

TOWNSHIP OF MT. MORRIS
ZONING BOARD OF APPEALS
BY-LAWS AND RULES OF PROCEDURE

The main function of purpose of the following Bylaws is to establish the rules of operation for the Mt. Morris Township Zoning Board of Appeals. In addition to establishing procedures, 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.

Mt. Morris Township
5447 Bicentennial Drive
Mt. Morris, MI 48458

ARTICLE I – TITLE

1.01 The group’s title shall be “The Mt. Morris Township Zoning Board of Appeals”, hereinafter referred to as “the ZBA”.

ARTICLE II – POWERS AND AUTHORITY

2.01 These by-laws and rules of procedure of the ZBA are subordinate and subject to the following statutes:

- A. The Michigan Planning Enabling Act, Public Act 33 of 2008, as amended;
- B. The Michigan Zoning Enabling Act, Public Act 110 of 2006; Public Act 12 of 2008, as amended;
- C. The Mt. Morris Township Zoning Ordinance;
- D. The Michigan Open Meetings Act, Public Act 267 of 1976, as amended.

2.02 The ZBA shall perform such legally permissible duties and shall carry out such processes and procedures as may be required by the Ordinances and Public Acts set forth in paragraph 2.01 including the following:

- A. To hear and decide applications for variances from the Mt. Morris Township Zoning Ordinance.
- B. To hear and decide applications for interpretation of the Mt. Morris Township Zoning Ordinance.
- C. To hear and decide applications for variances, exceptions, temporary land uses, ordinance interpretation and appeals of administrative decisions.
- D. To hear and decide any other matters authorized by the Mt. Morris Township Zoning Ordinance.

ARTICLE III – MEMBERS

3.01 **Member Composition.** The ZBA shall consist of five (5) members appointed as follows:

- A. One member shall be a member of the Mt. Morris Township Planning Commission selected by the Planning Commission and appointed by the Mt. Morris Township Board of Trustees;

- B. The second, third, fourth and fifth members shall be selected from electors in the Township and appointed by the Mt. Morris Township Board of Trustees.
- C. An employee or contractor of Mt. Morris Township may not serve as a member of the ZBA.

3.02 **Alternate Member Composition.** The Mt. Morris Township Board of Trustees may appoint up to two (2) alternate members for three-year terms.

- A. An alternate member shall not be a member of the Mt. Morris Township Board of Trustees or the Mt. Morris Township Planning Commission.
- B. An alternate member shall be called to serve as a member of the ZBA in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings.
- C. An alternate member shall also be called to serve as a member for the purpose of reaching a decision on a case in which a member has abstained from voting due to a conflict of interest. The alternate member appointed shall serve in the case until a final decision is made.
- D. An alternate member, when serving as a member of the ZBA has the same voting rights as a regular member of the ZBA.

3.03 **Member Duties.** The ZBA collectively shall perform such duties as contained in the ordinances and acts set forth in paragraph 2.01 of these Bylaws.

- A. ZBA Members shall attend training sessions, conferences and/or meetings as needed to fulfill the duties of the ZBA, and for which the appropriation of funds has been approved by the Mt. Morris Township Board of Trustees. As part of training, every member is encouraged to read the Mt. Morris Township Zoning Ordinance, the Michigan Zoning Enabling Act, and the Michigan Planning Enabling Act.

3.04 **Compensation.** ZBA members may be paid a reasonable per diem and be reimbursed for expenses actually incurred in the discharge of their duties at a rate determined by the Mt. Morris Township Board of Trustees. Members may volunteer their services.

3.05 **Terms of Office.**

- A. The terms of office of regular and alternate members of the ZBA shall be three (3) years and until a successor has been appointed.
- B. A successor must be appointed not more than one (1) month after the expiration of the preceding term. Terms shall be arranged so as to provide

as nearly as possible for the appointment of an equal number of members each year. Members from the Mt. Morris Township Planning Commission and Mt. Morris Township Board of Trustees shall have terms limited to their respective other official term or to a lesser period determined by resolution of the Mt. Morris Township Board of Trustees.

3.06 **Vacancies.** A vacancy on the ZBA occurring other than through the expiration of the term shall be filled for the unexpired term by the Mt. Morris Township Board of Trustees.

3.07 **Ex Parte contact.** Members of the ZBA shall avoid Ex Parte contact about cases where an administrative decision is before the ZBA whenever possible. 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 ZBA at a public meeting or hearing what was said, so that every member and other interested parties are made aware of the contact.

