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# Town Of Frankton

## Board of Zoning Appeals Rules and Procedures

# Table of Contents

|   |           |
|---|-----------|
| <b>Section 1: Overview .....</b>                        | <b>3</b>  |
| <b>Section 2: Duties and Powers .....</b>               | <b>4</b>  |
| <b>Section 3: Membership .....</b>                      | <b>5</b>  |
| <b>Section 4: Officers.....</b>                         | <b>6</b>  |
| <b>Section 5: General Rules for Meetings .....</b>      | <b>7</b>  |
| <b>Section 6: Regular Meetings .....</b>                | <b>9</b>  |
| <b>Section 7: Member Rules.....</b>                     | <b>12</b> |
| <b>Section 8: Conduct of Public Hearings .....</b>      | <b>13</b> |
| <b>Section 9: Official Action.....</b>                  | <b>14</b> |
| <b>Section 10: Communication .....</b>                  | <b>15</b> |
| <b>Section 11: General Rules for Applications .....</b> | <b>16</b> |
| <b>Section 12: Special Exception.....</b>               | <b>17</b> |
| <b>Section 13: Development Standards Variance .....</b> | <b>18</b> |
| <b>Section 14: Use Variance.....</b>                    | <b>20</b> |
| <b>Section 15: Administrative Appeal.....</b>           | <b>21</b> |
| <b>Section 16: Flood Hazard Area Variance.....</b>      | <b>22</b> |
| <b>Section 17: Definitions.....</b>                     | <b>24</b> |
| <b>Section 18: Fee Schedule .....</b>                   | <b>26</b> |

# Section 1: Overview

- 1.1. Establishment:** The Frankton 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 Frankton Board of Zoning Appeals is the corporate limits of the Town of Frankton (the “Town”).
- 1.4. General Description of Role:** The role of the Frankton Board of Zoning Appeals is to hear and determine appeals, consider special land uses and exceptions, and consider variances from the Frankton Zoning Ordinance, as may be amended or replaced from time to time (the “Zoning Ordinance”). (See *Section 2: Duties and Powers* for more information.)
- 1.5. General Description of Board of Zoning Appeals Members:** The Frankton 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 Frankton Board of Zoning Appeals:

| Zoning Appeals   | Processes  | Role of Frankton Board of Zoning Appeals May   | Actions the Frankton BZA  |
|--|--|--|---|
| <ul style="list-style-type: none"> <li>Special Exception</li> </ul>                    | <ul style="list-style-type: none"> <li>Hold a public hearing</li> <li>Render a final decision</li> </ul> | <ul style="list-style-type: none"> <li>Approve with or without conditions and/or written commitments</li> </ul>                  | Decision is discretionary based on findings of fact.  |
| <ul style="list-style-type: none"> <li>Variance of Development Standards</li> </ul>    | <ul style="list-style-type: none"> <li>Hold a public hearing</li> <li>Render a final decision</li> </ul> | <ul style="list-style-type: none"> <li>Approve with or without conditions and/or written commitments</li> </ul>                  | Decision is discretionary based on findings of fact.  |
| <ul style="list-style-type: none"> <li>Variance of Use</li> </ul>                      | <ul style="list-style-type: none"> <li>Hold a public hearing</li> <li>Render a final decision</li> </ul> | <ul style="list-style-type: none"> <li>Approve with or without conditions and/or written commitments</li> </ul>                  | Decision is discretionary based on findings of fact.  |
| <ul style="list-style-type: none"> <li>Administrative Appeals</li> </ul>               | <ul style="list-style-type: none"> <li>Hold a public hearing</li> <li>Render a final decision</li> </ul> | <ul style="list-style-type: none"> <li>Reverse the decision</li> <li>Affirm the decision</li> <li>Modify the decision</li> </ul> | Decision is discretionary based on findings of fact. The Board of Zoning Appeals assumes all the powers of the official whose decision is being challenged. Appeals cannot be made to Legislative decisions made by the Frankton Plan Commission or Town Board. |
| <ul style="list-style-type: none"> <li>Flood Hazard Area Standards Variance</li> </ul> | <ul style="list-style-type: none"> <li>Hold a public hearing</li> <li>Render a final decision</li> </ul> | <ul style="list-style-type: none"> <li>Approve with or without conditions and/or written commitments</li> <li>Deny</li> </ul>    |   |

