



CITY OF WIXOM ZONING BOARD OF APPEALS

BY-LAWS AND RULES OF PROCEDURE

Adopted:
Zoning Board of Appeals
November 8, 1995

Approved:
City Council
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Amended:
Zoning Board of Appeals
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PREAMBLE

These rules are supplementary to the provisions of the Zoning Ordinance of the City of Wixom as they relate to the procedure of the Zoning Board of Appeals. The Zoning Board of Appeals is established to interpret the intent of the ordinance in those cases where the text may be unclear or where there is an appeal from any action, order, requirement or determination made by the building official or other enforcing agent. The Zoning Board of Appeals may grant relief from the literal provisions of the Zoning Ordinance only when practical difficulties or unnecessary hardships result from a literal application of the law. Nothing herein shall be construed to give or grant to the Zoning Board of Appeals the power or authority to alter or change the Zoning Ordinance, including the zoning map. Sole authority rests with the City Council.

Article 1. Establishment and Membership:

The City of Wixom Zoning Board of Appeals is established pursuant to Chapter 18.22 of the City of Wixom Zoning Ordinance and has those powers and duties specified under Michigan Zoning Enabling Act (Public Act 110 of 2006 as amended).

Membership of the Zoning Board of Appeals shall consist of seven (7) regular members, one (1) of whom shall be a member of the Planning Commission, and two (2) alternate members, appointed by the majority vote of the City Council. A member of the City Council may be appointed to the Zoning Board of Appeals, but shall not serve as chair. A member of the Zoning Board of Appeals who is also a member of 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 Planning Commission, or the legislative body. However, the member may consider and vote on other unrelated matters involving the same property.

Members shall be appointed for a term of three (3) years, expiring on June 30th in the year of expiration, except that the terms for the Planning Commission or Council members shall be the same as that for their office. All vacancies for unexpired terms shall be filled for the remainder of the term in the same manner as the original appointment. A successor shall be appointed not more than 1 month after the term of the preceding member has expired.

The City Council may appoint up to two (2) alternate members to serve on the Zoning Board of Appeals, appointed by the majority vote of the City Council to serve a three (3)-year term. The alternate members shall be called to sit as regular members of the Zoning Board of Appeals in the absence of a regular member or for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. Once an alternate has been called to serve in a particular case, he or she shall continue to participate in that case until a decision has been rendered.

Members of the Zoning Board of Appeals or alternates shall be removable by the City Council for nonperformance of duty or misconduct in office upon written charges and after a public hearing.

New members of the Board shall attend a Zoning Board of Appeals workshop. Each member shall

have attended at least four (4) hours per year of training in planning and zoning during the member's current term of office.

It is recommended that Board members make site inspections on all cases prior to the Board meetings.

Article 2. Organization:

The election of the Chairperson and Vice-Chairperson of the Board shall be conducted at the December meeting of the Board. The term of office shall be for one (1) year and shall begin in January of the ensuing year. A vacancy in either office, during the term of office, shall be filled at the next meeting of the Board. The Chairperson shall preside at all meetings of the Board's proceedings, shall sign all official communications of the Board of Appeals, and shall perform such duties as may be requested by the Board.

Article 3. Conflicts of Interest:

Members of the Zoning Board of Appeals shall sit in on all cases except wherein a specific case a Board member requests to abstain in alleged conflict of interest. The Board member who is abstaining from the case must let it be known prior to any discussion of that specific case, at which point the member shall present the possible conflict. The remaining members of the Board must vote to determine whether or not a possible conflict exists. If it is determined that a conflict exists, the member must leave the premises until after the request has been acted upon.

Article 4. Powers and Duties of the Zoning Board of Appeals:

- A. **Appeals of Administrative Decisions.** The Zoning Board of Appeals shall hear and decide appeals where it is alleged by the appellant that there is error in any order, interpretation, requirement, permit, decision or refusal made by any administrative official or body in enforcing any provision of the ordinance. Appeals may be taken by a person aggrieved or by an officer, department, board, or commission of the City acting under authority of the Ordinance.
- B. **Dimensional (nonuse) and Use Variances.** The Zoning Board of Appeals shall hear and decide appeals where there are practical difficulties (nonuse variance) or unnecessary hardships (use variance) in carrying out the strict letter of the Zoning Ordinance.
- C. **Ordinance Interpretations.** The Zoning Board of Appeals shall have the power to interpret the provisions of the zoning text and/or zoning map.
- D. **Special Land Use and PUD Standards.** The Zoning Board of Appeals may grant dimensional or other site plan related variances (e.g., lot dimensions, setbacks, building height, lot coverage, parking, etc.) for special land uses. The ZBA shall not have the power to reverse or modify the Planning Commission's decision to approve or deny a special land use nor grant variances to any conditions placed on special land use approval. The ZBA shall not have the authority to grant variances to the PUD regulations of [Chapter 18.11](#) or any requirements placed on PUD approval. However, the ZBA

