

ZONING BOARD OF APPEALS RULES OF PROCEDURE

ARTICLE I NAME

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

ARTICLE II ENABLING AUTHORITY

The Zoning Board of Appeals was established by the City of Kalamazoo, as authorized by the Michigan Zoning Enabling Act – MCL §125.3101 et seq (“Enabling Act”), under the City of Kalamazoo Code of Ordinances, Appendix A – Zoning Ordinance, §11.3 (“Zoning Ordinance”).

ARTICLE III PURPOSE, OBJECTIVES AND DUTIES

Section 3.0. The purpose of ZBA is to hear and decide questions that arise in the administration of the Zoning Ordinance as outlined in §11.3 and under the Enabling Act.

Section 3.1. The powers and duties of ZBA are further enumerated under §8.3E-Variances and §8.3G-Appeals of Administrative Decisions.

ARTICLE IV MEMBERSHIP

Section 4.0. *Members:* ZBA board members are appointed by the City Commission following the recommendation of ZBA and shall consist of six (6) regular members and two (2) alternate members. In recommending membership to ZBA the board shall endeavor to ensure the membership represents a cross-section of the community regarding gender, race, or neighborhood composition, a member has experience or interest in the subject matters that routinely come before ZBA and several points of view are represented.

Section 4.1. *Term:* Members serve for three-year terms and may not serve for more than two consecutive terms, excluding fulfilling the unexpired term of a former member.

Section 4.2. *Residency:* Members shall be residents of the City of Kalamazoo and serve without compensation.

Section 4.3. *Vacancy:* If a vacancy occurs among the members of ZBA by reason of death, resignation, disability, or otherwise, the board shall follow the same procedure for filling the remaining term of such member as an original appointment.

Section 4.4. *Absences:* A member who is absent for more than 50% of the regular meetings of ZBA over a six-month period is considered to have resigned as a member. ZBA shall submit as soon as practicable for City Commission approval the name of the individual it recommends to fill the remaining term of that absent member.

ARTICLE V OFFICERS

Section 5.0. *Officers:* The officers of ZBA shall consist of a Chair, Vice-Chair, and Secretary, elected by ZBA at its annual meeting. Officers shall serve for a period of one year and may be reelected.

Section 5.1. *Recording Secretary*: An staff employee of the Community Development and Planning Department shall serve as Recording Secretary of ZBA, but shall not have a vote in matters before the Board. In the absence of the Recording Secretary from any meeting, the officer presiding shall designate an Acting Recording Secretary to serve for the meeting in question.

Section 5.2. *Duties of Officers*:

- a) Chair
 - 1) To preside at all meetings of ZBA.
 - 2) To call Special Meetings in accordance with these Rules of Procedure.
 - 3) To see that all actions of ZBA are properly taken.
 - 4) To decide points of order and procedure subject to these rules and with the guidance of Robert's Rules of Order (as revised).
 - 5) To sign all documents and letters on behalf of ZBA.
- b) Vice-Chair
 - 1) During the absence, disability or disqualification of the Chair, the Vice-Chair shall exercise or perform all the duties and responsibilities of the Chairperson.
- c) Secretary
 - 1) To present to ZBA all such business as shall properly and legally come before it.
 - 2) To inform ZBA of all correspondence relating to business of ZBA and to attend to such correspondence.
 - 3) To conduct the election of officers at ZBA's Annual Meeting.
 - 4) To conduct a special election for the appointment of any officer to fill a vacancy, in accordance with these Rules of Procedure.
 - 5) During the absence, disability or disqualification of the Chair and Vice-Chair, the Secretary shall exercise or perform all the duties and responsibilities of the Chair.
- d) Recording Secretary
 - 1) To take and keep the Minutes of all meetings of ZBA.
 - 2) To give or serve all notices required by law or these Rules of Procedure.
 - 3) To prepare the Agenda for all meetings of ZBA.
 - 4) To be custodian of ZBA's records.

Section 5.3. *Vacancies*: If any vacancy occurs among the ZBA officers before the term of that officer expires, ZBA shall hold an election at the next regularly scheduled meeting, or as soon as practicable, in the same manner as an election for full-term officers. The officer will serve the unexpired term of the office in which the vacancy occurred.

