

Bylaws: Zoning Board of Appeals

The Village of Benzonia is engaged in the Redevelopment Ready Communities (RRC) Program, which is administered by the Michigan Economic Development Corporation (MEDC). The following are rules of procedure which have been adopted by the Village Council on April 3, 2023.

Zoning Board of Appeals Bylaws

1. Purpose

- A. The Village of Benzonia Zoning Board of Appeals (herein after referred to as the ZBA) adopts these bylaws pursuant to Public Act 110 of 2006 of Michigan Public Acts, as amended to facilitate the performance of its duties as outlined in the Village of Benzonia Zoning Ordinance (hereinafter referred to as the Zoning Ordinance).

2. Membership

- A. Membership shall consist of the Village Council as outlined in the Zoning Ordinance.
 - 1. Attendance: The position of a member of the ZBA will be considered vacant if any member attains three consecutive regular meeting unexcused absences or 25 percent of meetings in the calendar year, unless such absences shall be excused by the ZBA.
- B. Training: Members of the ZBA are required to attend training in planning and zoning. The training can be concurrent with training required for either the Village Council or Planning Commission. The Village will make every effort to provide or support training that is conducive to the member's schedule. As a part of training every member is expected to review the Village of Benzonia Zoning Ordinance, Village Master Plan, The Michigan Zoning and Enabling Act and the Michigan Municipal League's Zoning Board of Appeals Handbook.
- C. Liaisons: The purpose of liaisons is to provide certain information to the ZBA if desired. Liaisons may participate in discussion with the Appeals Board in addition to speaking in public participation, and nothing else. Liaisons cannot vote, introduce motions, initiate any other parliamentary action, be counted for a quorum or be expected to comply with attendance requirements pursuant to these Rules of Procedure. Liaisons may include but are not limited to: the zoning administrator, building inspectors, attorney, surveyors, register of deeds, or a planning consultant.
- D. Conflict of Interest and Incompatibility of Office.

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1. Each member of the Appeals Board shall avoid situations that are conflicts of interest, and/or incompatibility of office. As used here, a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:
 - a. Issuing, deliberating on, voting on, or reviewing a case concerning him or her.
 - b. Issuing, deliberating on, voting on, or reviewing a case concerning work on land owned by him or her or which is adjacent to land owned by him or her.
 - c. Issuing, deliberating on, voting on, or reviewing a case involving a corporation, company, partnership, or any other entity in which he or she is a part owner, or any other relationship where he or she may stand to have a financial gain or loss.
 - d. Issuing, deliberating on, voting on, or reviewing a case which is an action which results in a pecuniary benefit to him or her.
 - e. Issuing, deliberating on, voting on, or reviewing a case concerning his or her spouse, children, step-children, grandchildren, parents, brothers, sisters, grandparents, parents in-law, grandparents in-law, or members of his or her household.
 - f. Issuing, deliberating on, voting on, or reviewing a case where his or her employee or employer is:
 - i. an applicant or agent for an applicant, or
 - ii. has a direct interest in the outcome.
2. When, in a member's sole discretion, a conflict of interest exists, the member of the Appeals Board, shall do all of the following immediately, upon first knowledge of the case and determining that a conflict exists:
 - a. declare a conflict exists at the next meeting of the Appeals Board:
 - b. cease to participate at the Appeals Board meetings, or in any other manner, or represent one's self before the Appeals Board, its staff, or others, and
 - c. during deliberation of the agenda item before the Appeals Board leave the meeting, or remove one's self from the front table where members of the Appeals Board sit, until that agenda item is concluded.
3. If a member has a question whether a conflict of interest exists or not, that member should put the question before the Board. Whether a conflict of interest exists or not shall be determined by a majority vote of the remaining members of the Board in attendance.

3. Duties of All Members

A. *Ex Parte* contact

1. Members shall avoid *Ex Parte* contact about cases where an administrative decision is before the Appeals Board whenever possible.

