

**ARTICLE 2100
BOARD OF ZONING APPEALS**

2100.01 ESTABLISHMENT

2100.02 MEMBERSHIP AND ORGANIZATION

2100.03 QUORUM AND OFFICIAL ACTION

2100.04 GENERAL PROCEDURES

2100.05 POWERS AND DUTIES

2100.06 STAY OF WORK

2100.07 FILING PROCEDURE FOR AN APPEAL OF AN ADMINISTRATIVE DECISION

2100.08 FILING PROCEDURE FOR A VARIANCE REQUEST

2100.09 FILING PROCEDURE FOR A SPECIAL PERMIT USE

2100.10 PUBLIC HEARINGS

2100.11 FEES

2100.12 APPEAL OF A DECISION OF THE BOARD

2100.01 ESTABLISHMENT

A Board of Zoning Appeals shall be established in accordance with WV State Code, Article 8A. The word "Board" in this article shall mean the Board of Zoning Appeals.

2100.02 MEMBERSHIP AND ORGANIZATION

- A. Board members shall be appointed pursuant to §8A-8-4 of the Code of West Virginia, which states as follows:

§ 8A-8-4. Board of Zoning Appeals - Creation; membership; terms; vacancies.

As part of the zoning ordinance, the governing body of the municipality or the county court [county commission] shall create a board of zoning appeals consisting of five members to be appointed by the governing body of the municipality or by the county court [county commission].

The members of the board of zoning appeals shall be individuals who are freeholders and residents of the municipality or county and at least three fifths of such members must have been residents of the municipality or county for at least ten years preceding the time of their appointment. No member of the board of zoning appeals shall be a member of the planning commission nor shall any member hold other elective or appointive office in the municipality or county government. Members of the board shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

Upon creation of a board of zoning appeals, the members shall be appointed for the following terms: one for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on the first day of January of the first, second, and third year, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be for a term of three years.

If a vacancy occurs, by resignation or otherwise, among the members of the board of zoning appeals, the governing body of the municipality or the county court [county commission] shall appoint a member for the unexpired term.

- B. At its first meeting of each year, the Board shall elect a president, vice-president, and secretary from its membership. The vice chairman shall have the power and authority to act as chairman during the absence or disability of the chairman.

2100.03 QUORUM AND OFFICIAL ACTION

A majority of the members of the Board shall constitute a quorum. No action of the Board shall be official, however, unless authorized by a majority of all of the members of the Board.

2100.04 GENERAL PROCEDURES

- A. The Board shall adopt such rules as shall be necessary to carry out its duties under the terms of this ordinance.
- B. The Board shall keep minutes of its proceedings, records of all official actions and shall record the vote on all actions taken. All minutes and records shall be filed in the Office of Planning & Infrastructure (OPI) and shall be public records.

2100.05 POWERS AND DUTIES

- A. The Board shall:
 - 1. Hear and determine appeals from and review any order, requirement, decision or determination made by the County Planning Commission or Planning Officer charged with the enforcement of this ordinance;
 - 2. Permit and authorize exceptions to the district rules and regulations of this ordinance only in the classes of cases or in particular situations, as specified in this ordinance;
 - 3. Hear and decide special exceptions to the terms of this ordinance upon which the Board is required to act under this ordinance; and
 - 4. Authorize, upon appeal in specific cases, such variance from the terms of this ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship, and so that the spirit of this ordinance shall be observed, and substantial justice done.
 - a. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this ordinance.
 - b. Under no circumstances shall the Board grant a variance to allow a land use not permitted under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.
 - c. In exercising its powers and authority, the Board may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, as in its opinion ought to be done in the premises, and to this end shall have all the powers and authority of the official or body from whom or which the appeal is taken.

2100.06 STAY OF WORK

When an appeal has been taken and filed with the Board, all proceedings and work on the premises in question shall be stayed, i.e., stopped (by written notice of the OPI and sent to the property owner by certified mail) unless the official or County Planning Commission from whom or which the appeal was taken shall certify to the Board that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. If such certificate be filed, proceedings or work on the premises shall not be stayed except by a restraining order which may be granted by the Circuit Court of Putnam County, upon application thereof, on notice to the official or County Planning Commission from whom or which the appeal was taken, and the owners of the premises affected and on due cause shown.

