



Document Purpose:

This document outlines the rules and procedures that the Zoning Board of Appeals (ZBA) shall follow during its public meetings. The ZBA reviews and decides upon Special Exceptions (Sec. 155.2406), Major Temporary Use Permits (Sec. 155.2412.C), Interim Use Permits (Sec. 155.2415), Variances (Sec. 155.2420), and Appeals of a decision of the Development Services Director on an application for an Interpretation (Sec. 155.2424). The Board also reviews and decides upon appeals related to regulations in Section 100.40 (Movable Fixtures in Public-Right-of-Way); variances relating to regulations in Chapter 151 (Beaches and Waterways); variances and appeals concerning floodplain management regulations and actions under Chapter 154 (Buildings); and any other powers and duties delegated by the City Commission, in accordance with state law.

Per Section 155.2203.I of the Zoning Code, the ZBA shall adopt these rules of procedure to govern its operations.

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MEMBERSHIP:

The Zoning Board of Appeals consists of twelve residents, all residents of Pompano Beach, who volunteer their time and efforts to assist the City and its residents in administrating the Zoning Code. Of the twelve members, six are regular voting members, and six are alternates. Alternate members serve as substitutes for regular voting members who are temporarily absent or disqualified.

One regular voting member and one alternate shall be nominated by the Mayor, and one regular voting member and one alternate shall be nominated by each City Commissioner from among residents of the Commissioner's district. However, a Commissioner may nominate someone outside their district if they believe that individual would better serve the public interest. All nominees must be approved by the City Commission by a majority vote.

Regular voting members and alternate members serve without compensation and are appointed for terms that run concurrently with the term of the City Commissioner who appointed them. Both regular and alternate members continue to serve until their successors are appointed.

ELECTION OF CHAIR AND VICE-CHAIR

The Zoning Board of Appeals shall elect a Chair and Vice-Chair from among its members at the first meeting each year. Elections shall occur during the January meeting and will be the last agenda item. The Chair and Vice-Chair may serve consecutive terms without limitation.

The Chair shall preside over all board meetings. The Vice-Chair shall assume the role of Chair in their absence. If both the Chair and Vice-Chair are absent, the Board shall vote to select an acting Chair for the meeting.

QUORUM

A quorum of the Zoning Board of Appeals shall consist of five (5) members, as specified by Section 155.2203.G. (Quorum and Necessary Vote). No official business of the Board shall be conducted without a quorum.

ALTERNATE MEMBERS

The Chair or staff designee is authorized to assign an alternate member to substitute for a regular voting member who is temporarily absent or disqualified. Alternate members shall be assigned based on the following guidelines:

1. Each of the six alternate members shall be available throughout the year. Assignments will rotate, unless a shortage of available alternates makes rotation impossible.
2. No alternate may serve as a substitute for the same regular member for more than three consecutive months.
3. A maximum of three alternate members may serve as regular voting members at any one time.

4. No alternate may act as a substitute unless the Chair announces their assignment, which will be recorded in the official meeting minutes.
5. Alternate members shall have the same powers and duties as the regular voting members they replace.

The Secretary shall arrange for alternate members when a regular member cannot attend, but the Chair shall have ultimate authority on the matter. Members shall advise the Secretary as soon as they know they cannot attend a meeting.

Back-up material is distributed electronically. It is the Board member's responsibility to notify the City if they cannot access any information.

REMOVAL AND REPLACEMENT OF MEMBERS

The City Commission may, by majority vote, remove any member of the ZBA for good cause, including but not limited to poor attendance, lack of participation, unfitness, malfeasance, and conflict of interest. Any removal action shall follow the procedure outlined in Section 155.2203.C.4 of the Zoning Code.

- A member absent from three consecutive meetings or more than 50% of the scheduled meetings in a calendar year may be removed by the City Commission.
- The Chair or Development Services Director shall notify the Mayor and City Commission if a member qualifies for removal due to poor attendance.

VACANCIES

Vacancies arising from causes other than the expiration of terms shall be filled for the remaining term. A vacancy in the term of a regular voting member or alternate shall be filled by the City Commissioner who made the original appointment, with approval from the City Commission.

APPLICANT PROCEDURES

To request a determination from the Board, an applicant must submit an application through the Camino online portal to the Development Services Department. The application must include all required documentation. Applicants will be notified within five business days of submission whether their application is complete. Incomplete applications must be corrected and resubmitted within 45 days, or they will be considered withdrawn.

A fee, as set by the City, must be paid to cover the City's administrative and advertising costs. The Zoning Board of Appeals meets on the third Thursday of each month at 6:00 PM in the City Commission Chambers adjacent to City Hall.

All documentation submitted, including photographs, display boards, and presentations, becomes the property of the City and must be provided to the Board Secretary prior to the public hearing.

