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**RULES AND PROCEDURES**  
**FOR THE BOARD OF ZONING APPEALS**  
**FOR THE**  
**CITY OF MADISON, INDIANA**

**WHEREAS**, the City of Madison, Indiana Board of Zoning Appeals (“Board”) is authorized and required by I.C. 36-7-4-900 Series to supervise and make rules for: the filing of appeals; the application for variances and conditional uses; the giving of notice; the conduct of hearings; and the determination of whether a variance application is for a variance of use or for a variance from the developmental standards (such as height, location, bulk, or area); and the creation, form, recording, modification, enforcement, and termination of commitments; and

**WHEREAS**, the City of Madison, Indiana Board of Zoning Appeals is authorized and required to implement Rules and Procedures in accordance with City of Madison Zoning Ordinance 2016-19 Section 11.13 – Rules of Procedure

**WHEREAS**, The City of Madison Board of Zoning Appeals determines that its rules should be printed and be made readily available to all applicants and other interested persons.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY OF MADISON, INDIANA BOARD OF ZONING APPEALS, THAT THE FOLLOWING RULES BE ADOPTED.

## **ARTICLE I – AUTHORITY**

Board Jurisdiction – The jurisdiction of the Board shall be in accordance with The City of Madison Zoning Ordinance, Section 1.10 – Provisions of Ordinance Declared to Be Minimum Requirements. – “Within the City and the area of Jefferson County within two (2) miles of the corporate boundary.”

### **Section 1. Duties:**

The Duties of the Board shall be those set forth in IC 36-7-4-918.1 through 918.5.

### **Section 2. Membership:**

The Board shall consist of five (5) voting members, appointed in accordance with IC 36-7-4-902, IC 36-7-4-903 and Section 11.11 of the City of Madison Zoning Ordinance.

### **Section 3. Adoption of Rules:**

Board of Zoning Appeals may:

1. Adopt rules governing the creation, form, recording, modification, enforcement, and termination of commitments.
2. Adopt rules designating which specially effected persons and classes of specially affected persons are entitled to enforce commitments.

## **ARTICLE II – OFFICERS AND STAFF**

### **Section 1. Board Officers:**

At its first regular meeting of each year, the Board shall elect from its members a Chairman, Vice Chairman and Secretary.

### **Section 2. Duties of Board Officers:**

- A. Chairman – The Chairman shall preside over Board meetings and on behalf of the Board and shall exercise general supervision over the affairs of the Board, including the execution of contracts and agreements, the appointment of committees and representatives (except as otherwise provided by statute, ordinance, or these rules), the determination of points of order and procedure, and the signing of all official documents.
- B. Vice Chairman – The Vice Chairman shall have authority to act as Chairman of the Board during the absence or disability of the Chairman.
- C. Secretary – The Secretary shall keep a complete and accurate record of all proceedings and votes of the Board, have custody and preservation of all papers and documents of the Board, and shall prepare, publish and distribute reports, ordinances and other material relating to

Board activities. Accurate record of all hearings and official actions of the Board, and the minutes representing such record shall be available within a reasonable time after such hearing or action to all members of the Board. Approved minutes shall be made available for inspection by the public. The Board may appoint a city staff member to act as the Board's Secretary.

- D. Should the situation arise in which neither the chairman nor vice-chairman are in attendance, yet there is a quorum, said attending Board members shall elect a temporary chairman to preside over said meeting.

### **Section 3. Board Staff:**

The Planning, Preservation, & Design department head or his/her assignee shall provide technical and analytical assistance to the Board. The department head shall conduct a complete and thorough investigation of all matters that come before the Board and may enlist at his/her discretion, technical and professional assistance from engineers, architects and other consultants as required.

## **ARTICLE III – PUBLIC RECORDS**

The records and files for the Board shall be made available to the public under the provisions of IC 5-14-3, the Indiana Access to Public Records Law, and any amendments thereto.

