

# BZA Rules and Procedures

*Town of Mooresville Board of Zoning Appeals*

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## Article 1: Jurisdiction and Authority

- 1) Board of Zoning Appeals Authority. The authority to review, approve, and grant the petitions and permits listed in the UDO shall rest with the Town of Mooresville Board of Zoning Appeals (BZA). Where permitted, the BZA may, at its discretion, delegate such authority to the Administrator.
- 2) Jurisdiction. The BZA shall have jurisdiction over all land within the established boundary of the BZA as defined by description or map in the County Recorder's Office.
- 3) Administrator. The Public Works Superintendent (and any of their designated staff) shall serve as the Administrator and shall have the principal responsibility for the administration and enforcement of the Unified Development Ordinance (UDO). Their duties shall include, but not be limited to:
  - a) Inspections. Conducting inspections of structures and properties to determine compliance with the requirements of the UDO and all approvals granted by the BZA.
  - b) BZA Applications. Receiving, processing docketing, and referring all appropriate applications to the BZA.
  - c) Clerical & Technical Assistance. Providing all such clerical and technical assistance as may be required by the BZA.
- 4) Administrator's Right of Referral. The Administrator may, at their discretion, refer permits and petitions to the BZA for review and approval.

## Article 2: Membership

Membership of the BZA						
Member		Appointing Authority	Term	Qualifications	Residency	
1.	David Saddler	PC Member	Town Council President	May NOT be an elected or appointed officeholder.  No more than 2 citizen members may be of the same political party.	At least 3 must be residents of Mooresville.  Up to 2 may own property in Mooresville AND be a resident of Morgan County	
2.	Neal Allman	Citizen Member <i>(Non-PC Member)</i>				Initial term is 1 year; 4 years thereafter. 12/01/2022-01/01/2024
3.	Jennifer Meador	Citizen Member <i>(Non-PC Member)</i>				Initial term is 2 years; 4 years thereafter. 12/01/2022-01/06/2025
4.	Charles McGuire	Citizen Member <i>(Non-PC Member)</i>	Town Council	4 years 12/01/2022-01/04/2027		
5.	VACANT	PC Citizen Member	Plan Commission			

- 1) Composition. The BZA shall consist of five (5) members as prescribed *IC 36-7-4-902(a)*.
- 2) Certification. The Appointing Authority shall certify (in writing) the respective member appointed. The written certifications shall be sent to and made a part of the records of the BZA.
- 3) Qualifications for Members. The qualifications for citizen members shall be as prescribed by *IC 36-7-4-905*.
- 4) Term. The terms for each member shall be in accordance with *IC 36-7-4-906* and in accordance with the table above.
- 5) Alternate Member. Per *IC 36-7-4-907*, the Appointing Authority may appoint an alternate member to participate with the BZA in a hearing/meeting or decision if the regular member appointed by the Appointing Authority has a conflict of interest and is disqualified under *IC 36-7-4-909*. An alternate member has all the powers and duties of a regular member while participating in the hearing/meeting or decision.
- 6) Member Vacancy. If a vacancy occurs, the Appointing Authority shall replace the member in accordance with *IC 36-7-4-907*.

- 7) Removal of Members. The Appointing Authority may remove a member in accordance with *IC 36-7-4-907(b)*. Cause for removal may include a member's failure to appear at three (3) consecutive, regularly scheduled BZA hearing/meetings.

