

CITY OF BERKLEY ZONING BOARD OF APPEALS



RULES OF PROCEDURE

Updated March 2021

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, and are subject to the attendance, training, and continued education requirements in Sections 2-176 – 2-273. The ZBA shall consist of seven regular members and two alternate members 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) **Training.** New members appointed to serve on the ZBA shall complete a training program within six (6) months after appointment date. The training program shall be approved by the Community Development Director or City Manager to ensure the program provides information and training on roles, responsibilities and best practices for planning and zoning.
- b) **Continued Education.** Each board member shall commit to minimum 2-3 hours of continued education within each fiscal year. New appointees to ZBA shall not be required to complete the hours of continued education within the first fiscal year of appointment.
- c) **Reference Materials.** Upon taking office, each member shall have access to the ZBA Orientation Guidebook stored on Google Drive. Hard copies of the materials shall be provided upon request. The ZBA Orientation Guidebook shall consist of reference materials, such as, but not limited to:
- Updated Zoning Board of Appeals Rules of Procedure.
 - Berkley Zoning Map
 - The Michigan Planning Enabling Act.
 - The Michigan Zoning Enabling Act.
 - The Zoning Board of Appeals Handbook, published by the Michigan Municipal League
 - Any other materials deemed necessary to familiarize a new member with the appeals process and the duties of the ZBA.
- (2) **Duties.**
- a) **Attendance.** Each regular and alternate member has a duty to attend all meetings. Alternates are strongly recommended and encouraged to attend all meetings and if unable, should watch the recorded meeting and review the meeting minutes prior to the next scheduled meeting.
- b) **Absences.** Regular members who are unable to attend a regularly scheduled meeting must contact the Community Development Director prior to the meeting to alert them to the cause of absence. The ZBA shall determine if the absence is to be excused and approve the excused absence to be recorded in the meeting minutes. The ZBA may table to excuse the absence of a member until the next scheduled meeting.

- A vacancy shall occur when a member has missed four (4) consecutive regular meetings or twenty-five percent (25%) of regular meetings held during the fiscal year, unless such absences have been excused by the ZBA.
- c) **Preparation.** Members shall 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. Questions or concerns shall be directed to the Community Development Director.

SECTION THREE - MEETINGS

- (1) **Notices.** Notice of meetings shall be provided in accordance with the Open Meetings Act. The notice shall include the date, time and place of the meeting.
 - a) The Community Development Director shall notify all members of the ZBA, including regular and alternate members, a minimum of 15 days prior to a scheduled public hearing, that a meeting is scheduled. Notice to members shall be by e-mail.
 - b) Prior to the scheduled meeting date, the Community Development Director shall provide the agenda for the meeting and all documentation relevant to agenda items as well as any other information requested by the ZBA. All necessary materials shall be uploaded to the Google Drive. Hard copies of meeting materials may be provided upon request.
- (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, the Community Development Director shall contact the Chair to determine if the regular meeting is to be held. Cancellation notices shall be provided to all members and posted on the City website and at City Hall prior to the meeting date.
 - b) When a regular meeting date falls on or near a legal holiday or conflicts with a meeting of the Berkeley City Council, the ZBA shall select a suitable alternate date in the same month, if possible, in accordance with the Open Meetings Act. The meeting dates for the next calendar year shall be reviewed and approved at the last regular meeting of the current year.
 - c) Meetings shall be presided over by the Chair or, in the absence of the Chair, the Vice Chair, or, in the absence of both the Chair and Vice Chair, the most senior member of the Zoning Board of Appeals present.
- (3) **Other Meetings.** A special meeting can also be called by the Community Development Director, the City Manager, the Chair, 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 official action, a quorum consisting of four (4) voting members of the ZBA must be present, unless a use variance is under consideration, in which case, a quorum shall be five (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.
- Staff will read aloud the standards of review applicable to the case.
- 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 wishing to speak on a particular case must state his/her name and address for the record and may address the ZBA regarding the case, and shall not exceed three (3) minutes. The time limit for public comment shall be stated prior to the opening of the Public Hearing. The Chair may set a time limit and/or invite people to speak row by row to eliminate lines at the microphone. The time limit may be modified by a vote by the ZBA, if deemed appropriate, and shall apply to all persons speaking during the Hearing.
- 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. Per City of Berkley Code Section 2- 40 (**Ethics**), 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 he shall be allowed to remain in the meeting to present his case.

a) Failure of a member to disqualify himself 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,
- 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
- Staff / Board Member Report
- 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, Newly Revised.”

(15) Notice of Decision. 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 January 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 January meeting, then the officers shall be elected no later than a February meeting.

(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, the ZBA shall select a successor to the office of Vice-Chair at the earliest practicable time.

c) The Community Development Director, or designee, 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. Approved minutes shall be recorded with the City Clerk and posted on the City website.

SECTION SIX – OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

- (1) All meetings of the ZBA shall be open 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 January meeting, or if there is no January meeting, no later than the February meeting.

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.