3.08 **Site Inspections.** Site inspections may be done by the Zoning Administrator/ Building Official or other staff. No more than one member of the ZBA may accompany the zoning administrator or staff on a site inspection.

3.09 **Not Voting on the Same Issue Twice.** Any member of the ZBA shall avoid situations where they are sitting in judgement and voting on a decision, which they had a part in making. As used here, sitting in judgment and voting on a decision which they had a part in making at a minimum shall include, but not necessarily be limited to, the following:

- A. When the appeal is of an administrative or other decision by the Mt. Morris Township Planning Commission and the member of the ZBA sits both on the Mt. Morris Township Planning Commission and the ZBA.
- B. When the appeal is of an administrative or other decision by Mt. Morris Township Board of Trustees and the member of the ZBA sits both on the Mt. Morris Township Board of Trustees and the ZBA.
- C. When the appeal is of an administrative or other decision by any committee of the Mt. Morris Township Planning Commission, Mt. Morris Township Board of Trustees or other committee, and the member of the ZBA sits both on that committee and ZBA.

3.10 **Accepting gifts.** Gifts shall not be accepted by a member of the ZBA or liaisons from anyone connected with an agenda item before the ZBA. As used here, gifts shall mean cash, any tangible item, or service, regardless of value and food valued over \$10.

3.11 **Spokesperson for the Zoning Board of Appeals.**

- A. From time-to-time or on a specific issue the ZBA may appoint a spokesperson for the ZBA for all matters which occur outside of the meetings of the ZBA.

ARTICLE IV – OFFICERS AND DUTIES OF OFFICERS

4.01 **Selection.** At the first regular meeting of the new fiscal year, (the fiscal year of the Township starts April 1st and ends March 31st), the ZBA shall elect from its membership a Chairperson, Vice-Chairperson and Secretary, who shall serve for a twelve (12) month period and who shall be eligible for re-election to these positions. Vacancies in an office of the ZBA shall be filled at the next regular meeting of the ZBA. The membership shall elect one of its members to fill the vacancy until the next annual election.

4.02 **Duties.** Officer duties include the following:

A. **Chairperson.**

1. Presides at all Regular, Adjourned, Special or Committee Meetings.
2. Signs all decisions of the ZBA.
3. Rules 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 ZBA.
4. Restates all motions.
5. Appoints committees and officers of such committees if deemed necessary.
6. Calls special meetings as needed.
7. Administers oaths and requests the attendance of witnesses.
8. Represents the ZBA before the Mt. Morris Township Planning Commission or Mt. Morris Township Board of Trustees.
9. Testifies or gives depositions on behalf of the ZBA as a whole.
10. Sets the time and date for meetings and assures the membership and public are notified.
11. Receives all communications, petitions and reports to be addressed by the ZBA and distributes each as needed.
12. Performs other such duties as may be ordered by the ZBA.

B. Vice Chairperson.

1. Acts in the capacity of the Chairperson, with all the powers and duties of the Chairperson as previously stated, in the absence of the Chairperson; and
2. Performs other such duties as may be ordered by the ZBA.

C. Secretary.

1. Provides notice to the public for all regular, adjourned, special and committee meetings pursuant to the Michigan's Open Meetings Act and pursuant to the Michigan Zoning Enabling Act, Act 110 of 2006.
2. Takes attendance at each ZBA meeting.
3. Prepares the minutes. The minutes will contain a brief synopsis of the meeting, including a complete restatement of all motions and recording of votes; complete statement of the conditions or recommendations made on any action; and recording of attendance. All communications, actions, and resolutions shall be attached to the minutes. The official records shall be annually deposited with the Township Clerk.
4. Transfers draft minutes and approved minutes of each meeting to the Mt. Morris Township Clerk.
5. Receives and forwards to the ZBA Applications for variances, exceptions, temporary land uses, ordinance interpretation and appeals of administrative decisions and any other requests/matters lawfully brought before the ZBA.
6. Performs other duties as may be requested by the ZBA or the Mt. Morris Township Board of Trustees.
7. Prepares a time sheet/attendance record for the clerk for the payment of per diems to ZBA members.

4.03 **Tenure.** The officers shall take office immediately following their election. They shall hold their office for a term of one year or until their successors are appointed and assume office.

4.04 **Committees of the ZBA.** The ZBA Chairperson may appoint committees, comprised of members of the ZBA, (as long as no quorum is present), and other citizens to identify and analyze issues brought before the ZBA.

