

Zoning Board of Appeals Rules of Procedure

Adopted, effective immediately, December 7th, 2020.
As amended through May 16th, 2023.

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1. Purpose

101. The following rules of procedure are hereby adopted by the City of Escanaba Zoning Board of Appeals (hereinafter known as the ZBA) to facilitate the performance of its duties as outlined in the City of Escanaba Zoning Ordinance.

2. Membership

201. The membership of the ZBA shall be the number and appointed according to the procedure as established in the City of Escanaba Zoning Ordinance of 2003 and section 601 of PA 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, MCL. 125.3601).

202. Attendance. If any member of the ZBA is absent from three (3) consecutive meetings, then that member shall be considered delinquent. Delinquency shall be grounds for the City Council to remove a member from the ZBA for nonperformance of duty or misconduct after holding a public hearing on the matter. The Zoning Administrator shall keep attendance records and shall notify the City Council whenever any member of the ZBA is absent from three (3) consecutive meetings, so the City Council can consider further action allowed under law or excuse the absences.

- (1) Remote Attendance: ZBA members may be connected to a meeting remotely in accordance with the State of Michigan Open Meetings Act and the City of Escanaba Electronic Meeting Procedures Policy.

203. Training. Each member shall have attended at least four (4) hours per year of training in planning and zoning during the member's current term of office. Failure to meet the training requirements shall result in the member not being reappointed to the ZBA. Training shall be provided by one or more of the following organizations: Michigan Association of Planning, Michigan State University Extension, Michigan Municipal League, continuing education programs of Michigan State University, University of Michigan, Northern Michigan University, Central Michigan University, or Wayne State University.

204. Liaisons. The purpose of liaisons is to provide certain City of Escanaba and quasi-City of Escanaba officials with the ability to participate in discussion 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 attendance requirement pursuant to Section 202. Liaisons are, if not already an appointed ZBA member, are:

- (1) Planning & Zoning Department Staff, and their agents and consultants.
- (2) City Council Members
- (3) City Manager
- (4) City Attorney

3. Conflict of Interest and Incompatibility of Office

301. Each member of the ZBA shall avoid situations that are 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 issuing, deliberation on, voting on, or reviewing a case:

- (1) Concerning him or her.
- (2) Concerning work on land owned by him or her or which is within 300 feet of land owned by him or her.
- (3) Involving a corporation, company, partnership, or any other entity in which he or she is a part-owner, or any other relationship where he or she may stand to have a financial gain or loss.
- (4) Which is an action which results in a pecuniary benefit to him or her.
- (5) Concerning his or her spouse, children, stepchildren, grandchildren, parents, brothers, sisters, grandparents, parents-in-law, grandparents-in-law, or members of his or her household.
- (6) Where his or her employee or employer is:
 - A. an applicant or agent for an applicant, or
 - B. has a direct interest in the outcome.

302. When a conflict of interest exists, the member of the ZBA shall do all of the following immediately, upon first knowledge of the case and determining that a conflict exists:

- (1) Notify the Zoning Administrator prior to the next meeting (if possible).
- (2) Declare a conflict exists at the next meeting of the ZBA.
- (3) Cease to participate at the ZBA meetings, or in any other manner, or represent one's self before the ZBA, its staff, or others, regarding the case with which the conflict exists.
- (4) During deliberation of the agenda item with which the conflict exists, leave the ZBA meeting room entirely until that agenda item is completed.

303. If a member of the ZBA is appointed to another office, which is an incompatible office with his or her membership on the ZBA, then on the effective date of the appointment to the other office, that shall result in an automatic resignation from the ZBA. If a member of another office is appointed to the ZBA, which is an incompatible office with her or her membership in the other office, then on the effective date of the appointment to the ZBA, that shall result in an automatic resignation from the other office.

4. Duties of All Members

401. *Ex Parte* Contact.

- (1) Members shall avoid *Ex Parte* contact about cases where an administrative decision is before the ZBA whenever possible.
- (2) 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 must 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.

402. Site Inspections.

- (1) Site inspections shall be done by the Zoning Administrator or other staff as required. If a site inspection is conducted, a written report of it shall be submitted in the agenda packet and presented at the ZBA meeting.
- (2) If desired, no more than one member of the ZBA may accompany the Zoning Administrator or staff on a site inspection.

