

## CHAPTER 821

### ZONING ORDINANCE: ADVISORY BOARD OF ZONING APPEALS

#### 821-1. Establishment

The Monroe County Advisory Board of Zoning Appeals is hereby established in accordance with the Advisory Planning law set forth in Indiana Code Chapter 36-7-4.

#### 821-2. Membership

The Board shall consist of five (5) citizen members as follows:

- (A) Three (3) citizen members appointed by the Board of County Commissioners. One (1) of the Board of Commissioners' appointees must be a member of the Plan Commission. The two other appointees may not be members of the Plan Commission.
- (B) One (1) citizen member appointed by the County Council. The County Council appointee may not be a member of the Plan Commission.
- (C) One (1) citizen member appointed by the Plan Commission. The Plan Commission appointee must be a member of the Plan Commission other than the member appointed by the County Commissioners.

Each appointing authority may appoint an alternate citizen member to act during the absence or disability of a regular appointee of the authority.

#### 821-3. Qualifications of Members

The members of the Board may not hold other elective or appointive office in municipal, county, or state government, except as permitted by Section 2 of this chapter. A member must be a resident of the County Planning Jurisdictional Area.

#### 821-4. Terms of Office

- (A) The Board was established by Ordinance 86-19, passed on August 29, 1986, and said Ordinance provided that members be appointed for the following terms: one (1) member for a term of one (1) year; one (1) member for a term of two (2) years; one (1) member for a term of three (3) years; and two (2) members for a term of four (4) years. Board members were appointed to the foregoing terms. All subsequent members shall be appointed for a term of four (4) years which term expires on the first Monday of January of the fourth year after the member's appointment.
- (B) A member may serve until his successor is appointed and qualified. A member may be reappointed.

#### 821-5. Removal of Member

The appointing authority may remove a member from the Board for cause. The appointing authority must mail notice of the removal, along with written reasons for the removal, to the member at his residence address. A member who is removed may, within thirty (30) days after receiving notice of the removal, appeal the removal to the Monroe Circuit Court.

**821-6. Vacated Membership**

If a vacancy occurs among the members of the Board, the appointing authority shall appoint a member for the unexpired term of the vacating member.

**821-7. Expenses**

If the Board determines that it is necessary or desirable for members to join a professional organization or to attend a conference or interview dealing with planning or related problems, the Board may pay the applicable membership fees and all actual expenses of the members, subject to County Council appropriation of funds.

**821-8. Conflict of Interest**

A member of the Board may not participate in a hearing or decision of the Board concerning a zoning matter in which he has a direct or indirect financial interest. The Board shall enter in its records the fact that a regular member has such a disqualification and the name of the alternate member, if any, who participates in the hearing or decision in place of the regular member.

**821-9. Official Action**

An action of the Board is not official unless it is authorized by a majority of the entire membership of the Board.

**821-10. President and Vice President**

At the first Board meeting of each year, the Board shall elect a president and vice president from its members. The vice president shall act as president during the absence or disability of the president.

**821-11. Secretary**

The Board may appoint a secretary and such employees as are necessary for the discharge of its duties, subject to County Council appropriation.

**821-12. Rules of Procedure**

The Board shall adopt rules concerning the filing of appeals, applications for variances, conditional uses and special exceptions, the giving of notice, the conduct of hearings and other subjects or matters as required by state law or as deemed necessary or desirable by the Board.

**821-13. Meetings and Records**

All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, keep records of its examinations and other official actions, prepare written findings of fact and record the vote, disqualification, abstention, or failure to vote of each member upon each question. All minutes and records shall be filed in the office of the Board and shall be public records to the extent required by IC 5-14-3-1 et seq.

**821-14. Findings of Fact**

All decisions of the Board on all matters within its jurisdiction and authority shall be committed to writing and shall be supported by written specific findings of fact on each material element pertaining to the matter under consideration.

