

CARMEL BOARD OF ZONING APPEALS

Rules of Procedure

(Effective Date: September 28, 2020)

Article I. Powers and Duties

Section 1. Applicable Laws. The BZA shall function within the parameters of IC 36-7-4-900 *et seq.*, as amended, and as further provided by the Unified Development Ordinance of the City of Carmel (hereinafter called the "UDO").

Section 2. Open Meetings. All meetings of the BZA shall comply with the Open Door Law or Sunshine Act and any amendments thereto (IC 5-14-1.5-1 *et seq.*).

Article II. Officers and Employees

Section 1. Annual Election. At its first regular meeting of each year, the BZA shall elect from its members a Chairperson and Vice-Chairperson. The Vice-Chairperson shall have authority to act as Chairperson during the absence or disability of the Chairperson. The Chairperson and Vice-Chairperson shall serve until their respective successors are elected. In the event both the Chairperson and the Vice-Chairperson are absent from a regularly scheduled meeting, a temporary Chairperson shall be elected from the membership to chair that meeting.

Section 2. Presiding Officer. The Chairperson shall preside at all meetings of the BZA. Except as otherwise authorized by a resolution of the BZA, the Chairperson shall sign all contracts, claims against the BZA budget and other instruments made by the BZA. At each meeting, the Chairperson shall submit such recommendations and information as he or she may deem proper concerning the business, affairs and policies of the BZA. The Chairperson shall moderate all matters before the BZA following a fair, unbiased and impartial policy. The Chairperson, subject to these Rules, shall decide all points of order or procedure, unless otherwise directed by a majority of the BZA present. The Chairperson shall appoint any committee that may be found necessary by the BZA in order to undertake the duties of the BZA.

Section 3. Secretary. The BZA may appoint and prescribe the duties of a Secretary and such other employees as are necessary for the discharge of its duties, and within its budget, fix their compensation.

Section 4. Delegation of Authority. All ministerial duties of the BZA not otherwise delegated may be delegated to the Director of the Department of Community Services ("DOCS") or his/her authorized representatives, who are referred to generally in these Rules as the "Administrator".

Article III. Meetings

Section 1. Monthly Meetings. The regular meetings of the BZA shall be held on the 4th Monday of each month at 6:00 p.m. in the City of Carmel City Hall at One Civic Square, Carmel, or at such other location timely designated by the Chairperson. If the 4th Monday of the month falls on a legal holiday, the BZA shall set a substitute meeting date at a preceding regular meeting.

Section 2. Special Meetings. Special meetings of the BZA may be called by the Chairperson, by any two members upon written request to the Secretary, or as determined at a regular meeting. All members shall be notified of special meetings by the Secretary unless otherwise so notified at a regular meeting.

Section 3. Quorum. A majority of the members of the BZA shall constitute a quorum. No action is official, unless authorized by a majority of the BZA at a regular or properly called special meeting.

Section 4. Minutes. (a) The BZA shall keep minutes of its proceedings. In addition to stating the date, time, and place of each meeting and reflecting the business conducted, the minutes shall also show the names of all BZA members and supportive Staff present, indicating the late arrival or early departure of these personnel. Minutes shall include the vote of each member present and voting on every question, whether or not a final decision is rendered. Should any member(s) be disqualified from participating and voting on any application or otherwise unable to participate with the BZA, an alternate member may be appointed by the appointing body to fulfill the duties of the disqualified member.

(b) The minutes of each meeting shall be approved (or amended and approved) at the next regular meeting. The approved minutes shall become official when signed by the presiding officer and attested to by the Secretary. Copies of the minutes of the previous meeting shall be submitted to BZA members prior to the next regular meeting.

Section 5. Recordings. The BZA may record the proceedings of each meeting to substantiate and clarify the official minutes.

Section 6. Public Records. The BZA shall keep in its records all material relevant to each agenda item, including but not limited to required documents from the petitioner as part of the application; any data or evidence presented by either the petitioner and his or her supporters or by remonstrators at the public hearing; completed ballot forms; and any correspondence received by the BZA pertinent to the item. All records shall be kept in the BZA's office and shall be a matter of public record, open for inspection during business hours.

Section 7. Length of Meetings. All meetings shall terminate automatically if a quorum is not present. Should a meeting last past 11:00 p.m., the agenda item then being heard shall be concluded, and the question shall then be put to the members as to whether to take up any

further business or to recess the meeting to a time unanimously agreed upon for the purpose of completing that agenda. A majority of the quorum present shall decide the issue, a tie vote being considered a vote to recess. A recessed meeting shall not be considered a special meeting, although the Secretary shall be required to notify any members who were not in attendance at the regular meeting of the date, time and place of such recess.

Section 8. Conduct of Meetings. Unless otherwise provided for in these Rules, all meetings shall be conducted according to *Robert's Rules of Order*, as revised.

Section 9. Virtual Participation. (a) A BZA member who is not physically present at a meeting of the BZA may communicate with other BZA members during the meeting by telephone, computer, videoconferencing, or any other electronic means of communication, including electronic mail. Unless authorized by law or pursuant to an executive order duly issued by the Governor of the State of Indiana, such a member:

- (1) may not participate in final action taken at the meeting; and
- (2) may not be considered to be present at the meeting for quorum purposes.

