By-Laws of the Area Board of Zoning Appeals of Tippecanoe County, Indiana, and its Lafayette Division

(As adopted January 26, 1984)
(As Amended July 26, 1984)
(As Amended January 28, 1988)
(As Amended March 24, 1988)
(As Amended July 27, 1988)
(As Amended September 28, 1988)
(As Amended July 26, 1989)
(As Amended January 25, 1995)
(As Amended August 28, 1996)
(As Amended March 22, 2000)
(As Amended May 24, 2000)
(As Amended January 22, 2003)
(As Amended January 22, 2010)
(As Amended June 23, 2010)
(As Amended December 6, 2013)
(As Amended July 2014)
(As Amended March 2015)
(As Amended March 2017)

Introduction

The following by-laws adopted by the Area Board of Zoning Appeals of Tippecanoe County, hereinafter referred to as the Board, as and for by-laws of said Board, and the by-laws of the Area Board of Zoning Appeals of Tippecanoe County, Lafayette Division, hereinafter referred to as Lafayette Division. Where in these by-laws the particular by-law applies to the Lafayette Division, it shall herein be referred to as the division.

MEMBERSHIP:

The membership of the Board and its division shall be as provided by the Acts of the Indiana General Assembly and ordinances adopted pursuant thereto.

ELECTION OF OFFICERS:

The Board and its division shall elect each year a President and Vice-President who shall be members of the Board or division, and a Secretary who need not be a member of the Board or division.

Such election shall be held the first meeting of each year. Nominations for all offices shall be made from the floor and election of officers shall follow immediately thereafter. A candidate receiving a majority vote of the entire membership of the Board or division shall be declared elected and shall take office immediately.

OFFICERS:

Officers so elected shall take office immediately following their election and hold office for a term of one year or until their successors are elected and qualified.

The President shall preside at all meetings, appoint committees, and perform such other duties as may be ordered by the Board or division.

The Vice-President shall perform the duties of the President in his or her absence, and in case of vacancy, shall succeed to that office for the unexpired term of Vice-President.

The Secretaries of the Board and the division shall attest all notices and perform such other duties as directed by the board or division, its President or by these by-laws. In the absence of the Secretary, the President may appoint anyone to serve in the Secretary's absence. The Executive Director of the Area Plan Commission shall serve the Board as Secretary Pro Tempore in the absence of the Secretary; the Administrative Officer of the division shall serve as the Secretary Pro Tempore of the division in the absence of the secretary.

STAFF:

The Staffs of the board and the division as provided by ordinance shall assure that an accurate record of all meetings is prepared and kept, prepare the agenda for the meeting, notify the members of meetings and maintain the records of the Board and the Lafayette Division.

INTERESTED PERSONS:

As used herein interested persons shall mean those persons who are owners of property located adjacent to and directly across a street, alley, or railroad right-of-way from, plus those within one hundred (100) feet of, the property contained in the petition.

MEETINGS:

The Board shall hold regularly scheduled meetings on the fourth Wednesday of each month, except in November and December when a combined meeting shall be held on the first Wednesday in December. (Amended March 1988)

The Lafayette Division shall hold regularly scheduled meetings on the third Monday of each month, except in December when there will be no meeting.

Meetings falling on holidays may be rescheduled as necessary by the Board or division.

Special meetings of the Board or division shall also be held on the call of the respective President, the Secretary, or two-thirds of the members of the Board, or three-fifths of the members of the division. The respective Secretary is also authorized to call a meeting when an application has been filed which in the opinion of the Secretary requires immediate action by the Board or division.

Upon a call for any special meeting as provided above, the Secretary shall determine the date of such meeting, which meeting shall be on a day not less than twenty days from the date of the calling of such meeting and not more than twenty-eight days from the date of the calling of such meeting. The Secretary shall notify in writing all members of the Board or the division at least ten days prior to the date of such meeting and shall further notify all persons who have filed application not less than fourteen days prior to such meeting.

