

EVANSTON ZONING BOARD OF APPEALS

RULES OF PROCEDURE

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**ZONING BOARD OF APPEALS
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Article I. General Provisions

Section 1: These rules are supplementary to the Zoning Division of the Illinois Municipal Code, 65 ILCS 5/Art. 11, Div. 13, the Illinois Open Meetings Act, 5 ILCS 120, the City of Evanston Code of Ethics, Title 1, Chapter 10 of the Evanston City Code, 2012, as amended, and the City of Evanston's home rule Zoning Ordinance, Title 6 of the Evanston City Code, 1993, as amended, and are adopted pursuant to the authority contained therein.

Section 2: Nothing contained herein shall be construed to give or grant to the Board the power or authority to amend or change the Zoning Ordinance, which authority is reserved to the City Council following a public hearing before the Plan Commission.

Section 3: The Office of the Board shall be located in the office of Zoning within the Community Development Department, and the papers pertaining to any case may be examined at this location by any interested parties.

Section 4: All meetings and hearings of the Board, as defined in the Illinois Open Meetings Act, 5 ILCS 120, shall be open to the public and subject to public notice requirements.

Section 5: A quorum of the Board is required for the transaction of any business. A quorum shall consist of a majority of the current number of members.

Section 6: Information concerning any pending case shall be obtained only from the Secretary of the Board. Discussion of the merits of any pending case by the public with any Board member, except by sworn testimony at a public hearing, is improper, and may be considered prejudicial.

Section 7: No member of the Board shall participate in any way in any case in violation of the City's Code of Ethics.

Article II. Officers and Duties

Section 1: The officers shall be a Chair, Vice Chair, and Secretary.

Section 2: The appointing authority shall designate the Chair. The Board shall elect a member as Vice Chair. When the Chair and Vice Chair are both absent from the same meeting, the Board shall elect a member as acting Chair.

Section 3: The Chair shall supervise the affairs of the Board, preside at all meetings, appoint such committees and sub-committees as may be necessary to carry out the purpose of the Board, and shall provide for an oath or affirmation to be administered to all witnesses in cases before the Board. The Chair shall be ex-officio member of all committees and sub-committees so appointed.

Section 4: The Chair may, in order to avoid unnecessary delays, grant motions in advance of the hearing for issuance of subpoenas relating to a scheduled case for production of persons or documents provided for in Section XII.C.3 of the Zoning Ordinance. Motions to either overrule refusal to issue or to quash a subpoena may be presented to the

Board at the hearing.

Section 5: The Vice Chair or acting Chair shall perform all the duties and exercise all the powers of the Chair.

Section 6: In the event that any Board member is absent from three or more of the last six Board meetings held, the remainder of the Board present shall vote on a recommendation to the appointing authority as to said Board member's status with the Board. Such recommending vote shall be recast at all subsequent meetings until said Board member's attendance improves to absences of less than three of the last six Board meetings, with each recommending vote passed on to the appointing authority.

Section 7: The Zoning Administrator, or his/her designee, shall serve as Secretary of the Board.

Section 8: The Secretary shall:

- (a) be custodian of the active files of the Board and keep all records;
- (b) ensure the preservation of all files on which Board action has been completed.
- (c) conduct the correspondence of the Board;
- (d) inform applicants when their application is to be heard, and notify each applicant to be present at the hearing;
- (e) have public notice of meetings or hearings published in a local newspaper as required by law and these rules of procedure;
- (f) upon receipt of reprints of the public notice, promptly mail copies to landowners and residents in the vicinity of the property in question, but failure to do so shall not prejudice the hearing;
- (g) furnish a copy of said notice and a copy of each application and all supporting documents which is to be heard to each Board member;
- (h) keep records of the Board's official actions;
- (i) record the names and addresses, if provided, of all persons appearing before the Board;
- (j) ensure an audio-visual recording of the hearing, or detailed minutes of the meeting, occur and are available to the public;
- (k) maintain a record of the vote of each Board member upon every question, or if absent or failing to vote, indicating that fact;
- (l) be responsible for initial interpretation of these rules of procedure which may be overruled by the Board.

Article III. Application Requirements

A. ALL APPLICATIONS AND APPEALS

Section 1: Applications may be made for: an appeal from the decision of the Zoning Administrator or his/her designee, appeal for a time extension, variation, special use, or a referral by the City Council.

