

Village of Ellsworth

Zoning Board of Appeals Bylaws

April 17, 2023

Article 1 Title

1. The name shall be the Village of Ellsworth Zoning Board of Appeals, hereafter known as the "Board."
2. These Bylaws are adopted in and for the Village a Zoning Board of Appeals, which shall perform its duties and exercise its powers as provided in Michigan Public Act 110 of 2006, as amended (MCLA 125.3601), in such a way that the objectives of this Zoning Code shall be observed, public safety secured, and substantial justice done. (1264.01)

Article 2 Membership; Appointments; Terms

1. The Village of Ellsworth Village Council shall serve as the Zoning Board of Appeals (MCL 125.3601 (2)).
2. A member must be 18 years or older.
3. Each member shall represent and advocate what is best for the Village of Ellsworth as a whole, putting aside personal or special interests.
4. In the event that a member(s) of the Village Council is absent the Village Clerk and/or Village Treasurer shall act as alternate member of the ZBA.
5. No other elected officer or employee of the Village is eligible to be a member of the Zoning Board of Appeals.
6. Only the Zoning Board of Appeals can vote, introduce motions, initiate any other parliamentary action, be counted for a quorum, or be expected to comply with the attendance requirements.
7. Newly appointed Board members shall be provided with a copy of the Zoning Ordinance and these Bylaws.
8. Board members shall be responsible for providing and maintaining a current working email and address.
9. The Zoning Board of Appeals members, other than an ex officio member, shall serve for terms that are concurrent with their terms on Village Council.
10. Members serve without compensation.
11. duty, or misconduct, after holding a public hearing on the matter. The Board secretary or acting secretary in the absence of the elected secretary, shall keep attendance records and shall notify the Village Council whenever any member of the Board is absent from three consecutive regularly scheduled meetings, so the Village Council can consider further action allowed under law or excuse the absences.

12. The budget shall ensure that all Zoning Board of Appeals members review annually and receive proper training to assist them in the fulfillment of their roles and responsibilities and remove members who fail to receive adequate training.

Article 3 Conflict of Interest

1. Each member of the Board 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:
 - a. Issuing, deliberating on, voting on, or reviewing a case concerning him or her.
 - b. Issuing, deliberating on, voting on, or reviewing a case concerning work on land owned by him or her or which is adjacent to land owned by him or her.
 - c. Issuing, deliberating on, voting on, or reviewing a case involving a corporation, company, partnership, or any other entity in which he or she is a part owner, or any other relationship where he or she may stand to have a financial gain or loss.
 - d. Issuing, deliberating on, voting on, or reviewing a case which is an action which results in a pecuniary benefit to him or her.
 - e. Issuing, deliberating on, voting on, or reviewing a case where his or her employee or employer is:
 - i. an applicant or agent for an applicant, or
 - ii. has a direct interest in the outcome.
2. A member of the Zoning Board of Appeals who is also a member of the Planning Commission or Village Council shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission or Village Council. However, the member may consider and vote on other unrelated matters involving the same property. (MCL 125.3601 (13)).
3. If there is a question whether a conflict of interest exists or not, the question shall be put before the Board. Whether a conflict of interest exists or not shall be determined by a majority vote of the remaining members of the Board.
4. When a conflict of interest exists, the member of the Board shall do all of the following immediately, upon first knowledge of the case and determining that a conflict exists:
 - a. declare a conflict exists at the next meeting of the Board,
 - b. cease to participate at the Board or board meetings, or in any other manner, or represent oneself before the Board, its staff, or others, and
 - c. during deliberation of the agenda item before the Board, leave the meeting or remove oneself from the front table where members of the Board sit, until that agenda item is concluded.
5. Failure of a member to disclose a potential conflict of interest as required by this subsection constitutes malfeasance in office.
6. If a member of the Board is appointed to another office, which is an incompatible office with his or her membership on the Board, then on the effective date of the appointment to the other office, that shall result

in an automatic resignation from the Board. If a member of another office is appointed to the Board, which is an incompatible office with his or her membership in the other office, then on the effective date of the appointment to the Board, that shall result in an automatic resignation from the other office.

