-21-10-3 of the structure regulated under IC 8-21-

10 not less than sixty (60) days before the initial hearing of the petition. Said notice shall include the direction to send comments to the attention of the Hearing Officer.

2. NOTICE REQUIREMENTS FOR APPROVAL PETITIONS - Notice of all approval petitions to be heard by the hearing Officer shall be given in the following manner:

A. NOTICE BY PUBLICATION -Notice by publication shall be given by the Hearing Officer as stated in Article IV, 1. (a).

B. ADDITIONAL NOTICE BY PETITIONERS - Additional notice shall be provided as follows:

- (1) Additional notice, on a form prescribed by the Metropolitan Development Commission, shall be given by the petitioner, by registered, certified or first class mail at least ten (10) days before the date of hearing, to all neighborhood organizations notified, in the original petition, to all remonstrators' attorneys who appeared at the hearing in the original petition or, if none appeared, to the first two persons who spoke on behalf of remonstrators.
- (2) if the approval petition is not filed within twelve (12) months from the date of the decision by the Hearing Officer on the original petition, ten (10) day notice shall also be given to owners of adjoining land as stated in Article IV, 1, (b).

3. AFFIDAVIT OF NOTICE - Petitioner, his attorney or agent, shall furnish evidence of compliance with the above notice requirement by filing a notarized statement in the offices of the Hearing Officer, listing the names and addresses of property owners and neighborhood organizations to whom notice was sent and, except for approval petitions, certifying that notice was posted on the subject property. Said notarized statement shall be postmarked or filed in the offices of the Hearing Officer within three (3) business days following the mailing of the notice.

For purpose of this paragraph, "business day" shall refer to a day when the offices of the Hearing Officer are open to the public for the transaction of business for the entire period of its normal operating hours and shall exclude any day on which such offices are not open to the public for the transaction of business or any day when such offices are open for less than normal operating hours.

4. DEFECTIVE NOTICE – If proper notice pursuant to Sections 1 (b) and (c) of this Article has not been given, the Hearing Officer may continue the case until a later date to allow time for unnotified person(s) to prepare for the hearing. Personal appearance shall waive any defect in notice unless said defect is timely raised at the beginning of the hearing when the Hearing Officer is considering requests for continuances. If the failure to give proper notice is not discovered until after the hearing, the Hearing Officer may rescind the approval of a petition and may set the petition for rehearing upon proper notice given by the Petitioner.

ARTICLE V - PUBLIC HEARINGS

1. TIME AND PLACE OF PUBLIC HEARING - Regular meetings, designated as public hearings of the Hearing Officer, shall be heard in the City-County Building, Indianapolis, Indiana, at 10:00 o'clock A.M. on each Tuesday of each month.

If the regular meeting day falls on a legal holiday, such meeting shall then be held on the following Thursday, unless the Administrator determines that it would create a conflict with another scheduled hearing or meeting.

2. SPECIAL MEETINGS - Special meetings of the Hearing Officer may be called by the Hearing Officer.

Written notice of a special meeting is not required if the date, time and place of the special meeting are fixed at a previous regular meeting.

3. ALL MEETINGS AND HEARINGS PUBLIC - All regular or special meetings and hearings of the Hearing Officer shall be open to the public and petitioner(s), remonstrator(s) and other persons desiring to be heard shall have the right to give testimony in accordance with these rules.

4. ANY PARTY MAY APPEAR IN PERSON BY AGENT OR BY ATTORNEY - At hearings before the Hearing Officer, any party may appear in person, by agent or by attorney.

An attorney or other representative of any party, petitioner or remonstrator may testify as to facts of which said agent has particular knowledge relating to the issues of the petition, but in so testifying the attorney or representative shall be sworn and subject to cross examination, as are the petitioner's or remonstrator's other witnesses.

The Administrator of the Division of Planning of the Department of Metropolitan Development shall appear in person, by agent or by attorney and present evidence, statements and argument in support of, or in opposition to, the granting of any variance or the determination of any matter before the Hearing Officer.