403. Not Voting on the Same Issue Twice.

- (1) 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 which includes, but is not limited to:
 - A. When the appeal is of an administrative or other decision by the Planning Commission, and the member of the ZBA sits on both the Planning Commission and ZBA.
 - B. When the appeal is of an administrative or other decision by the legislative body, and the member of the ZBA sits on both the legislative body and ZBA.

- C. When the appeal is of an administrative or other decision by any committee or the Planning Commission, legislative body, other committee, and the member of the ZBA sit both on that committee and ZBA.

404. Accepting Gifts.

- (1) Gifts shall not be accepted by a member of the ZBA or liaisons from anyone connected with an agenda item before the ZBA.
- (2) As used here, gifts shall mean cash, any tangible item or service, regardless of value.

405. Spokesperson for the ZBA.

- (1) Free and open debate should take place on issues before the ZBA. Such debate shall only occur at meetings of the ZBA.
- (2) Once a vote is taken and an issue is decided by vote, the duty of each member of the ZBA is to represent the position reflected by the outcome of the vote. Minority reports and requests for reconsideration may take place only at an open meeting of the ZBA.
- (3) From time to time, or on a specific issue, the ZBA may appoint a spokesperson for the ZBA for all matters which occur outside the meetings of the ZBA.

406. Code of Conduct. Each member, upon appointment or reappointment, shall sign a Zoning Board of Appeals Code of Conduct.

5. Officers

501. Selections. At the July meeting of each year, the ZBA shall select from its membership a Chair and Vice-Chair. All officers are eligible for re-election. 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. The Zoning Administrator or designated staff will function as Secretary for the ZBA.

502. Tenure. The Chair and Vice-Chair shall take office at the next meeting following their selection and shall hold office for a term of one year or until their successors are selected and assume office.

503. Chair's Duties. The Chair retains his or her ability to discuss, make motions, and vote on issues before the ZBA. The Chair shall:

- (1) Preside at all meetings with all powers under parliamentary procedure;
- (2) Sign all decisions of the ZBA pursuant to MCL 125.3606(3);
- (3) Rule out-of-order any irrelevant remarks; remarks which are personal; remarks about another's race, religion, sex, physical condition, ethnic background, beliefs, or similar topics; profanity; or other remarks which are not about the topic before the ZBA;

- (4) Restate all motions including the maker and supporter before calling for a vote pursuant to Section 610 of these Rules;
- (5) Appoint committees and officers of committees (or choose to let the committee select their own officers);
- (6) Call special meetings as needed;
- (7) Review with the Zoning Administrator, prior to a ZBA meeting, the items to be on the agenda if he or she so chooses;
- (8) Act as the ZBA's chief spokesman and lobbyist to represent the ZBA at local, regional, and state government levels.
- (9) Represent the ZBA before the Planning Commission and City Council;
- (10) Perform such other duties as may be ordered by the ZBA.

504. Vice-Chair's Duties. The Vice-Chair shall:

- (1) Act in the capacity of the Chair, with all the powers and duties found in Section 503, in the Chair's absence.
- (2) Perform such other duties as may be ordered by the ZBA.

505. Secretary's Duties (to be performed by the Zoning Administrator or designated staff).

- (1) At each ZBA meeting, take notes for minutes and prepare a draft for approval at the next ZBA meeting;
- (2) Obtain required signatures on approved minutes;
- (3) Receive all communications, petitions, and reports to be addressed by the ZBA;
- (4) Keep attendance records pursuant to Section 202 of the Rules of Procedure;
- (5) Provide notice to the public and members of the ZBA for all meetings, pursuant to the Open Meetings Act, PA 267 of 1976, as amended, MCL 15.261 et seq.
- (6) Prepare an agenda for ZBA meetings pursuant to Section 606;
- (7) Prepare a Staff Report on each case to be heard by the ZBA for inclusion in the agenda packet which can serve as a basis for the Findings of Fact;
- (8) Perform such other duties as by be ordered by the ZBA.

6. Meetings

601. Regular Meetings. The ZBA shall meet quarterly on the first Tuesday of the months of January, April, July, and October at 6:00pm. Any other meetings of the ZBA will be called as needed in response to receipt of an application for appeal or variance. The meeting can be called by the Zoning Administrator or the Chair of the ZBA.

602. Scheduling Process. Meetings shall be called by emailing or calling ZBA members to coordinate a meeting time that will result in the most members being present (and constituting a

quorum). Agenda packets will be e-mailed to all ZBA members and alternates one week prior to the scheduled meeting.