Article 4 Duties of all Members

1. Members shall avoid *ex parte* contact about cases where a decision is before the Board whenever possible.
2. Despite one's best efforts, it is sometimes not possible to avoid *ex parte* contact. When that happens, the member should take detailed notes on what was said and report to the Board at a public meeting or hearing what was said, so that every member and other interested parties are made aware of what was said.
3. Gifts shall not be accepted by a member of the Board connected with an agenda item before the Board. As used here, "gifts" shall mean cash; any tangible item or service, regardless of value; and food valued over \$10.
4. Once a vote is taken and an issue is decided by vote, the duty of each member of the Board is to represent the position reflected by the outcome of the vote. Minority reports and requests for reconsideration may take place only at an open meeting of the Board.
5. Zoning Board of Appeals members are expected to speak to each other, Village staff, and the public respectfully, in ways that are non-discriminatory and do not create a hostile work environment.
6. Failure to comply with the aforementioned duties is grounds for removal from the Zoning Board of Appeals.

Article 5 Removal from Board

1. Members may be removed by the Council for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing.
2. The Zoning Board of Appeals Chair, or a majority of the Board, may initiate the process for removing a Board member on charges of misfeasance, malfeasance, or nonfeasance. The Board member must be officially notified in writing. When the charge is brought to the Board, and after reasonable deliberation, the Zoning Board of Appeals may vote on whether to remove the Board member in question. A two-thirds majority is necessary to bring the charge to Village Council who will hold the public hearing to determine the final outcome.

Article 6 Officers; Officer's Duties

1. The Zoning Board of Appeals shall elect a chairperson, vice-chairperson, and a secretary from its members, and may create and fill other offices as it considers advisable. An *ex officio* member of the Zoning Board of Appeals is not eligible to serve as chairperson. The term of each office shall be one (1) year, with opportunity for reelection as specified in the Zoning Board of Appeals bylaws. (1264.03)
2. A candidate receiving a majority vote from the entire membership of the Board shall be declared elected

and shall serve for one year or until his or her successor takes office.

3. In the event the office of the Chair becomes vacant, the Vice-Chair shall succeed to this office for the unexpired term, and the Board shall select a successor to the office of Vice-Chair for the unexpired term. In the event the office of the Secretary becomes vacant, the Board shall select a successor to the office of Secretary. The Board or Secretary may also designate another person who is not a member of the Board to be the recording secretary.
4. The Chair, Vice-Chair, and Secretary shall take office at the next meeting following their selection and shall hold office for a term of one year or until their successors are selected and assume office.
5. Chair's Duties. The Chair retains his or her ability to discuss, make motions, and vote on issues before the Board. The Chair:
 - a. Shall preside at all meetings with all powers under Robert's Rule of Order parliamentary procedure;
 - b. Shall rule out of order any irrelevant remarks; remarks which are personal; remarks about another's race, religion, sex, physical condition, ethnic background, beliefs, or similar topics; profanity; or other remarks which are not about the topic before the Board;
 - c. May call special meetings;
 - d. Shall appoint an Acting-Secretary in the event the Secretary is absent from a Board meeting;
 - e. May represent the Board, along with the Village Council Board member, before the Planning Commission; Village Council;
 - f. Shall perform such other duties as may be ordered by the Board.
6. Vice Chair's Duties. The Vice Chair:
 - a. Shall act in the capacity Chair, with all the same powers and duties in the Chair's absence;
 - b. Shall perform such other duties as may be ordered by the Board.
7. Secretary's Duties. The Secretary:
 - a. Shall execute documents in the name of the Board;
 - b. Shall be responsible for the minutes of each meeting, if there is not a recording secretary;
 - c. Shall review the draft of the minutes and sign them;
 - d. Shall submit the draft of the minutes for the approval to the Board and have them spread in suitable volumes;
 - e. Shall distribute copies of minutes to each member of the Board prior to the next meeting;
 - f. Shall distribute copies of minutes to the Village Council;
 - g. Shall submit a record of the minutes to be kept in the clerk's office;
 - h. Shall receive all electronic and paper communications, petitions, and reports to be addressed by the

Board, delivered or mailed to the Secretary in care of the Village;

- i. Shall keep attendance records;
 - j. Shall provide notice to the public and members of the Board 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.*;
 - k. Shall prepare an agenda for Board meetings;
 - l. Shall perform such other duties as may be ordered by the Board.
8. Recording Secretary's Duties. The Recording Secretary, if needed, shall not be a member of the Board or any of its committees, and shall:
- a. At each meeting, take notes for minutes and prepare a first draft of minutes for review and signature by the Secretary.

