

ZONING BOARD OF APPEALS

Rules of Procedure



**CITY OF CHICAGO
RAHM EMANUEL, MAYOR**

**Zoning Board of Appeals
Blake Sercye, Chairman**

These Rules of Procedure are adopted in accordance with Section 17-14-0303-E of the Chicago Zoning Ordinance (“Zoning Ordinance”).

City of Chicago
Zoning Board of Appeals
City Hall
121 North LaSalle Street
Room 905
Chicago, Illinois 60602
(312) 744-3888
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ORGANIZATION

The Zoning Board of Appeals (“Board”) shall consist of five members whose duties are set forth in the Zoning Ordinance and in these Rules of Procedure. The Board shall be appointed as provided in Section 17-14-301-A of the Zoning Ordinance. A quorum shall consist of three (3) members. All Board meetings shall be open to the public and shall be governed by the Illinois Open Meetings Act (“Open Meetings Act”), 5 ILCS 120/1 *et. seq.*

Officers: The officers of the Board shall consist of a Chairman and a Vice Chairman. The Chairman shall be designated by the mayor at the time of his or her appointment to the Board. All meetings shall be held at the call of the Chairman. The Chairman shall be the chief official of the Board, administering oaths, compelling the attendance of witnesses, presiding at Board hearings and meetings and deciding upon all points of order and procedure. The Board shall elect from its members a Vice Chairman who shall serve as acting chairman at Board meetings when the Chairman is absent or unable to conduct Board hearings and meetings. Where appropriate, all references to the Chairman in these Rules of Procedure shall include the Vice Chairman.

Office: The office of the Board shall be in Room 905 of City Hall, 121 N. LaSalle Street, Chicago, Illinois 60602 and shall be open for the transaction of business from 8:30 AM to 4:30 PM, Monday through Friday (excluding City holidays).

Staff: Staff services for the Board are provided by the Ordinance Administration Division of the Department of Planning and Development.

Communications: Unless otherwise directed by Board staff, all communications to the Board shall be by letter. Such letter shall be addressed to the Chairman and delivered to the Board’s office.

Records: The Board selects from its staff one staff member to serve as the Board’s Secretary. The Secretary ensures the Board follows all notice requirements required by the Zoning Ordinance. The Secretary manages all correspondence to the Board, keeps all Board meeting minutes, and keeps all written decisions made by the Board, all of which shall be made available for public review pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et. seq.*

Meetings: All meetings of the Board shall be scheduled by the Chairman and notices of such meetings sent to the Board members. Generally, the Board’s regular meetings are held on the third (3rd) Friday of every month in the City Council Chamber on the Second Floor of City Hall at 121 North LaSalle Street unless otherwise specified. All special meetings by the Board shall be scheduled by the Chairman in accordance with the provisions of the Open Meetings Act.

Voting: All matters of business requiring the concurrence of Board members shall be determined by a simple majority unless otherwise specified by the Zoning Ordinance.

JURISDICTION AND AUTHORITY

The Board is vested with the following jurisdiction and authority under Section 17-14-0300 of the Zoning Ordinance:

- (1) To hear and decide appeals from any order, requirement, decision or determination made by the Office of the Zoning Administrator under the Zoning Ordinance;
- (2) To hear and decide applications for special uses and variations to the applicable provisions of the Zoning Ordinance;
- (3) To hear, receive and decide all other matters referred to it, or required of it, by the Zoning Ordinance.

The Board shall not hear or decide any matter where a decision has been rendered therein by the Board within the preceding year (365 days) unless upon remand by a court or upon good cause shown.

APPLICATIONS FOR APPEALS

An appeal from any order, requirement, decision or determination of the Office of the Zoning Administrator may be taken to the Board by any person, firm or corporation, or by any officer, department, board or bureau aggrieved by a decision of the Office of the Zoning Administrator, except those decisions excluded under the Zoning Ordinance.

Form and Content: The application for an appeal shall be filed with the Board within forty-five (45) days after the entry of the final decision by the Office of the Zoning Administrator. The application shall be on a Board supplied form and shall include all materials required by the Board. An application shall not be considered complete – and a public hearing will not be scheduled – until all required materials are completed and submitted.