The Staff shall prepare a schedule for the filing of deadlines each year for the ensuing year which shall be in accordance with the Zoning Ordinance. Applications which are incomplete at the time of the filing deadline shall not be placed on the agenda. Board Staff shall be responsible for providing meeting agendas to the Madison Courier for publication as outlined in the City of Madison Zoning Ordinance.

## **ARTICLE IV - MEETINGS**

All meetings of the Board shall be conducted in accordance with IC 5-14-1.5, the Indiana Open Door Law, and any amendments thereto. All meetings and hearings of the Board, except 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 be heard, in accordance with these rules. Onsite inspections of property involved in petitions before the Board shall not be considered meetings.

### **Section 1. Meeting Notification:**

Meeting notification shall be in accordance with the City of Madison Zoning Ordinance Section 11.38, 11.39, 11.40, and with IC 5-14-1.5-5.

## **Section 2. Defective Notice:**

If proper notice has not been given, the application may be continued until a later date to allow time for those not notified to be advised of said application. Personal appearance at the meeting shall waive any defect in notice.

## **Section 3. Regular Meetings:**

The Board shall normally conduct regular meetings on the second Monday of each month at 6:30 p.m. (Time subject to change). If it is not possible to conduct the meeting at that time or place, the Chairman may set an alternative date, time, and/or place for the regular meeting. Rescheduled meetings shall be advertised in accordance with Zoning Ordinance requirements. A schedule of all regular meetings shall be published each year by the Secretary of the Board. Location of all regular meetings and special meetings shall be held in Madison City Hall at the times designated on the schedule of meetings, unless otherwise designated by the Board.

## **Section 4. Special Meetings:**

Special meetings of the Board may be called at any time by the Chairman or by two (2) members upon request to the Board's Staff. The Staff shall notify Board members of such special meeting at least three (3) days in advance of such meeting. Written notice to Board members of a special meeting shall not be required if the time and place of the special meeting has been fixed in a regular meeting of the Board, provided that all members of the Board are present at the regular meeting. Special meetings shall be provided to the news media in accordance with the Zoning Ordinance.

## **Section 5. Executive Session:**

The Board may meet in Executive Session pursuant to I.C. 5-14-1.5-6.1.

## **Section 6. Quorum:**

Three (3) members of the Board shall constitute a quorum. No business may be transacted and no public hearing may be opened at any meeting of the Board unless a quorum is in attendance. Majority – In accordance with IC 36-7-4-911, no action of the Board is official unless it is authorized at a regular or special meeting by a majority of the entire membership of the Board.

## **Section 7. Absenteeism:**

As provided by I.C. 36-7-4-907, any regular member who misses three (3) or more consecutive regular meetings of the Board may be treated as if the member has resigned. It will be at the discretion of the appointment body to appoint a replacement member.

## **Section 8. Meeting Cancellation:**

Whenever there is a lack of business for Board consideration, the Chairman may dispense with a regular meeting. In such cases, the Board Staff shall give notice to all members, and the news media shall be notified of such cancellation. Whenever it is determined that a quorum is not

available for a regular or special meeting, the Chairman of the Board shall dispense with such meeting, and all business scheduled for such meeting will be automatically continued to the next regular or special meeting. In such cases, the Board Staff shall give written or oral notice to the Board members, those having business before the Board, and to the news media. The Chairman of the Board also may dispense with a scheduled, regular, or special meeting in the event of a natural disaster, snow emergency, or similar causes. In such cases, the Board Staff shall give written or oral notice to the Board members and those having business before the Board, and if possible, the Staff shall notify the news media of the cancellation. In the event of cancellation for any reason, the Chairman may require re-notification to interested parties, with such notice to be paid for by the applicant or by the Board as the Chairman deems appropriate.

