

**MARION TOWNSHIP
ZONING BOARD OF APPEALS
RULES OF PROCEDURE**

Section 1 Purpose

The following rules of procedure are hereby adopted by the Marion Township Board of Appeals (hereinafter known as Appeals Board) on October 4, 2004, to facilitate the performance of its duties as outlined in Marion Township Zoning Ordinance.

Section 2 Officers

- 2.1 Selection.** At the regular meeting in November of each year, the Appeals Board shall select from its membership a Chairman, Vice Chairman, and Secretary. All officers are eligible for re-election.
- 2.2 Tenure.** The Chairman, Vice Chairman, and Secretary shall take office at the same meeting at which they are selected, and shall hold office for a term of one year or until their successors are selected and assume office.
- 2.3 Duties of Chairman.** The Chairman shall preside at all meetings, and perform other duties as may be ordered by the Appeals Board.
- 2.4 Duties of Vice Chairman.** The Vice Chairman shall act in the capacity of Chairman in his or her absence, and in the event that the office of the Chairman becomes vacant, the Vice Chairman shall succeed to this office for the unexpired term and the Appeals Board shall select a successor to the office of Vice Chairman for the unexpired term.
- 2.5 Duties of Secretary.** The Secretary shall execute documents in the name of the Appeals Board, perform the duties hereinafter listed and shall perform other duties as the Appeals Board may determine. The Secretary shall be responsible for the record and minutes of each meeting.

Section 3 Notice of Appeal

- 3.1 Filing.** Any aggrieved person, or the person's authorized agent, may appeal or seek a variance in writing on a form approved by the Zoning Board of Appeals, 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 clerk within ten (10) days from the date of the decision being appealed. Such request for a variance shall be filed with the clerk at any time.
- 3.2 Notification.** Within 10 days from the date of the receipt of the request for a variance or Notice of Appeal, the Township Office Secretary shall contact the Chairman of the Appeals Board and set up a date(s) and time for the Appeals

Board to meet to hold a hearing and a meeting to consider and act on the case. Notice of such meeting(s) shall be made by the Secretary as specified in Section 5.06 C of the Marion Township Zoning Ordinance. The notice sent to members of the Appeals Board shall include copies of the Notice of Appeal or request for a variance form; the entire content of the zoning administrator's file and/or other file(s) on the case; other relevant correspondence, permits by other applicable enforcement agencies; and anything else that is relevant.

- 3.3 **Deadline for Action.** The above notwithstanding, 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 60 days after receipt of the case, unless a longer period of time is mutually agreed upon by the petitioner and Appeals Board.
- 3.4 **Site Inspection.** The Appeals Board, if the chairman considers it necessary, may conduct a site inspection at the site at issue. In such instance, 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 his or her 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 a designate, shall cause to have notices of the Appeals Board decision delivered in person or by first-class mail to the zoning administrator and to anyone else requesting a copy in writing. Further, notice of the decision to the petitioner, or agent, filing the case shall be sent by first-class mail with proof of mailing.

Section 4 Meetings

- 4.1 **Regular Meetings.** The Appeals Board shall meet at least once a month if there are appeals. Any other meetings of the Appeals Board shall be called as needed in response to a receipt of a Notice of Appeal, so long as the meeting is scheduled within 30 days of the Notice of Appeal. The meeting can be called by the Chairman of the Appeals Board, or in his or her absence, the Vice Chairman.
- 4.2 **Attendance**

- A. If any member of the Appeals Board is absent without notice from more than three meetings in a row, that member shall be considered delinquent. Delinquency shall be grounds for the governing body to remove any member for nonperformance of duty or misconduct upon

public hearing from the Appeals Board. The elected Secretary shall keep attendance records and shall notify the governing body whenever any member of the Appeals Board is absent without notice from more than three meetings in a row, so the governing body can consider further action allowed under law. Members of the Zoning Board of Appeals may be removed by the township board for nonperformance of duty or misconduct in office upon written charges and after a public hearing.

- B. When a petitioner fails to appear at a properly scheduled meeting of the Board of Appeals, the Chairman may entertain a motion from the Board to dismiss the case for want of prosecution. In the absence of a motion by the Board, the chair shall rule. In cases that are dismissed for want of prosecution, the petitioner will be furnished written notice of the action by the Secretary of the Board. The applicant shall have fourteen (14) days from the date of 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 Chairman 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 readvertised in the usual manner prescribed for new cases.

4.3 Other Meetings. Meetings shall be called by delivering meeting notices by first-class mail, phone call, or by personal delivery to members of the Appeals Board at least seven (7) days prior to such meeting and shall state the purpose, time, location of the meeting and shall be posted at the township seven (7) 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 P.A. 267 of 1976, being the Michigan Open Meetings Act.

4.5 Quorum. A majority of the total membership of the Appeals Board shall constitute a quorum for the transaction of business and the taking of official action for all matters.