## Article 3: Duties and Powers

- 1) The following duties should be interpreted as activities that are obligations of the BZA in accordance with *IC 36-7-4-916, 918.1, and 918.2*:
  - a) Prescribe the procedures for:
    - i) filing appeals;
    - ii) the application for variances, special exceptions, special uses, contingent uses, and conditional uses;
    - iii) the giving of notice;
    - iv) the conduct of hearings; and
    - v) the determination of whether a variance application is for a variance of use or for a variance from the development standards (such as height, bulk, or area).
  - b) Approve or deny:
    - i) special exceptions;
    - ii) special uses;
    - iii) contingent uses; and
    - iv) conditional uses;
  - c) Hear and determine appeals from and review:
    - i) any order, requirement, decision, or determination made by the Administrator or staff member under the UDO;
    - ii) any order, requirement, decision, or determination made by an administrative board or other body except the PC in relation to the enforcement of the UDO; or
    - iii) any order, requirement, decision, or determination made by an administrative board or other body except the PC in relation to the enforcement of an ordinance requiring the procurement of an improvement location or occupancy permit.
- 2) Powers. The following powers should be interpreted as activities that are optional and may be initiated by the BZA within their jurisdiction pursuant to *IC 36-7-4-916*:
  - a) the allocation of cases filed among the divisions of the board of zoning appeals; and
  - b) the fixing of dates for hearings by the divisions.
- 3) Require Commitments. Pursuant to *IC 36-7-4-1015(a)*, as a condition to a:
  - a) Special Exception;
  - b) Special Use;
  - c) Contingent Use;
  - d) Conditional Use; or
  - e) Variance,the BZA may require or allow the owner of a parcel of real property to make a commitment to the BZA concerning the use or development of that parcel. Pursuant to *IC 36-7-4-1015(c)*, the BZA hereby declares that the criteria to be considered when an owner applies for the modification or termination of a commitment made under these Rules and Procedures are the same criteria that applied to the proposal when the BZA originally granted approval, as the case may be.

## Article 4: Actions and Decisions

Roles and Actions Taken on BZA Petitions		
Application Type	Staff	BZA
Special Exception	Review and make recommendations	<ul style="list-style-type: none"> <li>• Approve (with or without conditions)</li> <li>• Disapprove</li> </ul>
Use Variance		
Variance		
Appeals	Review and provide information	<ul style="list-style-type: none"> <li>• Approve (with or without conditions)</li> <li>• Disapprove</li> <li>• Modify Staff's decision</li> </ul>

- 1) Quorum. A quorum is a majority of the full membership of the BZA (at least 3 members).
- 2) Official Action. Action of the BZA is official when concurred by a majority of the full membership (at least 3 members).
- 3) Tie Votes. When a vote of the BZA results in a tie, the matter may be resolved by:
  - a) A different motion to reconsider the matter and followed by a re-vote; or
  - b) Re-docketing the matter for the next regularly scheduled hearing/meeting of the BZA. However, the Chairman of the BZA should see to it that ALL other options for a motion should be made, considered, and voted upon before the option for re-docketing should be considered (including making these motions himself).
- 4) Indecisive Vote. In any case where a vote of the BZA does not result in official action (meaning at least 3 members vote in favor of the motion), the matter may be resolved by:
  - a) A different motion to reconsider the matter and followed by a re-vote; or
  - b) Re-docketing the matter for the next regularly scheduled hearing/meeting of the BZA. However, the Chairman of the BZA should see to it that ALL other options for a motion should be made, considered, and voted upon before the option for re-docketing should be considered (including making these motions himself).
- 5) Continuances. Continuances may be requested or they may be automatic as described below.
  - a) Request for Continuance. A continuance may be requested for sufficient cause by the petitioner, by an interested party, or by a member of the BZA. It shall be within the discretion of the BZA to grant or deny any request for continuance. Re-notification shall not be required if a petition is continued at a properly noticed public hearing/meeting to the next regularly scheduled meeting or a specified future meeting date of the BZA.
    - i) Continuance Request by the Petitioner. A request for continuance by the petitioner may be filed in writing prior to the BZA's hearing/meeting or made orally at the beginning of the BZA hearing/meeting when the agenda is considered. However, the

petitioner shall be prepared to move forward with their petition until the continuance request is granted by the BZA.

- ii) Continuance Request by an Interested Party. A request for continuance by an interested party may be filed in writing prior to the BZA's hearing/meeting or made orally at the beginning of the BZA hearing/meeting when the agenda is considered. The interested party shall be prepared for the petition to move forward until the continuance request is granted by the BZA.

- (1) For purposes of requesting a continuance, an "interested party" is any individual whose right to use, acquire, or enjoy property is or may be affected by action taken by the BZA.

- iii) Continuance Request by a Member of the BZA. Any member of the BZA may make a motion of continuance for consideration by the BZA.

- b) Automatic Continuance. An automatic continuance may occur because of a lack of quorum, hearing/meeting time limitations, failure to meet newspaper notice requirements, or other reason allowed by Indiana Code. Failure of the petitioner to appear at the hearing/meeting does not constitute an automatic continuance. An automatic continuance does not count as a requested continuance described in this section. Re-notification shall not be required if a petition is continued at a properly noticed public hearing/meeting to the next regularly scheduled meeting or a specified future meeting date of the PC.