## Section 2: Duties and Powers

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

**A. Manage Documents and Materials:**

1. *Materials:* Make available to the public all public records, identified in IC 5-14=3, that are the responsibility of the Frankton Board of Zoning Appeals.
2. *Records:* Maintain records of all meetings, hearings, correspondences, and affairs of the Frankton Board of Zoning Appeals.

**B. Hear Applications:**

1. *Special Exception or Use:* Administer a process to approve or deny special exceptions, special uses, contingent uses and conditional uses when certain conditions are met.
2. *Use Variance:* Administer a process to approve or deny a variance from a use from the terms of the Zoning Ordinance.
3. *Variance from Development Standards:* Administer a process to approve or deny variances from the development standards of the Zoning Ordinance.
4. *Appeals:* Administer a process to determine appeals from decisions of administrative officials, hearing officers, staff members, administrative boards and other bodies under the Zoning Ordinance.
5. *Flood Hazard Area Standards Variance:* Administer a process to approve or deny variances from the flood hazard area standards, as authorized by the Town.

**C. Additional Duties:**

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

**2.2. Powers:** The following are powers of the Frankton 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 law:* Powers as may be permitted by Indiana law.

# Section 3: Membership

**3.1. Number of Members:** The Frankton Board of Zoning Appeals shall consist of five (5) members appointed in accordance with *IC 36-7-4-902(a)*.

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

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

**3.3. Term of Appointment:** All Frankton 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 Frankton 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 Frankton Board of Zoning Appeals on different years. Members shall not hold another elected or appointed office, except Members #1 and #5 who concurrently serve on the Frankton Plan Commission.

**3.5. Filling a Member Vacancy:** When a vacancy occurs among the members of the Frankton 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 Frankton 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 meetings, or four (4) meetings in any calendar year of the Frankton 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 Frankton Board of Zoning Appeals may resign from their appointment by written notice to the Frankton 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.

# Section 4: Officers

## 4.1. Election of Officers:

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

## 4.2. Role of the Chair: The Chair of the Frankton Board of Zoning Appeals shall:

- A. *Preside over Meetings*: Preside over all regular meetings and special meetings of the Frankton 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 Frankton Board of Zoning Appeals may address the Frankton Board of Zoning Appeals.
- E. *Executive Authority*: Execute contracts and agreements on behalf of the Frankton Board of Zoning Appeals.

## 4.3. Role of the Vice Chair: Act as Chair of the Frankton Board of Zoning Appeals during the absence or disability of the Chair.

## 4.4. Role of the Secretary:

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

## 4.5. Resignation of an Officer: An officer of the Frankton Board of Zoning Appeals may resign from their role as Chair or Vice Chair by written notice to the Frankton 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 Frankton 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:** Meetings of the Frankton Board of Zoning Appeals shall be noticed 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 Frankton Board of Zoning Appeals shall constitute a quorum. Therefore, three (3) of the five (5) members of the Frankton 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 6.7(C): Notice of Cancelled Meeting*.
- B. *Continue Official Action:* Whenever it is determined that a quorum will not be or has not been met for a meeting, the Chair of the Frankton Board of Zoning Appeals shall continue all official action to the next meeting.

**5.4. Situations Not Considered a Meeting:** On-site inspections of a property involved in applications before the Frankton Board of Zoning Appeals shall not be considered a meeting. No official action, deliberation, or informal votes shall take place at an on-site inspection and the Frankton 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 Chair 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, and recorded in the minutes of the Frankton Board of Zoning Appeals. No further notice by the Frankton Board of Zoning Appeals shall be necessary.

