

VILLAGE OF ELK RAPIDS
ZONING BOARD OF APPEALS BYLAWS

PURPOSE:

- A. These Bylaws are adopted by the Village of Elk Rapids Zoning Board of Appeals, herein after the ZBA, to facilitate the performance of its duties as outlined in P.A. 110 of 2006, as amended, being the Michigan Zoning Enabling Act, (M.C.L. 125.3101 *et seq.*), hereinafter the "Zoning Act" and §702., of the Village of Elk Rapids Zoning Code.

ARTICLE I: MEMBERSHIP

- A. The membership of the Zoning Board of Appeals, as well as the manner of appointment, terms of office, attendance requirements and methods for removal of ZBA members will be as described in §702.B., of the Village of Elk Rapids Zoning Code, as amended.

- B. Liaisons: The purpose of liaisons is to provide certain Village of Elk Rapids officials and quasi-officials the ability to participate in discussions with the ZBA, in addition to speaking in public participation, and nothing else. Liaisons cannot vote, introduce motions, initiate any other parliamentary action, be counted for a quorum or be expected to comply with the attendance requirements pursuant to these Bylaws. Liaisons are, but not necessarily limited to the following:
 - 1. Planning and Zoning Department staff, and their agents and consultants.
 - 2. Zoning Board of Appeals consultants.
 - 3. The Village Attorney.
 - 4. Village DPW, Police and other similar department heads.
 - 5. The Village Manager or Assistant Manager.
 - 6. The Village President.
 - 7. All Antrim County Department heads or their representatives as well as other State and Federal officials.

- C. Attendance: Regular attendance at scheduled meetings of the Board by members is recognized as being essential to the duties and functions of the entire Board. Therefore, failure to attend three consecutive regularly scheduled Zoning Board of Appeals meetings shall be considered nonfeasance in office and subject to removal from the Board pursuant to §702.B.6., of the Ordinance.

D. Training: Each member and alternate member shall have completed the requirements for certification as "Citizen Planner", offered as continuing education through Michigan State University and MSU Extension prior to the end of the member's first complete term of office. Members shall then attend training in planning and zoning as authorized by the Village Council in the adopted budget.

E. Conflict of Interest, Incompatibility of Office:

1. Each member of the ZBA shall avoid conflicts of interest and/or incompatibility of office. As used here, a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:

- Issuing, deliberating on, voting on, or reviewing a case concerning him or her.
- Issuing, deliberating on, voting on, or reviewing a case concerning work on land owned by, or which is adjacent to land owned by him or her.
- Issuing, deliberating on, voting on, or reviewing a case involving a corporation, company, partnership, or any other entity in which he or she is a part owner, or any other relationship with a corporation, company, partnership, or any other entity where he or she may stand to have a financial gain or loss.
- Issuing, deliberating on, voting on, or reviewing a case which is an action which results in a financial, fiscal or economic benefit to him or her.
- Issuing, deliberating on, voting on, or reviewing a case concerning his or her spouse, children, step-children, grandchildren, parents, brothers, sisters, grandparents, parent's in-law, grandparent's in-law, or members of his or her household.
- Issuing, deliberating on, voting on, or reviewing a case where his or her employee or employer is (1) an applicant or agent for an applicant, or (2) has a direct interest in the outcome.
- Issuing, deliberating on, voting on, or reviewing a case in which, due to particular circumstances, when the member believes there may be even the appearance of improper bias that could taint the outcome if the member participates.

2. When, in a member's sole discretion, a conflict of interest exists, the member of the Board, shall, upon first knowledge of the case and determining that a conflict exists:
 - Declare a conflict exists at the meeting of the Board and briefly explain the nature of the conflict to the Board.
 - Cease to participate at the Board meeting, in any other manner, or represent one's self before the Board, its staff, or others, and
 - During deliberation of the agenda item before the Board, remove one's self from the front table where members of the Board sit and leave the meeting until that agenda item is concluded.
3. If a member has a question whether a conflict of interest exists or not, that member should put the question before the Board. Whether a conflict of interest exists or not shall be determined by a majority vote of the remaining members of the Board in attendance at the meeting.
4. Incompatibility of Office: If a member of the Board is elected or appointed to another Village office, it shall result in an automatic resignation from the Zoning Board of Appeals on the effective date of the appointment to the other office.

F. Duties of all members:

1. Ex Parte Contact:

- Members shall avoid *Ex Parte* contact about cases where an administrative decision is before the Zoning Board of Appeals whenever possible.
- Despite one's best efforts it is sometimes not possible to avoid *Ex Parte* contact. When that happens, the member should take detailed notes on what was said and report to the ZBA at a public meeting or hearing what was said, so that every member and other interested parties are made aware of what was said.
- Site Inspections: Where site inspections are a necessary part of the issue before the ZBA, each member of the ZBA shall visit the site to gain information pertinent to the issue before the Board. No more than one member of the ZBA at any given time shall be on the site inspection.

