

METROPOLITAN
BOARD OF ZONING APPEALS
of
Marion County, Indiana

RULES OF PROCEDURE

ADOPTED: November 6, 1986

REVISED: October 18, 1988

October 23, 1990

October 6, 1992

March 28, 1995

June 18, 25, and July 2, 1996 (Fee amendments)

October 21, 28, and November 4, 1997 (Appeals)

November 22, 2005 (Fees, Tall structures, On-site notice)

December 1, 8, and 15, 2009

May 13, 20, 2014 and June 3, 2014

TABLE OF CONTENTS

	<u>page</u>
ARTICLE I - GENERAL RULES	
1. Three divisions of Board	4
2. Officers of the Board	4
3. Territorial jurisdiction	4
4. Powers of the Board	4
5. Categories of petitions and requests	5
6. Chairman to decide points of order	5
7. Definitions	5
ARTICLE II - FILING OF PETITIONS	
1. Who may file	6
2. Minimum filing time required prior to hearing	6
3. Filing on the Board's forms required	6
4. Required Findings of Fact	6
5. Specifying of Request required	7
6. Filing fees	7
7. Traffic Impact Studies	9
ARTICLE III - DOCKETING OF PETITIONS	
1. Docketing by Administrator	9
2. Docket number	10
3. Order of hearing petitions	10
4. Docketing procedures for Expedited Petitions	10
ARTICLE IV - NOTICE	
1. Notice Requirements for Administrative Appeals, Special Exceptions and Variances	11
2. Notice Requirements for Approval Petitions	12
3. Affidavit of Notice	13
4. Defective Notice	13
ARTICLE V - PUBLIC MEETINGS	
1. All meetings	14
2. Regular meetings	14
3. Special meetings	14
4. Quorum	14
5. Indecisive vote	14
6. Any party may appear in person, by agent or by attorney	15
7. Appearance required prior to testimony and evidence by adverse parties	15
8. Continuance	15
9. Motion to Dismiss	16
10. Time allowed and procedure for hearing petitions	16
11. Orderly conduct required	17

	<u>page</u>
12. Contacting any Board member regarding pending petition prohibited; administrator's written statement of facts or opinion to be filed not less than five (5) days prior to the hearing	17
13. No decision or finding unless based upon facts in permanent records and/or written statement filed by the Administrator	17
14. Disqualification of Board members in case of personal or financial interest	17
15. Amendments to any petition	18
16. Amendments and supplements to supporting documents	18
17. All testimony under Oath	18
18. Minutes and record of hearing	18
19. Ballot vote	18
20. Exhibits	18

ARTICLE VI - FINAL DISPOSITION OF PETITIONS

1. Dismissal of petitions	18
2. Withdrawal of petitions	19
3. Refiling following Adverse Decision	19
4. Notice of Board's decision	20
5. Letter of Grant or Denial	20
6. Conditions and Commitments - Affidavit of Compliance	20
7. Appeal procedure	22

ARTICLE VII – SUPPLEMENTAL REVIEW PROCESS

1. Establishment of Supplemental Review Process	23
2. Goal of Supplemental Review Process	24
3. Application of Supplemental Review Process	24
4. Rules for Supplemental Review Process	24

ARTICLE VIII - WAIVER OF RULES 24

ARTICLE IX - AMENDMENTS TO RULES OF PROCEDURE 25

INDEX	26
<i>Exhibit "A" Commitments</i>	<i>ii</i>
<i>Exhibit "B" Modification or termination</i>	<i>iv</i>
<i>Exhibit "E" Open Occupancy and Equal Employment Opportunity Throughout Marion County commitment</i>	<i>vi</i>

RULES OF PROCEDURE

ARTICLE I - GENERAL RULES

- 1. THREE DIVISIONS OF BOARD** - The Metropolitan Board of Zoning Appeals consists of three divisions of five members each, designated: Division I, Division II, and Division III.

With respect to the matters presented, each Division shall act as the Metropolitan Board of Zoning Appeals.

- 2. OFFICERS OF THE BOARD** - Each Division of the Board shall select a Chairman, Vice-Chairman, and Secretary annually from its members.

The Chairman shall preside at all meetings and in the Chairman's absence or disability those Board members present shall decide by consent who shall preside.

- 3. TERRITORIAL JURISDICTION** - Each Division 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 the Indiana Acts of 1981, P.L. 309, Sec. 23, as amended.

- 4. POWERS OF THE BOARD** - The Divisions of the Metropolitan Board of Zoning Appeals have the power to:

A. Hear and determine:

- (1) Any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning ordinance;
- (2) Any order, requirement, decision, or determination made by an administrative board or other body except the Metropolitan Development Commission in relation to the enforcement of the zoning ordinance; or
- (3) Any order, requirement, decision, or determination made by an administrative board or other body except the Metropolitan Development Commission in relation to the enforcement of an ordinance adopted under I.C. 36-7-4 requiring the procurement of an Improvement Location Permit or occupancy permit.

B. Approve or deny all:

- (1) Special exceptions;
- (2) Special uses;
- (3) Contingent uses; and
- (4) Conditional uses; from the terms of the zoning ordinance, but only in the classes of cases in the particular situations specified in the zoning ordinance. The board may impose **reasonable conditions as a part of its approval.**

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

D. Approve or deny the modification or termination of commitments, modifications to the conditions of a variance grant, or modifications to an approved site and development plan.

- 5. CATEGORIES OF PETITIONS AND REQUESTS** - The Divisions of the Metropolitan Board of Zoning Appeals may take action relative to the following matters:
- A. Use Variance Petition** - A variance for a use or structure that is not permitted in the zoning district.
 - B. Development Standards Variance Petition** - 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, but not involving the actual use.
 - C. Special Exception Petition** - An exception to the standard terms, regulations and requirements of an ordinance, as specified in the ordinance, relating to frontage, yard, setback, height, distance, use or other requirements of the applicable zoning district.
 - D. Administrative Appeal Petition** (to be filed as an approval petition) - The review by the Board of any order, requirement, decision or determination made by an administrative official, hearing officer, or other body except the Metropolitan Development Commission, or staff member under the zoning ordinance or in relation to the enforcement of an ordinance adopted under I.C. 36-7-4-900 requiring the procurement of an improvement location permit.
 - E. Approval Petition** - Approvals involving the waiver of the waiting periods before refileing after an adverse decision or the dismissal or withdrawal of a petition.
 - F. Modification Petition** - Petitions involving the modification or termination of commitments, modification of conditions and modification of an approved site and development plan of a variance or special exception petition.
 - G. Continuances and other Special Requests.**
- 6. CHAIRMAN TO DECIDE POINTS OF ORDER** - The Chairman, subject to these rules, shall decide all points of order or procedure, unless otherwise directed by a majority of the Division of the Board in session at the time.
- All requests for continuances, withdrawals 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.
- 7. DEFINITIONS** - As used in these Rules of Procedure, the following terms shall have the following meaning:
- A.** "Administrator" shall mean the Administrator of the Division of Planning of the Department of Metropolitan Development, or his/her designated representative, or his/her successor.
 - B.** "Board" shall mean the Metropolitan Board of Zoning Appeals of the City of Indianapolis, Marion County, Indiana.
 - C.** "Commission" shall mean the Metropolitan Development Commission of Marion County, Indiana.
 - D.** "Commitment" shall be as prescribed in Indiana Code 36-7-4.
 - E.** "Condition" shall be as prescribed in Indiana Code 36-7-4.
 - F.** "Covenant" shall be as prescribed in Indiana Code 36-7-4.
 - G.** "Division" shall mean one of the three Metropolitan Boards of Zoning Appeals, Division I, Division II, or Division III.

