

ZONING BOARD OF APPEALS

CITY OF LIVONIA

RULES OF PROCEDURE

SECTION ONE – AUTHORITY

The City of Livonia Zoning Board of Appeals (hereinafter referred to as “the ZBA” or “the Board”) 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 Livonia, as amended.

SECTION TWO - MEMBERSHIP

The Board Composition

The Board is composed of seven residents, each appointed to a three-year term. Board officers shall consist of a Chairman, Vice Chairman and Board Secretary. The Board shall elect annually its Board officers for the next annual period at its first Regular Meeting (as defined below) after August 1st of that year, or the next Regular Meeting or Special Meeting (as defined below) when a full Board is present.

Reference Materials

Upon taking office, each member shall have access to an electronic version of the ZBA Orientation Guidebook (“Guidebook”). Hard copies of the Guidebook shall be provided on request, as available. The Guidebook shall consist of reference materials, including, but not limited to:

- i. Updated Zoning Board of Appeals Rules of Procedure;
- ii. Livonia Zoning Map;
- iii. The Michigan Open Meetings Act;
- iv. The Michigan Planning Enabling Act;
- v. The Michigan Zoning Enabling Act;
- vi. The Zoning Board of Appeals Handbook (Michigan Municipal League);
- vii. Robert's Rules of Order;
- viii. Simplified Resolution, Day Care Motion and Opening Statement Templates; and,
- ix. Any other materials deemed necessary to familiarize a new member with the appeals process and the duties of the ZBA.

Ex Parte Contact

Members shall avoid Ex Parte contact concerning questions or matters pending before the Board. Ex Parte Contact shall include discussions among members, applicants, or the public outside of a Board meeting, including emails, about matters pending before the Board. Questions or concerns shall be directed individually to the City of Livonia Law Department.

SECTION THREE - RULES

RULE I - Meetings

A. In accordance with the Open Meetings Act, 1976 PA 267, the dates, times and places of all Regular meetings of the Board for the next ensuing calendar year shall be posted within ten (10) calendar days after the first meeting of each calendar year. The meetings are open to the public and any persons attending shall not be required to identify themselves as a condition of attendance at the meeting but shall identify themselves by name and address if they wish to address the Board.

B. The first Board meeting of the month shall be considered the Regular meeting and shall be held on a Tuesday at 7:00 P.M. By resolution supported by four (4) members of the Board, the date or the time of the Regular meeting may be changed. If a Regular meeting is changed, however, a public notice stating the new dates, times and places of the Regular meetings shall be posted within three (3) calendar days after the meeting at which the change is made.

C. Any meeting held in a month in addition to a Regular meeting shall be considered a Special Meeting. Special meetings may be called by the Board Chairman or upon written request of four (4) members, provided twenty-four (24) hours' notice has been given to each Board member before the time set for such hearing, except that the announcement of a Special meeting at any meeting at which all the members are present shall be sufficient notice of such meeting. The notice of any rescheduled Regular meetings or the calling of a Special meeting shall be posted at least eighteen (18) hours prior to the date of the rescheduled Regular meeting or Special meeting and shall state the date, time and place of such meeting.

D. The office secretary to the Board (hereinafter referred to as "Office Secretary") is designated as the person who shall post notices of meetings in the office of the Board, on the bulletin board at the office of the City Clerk and in local publication as required under the Open Meetings Act, 1976 PA 267 and the provisions of ACT 110 of the Public Acts of 2006, as amended (MCLA 125.3101). The Office secretary shall post all Appeal Materials (as defined below) as soon as available and no later than at least two (2) business days prior to a Regular meeting or Special meeting to the Board's file sharing platform, as it exists at that time and the City of Livonia website, excluding any private information, including, but not limited, to an applicant's Driver's License.

E. Four (4) members of the Board shall constitute a quorum for conducting its business. The concurring vote of four (4) the members of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant any matter upon which the Board is authorized to pass by law, or to affect any variation in the Zoning Ordinance, except that a concurring vote of two-thirds (2/3) of the members of the Board shall be necessary to grant a variance from uses of land. Further, that the only acceptable votes are Aye, Nay or Abstain. For clarity, in the instance when only four members of the Board are present at a Regular meeting and Special meeting, four concurring votes shall be necessary to grant a variance. Every resolution not otherwise provided for herein shall require a majority vote of the members present at a legally constituted meeting.

