

**CITY OF CLAWSON**  
**ZONING BOARD OF APPEALS**

**BYLAWS AND RULES OF PROCEDURE**

The main function or purpose of the following Bylaws is to establish the rules of operation for the Zoning Board of Appeals. In addition to establishing procedure, the Bylaws also describe the organizational framework of the Zoning Board of Appeals, and, in general terms, define the duties and responsibilities of the Zoning Board of Appeals.

City of Clawson  
Zoning Board of Appeals

425 N. Main Street  
Clawson, MI 48017

*Prepared: April 8, 2009*

CITY OF CLAWSON  
ZONING BOARD OF APPEALS

Bylaws and Rules of Procedure

**ARTICLE I: AUTHORITY**

Section 1

The rules and procedures of the City of Clawson Zoning Board of Appeals (hereinafter referred to as “the ZBA”) are subordinate and subject to the following statutes:

- a. Michigan Public Act 285 of 1931, as amended.
- b. Michigan Public Act 267 of 1976, as amended.
- c. Planning Enabling Act, Public Act 33 of 2008.
- d. Michigan Zoning Enabling Act P.A. 110 of 2006 further amended as Public Act 12 of 2008.
- e. The City of Clawson Land Development Regulations.
- f. The City of Clawson Code of Ordinances.
- g. The Rules of the Board, as set forth herein.
- h. Charter of the City of Clawson.

**ARTICLE II: TITLE**

The title of the Board shall be “The City of Clawson Zoning Board of Appeals.”

**ARTICLE III: MEMBERS**

Section 1

The ZBA shall consist of a minimum of five (5) members including the Chairperson and Vice Chairperson, representing insofar as possible different professions or occupations, appointed by the Mayor subject to approval by the members elect of the City Council. The Clawson City Clerk or her designee shall be the Secretary.

Section 2

All members of the Zoning Board of Appeals shall serve as such with compensation, if any, as determined by the City Council. Appointed members of the ZBA shall not hold another City office. The term of each appointed member of the ZBA shall be three (3) years or until his or her successor takes office. A successor shall be appointed not more than two months after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.

### Section 3

The City Council may appoint 2 alternate members for the same term as regular members to the ZBA. An alternate member may be called as specified to serve as a member of the ZBA in the absence of a regular member or if the regular member is unable to attend one or more meetings. An alternate may also be called to serve as a member for the purpose of reaching a decision on a case in which a regular member has a conflict of interest. The alternate member appointed shall serve in the case until a final decision is made even if the case continues for more than one meeting. The alternate member has the same voting rights as a regular member.

### Section 4

When members propose to resign, a notice of their intent in writing shall be provided to the Chairperson and the Secretary with a date of the resignation, effective in such a manner as to allow time for appointment of successors. When a vacancy occurs for any reason, the Secretary shall promptly indicate to the City Council that a vacancy exists.

### Section 5

A member of the ZBA may be removed by the City Council for misfeasance, malfeasance or nonfeasance in office upon written charges and after a public hearing. Before casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the ZBA and disqualify himself or herself from the vote. Failure of a member to disclose a potential conflict of interest as required by this subsection constitutes malfeasance in office.

## **ARTICLE IV: OFFICERS**

### Section 1

The officers of the ZBA shall be:

A Chairperson, who shall preside at all Regular, Adjourned, or Special Meetings, public hearings, or committee meetings of the ZBA and shall have such other duties as further prescribed in the Bylaws, and shall have authority to call and preside at all Special Meetings.

A Vice-Chairperson, who shall, in the absence of the Chairperson or his/her inability to act, preside at all Regular, Adjourned, or Special Meetings, public hearings, or committee meetings of the ZBA, and shall have the power to function in the same capacity as the Chairperson.

A Secretary, who shall have authority to execute documents in the name of the ZBA and shall perform such other duties as the Planning Commission may, from time to time determine.

## Section 2

The officers of the ZBA shall be elected each year for a one-year term by the ZBA at their first regular meeting held in each calendar year, and shall hold office until their successors are elected and assume office.

## **ARTICLE V: MEETINGS**

### Section 1

The Regular Meeting of the Zoning Board of Appeals shall be held on the third Thursday of each month at 7:30 P.M, at the City Hall. Such meetings may be held at other convenient place if directed by the chairperson in advance of the meeting or upon a finding that such other public location would serve public convenience or necessity with proper public notice as required by law. Any Regular Meeting may be adjourned to a definite date, by a majority vote of a quorum of the members. Special Meetings may be held as necessary, subject to the call of the Chairperson or Acting Chairperson or upon the request of a majority of the ZBA.

### Section 2

All Meetings of the ZBA shall be held in accordance with the provisions of PA 230 of 1976, the Open Meetings Act. Parliamentary procedure at ZBA meetings shall be governed by Robert's Rules of Order. The City Attorney shall be the Parliamentarian.

### Section 3

Each member shall be notified of the place and date of each meeting by the City Clerk, by a written notice, mailed to the address of the members not less than three (3) days prior to the date set for the meeting. Said notice may be waived by a unanimous vote of the ZBA.

### Section 4

Three (3) members of the commission shall constitute a quorum for the conduct of business. An affirmative vote of at least three (3) members of the ZBA shall be necessary in order to make a decision. In the case of a use variance, and affirmative vote of 2/3 of the members i.e., 4 out of 5 members is required in order to make a decision. Absence of a member from three (3) consecutively scheduled meetings or three (3) of seven (7) regular meetings without the recorded consent of the Chair shall be construed as resignation from the ZBA by absence.