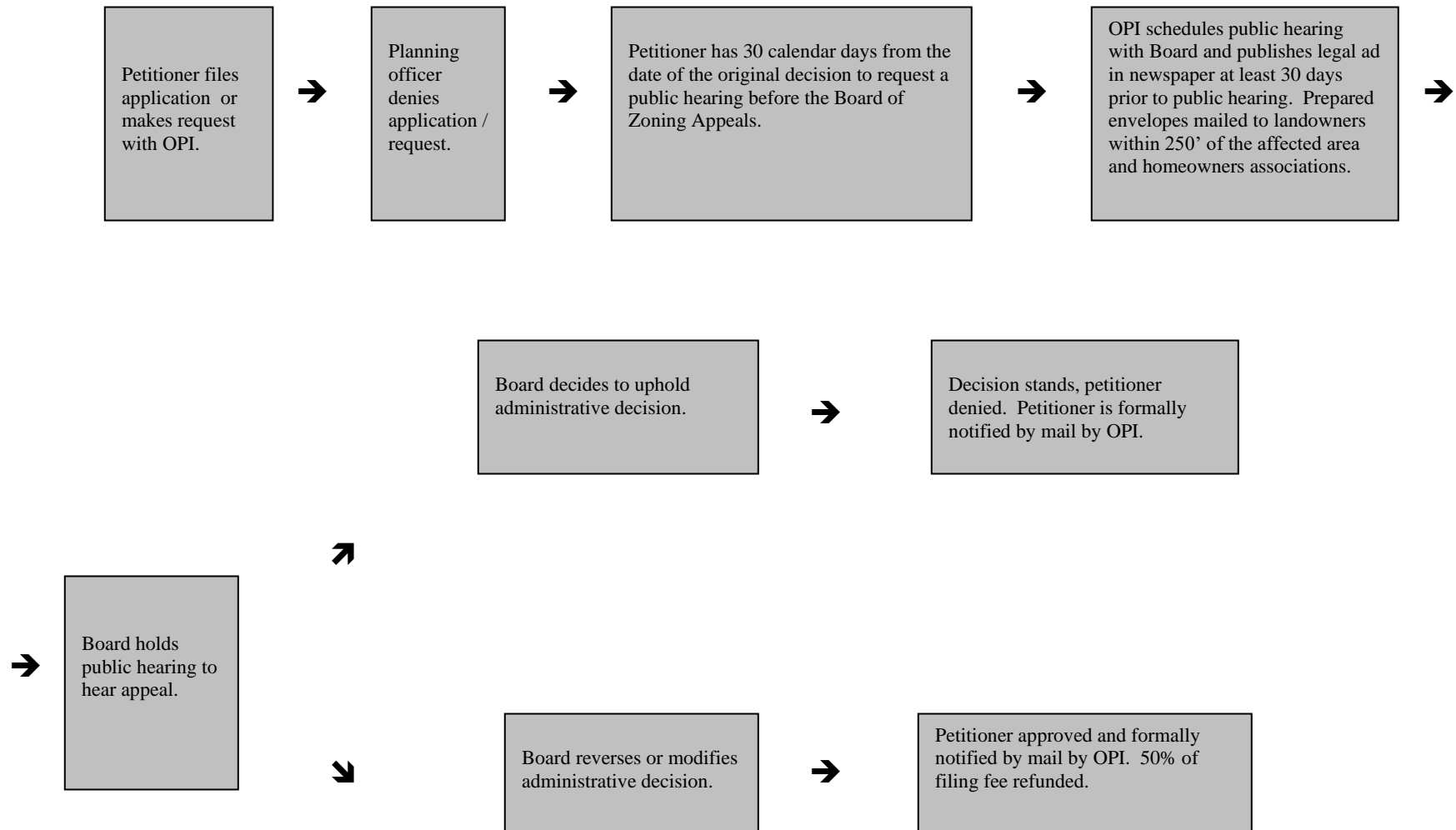
2100.07 PROCEDURE FOR AN APPEAL OF AN ADMINISTRATIVE DECISION

- A. An appeal taken from any order, requirement, decision, or determination made by the Planning Officer charged with the enforcement of this ordinance shall be filed with the Board on forms prescribed by the OPI. The appeal shall specify the reasons for the appeal and shall be made within 30 calendar days of the original action in question unless otherwise prescribed by the Board by general rule and regulation.

