



## **BY-LAWS OF THE CITY OF GRAND HAVEN ZONING BOARD OF APPEALS**

### **Section 1: AUTHORITY**

The following rules of procedure are hereby adopted by the Grand Haven Zoning Board of Appeals to facilitate the performance of its duties as outlined in the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended.

### **Section 2: MEMBERSHIP AND OFFICERS**

- A. Regular Members.** This ZBA shall be composed of seven (7) regular members. For purposes of these bylaws the phrase "members of the ZBA" shall mean the regular ZBA members.
- B. Selection and Tenure** – The Zoning Board of Appeals members shall be appointed by the mayor, but such appointment shall always be subject to the approval by a majority vote of the city council. At least one member of such board shall be a member of the Planning Commission, and the Commissioner's term on the board shall be co-terminus with the member's term on the Planning Commission. Said member shall be selected by the Chair of the Planning Commission. It is desirable the members of the ZBA be selected be representative of the population distribution and of the various interests present in the City. An elected officer of the City shall not serve as Chair of the Zoning Board of Appeals. Annually, the Zoning Board of Appeals shall select from its membership a chairperson and vice chairperson. A Secretary may be appointed from either the Board membership or a designated city official.

The term of each appointed member, shall be three (3) years or until the member's successor takes office. The Mayor and City Council shall seek to stagger the expiration dates of members of the Zoning Board of Appeals so at least one member's term expires each year and to achieve a reasonable degree of continuity of membership from one year to the next. Each member is eligible for two (2) consecutive terms.

Members may, after a public hearing, be removed by the mayor for inefficiency, neglect of duty, or malfeasance in office. The absence of any member of the commission from three (3) consecutive regular meetings without a reasonable and valid excuse shall create a vacancy. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the mayor

- C. Chairperson** -- The chairperson shall preside at all meetings, appoint committees, act as the official spokesperson for the ZBA and perform such other duties as ordered by the Zoning Board of Appeals or the City board.
- D. Vice chairperson** -- The vice chairperson shall act in the capacity of the chairperson in his/her absence. In the event the office of chairperson becomes vacant, the vice chairperson shall succeed to this office for the unexpired term and the Zoning Board of Appeals shall elect a successor to the

office of vice chairperson for the unexpired term.

- E. **Secretary** -- The Secretary shall execute documents in the name of the Zoning Board of Appeals, perform the duties hereinafter listed below and shall perform such other duties as a Zoning Board of Appeals may determine. These duties may be performed by the Zoning Administrator in the absence of an appointed Secretary.
1. **Minutes** -- The Secretary shall be responsible for a permanent record of the minutes of each meeting and shall have them recorded in suitable permanent records which shall be filed in the office of the City Clerk and shall be a public record. The minutes shall include, but not be limited to, a record of attendance, a complete restatement of all motions, the record of votes taken, and all conditions or recommendations made on actions taken.
  2. **Correspondence** -- The Secretary shall be responsible for issuing formal written correspondence with other groups or persons, as directed by the Zoning Board of Appeals. All communications, petitions, reports or other written materials received by the secretary shall be brought to the attention of the Zoning Board of Appeals.
  3. **Attendance** -- The Secretary shall be responsible for maintaining an attendance record for each Zoning Board of Appeals member and report those records annually to the Zoning Board of Appeals for inclusion in the annual report to the City board
  4. **Notices** -- The Secretary shall issue such notices as may be required by the Zoning Board of Appeals.
- F. **Planning Commission Representative**--The Planning Commission representative to the Zoning Board of Appeals shall report the actions of the Zoning Board of Appeals to the planning commission and update the Zoning Board of Appeals on actions by the planning commission that relate to the functions and duties of the Zoning Board of Appeals.

### Section 3: MEETINGS

The business the Zoning Board of Appeals may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act. The Zoning Board of Appeals may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

- A. **Regular Meetings** -- The Zoning Board of Appeals may schedule regular meetings each year and by resolution shall determine the time and place of such meetings. Other meetings may be held as necessary. When a regular meeting falls on a legal holiday or upon a day resulting in a conflict, the Zoning Board of Appeals shall, if possible, select a suitable alternate meeting date in the same month as the originally scheduled meeting.

