

## 155.2203. ZONING BOARD OF APPEALS (ZBA)

### A. Establishment

The Zoning Board of Appeals (ZBA) is hereby established in accordance with state law.

### B. Powers and Duties

The ZBA shall have the following powers and duties under this Code:

#### 1. Decide Applications for Development Permit

To review and decide the following applications for a development permit:

- a. Special Exception (Sec. 155.2406);
- b. Major Temporary Use Permit (Sec. 155.2412.C);
- c. Interim Use Permit (Sec. 155.2415);
- d. Variance (Sec. 155.2420); and
- e. Appeal of a decision of the Development Services Director on an application for an Interpretation (Sec. 155.2424).

#### 2. Other Powers and Duties

- a. To review and decide appeals of relating to regulations in Section 100.40 (Movable Fixtures in the Public Right-of-Way) of the Code of Ordinances , in accordance with procedures and standards in that section;
- b. To review and decide requests for variances relating to regulations in Chapter 151 (Beaches and Waterways) of the Code of Ordinances , in accordance with procedures and standards in that chapter;
- c. To review and decide requests for variances and appeals relating to floodplain management regulations in, and actions authorized by, Chapter 152 ( Buildings ) of the Code of Ordinances , in accordance with procedures and standards in that chapter; and
- d. To carry out any other powers and duties delegated to it by the City Commission, consistent with state law.

### C. Membership, Appointment, and Terms of Office

#### 1. Membership and Appointment

- a. The ZBA shall consist of six regular voting members and six alternate members.
- b. One regular voting member and one alternate member shall be nominated by the Mayor and one regular voting member and one alternate member shall be nominated by each City Commissioner from among residents of the City Commissioner's district—provided, however, that a Commissioner may nominate a person who does not reside in the City Commissioner's district on determining such person would better serve the public interest. All such nominees shall be appointed by resolution of the City Commission as a whole, by a majority vote.
- c. Each regular voting member and alternate member shall be a resident of the city.
- d. Regular voting members and alternate members shall serve without compensation.

#### 2. Terms

- a. Regular voting members and alternate members of the ZBA shall be appointed for a term which shall run concurrently with the term of the member of the City Commission who appointed them.
- b. Regular voting members and alternate members shall continue to serve until their successors are appointed.

#### 3. Alternate Members

The Chair or staff designee of the ZBA shall be authorized to assign one of the six alternate members to serve as a substitute for a regular voting member who is temporarily absent or disqualified, in accordance with the following:

- a. The Chair or staff designee shall rotate assignments among the alternate members unless the unavailability of alternate members makes such rotation impossible.

- b. No alternate member may serve as a substitute member for the same regular voting member for a period of more than three consecutive months.
- c. No more than three alternate members may serve as substitute members at any one time.
- d. No alternate member may take action as a substitute member unless the Chair first announces assignment of that role and the assignment is recorded in the official minutes of the meeting.
- e. When substituting for regular voting members, alternate members shall have the same powers and duties as the regular voting member they replace.

#### **4. Removal and Replacement; Attendance**

##### **a. Removal for Good Cause**

The City Commission may, by majority vote of a quorum present, remove and replace any member of the ZBA at any time for good cause, including, but not limited to, poor attendance (See subsection b below.), lack of participation, unfitness, malfeasance, and conflict of interest (See Section 155.2203.H.). Any allegation of cause for removal shall be in writing, and the City Commission shall hold a public hearing on such an allegation before taking action to remove a board member.

##### **b. Removal for Poor Attendance**

Any member of the ZBA who is absent from three consecutive regularly scheduled board meetings or more than 50 percent of regularly scheduled board meetings held within a calendar year shall be removed from the board by the City Commission in accordance with subsection a above. The Chair of the ZBA or the Development Services Director shall notify the Mayor and City Commission if a member qualifies for removal under this subsection.

#### **5. Vacancies**

- a. Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term only.
- b. A vacancy in the term of a regular voting member or alternate member shall be filled by the City Commissioner in whose district the appointment originated, with approval by resolution of the City Commission.

