

Village of Bellaire

Zoning Board of Appeals

Leslie Meyers, Chairperson

**Board Members: Dan Bennett, Lori Smalley, Colette Stanish and Scott Udell
And ZBA Alternate, Robert Massey**

ZONING BOARD OF APPEALS MEETING MINUTES

April 17, 2019

1. **Call to Order:** Chairperson Meyers called the meeting to order at 7:00 p.m.
2. **Roll Call Attendance**
 - Present:** Dan Bennett, Leslie Meyers, Lori Smalley and Scott Udell
 - Absent:** Colette Stanish
 - Staff Present:** Lori Lockett, Zoning Administrator
 - Others Present:** Bryan Graham, Village Counsel
3. **Approval of Agenda:** Chairperson Meyers requested that agenda New Business items b) Election of Officers and d) Meeting Dates be reversed. The amended agenda was approved.
 - Motion by Smalley, seconded by Bennett, to approve the agenda as amended. Motion carried by unanimous voice vote.**
4. **Approval of Minutes:** The minutes of the May 16, 2018 meeting were approved as written.
 - Motion by Smalley, seconded by Meyers, to approve the minutes of the May 16, 2018 meeting as written. Motion carried by unanimous voice vote.**
5. **Establishment of Conflict of Interest:** None presented.
6. **Public Comment on Agenda Items:** None presented.
7. **Old Business:** None presented.
8. **New Business**
 - a) **Training Session:** Bryan Graham began the training session with a review of the role of ZBA members. According to Mr. Graham, the role as member of the ZBA is the most difficult job in local government. The ZBA is like the local court when it comes to zoning. Decisions are not based on personal opinions, whether something is a good idea or bad idea, but on legal requirements. Using a murder trial as an analogy, Mr. Graham stated the ZBA process is like a jury trial. The jury has to be fair and impartial. Due process is required because of the constitutional rights to life and liberty. The ZBA deals with zoning issues that affect someone's property rights. Those property rights are also guaranteed by the federal constitution. It is important that the ZBA understand their role and constitutional obligation to make decisions that follow proper procedure and that are supported by evidence.

Regardless of the decision, it has to be defensible in court. The decisions the ZBA makes are discretionary. They are administrative decisions unlike the legislative decisions made by the village council. The law requires that administrative decisions be based on standards and not arbitrary. The standards are contained in the zoning ordinance. A public hearing is required during which evidence is gathered. The ZBA has to apply the standards much like a jury applies the jury instructions. It is important to make a good record of the meeting. Minutes are like a transcript of the meeting and should be a summary of what was said. Mr. Graham recommends that meetings are recorded and stressed the importance of a detailed summary. Mr. Graham reviewed the functions of the ZBA. The functions are limited by what the law requires. The zoning ordinance is made in a very detailed way. The planning commission has to hold public hearings. The public provides input. The regulations are then recommended to the village council and if approved are enacted into law. A function of the ZBA is to make interpretations of the zoning ordinance. In order to make an interpretation, there must be an ambiguity. If the zoning ordinance is clear it must be applied as written. If there are two reasonable interpretations that can be made, there is an ambiguity. The ZBA then has to apply the rules of statutory construction. The ZBA has to look at the ordinance as a whole and apply rules. If the ZBA is requested to interpret a provision, they may wish to seek legal assistance to go through the process. The ZBA also hears appeals from administrative decisions made by the zoning administrator, i.e. issuance of a permit. The ZBA is not substituting their judgment; but rather looking at the zoning ordinance to determine whether it was applied properly. The Michigan Zoning Enabling Act allows appeals from issuance of a SUP or PUD approval by the planning commission only if in the zoning ordinance. The village ordinance has no such provision so appeals of these matters would go to circuit court. Appeals of a plot plan or site plan decision would go to the ZBA. The zoning ordinance does not allow appeals of enforcement decisions because the law allows discretion for the municipality to enforce the ordinance. Often times disputes are between neighbors. The ZBA also addresses variances. There are two types, dimensional and use and each have standards. The dimensional variance deals with height, setbacks, etc. The standards must be met before a variance can be granted. What is a variance? A variance is legal permission to violate the zoning ordinance. Because of the public hearing process involved in adopting the ordinance, the law places constraints on the ZBA. Generally, variances should be denied. There must be something unusual about the property. Chairperson Meyers commented on the variance process and efforts of a zoning administrator prior to the request. Mr. Graham cautioned against the approach and stated that a property owner has an absolute right to apply for a variance. He continued with an explanation of use variances. A use variance is a way to allow a use in a zoning district that would otherwise not be allowed. Applying the law properly, a use variance is a check valve for a takings case. If someone does not have the reasonable use of their property it is an undue hardship. Instead of paying damages for a taking, the law allows for a use variance to approve use of the property. According to Mr. Graham, very rarely is someone prohibited from using their property; it just may not be the use the owner wants. That is not a legal basis for granting a use variance. Mr. Graham reviewed the procedures for making discretionary decisions. Members must avoid a conflict of interest. Members have a constitutional duty to be a fair and impartial decision-maker. Conflict of interest are defined in rules of procedure and are in the court rules. The constitutional duty to be a fair and impartial decision maker is important. This is a small community. If there is a controversial issue to be heard, community members may try to approach ZBA members