603. Public. All meetings, hearing, records, and accounts shall be open to the public, and posted in compliance with PA 267 of 1976, as amended, (being the Michigan Open Meetings Act). All regular and special meetings, hearings, records, and accounts shall be open to the public.

- (1) All public comment on all agenda items should be presented at the beginning of the meeting where provided in the printed agenda so that the ZBA can hear concerns and questions before acting on an issue. After that point in the meeting, public comment is normally not allowed; however, sometimes the ZBA may direct questions to members of the public. Those making public comment are expected to be familiar with the issue and have prepared comments ahead of time. To help the public in preparing for the meeting, the full agenda packet of materials will be made available on the website one week prior to the meeting.
- (2) The Chair may limit the amount of time allowed for each person wishing to make public comment at a ZBA meeting to three (3) minutes. The Chair may ask members of the audience to caucus with other sharing similar positions so they may select a single spokesperson. If a single spokesperson is selected, that individual shall be able to make public comment at the ZBA meeting with an extended time limit as determined by the Chair.

604. Quorum. Half the total membership of the ZBA, rounded up to the next whole number, shall constitute a quorum for the transaction of business and the taking of official action for all matters.

605. Petitioner Attendance. 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 the want of prosecution, the petitioner will be furnished written notice of the action by the Zoning Administrator. 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, the applicant must file a written request with the Zoning Administrator for reinstatement. Reinstatement shall be at the discretion of the Chair for good cause shown, and upon payment of the fee set by City Council. In call cases reinstated in the above-described manner, the case will be docketed and re-advertised in the usual manner prescribed for new cases.

606. Order of Business, Agenda. The Zoning Administrator shall prepare an agenda for each meeting and the order of business therein shall be as follows:

- (1) Call to Order & Roll Call
- (2) Approval of/Adjustments to Agenda
- (3) Conflict of Interest Declarations
- (4) Public Hearings.
- (5) Public Comment on Agenda Items Not Having a Public Hearing

- (6) Housekeeping Business
 - A. Approval of Previous Minutes
 - B. Election of Officers
 - C. Other
- (7) Unfinished Business
- (8) New Business
- (9) Public Comment on Items Not on this Agenda
- (10) Adjournment

607. Placement of Items on the Agenda.

- (1) The Planning & Zoning Department shall be the office of record for the ZBA.
- (2) The Zoning Administrator may receive items on behalf of the ZBA.
- (3) When a request for appeal or variance is received and deemed complete, the Zoning Administrator shall initiate scheduling of a ZBA meeting within 3 business days. The meeting shall be scheduled at the earliest opportunity for which a quorum of the ZBA can be assembled and which allows adequate posting time for the required 15-day notifications.

608. Public Hearings. Cases will be presented as follows:

- (1) The Chairman will declare a hearing open, state its purpose, and summarize the procedures outlined in Section 603.
- (2) The Zoning Administrator will present the petitioner's request, actions taken on the matter, and reasons for those decisions. Only a brief oral overview is necessary during the meeting, as these items shall be fully outlined in the Staff Position paper submitted in the agenda packet.
- (3) The petitioner – through himself, his agent, or his lawyer – may present his case, including presenting witnesses on his behalf. No time limit will be imposed on the petitioner.
- (4) Members of the ZBA disclose any *ex parte* contact made with the petitioner and the details of the conversation.
- (5) Members of the public who support the petitioner speak and correspondence is read by the Zoning Administrator. Depending on the number of people present, the Chair may:
 - A. Recess the meeting for a short time to allow those in support to caucus in order to have one speak on their behalf for a set duration of time set by the Chair.
 - B. Allow many to speak in favor of the petitioner and impose the time limit for each speaker, pursuant to Section 603.2.
- (6) Members of the public who oppose the petitioner speak and correspondence is read by the Zoning Administrator. Depending on the number of people present, the Chair may:
 - A. Recess the meeting for a short time to allow those in opposition to caucus in order to have one speak on their behalf for a set duration of time set by the Chair.
 - B. Allow many to speak in opposition to the petitioner and impose the time limit for each speaker, pursuant to Section 603.2.