5. APPEARANCE REQUIRED PRIOR TO TESTIMONY AND EVIDENCE BY ADVERSE PARTIES AND OTHERS-

A. Adverse parties, remonstrators or any other person speaking before the Hearing Officer to any petition pending determination and decision by the Hearing Officer shall be required to enter a written or oral appearance specifying their names and addresses prior to the presentation of testimony and evidence.

B. Where such appearance is entered at least three (3) days prior to such public hearing, the petitioner shall supply such adverse party or parties with a copy of the petition and plot plan of the property involved, upon written request to the petitioner.

6. CONTINUANCE - The Hearing Officer may, at any time, in its own discretion, continue the hearing of any petition. The Hearing Officer may refer any petition to any Division of the Metropolitan Board of Zoning Appeals.

The Hearing Officer may determine if renotification of owners of adjacent parcels, or if notification of additional interested parties shall be required if a petition is referred to one of the Divisions of the Board.

There shall be no "Automatic Continuances" of petitions scheduled before the Hearing Officer.

7. MOTION TO DISMISS - In order for a remonstrator's "motion to dismiss" to be considered by the Hearing Officer, said motion must be filed with the Administrator of the Division of Planning, and a copy served upon petitioner or designated agent, no later than the Thursday before the date of the scheduled hearing. Failure to comply with this provision shall result in summary dismissal of the "motion to dismiss" by the Hearing Officer.

8. TIME ALLOWED AND PROCEDURE FOR HEARING OF PETITIONS - Petitioners and remonstrators, respectively, shall be permitted a total of ten (10) minutes each for presentation of evidence, statements and arguments at the public hearing of every petition before the Hearing Officer, as follows:

A. **Petitioners and persons appearing in support** of the petition being heard by the Hearing Officer shall first have eight (8) minutes for the presentation of evidence, statements and argument in support of the matter being considered.

A reasonable additional time shall be allowed by the Hearing Officer for cross-examination and redirect examination of petitioner's witnesses.

B. **Remonstrators and persons appearing in opposition** to the petition shall then have eight (8) minutes for the presentation of evidence, statement and argument in opposition to the matter being considered.

A reasonable additional time shall then be allowed by the Hearing Officer for cross-examination and redirect examination of remonstrators' witnesses.

C. **Any member of the City-County Council** shall be allowed a reasonable additional time to provide testimony regarding a petition.

D. The **Administrator** in person, by agent or by attorney shall be given reasonable time by the Hearing Officer for the presentation of evidence, statements and argument in support of, or in opposition to, the matter being considered.

E. The petitioner shall then have two (2) minutes for **rebuttal** that shall include only evidence, statements and argument in rebuttal of remonstrators or the Administrator's evidence and a brief closing statement.

F. Remonstrators and persons appearing in opposition to the petition shall then have two (2) minutes for **rebuttal** that shall include only evidence, statements and argument in rebuttal of petitioner's rebuttal evidence or the Administrator's evidence and a brief closing statement.

G. A reasonable additional time may be allowed for any **member of the City-County Council** to provide rebuttal testimony.

H. Neither petitioners nor remonstrators shall be permitted to reserve for rebuttal any time not used during their initial presentations.

The Hearing Officer shall have authority to cut off repetitious and irrelevant testimony and shall have authority to extend the total ten (10) minute periods specified above, when it is appropriate in the interest of affording to all interested parties a fair hearing.

The Hearing Officer shall have authority to waive the requirements of this section, in order to conduct a hearing in a manner that he or she feels more appropriate.

9. ORDERLY CONDUCT REQUIRED - Every person appearing before the Hearing Officer shall abide by the order and direction of the Hearing Officer. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges extended by the Hearing Officer and shall be dealt with as the Hearing Officer deems fair and proper.

10. CONTACTING THE HEARING OFFICER REGARDING PENDING PETITION - PROHIBITED: ADMINISTRATOR'S WRITTEN STATEMENT OF FACTS OR OPINION TO BE FILED NOT LESS THAN THREE (3) DAYS PRIOR TO HEARING -

No person shall contact the Hearing Officer orally or in writing, in advance of a public hearing, on a petition then pending for decision with intent to influence the Hearing Officer's action on such petition except that the Administrator of the Division of Planning of the Department of Metropolitan Development or member(s) of the Division Staff, may file not less than three (3) days prior to any proposed hearing, a statement, in writing, stating any facts or opinion that is desired to be set forth with respect to such petition. If a statement is prepared, a copy of such statement shall be furnished simultaneously to all persons shown of record.