VOTING:

Voting on all applications before the Board and the division shall be by written ballot. A separate ballot shall be utilized for each variance petitioned. (Amended 5-24-00) All ballot forms shall be approved by the Board Attorney. All action of the Board or division shall be official when a majority of the members of the Board or division (rather than a majority of those present) concur in either voting for or against the matter before it. A majority of the members of the Board or division shall constitute a quorum at all meetings. An indefinite non-majority vote on any petition shall automatically result in a continuance to the next regularly scheduled meeting.

Any member having a conflict of interest on any particular petition shall absent himself or herself from the hearing room on that petition. A member having such a conflict of interest shall announce for the record the reason for leaving.

FILING FEES (Amended January 2014)

Non-refundable filing fees are established as follows:

Single-Family Residential Variance (ABZA & Lafayette Division)	$100 + $50 per each additional request
Multi-Family Residential or Commercial/Industrial Variance	$500 + $50 per each additional request
Special Exception	$500
Appeal from the Decision of an Administrative Officer	$500

PROCEDURE-FILING:

All requests for variance and petitions therefor shall be filed with the Board or division. All requests for special exception or appeal from a decision of an Administrative Officer and petitions therefor shall be filed with the Board. When two separate uses located on the same property require special exceptions, they shall be filed in two separate special exception requests, even if both uses share an SIC number in the Unified Zoning Ordinance or the SIC Manual. (Amended March 2000)

Complete submissions shall be filed no less than twenty-eight (28) days prior to a regularly scheduled meeting in the Office of the Area Plan Commission of Tippecanoe County for the Area Board, and in the Office of the City Engineer of the City of Lafayette for the Lafayette Division.

A complete submission for variance or special exception shall consist of the following:

1. a signed and notarized petition with legal description and the names and addresses of interested persons who shall consist of all owners of property and the Auditor's key number of that property, located adjacent to and directly across a street, alley, or railroad right-of-way from, plus those within one hundred (100) feet of the property contained in the petition;

2. two (2) Notices of Public Hearing with metes and bounds legal description or its lot number and subdivision name if it is a platted lot, the city or town, township and the Section, Township and Range locating the property (Amended June 2010)

3. two (2) Release Letters to the Journal and Courier/Lafayette Leader;

4. a notarized letter of consent from the owner of the property if different from the petitioner; and,

5. a dimensioned site plan showing the property lines, right-of-way lines, easements, existing and/or proposed structures, parking and the general use of the land within five hundred (500) feet of the subject property.

6. When petitioning ABZA for approval of a special exception or variance(s) and the property is located in the City-Campus-Community Collaboration Zone of the City of West Lafayette as shown on the attached maps, it is required that the petitioner delivers a copy of the application and plat or plans to:
    a. West Lafayette City Engineer
    b. West Lafayette Department of Development
    c. West Lafayette/Purdue University Joint Board c/o the West Lafayette City Engineer on behalf of the Chair of the Joint Board (if property is in the City-Campus-Community Collaboration Zone shown on the attached maps) (amended March 2015)

All forms shall be approved by the Board and shall be made available to applicants by the staff of the Board or the division having jurisdiction over the petition. The forms provided herein shall be those approved by the Board.

In addition to the forms necessary for the filing of a submission the applicant shall be furnished with affidavits for sign posting and the mailing of notices to interested persons (as listed on the petition), and the form for notice to interested persons.

Signs to be posted on the property shall be available at the office of the Board and may be available at the office of the division.

The staffs of the Board and the Lafayette Division shall cause the Notices of Public Hearing to be published in two newspapers of general circulation in Tippecanoe County at least ten (10) days prior to the date of public hearing on such petition.

The applicant shall cause to be erected on said property in a clearly visible manner a sign(s) abutting the street(s), at least ten (10) days prior to the date set for such hearing. In cases where a property has no side abutting a street, the staff shall determine where the sign(s) shall be placed. The applicant shall further, by certified mail (no return receipt) give notice on the form provided to all interested persons as established in the petition, at least ten (10) days prior to the date set for such hearing.

All complete and proper submissions shall be placed on the agenda of the next meeting of the Board or division. Incomplete submissions shall not be placed on the agenda.