- H. "Hearing Officer" shall mean a person (who may be an employee of the Department of Metropolitan Development) nominated by the Director of the Department and appointed by the Metropolitan Development Commission who has the power of a Metropolitan Board of Zoning Appeals to grant or deny (a) a variance from the development standards (such as height, bulk or area) of the zoning ordinance or (b) a special exception pertaining to the height, bulk or area restrictions from the terms of the zoning ordinance. The functions of the Hearing Officer shall be governed by the "Rules of Procedure for the Hearing Officer" as adopted by the Metropolitan Development Commission.
- I. "Supplemental Review Process" is a procedure that allows for more intense review and more complete presentation of major approval, rezoning, and variance petitions.

ARTICLE II - FILING OF PETITIONS

1. **WHO MAY FILE** - No variance, special exception, modification, or approval petition may be accepted for filing unless signed by the owner of the subject parcel or 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 paragraph, 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. **MINIMUM FILING TIME REQUIRED PRIOR TO HEARING** - All petitions shall be filed at least thirty-five (35) days prior to the hearing at which they are to be considered, unless otherwise requested by petitioner and approved by the Administrator.

3. **FILING ON THE BOARD'S FORMS REQUIRED** - All petitions to the Board shall be made on forms to be supplied by the Board 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, material 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.

Findings of Fact are the basis for the Board's decision on a variance, and are unique circumstances related to the site in question. Findings of Fact shall be submitted on forms provided by the staff, with the petition. The Board must adopt Findings of Fact in a decision to approve or deny a variance, special exception, or modification petition.

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 standard(s) and regulation(s), condition(s) or approval(s) sought by the petitioner to be modified or approved. A mere recitation in the petition that development is, or will be, "per plans" is insufficient to modify any standards or regulations of the applicable ordinance(s).

6. FILING FEES -

A. FEE SCHEDULE - In order to compensate for the expense of advertising and processing, the following fee shall be paid by the applicant at the time of filing:

1. Variance of Use for a:	
(a) Single or Two-family Dwelling Use	\$ 579.00 plus \$29.00 for each variance of development standards requested
(b) All Other Uses	\$1,999.00 plus \$29.00 for each variance of development standards requested
2. Variance of Development Standards of the:	
(a) Dwelling Districts Zoning Ordinance	\$ 550.00 plus \$29.00 for each variance of development standards requested
(b) Sign Regulations for on-premises sign(s)	\$1,970.00 plus \$29.00 for each variance of development standards requested
(c) Sign Regulations for off-premises sign(s)	\$3,270.00 plus \$29.00 for each variance of development standards requested
(d) Commercial, Industrial and All Other Zoning Ordinances	\$1,970.00 plus \$29.00 for each variance of development standards requested
3. Special Exceptions pertaining to:	
(a) Manufactured Homes	\$ 479.00 plus \$ 29.00 for each variance of development standards requested
(b) Commercial or Industrial Use	\$1,650.00 plus \$ 29.00 for each variance of development standards requested
(c) Religious Use	\$1,650.00 plus \$ 29.00 for each variance of development standards requested

(d) Other Special Exceptions	\$1,650.00 plus \$ 29.00 for each variance of development standards requested
4. Petition for Board Approval:	
(a) Modification or termination of commitments, conditions, site or development plan associated with a previously-approved petition for:	
(1) Single- or two-family residential use	\$ 579.00
(2) all other uses	\$1,679.00
(b) Waiver of the one-year waiting period before refileing after an adverse decision (such as denial or withdrawal).	\$1,650.00
(c) Additional fee for any petition involving a petition over 20 years old or a petition that has been modified more than twice	\$ 159.00
5. Administrative Appeal:	
(a) Appeal of the Administrator's interpretation of the ordinance	\$1,650.00
(b) Appeal of a Certificate of Legally-Established Nonconforming Use	\$1,199.00
(c) All other appeals	\$1,650.00
6. Administrator's Approval (See notes below):	
(a) Specific Review	\$ 99.00
(b) General Review	\$ 279.00
<p>(Notes: In those petitions where the Board has imposed a requirement, condition or written commitment that stipulates the review and approval of a final plan by the Administrator, a "specific review" relates to a specified item or items requiring approval, such as signs, landscaping or parking lot layout. A "general review" relates to an overall review of the entire plan and any specific requirements placed on the plan by the Board.</p> <p>The fee for "Administrator's Approval" shall be assessed, and payment due, at the time of submittal.)</p>	
7. Miscellaneous:	
(a) Amendment to a Petition that changes the requested use requiring revised legal notice after legal notice has been published	\$ 799.00
(b) Amendment to any other Petition requiring revised legal notice after legal notice has been published	\$ 250.00

B. Waiver Or Modification Of Fees - A Division of the Board may at any time, for good cause shown, or upon its own motion, waive or modify the applicable filing fee to not less than fifty dollars (\$50.00), transfer a filing fee and waive or modify the fee for an Improvement Location Permit required as a part of the decision of the Board, said permit fee schedule being established by the Metropolitan Development Commission's Rules of Procedure.

C. 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.

D. Refund of Fees of Withdrawn or Transferred Petitions - The Administrator 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 is 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 – The Board shall establish a nonreverting fund to maintain the receipts from any filing fees for petitions and other activities to defray administrative costs. The fund may be jointly or separately from the Metropolitan Development Commission.

7. TRAFFIC IMPACT STUDIES - Each petition for variance or petition for special exception shall be subject to the provisions of the “Applicant's Guide, Transportation Impact Studies for Proposed Development” dated June 29, 1990 that is incorporated herein by reference and made a part of these Rules of Procedure.