However, nothing herein shall prohibit any interested party from requesting a continuance, in writing, as provided for by these rules.

11. OBJECTIONS OR CONDITIONS OF THE ADMINISTRATOR - The Administrator, or authorized agent(s) or staff may, at any time, file a written objection to such a variance, special exception or approval petition if it would be injurious to the public health, safety, morals and general welfare of the community. If a written objection is filed, the petition shall be considered withdrawn from consideration by the Hearing Officer and shall be referred for hearing to one of the Divisions of the Metropolitan Board of Zoning Appeals.

The Administrator may indicate that he does not object to the granting of the variance, special exception or approval petition if specified conditions or commitments are attached: if the applicant for the variance, special exception or approval petition does not accept these conditions or commitments, the petition shall be considered withdrawn from consideration by the Hearing Officer and shall be referred for hearing to one of the Divisions of the Metropolitan Board of Zoning Appeals.

12. NO DECISION OR FINDING UNLESS BASED UPON FACTS IN PERMANENT RECORDS AND/OR WRITTEN STATEMENT FILED BY ADMINISTRATOR - No decision or finding of the Hearing Officer shall be made unless it is based upon facts submitted at a hearing and made a part of the permanent record and/or such written statement filed by the Administrator of the Division of Planning, the Administrator's agent or the Administrator's attorney. Provided, however, nothing herein contained shall deny the right of the Hearing Officer to inspect land involved in any petition to be heard by the Hearing Officer.

13. DISQUALIFICATION OF THE HEARING OFFICER IN CASE OF PERSONAL OR FINANCIAL INTEREST - The Hearing Officer shall, when some personal or direct or indirect financial interest in any petition exist, refer said petition to one of the Divisions of the Metropolitan Board of Zoning Appeals. The record of the particular petition concerned shall note any such disqualification.

14. AMENDMENTS TO ANY PETITION - Requests to amend any petition may be filed in writing prior to or at the beginning of any hearing, or made orally at the hearing. Any remonstrators present shall have the right to be heard on any objections they may have to such proposed amendment. It shall be within the discretion of the Hearing Officer to grant or deny requests for amendments and to require renotification in compliance with Article IV. Provided, however, any proposed amendment to modify additional standards or regulations of the applicable ordinance(s) shall be redocketed and readvertised and the petitioner shall pay an additional filing fee.

- 15. AMENDMENTS AND SUPPLEMENTS TO SUPPORTING DOCUMENTS** - Requests to amend or supplement supporting documents to any petition, including revised site plan, revised elevations, proposed commitments and conditions, must be filed no later than the Monday of the week prior to the week of the scheduled hearing. If supporting documents are amended or supplemented between the Monday of the week of the hearing, or at the hearing, it shall be within the discretion of the Hearing Officer to continue the petition. In making this determination, consideration shall be given to sufficient time to adequately review these new supporting documents.
- 16. ALL TESTIMONY UNDER OATH** - All testimony before the Hearing Officer shall be given under oath or affirmation that shall be administered by some person qualified to administer oaths.
- 17. MINUTES AND RECORD OF HEARING** - The Hearing Officer shall keep minutes of all proceedings, investigations and other official actions and in all petitions heard by the Hearing Officer; and shall record the vote on all action taken. A verbatim recording or stenographic or stenotype record, shall be made of all hearings of the Hearing Officer, and shall remain on file in the offices of the Hearing Officer. All minutes and records shall be filed in the offices of the Hearing Officer and shall be public records.
- Copies of such verbatim record of any hearing may be ordered by any party. The cost thereof shall be paid by the party ordering such copy or copies.

