

SPEEDWAY BOARD OF ZONING APPEALS

OF

MARION COUNTY, INDIANA

RULES OF PROCEDURE

ADOPTED on May 3<sup>RD</sup>, 2023

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## RULES OF PROCEDURE

### ARTICLE I - GENERAL RULES

1. Name and Number of Members. This body shall be known as the SPEEDWAY BOARD OF ZONING APPEALS (the "Board") and shall consist of members appointed by the Town Council (the "Town Council").
2. Officers of The Board. 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 the Vice-Chairman shall preside. In the absence or disability of the Chairman and Vice-Chairman, the Secretary shall preside.
3. Territorial Jurisdiction. The Board shall have jurisdiction throughout the corporate boundaries of the Town.
4. Powers of the Board. The Board has the power to:
  - (a) Hear and determine appeals from and review:
    - (1) Any order, requirement, decision or determination made by an administrative official or staff member under the zoning ordinance;
    - (2) Any order, requirement, decision, or determination made by an administrative board or other body 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 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 or 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 of use from the terms of the zoning ordinance; and approve or deny variances from the development standards (such as height, bulk or area) of the zoning ordinance. The Board may impose reasonable conditions as a part of its approval.
- (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 Board 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, or other body, or staff member under the zoning ordinance or in relation to the enforcement of an ordinance adopted under I.C. 36-7-4-900 et seq. requiring the procurement of an Improvement Location Permit.
- (e) Approval Petition - Various approvals involving the modification or termination of commitments, modification of conditions of a variance grant, modification of an approved site and development plan or waiver of the waiting periods before refiling after an adverse decision, dismissal or withdrawal of a petition.
- (f) 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 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 Town Manager, or his/her designee, and the Administrator of the Division of Planning of the Town , or his/her designated representative, or his/her successor.
- (b) "Board" shall mean the Speedway Board of Zoning Appeals, Marion County, Indiana.
- (c) "Commitment" shall be as prescribed in Indiana Code 36-7-4.
- (d) "Condition" shall be as prescribed in Indiana Code 36-7-4.

## ARTICLE II - FILING OF PETITIONS

- 1. Who May File. No variance, special exception 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, except approval petitions, shall be filed at least thirty-five (35) calendar days prior to the hearing at which they are to be considered. All appeals from an order, requirement, decision or determination made by an administrative official, staff member, or administrative board under the zoning ordinance shall be filed within sixty (60) calendar days of approval of, or denial of, said order, requirement, decision or determination.
- 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 two copies of the applicable petition, two

copies of the legal description of the subject property and seven 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 any time of filing a petition, proposed detailed written findings of fact shall be filed. Findings of fact are the basis of the Board's decision on a petition, and are unique circumstances related to the site in question. Findings of fact shall be submitted on forms provided by the Board with the 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 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) In order to compensate for the expense of processing, the following fee shall be paid by the applicant at the time of filing; however, the Board may at any time, for good cause shown or upon its own motion, waive or modify the applicable filing fee:

(i) Administrative Appeal

- |     |  |          |
|-----|--|----------|
| (1) | Certificate of Legally Established<br>Non-conforming Use | \$400.00 |
| (2) | All Other  | \$400.00 |

(ii) Variance of Use

- |     |                                      |   |
|-----|--------------------------------------|---|
| (1) | Single or Two-family Dwelling<br>Use | \$200.00 (plus \$50.00 for each<br>additional variance of development<br>standards requested) |
| (2) | Other Dwelling Use                   | \$600.00 (plus \$50.00 for each<br>additional variance of development<br>standards requested) |
| (3) | Commercial/Industrial Use            | \$950.00 (plus \$95.00 for each<br>additional variance of development<br>standards requested) |
| (4) | All Other Uses                       | \$900.00 (plus \$95.00 for each<br>additional variance of development<br>standards requested) |



(iii) Variance of Development Standards

(1)	Dwelling Districts Zoning Ordinance	\$300.00 (plus \$50.00 for each additional variance of development standards requested)
(2)	Sign Regulations for on-premises signs(s)	\$500.00 (plus \$95.00 for each additional variance of development standards requested)
(3)	Sign Regulations for off-premises signs(s)	\$2,000.00 (plus \$195.00 for each additional variance of development standards requested)
(4)	Commercial, Industrial and All Other Zoning Ordinances	\$500.00 (plus \$95.00 for each additional variance of development standards requested)