ARTICLE III - DOCKETING OF PETITIONS

1. DOCKETING BY ADMINISTRATOR - Each petition filed in proper form shall be numbered and docketed by the Administrator, within ten (10) days after a petition has been filed, for hearing either before the Hearing Officer or one of the Divisions of the Board. Each modification or approval petition filed in proper form shall be docketed before the same body that decided the original petition.

Further, a petition that has been filed on a parcel or a portion of a parcel that was the subject of a petition(s) within the previous three years, shall be docketed before the same body that decided (or

was scheduled to hear) the previous petition(s). However, any variance, approval, or modification petition related to a petition heard and decided by the Hearing Officer may be docketed before one of the three Divisions of the Board.

The Administrator may limit the number of new petitions docketed for any one of the Divisions of the Board, if the docket has already been filled with continued petitions or petitions redocketed due to an indecisive vote.

- 2. DOCKET NUMBER** - The term of the Board being the calendar year, 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 indicating the type of petition, along with the number 1, 2 or 3 indicating the Division of the Board with which the petition is docketed, and the number that indicates the sequence that the petition occupies among the petitions filed. The system of initials indicating the type of petition shall be established and maintained by the Administrator.

Aside from the provisions of Section 1 of this Article, no petition shall be docketed before a specific Division based on requests for that Division by a petitioner(s) or remonstrator(s).

A petitioner may agree to have his/her petition reviewed through the Supplemental Review Process, as outlined in Article VII of these Rules. If the Supplemental Review Process is used, the petition shall not be docketed for hearing until at least one meeting has occurred in accordance with the procedure.

- 3. ORDER OF HEARING PETITIONS** - On the date set for hearing, administrative appeals, approval, modification, special exceptions and variance petitions shall come before that Division of the Board with which they have been filed and docketed, in the regular order of their consecutive numbers and in the order enumerated above.

Provided, however, petitions redocketed following an indecisive vote, petitions appealed from a decision of the Hearing Officer, petitions transferred from the Hearing Officer, petitions transferred from another Division of the Board, petitions redocketed following a special request, petitions for Board approval, and petitions continued from a previous hearing by a Division of the Board, shall be heard at the beginning of the public hearing, in the order enumerated above, before the regularly docketed petitions.

- 4. DOCKETING PROCEDURES FOR EXPEDITED PETITIONS** - Petitions may be scheduled out of their regular consecutive number order, if they are placed on the expedited portion of the docket. Petitions may be expedited and placed on the beginning of the docket by the Administrator if, and only if, the following criteria are met:

- A. There is no known remonstrance to the petition;
- B. Staff is recommending approval of the petition; and
- C. The petitioner is in agreement with the conditions or commitments as proposed in the written staff report.

For expedited petitions, the Chairman shall allow reasonable time to present testimony, but may further limit the allowable time permitted by Article V, Section 10 of these Rules.

Each expedited petition shall be subject to a separate vote by the Board.

If remonstrators are present at the hearing to discuss an expedited petition, that petition shall be removed from the expedited portion of the docket and heard in its normal order.

ARTICLE IV - NOTICE

1. NOTICE REQUIREMENTS FOR ADMINISTRATIVE APPEALS, SPECIAL EXCEPTIONS AND VARIANCES - Notice of all administrative appeal, special exception and variance petitions to be heard by the Board shall be given to all interested parties or property owners, in the following manner:

A. Notice By Publication - Notice by publication shall be given by the Board, in the Board's prescribed form, in two newspapers of general circulation in Marion County at least ten (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 Board, shall be given by the petitioner by registered, certified or first class mail at least twenty-three (23) days before the date of hearing to the owners of all adjoining parcels of ground to a depth of two (2) ownerships, within six hundred sixty (660) feet of the perimeter of the subject property. However, the Indianapolis Department of Public Works (DPW) or its successor and the Indiana Department of Transportation (INDOT) 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 to the INDOT.
- (2) For purpose of the 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 given 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.

Provided, however, nothing herein shall require a petitioner to give notice to owners of land located more than six hundred sixty (660) feet from the subject property.
- (4) Any waiver of notice requirements must be requested of the appropriate Division of the Board prior to hearing the petition. Waiver requests shall be made by letter and shall be submitted to the Administrator at least seven (7) calendar days prior to the scheduled hearing.
- (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(s) of record at a point in time within fourteen (14) days of the date on which 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 Board, 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 or 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 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 Board.
- (7) Such notice for Administrative Appeal petition shall also be sent in the same manner to the property owner if the petitioner is not the owner of the property that is the subject of an Administrative Appeal petition.
- (8) 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 offices of the Board and incorporated herein by reference). The Neighborhood Organization Map shall be created and maintained as provided for in the Metropolitan Development Commission's Rules of Procedure. For purposes of such notice, the names, addresses 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 Administrator.

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

The list of those City-County Councilors 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 Board, shall be posted at least twenty-three (23) calendar 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 not be located in any public street right-of-way, unless authorized by the Administrator. Said notice shall remain posted until resolution of the petition. The Administrator may require a nominal, refundable deposit for said notice. Deposit shall be refunded upon return of said notice.

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 Board 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 Board.

- 2. NOTICE REQUIREMENTS FOR MODIFICATION AND APPROVAL PETITIONS** - Notice of all approval and modification petitions to be heard by the Board shall be given in the following manner:

A. Notice by Publication - Notice by publication shall be given by the Board as stated in Article IV, Section 1, A.

B. Additional Notice by Petitioners - Additional notice shall be provided as follows:

(1) Additional notice, on a form prescribed by the Board, shall be given by the petitioner, by registered, certified or first class mail at least twenty-three (23) calendar 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 modification or approval petition is not filed within twelve (12) months from the date of the decision by the Board on the original petition, twenty-three (23) day notice shall also be given to owners of adjoining land as stated in Article IV, Section 1, B.

C. Notice On Subject Property - Notice, in a form prescribed by the Board, shall be posted at least twenty-three (23) calendar 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 not be located in any public street right-of-way, unless authorized by the Administrator. Said notice shall remain posted until resolution of the petition. 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.

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 Board, listing the names and addresses of the 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 Board 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 Board 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 the normal operating hours.

4. DEFECTIVE NOTICE - If proper notice pursuant to Sections 1, B. and C. of this Article has not been given, the Board may continue the petition until a later date to allow time for persons not notified to prepare for the hearing. Personal appearance shall waive any defect in notice for that interested party unless said defect is timely raised at the beginning of the hearing when the Board is considering requests for continuances.

The Board shall continue any petition where notice was not sent at least ten (10) days before the hearing.

If the failure to give the proper notice is not discovered until after the hearing, the Board may rescind its decision on the petition and may order a rehearing of the petition upon proper notice given by the Petitioner.