Upon notification in writing from the staff that a Board of Zoning Appeals case has not been placed on the agenda due to an incomplete, improper, or untimely, submission, the petitioner, or his representative, has five (5) days to file in writing a notice of appeal of that decision. Written notice of appeal shall be provided by registered mail to the office of the Board of Zoning Appeals.

The particular case file in appeal shall not be altered by addition or deletion. The Board of Zoning Appeals will hear such appeal under New Business at its next regular hearing. Petitioner must pay for advertisements, due notice, and sign posting, providing all proofs and affidavits to the Board. Petitioner or his representative must be present or the appeal shall be dismissed.

The Board shall examine the case file, as it was composed when reviewed by the staff, to establish whether the filing requirements were met on the filing deadline. An itemized

list of the file contents may be appended by staff. Should the appeal be sustained, and the Board finds all required submissions were filed when reviewed by the staff, the case may be heard by the Board or, continued to the next regular hearing to obtain more information. Should the appeal be denied the petitioner may then amend the submission to remedy the deficiency(ies) at any time prior to the next regular filing deadline for a subsequent hearing. New publications, due notice and signage will be required, all at petitioner's expense. (Amended July 1988)

If the applicant is appealing the decision of an Administrative Officer, then the applicant shall file a request for an appeal within fifteen (15) days from the date of determination by the Administrative Officer appealed from. Such request shall specify the Administrative Officer making the decision, the date thereof, the decision, and the reasons in detail the applicant believes the Administrative Officer's decision is in error. The applicant shall also furnish the names and addresses of the owner of the property involved in the decision, the owners of all property located adjacent to and directly across a street, alley, or railroad right-of-way from, plus those within one hundred (100) feet of the property involved, and all other persons who presented any information to the Administrative Officer prior to his determination. All such persons together with the Administrative Officer involved shall be given notice of the appeal and the date, time and place and purpose of the hearing at least ten (10) days prior to the hearing by certified mail (no return receipt). Legal notice by publication must be made ten (10) days prior to the date of the public hearing on such appeals, said notice to give the date, time, place and purpose of the hearing. Proof of such notice shall be made in the same manner as is made for other hearings. No posting of signs shall be required.

Upon filing of an appeal from an Administrative Officer or body, the staff of the Board shall within 5 days of the filing of the appeal, request the Administrative Officer to file all documents, plans, papers and other matters constituting the record of the action from which the appeal is taken, which record shall be filed with the Board not less than ten (10) days prior to the date of the hearing, which record when so filed shall be available for public inspection and copying. If the applicant or other interested persons believe that the transcript of the record does not contain all of the documents, plans, papers or other material upon which the Administrative Officer based the decision appealed from, within five (5) days of the hearing such applicant or other interested person shall file with the Board a petition for inclusion into the record such additional matter attaching thereto copies or describing in detail the matters believed to be omitted. Such petition shall be heard first and determined by the Board at the public hearing. Except for matters the Board finds to be omitted from the record or matters the Board considers to have been by statute or ordinance a requirement for the Administrative Officer's decision, no further evidence shall be received at the public hearing other than said transcript. (Amended January 2014)

Submissions for appeal shall be placed on the agenda of the next regular meeting which is at least twenty-eight (28) days following the filing of the request.

PROCEDURE-HEARING:

At any meeting the Board and the division shall hear all matters placed on the agenda, provided that at the time said hearing is to begin there has been filed with the Board or

division: proofs of publication of the notices as required herein, the affidavit of sign posting, the affidavit of mailing of notices to interested persons, and the receipts of certified mailing from the Post Office. The Board and its division shall have no authority to hear any matter until such proofs, affidavits and receipts are filed. In addition to these requirements, no petition for variance shall be heard unless the Area Plan Commission or its Executive Committee has determined that the request is not for a use variance and no application for special exception shall be heard unless the appropriate Administrative Officer has filed with the Board a report of determination concerning the need for such special exception.

