



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: The Urbana Zoning Board of Appeals
FROM: Kevin Garcia, AICP, Planner II
DATE: February 14, 2020
SUBJECT: Proposed change in bylaws to allow remote meeting attendance

Per the bylaws of the Urbana Zoning Board of Appeals, the Board shall review the bylaws biannually. Staff recommends that the Board review the bylaws and consider making the following proposed changes:

1. Add language to allow remote attendance (i.e. by phone or by video conferencing).

The Urbana City Clerk suggests that all boards and commissions amend their bylaws to allow remote attendance at meetings. The proposed language (attached) would allow remote attendance at meetings where a physical quorum is already present, and if the absence of the Board member is due to one of the following reasons: illness or disability; work; City business; family or other emergency. Please note that remote attendance would not be allowed if the absence is due to personal reasons, e.g. being on vacation.

2. Replace the phrase “at least biannually” with the phrase “at least once every two years” in Section 8.

“Biannual” can mean either twice per year or once every two years. While the intent is that the bylaws are reviewed by the Board once every two years, the word “biannual” is ambiguous. This change would clear up any confusion caused by the word choice.

The bylaws and the proposed changes should be reviewed at the February 19, 2020, meeting. Any changes to the bylaws may be voted on at the next meeting of the Board.¹

Attachments: ZBA Bylaws (Approved 12-17-2014)
Proposed Changes to Allow Remote Attendance

¹ Article VIII, Section 2

CITY OF URBANA
RULES OF PROCEDURE FOR THE ZONING BOARD OF APPEALS

ARTICLE I - General Provisions

Section 1:

It is the purpose of these rules to establish a guide for the operation of the Urbana Zoning Board of Appeals. These rules are supplemental to the provisions of Section XI-3 of the Zoning Ordinance, which state that the Board shall adopt rules necessary to conduct its affairs, and that are consistent with the provisions of the Urbana Zoning Ordinance.

Section 2:

Any member who has any pecuniary or personal interest in a matter before the Board shall remove himself or herself from any consideration of that matter.

Section 3:

The Board's attorney shall be consulted in cases where the powers of the Board are not clearly defined, or where legal questions are at issue.

ARTICLE II - Officers and Duties

Section 1:

The officers shall be a Chair and an Acting Chair. The Mayor shall designate the Chair, with the consent of the City Council. An Acting Chair will be elected from among the members of the board at those meetings when the Chair is absent. The Director of the Department of Community Development Services or his/her representative shall serve as Secretary to the Board.

Section 2:

The Chair shall supervise the affairs of the Board. He/She shall preside at all meetings of the Board; shall appoint such committees and sub-committees as may be necessary to carry out the duties of the Board; and shall provide that an oath be administered to all witnesses in cases before the Board. The Chair shall be an ex-officio member of all committees and sub-committees so appointed.

Section 3:

The Acting Chair, in the absence or disability of the Chair, shall perform all the duties and exercise all the powers of the Chair.

Section 4:

The Secretary of the Board or his/her designee shall:

1. Record and maintain permanent minutes of the Board's proceedings, in accordance with the regulations of the Open Meetings Act, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact.
2. Keep records of its hearings and other official actions.

3. Record the names and addresses of all persons appearing before the Board, and provide accurate summaries of their testimony.
4. Have published in local newspaper public notices of meetings or hearings as required by law.
5. File the minutes and records in the office of the Board, which minutes and records shall be a public record.
6. Be the custodian of the files of this Board and keep all records.
7. Notify the media in accordance with the Open Meetings Act.

ARTICLE III - Meetings

Section 1:

Regular meetings shall be held at a time and day to be agreed upon from time-to-time by the Board.

Section 2:

All meetings shall be open to the public, except for those meetings that may be closed in compliance with the Open Meetings Act.

Section 3:

No decision shall be made without a quorum present. A quorum of any regular or special meetings shall consist of a majority of the appointed members.

Section 4:

Public hearings may be held by less than a quorum of the Zoning Board of Appeals; however, such public hearings shall be continued until a quorum is present, at which time a vote may be taken.