**5.6. Meeting Minutes:**

- A. *Recording Official Action:* The Secretary shall take notes and prepare the minutes of the Frankton Board of Zoning Appeals meetings. The minutes shall document the topic and nature of discussions, names and addresses of speakers from the public, and the vote of each member on each motion, including any abstention and/or recusal due to conflict of interest.
- B. *Procedure:* The minutes from any meeting shall be presented to the Frankton Board of Zoning Appeals for review and approval at its next meeting. Members may review and approve minutes of meetings at which they were not present.
- C. *Audio or Video Recording:* There is no mandate to record audio or video of any Frankton Board of Zoning Appeals meeting. If such recordings are created, they are to aid in the preparation of the official minutes and are considered public documents pursuant to *IC 5-14-3*.
- F. *Official Minutes:* The only official minutes of any meeting are the written minutes as reviewed and approved by vote at a meeting and signed by the Chair of the Frankton 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 Frankton 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 Frankton Board of Zoning Appeals Rules and Procedures

may be suspended by unanimous vote of the members present, except provisions that are mandated by Indiana law.

**5.8. Presence of Applicant:** The applicant or representative thereof shall be present at the meeting in order for the Frankton Board of Zoning Appeals to hear the applicant's application. Failure to appear will result in the tabling of the application to the next scheduled meeting. Failure to appear two (2) times shall result in dismissal of the application.

**5.9. Public Notice Scrutiny:** A person, or representative thereof, 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 Frankton Board of Zoning Appeals. Cause may include a legal issue or question that requires legal counsel input, an essential piece of information that is not available, or an essential representative or expert who is not available.



# Section 6: Conduct of Meetings

- 6.1. Meeting Time:** Unless otherwise provided in a notice of public meeting, all meetings of the Board of Zoning Appeals shall begin at 6:00 PM.
- 6.2. Long Meetings:** Should a meeting last past 7:30 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 Frankton 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.
- 6.3. Meeting Location:** All meetings shall be held at the Frankton Police Department, 108 E. Sigler Street, Frankton, Indiana unless otherwise published or posted according to notice requirements of *Section 6.7: Notice to Public for Meetings*.
- 6.4. Modification of a Meeting:** If it is determined that a meeting is impractical to be held after notice of the meeting has been published, the Chair may set an alternate date, time and/or place for the meeting. The Secretary shall provide notice to the public per *Section 6.7(B): Notice of Modified Meeting*.
- 6.5. Cancellation of a Meeting:** The Chair of the Frankton Board of Zoning Appeals may dispense with a duly noticed 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 6.7(C): Notice of Cancelled Meeting*. In the event of cancellation, all business scheduled for the cancelled meeting will be continued to the next meeting and the Chair may require re-notification to interested parties. If re-notification is required, the cost may be paid by the applicant or the Frankton Board of Zoning Appeals, as determined by the Chair.
- 6.6. Recessed Meeting:** Prior to the conclusion of the meeting, the Chair shall set a date, time, and place for the continuation of a recessed meeting. No further notice by the Frankton Board of Zoning Appeals shall be necessary for a recessed meeting.
- 6.7. Notice to Public for Meetings**
- A. *Public Notice of Meetings:* The Town Hall Clerks shall publish notice of meeting in a newspaper of regular circulation in accordance with *IC 5-14-1.5*.
  - B. *Notice of Modified Meeting:* In the event a meeting is modified, the Secretary shall notify the Frankton Board of Zoning Appeals members, affected applicants, and publish legal notice of the modified time, date and/or place of the meeting in a newspaper of regular circulation in accordance with *IC 5-14-1.5*.
  - C. *Notice of Cancelled Meeting:* In the event a meeting is cancelled, the Town Hall Clerks shall attempt to notify the Frankton 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.