Section 2: Any application may propose alternative forms of relief for the same proposal providing a separate filing fee, if applicable, is paid for each alternative request so filed and each case is properly noticed in the newspaper and to neighboring properties.

Section 3: A certificate of disclosure of ownership interests of entities seeking City Council or Board approval on real estate matters shall be filed with any application on property not held in sole ownership by the applicant.

Section 4: The application shall contain requests for all zoning relief necessary to allow the proposal. In any case where physical improvements are contemplated, or deemed necessary, plans sufficient in detail for a Zoning Analysis shall first be submitted to the Community Development Department for the review and preparation of a zoning analysis, except for an appeal being filed by other than the property owner or contract purchaser.

Section 5: Applications may not be filed which are prospective with respect to a proposed change to the Zoning Ordinance. However, if a petition or reference has been made and publicly noticed in the newspaper for the Zoning Committee of the Plan Commission or the full Plan Commission, the Board may suspend this rule.

B. APPEALS FROM DECISION

Section 1: An appeal may be taken to the Board from any zoning regulation, requirement, decision, or determination made by the Zoning Administrator or his/her designee, by any person aggrieved, or by any officer, department, board or bureau of the City.

Section 2: For purposes of this Article III.B., “any person aggrieved” is defined in Section 6-12-6-1 of the Zoning Ordinance.

Section 3: The enforcing officer shall transmit to the Secretary of the Board all papers constituting the records upon which the action appealed from was taken.

Section 4: Prior to the hearing of the appeal, the appellant shall provide all the information and all papers requested in the applicable forms, as well as any other information that may be required relevant to the appeal., The Board may, at its discretion, collect any further information or evidence, which may or may not require the continuance of a case, to aid it in reaching a decision.

Section 5: The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end has all the powers of the officer from whom the appeal was taken. The Board also may remand the matter to the Zoning Administrator for further consideration.

C. APPEAL FOR TIME EXTENSION

Section 1: An appeal may be taken to the Board from a directive by the Zoning Administrator or his/her designee to correct or discontinue any violation of the Zoning Ordinance by a specific date by any person aggrieved. Said appeal may be made to the Board only for the purpose of providing a longer time period for correcting or discontinuing an existing violation to the Zoning Ordinance.

Section 2: The enforcing officer shall transmit to the Secretary of the Board all papers constituting the records upon which the action appealed from was taken.

Section 3: Prior to the hearing of the extension, the appellant shall provide all the information and all papers requested in the applicable forms, as well as any other information that may be required to reach in a decision.

D. VARIATIONS

Section 1: A request for a variation may be filed by any property owner, authorized representative, contract purchaser, or 99 year lessee.

Section 2: Prior to the hearing of the variation, the applicant shall provide all the information and all papers requested in the applicable forms, as well as any other information that may be required by the Board to aid it in reaching its recommendation or decision.

E. SPECIAL USE

Section 1: A special use permit may be requested by any property owner, authorized representative, contract purchaser, or 99 year lessee whose property is located in a zoning district where the requested special use is so listed, except as provided in Article III, A. All Applications and Appeals, Section 5 of these Rules.

Section 2: Prior to the hearing of the special use, the applicant shall provide all the information and all the papers requested in the applicable forms, as well as any other information that may be required by the Board to aid it in reaching its recommendation or decision.

Article IV. Filing and Scheduling Procedures

Section 1: All applications shall be made on forms supplied by the Secretary.

Section 2: When any application is filed which proposes alternative forms of relief for the same proposal it shall not be scheduled for hearing until all filing procedures for all alternative application requests have been completed.

Section 3: Any proposal which is the subject of an application for a variation, special use, or an appeal for a time extension, which proposal is found not to conform to any other law or laws of the City shall not be accepted for hearing , except as provided in Article III, A. All Applications and Appeals, Section 5 of these Rules.

Section 4: Any proposal that is the subject of an application for a variation, special use, or an appeal for a time extension, and is found to also need review by the Design and Project Review Committee or Preservation Commission, shall not be accepted for hearing until the applicant has appeared before the Design and Project Review

Committee or Preservation Commission and received a recommendation.