(iv) Special Exceptions

(1)	Manufactured Homes	\$125.00
(2)	Commercial or Industrial Use	\$900.00
(3)	Religious Use	\$600.00
(4)	Other Special Exceptions	\$600.00

(v) Petition for Board Approval

(1)	Modification or termination of commitments, modification to conditions or a variance grant or special exception and modifications to an approved site plan and/or development plan	\$200.00 (for approval petitions for individual single and two-family residential unit) \$900.00 (for approval petitions for all other types of development)
(2)	Waiver of the one year waiting period before refile after an adverse decision.	\$160.00

(b) Waiver or Modification of Fees. 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).

(c) Reduction of Fees. For churches and other not-for-profit organizations, all fees outlined above shall be reduced by one-half. Documentation of charitable status shall be submitted and filed with the petition to received said reduction.

(d) Refund of Fees of Withdrawn Petitions. The Board or Town Clerk may 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 Board or Town Clerk may for good cause shown refund all except one hundred dollars (\$100.00) of the applicable filing fee if the petition is withdrawn prior to any public hearing.

### ARTICLE III – DOCKETING OF PETITIONS

**Where to file?** Once your paperwork is complete, please contact the Recording Secretary to schedule a time to file and make the payment for the filing fee.

1. Docketing. Each petition filed in proper form shall be numbered and docketed for hearing before the Board within ten (10) calendar days after a petition has been filed for hearing. The Board may limit the number of new petitions docketed 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 1<sup>st</sup> of each year, and for all petitions shall be hyphenated with the year of its initial hearing, the initials "UVS" for use variances, "DVS" for development standards variances, "SES" for special exceptions, "APS" for approval and administrative appeals petitions, and the number which indicates the sequence which the petition occupies among the petitions filed.
3. Order of Hearing Petitions. On the date set for hearing, administrative appeals, special exceptions and various petitions shall come before the Board in the regular order of their consecutive numbers and in the order enumerated above. Provided, however, petitions redocketed following an indecisive vote, petitions redocketed following a special request, petitions for Board approval, and petitions continued from a previous hearing of the Board, shall be heard at the beginning of the public hearing, in the order enumerated above, before the regularly docketed petitions.

### 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 Petitioner, in the Board's prescribed form, in two newspapers—one in the *Indianapolis Star* and one in the *Indiana Business Journal* at least ten (10) calendar days before the hearing.

(b) Additional Notice by Petitioners to Owners of adjoining Land and to Neighborhood Organizations.

- 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 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 or Town of Speedway 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 Indiana Department of Transportation.

- (ii) 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 adjacent land owned by petitioner.
- (iii) In the case of property which is subject to IC 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 described in the petition or outside Marion County.

- (iv) Any waiver of notice requirements must be requested of the Board prior to hearing the petition. Waiver requests shall be made by letter and shall be submitted to the Board at least seven (7) calendar days prior to the scheduled hearing.
- (v) For the purpose of determining names and addresses of legal title owners, the records in the offices of the Wayne Township Assessor of Marion County, which list the current owner of record at the time the notice shall be sent, shall be deemed to be the true names and addresses of persons entitled to notice. If notice is sent to such persons for the purposes of the hearing before the Board, such notice shall be deemed proper.
- (vi) Such notice shall state:
  - (1) the docket number and substance of the petition;
  - (2) the general location (by address or other identifiable locational or geographical characteristic) of the subject property (this does not require the identification of any real property by metes and bounds);
  - (3) the name of petitioner;
  - (4) the time and place said petition has been set for hearing; and
  - (5) that the petition and file, including the legal description of the subject property, may be examined in the offices of the Board.

- (vii) Such notice for administrative appeal petitions shall also be sent in the same manner if the petitioner is not the owner of the property that is the subject of the administrative appeal petition.
- (viii) 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.