F. The Board shall also hear appeals from the Swimming Pool and Fence Ordinances as provided by the Code of Ordinances of the City of Livonia. The procedure for hearing fence appeals is the same as all other appeals, except Swimming Pool Appeals. The procedure for filing and hearing Swimming Pool Appeals is governed under Rule III Swimming Pool Appeals.

- G. The order of business at Board meetings shall be as follows:
- i. Roll Call
 - ii. Pledge of Allegiance
 - iii. Introductions and Procedural Explanations (including recourse to Circuit Court)
 - iv. Petitioner Roll Call
 - v. Disposition of Appeals
 - vi. Discussion of Minutes of previous meeting and action thereon
 - vii. Other Business
 - viii. Adjournment

H. The meetings shall be conducted under Robert's Rules of Order, revised, except as pertains to the proportion of the membership necessary to take action per Rule I, paragraph E.

RULE II – Appeals

A. An appeal to the Board may be taken from any order, directive, requirement, decision or determination of any administrative official or other Board charged with the enforcement of the Zoning Ordinance, by any person aggrieved thereby, or by any officer, department, board, or bureau of the City, except decisions of City Council or where such an appeal is prohibited by Ordinance. Such appeal shall be taken by filing with the Board an application or notice of appeal which shall set forth or be accompanied by the information and data required in Paragraphs E and F of this Rule II.

B. The application or notice of appeal to the Board shall be made in writing, on forms adopted by said Board, and shall be submitted to the Office Secretary. Forms for appeals can be secured from the Inspection Department.

C. Notices of appeal or applications for any variation or modification of the requirements of the Zoning Ordinance shall be made by the owner of the premises affected. Such notice or application may be made, however, by an attorney or agent upon proper authorization. The Board shall require such authorization in writing from the owner.

D. An original and duplicate of each application or notice of appeal from an order or determination of an administrative official or bureau shall be forwarded to such official or bureau, and such official or bureau shall forthwith transmit to the Board the original of the application or notice of appeal together with all the papers constituting the record upon which the action of appeal was taken.

E. The application or notice of appeal shall set forth or shall be accompanied by the following data and information:

- i. The principal points upon which the appeal is made;
- ii. The street address, if any, and the cross streets; and,

iii. A clear and accurate description of any structural material to be used for the proposed work to be done and/or use to be made of the property involved.

F. The application or notice of appeal shall be accompanied with the following:

i. Residential or Commercial: A copy of a plot plan drawn to scale showing the actual shape and dimensions of the lot; the existing buildings and accessory buildings, lines within which the proposed building is to be erected or altered; the existing and intended use of each building or part of a building; the number of families or housekeeping units the building is designed to accommodate, and such other information with regard to the lot. Show adjacent lots with building locations and address number. Additionally, a photograph, architectural rendering or rendering and plan of the building and property involved. New construction, alteration and additions to a building require a minimum of one set of building plans in addition to the plans which accompany the building permit application.

ii. Signs: A copy of a plot plan clearly showing the proposed location of the sign(s) drawn to scale and all existing signs, and detailed plans of the proposed sign(s) including, but not limited to, a color rendering of the proposed sign(s). Additionally, a photograph or rendering and plan of the sign involved.

G. All available pertinent information shall be furnished by the applicant. All consents secured by, and copies of all notices given by, the applicant shall be filed with the Board.

H. The Board may request of the applicant such additional information and data as is deemed essential to advise the Board with reference to any question involved in the appeal. Refusal or failure to comply on the part of the applicant may be grounds for the dismissal of the application by the Board.

I. The Board shall fix a reasonable time for the hearing of the appeal and give notice thereof to all persons entitled to notice under the provisions of ACT 110 of the Public Acts of 2006, as amended (MCLA 125.3101), and shall decide the same within a reasonable time, having regard to the nature and exigencies of the case.

J. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order.

RULE III - Swimming Pool Appeals

A. Procedure for filing a Swimming Pool Appeal:

i. The applicant shall obtain appeal form from the Building Department and be completed in duplicate for submission to the Board.

ii. A copy of drawings and other information as described in the Ordinance shall be submitted with concurrent with the application for use by the Board in making its decision.

iii. The Office Secretary to the Board shall record the name and address of all property owners and residents adjacent to applicant's property.

