

Zoning Board of Appeals Rules of Procedure

As Adopted: May 17, 2018

REVISED: July 19, 2018

REVISED: July 20, 2023

REVISED: March 21, 2024

Section 1.0 Purpose.

The following rules of procedure are hereby adopted by the Scio Township Board of Appeals (hereinafter known as "ZBA") to facilitate the performance of its duties as outlined in the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended MCL 125.3101, et seq. These rules are enacted pursuant to Article XIV of the Scio Township Zoning Ordinance providing for the creation of a ZBA and the appointment of members thereto. Nothing herein shall be construed to give or grant the ZBA the power or authority to alter or change the Zoning Ordinance, including the Zoning Map, which authority is reserved for the legislative body.

Section 2.0 Membership and Term.

- 2.1 **Board Composition.** The ZBA shall consist of five (5) members. One (1) member shall also serve as a member of the Scio Township Planning Commission.
- 2.2 **Township Board Representation.** One (1) member of the ZBA may be a current member of the Scio Township Board of Trustees.
- 2.3 **Qualifications.** All members shall be electors of Scio Township and be representative of the community.
- 2.4 **Appointment.** Any Township Board member can bring forth a potential member for appointment. All appointments shall be approved by the Scio Township Board of Trustees.
- 2.5 **Vacancies.** All vacancies shall be filled in the same manner as the regular appointment process (Section 2.04), and shall only be for the balance of the uncompleted term.
- 2.6 **Term.** The term of each permanent ZBA member shall be three (3) years, except for members serving because of their membership on the Planning Commission or the Board, whose terms shall be limited to the time they are members of those bodies. Terms shall be staggered in a reasonable and practical manner.
- 2.7 **Alternates.** The Township Board of Trustees may appoint two (2) alternate members for the same terms as regular ZBA members. An alternate member may be called to serve as a member of the ZBA in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. An alternate member serving on the ZBA has the same voting rights as a regular member.

- 2.8 **Selection.** At the regular meeting in January of each year, the ZBA shall select from its membership Chairperson, Vice-Chairperson, and Secretary. All officers are eligible for re-election. An elected Township Official shall not serve as an officer of the ZBA.
- 2.9 **Tenure.** The Chairperson, Vice-Chairperson, and Secretary shall take office the same meeting of their selection and shall hold office for a term of one (1) year or until their successors are selected and assume office.
- 2.10 **Chairperson.** The Chairperson shall preside at all meetings, prepare the meeting agenda, sign documents on behalf of the ZBA along with the Secretary, administer oaths regarding the cases before the ZBA, compel the attendance of witnesses, and perform such other duties as may be ordered by the ZBA or Scio Township Board of Trustees.
- 2.11 **Vice-Chairperson.** The Vice-Chairperson shall serve in the absence of the Chairperson.
- 2.12 **Secretary.** The Secretary, subject to the direction of the ZBA and the Chairperson, shall conduct all correspondence of the Board and shall generally supervise the clerical work of the ZBA. The Secretary shall be responsible for the record and minutes of each meeting.
- 2.12 **ZBA/Planning Commission Representative.** One (1) Planning Commission member shall serve as a liaison to the ZBA. The ZBA liaison shall report the actions of the ZBA to the Planning Commission and update the ZBA on actions by the Planning Commission that relate to the functions and duties of the ZBA. A member of the ZBA who is currently an officer on the Planning Commission may not simultaneously serve as an officer of the ZBA.

Section 3.0 Duties of the ZBA. The ZBA shall perform the following duties:

1. Act on applications for variances, appeals, interpretations, or other matters as required by the Zoning ordinance and the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, MCL 125.3101 et seq.
2. Attend local training sessions, conferences, workshops, or meetings, as needed to properly fulfill the duties of a ZBA member.
3. Perform other duties and responsibilities as requested by the Board of Trustees or as may be specified in another Township ordinance.
4. Conduct site visits as deemed necessary to evaluate an application and supporting material.

