

# CITY OF BATAVIA ZONING BOARD OF APPEALS BYLAWS

Adopted June 6, 2012

## I. ORGANIZATION AND RESPONSIBILITIES

### A. Board

1. Organization. (Zoning Code Section 5.104) The Zoning Board of Appeals consists of seven members of the Plan Commission appointed by the Mayor with the advice and consent of the City Council.
2. Responsibilities
  - a. Variances. (Section 5.104.D.1) The Board shall approve Findings of Fact and make recommendations to the City Council, based on the facts and evidence in the public record relating only to the specific variance requested. Board Members are expected to study the agenda packet and visit the project site in preparation for the Public Hearing.
  - b. Appeals. (Section 5.104.D.2) The Board shall hear and decide appeals from decisions, determinations, and interpretations made by the Planning and Zoning Officer and Community Development Director in the administration and enforcement of the Zoning Code.

### B. Officers

The Board shall elect a Chair and Vice Chair every two years from among the members at the first meeting held after May 1<sup>st</sup>. The current Chair and Vice Chair will remain in office until the election.

1. The term of Chair and Vice Chair shall be two years, and no member serving as Chair or Vice Chair shall be eligible for re-election.
2. The Vice Chair shall act as Chair in the Chair's absence. In the absence of the Chair and Vice Chair, the senior member based upon years of membership shall act as Chair.
3. Any vacancy for Chair or Vice Chair shall be filled from the Board membership by majority vote of the Board. The term shall be for the remainder of the unexpired term of office.

4. The Chair shall preside at all meetings and hearings of the Board, decide all points of order and procedure, and perform any duties required by law, ordinance, or these bylaws. The Chair shall have the right to vote on all matters before the Board, and shall also have the right to make motions or second motions in the absence of either.

C. Staff

City staff shall furnish professional and technical advice and recommendations to the Zoning Board of Appeals.

II. **MEETINGS**

A. General Meeting Procedure

1. Meetings shall be held as needed. Meetings of the Board shall be held in the Council Chambers of City Hall, 100 North Island Avenue, Batavia IL unless otherwise advertised in the notices required by law. If necessary or appropriate, meetings may be held at different times or at different locations.
2. Meetings of the Board shall be open to the public and the minutes of the proceedings, showing the vote of each member and records of its examinations and other official actions, shall be approved and filed with the City Clerk and kept as a public record.
3. Board members are expected to attend all meetings. If a member cannot attend a meeting for whatever reason, that member shall give prior notice to the City staff of the inability to attend.
4. Whenever a member has a conflict of interest in the subject matter of a pending application, the member shall disclose the conflict, step away from the dais and refrain from any and all discussion of the matter. When a member steps away from the dais, the clerk shall record in the minutes that the member is absent. If the member returns to the dais after the vote, the clerk shall note in the minutes that the member returned to the meeting.
5. Meeting agendas shall be generally limited to two public hearings and all other matters of business will be scheduled at the discretion of staff.

B. Meeting Materials

Agendas and supporting material for all meetings shall be delivered to Board Members and posted on the City's website at least 48 hours before every meeting.

C. Quorum

A majority of Board members currently appointed shall constitute a quorum for transacting business at any meeting.

D. Withdrawal of Request

An applicant may withdraw an application by giving notice to the staff prior to the meeting or by presentation to the Board at a meeting.

E. Site Visits

City staff or the Board may schedule a site visit as an agenda item for a meeting to view a property that is the subject of an application. The purpose of the visit is to gather information relevant to an application. The minutes shall include a record of the site visit. Members may individually visit property which is the subject of an application at any time other than a scheduled meeting, provided that a majority of a quorum of the Board is not present at the property at the same time.

### III. **ORDER OF BUSINESS**

A. Procedure

1. The Chair shall call the meeting to order and the minutes clerk shall record the members present or absent. The Chair shall declare if a quorum is present.
2. If a public hearing has been scheduled for a meeting at which a quorum is not present, the meeting and public hearing shall be continued to a specific date, time and place.
3. The Chair shall call each matter of business in the order of the approved agenda, unless the order of the order of business is changed by action of the Board.
4. The Chair shall generally conduct meetings under Robert's Rules of Order, as modified herein. The formalities of Robert's Rules of Order shall be considered waived if any action taken deviates from those formalities without objection from the Board. A Board member may object to any deviation in formalities of Robert's Rules of Order at the time the action is taken before the next agenda item is called. When any provision in Robert's Rules is raised by a Board member for consideration, such

provision may only be suspended or modified by majority vote of the Board.