(c) Notice on Subject Property. Notice, on a form prescribed by the Board, shall be posted in a conspicuous place at the subject property at least twenty-three (23) calendar days before the date of hearing. Such notice shall remain posted until resolution of the petition.

(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 Approval Petitions. Notice of all approval 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 petitioner 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 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) calendar day notice shall also be given to owners of adjoining land as stated in Article IV, Section 1(b).

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 unnotified persons to prepare for the hearing. Personal appearance shall waive any defect in notice 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 - PUBLIC HEARINGS

1. All Meetings. All regular or special meetings and hearings of the Board, except such meetings which 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 Speedway Board of Zoning Appeals, shall be held in the Allison Public Meeting Room of the Town of Speedway, 5300 Crawfordsville Road, Speedway, Indiana, at 7:00 p.m., on the first Wednesday of each month. If the regular meeting day falls on a legal holiday, such meeting shall then be held on the following Wednesday.
3. Special Meetings. Special meetings of the Board may be called by the Chairman or by two (2) members thereof upon written or oral request to the Secretary to the Board at the Board offices, who shall send to all members thereof, at least two (2) 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. No action of the Board is official, however, unless concurred in by three members at a hearing. If there is no quorum for a regularly scheduled hearing, the Chairman shall have the authority to

continue all petitions scheduled on that docket.

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 Board, unless otherwise rescheduled 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 shall have the right to 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 petition may be granted in one of two ways:
  - (a) The Board may, at any time, in 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) Continuances for cause 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 Secretary in the offices of the Board, 5300

Crawfordsville Road, Speedway, Indiana, 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 remonstrator's witnesses.
- (c) Any member of the Town Council shall be allowed a reasonable 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, which 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, which 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) 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 Chairman. 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 or Opinion to Be Filed Not less than Five (5) 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 may file not less than five (5) days prior to any proposed hearing of the Board, a written statement of any facts or opinions which are desired to be set forth with respect to such petition. A copy of such statement shall be furnished to all persons shown of record. 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 properties involved in any petition to be heard by the Board.
14. Disqualification of Board Members in Case of Financial Interest. A member of the Board who has some direct or indirect financial interest in any petition presented to the Board shall disqualify himself or herself insofar as a member of the Board during the hearing of the particular petition, and shall not participate as a Board member in the hearing, findings of fact or decision in such petition; provided, however, that an alternate Board member, if any, may participate in place of the disqualified member. 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 Administrator 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, which shall be administered by some person qualified to administer oaths.
18. Minutes and Record of Hearing. The Board shall keep minutes of its proceedings, investigations and other official actions and all petitions heard by it, and shall record the vote on all actions taken. A record, including a reasonably accurate summary of the oral testimony, 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 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.

#### 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 which 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 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 a vote has been ordered by the Chairman. No petition which 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 Board grants an approval petition to permit a refiling of the petition.
3. Refiling Following Adverse Decision.
  - (a) Subject to the provisions of subparagraph (c) below, no parcel or part of a parcel, which 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 the Board, or the adverse decision of the Town Council, unless the body which previously denied the petition decides, by a majority vote of all members present, to allow a refiling within the twelve (12) month period. 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 or part of a parcel, which 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 the adverse decision by the Board, unless the Board decides, by a majority vote of all members present, to allow a refiling within the twelve (12) month period. 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 Section, no variance or special exception petition which has been the subject of a prior denial by the Board shall be granted except upon adoption of an additional finding that a substantial change in the particular circumstances which 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 or part of a parcel, which has been the subject of an adverse approval petition decision, shall again be included in an approval petition filed within a period of three (3) months from the date of an adverse decision by the Board, unless the Board decides to allow a refiling within the three (3) month period.
4. Notice of Board's Decision. Within five (5) business days after taking action regarding an administrative appeal, a special exception, an approval or a variance from the terms of the zoning ordinance, the Board shall file a copy of its decision in the office of the Board. If the Administrator is present at the hearing in which the Board took action regarding an administrative appeal, a special exception, an approval or a variance from the terms of the zoning ordinance, notice to the Administrator of the Board's decision shall be deemed given at the hearing.
5. Letter of Grant or Denial. Within five (5) business days after taking action regarding an administrative appeal, a special exception, an approval or a variance petition, the Board shall notify the petitioner of the Board's decision by sending the petitioner a letter of grant or denial which shall include, if a letter of grant, all conditions imposed by the Board; provided, however, a letter of grant will 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), petitioner shall 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) 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) 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: (1) enforceable by governmental authority pursuant to the provisions of I.C. 36-7-4-1014 or as otherwise provided by applicable statute or ordinance; and (2) shall subject the variance to revocation by the Board upon notice to petitioner and a hearing before the Board.