## **ARTICLE V - ELIGIBILITY**

The owner(s) of the property shall normally be the applicant. In the case of property which is being purchased under a land contract, the signatures of both the contract purchaser(s) and the contract sellers or their duly authorized agents shall be required. In cases where the applicant is not the owner, such as a lessee of a storefront, the owner shall provide written notice authorizing the applicant to pursue such application. In cases where the applicant can not appear in person before the Board to discuss their application, the applicant may authorize another person or entity to act on their behalf so long as written notification is provided to Staff at least one (1) business day prior to the meeting. Written notification can be in the form of letter or email so long as the email is sent from the email address provided on the application.

## **ARTICLE VI - FILING AND PROCEDURES**

### **Section 1. Application:**

Each petition to the Board shall be on application forms prescribed by the Staff and shall be accompanied by such information and exhibits as specified on such forms and as required by applicable ordinances. Any communication purporting to be a petition not on the prescribed forms or not containing the information required shall be considered incomplete and shall not be placed on the agenda.

### **Section 2. Amendments:**

- A. Increased density or intensity - No petition may be amended in a manner which increases the intensity of use (e.g., adds additional uses or land) after the filing deadline. Such amendment will result in continuing the petition for one month or until the next regular scheduled Board of Zoning Appeals meeting. The application as amended shall be re-advertised and new notice given to interested parties. The applicant shall be required to pay the costs of such re-advertising and renotification.

- B. Decreased density or intensity - It shall be within the discretion of the Board to approve an applicant's request to amend the petition in a manner which decreases the intensity of such (e.g., removes land or uses). The Board may require such amended petition to be continued and may require re-advertising and re-notification in the interest of providing a fair and adequate hearing.

### **Section 3. Filing Deadlines:**

The filing deadlines are specified per application within the Zoning Ordinance. Actual deadlines may vary to account for holidays, media publishing requirements, and other potential scheduling conflicts. The Secretary shall publish an official list of all filing deadlines for the year no later than December 1 of the preceding year.

## **ARTICLE VII - NOTICE REQUIREMENTS**

### **Section 1. Certified Mailing Meeting Notification:**

- A. Method of Notice - Notice shall be given to owners of all adjoining property and those across streets, corners or alleys, and others that may have a substantial interest in the case. Notification shall be by certified mail/return receipt not less than ten (10) days prior to the hearing. Certified mailing is the responsibility of the applicant(s).
- B. Determination of owners - Unless the applicable ordinance states otherwise, the names of property owners to be notified may be determined through Jefferson County GIS which has been synchronized within a timely manner. Names and addresses shall be deemed to be the true names and address of the persons entitled to notice. For the purpose of determining adjoining parcels of land, the land described in said petition shall be deemed to include any adjoining land owned by the applicant, provided, however, such ownership shall not be deemed to include the entire length of a right-of-way of a street, rail way, or similar feature, but shall be limited to the particular parcel involved. Land separated from petitioned property streets, railways, easements and the like shall be deemed to be land adjoining the petitioned land.
- C. Notification shall include:
  - 1. Name of the person or agency initiating the matter to be heard.
  - 2. Location of the parcel by at least one of the following two options:
    - A. Assigned street address of the parcel which is the subject of the petition (required option if street address has been assigned).
    - B. Parcel identification number of the subject parcel and general location. Description of the parcel as provided by the Plan Commission office.
  - 3. Time, date, and place of hearing.
  - 4. Pertinent information regarding the purpose of the application request.
  - 5. Any other information which may be required by law to be contained in such notice.

## **Section 2. Evidence of Notice:**

Certified mailing stubs and receipts, signed certified cards showing proof of service, and returned/undeliverable letters shall be provided to the Plan Commission office Staff at least one (1) working day prior to the hearing. If the requirements of Section 1, above, are not met, Staff shall notify the Board and the application shall be tabled to the next regular scheduled meeting.

## **Section 3. Publication:**

- A. Notice of publication containing all necessary information shall be given by the Plan Commission office in a newspaper of general circulation at least fifteen (15) calendar days before the hearing. The *applicant* shall assume the cost of said publication per the approved Schedule of Fees.
- B. Any other information which may be required by law to be contained in such notice.

