



# Village of Mayville Michigan ZONING BOARD OF APPEALS

## ADOPTED BYLAWS

05/17/2022

### ARTICLE I: PURPOSE

- A. The following rules of procedure are hereby adopted by the Village of Mayville Michigan Zoning Board of Appeals (hereinafter known as the ZBA) to facilitate the performance of its duties as outlined in the Village of Mayville Zoning Ordinance (Article 6 Division 3: Zoning Board of Appeals).

### ARTICLE II: MEMBERSHIP

- A. The membership of the ZBA shall be the number and appointed according to the procedure as established in the Village of Mayville Zoning Ordinance (Article 6 Division 3: Zoning Board of Appeals Sec. 21.00) and section 601 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3601).
- B. Attendance. If any member of the ZBA is absent from three consecutive regularly scheduled meetings, then that member shall be considered delinquent. Delinquency shall be grounds for the Village Council to remove a member from the ZBA for nonperformance of duty or misconduct after holding a public hearing on the matter. The ZBA secretary, or acting secretary in the absence of the elected secretary, shall keep attendance records and shall notify the Village Council whenever any member of the ZBA is absent from three consecutive regularly scheduled meetings, so the Village Council can consider further action allowed under law or excuse the absences.
- C. Training. Each member shall have attended at least one ZBA/Planning Commission meeting during the member's current term of office. Additional training shall be provided by one or more of the following organizations: Michigan Association of Planning, Michigan State University Extension, Michigan Townships Association, Michigan Municipal League, continuing education programs of Michigan State University, University of Michigan, Northern Michigan University, Central Michigan University, Wayne State University, or other organizations with recognized expertise within the planning profession.
- D. Liaisons. The purpose of liaisons is to provide certain Village of Mayville officials 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 requirements. Liaisons are, if not already an appointed ZBA member, are:
1. Planning Department Staff, and their agents and consultants.
  2. Zoning Administrator.
  3. The ZBA's attorney.
  4. The County Surveyor.
  5. The County Register of Deeds.

6. County Extension Director.
7. Regional (multi-county) Planning Staff.

## ARTICLE III: CONFLICT OF INTEREST AND INCOMPATIBILITY OF OFFICE

- A. 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, the following:
  1. Issuing, deliberating on, voting on, or reviewing a case concerning him or her.
  2. Issuing, deliberating on, voting on, or reviewing a case concerning work on land owned by him or her or which is adjacent to land owned by him or her.
  3. 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.
  4. Issuing, deliberating on, voting on, or reviewing a case which is an action which results in a pecuniary benefit to him or her.
  5. Issuing, deliberating on, voting on, or reviewing a case 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. Issuing, deliberating on, voting on, or reviewing a case where his or her employer is:
    - a. an applicant or agent for an applicant, or
    - b. 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 at the next meeting of the ZBA:
  2. cease to participate at the ZBA meetings, or in any other manner, or represent oneself before the ZBA, its staff, or others, and
  - 3, during deliberation of the agenda item before the ZBA leave the meeting or remove oneself from the front table where members of the ZBA sit, until that agenda item is concluded.
- C. 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 his 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.

## ARTICLE IV: DUTIES OF ALL MEMBERS

- A. 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 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.

**B. Site Inspections**

1. Site inspections shall be done by the zoning administrator or other staff. A written report of the site inspection shall be orally presented to the ZBA at a public meeting or hearing on the site.
2. If desired, no more than one member of the ZBA may accompany the zoning administrator or staff on a site inspection.

**C. Not Voting On the Same Issue Twice.**

1. Any member of the ZBA shall avoid situations where they are sitting in judgement and voting on a decision, which they had a part in making. As used here, sitting in judgement, and voting on a decision which they had a part in making at a minimum shall include, but not necessarily be limited to, the following:
  - a. When the appeal is of an administrative or other decision by Planning Commission and the member of the ZBA sits both on 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 both on the legislative body and ZBA.
  - c. When the appeal is of an administrative or other decision by any committee of the Planning Commission, legislative body, other committee, and the member of the ZBA sits both on that committee and ZBA.

**D, 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, and food valued over \$10.

**E. 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 of the meetings of the ZBA.

## **ARTICLE V: OFFICERS**

- A. Selection.** At the regular meeting in January of each year, the ZBA shall select from its membership a Chair, Vice-Chair, Secretary, and Deputy Secretary. All officers are eligible for reelection. 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. In the event the office of the Secretary becomes vacant, the Deputy Secretary shall succeed to this office for the unexpired term and the ZBA shall select a successor to the office of Deputy Secretary for the unexpired term. The ZBA or Secretary may also designate another person who is not a member of the ZBA to be the recording secretary.