Section 5: Upon receipt of a single copy of the application forms, required papers, and filing fee, if any, the Secretary shall promptly review it to determine if the necessary information and documents have been provided. If any revisions are necessary to perfect the application, it will be returned to the applicant with instructions. When the application forms are in proper order in all respects, all copies, including all required papers, shall be digitally submitted to all Board members, along with a zoning analysis and current prehearing report concerning the property.

Section 6: Appeal from Decision of the Zoning Administrator and his/her designee:

- (a) Upon receipt of a single copy of the appeal form, required papers and filing fee, if any, the Secretary shall promptly review it to determine if the necessary information and documents have been provided.
- (b) If the application is complete, the Secretary shall prepare all the papers constituting the record upon which the action appealed from was taken. These documents shall be transmitted to the members of the Board sufficiently in advance of the hearing at which the appeal is to be heard.

Section 7: When all prerequisites have been met and the application forms and documents are filed, the Secretary shall assign a case number and place it on the calendar for hearing. All completed applications and notices of appeal shall be assigned for hearing in the order in which they are accepted as having been filed in proper form.

Section 8: More than four cases shall be scheduled for any one hearing only upon consultation between the Chair and the Zoning Administrator or his/her designee, whereupon ample time for each case is anticipated. In the event more than four cases are scheduled for any one hearing, such cases will be heard as time allows, and may be rescheduled to a later hearing date if necessary.

Section 9: The docket shall be numbered serially beginning each January 1, and shall indicate the number, the year and the character of the case.

Article V: Public Notice

Section 1: The Board may consider any application for appeal from the interpretation of the Zoning Administrator or his/her designee, appeal for time extension, application for variation, application for special use permit, only after a public notice has been published.

Section 2: The Secretary of the Board shall give due notice of the time and place of every public hearing not more than thirty (30) days nor less than fifteen (15) days before the meeting by publishing a notice thereof at least once in one or more newspapers published in the City, or if no newspaper is published therein, then in one more newspapers having a general circulation within the City. Said notice shall contain a brief statement of the subject of the hearing, and the name of the Applicant(s) and his/her relationship to the case, the property address, the nature of the request. For special uses, the notice shall also contain the zoning district in which the property is located. All publications shall include the specific code sections sought for variance and/or special use approval.

Section 3: At the public hearing or any continuation thereof, any person with a legal interest in real property located within 500 feet of the property that is the subject of the appeal or application shall have the right to present evidence

and testimony, cross-examine witnesses, or seek a continuance of the hearing as provided in the Zoning Ordinance and applicable rules. Any other person in attendance will be afforded an opportunity to be heard in relation to the petitioner's request. Persons seeking to present evidence, testimony, or cross-examine witnesses, or seek a continuance of the hearing as provided shall be encouraged to state the address in which they hold real property to allow the Board a full understanding of the relevance to any case. Such persons are not required to provide the address in which they hold real property.

Article VI. Meetings (Including Hearings)

Section 1: Regular meetings shall be held on the third Tuesday of each month at 7:00 P.M. in the Civic Center, 2100 Ridge Avenue, unless such day shall be a legal holiday observed by the City or another conflict exists, in which case the regular meeting shall be held at such other time as the Board may decide. The Board shall determine whether any new case may begin after 10:00 P.M. in a given hearing, or if such case shall be rescheduled to the next hearing.

Section 2: Regular meetings may be canceled by the Secretary when there are no cases pending. Notice should be given to the members not less than fourteen days prior to the time set for such meeting.

Section 3: Special hearings or meetings may be called by the Chair at his discretion, or upon request of two (2) or more members, provided public notice of said hearing is published as required. The Board will attempt to schedule a special hearing whenever accepted cases cannot be heard at the next regular hearing because the docket is already full, or an appeal from the decision of the Zoning Administrator or his/her designee involving construction has been filed which could cause irreparable harm if not decided promptly.

Section 4: Audio-visual recordings shall be made, and minutes taken of all hearings and meetings of the Board. The recording and minutes pertaining to each case shall be made a part of the pertinent case file.

Article VII. Order of Business

Hearings of the Board shall ordinarily proceed as follows:

Section 1: Roll call and declaration of a quorum.