- (7) Rebuttal. Anyone may ask the Chair questions on presentations or speeches given at this hearing. The Chair will seek and answer to the questions. Answers shall be given to the Chair. No discussion, questioning or answering shall take place between any two or more people except between the Chair and the individual who has the floor.
- (8) Close the hearing. (At this point all public participation on the issue ends.)
- (9) Deliberation and Decision
 - A. ZBA discussion until a member proposes a motion that includes findings of fact, conclusions and rationale for reaching those conclusions, and conditions recommended
 - B. Discussion on motion
 - C. Action on motion

609. Recesses. The Chair, after the meeting has been in session for two hours, shall suspend the ZBA's business and evaluate the remaining items on the agenda. The ZBA shall then decide to finish that meeting's agenda, may act to continue the meeting on another day (and fix the time at which to adjourn), or complete some agenda items and continue the meeting on another day to complete other agenda items or postpone certain agenda items to the next meeting. If applicable, such action shall include the time, day, month, date, year, and location the ZBA will reconvene. If more than 18 hours will pass before the reconvened ZBA meeting, public notice shall be given to comply with PA 267 of 1976, as amended, (being the Michigan Open Meeting Act MCL 15.261 *et seq.*). Upon reconvening, a roll call of attendance shall be the first item of business before proceeding with the same agenda. The ZBA shall resume with the same meeting agenda, proceeding at the same point where they left off, without the addition of additional business.

610. Parliamentary Procedure. ZBA meetings shall be governed by *Robert's Rules of Order Newly Revised (11th Edition, Perseus Publishing, New York, 2000)* for issues not specifically covered by these Rules of Procedure. Where these Rule of Procedure conflict, or are different than *Robert's Rules of Order*, then these Rules of Procedure control.

611. Motions.

- (1) Motions shall be restated by the Chair before a vote is taken, including the name of the maker and supporter.
- (2) Findings of Fact. All actions taken in an administrative capacity (including, but not limited to appeals, zoning interpretation, variances) shall include each of the following parts:
 - A. A "Findings of Fact" that lists what the ZBA determines to be relevant facts (including parcel owner, parcel legal description, what is applied for) in the case in order to eliminate misleading statements, hearsay, irrelevant or untrue statements.
 - B. Conclusions – Listing reasons based on the facts for the ZBA's actions.
 - C. The ZBA's action, recommendation, or position, approval, approval with conditions, etc.
- (3) Any other motion shall be stated in prose or in the form of a resolution.

612. Voting. Voting shall be by roll call vote, and shall be recorded by “yes” or “no”. Member must be present (either physically or remotely in accordance with Section 202) to cast a vote. A motion is only adopted if over half the total membership of the ZBA (regardless of the number actually present at the meeting) casts their votes in favor of the motion.

7. Records.

701. Preparation. The Zoning Administrator shall keep, or cause to be kept, a record of the ZBA meetings, which, shall at a minimum include an indication of the following:

- (1) A copy of the meeting posting.
- (2) A signed statement indicating that notices, as required in these Rules or by other state statute or local ordinance, were sent out, with a list of to whom, by whom, and a copy of the newspaper notice.
- (3) A copy of the ZBA Application submitted, including any maps, drawings, site plans, etc.
- (4) A copy of the minutes of the meeting which shall include, in chronological sequence of occurrence:
 - A. Time and place the meeting was called to order.
 - B. Attendance (noting those who are present remotely) and quorum status.
 - C. Indication of others present (listing names when possible, and a count of unnamed individuals present).
 - D. Summary or text points of all reports given at the meeting and who gave the report and in what capacity. Alternatively, a copy of the report may be attached to the minutes and referenced in the minutes.
 - E. Summary of all points made in public participation or at a hearing by the applicant, officials, and guests and an indication of who made the comments. If provided in written form, a copy of the public’s statement, petition or letter may be attached to the minutes and referenced in the minutes.
 - F. Full text of all motions introduced, whether seconded or not, who made the motion, and who seconded the motion. For each motion, the following should be included:
 - i. Who testified and a summary of what was said.
 - ii. A statement of what is being approved (i.e.: variance, interpretation, etc.);
 - iii. The location of the property involved (by address, including tax parcel number if possible).
 - iv. What exhibits were submitted (list each one, describe each, number or letter each, and refer to the letter or number in the minutes.
 - v. What evidence was considered (summary of discussion by members at the meeting).
 - vi. The ZBA’s Findings of Fact.
 - vii. Reasons for the decision made. (If the action is to deny, then each reason should refer to a section of an ordinance which would be violated or with which was not complied.).
 - viii. The decision (e.g. approve, deny, approve with modification, etc.).

