

City of Shelbyville

Board of Zoning Appeals Rules and Procedures



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Section 1: Overview

- 1.1. Establishment:** The Shelbyville Board of Zoning Appeals is an Advisory Board of Zoning Appeals formed under the authority of *IC 36-7-4-900 Series* and any amendments thereto.
- 1.2. Authority of Rules:** These rules are adopted in accordance with the requirements of *IC 36-7-4-916*.
- 1.3. Jurisdiction:** The jurisdiction of the Shelbyville Board of Zoning Appeals is the corporate limits of the City.
- 1.4. General Description of Role:** The role of the Shelbyville Board of Zoning Appeals is to hear appeals, permit special land uses and grant variances from the Shelbyville Unified Development Ordinance, and grant variances from the Flood Hazard Area Standards in *Chapter 159*. (See *Section 2: Duties and Powers* for more information)
- 1.5. General Description of Board of Zoning Appeals Members:** The Shelbyville Board of Zoning Appeals is made up of five (5) appointed members as per *IC 36-7-4-902(a)* (See *Section 3: Membership* for more information)
- 1.6. Processes Under the Board of Zoning Appeals' Purview:** The following processes are the responsibility of the Shelbyville Board of Zoning Appeals:

Processes	Role of Shelbyville Board of Zoning Appeals	Actions the Shelbyville Board of Zoning Appeals May Take	Notes
<ul style="list-style-type: none"> Special Exception 	<ul style="list-style-type: none"> Hold a public hearing Render a final decision 	<ul style="list-style-type: none"> Approve with or without conditions and/or written commitments Deny 	Decision is discretionary based on findings of fact.
<ul style="list-style-type: none"> Variance of Development Standards 	<ul style="list-style-type: none"> Hold a public hearing Render a final decision 	<ul style="list-style-type: none"> Approve with or without conditions and/or written commitments Deny 	Decision is discretionary based on findings of fact.
<ul style="list-style-type: none"> Variance of Use 	<ul style="list-style-type: none"> Hold a public hearing Render a final decision 	<ul style="list-style-type: none"> Approve with or without conditions and/or written commitments Deny 	Decision is discretionary based on findings of fact.
<ul style="list-style-type: none"> Administrative Appeals 	<ul style="list-style-type: none"> Hold a public hearing Render a final decision 	<ul style="list-style-type: none"> Reverse the decision Affirm the decision Modify the decision 	Decision is discretionary based on findings of fact. The Board of Zoning Appeals assumes all the powers of the official who's decision is being challenged. Appeals cannot be made to decisions made by the Shelbyville Plan Commission or Common Council.
<ul style="list-style-type: none"> Flood Hazard Area Standards Variance 	<ul style="list-style-type: none"> Hold a public hearing Render a final decision 	<ul style="list-style-type: none"> Approve with or without conditions and/or written commitments Deny 	City Code of Ordinances, Chapter 159

Section 2: Duties and Powers

2.1. Duties: The following are duties of the Shelbyville Board of Zoning Appeals and should be interpreted as obligations.

A. *Manage Documents and Materials:*

1. *Materials:* Make available to the public all planning documents, and other related material that are the responsibility of the Shelbyville Board of Zoning Appeals.
2. *Records:* Maintain records of all meetings, hearings, correspondences, and affairs of the Shelbyville Board of Zoning Appeals.

B. *Hear Applications:*

1. *Special Exception:* Administer a process to approve or deny permitted uses when certain conditions are met.
2. *Use Variance:* Administer a process to approve or deny a variance from a use district or classification.
3. *Variance from Development Standards:* Administer a process to approve or deny variances from the development standards of the Shelbyville Unified Development Ordinance.
4. *Appeals:* Administer a process to determine appeals from decisions of the Secretary.
5. *Flood Hazard Area Standards Variance:* Administer a process to approve or deny variances from the flood hazard area standards, as authorized by the Shelbyville City Council and *Chapter 159*.

C. *Additional Duties:*

1. *Rules and Procedures:* Maintain rules and procedures in accordance with Indiana State Law.
2. *Other:* Any other duties as required by Indiana State Law.

2.2. Powers: The following are powers of the Shelbyville Board of Zoning Appeals and should be interpreted as optional activities.

A. *Advisors and Counsel:* Contract for special advisors or legal counsel when necessary to assist in carrying out duties.

B. *Indiana State Law:* Powers as may be permitted by Indiana State Law.

2.3. Secretary: The Executive Director of the Plan Commission (and/or his/her designees) shall be the Shelbyville Board of Zoning Appeal's Secretary. The Secretary's duties that are delegated by the Shelbyville Board of Zoning Appeals are described below.

A. *Attend Meetings:* Attend all meetings of the Shelbyville Board of Zoning Appeals and present facts pertaining to the issues raised by the application.

B. *Maintain Membership Roster:* Maintain a current roster of members including the terms of service, the respective appointing body and appointment requirements for each member.

C. *Board of Zoning Appeals Files:* Maintain records of all meetings, hearings, correspondences, rules and procedures, membership, term expirations and general affairs of the Shelbyville Board of Zoning Appeals.

D. *Board of Zoning Appeals Meetings:* Prepare information packets prior to each meeting, prepare agendas, conduct requested research, assure notification compliance.

E. *Material:* Publish and make available to the public all planning documents that are the responsibility of the Shelbyville Board of Zoning Appeals.

F. *Public Interaction:* Be available during city office hours as a first point of contact for planning and zoning questions from the public.

G. *Administrative Decisions:* Make administrative decisions based on the standards and procedures in the Shelbyville Unified Development Ordinance.

H. *Interpretations:* Interpret the standards and procedures in the Shelbyville Unified Development Ordinance.

I. *Receive Applications:* Receive and log applications submitted, as required by the Shelbyville Unified Development Ordinance.

J. *Review and Process Applications:* Review applications for compliance with minimum standards and verify facts. Once determined to be a complete application according to the appropriate procedure, assign a case number and schedule for a public hearing before the Shelbyville Board of Zoning Appeals.

K. *Compliance Inspections:* Inspect improvements to land, new or modified structures, and changes of use to verify compliance with the Shelbyville Unified Development Ordinance and decisions made by the Shelbyville Board of Zoning Appeals.

L. *Other:* Any duties that may be delegated to the Secretary by the Shelbyville Board of Zoning Appeals.

Section 3: Membership

3.1. Number of Members: The Shelbyville Board of Zoning Appeals shall consist of five (5) members appointed per Indiana State Law
 A. Members #1 through #5 shall be appointed in accordance with *IC 36-7-4-902(a)*.

3.2. Members by Appointment: The following table describes the appointment of each Shelbyville Board of Zoning Appeals member.

Board of Zoning Appeals Member	Appointing Body	Requirement of Appointment	Notes
Member #1	Mayor	Shall be a citizen member of the Shelbyville Plan Commission	See Section 3.3(A) for term of appointment.
Member #2	Mayor	Shall be a citizen member, but not a member of the Shelbyville Plan Commission	See Section 3.3(B) for term of appointment.
Member #3	Mayor	Shall be a citizen member, but not a member of the Shelbyville Plan Commission	See Section 3.3(B) for term of appointment.
Member #4	Common Council	Shall be a citizen member, but not a member of the Shelbyville Plan Commission	See Section 3.3(B) for term of appointment.
Member #5	Shelbyville Plan Commission	Shall be a member of the Shelbyville Plan Commission.	See Section 3.3(A) for term of appointment.

3.3. Term of Appointment: All Shelbyville Board of Zoning Appeals members are eligible for reappointment and shall serve until their term has expired.

- A. Members #1 and #5, who also serve on the Shelbyville Plan Commission, shall serve until a successor is appointed by the appropriate appointing body.
- B. Members #2, #3, and #4 shall be appointed for a term of four (4) years, beginning on the first Monday of January. The terms for these members shall be staggered, such that members roll-off the Board of Zoning Appeals on different years after serving their four (4) years.