Article 7 Meetings

1. Regular meetings. Meetings of the Board will be held on the same schedule as the Village Council regular meetings, unless otherwise specified by the Board. When the regular meeting day falls on a legal holiday, the Board shall select a suitable alternate day in the same month. An annual notice or regularly scheduled Board meetings shall comply with P.A. 267 of 1976, as amended (being the Michigan Open Meeting Act M.C.L. 15.261 *et seq.*).
2. Special meetings. All meetings of the Board shall be open to the public in accordance with Act 267 of the Public Acts of 1976 (Open Meetings Act). The notice of such a meeting shall specify the purposes of such a meeting, and no other business may be considered except by unanimous consent of the Board.
 - a. A special meeting of the Zoning Board of Appeals may be called by the chairperson, or by the vice chairperson at the absence of the chairperson, or by two (2) members of the Board, upon written request to the secretary. The secretary or designee shall send written notice of a special meeting to Zoning Board of Appeals members at least forty-eight (48) hours before the meeting
3. Quorum. Four or more number of seats for members of the Board, regardless whether vacancies exist or not, shall constitute a quorum for the transaction of business and the taking of official action for all matters before the Board.

Before the presiding officer calls a meeting to order, it is his or her duty to determine, although he or she need not announce, that a quorum is present. If a quorum is not present, the chair waits until there is one, or until, after a reasonable time, there appears to be no prospect that a quorum will assemble. If a quorum cannot be obtained, the chair calls the meeting to order, takes a roll call, announces the absence of a quorum, and entertains a motion to adjourn.

4. The business that the Zoning Board of Appeals may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act, Public Act 267 of 1976, as amended (M.C.L.A. 15.261 *et seq.*)

5. The order of business for a regular meeting is subject to change by the Chairperson's discretion, but shall follow the order below:
 - a. Call to order by Chairperson or Vice-Chairperson
 - b. Roll call
 - c. Determination of quorum
 - d. Approval of previous meeting's minutes
 - e. Approval of agenda
 - f. Old Business
 - g. New Business
 - h. Reports from other departments, boards, and commissions
 - i. Public comment
 - j. Comment from ZBA members
 - k. Adjournment
6. Any rule of procedure shall be governed by Robert's Rules of Order unless otherwise identified in this article.
7. Delivery of the agenda and accompanying materials shall be mailed to Board members so it is reasonably expected to be received prior to the regular meeting date. Electronic delivery shall also be made available, and may, at the individual board member's written preference, be the sole method of delivery to that board member.
8. Motions shall be restated by the Chair before a vote is taken.
9. Voting shall be by voice and shall be recorded as passing or failing. Roll call votes will be recorded only upon request by a member of the Board and shall be recorded by "yes" or "no." Members must be present to cast a vote. Voting by proxy shall not occur. The affirmative vote of a majority of those present or a majority of a quorum, whichever is greater, shall be necessary for the adoption of motions.
10. Action by the Board on any matter on which a hearing is held shall not be taken until the hearing has been concluded.
11. Public participation. All regular and special meetings, hearings, records, and accounts shall be open to the public.
12. Public Hearings. All petitions going before the Zoning Board of Appeals require a public hearing. Notice of the time and place of the hearing shall be given, not less than 15 days prior to such hearing, by at least one publication in a newspaper of general circulation.

- a. The Chairperson shall open hearings to the public after giving the petitioner an opportunity to be heard. After the public has had a reasonable opportunity to be heard, the Chairperson shall close the hearing on each petition. If a member of the Board desires further information, the member may, with the approval of the Chairperson or the approval of a majority of the members of the Board present, ask additional questions of members of the public, or the petitioner.

Article 8 Record

1. The Zoning Board of Appeals shall keep a public record of its resolutions, transactions, findings, and determinations. A writing prepared, owned, used, in the possession of, or retained by the Zoning Board of Appeals in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act, Public Act 442 of 1976, as amended (MCL 15.231 et seq.) (1220.07).
2. Minutes and Record. The Board Secretary shall keep, or cause to be kept, a record of Board meetings, which shall at a minimum include an indication of the following:
 - 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.)
 - b. Copy of the minutes, and all its attachments, which shall include a summary of the meeting, in chronological sequence of occurrence:
 - i. Time and place the meeting was called to order.
 - ii. Attendance.
 - iii. Indication of others present (listing names if others choose to sign in and/or a count of those present).
 - iv. 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.
 - v. 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 if it is provided in written form.
 - vi. 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:
 - A. Who testified and a summary of what was said, considering the following:
 - 1) The public shall state the first name, last name, representation of business or organization, and a resident address.
 - 2) The public shall speak for three minutes.