## **ARTICLE VIII – EX PARTE COMMUNICATION**

### **1. Definition:**

Ex parte contact means when an individual (whether an applicant, supporter, objector, or average citizen) engages in communication (conversation or correspondence) regarding a pending application with a member of the decision-making body outside of the public hearing.

### **2. The reason:**

The reason such contact is not legal nor ethical is because:

- 1) It allows an individual to "influence a judge";
- 2) It provides information to a single decision-maker instead of the "whole jury"; and
- 3) It does not allow for parties to hear or disagree with statements made "off the record", thus, subverting the fair and impartial public hearing process.

Therefore, please do not approach decision-makers regarding pending applications.

When ex parte contact occurs:

- at best, a decision-maker may disclose he/she was approached inappropriately and restate for the record what comments occurred outside of the public hearing.;
- at worst, the decision-maker may not be able to vote.

### **3. When does ex parte apply?**

- zoning action - conditional use applications
- zoning action - variance applications

### **4. When does ex parte not apply?**

- discussion with staff (who are not decision-makers)
- zoning action – text or map amendments (which are legislative acts)

## **ARTICLE IX – MEETING AGENDA**

### **Section 1. Agenda:**

The agenda shall list all applications to be considered by the Board at the regular or special meeting. The applications shall be listed on the agenda in the order in which the petition was filed with the Staff. New or Old Business may be added to the agenda by board members or Staff following the applications.

### **Section 2. Order of Business:**

#### **Regular Meetings -**

The order of business of regular meetings shall be as listed below, except that said order of business may be changed by the Chairman upon the consenting vote of a majority of those members.

- Call meeting to order
- Roll call of members
- Presentation of Minutes
- Renewals
- Hearing of tabled applications
- Hearing of new applications
- New Business
- Old Business
- Reports and Recommendations
- Adjournment

#### **Special Meetings -**

The order of business of special Meeting shall be as listed below.

- Call meeting to order
- Roll call of members
- The business for which the special meeting was called
- Adjournment

Closing the meeting – After all public comments have been heard under the rules of this section, the Chairman shall declare the hearing closed and shall call for a motion. Additional public comment shall not be permitted after the close of the hearing, unless the Chairman specifically allows comments. Any motion which has been made and seconded is open for discussion by the Board members, but such motion is closed to discussion by the public, unless the Chairman specifically allows such discussion. The Chairman shall have the authority to limit such discussion by the public or the Board members.



## **ARTICLE X - DISPOSITION OF PETITIONS**

### **Section 1. Representation:**

- A. Representation – The applicant shall appear in person, by agent, or attorney, and present any supporting witnesses, evidence, statements, and arguments in favor of the request. Remonstrators and persons in favor of the request may appear by agent or by attorney and present witnesses, evidence, statements, and arguments. A written remonstrance filed with the Board before the hearing may be considered by the Board and be made a part of the record of the hearing.
- B. Board participation – Board members shall be provided adequate opportunity to examine witnesses and question any evidence, statements, or arguments in interest of a fair hearing.
- C. Identification – Any persons wishing to be heard on any matter in a public hearing must stand before the Board and provide their name and address for the record.
- D. Commentary addressed to Board - All commentary at a public hearing shall be addressed to the Board through its Chairman. Such commentary shall not be permitted between opposing parties without the consent of said officer.
- E. Authority of Chairman – The Chairman shall have the authority to prohibit repetitious and irrelevant testimony and shall have the authority to limit the length of testimony by each speaker deemed appropriate to a fair public hearing.
- F. Orderly conduct – Every person appearing before the Board shall abide by the order and direction of the Chairman. Discourteous, disorderly, or contemptuous conduct shall not be tolerated, and the Chairman may take action as deemed necessary to prevent such conduct.

