

# ZBA Rules of Procedure- 06/04/2013

## DEXTER TOWNSHIP ZONING BOARD OF APPEALS RULES OF PROCEDURE of [June 4, 2013]

Adopted, effective immediately, [June 4, 2013, 7:30 pm]  
As amended through \_\_\_\_\_

### **Article 1: Purpose**

- A. The following rules of procedure are hereby adopted by the Dexter Township Zoning Board of Appeals (hereinafter known as the “Zoning Board of Appeals” or “ZBA”) to facilitate the performance of its duties as outlined in the Dexter Township Zoning Ordinance.

### **Article 2: Membership**

- A. **Members:** The membership of the ZBA shall be appointed according to the procedure as established in the Dexter Township Zoning Ordinance of May 1, 2003, and Section 601 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3601).
- B. **Attendance:** Regular members of the ZBA are expected to attend all regular meetings of the ZBA. Each regular member who has knowledge of the fact that he/she will not be able to attend a scheduled meeting of the ZBA shall notify the Township staff as soon as possible so that staff may contact alternate members to determine their availability to substitute. Staff shall notify the ZBA Chair in the event that the projected absences will produce a lack of a quorum. If any regular member of the ZBA is absent from three (3) consecutive regularly-scheduled meetings, then that member may be considered delinquent. Delinquency shall be grounds for the Township Board to remove a member from the ZBA for nonperformance of duty, or misconduct, after holding a public hearing on the matter. The ZBA secretary, or acting secretary in the absence of the elected secretary, shall keep attendance records and shall notify the Township Board whenever any member of the ZBA is absent from three (3) consecutive regularly scheduled meetings, so the Township Board can consider further action allowed under law or excuse the absences. Exceptions may be made if absences are due to illness, injury, sudden emergency, or the conduct of other business as authorized by the ZBA or if an alternate member of the ZBA was seated for the absent member.
- C. **Training:** ZBA members are highly encouraged to attend at least four (4) hours per year of training in planning and zoning during the member’s current term of office.

### **Article 3: Conflicts of Interest**

- A. Each ZBA member shall avoid 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:
  1. Issuing, deliberating on, voting on, or reviewing a case concerning the member.
  2. Issuing, deliberating on, voting on, or reviewing a case concerning work on land owned by the member or which is adjacent to land owned by the member.
  3. Issuing, deliberating on, voting on, or reviewing a case involving a corporation, company, partnership, or any other entity in which the member is a part owner, or any other relationship where the member or the member’s family, as defined in Section 3(A)(5), may stand to have a financial gain or loss.
  4. Issuing, deliberating on, voting on, or reviewing a case which is an action which results in a financial benefit to the member.
  5. Issuing, deliberating on, voting on, or reviewing a case concerning the member’s spouse, children, step-children, grandchildren, parents, brothers, sisters, grandparents, parents-in-law, grandparents-in-law, or other household members.
  6. Issuing, deliberating on, voting on, or reviewing a case where the member’s employee or employer is:
    - a. An applicant or agent for an applicant, or

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- b.** Has a direct interest in the outcome.
- B.** If there is a question whether a conflict of interest exists or not, the question shall be put before the ZBA at the request of any ZBA member. Whether a conflict of interest exists or not shall be determined by an affirmative vote by the majority of the remaining ZBA members.
- C.** When a conflict of interest exists, the ZBA member in question shall do all of the following immediately, upon first knowledge of the case and determining that a conflict exists:
  - 1.** Contact Township staff as soon as possible;
  - 2.** Declare a conflict exists at the next ZBA meeting;
  - 3.** Cease to participate as a ZBA member during that agenda item at the meeting; and
  - 4.** During deliberation of the agenda item before the ZBA, leave the meeting room until that agenda item is concluded.