4.05 The ZBA may request the assistance of Liaisons. The purpose of liaisons is to provide information. Liaisons cannot vote, introduce motions, initiate any other parliamentary action, be counted for a quorum or be expected to comply with attendance requirements. Liaisons are, but are not limited to: the Zoning Administrator, the Building Inspector, the Township Attorney, the County Surveyor, the County Register of Deeds and a Planning Consultant.

ARTICLE V – MEETINGS

5.01 **Meeting Notices.** Notices of all public hearings before the ZBA shall comply with the Mt. Morris Township Zoning Ordinance, the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended and Michigan Open Meetings Act, Public Act 267 of 1976.

5.02 **Annual Meeting.** The ZBA shall meet annually to elect officers.

5.03 **Regular Meeting.** Regular meetings of the ZBA shall be held as needed, on the 3rd Monday of each month. An additional meeting of the ZBA will also be held as needed, on the 1st Wednesday of the month during May through October, in the Mt. Morris Township Hall or in a suitable place available to the general public if deemed necessary by the Chairperson.

- A. The need for a meeting shall be based upon the submission of applications for variances, exceptions, temporary land uses, ordinance interpretation and appeals of administrative decisions by property owners or by the initiation by the Chairperson or Township staff. The dates and times shall be posted at the Mt. Morris Township Hall and a notice should be published in accordance with the Michigan Open Meetings Act. Any changes in the date or time of the regular meeting shall be posted and noticed in the same manner as originally established, in accordance with the Michigan Open Meetings Act.
- B. The ZBA will not act upon an application without the property owner or a designated representative of the applicant being present at the meeting, absent good cause. The representative must be designated, in writing, by the property owner. Good cause shall mean circumstances out of the control of the applicant (such as an illness or accident to the property owner or the representative). However, if the property owner or a representative will not be present, then the applicant shall provide in writing the basis for the good cause and all facts that support the application.

5.04 **Special Meetings.** A special meeting may be called by two members of the ZBA upon written request or by the Chairperson. The business, which the ZBA may perform, shall be conducted at a public meeting of the ZBA held in compliance with the Open Meetings Act. Public notice of the time, date, place and purpose of the special meeting shall be given in a manner required by the Michigan Open Meetings Act. The Zoning Administrator shall send written notice of a special meeting to the ZBA not less than 48 hours in advance of the meeting.

5.05 **Quorum.** A majority of the regular members of the ZBA shall comprise a quorum this means that 3 regular members must be present to constitute a quorum as long as the ZBA is comprised of 5 members. An alternate member is not counted for purposes of establishing a quorum. The ZBA shall not conduct any business unless a quorum is present. When a quorum is not present, no official action, except for closing of the meeting may take place. All public hearings without a quorum shall be scheduled for the next regular or special meeting and no additional public notice is required, unless additional notification is requested by the ZBA, provided that the date, time and place, of the next meeting, is announced at the meeting.

5.06 **Public Hearings.** Hearings shall be scheduled and due notice given in accordance with the Michigan Open Meetings Act.

5.07 **Motions.** Motions shall be restated as directed by the Chairperson before a vote is taken. The name of the maker and supporters of the motions shall be recorded. If possible, motions in the form of a resolution shall be pre-typed in the affirmative and included as a supplement to the agenda.

5.08 **Voting.**

- A. An affirmative vote of the majority of the ZBA members present for the conduct of business shall be required for the approval of any requested action or motion placed before the ZBA. Voting shall ordinarily be by voice vote for such items as approval of the minutes and approval of the agenda. However, a roll call vote will be required for all votes related to a decision on a variance, an exception, a temporary land use, an ordinance interpretation and an appeal of administrative decision. Furthermore, a roll call can also be required if requested by any ZBA member or directed by the Chairperson. All members of the ZBA including the Chairperson shall vote on all matters, with their names called on a rotating basis so the person whose name was called first on a roll call vote will be called last next time and second to last the next, etc., etc.
- B. A member may be excused from voting only if that person has a bona fide conflict of interest as recognized by majority vote of the remaining members of the ZBA. A request to be excused shall be made before consideration of the matter. The member shall reveal the basis for the potential conflict and the remainder of the ZBA shall vote to find that it is, or is not a conflict. A member may also request that the ZBA find by

majority vote that another member has a conflict of interest and should be prohibited from voting.