- (b) Commitments - Recording. The Board may require or permit the petitioner to make written commitments, in a form as prescribed by the Administrator, 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 be recorded by petitioner in the office of the Recorder of Marion County, Indiana, upon the grant of the variance, special exception or approval petition by the Board. Following the recording of the commitments, petitioner shall submit a copy of the recorded commitments to the Administrator and to the office of the Board for their respective files.

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) shall be entitled to enforcement thereof pursuant to I.C. 36-7-4-1015 or as otherwise provided by applicable statute or ordinance.

The commitments may be modified or terminated by a decision 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, in a form as prescribed by the Administrator, 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.

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#### Appeal Procedure.

- (a) Judicial Review by Certiorari. Every decision of the Board shall be subject to review by certiorari in accordance with I.C. 36-7-4. Such petition for certiorari shall be presented to the court within thirty (30) calendar days after the decision of the Board. The petitioner for certiorari shall pay the costs of preparation of the record of the hearing before the Board if the writ of certiorari calls for a record of evidence before said Board.
- (b) Administrator's Appeal to the Town Council. The Administrator (or other official so designated by the Town Council) may appeal to the Town Council 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. The Administrator must file in the office of the Division of Planning of the

Town a notice of appeal within five (5) days after the Board files a copy of the decision in the office of the Board, or, if the Administrator was present at the hearing at which the Board rendered its decision, within five (5) days after the decision of the Board. The notice of appeal must certify that the decision raises a substantial question of zoning policy appropriate for consideration by the Town Council. The Town Council shall hear the appeal at its next regular meeting held at least five (5) days after the notice of appeal is filed. The appeal of the BZA decision to the Town Council shall be “de novo” and shall be conducted in accordance with these Rules of Procedure.

Although persons other than the Administrator may not appeal a decision of the Board to the Town Council, the Administrator may appear as an interested party in appeals under this Article. No public notice need be given of the hearing of an appeal, but the Administrator shall promptly mail notice of the subject of the appeal and date and place of the hearing to each adverse party. However, if the record of the Board shows more than three (3) remonstrators appeared, then the Administrator need mail notice only to the first three (3) of each as disclosed by the record.

- 8        Exhibits. All exhibits, whether submitted by petitioner or remonstrator, shall be given an exhibit number and be retained in the files of the Board for a period of ninety (90) calendar days after the date of the hearing. At the end of said ninety (90) days, such exhibits may be claimed and withdrawn by the persons submitting the same, except for commitments submitted by petitioner. At the end of said ninety (90) days, the Board 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 Board may deem expedient.

#### ARTICLE VII - WAIVER OF RULES

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.

#### ARTICLE VIII - 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 the Board.

The foregoing RULES OF PROCEDURE of the SPEEDWAY BOARD OF ZONING APPEALS OF MARION COUNTY, INDIANA, are hereby adopted by the SPEEDWAY BOARD OF ZONING APPEALS OF MARION COUNTY, INDIANA, and applicable to matters and petitions initiated or filed on or after \_\_\_\_\_, 20\_\_\_. All Rules of Procedure of the Speedway Board of Zoning Appeals adopted prior to the date of adoption of the foregoing RULES OF PROCEDURE, and as amended subsequent thereto, are hereby repealed.

Trinity J. Roman  
Chairman

\_\_\_\_\_  
Board Member

Curt Miller  
Vice Chairman

Janet Fuller  
Board Member

\_\_\_\_\_  
Secretary

SPEEDWAY BOARD OF ZONING APPEALS OF MARION COUNTY, INDIANA  
ADOPTED the 3<sup>RD</sup> day of May, 2023.

