



# ZONING BOARD OF APPEALS (ZBA) BYLAWS

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**CITY OF NEWAYGO  
ZONING BOARD OF APPEALS BYLAWS**

**A. PURPOSE:**

The purpose of the City of Newaygo Zoning Board of Appeals is to hear only those matters that it is authorized to hear by the MI Zoning Enabling Act and Local Ordinance. Per local Ordinance, the City of Newaygo Zoning Board of Appeals shall deal with Administrative Appeals, Interpretations of the Zoning Ordinance, and Variances.

**B. BOARD COMPOSITION & QUALIFICATIONS:**

The members of the Zoning Board of Appeals shall be appointed by the City Council and shall consist of: The Mayor, Planning Commission Chairperson, TIFA Chairperson, PSD Chairperson and a Newaygo Economic Development Office Representative. Each member shall hold office for the extent of term of their respective office. If there is a conflict with a member listed, another member shall be selected from the respective board. A member of the Zoning Board of Appeals who is also a member of the Zoning Commission, the Planning Commission, or the legislative body shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Zoning Commission, the Planning Commission, or the legislative body. However, the member may consider and vote on other unrelated matters involving the same property. Refer to Chapter 23, Section 23.02 for additional information on alternate members of the Zoning Board of Appeals. The Board Chairperson shall be the Mayor. The Vice-Chair shall be appointed by the board and the Secretary shall be the City Clerk.

**C. MEETINGS:**

Meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson, Zoning Administrator, or two Board Members and shall be held at Newaygo City Hall located at 28 N. State Rd., Newaygo, MI 49337.

1. Posting and Notice Requirements:

- a) For all Zoning Board of Appeals meetings, per the Michigan Open Meetings Act, a public notice stating the date, time, place and reason of the meeting shall be posted at City Hall at least 18 hours before the meeting. If the posting area is not open to the public for any part of the 18 hours prior to the meeting, the notice must be posted on the exterior doors of City Hall. A public notice shall also be placed on the City's website.
- b) If a public hearing is required per Michigan Zoning Enabling Act 110 of 2006, the City Clerk or Clerk's agent shall publish notice of the hearing in a newspaper of general circulation in the local unit of government not less than 15 days before the date of the hearing. The public hearing notice shall also be posted at City Hall and on the City's website. Should a mailing be required, per the Zoning Enabling Act, the City clerk will mail the notice for the hearing to all people whom real property is assessed within 300 feet of the property that is the subject of the request and to the occupants of all structures within 300 ft. of the subject property regardless of whether the property or structure is located in the Zoning jurisdiction. The notice shall:
  1. Describe the nature of the request
  2. Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not

need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.

3. State when and where the request will be considered
4. Indicate when and where written comments will be received concerning the request

See section 125.3103 of the Michigan Zoning Enabling Act for additional information related to notices and mailings.

- c) Posting requirements may change should the Michigan Open Meetings Act be amended relating to posting requirements.

2. Decision-Making:

All decisions must be made at a meeting open to the public per the Michigan Open Meetings Act (OMA). The use of e-mail, texting or other forms of electronic communications among board members during the course of an open meeting or outside a meeting that constitutes deliberations towards decision-making or actual decisions violates the OMA. Please see OMA MCL 15.263 Section 3.2 and Section 3.3 for additional information.

3. Agendas:

- a) Preparations: The City Clerk, under the guidance of the Zoning Administrator shall prepare an agenda for each meeting of the Zoning Board of Appeals.
- b) Distribution: Agendas and all background material will be emailed to ZBA board members at least 18 hours prior to the meeting.

4. Minutes of Meetings:

- a) The City Clerk, or the Clerk's agent, shall act as recording secretary to the Zoning Board of Appeals, including recording the minutes, publishing legal notices, and providing notices to property owners and others as required by law. Minutes will be kept in the English language and shall include: date, time, place, members present, members absent, all findings, conditions, facts, and other relevant factors, including the vote of each member upon each case. The minutes must also include all roll call votes taken at the meeting. All minutes shall be filed in the office of the City Clerk.
- b) Unapproved minutes of meetings will be available for public inspection within eight (8) business days after the meeting to which the meetings refer.
- c) Approved minutes will be available for public inspection within five (5) business days after the meeting at which the minutes were approved by the Zoning Board of Appeals board.

**D. MEETING PROCEDURES:**

1. Meetings to be Public:

All meetings of the Zoning Board of Appeals shall be open to the public and the public shall have a reasonable opportunity to be heard under such rules and regulations as the Zoning Board of Appeals may prescribe.

