

ITEM #: 15
DATE: 05-09-23
DEPT: P&H

COUNCIL ACTION FORM

SUBJECT: AMENDMENTS TO ZONING BOARD OF ADJUSTMENT BYLAWS

BACKGROUND:

On August 9, 2022, the City Council approved Ordinance No. 4475 amending Section 29.1403 (Zoning Board of Adjustment) of the *Municipal Code*. Changes were made to the following subsections of Section 29.1403: (4) Board Action, (5) Officers and Duties, and (9) Applications to the Board. **The changes reassigned duties among City staff, clarified notification requirements, and modified voting procedures for approval to be clear that three votes are required to approve an application or appeal; a lack of three votes would be a denial.**

As the Board conducted its annual review of Bylaws, changes were necessary to bring components of the Bylaws into conformance with adopted amendments to the *Municipal Code*. **See Attachment A (Rules of the Zoning Board of Adjustment).**

The ZBA approved the attached amendments to the Bylaws, at its meeting on April 12, by a vote of 5-0. Those amendments are now pending approval by the City Council.

ALTERNATIVES:

1. Approve the attached amendments to the Zoning Board of Adjustment Bylaws.
2. Refer the proposed Bylaw amendments back to the Zoning Board of Adjustment or staff for revisions.

CITY MANAGER'S RECOMMENDED ACTION:

The proposed amendments to the ZBA Bylaws are consistent with changes made to Section 29.1403 of the *Municipal Code*. Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1, as described above.

Attachment A

**RULES OF THE
ZONING BOARD OF ADJUSTMENT**

City of Ames, Iowa

Please note that proposed amendments to the Bylaws are shown in bold type. Deletions are shown as a “cross-through” and additions are shown as “underlined.”

These are the rules of the Zoning Board of Adjustment of the City of Ames, Iowa, made and promulgated pursuant to authority of Section 414.9, Code of Iowa, and Section 29.1403, Ames Municipal Code.

I. FORCE, EFFECT, AVAILABILITY AND AMENDMENT TO THESE RULES.

A. Force and Effect.

1. These rules supplement but do not supersede the provisions of Chapter 29 of the Municipal Code of the City of Ames, Iowa.
2. The Board of Adjustment shall act in accordance with procedures specified by laws of the State, City ordinances, and the provisions of these rules.

B. Availability.

1. These rules will be available for inspection in the office of the City Clerk and copies made for such fee as the Clerk shall determine reasonable.

C. Amendment.

1. Any additions, alterations, or amendments to these rules shall be approved by a majority vote of all members of the Zoning Board of Adjustment, sitting in regular session, and shall go into effect as of the date of the additional approval of the City Council.

II. REQUIREMENTS AND PROCEDURES FOR APPEALS OR APPLICATIONS

A. Initiation of an Appeal or Application.

1. All appeals and applications made to the Board shall be in writing on forms provided by the City of Ames and shall be filed with the secretary

to the Board.

2. Every appeal or application shall refer to the specific provision of the ordinance involved and shall set forth exactly the interpretation that is claimed, the use for which the special permit is sought, or the details of the variance, exception, or other relief requested, and the grounds on which it is claimed that the request should be granted, as the case may be.
3. There shall be a separate filing of appeal or application for each tract of land. No appeal or application naming or describing more than one (1) tract will be considered.
4. Each appeal or application to the Board shall be assigned a case number and the secretary shall make a case file in which all documents, exhibits and reports submitted as evidence relative to the matter, and the Decision and Order of the Board shall be retained. The secretary shall cause an index of such files to be made relating case numbers to street address or other appropriate description of properties affected. The files shall be managed in accordance with the Records Retention Schedule of the City of Ames.
5. Each appeal or application must be signed by the property owner, if owned by a natural person, or owner's agent, if owned by some other entity. If the applicant is not the owner, the applicant must also sign the application.
6. ~~All applications shall be filed by 9:00 a.m. on the Wednesday 14 days before the next regularly scheduled meeting in order to be docketed for that meeting. The secretary may docket a late appeal after consultation with and approval of the chair, if it is determined that a delay would result in hardship to the applicant or other affected parties. Application deadlines may be altered when schedules are affected by a holiday.~~

Applications to the Board for a Special Use Permit, Variance, Exception, or Reasonable Accommodation may be made by any person. Such application shall be made by filing with the secretary of the Board an application as provided for by the City of Ames. The secretary shall publish notice of the application in a paper of general circulation in the City.