- ix. A list of all requirements or conditions, and details on any performance guarantee required.
 - G. A summary of all points made by members and staff in debate or discussion on the motion or issue.
 - H. Who called the question to vote.
 - I. The results of the roll call vote, indicating how each member voted.
 - J. That a person making a motion withdrew it from consideration.
 - K. All the Chair's rulings.
 - L. All challenges, discussion, and vote/outcome on a Chair's ruling.
 - M. All parliamentary inquiries or points of order.
 - N. When a voting member enters or leaves the meeting.
 - O. When a voting member or staff has a conflict of interest and when the voting member ceases or resumes participating in discussion, voting, and deliberations at a meeting.
 - P. All calls for an attendance count, the attendance, and the ruling if a quorum exists or not.
 - Q. The start and end of each recess.
 - R. All the Chair's rulings of discussion being out of order.
 - S. Full text of any resolutions offered.
 - T. Summary of announcements.
 - U. Summary of informal actions, or agreement on consensus.
 - V. Time of adjournment.
- (5) The records of any action on a case by the zoning administrator.
 - (6) The records of all past records regarding the property involved in a case (previous permit, special use permit, variances, appeals).
 - (7) Any relevant maps, drawings, photos presented as evidence at a hearing.
 - (8) Copies of any correspondence received or sent out in regard to a case.
 - (9) A copy of relevant sections, or a list of citations of sections of the zoning ordinance.
 - (10) A copy of any follow-up correspondence to or from the petitioner regarding the decision.

702. Retention. The record of each meeting shall be permanently kept on file, with the original filed with the Clerk's Office of the City of Escanaba. All the pertinent documents and minutes for each case before the ZBA shall be held in the Zoning Administrator's office.

703. Public Availability.

- (1) A draft copy of the minutes shall be made available to the public within eight (8) business days of a ZBA meeting, including the posting of such to the City of Escanaba website.
- (2) Approved and signed minutes shall be made available to the public within five (5) days of the meeting at which they are approved, including the posting of such to the City of Escanaba website.

8. Other Duties

801. The ZBA may also formulate and provide advice and may advise policy to the Planning Commission, the City Council, or any committee thereof, on issues dealing with administration, text, map, and enforcement of the zoning ordinance.

9. Adoption, Repeal, Amendments

901. Upon adoption of these Rules of Procedure, they shall become effective and all previous rules of procedure shall be repealed.

902. These Rules of Procedure may be amended at any regular or special meeting by a two-thirds (2/3) vote of the total members of the ZBA, so long as such amendment does not result in a conflict with state law, zoning ordinance, or court decision.

Appendix A. Code of Conduct

As a member I will:

1. Accept responsibility to represent the Zoning Board of Appeals to which I am appointed with dignity and pride by being a positive role model.
2. Conduct myself in a businesslike manner, respecting the rights and opinions of other members and of the public. Abusive, insulting, profane or excessively argumentative language or conduct should not be tolerated.
3. Abstain from, and not tolerate, physical or verbal abuse.
4. Accept the responsibility to promote and support the Zoning Board of Appeals to develop an effective planning and zoning program.
5. Make every effort to attend the meetings of the Zoning Board of Appeals on a regular basis and provide prior notification of any necessary absences.
6. Read the plan, zoning ordinance, other ordinances, rules of procedure, and other pertinent documents which pertain to the business of the Zoning Board of Appeals and continue to gain knowledge (and understanding) through self-study, inquiries, and attending appropriate training.

7. Attend training programs on planning and zoning in order to stay current on issues of concern for my community and in planning and zoning law.
8. Respect, adhere to, and help enforce the rules, policies, and guidelines established by the Zoning Board of Appeals.
9. Read meeting packet materials ahead of time and be prepared for the meetings.
10. Refrain from deciding cases before the meeting discussion.
11. Participate in the Zoning Board of Appeals deliberation at the meetings when appropriate.
12. Not engage in criminal activities, and other activities including but not limited to situations of conflict of interest, incompatible office, ex parte contact, not voting on the same issue twice by virtue of serving on two different bodies, or accepting gifts as a form of influencing my vote.
13. In public forums, after a vote by the Zoning Board of Appeals has been taken, represent the adopted majority position of the Zoning Board of Appeals when speaking on behalf of the Zoning Board of Appeals.