



CITY OF EAST GRAND RAPIDS

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CITY OF EAST GRAND RAPIDS ZONING BOARD OF APPEALS

BY-LAWS & RULES OF PROCEDURE

ADOPTED February 2, 2022

SECTION 1 – PURPOSE

The following by-laws and rules of procedure are hereby adopted by the City of East Grand Rapids Zoning Board of Appeals (hereinafter known as “ZBA”) to facilitate the performance of its duties as outlined in City of East Grand Rapids Zoning Ordinance, Chapter 50 of the East Grand Rapids City Code (hereinafter known as “zoning ordinance”), and Act No. 110 of the Public Acts of Michigan of 2006 (MCL 125.3101 et seq., as amended, being the Michigan Zoning Enabling Act.)

SECTION 2 – MEMBERSHIP

- A. The membership of the ZBA shall be the number specified in the East Grand Rapids Zoning Ordinance as of January 1, 2022, as amended. As used in these Rules of Procedure, “regular members” shall refer to the seven ZBA members that hear and vote at public hearings, and “total members” shall refer to the entire nine member roster of ZBA members including alternates.
- B. Attendance.
 1. A ZBA member who will not be able to attend a regularly scheduled meeting of the ZBA shall notify the Public Works Department no later than 3:00 p.m. on the date of the meeting. The Recording Secretary shall keep attendance records and shall attempt to notify the Chairperson and other members of the ZBA in the event that the projected absences will result in the failure to obtain a quorum.
 2. A ZBA member may be considered delinquent when one of the following occurs.
 - i. More than three absences in any 12-month period from regular ZBA meetings for which advance notice of the absence was not provided as required by subparagraph 1 of this section; or
 - ii. More than four consecutive absences in any 12-month period from regular ZBA meetings regardless of notification.
 3. Delinquent members shall be reported in writing to the Mayor and may be subject to removal from the ZBA per the standards and procedures set forth in the City Code.
- C. Training. Each member shall attend at least two hours of training in planning and zoning within six months of the member’s current ZBA term. If so provided by the zoning ordinance, failure to meet the training requirements may result in the member being suspended from the ZBA until this requirement is met. Acceptable training shall be one of the following.

1. An organized session facilitated by a member of the American Institute of Certified Planners (AICP).
2. A session organized from one of the following organizations: Michigan Association of Planning, Michigan State University Extension, Michigan Townships Association, or Michigan Municipal League.
3. A session organized from a continuing education program of a university in the state of Michigan that is accredited by the Planning Accreditation Board.

SECTION 3 – CONFLICT OF INTEREST

- A. Each member of the ZBA shall avoid situations that are conflicts of interest and/or are incompatible with their office. As used here, a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:
 1. Issuing, deliberating on, voting on, or reviewing a case directly involving him or her.
 2. 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 where he or she may stand to have a financial gain or loss.
 3. Issuing, deliberating on, voting on, or reviewing a case concerning his or her spouse, children, step-children, grandchildren, parents, brothers, sisters, grandparents, parents in-law, grandparents in-law, or members of his or her household.
 4. Issuing, deliberating on, voting on, or reviewing a case where his or her employee or employer is an applicant or agent for an applicant, or has a direct interest in the outcome.
- B. 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. declare a conflict exists when the matter comes up on the agenda;
 2. cease to participate for the agenda item in question, and
 3. during deliberation of the agenda item, leave the meeting until that agenda item is concluded.
- C. A ZBA member shall not appear before the ZBA as a petitioner or representative of a petitioner during his or her term of office. If a member of the ZBA has a petition or appeal before the ZBA, the member must follow the rules regarding conflicts of interest provided in in Section 3.B of these Rules of Procedure. In addition, the member must select a representative to present the petition or appeal to the ZBA. Such representative shall not be any of the persons or represent any of the entities listed in Section 3.A of these Rules of Procedure.

SECTION 4 – DUTIES OF ALL MEMBERS

- A. Ex Parte Contact.
 1. Members shall avoid Ex Parte contact regarding any case before the ZBA whenever possible. As used here, Ex Parte contact refers to any opinions or decision making expressed, directly or implied, without the presence of the full ZBA and occurring outside of a regular ZBA meeting.