ARTICLE VI MEETINGS

Section 6.0. *Regular Meetings*: ZBA shall conduct regular meetings in City Hall at 7:00 p.m. on the Second Thursday of each month. At each meeting, ZBA shall consider all matters properly noticed and brought before it. A regular meeting may be canceled if there are no matters for consideration; or may be rescheduled by ZBA at a prior meeting or by a majority of the ZBA members with sufficient public notice of the meeting change. If a quorum of ZBA members is not present at the regular meeting, the meeting shall be rescheduled to the next regularly scheduled meeting.

Section 6.1. *Annual Meeting*: The Annual Meeting of ZBA shall be the first regular meeting in February each year. The election officers for the ensuing year shall occur along with such other business as scheduled before ZBA.

Section 6.2. *Special Meetings:* Special meetings of ZBA shall be held at a time and place as designated and called by the Chair, or by a concurring vote of a majority of ZBA members, which vote may be obtained by telephone as reflected in the minutes of the special meeting. The notice of the special meeting shall include the purpose for which it is held; ZBA may not conduct business beyond that purpose. The notice of the special meeting shall comply with the Open Meetings Act and posted at least 18 hours before the scheduled hearing time.

Section 6.3. *Quorum:* At any meeting of ZBA, four members of ZBA shall constitute a quorum. No action shall be taken in the absence of a quorum except to adjourn the meeting to a subsequent date. If only four members are present the applicant of the matter pending before ZBA shall have the option to delay the public hearing until the next regularly scheduled meeting.

Section 6.4. *Voting:* At all meetings of ZBA, each member attending is entitled to cast one vote. Voting on all matters upon which ZBA is required to act under the Zoning Ordinance or Enabling Act, shall be by roll call. All other action shall be by voice vote, except when a majority of the members present prefers a roll call or ballot vote.

Section 6.5. *Disclosure:* If any member of ZBA has a real or apparent conflict of interest in a matter then before ZBA, that member shall disclose the conflict of interest and is disqualified from participating in the discussion or voting upon the matter. The Recording Secretary shall record in the minutes that the member did not participate in or cast a vote in that matter. A conflict of interest shall include, without limitation the following situations or relationships:

- a) The member, or his/her immediate family, his/her partner, or an entity in which the member has family or business ties has a financial or beneficial interest.
- b) The member has an ownership interest in the property or owns property adjacent to property that is before ZBA.
- c) The member is the employer or employee of the applicant or agent for the applicant and has a direct financial or beneficial interest in the outcome.

Section 6.6. *Conduct of Meetings:* All meetings of ZBA are open to the public. The order of Business at meetings shall be as follows:

- a) Call to Order
- b) Communications and Announcements
- c) Approve of the Minutes of the Previous Meetings
- d) Public Hearings
- e) Old Business
- f) New Business
- g) Adjournment

No board member or other person shall speak until duly recognized by the chair, and he or she shall immediately cease speaking if ruled out of order. Speakers other than members, after being recognized, shall commence by identifying themselves by name and address. The applicant shall have ten (10) minutes to present the reasons for the requested variance or other action that is before ZBA. Members of the public shall then be permitted to speak pursuant to these Rules of Procedure and the City Commission Rules pertaining to advisory boards and commissions. The chair has the option to grant additional time to the applicant or individual considering the particular circumstances involved in the matter under consideration. However, the chair may limit public comment and audience participation to the factors that ZBA must consider for the item under consideration to maintain the order of the meeting,

Section 6.7. *Adjourned Meeting:* ZBA may adjourn a regular or special meeting if all business cannot be disposed of on that date. No further public notice is required for such meeting if the time and place of its resumption is stated at the time of adjournment and is not subsequently changed.

Section 6.8. *Parliamentary Authority:* 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.

ARTICLE VI APPEALS OF ADMINISTRATIVE DECISIONS

Section 7.0. *Appeals:* In addition to all other matters properly brought before ZBA, ZBA shall hear and decide appeals from, and review any order, decision, determination, or interpretation made by the City Planner or other city administrative official in the administration or enforcement of the Zoning Ordinance. The appropriate city staff shall appear in person to present information to ZBA when the work has been started before the appeal was brought to ZBA.