B. Public Hearing Conduct

1. Public Hearings shall be held when required by law to gather facts and information pertinent to the matter under consideration.
2. Multiple variance requests on the same project may be heard at a single Public Hearing; each Variance shall be separately considered and voted upon by the Board.
3. Multiple appeals on the same project may be heard at a single Public Hearing; each appeal shall be separately considered and voted upon by the Board.
4. After opening the Public Hearing, the Chair shall, in the following order:
  - a. Request a staff report and provide an opportunity for members to question staff.
  - b. Invite the applicant to present the application, testimony and other information in support of the application that is relevant to the criteria the Board must consider in making its determination.
  - c. Invite members and the staff to ask questions of the applicant.
  - d. Invite all persons wishing to address the matter to:
    - i. Ask questions of the staff, the applicant and any other person testifying; and
    - ii. Present information and testimony that is relevant to the criteria the Board must consider in making its determination.
5. All relevant evidence for consideration of the matter at hand shall be made part of the record. The Chair may exclude irrelevant or redundant testimony from the record.
6. The introduction of any new plans, facts or documentation by an applicant that was not submitted to staff for consideration prior to the hearing, shall be grounds for continuation of the Public Hearing to allow the staff to review the material and to present an updated recommendation to the Board.
7. If an applicant fails to appear, the Board may conduct the hearing, continue the hearing to a date and time certain, or table the matter in the

Board's discretion, unless the applicant has submitted a request in writing at least 24 hours prior to the meeting that the Board continue the hearing or conduct the hearing without the applicant being present. If a Public Hearing is conducted at which the applicant fails to appear, the Board may conduct the hearing and hear those persons requesting to speak to the application. The Board may take action or continue the matter to a subsequent meeting.

8. If for any reason a Board meeting must be cancelled, staff shall post a notice in a conspicuous place that can be seen by any person attending the meeting that all matters on the posted agenda are being continued to a date, time and place certain. All posted agendas shall be revised accordingly.
9. Once the hearing has begun, all members must remain in the hearing room for the duration of the hearing. Members shall request the Chair recess the hearing, and the hearing shall be recessed, before a member leaves the room. A member who is absent from any portion of a Public Hearing may not vote on the matter unless he or she has reviewed the minutes or the recording of any portion of the hearing from which he or she was absent. Prior to voting the member who was absent must state that he or she is familiar with the record before voting. The vote of a member who was absent for all or a portion of a hearing who has not stated the he or she is familiar with the record will be counted as an abstention.
10. Any interested persons may speak to the issue under consideration, after being recognized by the Chair, signing the speakers' roster, and stating their name and address, and if applicable, the names of persons on whose behalf they are appearing.
11. The Chair may limit testimony to avoid repetitious or irrelevant evidence.
12. By majority vote, the Board may continue a hearing if it concludes that additional information or time for study is necessary. If a hearing is not continued to a date, time and place certain, or if it is tabled, the subject of the hearing shall not be considered again until new notice is published and given as required by law.
13. When the Board determines that no additional information is necessary to reach a decision, , and all persons wishing to speak have been heard, the Public Hearing shall be closed. A public hearing shall be closed by an approved motion.

C. Deliberation & Voting

1. The Board may begin deliberation before or after the public hearing is closed, at the Board's discretion.
2. Prior to voting, the Board may discuss and attempt to reach a consensus on each individual request.
3. Variances
  - a. If there is no consensus on the draft Findings of Fact, the Chair may call for a non-binding, straw poll to enable staff to prepare revised Findings of Fact. The Board shall continue the matter to be to a future meeting, with or without continuation of the public hearing, for preparation of revised findings.
  - b. The Board shall vote on all Findings of Fact necessary to meet the criteria for each Variance request prior to voting on the request itself. If the Board does not find in the affirmative for each of the required Findings of Fact, the Board's action shall be recorded as a unanimous recommendation for denial. If the Board finds in the affirmative for each of the required Findings of Fact, the Board shall proceed to vote on the request itself. The Board may include recommended conditions in the motion for action on a Variance before voting on the Variance application itself.
  - c. The Board may recommend approval, approval with conditions, or denial of each request.
4. Appeals: The Board shall uphold, reverse, or modify the decision of the administrative official.
5. Any motion may be approved by a majority vote of those Board members present and voting. A tie vote on a motion to approve a recommendation shall be recorded as a denial or recommendation for denial.

D. Reconsideration

1. Before the next agenda item is called, a member of the Board who voted on the prevailing side of any action may make a motion for reconsideration of that action.
2. An applicant, appellant, or any member of the Board may request reconsideration of any action taken at the preceding meeting by notifying the Community Development Department in writing at least four working days prior to the next meeting.

3. In the case of a tie vote, any member may make a motion for reconsideration of that matter before the next agenda item is called. A successful motion to reconsider a tie vote will permit the matter to be discussed and acted upon at that time.
4. If a timely request for reconsideration is received, the reconsideration will be included on the agenda for the next meeting.
5. Only a member who voted with the majority may make a motion for reconsideration of any matter for which a prior motion resulted in something other than a tie vote.
6. Any member may second a motion for reconsideration, regardless of which side he or she voted on.
7. If a motion for reconsideration passes, the matter shall be considered undetermined until a new motion is made and vote is taken. The Board may continue the discussion of the matter following approval of the motion for reconsideration or table it for future discussion. No action on the matter to be reconsidered shall be taken unless the matter is listed on the agenda for action and all required notification has taken place.
8. If new information is to be presented on a matter for which a public hearing has been concluded, a new public hearing must be scheduled and notice given as required by law.

E. Recommendation to City Council

The Community Development Director shall forward in writing to the Community Development Committee a complete and accurate summary of the Board's Findings and recommendations for the Committee's recommendation to the City Council. The Director shall prepare a draft Ordinance incorporating the above Findings and recommendations.

**IV. AMENDMENTS**

These bylaws may be amended by majority vote at any meeting of the Board, provided that intent to amend the bylaws has been listed on the agenda.