## Article 4: Duties of All Members

### A. Ex Parte Contact

- 1.** Members shall avoid ex parte contact with interested parties concerning petitions before the ZBA whenever possible.
- 2.** Despite one's best efforts, it is sometimes not possible to avoid ex parte contact. When that happens, the member shall take detailed notes on what was said and by whom and report to the ZBA at the next public meeting or hearing what was said and by whom, so that every member and other interested parties are made aware of the discussion.

### B. Site Inspections

- 1.** Site inspections shall be done by the Director of Planning & Zoning, Zoning Administrator, or other staff. A written report of the site inspection shall be presented to the ZBA at a public meeting.
- 2.** ZBA members are highly encouraged to make site inspections.
- 3.** No more than one (1) ZBA member shall visit a site at a time.
- 4.** If desired, up to one (1) ZBA member may accompany the Director of Planning & Zoning, Zoning Administrator, or staff on a site inspection.

### C. Not Voting On the Same Issue Twice

- 1.** Any member of the ZBA 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 ZBA member sits on both the Planning Commission and ZBA.
  - b.** When the appeal is of an administrative or other decision by the Township Board, and the ZBA member sits on both on Township Board and ZBA.
  - c.** When the appeal is of an administrative or other decision by any committee of the Planning Commission, Township Board, or other committee, and the ZBA member sits on both on that committee and ZBA.

### D. Accepting gifts

- 1.** Gifts shall not be accepted by a member of the ZBA from anyone connected with an agenda item before the ZBA.
- 2.** As used here, gifts shall mean cash, any tangible item, or service, regardless of value, and food valued over \$10.

### E. Oath of Office.

Each member, upon appointment, shall take an oath of office.

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## Article 5: Officers

- A. Selection.** At the first regular meeting of each year, the ZBA shall select from its membership a Chairperson, Vice-Chairperson, and Secretary. All officers are eligible for reelection. In the event the office of the Chairperson becomes vacant, the Vice-Chairperson shall succeed to this office for the unexpired term, and the ZBA shall select a successor to the office of Vice-Chairperson for the unexpired term. In the event the office of the Secretary becomes vacant, the ZBA shall select a successor to the office of the Secretary for the unexpired term. If both the Chairperson and Vice-Chairperson are absent from a meeting, the ZBA members present shall select a Chairperson to serve for that meeting.
- B. Tenure.** The Chairperson, Vice-Chairperson, and Secretary shall take office immediately following their selection and shall hold office for a term of one (1) year or until their successors are selected and assume office.
- C. Chairperson's Duties.** The Chairperson retains his or her ability to discuss, make motions, and vote on issues before the ZBA. The Chairperson shall:
1. Preside at all meetings with all powers under parliamentary procedure;
  2. Shall rule out of order any irrelevant remarks, remarks which are personal or discriminatory, profanity, and other remarks which are not about the topic before the ZBA;
  3. Restate all motions as pursuant to Section 7(K) of these Rules of Procedure;
  4. Appoint committees;
  5. Appoint officers of committees or choose to let the committee select their own officers.
  6. May call special meetings pursuant to Section 7(B) of these Rules of Procedure;
  7. Appoint an Acting-Secretary in the event the Secretary is absent from a ZBA meeting;
  8. Review with the Secretary or staff, prior to a ZBA meeting, the items to be on the agenda if he or she so chooses;
  9. Periodically meet with the Director of Planning & Zoning and/or other Zoning Department staff to review Zoning Department operation, procedures, and to monitor progress on various projects;
  10. Participate in job evaluations of the Zoning Department staff, discuss the evaluation with the Planning & Zoning Director, and provide a copy of the evaluation for the Zoning Department and Township Board's personnel files;
  11. Chair or perform a major role in the interview and selection process for a Planning & Zoning Director;
  12. Act as the ZBA's chief spokesperson and lobbyist to represent the ZBA at local, regional and state government levels, or delegate other ZBA members to do the same.
  13. Represent the ZBA, along with the Township Board ZBA member, before the Township Board, or appoint other ZBA members to do the same; and
  14. Represent the ZBA, along with the ZBA's Planning Commission member, before the Planning Commission, or appoint other ZBA members to do the same; and
  15. Perform such other duties as may be approved by the ZBA.
- D. Vice-Chairperson's Duties.** The Vice-Chairperson shall:
1. Act in the capacity of Chairperson, with all the powers and duties found in Section 5(C) of these Rules of Procedure, in the Chairperson's absence; and
  2. Perform such other duties as may be approved by the ZBA.
- E. Secretary's Duties.** The Secretary shall:
1. Execute documents, as applicable, in the name of the ZBA;
  2. Be responsible for the minutes of each meeting pursuant to Section 8(A) of these Rules of Procedure if there is not a recording secretary;
  3. Review the draft of the minutes, sign them, and submit them for approval to the ZBA and shall have them spread in suitable volumes. Copies of minutes shall be distributed to each member of the ZBA prior to the next meeting of the ZBA (the Secretary may delegate this duty to ZBA staff);