6) Withdrawal of Petitions.

- a) No petition may be withdrawn by the petitioner after a vote has been ordered by the Chairman or the chairperson presiding at the BZA hearing.
- b) A petition which has been withdrawn by the petitioner shall not again be placed on the docket for consideration by the BZA within a period of ninety (90) days from the date of withdrawal, except upon a motion by a BZA member to permit re-docketing and approved by the unanimous vote of the quorum present.

7) Dismissal. The BZA may dismiss a case for want of prosecution or for lack of jurisdiction.

## Article 5: Hearing/Meeting Schedule

- 1) Application Schedule. The Administrator shall develop and maintain an annual Application Schedule, which is a calendar of hearings/meetings and filing dates for the BZA. The existence of this calendar shall not be interpreted as prohibiting special hearings/meetings of the BZA.
- 2) Coordination of Calendar. The calendar of the BZA shall be coordinated to ensure the efficient processing of applications.
- 3) Compliance with Indiana State Code. All hearing/meeting and filing dates shall be based on the requirements of the UDO and the laws of the State of Indiana.
- 4) Approval of Dates. The Application Schedule shall be prepared by the Administrator and approved by the BZA.
- 5) Maintenance. The Application Schedule shall be reviewed and updated annually by the Administrator and posted in the PC Office and/or on the PC's website.



## Article 6: Petition Hearing/Meeting Procedures

- 1) Order of Business. The BZA shall follow the following order of business:
  - a) Call to Order
  - b) Minutes
  - c) Agenda Consideration (and consideration of requested continuances)
  - d) Old Business.
    - i) Public hearings on petitions
    - ii) Other petitions for consideration
    - iii) Other business
  - e) New Business
    - i) Public hearings on petitions
    - ii) Other petitions for consideration
    - iii) Other business
  - f) New Business from the Floor
  - g) Announcements
  - h) Public Comment for items not on the agenda
  - i) Adjournment
- 2) Procedure for Public Comment for Items Not on the Agenda. Each individual wishing to speak shall be allowed three (3) minutes.
- 3) Procedure for Petition Consideration.
  - a) Introducing the Petition. The Chairman shall introduce the petition. Each petition before the BZA shall generally be allotted a total of forty-five (45) minutes that includes the petitioner's presentation, staff and public official's report, public discussion, and closing remarks by the petitioner. The Chairman (or presiding member) shall have the authority to extend the time periods specified below where appropriate, unless otherwise directed by a majority of the quorum present.
    - i) Petitioner Presentation. The petitioner shall have a total of ten (10) minutes for the presentation of their petition.
    - ii) Staff and Public Official's Report. The Administrator shall present the staff and public official's report for the petition.
    - iii) Public Discussion.
      - (1) Discussion of Support. Persons in support of the petition shall have a total of ten (10) minutes to present evidence, comments, and questions relevant to the matter being considered.
      - (2) Discussion of Neutrality. Persons neutral on the petition shall have a total of ten (10) minutes to present evidence, comments, and questions relevant to the matter being considered.
      - (3) Discussion of Opposition. Persons in opposition of the petition shall have a total of ten (10) minutes to present evidence, comments, and questions relevant to the matter being considered.

- iv) Closing Remarks by Petitioner. The petitioner shall have a total of five (5) minutes for closing remarks as well as responding to the presentation of evidence, comments, and questions raised during the public discussion.
  - b) Discussion of BZA. The Chairman shall close the public discussion portion of the hearing/meeting and call for questions and comments from members of the BZA.
  - c) Call for Vote.
    - i) The Chairman shall call for a motion and a second on the case being heard.
    - ii) The Chairman shall call for further discussion.
    - iii) The Chairman shall call for a vote on the motion.
- 2) Hearing/Meeting Limitations. No petition shall be introduced for consideration after 8:00pm. Agenda items remaining on the agenda shall be automatically placed at the beginning of the agenda at the next regularly scheduled hearing/meeting of the BZA under "Old Business".

