

**RULES OF THE
ZONING BOARD OF APPEALS – CITY OF ANN ARBOR, MICHIGAN**

Article I Name

The name of this board is the Zoning Board of Appeals (“ZBA”).

Article II Enabling Authority

The Zoning Board of Appeals was established by Ann Arbor City Code, Chapter 8 §§ 1:197-198 and operates pursuant to Ann Arbor City Code, Chapter 55 and the Michigan Zoning Enabling Act (Act 110 of 2006; MCL §125.3101 et seq.), as amended.

Article III Purpose, Objectives, and Duties

Section 1. The purpose of the Zoning Board of Appeals is to hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps. The ZBA shall hear and decide on matters referred to the ZBA by City Code and state law, including but not limited to those powers described in City Code Chapter 55, § 5:98.

Section 2. The ZBA shall be limited to performing the tasks enumerated in these rules or otherwise delegated to it by state law, City Charter, City Code, or City Council.

Article IV Membership

Section 1. The ZBA shall consist of nine (9) members nominated by the Mayor and approved by City Council. One of these members shall also be a member of City Council, who shall serve as an ex officio member of the ZBA. The membership shall be representative of the population distribution and of the various interests present in the City. An employee or contractor of City Council may not serve as a member of the ZBA.

Section 2. All members of the ZBA shall serve without compensation. On a case by case basis, members may receive reimbursement for expenses incurred in the exercise of their duties, subject to the prior approval of the Community Services Area Administrator.

Section 3. All members of the ZBA shall be appointed for a three (3)-year term. If at any time the City Council member ceases to be a member of City Council, then his/her membership in the ZBA shall automatically terminate.

Section 4. Consistent with City Charter § 12.2 and MCL §125.3601(5), all members of the ZBA shall be registered electors in the City of Ann Arbor. All members shall be registered electors in the City of Ann Arbor for at least one year immediately preceding the time of appointment, unless an exception is granted by a resolution concurred in by at least seven (7) members of City Council.

Section 5. A member whose term has expired may hold over and continue to serve as a member of the ZBA until a successor has been appointed. Consistent with City Code § 1:171, no member shall be allowed to hold over for more than sixty (60) days beyond the

appointed term whether or not a successor has been appointed, except that City Council may extend terms for periods of ninety (90) days upon the recommendation of the Mayor and vote of at least six (6) members of Council.

Section 6. Consistent with City Code § 1:171, the Mayor shall notify City Council of the expiration of a member's term at least thirty (30) days prior and shall present to City Council all proposed reappointments no later than sixty (60) days after the expiration of the term.

Section 7. Consistent with City Code § 1:171, any vacancy on the ZBA occurring in the middle of a term shall be filled for the remainder of the term in the same manner as for full-term appointments.

Section 8. Members are expected to attend regularly scheduled meetings and to notify the Chair and Planning and Development Services manager in advance if they expect to be tardy or absent. If a member misses more than three (3) regularly scheduled meetings in a twelve (12) month period, the Chair shall notify the Mayor and may recommend removal of the member.

Section 9. Consistent with MCL § 125.3601(9), a member of the ZBA may be removed by City Council for misfeasance, malfeasance, or nonfeasance in office following written charges, notice and a hearing.

Article V Ethics and Conflicts of Interest

Section 1. A member of the ZBA shall abstain from discussion or voting on any matter where that member is involved in a real or apparent conflict of interest. Decisions regarding conflicts of interest shall be evaluated on a case-by-case basis with reasonable application of the principles provided in this Article. A conflict of interest shall at a minimum include, but is not necessarily limited to:

- a. Discussing, voting on, or otherwise acting on a matter in which a member or any member of his/her immediate family, his/her partner, or an entity with whom the member has family or business ties has a direct financial or beneficial interest.
- b. Discussing, voting on, or otherwise acting on a matter involving work on property which is owned by that member or which is adjacent to property owned by that member.
- c. Discussing, voting on, or otherwise acting on a matter where the member's employee or employer is an applicant or agent for an applicant, or has a direct financial or beneficial interest in the outcome.

