

**RULES OF PROCEDURE
SOUTH WHITLEY ADVISORY BOARD OF ZONING APPEALS**

ARTICLE I: MEMBERS, OFFICERS, AND STAFF

1.1 COMPOSITION OF BOARD MEMBERSHIP

The composition of the South Whitley Advisory Board of Zoning Appeals ("Board") shall be in accordance with Indiana Code, which at the time of adoption of these rules is stated in IC 36-7-4-902 *et seq.*, as follows:

- Three (3) citizen members appointed by the executive of the municipality, of whom one (1) member must be a member of the Plan Commission and two (2) must not be members of the Plan Commission.
- One (1) citizen appointed by the fiscal body of the municipality who must not be a member of the Plan Commission.
- One (1) member appointed by the Plan Commission from the Plan Commission's membership who must be one of the citizen members appointed to represent the unincorporated jurisdictional area.

Alternate member(s) may be appointed in the same manner and by the same appointing authority as the regular member(s). The alternate member may serve in lieu of the appointed regular member who is disqualified from, or otherwise unavailable to participate in, a hearing or decision.

None of the members of the Board may hold any elected office or any other appointed government office (except the required Plan Commission members).

1.2 OFFICERS OF THE BOARD

The Chair and Vice Chair shall be elected by the Board at the first regular meeting held each year.

The Department is designated as the Secretary.

1.3 DUTIES OF CHAIR AND VICE CHAIR

The Chair supervises the affairs of the Board and presides at all meetings of the Board.

The Vice Chair shall serve in the absence or unavailability of the Chair.

In the event that both the Chair and Vice Chair are absent from a meeting, a temporary Chair will be elected by those members present.

The Chair, subject to these rules, decides all points of procedure unless otherwise directed by a majority of the members of the Board.

1.4 DUTIES OF SECRETARY

The Secretary directs the day-to-day proceedings of the Board. Subject to the provisions of the Zoning Ordinance, these rules, and the direction of the Board and its Chair, the Secretary conducts all correspondence of the Board; sends out all notices required by these rules and the order of the Board; attends all meetings of the Board and all hearings; scrutinizes all applications to see that these rules are complied with; keeps the dockets and minutes of the Board's proceedings; compiles all required records; maintains the necessary files and indexes; and generally performs clerical work of the Board.

The Secretary may demand from an applicant such additional information and data as may be required to fully advise the Board with reference to an application, whether such information and data are called for by the official forms or not. Any failure or refusal on the part of the applicant to furnish such additional information or data may be grounds for dismissal of the application by the Board.

1.5 CONFLICT OF INTEREST

Any member who

- is biased or prejudiced or otherwise unable to be impartial; or
- has a direct or indirect financial interest in the outcome of the hearing or the decision; or
- otherwise meets the requirements defined by I.C. 36-7-4-909 or I.C. 35-44.1-1-4

shall have a conflict of interest and is disqualified from participating in a hearing or decision. In addition to any statutorily required action, any member having such conflict of interest will announce the conflict at the beginning of the meeting and prior to the introduction of the application which contains said conflict, and shall thereafter recuse himself and refrain from comment, discussion, or participation regarding the request, including voting thereon.

If an alternate member has been duly appointed and is available and qualified, the alternate member will replace the member holding the conflict of interest.

The Secretary shall enter into the Board's records the fact that a regular member has been disqualified and the name of the alternate member who serves in place of the regular member.

1.6 COMPENSATION

Members are entitled to be compensated for their attendance at regular meetings, special meetings, and training workshops. A member may "attend" by physical presence or by electronic participation, subject to the rules herein. Members may be compensated for attendance even if obligated to recuse themselves due to conflict of interest.

Attendance at committee meetings, other training or education opportunities, and other meetings on behalf of the Board are not compensated.

The amount of compensation is set by the Town Council. Currently, the rate is \$10 per meeting attended.

Compensation for travel mileage is not provided at this time.

ARTICLE II: MEETINGS

2.1 MEETINGS GENERALLY

All meetings at which actions are to be taken shall be open to the public. As permissible by the state code, meetings may be considered "public" if broadcast live by electronic means.