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4. Receive all communications, petitions and reports to be addressed by the ZBA, delivered or mailed to the Secretary in care of the Zoning Department Office (the Secretary may delegate this duty to ZBA staff);
  5. Keep attendance records pursuant to Section 2(B) of these Rules of Procedure;
  6. Provide notice to the public and members of the ZBA for all regular and special meetings, pursuant to the Open Meetings Act, P.A. 267 of 1976, as amended, M.C.L. 15.261 *et seq.* (the Secretary may delegate this duty to ZBA staff);
  7. Prepare an agenda for ZBA meetings pursuant to Section 7(E) of these Rules of Procedure (the Secretary may delegate this duty to ZBA staff); and
  8. Perform such other duties as may be approved by the ZBA.
- F. Recording Secretary's Duties.** The Recording Secretary shall not be a member of the ZBA or any of its committees, and shall:
1. At each meeting take notes for minutes and prepare a first draft of minutes pursuant to Section 8(A) of these Rules of Procedure for review and signature by the Secretary; and
  2. Perform such other duties as may be approved by the ZBA or Secretary.

## Article 6: Applications for Appeals

- A.** Applications for Appeals to the ZBA shall be processed and decided according to the standards of the Dexter Township Zoning Ordinance.

## Article 7: Meetings

- A. Regular Meetings.** Business meetings of the ZBA will be held at the Dexter Township Hall, 6880 Dexter-Pinckney Road, Dexter, MI 48130, according to the schedule adopted by the Township Board, unless otherwise posted. When a regular meeting day falls on a holiday, the ZBA may either cancel the meeting or select a suitable alternate day in the same month. The ZBA may cancel a meeting if there are no new or old business items for it to consider. An annual notice of regularly-scheduled ZBA meetings shall comply with P.A. 267 of 1976, as amended, (being the Michigan Open Meeting Act M.C.L. 15.261 *et seq.*). Special accommodations will be made for people with disabilities in a manner consistent with Township policy.
- B. Special meetings.** Any special meetings of the ZBA may be called as needed in response to receipt of an Application for Appeal. A special meeting can be called by the Chair of the ZBA or, in the Chair's absence, the Vice-Chair. A special meeting cannot be called until the Chair or ZBA staff has contacted all ZBA members, given the ZBA members the purpose, date, time, and location of the proposed special meeting, and verified that a quorum can be attained. Special meetings shall be called and duly noticed according to the standards of the Dexter Township Zoning Ordinance and P.A. 267 of 1976, as amended, (being the Michigan Open Meeting Act M.C.L. 15.261 *et seq.*). Special accommodations will be made for people with disabilities in a manner consistent with Township policy.
- C. Delivery of Agenda.** The agenda and accompanying materials shall be delivered to and received by ZBA members at least one (1) week prior to the ZBA meeting. Delivery may be sent by way of first class mail, hand delivery, or, if practicable, electronic delivery.
- D. Placement of Items on the Agenda.**
1. Dexter Township Hall shall be the office of record for the ZBA.
  2. The Director of Planning & Zoning may receive items on behalf of the ZBA.
  3. Items received by the Director of Planning & Zoning shall be presented to the ZBA at its next regularly scheduled ZBA meeting. The ZBA may act on those items of a minor nature or postpone action to the earliest available regular or special ZBA meeting. Those items of a major nature, including all variances, ordinance and map interpretations, or items normally receiving staff review, analysis, or recommendation shall be postponed until the earliest available regular or special ZBA meeting that meets noticing requirements.