7. ~~Upon receipt of an application or appeal, the secretary to the Board shall promptly transmit to the Department of Planning and Housing of the City of Ames a copy of said application or appeal,~~

~~together with a copy of the notice of the aforesaid hearing and shall request that said department submit to the Board its analysis and comments on this matter.~~

The Planning and Housing Director is responsible for appointing staff to serve as secretary of the Board. In the absence of the secretary, the chair may appoint one of the members of the Board to act as secretary pro tem for the meeting. The secretary shall keep minutes of the Board's proceedings, showing the vote for each member upon each question. If a member is absent or does not vote on any matter, the minutes shall indicate this fact. The Board shall keep records of all official actions, which shall be on file in the office of the City Clerk as a public record.

~~B. Condition Precedent to Appeal or Application.~~

- ~~1. Refusal of a zoning permit shall be a condition precedent to hearing appeal or application for an area, height or architectural variance or exception.~~
- ~~2. No such refusal of a zoning permit is required as a condition precedent to applications for a use variance, special use permit or exception.~~

~~C.~~ B. Time Limits for Appeals or Applications.

1. Limitation on appeals of interpretation: Appeals based upon alleged erroneous application or misinterpretation of zoning regulations by the zoning administrator shall be taken within a reasonable amount of time, not to exceed thirty (30) days after the administrator's decision was made.

III. PROOF OF REQUESTED ACTION

A. Evidence Required.

1. The facts asserted as a basis for granting or denying a variance, exception, appeal, or special use permit must be proved by evidence. Technical rules of evidence will not be applied; however, the Board may continue consideration of a matter pending production of evidence it deems necessary to a reasonable and valid determination on any matter before it.
2. Testimony relative to the facts of a matter before the Board shall be made under oath administered by the chair.

B. Subpoenas.

1. Subpoenas to compel attendance of material witnesses may be issued by the chair on his or her own initiative or at the request of any member of the Board.

IV. DECISIONS BY THE BOARD.

A. Decisions.

1. The Board will endeavor to make a decision immediately following presentation of evidence and arguments but may take a matter under advisement and make a decision at a later date. If a matter is taken under advisement, a decision thereon shall be made and announced not later than the next regularly scheduled session of the Board.
2. If the appellant or applicant fails to appear, either in person or by an agent knowledgeable about the appeal or application, to present his or her appeal or application to the Board on the date the hearing is scheduled on the petition, the Board may automatically deny the appeal or application.
3. The concurring vote of three members of the Board shall be necessary for any final action to be taken. to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

At the request of the person seeking action from the Board and prior to the beginning of the hearing on the person's matter, the hearing on the matter may be delayed until such time that the full Board is present to hear the person's request. The hearing may be delayed up to 45 days in an attempt to accommodate the request. However, if a meeting where the full Board is present cannot be held within 45 days of the original hearing date, the hearing on the matter shall proceed at the next Board meeting following the 45-day delay.

B. Effect of the Board Decision.

1. Once the Board has rendered final decision on a petition, resubmission of the same application shall be in accordance with the provisions of the Zoning Code. However, the same claim may be resubmitted to the Board for reconsideration if new material evidence is offered that could not have been presented at the prior hearing by use of reasonable diligence.

2. A petition denied for failure to appear to present evidence can be refiled only upon good cause shown for nonappearance at the initial hearing date.

V. MEETINGS

- A. The Board will meet on the second Wednesday of each month during the months of November through March. During the months of April through October the Board shall meet on the second Wednesday of each month and on the fourth Wednesday of each month, unless no applications are filed, and no other business requires action by the Board. The meeting date may also be changed by a majority vote of the Board when conflicts exist which preclude meeting on the regularly scheduled date. **The Board Secretary, in consultation with the chairperson, may contact the Board members to establish an additional or replacement meeting and set such date, without a vote of the Board.**
- B. When it is determined that it is necessary for the agenda to be deferred due to lack of a quorum of the members, and if there is insufficient time to notify the media, the Chair or Acting Chair shall declare the meeting open, explain the reason for deferral, and permit any interested person to speak.
- C. No agenda will include more than five applications for hearing. After consultation with and approval of the chair, the secretary may docket additional agenda items when it is determined that a delay in docketing the appeal would result in hardship to the applicant or other affected parties.

Adopted by City Council 9-1-1987.

Readopted with amendments by City Council 6-28-1994, 5-23-2000, and 1-23-2007.