CONDUCT OF HEARINGS

The following guidelines shall govern the conduct of meetings:

- 1) Five members of the ZBA shall constitute a quorum, as established by Code (155.2203.G. Quorum and Necessary Vote). No official business of the board shall be conducted without a quorum present.
- 2) The Chair shall announce any changes in the agenda, such as requests to table/postpone or cases that have been WITHDRAWN by the applicant, at the beginning of the meeting.
- 3) The Chair will provide an explanation of the prerequisites for the approval of each appeal and the Board procedures.
- 4) The Secretary shall place under oath the petitioner, Staff representatives, and all audience members desiring to speak to the case.
- 5) The Chair shall call the case number and request the petitioner come forward.
- 6) Members of the public wishing to speak to the case shall come forward and sit in the front row to expedite the hearing.
- 7) The applicant or their designated representative Petitioner shall give their name and address, spelling their last name for the record, and state if they have been sworn.
- 8) Staff shall present a brief summary of information regarding the subject property and the relief requested.
- 9) The applicant or their designated representative shall make their presentation to the Board.
- 10) Staff shall make its presentation, including staff's recommendation and may present any rebuttal or additional comments in response to the applicant's presentation.
- 11) The Chair shall call for questions from the Board to the applicant or their representative.
- 12) The Chair shall open the Public Hearing for those individuals wishing to speak in favor of the request.
- 13) The Chair shall invite individuals who wish to speak in opposition to the request to address the Board.
- 14) The applicant or their representative and board members shall have the opportunity to question witnesses.
- 15) The applicant or their representative shall be able to present closing arguments.

16) The Public Hearing is closed.

17) Board member discussion and deliberations.

18) The Chair shall call for a Motion, and the Board shall take a vote.

After the Chair calls the case, all potential witnesses must be sworn prior to testifying. A City representative, usually a member of the Development Services Department, will provide a brief summary of information regarding the subject property and the relief requested. The applicant should present the Zoning Board of Appeals with sufficient “competent and substantial evidence” (defined by the Florida Supreme Court as “such relevant evidence as a reasonable mind would accept as adequate to support a conclusion”). This presentation of evidence may be in the form of sworn testimony, written documents, photographs, charts, diagrams, etc. Any digital or physical evidence presented will be collected and kept by the ZBA Secretary, and will constitute part of the record of the proceedings. The applicant must present the ZBA with evidence which supports the review standards applicable to the relief sought. For example, an applicant who seeks a variance must present the ZBA with factual testimony or documentary evidence which tends to prove that the required standards for granting a variance are met. The burden to present competent, substantial evidence sufficient to prove all the standards are met, is on the applicant. All interested persons will also be invited to speak, under oath, either for or against the applicant. Either side may ask questions or “cross-examine” any witness who chooses to testify. After the applicant has presented proof as to all the review standards, then the City or any other party opposing the application will be given the opportunity to present evidence that the application is insufficient, incorrect, or fails to meet the review standards.

At that point, the Public Hearing portion is over, and no additional input or request from the applicant or the public shall be received at that time, unless a motion to reopen the Public Hearing is made, seconded and approved. The Zoning Board of Appeals members will then discuss the case, consider the evidence, and apply it to the review standards. Finally, one member will make a motion to approve the requested relief, another member will “second” the motion and the Zoning Board of Appeals will vote. All motions are made in the affirmative, that is, the motion will always be to approve the request, even if that member does not believe the applicant has proven their case. The reason for this is that—except for Special Exception applications regarding a Community Residence or Recovery Community which only require a simple majority—the ZBA’s rules require a “super-majority” of all members present. For example if all members are present, five (5) concurring votes are needed to approve any application or any appeal reversing or modifying a decision. Even where an applicant receives a 4-2 majority in favor of approving the relief requested, the application is still denied. Unless the vote is 5-1 or 6-0 in favor of the motion to approve, the application is denied if a six (6) member Board hears the matter. If fewer than six (6) members are present, a super-majority vote of five (5) votes of the quorum is still required.

DECISIONS OF THE BOARD

Final decisions rendered by the Zoning Board of Appeals shall be a written final order, signed by the Board Chair and rendered to the Board Secretary, with a signed copy sent to the property owner or other designated representative.

If a request is approved, the applicant must wait the number of days specified in the Zoning Code, for that specific application type, for the approval to be effective. If, however, the application is denied, the applicant may accept it, or appeal by filing a petition for writ of Certiorari in Broward Circuit Court in accordance with the requirements of the Florida Rules of Appellate procedure. The applicant may wish to bring a court reporter to the Zoning Board of Appeals hearing in order to record and transcribe the ZBA's proceedings in case the applicant decides to appeal, as the appellate court requires a "record".

MOTIONS FOR REHEARING

Any petitioner who may be aggrieved by a decision of the ZBA may, within ten days from the date of the decision was orally pronounced, but not thereafter, apply to the ZBA for a rehearing at the next regularly scheduled meeting of the Board or unless heard earlier by a special meeting.