Section 5:

Special meetings may be called by the Chair at his/her discretion, or upon the request of two (2) or more members, provided that public notice is given in accordance with the Open Meeting Act.

Section 6:

Authorizations.

1. All decisions shall be made by a roll call vote and shall require at least a majority of a quorum.
2. Conditional use requests may be granted by a simple majority (Section VII-2.D, Section VII-2.E, and Section VII-2.F).
3. Conditional use requests in which a valid written protest has been filed with the Secretary of the Board require a 2/3 vote (Section XI-11).

4. Minor Variance requests may be granted by a simple majority (Section XI-3.C.2.b).
5. Major Variance requests require a 2/3 vote and if so voted upon shall be forwarded to the Urbana City Council for final approval (Section XI-3.C.2.b).
6. Appeals may be granted by a simple majority (Section X1-3.D.)

Section 7:

Robert's Rules of Order shall be the official rules of the Zoning Board of Appeals except when they conflict with the officially adopted Rules of Procedure, in which case, the Rules of Procedure shall govern.

Section 8:

The Zoning Board of Appeals shall review the Rules of Procedure at least biannually at a regular meeting the Chair designates.

ARTICLE IV - Order of Business

Section 1:

Meetings of the Board shall ordinarily proceed as follows:

1. Roll call and declaration of quorum
2. Changes to the Agenda
3. Approval of Minutes of the previous meeting
4. Written Communications
5. Continued Public Hearings
6. New Public Hearings
7. Old Business
8. New Business
9. Audience Participation
10. Staff Report
11. Study Session
12. Adjournment

Section 2:

Continuances. Continuances may be granted to a specific time and date, at the discretion of and with the approval of a simple majority of the Zoning Board, for good cause shown. Continuances may be considered at the request of staff, a Zoning Board member, or any

BYLAWS APPROVED 12-17-2014

interested party who has entered his/her appearance. Continuances may be considered as follows:

1. A case may be continued by the Chair in the event of the lack of a quorum (does not require a vote).
2. New cases appearing for the first time on the agenda - continuances may be granted upon request.
3. Continued cases – All cases which have previously appeared on the agenda of the Board, constitute continued cases. A request for further continuance will be considered upon application by the applicant and/or his/her representative at the time the case is called, and upon showing:
 - a) That he/she has given reasonable notice in writing to all persons who have filed an appearance in the matter of his/her intent to request a continuance; and
 - b) That he/she will be unable to proceed with his/her evidence at the scheduled meeting.

Section 3:

Failure of Applicant to Appear.

The Zoning Board may or may not act upon a case in the event that an applicant fails to appear. This shall be at the discretion of the Zoning Board and may include consideration of factors such as extenuating circumstances associated with the absence, complexity of the case, and level of public interest in the case. Procedures for dismissal due to failure of an applicant to appear are as follows:

1. The Chair may entertain a motion from a Zoning Board member to dismiss a case for failure of the applicant to appear if no request for a continuance is made prior to the hearing. Dismissal shall require a simple majority vote of the Zoning Board.
2. In cases that are dismissed when the applicant does not appear, the applicant will be furnished with written notice by the Secretary of the Board, or his/her designee.
3. The applicant shall have seven (7) days from date of notice of dismissal to apply for reinstatement of the case. In such cases, applicant must file written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chair for good cause shown, and upon payment of a fee in the same amount as that required for initial filing.
4. In all cases reinstated, the case will be docketed and re-advertised in the usual manner prescribed for new cases.

Section 4:

Audience Participation.

1. Any person addressing the Zoning Board during "Audience Participation" shall be allowed five (5) minutes to speak.

2. It shall be the prerogative of the Chair to extend the five (5) minute time limit or if the Chair does not enforce or extend the time limit, the extension shall be decided without debate by a motion approved by the majority vote of the members of the Board present. The Chairperson shall also have the authority to reduce the time limit to three (3) minutes or a shorter time agreed upon by the Zoning Board members.
3. All public input may be limited to topics germane to those described on the agenda for that particular meeting. No member of the Board is obligated to respond to any public input provided.