Section 4.0 Meetings.

- 4.1 **Regular Meetings.** Regular monthly meetings shall be held on the third Thursday of each month or such other time as shall be set by the ZBA.

- 4.2 **Meeting Notice.** All meeting notices shall be made in accordance with the requirements of the Zoning Ordinance and the Open Meetings Act (P.A. 267 of 1976, as amended).
- 4.3 **Public Records.** All meetings, records, documents, correspondence and other materials of the ZBA shall be open to public inspection in accordance with the Freedom of Information Act, except as my otherwise be provided by law.
- 4.4 **Quorum.** Three (3) members of the total five (5) members serving shall constitute a quorum for the transaction of business and the taking of official action for all matters. The ZBA shall not conduct business unless a majority of members is present.
- 4.5 **Governing Procedures.** Meetings shall be conducted in a formal manner, in accordance with Michigan Zoning Enabling Legislation, ZBA Rules of Procedure, and Roberts Rules of Order. Roberts Rules shall not apply when they conflict with Michigan Zoning Enabling Legislation or they deny a petition his/her constitutional rights.
- 4.6 **Order of Business.** An agenda shall be prepared for each meeting and the order of business therein shall be as follows, unless the Chairperson in his or her discretion varies the order of items 4 through 10:
1. Call to Order.
 2. Roll Call.
 3. Adoption of Agenda.
 4. Communications or correspondence.
 5. Swearing In of persons giving testimony during a Public Hearing.
 6. Public Hearings.
 7. Old Business.
 8. Approval of Minutes.
 9. Other Business, including report of Planning Commission liaison.
 10. Public Comment. Citizens wishing to address the Zoning Board of Appeals on matters which are not on the public hearing portion of the agenda. Each speaker shall identify him/her self by name, and such oral presentations shall be limited to three (3) minutes except a representative or spokesperson of an organization shall have five (5) minutes to address the Board, provided that if more than 5 citizens express a desire to speak, the Chairperson in his or her discretion may limit the time of comment.
 11. Adjournment.

4.7 **Placing Agenda Items by ZBA Members.** Any member of the ZBA may request items to be placed on the agenda by contacting the Chairperson prior to the meeting or hearing. Requests should be accompanied by explanatory or background information when possible. The ZBA member may also proposed additions at the time of agenda approval during the meeting.

4.8 **Public Hearings.** All public hearings held by the ZBA shall be held as part of a regular or special meeting of the ZBA. The following rules of procedure shall apply to public hearings held by the ZBA:

1. The Chairperson opens the public hearing by announcing the subject of the appeal, the petition by identifying the applicant's name, case number, specified request, and the general location of the subject property.
2. Chairperson summarizes procedures/rules to be followed during the hearing.
3. Chairperson will call on the petitioner or their representative to present their statements in support of the appeal along with any supporting evidence.
4. The petitioner, his agent or attorney, may present his case, including presenting witnesses on his behalf.
5. Members of the ZBA shall report on their site inspection and any conversations with the petitioner they may have had.
6. Members of the public who support the petitioner speak and correspondence is read.
7. Members of the public who oppose the petitioner speak and correspondence is read.
8. The Chairperson may permit the petitioner a rebuttal within limits set by the Chairperson.
9. Chairperson will, upon their motion or the motion of any ZBA member announce the close of the hearing or announce continuation of the public hearing to another specified time and date if the hour is late or additional pertinent information must be obtained.
10. ZBA deliberates the request and decides the issue or, if a majority of members decide more information or clarification is needed, the issue may be postponed to a future meeting.

To ensure that everyone has the opportunity to speak, the ZBA may elect to limit the time permitted for each person to speak. However, the petitioner may be afforded additional time as determined by the Chairperson. The Chairperson may also elect to allow persons to speak only once, until all persons have had the opportunity to speak, at which time the Chairperson, in his or her discretion, may permit additional comments.