outside of the public hearing. It is important to tell them that you cannot discuss the matter outside of the hearing. Ask them to attend the hearing to express their opinion. ZBA members cannot make decisions on their personal beliefs or opinions; they must be made on the standards. He cautioned against the use of social media citing the example of a ZBA member who had liked an opposition group's page. The public hearing process was discussed. The chair controls the meeting. Comments should be addressed to the chair. All exhibits should be identified: the application, the zoning ordinance, the master plan, and any other documents used to make the decision. The ZBA must compile a record that ultimately three judges in Lansing could be reviewing. Mr. Graham addressed the remaining phases of the public hearing process including those speaking in favor, those speaking against, and rebuttal. The applicant has the burden of proof that all of the standards are met. Member Bennett asked about limiting the time a person may comment. Mr. Graham stated that the rules of procedure may set a time limit, generally three minutes. The chair has some discretion and could limit redundant and repetitive comments. The ZBA will hear competing evidence and must decide who/what to believe. The standard is a scintilla of the evidence, what a "reasonable person" would accept as true. The ZBA does not have to have a preponderance of the evidence. Once the evidence is gathered the public hearing is closed and the ZBA moves on to deliberations. If there are questions, they may be asked, but be careful that the public hearing process is not reopened. Apply the standards to the deliberations. It is important to build a record. If the ZBA requires additional information they may adjourn to a specific time, date and location without having to re-notice the public hearing. If there are questions, the issue must be opened up to all sides. There are times when materials are presented at the meeting. The ZBA should take the time to review information provided. It may be necessary to adjourn the case to another specific time, date, and location for review of the information. If his law firm is involved, they will prepare proposed findings. Mr. Graham likes to provide options based on the evidence. He reviewed the case study and materials with the members. According to Mr. Graham, the audience for the findings of fact is a judge or panel of judges in Lansing who have no idea what the property looks like. The general findings of fact paint a picture. If there is evidence that supports a particular finding it should be cited i.e. the zoning ordinance or ZBA minutes. Findings include the general findings of fact then the findings under the standards. The ZBA decision must be based on the standards, not on pressure from the audience. True needs for variances may deal with wetlands, steep slopes, preexisting septic fields. An owner does not have the right to overbuild the property and necessitate a variance. If the lot is substandard there may be a limited building envelope that warrants a variance. Self-created problems mean the variance should be denied. Mr. Graham reviewed the work sheet and suggested that members should note their thoughts on a request in preparation for the hearing. It forces members to focus on the standards.

- b) **Meeting Dates:** There was brief discussion about the dates on the third Wednesday of the month and meeting time. Chairperson Meyers expressed concern about her availability for meetings every other month due to obligations of her employment. Mr. Graham interjected that if the ZBA meets for public hearing, it must call a special meeting shortly after the minutes are prepared to approve the minutes. The approval of the minutes starts the 21-day appeal process. There was brief discussion about the variance and extension granted for the Short's property. There was discussion about the time of the meetings. Zoning Administrator Luckett noted that the time is set at 7:00 p.m. in the by-laws (sic). They may meet at a

different time if the majority of the members agree. There is also a provision that any amendments are to be submitted in writing at least one month prior to the meeting at which the changes will be considered. Chairperson Meyer suggested that she would choose not to be the chair because she already knows the days that she could not attend at 7:00 p.m. Zoning Administrator Luckett explained the efforts to find another alternate member. Udell stated that he would check with his brother-in-law. There was discussion about the 7:00 p.m. time and what works for the members and applicants. Zoning Administrator Luckett stated the planning commission meets at 5:00 p.m. the Master Plan Committee at 5:30 p.m. Members in attendance were okay with an earlier time but wanted to ask the absent member. Due to the fact that the meetings are scheduled "as needed" the members agreed to the meeting dates. Motion by Bennett supported by Udell to approve the proposed meeting dates.

Motion by Bennett, seconded by Udell, to approve the proposed meeting dates. Motion carried by unanimous voice vote.

c) **Rules of Procedure:** The members reviewed the Village of Bellaire Zoning Board of Appeals Rules of Procedure and discussed the possibility of meeting at a different time. After discussion about whether an amendment was needed to adjust the meeting, time and that meetings are as needed on the third Wednesday, there were no changes to the rules of procedure proposed.

d) **Election of Officers:** The current officers were identified: Leslie Meyers, Chairperson, Dan Bennett, Vice-Chairperson, and Lori Smalley, Secretary. Bennett made the motion to nominate the slate of officers. The motion was seconded by Smalley. After asking three times whether there were other nominations, nominations were closed and a vote on the motion was taken.

Motion by Bennett, seconded by Smalley, to nominate the slate of officers. Motion carried by unanimous voice vote.

9. **Correspondence/Reports:** Zoning Administrator Luckett requested that members turn in their training records and check their mailboxes. The current issue of the Planning & Zoning News was at their places and deals with training.

10. **Member/Public Comment:** None presented.

11. **Adjournment: Motion by Udell seconded by Smalley to adjourn the meeting. Motion carried by unanimous voice vote. Meeting adjourned at 8:10 p.m.**

Minutes compiled by:
Lori Luckett, Zoning Administrator & Recording Secretary

Approved: _____
Leslie Meyers, Chairperson

Date: _____