3.4. Restrictions: Members of the Shelbyville Board of Zoning Appeals shall not hold another elected or appointed office, except Members #1 and #5 who concurrently serve on the Shelbyville Plan Commission.

3.5. Filling a Member Vacancy: When a vacancy occurs among the members of the Shelbyville Board of Zoning Appeals, the appointing body of the vacated position shall appoint a new member for the duration of the unexpired term.

3.6. Alternate Member: The respective appointing body may appoint an alternate member to participate on the Shelbyville Board of Zoning Appeals in any hearing or decision if the regular member it has appointed has a disqualification or is unavailable to participate in the hearing or decision, pursuant to *IC 36-7-4-907(a)*.

3.7. Removal of a Member: The appointing body may remove a member prior to their term expiration pursuant to *IC 36-7-4-906(f)* for cause. Otherwise, Board of Zoning Appeals members shall not be removed.

3.8. Forfeiture of Membership: A member who misses three (3) consecutive regular meetings, or four (4) scheduled “regular meetings” or “special meetings” in any calendar year of the Board of Zoning Appeals may be treated as if the member had resigned, at the discretion of the appointing authority.

3.9. Resignation of Member: A member of the Shelbyville Board of Zoning Appeals may resign from their appointment by written notice to the Shelbyville Board of Zoning Appeals or by declaration at a regular meeting or special meeting as documented by the meeting’s minutes. Upon receipt of resignation letter or declaration, the appointing body of the vacated position shall appoint a new member for the duration of the unexpired term.

3.10. Term of Salary: A member of the Board of Zoning Appeals shall receive compensation on a biannual schedule as determined within the City of Shelbyville Salary Ordinance.

Section 4: Officers

4.1. Election of Officers:

- A. *Officers*: The Shelbyville Board of Zoning Appeals shall elect a Chairman and Vice Chairman.
- B. *Timing of Elections*: The election of officers shall occur at the first scheduled regular meeting of the Shelbyville Board of Zoning Appeals of each calendar year.
- C. *Agenda*: The election of officers shall be the first agenda item following “Confirmation of Quorum” and the election shall be chaired and conducted by the City Attorney.
- D. *Eligible Members*: All members shall be eligible for an officer position.
- E. *Term of Office*: Each officer shall serve from the time of being elected through the following year’s election of officers (i.e. one year). Immediately following the successful election of a Chairman, that person shall begin to preside over the meeting.

4.2. Role of the Chairman: The Chairman of the Shelbyville Board of Zoning Appeals shall:

- A. *Preside over Meetings*: Preside over all regular meetings and special meetings of the Shelbyville Board of Zoning Appeals.
- B. *Maintain Order*: Maintain order in the room during meetings.
- C. *Summarize Decision*: Summarize decisions for the record after each official action.
- D. *Recognize and Permit Speakers*: Determine when persons who are not members of the Shelbyville Board of Zoning Appeals may address the Shelbyville Board of Zoning Appeals.
- E. *Executive Authority*: Execute contracts and agreements on behalf of the Shelbyville Board of Zoning Appeals.

4.3. Role of the Vice Chairman: Act as Chairman of the Shelbyville Board of Zoning Appeals during the absence or disability of the Chairman.

4.4. Role of the Secretary:

- A. *Preside Over Meeting*: Preside over the Shelbyville Board of Zoning Appeals meeting in the absence or disability of both the Chairman and Vice Chairman, however the first and only item of business to be presented by the Secretary shall be the election of a Chairman pro tempore.
- B. *Public Notice*: Ensure necessary public notice for meetings of the Shelbyville Board of Zoning Appeals.
- C. *Meeting Minutes*: Prepare the minutes of the Shelbyville Board of Zoning Appeals meetings.
- D. *Document Acts*: Document all official acts and votes of the Shelbyville Board of Zoning Appeals.

4.5. Resignation of an Officer: An officer of the Shelbyville Board of Zoning Appeals may resign from their role as Chairman or Vice Chairman by written notice to the Shelbyville Board of Zoning Appeals or by declaration at a regular meeting or special meeting, as documented by the meeting’s minutes. Upon receipt of a resignation letter or declaration, the Shelbyville Board of Zoning Appeals shall elect a successor at its next scheduled regular meeting or special meeting to serve out the unexpired term of office as an officer.

Section 5: General Rules for Meetings

- 5.1. Open Door Laws:** Regular meetings of the Shelbyville Board of Zoning Appeals shall be notified and conducted in accordance with *IC 5-14-1.5* (Indiana Open Door Law) as amended.
- 5.2. Quorum:** A majority of members of the Shelbyville Board of Zoning Appeals shall constitute a quorum. Therefore, three (3) of the five (5) members of the Shelbyville Board of Zoning Appeals shall be considered a quorum.
- 5.3. Failure to Reach Quorum:**
- A. *Advance Notice:* If failure to meet quorum is imminent and known prior to the meeting date, the Secretary shall attempt to provide notice to the public in accordance with *Section 6.9(C): Notice of Cancelled Regular Meeting*.
 - B. *Continue Official Action:* Whenever it is determined that a quorum will not be or has not been met for a regular meeting or special meeting, the Chairman of the Shelbyville Board of Zoning Appeals shall continue all official action to the next regular meeting or special meeting.
- 5.4. Situations Not Considered a Regular or Special Meeting:** On-site inspections of a property involved in applications before the Shelbyville Board of Zoning Appeals shall not be considered a regular or special meeting. The Secretary shall provide notice to the public per *Section 7.7(A)(2): Meeting Without Public Hearing* of the on-site meeting. No official action, deliberation, or informal votes shall take place at an on-site meeting and the Shelbyville Board of Zoning Appeals members shall be limited to fact finding.
- 5.5. Exceed Meeting Room Capacity:** When attendance in the meeting space exceeds its occupancy capacity the Chairman shall either:
- A. *Adjourn and Reconvene the Meeting:* Announce that the occupancy limit has been exceeded and that the meeting will be recessed and reconvened in thirty (30) minutes at another available facility with adequate space to accommodate the attendees. This option shall only be allowed if:
 - 1. The new location is within a five (5) minute drive or walk of the initial location, and
 - 2. A sign communicating the change is clearly posted on the door of the initial location, and
 - 3. All attendees are instructed that the meeting will move to a new location, and
 - 4. The ability to record accurate minutes is maintained, and
 - 5. The new facility has the acoustics or other ability to allow attendees to hear public comments, deliberation, and other verbal communication necessary for taking official action.
 - B. *Reschedule the Meeting:* Announce to all attendees that the application(s) being considered shall be postponed to a future meeting. The future meeting date, time and location shall be identified and announced to anyone in attendance or trying to gain attendance to the meeting.
 - 1. *If Rescheduled to a Regular Meeting:* No further notice by the Shelbyville Board of Zoning Appeals shall be necessary.
 - 2. *If Rescheduled to a Special Meeting:* The Secretary shall provide notice to the public per *Section 7.7(A)(1): Meeting With Public Hearing*.
- 5.6. Meeting Minutes:**
- A. *Recording Official Action:* The Secretary shall take notes and prepare the minutes of the Shelbyville Board of Zoning Appeals meetings. The minutes shall document the vote of each member on each motion; and reflect each member's vote, choice to abstain and/or recusal due to conflict of interest.
 - B. *Recording of Deliberation:* The Secretary shall capture the essence of all discussions and deliberations, however the Board of Zoning Appeals does not require such discussions to be transcribed or recorded.
 - C. *Recording of Public Input:* The Secretary shall capture the essence of all public input, by speaker, including said speaker's name and address. The Secretary is not required to transcribe public input.
 - D. *Procedure:* The minutes from any meeting shall be presented to the Shelbyville Board of Zoning Appeals for review and approval at its next regular meeting. Members may review and approve minutes of meetings at which they were not present.
 - E. *Audio or Video Recording:* There is no mandate to record audio or video of any Shelbyville Board of Zoning Appeals meeting. If such recordings are created, they are to aid in the preparation of the official minutes. It is the discretion of the Secretary to archive said material. If archived, such material shall not be required to be retained for more than one (1) year.