Executive sessions may be held to discuss topics as permitted by state code.

2.2 SCHEDULED REGULAR MEETINGS

Regular meetings are held on the second Thursday of each month, excluding holidays. A calendar of the regular meetings is to be prepared by the Secretary prior to the beginning of each year. Meetings will begin at 6:15 P.M., Eastern Time.

Meetings are held in the South Whitley Town Hall, 118 East Front Street, South Whitley, Indiana, unless otherwise announced.

Regular meetings may be cancelled due to a lack of agenda items.

2.3 SPECIAL MEETINGS

Special meetings may be held upon call of the Chair, or by written request by two members to the Secretary, or as determined by the Board at a regular meeting. The Secretary shall send to all members, at least three (3) days in advance of said meeting, a notice fixing the time and place of the meeting. Written notice to members of a special meeting is not required if the time and place of the meeting has been fixed in a regular meeting.

Only matters included in the call for a special meeting shall be considered, except by unanimous approval of all members of the Board.

2.4 QUORUM AND AUTHORIZATION

A majority of the members of the entire Board constitutes a quorum; this is three (3) members. No action shall be official unless authorized by a quorum of members at a regular or properly called special meeting.

No official business shall be authorized at a meeting lacking a quorum, and any items of official business shall be automatically continued to the next regular meeting.

2.5 MINUTES AND RECORDS

The Board shall keep minutes of its proceedings, keep records of its examinations and other official actions, and shall record the vote on all actions taken.

The Secretary maintains the record of the minutes, in which shall be recorded the decision relating to each application together with the vote of each member of the Board present, those absent being so marked, together with other actions of the Board, and including a record of the transactions at hearing.

All minutes and records shall be filed in the office of the Board and shall be a public record.

Regularly scheduled meetings of the Board may be recorded. If recorded, the audio or video tapes or digital files of each meeting will be retained for no less than five (5) years from the date of the meeting and shall be a public record.

All exhibits, whether submitted by a petitioner or remonstrator, shall become the property of the Board and shall remain and become a part of the case in which the exhibits were submitted.

2.6 ORDER OF BUSINESS AT REGULAR MEETINGS

The general order of business at regular meetings of the Board will be as follows:

- Roll Call
- Election of officers (only at the first regular meeting each year)
- Consideration of minutes of previous meeting(s)
- Old business
- New business
- Other business
- Adjournment

The order of business item types will be initially set by the Secretary as follows:

- Variances, with the further categorization as applicable:
 - Variances of use
 - Variances of development standards
- Special exceptions
- Appeals of administrative decisions
- Interpretations

The Chair may reorder business items as may be necessary to conduct an orderly and efficient meeting.

2.7 ELECTRONIC MEETINGS AND MEMBER PARTICIPATION

The Board may conduct meetings that include member participation by electronic means, as provided by IC 5-14-1.5-3.5.

All votes taken during a meeting under this section must be taken by roll call vote.

At least fifty percent (50%) of the members of the Board must be physically present at a meeting.

A member may not attend more than fifty percent (50%) of the Board's regular meetings in a calendar year by means of electronic communication, unless the member's electronic participation is due to: military service, illness or other medical condition, death of a relative, or an emergency involving actual or threatened injury to persons or property.

A member may not participate in a meeting by electronic communication if the Board is attempting to take action on:

- *There are no exclusions to electronic participation.*

A member may attend two (2) consecutive meetings (a set of meetings) by electronic communication. A member shall physically attend at least one (1) meeting between sets of meetings that the member attends by electronic communication, unless the member's absence is due to: military service, illness or other medical condition, death of a relative, or an emergency involving actual or threatened injury to persons or property. Documentation of such cause will be provided to the Secretary and kept as part of the meeting record.

Notice of a member's intention to participate electronically should be given to the Secretary by 3 P.M. on the day of the meeting.

2.8 ELECTRONIC MEETINGS AND PARTICIPATION BY OTHERS

An applicant must physically attend the hearing to provide information and respond to questions about their request. Exception may be made on an individual basis by the Chair for good cause shown.