**6.8. Order of Business:** The order of business at meetings shall be:

- A. Call to Order
- B. Roll Call
- C. Confirm Quorum
- D. Approval 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, Secretary, and/or Legal Counsel
- J. Adjourn

**6.9. 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 Frankton Board of Zoning Appeals by vote at the beginning of the meeting.

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## Section 7: Member Rules

### 7.1. Conflict of Interest:

- A. *Recusal*: Any member of the Frankton Board of Zoning Appeals with a conflict of interest, as defined in *Section 17: Definitions*, shall recuse himself or herself and not participate as a Frankton 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 he or she may have a conflict of interest shall present his or her situation and ask for a determination by the Frankton Board of Zoning Appeals Chair and/or the Frankton Board of Zoning Appeals attorney.
- C. *Advance Notification*: When possible, the member shall notify the Secretary and Chair of any conflict of interest and intent to recuse himself or herself 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 Frankton Board of Zoning Appeals member has a conflict of interest and intends to recuse himself or herself, the member 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 Frankton Board of Zoning Appeals, the member shall not be seated with the remainder of the Frankton Board of Zoning Appeals members. To remove any suspicion of influence or special treatment, the member should consider removing himself or herself from the meeting room when not participating as a citizen or an applicant.
- F. *Effect on Quorum*: If a Frankton Board of Zoning Appeals member has to recuse himself or herself, which results in a failure to meet quorum, the application shall be continued to a future meeting.
- G. *Reflection in the Minutes*: Any member who recuses himself or herself and the reason for the member's conflict of interest shall be noted in the meeting minutes.

# Section 8: Conduct of Public Hearings

## 8.1. Order of Business:

- A. *Open Public Hearing*: The Chair shall open the public hearing.
- B. *Secretary Report*: The Chair shall give a report on the application.
- C. *Applicant Presentation*: The Chair shall ask the applicant to make their presentation to the Frankton Board of Zoning Appeals.
- D. *Questions*: The Frankton Board of Zoning Appeals members may ask questions of the 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 Chair 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 Frankton Board of Zoning Appeals Chair or Secretary shall read said comments aloud if only one copy is presented and if final action is anticipated.
  - 2. *Statements of Remonstrance*: The Chair 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 Frankton Board of Zoning Appeals Chair 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 Chair may call for a motion to close the public hearing, or any Frankton Board of Zoning Appeals member may ask the Chair 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 Frankton 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 Chair may call for a motion for final action, or any Frankton 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 Chair 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 Chair shall call for a vote on the motion and the Secretary shall record the vote. If findings of fact are applicable, the Chair shall read the finding statements and call for a vote on each applicable finding or all of them at once.

**8.2. Limits on Testimony:** At the beginning of the public hearing, the Chair 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 are as follows unless the Chair 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 Chair may discretionarily grant additional time during the meeting if the information being presented is valuable and necessary for a final decision.

## Section 9: Official Action

**9.1. Official Action:** An action of the Frankton Board of Zoning Appeals shall be official when:

- A. *Official Meeting:* The action is taken at a duly noticed public meeting;
- B. *Quorum:* At least three (3) members of the Frankton 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 member of the Frankton 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 Frankton 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.

**9.2. Present to Vote:** A Frankton Board of Zoning Appeals member shall be present for the public hearing in order to be eligible to vote on any matter.

**9.3. Remote Participation:** A member of the Frankton Board of Zoning Appeals may participate in a 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; the member 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.

**9.4. Absentee or Proxy Voting:** Absentee or proxy voting shall not be permitted.

**9.5. Call for a Vote:** All members of the Frankton Board of Zoning Appeals shall be required to vote for or against a proposed action, or shall petition to abstain. The Chair shall call for a second vote if one or more of the Frankton 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.

**9.6. Petition to Abstain:** Any member of the Frankton 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 Chair may accept or reject a petition to abstain. If granted, the member shall not be required to vote. If rejected, the Chair 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.