Notice of Appeal: A notice of appeal shall also be filed with the Office of the Zoning Administrator. Such notice shall specify the grounds of the appeal.

Force and Effect: As an appeal generally stays all furtherance of the action appealed, no appeal shall be in force or in effect until the application is submitted in the form required and notice is filed with the Office of the Zoning Administrator.

Notice of Hearing: Within seven (7) days of the filing, the Office of the Zoning Administrator shall provide the Board with all relevant materials from which the decision was made. The Board shall give due notice to the applicant of the date, time and place of the public hearing at which the appeal will be heard.

Hearing: No new evidence shall be presented at the public hearing. The Board will review only the evidence previously presented to the Office of the Zoning Administrator.

APPLICATIONS FOR VARIATIONS AND SPECIAL USES

Applications Not Allowed: No application for a variation or special use shall be filed in a specific case where a building permit, certificate of occupancy, or zoning certificate has been denied by the Office of the Zoning Administrator on the grounds that the proposed plan or use is not an allowed use of the property under the provisions of the Zoning Ordinance.

Official Denial: At the time of filing said application, the applicant shall submit the official written denial issued by the Office of the Zoning Administrator. However, in the case of a special use application for an adult use (as defined by 17-17-0104-A of the Zoning Ordinance), such application may be filed whether or not the Office of the Zoning Administrator has issued an official denial of zoning certification or has taken any other action in connection with the application.

Form and Content: Applications for a special use or variation shall be on forms supplied by the Board and shall include all materials required by the Board. An application shall not be considered complete – and a public hearing will not be scheduled – until all required materials are completed and submitted.

Who May File: Applications for a variation or special use shall be filed by the property owner or on the property owner's behalf by a party having a legal interest in the property and shall be filed within forty-five (45) days of the official denial of zoning certification. If the applicant is not the property owner, the applicant shall submit written and signed authorization from the property owner to file said application. In accordance with Chapter 2-154 of the Municipal Code of Chicago, disclosures of ownership interests shall be filed with every application.

Written Notice for a Variation: An applicant for a variation shall, not more than thirty (30) days before filing said application with the Board, serve written notice either in person or by first class mail on the owners or tax payers of record of all property within 100 feet in each direction of the property lines for which the variation is requested. Land occupied by public roads, streets, alleys, and other public ways is to be excluded in computing this 100 feet as prescribed by Section 17-13-0107-A of the Zoning Ordinance.

Written Notice for a Special Use: An applicant for a special use shall, not more than thirty (30) days before filing said application with the Board, serve written notice either in person or by first class mail on the owners or tax payers of record of all property within 250 feet in each direction of the property lines of the subject property for which the special use is requested. The number of feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing this 250 feet requirement.

In the case of special use applications for sanitary landfills, hazardous waste treatment or storage facilities, liquid handling facilities, resource recovery facilities, reprocessible construction/demolition material facilities, incinerators or transfer stations, the applicant shall provide written notice to all property owners or taxpayers of record within 500 feet in each direction of the property lines of the subject property. Again, land occupied by public roads, streets, alleys and other public ways shall be excluded when computing the required number of

feet. In addition, written notice shall also be served to the Alderman of the Ward in which the incinerator, hazardous waste treatment or storage facility, resource recovery facility, reprocessible construction/demolition material facility, transfer station, liquid waste handling facility or sanitary landfill is to be located, as well as to the Solid Waste Advisory Commission.

When any property requiring notice has been converted to more than twenty-five (25) condominium units, the applicant is required to serve notice to the condominium association governing the property.

Proof of Written Notice: The applicant shall furnish to the Secretary a complete list containing the names and the last known addresses of the property owners or taxpayers of record of all property required to be served for the application as well as the method of service used. The applicant shall also furnish to the Secretary a sworn affidavit certifying compliance with all applicable written notice requirements.

Posted Notice: The applicant shall post a notice sign on the property in accordance with Section 17-13-107-C of the Zoning Ordinance.