- C. A member of the ZBA who is also a member of the Planning Commission or the Township Board of Trustees 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 the Township Board of Trustees. However, the member may consider and vote on other unrelated matters involving the same property. Any member abstaining from a vote shall not participate in the discussion of that item and shall leave the room while the issue is being discussed and voted on.

5.09 Order of Business.

- A. A written agenda for all regular meetings should be prepared as follows. The order of business shall be:
 - 1. Call to Order
 - 2. Pledge of Allegiance
 - 3. Roll Call
 - 4. Approval of Minutes
 - 5. Approval of Agenda
 - 6. Conflict of Interest Statement (Declare and cite agenda item.)
 - 7. Approval of Minutes
 - 8. Public Comments (Any person may speak for up to 2 minutes.)
 - 9. Postponed Business
 - 10. Public Hearing(s)
 - 11. Pending Business
 - 12. New Business
 - 13. Public Comment (Any person may speak for up to 2 minutes.)
 - 14. Reports
 - 15. Correspondence

16. Adjournment

5.10 **Rules of Order.** All meetings of the ZBA shall be conducted in accordance with generally accepted parliamentary procedure, as governed by the most recent edition of “Robert’s Rules of Order.”

5.11 Public hearings conducted by the ZBA shall be run in an orderly and timely fashion.

5.12 All ZBA meetings should be recorded using audio and/or video recording technology if practical.

5.13 Once a vote is taken and an issue is decided by vote, the duty of each member of the ZBA is to represent the position reflected by the outcome of the vote. Requests for reconsideration may take place only at an open meeting of the ZBA.

5.14 **Notice of Decision.** A written notice containing the ZBA’s Findings of Fact and Decision shall be sent to the applicant of a request or appeal.

ARTICLE VI – OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

6.01 All meetings of the ZBA shall be held in compliance with Michigan’s Open Meeting Act, Public Act 267 of 1976. All deliberations and decisions of the ZBA shall be made at a meeting open to the public.

6.02 A person shall be permitted to address the ZBA during the public comment portion(s) of the ZBA meeting.

6.03 Free and open debate should only take place on issues before the ZBA.

6.04 A person shall not be excluded from a meeting of the ZBA except for breach of the peace, committed at the meeting.

ARTICLE VII – ABSENCES, REMOVALS, AND RESIGNATIONS

7.01 **Removal.** A member of the ZBA may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing before the Mt. Morris Township Board of Trustees.

7.02 **Absence.** To be excused, members of the ZBA shall notify the Secretary when they intend to be absent from a meeting. The Secretary shall notify the Chairperson or Vice Chairperson in the Chairperson’s absence. The Chairperson or Vice Chairperson in the Chairperson’s absence shall determine if the absence will be excused and consented to. An

“excused absence” shall be defined as an absence caused by illness, family related emergency, job requirement, personal matters, etc. Failure to make the notification and obtain the consent of the Chairperson or Vice Chairperson in the Chairperson’s absence prior to the ZBA meeting which the member will be absent from shall result in an unexcused absence.

7.03 Absence of a member from three (3) consecutively scheduled ZBA meetings or three (3) of seven (7) consecutively scheduled ZBA meetings without the recorded consent of the Chairperson or Vice Chairperson in the Chairperson’s absence may be construed as a resignation from the ZBA by absence. The Chairperson shall convey absenteeism to the Township Board of Trustees for consideration at a public hearing.

7.04 **Resignation.** A member may resign from the ZBA by sending a letter of resignation to the Township Supervisor, Township Board and/or the ZBA Chairperson.

ARTICLE VIII – CONFLICT OF INTEREST AND INCOMPATIBILITY OF OFFICE

8.01 ZBA members shall apply the following rules or guidelines in situations that involve or might involve a conflict of interest. If a member is unsure whether a conflict of interest exists, the Township Attorney should be consulted in advance of the meeting.