- F. *Official Minutes:* The only official minutes of any meeting are the written minutes as reviewed and approved by vote at a regular meeting and signed by the Chairman of the Shelbyville Board of Zoning Appeals. Audio or video tape shall not be construed as the official minutes.
- G. *Storage of Minutes:* The Secretary shall archive all written meeting minutes once they are approved. The minutes of the Shelbyville Board of Zoning Appeals shall be filed in the Secretary's office and are considered public record, as defined by *IC 5-14-3* (Indiana Access to Public Records Act).
- 5.7. Suspension of Rules:** Any of the rules or procedures in the Shelbyville Board of Zoning Appeals Rules and Procedures may be suspended by unanimous vote of the members present, except provisions that are mandated by Indiana State Law.
- 5.8. Presence of Applicant:** The applicant or their representative shall be present at the meeting in order for the Shelbyville Board of Zoning Appeals to hear their application. Failure to appear will result in the tabling of the application to the next scheduled regular meeting. Failure to appear two (2) times shall result in dismissal of the application.
- 5.9. Public Notice Scrutiny:** A person, or their representative, appearing in person at a public hearing on an application shall not question the adequacy of the public notice unless the issue is raised at the beginning of the public hearing.
- 5.10. Continuation:** When cause exists, any agenda item, before or during deliberation, or a public hearing, may be continued by vote of the Shelbyville Board of Zoning Appeals. Cause may include a legal issue or question that requires legal counsel input or an essential piece of information is not available, or an essential representative or expert is not available.

Section 6: Regular Meetings

- 6.1. Published Schedule:** The *Schedule of Meetings* shall be prepared, adopted and published by the Secretary prior to the first meeting of each year in accordance with *Section 6.9(A): Public Notice of Schedule of Meetings*. The schedule shall include the meeting dates as well as the corresponding filing deadline and public hearing notice deadline for each meeting.
- 6.2. Regular Meeting Date:** Regular meetings of the Shelbyville Board of Zoning Appeals are generally on the second Tuesday of each month or alternate date if the regular meeting falls on or within two days of a State or Federal holiday or otherwise is impractical to hold the meeting on the fourth Tuesday of a particular month.
- 6.3. Regular Meeting Time:** Regular meetings shall begin at 7:00 PM.
- 6.4. Long Meetings:** Should a meeting last past 9:30 PM, the agenda item then being heard shall be considered the last item on the agenda and concluded in a timely manner. Following that item, the Shelbyville Board of Zoning Appeals shall decide whether to undertake additional agenda items or to recess the meeting, thus postponing the remaining agenda item(s). A tie vote shall be considered a vote to recess the meeting.
- 6.5. Regular Meeting Location:** All regular meetings shall be held at the Shelbyville City Hall, Council Chambers, 44 W. Washington Street, Shelbyville, Indiana unless otherwise published or posted according to notice requirements of *Section 6.9: Notice to Public for Regular Meetings*.
- 6.6. Modification of a Regular Meeting:** If it is determined that a regular meeting is impractical to be held after the *Schedule of Meetings* has been published, the Chairman may set an alternate date, time and/or place for the meeting. The Secretary shall provide notice to the public per *Section 6.9(B): Notice of Modified Regular Meeting*.
- 6.7. Cancellation of a Regular Meeting:** The Chairman of the Shelbyville Board of Zoning Appeals may dispense with a regular meeting in the event of a natural disaster, snow emergency, lack of official business, lack of quorum, or similar cause. In such cases, the Secretary shall attempt to provide notice to the public per *Section 6.9(C): Notice of Cancelled Regular Meeting*. In the event of cancellation, all business scheduled for the cancelled meeting will be continued to the next regular meeting or special meeting and the Chairman may require re-notification to interested parties. If re-notification is required, the cost may be paid by the applicant or the Shelbyville Board of Zoning Appeals, as determined by the Chairman.
- 6.8. Recessed Regular Meeting:** Prior to the conclusion of the regular meeting, the Chairman shall set a date, time, and place for the continuation of a recessed meeting. No further notice by the Shelbyville Board of Zoning Appeals shall be necessary for a recessed regular meeting. If a specific date, time, or place is not announced for the remaining agenda items, it shall be assumed that they will be placed on the agenda for the next regular meeting.
- 6.9. Notice to Public for Regular Meetings**
- A. *Public Notice of Schedule of Meetings:* The Secretary shall publish notice of the *Schedule of Meetings* in a newspaper of regular circulation at least thirty (30) days prior to the first meeting of each year. No further notice by the Shelbyville Board of Zoning Appeals shall be necessary for regular meetings.
 - B. *Notice of Modified Regular Meeting:* In the event a regular meeting is modified, the Secretary shall notify the Shelbyville Board of Zoning Appeals members, affected applicants, and publish legal notice in a newspaper of regular circulation at least ten (10) days prior to the alternate regular meeting.
 - C. *Notice of Cancelled Regular Meeting:* In the event a regular meeting is cancelled, the Secretary shall attempt to notify the Shelbyville Board of Zoning Appeals members, affected applicants and provide notice to the news media. In addition, the Secretary shall post a memo on or near the entrance to the meeting location to notify potential attendees. No further notice shall be necessary.
- 6.10. Filing Deadlines:** The deadline for submitting an application for public hearing by the Shelbyville Board of Zoning Appeals shall be in accordance with the adopted *Schedule of Meetings*. The submittal deadline is generally twenty-one (21) calendar days prior to the next regular meeting of the Shelbyville Board of Zoning Appeals.
- 6.11. Pre-meeting:** The Shelbyville Board of Zoning Appeals may schedule a “pre-meeting” at 6:30 PM before the regular meeting. A pre-meeting shall be open to the public and shall be limited to briefing the Board of Zoning Appeals members on information in their packets, orientation and context of sites for upcoming applications, training, and other information sharing. A pre-meeting shall not be used to reach consensus, to pre-decide a final action, to inquire about a member’s position on a vote, or other official action.

6.12. Order of Business: The order of business at regular meetings shall be:

- A. Call to Order
- B. Roll Call
- C. Confirm Quorum
- D. Confirmation of the Previous Meeting's Minutes
- E. Approve or Modify Agenda
- F. Old Business
 - 1. *Public Meetings*
 - 2. *Public Hearings*
- G. New Business
 - 1. *Public Meetings*
 - 2. *Public Hearings*
- H. Other Business
- I. Report from Officers, Committees, and/or Secretary, and/or Legal Counsel
- J. Adjourn

6.13. Order of Cases: Cases on the agenda for each meeting shall be listed under the appropriate heading (e.g. New Business) and placed in the order of their assigned case number (i.e. first assigned will be first listed). However, the order of cases may be modified by the Secretary in order to place simple cases first. Further, the order may be modified by the Shelbyville Board of Zoning Appeals by vote at the beginning of the meeting.