(b) The minutes of any meeting in which a BZA member participates by using a means of communication described in Paragraph A must state the name of:

- (1) each member who was physically present at the place where the meeting was conducted;
- (2) each member who participated in the meeting by using a means of communication described in Paragraph A; and
- (3) each member who was absent.

Article IV. Agendas

Section 1. Preparation. The Administrator shall review any application to be placed on the BZA's agenda for technical and legal compliance with the terms of the UDO before entering it on the BZA's agenda. In placing any item on a given agenda, care shall be taken that the petitioner has sufficient time to comply with the notification requirements for advertising and legal notice to interested parties.

Section 2. Docketing. All items appearing on the BZA's agenda for the first time shall be assigned a docket number by the BZA or its delegate who shall also set a date, time and place for any required public hearing. Each item shall be numbered individually and consecutively in the order in which the applications are placed on the agenda. The docket numbers shall begin anew on January 1st of each year and shall include the assigned number, the year, and the appropriate letter identifying the type of case to be heard. These identifying letters shall be:

A	=	Appeal of a decision or determination of the Director of the Department of Community Services
CM	=	Commitment Modification
CT	=	Commitment Termination
I	=	Appeal of an Interpretation of the Official Zoning Map
N	=	Appeal of Nonconforming Use Determination
SE	=	Special Exception
SU	=	Special Use
V	=	Development Standards Variance
UV	=	Use Variance
R	=	Revocation of Approval

Section 3. TAC. Any application to the BZA which involves land usage in any way shall be sent to the Technical Advisory Committee (TAC) for its review and recommendations prior to being heard by the BZA. This Section does not apply to applications for a Special Exception.

Section 4. Filing Fees. Petitions not initiated by the BZA itself shall be accompanied by a non-refundable filing fee as established by the UDO.

Section 5. Notice of Fee Changes. When amending Section 4 of this Article dealing with Filing Fees, the BZA shall publish a public notice as required by Article VI of these Rules.

Section 6. Standard Agenda. The order of business on the agenda for each regular meeting shall be:

- A. Call to Order
- B. Pledge of Allegiance
- C. Swearing in of Members (when applicable)
- D. Roll Call
- E. Declaration of a Quorum
- F. Approval of Minutes of Previous Meeting(s)
- G. Election of Officers (when applicable)
- H. Communications, Bills, and Expenditures
- I. Reports, Announcements, and Legal Counsel Report
- J. Public Hearings
- K. Old Business
- L. New Business
- M. Adjournment

Section 7. Order of Business. All items on the agenda for each meeting shall appear, under the proper heading, in the order of their assigned docket numbers unless otherwise ordered by the BZA.

Section 8. Circulation of Materials. (a) Copies of the agenda and support documentation for the items appearing at the regular meeting shall be submitted to the BZA members no less than 10 days prior to the meeting. If support information on a particular item is not received by the BZA 10 days prior, the item will be tabled until the next regularly scheduled meeting. Deletions, but not additions, to the agenda may be submitted to the BZA at a regularly scheduled meeting. The agenda for a special meeting may be submitted at the time of the special meeting, but shall include only the item or items for which the meeting was specifically called.

(b) Written statements and/or letters from the public which are intended to influence the BZA members' action on a matter pending before the BZA may be submitted to the Administrator not less than 10 days prior to the meeting. Pursuant to IC 36-7-4-920(g), and not less than five days prior to the meeting, the Administrator shall then file with the BZA a written statement setting forth any facts or opinions of the Staff relating to the matter. The Administrator shall include with the Staff's statement copies of all public statements or opinions that have been timely received under this subsection (b). If a statement or letter is not timely received under this subsection, it may still be distributed to the members of the BZA at the meeting at which the hearing on the matter is held.

Article V. Appeals

Section 1. Filing. An appeal from any order, requirement, decision, or determination made by an administrative official or board charged with the enforcement of the UDO shall be filed with the BZA.

Section 2. Time for Filing. (a) The appeal shall be filed with the BZA within 30 days of the decision of the enforcing official or board that is being contested. In those cases where the thirtieth day falls on a Saturday, a Sunday, a legal holiday, or a day on which the office of the BZA is closed, the filing deadline shall be extended to the end of the next business day.

(b) The appeal shall be filed in duplicate on a form provided by the BZA and shall specify the grounds thereof in such a manner as to fully inform the BZA of all facts and elements involved, including a clear statement of the reason(s) why the petitioner deems the appeal to be justified. Any communication purporting to be an appeal or petition shall be regarded as a mere notice of intention to seek relief and shall be of no force or effect until made in the form required.

(c) When appropriate, the petitioner shall provide the BZA with copies of any documents supporting his or her case.

(d) The Administrator shall review the application and place it on the BZA's agenda when it is in technical and legal compliance.

Section 3. Docketing. Following placement on the agenda, the BZA or its delegate shall assign a docket number and fix a date, time and place for the public hearing. The Administrator shall so notify the petitioner.

Section 4. Transmission of Documents. The administrative official or board from whom the appeal is taken shall, upon request of the BZA, transmit to it all documents, plans, papers, etc., leading to the decision being appealed.

Section 5. Stay of Work. When an appeal has been filed with the BZA, proceedings on the premises affected shall be stayed unless the official or board certifies to the BZA that a stay would cause imminent peril to life or property. In that case proceedings may only be stayed by a restraining order. The BZA may issue a restraining order after application, notice to the officer or board and to the owner of the premises affected, and upon due cause shown. The official or board charged with the enforcement of the UDO may call upon the police power of the City to give effect to that order.