The petitioner requesting a rehearing shall establish all of the following:

- 1) That there is new evidence which could not have been discovered before the hearing by the exercise of due diligence;
- 2) That the evidence is material and not merely cumulative, and
- 3) There is a strong likelihood that the new evidence will affect the results if a new hearing is granted.

The ZBA shall render its decision, after hearing arguments based on the foregoing criteria. The concurring vote of five members of the Board shall be necessary to grant a rehearing. The Public Hearing for any rehearing that is granted shall not be considered during the same meeting that the rehearing request is scheduled to be heard. For motions for rehearing that are approved the rehearing will be heard at the next available ZBA meeting.

REQUESTS FOR EXTENSION OF APPROVAL

Requests for extension of Board approval shall be in compliance with Zoning Code Section 155.2308.B.

MODIFICATION OF CONDITIONS

In order to modify a condition, other than one involving an extension of time, a new application shall be filed, processed and advertised the same as the original request.

REQUESTS TO TABLE/POSTPONE DECISIONS OF THE BOARD

- 1) Two (2) postponements of an application, not to exceed a total of sixty (60) days, may be granted by the Board upon request of the applicant. Failure of an applicant to proceed at the next hearing scheduled for the matter following two (2) postponements, shall result in the matter being stricken from the

agenda by the Board. Any such matter stricken must undergo a new application process to again be placed before the Board for a determination.

- 2) The Board Chair has the authority to grant a postponement of any matter set for the first time upon the filing of a written request by an applicant, and the item shall remain on the agenda for ratification by the Board on the record, and reset for the next scheduled meeting. An applicant need not be present at such time. A second request to postpone an item must be considered at the meeting scheduled for the item. It is not required that the applicant be present at the meeting.
- 3) Should any meeting be cancelled or no regular monthly meeting of the Board be scheduled for any month following a postponement, the matter will be set for the next available meeting and the postponement shall be treated as if it were only a thirty (30) day period of time.
- 4) The Board may on its own by motion, postpone any matter to its next scheduled meeting, should the Board determine there is a need for more information or further study, or that such a postponement is required in the interest of fairness or due process either to the applicant, the Board or to the general public. Any such postponement initiated by the Board shall not be held against the applicant as a postponement.
- 5) If an applicant, or their authorized representative, is not present at the initial Public Hearing, the matter will be tabled, in deference to the applicant. The Secretary shall contact the applicant after the meeting and inform them of the time and date of the next meeting wherein the matter will be considered. Should there be no one present at the next meeting, or should no word be received from the applicant, the matter will be STRICKEN from the agenda.
- 6) For applications that are not postponed to a date and time certain, or items that are postponed more than once, the item shall be re-noticed. The applicant shall be responsible for all costs associated with additional required mailed notices and legal advertisements. These costs must be paid prior to the legal advertising deadline for the meeting that the application will be considered.
- 7) If only 5 eligible voting ZBA Members are present to hear a case, the Chair will reiterate to the Applicant that a supermajority is required for approval, and offer the Applicant the opportunity to postpone the item (without prejudice) to be heard at the next available ZBA meeting with the opportunity to present the case to a full board (6 members).

CONFLICT OF INTEREST

A member of the ZBA shall not participate in the review of, or vote on, an application for a development permit if the action proposed by the application creates a conflict of interest—that is, if the action proposed by the application would inure to the special private gain or loss of the member, any principal or corporation (or a parent organization or subsidiary of such corporation) that employs or otherwise retains the services of the member, or a close relative (e.g., parent, sibling, spouse, or parent- or sibling-in-law) or business associate of the member, or for any other reason as set forth in Chapter 112 of the Florida Statutes or any other applicable

requirements. All procedures for disclosure of conflicts as set forth in Chapter 122 of the Florida Statutes must be followed.

If an objection is raised to a board member's participation in a matter based on a conflict of interest (as defined in subsection 1 above), and that member does not recuse themselves, the remaining members of the board present shall, by majority vote of a quorum present, determine whether the member is or is not disqualified from participating in and voting on the matter.

If a board member is disqualified on a regular and continuing basis due to a conflict of interest (as defined in subsection 1 above), the Chair of the board may request, in writing, that the member resign. If the member does not resign in response to such a request, the Chair shall report the conflict of interest to the Mayor and City Commission, who may consider whether to remove and replace the member in accordance with Section 155.2203.C.4, Removal and Replacement; Attendance.

Revisions approved by Board motion at the March 20, 2025 meeting.

Revisions approved by Board motion at the February 15, 2018 meeting.

Revisions approved by Board motion at the July 16, 2015 meeting.

Revised by Cassandra LeMasurier, Advisory Board Secretary, June 23, 2014.

Revised by Cassandra LeMasurier, Advisory Board Secretary, February 20, 2014.

Prepared by Linda Hora, Advisory Board Secretary, and revised September 15, 2011.