LaPorte County
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LAPORTE COUNTY BOARD OF ZONING APPEALS
PROCEDURE FOR VARIANCE

The Board of Zoning Appeals handles requests for variances and special exceptions regarding any of the LaPorte County land use ordinances. When requesting a variance for special exception, or appealing an administrative decision, the following procedure will be followed:

1. A petition filed by the owners of the property requesting the variance for special exception and the individuals requesting the variance for special exception, if different from the owners. Both parties must petition for and sign the petition.

2. A brief legal description, common address, common acreage involved and if no common address, the closest road intersection so the property may be located as well as the township of the property location.

3. The reason for the variance, request for Special Exception or administrative appeal and the intended use of the property if the variance is granted.

4. The date the petition will be heard by the Board of Zoning Appeals.

All petitions must be filed at least fifteen (15) days before the hearing.

The Petitioners must file two (2) copies of the petition with the Board of Zoning Appeals.

The Petitions shall present a legal notice for signature by the Secretary of the Board.

It is the Petitioner's responsibility to insure that the legal notice is taken to the newspaper at least fourteen (14) days before the date of the hearing and be published at least ten (10) days prior to the hearing.

The Petitioners may prepare and file findings of fact as they relate to the petition. These may be given to the Board on the night of the hearing.

It is the Petitioner's responsibility to place an 8.5x11inch placard in a window or on the subject property of the petition for variance at least ten (10) days prior to the hearing in accordance with Indiana Code §36-7-4-920 . Proper signage will be provided by the Building Commissioner and all placards will have information that shall include but not limited to:

1. The date, time and location of the Petitioner's hearing before the Board;

2. Petitioner's name, address, address of property affected; and,

3. Nature of the request concerning the administrative appeal, special exception or variance of use or the developmental standards applied for.

Said placard must be visible from the sidewalk and/or road of the subject property for the entire ten (10) days prior to the Petitioner's hearing before the Board in accordance with Indiana Code §36-7-4-920. This placard is intended to assist the Members of the BZA to preview your property if they wish to do so prior to your hearing. Failure to properly display the placard could result in a delay in your hearing before the Board.

The Petitioners shall notify all adjoining property owners at least ten (10) days prior to the hearing. This may be done either in person or by certified mail, return receipt requested. The adjoining landowners must receive a copy of the petition and the notice of public hearing. If notification is done in person, the adjoining property owner (s) must sign and date the notice of public hearing which must be at least six (6) days prior to the hearing. Adjoining landowners are defined as any and all property owners of record of each lot or parcel of real estate abutting or adjacent to the tract of real estate that is the subject of the application, petition, or matter upon which a public hearing is to be held before the legislative body, plan commission, or board of zoning appeals. This also includes landowners who are across any roadway from the property in question. The owners of record shall be according to the real estate master file as maintained by the auditor of the county or city, at the time of the filing of an application or petition.

The Petitioners shall pay the filing fee as required.

A site plan must be submitted with the petition if applicable and it involves the placement of any building or any other structure, i.e. the site plan should also include septic and well, as well location, additional buildings and driveways and property boundaries with approximate measurements.

The Petitioner may submit any additional drawings, photographs or other documentations that they believe is helpful in presenting their request.

HEARING

The Petitioners will also provide the Affidavit of Publication that they receive from the newspaper showing that notice was published. The affidavit of publication may be obtained once the Petitioner has paid for the publication. The Petitioners will use general circulation for their respective areas. Generally this will either be in the LaPorte Herald Argus or the Michigan City News Dispatch. It will not be sufficient notice if an individual on the eastern side of the County uses the Michigan City news Dispatch

knowing that the paper of general circulation is the LaPorte Herald Argus. The purpose of the notice is to make sure all adjoining landowners are most likely to have notice of the public hearing, not to just meet a formal legal requirement.

The Petitioner will present to the Board, the green cards showing certified mailing regarding notice to adjoining landowners or copies of the notices signed and dated by the adjoining landowners.

The Petitioners will also provide to the Board the Affidavit listing the adjoining landowners so that there can be verification that all the adjoining landowners have received notice.

The real estate office will also have the names and addresses of the adjoining landowners which notice can be sent.

The hearing format allows the Petitioner to make their presentation. The presentation is made to the Board. After the Petitioner's presentation, any individuals who wish to remonstrate against the Petition or speak in favor of the Petition will be given an opportunity to speak. The Petitioners will then be allowed additional time in which to rebut any concerns of the remonstrators.

After the presentation of evidence, the Board will make a determination to grant or deny the request. The matter may be tabled, continued for additional review or submissions or granted with certain conditions or restrictions.

Prior to the hearing it is recommended that the Petitioners consult with the adjoining landowners and advise them fully of what the request is about.

EVIDENCE NECESSARY

The following is the evidence necessary provided by statute and ordinance in order to receive a variance. The Petitioner must prove each of the requirements as applicable.