ARTICLE V - MEETINGS

- 1. ALL MEETINGS** - All regular or special meetings and hearings of the Divisions of the Board, except such meetings that are legally constituted executive sessions, 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.
- 2. REGULAR MEETINGS** - Regular meetings, designated as public hearings of the Divisions of the Board, shall be held in the City-County Building, Indianapolis, Indiana, at 1:00 PM as follows:

Division I	1st Tuesday of each month	
Division II	2nd Tuesday of each month	
Division III	3rd Tuesday of each month	
Division I, II, or III	4th Tuesday of each month	If needed, one of the Divisions holds an additional meeting on this 4 th Tuesday.

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. The Administrator shall then select an alternate hearing date.

- 3. SPECIAL MEETINGS** - Special meetings of any Division of the Board may be called by the Chairman or by two (2) members thereof upon written request to the Secretary who shall send to all members thereof, at least two (2) calendar days in advance of a special meeting, a written notice fixing the time and place of the meeting.

Written notice of a special meeting is not required if the time of the special meeting is fixed at a previous regular meeting.

- 4. QUORUM** - Three members of the Board shall constitute a quorum. Board members may substitute among Divisions in order to secure a quorum. No action of the Board is official, however, unless concurred in by three Board members at a hearing. If there is no quorum for a regularly scheduled hearing, the Chairman shall have the authority to continue or transfer all petitions scheduled on that docket to any Division of the Board as is deemed appropriate to afford petitioners and/or remonstrators with a timely hearing of a petition.
- 5. INDECISIVE VOTE** - When a vote of the Board does not result in an official action of the Board as set forth in Section 4 above, the petition shall be automatically continued, redocketed and heard at the next regularly scheduled meeting of the same Division of the Board, unless otherwise rescheduled for good cause shown by the Board at the same meeting at which the indecisive vote occurred.

Provided, however, if the vote of the Board upon such rehearing again results in an indecisive action of the Board, the petition shall automatically be transferred and heard without further notice at the next regularly scheduled hearing of another Division of the Board -- Division I petitions being so automatically transferred to Division II, Division II petitions to Division III, and Division III petitions to Division I, unless otherwise rescheduled for good cause shown by the Board at the same meeting at which the indecisive vote occurred.

6. ANY PARTY MAY APPEAR IN PERSON, BY AGENT OR BY ATTORNEY - At hearings before the Board, 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 arguments in support of or in opposition to the granting of any variance or the determination of any matter before the Board.

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

A. Adverse parties, remonstrators or any other person speaking before the Board to any petition pending determination and decision by the Board 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 five (5) business 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.

8. CONTINUANCE - A continuance on any non-petition matter shall be at the discretion of the Board and shall not be eligible for an automatic continuance by the Administrator.

A continuance on any petition may be granted in one of three ways:

A. Board Continuance: The Board may, at any time, on its own discretion, continue the hearing of any petition. On its own motion, the Board may determine if renotification of interested property owners shall be required if a petition is continued at a hearing for which proper notice was given by petitioner in compliance with the notice requirements of Article IV hereof.

B. Automatic Continuance: Each party (petitioner(s) and remonstrator(s)) shall be granted one automatic continuance by the Administrator, provided the continuance request meets the following:

- (1) The continuance request must be the first request for continuance by that party.
- (2) The continuance request must be made in writing and filed by 5:00 pm EST on the fifth calendar day prior to the day of the scheduled hearing.
- (3) The continuance request shall be for the same Division of the Board as originally scheduled.
- (4) The continuance request shall include the new date of the hearing that shall be for the next regularly scheduled meeting of the Division that is at least three weeks later than the scheduled hearing.
- (5) The party requesting the continuance shall give notice to all parties required to be served notice by Article IV hereof and to attorneys or agents who have entered their appearance or are known by the party requesting the continuance to represent petitioner(s) or remonstrator(s).

- (6) However, registered neighborhood organizations and City-County Councillors shall be required to give notice only to attorneys, agents, petitioners, and individuals who have signed a remonstrators of record form in the petition file.
- (7) If the continuance is granted to a date other than requested in the written request, the party requesting the date change shall notify all parties entitled to receive the notice of the date to which the hearing has been continued and shall file a copy of such notice with the Administrator.
- (8) An affidavit of notice shall be submitted to the Administrator at the time the continuance request is filed.
- (9) An automatic continuance request cannot be withdrawn after being file-stamped and accepted by the office of the Administrator.

C. Continuance for Cause: All other continuances shall be considered a continuance for cause that may be granted by the Board at the hearing. If both the petitioner(s) and remonstrator(s) do not agree to a continuance for cause, the Board shall base its decision to grant or not to grant the request on testimony from both parties at the hearing. At the hearing, written requests for continuance shall be considered prior to verbal requests for continuance.

9. MOTION TO DISMISS - In order for a remonstrator's "motion to dismiss" to be considered by the Board, said motion must be filed with the Administrator, 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 Board.

10. TIME ALLOWED AND PROCEDURE FOR HEARING OF PETITIONS – Petitioners and remonstrators, respectively, shall be permitted a total of twenty (20) minutes each for presentation of evidence, statements and arguments at the public hearing of every petition before the Board, as follows:

A. Petitioners and persons appearing in support of the petition being heard by the Board shall first have fifteen (15) minutes for the presentation of evidence, statements, and arguments in support of the matter being considered.

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

B. Remonstrators and persons appearing in opposition to the petition shall then have fifteen (15) minutes for the presentation of evidence, statements and arguments in opposition to the matter being considered.

A reasonable additional time shall then be allowed by the Board 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 a reasonable time by the Board for the presentation of evidence, statements, and arguments in support of, or in opposition to, the matter being considered.

E. The petitioner shall then have five (5) minutes for rebuttal that shall include only evidence, statements and arguments 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 five (5) minutes for rebuttal that shall include only evidence, statements and arguments 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 Chairman shall have the authority to cut off repetitious and irrelevant testimony and shall, unless otherwise directed by a majority of the Board in session at that time, have authority to extend the total twenty (20) minute periods specified above, when it is appropriate in the interest of affording to all interested parties a fair hearing.

- 11. ORDERLY CONDUCT REQUIRED** - Every person appearing before the Board shall abide by the order and direction of the Board's presiding officer. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges extended by the Board and shall be dealt with as the presiding officer deems fair and proper.

- 12. CONTACTING ANY BOARD MEMBER REGARDING PENDING PETITION PROHIBITED; ADMINISTRATOR'S WRITTEN STATEMENT OF FACTS OF OPINION TO BE FILED NOT LESS THAN FIVE (5) CALENDAR DAYS PRIOR TO THE HEARING** - No person shall contact any members of the Board orally, or in writing, in advance of a public hearing, on a petition then pending for decision with intent to influence such person's action on such petition, except that the Administrator, or member(s) of the Division staff, shall file not less than five (5) calendar days prior to any proposed hearing of any Division of the Board, a statement, in writing, stating any facts or opinion that is desired to be set forth with respect to such petition. A copy of such statement shall be furnished 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.