The Board and the division will only conduct hearings on such petition at which the applicant or his or her representative is present and upon failure of such applicant or representative to be present, the petition will be automatically dismissed by the Board or division, provided, however that if prior to such hearing the applicant or representative has requested a continuance of the Secretary of the Board or division, then the Board or division in its discretion may grant a continuance to the next meeting, or to such future meeting as the Board or division may determine.

A petitioner for variance(s) or special exception is entitled to two continuances only of no more than two (2) months each, whether requested by the petitioner or mandated by procedural failure (such as failure to post sign, or failure to provide sign posting affidavit or proofs of publication, etc.). After two such continuances, a petitioner's case shall be heard at the next regularly scheduled meeting of the Board or division, unless:

1) it has already been withdrawn by the petitioner; or
2) neither the petitioner nor his representative is present at the meeting, which shall result in dismissal; or
3) there is a procedural failure, which shall result in dismissal as well; or
4) a third continuance of no more than two (2) months is granted by the Board upon a written request for such continuance setting forth the need for such continuance filed before 12:00pm on the day of the meeting and a finding by the board that the continuance is not made for the purpose of undue or unnecessary delay.

In no event shall the total time period of all continuances granted with respect to a petitioner’s case exceed four (4) months. These limits to petitioner-created continuances shall not apply to Board-created continuances, such as non-decisive votes, and motions to continue in order to gain more information. (Amended June 2014)

In the interest of maintaining an informed public, the Board shall strongly urge petitioners to file continuance requests and withdrawal notifications in writing with the Board's staff, by the end of the week prior to the scheduled hearing.

At such hearing a member of the Board or division shall first make a motion to hear and vote on the petition. Following the second to the motion, staff shall present its review of the request, recommendation, and evidence, if any. The applicant shall then be entitled to present his or her request, any persons wishing to speak, either in favor or in opposition, may present their views, and members of the Board or division may then question staff, applicant or remonstrator. The applicant may at the conclusion of the remonstrances respond thereto. Upon call for a vote by a member, a vote by written ballot shall then be taken and the results announced.

Letters and written communications mailed, hand delivered, faxed or emailed to the Office of the Board in advance of the hearing are intended for persons unable to attend the hearing themselves. For letters to qualify to be entered into the record they must be 1) signed regardless of delivery method, 2) include the signer's address, 3) received no later than noon on the day of the hearing and 4) be no longer than two pages, 11 point font size, double spaced with 1" margins. Letters sent to the office of the Board that qualify to be entered in the record will be read by staff, and once received the letter shall not be withdrawn. Once a letter is read at a meeting, it is a part of the record. The writer is not permitted to speak or submit another letter even at a subsequent meeting resulting from either an inconclusive vote or a continuance, having originally chosen to submit a letter. Should the author be present at the meeting he will not be permitted to speak, having elected instead to present his views in writing. This rule shall apply to any written material on which four or fewer signatures appear, or any petition of more than 300 words filed by the noon deadline. Any petition presented after the deadline or during the hearing shall not be read into the record by staff, but may be passed to the members. (Amended December 2013)

The President shall have the right prior to the presentation of any application to limit the time the applicant and any remonstrator may take in presenting his or her application or views, but in no event shall such time be limited to less than five (5) minutes.

Except for a written briefing by the Staff as provided herein, prior to the hearing on any petition before the Board or the division, no applicant nor representative thereof, nor any person who supports such applicant nor representative thereof, nor any person who opposes such petition nor representative thereof, shall discuss, write or communicate directly or indirectly with any member of said Board or division concerning any matter, fact or opinion regarding such petition. If it is brought to the attention of the Board or division either prior to the hearing or at the hearing, that any person has violated the provisions of this paragraph, then the applicant (if such violation was committed by a person opposing the petition), or any person opposing such applicant, (if the applicant or person supporting the petition violated this paragraph), shall be entitled to a continuance. Such continuance shall be to the next regular meeting of the Board or division. The person making such violation shall, following such continuance, deliver personally to the Executive Director of the Area Plan Commission on behalf of the Board, or the Secretary of the division ten (10) copies of all written communication or a complete resume of all oral communication at least ten (10) days before such meeting for delivery to each member of the Board or division, and deliver personally at that time to the person requesting the continuance, and such other persons who at the time of the continuance make such a request. If such person fails to provide the required information, such person or his or her principal, if the violation is made by a representative, shall not be permitted to present any matters at the continued hearing.