**9.7. Failure to Take Official Action:** If the Frankton 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 meeting. If an official action fails to be acted upon in any two (2) meetings, it shall be considered denied.

**9.8. 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 Frankton 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 Frankton Board of Zoning Appeals votes in favor of reconsidering the matter.

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## Section 10: Communication

- 10.1. Open Door Laws:** All communication outside of Frankton Board of Zoning Appeals meetings shall be in accordance with *IC 5-14-1.5* (Indiana Open Door Law), as amended.
- 10.2. Official Communication with Members:** Any official communication by the Secretary with members of the Frankton 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.
- 10.3. Communication with Board of Zoning Appeals Member Outside Meetings:** Communication with a member of the Frankton Board of Zoning Appeals outside of a meeting with regard to an application pending before the Frankton Board of Zoning Appeals is prohibited. This prohibition includes the applicant, interested party, general public, and other Frankton Board of Zoning Appeals members. Information to be shared with Frankton Board of Zoning Appeals members shall be routed through the Secretary and documented in the file prior to dissemination to all other members.
- 10.4. Meeting Packets:** The Secretary shall distribute meeting packets consisting of copies of the agenda, applications, support material, and other necessary meeting information to the Frankton Board of Zoning Appeals members prior to the meeting.

# Section 11: General Rules for Applications

- 11.1. Processes:** All applications shall be regulated by *IC 36-7-4-900 Series*, the Zoning Ordinance and the contents within the Board of Zoning Appeals Rules and Procedures.
- 11.2. Application Required:** An application is required for items to be placed on the Frankton Board of Zoning Appeals agenda for a public hearing. The Board of Zoning Appeals Checklist form is available from the Town Employees at the Frankton Town Hall.
- 11.3. Required Material to be Submitted:** The material required to be submitted shall be listed on the application form provided by the Town Hall. For unique cases, additional material may be required for the Board of Zoning Appeals to make a decision on the matter. Therefore, the Town Hall Clerks or Building Inspector 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.
- 11.4. Application Submittal Quantity:** The applicant shall submit seven (7) copies of the application and all supporting materials, and any other information or visual aids required by the Building Inspector the Board of Zoning Appeals to make a final action.
- 11.5. Deadline for Submitting Appeal:** The deadline for submitting an appeal to the Frankton Board of Zoning Appeals shall be 30 days after the appealed action of the administrative official, hearing officer, staff member, administrative board or other body, as permitted by *IC 36-7-4-900 Series*.
- 11.6. Combining Applications:** In order to expedite the hearing process, applications may be filed concurrently and processed concurrently at the discretion of the Town Hall Staff or Building Inspector.
- 11.7. Filing Fee:** Each application shall be accompanied by a non-refundable filing fee as described in *Section 18: Fee Schedule*.
- 11.8. Prerequisites for a Public Hearing:** An application shall be placed on the agenda for a public hearing within 30 days after the Building Inspector concurs that the application is substantially complete.
- 11.9. Reasons to Remove a Case from the Agenda:**
- A. *Failure to Notify:* If the Town Hall Staff or Building Inspector 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.
- 11.10. Amendment of Application:** An applicant may request to amend their application at any time before a vote has been called for by the Chair of the Frankton Board of Zoning Appeals. A request to amend an application is at the discretion of the Frankton 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 meeting of the Frankton 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 Frankton Board of Zoning Appeals and may require re-notification of interested parties.
- 11.11. 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 Frankton Board of Zoning Appeals.
- 11.12. 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 12: Special Exception

**12.1. Process:** The process for Special Exception shall be according to *IC 36-7-4-900 Series* and the Zoning Ordinance.

**12.2. Notice to Interested Parties:** The general public shall be notified of an application for Special Exception and public hearing through the newspaper according to *IC 5-14-3*. Interested parties shall be notified by letter by U.S. certified mail, return receipt requested, or by hand delivery (see *Section 11.12: Hand Delivery of Notices* in the Board of Zoning Appeals Rules and Procedures). The definition of “interested party” shall be according to *Section 17: Definitions* in the Board of Zoning Appeals Rules and Procedures. The applicant shall be responsible for giving proper notice at its sole expense.