4.6 Order of Business. The Chairman or his or her designate shall prepare an agenda for each meeting and the order of business therein shall be as follows:

- A. Call to order and roll call.
- B. Site inspection, then recess (optional if the meeting is posted to include a site inspection.)
- C. Reconvene and roll call (if following a site inspection, when necessary.)
- D. Election of officers, if necessary.

E. General Business

1. Approval of minutes from previous meeting
2. Approval of agenda
3. Other

F. Chairman reads Reason and Procedure of Appeals Hearing.

G. Public Hearings. The Chairman will declare a public hearing open and state its purpose.

1. The Chairman 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, or provide copies.
2. ZBA Case Number (case number and parcel ID).
 - a. The petitioner, through him or herself, agent, or lawyer, may present the case, including presenting witnesses on his or her behalf. No time limit will be imposed on the petitioner.
 - b. Members of the Appeals Board shall report on the site inspection and any other relevant information they may have.
 - c. Members of the public who support the petitioner speak and correspondence is read.
1. The Chairman may recess the meeting for a short time to allow those in support to caucus in order to have one speak on their behalf for an unlimited period of time if a large number of people are present on an issue.
2. The Chairman may allow many to speak in favor of the petitioner and can impose a time limit for the speaker that is three (3) minutes per speaker.
 - d. Members of the public who oppose the petitioner speak and correspondence is read.
1. The Chairman may recess the meeting for a short time to allow those in support to caucus in order to have one speak on their behalf for an unlimited period of time if a large number of people are present on an issue.
2. The Chairman may allow many to speak in opposition of the petitioner and can impose a time limit for the speaker that is five (5) minutes or more per speaker.

- e. Rebuttal. Anyone may ask the Chairman questions on presentations or speeches given at this hearing. The Chairman will seek an answer to the question. Answers shall be given to the Chairman. No discussion, questioning or answering shall take place between any two or more people except between the Chairman and the individual who has the floor.
 - f. Close the Public Hearing (at this point, all public participation on the issue ends.)
- H. Recess to another night as provided in Section 4.8 of these rules of procedure (optional).
- I. Business Session
- 1. Action on pending case number (case number and parcel ID).
 - a. 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, hearing testimony.) Discussion continues until a member is confident enough to propose a motion that includes a “finding of fact” and/or “conclusions,” and “rationale explaining any conclusions are reached” and “conditions”, if any.
 - b. Motion is proposed on “finding of fact,” based on “rationale, conclusions and conditions.”
 - c. Discussion on the motion.
 - d. Action on the motion.
 - e. Discussion focusing on standards and requirements of the ordinance.
 - 2. Other business of the Appeals Board.
- J. Call to the Public.
- K. Adjournment.

4.7 Comments Out of Order. The Chairman shall rule out of order any irrelevant remarks that include, but are not limited to, remarks that are personal, about another’s race, religion, sex, physical condition, ethnic background, beliefs, or similar topics; profanity; or any other remarks that are not about land use.

4.8 Recesses. The Chairman may recess a public hearing and/or meeting to another time if it is after 11:00 pm or if the meeting (not including site inspection) has been over three (3) hours upon a majority vote of the members. 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 Robert's Rules of Order if not specifically dealt with in these rules of procedure.

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

A. Motions dealing with an appeal or a variance concerning the Marion Township zoning ordinance shall be a review of the request in accordance with Section 5.05 C, items 1-6, of the township zoning ordinance and shall include:

1. The list of facts, which is the information pertinent to making a decision on the matter, structured as a "finding of fact" of "finding of facts" on the case.
2. The conclusion or decision.
3. 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 Marion Township zoning ordinance.
4. Reasons why the conditions are imposed.

B. Motions dealing with an ordinance interpretation, or an appeal of an administrative decision, shall be stated in the affirmative and must contain reasons that support the offered motion.

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. The concurring vote of a majority of the members of the Appeals Board shall be necessary to reverse an order, requirement, decision, or determination of the administrative official or body, or to decide in favor of the applicant on any matter upon which they are required to pass under or to effect any variance in the zoning ordinance or any other motion properly before the Appeals Board.

Section 5 Records

5.1 Preparation. A record of each meeting, including hearings and site inspections, shall be prepared by the Secretary, or his or her designee.

5.2 Content. The record of each meeting shall 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 list of to 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. All past records regarding the property involved in a case (previous permits, special use permits, variances, appeals.)
- G. Any relevant maps, drawings, photographs, or other information 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 clerk of the municipality. 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. Unapproved copies of the minutes shall be made available to members of the Appeals Board and the public within eight (8) days of the meeting.

Section 6 Per Diem and Mileage

Mileage and per diem may be paid to members of the Appeals Board at rates established by the governing body for attending Appeals Board meetings, and other authorized meetings and trips, if those members submit a bill for the same.

Section 7 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 8 Adoption and Repeal

Upon adoption of these rules of procedure of the Marion Township Zoning Board of Appeals, they shall become effective and all previous rules of procedure, as amended, shall be repealed.

Section 9 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.

Adopted by the Marion Zoning Board of Appeals on the _____ day of _____
2004.

Presiding Chair-person: _____ Secretary: _____
John Lowe, Chairperson Dan Lowe, Secretary