**821-15. General Powers and Duties**

The Board:

- (A) shall hear and determine appeals from and review any order, requirement, decision or determination made by the Plan Director, a staff member or administrative officer, board or committee designated by the Zoning Ordinance, other than the Plan Commission, made in the enforcement of the Zoning Ordinance or the issuance of permits required by the Zoning Ordinance.
- (B) may reverse or affirm, wholly or partially, or may modify any order, requirement, decision or determination appealed from as in its opinion ought to be done in the premises and to that end shall have all the powers vested in the person or board from whom the appeal is taken. Reversal or modification must rest upon a finding by the Board that the initial order, requirement, decision or determination was improper as a matter of law or fact.
- (C) shall hear, and approve or deny, special exceptions to the Zoning Ordinance but only in the classes of cases and in accordance with the criteria specified in the Zoning Ordinance. The Board may impose reasonable conditions as a part of its approval.
- (D) shall approve or deny variances of use from the terms of the Zoning Ordinance. The Board may impose reasonable conditions as a part of its approval.
- (E) shall approve or deny variances from the development standards (e.g., height, bulk, area and density) of the Zoning Ordinance but not from said standards as they may apply to subdivisions.

**821-16. Appeal Procedures**

- (A) An appeal filed with the Board must specify the grounds of the appeal and must be filed within such time and in such form as may be prescribed by the Board by rule.
- (B) The administrative official, hearing officer, administrative board, or other body from whom the appeal is taken shall, on the request of the Board, transmit to the Board all documents, plans, and papers (or certified copies of the same) constituting the record of the action from which an appeal was taken.
- (C) When an appeal from the decision of an official or board has been filed with the Board, proceedings and work on the premises affected shall be stayed unless the official or board certifies to the Board that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In that case, proceedings or work may not be stayed except by court order.
- (D) The Board shall fix a reasonable time for the hearing of administrative appeals, exception, uses, and variances.
- (E) Public notice in accordance with IC 5-3-1-2 and IC 5-3-1-4 and due notice to interested parties shall be given at least ten (10) days before the date set for the hearing.

- (F) The party taking the appeal, or applying for the exception, use, or variance, may be required to assume the cost of public notice and due notice to interested parties. At the hearing, each party may appear in person, be agent, or by attorney.
- (G) The Board shall, by rule, determine who are interested parties, how notice is to be given to them, and who is required to give that notice.
- (H) The Board staff and other persons may appear before the Board at the hearing and present evidence in support of or in opposition to the granting of a variance or the determination of any other matter.
- (I) A person may not communicate with any member of the Board before the hearing with intent to influence the member's action on a matter pending before the Board. Not less than five (5) days before the hearing, however, the staff may file with the Board a written statement setting forth any facts or opinions relating to the matter.
- (J) The Board may require any party adverse to any pending petition to enter a written appearance specifying the party's name and address. If the written appearance is entered more than four (4) days before the hearing, the Board may also require the petitioner to furnish each adverse party with a copy of the petition and a plot plan of the property involved.
- (K) Upon appeal, the Board may reverse, affirm, or modify the order, requirement, decision, or determination appealed from. For this purpose, the Board has all the powers of the official, officer, board, or body from which the appeal is taken.
- (L) The Board shall make its decision on any matter specified in Section 16 of this chapter at the meeting at which the matter is first presented or at the conclusion of the hearing on the matter if the hearing is continued. Within five (5) days after making any decision, the Board shall file in the office of the Board a copy of its decision.

**821-17.**

**Commitments**

- (A) In the case of a petition for a variance, conditional use or special exception from the terms of the Zoning Ordinance, the Board may permit or require the owner of the affected parcel to make a written commitment concerning the use or development of the affected parcel.
- (B) The Board may adopt rules: governing the creation, form, recording, modification, enforcement, and termination of commitments; and, designating which specially affected persons and classes of specially affected persons are entitled to enforce commitments.
- (C) Commitments shall be recorded in the Monroe County Recorder's Office and shall take effect upon the granting of the exception, use or variance. Unless modified or terminated by the Board, a commitment is binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel. A commitment is binding on the owner of the parcel even if it is unrecorded; however, an unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person had actual notice of the commitment. A commitment may be modified or terminated only by the Board at a public hearing after notice as provided by rule.

- (D) By permitting or requiring commitments, the Board does not become obligated to approve or deny any request.
- (E) Conditions imposed on the granting of an exception, use or variance are not subject to the rules applicable to commitments.
- (F) The rules applicable to commitments do not affect the validity of any covenant, easement, equitable servitude, or other land use restriction created in accordance with law.

**821-18.**

**Judicial Review**

Each decision of the Board on a matter specified in Section 16 is subject to review by certiorari.

**[end of chapter]**