2. Not voting on the same issue twice: Any member of the ZBA shall avoid situations where they are sitting in judgment and voting on a decision which they had a part in making. As used here, sitting in judgment and voting on a decision which they had a part in making, at a minimum shall include, but not necessarily be limited to the following:

- When the appeal is of an administrative or other decision by the Zoning Board of Appeals and the member of the Board sits both on the Planning Commission and the Zoning Board of Appeals.
- When the appeal is of an administrative or other decision by any committee of the Planning Commission, Village Council, or other committee and the member of the ZBA sits both on that committee and Zoning Board of Appeals or both on the Planning Commission and Zoning Board of Appeals.

ARTICLE II: OFFICERS

- A. At its first regular meeting in May of each year, the ZBA shall elect from its membership a Chair, Vice-Chair and appoint a Recording Secretary as determined by a majority of its members. All officers are eligible for re-election. The Chair, Vice-Chair and Recording Secretary shall take office immediately following their election and shall hold office for a term of one year or until their successors are selected and assume office. In the event the office of the Chair becomes vacant, the Vice-Chair shall succeed to this office for the unexpired term and the ZBA shall select a successor to the office of Vice-Chair for the unexpired term.
- B. Duties of the Chair shall be to preside at all meetings, appoint committees, may call special meetings pursuant to these Bylaws, act as an ex-officio member of all committees of the ZBA, and perform such other duties as may be required by the office.
- C. Duties of the Vice-Chair shall be to act in the capacity of Chair with all the powers and duties of that office in the absence of the Chair.
- D. Duties of the Recording Secretary or acting Recording Secretary, shall be to execute documents in the name of the Zoning Board of Appeals, record minutes of each meeting and submit them for approval to the ZBA.

ARTICLE III: HEARINGS AND MEETINGS

- A. Meetings of the ZBA will be held the third (3rd) Thursday of each month at 7:00 P.M. at the Elk Rapids Community Governmental Center, 315 Bridge St. When the regular meeting day falls on a legal holiday or other conflicting date, the Board shall select a suitable alternate day in the same month or at such other time as may be selected by the Board.
- B. All hearings and meetings shall be noticed and conducted in accordance with the Public Act 267 of 1976, as amended, that being the Michigan Open Meetings Act, M.C.L. 15.261 *et seq.*, P.A. 110 of 2006, as amended, being the Michigan Zoning Enabling Act, (M.C.L. 125.3101 *et seq.*), and this Zoning Code.
- C. Special meetings may be called at the discretion of the Chair, by any two members of the ZBA, or by the Chair at the request of any non member of the ZBA upon payment of a non-refundable fee to cover costs of the special meeting.
- D. Notice of special meetings shall be given by the Secretary or Village Staff to members of the ZBA at least forty eight (48) hours prior to such meeting and shall state the purpose, date, time, and location of the meeting. Special meetings called for discussion or work session purposes require no formal agenda.
- E. When a petitioner fails to appear at a properly scheduled meeting of the ZBA, the Chair may entertain a motion from the ZBA to dismiss the case for want of prosecution. In the absence of a motion by the ZBA, the Chair shall rule. In cases which are dismissed for want of prosecution, the petitioner will be furnished written notice of the action by the Secretary. The applicant shall have seven (7) days from the date of the notice of dismissal to apply for reinstatement of the case. In such cases, applicant must file a written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chair for good cause shown. In all cases reinstated in the above described manner, the case will be docketed and re-advertised in the same manner prescribed for new cases.
- F. Quorum: A majority of the full Zoning Board of Appeals shall be present in order for the ZBA to conduct business or take any official action. A majority of three (3) affirmative votes of the ZBA is necessary to reverse a decision of the Zoning Administrator, provide an interpretive ruling or grant a variance. When a quorum is not present, no official action, except for closing the meeting, can be taken. Members may discuss matters of interest but can take no action. Public Hearings having no quorum present shall be rescheduled and no additional public notice is required provided the rescheduled date, time and place are announced at the meeting.