## Article 7: General Hearing/Meeting Conduct and Procedures

- 1) **Orderly Conduct.** Every person appearing before the BZA shall abide by the order and direction of the Chairman. Discourteous, disorderly, or contemptuous conduct shall be regarded as a breach of the privileges and shall be dealt with as the Chairman deems fair and proper.
- 2) **Appearance at Hearings/Meetings.** Any party may appear in person or by representative (person, agent, attorney, etc.) at BZA hearings/meetings. A representative may testify to the facts that he has particular knowledge of that relate to the issues of the petition. In so testifying, the representative shall be subject to cross-examination and questions.
- 3) **Contacting Members.** No person (including petitioners, remonstrators, PC members, BZA members and others) may communicate with any member of the BZA before a hearing/meeting with the intent to influence the member's action on a matter pending before the BZA. At the start of a meeting/hearing, Members shall disclose if persons have tried to communicate about a pending matter.
- 4) **Basis for Decisions.** Actions of the BZA shall be based upon:
  - a) Information made part of the permanent record;
  - b) The information submitted at the hearing/meeting and made part of the permanent record;
  - c) The testimony received at the hearing/meeting and made part of the permanent record;
  - d) The applicable ordinances that are in effect and relevant to the petition (i.e. UDO).
- 5) **Site Visit.** Members shall have the right to inspect land involved in any petition to be heard by the BZA either individually or jointly. No more than two (2) members shall inspect the subject land at any one (1) time.
- 6) **Conflict of Interest.** A BZA member who has a conflict of interest shall not sit as a member of the BZA, nor vote on the particular petition; however they may participate in the discussion as a member of the public. If a question by anyone arises about whether or not a conflict of interest is present, the BZA's attorney shall be consulted and make a determination about the matter. A member of the BZA shall have a conflict of interest with regard to a petition if:
  - a) They, or a family member, have financial interest in a subject property or petition; or
  - b) They own (individually or jointly) property close enough to a subject petition to receive written notice.
- 7) **Record of Hearing/Meeting.** The Administrator shall manage files and maintain a record of all petitions, hearings, and meetings of the BZA. Copies of such record of any hearing/meeting may be ordered by any party, and cost thereof shall be paid by the party ordering such copy or copies in accordance with the adopted fees.
- 8) **Attendance.** BZA members are expected to attend all hearings/meetings of the BZA. To ensure a quorum, members shall notify the Administrator at their earliest convenience if they are not able to attend a scheduled hearing/meeting either entirely or in part. Members

who fail to appear at hearings/meetings may be subject to removal from the BZA (see *Article 2, Section 7: Removal of Members*).

- 9) Electronic Participation Policy.
  - a) Quorum Required in Person. In order to officially conduct a meeting, a quorum of the BZA (at least 3 members) must be physically present at the meeting.
  - b) Participating Electronically. Any BZA member may participate in a meeting by any electronic means of communication that:
    - (1) allows all participating members of the BZA to simultaneously communicate with each other; and
    - (2) other than a meeting that is an executive session, allows the public to simultaneously attend and observe the meeting.
  - ii) A member who participates by an electronic means of communication:
    - (1) shall notify the Chairman and Secretary of the member's intent to participate electronically at least 72 hours (3 days) before the meeting;
    - (2) shall be considered present for purposes of establishing a quorum; and
    - (3) may participate in final action only if the member can be seen and heard.
  - i) All votes taken during a meeting at which at least one member participates by an electronic means of communication must be taken by roll call vote.
  - c) Limitation on Participating Electronically.
    - i) A member may not attend more than fifty percent (50%) of the meetings in a calendar year by electronic means of communication unless the member's electronic participation is due to:
      - (1) military service;
      - (2) illness or other medical condition;
      - (3) death of a relative; or
      - (4) an emergency involving actual or threatened injury to persons or property.
    - ii) A quorum of the BZA may vote to suspend this limitation and allow electronic participation for other reasons when necessary.
  - d) Meeting Minutes. Minutes and memoranda of a meeting at which any member participates by electronic means of communication must:
    - i) identify each member who:
      - (1) was physically present at the meeting;
      - (2) participated in the meeting by electronic means of communication; and
      - (3) was absent; and
    - ii) identify the electronic means of communication by which:
      - (1) members participated in the meeting; and
      - (2) members of the public attended and observed the meeting if the meeting was not an executive session.
  - e) Roll Call Vote. All votes taken during a meeting at which at least one member participates by an electronic means of communication must be taken by roll call vote.
  - f) Declaration of Emergency. If an emergency is declared by the governor under Indiana Code § 10-14-3-12; or the Mooresville Town Council president under Indiana Code § 10-14-3-29; members are not required to be physically present for a meeting until the emergency is terminated. Members may participate in a meeting by any means of communication provided that:
    - i) At least a quorum of the members participate in the meeting using electronic communication or in person.

