

City of Wayland

Zoning Board of Appeals

By-Laws



SECTION 1.0 PURPOSE

The following rules of procedure are hereby adopted by the City of Wayland Zoning Board of Appeals (herein after referred to as the "Appeals Board") to facilitate the performance of its duties as outlined in the City of Wayland Zoning Ordinance, Article XIII of the Wayland City Code and the Zoning Enabling Act, Act No. 110, the Public Acts of Michigan of 2006, as amended (MCL 125.3101 et seq.) ("Act 110").

SECTION 2.0 OFFICERS

2.1 Selection. At the first meeting of each year, the Appeals Board shall select from its membership a Chairperson, Vice-Chairperson, and Secretary. All officers are eligible for reelection.

2.2 Tenure. The Chairperson, Vice-Chairperson, and Secretary shall take office at the same meeting of 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 Chairperson shall preside over all meetings and perform such other duties as may be ordered by the Appeals Board.

2.4 Duties. The Vice-Chairperson shall act in the capacity of Chairperson in his absence and in the event the office of the Chairperson becomes vacant, the Vice Chairperson shall succeed in this office for the unexpired term. The Appeals Board shall select a successor to the office of Vice-Chairperson for the unexpired term. The Vice Chairperson shall perform such other duties as the Appeals Board may determine.

2.5 Duties. The Secretary shall record the official proceedings of the meetings and conduct all correspondence as may be directed by the Appeals Board. The minutes of each meeting shall be made available to the public and approved by the members of the Appeals Board in conformance with the provisions of the Open Meetings Act, Act 267, Public Acts of Michigan, 1976, as amended ("Act 267"). City Staff may assist in secretarial tasks.

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, and upon payment of a fee as may be

established from time to time by the governing body. Such notice of appeal shall be filed with the zoning administrator not more than 30 days from the date of the decision being appealed. Such a request for a variance or appeal of a decision may be filed with the zoning administrator at any time.

3.2 Notification. Within 10 days from the date of the receipt of the request for a variance, interpretation, notice of appeal or other business item, the zoning administrator shall contact the Chairperson of the Appeals Board and establish a date and time for the board to hold a hearing and a meeting to consider and act on the case.

Notice of such meeting shall be made by the zoning administrator as specified in Section 103 of Act 110, being MCL 125.3103, this Section 3.2, and Section 4.3 of these rules of procedure. The notice sent to members of the Appeals Board shall include copies of the notice of appeals or request for a variance form; the entire content of the zoning administrators file, and/or other file(s) on the case; other relevant correspondence, permits by other applicable enforcement agencies; and anything else which is relevant.

Notice shall be published in a newspaper of general circulation within the City of Wayland not less than 15 days prior to the date of the hearing. Not less than 15 days before the date the request will be considered, notice shall be given to the owners of the property that is the subject of the request by either personal service or by depositing the same during business hours for delivery with the United States postal service or other public or private delivery service.

In addition to the above notice requirements, notice of such meeting shall be delivered in person or by first class mail to the landowner, adjacent landowners, and occupants within 300 feet of the appellant's property. The notice shall be delivered not less than fifteen (15) days before the public hearing. The content of such notice shall contain all information required by Section 103(4) of Act 110.

3.3 Deadline for Action. 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 45 days after receipt of the case unless a longer period is mutually agreed upon by the petitioner and the Appeals Board.

3.4 Site Inspection. The Appeals Board, if the chairperson considers it necessary, may conduct a site inspection of the site at issue. In such instances, 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 meeting/hearing, shall always be held the same day and as 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 designate, shall cause to have timely notices of the Appeals Board decision delivered in person, by email, or by first-class mail to the zoning

administrator, to the governing body's attorney's office, the petitioner or his agent, and to anyone else requesting a copy in writing.

SECTION 4.0 MEETINGS

4.1 Meetings. The Appeals Board shall meet in accordance with its annual calendar of regular meetings adopted at the first meeting of each fiscal year of the Appeals Board (in accordance with Act 267) or as otherwise as needed. Any meetings of the Appeals Board shall be called as needed in response to receipt of a Notice of Appeal, so long as the meeting is scheduled within 20 days of the notice of appeal. The meeting can be called by the City Manager, the Chairperson of the Appeals Board, or, in his absence, the Vice-Chairperson. The meetings of the Appeals Board shall take place on the second Thursday of the month in the City Council Chambers, City Hall, 103 S. Main, Wayland, Michigan 49348.