shall have the authority to hear and decide appeal requests by individual lot owners for variances from other sections of the zoning ordinance following final approval of the PUD, provided such variances do not affect the terms or conditions of the original PUD approval or constitute a variance to the PUD regulations of [Chapter 18.11](#).

- E. **Ex Parte Contact.** Zoning Board of Appeals members shall avoid Ex Parte contact on petitions before the Board whenever possible. In the event that Ex Parte contact occurs, the Board member shall take detailed notes on what was said and report to the Board at a public meeting or hearing so that every member and other interested parties are made aware of what was said.

Article 5. Meetings:

- A. Chapter 18.21.110 – Public Hearings, of the City of Wixom Municipal Code shall apply. All meetings shall be conducted following Robert's Rules of Order.
- B. If a Board member is unable to attend a Board Meeting, he/she shall call the City staff and notify them in advance of their intended absence otherwise the absence shall result in an unexcused absence. Total absences exceeding twenty-five (25%) percent of all meetings in any one (1) calendar year shall be considered nonperformance of duty and may be cause of removal from the Board upon vote by the majority of City Council.
- C. Meeting packets (consisting of prior meeting's minutes, upcoming meeting agenda and case information) shall be distributed (7) days prior to the next regular meeting.

Article 6. Meeting Procedure:

- A. All Board of Appeals meetings shall be open to the public and shall be preceded by notice pursuant to the requirements of the City of Wixom Zoning Ordinance and the Open Meetings Act.
- B. Board meetings shall be held on the second Monday of the month at 7:30 pm, except when such day falls on a legal holiday, then on a date determined by the Board.
- C. Five (5) Board members may temporarily suspend any rule of procedure or change the date and time of regular meetings.
- D. A special meeting may be called by the Chairperson provided notice has been given under the Open Meetings Act.
- E. Five (5) members of the Board shall constitute a quorum for the purpose of conducting Board business.
- F. The Zoning Board of Appeals shall not conduct business unless a majority of the members of the Zoning Board of Appeals are present.

G. The following format shall be followed in the conduct of a Board Meeting:

1. Call to Order. Meeting called to order by the Chairperson.
2. Attendance. Attendance Roll Call by Recording Secretary.
3. Minutes. Approval of the previous meeting minutes.
4. Rules of Conduct. The Rules of Conduct for the hearing shall be read aloud by the Recording Secretary as follows:
 - a. EACH PERSON DESIRING TO ADDRESS THE BOARD SHALL STATE THEIR NAME AND ADDRESS.
 - b. INDIVIDUAL PERSONS SHALL BE ALLOWED TEN (10) MINUTES TIME TO ADDRESS THE BOARD. AN EXTENSION OF TIME MAY BE GRANTED AT THE DISCRETION OF THE CHAIRPERSON.
 - c. THERE SHALL BE NO QUESTIONING BY THE AUDIENCE OF THE PERSONS ADDRESSING THE BOARD HOWEVER, THE BOARD MEMBERS MAY QUESTION THAT PERSON WITH RECOGNITION OF THE CHAIRPERSON.
 - d. NO PERSON SHALL BE ALLOWED TO ADDRESS THE BOARD MORE THAN ONCE UNLESS PERMISSION IS GRANTED BY THE CHAIRPERSON.
 - e. ONE SPOKESPERSON FOR A GROUP ATTENDING WILL BE ALLOWED A TEN (10) MINUTE TIME TO ADDRESS THE BOARD.
 - f. A PUBLIC HEARING IS NOW IN SESSION.
5. Public Hearing. The public hearing shall be conducted as follows:
 - a. Announcement by Chairperson. The Chairperson will then announce the first public hearing as follows: "At this time a Public Hearing is called to consider (state the purpose for the hearing). Legal notice of this Hearing was published on (date) in the (local paper carrying notice, Spinal Column, etc.) of the regular circulation in the City of Wixom".
 - b. Staff Comments. Staff comments on the hearing, if requested will be recognized at this time.
 - c. Proponents. Individuals speaking in support shall present first, beginning with the applicant. Everyone who wishes to speak will be afforded limited opportunity to do so. The Chairperson shall/may overrule irrelevant remarks. All comments will be directed to the Chairperson.
 - d. Opposition. Opposition speakers will go next and will be held to the same rules and guidelines as proponents.
 - e. Rebuttal. Applicant may offer rebuttal at this time.
 - f. Close Public Hearing. The Chairperson will then close the Public Hearing.
 - g. Deliberation. The Board will begin its deliberation on the Public Hearing.
 - h. Motion. A motion will then be made by a Board Member. The motion to approve, deny or approve with conditions shall state the conclusions and the rationale for the conclusions.
 - i. Vote. A voice vote will then be called by the Chairperson. If the vote is not unanimous, then a roll call vote will be taken by the Recording Secretary.
 - j. Result of Vote. The results of the vote will be announced by the Chairperson. The applicant will then be excused by the Chairperson.
6. Remaining Caseload. Procedure 5a. through j. will be followed for each subsequent hearing