- ii) The public may simultaneously attend and observe the meeting unless the meeting is an executive session.
- iii) The minutes or memoranda of the meeting must comply with subsection d) of this resolution.

## Article 8: Filing of Petitions

- 1) Policy for Filings.
  - a) Prior Code Violation Resolution. A petition or permit application may not be filed for a property that has a previously documented and unresolved code violation until the violation has been resolved. However, the Administrator may allow the filing of a petition application or permit application if it is shown that it will directly contribute to the resolution of the violation.
  - b) Adverse Decision. A petition that receives an adverse decision from the BZA may not be re-filed for a period of one (1) year from the date of the adverse decision. The Administrator shall determine if a new petition significantly differs from the previous petition that received the adverse decision.
- 2) Filing Required Prior to Hearing/Meeting.
  - a) Petitions for Consideration. All applications for consideration shall be filed in accordance with the proper forms adopted by the BZA, in the required numbers, and in the required form, and in accordance with the adopted Application Schedule.
  - b) Incomplete Applications. If the Administrator finds that the application or submittal is insufficient, not in accordance with the proper forms, or not in compliance with the applicable submittal content sections of the UDO, said petition shall be considered "incomplete" and shall not be accepted until such time as it becomes complete.
- 3) Attendance at Hearing/Meeting Required. The petitioner (or their designated representative) shall attend the public hearing/meeting in person to present the application or petition, to answer questions from the BZA, and to make rebuttal or answer questions of remonstrators. Failure to meet this requirement may result in the dismissal of the petition.
- 4) Filing on BZA Forms. Any communication purporting to be an application not on forms furnished by the BZA or not containing the information called for on said forms, shall be regarded as a mere notice of intention to file and shall be of no force or effect until it is made on and in the form required. All application forms, including the instructions therewith, are hereby declared to be a part of these written *Rules and Procedures*.
- 5) Filing Fee. The petitioner shall pay the appropriate filing fee at the time of filing their petition to cover expenses of processing the petition. The amount of fees shall be in accordance with the fee schedule as adopted by the Town Council.

## Article 9: Public Notice

- 1) Notice Requirements. Notice of petitions or cases to be heard by the BZA at a public hearing shall be given to all interested parties or property owners in the following manner:
  - a) Notification by Newspaper. In accordance with IC 5-3-1-2 and IC 5-3-1-4, the petitioner shall publish notice at least ten (10) calendar days prior to the scheduled public hearing in the newspaper as designated in the BZA Application Packet. This is a requirement under State Statute and cannot be waived by the BZA. Failure to meet the newspaper notification deadline will automatically result in a continuance of the petition (See *Article 4, Section 5: Continuances*). The proof of publication affidavit from the publisher shall be submitted to the file prior to the hearing. The cost of publication shall be borne by the petitioner.
  - b) Notification by Mail. The petitioner shall provide written notice to “interested parties” prior to the scheduled hearing as designated in the BZA Application Packet. Notice shall be postmarked at least ten (10) calendar days prior to the hearing. Receipts and/or the Affidavit of Mailing shall be submitted to the file prior to the hearing. The cost of mailing shall be borne by the petitioner.
    - i) For purposes of notification by mail, an “interested party” is defined as the owners of parcels of land surrounding the subject property to a depth of two (2) ownerships or six hundred sixty (660) feet, whichever is less.
  - c) On-site Notification. The petitioner shall post on-site notification sign(s) on the subject site at least ten (10) calendar days prior to the hearing as designated in the BZA Application Packet.
    - i) Sign. The required on-site notification sign(s) shall be provided by the Administrator and is not subject to the sign regulations of the UDO. The cost of the on-site notification sign(s) shall be borne by the petitioner.
    - ii) Quantity. One (1) on-site notification sign is required for each street frontage of the subject site. For example, a corner lot will require two (2) signs; one (1) on each street frontage.
    - iii) Placement. The on-site notification sign(s) shall be placed in a conspicuous place on the subject property. It must be visible to pedestrians and motorists and not within the right-of-way.
  - d) Additional Notification. Additional notification may be required at the discretion of the Administrator or BZA with written justification for doing so.