Section 7: Special Meetings

- 7.1. Calling a Special Meeting:** Special meetings may be called by the Chairman or any two (2) voting members of the Shelbyville Board of Zoning Appeals upon written notice (i.e. email or hard copy) to the Secretary. The Secretary shall provide notice to the public per *Section 7.7(A): Public Notice of Special Meeting*. Public notice is not required if:
- A. *Fixed at a Regular Meeting:* The date, time and place of the special meeting are established and announced at a regular meeting; and
 - B. *All Members Present:* All members of the Shelbyville Board of Zoning Appeals are present at that regular meeting; and
 - C. *Compliance with Notice:* The Secretary issued notice complies with the notice requirements of *IC 5-14-1.5-5* (Indiana Open Door Law).
- 7.2. Special Meeting Date:** The date of the special meeting shall be established by the Secretary and shall be scheduled within two (2) weeks of the request for a special meeting.
- 7.3. Special Meeting Time:** The time of the special meeting shall be established by the Secretary.
- 7.4. Meeting Location:** All special meetings shall be held at the Shelbyville City Hall, Council Chambers, 44 W. Washington Street, Shelbyville, Indiana unless otherwise published or posted according to notice rules.
- 7.5. Cancellation of a Special Meeting:** The Chairman of the Shelbyville Board of Zoning Appeals may dispense with a special meeting in the event of a natural disaster, snow emergency, lack of business, lack of quorum or similar causes. In such cases, the Secretary shall provide notice to the public per *Section 7.7(B): Notice of Cancelled Special Meeting*. In the event of cancellation, the Chairman may require re-notification to interested parties. If re-notification is required, the cost may be paid by the applicant or the Shelbyville Board of Zoning Appeals, as determined by the Chairman.
- 7.6. Recessed Special Meeting:** Prior to the conclusion of the special meeting, the Chairman shall set a date, time, and place for the reconvening of a recessed meeting. No further notice from the Shelbyville Board of Zoning Appeals shall be necessary for a recessed regular meeting.
- 7.7. Notice to Public for Special Meetings:**
- A. *Public Notice of Special Meeting:*
 1. *Meeting With Public Hearing:* The Secretary shall notify the Shelbyville Board of Zoning Appeals members, affected applicants, and publish notice in a newspaper of regular circulation at least ten (10) days prior to the special meeting.
 2. *Meeting Without Public Hearing:* The Secretary shall notify the Shelbyville Board of Zoning Appeals members and publish notice in a newspaper of regular circulation at least two (2) days prior to the special meeting.
 - B. *Notice of Cancelled Special Meeting:* In the event a special meeting is cancelled, the Secretary shall attempt to notify the Shelbyville Board of Zoning Appeals members, affected applicants, and provide notice to the news media. In addition, the Secretary shall post a memo on or near the entrance to the meeting location to notify potential attendees. No further notice shall be necessary.
- 7.8. Order of Business:** The order of business at a special meeting shall be:
- A. Call to Order
 - B. Roll Call
 - C. Determination of Quorum
 - D. Old Business
 1. *Public Meetings*
 2. *Public Hearings*
 - E. New Business
 1. *Public Meetings*
 2. *Public Hearings*
 - F. Adjournment
- 7.9. Order of Cases:** Cases on the agenda for each meeting shall be listed under the appropriate heading (e.g. New Business) and placed in the order of their assigned case number (i.e. first assigned will be first listed). However, the order of cases may be modified by the Secretary in order to place simple cases first. Further, or the order may be modified by the Shelbyville Board of Zoning Appeals by vote at the beginning of the meeting.

Section 8: Member Rules

8.1. Conflict of Interest:

- A. *Recusal*: Any member of the Shelbyville Board of Zoning Appeals with a conflict of interest, as defined in *Section 18: Definitions*, shall recuse themselves and not participate as a Shelbyville Board of Zoning Appeals member in any public hearing, discussion, or official action in regard to the matter.
- B. *Question of Conflict*: A member who believes they may have a conflict of interest shall present their situation and ask for a determination by the Shelbyville Board of Zoning Appeals Chairman and/or the Shelbyville Board of Zoning Appeals attorney.
- C. *Advance Notification*: When possible, the member shall notify the Secretary and Chairman of their conflict of interest and intent to recuse themselves at least two (2) days prior to the public hearing in order to determine if a quorum will be present after recusal.
- D. *Participation as a Citizen*: If a Shelbyville Board of Zoning Appeals member has a conflict of interest and intends to recuse themselves, they may still participate as an affected property owner, as the applicant property owner, or as a remonstrator, but shall not be given any special consideration or allotment of time during the public hearing.
- E. *Appearance of Impropriety*: Through the duration of the subject public hearing, discussion or official action of the Shelbyville Board of Zoning Appeals, the member shall not be seated with the remainder of the Shelbyville Board of Zoning Appeals members. To remove any suspicion of influence or special treatment, the member should consider removing themselves from the meeting room when not participating as a citizen or an applicant.
- F. *Affect on Quorum*: If a Shelbyville Board of Zoning Appeals member has to recuse themselves which results in a failure to meet quorum, the application shall be continued to a future regular meeting or special meeting.
- G. *Reflection in the Minutes*: Any member who recuses themselves and the reason for their conflict of interest shall be noted in the meeting minutes.

Section 9: Conduct of Public Hearings

9.1. Order of Business:

- A. *Open Public Hearing:* The Chairman shall open the public hearing.
- B. *Secretary Report:* The Chairman shall ask the Secretary to give a report on the application.
- C. *Applicant Presentation:* The Chairman shall ask the applicant to make their presentation to the Shelbyville Board of Zoning Appeals.
- D. *Questions:* The Shelbyville Board of Zoning Appeals members may ask questions of the Secretary, applicant, and legal counsel as well as ask for clarification of comments made by the public during this time.
- E. *Public Input:*
 1. *Statements of Support:* The Chairman shall ask for persons who generally support the application to make statements. Persons who wish to submit their comments in writing may do so. The Shelbyville Board of Zoning Appeals Chairman or Secretary shall read said comments aloud if only one copy is presented and if final action is anticipated.
 2. *Statements of Remonstrance:* The Chairman shall ask for persons who generally are against the application to make statements of remonstrance. Persons who wish to submit their comments in writing may do so. The Shelbyville Board of Zoning Appeals Chairman or Secretary shall read said comments aloud if only one copy is presented and if final action is anticipated.
- F. *Applicant Rebuttal:* The applicant may make a brief rebuttal to any public remonstrance.
- G. *Close Hearing:* The Chairman may call for a motion to close the public hearing, or any Shelbyville Board of Zoning Appeals member may ask the Chairman to call for a motion to close the public hearing. Upon a motion, second, and vote in favor the public hearing shall be officially closed.
- H. *Discussion and Deliberation:* The Shelbyville Board of Zoning Appeals shall then discuss and deliberate the matter at hand. If applicable, findings of fact shall be confirmed.
- I. *Motion for Final Action:* The Chairman may call for a motion for final action, or any Shelbyville Board of Zoning Appeals member may make a motion for final action. If applicable, the motion should include conditions or commitments.
- J. *Further Discussion:* After the motion has been seconded, the Chairman shall ask for any further discussion. Amendments to the motion may be made, seconded, deliberated, and voted on at this time.
- K. *Call for Vote:* The Chairman shall call for a vote on the motion and the Secretary shall record the vote. If findings of fact are applicable, the Chairman shall read the finding statements and call for a vote on each applicable finding or all of them at once.

9.2. Limits on Testimony: At the beginning of the public hearing, the Chairman may limit the length of time that all persons may speak or request that repetitious statements by different speakers be minimized in order to reasonably limit the length of the public hearing. The rules for testimony time is as follows unless the Chairman restricts them further at the beginning of the hearing:

- A. *Applicant Presentation:* The applicant may present for up to fifteen (15) minutes.
- B. *Public Input:* Each person desiring to speak during the public hearing shall sign-in prior to and provide his or her name and address for the record.
 1. *Statements of Remonstrance:* In total, the time for all statements of remonstrance shall be conducted within thirty (30) minutes.
 - a. *Organized:* Statements representing three (3) or more interested parties or general remonstrators may present for up to ten (10) minutes.
 - b. *General:* Statements representing two (2) or less interested parties or general remonstrators may present for up to five (5) minutes.
 2. *Statements of Support:* In total, the time for all statements of support shall be conducted within thirty (30) minutes.
 - a. *Organized:* Statements representing three (3) or more interested parties or general supporters may present for up to ten (10) minutes.
 - b. *General:* Statements representing two (2) or less interested parties or general supporters may present for up to five (5) minutes.
- C. *Applicant Rebuttal:* The applicant may rebut claims against the proposal for up to five (5) minutes.
- D. *Additional:* The Chairman may discretionarily grant additional time during the meeting if the information being presented is valuable and necessary for a final decision.