Article VI. Notice of Hearings

Section 1. Appeals; Revocations. Subject to the provisions of IC 36-7-4-900 *et seq.*, public hearings shall be held on all appeals from decisions of the administrative official or board charged with enforcement of the UDO, or before the BZA considers whether to revoke any approval previously granted by the BZA.

Section 2. Variances, etc. Subject to the provisions of the UDO, public hearings shall be held on all variance or other applications.

Section 3. Publication. (a) In appeals and applications for commitment amendments, variances, and other applications to be heard by the BZA, a legal notice of the public hearing shall be prepared by the petitioner and advertised in a locality newspaper that circulates within the City, not less than 20 days prior to the hearing, not including the date of the hearing itself.

(b) In applications for development standards variances or special uses/exceptions to be heard by a BZA Hearing Officer under Article IX of these Rules, a legal notice of the public hearing shall be prepared by the petitioner and advertised in a locality newspaper that circulates within the City, not less than 10 days prior to the hearing, not including the date of the hearing itself.

(c) For purposes of consideration, a locality newspaper that circulates within the City, in accordance with the Indiana Code, would be the Current in Carmel. However, where the affected area is located within or adjacent to the 46074 postal ZIP Code, the Administrator may direct that the Current in Westfield be deemed to be a locality newspaper that circulates within the City; and, where the affected area is located within or adjacent to the 46077 postal ZIP Code, the Administrator may direct that the Current in Zionsville be deemed to be a locality newspaper that circulates within the City. Where the affected area is located within or adjacent to the 46240, 46260, 46268, 46280, or 46290 postal ZIP Code, the Administrator may direct that the Indianapolis Star be deemed to be a locality newspaper that circulates within the City.

(d) The petitioner shall assume the cost of said notice. Three business days prior to the date of the public hearing, the petitioner shall deliver to the Administrator a copy of the notice mailed (or hand delivered) to the interested parties, a copy of the Certificate of Mailing from the United States Postal Service (or the signed receipts whenever notices were hand delivered), and an affidavit from the publisher certifying the date that the notice was published.

Section 4. Standard Form. The petitioner is encouraged to use the standard “Public Notice” form available from the Administrator.

Section 5. Interested Parties. (a) The petitioner shall give due notice to interested parties, which shall include the owners of every property adjoining and abutting the affected area, including property across a public right-of-way. Due notification shall be accomplished by first class letter with a Certificate of Mailing (or notices may be hand delivered if signed receipts are obtained from the interested parties). Notification must be sent or hand delivered not less than 20 days (or 10 days, for applications to be heard by a BZA Hearing Officer) prior to the hearing and must include the location and nature of the subject petitioned or appealed, and give the date, time, and place for the public hearing.

(b) The petitioner shall be responsible for obtaining a certified list of the names and current addresses of the owners of such adjoining and abutting property owners from the records on file in the office of the Hamilton County Auditor in Noblesville, Indiana, and shall provide the Administrator with two copies of this list certified by the Auditor against which to check the signed receipts of the notice.

(c) Whenever any adjoining or abutting property lies across the county line, then the petitioner shall be responsible for obtaining a certified list of the names and current addresses of such adjoining and abutting property owners from the records on file in the office of the Boone County Auditor or Marion County Auditor, as the case may be, and shall provide the Administrator with two copies of this list certified by that Auditor against which to check the sufficiency of the notice.

Section 6. Signs. The petitioner shall also serve notice to the general public by placing a sign per the approval of the Administrator (size and placement) on site of the petition. The sign shall be placed no less than 20 days (or 10 days, for applications to be heard by a BZA Hearing Officer) prior to the public hearing and removed no more than three days after.

Section 7. Pre-hearing Conference. (a) Regarding any agenda item pending before it, the Administrator may request, or the BZA in its discretion may direct, the attorneys for the petitioner and all interested parties to meet with the Administrator for a pre-hearing conference to consider:

- (1) the simplification of the issues;
- (2) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (3) a limitation of the number of expert witnesses;
- (4) an exchange of names and witnesses to be called during the hearing and the general nature of their expected testimony;
- (5) the desirability of using one or more types of alternative dispute resolution before the hearing is held; and
- (6) such other matters as may expedite the disposition of the agenda item.

(b) The Administrator shall give at least 10 days notice of the pre-hearing conference unless otherwise directed by the BZA. At least one attorney planning to take part in the hearing shall appear for each of the parties and participate in the conference.

(c) Each attorney shall completely familiarize himself or herself with all aspects of the pending item in advance of the conference and be prepared to enter into stipulations with reference to as many facts and issues and exhibits as possible.

(d) If necessary or advisable, the Administrator may adjourn the pre-hearing conference from time to time or may order an additional pre-hearing conference.

(e) If, following the pre-hearing conference or during the hearing, counsel discovers additional exhibits or the names of additional witnesses, the same information required to be disclosed at the conference shall be immediately furnished opposing council. The original of any such disclosure shall immediately be filed with the Administrator and shall indicate the date it was furnished opposing counsel.

Article VII. Conduct of Hearings

Section 1. Time. A public hearing that has been legally advertised and noticed to be held at a given meeting may start later than the stated time if prior items on the agenda are running late, but in no case may it start earlier than the advertised time.

Section 2. Recusal. No member of the BZA shall participate in the hearing and determination of a zoning matter in which he or she has a direct or indirect financial interest. Any disqualification of a member shall be included in the minutes, and an alternate member may be appointed to participate as a member concerning that particular item.