2. Order of Business:

The City Clerk, under the guidance of the Zoning Administrator, in accordance with the following order of business shall prepare an agenda for each Zoning Board of Appeals meeting:

- Call to Order
- Pledge of Allegiance

- Roll Call
- Excuse Absent Members
- Approval of Agenda
- Public Comments (agenda items only)
- Approval of Minutes
- Board Business
- Public Comment
- Board Member Comments
- Adjournment

a) Motions:

- i. No motion shall be debated unless it has been seconded
- ii. The initiator of a motion may withdraw any motion at any time before it has been adopted. However, if the motion has been seconded, the seconding party must also consent to withdrawal
- iii. All motions, resolutions and amendments or substitutions thereto, and the vote thereon, shall be entered in the minutes unless withdrawn
- iv. When an appeal is taken from a decision by the Chair, the member taking the appeal shall be allowed to state his or her reason or doing so. The questions shall then be immediately put in the following (or substantially similar) form--“Shall the ruling of the Chair be sustained?”

3. Quorum:

A majority of the total membership of the board, three (3) members, shall comprise a quorum. In the absence of a quorum a lesser number may adjourn any meeting to a later time or date, and in the absence of all members the Clerk may adjourn any meeting for not longer than one week.

Final disposition of any matter of the ZBA shall require a 2/3 vote (at least 4 votes) of the entire board.

4. Presiding Officer:

The presiding officer, hereinafter “Chair”, shall be responsible for enforcing the Rules of the Board as contained herein.

- a) The Chair. The Mayor shall be the Chair and preside at the meetings of the Zoning Board of Appeals. If the mayor is absent or unable to chair a meeting of the Zoning Board of Appeals, the Vice-Chair shall do so.
- b) It shall be the duty of the Chair to preside at all meetings of the Zoning Board of Appeals, to preserve order and to decide all questions of order and procedure subject to appeal to the board.

**E. ELECTRONIC MEETINGS:**

Electronic meetings may be offered at times if allowed by State Order or the Michigan Open Meetings Act (OMA) and will follow all OMA guidelines. In situations where an electronic meeting may be offered, Zoning Board of Appeals may have a meeting entirely electronically or a meeting where some board members participate electronically and some board members are face-to-face. Electronic meetings may be in the form of teleconference, audio-conference, or videoconference.

1. Guidelines:

- a) Meetings must be conducted in a manner that permits two-way communication so that board members can hear and be heard by other board members, and so that public participants can hear board members and can be heard by board members and other participants during public comments.
- b) At the start of each meeting the Chair must publicly declare why the meeting is being held electronically.
- c) For each member of the board attending the meeting remotely, a public announcement at the start of the meeting by that member, to be included in the meeting minutes, that the member is in fact attending the meeting remotely. If the member is attending the meeting remotely for a purpose other than for military duty, the member's announcement must further identify specifically the member's physical location by stating the county, city, township, or village and state from which he or she is attending the meeting remotely.
- d) For each board member attending the meeting remotely, they must state their name prior to speaking or making a motion.
- e) Members attending the meeting remotely must announce their departure if prior to the end of the meeting.
- f) The Chair may cause or direct the disconnection or muting of a member or public connection if it is causing undue interference with the meeting.
- g) Any business transacted during loss of meeting room connection is null and void, unless there is a quorum in the meeting room at such time.
- h) No action shall be invalidated on the grounds that the loss of, or poor quality of, a member's individual connection prevented participation in the meeting as long as a quorum is still present.
- i) Refer to the Open Meetings Act and Robert's Rules of Order for additional information.

2. Electronic Meeting Notice (Posting) Requirements:

For an electronic meeting of the Zoning Board of Appeals, per the Open Meetings Act, a public notice shall be posted at City Hall at least 18 hours before the meeting. If the posting area is not open to the public for any part of the 18 hours prior to the meeting, the notice must be posted on the exterior doors of city Hall. A public notice shall also be placed on the City's website. The public notice must contain:

- a) A statement as to why the public body is meeting electronically.
- b) How members of the public may participate in the meeting electronically. If a telephone number, internet address, or both are needed to participate, that information must be provided specifically.
- c) How members of the public may contact board members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
- d) The Zoning Board of Appeals shall not, as a condition of participating in an electronic meeting, require a person to register or otherwise provide his or her name or other information to fulfill a condition precedent to attendance.
- e) Refer to the Open Meetings Act for additional information.

3. Minutes of Electronic Meeting:

The meeting minutes of an electronic meeting must list who is present and who is remote. All votes shall be taken by roll call and listed in the minutes.

**F. VOTING AND DISCUSSION:**

1. Roll Call:  
In all roll call votes, the Recording Secretary shall call the names of the members of the Zoning Board of Appeals.
2. Results of Voting:  
In all cases where a vote is taken, the Chair shall declare the result.
3. Duty to Vote:  
Whenever a question is put before the Zoning Board of Appeals by the Chair, every board member shall vote, provided however, that no board member shall be required to vote if:
  - a) That board member shall have a conflict of interest and shall state his/her conflict of interest and determined to be a conflict by vote of the Zoning Board of Appeals board. Refer to Ordinance 18-05 for Conflict of Interest Information.
  - b) Excused by vote/approval of at least three Zoning Board of Appeal Members.

If a board member is precluded from voting pursuant to a conflict of interest, that member shall refrain from participating in the discussion on the issue.