Section 10: Official Action

- 10.1. Official Action:** An action of the Shelbyville Board of Zoning Appeals shall be official when:
- A. *Official Meeting:* The action is taken at a regular meeting or special meeting;
 - B. *Quorum:* At least three (3) members of the Shelbyville Board of Zoning Appeals are in attendance at the time of the motion and vote;
 - C. *Motion:* A motion was made and seconded by a members of the Shelbyville Board of Zoning Appeals;
 - D. *Authorized by Vote:* An official vote is taken by verbal cue or by written ballot; and
 - E. *Majority Vote:* A majority of the entire membership of the Shelbyville Board of Zoning Appeals vote in favor of the proposed action (i.e. at least three members). A majority shall NOT be the majority of the members present.
- 10.2. Present to Vote:** A Shelbyville Board of Zoning Appeals member shall be present for the public hearing in order to be eligible to vote on any matter.
- 10.3. Remote Participation:** A member of the Shelbyville Board of Zoning Appeals may participate in a regular meeting or special meeting via computer technology, telephone, cellular phone, video conference, or other similar means. However, said member shall not be considered present for quorum purposes and shall only participate for deliberative purposes; they shall not be able to participate in any official action (i.e. vote). Remote participation of a member shall be clearly noted in the meeting minutes.
- 10.4. Absentee or Proxy Voting:** Absentee or proxy voting shall not be permitted.
- 10.5. Call for a Vote:** All members of the Shelbyville Board of Zoning Appeals shall be required to vote for or against a proposed action, or shall petition to abstain. The Chairman shall call for a second vote if one or more of the Shelbyville Board of Zoning Appeals members does not respond (i.e. does not vote) after the initial call to vote. Further non-response shall be considered a vote in favor of the proposed motion.
- 10.6. Petition to Abstain:** Any member of the Shelbyville Board of Zoning Appeals may petition to abstain from voting as mentioned above. For the record, the petition to abstain may include the reason for petition. The Chairman may accept or reject a petition to abstain. If granted, the member shall not be required to vote. If rejected, the Chairman shall call for a new vote at which time the member that petitioned to abstain shall be required to vote in favor of or against the proposed motion.
- 10.7. Failure to Take Official Action:** If the Shelbyville Board of Zoning Appeals fails to take an official action due to lack of quorum, permitted abstention, or recusal, the matter shall be continued to the next regular meeting. If an official action fails to be acted upon in any two (2) meetings, it shall be considered denied.
- 10.8. Reversing an Official Action:** An official action may be reversed if:
- A. *Qualified Member:* The person calling for a reversal of an official action is a member of the Shelbyville Board of Zoning Appeals that voted with the majority;
 - B. *Same Meeting:* The motion to reconsider the official action is made during the same meeting as the official action in question; and
 - C. *Majority Vote:* The Shelbyville Board of Zoning Appeals votes in favor of reconsidering the matter.

Section 11: Communication

- 11.1. Open Door Laws:** All communication outside of Shelbyville Board of Zoning Appeals meetings shall be in accordance with IC 5-14-1.5 (Indiana Open Door Law) as amended.
- 11.2. Official Communication with Members:** Any official communication by the Secretary with members of the Shelbyville Board of Zoning Appeals shall be made in writing and conveyed via US Postal Service or email, or conveyed by voice via face-to-face meeting or telephone. If official communication occurs via voice, a log of that communication shall be maintained by the Secretary.
- 11.3. Communication with Board of Zoning Appeals Member Outside Meetings:** Communication with a member of the Shelbyville Board of Zoning Appeals outside of a regular meeting or special meeting with regard to an application pending before the Shelbyville Board of Zoning Appeals is prohibited. This prohibition includes the applicant, interested party, general public, and other Shelbyville Board of Zoning Appeals members. Information to be shared with Shelbyville Board of Zoning Appeals members shall be routed through Secretary and documented in the file prior to dissemination to all other members.
- 11.4. Meeting Packets:** The Secretary shall distribute meeting packets consisting of copies of the agenda, applications, support material, and other necessary meeting information to the Shelbyville Board of Zoning Appeals members prior to the meeting.

Section 12: General Rules for Applications

- 12.1. Processes:** All applications shall be regulated by *Article 9: Processes* in the Shelbyville Unified Development Ordinance and the contents within the Board of Zoning Appeals Rules and Procedures.
- 12.2. Application Required:** An application is required for items to be placed on the Shelbyville Board of Zoning Appeals agenda for a public hearing.
- 12.3. Required Material to be Submitted:** The material required to be submitted shall be listed on the application form provided by the Zoning Administrator or Secretary. For unique cases, additional material may be required for the Board of Zoning Appeals to make a decision on the matter. Therefore, the Zoning Administrator or Secretary may request additional material pertinent to the case. Further, during a hearing, the Board of Zoning Appeals may require additional information to be submitted before taking a final action on the matter.
- 12.4. Application Submittal Quantity:** The applicant shall submit seven (7) copies of the application and all support materials, and any other information or visual aids required by the Secretary, necessary for the Board of Zoning Appeals to make a final action.
- 12.5. Deadline for Submitting:** The deadline for submitting an application for consideration by the Shelbyville Board of Zoning Appeals shall be in accordance with the adopted *Schedule of Meetings*.
- 12.6. Combining Applications:** In order to expedite the hearing process, applications may be filed concurrently and processed concurrently at the discretion of the Secretary.
- 12.7. Filing Fee:** Each application shall be accompanied by a non-refundable filing fee as described in *Section 19: Fee Schedule*.
- 12.8. Prerequisites for a Public Hearing:** An application shall be placed on the agenda for a public hearing only if the Secretary concurs that the application is substantially complete.
- 12.9. Reasons to Remove a Case from the Agenda:**
- A. *Failure to Notify:* If the Secretary determines that the notification requirements have not been met, the case shall be automatically continued to a future meeting.
 - B. *Modification of Application:* If the applicant modifies their application or request prior to the meeting in such a way that the previously mailed or delivered notices no longer describe the matter accurately, the case shall be automatically continued to a future meeting and re-notification shall be required.
- 12.10. Amendment of Application:** An applicant may request to amend their application at any time before a vote has been called for by the Chairman of the Shelbyville Board of Zoning Appeals. A request to amend an application is at the discretion of the Shelbyville Board of Zoning Appeals and may require re-notification of interested parties.
- A. *Increase in Density or Intensity:* A request to increase the density or intensity of an application shall automatically be postponed to the next regular meeting of the Shelbyville Board of Zoning Appeals and shall require re-notification of interested parties.
 - B. *Decrease in Density or Intensity:* A request to decrease the density or intensity of an application is at the discretion of the Shelbyville Board of Zoning Appeals and may require re-notification of interested parties.
- 12.11. Request by Remonstrator to Continue a Case:** At the first public hearing where the applicant presents their application, a remonstrator may request that an application be continued one (1) time and shall state the reason for the request. The continuance of an application is at the discretion of the Shelbyville Board of Zoning Appeals.
- 12.12. Hand Delivery of Notices:** If an applicant wishes to hand deliver notices to interested parties, the applicant shall get a signature from each property owner or lease holder to whom the notice is delivered. The signature shall be on a form which briefly describes the case, has a signature line, has a date line, and states "...that by signing this form I attest that I have received the legal notice..." or similar language. The form shall be signed and dated at least ten (10) days prior to the public hearing (not including the day of the hearing) to be considered a valid notice.