4.2 Attendance/Performance. If any member of the Appeals Board accumulates unexcused absences for more than two meetings in a row, or more than 25% of the meetings held in a rolling 24-month period, then that member shall be considered delinquent. Delinquency shall not be established when the absent Board member has given notice to the Board at least five days in advance of their absence. The Appeals Board shall make a finding of the delinquent member's reason for absence, commitment to future performance, and impact on the Appeal Board's ability to conduct business for the public. These findings, after public discussion of the delinquency determines neglect of duty, shall be forwarded by the Secretary to the Mayor for further action, which may include removal from office in accordance with Act 110.

When a petitioner fails to appear at a properly scheduled meeting of the Board of Appeals, the Chairperson may entertain a motion from the Board to dismiss the case for want of prosecution. In the absence of a motion by the Appeals Board, the chair shall rule. In cases which are dismissed for want of prosecution, the petitioner will be furnished with written notice of the action by the Secretary of the Appeals Board. The applicant shall have seven (7) days from the date of notice of dismissal to apply for reinstatement of the case. In such cases, the applicant must file a written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chairperson for good cause shown, and upon payment of a fee set from time to time by the governing body. In all cases reinstated in the above-described manner, the case will be docketed and re-advertised in the usual manner prescribed for new cases.

4.3 Other Meetings. Meetings shall be called by delivering meeting notices by first class mail, electronic mail, or by personal delivery to members of the board at least five days prior to such meeting and shall state the purpose, time, and location of the meeting and shall be posted at City Hall ten 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 Act 267.

4.5 Quorum. The presence of three members shall be necessary to constitute a quorum. A majority vote of the members shall be required to pass on business matters. For any matter under which the Appeals Board is required to pass under the provisions of the Wayland City Code, a two-thirds majority vote of the full board shall be necessary.

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 roll call, and approval of agenda.

B. Approval of minutes from the previous meeting.

C. Site inspection, then recess (optional, if the meeting is posted to include a site inspection).

D. Reconvene and roll call (if following a site inspection).

E. Election of officers, if necessary.

F. Public Hearings. The Chairperson will declare a public hearing open and state its purpose.

1). The Chairperson shall summarize, provide copies, or conspicuously post the procedure for public hearing as outlined in Sections 4.6,4.7,4.8 and 4.9 of these rules of procedure for any members of the public in attendance.

2). Case number (numbered by year/sequence)

(i) The zoning administrator presents the petitioner's request, his action on the latter and reasons for his decision plus a written copy of his request.

(ii) The petitioner, through himself, his agent, or his lawyer may present his case, including presenting witnesses on his behalf. No time limit will be imposed on the petitioner.

(iii) Members of the Appeals Board shall report on their site Inspection and any conversations with the petitioner they may have had.

(iv) Members of the public speak, and correspondence is read.

a. The Chairperson may recess the meeting for a short time to allow attending groups to caucus in order to have one individual speak on their behalf for an unlimited period of time if there are a large number of people present on an issue.

b. The Chairperson shall allow the rest of the public to speak in response to the matter and may impose a time limit for each speaker.

(v) Rebuttal. Anyone may ask the Chairperson questions on presentations or speeches given at this hearing. The Chairperson will seek an answer to the question. Answers shall be given to the Chairperson. There shall be no discussion, questioning or answering people except between the Chairperson and the Individual who has the floor. (vi) Close the Public Hearing. (At this point all public participation on the issue ends). (vii) Members of the Appeals Board

may question or request clarification with any interested party on any matter related to the case.

G. Recess to another day as provided in Section 4.8 of these rules of procedure. If a recess occurs, additional public comment will be given.

H. Business Session.

1). Action on pending case number _____ .

(i) Discussion: Review of facts based on all Information presented (from the application, written request for appeal, zoning ordinance, physical characteristics of the parcels, staff reports, and hearing testimony). Discussion continues until a member proposes a motion that includes a "finding of fact" with those conclusions that are reached and conditions to be applied, if any. (ii). A motion is proposed on "finding of fact." (iii) Discussion on the Motion, (iv) Action on the motion.