- 13. NO DECISION OR FINDING UNLESS BASED UPON FACTS IN PERMANENT RECORDS AND/OR WRITTEN STATEMENT FILED BY THE ADMINISTRATOR** - No decision or finding of the Board 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, the Administrator's agent or the Administrator's attorney. Provided, however, nothing herein contained shall deny the right of the Board members to inspect land involved in any petition to be heard by the Board.

- 14. DISQUALIFICATION OF BOARD MEMBERS IN CASE OF PERSONAL OR FINANCIAL INTEREST** - A member of a Division of the Board who has some personal or direct or indirect financial interest in any petition presented to that Division shall disqualify himself or herself insofar as a member of that Division during the hearing of the particular petition, and shall not participate as a Board member in that Division's hearing, findings of fact or decision in such petition. The member disqualifying himself or herself shall do so before the petition is heard and shall leave the room where the hearing is to occur while the testimony relating to the

petition is in progress. The record of the particular petition concerned shall note any such disqualification.

- 15. 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 Board 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.

- 16. 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 prior to the week of the scheduled hearing and the beginning of the hearing, or at the hearing, it shall be within the discretion of the Board to continue the petition. In making this determination, consideration shall be given to whether or not the staff and any remonstrators have had sufficient time to adequately review these new supporting documents.

- 17. ALL TESTIMONY UNDER OATH** - All testimony before the Board shall be given under oath or affirmation that shall be administered by some person qualified to administer oaths.

- 18. MINUTES AND RECORD OF HEARING** - Each Division of the Board shall keep minutes of its proceedings, investigations and other official actions and in all petitions heard by it; and shall record the vote on all actions taken. A verbatim recording or stenography or steno-type record, shall be made of all hearings of the Board, and shall remain on file in the offices of the Board. All minutes and records shall be in the offices of the Board 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.

- 19. BALLOT VOTES** - In all petitions heard by the Board, the Board's vote shall be by ballot. All such ballots shall remain on file in the offices of the Board and shall be public records.

- 20. EXHIBITS** - All exhibits presented at the hearing, whether submitted by petitioner or remonstrator, shall be given an exhibit number. Parties presenting exhibits at the hearing shall make a copy available to the opposing party and make a copy available to the Administrator.

All exhibits shall be retained in the files of the Board for a period of six (6) months after the date of the hearing. At the end of six (6) months 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 Administrator may dispose of any such exhibits that have not been claimed by the party filing the same and which are not a necessary part of any commitments, in whatever manner the Administrator may deem expedient.

ARTICLE VI - FINAL DISPOSITION OF PETITIONS

- 1. DISMISSAL OF PETITIONS** - The Board may dismiss a petition for want of prosecution or for lack of jurisdiction.

Any petition that has been dismissed by the Board for want of prosecution shall not again be filed for consideration by the Board within a period of three (3) months from the date of the dismissal, unless the same Division of the Board grants an approval petition to permit a refiling of the petition.

- 2. WITHDRAWAL OF PETITIONS** - No petition may be withdrawn by the petitioner after that petition has been called for hearing, and testimony has begun. However, a companion petition that has been filed on the same property and docketed for the same hearing may be withdrawn after a hearing has begun. (Petitions also may be amended as provided for in Article V, Section 15 after a hearing has begun.)

No petition that has been withdrawn by the petitioner shall again be filed for consideration by the Board within a period of three (3) months from the date of said withdrawal, unless the same Division of the Board grants an approval petition to permit a refiling of the petition.

- 3. REILING FOLLOWING ADVERSE DECISION**

A. Subject to the provisions of subparagraph (c), no parcel of ground, or part of a parcel that has been the subject of an **adverse use variance decision or adverse rezoning decision** shall again be included in a variance of use petition filed within a period of twelve (12) months from the date of either the adverse decision of a Division of the Board, or the adverse decision of the Metropolitan Development Commission, or the adverse decision of the City-County Council, unless the body that previously denied the petition decides, by a majority vote of all members present, to allow a refiling within the twelve (12) month period. A Division of the Board may allow such refiling only upon the granting of an approval petition filed and considered pursuant to these Rules of Procedure.

B. Subject to the provisions of subparagraph (c), no parcel of ground, or part of a parcel that has been the subject of an **adverse special exception or development standards variance decision** shall again be included in a special exception or a development standards variance petition filed within a period of twelve (12) months from the date of either the adverse decision by a Division of the Board or the adverse decision of the Metropolitan Development Commission, unless the body that previously denied the petition decides, by a majority vote of all members present, to allow a refiling within the twelve (12) month period. A Division of the Board may allow such refiling only upon the granting of an approval petition filed and considered pursuant to these Rules of Procedure.

C. Notwithstanding the provisions of subparagraphs (a) and (b) of this Article, no variance or special exception petition that has been the subject of a prior denial by any Division of the Board or the Metropolitan Development Commission shall be granted except upon adoption of an additional finding that a **substantial change** in the particular circumstances that induced the prior denial has occurred.

It shall be the duty of the petitioner to prepare and submit, at the time of filing, a detailed written finding of fact reflecting this substantial change in circumstances.

D. No parcel of ground, or part of a parcel that has been the subject of an **adverse approval or modification petition decision** shall again be included in an approval or modification petition filed within a period of three (3) months from the date of an adverse decision by the Board,

unless the body that previously denied the petition decides, by a majority vote of all members present, to allow a refiling within the three (3) month period.

4. NOTICE OF BOARD'S DECISION - Within five (5) business days after granting an administrative appeal, a special exception, an approval, a modification or a variance from the terms of the zoning ordinance, the Board shall file with the Administrator a copy of its decision. However, if a representative of the Administrator appears at the hearing granting an administrative appeal, a special exception, an approval or a variance from the terms of the zoning ordinance, then this appearance shall be considered notice to said Division of the Board's decision, and a copy of the decision need not be filed.

5. LETTER OF GRANT OR DENIAL - Following the Board's action on an administrative appeal, a special exception, an approval or a variance petition, the Administrator shall notify the petitioner of the Board'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 Board.

A letter of grant shall not be sent until any commitments required by the Board are submitted and are properly executed and recorded.