Members of the public may attend and observe an electronic meeting using the technology made available by the Board. There may be opportunity for members of the public to register comment during public hearings via electronic means. If possible, oral comments will be taken in the same manner as in-person attendees. Otherwise, written comments may be transmitted, which will be entered into the record and treated like any other submitted comment.

2.9 ABSENCES

Members should notify the Secretary if they are not able to attend a meeting in person as soon as practicable, and no later than noon on the day of the meeting, and they should indicate if they intend to participate electronically instead.

Even if not intending to participate electronically, members should attempt to notify the Secretary before the meeting if they will not be present.

2.10 MEETING LENGTH

During any regular meeting, no public hearing will be opened after 9:30 P.M., and any scheduled public hearing items not yet heard will be automatically continued to the next regular meeting.

If a public hearing is already in progress at 9:30 P.M., final action on the petition will be taken no later than 10:00 P.M., or the hearing will be continued.

Regular meetings will adjourn by 10:30 P.M.

ARTICLE III: PETITIONS FOR PUBLIC HEARING

3.1 APPLICATIONS

A petition for any requested action on behalf of the Board shall be filed on forms made available through the Secretary which shall be completed and submitted along with all other required information, data, and drawings as required by the Zoning Ordinance.

For variances and special exceptions, the property owner shall be the applicant or shall submit a notarized agent statement permitting the applicant to file on their behalf. Other evidence of owner consent may be provided or required.

3.2 FEES

Applications and petitions shall be accompanied by the filing fees as are established by the Department from time to time. Fees shall be paid to the Department.

3.3 DOCKET AND CALENDAR

Each application filed in proper form with the required data shall be numbered serially, docketed, and shall be placed upon the calendar of the Board by the Secretary. The docket numbers shall begin anew on January first of each year and shall generally be hyphenated with the number of the year in which the application is to be heard, a "SW" indicating a South Whitley application, an abbreviation indicating the type of case, and the number of case.

<u>Petition type</u>	<u>Docket number example</u>
Variances (use and development standards)	21-SW-VAR-1
Special exceptions	21-SW-SE-1
Appeals of administrative decisions	21-SW-APP-1

Applications shall be initially submitted no later than the filing deadline designated by the meeting calendar, which shall be approximately twenty-five (25) days prior to the date of the hearing, except for good cause at the discretion of the Secretary or Chair. All applications docketed will be set for hearing at the regular meeting corresponding to the filing deadline. If an application or the support documents are modified after the application is set for hearing, said amended documents will be provided to the Secretary no later than fourteen (14) days prior to the scheduled hearing date, and if not so provided, the hearing may be rescheduled.

Applications will typically be grouped by type (as indicated in Section 2.6) and in the order in which they were submitted. However, applications may be arranged for efficient processing or for good cause shown. Where all applications cannot be disposed of on the day set, the Board may adjourn from day to day, or until the next regular or special meeting, as it may order.

No notice is required other than that provided for in these rules or by Ordinance to be given to applicants or others interested in hearings conducted by the Board.

3.4 INTERESTED PARTIES

Interested parties are defined to be all abutting and adjoining legal landowners within two (2) property ownership depths of the applicant's property, or within 660 feet, whichever is satisfied first.

3.5 NOTICES

For each application, the applicant shall assume the expense of notification and publication of notice as required by these rules, by Ordinance, or by State Statute.

Newspaper notice (publication)

For every application which is to have a public hearing heard by the Board, notice shall be given by publication per the requirements of IC 5-3-1. Generally, notice will be published in a newspaper of general circulation in South Whitley, Indiana, in the form prescribed by the Secretary, unless otherwise provided for by the Statute.

The applicant shall cause the notice to be published no less than ten (10) days prior to the date set for the hearing, and proof of publication must be filed with the Secretary before the hearing.