- a. Adjacent property owners or residents are defined as owners or residents of property, any part of the boundary of which is common to the applicant's property.
 - b. Notice will be sent to these persons advising them of a public hearing.
- B. Hearing of the Swimming Pool Appeal:
- i. The hearing on the appeal will be per the docket as scheduled by the Office Secretary.
 - ii. The Board will not consider or grant variances or modifications that would waive the requirement of protective fences, walls or electrical safety.
 - iii. Four (4) members of the Board shall constitute a quorum for the hearing of these cases and a simple majority vote of the Board shall be required to grant or deny the appeal.
 - iv. The decision of the Board shall become final within five (5) calendar days following the hearing and the applicant shall be mailed a copy of the decision.
 - v. All variances granted shall be for good reason. Variances shall not be injurious to the health, welfare, or safety of the applicant, adjacent property owners, or the City of Livonia.

RULE IV - Docket and Calendar

- A. Each application or notice of appeal determined to be properly filed with the required information and data, shall be numbered serially, recorded and placed upon the calendar as directed by the Office Secretary, for a Regular Meeting, and Special Meeting as provided herein, as soon as the required and essential information and data have been furnished and properly assembled and statutory notice requirements are met.
- B. The record book shall be kept posted to date by the Office Secretary and shall record the name and address of the applicant, the nature and type of the appeal, the location of premises, date of hearings and all discontinuances, postponements, dates of sending notices and other steps taken, or acts done, and the final disposition of the case.
- C. When the applications for appeal are docketed and placed on the calendar, the Office Secretary shall direct that all inspections, maps, plats, and other required information and data are properly assembled and prepared for the hearing.
- D. Notices, by first class mail or by personal service, shall be sent to the parties in interest, the owners and residents of all abutting lots, as well as owners and residents of all land and property within a 300-foot radius, at least fifteen (15) calendar days prior to the date set on the calendar for the hearing and publish as required by current applicable state and local law existing at that time.
- E. Regular Meetings shall be held as scheduled as long as there is one case docketed, however, no more than five cases shall be docketed at a Regular Meeting.
- F. Should there be more than five cases filed for a meeting date, any additional case or cases shall be scheduled on the next Special Meeting date which shall be held as long as there is one case docketed.

G. No case shall be scheduled on a Special Meeting date until the preceding Regular Meeting date has reached the five case limit or approved by the Board Chairman.

RULE V – Hearings

A. Appeals will be heard by the Board in the order in which they appear on the calendar except that an appeal may be advanced, postponed or adjourned for hearing by order of the Board upon good cause shown.

B. An applicant may appear in his/her own behalf or may be represented by attorney or agent at the hearings of appeals by the Board.

C. The regular order of procedure of hearings shall be:

- i. City official's presentation of the case
- ii. Applicant's presentation of the case
- iii. Interested property owners' presentation of the case
- iv. Rebuttals in similar order
- v. Reading of the correspondence
- vi. Disposition of the case

D. A minute book shall be kept as directed by the Office Secretary in which shall be recorded all resolutions relating to each case acted upon, together with the vote of each member of the Board (those absent being so marked), together with all other actions of the Board. In accordance with the Open Meetings Act, 1976 PA 267, the minutes shall show date, time, place, members present and absent, all decisions made and all roll call votes taken. Also, the minutes shall be open to public inspection and shall be available at the location or by other form as noted on the posted public notices. Copies of minutes shall be available for the cost of printing and copying the same. All proposed minutes shall be available for public inspection not more than eight (8) working days after the meeting to which they refer. Approved minutes shall be available not more than five (5) working days after their approval.

E. The following rules for addressing this Board at all meeting shall govern such proceedings:

- i. Members of the public at the meeting shall not speak until they are recognized by the chair.
- ii. Each person receiving permission to address this Board shall identify himself/herself by name and, if appropriate, address and/or group affiliation.
- iii. A person, other than a Petitioner, addressing this Board on an item on the agenda shall be limited to two minutes, unless the period of time is extended by a majority of this Board present, and shall be recognized to speak prior to this Board's consideration of the item;
- iv. Persons addressing this Board shall make responsible comments and shall refrain from making personal, impertinent, slanderous or profane remarks; and,
- v. Any person causing a breach of the peace may be asked to leave the meeting.

F. The comments of any individual Board Member, after the completion of the presentations of the applicant and any opponents, shall not exceed three minutes in duration.

G. Proposed findings of fact supporting a denial of the requested variance shall be presented in each case by the pertinent City official(s).

H. The style of all resolutions granting, denying, or granting in part and denying in part any request for variance shall be as follows: "In appeal number [insert case no.], the requested variance is [granted/denied/granted in part and denied in part] for the following reasons and findings of fact:".

I. No correspondence shall be read into the record of the hearing of any case if such correspondence was written by any individual or on behalf of any entity, which spoke, or was represented by an individual who spoke, during the hearing and such correspondence shall be incorporated into the record.