Section 3. Voting. All members present at a given meeting shall vote on all questions before the BZA unless they are disqualified from participating by state law. No abstentions from voting shall be allowed.

Section 4. Lack of Notice. If proof of proper legal notice and/or notice to adjoining and abutting property owners is not presented to the Administrator by the petitioner prior to the public hearing, not counting the hearing date itself, the petition shall be tabled and rescheduled for the next regular meeting. Public announcement of this change at the originally scheduled meeting shall be deemed sufficient notice to all parties. Should a question concerning defect in notice be raised, it must be raised prior to the start of the hearing, although personal appearance by such an owner shall waive the defect.

Section 5. Failure to Appear. The petitioner, petitioner's attorney or their representative with proper power of attorney must be present in order for a public hearing to be held as scheduled. However, written appearances by those augmenting the presentation, as well as by those either supporting or remonstrating against it will be accepted prior to or during the public hearing. Failure of the petitioner or their representative to appear will result in the petition being tabled and rescheduled for the next meeting, unless those remonstrating against it object to the tabling, in which case the BZA may vote to dismiss the petition for lack of prosecution. Public announcement of this change or dismissal at the originally scheduled meeting will be deemed sufficient notice to all parties.

Section 6. Tabling. (a) If only a majority (3 out of 5 members) of the BZA are available to hear any agenda item, thereby requiring that the petitioner receive an affirmative vote from all members present in order to prevail, the petitioner may request that the BZA table his or her agenda item once, with the reasonable expectation that more members will be available at the next meeting. In order to exercise this option, however, he or she must request the tabling prior to the start of the hearing of that agenda item, by informing the Chairperson.

(b) If the petitioner wishes to request a tabling for any other reason, he or she shall inform the Administrator not less than five days prior to the meeting. However, the BZA shall grant a petitioner only one tabling under this subsection (b), unless the petitioner agrees to provide new notices of the public hearing as required by Article VI of these Rules.

(c) This Section does not prohibit a petitioner from withdrawing his or her agenda item less than five days prior to the meeting at which it is to be heard. However, any item so withdrawn must then be re-filed with the BZA, and the petitioner must provide new notices of the public hearing as required by Article VI of these Rules.

(d) Whenever the BZA grants a one-time tabling under subsection (a) or (b), public announcement of the change of hearing date at the originally scheduled meeting will be deemed sufficient notice to all parties.

Section 7. Continuances. (a) The BZA, at its own discretion, may continue or postpone the hearing of any agenda item upon the affirmative vote of a majority of the members present. Such a continuance or postponement will not be considered a tabling requested or otherwise caused by the petitioner.

(b) Whenever the BZA continues or postpones the hearing of an agenda item under subsection (a), public announcement of the continuance or change of hearing date at the originally scheduled meeting will be deemed sufficient notice to all parties.

Section 8. Oral Amendments. During a hearing, the petitioner may offer oral amendments to their petition, all of which must be made a part of any motion to approve and so indicated on the official Findings of Fact attested to by the Secretary. The petitioner and/or their representative shall be required to sign the official Findings of Fact to indicate their willingness to comply with any oral amendments. However, should the BZA determine that any proposed amendments are material or substantial enough to warrant further review by the Administrator or an additional public hearing before final action is taken, the petitioner shall be required to table his or her petition and submit a written amended petition.

Section 9. Motion to Approve. Once a motion to approve a petition has been made and seconded, members may further discuss the petition. Once members have been asked to vote by filling out their ballots, no further discussion, tabling, or amending of the petition will be allowed, and a vote may be taken only on the application as presented. Should any facts brought out in a BZA meeting or hearing indicate that more terms of the UDO are being varied than were actually applied for, procedures for amending of the petition must be followed before the BZA can take action on that aspect of a proposal.

Section 10. Failure to Prosecute. If a petition is tabled as a result of Section 4, 5, 6, 7, 8 or 9 of this Article, the petitioner must take affirmative action on the petition in time to be heard at the next regularly scheduled meeting of the BZA. If no such action has been taken, the BZA may vote to dismiss the petition for lack of prosecution. Affirmative action shall include withdrawing the petition, proceeding with the petition as originally filed, or amending the petition and presenting it as amended.

Section 11. Written Amendments. (a) If a petition has been tabled for any reason and at any point prior to taking a vote, the petitioner shall have the right to file one amended petition. All such amendments must be in written form and must be submitted for review by the Administrator, prior to the next meeting. It shall be left to the discretion of the Administrator as to whether or not the nature of the amendment(s) indicate that the petitioner should take necessary steps to re-notice their application or be required to submit his or her amended petition to the TAC for its review and recommendations prior to appearing before the BZA.

(b) Payment of any fees associated with the amendment procedure shall be as set forth in Article IV, Section 4 of these Rules. In all cases when an amended petition is presented to the BZA, the public hearing shall be reopened.

Section 12. Decorum. Orderly conduct shall be required of every person appearing before the BZA or attending a BZA meeting. All persons shall abide by these Rules and the direction of the Chairperson. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the BZA and shall be dealt with as the BZA or the Chairperson directs. All persons recognized by the Chairperson shall rise and identify themselves by name

and community in which he or she resides before addressing the BZA.