ARTICLE V - Procedures at Hearings

Section 1:

Unless otherwise determined by the Chair, the procedure at a hearing shall be as specified herein.

Section 2:

All witnesses shall testify under oath.

Section 3:

The applicant may appear in his/her own behalf, and/or be represented by counsel or agent. The applicant or his/her representative may make a statement outlining the nature of his/her request prior to introducing evidence.

Section 4:

Evidence shall be presented in the following order:

1. Staff presents brief summary of cases
2. Board questions staff
3. Applicant makes statement and presents evidence
4. Board examines applicant
5. Proponents make statements
6. Board questions proponents
7. Opponents make statements.
8. Board questions opponent. Opponents shall be allowed a reasonable opportunity for relevant questioning (i.e. "cross-examination") of the applicant. If the applicant is unable or unwilling to respond to the relevant questions, the Chair shall direct the Recording Secretary to take note of such in the minutes of the Zoning Board of Appeals.
9. Rebuttal by applicant
10. Rebuttal by objector

11. Applicant makes final statement

ARTICLE VI - Decisions

Section 1:

The Board shall conduct its vote in public session at the meeting in which evidence is concluded, unless the Board considers additional time for deliberation is necessary.

Section 2:

All decisions of the Board shall be made at a public meeting by motion made, seconded, and the Secretary polling the membership by a roll call vote. The motion, which decides the issue, shall be in the form of fact and shall state the reason(s) for the findings of the Board. If conditions are imposed in the granting of a variance or conditional use, such conditions shall be included in the motion.

ARTICLE VII – Conflict of Interest

Section 1:

Any member of the Zoning Board of Appeals who has a conflict of interest in a matter before the Board shall not participate in the discussion or vote thereon. Conflicts of interest may arise from various scenarios including, but not limited to, financial, ownership or property interests, conflicts with employment or appointments, or conflicts with a publicly stated opinion on a pending application.

Section 2:

If it is determined that a Board member has a conflict of interest, they must state so and remove themselves from the discussion and from the table while the matter is resolved. Such action shall not affect the quorum established to conduct the meeting. The Board member's recusal will be considered an abstention and shall not be counted as either an aye or a nay vote. Further, the abstaining member shall not be counted in determining the total number of votes required for approval of a matter before the commission, any statute, ordinance or rule of parliamentary procedure to the contrary notwithstanding.

Section 3:

A Board member that has publicly stated a position in the press, in a public forum or on a public petition in regards to a case prior to that case being voted on by the Board shall be deemed a conflict of interest. In this event, the Board member shall indicate a conflict of interest as described herein and shall recuse themselves from participating in that case.

Section 4:

The Chair, after consulting with the City Planner and the City Attorney, shall determine if a Rule of Procedure has been violated for the purposes of determining a conflict of interest. The determination of the Chair is subject to being over-ruled by the Board.

ARTICLE VIII - Amendment of Rules

Section 1:

These rules may be amended by majority vote of the Board.

Section 2:

A proposed amendment must be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

THE FOREGOING RULES AND REGULATIONS ARE HEREBY ADOPTED AS AMENDED BY THE ZONING BOARD OF APPEALS OF THE CITY OF URBANA, ILLINOIS ON THE 17th DAY OF DECEMBER, 2014.

CHAIR

SECRETARY

ATTACHMENT: Proposed Changes to Allow Remote Attendance

The following could be added to the Zoning Board of Appeals bylaws if the Board would like to add the option to attend meetings remotely in certain circumstances.

Suggested Language:

Members may attend meetings by video or telephone conference in accordance with Illinois Statute 5 ILCS120/7(c) which states in part:

If a quorum of the members of the public body is physically present, then a majority of the public body may allow a member to attend by video or telephone conference if the member is prevented from physically attending because of the following:

- (1) personal illness or disability;
- (2) employment purposes or the business of the public body; or
- (3) a family or other emergency.

If a member wants to attend the meeting by video or telephone conference, he or she must notify the recording secretary before the meeting, unless advance notice is impractical.

A member attending a meeting by video or telephone where a quorum of the members of the public body is physically present, may cast votes.