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2. Despite one's best efforts it is sometimes not possible to avoid *Ex Parte* contact. When that happens, the member should take detailed notes on what was said and report to the Appeals Board at a public meeting or hearing what was said, so that every member and other interested parties are made aware of what was said.
- B. Site Inspections
1. Site inspections shall be done by the zoning administrator or other staff. A written report of the site inspection shall be orally presented to the Appeals Board at a public meeting or hearing on the site.
 2. If desired, no more than one member of the Appeals Board may accompany the zoning administrator or staff on a site inspection.
 3. If desired, the entire appeals board may accompany the zoning administrator or staff for a site inspection, however that site inspection must be posted as a public meeting and there must be accommodations for the public to participate.
- C. Not Voting On the Same Issue Twice.
1. Any member of the Appeals Board shall avoid situations where they are sitting in judgment and voting on a decision, which they had a part in making. As used here, sitting in judgment and voting on a decision which they had a part in making at a minimum shall include, but not necessarily be limited to, the following:
 - a. When the appeal is of an administrative or other decision by Planning Commission, and the member of the Appeals Board sits both on the Planning Commission and Appeals Board.
 - b. When the appeal is of an administrative or other decision by any committee of the Planning Commission, Village Council, or other committee, and the member of the Appeals Board sits both on that committee and Appeals Board or the Planning Commission and Appeals Board.
- D. Accepting gifts.
1. Gifts shall not be accepted by a member of the Appeals Board or liaisons from anyone connected with an agenda item before the Appeals Board.
 2. As used here, gifts, shall mean cash, any tangible item, or service, regardless of value; and food valued over \$10.
- E. Spokesperson for the Appeals Board.
1. Free and open debate should take place on issues before the Appeals Board. Such debate shall only occur at meetings of the Appeals Board.

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2. Once a vote is taken and an issue is decided by vote, the duty of each member of the Appeals Board is to represent the position reflected by the outcome of the vote. Minority reports and requests for reconsideration may take place only at an open meeting of the Appeals Board.
3. From time-to-time, or on a specific issue the Appeals Board may appoint a spokesperson for the Appeals Board for all matters which occur outside of the meetings of the Appeals Board.

4. Officers

- A. At the first meeting of the year the ZBA shall elect from its membership a Chairperson, Vice-Chairperson and Secretary. The Chairperson shall preside at meetings. In the absence of the Chairperson, the Vice-Chairperson shall preside. In the absence of both the Chairperson and Vice-Chairperson, the Secretary shall preside. The Chairperson shall decide all points of order and procedure. All officers shall hold their position for one full year and all are eligible for reelection. Vacancies in office shall be filled at the same or next meeting by regular election procedures.
- B. Duties of the Chair shall be to preside over all meetings, appoint committees, call special meetings as needed pursuant to bylaws, act as an ex-officio member of all committees of the ZBA, and perform such other duties as may be required by the office.
- C. Duties of the Vice-Chair shall be to act in capacity of the Chair with all the powers and duties of that office in the absence on the chair.
- D. Duties of the recording secretary shall be to execute documents in the name of the ZBA, record minutes of each meeting and submit them to approval to the ZBA.

5. Demand for an Appeal

- A. Filing: The following may file for an appeal or zoning interpretation:
 1. Village property owner or their authorized agent.
 2. Interested party with property owner's permission provided in writing.
 3. Officer, department, board, or bureau of the State or local unit of government.
- B. The filing for an appeal of a decision or for a variance shall be in writing on a form provided by the Community Development Department and application fees shall be paid at time of submission.
- C. The Community Development Department shall prepare copies of the below for inclusion in the package delivered to Appeal Board members:
 1. Copies of the application and all provided supporting documentation.

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2. Previous zoning permits and records of Appeal Board action.
3. Other relevant correspondence or permits by other applicable enforcement agencies.
4. Anything else which is relevant.

D. Notice. The notice shall meet the requirements of the Zoning Ordinance.

E. Deadline for Action. The Appeals Board shall decide on all matters brought before them within 90 days of the date of the filing of the appeal.

F. Notice of Decision. The Secretary shall deliver notice of the Appeal Board's decision in-person or by mail to the zoning administrator, the petitioner or their authorized agent, and anyone else requesting a copy in writing.

G. Variances expire if not acted upon within one year from the date of approval.

6. Hearings and Meetings

A. Meetings of the Appeals Board will be called as needed in response to receipt of a Demand for Appeal, so long as the meeting is scheduled within 20 days of the Demand for Appeal. The meeting can be called by the zoning administrator, the chairman of the Appeals Board, or, in the Chair's absence, the Vice-Chair.