Section 2. When a conflict of interest exists with regard to a particular matter, the member of the ZBA who is subject to the conflict, shall do all of the following immediately, upon first knowledge or realization that a conflict exists:

- a. Declare that a conflict exists and that the member will recuse him or herself from the matter.

- b. Disclose, except where it violates a confidence, the general nature of the conflict, and the minutes shall so record the conflict and recusal.
- c. Cease to participate in any manner when the matter is discussed, voted on, or otherwise acted on at Commission or committee meetings, or in any other forum.
- d. During deliberation of the matter before the Commission or a committee, leave the meeting or the area where members of the Commission sit, until action on the matter is concluded.

Section 3. Before discussion on an item or voting, a member shall disclose all pertinent facts regarding any potential conflict of interest, except where it violates a confidence, and those facts shall be included in the minutes.

Section 4. Where a question has arisen as to whether a member is ineligible to participate in discussion or vote on a matter because of a conflict of interest, the ZBA may determine that the member is ineligible due to a conflict of interest by a vote of a majority of the other members. Upon such a determination, the ineligible member shall not participate in discussion or vote on the matter.

Section 5. If the recusal of a member of the ZBA results in the loss of a quorum, then the matter shall be postponed until the next regularly scheduled meeting, and testimony shall not be heard without a quorum.

Section 6. Members of the ZBA shall complete an annual disclosure of organization affiliations and shall update this disclosure in writing at any time during the year when such affiliations change.

Section 7. A member of the ZBA shall not participate and vote on a specific decision which they participated in making. Such decisions include, but are not necessarily limited to the following:

- a. When the appeal is of an administrative or other decision by Planning Commission, and the member of the ZBA is also a member of the Planning Commission.
- b. When the appeal is of an administrative or other decision by the City Council, and the member of the ZBA sits on the City Council.

Section 8. A member of the ZBA shall neither solicit nor accept gratuities, favors, or anything of monetary value from entities in a position to benefit from a decision of the ZBA.

Section 9. A member of the ZBA shall not obtain, for himself/herself or for any person with whom he/she has business or family ties, any financial or beneficial interest in a matter which may be affected by a decision of the ZBA. This restriction shall apply during the member's tenure on the ZBA and for one year thereafter.

Section 10. Members shall not act, hold themselves out, or permit themselves to be perceived as official representatives or spokespersons for the ZBA without authorization from the Chair. When communicating for personal purposes on matters that may relate to

the ZBA's business, members shall clearly indicate that their statements are made in a personal capacity and do not necessarily reflect the views of the ZBA. Whenever a member is asked to speak on behalf of the ZBA, he/she shall seek permission of the Chair in advance.

Section 11. A member shall not appear before the ZBA as a petitioner, representative of a petitioner, or as a party interested in a petition during the member's term of office.

Section 12. The ZBA or individual members shall not intrude into the management of the City Planning and Development Services Unit.

Section 13. Members shall conduct themselves in a fair, courteous, and understanding manner at all times in the discharge of their duties, and shall avoid exchanges or actions based upon personal differences.

Article VI Officers

Section 1. The officers of the ZBA shall be a Chair and Vice-Chair. The officers shall be elected from among the members by secret ballot each year at the annual organizational meeting. The Chair shall not be a member of City Council. The officers shall be elected for a one-year term by a majority of the voting members currently serving on the ZBA. No member shall serve more than three (3) consecutive full terms in the same office. The term of each officer shall run from May 1 to April 30 of the following year.

Section 2. The Chair shall preside at all meetings and shall decide points of order and procedure, subject to the provisions of these rules and with the guidance of Robert's Rules of Order, as revised. The Chair shall have the privilege of discussing and voting on all matters before the ZBA. The Vice-Chair shall assume the duties of the Chair in the Chair's absence.

Section 3. When an office becomes vacant before the expiration of the current term (whether by resignation, removal, incapacity, or other circumstance), the vacancy shall be filled by election in the same manner as for full-term officers and the new officer shall serve the remainder of the term. The replacement officer shall be elected at the next regularly scheduled meeting or as soon as practicable. If the Vice-Chair is not a member of City Council, the Vice-Chair may be elected as replacement Chair, in which case a replacement Vice-Chair shall be elected at the same time.