ARTICLE VI - FINAL DISPOSITION OF PETITIONS

- 1. DISMISSAL OF PETITIONS** - The Hearing Officer may dismiss a petition for want of prosecution or for lack of jurisdiction.
- Any petition that has been dismissed by the Hearing Officer for want of prosecution shall not again be filed for consideration by the Hearing Officer within a period of three (3) months from the date of the dismissal, unless the Hearing Officer grants an approval petition to permit a refiling of the petition.
- 2. WITHDRAWAL OF PETITIONS** - No petition may be withdrawn by the petitioner after a decision has been made by the Hearing Officer. No petition that has been withdrawn by the petitioner shall again be filed for consideration by the Hearing Officer within a period of three (3) months from the date of said withdrawal, unless the Hearing Officer grants an approval petition to permit a refiling of the petition.
- 3. TRANSFER OF PETITIONS** - The Hearing Officer, in appropriate circumstances, may transfer a variance, special exception or approval petition to the docket of any Division of the Metropolitan Board of Zoning Appeals.
- 4. REFILEING FOLLOWING ADVERSE DECISION** - A petition for a variance, special exception or approval relative to the same property may be filed with the Metropolitan Board of Zoning Appeals at any time following the denial or withdrawal of a variance, special exception or approval petition filed under this procedure.
- 5. NOTICE OF HEARING OFFICER'S DECISION** - Within five (5) days after granting a variance, special exception or approval petition, the Hearing Officer shall file with the Division of Planning a copy of his or her decision. However, if a representative of the Division of Planning appears at the hearing granting a variance, special exception or approval petition, then this appearance shall be considered notice to said Division and a copy of the decision need not be filed.

6. LETTER OF GRANT OR DENIAL - Following the Hearing Officer's action on a variance, special exception or approval petition, the Administrator of the Division of Planning shall notify the petitioner of the Hearing Officer's decision by sending the petitioner a letter of grant or denial that shall include, if a letter of grant, all conditions imposed by the Hearing Officer.

7. CONDITIONS AND COMMITMENTS - AFFIDAVIT OF COMPLIANCE

A. CONDITIONS IMPOSED BY HEARING OFFICER - AFFIDAVIT OF COMPLIANCE

- Whenever the decision of the Hearing Officer is conditioned upon petitioner's compliance with a requirement imposed by the Hearing Officer concerning construction or site development (e.g. installation of landscaping, fencing, paving, curb stops or any comparable requirement) and such condition is recited in the notice to petitioner of the Hearing Officer's decision, petitioner shall be required to notify the Administrator of the Division of Planning of the Department of Metropolitan Development of the timely fulfillment of such requirement by filing an affidavit of compliance in the offices of the Hearing Officer. If the time for fulfillment of the condition is stated in the Hearing Officer's decision, the affidavit shall be filed within thirty (30) days after the time allowed for fulfillment. If the time for fulfillment is not stated in the Hearing Officer's decision, the affidavit shall be filed within thirty (30) days after the commencement of the use of completion of construction authorized by the Hearing Officer's decision, whichever is earlier.

Failure to comply with any conditions imposed by the Hearing Officer shall constitute a violation enforceable by governmental authority pursuant to the provision of I.C.36-7-4-1014.

B. COMMITMENTS - RECORDING - If deemed advisable, the Hearing Officer may require or permit the petitioner to make written commitments concerning the use of development of the subject property.

The commitments shall be reduced to writing in **recordable form and signed by the owner(s)** of the real estate. The commitments shall authorize their recording by the Division of Planning in the office of the Recorder of Marion County, Indiana, upon the grant of the variance, special exception or approval petition by the Hearing Officer. Following the recording of the commitments, the Division of Planning shall return the original recorded commitment to petitioner and shall retain a copy of the recorded commitments in its file.

The commitments shall be in the form set forth in **Exhibit "A"** of these Rules of Procedure.

The Hearing Officer may require in such commitment the designation of any specially affected persons, who in addition to persons entitled to receive notice of the hearing under Article IV, Section (b) shall be entitled to enforcement thereof pursuant to I.C. 36-7-4-1015.