#### **D. Chair and Vice-Chair**

- 1. The ZBA shall elect a Chair and a Vice-Chair from among its members, each to serve a one-year term. The Chair and Vice-Chair may be elected to successive terms without limitation.
- 2. The Chair shall preside over all board meetings. The Vice-Chair shall preside over board meetings in the absence of the Chair. If both the Chair and Vice-Chair are absent, the ZBA shall vote to determine who shall serve as acting Chair for the meeting.

#### **E. Staff**

The Development Services Director shall serve as the professional staff liaison to the ZBA, provide it with administrative support, and serve as its Secretary, notifying board members of all meetings and keeping the minutes of the meetings.

#### **F. Meetings**

##### **1. Schedule**

The ZBA shall adopt a schedule establishing the date, time, and location of regular meetings, provided that the ZBA shall meet at least once in a calendar month. The Chair may adjourn a regular meeting on determining that there are no agenda items for consideration, and may call special meetings.

##### **2. Official Record**

The ZBA shall keep a written record of its recommendations, transactions, findings, and determinations. Such record shall include minutes of meetings in accordance with state law (Sec. 286.011, Fla. Stat.) and shall be a public record and filed with the Development Services Director.

##### **3. Notice of Meetings**

- a. The Development Services Director shall provide notice of ZBA meetings to each board member at least 48 hours before the meeting.
- b. Notice of all ZBA meetings and public hearings shall be provided in accordance with state law and the public hearing requirements in Section 155.2305.C, Public Hearing Notice, as appropriate.

##### **4. Open Meetings**

All meetings of the ZBA shall be open to the public.

## **5. Procedure**

In conducting its meetings, the ZBA shall follow rules of procedure adopted in accordance with Section 155.2203.I, Rules of Procedure.

### **G. Quorum and Necessary Vote**

#### **1. Quorum**

Five members of the ZBA shall constitute a quorum. No official business of the board shall be conducted without a quorum present.

#### **2. Voting**

The concurring vote of five members of the ZBA shall be necessary to approve a Special Exception, Major Temporary Use Permit, or Interim Use Permit, grant any Variance, or approve any appeal reversing or modifying a decision. An affirmative vote of the majority of board members present and constituting a quorum shall be required for all other decisions.

### **H. Disqualification from Participation and Voting Based on Conflict of Interest**

1. A member of the ZBA shall not participate in the review of, or vote on, an application for a development permit if the action proposed by the application creates a conflict of interest—that is, if the action proposed by the application would inure to the special private gain or loss of the member, any principal or corporation (or a parent organization or subsidiary of such corporation) that employs or otherwise retains the services of the member, or a close relative (e.g., parent, sibling, spouse, or parent- or sibling-in-law) or business associate of the member.

2. If an objection is raised to a board member's participation in a matter based on a conflict of interest (as defined in subsection 1 above), and that member does not recuse himself or herself, the remaining members of the board present shall, by majority vote of a quorum present, determine whether the member is or is not disqualified from participating in and voting on the matter.

3. If a board member is disqualified on a regular and continuing basis due to a conflict of interest (as defined in subsection 1 above), the Chair of the board may request, in writing, that the member resign. If the member does not resign in response to such a request, the Chair shall report the conflict of interest to the Mayor and City Commission, who may consider whether to remove and replace the member in accordance with Section 155.2203.C.4, Removal and Replacement; Attendance.

### **I. Rules of Procedure**

The ZBA shall adopt rules of procedure governing its procedures and operations. Copies shall be made available for public inspection in the Development Services Department.

(Ord. 2012-64, passed 9-11-12; Am. Ord. [2013-37](#), passed 1-22-13; Am. Ord. [2014-16](#), passed 1-28-14; Am. Ord. [2015-75](#), passed 9-8-15; Am. Ord. [2017-17](#), passed 1-10-17; Am. Ord. [2023-28](#), passed 1-24-23)