The public hearing notice shall state, at a minimum:

- The docket number and substance of the petition
- The location by address or other identifiable geographic characteristic of the subject property
- The name of the petitioner
- The time and place of the hearing
- That the petition and file may be examined in the office of the Secretary
- That the legal description of the property is on file in the office of the Secretary

Notice to interested parties (mailed notices)

Notice to interested parties shall be made by certified mail (return receipt requested) or by certificate of mailing no less than ten (10) days before the date of the hearing. The original certified mail return receipts or the original certificate of mailing, along with any returned notices, shall be filed with the Secretary before the hearing.

A copy of the published public hearing notice may be used for the notice, along with any additional maps, plans, text, etc. as may be necessary to adequately, but concisely, describe the application, as may be determined by the Secretary.

Notice to interested parties (on-site signage)

Notice to interested parties shall also be made by placement of a notice on the subject site no less than ten (10) days before the date of the hearing.

The on-site notice consists of a sign to be provided by the Secretary. The sign shall be placed on the subject property, approximately within 5' of the right-of-way line of the street with the most traffic adjacent to the property (except for limited access roads) and outside of any visibility triangle. The sign text must be visible from the street. The Secretary may require additional notices to be posted for properties with greater than 300' of street frontage or for cases consisting of multiple properties.

The notice shall remain on-site until final action on the petition has been taken, including any continuances. Loss of the sign due to weather, vandalism, theft, or similar act outside the control of the applicant does not necessarily constitute notice failure.

The Secretary may vary the requirement for personal notification if a departure from the rules above is justified and the intent of this rule is observed. The Board may waive or modify a requirement for personal notification if the other personal notice method is achieved.

ARTICLE IV: HEARINGS AND OFFICIAL ACTIONS

4.1 HEARINGS

The Board shall hold a public hearing on applications in a public meeting at the date, time, and place specified in the notice.

The applicant or other interested persons may appear in person, by attorney, or by representative. In the absence of any appearance on behalf of the applicant, the Board may, at its discretion, proceed with the hearing or continue the hearing. Failure of the applicant to appear at the hearing two or more times, despite being notified of the need to appear, will be grounds for the Board to dismiss the application.

At the hearing, the general order of presentation of an application will be as follows:

- Presentation of the Staff Report by the planning staff
- Applicant's initial presentation (maximum 15 minutes)
- Public hearing. Those in favor of the application should speak first and those opposed to the application speak second (maximum 5 minutes per representative of a group or 2 minutes per individual speaker)
- Applicant's rebuttal (maximum 5 minutes)

- Discussion by the Board
- Motion on the application
- Vote on the motion

The Chair may waive or alter these time limits or impose other reasonable rules as may be necessary to efficiently hear those wishing to speak on a case.

A party may request additional time for good cause. The Chair may cut short any presentations that are irrelevant, repetitive, slanderous, offensive, or that are otherwise not conducive to an orderly proceeding, provided that the presenter has been admonished at least once.

All speakers must clearly state their name and address in addition to their testimony. All persons who speak affirm they will be honest and truthful in their presentations and may be liable for false presentations up to the penalty for perjury.

Every person appearing at hearings shall abide by the order and directives of the Chair. Discourteous, disorderly, or contemptuous conduct shall be regarded as a breach of the privileges of the Board and shall be dealt with by the Chair as he or she deems fair and proper. Disregard of the Chair's directives or other disorderly conduct can result in removal from the meeting.

4.2 ACTION AND DISPOSITION

Following the public hearing, the Board shall make recommendations, grant or deny requests, transmit reports, or take other necessary action as prescribed by the State Statute or the Zoning Ordinance.

All decisions of the Board on matters heard in a public hearing shall be by recorded vote. The vote of each member is a permanent record.

4.3 VOTING

Only a motion duly passed by a majority of the Board members is an official action.

Motions receiving less than the required number of votes, or those having a tie vote, are considered failed motions. In no instance shall an action be assumed by the failure of a motion of an opposing nature.

If official action cannot be taken on an item after three failed motions, the item will be automatically continued to the next regular meeting.

4.4 ABSTENTIONS

Members are to vote on all motions, except when there is a conflict of interest as described in Section 1.5. If an abstention is found to be necessary, it must be accompanied by a statement of the reason the member is abstaining. Abstaining from voting without giving specific grounds could be considered arbitrary and capricious.