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4. Petitions shall be submitted according to a schedule of deadlines adopted by the Township.
5. There shall be a maximum of five (5) new petitions for any meeting. If the agenda becomes full, any new petitions shall be placed on the next available meeting with agenda openings.
- E. **Order of Business and Agenda.** The Secretary, or designee, shall prepare an agenda for each meeting, and the order of business therein shall be as follows, unless the ZBA amends the agenda at the meeting:
  1. Call to Order and Pledge of Allegiance.
  2. Approval of Agenda.
  3. Approval of Minutes.
  4. Public Comment (on non-agenda items).
  5. Action Items (Old Business, New Business).
    - a. The Chairman shall summarize, provide copies, or conspicuously post the procedure for public hearing as outlined in Sections 7(E) and 7(J) of these Rules of Procedure for any members of the public in attendance, or provide copies.
    - b. Case Number [*Year Number*]-ZBA-[*Case Number*].
      - i. **Staff presentation.** The Director of Planning & Zoning or other Township staff presents the petitioner's request. This presentation shall include the facts stated in the petitioner's application, the Director's written report to the ZBA, and/or any other facts deemed relevant by the Director or staff. ZBA members may direct questions to the Director or Township staff.
      - ii. **Petitioner Presentation.** The petitioner, through himself, his agent, or his counsel, may present his case, including presenting witnesses on his behalf. No time limit will be imposed on the petitioner. ZBA members may direct questions to the petitioner, his agent, his counsel, or his witnesses.
      - iii. **ZBA Member Reports.** ZBA members shall report any conversations with the petitioner or others while conducting a site inspection. All ex parte contact shall be reported in accordance with Section 4(A)(2) of these Rules of Procedure.
      - iv. **Public Hearing.** The Chairperson shall declare the public hearing open, state its purpose, and allow for public participation in accordance with Section 7(J) of these Rules of Procedure. ZBA members may direct questions to members of the public. Members of the public shall direct all questions on presentations or speeches given at this hearing to the Chairperson. The Chairperson will seek an answer to the question. Answers shall be given to the Chairperson. When members of the public direct questions to the Chairperson, no discussion, questioning, or answering shall take place between any two or more people except between the Chairperson and the individual who has the floor.
      - v. **Close of Public Hearing.** Close the public hearing. (At this point all public participation on the issue ends.)
      - vi. **Discussion.** ZBA members shall discuss the petition and adopt findings of fact.
      - vii. **Action on Pending Case Number** [*Year Number*]-ZBA-[*Case Number*]. Motions shall be made and acted upon in accordance with Section 7(K).
  6. Public Comment (on non-agenda items).
  7. Concerns of ZBA Members, Director of Planning & Zoning, and Recording Secretary.
  8. Adjournment.
- F. **Quorum.** A total of three (3) members, regardless if vacancies exist or not, shall constitute a quorum for the transaction of business and the taking of official action for all matters before the ZBA. Whenever a quorum is not present at a regular or special meeting, those present shall adjourn the meeting to another day.
- G. **Parliamentary Procedure.** Parliamentary procedure in ZBA meetings shall be informal.
- H. **Comments Out of Order.** The Chairperson shall rule out of order any irrelevant remarks; remarks which are personal or discriminatory; profanity; or other remarks which are not about the topic before the ZBA.