Section 4. No member may hold more than one (1) office at a time.

Article VII Meetings

Section 1. The ZBA shall schedule regular meetings at least monthly. Regular meetings shall be held on the fourth Wednesday of each month unless the ZBA sets alternate dates by resolution. The entire schedule of regular meetings for the upcoming organizational year shall be posted within 10 days after approval at the annual organizational meeting. A change in the schedule of regular meetings shall be approved by the ZBA, and notice of the change shall be posted within three (3) days after the meeting at which the change is approved.

Section 2. Special meetings may be called by the Chair or by a concurring vote of a majority of the voting members currently serving on the ZBA. The purpose of the special meeting shall be stated in the public notice for that meeting. At the special meeting, the ZBA may not conduct any business beyond the specific purpose stated in the public notice, except by unanimous consent of the voting members present. Consistent with the Open Meetings Act, public notice of the special meeting shall be posted at least eighteen (18) hours prior to the scheduled starting time.

Section 3. The first meeting in April of each year shall be the annual organizational meeting. At this meeting the ZBA shall establish the annual meeting schedule, hold elections for officers, and review ZBA rules and procedures.

Section 4. The ZBA may hold non-voting working meetings to carry on the work of the ZBA. Public notice of the working meeting shall be posted at least eighteen (18) hours prior to the scheduled starting time.

Section 5. Public notice of committee meetings shall be posted at least eighteen (18) hours prior to the scheduled starting time.

Section 6. Public notice of all meetings shall be posted at City Hall.

Section 7. Notice of each meeting shall be provided to all members of the ZBA at least forty-eight (48) hours prior to the scheduled starting time for all regular and special meetings and at least eighteen (18) hours prior for all rescheduled and committee meetings.

Section 8. The Planning and Development Services Manager or other delegated staff member may cancel a meeting if there is no business on the agenda, by providing notice of cancellation to members of the ZBA at least three (3) days prior to the meeting time. The Planning and Development Manager or other delegated staff member may also cancel a meeting due to weather, emergency, or other circumstances that may substantially limit the ability of members of the ZBA or the public to attend, or when a quorum will not be present, upon notice to members of the ZBA at least two (2) hours prior to the scheduled meeting time, where practicable. Staff shall post public notice of the cancellation as soon as practicable. Staff may reschedule cancelled meetings after consulting with the Chair. Public notice for rescheduled meetings shall be posted at least eighteen (18) hours prior to the scheduled starting time.

Section 9. A majority of all voting members currently serving on the ZBA shall constitute a quorum. The concurring vote of five (5) members of the ZBA shall be necessary to reverse any order, requirement, decision or determination of an administrative official or body, to decide in favor of the applicant on a matter upon which the ZBA is required to pass by ordinance, or to grant a variance. The right to vote is limited to members of the ZBA actually present at the time the vote is taken at a lawfully called meeting. Unless otherwise provided in these rules, other decisions of the ZBA shall also require the concurring vote of five (5) members.

Section 10. Except for the election of officers, voting shall be by voice and a show of hands. If the vote is not unanimous, a roll call vote shall be taken and recorded in the minutes.

Section 11. The ZBA shall arrange to keep minutes of all regular and special meetings of the ZBA, which shall be a record of the ZBA's consideration and actions, and which shall include at a minimum a list of those members present and not present at each meeting; names and addresses, where given, of all persons appearing before the ZBA, a record of all hearings, exhibits presented to the ZBA, each resolution, motion, or other matter acted upon by the ZBA and a description of the outcome of each action. Draft minutes shall be available for public inspection not more than eight (8) business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than five (5) business days after the meeting in which the minutes are approved. Minutes shall be filed in the Planning and Development Services Unit and the City Clerk's Office and shall be a public record.