B. Public. All meetings, hearings, records, and accounts shall be open to the public, and posted in compliance with P. A. 267 of 1976, as amended, (being the Michigan Open Meetings Act). All regular and special meetings, hearings, records and accounts shall be open to the public.

1. All public comment on all agenda items should be presented at the beginning of the meeting where provided in the printed agenda. After that point during the meeting, public comment is normally not allowed; however, sometimes the Appeals Board may direct questions to members of the public. Public comment is at the beginning of the meeting so the Appeals Board can hear concerns and questions before acting on an issue. Those making public comment are expected to be familiar with the issue and have prepared comments ahead of time. To help the public in preparing for the meeting, any written material shall be made available without cost for members of the public asking for a copy prior to the meeting.

2. The Chair may limit the amount of time allowed for each person wishing to make public comment at an Appeals Board meeting. The Chair may ask members of the audience to caucus with others sharing similar positions so they may select a single spokesperson. If a single spokesperson is selected, that individual shall be able to make public comment at the Appeals Board meeting without time limit or an extended time limit.

3. For the purpose of public participation during the public hearings or other matter before the ZBA, members of the public may address the ZBA stating their name and address for the record, and address their comments and questions to the chairperson. Speakers shall be

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allowed to speak once for no longer than five minutes. Longer allocations of time may be granted by the chairperson.

- C. Quorum. Half the total membership of the Appeals Board, rounded up to the next whole number, shall be the quorum for the transaction of business and the taking of official action for all matters. When a quorum is not present, no official action, except for closing the meeting can be taken. Members may discuss matters of interest, but take no action. Public hearings having no quorum present shall be reschedule and no additional public notice in required provided that the rescheduled date, time, and place are announced at the meeting.
- D. When a petitioner fails to appear at a properly scheduled meeting of the Appeals Board, the Chair may entertain a motion from the Appeals 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 written notice of the action by the Secretary. The applicant shall have seven (7) days from the date of the notice of dismissal to apply for reinstatement of the case. In such cases, applicant must file a written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chair 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.
- E. Order of Business: A written agenda for all meetings shall be prepared by Planning Department staff using the following general order of business outlined below:
 - 1. Call to order, Roll Call, Pledge of Allegiance
 - 2. Election of Officers (If necessary)
 - 3. Approval of Past Meeting Minutes
 - 4. Public comments on items not on the agenda
 - 5. New Business/Public Hearing: The Chairman will declare the hearing open and state its purpose.
 - a. *The Chairman shall summarize, provide copies, or conspicuously post the procedure for public hearing as outlined for any members of the public in attendance, or provide copies.*
 - b. *Case Number.*
 - i. *The zoning administrator presents the petitioner's request, his action on the matter and reasons for his decisions plus a written copy of the petitioner's request.*
 - ii. *The petitioner --through himself, his agent, his lawyer-- may present his case, including presenting witnesses on his behalf. No time limit will be imposed on the petitioner.*

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1. The Zoning Administrator shall be the office of record for the Appeals Board.
 2. The Zoning Administrator may receive items on behalf of the Appeals Board. The deadline to add items to the Appeals Board's meeting agenda shall be seven business days prior to the next regularly scheduled Appeals Board meeting.
 3. Items received by the Zoning Administrator less than seven business days prior to the next regularly scheduled Appeals Board meeting shall be set aside to be received by the Appeals Board at its next scheduled Appeals Board meeting. The Appeals Board may act on those items of a minor nature or table action to the subsequent regular or special Appeals Board meeting at the discretion of the Chair, Secretary, or Zoning Administrator. Those items of a major nature including all variances, ordinance, and map interpretations, items normally receiving staff review, analysis, or recommendation shall be tabled until the subsequent regular or special Appeals Board meeting and any public notice requirements are met.
- G. Parliamentary Procedure: Appeals Board meetings shall then be governed by *Roberts Rules of Order Newly Revised*, (11th Edition, Perseus Publishing, New York, 2000) for issues not specifically covered by these Rules. Where these Rules of Procedure conflict, or are different than *Robert's Rules of Order*, then these Rules of Procedure control.
- H. Motions.
1. Motions shall be restated by the Chair before a vote is taken.
 2. Findings of Fact. All actions taken in an administrative capacity (including but not limited to appeals, special use permits, subdivisions, zoning, site plan review, planned unit developments, variances, determination of compliance with an adopted plan, review of township zoning) shall include each of the following parts.
 - a. A findings of fact, listing what the Appeals Board determines to be relevant facts (including parcel owner, parcel legal description, what is applied for) in the case in order to eliminate misleading statements, hearsay, irrelevant, and untrue statements.
 - b. Conclusions, listing reasons based on the facts for the Appeals Board's action.
 - c. The Appeals Board's action, recommendation or position, approval, approval with conditions, or disapproval.
 3. Any other motion shall be stated in prose or in the form of a resolution.
- I. Voting. Voting shall be by roll call vote, and shall be recorded by "yes" or "no". Members must be present to cast a vote.
1. A motion is only adopted if over half the total membership of the Appeals Board (regardless of the number actually present at the meeting) casts their votes in favor of the motion.
 2. A motion to adopt a use variance requires a 2/3 vote of the total membership.

