



## Board of Zoning Appeals Application Policy and Procedure

### *Variance*

#### **General Information**

The Lizton Board of Zoning Appeals meets on the 4th Monday of every Month. The meetings start at 6:00 PM in the Town Hall, 106 Lebanon Street Lizton, IN 46149.

Applications **MUST BE FILED** with the Zoning Administrator according to the "Calendar of Filing and Meeting Dates". Petitions are heard in the order in which they are filed.

**THE FOLLOWING INFORMATION, DOCUMENTS AND FEES ARE REQUIRED WHEN FILLING A PETITION FOR DEVELOPMENT STANDARDS VARIANCE, USE VARIANCE OR SPECIAL EXCEPTION TO BE HEARD BY THE LIZTON BOARD OF ZONING APPEALS:**

1. Completed Application: Original and 5 copies
2. Application fee: See Official Schedule of Fees. (NON-REFUNDABLE fee must be paid when the petition is filed)
3. Property Owners Consent: Original and 5 copies
4. Construction Plans and Specifications (if petition includes construction) Original and 5 copies

***Assistance can be sought in preparation of the application from the Zoning Administrator; however, the major execution rests with the applicant. Applicants may choose to have an attorney or their consultant prepare the application and represent them at the hearing, though this is not a requirement.***

In no case shall variances be authorized without the approval of the Board of Zoning Appeals. Further, no decisions on previous applications shall serve to set a precedent for any other application before the Board. The following procedure applies to variance applications:

#### **Application**

The applicant shall submit a special exception application, affidavit and consent of property owner(s) (if the owner is someone other than the applicant), a copy of the deed for the property involved, the required filing fee, and required supporting information. Supporting information shall include, but not be limited to, the following:

##### **(1) Site Plan**

A site plan shall be signed and dated by the petitioner, and clearly show the entire layout of the property and all features relevant to the special exception request.

##### **(2) Statement of Intent**

A statement of intent to the Board of Zoning Appeals describing the details of the special exception request including, but not limited to:

- a) The ways in which the special exception shall comply with the applicable development standards of this Ordinance,
- b) The ways in which the special exception shall be consistent with the required determination described by this Ordinance, and

c) Any written commitments in a recordable format being made by the applicant.

**(3) Waste Disposal Verification**

A letter from the Hendricks County Board of Health indicating that the special exception will make acceptable use of an existing or proposed septic system, or a letter from a public sewer provider stating that the proposed special exception will be served by its utility.

**(4) Fiscal Impact Study**

A Fiscal Impact Study may be required in accordance with the Town of Lizton Code.

**Notification**

Notification for the scheduled public hearing regarding the special exception request shall be completed consistent with this Ordinance and the Rules and Procedures of the Board of Zoning Appeals.

**Public Hearing**

The Board of Zoning Appeals will then, in a public hearing scheduled consistent with the adopted Calendar of Filing and Meeting Dates, review the special exception application and required supporting information.

**(1) Representation**

The applicant, or a representative of the applicant, must be present at the public hearing to present the application and address the findings.

**(2) Testimony**

The Board shall consider a report from the Zoning Administrator and testimony from the applicant, applicant's representative, remonstrators, members of the public and interested parties at the hearing.

**(3) Procedures**

The presentation of reports and testimony and all other aspects of the public hearing shall be consistent with the Rules and Procedures of the Board of Zoning Appeals.

**(4) Possible Action**

The Board of Zoning Appeals may approve, approve with conditions, deny, or continue the application.

**a) Approval**

The application shall be approved if a determination is made consistent with the requirements of this Section.

**b) Approval with Modifications**

The application may be approved with modifications if the Board of Zoning Appeals determines that the required determination may be made only if certain conditions are applied to the application. The Board may make reasonable conditions related to the required determination, part of its approval and/or accept written commitments from the applicant.

**c) Denial**

The application shall be denied if a determination is made that any requirement of this Section has not been met. Applications that are denied shall not be eligible for consideration again by the Board for a period of 3 months from the date of denial, or as otherwise determined by the BZA.

