

**CITY OF BERKLEY
ZONING BOARD OF APPEALS
RULES OF PROCEDURE**

SECTION ONE – AUTHORITY

The City of Berkley Zoning Board of Appeals (hereinafter referred to as the ZBA) adopts these rules of procedure pursuant to the Michigan Zoning Enabling Act, MCL 125.3101 et seq., as amended and the ordinances of the City of Berkley (as amended).

SECTION TWO - MEMBERSHIP

(1) **Membership.** Members shall be appointed according to the procedure as established by Berkley ordinances. The ZBA shall consist of seven regular members and two alternate members all to be appointed by City Council. An alternate member may be called as specified in the zoning ordinance to serve and vote as a member of the ZBA in the absence of a regular member. An alternate member may also be called to serve as a member for purposes of reaching a decision on a case in which a member has abstained for reasons of conflict of interest. Alternate members called upon to serve in instances of vacancy or conflict of interest shall do so on a rotational basis, starting with the most senior alternate.

- a) **Continued Education.** Each member shall commit to 5-6 hours of continued education within each fiscal year. New appointees to the Commission shall not be required to complete the hours of continued education within the first fiscal year of appointment.
- b) **Materials.** Upon taking office for the first time, each member shall be sent via email a package of materials to assist them in their role, including but not limited to:
 - A copy of the Zoning Board of Appeals-Rules of Procedure.
 - Chapter 2 - Section 40 (Ethics), Chapter 94 (Signs) and Chapter 138 (Zoning) of the Berkley ordinances. Ordinance updates will be provided on the City’s website.
 - The Michigan Zoning Enabling Act.
 - Any other materials deemed necessary by the Community Development Director and approved by the Chair of the ZBA to familiarize a new member with the appeals process and the duties of the ZBA.
 - The Berkley Zoning Map.
- c) **Resignation.** Members seat is resigned upon receipt of a letter or email of resignation to the City Clerk Office.

(2) **Duties.**

- a) **Attendance.** Each regular and alternate member has a duty to attend all meetings except for good cause.
- b) **Absences.** Members who are unable to attend a regularly scheduled meeting must contact the Zoning Administrator prior to the meeting to alert to the cause of the absence. The Zoning Board of Appeals shall approve the excused absence as part of the regular meeting and it shall be noted in the meeting minutes.

- c) Arrive prepared for the business at hand, having reviewed written materials and completed site visits as necessary to be educated on the agenda issues.
- d) *Ex Parte* Contact. Members shall avoid *Ex Parte* contact concerning questions or matters pending before the ZBA.
- e) *Ex Parte* Contact shall include discussions among members, applicants, or the public outside of a ZBA meeting, including emails, about matters pending before the ZBA.

SECTION THREE - MEETINGS

- (1) **Notices.** Notice of meetings shall be provided in accordance with the Open Meetings Act. Prior to the scheduled meeting date, the Zoning Administrator shall provide the agenda for the meeting and all documentation relevant to agenda items as well as any other information requested by the ZBA.
- (2) **Regular Meetings.** Regular meetings of the ZBA shall be held monthly in the City Hall on the second Monday of every month at 7:00 p.m.
 - a) If there are no appeals, requests for variances or requests for interpretation of the zoning ordinance to consider, a regular meeting shall be postponed to the next (otherwise) regular meeting date when there are such requests to consider. All other business shall be held over to the agenda for the next regular meeting.
 - b) When a regular meeting date falls on or near a legal holiday or a regular City Council meeting, the ZBA shall select a suitable alternate date in the same month, if possible, in accordance with the Open Meetings Act.
- (3) **Other Meetings.** A special meeting can also be called by the Zoning Administrator, the Chair of the ZBA, or, in the Chair's absence, the Vice-Chair.
- (4) **Membership.** Any changes in Board membership will be announced prior to roll call.
- (5) **Quorum.** In order for the ZBA to conduct business or take any official action, a quorum consisting of 4 voting members of the ZBA must be present unless a use variance is under consideration, in which case, a quorum shall be 5 voting members present. When a quorum is not present, no official action, except for closing of the meeting may take place. All items scheduled to be heard, shall be rescheduled for the next regular meeting. No additional public notice shall be required provided the date, time and place are announced at the meeting.
- (6) **Hearings.** Hearings shall be scheduled and due notice given in accordance with the provisions of the Acts and ordinance cited in Section 1.

Public hearings conducted by the ZBA shall be run in an orderly and timely fashion. This shall be accomplished by the following procedure:

- Introduction of case by staff.
- The Chair confirms that the applicant is present and receives an opportunity to present the case.
- The Chair opens discussion. The ZBA may ask the applicant or staff questions.
- The Chair opens the public hearing. Each person must state his/her name and address for the record and may address the ZBA regarding the case not to exceed three minutes, to be modified at the discretion of the Chair. The Chair may invite people to speak row by row to eliminate lines at the microphone.