2. Despite one's best efforts, it is sometimes not possible to avoid Ex Parte contact. When that happens, the member should record and report what was said to the ZBA at a public meeting or hearing, so that every member and other interested parties are made aware of what was said.
- B. Not Voting On the Same Issue Twice. A ZBA member who is also a member of the Planning Commission or City Commission shall not participate in any case in which that member previously participated in that other role. In such case, an alternate shall be appointed.
 - C. Site Inspections. Members of the ZBA are encouraged to perform site inspections related to variance and appeal requests when permission is granted by the property owner. Only one ZBA member shall be present at any site inspection. ZBA members shall follow all rules and standards under Section 4.A of these Rules of Procedure regarding all interactions and conversations that may occur during the site inspection.
 - D. Accepting Gifts. Gifts shall not be accepted by a member of the ZBA or liaisons from anyone connected with an agenda item before the ZBA.
 - E. Deliberation. Free and open debate should take place on issues before the ZBA. Such debate shall only occur at meetings of the ZBA. 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.
 - F. Advice to Commissions. The ZBA may formulate and provide advice and may advise the Planning Commission, City Commission, or any committee thereof, on issues dealing with administration, text, map, and enforcement of the zoning ordinance.

SECTION 5 – OFFICERS

- A. Selection. At the first regular meeting of each fiscal year, the ZBA shall select from its regular members a Chairperson, Vice-Chairperson, and Secretary. All officers are eligible for reelection. In the event the office of the Chairperson becomes vacant, the Vice-Chairperson shall succeed to this office for the unexpired term and the ZBA shall select a successor to the office of Vice-Chairperson for the unexpired term. In the event the office of the Secretary becomes vacant, the ZBA shall select a successor to the office of Secretary for the unexpired term. The ZBA may also designate another person who is not a member of the ZBA to be the Recording Secretary.
- B. Tenure. The Chairperson, Vice-Chairperson, and Secretary shall take office immediately following their selection and shall hold office for a term of one year or until their successors are selected and assume office.
- C. Chairperson's Duties. The Chairperson retains his or her ability to discuss, make motions, and vote on issues before the ZBA. The Chairperson shall:
 1. Preside at all meetings with all powers under parliamentary procedure;
 2. Sign all decisions of the ZBA pursuant to M.C.L. 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 relevant to the topic before the ZBA;
 4. Assign alternates to a case in the event of the absence, late arrival, or a declared conflict of interest of a regular ZBA member in accordance with Section 5.100 of the Zoning Ordinance;

5. Restate all motions as pursuant to Section 7.K of these Rules of Procedure;
6. Appoint committees;
7. Appoint officers of committees or choose to let the committee select their own officers;
8. May call special meetings pursuant to Section 7.B of these Rules of Procedure;
9. Review with City staff, prior to a ZBA meeting, the items to be on the agenda if he or she so chooses; and
10. Perform such other duties as may be ordered by the ZBA.

D. Vice-Chairperson's Duties. The Vice-Chairperson shall:

1. Act in the capacity of Chairperson, with all the powers and duties found in Section 5.C of these Rules of Procedure, in the Chairperson's absence; and
2. Perform such other duties as may be ordered by the ZBA.

E. Secretary's Duties. The Secretary shall:

1. Act in the capacity of Chairperson, with all the powers and duties found in Section 5.C of these Rules of Procedure, in the Chairperson's and Vice-Chairperson's absence;
2. Be responsible for the minutes of each meeting pursuant to section 8.A of these Rules of Procedure in the event of an absence of the Recording Secretary; and
3. Perform such other duties as may be ordered by the ZBA.

F. Recording Secretary's Duties. The Recording Secretary shall not be a member of the ZBA or any of its committees, and shall:

1. At each meeting, take notes for minutes and prepare the minutes pursuant to section 8.A of these Rules of Procedure for review by the ZBA;
2. Receive all communications, petitions, and reports to be addressed by the ZBA, delivered or mailed to the Public Works Department;
3. Keep attendance records pursuant to Section 2.B of these Rules of Procedure; and
4. Perform such other duties as may be ordered by the ZBA or Secretary.

SECTION 6 – FILING AN APPLICATION

A. Filing. The following may file an application for a hearing before the ZBA pursuant to its prescribed duties:

1. Any aggrieved person, or the person's authorized agent; or
2. Officer, department, board, or bureau of the state or other unit of government.

B. The filing for a ZBA decision shall be in writing on a form provided by the Zoning Administrator and upon payment of a fee as established in the City's current fee schedule. An appeal of an administrative decision shall be filed not more than 15 days from the date of the decision being appealed. All other applications shall be filed at any time.

