



PLANNING AND ZONING
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MEMORANDUM

TO: Zoning Board of Appeals Members

FROM: Denise Blakeslee 

DATE: March 2, 2006

RE: March 9, 2006 Worksession

Members, we scheduled a worksession for Thursday, March 9, 2006 at 5:30 p.m. in the Council Chambers. This worksession will allow us the opportunity to continue our work on updating the By-Laws. The proposed By-Laws could not be adopted until the new zoning ordinance was adopted. The Zoning Ordinance was adopted by City Council on February 21, 2006 and will go into effect on March 27, 2006.

There were several items that were noted from the last meeting for discussion at our worksession. These items are:

- ◆ Schedule an annual organizational meeting in January.
- ◆ Determine what is an excused absence because the board meets on an as needed basis.
- ◆ Establish what a conflict is and when it should be declared.

In addition our Planning Consultant has recommended using "*Modern Parliamentary Procedure*" instead of "*Robert's Rules of Order*". Cyndy Fuller has taught classes on "*Robert's Rules of Order*" and has been evaluating a copy of "*Modern Parliamentary Procedure*". We have asked Ms. Fuller to make a presentation to Planning Commission and the ZBA. We will be working on coordinating a date with the Planning Commissioners and Ms. Fuller.

Please bring your copies of the current and proposed By-Laws with you to the worksession. If you need copies please call me.

See you at the Worksession! If you are unable to attend please call me at 398-2805.

CITY OF MANISTEE
ZONING BOARD OF APPEALS
BY-LAWS AND RULES OF PROCEDURES

1. AUTHORITY

These By-laws and Rules of Procedures are adopted by the Zoning Board of Appeals of the City of Manistee, County of Manistee, (hereinafter known as Appeals Board) pursuant to Public Act 207 of 1921, as amended, the City and Village Zoning act; the City of Manistee Zoning Ordinance, and the Public Act 267 of 1976, as amended, the Open Meetings Act.

2. OFFICERS

2.1 Selection. At the Organizational meeting in January, the Appeals Board shall elect a chair, vice-chair and secretary who shall serve for the next twelve (12) months and who shall be eligible for re-election. Vacancies in an office of the Appeals Board shall be filled at the next meeting of the Appeals Board. The membership shall elect one of its members to fill the vacancy until the next annual election.

2.2 Duties. The chair shall preside at all meetings and shall conduct all meetings in accordance with the rules provided herein.

The vice-chair shall act in the capacity of the chair in the absence of the chair or in the event of a vacancy in the office of chair; in which case, the Appeals Board shall select a successor to the office of vice-chair at the earliest practicable time.

The Secretary, or a Recording Secretary appointed by the Secretary shall be responsible for the preparation of minutes, keeping of pertinent public records, delivering communications, reports, and related items of business of the Appeals Board, issuing notices of public hearings and performing related administrative duties to assure efficient and informed Appeals Board operations. In the event the Secretary is absent, the chair or acting chair shall appoint a temporary secretary for such meeting.

2.3 Tenure. The officers shall take office immediately following their election. They shall hold their office for a term of one year, or until their successors are elected and assume office.

3. MEETINGS

3.1 Meetings. Meetings shall be scheduled upon receipt of a complete application. The business which the Appeals Board may perform shall be conducted at a public meeting of the Appeals Board held in compliance with the Open Meeting Act. Public Notice of the time, date, and place of the special meeting shall be given in a manner as required by the Open Meeting Act.

- 3.2 Meeting Notice. Notice of all meetings shall be posted at City Hall. The notice shall include the date, time and place of the meeting. Any changes in the date or time of the meetings shall be posted and noticed in the same manner as originally established.
- 3.3 Attendance. A member may be removed from office by the appointing City Council for neglect of official duty or misconduct in office after being given a written statement for reasons and an opportunity to be heard thereon. Un-excused absences may be reason for removal and three (3) un-excused absences in a row shall be reported in writing to the City Manager. ~~An un-excused absence is defined as not notifying the Recording Secretary prior to the meeting.~~
- 3.4 Special Meetings. A special meeting may be called by two members of the Appeals Board upon written request to the Secretary or by the Chairperson. The business which the Appeals Board may perform shall be conducted at a public meeting of the Appeals Board held in compliance with the Open Meeting Act. Public Notice of the time, date, and place of the special meeting shall be given in a manner as required by the Open Meeting Act, and the Secretary or Recording Secretary shall send written notice of a special meeting to Appeals Board members not less than 48 hours in advance of the meeting.
- 3.5 Quorum. In order for the Appeals Board to conduct business or take any official actions, a quorum consisting of at least three of the five members and two alternates of the Appeals Board shall be present. When a quorum is not present, no official action, except for the closing of the meeting may take place. The members of the Appeals Board may discuss matters of interest, but shall take no action until the next regular or special meeting. All public hearings without a quorum shall be scheduled for the next regular or special meeting and no additional public notice is required provided the date, time and place is announced at the meeting.
- 3.6 Public 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 Appeals Board shall be run in an orderly and timely fashion. This shall be accomplished by the following procedure.
1. The Chair of the Appeals Board shall announce that a public hearing will be conducted on a request.
 2. The Chair shall read the public hearing announcement as published in the newspaper and give a brief description of the hearing subject and the public notice procedure.
 3. The Chair shall announce the following hearing rules:
 - a. The Chair will recognize each speaker. When a speaker has the floor, he/she is not to be interrupted unless time has expired. Persons speaking without being recognized shall be out of order.