Section 2: Call by the Chair to determine if all applicants are present and for announcement by any members if they must abstain from consideration of any particular case on the agenda due to a possible conflict of interest. If such abstentions result in the loss of a quorum on any case, such case shall be postponed by public announcement to a date certain.

Section 3: Call for withdrawals or requests for continuances:

- (a) Any application or any portion of an application may be withdrawn at any time prior to the Board voting on a recommendation or final decision. Any application withdrawn after the Board has begun deliberation shall not be reinstated or resubmitted within six (6) months of withdrawal. Any application that is deemed substantially different from the original application, as determined by the Chair and Zoning Administrator or his/her designee, may be resubmitted at any time.

- (b) A request for a continuance by any applicant or person with a legal interest within 500 feet of the subject property will be considered by the Board and may be granted by the Board upon showing the case is unable to proceed at the current hearing for good cause. Any case in which a continuance is granted by the Board shall be continued by public announcement to a date certain.
- (c) The Board may, at its discretion, continue any matter in which it determines additional clarification, evidence, or testimony is required.

Section 4: Any case begun at a previous hearing may only hear new testimony and receive new evidence if testimony remained open at the time of the continuance or if the Board reopens testimony.

Section 5: Hearing of new cases. Any new case shall be read into the record with the requested zoning relief clearly stated. Such case shall then be given ample time for testimony, cross examination, and rebuttal. Any case not continued to a certain date shall then move into deliberation by the Board and result in a motion on the case or be continued to a later date if the Board deems necessary. Procedures for hearing new cases are pursuant to Article VIII of these Rules.

Section 6: The Board shall adjourn any hearing once all cases on the docket have been heard or continued and all other matters of the Board have been discussed.

Article VIII. Procedures for Hearing Cases

Section 1: The Chair shall have the public notice of each matter and the list of documents placed on file read into the record. The notice and the petition or reference shall be part of the record.

Section 2: An audio-visual recording and minutes of the hearing shall be made.

Section 3: If an applicant fails to appear, the Chair may entertain a motion to dismiss the matter or continue the matter to a date certain.

Section 4: The Chair shall ensure that all parties with a legal interest within 500 feet of the property who wish to testify do so under oath or affirmation. Witnesses shall testify from the podium.

Section 5: A person may testify on behalf of another person, group, or an organization, only if the person submits written authorization to do so at or prior to the hearing.

Section 6: The Chair shall have the right to cause removal from the hearing of any person who is disorderly or contemptuous.

Section 7: A petitioner or objector, or their agent or attorney, may submit a petition favoring or opposing the proposal. The person submitting the petition must appear at the hearing and such petition shall contain only a brief statement of the position of the person(s) favoring or opposing the proposal, their printed names, addresses, and signatures. No petition will be admitted into evidence unless the submitter testifies that he or she collected all signatures on the petition and that each person who signed the petition did so in the presence of the submitter.

Section 8: Testimony and other evidence shall be ordinarily presented in the following order; except that Board members may question witnesses at any time. The Chair may alter the order of presentation as the circumstances may require and may place reasonable time limits on testimony, if needed.

- (1) The Board will hear statements, testimony, or evidence from the Applicant(s) or their attorneys and/or witnesses.
- (2) The Board will hear statements from persons who wish to support the Applicant(s).
- (3) After the Applicant(s), their witnesses, and persons supporting the Applicant(s) have completed their presentation, the Chair will allow cross-examination of the Applicant(s) and their witnesses by persons with a legal interest in real property located within 500 feet of the subject property.
- (4) The Board will hear testimony or evidence from persons with a legal interest in real property located within 500 feet of the subject property opposing the request of the Applicant(s), as well as statements from other persons who oppose the request of the Applicant(s).
- (5) After opposing testimony and statements have concluded, Applicant(s) may cross-examine all persons who have testified in opposition to the Applicant(s).
- (6) Cross-examination of persons giving testimony must be relevant to the matters heard and be confined to the points raised during that person's testimony.
- (7) Testimony and evidence which is cumulative, repetitious, harassing, argumentative or irrelevant to the case being heard will be disallowed.

Section 9: Persons with a legal interest in real property within 500 feet, in the case of special uses, variations, and unique uses, in each direction of the subject property, exclusive of public roads, streets, alleys, and in other public ways who wish to object shall, upon request, be granted one continuance for the purpose of presenting evidence to rebut testimony given by the Applicant(s). Such continuance shall be by public announcement to a date certain. Such request shall be made following presentation of the Applicant's evidence.