- B. Tenure. The Chair, Vice-Chair and Secretary shall take office in January following their selection and shall hold office for a term of one year or until their successors are selected and assume office.
- C. 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. Shall sign all decisions of the ZBA pursuant to M.C.L 125.3606(3);
  - 3. Shall 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 as pursuant to these Rules of Procedure;
  - 5. Appoint committees;
  - 6. Appoint officers of committees or choose to let the committee select their own officers.
  - 7. May call special meetings pursuant to these Rules of Procedure;
  - 8. Appoint an Acting-Secretary in the event the Secretary is absent from an ZBA meeting.
  - 9. Review with the Secretary or staff, prior to a ZBA meeting, the items to be on the agenda if he or she so chooses;
  - 10. Act as the ZBA's chief spokesman and lobbyist to represent the ZBA at local, regional, and state government levels.
  - 11. Represent the ZBA, along with the Village Council ZBA member, before the Village Council; and
  - 12. Represent the ZBA, along with the Planning Commission member, before the Planning Commission; and
  - 13. Perform such other duties as may be ordered by the ZBA.
- D. Vice-Chair's Duties. The Vice-Chair shall:
  - 1. Act in the capacity of Chair, with all the powers and duties found in these Rules of Procedure, in the Chair's absence; and
  - 2. Perform such other duties as may be ordered by the ZBA.
- E. Secretary's Duties. The Secretary shall:
  - 1. Execute documents in the name of the ZBA;
  - 2. Be responsible for the minutes of each meeting pursuant to these Rules of Procedure if there is not a recording secretary.
  - 3. Review the draft of the minutes, sign them, and submit them for approval by the ZBA and shall have them spread in suitable volumes. Copies of minutes shall be distributed to each member of the ZBA prior to the next meeting of the ZBA (the Secretary may delegate this duty to ZBA staff);
  - 4. Receive all communications, petitions and reports to be addressed by the ZBA, delivered or mailed to the Secretary in care of the Planning Department Office;

5. Keep attendance records pursuant to these Rules of Procedure;
  6. Provide notice to the public and members of the ZBA for all regular and special meetings, pursuant to the Open Meetings Act, P.A. 267 of 1976, as amended, M.C.L. 15.261 et seq. (the Secretary may delegate this duty to ZBA staff);
  7. Prepare an agenda for ZBA meetings pursuant to these Rules of Procedure (the Secretary may delegate this duty to Planning Department staff);
  8. May hire on behalf of the ZBA for the local unit of government a ZBA recording secretary (who shall not be a member of the ZBA); and
  9. 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 a first draft of minutes pursuant to these Rules of Procedure for review and signature by the Secretary; and
  2. Perform such other duties as may be ordered by the ZBA or secretary.

## ARTICLE VI: Demand for Appeal

- A. Filing. The following may file for an appeal:
1. Any aggrieved person, or the person's authorized agent;
  2. Officer, department, board, or bureau of the state; and
  3. Officer, department, board, or bureau of a local unit of government.
- B. The filing for an appeal of a decision or for a variance shall be in writing on a form provided by the zoning administrator, and upon payment of a fee as may be established from time to time by the legislative body. Such Demand for Appeal shall be filed with the zoning administrator not more than 30 days from the date of the decision being appealed. A Demand for Appeal for a variance shall be filed with the zoning administrator at any time.
- C. Notification. Within 10 days from the date of the receipt of the Demand for Appeal which is found to be complete, the zoning administrator shall contact the Chair of the ZBA and set up a date(s) and time for the ZBA to meet to hold a hearing and a meeting to consider and act on the case. Notice of such meeting(s) shall be made by the zoning administrator as specified in these Rules of Procedure.
- D. The notice sent to members of the ZBA shall include:
1. Copies of the Zoning Board of Appeals Application form;
  2. the entire content of the zoning administrator's file, and/or other file(s) on the case;
  3. other relevant correspondence, permits by other applicable enforcement agencies;
  4. previous zoning permits and record of ZBA actions concerning the property in question; and
  5. anything else which is relevant.
- E. The zoning administrator shall prepare copies of the above for inclusion in the package sent to ZBA members.
- F. The notice shall include the following information:
- L Describe the nature of the request
  2. Indicate the property (ie) which is(are) subject of the hearing.
  3. A listing of all existing street addresses within the property (ie) which is(are) subject of the appeal. (Street addresses do not need to be created and listed if no

such addresses currently exist. If there are no street addresses another means of identification may be used.

