

**ZONING BOARD OF APPEALS
BY-LAWS**

**CITY OF NILES
Berrien County, Michigan**

Adopted

**Zoning Board of Appeals
December 20, 2022
Niles City Council
January 9, 2023**

Prepared by

CITY OF NILES ZONING BOARD OF APPEALS

Assisted by

WILLIAMS & WORKS

BY-LAWS AND RULES OF PROCEDURE

I. AUTHORITY.

These By-laws or Rules of Procedure are adopted by the City of Niles Zoning Board of Appeals (hereinafter referred to as the Board) pursuant to the Zoning Enabling Act, Open Meetings Act, the Freedom of Information Act, and the City of Niles Zoning Ordinance.

II. MEMBERSHIP.

A. Members

The Board shall consist of five (5) members as provided by Section 601 of Act 110 of the Public Act of 2006, as amended. The first member of such Zoning Board of Appeals shall be a member of the Planning Commission. The remaining members of the Zoning Board of Appeals shall be selected from the electors or the City. The members selected shall be representative of the geographic population distribution of the City. An employee or contractor of the City Council may not serve as a member or an employee of the City Zoning Board of Appeals. Members of the Zoning Board of Appeals shall be removable by the City Council for nonperformance of duty or misconduct in office upon written charges and after a public hearing. A member shall disqualify themselves from a vote in which he has a conflict of interest. Failure of a member to disqualify themselves from a vote in which he or she has a conflict of interest shall constitute misconduct in office.

B. Term

The term of each member shall be for three (3) years, except for members serving because of their membership on the zoning commission or legislative body, whose terms shall be limited to the time they are members of those bodies. When members are first appointed, the appointments may be for less than 3 years to provide for staggered terms. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term.

Meetings of the City Zoning Board of Appeals shall be held at the call of the Chairperson and at other times as the Board in its rules of procedure may specify. All meetings of the Zoning Board of Appeals shall be open to the public. The Board shall maintain a record of its proceedings which shall be a public record.

C. Officers

1. Officers and their selection. At the first meeting of the Board in the calendar year, the Board shall select from its membership a Chairperson and Vice-Chairperson. An elected member of the City Council shall not serve as Chairperson or Vice-Chairperson of the Zoning Board of Appeals.
2. Duties. A Chairperson shall preside at all meetings and shall conduct all meetings in accordance with the rules provided herein. The Vice-Chairperson shall act in the capacity of the Chairperson in the absence of the Chairperson and shall succeed to the office of Chairperson in the event of a vacancy in that office, in which case the Commission shall select a successor to the office of Vice-Chairperson at the earliest practical time.
3. Tenure. The officers shall take office immediately following their election, who shall serve until December 31st of the appointment calendar year and who shall be eligible for reelection.

D. Secretarial Duties

1. Secretary. The Board may select from its membership a Secretary or it may select a non-member to act as Secretary. The Secretary shall have the responsibility of keeping the minutes or record of all meetings and other pertinent records, conducting all necessary correspondence, and performing such other administrative duties as are designated by the Board.
2. Zoning Administrator. The Zoning Administrator or other person authorized by the City Council shall be responsible for preparing and giving all notices of public hearings and meetings, preparing, posting and otherwise serving all Open Meetings Act meeting notices, notifying Board members of meetings, delivering communications, petitions, reports and related items of business to the Board, and preparing all written decisions or orders of the Board.

III. MEETINGS.

A. Place of Meetings

Regularly scheduled meetings may be held at City Hall. Whenever the regular meeting place of the Board shall appear inadequate for members of the public to attend, the Chairperson may change the meeting to a larger facility located in the City. A notice of such change shall be prominently posted on the door of the regular meeting place.

B. Time of Meetings

The Chairperson will schedule meetings of The Board within 30 days of the submittal of an application. The date and time of the meeting shall be determined by the Chairperson. Matters on the agenda and not yet acted upon at the time of adjournment will be placed on a future agenda of the Board, to be set by the Chairperson.

C. Notice of Meetings

1. Notice of scheduled meetings shall be posted in a conspicuous place at City Hall and given to each member of the Board at least 15 days prior to said meeting.
2. The Zoning Administrator shall notify all persons owning real property within 300 feet of the subject parcel via first-class postal mail and submit such notice to a newspaper of general circulation to be published on or before 15 days of the scheduled hearing.