The Hearing Officer may not modify or terminate any commitment. The commitments may be modified or terminated by a decision of a Division of the Metropolitan Board of Zoning Appeals made at public hearing after proper notice has been given. Any modification or termination of the commitments approved by the Board shall not be in full force and effect until reduced to writing by the present owner(s) of the real estate, endorsed by the Board, and recorded in the office of the recorder of Marion County, Indiana

C. ADMINISTRATOR'S APPROVAL - In those petitions where a decision of the Hearing Officer is conditioned upon the petitioner's compliance with a requirement imposed by the Hearing Officer concerning construction and site development, or where the Hearing Officer requires or permits the petitioner to make written commitments concerning the use or development of the subject property, and the requirement or written commitment stipulates the review and approval official plan by the Administrator, the Administrator shall have the following authority and shall follow the following procedures in the review process:

- (1) Administrator's approval of final plans shall be obtained prior to applying for an Improvement Location Permit. It is suggested that the Administrator should be consulted early in the design stage of the project in order that any needed changes can easily be incorporated in to final plans. (This suggestion is not to be interpreted as a requirement for approval.)
- (2) The scope of review of a final plan by the Administrator may include, but not be limited to, one or more of the following development aspects:
 - (a) site layout;
 - (b) building location, configuration and design;
 - (c) parking location and configuration;
 - (d) interior traffic flow;
 - (e) ingress and egress to the development;
 - (f) sign location, size and design,
 - (g) extent, placement and specification for landscaping, fencing and screening; and,
 - (h) an illumination or lighting plan.
- (3) In exercising discretion to approve or disapprove a final plan, the Administrator shall use the following standard:
 - (a) If the condition or written commitment indicates that the applicable development aspects will comply with certain written standards (e.g. Architectural Graphics Standards) or a development example (e.g., a development project in existence in Marion County), the Administrator will be guided by the standard expressed by the written document or example.
 - (b) If a standard is not provided under a., the Administrator will be guided by the comments prepared and presented in the staff report, statements made at the hearing by the petitioner, remonstrator and other interested parties and comments made by decision-makers during the course of the hearing.

If a standard is not provided under a., and if comments and statements mentioned in b. do not provide an adequate standard, the Administrator shall consider what is "good professional practice under the circumstances". In determining what is good professional practice under the circumstances, the Administrator will be guided by the characteristics of similar development of superior quality in Marion County.

The standard applied by the Administrator is not confined to the standard that can be inferred from the development standard of the applicable zoning district and may include standards described in plan and/or testimony presented at the public hearing and agreed to in principle by the petitioner.

- (4) If the Administrator does not approve a plan submitted by the petitioner, and no alternative plan acceptable to both parties can be agreed upon, the petitioner shall have the right to appeal such action of the Administrator. Such an appeal shall be filed as a petition for a modification of commitments to approve a specific development plan.

The review fee for "Administrator's Approval" shall be assessed, and payment due, at the time of submittal.

8. APPEAL PROCEDURE -

A. FILING OF REQUEST FOR APPEAL - Any interested party, including the Administrator of the Division of Planning, may file a request for an appeal of the decision of the Hearing Officer. Such request for appeal shall be filed in the offices of the Hearing Officer no later

than by 5:00 pm of the 14th calendar day following such hearing. Said request for appeal shall simply state that the party requests a hearing by the Board of Zoning Appeals.

B. SERVICE OF REQUEST FOR APPEAL UPON OTHER PARTIES – Upon the same day as a request for appeal is filed in the offices of the Hearing Officer, a copy thereof shall be served, personally or by mailing, upon the party as follows: a remonstrator shall serve petitioner's attorney or, if none has appeared, the petitioner as named and at the address stated in the petition; a petitioner shall serve all remonstrators' attorneys who appeared at the hearing and, if none appeared, shall serve the first two persons who spoke on behalf of remonstrators, at their addresses as stated at the hearing; the Administrator of the Division of Planning, upon filing a request for appeal, shall serve both the petitioner and remonstrators above as provided. A certificate evidencing such service shall be filed with the Hearing Officer.

C. DOCKETING FOR BOARD OF ZONING APPEALS - Every petition shall automatically be placed on the docket of the next regular meeting of the Division of the Board that is to be held not sooner than five (5) business days after the expiration of the time for filing a request for an appeal in such petition, provided, however, no petition shall be so docketed until all the commitments required or allowed by the Hearing Officer, and that comply with the requirements of this Article, shall have been filed with the Administrator of the Division of Planning.