4. A statement of when and where the issue will be considered
  5. An indication of when and where written comments will be received concerning the issue.
- G. The notices shall be given not less than 15 days before the date of consideration for approval. Notices shall be:
1. Published in a newspaper of general circulation in the local unit of government. (Note: "General circulation" means a newspaper which has a paid subscription and does not mean a free-distribution advertiser or similar type publication.)
  2. Sent by mail or personal delivery to owners of property(ie) for the land which is the subject of the appeal.
  3. Sent by mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property(ie) which is the subject of the appeal regardless of whether the owner and property is located in the zoning jurisdiction or not.
  4. Sent by mail or personal delivery to all persons which occupy all structures within 300 feet of the property(ie) which is the subject of the appeal regardless of whether the structure and occupant is located in the zoning jurisdiction or not.
  5. Sent by mail or personal delivery to the person requesting the interpretation.
  6. Sent by mail or personal delivery to the governing body's attorney's office.
  7. Sent by mail or personal delivery to the landowner, and
  8. Sent by registered mail with return receipt to the person and/or agent seeking the appeal or variance.
- H. Deadline for Action. The above notwithstanding, the ZBA shall hear the case and render and file its decision with a statement of reasons for the decision with the zoning administrator at the next ZBA meeting, or within 20 days of filing of the notice of appeals, whichever occurs first.
- I. Notice of Decision. The Secretary, or designate, shall cause to have notices of the ZBA decision delivered in person or by first class mail to the zoning administrator; to the governing body's attorney's office; and to anyone else requesting a copy in writing. Further, a certified written notice of the decision to the petitioner, or his agent, filing the Demand for Appeal shall be sent by restricted registered mail with return receipt.

## ARTICLE VII: MEETINGS

- A. Regular Meetings. The ZBA shall meet at least once each year during the month of January. Any other meetings of the ZBA will be called as needed in response to receipt of a Demand for Appeal, so long as the meeting is scheduled within 20 days of the Demand for Appeal. The meeting can be called by the zoning administrator, the chairman of the ZBA, or, in the Chair's absence, the Vice-Chair.
- B. Other meetings. Meetings shall be called by delivering meeting notice by email or by personal delivery to members of the ZBA at least seven days prior to such meeting (so that members receive the notice prior to the weekend prior to the meeting date). The notice shall state the purpose, time, location of the meeting.
- C. Public. All meetings, hearings, records, and accounts shall be open to the public, and posted in compliance with P. A. 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. After that point during the meeting, public comment is normally not allowed; however, sometimes the ZBA may direct questions to members of the public. Public comment is at the beginning of the meeting so the ZBA can hear concerns and questions before acting on an issue. 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, any written material shall be made available without cost for members of the public asking for a copy 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. The Chair may ask members of the audience to caucus with others 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 without time limit or an extended time limit.
- D. Quorum. Half the total membership of the ZBA, rounded up to the next whole number, shall be the quorum for the transaction of business and the taking of official action for all matters.
- E. 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 want of prosecution, the petitioner will be furnished written notice of the action by the Secretary. 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, applicant must file a written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chair for good cause shown, and upon payment of a fee set from time to time by the governing body. 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 Secretary, or designee, shall prepare an agenda for each meeting and the order of business therein shall be as follows:
1. Call to order, roll call, and Pledge of Allegiance.
  2. Site inspection, then recess (optional, if the meeting is posted to include a site inspection).
  3. Reconvene and roll call (if following a site inspection).
  4. Election of officers, if necessary.
  5. Public Hearings. The Chairman will declare a hearing open and state its purpose.
    - a. The Chairman shall summarize, provide copies, or conspicuously post the procedure for public hearing as outlined in these Rules of Procedure for any members of the public in attendance, or provide copies.
    - b. Case Number
      - i. The zoning administrator presents the petitioner's request, his action on the matter and reasons for his decisions plus a written copy of the petitioner's request.