**d) Continued**

The application may be continued by the Board based on a request by the Zoning Administrator or applicant; an indecisive vote wherein the item is essentially tabled; or a determination by the Board that additional information is required prior to action being taken on the request.

1. Additional legal notice shall not be required unless specified by the Board of Zoning Appeals.
2. The continuing of all applications shall be consistent with the adopted Rules and Procedures of the Board of Zoning Appeals.

### **Decision Criteria**

The Board of Zoning Appeals shall have the power to authorize special exceptions. In approving special exceptions, the Board of Zoning Appeals may attach any conditions to the special exception as it deems necessary to assure compliance with the purpose of this Ordinance. If the conditions of the special exception are not completely and continuously adhered to after the granting of the special exception, the special exception shall become null and void upon notice to the property owner from the Board of Zoning Appeals and completion of the termination process consistent with *Termination* on the following pages. The following requirements shall be met:

- (1) The special exception shall be permitted by this Ordinance;
- (2) The special exception can be served with adequate utilities, access roads, drainage, and other necessary facilities;
- (3) The special exception shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the development standards of this Ordinance;
- (4) The special exception shall be sorted, oriented, and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties;
- (5) The special exception shall produce a total visual impression and environment which is consistent with the environment of the neighborhood;
- (6) The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood;
- (7) The special exception shall preserve the purpose of this Section.

### **Other Considerations**

When considering a special exception the Board of Zoning Appeals may consider the following items as they relate to the proposed use:

- (1) Topography and other natural site features;
- (2) Zoning of the site and surrounding properties;
- (3) Driveway locations, street access and vehicular and pedestrian traffic;
- (4) Parking (including amount, location, and design);
- (5) Landscaping, screening, buffering;
- (6) Open space and other site amenities;
- (7) Noise production and hours of any business operation;
- (8) Design, placement, architecture, and building material of the structure;
- (9) Placement, design, intensity, height, and shielding of lights;
- (10) Traffic generation;
- (11) General site layout as it relates to its surroundings; and
- (12) Any other criteria deemed relevant by the Board.

## **Conditions**

The Board may impose such reasonable conditions upon its approval as it deems necessary to find that the criteria for approval in this Section have been satisfied.

## **Commitments**

The Board may require the owner(s) of the property to make written commitments in recordable form concerning the use or development of the property as specified under IC 36-7-4-921. Such commitments shall be recorded in the Hendricks County Recorder's Office. A copy of the recorded commitments shall be provided to the Zoning Administrator for inclusion in the petition file at the time an application is submitted and prior to the issuance of any Improvement Location Permit. No Improvement Location Permit shall be issued for a permit application which does not comply with the recorded commitments.

## **Limitations**

Unless otherwise specified by the Board, special exception approvals shall be limited to, and run with the applicant at the location specified in the application. The Board may also limit special exceptions to a specific time period and a specific use. Special Exceptions shall also be invalid if:

- (1) the property is in compliance with the Ordinance as written, or
- (2) the special exception approval is terminated.

## **Termination**

A special exception use may be terminated by the Board of Zoning Appeals under the following procedures:

### **(1) Public Hearing**

Upon determination by the Zoning Administrator that possible grounds for termination exist, the matter shall be placed on the Board of Zoning Appeals agenda for a public hearing. The Zoning Administrator, or his or her designee, shall notify the applicant and all adjacent properties previously noticed, of the hearing via Certified Mail a minimum of ten days prior to the hearing.

### **(2) Grounds for Termination**

At the public hearing the special exception use shall be revoked if a finding is made by the Board that one or more of the following is true:

- a) The execution of the approval is not consistent with any requirement of this Ordinance;
- b) The execution of the approval is not consistent with any condition of approval;
- c) The execution of the approval is not consistent with any written commitment; or
- d) The approved was the result of fraud or the misrepresentation of facts.

## **Special Exception Use Expansion**

A use authorized as a special exception may not be expanded, extended, or enlarged unless reauthorized by the Board under the procedures set forth in this Section for granting a special exception.