- G. Motions: Motions shall be restated by the Chair or by the Secretary before a vote is taken. All motions related to actions taken by the ZBA shall be based on Findings of Fact that shall include each of the following parts:
1. A finding of fact, listing what the ZBA determines to be relevant facts in the case in order to eliminate misleading statements, hearsay, irrelevant, and untrue statements.
 2. Conclusions to list reasons based on the facts for the ZBA's action, often directly related, or not, to a finding of compliance, or noncompliance to standards.
 3. The ZBA's action; recommendation or position, approval, approval with conditions, or disapproval.
- H. Voting: Voting shall be by roll call vote and recorded by "yes" or "no". A member may be excused from voting only if that member has a conflict of interest pursuant to Article I (e) of these Bylaws. Determination of grounds for abstention shall be made prior to discussion of the item. In all roll call votes, the names of the members of the ZBA shall be called in rotation order as seated and the names to be called first shall be advanced one position in rotation in each successive roll call vote. Members must be present to cast a vote. Voting by proxy shall not occur. Three (3) affirmative votes of members of the ZBA shall be required for approval of any action or motion placed before the ZBA. Action by the ZBA on any matter on which a public hearing is held shall not be taken until the public hearing has been concluded.
- I. Parliamentary Procedure: Parliamentary procedure in Zoning Board of Appeals meetings shall be governed by Robert's Rules of Order Newly Revised Edition, for issues not specifically covered by these Bylaws. Where these Bylaws conflict, or are different than Robert's Rules of Order, then these Bylaws shall control.
- J. Order of Business: The Secretary, or designee, shall prepare an Agenda for each meeting and the order of business shall be as follows:
1. Call to order, Pledge of Allegiance and roll call.
 2. Approval of minutes of the last meeting.
 3. Citizens Comments: Any citizen who wishes to address the Board on a matter not listed on the agenda may speak at this time. The Chair shall recognize the citizen before speaking. A five-minute limitation applies unless extended by the Chair. Citizens wishing to speak on matters on the agenda will be permitted,

under the same limitations, to speak when the matter is brought before the Board.

4. Public Hearing: The procedure for each application shall be as follows:
 - The Chair will declare the Public Hearing open, state its purpose, and summarize the procedure to be followed.
 - ZBA Staff will present the main points of the matter under consideration, a Staff report, and if appropriate, a Staff recommendation.
 - The Petitioner, their representative or a proponent of the action will make a presentation about the matter under consideration.
 - Comments by the Public – Individual citizens, group or organizational representatives speaking in support of the matter will make presentations followed by individual citizens, group or organizational representatives speaking in opposition to the matter under consideration.
 - Related Correspondence from interested citizens or their representatives is read into the proceeding record.
 - There being no further public comment or until the Chair determines that a state of redundancy or diminishing returns has set in, the Chair will close the Public Hearing.
 - The ZBA will enter into Executive Session for discussion and action on the matter under consideration.
5. Old Business
6. New Business
7. Staff Reports
8. Calendar Review
9. Adjournment

K. The Agenda:

1. The agenda and accompanying materials shall be mailed or delivered to Board members one week prior to the meeting date, if possible.
2. The Planning and Zoning Department shall be the Office of Record for the Zoning Board of Appeals. The Planning and Zoning Administrator may receive agenda items on behalf of the Board between the time of the adjournment of the previous Board meeting and eight business days prior to the next regularly scheduled Board meeting. Items received less than eight business days prior to the next regular scheduled meeting shall be set aside to be placed on the Agenda for the next regularly scheduled meeting of the Board.

Items of a major nature, i.e. items normally receiving staff review, analysis, or recommendation, shall be postponed until the subsequent regular or special Zoning Board of Appeals meeting. Items of a minor nature may be included on the agenda at the discretion of the Planning and Zoning Administrator, the Chair, or the Secretary.

L. Official Record. The Secretary or Village Staff shall keep, or cause to be kept, a record of ZBA meetings, which, shall at a minimum include an indication of the following:

1. Copy of the meeting posting pursuant to P.A. 267 of 1976, as amended, being the Michigan Open Meetings Act, M.C.L. 15.261 *et seq.*
2. Copy of the minutes and all its attachments which shall include a summary of the meeting in chronological sequence of occurrence.
3. Records of any action, support documents, maps, site plans, photographs, correspondence received, attached as an appendix to the minutes. Zoning Board of Appeals records related to minutes, bonds, oaths of officials, zoning ordinances, master plans, other records of decisions, ZBA publications and all correspondence related to the foregoing, shall be permanently kept.

ARTICLE IV: ADOPTION, REPEAL, AND AMENDMENTS

- A. These Bylaws shall become effective immediately upon their adoption by the Zoning Board of Appeals and all previous Bylaws are hereby repealed.

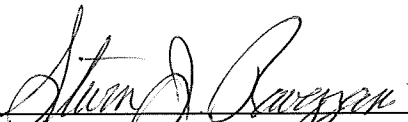
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- B. These Bylaws may be amended at any regular or special meeting by an affirmative vote of a majority of the total number of seats for members of the Board, regardless if vacancies exist or not, provided, that all members shall have been furnished a copy of the proposed amendment at least three days prior to that meeting.

Adopted by the Zoning Board of Appeals on this the **20th day of April, 2017.**



Chair, Zoning Board of Appeals



Planning and Zoning Administrator