on the agenda.

7. Call to Public. After the last hearing, a call to the public will be made. A person may address the Board on any subject for a period not to exceed five (5) minutes.
8. Old Business.
9. New Business.
10. Board Member Comments.
11. Staff Comments.
12. Adjournment.

Article 7. Decisions of the Zoning Board of Appeals:

- A. The record and decisions of the Zoning Board of Appeals shall meet all of the following:
 1. Comply with the constitution and laws of this State;
 2. Be based upon proper procedure;
 3. Be supported by competent material and substantial evidence on the record; and
 4. Represent the reasonable exercise of discretion granted by law to the Zoning Board of Appeals.
- B. The Zoning Board of Appeals shall observe the following voting requirements.
 1. The concurring vote of five (5) members of the Board shall be necessary to decide any appeal, interpretation or dimensional variance.
 2. The concurring vote of six (6) members of the Board shall be necessary to approve a use variance. If there is not a full membership of the Board present, the applicant may request to be tabled until a future meeting.
- C. In authorizing an action within its authority, the Zoning Board of Appeals may attach any conditions deemed necessary, provided any conditions comply with each of the following standards:
 1. Be designed to protect natural resources, the health, safety and welfare, as well as the social and economic wellbeing of those who will use the land use or activity under consideration; residents and land owners immediately adjacent to the proposed land use or activity; and the community as a whole;
 2. Be related to the valid exercise of the police power and purposes which are affected by the proposed activity; or
 3. Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established in the Ordinance for the land use or activity under consideration; and be necessary to ensure compliance with those standards.
- D. Decisions of the Zoning Board of Appeals shall be based upon findings of fact which shall be supported in the record of the proceedings of the Board.
- E. The Board shall prepare an official record for each application and shall base its decision on this record. The official record shall include:
 1. Any relevant administrative record or administrative orders (for appeals);
 2. A copy of the application form and required notices;
 3. Any documents, exhibits, photographs, or written reports as may be submitted to the Board for its consideration; and
 4. The minutes of the hearing, findings of fact, and decisions and orders of the Board.

- F. Approval of a dimensional variance by the Zoning Board of Appeals shall be valid for a period not longer than twelve (12) months, unless a building permit for the construction or alteration is obtained and construction or alteration is started and proceeds to completion in accordance with the terms of the permit and the requirements of the Board.
- G. Approval of a use variance by the Zoning Board of Appeals shall be valid for a period not longer than twelve (12) months unless the use is established within that period. Approval shall continue in force and effect if a building permit for construction or alteration is obtained within this period, and the construction or alteration begins and proceeds to completion in accordance with terms of the permit and the requirements of the Board.
- H. The decision of the Board shall not become final until whichever of the following deadlines comes first: thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson; or within twenty one (21) days after the Board approves the minutes of its decision. Appeals from such final decision of the Zoning Board of Appeals may be taken to the Circuit Court, as provided by law.

Article 8. Amendments:

- A. These By-laws and Rules of Procedure may be amended or modified, provided:
 - 1. That any amendment or modifications is presented in writing at a meeting of the Board;
 - 2. Further, that favorable action is taken thereon at the next regular meeting of the Board;
 - 3. Further, that the proposed amendments or modifications are submitted to the Board and receives approval therefrom, and shall become effective immediately upon such approval.
- B. These By-laws and Rules of Procedure may be amended at any regular or special meeting by two-thirds (2/3) vote of the members of the Board provided such amendment does not result in a conflict with the State law, the City Zoning Ordinance, the City Charter or court decision.