4.9 **General Rules for Conduct at Hearings.**

1. Statements or questions by the audience shall be addressed to the Chairperson.

2. ZBA members may question the petitioner, others in support, and those in opposition during presentations.
3. ZBA members shall refrain from debating or arguing with persons commenting.
4. If a large number of individuals wish to voice the same position either in support of or in opposition to the appeal, they may designate one (1) person to be the spokesperson for the group.
5. The Chairperson has the authority to restrict each speaker to a reasonable length of time for presenting their comments.
6. During the hearing, the ZBA shall not be bound by the strict rules of evidence and may take into consideration any evidence it deems relevant and material or exclude any evidence it deems irrelevant and immaterial.

4.10 **Motions.** Motions shall be reiterated by the Chairperson before a vote is taken.

A. Motions dealing with an appeal or variance concerning the Scio Township Zoning Ordinance shall be stated with the following parts or stated as two (2) motions:

1. The list of facts pertinent to making a decision on the matter, structured as a “finding of fact” on the case.
2. The conclusion, decision of the Board. This motion, or part of a motion, shall include the following parts:
 - i. The rationale and reasons for the conclusion. The rationale and reasons shall reference the exceptional difficult or unusual hardship upon which the appeal is based and shall contain at a minimum:
 - a. If there are exceptional or extraordinary circumstances or conditions applicable to the property involved or the intended use of the property that do not apply generally to other properties or class of uses in the same district;
 - b. If such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity;
 - c. If the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located;
 - d. If the granting of such variance will not adversely affect the purpose or objectives of the master plan of the Township; and

- e. Absent exceptional circumstances which would otherwise result in substantial injustice, whether the circumstances or conditions upon which the variance is based result from the actions of the applicant or his predecessor in title.

(Note: all five of the above points must be found true, or in the affirmative, or a variance shall not be granted.)

- ii. The conclusion or decision.
- iii. Any conditions upon which a variance may be issued, if applicable. Conditions shall be listed in detail, and may include the requirement that the Petitioner record a certified copy of the variance granted with the Washtenaw County Register of Deeds, at the Petitioner's expense.
- iv. Reasons why the conditions are imposed.

B. Motions dealing with an ordinance interpretation, or an appeal of an administrative decision, shall be stated with the following parts, or stated as two (2) motions.

- 1. The list of facts pertinent to making a decision on the matter.
- 2. The conclusion or decision of the Board. This motion, or part of the motion, shall contain the following parts:
 - i. The rationale or reasons to explain how the facts support the conclusion.
 - ii. The conclusion or decision.

4.11 **Voting.** Voting shall be by roll call vote, and shall be recorded by yeas and nays. Members must be present to cast a vote. To pass or deny any variance, appeal or other official action required by the zoning ordinance, a vote of the majority of the total membership (three (3) members) of the ZBA is required. Voting shall be by voice vote. However, a follow-up roll call vote shall be taken if requested by any ZBA member or directed by the Chairperson to clarify a vote. All ZBA members, including the Chairperson, shall vote on all matters. The ZBA/Planning Commission representative shall not participate in a public hearing or vote on the same matter that the member voted on as a member of the Planning Commission.

4.12 **Staff Report.** A staff report prepared by the Zoning Administrator, a staff representative and/or other Township officials and consultants shall accompany each appeal. The report shall consist of a summary of the request, and pertinent facts related to the petitioner's property and surrounding property. Pertinent facts shall include information as to whether there has been a previous petition on that property, and its disposition. In matters concerning non-conforming uses and structures, the history of the property shall be presented showing when the property was built and the zoning provisions under which it was built.

4.13 **Site Inspection.** Site inspections may be conducted by each ZBA member individually prior to the scheduled public hearing at their own expense and time.

Section 5.0 Appeals from Administrative Decisions.