## Article 10: Docketing of Cases

- 1) Docketing of Cases. Each case shall be filed in proper form, with the required date, numbered serially, and placed on the docket by the Administrator.
- 2) Order of Considering Cases. On the date set for hearing/meeting, cases shall come before the BZA either in the regular order of their consecutive numbers, or grouped by similar petitions, as determined by the Administrator when setting the hearing/meeting agenda. Provided, however, cases re-docketed or continued from a previous hearing/meeting shall be heard at the beginning of the hearing/meeting under "Old Business."
- 3) Agenda Limitations. In preparing the docket for each public hearing/meeting of the BZA, the cases scheduled shall be limited to a reasonable number as determined by the Administrator.
- 4) Hearing/Meeting Limitations. No petition shall be introduced for consideration after 8:00pm. Agenda items remaining on the agenda shall be automatically placed at the beginning of the agenda at the next regularly scheduled hearing/meeting of the BZA under "Old Business".



## Article 11: Officers, Plan Commission Records

- 1) Officers of the BZA.
  - a) Chairman. A Chairman shall be elected at the first regular hearing/meeting of the BZA in each calendar year. The Chairman shall preside at all BZA hearings/meetings. Hearings/meetings shall be held at the call of the Chairman or at other times which the BZA deems necessary.
  - b) Vice Chairman. A Vice Chairman shall be elected in the manner prescribed for the Chairman and shall have the authority to act as Chairman during the absence or disability of the duly elected Chairman.
  - c) Secretary. The Administrator, or their designee, shall serve as the Secretary of the BZA. The Secretary shall cause minutes of the BZA hearing/meeting to be maintained in permanent volume, notice to be served of all public hearings, and notification to be served to all members of all hearings/meetings. The Secretary, subject to the direction of the Chairman (or the Administrator), shall record all important facts pertaining to each hearing/meeting, all resolutions acted upon by the BZA, and all votes of members of the BZA upon any resolution or upon the final determination of any questions, indicating the names of any members absent or facility to vote.
  - d) In the absence of both the Chairman and Vice Chairman, a chairperson shall be selected from the legal voting quorum present at the hearing/meeting.
  - e) A Recording Secretary may be used for keeping and transcribing minutes of regular or special hearing/meetings of the BZA.
- 2) Presiding Officer. The presiding officer shall decide all points of order of procedure in accordance with these rules, unless otherwise directed by a majority of the quorum present.
- 3) Recorded Vote. In all cases heard by the BZA, the vote shall be recorded in the minutes of the hearing/meeting.
- 4) Agenda Preparation and Distribution. The Administrator shall oversee the preparation and distribution of an agenda for each hearing/meeting of the BZA. Agendas shall be distributed prior to the hearing/meeting to members of the BZA, legal counsel, and, if requested, the press. Other interested or affected parties may request agendas from the Administrator.
- 5) Open Door Law. The BZA shall comply with *IC 5-14-1.5, the Open Door Law*, with respect to the use of agendas and requirements for hearing/meetings.


## **Article 12: Amendment of Rules and Procedures**

- 1) Amendment of Rules and Procedures. Amendment to these Rules and Procedures may be made by the BZA only upon the affirmative vote of a majority of the full membership of the BZA.
- 2) Proposed Amendments: Any amendment to these rules or procedures must be presented at least fourteen (14) days prior to voting on the amendment.
- 3) Suspension of Rules or Procedures. The suspension of any rule or procedure may be ordered at any hearing/meeting of the BZA by a majority vote of the quorum present.

## Article 13: Adoption and Amendment History of Rules and Procedures

- 1) The official record of these Rules and Procedures for the BZA shall be kept on file at the PC Office, 4 E Harrison St, Mooresville, IN 46158.
- 2) Adopted:
  - a) October 25, 2022.
- 3) Amended:
  - a) Reserved.

Attest:

Chairman:  2/9/23  
Date

Secretary:  2-9-23  
Date