



# ***RULES OF PROCEDURE***

## ***CITY OF POMPANO BEACH ZONING BOARD OF APPEALS***

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### **MEMBERSHIP**

Per Section 155.2203.I [Rules of Procedure], the Zoning Board of Appeals shall adopt rules of procedure governing its procedures and operations. The Zoning Board of Appeals is made up of nine residents of Pompano Beach who volunteer their time and efforts to assist the City and its residents in the administration of the Zoning Code. Of the nine members, six are regular voting members and three members are alternates who may serve as a substitute for a regular voting member who is temporarily absent or disqualified. Each regular member has been appointed by the Mayor, a City Commissioner, or the City Commission as a whole and serves a term which runs concurrently with the term of the member of the City Commission who appointed them. Alternate members serve a three year, concurrent term. Both regular and alternate members serve without compensation. Regular voting members and alternate members shall continue to serve until their successors are appointed.

### **ALTERNATE MEMBERS**

The Chair of the ZBA shall be authorized to assign one of the three alternate members to serve as a substitute for a regular voting member who is temporarily absent or disqualified, in accordance with the following:

1. Each of the three alternate members shall be on call for a total of four (4) meetings throughout the year. This schedule shall be established at the first regularly scheduled meeting of each year, and may be adjusted by the Chair and by the Alternates in coordination with the Chair and Board Secretary.
2. The alternate members shall be required to attend the meetings that they are assigned. However, the Board Secretary, acting on behalf of the Chair, may release the alternate from attending if all regular Board members have confirmed their attendance by noon on the day of the meeting.
3. In the case that a second alternate member is required, the Secretary shall request the presence of the alternate who is not scheduled to serve for the subsequent meeting.
4. No alternate member may serve in place of a single regular voting member for a continuous period of more than three months.
5. No more than two alternate members may serve as regular voting members at any one time.
6. No alternate member may take action as a substitute member unless the Chair first announces assignment of that role and the assignment is recorded in the official minutes of the meeting.

7. When substituting for regular voting members, alternate members shall have the same powers and duties as the regular voting member 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 possible when they become aware they are unable to attend a meeting. There shall be no more than two (2) alternate members serving at any particular Board meeting.

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

### **REMOVAL AND REPLACEMENT OF MEMBERS**

The City Commission may, by majority vote of a quorum present, remove and replace any member of the ZBA at any time for good cause, including, but not limited to, poor attendance, lack of participation, unfitness, malfeasance, and conflict of interest (See Section 155.2203.H. of the Code of Ordinances). Any allegation of cause for removal shall be in writing, and the City Commission shall hold a public hearing on such an allegation before taking action to remove a board member.

Any member of the ZBA who is absent from three consecutive regularly scheduled board meetings or more than 50 percent of regularly scheduled board meetings held within a calendar year shall be removed from the board by the City Commission in accordance with subsection a above. The Chair of the ZBA or the Development Services Director shall notify the Mayor and City Commission if a member qualifies for removal under this subsection, as required by Code (155.2203. C. 4. B. Removal for Poor Attendance).

### **VACANCIES**

Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term only, in accordance with the following:

1. A vacancy in the term of a regular voting member shall be filled by the City Commissioner in whose district the appointment originated.
2. A vacancy in the term of an alternate member shall be filled by the City Commission as a whole.

### **ELECTION OF CHAIR AND VICE CHAIR AND DUTIES**

The Board shall elect from among its members a Chair and Vice Chair to serve for a one year term. Elections shall be held each year at the January meeting and shall be the last item on the agenda for that meeting. The Chair and Vice-Chair may be elected to successive terms without limitation.

The Chair shall preside over all board meetings. The Vice-Chair shall preside over board meetings in the absence of the Chair. If both the Chair and Vice-Chair are absent, the ZBA shall vote to determine who shall serve as acting Chair for the meeting.

**PURPOSE**

The Zoning Board of Appeals hears the following applications, as authorized by Code (155.2203. B. Powers and Duties):

1. Special Exception
2. Major Temporary Use Permit
3. Interim Use Permit
4. Variances, including those from the city's base flood elevation standards
5. Appeal of a decision of the Development Services Director on an application for an Interpretation

In addition to the application types listed above the Zoning Board of Appeals shall also have the powers and duties listed below.

1. To review and decide appeals of relating to regulations in Section 100.40 (Movable Fixtures in the Public Right-of-Way) of the Code of Ordinances, in accordance with procedures and standards in that section;
2. To review and decide requests for variances relating to regulations in Chapter 151 (Beaches and Waterways) of the Code of Ordinances, in accordance with procedures and standards in that chapter;
3. To review and decide requests for variances and appeals relating to floodplain management regulations in, and actions authorized by, Chapter 152 (Buildings) of the Code of Ordinances, in accordance with procedures and standards in that chapter; and
4. To carry out any other powers and duties delegated to it by the City Commission, consistent with state law.

**APPLICANT PROCEDURES**

An applicant for a determination by the Board shall submit an application to the Development Services Department. Application forms are available online or at City Hall. Each application type includes its own list of submittal requirements. Within five business days after application submittal deadline, the applicant will be notified if the application is complete or incomplete. If the application is incomplete, the applicant must submit the missing material within 45 calendar days of first being notified of deficiencies, or the application will be considered withdrawn. The Development Services Director shall not process an application for further review until it is determined to be complete.

A fee must be paid by the applicant, the purpose of which is to cover the City's costs for administrative and advertising services performed. A hearing date is assigned to the applicant. The Zoning Board of Appeals meets on the third Thursday of every month at 6:00 P.M. in the City Commission Chambers located adjacent to City Hall.

All documentation submitted as evidence, including photographs, display boards, etc. shall become the property of the City and must be retained in the case file. Large displays must be reduced to a manageable size which can be filed and copies must be provided to the Advisory Board Secretary at the time of Public Hearing before the Board.

**CONDUCT OF HEARINGS**

Meetings of the Zoning Board of Appeals shall be conducted as follows:

- 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) Any changes in the agenda, such as requests to table/postpone or cases which have been WITHDRAWN by the applicant shall be announced by the Chair 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 members of the audience 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 call for individuals wishing to speak in opposition to the request to come forward and 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 have an opportunity to present closing arguments
- 16) The Public Hearing is closed.
- 17) Board members discussion and deliberations.
- 18) Chair shall call for a Motion and the Board shall take a vote.

After the Zoning Board of Appeals' 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 written or documentation evidence presented will be collected and kept by the Zoning Board of Appeals Secretary, and will constitute part of the record of the proceedings. Applicants may wish to bring sufficient copies of any evidence for the six Zoning Board of Appeals members, as well as a copy for the Assistant City Attorney and an extra copy to file with the Secretary (large maps, photos, diagrams, etc. shall be reduced in size in order to be placed in the file). In the event reduced copies of the evidence presented are not made available to the Secretary at the time of the meeting, the ORDER of the Board shall be held until such time as the evidence is provided to the Secretary for the file. The applicant must present the Zoning Board of Appeals with evidence which supports the review standards applicable to the relief sought. For example, an applicant who seeks a variance must present the Zoning Board of Appeals 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 his case. The reason for this is that the Zoning Board of Appeals' 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 Zoning Board of Appeals' 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 Zoning Board of Appeals may, within ten days from the date of the decision was orally pronounced, but not thereafter, apply to the Zoning Board of Appeals 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 Zoning Board of Appeals 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 Zoning Board of Appeals 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) In the event an applicant, or his 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 him/her 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) In the (unlikely) event that only 5 eligible voting ZBA Members are present to hear a case, the Chair will re-iterate 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 himself or herself, 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 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.*