Section 13. Times. The procedure to be followed for the holding of a public hearing shall be as follows:

- (1) The Chairperson shall officially open the public hearing. During the hearing, the Chairperson may limit the length of time all persons may speak or request that repetitious statements by different speakers be avoided in order to reasonably limit the length of the hearing.
- (2) The petitioner shall make his or her presentation (15 minutes), with the burden of providing all necessary information for a clear understanding of the application falling upon him or her.
- (3) Statements and/or letters from the public in support of the project will be heard (5 minutes).
- (4) Statements and/or letters from the public in remonstrance against the project will be heard (15 minutes).
- (5) The petitioner may make a brief rebuttal to any public remonstrance (5 minutes).
- (6) To maintain orderly procedure, each side should proceed without interruption by the other side.
- (7) Following public remonstrance and petitioner rebuttal, the TAC reports or Administrator recommendations concerning the application will be heard.
- (8) The BZA members shall have an opportunity to question the petitioner concerning the application. As deemed necessary, members may also ask for clarification of points made by the public or may request a legal opinion from the BZA's counsel regarding any aspect of the petition.
- (9) The Chairperson shall ask if the BZA is ready to proceed to a vote and close the public hearing.
- (10) A member of the BZA may make an appropriate motion for disposition of the case, which must then be seconded by another member. Any conditions to the approval of an application must be so stated in the motion.
- (11) Further discussion may be called for. Any amendments to the motion itself must be made, seconded, discussed and voted on, and the question shall then be put to the BZA.

Article VIII. Final Disposition of Cases

Section 1. Recording of Votes. All decisions of the BZA, on matters heard in public hearings, shall be by record vote. The Chairperson shall publicly announce the decisions of the BZA for purposes of recording in the minutes. The vote of each member shall be a matter of permanent record.

Section 2. Ballots. Voting shall be by written ballots. Ballots shall be filled out by all voting members on each issue before the BZA except internal BZA procedural issues (electing officers, hiring employees, adopting rules, etc.) or in such a case as the BZA concludes that ballots are unnecessary or inappropriate.

Section 3. Findings. A majority of the entire membership of the BZA must approve the petition. The BZA may adopt written findings of fact as submitted by the petitioner or by any interested party, with or without modifications, specifications, or limitations, or the BZA may delegate to its counsel and/or the Administrator the authority to prepare written findings. The BZA's written findings shall be executed by the Chairperson and Secretary of the BZA and filed in the office of the BZA within 45 days after the date of the BZA's decision.

Section 4. No Decision Vote. In the event that a vote on an application before the BZA results in a tie vote or does not receive the necessary majority vote to decide the issue, a "no decision vote" will be declared. The petition shall immediately be scheduled for rehearing at the subsequent month's meeting. When the petition is heard at the subsequent month's meeting, the petitioner may make a brief recapitulation of their previous presentation and may elect to amend it or to present additional evidence in support of it. Any public hearing which was held when the application was originally presented shall be reopened to remonstrance or to address any proposed amendments or any new evidence which has been introduced.

Section 5. Final Decision. (a) The final disposition of any appeal before the BZA shall be in the form of a decision either reversing or modifying the requirement, order, decision, or determination appealed from or affirming the requirement, order, decision, or determination and denying the appeal. The BZA may adopt written findings of fact as submitted by the petitioner, by the respondent, or by any interested party, with or without modifications, specifications, or limitations, or the BZA may delegate to its counsel the authority to prepare written findings.

(b) The BZA's written findings shall be executed by the Chairperson and Secretary of the BZA and filed in the office of the BZA within 45 days after the date of the BZA's decision. The BZA may dismiss an appeal for lack of jurisdiction.

Section 6. Effect of Withdrawal/Dismissal. An application which has been withdrawn by the petitioner or dismissed by the BZA for lack of prosecution shall not be placed on the agenda for consideration within a period of three months following the date of withdrawal or dismissal from the agenda of the BZA.

Section 7. Effect of Adverse Decision. (a) A development standards variance or special use application which has been decided adversely to the petitioner shall not be placed again on the BZA's agenda for consideration until the legality of the BZA's decision is finally determined pursuant to IC 36-7-4-1600 *et seq.*, or for a period of six months following the date of the adverse decision issued by the BZA, whichever is later. In addition, whenever a development standards variance or special use application has been decided adversely to the petitioner, the property involved in the application shall not be the subject of a different application for a period of three months following the date of the denial.

(b) A use variance application which has been decided adversely to the petitioner shall not be placed again on the BZA's agenda for consideration until the legality of the BZA's decision is finally determined pursuant to IC 36-7-4-1600 *et seq.*, or for a period of 12 months following the date of the adverse decision issued by the BZA, whichever is later. In addition, whenever a use variance application has been decided adversely to the petitioner, the property involved in the application shall not be the subject of a different use variance application, or any special use application or rezone proposal (subject to Carmel Plan Commission Rules), for a period of six months following the date of the adverse decision issued by the BZA.

(c) Pursuant to UDO Section 9.08.B.7, a special exception application which has been decided adversely to the petitioner shall not be placed again on the BZA's agenda for consideration until the legality of the BZA's decision is finally determined pursuant to IC 36-7-4-1600 *et seq.*, or for a period of 12 months following the date of the adverse decision issued by the BZA, whichever is later. In addition, whenever a special exception application has been decided adversely to the petitioner, the property involved in the application shall not be the subject of a different special exception application, or any use variance application or rezone proposal (subject to Carmel Plan Commission Rules), for a period of six months following the date of the adverse decision issued by the BZA.