Section 13: Special Exception

- 13.1. Process:** The process for Development Standards Variance shall be according to *Section 9.07: Special Exception* in the Shelbyville Unified Development Ordinance.
- 13.2. Notice to Interested Parties:** The general public shall be considered an interested party and shall be notified through the newspaper according to *Section 9.13: Notice of Public Hearing* in the Shelbyville Unified Development Ordinance. Interested parties shall be notified by letter (see *Section 9.13: Notice of Public Hearing* in the Unified Development Ordinance) or by hand delivery (see *Section 12.12: Hand Delivery of Notices* in the Board of Zoning Appeals Rules and Procedures). The definition of “interested party” shall be according to *Section 18: Definitions* in the Board of Zoning Appeals Rules and Procedures.
- 13.3. Action by the Board of Zoning Appeals:** The Board of Zoning Appeals may dismiss, continue, approve, or deny an application for Special Exception.
- A. *Dismissal:*
1. *Justification:* The Shelbyville Board of Zoning Appeals may dismiss an application if:
 - a. *Lack of Jurisdiction:* The Shelbyville Board of Zoning Appeals has no jurisdiction over such matter.
 - b. *Failure to Appear:* An applicant fails to appear at two (2) consecutive public hearings of their matter.
 - c. *Excessive Continuance:* An application is continued for more than three (3) consecutive months at the request of the applicant.
 - d. *Failure to Take Action:* A vote of the quorum does not result in official action at two (2) or more public hearings of the application.
 2. *Re-filing:* In order to be reconsidered by the Shelbyville Board of Zoning Appeals, a dismissed application shall be re-filed.
 3. *Limitations on Reconsideration:* A new application involving the same property that was part of a previously dismissed application shall not be placed on agenda for six (6) months from the date it was dismissed.
- B. *Continuance:*
1. *Initiated by the Board of Zoning Appeals:* The Shelbyville Board of Zoning Appeals may continue any application for any of the below listed reasons. Re-notification to interested parties shall not be required if the matter is continued to the next regular meeting, or otherwise announced (i.e. date, time, and location) at a regular meeting.
 - Additional information is needed for the Board of Zoning Appeals to render a decision,
 - Additional time is needed for interested parties to gather data and information for testimony,
 - Additional time for applicant to deliberate or negotiate with interested parties,
 - Additional notification of interested parties is determined to be necessary, or
 - Additional time is necessary for items of discovery to be presented to the Board of Zoning Appeals.
 2. *Indecisive Vote:* The Shelbyville Board of Zoning Appeals shall continue any application if the vote of the quorum does not result in official action.
- C. *Approval:* See *Section 9.09: Use Variance* in the Shelbyville Unified Development Ordinance for process related to approvals.
- D. *Denial:* See *Section 9.09: Use Variance* in the Shelbyville Unified Development Ordinance for process related to denials.
1. *Re-filing:* In order to be reconsidered by the Shelbyville Board of Zoning Appeals, an application involving the same property that was part of an application that was previously denied shall be re-filed.
 2. *Limitations on Reconsideration:* A new application involving the same property that was part of an application that was previously denied shall not be placed on an agenda for one (1) year from the date it received the adverse decision. However, the new application may be reconsidered after two (2) months from the date of denial if the Secretary finds that there is a substantial change in the application or the circumstances affecting the application have changed.

Section 14: Development Standards Variance

14.1. Process: The process for Development Standards Variance shall be according to *Section 9.08: Development Standards Variance* in the Shelbyville Unified Development Ordinance.

14.2. Notice to Interested Parties: The general public shall be considered an interested party and shall be notified through the newspaper according to *Section 9.13: Notice of Public Hearing* in the Shelbyville Unified Development Ordinance. Interested parties shall be notified by letter (see *Section 9.13: Notice of Public Hearing* in the Unified Development Ordinance) or by hand delivery (see *Section 12.12: Hand Delivery of Notices* in the Board of Zoning Appeals Rules and Procedures). The definition of “interested party” shall be according to *Section 18: Definitions* in the Board of Zoning Appeals Rules and Procedures.

14.3. Action by the Board of Zoning Appeals: The Board of Zoning Appeals may dismiss, continue, approve, or deny an application for a Development Standards Variance.

A. Dismissal:

1. *Justification:* The Shelbyville Board of Zoning Appeals may dismiss an application if:
 - a. *Lack of Jurisdiction:* The Shelbyville Board of Zoning Appeals has no jurisdiction over such matter.
 - b. *Failure to Appear:* An applicant fails to appear at two (2) consecutive public hearings of their matter.
 - c. *Excessive Continuance:* An application is continued for more than three (3) consecutive months at the request of the applicant.
 - d. *Failure to Take Action:* A vote of the quorum does not result in official action at two (2) or more public hearings of the application.
2. *Re-filing:* In order to be reconsidered by the Shelbyville Board of Zoning Appeals, a dismissed application shall be re-filed.
3. *Limitations on Reconsideration:* A new application involving the same property that was part of a previously dismissed application shall not be placed on agenda for six (6) months from the date it was dismissed.

B. Continuance:

1. *Initiated by the Board of Zoning Appeals:* The Shelbyville Board of Zoning Appeals may continue any application for any of the below listed reasons. Re-notification to interested parties shall not be required if the matter is continued to the next regular meeting, or otherwise announced (i.e. date, time, and location) at a regular meeting.
 - Additional information is needed for the Board of Zoning Appeals to render a decision,
 - Additional time is needed for interested parties to gather data and information for testimony,
 - Additional time for applicant to deliberate or negotiate with interested parties,
 - Additional notification of interested parties is determined to be necessary, or
 - Additional time is necessary for items of discovery to be presented to the Board of Zoning Appeals.
2. *Indecisive Vote:* The Shelbyville Board of Zoning Appeals shall continue any application if the vote of the quorum does not result in official action.

C. Approval: See *Section 9.08: Development Standards Variance* in the Shelbyville Unified Development Ordinance for process related to approvals.

D. Denial: See *Section 9.08: Development Standards Variance* in the Shelbyville Unified Development Ordinance for process related to denials.

1. *Re-filing:* In order to be reconsidered by the Shelbyville Board of Zoning Appeals, an application involving the same property that was part of an application that was previously denied shall be re-filed.
2. *Limitations on Reconsideration:* A new application involving the same property that was part of an application that was previously denied shall not be placed on an agenda for one (1) year from the date it received the adverse decision. However, the new application may be reconsidered after two (2) months from the date of denial if the Secretary finds that there is a substantial change in the application or the circumstances affecting the application have changed.

14.4. Hearing Officer for Temporary Signs: Pursuant to IC 36-7-4-923, an alternate procedure for a temporary sign variance is established.