C. Notification. Notification of all public hearings shall be made as set forth in Section 5.101 of the zoning ordinance.

- D. Notice of Decision. The City shall cause to have notices of the ZBA decision delivered in accordance with Section 5.103 of the zoning ordinance.

SECTION 7 – MEETINGS

- A. Regular Meetings. The ZBA shall meet at least once each year during the month of July. At this meeting, the ZBA shall establish an annual calendar of meetings, specifying the dates and time. All meetings shall be held in the City Commission Chambers, City Hall, 750 Lakeside Dr. SE, East Grand Rapids, Michigan.
- B. Special Meetings. Special meetings of the ZBA may be called by the ZBA Chairperson or by any four members of the ZBA, in concert with City staff and in response to the receipt of an application or for purposes of conducting other business. Public notice for special meetings shall be made in accordance with the Michigan Open Meetings Act.
- C. Public Attendance.
1. All meetings, hearings, records, and accounts shall be open to the public, and posted in compliance with the Michigan Open Meetings Act and the Michigan Zoning Enabling Act. Public hearing procedures shall be posted or otherwise provided at all meetings.
 2. A person shall not be excluded from a meeting of the ZBA except for breach of the peace committed by the person at the meeting.
- D. Quorum.
1. Four regular members of the ZBA shall be required to establish a quorum for the transaction of business. When a quorum is not present, no official action, except for adjourning the meeting may take place. In the absence of a quorum, the members of the ZBA may discuss matters of interest, but may not take action until the next regular or special meeting at which a quorum exists.
 2. If the recusal of a member of the ZBA results in the loss of a quorum, the matter shall be postponed until the next scheduled meeting, and testimony shall not be heard without a quorum.
 3. All public hearings without a quorum shall be scheduled for the next regular or special meeting. No additional public notice shall be required if the date, time, and place of the next meeting is announced at the meeting.
- E. Case Dismissal and Reinstatement. When a petitioner fails to appear at a properly scheduled meeting of the ZBA, the Chairperson may entertain a motion to dismiss the case. In the absence of a motion, the Chairperson shall rule. The Chairperson shall also have the discretion to table the agenda item if good cause for the absence is presented. In situations where such cases are dismissed, the petitioner will be furnished written notice of the action by the Zoning Administrator. The applicant shall have seven 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 Chairperson for good cause shown and may be subject to a new application fee as set from time to time by the City. In all cases reinstated in the above-described manner, the case will be docketed and re-advertised in the usual manner prescribed for new cases.
- F. Order of Business, Agenda. The Chairperson, with input and assistance from City Staff, shall prepare an agenda for each meeting of the ZBA, listing each of the items to be considered at the meeting and including the following elements, as applicable to the meeting:

1. Call to order.
2. Roll call.
3. Housekeeping Business, including approval of minutes from previous meeting.
4. Election of officers, if necessary.
5. Public Comment for items not on this agenda or subject to a hearing at this meeting.
6. Public Hearings. The Chairman will declare a hearing open and state its purpose. Cases will be organized by assigned Case Number (numbered by year/sequence). The Public Hearing format will be generally as follows.
 - i. The Zoning Administrator presents the petitioner's request, the City's report with any recommendations, and written copies of the petitioner's request.
 - ii. The petitioner – through him/herself, agent, or lawyer – may present his/her case, including presenting witnesses on his/her behalf. No time limit will be imposed on the petitioner. Each speaker shall state their name and address for the record and may present written comments for the record.
 - iii. Members of the ZBA may question or request clarification from the petitioner on any matter related to the case.
 - iv. Members of the ZBA shall report on any site inspection and conversations with the petitioner they may have had.
 - v. Members of the public speak and correspondence is read. If there are a large number of people present regarding a particular issue, the Chairperson may recess the meeting for a short time to allow attending groups to caucus in order to have one person speak on their behalf. Otherwise, the Chairperson shall allow all public attendees the opportunity to speak in response to the matter. Each speaker shall state their name and address for the record. At his/her discretion, the Chairperson may impose a time limit of no less than three minutes per speaker.
 - vi. Rebuttal. Anyone may ask the Chairperson questions on presentations or speeches given at this hearing. The Chairperson may, at his/her discretion, seek an answer to the question. No discussion, questioning, or answering shall take place between any two or more people except between the Chairperson and the individual who has the floor.
 - vii. Close the hearing. At this point, all public participation on the issue ends.
 - viii. Action on the request.
 - a. Discussion and review of the facts is held based on all information presented. Discussion continues until a member is confident enough to propose a motion based on conclusions reached, rationale for the conclusions, and conditions, if any.
 - b. Motion is proposed based on the conclusions reached based on a review of all applicable standards. Reasonable conditions as determined by the ZBA may be attached to a motion to approve.
 - c. Discussion on the motion.
 - d. Action on the motion.