6. CONDITIONS AND COMMITMENTS - AFFIDAVIT OF COMPLIANCE

A. Conditions Imposed By Board - Affidavit Of Compliance – Whenever the decision of the Board is conditioned upon petitioner's compliance with a requirement imposed by the Board 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 letter of grant, petitioner shall be required to notify the Board of the timely fulfillment of such requirement by filing an affidavit of compliance in the offices of the Board. If the time for fulfillment of the condition is stated in the Board's decision, such affidavit shall be filed within thirty (30) calendar days after the time allowed for fulfillment. If the time for fulfillment is not stated in the Board's decision, the affidavit shall be filed within thirty (30) calendar days after the commencement of the use or completion of construction authorized by the Board's decision, whichever is earlier.

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

B. Commitments - Records - If deemed advisable, the Board may require or permit the petitioner to make written commitments concerning the use or 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 Administrator in the office of the Recorder of Marion County, Indiana, upon the grant of the variance, special exception, modification, or approval petition by the Board. Following the recording of the commitments, the Administrator shall return the original recorded commitments to petitioner and shall retain a copy of the recorded commitments in its file.

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

The Board may require in such commitment the designation of any specially affected persons or categories of 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 commitments may be modified or terminated by a decision of that same Division of the Board made at public hearing pursuant to an approval petition filed and considered pursuant to these Rules of Procedure. 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, approved by the Board, and recorded in the office of the Recorder of Marion County, Indiana.

The modification or termination shall be in substantially the form set forth in Exhibit "B" of these Rules of Procedure.

C. Administrator's Approval - In those petitions where a decision of the Board is conditioned upon the petitioner's compliance with a requirement imposed by the Board concerning construction and site development, or where the Board 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 of final 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 the 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 specifications 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 of 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, remonstrators and other interested parties and comment made by decision-makers during the course of the hearing.
- (c) 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 standards of the applicable zoning district and may include standards described in plan and/or testimony presented at the public hearing and agreed to in principal 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 an approval petition for an Administrative Appeal. This appeal must be filed within 23 days from the date of the denial or the approval.

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

7. APPEAL PROCEDURE -

- A. Petition for Judicial Review.** Every decision of the Board shall be subject to Judicial Review in accordance with Indiana Code 36-7-4-1016 and 36-7-4-1600.

A petition for judicial review must be filed with the court after the expiration of the period within which an official designated by the Metropolitan Development Commission or a member of the City-County Council may file an appeal in accordance with Indiana Code 36-7-4-922, but not later than thirty (30) days after the date of the decision that is subject of the petition for judicial review. However, if the official or member of the City-County Council files an appeal, then only the decision of the Metropolitan Development Commission sitting as the Board of Zoning Appeals is subject to judicial review. The official or the member of the City-County Council may not seek judicial review of a decision of a Board of Zoning Appeals or the Metropolitan Development Commission, sitting as a Board of Zoning Appeals.

- B. Administrator's or City-County Councilor's Appeal To The Commission -** The Administrator may appeal to the Metropolitan Development Commission any decision of the Board granting an administrative appeal, special exception, or variance from the terms of the zoning ordinance in accordance with Indiana Code 36-7-4-922.

A City-County Councilor, in whose district the parcel of real property under consideration is located, may appeal to the Metropolitan Development Commission a decision of the Board, approving, denying, or otherwise concerning a variance of use from the terms of the zoning ordinance that affects only real property located outside the corporate boundaries of an excluded city.

The Administrator or City-County Councilor must file in the office of the Division of Planning of the Department of Metropolitan Development a notice of appeal within five (5) calendar days after the Division receives a copy of the decision if one is required, or, if a representative of the Department of Metropolitan Development or the City-County Councilor appears at the hearing at which the relevant decision, as described above, is made, then the Administrator or City-County Councilor must file the notice of appeal within five (5) calendar days after the Board has rendered its decision. The notice must be submitted on a form provided by the Department of Metropolitan Development and must certify that the decision raises a substantial question of zoning policy appropriate for consideration by the Commission. The Commission shall hear the appeal at its next regular meeting held at least five (5) calendar days after the notice of appeal is filed.

Although persons other than the staff or a City-County Councilor may not appeal a decision of a Board to the Metropolitan Development Commission, they may appear as interested parties in appeals under this Article. No public notice need be given of the hearing of an appeal, but the party filing the appeal (staff or City-County Councilor) shall promptly mail notice of the subject of the appeal and date and place of the hearing to each adverse party and the petitioner. However, if the record of the Board shows more than three (3) proponents or three (3) remonstrators appeared, then the party filing the appeal need mail notice only to the first three (3) of each as disclosed by the record.

C. Appeals of Administrator's Decision - The Board, per IC 36-7-4-916 and IC 36-7-4-918.1, shall hear and determine appeals from and review:

- (1) any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning ordinance;
- (2) any order, requirement, decision, or determination made by an administrative board or other body except the Metropolitan Development Commission in relation to the enforcement of the zoning ordinance; or,
- (3) any order, requirement, decision, or determination made by an administrative board or other body except the Metropolitan Development Commission in relation to the enforcement of an ordinance adopted under IC 36-7-4 requiring the procurement of an Improvement Location Permit. Any party of interest shall have the right to bring such action/determination before the Board through the filing of a Petition of Administrative Appeal. Any such appeal noted above shall be filed within sixty (60) calendar days of approval of, or denial of, said order, requirement, decision or determination. This section shall not apply to those appeals which, by the zoning ordinances, are delegated to the Metropolitan Development Commission for its review and determination.

ARTICLE VII - SUPPLEMENTAL REVIEW PROCESS

- 1. ESTABLISHMENT OF SUPPLEMENTAL REVIEW PROCESS** - The Board of Zoning Appeals establishes a flexible procedure for more intense review and more complete presentation of major variance and special exception petitions permitted by I.C. 36-7-4-403.5. This procedure, called the Supplemental Review Process, generally applies to petitions that, because of development size or intensity, will have a significant effect on drainage ways, parks, roadways, or sewer systems. Under the Supplemental Review Process, not all petitions will follow exactly the same procedure but common elements of the Process include:

- A. Additional information about the effect of the development on infrastructure is requested from the petitioner.
- B. Review of the supplemental information is made by the Department of Metropolitan Development, Department of Parks and Recreation, and Department of Public Works.
- C. Interested persons and organizations in the community are notified about the petition.
- D. A coordination meeting led by Department of Metropolitan Development staff is conducted to discuss the petition with the petitioner, representatives of affected City Departments, interested persons and organizations in the community. Additional meetings may be held.
- E. The petition is then scheduled for hearing before the Board.
- F. The staff provides information that is more substantial to the Board at the time of presentation of the petition, including information about the effect of the proposed development on infrastructure adequacy.