### **Section 2. Presentations:**

- A. The applicant shall present facts relating to the case in no more than five (5) minutes being available for the presentation however the Chairman of the Board may determine more time is needed. This shall include initial and follow up comments. The burden to supply all information necessary for a clear understanding of the case shall be upon the applicant.
- B. Each remonstrating party shall have the opportunity to present facts relating to the case with up to fifteen (15) minutes, or more at the discretion of the Chairman, being available for their presentations.
- C. The Board shall then recognize nonparties allowing up to approximately five (5) minutes in which to present rebuttal. However, the Chairman may determine more time is needed.
- D. The Staff may present a Staff Report detailing any opinions, findings, and/or recommendations relating to the petition.

- E. The Chairman shall call for a discussion by members, which may include directing any further questions to any speakers.
- F. Findings of Fact shall be completed for each application. Failure of response by a Board member shall be considered a “no”.
- G. The Chairman shall call for a motion.

### **Section 3. Motions:**

The final disposition of any petition duly filed and brought before the Board shall be in the form of a motion, properly adopted, specifically setting forth such disposition.

- A. Motion by Board - Automatic - In the event that the Board does not achieve the required three (3) votes to approve or deny a petition, the petition shall be automatically tabled and placed on the agenda for the next regularly scheduled meeting.
- B. Improper – If Staff informs the Board that proper notice under applicable laws and these rules has not been given for the initial hearing, the Board should table the application to allow time for proper notice to be given. If notice is still not met at subsequent meetings, the Board may choose to table or dismiss the application.
- C. A motion to approve a petition may be conditional upon an applicant’s compliance with a requirement or requirements imposed by the Board. Such condition(s) of approval shall be specifically stated and recited to the applicant. The Board may impose a time limit upon the fulfillment of any such requirement(s). In the event any condition of the decision has not been fulfilled or the time for compliance has expired, the decision shall be revoked and rescinded.
- D. If a motion fails to achieve the necessary votes to pass, the petition under review shall be considered to still be open. Further discussion should be held and an additional motion shall be made until such motion achieves the required number of votes to pass.

### **Section 4. Voting:**

- A. Each motion on a matter requiring a public hearing shall be voted on. The vote of each member shall become a part of the record on the petition, and the vote of each member shall be disclosed by any Board officer or the Staff to anyone requesting such information.
- B. In accordance with IC 36-7-4-223, a Board member may not participate in a hearing or decision concerning a matter in which he/she has direct or indirect financial interest. A member shall declare his/her known conflict of interest. Questions as to whether such conflict exists may be determined by the Chairman. When there is uncertainty as to the applicability of this section, the member shall be disqualified. The Board shall enter in its

records the fact that its member has a disqualification. Members are expected to disclose any personal, non-financial interest in any matter before the Board, and shall abstain from participation and voting on such matter. A member who has a conflict of interest may remain at the Board table but shall refrain from discussion. Such member may join the audience but may not give testimony on the matter before the Board. If the case should arrive where a quorum is needed following such disqualification, an alternate member to the Board shall enter into its record the fact a regular member has such a disqualification; name of the alternate member, if any, who participates in the hearing or decision in place of the regular member. Nothing in this section shall prevent a member of the Board from presenting a petition on his/her own behalf but shall not appear before the Board on behalf of others.

- C. All Board members present, excepting those with a conflict of interest, shall vote on each matter for which a public hearing is held. An abstention for any other reason shall have the same effect as a negative vote.
- D. Absentee or proxy voting shall not be permitted. Members must be present for the public hearing in order to be eligible to vote on any matter. In the event a member is absent for part of a public hearing, such member's eligibility to vote on the matter shall be at the discretion of the Chairman.
- E. An alternate member may be assigned pursuant to IC 36-7-4-907(a) and City of Madison Zoning Ordinance Section 11.11. The appointing authority may appoint an alternate member to participate with the Board in any hearing or decision if the regular member it has appointed has a disqualification under IC 36-7-4-909 or is unavailable to participate in the hearing or decision. An alternate member shall have all of the powers and duties of a regular member while participating in the hearing or decision.