Section 12. All meetings of the ZBA and its committees shall be open to the public and conducted in accordance with the Michigan Open Meetings Act (PA 267 of 1976), as amended. Closed sessions may be called for purposes listed in the Open Meetings Act.

Section 13. Public comment shall be allowed at all meetings. The Chair may establish reasonable time limits for public comment and audience participation during hearings. The Chair may extend an individual's speaking time in his/her discretion.

Article VIII Agenda and Order of Business

Section 1. The agendas for each meeting of the ZBA shall be developed by the Chair and the Planning and Development Services Manager or other delegated staff member. Agendas for all regular meetings shall be made available to the public and other members of the ZBA at least forty-eight (48) hours before the meeting's scheduled starting time.

Section 2. If the length of the agenda or the complexity of issues before the ZBA indicate the necessity for an additional regular meeting, the Planning and Development Services Manager or other delegated staff member shall notify the Chair who may then schedule a Special Meeting to be held within two (2) weeks of the regularly scheduled meeting.

Section 3. The order of business at regular meetings shall be as follows. The order of business may be suspended or modified by a majority vote of those members present.

- a) Call to Order
- b) Roll Call
- c) Approval of Agenda
- d) Approval of Minutes of Previous Meeting
- e) Hearings of Appeals and Applications
- f) Old Business
- g) New Business
- h) Reports and Communications
- i) Public Comment on Non-Agenda Items
- j) Adjournment

Article IX Appeals and Applications

Section 1. An appeal may be taken by an aggrieved person, the person's authorized

agent, or an officer, department, board, or bureau of the state or the City. Such an appeal shall be filed within sixty (60) calendar days of the date of decision of the body or officer from whom the appeal is taken. A notice of appeal shall be filed with the body or officer from whom the appeal is taken and with the ZBA, specifying the grounds for the appeal. The Planning and Development Services Unit shall accept notices on behalf of the ZBA.

Section 2. Any communication purporting to be a notice of appeal or application shall be regarded as a mere notice of intention to seek relief until it is made upon the forms provided by the ZBA which shall be available in the Planning and Development Services Unit, including required data and a signature. A fee as prescribed by City Council shall be paid at the time of filing the appeal.

Section 3. Within five (5) business days, the Planning and Development Services Unit shall have the body or officer from whom the appeal is taken transmit the complete record upon which the action appealed from was taken to the ZBA.

Section 4. In the case of applications for variances, and other matters as may properly come before the ZBA, the application shall be made upon forms provided by the ZBA which shall be available in the Planning and Development Services Unit. The procedure for variances and other matters shall be the same as that for the filing of an appeal except that applications may be filed at any time and immediate transmittal of the record to the ZBA shall not be required.

Section 5. Each appeal or application, filed in the proper form with the required data and fee, shall be numbered serially within each calendar year, and placed upon the agenda for the next meeting in accordance with the filing deadline and meeting schedule established annually at the organizational meeting.

Section 6. A staff report prepared by the Planning and Development Services Unit shall accompany each appeal. The report shall consist of a summary of the request and pertinent facts related to the petitioner's property and surrounding property. Pertinent facts shall include information as to whether there has been a previous petition on that property, and its disposition. In matters concerning nonconforming uses and structures, a history of the property shall be presented showing when the property was built and the zoning provisions under which it was built.

Article X Hearings and Hearing Notices

Section 1. Planning and Development Services staff shall provide notice of hearings as required by MCL § 125.3604(4) and (5), and City ordinance.

Section 2. The notice of hearing shall describe the nature of the petition, the relief requested, indicate the property that is subject of the petition, the time and place of the hearing, and indicate when and where written comments will be received concerning the request. A copy of the notice and a list of persons to whom the notice was mailed shall become part of the record of the ZBA.

Section 3. Each appeal or application shall be heard in the following manner.

1. Calling of the case by the Chair.
2. Staff reports and recommendations: Any communications to the ZBA concerning the case shall be read or reviewed and made part of the record.
3. Statement of standards to be applied.
4. Questions by the ZBA to staff.
5. Petitioner's presentation. A petitioner may testify personally, by agent or attorney, and the petitioner may bring and present such witnesses as may be necessary.
6. Questions by the ZBA to Petitioner.
7. Audience Participation.
8. Petitioner Rebuttal.
9. Closing of hearing followed by ZBA discussion and decision.