**12.3. 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 Frankton Board of Zoning Appeals may dismiss an application if:
  - a. *Lack of Jurisdiction:* The Frankton 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 Frankton 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 Frankton 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 meeting, or otherwise announced (i.e. date, time, and location) at a 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 Frankton Board of Zoning Appeals shall continue any application if the vote of the quorum does not result in official action.

**C. Approval:** See *IC 36-7-4-900 Series* and the Zoning Ordinance for process related to approvals.

**D. Denial:** See *IC 36-7-4-900 Series* and the Zoning Ordinance for process related to denials.

1. *Re-filing:* In order to be reconsidered by the Frankton 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 Building Inspector finds that there is a substantial change in the application or the circumstances affecting the application have changed.

# Section 13: Development Standards Variance

**13.1. Process:** The process for Development Standards Variance shall be according to *IC 36-7-4-900 Series* and the Zoning Ordinance. A Development Standards Variance shall be considered a variance of any Zoning Ordinance regulations other than the principal, secondary or incidental permitted use of a property.

**13.2. Notice to Interested Parties:** The general public shall be notified of the application for Development Standards Variance and public hearing through the newspaper according to *IC 5-14-3*. Interested parties shall be notified by letter by U.S. certified mail, return receipt requested, or by hand delivery (see *Section 11.12: Hand Delivery of Notices* in the Board of Zoning Appeals Rules and Procedures). The definition of “interested party” shall be according to *Section 17: Definitions* in the Board of Zoning Appeals Rules and Procedures. The applicant shall be responsible for giving proper notice at its sole expense.

**13.3. 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 Frankton Board of Zoning Appeals may dismiss an application if:
  - a. *Lack of Jurisdiction:* The Frankton 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 Frankton 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 Frankton 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 meeting, or otherwise announced (i.e. date, time, and location) at a 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 Frankton Board of Zoning Appeals shall continue any application if the vote of the quorum does not result in official action.

**C. Approval:** See *IC 36-7-4-900 Series* and the Zoning Ordinance for process related to approvals.

**D. Denial:** See *IC 36-7-4-900 Series* and the Zoning Ordinance for process related to denials.

1. *Re-filing:* In order to be reconsidered by the Frankton 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 Building Inspector finds that there is a substantial change in the application or the circumstances affecting the application have change .

# Section 14: Use Variance

**14.1. Process:** The process for Use Variance shall be according to *IC 36-7-4-900 Series* and the Zoning Ordinance. A Use Variance shall be considered a variance of the principal, secondary or incidental permitted use of a property pursuant to the Zoning Ordinance.

**14.2. Notice to Interested Parties:** The general public shall be notified of a Use Variance application and public hearing through the newspaper (Elwood Call Leader) according to *IC 5-14-3*. Interested parties shall be notified by letter by U.S. certified mail, return receipt requested, or by hand delivery (see *Section 11.12: Hand Delivery of Notices* in the Board of Zoning Appeals Rules and Procedures). The definition of “interested party” shall be according to *Section 17: Definitions* in the Board of Zoning Appeals Rules and Procedures. The applicant shall be responsible for giving proper notice at its sole expense.

**14.3. 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 Frankton Board of Zoning Appeals may dismiss an application if:
  - a. *Lack of Jurisdiction:* The Frankton 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 Frankton 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 Frankton 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 meeting, or otherwise announced (i.e. date, time, and location) at a 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 Frankton Board of Zoning Appeals shall continue any application if the vote of the quorum does not result in official action.

**C. Approval:** See *IC 36-7-4-900 Series* and the Zoning Ordinance for process related to approvals.

**D. Denial:** See *IC 36-7-4-900 Series* and the Zoning Ordinance for process related to denials.

1. *Re-filing:* In order to be reconsidered by the Frankton 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 Town Hall Staff finds that there is a substantial change in the application or the circumstances affecting the application have changed.