D. HEARING BY BOARD OF ZONING APPEALS IF REQUEST FOR APPEAL FILED - If a request for an appeal is properly filed, the board shall proceed to hear the petition at its first meeting at which the petition appears on its docket or at any subsequent meeting to which the same may be continued.

At such hearing, all parties, including the Administrator, shall be allowed to present evidence and argument relevant to the petition, as provided for in the Board's Rules of Procedure.

Any commitment required or allowed by the Board and submitted by the petitioner at such hearing shall comply with all requirements of form and recording set forth in the Board's Rules of Procedure. In such commitment, the Board may require the designation of any specifically affected persons or categories of specially affected person, who (in addition to persons entitled to receive notice of the petition by the Board's Rules of Procedure) shall be entitled to enforcement thereof pursuant to I.C. 36-7-4-1015. At the conclusion of such hearing, the Board shall make its decision of said petition.

E. WITHDRAWAL OF REQUEST FOR APPEAL - Any person filing a request for appeal of the decision by the Hearing Officer shall have the right to withdraw the same prior to the petition being heard by the Board of Zoning Appeals. If all such requests in a petition are withdrawn, the decision of the Hearing Officer shall stand, as it would have had the request(s) not been filed.

9. EXHIBITS - All exhibits, whether submitted by petitioner or remonstrator, shall be given an exhibit number and be retained in the files of the Hearing Officer for a period of six (6) months after the date of the hearing. At the end of ninety (90) days after the date of the hearing, such exhibits may be claimed and withdrawn by the persons submitting the same, except for commitments submitted by petitioner. At the end of such six (6) month period following the date of the hearing, the Hearing Officer may dispose of any such exhibits, that have not been claimed by the party filing the same and that are not a necessary part of any conditions or commitments, in whatever manner the Hearing Officer may deem expedient.

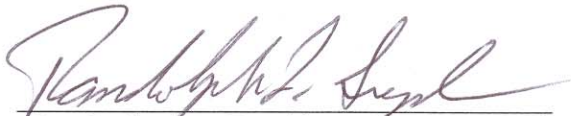
ARTICLE VII - WAIVER OF RULES

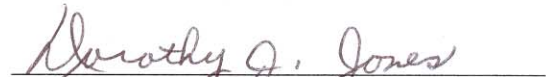
The Hearing Officer shall have the right to waive the Rules of Procedure upon his or her own motion, or upon request of an interested party, for good cause shown. However, a waiver request can not be granted that would be inconsistent with Indiana Code.

ARTICLE VII - AMENDMENTS

Amendments to these Rules of Procedure may be made by the Metropolitan Development Commission upon the affirmative vote of a majority of the members of the Commission who are entitled to vote.

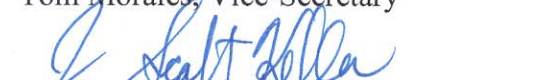
The foregoing Rules of Procedure of the Hearing Officer of the Metropolitan Board of Zoning Appeals of Marion County, Indiana, are hereby adopted by the affirmative vote of the undersigned members of the Metropolitan Development Commission, this 2nd day of December 2009. The Effective Date of this RULES OF PROCEDURE OF THE HEARING OFFICER OF THE METROPOLITAN BOARD OF ZONING APPEALS OF MARION COUNTY, INDIANA shall be January 1, 2010.


Randy Snyder, President


Dorothy J. Jones, Vice President


Tom Morales, Vice-Secretary

Diana Hamilton, Commissioner

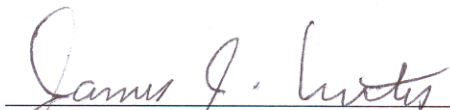

J. Scott Keller, Commissioner


Lisa Kobe, Commissioner


Tim Ping, Commissioner


Jason Gaines, Commissioner

**METROPOLITAN DEVLEOPMENT COMMISSION
OF MARION COUNTY, INDIANA**

ATTEST: 
James J. Curtis, Sr., Secretary
Metropolitan Development Commission
of Marion County, Indiana

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