

**ARTICLES OF
RULES AND PROCEDURES**

MCHENRY COUNTY
ZONING BOARD OF APPEALS

MCHENRY COUNTY GOVERNMENT CENTER
AUXILIARY SERVICE BUILDING
WOODSTOCK, ILLINOIS

Revised, November 2000

ARTICLE I GENERAL PROVISIONS

- Section 1: These rules are supplementary to the provisions of the *Zoning Ordinance of the County of McHenry* as they relate to procedures of the Zoning Board of Appeals (the "ZBA").
- Section 2: The State's Attorney shall be consulted in cases where the powers of the Zoning Board of Appeals are not clearly defined.
- Section 3: The office of the Zoning Board of Appeals shall be located in the Annex Building at the McHenry County Government Center, Woodstock, Illinois.
- Section 4: The records of the ZBA proceedings are public records and, as such, are available for reference and review in the ZBA office. Copies of the requested documents are available, subject to the fee provisions for copies established by the County Board and subject to the *Freedom of Information Act*.
- Section 5: Unless specifically identified in these by-laws, the term "member" shall apply to alternates serving in the absence of a regular Zoning Board of Appeals (ZBA) member.

ARTICLE II: RESPONSIBILITIES AND DUTIES

- Section 1: The officers shall be a Chairperson and a Vice-Chairperson.
- Section 2: The seven (7) regular Zoning Board of Appeals members shall elect from themselves the Vice-Chairperson. The Vice-Chairperson shall be determined at a regular meeting of the Zoning Board of Appeals during the month of August, and shall hold office for one year, commencing on the first day of September, or until a successor is determined.
- Section 3: The Chairperson shall supervise the affairs of the Zoning Board of Appeals, preside at all meetings of the Zoning Board of Appeals, conduct all hearings before the Zoning Board of Appeals and decide all points of order, unless otherwise directed by a majority of all the Zoning Board of Appeals' members in session at the time.

The Chairperson shall have the authority to control the proceedings. The Chairperson may:

- Set time limits;
- Schedule the appearance of witnesses and insist on their appearance on dates set forth in the scheduling order;
- Restrict witnesses from testifying for failure to appear on the date scheduled for that witnesses testimony; and
- Take whatever steps deemed reasonable by the Chairperson, to control the conduct of the hearing to assure that it is administered in an orderly and efficient manner.

Further, the Chairperson or Vice-Chairperson shall be the only Zoning Board of Appeals members to respond to communications outside of hearings and voting meetings. Other administrative duties are: review and approve Zoning Board of Appeals members' pay vouchers; review and approve invoices and bills; review and initial ordinances for submission to the County Board; and schedule hearings and other duties as required.

The Chairperson shall also appoint such committees and sub-committees as may be necessary to carry out the purposes of the Zoning Board of Appeals, and be an ex-officio member of all committees and subcommittees so appointed.

- Section 4: In the absence of the Chairperson, the Vice-Chairperson shall perform all the duties and exercise all the powers of the Chairperson. In the absence of the Chairperson and Vice-Chairperson, a "Chairperson Pro-tem" will be elected by those ZBA members present at a hearing or voting meeting for the purpose of conducting the meeting. Alternate members shall not be considered as a "Chairperson Pro-tem", but shall vote to elect the same.
- Section 5: A coordinator shall be provided for the Zoning Board of Appeals with the concurrence of the McHenry County Board and/or their liaison committee.
- Section 6: A coordinator shall record and maintain permanent minutes of the Board's Voting/Business meetings. The vote of each member, upon every question, shall be reported.
- Section 7: A court reporter shall be present at every hearing (except proceedings conducted solely for the purpose of setting a date for a continued hearing) and voting meeting in order to provide the Board with a transcript of the proceedings. Transcripts shall be sent to the McHenry County Zoning Board of Appeals. Costs for all transcripts of hearings and/or voting meetings before the Zoning Board of Appeals shall be borne by the applicant unless otherwise determined by McHenry County. Costs of transcripts shall be paid directly to the court reporting service.
- Section 8: Except in unforeseen emergency situations, regular Zoning Board of Appeals members shall notify the Chairman as soon as possible, but not less than forty-eight (48) hours, of an expected absence from a scheduled hearing.