D. Quorum

In order for the Board to conduct business or take official action, a quorum consisting of at least three (3) of the five (5) members of the Board shall be present. When a quorum is not present, no official action, except closing of the meeting, may take place. The members of the Board may discuss matters of interest, but can take no action until the next regular or special meeting. In the event the Board shall meet and a quorum is not present, the Board, upon the action of a majority of those present, may adjourn the meeting to another day provided that proper notice is given to the members and to the public.

IV. PUBLIC HEARINGS.

A. Notice of Public Hearings

Public hearings shall be scheduled and due and proper notice shall be given by the Zoning Administrator in compliance with the Zoning Enabling Act (Act 110 of 2006). Notice of hearings involving applications for authorized appeals outlined in Section 1201 of the City of Niles Zoning Ordinance shall be mailed to all owners of real property located within three hundred (300) feet of the property that is the subject of the hearing within 15 days of said hearing. The Zoning Administrator shall also submit the public hearing notice to a newspaper of general circulation for publication on or before 15 days prior to the scheduled hearing.

B. Conflict of Interest

1. Disqualification from participation as a member. A member shall be disqualified from participating and voting on any issue in which the member has a conflict of interest, as defined in part 2 of this section.
2. Definition of conflict of interest. A member of the Board shall be deemed to have a conflict of interest as to any matter or proceeding pending before the Board if: (1) the member has a direct or indirect pecuniary or financial interest in the outcome of the matter at issue; or (2) the matter at issue involves the member's business or place of employment; or (3) participation in making a decision might violate the letter or spirit of a member's code of professional ethics or responsibility; or (4) the member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.
3. Raising issue of conflict of interest. Although the issue of whether or not a member has a conflict of interest should be raised by the member who believes he/she has a conflict of interest, the issue of a conflict of interest may also be raised by another member of the Board or by the applicant for the relief being sought under the Zoning Ordinance. The issue should be raised prior to the commencement of the public hearing or as soon as the conflict of interest is discovered.
4. Determination of issue of conflict of interest. The determination of a conflict of interest shall be made by the Board upon motion of the member claiming a conflict of interest or upon motion of another member of the Board.
5. Grounds for removal. Failure of a member to raise the issue of a possible conflict of interest and to have the Board rule upon it shall constitute misconduct in office and shall be grounds for removal from office.

C. Format for Conducting a Public Hearing

1. Opening remarks by the Chairperson. The Chairperson of the Board shall officially open the hearing and he/she shall announce that the public hearing is being conducted on an application for relief under the City of Niles Zoning Ordinance and that the purpose of the hearing is to receive input from the applicant and the public regarding the subject of the hearing. The Chairperson should give a brief description of the subject of the hearing and any history or other information which might be relevant to the hearing.

2. Announcement of hearing rules. The Chairperson shall also announce the following hearing rules:
 - a. This is a public hearing designed to receive comments on the above subject. Only comments regarding this subject will be accepted and the Board and applicant for relief will not be required to answer questions posed by members of the public unless deemed appropriate by the Chairperson.
 - b. All persons wishing to comment shall be given an opportunity to do so.
 - c. The person addressing the Board shall state his/her name and address and make comments directly to the Board.
 - d. Each person speaking shall limit his/her comments to three (3) minutes.
 - e. All members of the public attending the hearing shall have an opportunity to speak before a person is allowed to speak a second time.
 - f. If at any time during the hearing, the Chairperson feels no other relevant comments are being stated or the public is out of order, a motion may be requested to close the public hearing. The Chairperson may, at his/her discretion, terminate unreasonably repetitive, irrelevant, or lengthy comments which are non-productive to the issue at hand.
3. Remarks and/or recommendations by Zoning Administrator. The Board may allow the Zoning Administrator to address the Board in regard to the relief being sought by the applicant and to make a recommendation if the Zoning Administrator deems it appropriate.
4. Presentation by Applicant. This shall include:
 - a. Remarks by applicant or spokesperson for the applicant, if any;
 - b. Reading of correspondence in support of the applicant;
 - c. People in the audience speaking in support of the application; and
 - d. Questioning by the Board.

5. Presentation by the opposition. This shall include:
 - a. Remarks by the spokesperson for opposition, if any;
 - b. Reading of correspondence in opposition to the application;
 - c. People in the audience speaking in opposition to the application; and
 - d. Questioning by the Board.

6. Applicant's rebuttal.
 - a. The applicant will be allowed to respond only to matters raised in the opposition's presentation - not new matters or a rehash of matters already covered.
 - b. Additional questioning by the Board, if any.