Section 7.1. *Time:* All written appeals from any order, decision, determination or interpretation made by the City Planner or the above city administrative official shall be made within thirty (30) days of the date of the order, decision, determination or interpretation.

Section 7.2. *Record on Appeal:* Upon receipt of the written appeal, the City Planner or the city official whose order, decision, determination or interpretation is being appealed shall transmit the written appeal and all papers, documents and other materials relating the issues involved in the appeal.

Section 7.3. *Schedule of Hearings:* The scheduling of the appeal shall occur at the next regularly scheduled meeting that complies with the written notice requirements regarding the substance and timing of the notice under the Zoning Ordinance.

Section 7.4. *Findings of Fact:* Following the hearing of any appeal ZBA shall make a finding of fact upon which it shall base its decision. A finding of fact shall consist of the facts and circumstances relied upon by ZBA in its determination of an appeal, and shall be based upon the evidence presented to ZBA.

Section 7.5. *Decision:* ZBA may affirm, partly affirm, modify or reverse the order, decision, determination or interpretation of the City Planner or the city official. Competent, material and substantial evidence on the record that the order, decision, determination or interpretation failed to comply with either the procedural or substantive requirements of the Zoning Ordinance, state law or federal or state constitutions is required before ZBA can, by the concurring vote of the majority of ZBA members, reverse or modify that order, decision, determination or interpretation. ZBA may impose conditions that ensure the requirements and purposes of the Zoning Ordinance are followed on any affirmative decision. If ZBA does not render its decision on the date of the hearing, after all the evidence is presented, it shall make that decision by the next regularly scheduled meeting.

ARTICLE VIII POST DETERMINATIONS

Section 8.0. *Conditions of variances:* Unless otherwise specified by ZBA all variances granted shall become null and void if not exercised within one year from the date of granting. Further all variances approved by ZBA are granted in accordance with any site plan, documents or other information submitted to ZBA at the hearing for consideration.

Section 8.1. *Reconsideration:* Following any decision adopted by ZBA, a member who either

voted with the prevailing side or did not vote may make a Motion to Reconsider may at any time during the same meeting, or within ten (10) days after the meeting. The member making a Motion to Reconsider after the meeting shall submit the motion in writing with the stated reasons to support the motion; and that shall further deliver the motion to the recording secretary, city staff providing primary administrative support to ZBA and the other ZBA members who were present at the meeting. Any member may second the motion, and if motion is made after the meeting the second shall also be in writing and delivered in the same manner as the motion. The decision on the motion shall occur at the next regularly scheduled meeting. No decision shall be reconsidered more than once, nor shall a vote to reconsider be reconsidered. The applicant, or aggrieved person who originally appealed to ZBA, shall be given notice if a Motion to Reconsider is made and filed.

Section 8.2. *Rehearing – Change of Circumstances/Newly Discovered Evidence*: Any person whose request for a variance was not approved, or whose appeal was not granted may submit a written request for a rehearing based on a change in circumstances or the discovery of new evidence (not available or known at prior hearing due to no fault of that person) which facts accompany the request. In order for ZBA to grant a rehearing it must first determine, based on the evidence presented at the public hearing that a change in circumstances occurred or that new evidence does exist. ZBA shall consider the request for rehearing at the next regularly scheduled meeting that will comply with the notice requirements for a public hearing.

ARTICLE IX MISCELLANEOUS

Section 9.0. *City Staff Support*: To better carry out ZBA's duties and responsibilities under the Zoning Ordinance, the City Planner shall appoint employees of the city's Community Planning and Economic Development Department to provide administrative support and professional advice to ZBA, including one acting as the Recording Secretary. The City Attorney's Office shall also act as legal consultant to ZBA.

Section. 9.1. *Amendment*: These Rules of Procedure may be amended at any meeting of ZBA provided that the proposed amendment is delivered to each member in writing at least five (5) days before that meeting.

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