8.02 The ZBA member shall declare a conflict of interest and abstain from participating in hearings, deliberations, or voting on a request when:

- A. A relative or immediate family member of the ZBA member is involved in any request for which the ZBA is asked to make a decision.
- B. The ZBA member has a 1 percent business, organizational, or financial interest in the property involved in the request before the ZBA or has a 1 percent business or financial interest in the applicants’ company, agency, or association.
- C. The ZBA member owns or has a financial interest in neighboring property to the property which is the subject of the request. For purposes of this section, a neighboring property shall include any property falling within the notification radius for the proposed development, as required by the zoning ordinance or other applicable ordinance;
- D. The ZBA member lives within 300 feet of the property which is the subject of the request.
- E. An employer or employee of the ZBA member is a party to the matter that will be considered by the ZBA or has a property interest that could be impacted by the ZBA’s decision;

- F. The ZBA member makes public statements concerning the merits of the matter to be decided by the ZBA outside of the hearing on the matter which can reasonably be construed as expressing the ZBA member's preferred dispositional outcome or which reasonably shows that the ZBA member has such a firmly held position in advance of the hearing on the matter such that it would appear to the public that the member cannot reach an unbiased decision based on facts that will be presented at the hearing on the matter.
- G. The decision of the ZBA will result in any pecuniary benefit to the ZBA member
- H. The ZBA member is the Planning Commission representative and the matter to be heard is from a previous Planning Commission decision in which the member participated.
- I. Circumstances exist such that an appearance of a conflict of interest or an appearance of impropriety would exist, as determined by the ZBA member declaring such conflict and with advice from the Township Attorney as needed.
- J. If a member of the ZBA is appointed to another office, which is an incompatible office with his or her membership on the ZBA, then on the effective date of the appointment to the other office, that shall result in an automatic resignation from the ZBA. If a member of another office is appointed to the ZBA which is an incompatible office with his or her membership in the other office, then on the effective date of the appointment to the ZBA, that shall result in an automatic resignation from the other office.

8.03 When circumstances exist such that a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest, abstain from participating in the matter as a member of the ZBA and abstain from voting on the matter. In addition, the member shall leave the member's seat with the ZBA.

8.04 If a ZBA member has a conflict of interest, the member shall have the right to speak as a private citizen during public comment or as an applicant. However, the member with such a conflict of interest should avoid any appearance that the member is using his or her membership on the ZBA or relationship with other ZBA members as a basis for attempting to persuade the other ZBA members to vote a particular way. If the ZBA member has another person or other method, such as a report by an expert, for presenting information to the ZBA and which is reasonable, the use of this alternate method is preferred.

8.05 Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

8.06 This conflict of interest policy is intended to promote fair, unbiased decision-making and promote public confidence in township government. However, this policy must not be used by a member as a method of avoiding difficult or controversial decisions.

ARTICLE IX -- REQUIRED SUBMITTED INFORMATION

9.01 Unless all required information is received, a person's application for a variance, an exception, a temporary land use, an ordinance interpretation or an appeal of administrative decision or any other matter will not be forwarded to the ZBA for consideration and may be postponed to a later date when all information is received.

9.02 **Site Plan.** A site plan, as described below, is required in submission of an appeal or petition relating to a parcel of land or structures on that parcel:

- A. A drawing shall be submitted reflecting accurate dimensions of the property, locations on the property of structures and locations of buildings on adjacent properties. Where pertinent, the ZBA may request a survey, with the above information which shall be performed by a registered land surveyor.
- B. Drawings in general shall provide a clear picture of those factors important to the appeal or petition so the ZBA can make a factual determination.

9.03 The applicant shall provide appropriate staking on sites where yard variances are desired. The stakes shall be flagged and placed to identify the proposed edge of structures involved in the proposed variance. Appropriate yard line stakes shall also be placed for the yard line from which the variance is desired.

9.04 **Applicant Information.** To ensure adequate time for review, an applicant may not submit additional information to the ZBA after their information packet has been distributed. Additional information can be submitted if requested by the ZBA. This section shall not limit the right of the public to submit written comments as allowed by law.

9.05 **Information for Board.** All information submitted to the ZBA shall be submitted to the Zoning Administrator or the Zoning Administrator's designee to be forwarded to the ZBA. Information sent directly to members will not be reviewed or considered by the ZBA.

ARTICLE X-- CONFLICTING PROVISIONS

10.01 In the event of a conflict of provision between these by-laws and the Township Zoning Ordinance, the provisions of the Zoning Ordinance shall prevail.

ARTICLE XI – AMENDMENT OF BY-LAWS AND RULES OF PROCEDURE

11.01 These Bylaws and Rules of Procedure may be amended by the ZBA by a majority vote of members, during any regular meeting, provided that all members have received an advanced copy of the proposed amendments at least 3 days prior to the meeting at which such amendments are to be considered.

Adopted by the Mt. Morris Township Zoning Board of Appeals on this 19th day of September in the year 2022.

Zoning Board of Appeals – Chairperson

Zoning Board of Appeals - Secretary