7. Deliberations.
 - a. Upon conclusion of the presentations, the Chairperson shall request a motion to close the public portion of the hearing for Board deliberations. No further input shall be allowed from the applicant or the public after the commencement of deliberations unless specifically requested by the Board.
 - b. Deliberations should involve the following:
 - (1) A discussion among the members of the Board related to the six standards that must be met for granting the appeal as outlined in Section 1201.4.d. of the City of Niles Zoning Ordinance;
 - (2) Formulation of a motion rendering a decision on the matter before the Board, which motion must include the findings of fact in support of the decision.

8. Voting on the motion. Before the motion is voted upon, it should be restated by the Secretary for the purposes of clarifying the meaning of the motion. The motion should then be voted upon, with all members present voting and without any member abstaining.

9. Announcement of decision and adjournment. The announcement of the results of the voting and the meaning of the decision should be done by the Chairperson. Thereafter, the hearing should be adjourned.

V. CONDUCT OF MEETINGS.

A. Order of Business

The order of business at a Board meeting shall be as follows:

- I. Call to order.
- II. Pledge of Allegiance
- III. Roll call.
- IV. Announcement of agenda.
- V. Approval of minutes of the previous meeting.
- VI. Public comments and communications concerning items not on the agenda.
- VII. Old business (any unfinished or ongoing business).
- VIII. New business.
- IX. Public hearing(s).

B. Motions

Motions for decisions on matters before the Board shall be restated by the Secretary before a vote is taken. The name of the maker and supporter of the motion shall be recorded and the reasoning or rationale for the decision shall be clearly stated in the motion.

C. Voting

An affirmative vote of the majority of those Board members present for the conduct of business shall be required for the approval of any requested action or motion placed before the Board. Voting shall be by voice vote, provided, however, that a roll call vote may be required if requested by any Board member or directed by the Chairperson. All members of the Board, including the Chairperson, except where it has been determined that the member has a conflict of interest, shall vote on all matters, but the Chairperson shall vote last. A member shall be excused from participating and voting if that person has been determined to have a conflict of interest pursuant to IV, C hereof. No member shall abstain from voting unless it has been determined that he has a conflict of interest.

D. Rules of Order

All meetings of the Board shall be conducted in accordance with generally accepted parliamentary procedures as governed by *Robert's Rules of Order*.

E. Minutes or Record of Meeting

The Secretary of the Board shall maintain or keep minutes or a record of its proceedings and copies of the minutes or record shall be filed in the office of the

City Clerk, and they shall be a public record. The minutes shall contain a synopsis of the meeting, including a complete statement of all motions and recording of votes; a complete statement of the decision or recommendation, including any conditions thereto, made on any action taken by the Board; and a recording of attendance. All correspondence and other communications, any written resolutions, decisions, or other documentation of action taken, any exhibits submitted at hearings shall be attached to the minutes or other record of the proceedings.

VI. OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS.

A. Open Meetings Act

1. All meetings of the Board shall be open to the public and held in a place available to the general public.
2. All deliberations and decisions of the Board shall be made at a meeting open to the public. In other words, there shall be no closed sessions of the Board.
3. A person shall be permitted to address a hearing of the Board under the rules established in Subsection IV, D, and to address the Board concerning non-hearing matters under the rules established in Subsection V, A, to the extent that they are applicable.
4. A person shall not be excluded from a meeting of the Board except for a breach of the peace committed at the meeting.

B. Freedom of Information Act

All records, files, publications, correspondences and other materials are available to the public for reading, copying and other purposes as governed by the Freedom of Information Act.

VII. AMENDMENTS.

These Bylaws and Rules of Procedure may be amended by the Board by a concurring vote of the majority of those Board members present for the conduct of business during any regular or special meeting, provided that all members have received in advance a copy of the proposed amendments at least three (3) days prior to the meeting at which such amendments are to be considered.

VIII. ZONING BOARD AND CITY COUNCIL APPROVAL.

These Bylaws and Rules of Procedure and any amendments are subject to the approval of the Zoning Board and City Council.

Zoning Board of Appeals Motion to Adopt

Motion by Wilson, and supported by Weimer to adopt the foregoing Bylaws and Rules of Procedure of the Zoning Board of Appeals.

Votes: Ayes: DiCostanzo, Pickles, Thomas, Weimer, Wilson
Nays:
Absent:

City Council Motion to Adopt

Motion by DiCostanzo, and supported by McAfee to adopt the foregoing Bylaws and Rules of Procedure of the Zoning Board of Appeals.

Votes: Ayes: McAfee, Weimer, DiCostanzo, Thomas, Dunnem, Rogers
Nays:
Absent: Boggs, Bertschy

Bylaws and Rules of Procedure adopted January 9, 2023



Tina Bergman, City Clerk