7. Other business of the ZBA.

8. Adjournment.

G. Placement of Items on the Agenda.

1. The Public Works Department shall be the office of record for the ZBA and may receive items for the ZBA agenda on their behalf.

2. Items received by the Public Works Department less than seven business days prior to the next regularly scheduled ZBA meeting shall be set aside to be received by the ZBA at its next regularly scheduled meeting. The City or ZBA may waive this deadline requirement at its discretion for minor items that would not require a vote.

3. The deadline to add items to the ZBA's meeting agenda shall be seven days prior to the next regularly scheduled ZBA meeting.

H. Recesses. The Chairperson or the ZBA, after the meeting has been in session for two hours, may suspend the ZBA's business and evaluate the remaining items on its agenda. The ZBA may then decide to finish that meeting's agenda, may act to continue the meeting on another day (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 the Michigan Open Meeting Act. 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.

I. Parliamentary Procedure. ZBA meetings shall be governed by the most recent edition of Robert's Rules of Order for issues not specifically covered by these Rules of Procedure. Where these Rules of Procedure conflict or are different than Robert's Rules of Order, then these Rules of Procedure shall control.

J. Motions.

1. Motions shall be restated by the Chairperson before a vote is taken.

2. All actions taken by the ZBA shall include each of the following parts.

i. A listing of relevant facts and information about the case.

ii. Conclusions reached, listing reasons based on the above facts related to the applicable ordinance standards.

iii. The ZBA's action, recommendation, or position regarding approval, approval with conditions, or disapproval.

3. Any other motion shall be stated in prose or in the form of a resolution.

K. Voting. Voting shall be by roll call vote and shall be recorded by "yes" or "no". Members must be present to cast a vote. Four "yes" votes by the regular members shall be required to approve all requests before the ZBA, except that five "yes" votes from the regular members shall be required to grant a use variance.

SECTION 8 – RECORDS

- A. Preparation. The Recording Secretary shall keep, or cause to be kept, a record of ZBA meetings, which, shall at a minimum include an indication of the following:
1. A copy of the meeting posting as required in Section 6 of these Rules of Procedure.
 2. A signed statement indicating that notices, as required in Section 6 of these Rules of Procedure, were sent out, with a list of to whom, and an indication of by whom, and a copy of a newspaper notice, if one was published.
 3. A copy of all applications, including any maps, drawings, site plans, etc.
 4. The original of the minutes of the meeting which shall include all actions and discussions that occur in chronological sequence.
 5. The records of any action on a case by the Zoning Administrator.
 6. All past records regarding the property involved in a case (previous permit, special use permit, variances, appeals).
 7. Any relevant maps, drawings, photographs, presented as evidence at a hearing.
 8. Copies of any correspondence received or sent out in regard to a case.
 9. A copy of any follow-up correspondence to or from the petitioner regarding the decision.
- B. Retention. The record of each meeting shall be permanently kept on file and spread in suitable volumes. All the pertinent documents and minutes for each case before the ZBA shall be copied and filed with the Public Works Department.

SECTION 9 – ADOPTION, REPEAL, AMENDMENTS

- A. Upon adoption of these Rules of Procedure of February 2, 2022, they shall become effective and all previous rules of procedure, as amended, shall be repealed.
- B. At least once in any three year period, the ZBA shall review these Rules of Procedure.
- C. These Rules of Procedure may be amended at any regular or special meeting by a “yes” vote from at least six total members of the ZBA, so long as such amendment does not result in a conflict with state law, zoning ordinance, or court decision. All proposed amendments shall appear on the agenda of the meeting at which the amendment is to be considered.
- D. Severability. If any section, paragraph, or provision of these Rules of Procedure shall be rendered unenforceable and invalid by a court of competent jurisdiction or a conflicting provision of law, that holding or provision shall not affect the validity of these Rules of Procedure as a whole.