The appeal, or application, shall include a list of the property owners' names and addresses located within 250 feet of the affected area, as of record in the office of the Putnam County Assessor. The subject property also shall be included in the affected area. The applicant must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and address of property owners in the affected area. If the list includes a lot within a subdivision, the applicant must submit the name of the president for that subdivision's homeowner's association along with a stamped and addressed envelope for that member.

- B. The OPI will publish a legal advertisement describing the request to appear in a local newspaper of general circulation 30 days prior to the scheduled public hearing before the Board. The prepared envelopes notifying the property owners located within 250 feet of the affected property and the president of the homeowner's association of an affected subdivision and submitted by the applicant will be mailed at the same time the legal advertisement is submitted to the newspaper for publication.
- C. The Board shall hold a duly scheduled public hearing on the appeal.
- D. If the Board decides to uphold the administrative decision, the administrative decision stands and the petitioner is denied. The petitioner is formally notified by mail by the OPI of the right to appeal the decision to Putnam County Circuit Court within thirty (30) days.
- E. If the Board reverses or modifies the administrative decision, the appeal stands as approved by the Board. The petitioner is formally notified in writing by the OPI and 50 percent of the filing fee is refunded to the petitioner.

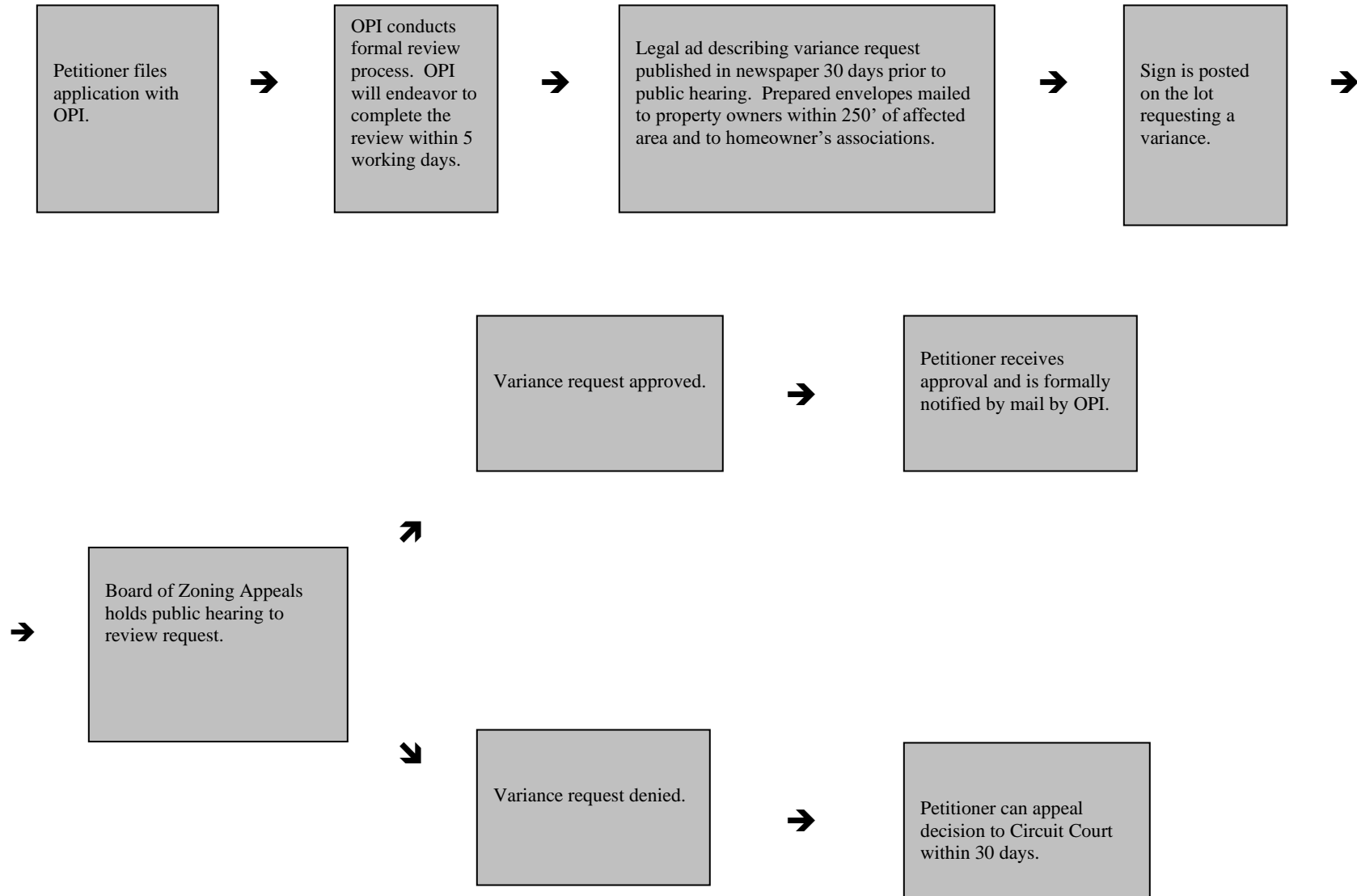
ADMINISTRATIVE DECISION APPEAL FLOW CHART