Notice of Hearing: Pursuant to Section 17-13-107-B of the Zoning Ordinance, the Board shall give due notice to the applicant of the date, time and place of the public hearing at which time the application for the variation or special use shall be heard. Not more than thirty (30) days nor less than fifteen (15) days before the hearing, the Secretary shall cause to be published a notice of hearing in a newspaper of general circulation. Not more than thirty (30) days nor less than fifteen (15) days before the hearing, the Secretary shall also send written notice to those persons required to be notified under the Zoning Ordinance.

New Notice Required When: If final action on an application under consideration by the Board is postponed, deferred or otherwise continued for more than 12 months from the date of the originally scheduled public hearing on the application, new notice of the hearing on the application shall be given as required under Sections 17-13-107-A, B, and C of the Zoning Ordinance.

PUBLIC HEARINGS ON APPLICATIONS FOR APPEALS, VARIATIONS AND SPECIAL USES

Public hearings on applications are held at the Board's regular meetings. Each regular meeting is divided into a morning and an afternoon session.

Proposed Findings of Fact for Special Uses and Variations: No less than ten (10) days prior to an applicant's scheduled hearing date for a special use or variation, an applicant shall submit to the Secretary proposed Findings of Fact. The proposed Findings of Fact shall be in the form supplied by the Board and shall contain all materials required by the Board. Failure to submit a completed proposed Findings of Fact shall result in the application not being heard on its scheduled hearing date and may, in the Board's discretion, result in the dismissal of the application.

Representation of Applicant: The applicant shall be present at the hearing and may be represented by an attorney. Appearance of an applicant via power of attorney shall not be permitted. When the applicant is a land trust, a beneficiary of the trust shall be present. When the applicant is a legal entity, the Board may postpone any hearing if the applicant's representative does not have sufficient knowledge or authority with respect to the application. The Board will resume the hearing when the applicant provides a representative with such sufficient knowledge or authority. In the event that the applicant does not appear, the matter may be dismissed for want of prosecution.

Additional Requirements for Special Uses: All applicants shall provide an expert witness (such as a certified appraiser or land planner) to testify to the standards of Section 17-13-0905 of the Zoning Ordinance. The Board will require a copy of the proposed expert witness' curriculum vitae. If the applicant will not be the operator of the special use, the operator as well as the applicant shall be present at the hearing. Appearance of an operator via power of attorney shall not be permitted. When the operator is a legal entity, the Board may postpone any hearing if the operator's representative does not have sufficient knowledge or authority with respect to the application. The Board will resume the hearing when the operator provides a representative with such sufficient knowledge or authority. In the event that the operator does not appear, the matter may be dismissed for want to of prosecution.

Public Testimony: Any member of the public may appear and testify at a hearing. All members of the public wishing to testify on an application shall register their names and addresses on the appearance sheet provided by the Board prior to the application being called for hearing. Those persons that have not registered their names and addresses on the appearance sheet prior to the application being called for hearing shall not be allowed to testify on the application. Any member of the public may be represented by an attorney but shall, like the applicant, be present at the hearing. Appearance via power of attorney shall not be permitted.

Withdrawal of Applications: During the hearing, an application can be withdrawn only with the consent of the Board. An application cannot be withdrawn at the conclusion of the hearing.

Preliminary Statement & Exhibits: After a hearing date is set but prior to the hearing of any application, the Chairman may require any party of record to submit a written statement. The form and content of such written statement shall be in the Chairman's discretion. The Chairman may also require any party of record to submit a set of pre-marked exhibits the party intends to enter into evidence.

Exhibits: Exhibits shall be pre-marked for identification and shall be offered in an orderly fashion. They shall be made available for examination by any and all interested parties. After the conclusion of the hearing, a copy of all exhibits accepted into evidence shall be given to the Secretary.

Testimony: Other than statements made by attorneys of record, all statements shall be made under oath and shall be subject to cross-examination. At the Chairman's discretion, testimony may be made by question and answer method or in statement form.