#### **Section 4. Indecisive Vote:**

When a vote of the Board does not result in an official action of the Board, the petition may be tabled and placed on the agenda to be heard at the next regularly scheduled meeting. The applicant may also elect to withdraw said petition.

#### **Section 5. Disapproval:**

- A. The Board shall disapprove any petition for which the applicant fails to show to the Board's satisfaction that the required criteria for approval has been met. The Board shall make written findings on each of the criteria.
- B. Refiling - No petition which has been denied or dismissed by the Board shall again be placed on the agenda for hearing within a period of one hundred eighty (180) calendar days from the date of such disapproval, except upon a motion duly adopted by a majority of the membership of the Board to permit such reapplication.

## **Section 6. Dismissals:**

- A. The Board may dismiss a petition if the applicant or authorized representative does not appear to present and speak in favor of such petition or if such petition has been improperly filed as determined by the Board.
- B. The Board shall dismiss a petition if it finds it has no jurisdiction over such matter.

## **Section 7. Withdrawals and Continuance:**

- A. Any petition may be withdrawn without prejudice provided a written request for withdrawal signed by the applicant or an authorized representative is received by the Board's Staff at least seven (7) calendar days before the scheduled hearing.
- B. Any petition which is withdrawn less than seven (7) calendar days before the scheduled hearing shall not again be placed on the agenda for a hearing within a period of sixty (60) calendar days from the date of the originally scheduled hearing, except upon a motion duly adopted by a majority of the members of the Board to permit such reapplication.
- C. No petition may be withdrawn after a motion has been made and seconded and a vote has been ordered by the Chairman.
- D. The Board or the Board's Staff may request a continuance not to exceed sixty (60) days in which to review the petition or to allow the investigation or review of issues not raised in the original petition or new matters. Any member of the Board may at any time move to continue the hearing of any petition. Such a motion duly seconded and adopted shall continue the hearing to the time specified in the motion. The Board may include in the motion specific instructions for re-advertising and/or re-notification of interested parties.
- E. An applicant may request to table application not to exceed sixty (60) days. Such request shall be in writing and filed with the Board designee no later than the required filing deadline preceding scheduled hearing. The Board or its designee will determine whether the table request will be granted. Request to table shall not be unreasonably denied.
- F. No request to table shall be granted at the hearing to the applicant(s) or remonstrator(s) except for good cause shown. In determining good cause, consideration will be given to the person(s) present at the hearing, whether or not the cause could or should have been foreseen, and whether the requesting party had the opportunity to request tabling in advance of the hearing.
- G. If the applicant fails to appear at a hearing on the petition, either in person or by counsel, without sufficient reason, the petition may be dismissed or the matter may be continued. Petitions will be dismissed after ninety (90) days of inaction unless good cause is shown.

- H. The Board may elect to continue a meeting if the order of business has not completed by a reasonable time.

## **ARTICLE XI – DEFINITIONS**

### **Section 1. Variance:**

A modification of the strict terms of the relevant regulations of this ordinance where such modification will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of this ordinance and regulations would result in unnecessary and undue hardship.

### **Section 2. Variance of Use:**

A variance of Use is an administrative exception to land use regulations. The specific purposes for which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained.

### **Section 3. Variance from Developmental Standards:**

A granting of variance from a development standard (e.g., height, bulk, area, etc.) as set forth in the Zoning Ordinance. This definition shall be construed liberally to include all variance requests except those which are clearly for variance of use.

It can be requested by a builder or landowner when an odd configuration of the land, or sometimes the physical improvements (structures) on the land, requires a relaxation of the applicable regulations to avoid denying the landowner the same rights and use of the property enjoyed by owners of neighboring properties. Example: House built on an oddly-shaped lot. If the odd shape of the lot makes it impossible for the landowner to comply with the standard building setbacks specified in the Zoning Ordinance, a variance could be requested to allow a reduced setback. Typically, a variance request arises from some condition peculiar to the property involved.