Section 8. Lack of Jurisdiction. Any action which results in a determination by the BZA that it lacks jurisdiction over any application before it shall not be considered an adverse decision against the petitioner as defined in Section 7 of this Article. Following a decision that it lacks jurisdiction, the BZA may vote to refund filing fees.

Section 9. Pursuant to IC 36-7-4-1015(a), as a condition to an application for a Special Use/Exception or Variance, the BZA may require or allow the owner of a parcel of real property to make a commitment to the BZA concerning the use or development of that parcel. Pursuant to IC 36-7-4-1015(c), the BZA hereby declares that the criteria to be considered when an owner applies for a modification or termination of a commitment are the same criteria that applied when the BZA (or Hearing Officer) granted its conditional approval.

Article IX. Hearing Officers

Section 1. Monthly Meetings. Pursuant to the alternate procedure authorized by Section 9.15(G) of the UDO, regular hearings shall be conducted by a BZA Hearing Officer on the 4th Monday of each month at 5:00 p.m. in the City of Carmel City Hall at One Civic Square, Carmel, or at such other time and location timely designated by the Chairperson of the BZA. However, no hearings shall be conducted on any legal holiday.

Section 2. Powers and Duties. Any BZA Hearing Officer has the power of the BZA to approve or deny a variance from the development standards of the UDO, or a special use, after a public hearing conducted in accordance with these Rules. A Hearing Officer shall make a decision on any application that he or she hears, at the conclusion of the hearing (including any continuance or postponement thereof) on that application. Within five days after making any decision, the Hearing Officer shall file in the Office of the BZA a copy of his or her decision.

Section 3. Procedure. Unless otherwise provided for in this Article IX, all hearings before a Hearing Officer shall be conducted, insofar as practicable, in accordance with Articles III, IV, VI, and VII of these Rules. In particular, the minutes and records of all proceedings before a Hearing Officer shall be kept in accordance with Article III, Sections 4 through 6. If a petition before a Hearing Officer is tabled as a result of Article VII, Section 4, 5, 6, 8, or 9, the petitioner must take affirmative action on the petition in time to be heard at the next regularly scheduled meeting of the BZA, as provided in Article VII, Section 10.

Section 4. Agendas. (a) After the Administrator has reviewed and accepted any development standards variance or special use application under Article IV, Section 1 of these Rules, the Administrator may, pursuant to Section 9.15(G) of the UDO, place the application upon a Hearing Officer's agenda instead of placing the application upon the agenda for a regular meeting of the BZA.

(b) Copies of each application on a Hearing Officer's agenda shall also be submitted to all members of the BZA, no less than 10 days before the scheduled hearing date for that agenda. Any member of the BZA may then communicate with the Administrator if in the opinion of the member an application should be placed upon the agenda for a regular meeting of the BZA. The Administrator shall then remove such application from the Hearing Officer's agenda and place it on the agenda for a regular or special meeting of the BZA.

(c) In addition, whenever a Hearing Officer is of the opinion that an application should be heard by the entire membership of the BZA, then the Hearing Officer shall so advise the Administrator, and the Administrator shall then remove such application from the Hearing Officer's agenda and place it on the agenda for a regular or special meeting of the BZA.

Section 5. Removal of Agenda Item. (a) The Administrator may, not less than five days before a hearing before a Hearing Officer, remove any application from the Hearing Officer's agenda if in the opinion of the Administrator:

(1) the approval of the development standards variance or special use may be found to be injurious to the public health, safety, morals, and general welfare of the community; or

(2) the use or value of the area adjacent to the property included in the variance or use may be found to be affected in a substantially adverse manner.

(b) If the Administrator removes an application from a Hearing Officer's agenda, the application shall be considered withdrawn, or shall be transferred to the agenda of the BZA if requested by the petitioner.

Section 6. Recommendations. The Administrator may, not less than five days before a hearing before a Hearing Officer, indicate that the Administrator has no objection to the approval of a development standards variance or special use by the Hearing Officer if specified conditions are attached to the approval. If the petitioner does not accept these conditions, the application shall be considered withdrawn, or shall be transferred to the agenda of the BZA if requested by the petitioner.

Section 7. Commitments. Following the hearing of any application under the alternate procedure described in this Article IX, a Hearing Officer may impose conditions and may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel, as provided in IC 36-7-4-1015(a) and these Rules. If the petitioner fails to accept these conditions or fails to make the commitment, the application shall be considered withdrawn, or shall be transferred to the agenda of the BZA if requested by the petitioner. The Hearing Officer may not modify or terminate any commitment, whether made under the alternate procedure or pursuant to an approval by the BZA. Such a commitment may be modified or terminated only by the BZA itself.

Section 8. Appeals. (a) The provisions of this Section apply to any appeal from a decision of a Hearing Officer, notwithstanding Articles V and VI of these Rules.

(b) A decision of a Hearing Officer may not be a basis for judicial review, but it may be appealed to the BZA. The BZA shall conduct a new hearing on the matter and shall not be bound by any findings of fact made by the Hearing Officer. A person who wishes to appeal a decision of the Hearing Officer must file the appeal with the BZA within five days after the decision is made, as provided in IC 36-7-4-924.