Notice of regular Zoning Board of Appeals meetings shall be posted at the principal City office within 10 days after the Zoning Board of Appeals' first meeting in each calendar year in accordance with the Open Meetings Act.

- B. **Special Meetings**—Special meetings may be called by mutual consent upon written request from the Secretary or Zoning Administrator. Notice of special meetings shall be given to the members of the Zoning Board of Appeals at least 48 hours prior to the meeting. Such notice shall state the purpose, time and location of the special meeting and shall be posted in accordance with the Open Meetings Act; Act 267 of 1976 as amended.

- C. **Notice**—Notice required for specific requests or actions will be given in accordance with the Michigan Zoning Enabling Act or other applicable statute.
- D. **Public Hearings**—All public hearings held by the Zoning Board of Appeals must be held as part of a regular or special meeting of the Zoning Board of Appeals. The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof in accord with City of Grand Haven Zoning Ordinance Section 40-122 Hearing Notice Requirements hereof. Upon hearing, any party may appear in person or by agent or by attorney.
- E. **Agenda**—The Secretary shall be responsible for preparing an agenda for Zoning Board of Appeals meetings. The agenda may be modified by action of the Zoning Board of Appeals.
- F. **Quorum**—A majority of the regular members of the Zoning Board of Appeals shall constitute a quorum for transacting business and taking official action for all matters. The Zoning Board of Appeals shall not conduct business unless a majority of the regular members is present.
- G. **Voting**—To pass or deny any dimensional variance, appeal or other official action required by the zoning ordinance, an affirmative vote of at least a majority of the total membership of the Zoning Board of Appeals is required. Voting shall be by a roll call vote. Except in the case of a conflict of interest, all Zoning Board of Appeals members, including the chairperson, shall vote on all matters.
- H. **Public Records**—All meetings, minutes, records, documents, correspondence and other materials of the Zoning Board of Appeals shall be open to public inspection in accordance with the Freedom of Information Act, except as may otherwise be provided by law.

#### **Section 4: DUTIES AND POWERS**

The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms or intent of this Ordinance, but does have power to act on those matters where by statute or this Ordinance provision is made for an administrative review, interpretation, variance or exception as defined therein.

- A. **Interpretation.** The Zoning Board of Appeals shall have the power to:
  - 1. Interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of the Ordinance and in accordance with applicable law.
  - 2. Determine the precise location of the boundary lines between zoning districts.
- B. **Variances.** The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height regulations, yard and depth regulations, and off-street parking and loading space requirements provided it finds that **all of the Basic Conditions** set forth herein can be satisfied. The appellant shall submit, along with the established fee and other materials, a narrative demonstrating why a variance is sought.
  - 1. **Basic Conditions.** The Board shall find that a variance request meets all of the following conditions.
    - a. The requested variance shall not be contrary to the public interest or to the intent and purpose of this Ordinance.

- b. The requested variance shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a special land use permit is required.
  - c. The requested variance shall not cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located.
  - d. The conditions or situation of the property or its intended use is not so general or recurrent a nature as to make reasonably practicable a general regulation for the condition or situation.
  - e. Any exceptional or extraordinary circumstances applying to the property in question are not self-created.
  - f. There is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.
  - g. The requested variance is the minimum variance that will make possible the reasonable use of the improvement.
2. Rules. The following rules shall be applied in the granting of variances:
- a. The Board may specify, in writing, such conditions regarding the character, location, and other features that will in its judgment, secure the objectives and purposes of this Ordinance. The breach of any such condition shall automatically invalidate the permit granted.
  - b. Each variance granted under the provisions of this Ordinance shall become null and void unless: The construction authorized by such variance has received a City Land Use Permit within one (1) year after the granting of the variance; and the occupancy of land, premises, or buildings authorized by the variance has taken place within one (1) year after the issuance of the Land Use Permit, unless an extension of time has been granted by the Zoning Board of Appeals. The Zoning Administrator may grant one six (6) month extension of construction. After expiration of a six (6) month extension, all extension shall be granted by the Zoning Board of Appeals.
  - c. No application for a variance which has been denied wholly or in part by the Board shall be re-submitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence of changed conditions found, upon inspection by the Board, to be valid. For such newly discovered evidence to be considered, an applicant shall submit a detailed description of such evidence to the Zoning Administrator who shall place it on the agenda of the Zoning Board of Appeals along with a report and recommendation on the nature of such newly discovered evidence and whether it may have been pertinent to the decision of the Zoning Board of Appeals. If the Zoning Board of Appeals determines that the newly discovered evidence would have been pertinent to its decision, it shall direct the Zoning Administrator to accept a new application for the previously denied variance. An application considered under the terms of this subparagraph shall be considered a new application and shall be subject to all hearing, notice and fee requirements of this Ordinance.