- b. Each speaker shall state their name and address for the record and may present written comments for the record.
 - c. Speakers shall address all comments and questions to the Appeals Board and comments will be limited to the subject matter of the Public Hearing.
 - d. Unless waived by the Appeals Board for a specific meeting or a specific speaker, public comment shall be limited to five (5) minutes per speaker. If a group of people wish to be heard on one subject, a spokesperson may be designated who may request that more than five (5) minutes be permitted for collective comments of the group as presented by that speaker.
 - e. ~~The Chair may allow people to speak a second time after everyone has had the opportunity to speak.~~ The Chair may request that repetitive comments be limited or abbreviated in the interest of saving time and allowing others to speak.
 - f. The Chair may establish additional rules of procedure for particular hearings as he/she determines appropriate.
 - g. Normal civil discourse and decorum is expected at all times. Applause, shouting, outbursts, demonstrations, name-calling or other provocative speech or behavior may result in removal from the hearing or an adjournment.
4. Once all public comments have been stated, the Chair shall close the hearing. Any voting member of the Appeals Board may initiate a motion to close the hearing.
5. Public Hearings shall be carried out in the following format:
- a. The Chair shall open the hearing.
 - b. The Applicant shall present any comments and explanation of the case. Applicants presentation shall not be subject to the five (5) minute limitation.
 - c. The City staff and any consultants serving the City shall present their reports.
 - d. The hearing will be opened for public comment.
 - e. The public comment period will be closed.
 - f. Deliberation and discussion by the Appeals Board.
 - g. Disposition of the case by the Appeals Board.

~~3.7 Conflict of Interest. A Conflict of interest shall be announced prior to discussion on request or immediately upon realizing a conflict exists. Any members may be excused from voting only if that person has a bonafide conflict of interest as recognized by the a majority of the remaining members of the Appeals Board. Any members abstaining from a vote shall not participate in the discussion of that item.~~

3.8 Motions. ~~Every Motion shall require a second.~~ Motions shall be restated by the Chair before a vote is taken. The name of the maker and second of each motion shall be recorded.

- 3.9 Voting. An affirmative vote of the majority of the Appeals Board shall be required for the approval of any requested action or motion placed before the Appeals Board. Voting shall ordinarily be by voice vote; provided however that a roll call vote shall be required if requested by any Appeals Board member or directed by the Chairperson. All members of the Appeals Board including the Chairperson shall vote on all matters, but the Chairperson shall vote last.
- 3.10 Order of Business. A written agenda for all regular meetings shall be prepared as followed. The order of business shall be:
- Call to Order.
 - Roll Call
 - Approval of Agenda
 - Site Inspection
 - Public Hearings.
 - Approval of Minutes.
 - Business Session.
 - Action on Pending Case
 - Old Business
 - Other Business of the Appeals Board
 - Public Comments and Communications concerning items not on the agenda.
 - Adjournment.
- A written agenda for special meeting shall be prepared and followed, however the form as enumerated above shall not be necessary.
- 3.11 Rules of Order. All meetings of the Appeals Board shall be conducted in accordance with generally accepted parliamentary procedure, as governed by *Modern Parliamentary Procedures*.
- 3.12 Agenda Items. For an item to be considered at a regular Appeals Board meeting, it must be submitted to the City Community Development Department no later than the established policy of the City prior to the next scheduled Appeals Board Meeting.

4. MINUTES

- 4.1 Preparation. Appeals Board minutes shall be prepared by the Secretary or Recording Secretary of the Appeals Board. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and recording votes; complete statement of the conditions or recommendations made on any action; and recording of attendance. All communications, action and resolutions shall be attached to the minutes.

5. OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

- 5.1 All meetings of the Appeals Board shall be open to the public and held in a place available to the general public.
- 5.2 All deliberations and decision of the Appeals Board shall be made at a meeting open to the public.
- 5.3 A person shall be permitted to address a hearing of the Appeals Board under the rules established in subsection 3.5, and to address the Appeals Board concerning non-hearing matters at the time designated for such comments.
- 5.4 A person shall not be excluded from a meeting of the Appeals Board except for breach of the peace, committed at the meeting.
- 5.5 All records, files, publications, correspondences, and other materials are available to the public for reading, copying, and other purposes as governed by the Freedom of Information Act.

6. ANNUAL REVIEW OF BY-LAWS

The Appeals Board shall annually review their By-Laws at their Organizational Meeting in January after the election of Officers.

7. AMENDMENTS

These rules may be amended by the Appeals Board by a concurring vote to subsection 3.7, during any regular meeting, provided that all members have received an advanced copy of the proposed amendments at least three (3) days prior to the meeting at which such amendments are to be considered.

THESE BY-LAWS AND RULES OF PROCEDURES ARE ADOPTED ON THIS ____ DAY OF _____, 2006

CITY OF MANISTEE APPEALS BOARD

**CITY OF MANISTEE ZONING BOARD OF APPEALS
BY LAWS AND RULES OF PROCEDURE**

Section 1.0 Purpose

The following rules of procedure are hereby adopted by the City of Manistee Zoning Board of Appeals (hereinafter known as Appeals Board) to facilitate the performance of its duties as outlined in the Manistee City Zoning Ordinance.

Section 2.0 Officers

- 2.1 Selection.** At the first scheduled meeting of each year, the Appeals Board shall select from its membership a Chairman, Vice Chairman, and Secretary. All officers are eligible for reelection.
- 2.2 Tenure.** The Chairman, Vice Chairman, and Secretary shall take office at the next meeting after their selection and shall hold office for a term of one year or until their successors are selected and assume office.
- 2.3 Duties. The Chairman** shall preside at all meetings, and perform such other duties as may be ordered by the Appeals Board. Appoint an acting Secretary for a meeting at which the Secretary is absent.
- 2.4 Duties. The Vice Chairman** shall act in the full capacity of the Chairman in the absence of the Chairman and in the event the office of the Chairman becomes vacant, the Vice-Chairman shall succeed to this office for the unexpired term and the Appeals Board shall select a successor to the office of Vice-Chairman for the unexpired term.
- 2.5 Duties. The Secretary** shall execute formal documents in the name of the Appeals Board. The Secretary or his or her designee shall perform the duties hereinafter listed and shall perform such other duties as the Appeals Board may determine. The Secretary shall be responsible for the record and minutes of each meeting. The Secretary shall be responsible for copies of the minutes being distributed to each member of the Appeals Board, prepare an Agenda for each meeting, be responsible for all communications, petitions and reports addressed to the Appeals Board. The Secretary shall keep attendance records and shall notify the City council whenever any member of the Appeals Board is absent from three consecutive regularly scheduled meetings so the City Council can take further action pursuant to Section 4.2 of these rules of procedure and by laws.

Section 3.0 Notice of Appeal

- 3.1 Filing.** Any interested person, or the person's authorized agent, may appeal or seek a variance in writing on a form provided by the Zoning Administrator at any time, and upon payment of a fee as may be established from time to time by the governing body. A meeting will be scheduled within 30 days of receipt of the appeal.

3.2 Notification.

- A. The Secretary or his or her designee shall schedule a meeting date with the Zoning Administrator and the members of the Appeals Board. Members of the Appeals Board will be mailed a notice no later than five (5) days before the scheduled meeting date. The Secretary or his or her designee shall prepare copies of the following for inclusion in the package sent to Appeals Board members:
- (1) copies of the Notice of Appeal or request for a variance form;
 - (2) relevant contents 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 appeals board actions concerning the property in question; and
 - (5) anything else which is relevant.
- B. Notice of such meeting shall be delivered in person or by first class mail to:
- (1) the Manistee City Manager's office,
 - (2) any other interested persons,
 - (3) the landowner,
 - (4) adjacent landowners and occupants,
 - (5) and a notice sent by first class mail to the person and/or agent seeking the appeal or variance.

3.3 Deadline for Action. The above notwithstanding, the Appeals Board shall hear the case and render and file its decision with a statement of reasons for the decision with the Zoning Administrator not more than 30 days after receipt of the case, unless a longer period of time is mutually agreed upon by the petitioner and Appeals Board.