(c) An appeal under this Section shall be filed in duplicate on a form provided by the BZA and shall specify the grounds thereof in such a manner as to fully inform the BZA of all facts and elements involved, including a clear statement of the reason(s) why the appellant deems the appeal to be justified. Any communication purporting to be an appeal shall be regarded as a mere notice of intention to seek relief and shall be of no force or effect until made on the form required.

(c) When appropriate, the appellant shall provide the BZA with copies of any documents supporting his or her case. The Administrator shall review the appeal and place it on the BZA's agenda when it is in technical and legal compliance. Following placement on the agenda, the BZA or its delegate shall assign a docket number and fix a date, time, and place for the public hearing. The Administrator shall so notify the appellant.

(d) When an appeal has been filed under this Section, proceedings on the premises affected shall be stayed unless the Administrator certifies to the BZA that a stay would cause imminent peril to life or property. In that case, proceedings may be stayed only by a restraining order. The BZA may issue a restraining order after application, notice to the owner of the premises affected, and upon due cause shown. The Administrator may call upon the police power of the City or County to give effect to that order.

(e) In appeals under this Section, a legal notice of the public hearing shall be prepared by the appellant and advertised in a locality newspaper that circulates within the City, not less than 10 days prior to the hearing, not including the date of the hearing itself. The appellant is encouraged to use the standard "Public Notice" form available from the Administrator. The appellant shall assume the cost of said notice.

(f) The appellant shall give due notice to interested parties as determined under Article VI, Section 5 of these Rules. Such notification must otherwise comply with Article VI, Section 5 of these Rules.

(g) The appellant shall also serve notice to the general public by placing a sign per the approval of the Administrator (size and placement) on site of the petition. The sign shall be placed no less than 10 days prior to the public hearing and removed no more than three days after.

(h) Regarding any appeal pending before it under this Section, the Administrator may request, or the BZA in its discretion may direct, the attorneys for the appellant and all interested parties to meet with the Administrator for a pre-hearing conference to consider any or all matters listed in Article VI, Section 7 of these Rules. Such a conference shall be conducted in accordance with Article VI, Section 7, subsections (b) through (e).

Section 9. No Suspensions. A Hearing Officer shall not have the right to suspend these Rules.

Article X. Special Exception Process

Section 1. Notice and Hearing. Subject to the provisions of Section 9.08 of the UDO, public hearings shall be held on all applications for the establishment or renewal of a Special Exception. The applicant shall be responsible for the cost and publication of the required notices of the public hearing. However, no notice by publication is required for an application for the renewal of a Special Exception.

Section 2. Publication. A legal notice of the public hearing for the initial establishment of a Special Exception shall be prepared by the applicant and advertised in a locality newspaper that circulates within the City, not less than 10 days prior to the hearing, not including the date of the hearing itself. The applicant is encouraged to use the standard “Public Notice” form available from the Administrator.

Section 3. Locality Newspaper. For purposes of consideration, a locality newspaper that circulates within the City, in accordance with the Indiana Code, would be the Current in Carmel. However, where the affected area is located within or adjacent to the 46074 postal ZIP Code, the Administrator may direct that the Current in Westfield be deemed to be a locality newspaper that circulates within the City; and, where the affected area is located within or adjacent to the 46077 postal ZIP Code, the Administrator may direct that the Current in Zionsville be deemed to be a locality newspaper that circulates within the City. Where the affected area is located within or adjacent to the 46240, 46260, 46268, 46280, or 46290 postal ZIP Code, the Administrator may direct that the Indianapolis Star be deemed to be a locality newspaper that circulates within the City.

Section 4. Interested Parties. (a) The applicant shall give due notice to interested parties, which shall include the owners of property adjoining and abutting the affected area, including property across a public right-of-way. Notification to interested parties shall be accomplished by first class letter with a Certificate of Mailing (or notices may be hand delivered if signed receipts are obtained from the interested parties). Notification must be sent or hand delivered not less than 10 prior to the hearing and must include the location and nature of the Special Exception, and give the date, time, and place for the public hearing.

(b) The applicant shall be responsible for obtaining a certified list of the names and current addresses of the owners of such adjoining and abutting property owners from the records on file in the office of the Hamilton County Auditor in Noblesville, Indiana, and shall provide the Administrator with two copies of this list certified by the Auditor against which to check the signed receipts of the notice.

(c) Whenever any adjoining or abutting property lies across the county line, then the petitioner shall be responsible for obtaining a certified list of the names and current addresses of such adjoining and abutting property owners from the records on file in the office of the Boone County Auditor or Marion County Auditor, as the case may be, and shall provide the Administrator with two copies of this list certified by that Auditor against which to check the sufficiency of the notice.

Section 5. Proof of Notice. Three business days prior to the date of the public hearing, the applicant shall deliver to the Administrator a copy of the notice mailed (or hand delivered) to the interested parties, a copy of the Certificate of Mailing from the United States Postal Service (or the signed receipts whenever notices were hand delivered), and (for an initial application) an affidavit from the publisher certifying the date that the notice was published.

Section 6. General Public. The applicant shall also serve notice to the general public by placing a sign per the approval of the Administrator (size and placement) on site of the petition. The sign shall be placed no less than 10 days prior to the public hearing and removed no more than three days after.

Section 7. Monthly Meetings. Regular hearings under this Article shall be conducted by a BZA Hearing Officer on the 4th Monday of each month at 5:00 p.m. in the City of Carmel City Hall at One Civic Square, Carmel, or at such other time and location timely designated by the Chairperson of the BZA. However, no hearings shall be conducted on any legal holiday.