4. Rules of Parliamentary Procedure:  
Meetings of the Zoning Board of Appeals shall generally utilize Roberts Rules of Order, unless otherwise provided for in these bylaws.
5. General Consensus:  
General consent or consensus may be used to give direction and the minutes should indicate that a majority consented.

**G. PUBLIC PARTICIPATION:**

1. General:  
Each Zoning Board of Appeals Agenda shall provide time for public audience participation, as requested and limited herein. Members of the public may comment only during the public comment portions of the meeting. Public comment shall not be in order except during designated times or as approved by the Chair. Any person shall have the right to record or broadcast the proceedings of the Zoning Board of Appeals meetings, but they shall not utilize the electrical outlets or internet bandwidth of the City without the prior permission of the Chair and City Manager.
  - a) Specific answers to citizen's questions need not be given by the Chair or other City officials at the time requested, but may, at the City's discretion, be followed up later.
2. Persons Addressing the Board:  
Members of the public at the meeting shall not speak unless recognized by the Chair. Prior to addressing the board, members of the public shall state their name and address and, if appropriate, group affiliation for the record.
3. Conduct of Public Hearings:  
Unless otherwise required by State or local law, public hearings shall be opened by declaration of the Chair at the time stated in the public notice of the hearing. If no members of the public desire to speak or no members of the public are present, then the Chair may declare the hearing closed and take up consideration of the next agenda item. Members of the

public shall be limited to speaking for a maximum of three (3) minutes during any public hearing. A person representing a group of citizens and speaking on behalf of them shall be allowed up to five (5) minutes to address the board during a hearing. The Chair shall notify the speaker when time is up.

4. Requests to Speak During Regular Agenda Items:

Any person wishing to speak to an item included on the printed meeting agenda may do so if recognized by the Chair. Upon recognition, they will be required to state their name and address and will be allowed up to three (3) minutes to address the board. A speaker representing a group or association present at the meeting may be allowed up to five (5) minutes to address the board. No citizen shall speak for more than three (3) minutes during either public comment periods. If the application of such time limits has the effect of completely denying one or more persons the ability to address the board, such persons shall be given at least two (2) additional minutes each to address the board. The board may suspend the time limitation when warranted. The board may also, in its discretion, limit public comments to new information or matters not fully addressed at the meeting or any previous meeting regarding the agenda item at issue. When all persons who wish to address that agenda item have been heard, the Chair shall announce that public comment on the agenda item is concluded. Zoning Board of Appeal Members shall then discuss the agenda item, and no further public comment shall be entertained.

- a) In addition to the above-mentioned public comment period, as well as the second public comment period, the Chair may permit limited public comment for particular agenda items.
- b) All public comments shall be directed to and through the Chair. No member of the public shall directly address any other member of the public or any other City Official.
- c) All public comments shall be related to City matters. Public comments must be relevant and germane to the business and functions of the City.
- d) No citizen can “transfer”, reserve or delegate any public comment time to any other person.
- e) The Chair has the authority to extend the comment period for citizens at the Chair’s discretion.
- f) The Secretary shall be responsible for timing the length of public comments and informing the Chair when a citizen has thirty seconds remaining and when time has expired.
- g) No person shall be allowed to speak more than once on the same matter at the same meeting. Person purporting to speak to the same general subject matter in his and her personal and representative capability shall be recognized only once.

5. Requests to Speak Second Public Comment Section:

Members of the public shall have an opportunity, under the second Public Comment section, to address the Board for no more than three (3) minutes on any item that is not on the approved agenda. All rules of conduct still apply from item 5a-5g.

6. Deviations from Public Participation Rules:

Under unique or desirable circumstances, upon consensus of the Board, the Chair may recognize a member of the audience who shall be permitted to address the Board at a time other than audience participation. However, all other rules as provided herein shall apply.

7. Disorderly Conduct at Meetings:

Persons addressing the Zoning Board of Appeals shall make responsible comments and shall refrain from making personal, impertinent, slanderous, profane remarks or obscene speech or gesture. No person shall disrupt a meeting of the Zoning Board of Appeals. The Chair may call to order any person who is being disorderly by speaking when not recognized by the Chair or otherwise disrupting the proceeding by failing to be germane, by speaking longer than the allotted time, or by speaking vulgarities. Such persons shall thereupon be seated until the chair shall have determined whether the person is in order. If a person so engaged in presentation shall be called out of order, he or she shall not be permitted to speak at the same meeting except upon special leave by the Board. If the person shall continue to be disorderly and disrupt the meeting, the Chair may order the Police Department to remove the person from the meeting.

- a) Members of the public shall not talk among themselves during a meeting of the Zoning Board of Appeals in a volume greater than a whisper, and upon being asked by the Chair to quiet down, shall do so.

**H. AMENDMENTS TO THE RULES:**

The rules of the Zoning Board of Appeals may be altered or amended by a majority vote of the entire City Council. However, the Zoning Board of Appeals may establish its own rules and procedures if it elects to do so by adoption of a Resolution.

Adopted this 13<sup>TH</sup> day of December, 2021

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Ed Fedell, Mayor

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Kim Goodin, City Clerk