No member of the Board or division shall permit any person except for a written briefing by the staff as provided herein, to discuss or give any matters, facts or opinion concerning any petition to be heard by said Board or division to such member, and shall immediately report any such communication to the President of the Board or division.

Nothing herein shall prevent any member of the Board or a division from advising any person as to any procedure for filing any petition or remonstrance before the Board or

division or advising any person as to the procedure of the Board or division or in general how other petitions, support, remonstrances or objections are presented to the Board or division. Nothing herein shall prevent any member of the board or division from viewing any premises the subject of any petition to familiarize himself or herself with the location of the premises and general characteristics of the neighborhood.

Nothing herein shall prevent the Area Plan Commission or its Executive Committee from making a finding as to whether or not any petition for special exception before the Area Board of Zoning Appeals does or does not substantially adversely affect the Comprehensive Plan and from making a finding whether or not a petition for variance is a use variance and from so informing the Board or division.

Nothing herein shall prevent the Area Plan Commission members to the Area Board of Zoning Appeals from discussing a matter before the Area Board of Zoning Appeals with any other members of the Area Plan Commission when such discussion is made in performance of the duties of such members.

Nothing herein shall prevent the staffs of the Board and its division from filing a written briefing with the members of the Board or division at least five (5) days prior to the hearing or making explanation thereof at the public hearing. Any written briefing prepared by a staff shall be made available to the applicant and his or her representative and shall upon request be given to any interested person prior to such hearing.

Any written evidence presented to the Board or division (such as pictures, drawings, letters or petitions) shall become a part of the files of the Board or division.

All submissions once filed with the Board or its division shall become part of the public record and shall upon request be made available for viewing by any person.

Following any hearing, if any person having entered an appearance at the hearing, files with the Board or division any brief, memorandum of law, or findings of fact, he or she shall deliver a copy of same to every other person who entered an appearance at such hearing or his or her representative, and attach thereto a certificate of service as to such persons.

It shall be the responsibility of the applicant to remove the public notification sign(s) posted on the property within five (5) days following final action on the petition.

The order of business at all Board and division meetings shall be as follows:

1. Approval of Minutes
2. New Business
3. Public Hearing
4. Administrative Matters
5. Adjournment,

provided however, that at the first meeting of each year the first item of business shall be the election of officers.

APPROVAL OF FORMS:

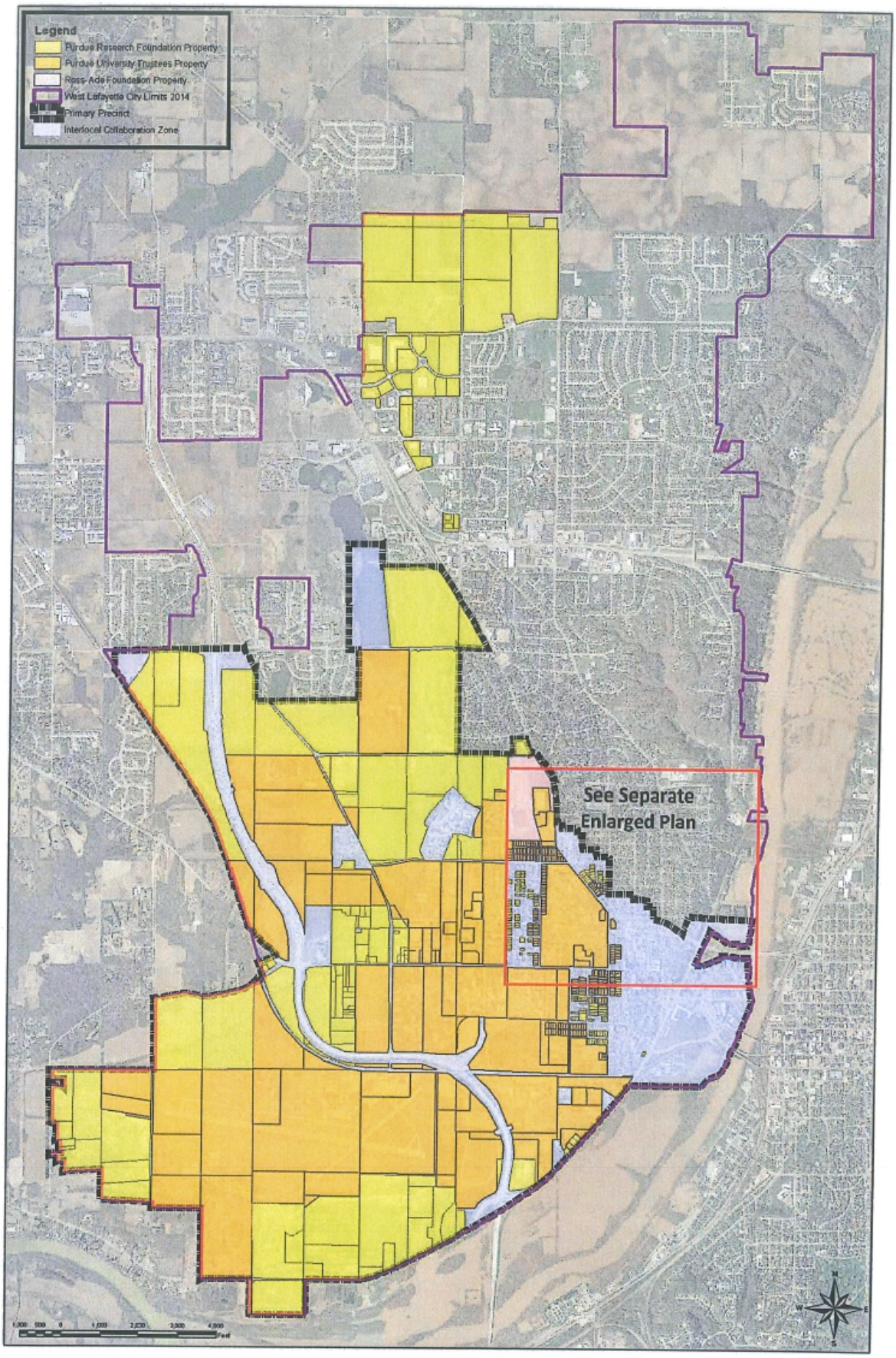
The forms set forth herein requiring approval of the Board are as attached hereto and made a part thereof, which attached forms are hereby approved by the Board.

AMENDMENTS:

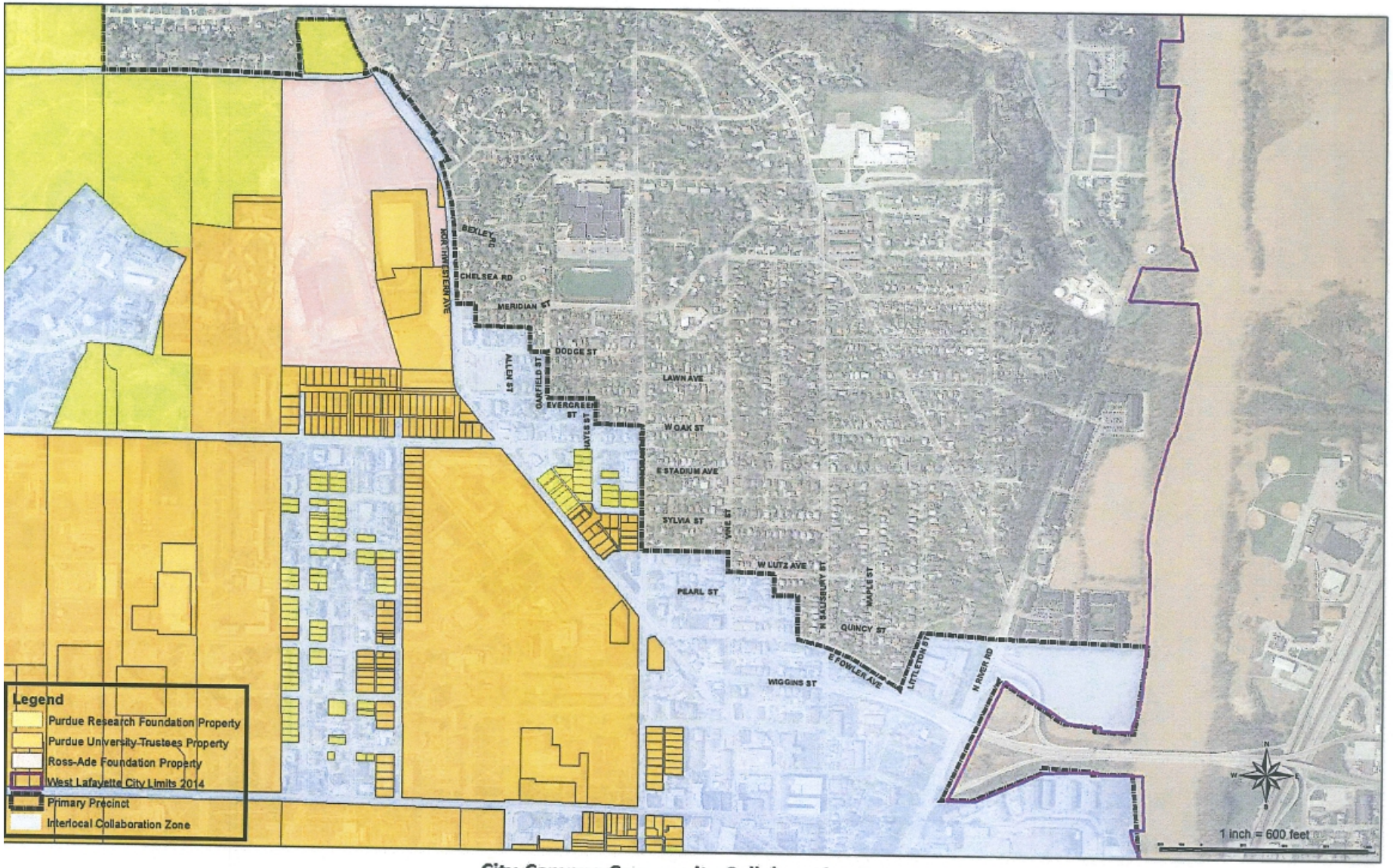
These By-Laws may be amended or added to by a two-thirds vote of the entire membership of the Board. Such amendment shall be provided to the members, in writing, at least five days prior to the meeting at which it is to be considered.

ATTACHMENTS TO BZA BYLAWS:

-- Petition for Special Exception
-- Notice of Public Hearing on Special Exception (Amended July 2017)
-- Notice of Public Hearing Release Form
-- Notice to Interested Persons (Amended July 2017)
-- Report of Determination for Special Exception
-- A Petition for a Special Exception Findings of Fact
-- Affidavit of Notice to Interested Persons for Variance/Special Exception
-- Sign Posting Affidavit
-- Petition for Variance
-- Notice of Public Hearing on a Variance (Amended July 2017)
-- Notice to Interested Persons (Amended July 2017)
-- Determination of Variance
-- Notice of Public Hearing on Appeal of Decision of Administrative Officer (Amended July 2017)
-- Affidavit of Notice to Interested Persons (Amended July 2017)
for Appeal of Decision of Administrative Officer
-- Notice to Interested Persons for Appeal of Decision of Administrative Officer (Amended July 2017)
-- Report of findings of fact.
RE: BZA No._____
A Petition for variance of the zoning ordinance.
-- How to File a Variance (Amended July 2017)
-- How to File a Special Exception (Amended July 2017)
-- City-Campus-Community Collaboration Zone Map (Amended March 2015)
-- City-Campus-Community Collaboration Zone Map Enlargement Area Map (Amended March 2015)



City-Campus-Community Collaboration Zone



City-Campus-Community Collaboration Zone