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7. Records

- A. Minutes and Record. The Secretary shall keep a record of Appeals Board meetings, which shall at a minimum include the following:
1. Copy of the meeting notice.
 2. Affidavits of meeting notice postings.
 3. Copy of the minutes, and all its attachments which shall include a summary of the meeting, in chronological sequence of occurrence:
 - a. Time and place the meeting was called to order
 - b. Attendance
 - c. Indication of others present
 - d. Summary or text of points of all reports given at the meeting, and who gave the report and in what capacity. Alternatively, a copy of the report may be attached, if offered in writing.
 - e. Summary of all points made in public participation by the applicant, officials, and guests and an indication of who made the comments. Alternatively, a copy of the report may be attached, if offered in writing.
 - f. Full text of all motions introduced, whether seconded or not, who made the motion and who seconded the motion. For each motion, the following should be included:
 - i. A statement of what is being approved (I.E., non-use variance, use variance, etc.)
 - ii. The location of the property involved (parcel number is best)
 - iii. What exhibits were submitted (list each one, describe each, number or letter each and refer to the letter or number in the minutes)
 - iv. What evidence was considered (summary of discussion by members at the meeting)
 - v. The finding of fact
 - vi. Reasons for the decision made (If the decision is to deny, then each reason should refer to a section of an ordinance which would be violated, or with which not complied)
 - vii. The decision
 - viii. A list of all required improvement if any
 - ix. List of all changes to the elevation/drawing/site plan that was submitted
 - g. The type of vote and its outcome. If a roll call vote, indicate who voted yes, no, abstained, or a statement the vote was unanimous. If not a roll call vote, then simply a statement: "Motion passed/failed number of votes in majority to number of votes in minority".
 - h. When a voting member enters or leaves a meeting.

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- i. When a voting member or staff member has a conflict of interest and when the voting member ceases and resumes participation in discussion, voting, and deliberations at a meeting.
 - j. The attendance and ruling if a quorum exist or not.
 - k. The start and end of each recess.
 - l. Summary of announcements.
 - m. Summary of informal actions or agreement on consensus.
 - n. Time of adjournment.
4. Records of any action, support documents, elevations, site plans, photographs, correspondence received, attached as an appendix to the minutes.
- B. Retention. Appeals Board records shall be preserved and kept on file according to the following schedule, as adopted by the State of Michigan:
- 1. Minutes, oaths of officials, other records of decisions, Appeals Board or department publications, correspondence: Permanent.
 - 2. Bills and/or invoices, receipts, purchase orders: 7 years.

8. Other Duties

- A. The Appeals Board may also formulate and provide advice and may advise policy to the planning commission, [legislative body], or any committee thereof, on issues dealing with administration, text, map and enforcement of the zoning ordinance.

9. Amendments

- A. Upon adoption of these Rules of Procedure of the ZBA they shall become effective and all previous rules of procedure, as amended, shall be repealed.
- B. These Rules of Procedure may be amended at any regular or special meeting by a two-thirds ($\frac{2}{3}$) 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.

These rules were adopted by resolution of the Village Council pursuant to the authority of the General Law Village Act. None of these rules may supersede the General Law Village Act or the laws of the State of Michigan.

- i. Adopted: April 3, 2023
- ii. Last Amended: _____