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- I. Recesses.** The Chairperson, or the ZBA, after the meeting has been in session for at least three (3) hours (not including site inspections), may suspend the ZBA's business and evaluate the remaining items on its agenda. Upon such suspension, the ZBA shall then decide to finish that meeting's agenda, act to continue the meeting on another day (fix the time at which to adjourn), or complete some agenda items and continue the meeting on another day to complete other agenda items or postpone certain agenda items to the next meeting. If applicable, such action shall include the time, day, month, date, year, and location the ZBA will reconvene. If more than 18 hours will pass before the reconvened ZBA meeting, public notice shall be given to comply with P.A. 267 of 1976, as amended, (being the Michigan Open Meeting Act M.C.L. 15.261 *et seq.*). Upon reconvening, a roll call of attendance shall be the first item of business before proceeding with the same agenda. The ZBA shall resume with the same meeting agenda, proceeding at the same point where it left off, without the addition of additional business.
- J. Public Participation.** 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 non-agenda items or items not listed as "Action Items" on the agenda shall be presented at the beginning and end of the meeting where provided in the printed agenda. All public comment on items listed as "Action Items" on the agenda shall be presented during consideration of that "Action Item." In addition, ZBA members may direct questions to members of the public. To help the public prepare for the meeting, any and all written material shall be made available at Dexter Township Hall for inspection by members of the public asking to review a copy prior to the meeting.
  2. The amount of time allowed for each person wishing to speak at a ZBA meeting shall be limited to three (3) minutes. A petitioner or representative of the petitioner may speak for up to five (5) minutes. 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 may speak for up to five (5) minutes. At the discretion of the Chair, speaking times may be extended.
- K. Motions.**
1. Motions shall be summarized by the Chairperson before a vote is taken. If requested by a ZBA member, the Chairperson shall restate the motion before a vote is taken.
  2. **Findings of Fact.** All actions taken in an administrative capacity (including but not limited to appeals, variances, determination of compliance, and review of township zoning) shall include each of the following parts:
    - a. A findings of fact, listing what the ZBA determines to be relevant facts in the case;
    - b. Conclusions, listing reasons based on the facts for the ZBA's action, related to a finding of compliance, or noncompliance, to standards; and
    - c. The ZBA's action: recommendation or position, approval, approval with conditions and reason for conditions, or disapproval.
  3. Any other motion shall be stated in prose or in the form of a resolution.
- L. Voting.** Voting shall be by roll call vote for findings of fact and motions for variances and interpretations, and shall be recorded by "yea" or "nay". Other votes may be by voice vote or, upon request of a ZBA Member or upon the Chairperson's discretion, by a roll call vote. Members must be present to cast a vote. Voting by proxy shall not occur. The affirmative vote of three (3) members shall be necessary for the adoption of a motion.
- M. ZBA Action.** Action by the ZBA on any matter on which a hearing is held shall not be taken until the hearing has been concluded.