### **Section 5: CONFLICT OF INTEREST**

- A.** No Board member shall sit in hearing or vote in passing upon any case in which he is personally or financially interested. Disclosure of the basis for abstention may be given at the meeting. The Board member shall abstain from discussion and voting. If such abstention results in loss of quorum, the matter shall be laid over until the next regularly scheduled meeting, and testimony shall not be heard without a quorum.
- B.** Conflict of interest is defined as, and a Zoning Board of Appeals member shall declare a conflict of interest and abstain from participating in Zoning Board of Appeals deliberations, voting on a request and must leave the room when:
1. An immediate family member is involved in any request for which the Zoning Board of Appeals is asked to make a decision. "Immediate family member" is defined by the Zoning Ordinance.
  2. The Zoning Board of Appeals member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant's company, agency or association.
  3. The Zoning Board of Appeals member owns or has a financial interest in neighboring property.
  4. There is a reasonable appearance of a conflict of interest, as determined by the Zoning Board of Appeals member declaring such conflict.
  5. The Zoning Board of Appeals member is also a member of the planning commission or the City board and voted on the same matter as a member of the planning commission or City board. However, the member may consider and vote on other unrelated matters involving the same property.
- C.** The Zoning Board of Appeals member declaring a conflict of interest should state the nature of the conflict and whether he or she believes he or she could impartially consider the request before the Zoning Board of Appeals. He or she should individually decide to abstain from any discussion or votes relative to the matter that is the subject of the conflict. The member declaring a conflict shall absent him/herself from the room in which the discussion takes place, unless doing so would violate his or her constitutionally protected rights to participate. He or she should not make any presentations to the Zoning Board of Appeals as a representative of the proposal.

### **Section 6: DECISIONS**

- A. Possible Decisions.** The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from or, where it is claimed there are practical difficulties or unnecessary hardship, the Board may grant or deny variances.
- B. Time of Decisions.** The Board shall make its decisions within a reasonable time from the point of the application completion.
- C. Motions.** The motion proposing a decision to reverse or modify the decision appealed from or, in the case of a variance, a decision to grant the variance based on practical difficulty or unnecessary hardship shall include reasons in support of the proposed decision to reverse or modify or to grant a variance, and what conditions, if any, the Board requires.

- D. Vote.** The concurring vote of the majority of the members of the Board shall be necessary to reverse any order, requirement or determination of the Administrative Official. The same vote shall be necessary for the granting of a variance.
- E. Filing of Decision and Orders.** Decisions and Orders of the Board shall be filed in the office of the City Clerk and shall be public records. Copies shall also be sent to all parties of the appeal, the City Assessor's Office, and to other interested agencies and departments of the City Government.
- F. Decision is Final:** The decision of the Zoning Board of Appeals shall be final upon the approval of the meeting minutes, unless any person having an interest affected by this Ordinance shall appeal said decision to the Circuit Court.
- G. Time To and Notice of Appeal: Transmission of the Record.** Such appeal shall be taken within thirty (30) days, by the filing with the City Clerk, the Zoning Administrator or other officer from whom the appeal is taken and with the Zoning Board of Appeals of a notice of appeal specifying the grounds thereof together with a fee established by the City Council which shall be paid to the Zoning Administrator at the time the notice of appeal is filed. The officer from whom the appeal is taken shall forthwith transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed was taken.

#### **Section 7: AMENDMENTS**

These rules of procedure may be added to, amended or repealed in whole or in part. Proposed changes to these rules of procedure must be submitted in writing to the member of the ZBA at least one (1) month in advance of the meeting at which the proposed changes will be considered. A majority vote of the entire ZBA members shall be required to amend these rules of procedure.

Adopted by the City of Grand Haven Zoning Board of Appeals on this \_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
ZBA Chairperson

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ZBA Secretary