4.5 CONTINUANCES

One (1) administrative continuance at the request of the petitioner(s) or the remonstrator(s) will be allowed without need for authorization of the Board. Such administrative continuance will be announced for the record and benefit of interested parties on the meeting agenda/notice and/or at the meeting.

Additional continuances may be authorized only by action of the Board.

Continuances may be authorized by the Board for a period longer than the next regular meeting. New hearing notice shall be given for any continuance period exceeding ninety (90) days.

4.6 WITHDRAWN APPLICATIONS

An application may not be withdrawn by the applicant after the vote has been called for by the Chair unless a majority of the members of the Board agree to the withdrawal.

No petition which has been withdrawn by the applicant shall again be placed on the docket for consideration by the Board within a period of six (6) months from the date of the said withdrawal, except upon the motion of a Board member, and adopted by the unanimous vote of all Board members present at a regular or special meeting.

4.7 REHEARINGS

No rehearings shall be entertained after an official action has been taken by the Board. No additional application to the Board shall be allowed within the time period prescribed by Ordinance or, if no such time is prescribed, six (6) months from the date of the hearing.

However, a new application for hearing may be made if there is evidence that a substantial change in the circumstances affecting the property occurred since the prior decision relating to said parcel or property.

4.8 EX PARTE CONTACT AND REQUESTS FOR ADVICE

No applicant, person, firm, corporation, public employee, or body politic may contact any member of the Board in advance of the public hearing with intent to influence the member's action on a case pending for decision.

Any information to be provided to members must be made through the Staff in order to maintain record of the communication and to ensure fair dissemination of information among members.

The Staff may file a Staff Report setting forth facts, interpretations, and opinions on the case no less than five (5) days prior to the hearing date.

Informal requests for advice, or moot questions, regarding the suitability of potential filings will not be considered by the Board. This does not include interpretations of code that may affect such suitability.

Any advice, opinion, or information given by any Board member or the Secretary, or any other official or employee of the Town of South Whitley, shall not be binding on the Board as a whole. Because of the inappropriateness caused by individuals appealing personally to members of the Board, it is declared to be the policy of the Board to discourage any such personal appeals and to direct questions to the Secretary.

4.9 APPEALS OF BOARD DECISIONS

Indiana Code 36-7-4-1600 *et seq.* provides that for persons to file a petition for judicial review of a Board decision. Such petition is to be filed not later than thirty (30) days after the date of the decision.

If such an appeal petition is filed, any work done by the applicant pursuant to the Board's decision within that appeal period is at the sole liability of the applicant.

ARTICLE V: AMENDMENTS AND SUSPENSIONS

5.1 PRIOR RULES

Any rules setting forth the procedures and duties of the Board that may have been previously passed are hereby repealed.

5.2 AMENDMENTS

Amendments to these Rules of Procedure may be made by the Board at any regular or special meeting upon the affirmative vote of a majority of the members of the Board.

5.3 SUSPENSIONS

The suspension or waiver of any rule of procedure may be ordered at any meeting by unanimous vote of those present.

5.4 SEVERABILITY

Should any provision of these rules be void or unenforceable, such provision shall be deemed omitted, and these rules with such provisions omitted, shall remain in effect.

5.5 EFFECTIVE DATE

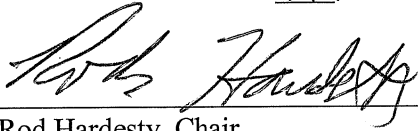
These Rules of Procedure are effective October 17, 2022.

APPROVAL

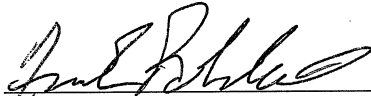
These Rules of Procedure of the South Whitley Advisory Board of Zoning Appeals are hereby approved by the affirmative vote of the Board on the below date.

SOUTH WHITLEY ADVISORY BOARD OF ZONING APPEALS

SO APPROVED THIS 17th DAY OF October, 2022.



Rod Hardesty, Chair



Frank Baldrige, Vice Chair