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## Article 8: Record

- A. Minutes and Record.** The ZBA Secretary shall keep, or cause to be kept, a record of ZBA meetings which shall, at a minimum, include an indication of the following:
1. A copy of the meeting posting pursuant to P.A. 267 of 1976, as amended, (being the Michigan Open Meetings Act, M.C.L. 15.261 *et seq.*).
  2. A signed statement indicating that notices, as required in Dexter Township Zoning Ordinance, were sent out, with a list of to whom, and an indication of by whom, and a copy of a newspaper notice, if one was published.
  3. A copy of the *Application for Appeal*, including any maps, drawings, plot plans, etc.
  4. A copy of the minutes, and all its attachments (or references thereto) 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 (listing names if others choose to sign in and/or a count of those present).
    - d. Summary or text of points of all reports (including reports of what was seen and discussed at a site inspection) given at the meeting and who gave the report and in what capacity. An alternative is to attach a copy of the report if offered in writing.
    - e. Summary of all points made in public participation or at a hearing by the applicant, officials, and guests and an indication of who made the comments. An alternative is to attach a copy of the public's statement, petition, or letter (or reference thereto) if it is provided in written form.
    - 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, as applicable:
      - (1) A statement of what is being approved or decided (e.g. administrative review, interpretation of an ordinance, variance, classification of uses, etc.)
      - (2) The location of the property involved (tax parcel number and description, legal description is best).
      - (3) What exhibits were submitted.
      - (4) What evidence was considered (summary of, or reference to, discussion by ZBA members, the applicant(s), and members of the public at the meeting(s)).
      - (5) The findings of fact, pursuant to Section 7(K)(2).
      - (6) Reasons for the decision made. (If the action is to deny, then each reason should refer to a section of an ordinance which would be violated or with which not complied.)
      - (7) The decision (e.g. approve, deny, approve with modification).
      - (8) A list of all required improvements (and if they are to be built up-front or name the type of performance security to be used), and conditions of approval, if any.
      - (9) List of all changes to the map/drawing/plot plan that was submitted.
      - (10) Make the map/drawing/site plan part of the motion (e.g. "...attached to the original copy of these minutes as appendix 'A', and made a part of these minutes...").
    - 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, such as: "the motion passed/failed after a voice vote."
    - h. That a person making a motion withdrew it from consideration.
    - i. All the Chairperson's rulings.
    - j. All challenges, discussion, and vote/outcome on a Chairperson's ruling.
    - k. All parliamentary inquiries or points of order.
    - l. When a voting member enters or leaves the meeting.
    - m. When a voting member or staff member has a conflict of interest and when the voting member ceases or resumes participation in discussion, voting, and deliberations at a meeting.

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- n. All calls for an attendance count, the attendance, and the ruling if a quorum exists or not.
  - o. The start and end of each recess.
  - p. All Chairperson's rulings of discussion being out of order.
  - q. Full text of any resolutions offered. An alternative is to attach a copy of the resolution.
  - r. Summary of announcements.
  - s. Summary of informal actions, or agreement on consensus.
  - t. Time of adjournment.
- 5. The records of any action on a case by the Zoning Administrator.
  - 6. The records of all past records regarding the property involved in a case (e.g., previous permit, special use permit, variances, appeals, etc.).
  - 7. Any relevant maps, drawings, and photographs presented as evidence at a hearing.
  - 8. Copies of any correspondence received or sent out in regard to a case.
  - 9. A copy of relevant sections, or a list of citations of sections of the Zoning Ordinance.
  - 10. A copy of any follow-up correspondence to or from the petitioner regarding the decision.
- B. Retention.** ZBA records shall be preserved and kept on file according to the following schedule:
- 1. Minutes, bonds, oaths of officials, zoning ordinances, master plans, other records of decisions, ZBA or department publications, and correspondence shall be retained permanently.
    - a. Draft copies of the minutes shall be available to the public and ZBA members within eight (8) days of the meeting.
    - b. Copies of the approved minutes shall be distributed to each ZBA member.

## Article 9: Mileage and Per Diem

- A. A per diem shall be paid to ZBA members at rates established by the Dexter Township Board of Trustees for attending ZBA meetings. Mileage may only be paid for attendance at site inspections or off-site training, if those members submit a bill for the same. No mileage or per diem is paid to any members unless authorized and budgeted by the Township Board.

## Article 10: Other Duties

- A. The ZBA may also formulate and provide advice and may advise policy to the Planning Commission, Township Board, or any committee thereof, on issues dealing with administration, and amendment or enforcement of the Zoning Ordinance.

## Article 11: Adoption, Repeal, Amendments, and Miscellaneous

- A. Upon adoption of these Rules of Procedure of [June 4, 2013], they shall become effective and all previous Rules of Procedure, shall be repealed.
- B. These Rules of Procedure may be amended at any regular or special meeting by an affirmative vote of four (4) ZBA members, provided a notice of the proposed amendment is provided to ZBA members at a proceeding regular meeting and provided that such amendment does not result in a conflict with state law, the Zoning Ordinance, or a court decision.