ARTICLE III: MEETINGS/HEARINGS

- Section 1: Zoning hearings are generally held at 1:30 p.m. each Wednesday and Thursday as necessary, at the McHenry County Government Center unless such day is recognized as a holiday. In the event a Wednesday or Thursday is a holiday, the hearing shall be held at such other times as the Chairperson may designate. A night hearing can be chosen by the petitioner or may be assigned by the ZBA. As a rule, only one night hearing will be held each week, preferably on Thursday.
- Section 2: Special meetings or additional hearings may be called by the Chairperson at his or her discretion, or upon the request of two (2) or more regular members, provided that forty-eight (48) hours notice is given to each regular member. These meetings/hearings will be held at times, dates and places to be designated.
- Section 3: All meetings, hearings shall be held in accordance with the Open Meetings Act of Illinois. (A member recommending approval of a petition, or seconding a recommendation for approval, may speak against their recommendation or second.)
- Section 4: Alternate members shall serve as members of the Board only in the absence of regular members. The alternate member with the greatest amount of time remaining in his or her term (as determined by the tenure of his or her appointment) shall have priority over the other alternate member in determining which alternate member shall serve in the absence of a regular member. In the event that no alternate member is available to serve in the absence of a regular member, the regular member shall be allowed to read the transcript of the hearing prior to voting.
- Section 5: A quorum shall consist of five (5) members at any regular or special meeting, and is required for any decision, determination or official action by the Board.

- Section 6: Public hearings may be held by less than a quorum of the Board, but only with the consent of the petitioners. It shall be explained that five votes are required for recommendation from the ZBA.
- Section 7: Voting meetings when not held immediately following a hearing, will normally be held on the fourth Tuesday of each month, in the McHenry County Government Center. A regular Board Member not present at a hearing, and at which no alternate was available, may read the transcript and vote on the petition. The voting on a petition will be done at the conclusion of a hearing where practicable. (The petitioner may ask for a deferral of the vote if and when the a full Board is not present). The alternate member(s) hearing a petition shall be the member(s) voting on that petition. In the event of a continuation, the alternate member shall attend additional hearings, read additional transcripts and vote on the petition.
- Section 8: A petitioner may need to request a continuation of a hearing prior to the date assigned. These requests must be received by the Zoning Board coordinator at least 48 hours before the date and time assigned allowing the Zoning Board Members and court reporter be properly advised of the continuation. Less than 48 hours notification will result in additional fees to cover costs incurred as determined by the Chairman.

Continuances of a hearing in process may be granted at the discretion of the Chairperson of the McHenry County Zoning Board of Appeals. Any hearing for any petition which may be continued more than once (1) shall require the petitioner to submit additional fees in an amount equal to the current per diem of the Zoning Board of Appeals for each continuation.

Additional costs incurred for continuances requested by the petitioner or by any objecting attorney / person shall be borne by the requester, to be paid prior to the continued hearing date being set, the amount to be determined by the Chairperson of the Zoning Board of Appeals.

- Section 9: Once a hearing time and date have been assigned, the petitioner may withdraw a petition. If the petition is withdrawn in writing at least seventy-two (72) hours prior to the scheduled opening of the hearing, the petitioner shall receive a refund of all fees paid less \$350.00. In all other situations, fees collected are not returnable.

ARTICLE IV: PROCEDURES AND ORDER OF BUSINESS

Section 1: General Procedures:

- A. The petition for a hearing before the Zoning Board of Appeals will be prepared and presented in the manner required by the *McHenry County Zoning Ordinance*. Petitioners having questions regarding the preparation of a Petition should consult the Planning and Development Department. Petitions for Variations must speak to that part of the ordinance to be varied and the specific amount of variance requested.
- B. The hearing shall be held in the McHenry County Government Center or in the township affected by the terms of a proposed amendment if an owner of property affected by such proposed amendment so requests. Property located in two or more townships will be considered as existing in that township in which the major portion of the property is located. Additional fees for costs, if any, including renotification caused by the movement of the hearing to a location away from the Government Center shall be borne by the requester(s).

- C. A petitioner or objector, or his agent or attorney, may submit to the ZBA list of the persons favoring or opposing the petition. Such petitions will be admitted into evidence by the ZBA and forwarded to the County Board.
- D. All witnesses shall testify under oath.
- E. Any attorney representing an objector, or group of objectors, shall be on file as an objector prior to the hearing being opened. When filing, the objecting attorney shall file a written statement outlining specifically what the objector is protesting.
- F. The Zoning Board of Appeals shall not be bound by the strict rules of evidence. It may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony.
- G. The Chairperson shall rule on all questions relating to the admissibility of evidence. The Chairperson may be overruled by a majority of the Zoning Board of Appeals.
- H. The report of the McHenry County Zoning Board of Appeals shall contain a short summary of the petition, location of the property, and the reasons advanced by the McHenry County Zoning Board of Appeals for its recommendation. The report shall include the name of the board member making the motion, the seconding thereof, and all votes by name for or against the motion. Members abstaining or absent shall also be recorded. Those abstentions should indicate a reason for same.
- I. The McHenry County Zoning Board of Appeals may postpone a vote at a voting meeting on any petition to the next regular voting meeting date. Further delay in the vote may only occur with the approval of the Petitioner, his attorney or agent.