- The Chair closes the public hearing.
 - Discussion. The ZBA may ask staff or the applicant questions.
 - The Chair shall call for a motion.
 - After a motion has been made and supported, there may be additional discussion.
 - The Chair will call for a roll call vote.
- (7) **Motions.** The Chair shall restate motions before a vote is taken. The name of the maker and supporters shall be recorded. The motion shall state whether or not a practical difficulty or undue hardship has been found. The reasons for such a finding shall also be stated.
- (8) **Voting.** The concurring vote of 2/3's of the ZBA members shall be required for the approval of a use variance. The concurring vote of a simple majority of the ZBA members shall be required to reverse an order, requirement, decision, or determination of the zoning officer to approve a non-use variance, to decide in favor of the applicant on a matter upon which the ZBA is required to pass under the zoning ordinance, and for all other business. Voting shall be by roll call unless the Chair decides another method of voting would be appropriate. All members of the ZBA, including the Chair shall vote on all matters except as provided below. The order of the voting members shall be varied.
- a) No member shall abstain from voting on any matter except in the case of a conflict of interest as provided below in Section 3 (12) of these rules.
- (9) **Conditions.** The ZBA may modify a request or impose reasonable conditions designed to maintain the public health, safety and welfare.
- (10) **Withdrawals.** In the event that an applicant withdraws an application after the notices have been sent and the meeting posted, the ZBA shall introduce the case and advise that the item has been withdrawn. A motion to accept the withdrawal will be entered. In the event that an applicant withdraws an application before the notices have been sent and the meeting posted, the ZBA shall receive a copy of the withdrawal, but no motion to accept the withdrawal shall be necessary.
- (11) **Dismissals.** When the petitioner fails to appear at a properly scheduled meeting of the ZBA, the Chair may entertain a motion to dismiss the case for want of prosecution. In the absence of a motion, the Chair shall rule. In such cases, the petitioner will be furnished written notice of the action.
- (12) **Conflict of Interest.** A ZBA member shall declare a possible conflict of interest and reasons for such, after the introduction of a case. The ZBA shall discuss and determine if such a conflict exists. Fellow ZBA members shall make and support a motion to excuse the ZBA member from deliberating. The excused member shall leave the meeting room during deliberation of the case. An alternate member may be called to serve as a member for the purpose of reaching a decision on the case. The excused ZBA member shall be called back prior to the introduction of the next case. In the event that the ZBA member is the applicant, then they shall be allowed to remain in the meeting to present their case.
- a) Failure of a member to disqualify themselves from a vote in which the member has a conflict of interest constitutes malfeasance in office.
- (13) **Order of Business.** A written agenda for all regular meetings shall be prepared as follows. The order of business shall be:
- Open the meeting – call meeting to order, confirm recorder, if any, is on
 - Pledge of Allegiance
 - Roll Call

- Confirmation of a Quorum
 - Approval of Agenda
 - Approval of Minutes – Each set of minutes shall be approved individually
 - Old Business – Items that have been postponed or referred to staff
 - New Business
 - Other Business – Administration or ZBA members may discuss upcoming items or interpretation concerns unrelated to agenda items
 - Liaison Reports
 - Public Comments
 - Adjourn
- (14) **Rules of Order.** All meetings of the ZBA shall be conducted in accordance with generally accepted parliamentary procedure, as governed by the most current edition of “Robert’s Rules of Order.”
- (15) **Notice of Decision.**
- a) Upon determination of the Zoning Board of Appeals case a documentation of decision will be signed by the Chair or acting Chair and Zoning Administrator of the determination consisting of finding of facts, reason for decision, the decision, and conditions, if any to complete the approval of record process.
 - b) The City shall send a copy of the approved minutes containing the ZBA decision and any conditions to the petitioner within five days of the minutes being approved.

SECTION FOUR – OFFICERS

- (1) **Selection.** Annually, at the July meeting, the ZBA shall select by majority vote from its membership, a Chair and Vice-Chair. Officers shall be eligible for re-election. If there is no July meeting, then the officers shall be elected no later than a September meeting or the next regularly held meeting after September.
- (2) **Duties.** The Chair shall preside at all meetings and shall conduct all meetings in accordance with the rules provided herein. If the Chair is not able to chair a meeting or portion of a meeting, the Vice-Chair shall act in place of the Chair for that meeting or portion of meeting.
- a) The Vice-Chair shall act in the capacity of the Chair and shall succeed to the office of Chair in the event of a vacancy in that office.
 - b) If there is a vacancy in the office of Vice-Chair for whatever reason, the ZBA shall select a successor to the office of Vice-Chair at the earliest practicable time.
 - c) The Zoning Administrator shall be responsible for the preparation of minutes, keeping of pertinent public records, delivering communications, petitions, reports and related items of business of the ZBA, issuing notices of public hearings and performing related administrative duties to assure efficient and informed ZBA operations.
- (3) **Tenure.** The officers shall take office at the next meeting after their election. They shall hold their offices until their successors are elected and assume office.

SECTION FIVE – MINUTES

The minutes shall contain a synopsis of the meeting including a complete restatement of all motions and recording of votes; a complete statement of the conditions or recommendations made on any action; and recording attendance. All communications, actions, and resolutions shall be attached to the minutes. The official records shall be deposited with the City Clerk.

SECTION SIX – OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

- (1) All meetings of the ZBA shall be opened to the public and held in a place available to the general public.
- (2) All deliberations and decisions of the ZBA shall be made at a meeting open to the public.
- (3) A person shall be permitted to address a hearing of the ZBA under the rules established in section 3 (6) and to address the ZBA concerning non-hearing matters under the rules established under section 3 (13) to the extent that they are applicable.
- (4) A person shall not be excluded from a meeting of the ZBA except for breach of the peace committed at the meeting.
- (5) All records, files, publications, correspondence, and other materials are available to the public for reading, copying and other purposes as governed by the Freedom of Information Act.

SECTION SEVEN – ANNUAL REVIEW

These rules of procedures shall be reviewed annually, at the July meeting, or if there is no July meeting, no later than the September meeting or the next regularly held meeting after September.

Care shall be taken to insure that these rules shall not conflict with any federal or state law or City of Berkley ordinance; however, if any such conflict exists, then the federal or state law or city ordinance shall override these rules, but only to the extent of such conflict.

SECTION EIGHT – AMENDMENTS

These rules may be amended by the ZBA by a concurring vote pursuant to section 3 (8) during any regular meeting, provided that all members have received an advanced copy of the proposed amendments at least three days prior to the meeting at which such amendments are to be considered.