2100.08 PROCEDURE FOR A VARIANCE REQUEST

- A. A request for a variance from the terms of this ordinance shall be filed with the Board on forms prescribed by the OPI. The variance request shall specify the reasons for the variance. The variance request, or application, shall include a list of the property owners' names and addresses within 250 feet of the affected area, as of record in the office of the Putnam County Assessor, including across streets and alleys. The subject property also shall be included in the affected area. The applicant must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and address of property owners in the affected area. If the list includes a lot within a subdivision, the applicant must submit the name of the president for that subdivision's homeowner's association along with a stamped and addressed envelope for that member.
- B. The OPI will publish a legal advertisement describing the variance request to appear in a local newspaper of general circulation 30 days prior to the scheduled public hearing before the Board. The prepared envelopes submitted by the applicant notifying the property owners within 250 feet the affected property, including across streets and alleys, and the president of the homeowner's association of an affected subdivision will be mailed at the same time the legal advertisement is submitted to the newspaper for publication.
- C. The Board shall hold a duly scheduled public hearing on the appeal.
- D. Factors for Considering a Variance Request
 - a. A Variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classification of a parcel of land.
 - b. The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:
 - 1. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
 - 2. Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;
 - 3. Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
 - 4. Will allow the intent of the zoning ordinance to be observed and substantial justice done.
- E. If the Board decides to deny the variance request, the petitioner is formally notified by mail by the OPI of the right to appeal the decision to Putnam County Circuit Court within thirty (30) days.