The variance request is justified only if special conditions exist on the lot that create a hardship making it too difficult to comply with the Zoning Code normal requirements. Likewise, a request for a variance on a normal lot with no special conditions could judiciously be denied. The special conditions or hardship typically must arise from some physical configuration of the lot or its structures. The financial or personal situation of the applicant normally cannot be taken into consideration. Under most codes governing variances, approval of the variance must not result in a public health or safety hazard and must not grant special privilege to the property owner. In other words, when a variance is granted, any other property owner with similar site conditions should be able to obtain a similar variance; this criterion is often addressed by citing precedence.

#### **Section 4. Conditional Use Permit:**

A use of property that is allowed by the Official Schedule of District Regulations with specified conditions, something that needs to be considered on a site-specific basis.

New types of uses with characteristics of such unique and special nature relative to location, design, size, method of operation, circulation, and public facilities that each specific use must be considered individually. Conditional Uses shall be in accordance with Zoning Ordinance, Section 7.00.

### **ARTICLE XII – STANDARDS**

#### **Section 1. Variance of Use Standards:**

Application shall include and meet all requirements as outlined in the City of Madison Zoning Ordinance, Section 11.34 – Application for Variances of Use

The Board shall approve or deny variances of use from the terms of the City of Madison Zoning Ordinance as outlined in City of Madison Zoning Ordinance Section 11.33 – Variances of Uses and per IC 36-7-4-918.4.

The Board may approve a request for a Variance of Use application only upon a determination in writing that all of the requirements of the City of Madison Zoning Ordinance and the following criteria have been satisfied:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affect in a substantially manner.
3. The need for the variance arises from some condition peculiar to the property involved.
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.
5. The approval does not interfere substantially with the Comprehensive Plan.

#### **Section 2. Variance from Development Standards:**

Application shall include and meet all requirements as outlined in the City of Madison Zoning Ordinance, Section 11.36 – Application for Variances from Development Standards.

The Board shall approve or deny variances of development standards from the terms of the City of Madison Zoning Ordinance as outlined in City of Madison Zoning Ordinance Section 11.35 – Variances from Development Standards and IC 36-7-4-918.5.

Development standards granted by the Board Zoning of Appeals shall run with the land. The Board may approve or deny variances from the development standards of the Zoning Ordinance. A variance from Development Standards may be approved only upon a determination that:

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affect in a substantially manner.
3. The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

A variance shall not be granted unless the Board makes specific findings of fact, based directly on the particular evidence presented to it, which support conclusions that the standards and conditions imposed by the Zoning Ordinance have been met by the applicant.

The Board shall also comply with City of Madison Zoning Ordinance, Section 11.37 – Supplementary Conditions and Safeguards.

### **Section 3. Conditional Use:**

Conditional uses shall conform to the procedures and requirements of the City of Madison Zoning Ordinance Sections 11.71 – 11.78.

The Board of Zoning Appeals shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use of the proposed location:

1. Is in fact a Conditional Use as established under the provisions of Article V of the City of Madison Zoning Ordinance and appears on the Official Schedule of District Regulations adopted by Section 7.00 for the zoning district involved.
2. Will be harmonious with and in accordance with the general objectives, or with any specific objective of the City's Comprehensive Plan and/or the Zoning Ordinance.
3. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.

4. Will not be hazardous or disturbing to existing or future neighboring uses.
5. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
6. Will not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare of the community.
7. Will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.
8. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.
9. Will not result in the destruction, loss, or damage of natural, scenic, or historic features of major importance.

#### **Section 4. NON TRANSFERABLE**

A Conditional Use Permit shall be deemed to authorize only one (1) particular use and said permit shall automatically expire if, for any reason, the use has not commenced within one (1) year. A Conditional Use Permit is granted to the property owner who makes the original application and does not transfer to the new owner if the property changes ownership. The new owner must apply to the Board of Zoning Appeals for a new permit in order to continue the use that was conditionally allowed.