3.4 Site Inspection. The Appeals Board, if the chairman considers it necessary, may conduct a site inspection at the site at issue. In such instance, the site inspection shall be posted as part of the public meeting/hearing. A quorum of the Appeals Board shall not ride in the same vehicle to or from a site inspection or to or from a meeting. The site inspection, if posted as part of the same meeting/hearing shall always be held the same day and as the part of the same meeting as the start of the public hearing on the case. Nothing in this paragraph shall prevent members of the Appeals Board from individually and separately visiting a site in question at their own expense and time. A quorum of the Appeals Board shall not make site inspections or otherwise discuss a Notice of Appeal except during posted open meetings of the Appeals Board.

3.5 Notice of Decision. The Secretary, or his or her designate, shall cause to have notices of the Appeals Board decision delivered in person or by first class mail to the Zoning Administrator; and to anyone else requesting a copy in writing. Further, notice of the decision to the petitioner, or his agent, filing the case shall be sent by first class mail.

Section 4.0 Meetings.

- 4.1 Regular Meetings.** Meetings of the Appeals Board will be called as needed in response to receipt of a Notice of Appeal, so long as the meeting is scheduled within 30 days of the Notice of Appeal. The meeting can be called by the Zoning Administrator of the City of Manistee, the Chairman of the Appeals Board, or, in his absence, the Vice-Chairman.
- 4.2 Attendance.**
- A. If any member of the Appeals Board has unapproved absences from three consecutive meetings, then that member shall be considered delinquent. Delinquency shall be grounds for the City Council to remove any member of the Appeals Board for nonperformance of duty or misconduct of office, or both.
 - B. When a petitioner or their agent fails to appear at a properly scheduled meeting of the Board of Appeals, the Chairman may entertain a motion from the Board to dismiss the case for want of prosecution. In the absence of a motion by the Board, 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 of the Board or his or her designee.
- 4.3 Other meetings.** Meetings shall be called by delivering meeting notice by first class mail or by personal delivery to members of the Appeals Board at least five days prior to such meeting and shall state the purpose, time, location of the meeting and shall be posted at the City Hall not more than fifteen (15) days/not less than five (5) days prior to such meeting.
- 4.4 Public.** All meetings, hearings, records and accounts shall be open to the public, and posted in compliance with P. A. 267 of 1976, being the Michigan Open Meetings Act.
- 4.5 Quorum.** Three (3) members shall constitute a quorum for the transaction of business and the taking of official action for all matters. Whenever a quorum is not present at a meeting, those present may adjourn the meeting to another day or hold the meeting for the purpose of considering such matters as are on the agenda. No action taken at such a meeting shall be final or official unless and until ratified and confirmed at a subsequent meeting when a quorum is present by acting to approve the minutes of the meeting at which the quorum is not present.
- 4.6 Order of Business.** Agenda. The Secretary or his designate shall prepare an agenda for each meeting and the order of business therein shall be as follows:
- A. Call to order and roll call.
 - B. Site inspection, then recess (optional, if the meeting is posted to include a site inspection).
 - C. Reconvene and roll call (if following a site inspection).
 - D. Election of officers, if necessary.
 - E. Public Hearings.
 - F. Recess to another night as provided in Section 4.9 of these rules of procedure (optional).
 - G. Approval of Minutes

- H. Business Session.
 - (1) Action on pending case
 - (2) Old Business
 - (3) Other business of the Appeals Board.
- I. Adjournment.

4.7 Speaking at Meetings. The following order shall be followed for speaking during meetings:

- A. 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.
- B. Members of the Appeals Board shall report on their site inspection and any conversations with the petitioner they may have had.
- C. Members of the public who support the petitioner speak and correspondence is read. At the chairman's option he may:
 - (1) may 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.
 - (2) may 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.
- D. Members of the public who oppose the petitioner speak and correspondence is read. At the chairman's option he may:
 - (1) may 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.
 - (2) may 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.
- E. Rebuttal. Any member of the public 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 members of the public except between the Chairman and the individual who has the floor.

4.8 Comments Out of Order. The chairman shall rule out of order any irrelevant remarks; remarks which are personal, about another's race, religion, sex, physical condition, ethnic background, beliefs, or similar topics; profanity; or any other remarks which are not about land use.

4.9 Recesses. The Chairman may recess a public hearing and/or meeting to another time if the meeting (not including site inspections) has been in session over three hours, or for other reasons. In order for a recess to be in order, the time, day, month, date, year and location to reconvene shall be stated as part of the action to recess. If a meeting and/or public hearing reconvenes over 36 hours after the action to recess, the reconvened meeting shall be posted at least 18 hours before the time of the reconvened meeting, to comply with Section 4.4 of these rules of procedure. Upon reconvening, a roll call vote shall be taken as the first order of business.