RULE VI - Rehearing

A. A rehearing of any decision of the Board may be granted when:

- i. New evidence is submitted which could not reasonably have been presented at the meeting at which the decision was made, provided that such request for rehearing is made prior to the expiration of the five-day period prior to notification of the Board's decision; or,
- ii. The duration of a "time use qualified" variance has expired.

B. If a rehearing is granted, the case shall be put on the calendar for a rehearing under the procedure for a regular hearing. See Rule V.

C. In all cases, except when requested by a member of this Board, the request for a rehearing before this Board shall be set forth in a petition, reciting the reasons for said request and said petition shall be accompanied by such evidence and affidavits relied upon by the petitioning party to justify said request. All such petitions received pursuant to this rule shall be heard as soon thereafter as the calendar will permit. Said hearing will be held to determine whether or not the petition for said rehearing shall be granted.

RULE VII - Disposition of an Appeal

A. The Board may deny an appeal for lack of jurisdiction or prosecution, or may reverse, affirm, vary or modify any order, requirement, decision or determination of any administrative officer or bureau charged with the enforcement of the Zoning Ordinance and may enter such decision or order as in its judgment ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. The final decision shall be in writing, and so far as it is practicable, in the form of a resolution of the Board. The decision of the Board shall not become final until the expiration of five (5) calendar days from the date of entry of such order or decision unless the Board shall find the immediate effect of such order is necessary for the preservation of property or personal rights and shall so certify on the record.

B. Within five (5) calendar days after entry of the decision of the Board, a copy of such decision shall be mailed to the applicant. The official decision occurs when the Board minutes are approved.

C. Any applicant may, with the consent of the Board, withdraw his/her/its application at any time prior to the final action thereon.

D. Whenever any variance or modification of the strict application of the terms of the Zoning Ordinance is authorized by the order of the Board, a building or other requisite permit shall be obtained from the Bureau of Inspection within an interval if specified by the Board, and failure to obtain such permit within that time shall thereby invalidate and terminate such authority when so conditioned by the Board. However, an extension request will be allowed under the rules for a hearing as indicated in Rule V.

E. Any person having standing to appeal the relief or lack thereof granted, may petition for redress from the Wayne County Circuit Court, as set forth in the Michigan Zoning Enabling Act and pertinent Court Rules.

RULE VIII - Officers and Duties

A. The Chairman shall preside at all meetings of the Board. In case of the absence of the Chairman or at the request of the Chairman, the Vice Chairman shall preside. In the absence of the Chairman and Vice Chairman, the Board Secretary shall preside. If none of these officers are present, a temporary Chairman shall be elected by the members present.

B. The Chairman, subject to these rules, shall decide all points of order on procedure, unless otherwise directed by a majority of the Board in session at that time.

C. All committees that may be deemed necessary and advisable for the proper conduct of business, shall be appointed by the Chairman, unless otherwise provided for by the Board.

D. The Board Secretary shall direct the keeping of the minutes of the Board's proceedings, the compiling of the required records and the maintaining of all necessary records, files and indexes.

E. Any duties of a clerical, administrative or ministerial nature assigned to or imposed upon any officer by these rules may be delegated to Office Secretary or any clerk or assistant who may be employed by the Board to perform such duties.

RULE IX – Amendments

Amendments to these Rules of Procedure may be made at any regular meeting upon the affirmative vote of five (5) members, with one-week prior notification to all members.

RULE X – Records

A. The records pertaining to all appeals to the Board shall be kept in the office of said Board, in such manner as to be available to the public during regular office hours, upon request to an attendant, but shall not be taken from the office except by written permission of the Board.

B. Electronic records pertaining to all appeals to the Board shall be made available via the City of Livonia web site.

RULE XI – Absences

Prospective absences of a member of the Board shall be reported to the Law Department and the Board prior to the meeting.

RULE XII–Review

A. The Board may order the review of these Rules of Procedure by a vote five (5) or more members of the Board, which review shall be completed and voted upon with in ninety (90) days from the date of the vote for the review. Revised rules will become effective on the date of an affirmative vote for the revised rules.

B. Care shall be taken to ensure that these rules shall not conflict with any federal or state law or City of Livonia 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.

Rule XIII– Alternates

In the event City Council appoints an alternate member to the Board pursuant to the Michigan Zoning Enabling Act, the Alternate shall have all rights and duties and occupy the seat at the table with respect to such case as the replaced member has in other cases before the Board.