VARIANCE OF USE

It is recommended that the Petitioners consult with an attorney regarding their petitions. LaPorte County Zoning Ordinance and Indiana Statues require that in order to obtain a use variance the Petitioners must prove the following five (5) requirements:

1. The granting of a variance will not be injurious to the public health, safety, morals or general welfare of the community.

2. That the use and value of the area adjacent to the property involved will not be affected in a substantially adverse manner.

3. That the need for the variance arises from a condition peculiar to the property and is not due to the general conditions of the neighborhood.

4. The strict application of the terms of the zoning ordinance would constitute an undue hardship if applied to the property for which the variance is sought.

5. The granting of the variance does not interfere substantially with the Master/Comprehensive plan.

VARIANCE FOR DEVELOPMENTAL STANDARDS

If the variance is for one of developmental standards the Petitioner must only prove three (3) elements:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community.

2. That the use and value of the area adjacent to the property involved will not be affected in a substantially adverse manner.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. Practical difficulties shall result from exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district. The variance shall be necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district.

VARIANCE FOR SPECIAL EXCEPTION

If the application is for a special exception the Petitioner must show evidence regarding the following evidence:

1. **General Welfare.** The proposal will not be injurious to the public health, safety, and general welfare of the community.

2. **Surrounding Property.** The special exception use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish or impair property values within the neighborhood. The establishment of the special exception use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

3. **Hazard.** The special exception shall not be hazardous to adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or property.

4. **Public Facilities and Services.** The use will be served adequately by essential public facilities and services such as: highways, streets, police and fire protection, drainage structures, water and sewage facilities, refuse disposal and schools. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

5. **Development Requirements.** The development of the property will be consistent with the intent of the development requirements established by this ordinance for similar uses. The development will be designed, constructed, operated and maintained to be compatible with, and not significantly alter, the existing or intended character of the general vicinity, based upon the County Comprehensive Land Development Plan.

6. **Ordinance Intent.** Granting the special exception use will not be contrary to the general purposes served by this ordinance, and will not permanently injure other property or uses in the same zoning district and vicinity.

7. **County Land Development Plan.** The proposed use will be consistent with the character of the zoning district in which it is located and the recommendations of the County Land Development Plan.

8. **Use Regulations.** Where there are use-specific regulations contained in Article 14, the special exception use shall comply with all of the regulations applicable to the use.

The Petitioner may wish to provide certain commitments in advance that they are willing to be bound to if the request is granted. This may be done at the time of filing of the petition or at the time of the hearing.

The Board of Zoning Appeals is not required to prove the Petitioner's case. It is the Petitioners' responsibility and requirement to present all the evidence necessary in order to obtain the variance for special exception. The granting of a variance is totally discretionary with the Board. The granting of that variance must be based on the evidence presented and is not based on the number of individuals for or against a particular petition. A special exception must be granted if the Board finds that the individuals prove all the requirements necessary as provided by the Ordinance. It is a violation of Indiana law for any Board member to have a discussion with a Petitioner or a remonstrator at any time other than during the hearing regarding the variance or special exception. Board members may review the property but they cannot elicit or discuss anything except at a meeting. If the Board grants the variance of use, it is personal in nature and only to the Petitioner and cannot be transferred to anyone else. If the Petitioner ceases that use, the variance becomes void. If anyone purchases the property, they must request a

continuation of the variance from the Board if they wish to continue the same use for which the variance was sought. In the case of a developmental standard, the variance runs with the land because it involves a building. A special exception is the same procedure as a use variance.

COMMON VAIRANCE OR SPECIAL EXCEPTANCE CONSIDERATIONS FOR MOBILE HOMES

Mobile homes are not allowed in LaPorte County except in mobile home parks. The Board considers temporary placement of a mobile home in no more than three (3) year increments. The granting of the variance for the placement of a mobile home is generally contingent upon building or placement of a residence at which time the mobile home must be removed.

FRONTAGE LIMITATIONS

All residential parcels must have at least two hundred (200) feet of frontage unless specified otherwise in the subdivision ordinance. See the LaPorte County Joint Zoning Ordinance for more specific information.

SIGNS

If the variance or special exception involves a business use, signage is permitted for up to six (6) square feet. Any additional signage of a larger nature should be included in being part of the petition. Please refer to the LaPorte County Joint Zoning Ordinance for more specific information.

BUSINESS USE

If the request is for a business use, hours and parking are primary consideration. Traffic patterns of whether or not there will be congestion of traffic will be reviewed as well as any type of exterior lighting. See the LaPorte County Joint Zoning Ordinance for more specific information.

DEVELOPMENTAL STANDARDS

Developmental standards involve a variance regarding height of a building or structure, the location, design of a structure, and placement of a structure upon a lot. See the LaPorte County Joint Zoning Ordinance for more specific information.