- ii. The petitioner --through himself, his agent, his lawyer-- may present his case, including presenting witnesses on his behalf. No time limit will be imposed on the petitioner.
  - iii. Members of the ZBA shall report on their site inspection and any conversations with the petitioner they may have had.
  - iv. Members of the public who support the petitioner speak and correspondence is read. At the chairman's option he 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 an unlimited period of time if there are a large number of people present on an issue or for a set duration of time.
    - (b) allow many to speak in favor of the petitioner and can impose a time limit for the speaker that is three (3) minutes or more per speaker.
  - v. Members of the public who oppose the petitioner speak and correspondence is read. At the chairman's option he 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 an unlimited period of time if there are a large number of people present on an issue.
    - (b) allow many to speak in opposition of the petitioner and can impose a time limit for the speaker that is three (3) minutes or more per speaker.
  - vi. Rebuttal. Anyone may ask the Chairman questions on presentations or speeches given at this hearing. The Chairman will seek an answer to the question. Answers shall be given to the Chairman. No discussion, questioning or answering shall take place between any two or more people except between the Chairman and the individual who has the floor.
  - vii. Close the hearing. (At this point all public participation on the issue ends.)
6. Public Comment for on this agenda but which are not items subject to a hearing at this meeting).
  7. Recess to another night as provided in these Rules of Procedure (optional).
  8. Housekeeping Business.
    - a. Approval of minutes from previous meeting.
    - b. Other.
  9. Business Session.
    - a. Action on pending case number.
      - i. Discussion: Review of the facts based on all information presented (from the application, written request for appeal, zoning ordinance, physical characteristics of the parcels, staff reports, hearing testimony). Discussion continues until a member is confident enough to propose a motion that includes a "finding of fact" and/or "conclusions", and "rationale explaining why conclusions are reached" and "conditions" if any.



issues not specifically covered by these Rules. Where these Rules of Procedure conflict, or are different than Robert's Rules of Order, then these Rules of Procedure control.

16. Motions.

- a. Motions shall be restated by the Chair before a vote is taken.
- b. Findings of Fact. All actions taken in an administrative capacity (including but not limited to appeals, special use permits, subdivisions, zoning, site plan review, planned unit developments, variances, determination of compliance with an adopted plan, review of township zoning) shall include each of the following parts.
  - i. A finding of fact, listing 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, and untrue statements.
  - ii. Conclusions, listing reasons based on the facts for the ZBA's action.
  - iii. The ZBA's action, recommendation or position, approval, approval with conditions, or disapproval.
- c. Any other motion shall be stated in prose or in the form of a resolution.

17. Voting. Voting shall be by roll call vote and shall be recorded by "yes" or "no".

Members must be present 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.

## ARTICLE VIII: RECORDS

A. Preparation. The ZBA 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 these Rules of Procedure.
2. A signed statement indicating that notices, as required in 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 the Demand for Appeal, including any maps, drawings, site plans, etc.
4. The original of the minutes of the meeting (including the hearing and site inspection) which shall include, in chronological sequence of occurrence:
  - a. Time and place the meeting was called to order.
  - b. Attendance.
  - c. Indication of others present (listing names if others choose to sign in and/or a count of those present).
  - d. Summary or text of points of all reports (including reports of what was seen and discussed at a site inspection) given at the meeting and who gave the report and in what capacity. An alternative is to attach a copy of the report if offered in writing.
  - 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. An alternative is to attach a copy of the public's statement, petition, or letter, if it is provided in written form.
- 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 (e.g., special use permit, variance, conditional use permit, subdivision, land division, etc.)
    - iii. The location of the property involved (tax parcel number and description, legal description is best).
    - 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 administrative body'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 not complied.)
    - viii. The decision (e.g., approve, deny, approve with modification).
    - ix. A list of all required improvements (and if they are to be built upfront or name the type of performance security to be used), if any.
    - x. List of all changes to the map/drawing/site plan that was submitted.
    - xi. Make the map/drawing/site plan part of the motion (e.g., "...attached to the original copy of these minutes as appendix 'N, and made a part of these minutes...").
  - 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?
  - i. The type of vote and its outcome. If a roll call vote, indicate who voted yes, no, abstained or a statement the vote was unanimous. If not a roll call vote, then simply a statement: "the motion passed/failed after a voice vote."
  - 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. Full text of any resolutions offered.
  - s. Summary of announcements.
  - t. Summary of informal actions, or agreement on consensus.
  - u. 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, 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 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.
- B. Retention. The record of each meeting shall be permanently kept on file and spread in suitable volumes, with a copy filed with the clerk of the Village of Mayville. All the pertinent documents and minutes for each case before the Board of Appeals shall be copied and filed with the zoning administrator's office. Copies of the minutes shall be distributed to each member of the ZBA. Copies of the minutes shall be available to the public within seven days of the meeting.

## ARTICLE IX: OTHER DUTIES

- A. The ZBA may also formulate and provide advice and may advise policy to the planning commission, Village Council or any committee thereof, on issues dealing with administration, text, map, and enforcement of the zoning ordinance.

## ARTICLE X: ADOPTION, REPEAL, AMENDMENTS

- A. Upon adoption of these Rules of Procedure of May 17, 2022, they shall become effective and all previous rules of procedure, as amended, shall be repealed.
- B. These Rules of Procedure may be amended at any regular or special meetings by a two thirds (%) 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.

Mayville Village Council Approved: 05-17-22