- A. *Hearing Officer:* The hearing officer shall be as appointed and established by the Shelbyville Plan Commission.
- B. *Limitations:* The hearing officer shall only be authorized to hear variances for temporary signs.
- C. *Process:* Anyone wishing to be granted a variance in regard to temporary signs may either file with the Board of Zoning Appeals using the standard process, or may file for a hearing officer hearing using the following steps:
 - 1. *Application:* The same application for a development standards variance shall be submitted on a form provided by the Zoning Administrator.
 - 2. *Date of Hearing:* The applicant shall be issued a date and time for the hearing, allowing enough time for the applicant to mail or deliver notices to interested parties. Generally, hearings will be scheduled on Wednesday's of each week between the hours of 3:00 PM and 4:00 PM.
 - 3. *Notice:* Notice of the hearings shall be mailed (i.e. post dated) to adjacent property owners at least seven (7) days prior to the hearing, or hand delivered at least five (5) days prior to the hearing.
 - 4. *Hearing:* The hearing officer will conduct the hearing as follows:
 - a. Introductions
 - b. Open hearing
 - c. Applicant presentation (up to 5 minutes)
 - d. Supporter presentation (up to 5 minutes per property owner/tenant)
 - e. Remonstrant presentation (up to 5 minutes per property owner/tenant)
 - f. Rebuttal of applicant (up to 2 minutes per property owner/tenant)
 - g. Rebuttal of remonstrator (up to 2 minutes per property owner/tenant)
 - h. Close hearing
 - i. Render a final action with or without conditions or commitments
- D. *Final Action:* A final action may be an approval with or without conditions and/or commitments, denial, or transfer of hearing to the Board of Zoning Appeals.
- E. *Commitments:* In granting approval of a variance, the hearing officer may attach written voluntary commitments to the approval which shall be filed with the final action.
- F. *Conditions:* In granting approval of a variance, the hearing officer may attach written conditions to the approval which shall be filed with the final action.
- G. *Applicant Appeal:* The applicant may appeal the decision of the hearing officer to the Board of Zoning Appeals, filing within five (5) days of the decision.
- H. *Interested Party Appeal:* An interested party may appeal the decision of the hearing officer to the Board of Zoning Appeal within fourteen (14) days after placement of a temporary sign.
- I. *Verbal and Written Report:* The hearing officer shall give a verbal report of any hearings it conducted at the next regular meeting of the Board of Zoning Appeals and shall file a written report in the office of the Secretary.
- J. *Conflict of Interest and Communication:* The hearing officer shall be subject to the same requirements as the Board of Zoning Appeals with respect to conflicts of interest and communications with the hearing officer (see *Section 8: Member Rules* and *Section 11: Communication* in the Board of Zoning Appeals Rules and Procedures).
- K. *Transfer Hearing:* The hearing officer may, at his/her discretion, transfer an application filed under this alternative procedure to the Board of Zoning Appeals if, in the judgment of the hearing officer, the case warrants consideration by the Board of Zoning Appeals or it appears likely that the decision of the hearing officer would be appealed to the Board.

Section 15: Use Variance

15.1. Process: The process for Use Variance shall be according to *Section 9.09: Use Variance* in the Shelbyville Unified Development Ordinance.

15.2. Notice to Interested Parties: The general public shall be considered an interested party and shall be notified through the newspaper according to *Section 9.13: Notice of Public Hearing* in the Shelbyville Unified Development Ordinance. Interested parties shall be notified by letter (see *Section 9.13: Notice of Public Hearing* in the Unified Development Ordinance) or by hand delivery (see *Section 12.12: Hand Delivery of Notices* in the Board of Zoning Appeals Rules and Procedures). The definition of “interested party” shall be according to *Section 18: Definitions* in the Board of Zoning Appeals Rules and Procedures.

15.3. Action by the Board of Zoning Appeals: The Board of Zoning Appeals may dismiss, continue, approve, or deny an application for a Use Variance.

A. Dismissal:

1. *Justification:* The Shelbyville Board of Zoning Appeals may dismiss an application if:
 - a. *Lack of Jurisdiction:* The Shelbyville Board of Zoning Appeals has no jurisdiction over such matter.
 - b. *Failure to Appear:* An applicant fails to appear at two (2) consecutive public hearings of their matter.
 - c. *Excessive Continuance:* An application is continued for more than three (3) consecutive months at the request of the applicant.
 - d. *Failure to Take Action:* A vote of the quorum does not result in official action at two (2) or more public hearings of the application.
2. *Re-filing:* In order to be reconsidered by the Shelbyville Board of Zoning Appeals, a dismissed application shall be re-filed.
3. *Limitations on Reconsideration:* A new application involving the same property that was part of a previously dismissed application shall not be placed on agenda for six (6) months from the date it was dismissed.

B. Continuance:

1. *Initiated by the Board of Zoning Appeals:* The Shelbyville Board of Zoning Appeals may continue any application for any of the below listed reasons. Re-notification to interested parties shall not be required if the matter is continued to the next regular meeting, or otherwise announced (i.e. date, time, and location) at a regular meeting.
 - Additional information is needed for the Board of Zoning Appeals to render a decision,
 - Additional time is needed for interested parties to gather data and information for testimony,
 - Additional time for applicant to deliberate or negotiate with interested parties,
 - Additional notification of interested parties is determined to be necessary, or
 - Additional time is necessary for items of discovery to be presented to the Board of Zoning Appeals.
2. *Indecisive Vote:* The Shelbyville Board of Zoning Appeals shall continue any application if the vote of the quorum does not result in official action.

C. Approval: See *Section 9.09: Use Variance* in the Shelbyville Unified Development Ordinance for process related to approvals.

D. Denial: See *Section 9.09: Use Variance* in the Shelbyville Unified Development Ordinance for process related to denials.

1. *Re-filing:* In order to be reconsidered by the Shelbyville Board of Zoning Appeals, an application involving the same property that was part of an application that was previously denied shall be re-filed.
2. *Limitations on Reconsideration:* A new application involving the same property that was part of an application that was previously denied shall not be placed on an agenda for one (1) year from the date it received the adverse decision. However, the new application may be reconsidered after two (2) months from the date of denial if the Secretary finds that there is a substantial change in the application or the circumstances affecting the application have changed.

Section 16: Administrative Appeal

- 16.1. Process:** The process for Administrative Appeal shall be according to *Section 9.04: Administrative Appeal* in the Shelbyville Unified Development Ordinance.
- 16.2. Notice to Interested Parties:** The general public shall be considered an interested party and shall be notified through the newspaper according to *Section 9.13: Notice of Public Hearing* in the Shelbyville Unified Development Ordinance. Interested parties shall be notified by letter (see *Section 9.13: Notice of Public Hearing* in the Unified Development Ordinance) or by hand delivery (see *Section 12.12: Hand Delivery of Notices* in the Board of Zoning Appeals Rules and Procedures). The definition of “interested party” shall be according to *Section 18: Definitions* in the Board of Zoning Appeals Rules and Procedures.
- 16.3. Action by the Board of Zoning Appeals:** The Board of Zoning Appeals may dismiss, continue, affirm, reverse, or modify a decision, interpretation, order, determination, or action made by the Zoning Administrator, Hearing Officer, or any other person or group authorized to administer the Unified Development Ordinance, any portion of the Unified Development Ordinance, or any other stand alone ordinance adopted under the enabling legislation for planning and zoning.
- A. *Dismissal:*
1. *Justification:* The Shelbyville Board of Zoning Appeals may dismiss an application if:
 - a. *Lack of Jurisdiction:* The Shelbyville Board of Zoning Appeals has no jurisdiction over such matter.
 - b. *Failure to Appear:* An applicant fails to appear at two (2) consecutive public hearings of their matter.
 - c. *Excessive Continuance:* An application is continued for more than three (3) consecutive months at the request of the applicant.
 - d. *Failure to Take Action:* A vote of the quorum does not result in official action at two (2) or more public hearings of the application.
 2. *Re-filing:* In order to be reconsidered by the Shelbyville Board of Zoning Appeals, a dismissed application shall be re-filed.
 3. *Limitations on Reconsideration:* A new application involving the same property that was part of a previously dismissed application shall not be placed on agenda unless substantially altered or otherwise altered to overcome the deficiency or cause of dismissal.
- B. *Continuance:*
1. *Initiated by the Board of Zoning Appeals:* The Shelbyville Board of Zoning Appeals may continue any application for any of the below listed reasons. Re-notification to interested parties shall not be required if the matter is continued to the next regular meeting, or otherwise announced (i.e. date, time, and location) at a regular meeting.
 - Additional information is needed for the Board of Zoning Appeals to render a decision,
 - Additional time is needed for interested parties to gather data and information for testimony,
 - Additional time for applicant to deliberate or negotiate with interested parties,
 - Additional notification of interested parties is determined to be necessary, or
 - Additional time is necessary for items of discovery to be presented to the Board of Zoning Appeals.
 2. *Indecisive Vote:* The Shelbyville Board of Zoning Appeals shall continue any application if the vote of the quorum does not result in official action.
- C. *Affirm:* See *Section 9.04: Administrative Appeal* in the Shelbyville Unified Development Ordinance for process related to affirmation.
- D. *Reverse or Modify:* See *Section 9.04: Administrative Appeal* in the Shelbyville Unified Development Ordinance for process related to modification.
- 16.4. Limitation on Filing for Administrative Appeal:** An administrative appeal shall be filed within thirty (30) days from the date the decision, interpretation, order, determination, or action was rendered. Because administrative decisions are not noticed to the public or interested parties, an interested party may file for an administrative appeal within thirty (30) days after a building permit is posted, occupancy permit issuance, or any other final action of the Plan Commission or Board of Zoning Appeals.