2. GOAL OF SUPPLEMENTAL REVIEW PROCESS - The goal of the Supplemental Review Process is to allow the Board to make more informed decisions on the major petition that affect adequacy of drainage systems, parks, roadways, and sewer systems. This goal is accomplished by establishing a structured means for provision of more accurate and complete information about the impact of the proposed development on infrastructure and establishing meetings among interested parties so that this information can be shared and conflicts among competing interests can be identified and, if possible, resolved. The Supplemental Review Process shall not unreasonably burden the resources of petitioners or needlessly protract the petition process. City staff shall be reasonable in applying Supplemental Review Process requirements and attentive to meeting City response time deadlines established under the Process.

3. APPLICATION OF SUPPLEMENTAL REVIEW PROCESS - Petitions that meet the thresholds for the Supplemental Review Process will be the subject of a request by staff to be included in the Process. The petitioner is not required to participate in the Supplemental Review Process. However, petitions that meet Supplemental Review Process thresholds but do not participate in the Process, staff shall assume reasonable infrastructure impacts based on the most intense development allowed by the petition in analyzing the petition and shall point out in the staff comment that the petitioner has declined to participate in the Supplemental Review Process.

"Automatic" continuances, provided for under Article VI, Section 8, B, are not allowed, for either petitioner(s) or remonstrator(s), if the petition is being considered under the Supplemental Review Process.

A petitioner who agrees to participate in the Supplemental Review Process may, at any time, withdraw from the Process.

4. RULES FOR SUPPLEMENTAL REVIEW PROCESS - Procedural rules applying specifically to the Supplemental Review Process are hereby adopted by the Board and are found in a booklet entitled "Supplemental Review Process User Manual." This booklet provides detailed information about Supplemental Review Process requirements and operation. The Supplemental Review Process is governed by these Rules of Procedure and the "Supplemental Review Process User Manual." In case of a conflict, these Rules of Procedure control.

ARTICLE VIII - WAIVER OF RULES

Each Division of the Board shall have the right to waive the Rules of Procedure upon their 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.

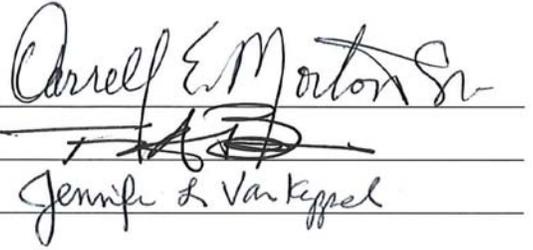
ARTICLE IX - AMENDMENTS TO RULES OF PROCEDURE

Amendments to these Rules of Procedure may be initiated by the Board upon the affirmative vote of a majority of the members of all of the Divisions of the Board who are entitled to vote.

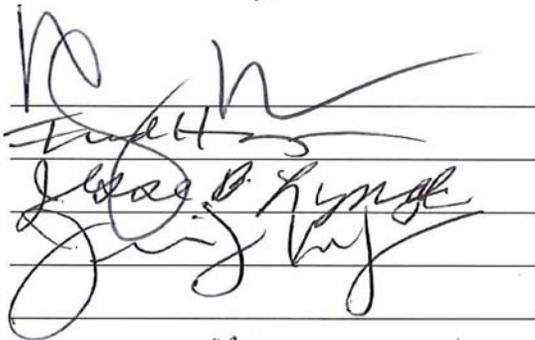
The foregoing RULES OF PROCEDURE OF THE METROPOLITAN BOARD OF ZONING APPEALS OF MARION COUNTY, INDIANA, are hereby adopted by the METROPOLITAN BOARD OF ZONING APPEALS OF MARION COUNTY, INDIANA, and applicable to matters and petitions heard on or after July 1, 2014.



Date: JUNE 3, 2014
Division I of the Metropolitan
Board of Zoning Appeals of
Marion County, Indiana



Date: MAY 13, 2014
Division II of the Metropolitan
Board of Zoning Appeals of
Marion County, Indiana



Date: MAY 20, 2014
Division III of the Metropolitan
Board of Zoning Appeals of
Marion County, Indiana

Rules of Procedure for Metropolitan Board of Zoning Appeals of Marion County, Indiana

INDEX

	<i>page</i>		<i>page</i>
<i>Administrator's Approval</i>	21-22	<i>publication</i>	11
<i>Adverse decision, refileing</i>	19	<i>on subject property</i>	12
<i>Adverse party, appearance required</i>	15	<i>for tall structures</i>	12
<i>Affidavit of compliance</i>	20	<i>Oath, testimony under</i>	18
<i>Amendments</i>		<i>Officers of board</i>	4
<i>to petition</i>	18	<i>Order of petitions</i>	10
<i>to rules of procedure</i>	26	<i>Petitions, categories of</i>	
<i>to supporting documents</i>	18	<i>administrative appeal petition</i>	5
<i>Appeal</i>		<i>approval petition</i>	5
<i>by administrator</i>	22	<i>development standards variance petition</i>	5
<i>Of Administrator's decision</i>	23	<i>special exception petition</i>	5
<i>by judicial review</i>	22	<i>use variance petition</i>	5
<i>Ballot vote</i>	18	<i>Petitions, filing of</i>	
<i>Commitments</i>		<i>docket numbers</i>	10
<i>modification of</i>	4, 5, 21	<i>docketing of petition, time requirements</i>	9
<i>recording of</i>	20-21	<i>filing fees</i>	7
<i>Conditions, affidavit of compliance</i>	20	<i>filing time, minimum</i>	6
<i>Conflict of interest, board members</i>	17-18	<i>findings of fact</i>	6
<i>Continuance</i>	15	<i>order of petition</i>	10
<i>automatic</i>	15	<i>request, specifying of</i>	7
<i>for cause</i>	16	<i>required forms</i>	6
<i>when heard</i>	15	<i>waiver of fees</i>	8
<i>Dismissal of petition</i>	19	<i>who may file</i>	6
<i>Disqualification of board member,</i>		<i>Points of order</i>	5
<i>conflict of interest</i>	17-18	<i>Powers of board</i>	4
<i>Divisions of board</i>	4	<i>Public hearing</i>	
<i>Docket numbers</i>	10	<i>adverse party, appearance required</i>	15
<i>Exhibits</i>	18	<i>conflict of interest, board members</i>	17
<i>Expedited petitions</i>	10	<i>indecisive vote</i>	14
<i>Filing fees</i>	7	<i>minutes of hearing</i>	18
<i>Filing time, minimum</i>	6	<i>oath</i>	18
<i>Findings of fact</i>		<i>orderly conduct required</i>	17
<i>based on record</i>	17	<i>place of</i>	14
<i>filing of</i>	6	<i>quorum for</i>	14
<i>Hearing Officer, definition of</i>	6	<i>representation at</i>	15
<i>Indecisive vote</i>	14	<i>special meetings</i>	14
<i>Jurisdiction</i>	4	<i>time allotment</i>	16-17
<i>Letter of grant or denial</i>	20	<i>time of</i>	14
<i>Minutes of hearing</i>	18	<i>Quorum</i>	14
<i>Motion to dismiss</i>	16	<i>Representation at hearing</i>	15
<i>Noise Sensitive Areas, Additional Notice</i>	12	<i>Required forms</i>	6
<i>Notice</i>		<i>Special meetings</i>	14
<i>to adjoining land owners</i>	11, 13	<i>Supplemental Review</i>	23
<i>affidavit of</i>	13	<i>Tall Structures, Additional Notice</i>	12
<i>of appeal</i>	21- 23	<i>Territorial jurisdiction</i>	4
<i>for approval petitions</i>	12	<i>Time allotment, public hearing</i>	16-17
<i>of board's decision</i>	20	<i>Traffic Impact Studies</i>	9
<i>defective</i>	13	<i>Variance</i>	
<i>elements of</i>	11-12	<i>development standards variance</i>	5
<i>horizontal property law</i>	11	<i>use variance</i>	5
<i>to affected City-County Councillors</i>	12	<i>Waiver of fees</i>	8-9
<i>to neighborhood organizations</i>	12	<i>Waiver of rules</i>	25
<i>for noise sensitive areas</i>	12	<i>Withdrawal of petition</i>	19