Section 2: Suggested Order of Business During Hearings (subject to modification by Chairperson).

- A. Call to order and reason or purpose for hearing.
- B. Petition will be read at the discretion of the Chairperson.
- C. Introduction of Board by name of township in which he or she resides.
- D. Recognition of fees, publication, and posting of property and notification by Illinois Department of Conservation concerning endangered species.
- E. Recognition of petitioner and witnesses. Swearing in those which will present testimony.
- F. Citation of Board proceedings.
- G. Recognition of public and observers.
- H. Petitioner(s) present, testimony and evidence.
 - I. Cross examination by Board Members, public, and observers.
 - J. Public, which includes staff, who are sworn present testimony and evidence.
 - K. Cross examination of public's testimony by Board Members and petitioner.
 - L. Summary statements by Petitioner or his/her attorney.
- M. Receipt of Soil and Water Conservation District Report is acknowledged.

N. Time, date and place of Voting Meeting is announced. Voting may be one as a separate meeting following hearing.

O. Hearing closed.

Section 3: Order of Business During Voting Meetings:

A. Call to Order and purpose of Voting Meeting.

B. Reading and approval of minutes of the previous meeting as necessary.

C. Deliberation and voting on petitions on the agenda. No testimony or evidence can be presented during this meeting unless requested by the Board.

D. Unfinished business.

E. New business.

F. Adjournment.

ARTICLE V: NOTICES OF HEARINGS

Section 1: The petitioner shall file a sworn affidavit containing a copy of the notice, the names and addresses of all taxpayers entitled to notice and those who received notice. Said affidavit and list shall be filed with the Zoning Board of Appeals at least four (4) days in advance of the hearing, exclusive of the date of the hearing itself.

Section 2: The coordinator for the Board shall provide a *Publicity Release* to be furnished to the newspapers for publication within the County.

Section 3: All petition requirements and fees must be furnished and paid prior to the setting of a hearing time and date.

ARTICLE VI: RECOMMENDATIONS

Section 1: The Zoning Board of Appeals may hold a *Voting Meeting* after the close of any hearing.

Section 2: A concurring vote of five (5) members of the Zoning Board of Appeals shall be necessary to make a recommendation.

ARTICLE VII: PETITION FOR AN APPEAL

Section 1: Procedures

A. The petitioner must file a copy of the *Appeal* with the Zoning Enforcement Officer and the Zoning Board of Appeals' Coordinator. The Zoning Enforcement Officer will provide the Board with a copy of the entire file in the matter.

An *Appeal* shall provide the following information:

1. name and address of the petitioner;
2. location of the property;
3. a copy of the Zoning Enforcement Officer's letter outlining reasons for the decision being appealed;

4. identification of the ordinance provisions in dispute, and the reason given by the enforcing officer for the decision being appealed;
5. a description of the proposed use, including a plot plan if applicable, and,
6. a specification of the grounds for the appeal.

The appeal shall be signed by the Petitioner or his attorney with their address and telephone number.

- B. The decision of the ZBA, which shall be deemed the transcript of the Hearing and Voting Meeting of the Appeal, shall be furnished to the Petitioner and attorney / authorized agent and with the Officer from whom the appeal is taken within thirty (30) days from the date of the hearing by the Chairperson of the Zoning Board of Appeals. Certified mail or some other method shall be used to send out the decision of the ZBA so that proof of notification may be established.

ARTICLE VIII: CONSIDERATION OF PREVIOUS ACTIONS

Section 1: Motion to reconsider shall be made:

- A. By a member voting on the prevailing side of the original motion.
- B. At the same meeting as the original motion.

Section 2: Motion to rescind on votes not related to recommend approval or denial of a petition.

- A. Shall be made by a member voting on the prevailing side of the original motion.
- B. Shall be made only during the following meeting.
- C. A letter of intent to present a rescinding motion shall be mailed no later seven (7) days prior to the meeting at which the motion to rescind is to be made, stating the subject matter and the reason.
- D. Shall require five (5) Zoning Board of Appeals members.

Section 3: A simple majority vote on motion to reconsider or motion to rescind will be sufficient except in those instances specifically requiring a definite member vote for passage.

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