2.) Other business of the Appeals Board.

I. Public/Commissioner Comments

J. Adjournment

4.7 Comments Out of Order. The Chairperson 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.

4.8 Recesses. The Chairperson may recess a public hearing and/or meeting to another time or if the meeting (not including site inspections) has been over three hours. 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 shall be taken as the first order of business.

4.9 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.

4.10 Motions. Motions shall be reiterated by the Chairperson before a vote is taken.

A. Motions dealing with an appeal or a variance concerning the City of Wayland Zoning Ordinance shall be stated with the following parts, or stated as two motions:

(1) The list of facts, which is the information pertinent to deciding on the matter, is structured as a "finding of fact" on the case.

(2) The conclusion, decision of the Appeals Board. This motion, or part of a motion, shall include the following parts:

(i) The rationale, reason, for why the conclusion was made, which must (a) comply with the constitution and laws of the State of Michigan, (b) be based on proper procedure, (c) be supported by competent, material, and substantial evidence on the record, and (d) represent the reasonable exercise of discretion granted to the Appeals Board. The rationale, reasons, shall contain, at a minimum:

a. If the property cannot be used in conformance with the ordinance without the requested or lesser variance.

b. If the problem is due to a unique situation not shared in common with nearby property owners.

c. If granting the variance would not alter the essential character of an area.

d. If the problem requiring a variance was not self-created. (NOTE) All four of the above points must be found true, or in the affirmative, or a variance shall not be granted.

e. Other specific standards for variances that are in the City of Wayland Zoning Ordinance.

f. An explanation of how the facts support the conclusion.

(ii) The conclusion or decision.

(iii) Any conditions upon which a variance may be issued, if applicable. Conditions shall be listed in detail and based on regulations or standards already in the Wayland Zoning Ordinance.

(iv) Reasons why the conditions are imposed.

B. Motions dealing with an ordinance interpretation, or any appeal of an administrative decision, shall be stated with the following parts, or stated as two motions.

1.) The list of facts is the information pertinent to making a decision on the matter.

2.) The conclusion or decision of the Appeals Board. This motion, or Wayland Zoning Board of Appeals Bylaws, shall contain the following parts:

(i) The rationale, or reasons, to explain how the facts support the conclusion. (ii) The conclusion or decision.

C. Any other motion shall be stated in prose or in the form of a resolution.

4.11 Voting. Voting shall be by roll call vote and shall be recorded by yeas and nays. Members must be present to cast a vote.

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 designate.

5.2 Content. The record of each meeting should include the following items:

A. A copy of the meeting posting as required in Section 4.4 of these rules of procedure.

B. A signed statement indicating that notices, as required in Section 3.2 of these rules of procedure, were sent out, with a list of whom, and an indication of by whom, and a copy of a newspaper notice if one was published.

C. A copy of the request for a variance or notice of appeal, whichever is applicable, including any maps, drawings, site plans, etc.

D. The original of the minutes of the meeting (including the hearing and site inspection), which shall include all action taken in chronological sequence of occurrence.

E. The records of any action on a case by the zoning administrator.

F. The records of all past records regarding the property involved in a case (previous permit, special use permit, variances, appeals).

G. Any relevant maps, drawings, or photographs presented as evidence at a hearing.

H. Copies of any correspondence received or sent out in regard to a case.

I. A copy of relevant sections, or a list of citations of sections of the zoning ordinance.

J. A copy of any follow-up correspondence to or from the petitioner regarding the decision.

5.3 Retention. The record of each meeting shall be permanently kept on file and spread in suitable volumes, with a copy filed with the City Clerk. All the pertinent documents and minutes for each

case before the Board of Appeals shall be copied and filed with the zoning administrator's office.

Copies of the minutes shall be available to the public no later than fifteen days after a meeting.

SECTION 6.0 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 the administration, text, map, and enforcement of the zoning ordinance.

SECTION 7.0 CONFLICT OF INTEREST

The members of the Appeals Board shall comply with Act No. 196 of the Public Acts of 1973, State of Michigan, as amended as it pertains to standards of conduct for public officers.

SECTION 8.0 ADOPTION AND REPEAL

Upon adoption of these rules of procedure of the Wayland Zoning Board of Appeals and the Wayland City Council, they shall become effective, and 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.