EXHIBIT "A"

**COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE
IN CONNECTION WITH A VARIANCE, SPECIAL EXCEPTION OR APPROVAL GRANT**

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of the parcel of real estate:

Legal Description: *(insert or reference attachment here)*

Statement of COMMITMENTS:

1. _____

2. _____

3. _____

4. _____

These COMMITMENTS shall be binding on the owner, subsequent owners, and other persons acquiring an interest in the real estate. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Board of Zoning Appeals made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon the grant of variance, special exception or approval petition # _____ by the Metropolitan Board of Zoning Appeals or the Hearing Officer.

These COMMITMENTS may be enforced jointly and severally by:

1. The Metropolitan Development Commission; and,
2. Owners of all parcels of ground adjoining the real estate depth of two (2) ownerships, but not exceeding six hundred sixty (660) feet from the perimeter of the real estate. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the offices of the various township assessors of the Marion County, which the current owners of record at the time the notice shall be sent. (This paragraph defines the category of persons entitled to receive personal notice of the variance, special exception or approval petition under the rules of the Board in force at the time the COMMITMENT was made); and,
3. _____
4. _____

Rules of Procedure for Metropolitan Board of Zoning Appeals of Marion County, Indiana

The undersigned hereby authorizes the Division of Planning of the Department of Metropolitan Development to record this Commitment in the office of the Recorder of Marion County, Indiana, upon final approval of petition # _____.

IN WITNESS WHEREOF, owner(s) has executed this instrument this _____ day of _____, 20_____.

Signature _____

Signature _____

Printed _____

Printed _____

Title/ _____

Title/ _____

Organization _____

Organization _____

Name: _____

Name: _____

STATE OF INDIANA)

) SS:

COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared _____, owner(s) (title/organization name) of the real estate who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this
_____ day of _____, 20_____

Notary Public

Printed Name of Notary Public

My Commission

expires: _____

My County of

residence: _____

I affirm under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document unless required by law. - _____

*This instrument was prepared by*_____.

EXHIBIT "B"

**COMMITMENTS MODIFYING OR TERMINATING EXISTING COMMITMENTS
CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN
CONNECTION WITH VARIANCE OR SPECIAL EXCEPTION GRANT.**

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following modification(s) or termination(s) of commitment(s) concerning the use and development of the parcel of real estate:

Legal Description: *(insert or reference attachment here)*

Statement of Modification or Termination of COMMITMENTS:

1. _____

2. _____

3. _____

4. _____

These modified COMMITMENTS shall be binding on the owner, subsequent owners, and other persons acquiring an interest therein. These modified COMMITMENTS may be further modified or terminated by a decision of the Metropolitan Board of Zoning Appeals made at a public hearing after proper notice has been given.

Modified COMMITMENTS contained in this instrument shall be effective upon the adoption of modification or termination approved by the Metropolitan Board of Zoning Appeals in petition # _____.

These COMMITMENTS may be enforced jointly and severally by:

1. The Metropolitan Development Commission; and
2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six hundred sixty (660) feet from the perimeter of the real estate. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the offices of the various township assessors of Marion County, which list the current owners of record at the time the notice shall be sent. (This paragraph defines the category of persons entitled to receive personal notice of the variance, special exception or approval petition under the rules of the Board in force at the time the commitment was made); and
3. _____.

EXHIBIT "E"

OPEN OCCUPANCY AND EQUAL EMPLOYMENT OPPORTUNITY COMMITMENT

1. The owner commits that he shall not discriminate against any person on the basis of race, religion, color, disability, sex, sexual orientation, gender identity, familial status, national origin, ancestry, age United States military service veteran status in the sale, rental, lease or sublease, including negotiations for the sale, rental, lease or sublease, of the real estate or any portion thereof, including, but not limited to:
 - A. any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters by one or more families or a single individual;
 - B. any building, structure or portion thereof, or any improved or unimproved land utilized or designed or intended for utilization, for business, commercial, industrial or agricultural purposes;
 - C. any vacant or unimproved land offered for sale or lease for any purpose whatsoever.
2. The owner commits that in the development, sale, rental or other disposition of the real estate or any portion thereof, neither he nor any person engaged by him to develop, sell, rent or otherwise dispose of the real estate, or portion thereof shall discriminate against any employee or applicant for employment, employed or to be employed in the development, sale, rental or other disposition of the real estate, or portion thereof with respect to hire, tenure, conditions or privileges of employment because of race, religion, color, disability, sex, sexual orientation, gender identity, familial status, national origin, ancestry, age United States military service veteran status.

EXEMPT PERSONS AND EXEMPT ACTIVITIES

An exempt person shall mean the following:

- (1) With respect to commitments 1 and 2 above:

- (a) any not-for-profit corporation or association organized exclusively for fraternal or religious purposes;
- (b) any school, educational, charitable or religious institution owned or conducted by, or affiliated with, a church or religious institution;
- (c) any exclusively social club, corporation or association that is not organized for profit and is not in fact open to the general public;

provided that no such entity shall be exempt with respect to a housing facility owned and operated by it if such a housing facility is open to the general public;

- (2) With respect to commitment 2, a person who employs fewer than six (6) employees within Marion County.

An exempt activity with respect only to commitment 1 shall mean the renting of rooms in a boarding house or rooming house or single-family residential unit; provided, however, the owner of the building unit actually maintains and occupies a unit or room in the building as his residence, and, at the time of the rental the owner intends to continue to so occupy the unit or room therein for an indefinite period subsequent to the rental.