### Section 5

No new matters will be discussed after 10:00 P.M. unless the ZBA votes to continue the meeting. The board members have the right to determine which, if any, of the items remaining on the agenda will be discussed or deferred to the next regularly scheduled board meeting.

## **ARTICLE VI: THE ORDER OF BUSINESS**

### Section 1

Notwithstanding Roberts Rules of Order, the order of business for a Regular Meeting shall be:

1. Call to order by Chairperson or Vice-Chairperson.
2. Pledge of Allegiance.
3. Roll call.
4. Determination of a quorum.
5. Approval of Minutes of last preceding meeting.
6. Hearings and/or New Business.
7. Public Comments – items not on the agenda.
8. Other business.
9. Adjournment.

### Section 2

The Chairperson shall open an agenda item to public comment after receiving the recommendation of the City Planner, and 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 ZBA desires further information, he/she may, with the approval of the Chairperson ask additional questions of members of the public, City Planner, or the petitioner. All comments shall be addressed through the chair. There shall be no questioning or argument between individuals in the audience.

## **ARTICLE VII: POWERS OF THE ZONING BOARD OF APPEALS**

### Section 1

Administrative Review. To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision or refusal made by the Director of Building and Planning in enforcing any provision of the Land Development Regulations (LDR).

Interpretation of Zoning Map and Text. To hear and decide in accordance with the provisions of the LDR requests for interpretation of the zoning map and text of the LDR.

Variations – dimensional. To authorize upon appeal, a variance from the strict application of the provisions of the LDR where existing conditions or factors result in exceptional circumstances and practical difficulty, provided that such relief may be granted without detriment to public health, safety and welfare and the intent of the zoning provisions of the LDR. The burden of demonstrating practical difficulty is on the applicant.

Variations – non-dimensional/use variance. To authorize upon appeal, the use of the site for uses other than those permitted by the LDR for the specific zoning district in which the parcel is located. Test of use variance requires the demonstration of undue hardship upon the applicant, which is not self imposed and would prevent the use of the parcel for any of the uses allowed by the LDR. A 2/3 majority of votes is required for any action to pass.

Temporary uses and buildings. To permit temporary uses, buildings and structures in connection with the development of land for periods not to exceed one year.

Uses not provided for. To approve, deny or approve with conditions, subject to applicable standards, maintaining public health, safety and welfare, uses that are not specifically allowed per the LDR.

Public service or public utility building variance. To permit the erection and use of a building or addition to a building for public service or utility purposes in any permitted zoning district when the proposal does not conform to the standards set forth in the LDR for the zoning district. The applicant must demonstrate that no reasonable alternative is available and the proposal is in the interest of public convenience and service.

## Section 2

The decisions made by the ZBA shall be substantiated with specific findings of fact. The ZBA is not empowered to change the terms of the LDR, to effect changes to the zoning map or to add to the uses permitted in any zoning district unless specifically empowered to do so. The decision shall be made on the required proof of exceptional circumstances/practical difficulty or undue hardship being demonstrated by the applicant.

## Section 3

A variance shall run with the land, except that if no building permit has been obtained within one year of the effective date of the variance and not erection or alteration has begun in compliance with the building permit, the variance shall become null and void.

## Section 4

The decisions of the ZBA are final. However, a person having an interest affected by decision may appeal to Circuit Court. An appeal of any decision by the ZBA must be filed within 30 days after the ZBA certifies its decision in writing or approves the minutes of its decision.

## **ARTICLE VIII. PUBLIC HEARING NOTICES**

Any of the actions noted above in Article VII, placed before the ZBA for consideration shall require one public hearing thereon, notice of the time and place of which shall be given not less than fifteen (15) days prior to such hearing by one publication in a newspaper of general circulation in the City of Clawson and in the official gazette, if any, of the municipality, and by Registered United States First Class Mail/hand delivered to all properties within 300 feet of the boundaries of the said property under consideration for action.

## **ARTICLE IX: CONFLICT OF INTEREST**

No member of the ZBA shall participate in any case in which he/she has a financial or personal interest in the property or the action concerned, or will be directly affected by the decision, or has or believes he/she has any other conflict of interest as defined by applicable law. No member of the staff, board or any agency serving the ZBA shall prepare or present any arguments or reports, or attempts to influence decisions of the board, in any case in which he/she has a similar interest. Any question about the lack of impartiality on a matter of business by the ZBA shall be disclosed prior to public discussion of the matter.

## **ARTICLE X: MINUTES**

### Section 1

The ZBA shall keep a set of Minutes of all Regular and Adjourned Meetings and at Special Meetings where official business was transacted. These Minutes shall become a public record and shall be filed with the City Clerk. Said Minutes shall contain the number of members of the public in attendance.


### Section 2

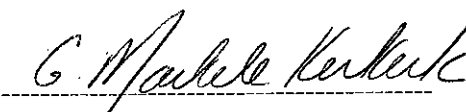
The Secretary or the Chairperson shall sign all Minutes, after approval by the ZBA members, at the following meeting.

## **ARTICLE XI: AMENDMENT OF BYLAWS**

These Bylaws are in conformance to State Law and the City's Land Development Regulations and are intended as guidelines to enable the ZBA to function appropriately. These bylaws MAY NOT be changed, unless such change is to bring the bylaws into conformance to changes in State Laws or to clarify procedures as set forth herein.

Adopted by the City of Zoning Board of Appeals on this 16<sup>th</sup> day of April 2009.

  
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ZBA Chairperson

  
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ZBA Secretary