Section 4. Prior to the hearings in each meeting, an announcement shall be made of any petition withdrawn or adjourned. Requests for such withdrawal or adjournment may be made at any time prior to the particular petition being called, and may be granted at the discretion of the Chair. Audience participation shall be allowed for any hearing where public notice has been provided prior to the meeting.

Section 5. Unless the petitioner or the petitioner's agent or attorney is present for the hearing of a petition, the Chair shall dismiss the petition, and the petition shall not be heard again by the ZBA within three (3) months from the date of dismissal. If within one (1) week of the missed hearing, the petitioner provides evidence to the Chair that in the Chair's discretion shows good cause for the failure to be present, the Chair shall schedule the dismissed petition on the next regularly scheduled meeting agenda as practicable to provide notice and a hearing prior to the meeting. If a petition is rescheduled under this section, the petitioner shall be exempt from filing a rehearing request or paying an additional fee.

Section 6. An application for a rehearing shall be made in the same manner as for an original hearing. The application for a rehearing shall be denied by the ZBA if the petitioner is unable to present evidence to show that there has been a substantial change in facts, circumstances, or scope or nature of relief requested, or that the ZBA approval has expired.

Article XI. Decisions

Section 1. The ZBA may reverse or affirm, wholly or partly, or modify the decision appealed from or it may grant or deny variances in accordance with City Code and state law.

Section 2. The ZBA shall make its decisions within a reasonable time.

Section 3. The motion proposing a decision to reverse or modify a decision appealed from or, in the case of a variance, a decision to grant a variance, shall include findings of fact, and what conditions, if any, the ZBA requires.

Section 4. Within ten (10) business days of the hearing at which the ZBA's decision becomes final, there shall be a written decision and order signed by the Chair. The decision and order shall identify the property, the relief sought, the motion voted upon, the vote and whether the motion passed or failed.

Section 5. Decisions and Orders of the ZBA shall be public records. Copies shall also be sent to all parties of the appeal, the City Assessor's Office, and to other interested agencies and departments of the City Government.

Article XII. Committees

Section 1. The ZBA may create standing or special committees to carry on the work of the ZBA. Standing committees may, but need not be, described in the rules. Committees shall be limited to performing the tasks delegated to them by the ZBA. A minimum of two (2) members of the ZBA shall serve on such a committee.

Section 2. Members of committees shall be appointed by the Chair.

Article XIII. Parliamentary Authority

Section 1. The rules contained in the current edition of Robert's Rules of Order Newly Revised shall guide the ZBA; however parliamentary procedure shall be flexible and may be adjusted in the Chair's discretion to best serve the needs of the ZBA. Nevertheless, no procedure shall be adopted that is inconsistent with the Rules of the ZBA.

Section 2. The ZBA shall not adopt or follow any operating procedures, regulations, or guidelines not expressly prescribed by the Rules of the ZBA.

Article XIV. Amendment of Rules

Section 1. Amendments to these rules may be approved at any regular meeting by a two-thirds vote of all voting members currently serving on the ZBA, provided that notice of the substance of any proposed amendments was provided to the ZBA at the previous regular meeting and specific proposed wording was included in the ZBA's informational packet for the meeting at which the proposed amendment will be considered. Proposed amendments shall be submitted to the Office of the City Attorney for review prior to approval.

Section 2. These rules shall be reviewed annually by the ZBA for possible amendment during the annual organizational meeting.

Article XV. Miscellaneous

Section 1. At the discretion of the City Administrator, or as otherwise mandated by City

Council, the staff of the Planning and Development Services Unit shall be the primary provider of administrative support and professional advice to the ZBA and Planning and Development Services Manager or their designee shall be the primary liaison between the ZBA and staff.

Section 2. The Ann Arbor City Attorney's Office shall be the legal consultant to the ZBA.

Adopted by the ZBA on May 22, 2013