# Section 15: Administrative Appeal

**15.1. Process:** The process for Administrative Appeal shall be according to *IC 36-7-4-900 Series* and the Zoning Ordinance.

**15.2. Notice to Interested Parties:** The general public shall be notified of an appeal and the public hearing through the newspaper (Elwood Call Leader) according to *IC 5-14-3*. Interested parties shall be notified by letter by U.S. certified mail, return receipt requested, (or by hand delivery (see *Section 11.12: Hand Delivery of Notices* in the Board of Zoning Appeals Rules and Procedures). The definition of “interested party” shall be according to *Section 17: Definitions* in the Board of Zoning Appeals Rules and Procedures. The applicant shall be responsible for giving proper notice at its sole expense.

**15.3. 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 administrative officials, hearing officers, staff members, administrative boards and other bodies under the Zoning Ordinance.

*A. Dismissal:*

1. *Justification:* The Frankton Board of Zoning Appeals may dismiss an application if:
  - a. *Lack of Jurisdiction:* The Frankton 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 Frankton 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 Frankton 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 meeting, or otherwise announced (i.e. date, time, and location) at a 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 Frankton Board of Zoning Appeals shall continue any application if the vote of the quorum does not result in official action.

*C. Affirm:* See *IC 36-7-4-900 Series* and the Zoning Ordinance for process related to affirmation.

*D. Reverse or Modify:* See *IC 36-7-4-900 Series* and the Zoning Ordinance for process related to reversal or modification.

**15.4. 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.

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## Section 16: Flood Hazard Area Variance

**16.1. Procedure:** The Board of Zoning Appeals shall consider all factors contained in the Zoning Ordinance and the Town's Flood Hazard Areas Ordinance in granting or denying a Flood Hazard Area Variance.

**16.2. Permit Required:** Any Flood Hazard Area Variance may not be granted unless the applicant has first obtained an appropriate permit from the Indiana Department of Natural Resources.

**16.3. Special Conditions:** Upon the consideration of the factors listed in *Section 16: Flood Hazard Area Variance*, 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 the Zoning Ordinance and the Town's Flood Hazard Areas Ordinance.

# Section 17: Definitions

**Administrator:** See “Secretary.”

**Application:** A formal request for the Frankton Board of Zoning Appeals to take action on a specific request in a form as provided by the Frankton Board of Zoning Appeals.

**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 Frankton Board of Zoning Appeals member with regard to a matter before the Frankton Board of Zoning Appeals.

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

**Executive Session:** A meeting of the Frankton 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).

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

**Hearing:** A meeting of the Frankton 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 Frankton 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 Frankton Board of Zoning Appeals. Interested parties shall be identified by the applicant at the applicant’s sole expense.

| TABLE 18-A         | Use Variances and Special | Development Standards | Administrative Appeals | Flood Hazard Area Standard |
|--------------------|---------------------------|-----------------------|------------------------|----------------------------|
|                    |                           | Exceptions            |                        | Variances                  |
| 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 Frankton 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 Frankton Board of Zoning Appeals on their role and responsibilities as public officials, but not for any other official action.

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**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 Frankton Board of Zoning Appeals is empowered or authorized to take official action.

**Secretary:** Frankton Town Hall Staff and/or Building Inspector



## Section 18: Fee Schedule

- 18.1. Fees:** In accordance with the requirements of *IC 36-7-4-411* and *IC 36-7-4-704* and the Zoning Ordinance, Frankton has established a uniform schedule of fees contained in a separate Town of Frankton ordinance that is available and on file in the office of the Town of Frankton Clerk and [franktonzoning.com](http://franktonzoning.com) online. 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
  - G. Any other process or petition identified in the Zoning Ordinance or the Fee Ordinance.