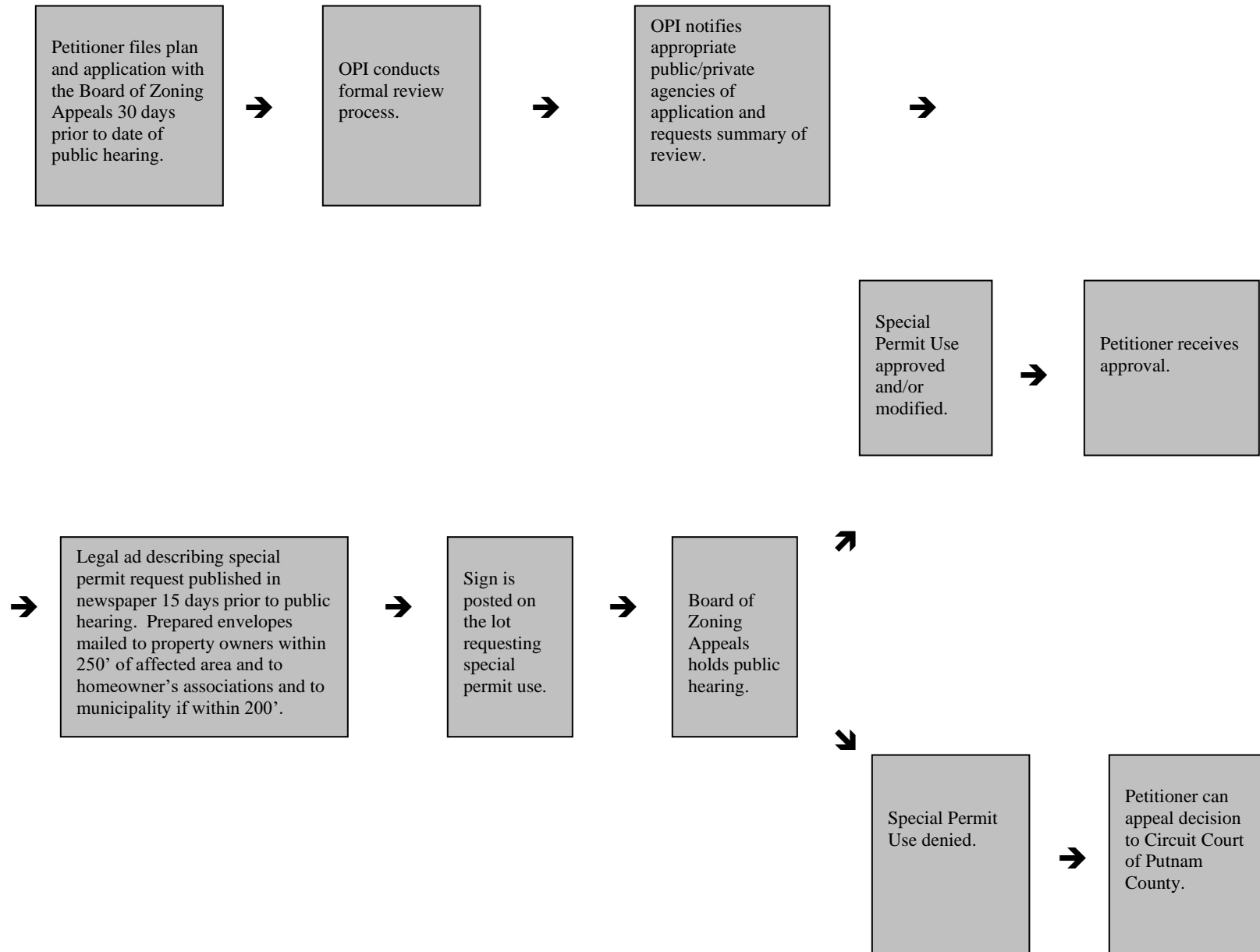
VARIANCE FLOW CHART



2100.09 PROCEDURE FOR A SPECIAL PERMIT USE

An application for a Special Permit Use may be filed with the Board of Zoning Appeals by the owner, lessee, or other person having a legal or equitable interest in the subject property pursuant to Article 1100, Special Permit Uses.

SPECIAL PERMIT USE FLOW CHART



2100.10 PUBLIC HEARINGS

- A. Before deciding any case filed with the Board, the Board shall hold a public hearing. At the hearing, any party may appear in person, by agent or by attorney. The Board shall fix a reasonable time for the hearing and give public notice as follows:
1. Publication of a Class I legal advertisement (one time) at least fifteen (15) days prior to the date of the hearing; and
 2. The posting of a notice of the public hearing on the subject property for a variance request and special permit use.
 3. Mailing of notices of the hearing at least 15 days prior to the date of the hearing to those parties described below:
 - a. In the case of an administrative appeal, mailing of notices to those owners of record of property within the affected area, as defined in 2000.03 Section 2100.07, and to other property owners who, in the opinion of the Planning Officer, might be affected by the action in question, and to the president of the homeowner's association of an affected subdivision.
 - b. In the case of an application for a variance, mailing of notices to those owners of record of properties abutting the subject real estate, including across streets and alleys, and to the president of the homeowner's association of an affected subdivision.
 - c. In the case of an application for a special permit use, mailing of notices to those property owners within 250' of the subject real estate, and to the president of the homeowner's association of an affected subdivision, and to a municipality if the subject real estate is within 200'
 4. Both the legal advertisement and the mailed notices discussed in subsection a. above shall include the time and place of the hearing and the action to be considered.
 5. Notices of public hearings meeting all the requirements of (Section 2100.19) shall be deemed adequate notice.

2100.11 FEES

Applications or appeals filed with the Board shall be accompanied by a filing fee as shown on the Planning Commission Fee Schedule in the OPI. The purpose of the fee shall be to defray, in part, the expenses connected with each application.

2100.12 APPEAL OF A DECISION OF THE BOARD

- A. Any decision or order of the Board shall be subject to review by certiorari.
- B. Any person or persons jointly or severally aggrieved by any decision or order of the Board may present to the Circuit Court of Putnam County a petition duly verified, setting forth that such decision or order is illegal in whole or in part, and specifying the grounds of the alleged illegality. The petition shall be presented to the Court within 30 days after the date of the Board's decision.