Section 10: After testimony is closed, new evidence may not be offered unless the matter is republished, unless the Board reopens testimony for a point of clarification. If new evidence that was not presented in testimony is introduced, the matter must be republished.

Article IX. Dismissed Cases

Section 1: If a case is dismissed for want of prosecution, the applicant will be furnished written notice by the Secretary.

Section 2: A dismissed application cannot be reinstated or resubmitted within six months of dismissal and a new application fee shall be required if such application is subsequently reinstated or resubmitted. Any application withdrawn after the Board has begun deliberation shall not be reinstated or resubmitted within six (6) months of

withdrawal. Any application that is deemed substantially different from the original application, as determined by the Chair and Zoning Administrator or his/her designee, may be resubmitted at any time.

Section 3: In all cases reinstated in the above described manner, the case will be docketed and republished.

Article X. Decisions or Recommendations

Section 1: All deliberations of the Board shall be conducted, and all motions, votes, actions, decisions or recommendations shall be made at a meeting open to the public. The decision or recommendation on a case shall be made at the meeting at which testimony is concluded, unless the case is continued to a date certain.

Section 2: All decisions or recommendations shall be made by a motion and seconded. If conditions are imposed, such conditions shall be included by motion.

Section 3: Except as provided in Article X, Section 4, the concurring vote of four (4) members shall be necessary to decide any matter upon which the Board is the determining body. If conditions are imposed, such conditions shall be included in the decision.

Section 4: If due to the absence of Board Members in cases in which the Board is the final authority, a concurring vote of four (4) members does not occur, the matter shall be continued to a date certain with the votes so far recorded standing in order to allow additional members to view the audio-visual recording of the proceedings or review the meeting minutes, and then vote on the motion at the date certain hearing, or further hearings, until there are four concurring votes.

Section 5: When the Board is recommendatory to the City Council, the matter shall be decided by a majority of the quorum present. In the event a majority vote is not reached on a motion in which the Board is recommendatory to the City Council, the matter shall proceed to City Council with no recommendation from the Board, though the Board may recommend conditions should the matter be approved by City Council.

Section 6: If the Board decides favorably on any portion of an application for which the Board is the final authority, and the application was filed with alternative forms of relief for the same proposal and the favorable decision results in all the relief necessary to allow the proposal to go forward, the remaining alternative forms of relief shall be dismissed without further action.

Section 7: All Board determinations shall be distributed in writing to the applicant of said case, along with any conditions imposed by the Board. Such determination shall be kept on file as public record in the Zoning Office in the Community Development Department.

Section 8: The audio-visual recording of the case shall be acknowledged as to accuracy by the recorder in attendance and shall be a part of the public record of the Board.

Section 9: The Board's recommendation shall be provided promptly to the applicant and the City Council.

Section 10: Any variation or special use shall be subject to the invalidation provisions of Section 6-12-4(C) or 6-12-5(c) of the Zoning Ordinance, unless a variation to the contrary has been granted.

Article XI. Matters Previously Decided

Section 1: When a covenant has been filed following a hearing before the Board and in compliance with actions of the Board or City Council that the property in question will be brought into compliance with the ordinance within a specific period, no further hearing concerning such compliance may be brought.

Section 2: An application for a variation, special use, or appeal which has been denied may not be brought again before the Board except that the Chair, in consultation with the Zoning Administrator or his/her designee, may grant another hearing in any case in which the same applicant or a new applicant desires to offer material new evidence which was not available at the time of the hearing. Any application that is deemed substantially different from the original application, as determined by the Chair and Zoning Administrator or his/her designee, may be resubmitted at any time.

Section 3: Upon further consideration of any matter previously granted by the City Council, by adoption of ordinance, the Board may exercise final authority if such authority was subsequently delegated to the Board.

Section 4: These rules in Article XI may be suspended upon the affirmative vote of a majority of the Board present.

Article XII. Amendment of Rules

Section 1: These rules may be amended by an affirmative vote of a majority of the Board present.

Section 2: Any proposed amendment must be presented in writing at a regular or special meeting. Copies of such proposed amendments shall be forwarded to any absent member.