- 4.10 Parliamentary Procedure.** Meetings shall be conducted in a formal manner, and parliamentary procedure shall be governed by Roberts Rules of Order if not specifically dealt with in these rules of procedure.
- 4.11 Motions.** Motions shall be reiterated by the Chairman before a vote is taken.
- 4.12 Voting.** Voting shall be by voice or shall be by roll call and each vote recorded in the minutes. Roll call votes shall only be done upon request of a member or by ruling of the Chairman. A quorum of three (3) regular or alternate members, with a maximum of five (5) members, must be present to take any action. A Motion is only adopted if three or more of the members of the Appeal Board casts their votes in favor of the motion. Members must be present to cast a vote.
- 4.13 Conflict of Interest.** As used here a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:
- A. A member of the Appeals Board issuing, deliberating, voting or reviewing a case where he/she is:
 - (1) an applicant, or
 - (2) has a direct interest in the case, or
 - (3) chooses to intervene in a case and is done in such a manner that the appeals member feels, in his/her judgement, that his/her job, scope of duties and/or position may be a risk, pending the outcome of the permitting process.
 - B. A member of the Appeals Board issuing, deliberating, voting or reviewing a case:
 - (1) involving a corporation, company, partnership, or other entity in which he is a part owner, or any other relationship where he may stand to have a financial gain or loss, or
 - (2) which is an action which results in a pecuniary benefit to himself, or
 - (3) concerning his spouse, children, step-child, grandchildren, parents, brother, sister, grandparents, parents in-law, grandparents in-law or member of his household.
 - C. The Planning Commission Representative to the Appeals Board will abstain from any case where as a member of the Planning Commission he or she made a decision which resulted in the appeal.
 - D. When a member of the Appeals Board determines a conflict of interest exists he or she shall do the following immediately:
 - (1) notify staff and Chair to allow opportunity to contact an alternate member, and
 - (2) declare a conflict exists at the beginning of the meeting where the case appears on the agenda, or when the topic brought up so such declaration is recorded in the minutes, and
 - (3) refrain from participating in the discussion, site inspection or review of the case, except where specific information has been requested by the commission, and
 - (4) refrain from casting a vote on any motion having to do with the case.

Section 5.0 Records

5.1 Preparation. A record of each meeting, including hearings and site inspections, shall be prepared by the Secretary, or his or her designate.

5.2 Content/Retention.

- A. The original minutes from the meeting shall be kept on file by the City Clerk.
- B. The following items will be placed into the property record file in the City Assessors office:
 - (1) The original request for a variance or notice of appeal, whichever is applicable, including any maps drawings, site plans or other information submitted by the applicant
 - (2) A copy of the meeting posting
 - (3) A copy of the notice of publication to the newspaper
 - (4) A copy of the mailing list, and Affidavit of Mailing
 - (5) Copy of the minutes from the meeting
 - (6) Copy of any correspondence received or sent in regard to the case.
 - (7) A copy of any follow-up correspondence to or from the petitioner regarding the decision.
- C. The following items will be placed on file in the Zoning Administrators Office:
 - (1) A copy of the meeting agenda
 - (2) A copy of the meeting minutes
 - (3) A copy of the memo sent to the members of the Appeals Board
 - (4) A copy of the variance or notice of appeal, whichever is applicable, including any maps drawings, site plans or other information submitted by the applicant
- D. Copies of the minutes shall be distributed to each member of the Appeals Board prior to their next meeting.
- E. A copy of the minutes shall be available to the public within seven days of the meeting by posting a copy in the lobby of City Hall.

Section 6.0 Per Diem and Mileage

Mileage and per diem may be paid to members of the Appeals Board at rates established by the Manistee City Council for attending Appeals Board meetings, and other authorized meetings and trips, if those members submit a bill for the same. Only mileage may be paid for attendance at site inspection meetings, if those members submit a bill for the same. No mileage or per diem is paid to any members unless authorized and budgeted by the Manistee City Council.

Section 7.0 Other Duties

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

Section 8.0 Adoption and Repeal

Upon adoption of these rules of procedure by the Appeals Board 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 Appeals Board, so long as such amendment does not result in a conflict with state law, zoning ordinance or court decision.

ADOPTED BY CITY OF MANISTEE ZONING BOARD OF APPEALS - JANUARY 9, 2003