#### **ARTICLE XIII - COMMITMENTS**

- A. Commitments shall be recorded in the office of the County Recorder and take effect upon the approval of the Conditional Use or Variance. Unless modified or terminated by the Plan Commission or Board of Zoning Appeals, as applicable, may be a commitment is binding on:
  1. The owner of the parcel.
  2. Any subsequent owner of the parcel (Variance only)
  3. A person who acquires an interest in the parcel (Variance only)
- B. 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 has actual notice of the commitment. A commitment may be modified or terminated only by a decision of the Plan Commission or Board of Zoning Appeals made at a public hearing after notice as provided by rule.

- C. This section does not affect the validity of any covenant, easement, equitable servitude, or other land use restriction created in accordance with law.

## **ARTICLE XIV - APPEALS**

### **Section 1. Administrative Appeals:**

- A. A grant of relief from the decision of the Director of the Plan Commission as outlined in Section 11.30, 11.31, and 11.32 of the Zoning Ordinance. The Board has appellate jurisdiction relative to appeals and variances.
- B. Upon appeal, the Board may reverse, affirm, or modify any order, requirements, decision, or determination so appealed. For this purpose, the Board has all the powers of the official, officer, board, or body from which the appeal was taken.
- C. In considering an appeal, the Board shall hear testimony of the official, officer, board, or body from which the appeal was taken as to the reasons for the order, requirement, decision, or determination under appeal. It also shall hear testimony of the appellant as to the grounds for the appeal. The Board may hear such additional testimony as it considers relevant to the decision.
- D. In deciding an appeal, the Board shall consider the intent and purposes of the Zoning Ordinance and shall make a decision which upholds such intent and purposes. A majority vote of the entire membership of the Board is required to overturn a decision of the Code Enforcement Officer. Failure to achieve such majority shall result in affirmation of the decision so appealed.
- E. Refiling - Once the Board has decided an appeal, the same appeal shall not again be placed on the agenda for hearing within a period of one hundred eighty (180) calendar days from the date of the original decision, except upon a motion duly adopted by a majority of the membership of the Board to permit such reapplication.
- F. Review by Certiorari – In accordance with I.C. 36-7-4-1 002, each decision of the Board of Zoning Appeals is subject to review by certiorari. Each person aggrieved by a decision of the Board may present, to the Circuit Court of Jefferson County, a verified petition setting forth that the decision is illegal as a whole or in part and specifying the grounds of the illegality. Any such petition which are to be reviewed by a certiorari must be submitted to the Court within thirty (30) days from the date of the decision of the Board.

## **ARTICLE XV - AMENDMENTS**

Amendments to the Rules of Procedure may be made by the Board at any regular or special meeting upon the affirmative vote of a majority of the membership of the Board, provided however, that the proposed amendment shall have been presented in writing at a previous regular meeting of the Board.

## **ARTICLE XVI - SEVERABILITY**

If any section, clause, provision, or portion of these rules shall be held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section, clause, provisions, or portion of these rules.

All portions of the City of Madison Board of Zoning Appeals shall be in full and complete compliance with the City of Madison Zoning Ordinance 2016-19.

Upon adoption of the Board of Zoning Appeals Rules of Procedure, they shall be made available to all applicants and any interested parties. Additionally, said Rules of Procedure should also be used by the Staff and Board.

## **ARTICLE XVII - CERTIFICATE OF ADOPTION**

The foregoing Rules of Procedure of the City of Madison Board of Zoning Appeals are hereby adopted and goes into effect by the affirmative vote of the Board this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_.

\_\_\_\_\_  
Scott Baldwin, Chairman

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Mark Acosta, Vice-Chairman

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Nancy Burkhardt, Board Member

***ATTEST:***

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Rick Farris, Board Member

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Joe Patterson, Associate Planner; Secretary