- 5.1 **Notice of Appeal.** All notices of appeal to the ZBA shall be made in writing on notice forms provided for that purpose. Notices of appeal shall be serviced upon the administrative official from whom the appeal is taken, and such official shall transmit to the ZBA all documentation constituting the record upon which the action of appeal was taken. The notice of appeal shall be accompanied by such fee as established by the Township Board.
- 5.2 **Time for Appeal.** Every appeal shall be filed by the appellant within sixty (60) days of the date of a permit refusal, a requirement, a decision, or a determination of such official from which the appeal is taken, provided the ZBA may in exceptional cases for good reason grant additional time.
- 5.3 **Stay of Proceedings.** Filing an appeal stays all further enforcement proceedings by the Zoning Administrator or other official unless the Zoning Administrator or other official certifies to the ZBA a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed unless the appellant obtains a restraining order which may be granted by the ZBA or by the circuit court, on notice to the Zoning Administrator or other official and on due cause shown.
- 5.4 **Dismissal and Reinstatement of Appeal.** An appellant or an authorized representative is required to attend the scheduled hearing in any manner available to the public. When the appellant fails to appear at a properly scheduled hearing, the matter will be postponed to the next scheduled hearing. If an appellant fails to appear at the next scheduled meeting of the ZBA, the Chairperson may entertain a motion from the ZBA to dismiss the case for want of prosecution; the appellant will be furnished written notice of the dismissal by the Secretary. The appellant shall have seven (7) days from the date of notice of dismissal to apply for reinstatement of the case. In such cases, the appellant must file a written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chairperson for good cause shown, and upon payment of a fee established by the Township Board. The Township Board may waive the reinstatement fee upon a showing of extenuating circumstances. 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.

Section 6.0 Absences, Removals, and Resignations.

- 6.1 **Absences.** To be excused from a meeting of the ZBA, a ZBA member shall notify the Township Office, ZBA Chairperson, or other individual as designed by the ZBA. Failure to make this notification prior to a meeting shall result in an unexcused absence.

- 6.2 **Removals.** Members of the ZBA may be removed by the Township Board for misfeasance, malfeasance or non-feasance in office upon written charges and after a due process hearing. A member shall disclose when there is or may be a conflict of interest prior to the matter being considered by the ZBA. Failure of a member to disclose that there is or may be a conflict of interest to allow the ZBA to disqualify the member from a vote shall constitute malfeasance in office. A member shall first be given the opportunity to resign prior to removal by the Township Board.
- 6.3 **Resignations.** A member may resign from the ZBA by sending a letter or resignation to the Supervisor, Township Board or ZBA Chairperson. Unless otherwise indicated in the letter, the resignation shall be effective on the date the letter is received.

Section 7.0 Conflict of Interest.

ZBA members shall declare a conflict of interest and abstain from participating in a hearing or deliberations on a request when:

1. The ZBA member or member's relative or other family member is involved in any request for which the ZBA is asked to make a decision.
2. The ZBA 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 ZBA member owns or has a financial interest in neighboring property. For purposes of this section, a neighboring property shall include any property falling within the notification radius for the proposed development, as required by the zoning ordinance or other applicable ordinance.
4. There is a reasonable appearance of conflict of interest, as determined by the ZBA member declaring such conflict. However, declaring a conflict of interest should not be used as a means of avoiding a difficult or uncomfortable decision.

The ZBA member declaring a conflict of interest should state the nature of the conflict to the ZBA. The ZBA shall consider a motion to excuse the declared member through the vote. Once formally excused, the member should vacate his or her seat during all proceedings involving the matter that lead to the member's declared conflict of interest. The member declaring a conflict shall leave the room in which the discussion takes place, unless doing so would violate his or her constitutionally protected rights to participate. Further, he or she should not make any presentations to the ZBA as a representative of the proposal.

Section 8.0 Adoption and Repeal.

Upon adoption of these rules of procedure, they shall become effective and all previous rules of procedure, as amended, shall be repealed.

Section 9.0 Amendments.

These rules may be amended at any regular or special meeting by a majority vote of the total members of the Board, so long as such amendment does not result in a conflict with state law, zoning ordinance, or court decision.