- B. A statement of what is being approved (e.g. variance request/type, , etc.)
 - C. The location of the property involved (tax parcel number and description, legal description is best).
 - D. What exhibits were submitted.
 - E. What evidence was considered.
 - F. The administrative body's findings of fact.
 - G. Reasons for the decision made.
 - H. The decision.
 - I. A list of all required improvements, if any.
- vii. Who called the question.
 - viii. The type of vote and its outcome.
 - ix. That a person making a motion withdrew it from consideration.
 - x. All the Chair's rulings.
 - xi. All challenges, discussion, and vote/outcome on a Chair's ruling.
 - xii. All parliamentary inquiries or point of order.
 - xiii. When a voting member enters or leaves the meeting.
 - xiv. When a voting member or staff member has a conflict of interest, and when the voting member ceases and resumes participation in discussion, voting, and deliberations at a meeting.
 - xv. All calls for an attendance count, the attendance, and ruling if a quorum exists or not.
 - xvi. The start and end of each recess.
 - xvii. All Chair's rulings of discussion being out of order.
 - xviii. Full text of any resolutions offered.
 - xix. Summary of announcements.
 - xx. Summary of informal actions, or agreement on consensus.
 - xxi. Time of adjournment.

3. Retention. Board records shall be preserved and kept on file according to the following schedule:

- a. Minutes, bonds, oaths of officials, other records of decisions, Board, or department publications: Permanent.
- b. Correspondence: Permanent.

Article 9 Staff and Consultants

The Board may employ the Village of Ellsworth staff, citizens, or professional planning consultants who shall hold office at the will and pleasure of the Board, with approval of the Village Council. The Staff members shall provide general direction of the Board's work. They shall have such other powers and duties as may be delegated to them by the Board.

Article 10 Board Responsibilities

As set forth in Section 603(1) of Public Act 110 of 2006, as amended, and herein, the Zoning Board of Appeals shall have the authority to hear and decide questions that arise in the administration of the Zoning Ordinance, including:

1. adopt rules to govern its procedures sitting as a zoning board of appeals pursuant to Public Act 110 Board of 2006, as amended. (1264.06);
2. interpretation of the Zoning Map and to hear and decide appeals from and review any administrative order, requirement decision, or determination made by an administrative official or Planning Commission; (1264.06);
3. the authority to hear and decide upon mapping disputes and establish the boundary location in accordance with Section 1266.02(b) where disputes arise as to the location of the floodplain boundary or the limits of the floodway. The decision of the Board shall be based upon the most current floodplain studies issued by the Office of Federal Insurance and Hazard Mitigation. In cases where the Office of Federal Insurance and Hazard Mitigation information is not available, the Board shall reference the best available floodplain information; (1264.06);
4. Dimensional or Non-Use Variances. The ZBA shall have authority in specific cases to authorize one (1) or more dimensional or "non-use" variances from the strict letter and terms of this chapter by varying or modifying any of its rules or provisions so that the spirit of this chapter is observed, public safety secured, and substantial justice done. A dimensional or non-use variance allows a deviation from the dimensional (i.e., height, bulk, setback) requirements of the chapter, based on findings of fact set forth in Sec. 1264.09 of the Ellsworth Zoning Ordinance;
5. Use Variances. The ZBA shall have authority, in specific cases, to establish a use of land that is otherwise prohibited in a zoning district so long as the spirit of the Zoning Ordinance is observed, public safety is secured and substantial justice is done. The ZBA may grant a use variance upon a finding of unnecessary hardship, subject to a two-thirds (2/3) majority vote of the members of the ZBA, based on findings of fact set forth in Sec. 1264.09 of the Ellsworth Zoning Ordinance.

Article 11 Amendments

These By-Laws and Rules of Procedure may be changed, or added to, by the affirmative vote of three (3) members of the Board, by resolution, at any regular or special meeting called for that purpose.

Article 12 Adoption

These Bylaws were adopted [date] and will take immediate effect and supersede all previous bylaws or Board practices.