Evidence: Hearings shall be conducted in such a way that is calculated to result in a just and lawful determination of the issues as promptly as circumstances allow. The Board shall be the judge of all relevance and materiality of evidence. The Board may require a preliminary statement of the nature of the evidence proposed to be elicited from any witness. Repetitive testimony by multiple witnesses shall not be allowed. Testimony unrelated to the application shall not be allowed. Personal attacks shall not be allowed.

Interpreters: Parties shall provide their own interpreters.

Order of Procedure: Generally, the order of procedure at public hearings is as follows:

- (1) Opening of hearing by Chairman;
- (2) Statement of Chairman summarizing application;
- (3) Taking appearances of all attorneys of record (if any);
- (4) Swearing in of witnesses;
- (5) Opening statements (if any);
- (6) Presentation of direct case of applicant; cross-examination of applicant's witnesses by attorneys of record or others designated by the Chairman;
- (7) Presentation of direct case of those objecting to the application; cross-examination of objectors' witnesses by attorneys of record or others designated by the Chairman;
- (8) Rebuttal testimony of applicant's witnesses (if any) and closing remarks by applicant or applicant's attorney of record;
- (9) Application taken under advisement by Board.

The Chairman, in his or her discretion, may choose to alter the order of procedure as circumstances may require. For instance, the Chairman may decide that an applicant's proposed Findings of Fact adequately explain the application to the Board. In such a situation, the Chairman may, in his or her discretion, allow five (5) minutes of testimony on the application and then open up the hearing to questions by the Board.

Subpoenas: For special uses and variations, the Board may issue subpoenas to compel attendance of witnesses or production of documents. Service of such subpoenas shall be in the same manner of service of summons as in a civil action.

Depositions: The Board may authorize the taking of depositions either upon its own motion or upon good cause shown.

Briefs and Oral Argument: The Board may call for briefs, oral arguments or both at the conclusion of any hearing. If the Board requests briefs, a briefing schedule shall be entered, and the Board shall set another hearing date. Copies of all briefs and any replies thereto shall be served on the Chairman and all parties of record. In the event of oral argument, all parties of record shall be notified and will have a chance to be heard.

Continuances: Continuances are granted at the discretion of the Board. If a continuance is sought, the request shall be made by motion. Such motion shall be made in person and shall be made immediately upon the opening of the hearing. Nevertheless, the Board may, in its discretion, grant a continuance on its own motion at any time.

Transcripts: A record of a hearing is not transcribed by a court reporter unless requested by the Board or any party interested in the hearing. The cost of such transcription shall be borne by the party requesting it. In cases filed pursuant to the Administrative Review Law, the plaintiff shall pay for both the cost of the transcript and the cost of preparing and certifying the record.

Scrivener's Error: Whenever a decision of the Zoning Board of Appeals contains an obvious numerical error or obvious misstatement, the applicant or any party of interest has the right to petition the Board to make corrections. Any request for a correction of error shall be presented to the Board within thirty (30) days after the date on which the decision was issued, as evidenced by time stamp. Any such request shall be made in writing filed with the Board with copies issued to all parties in interest.

FINAL DISPOSITIONS

The Board's final decision on any application for appeal, variation, or special use shall be in the form of written resolution. Said written resolution shall contain the necessary findings of fact to grant, modify, or deny the application. The concurring vote of three (3) members is necessary to grant an application. If a resolution fails to receive three (3) concurring votes, the application shall be deemed denied, and a written resolution denying such application shall be issued.

Administrative Review: All decisions and findings of the Board shall be final administrative determinations and shall be subject to judicial review pursuant to the Illinois Administrative Law, 735 ILCS 5/3-101 *et. seq.*

Obtaining Copies of the Board's Decision: A resolution shall be mailed to the applicant (or if the applicant is represented by counsel, the counsel of the applicant) of each application. A copy of the Board's resolution shall also be mailed to individuals or organizations that attended the hearing and entered their appearance along with a valid mailing address on the appearance sheet.

Public Records: A copy of every rule, regulation, variation, order, requirement, decision or determination of the Board shall be filed immediately with Office of the Zoning Administrator as a public record.