Section 17: Flood Hazard Area Variance

- 17.1. Procedure:** The Board of Zoning Appeals shall consider all technical elevations, all relevant factors, all standards specified in other sections of this ordinance, and;
- A. The danger of life and property due to flooding or erosion damage,
 - B. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner,
 - C. The importance of the services provided by the proposed facility to the community,
 - D. The necessity to the facility of a waterfront location, where applicable,
 - E. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage,
 - F. The compatibility of the proposed use with existing and anticipated development,
 - G. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area,
 - H. The safety of access to the property in times of flood for ordinary and emergency vehicles,
 - I. The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site, and
 - J. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- 17.2. Conditions for Flood Hazard Area Variance:**
- A. Flood Hazard Area Variances shall only be issued when there is:
 1. A showing of good and sufficient cause,
 2. A determination that failure to grant the Flood Hazard Area Variance would result in exceptional hardship, and
 3. A determination that the granting of a Flood Hazard Area Variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
 - B. No Flood Hazard Area Variance for a residential use within a floodway subject to *Section 5(E) or 5(G)(1) of Chapter 159* may be granted.
 - C. Any Flood Hazard Area Variance granted in a floodway subject to *Section 5(E) or 5(G)(1) of Chapter 159* will require a permit from the Indiana Department of Natural Resources.
 - D. Flood Hazard Area Variances to the Provision for Flood Hazard Reduction of *Section 5(B) of Chapter 159*, may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
 - E. Flood Hazard Area Variances shall only be issued upon a determination that the Flood Hazard Area Variance is the minimum necessary, considering the flood hazard, to afford relief.
 - F. Flood Hazard Area Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.
 - G. Any application to whom a Flood Hazard Area Variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (*See Section 6(E) of Chapter 159*).
 - H. The Floodplain Administrator shall maintain the records of appeal actions and report any Flood Hazard Area Variances to the Federal Emergency Management Agency of the Indiana Department of Natural Resources upon request (*See Section 6(E) of Chapter 159*).
- 17.3. Flood Hazard Area Variance Notification:** Any application to whom a Flood Hazard Area Variance is granted shall be given written notice over the signature of a community official that:
- A. The issuance of a Flood Hazard Area Variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
 - B. Such construction below the base flood elevation increases risk to life and property.
- The Floodplain Administrator will maintain a record of all Flood Hazard Area Variance actions, including justification for their issuance, and report such Flood Hazard Area Variances issued in the community's biennial report submission to the Federal Emergency Management Agency.

- 17.4. Historic Structure:** Flood Hazard Area Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an “historic structure” and the Flood Hazard Area Variance is the minimum to preserve the historic character and design of the structure.
- 17.5. Special Conditions:** Upon the consideration of the factors listed in *Section 17: Flood Hazard Area Variance*, and the purposes of *Chapter 159*, the Board of Zoning Appeals may attach such conditions to the granting of Flood Hazard Area Variances as it deems necessary to further the purposes of *Chapter 159*.

Section 18: Definitions

Administrator: See “Secretary.”

Application: A formal request for the Shelbyville Board of Zoning Appeals to take action on a specific request in a form as provided by the Shelbyville Department of Building, Planning and Development.

Caucus: A meeting or gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for a political campaign or related action.

Conflict of Interest: In accordance with *IC 36-7-4-909*, a conflict of interest is a direct or indirect financial interest of a Shelbyville Board of Zoning Appeals member with regard to a matter before the Shelbyville Board of Zoning Appeals.

Deliberate: A discussion which may reasonably be expected to result in official action.

Executive Session: A meeting of the Shelbyville Board of Zoning Appeals that excludes the public and that is limited to matters identified by *IC 5-14-1.5-6.1* (Open Door Law) including pending or threatened litigation, prospective employees, and job performance of existing employees.

Final Action: A vote by the Shelbyville Board of Zoning Appeals on any motion, proposal, rule, procedure, regulation, interpretation, or order.

Hearing: A meeting of the Shelbyville Board of Zoning Appeals which:

- Has been announced by public notice;
- Is open to the public; and
- Where the public will be given the opportunity to speak.

Indecisive Vote: A vote of the Shelbyville Board of Zoning Appeals quorum that did not result in a decision by a majority of the voting quorum after all possible actions have been exhausted.

Interested Party: An owner and any leaseholder of a lot or tract of land that is within a prescribed distance (see Table 18-A below) of the subject lot being considered for a Special Exception, Use Variance, Development Standards Variance, or Administrative Appeal by the Shelbyville Board of Zoning Appeals. Owners shall be identified by the Plan Commission Secretary.

TABLE 18-A	Use Variances and Special Exceptions	Development Standards Variances	Administrative Appeals	Flood Hazard Area Standard Variance
Park Uses	600 feet	200 feet	300 feet	200 feet
Agricultural Uses	300 feet	300 feet	300 feet	300 feet
Residential Uses	200 feet	200 feet	300 feet	200 feet
Institutional Uses	600 feet	200 feet	300 feet	200 feet
Commercial Uses	600 feet	300 feet	300 feet	300 feet
Industrial Uses	600 feet	300 feet	300 feet	300 feet

Meeting: A gathering of a three (3) or more of the voting members of the Shelbyville Board of Zoning Appeals for the purpose of taking official action upon public business. It does not include:

- Any social or chance gathering not intended to avoid this chapter;
- Any on-site inspection of any project, program, or facilities of applicants for incentives or assistance from the governing body;
- Traveling to and attending meetings of organizations devoted to betterment of government;
- A gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources;
- A caucus; or
- An orientation of members of the Shelbyville Board of Zoning Appeals on their role and responsibilities as public officials, but not for any other official action.

No Official Action: See “Indecisive Vote.”

Official Action: Shall include:

- Receiving information about a matter before the Board of Zoning Appeals;
- Deliberating about a matter before the Board of Zoning Appeals;
- Establishing policy;
- Making recommendations to an applicant;
- Making decisions about a matter before the Board of Zoning Appeals; or
- Taking final action on a matter before the Board of Zoning Appeals.

Public Business: Any function upon which the Shelbyville Board of Zoning Appeals is empowered or authorized to take official action.

Secretary: The Executive Director of the Shelbyville Plan Commission or their authorized representative.

Section 19: Fee Schedule

19.1. Fees: In accordance with the requirements of *IC 36-7-4-411* and *IC 36-7-4-704* and the Shelbyville Unified Development Ordinance, the Shelbyville has established a uniform schedule of fees contained in a separate City of Shelbyville ordinance that is available and on file in the office of the City of Shelbyville Clerk and the Shelbyville Plan Commission Secretary's Office. Fees apply to the following processes:

- A. Requesting a Special Meeting
- B. Use Variance
- C. Development Standards Variance
- D. Special Exception
- E. Flood Hazard Area Standards Variance,
- F. Administrative Appeal, and
- G. Any other process or petition identified in the Shelbyville Unified Development Ordinance or the Fee Ordinance.

Section 20: Repeal

All previous Rules and Procedures published by the Shelbyville Board of Zoning Appeals are hereby superseded and replaced by these Rules and Procedures as of _____ [date].

Rules and Procedures of the Shelbyville Board of Zoning Appeals of the City of Shelbyville, Indiana, are effective as of _____ [date] by a vote of a majority of the Shelbyville Board of Zoning Appeals members at a [regular/special] meeting held on _____ [date].

Attest:

Name, Secretary