Section 8. Decisions. Any BZA Hearing Officer has the power to approve or deny a Special Exception after a public hearing conducted in accordance with these Rules. A Hearing Officer shall make a decision on any application that he or she hears, at the conclusion of the hearing (including any continuance or postponement thereof) on that application. Within five days after making any decision, the Hearing Officer shall file in the Office of the BZA a copy of his or her decision.

Section 9. Procedure. Unless otherwise provided for in this Article X, all hearings before a Hearing Officer shall be conducted, insofar as practicable, in accordance with Articles III, IV, VI, and VII of these Rules. In particular, the minutes and records of all proceedings before a Hearing Officer shall be kept in accordance with Article III, Sections 4 through 6.

Section 10. Renewals. The Administrator may, not less than five days before a hearing before a Hearing Officer on a renewal application, indicate that the Administrator has no objection to the renewal of the Special Exception. In such cases, the renewal of the Special Exception shall generally be entitled to favorable consideration.

Section 11. Commitments. Following the public hearing on an application for a Special Exception, the Hearing Officer may, as a condition to approval (of either an initial or renewal application), permit or require the owner of the subject property to make written commitments as described in Section 9.08(E) of the UDO. If the applicant fails to accept the condition or the owner fails to make the commitment, the application shall be considered withdrawn. The Hearing Officer may not modify or terminate any commitment, whether made under this Article or pursuant to an approval by the BZA. Such a commitment may be modified or terminated only by the BZA itself.

Section 12. Appeals. (a) The provisions of this Section apply to any appeal from a decision of a Hearing Officer under this Article, notwithstanding Articles V and VI of these Rules.

(b) A decision of a Hearing Officer may not be a basis for judicial review, but it may be appealed to the BZA. The BZA shall conduct a new hearing on the matter and shall not be bound by any findings of fact made by the Hearing Officer. A person who wishes to appeal a decision of the Hearing Officer must file the appeal with the BZA within five days after the decision is made, as provided in IC 36-7-4-924.

(c) An appeal under this Section shall be filed in duplicate on a form provided by the BZA and shall specify the grounds thereof in such a manner as to fully inform the BZA of all facts and elements involved, including a clear statement of the reason(s) why the appellant deems the appeal to be justified. Any communication purporting to be an appeal shall be regarded as a mere notice of intention to seek relief and shall be of no force or effect until made on the form required. When appropriate, the appellant shall provide the BZA with copies of any documents supporting his or her case. The Administrator shall review the appeal and place it on the BZA's agenda when it is in technical and legal compliance. Following placement on the agenda, the BZA or its delegate shall assign a docket number and fix a date, time, and place for the public hearing. The Administrator shall so notify the appellant.

(d) When an appeal has been filed under this Section, proceedings on the premises affected shall be stayed unless the Administrator certifies to the BZA that a stay would cause imminent peril to life or property. In that case, proceedings may be stayed only by a restraining order. The BZA may issue a restraining order after application, notice to the owner of the premises affected, and upon due cause shown. The Administrator may call upon the police power of the City to give effect to that order.

(e) In appeals under this Section, a legal notice of the public hearing shall be prepared by the appellant and published in a locality newspaper that circulates within the City, not less than 10 days prior to the hearing, not including the date of the hearing itself. The standard "Public Notice" form available from the Administrator shall be used. The appellant shall assume the cost of said notice.

(f) The appellant shall give due notice to interested parties as determined under Article VI, Section 5 of these Rules. The appellant shall also serve notice to the general public by placing a sign per the approval of the Administrator (size and placement) on site of the petition. The sign shall be placed no less than 10 days prior to the public hearing and removed no more than three days after.

(g) Regarding any appeal pending before it under this Section, the Administrator may request, or the BZA in its discretion may direct, the attorneys for the appellant and all interested parties to meet with the Administrator for a pre-hearing conference to consider any or all matters listed in Article VI, Section 7 of these Rules. Such a conference shall be conducted in accordance with Article VI, Section 7, subsections (b) through (e).

Section 13. No Suspensions. A Hearing Officer shall not have the right to suspend these Rules.

Article XI. Suspension and Amendments

Section 1. Suspension of Rules. The BZA shall have the right to suspend these Rules or any portion thereof, except where otherwise controlled by state law or the UDO, at any meeting, upon the majority approval of all members present.

Section 2. Amendment of Rules. The BZA shall have the right to amend these Rules or any portion thereof at any regular or special meeting, provided that the amendments are approved by a majority of the BZA.

Section 3. Severability. Should a court having jurisdiction declare these Rules to be in part null or void, such ruling shall not affect the remainder of these Rules, and they shall stay in full force and effect as if the omitted portion did not exist.

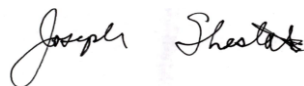
WHEREFORE, the Rules of Procedure of the Carmel Board of Zoning Appeals, as previously published, are hereby approved with all amendments included herein, by an affirmative vote of all members of the BZA in attendance at the meeting of September 28, 2020. These Rules of Procedure shall be effective from and after the BZA's approval, and their formal adoption and implementation shall be considered revocation of any inconsistent rules, regulations, or amendments which may have been adopted prior thereto.

By:



Alan Potasnik, Board Chairperson

Attest :



Joe Shestak, Plan Commission Secretary

Dated: 9-28-20