

Village of Avoca

Zone Board of Appeals

Policy and Procedure

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| Policy: Village of Avoca – ZBA Policy and Procedure | | | | | | Policy #26 | |
| Effective: June 8, 2023 | | | | Author: Eric R. Tyner | | | |
| Approved by Board: | Mayor: | Trustee: | Trustee: | Trustee: | Trustee: | Filed: | Clerk: |

I. Purpose:

To establish a standardized policy to be implemented and adhered to by all Village of Avoca appointed Zoning Board of Appeals members during their official duties and tenure in the employment of the Village of Avoca. The following rules of procedure are hereby adopted by the Village of Avoca Zoning Board of Appeals (hereinafter known as the ZBA) to facilitate the performance of its duties as outlined in the adopted Village of Avoca Zoning document.

II. Membership:

- A. The membership of the ZBA shall be the number and appointed according to the procedure as established in the Village of Avoca Local Law 2023-1.
- B. Attendance. If any member of the ZBA is absent from three (3) meetings in one calendar year, then that member shall be considered delinquent. Delinquency shall be grounds for the Village of Avoca Board of Trustees to consider action against that member of the ZBA for non-performance of duty or misconduct, up to and including removal. The ZBA Chairperson shall keep attendance records and shall notify the Mayor whenever any member of the ZBA is absent from more than two (2) scheduled meetings annually, so the Village Board of Trustees can consider further action allowed under law or excuse the absences.
- C. Remote Attendance: ZBA members may be connected to a meeting remotely in accordance with the State of New York Open Meetings Law and the Village of Avoca Policy and Procedures for remote attendance.
- D. Compensation: Members and alternates of the ZBA shall be compensated for the services performed. Compensation for members and alternates shall be established during the Village of Avoca Reorganization Meeting held in the first month of the Village of Avoca fiscal year.

- E. Training. Each member shall have attended at least four (4) hours per year of training in planning and zoning during the member's current appointment to the ZBA. Failure to meet the training requirements can result in the member not being reappointed to the ZBA and possible removal during their current term of appointment. Training shall be provided by the State of New York or another licensed and approved training source.
- F. Member in Good Standing: As appointment members and alternates of the ZBA are representatives of the Village of Avoca and represent the image and civic responsibility the Village of Avoca wishes to portray to the public; all members must be in good standing with the Village of Avoca. A member's good standing can be reviewed by the Village Board of Trustees for such instances of conviction of a crime, prolonged or repeated delinquency in taxes, prolonged or repeated delinquency in village operated utilities (water department), ethics violations, acting in a manner which tends to bring disgrace upon the ZBA, or other action as deemed appropriate by the Board of Trustees.

In the event the Board of Trustees reviews and sustains that a member of the ZBA is no longer in good standing, the ZBA member's appointment to the ZBA can be suspended or revoked after public hearing, as provided by law (See NY Village Law 7-712(9)).

- G. Alternates. The purpose of alternates to the ZBA is to sit and possibly vote and take any action in certain Village of Avoca ZBA discussions, meetings or hearings in the event another appointed member of the ZBA is absent. Alternates cannot vote, introduce motions, initiate any other parliamentary action if the other (5) appointed members of the ZBA are present. Alternate ZBA members are expected to:
1. If possible, attend any meeting or hearing when requested by the ZBA Chairperson;
 2. Continue to be present and vote in any matter before the ZBA that they were previously involved in;
 3. Fulfill any other duties or requirements as requested by the ZBA Chairman.

III. Conflict of Interest and Incompatibility of Appointment

- A. Each member of the ZBA shall avoid situations that are conflicts of interest, and/or incompatibility with their appointment. As used here, a conflict of interest shall at a minimum include, but not necessarily be limited to issuing, deliberation on, voting on, or reviewing any case that:
1. Concerning him or her.

2. Concerning work on land owned by him or her or which is within 300 feet of land owned by him or her.
 3. Involving a corporation, company, partnership, or any other entity in which he or she is a part-owner, or any other relationship where he or she may stand to have a financial gain or loss.
 4. Which is an action which results in a pecuniary benefit to him or her
 5. Concerning his or her spouse, children, step-children, grandchildren, parents, brothers, sisters, grandparents, parents-in-law, grandparents-in-law, or members of his or her household.
 6. Where his or her employee or employer is:
 - a. an applicant or agent for an applicant, or
 - b. has a direct interest in the outcome.
- B. When a conflict of interest exists, the member of the ZBA shall do all of the following immediately, upon first knowledge of the case and determining that a conflict exists:
1. Notify the ZBA Chairman prior to the next meeting (if possible).
 2. Declare a conflict exists at the next meeting of the ZBA.
 4. Cease to participate at the ZBA meetings, or in any other manner, or represent one's self before the ZBA, its staff, or others, regarding the case with which the conflict exists
 5. During deliberation of the agenda item with which the conflict exists, leave the ZBA meeting room entirely until that agenda item is completed.
2. If a member of the ZBA is appointed to another office, which is an incompatible office with his or her appointment 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.

IV. Duties of ZBA members

A. Ex Parte Contact

1. Members shall avoid Ex Parte contact about cases where an administrative decision is before the ZBA whenever possible.
2. 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 must 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 what was said.

B. Site Inspections

1. Site inspections can be done by the Zoning Chairperson or other members as required. If a site inspection is conducted, a written report of it shall be submitted in the agenda packet and presented at the ZBA meeting.
2. If desired, no more than one member of the ZBA may accompany the Zoning Chairperson on a site inspection.

C. Not Voting on the Same Issue Twice

1. Any member of the ZBA shall avoid situations where they are sitting in judgment and voting on a decision which they had a part in making which includes, but is not limited to:
 - a. When the appeal is of an administrative or other decision by the legislative body, if the member of the ZBA sits on both the legislative body and ZBA.
 - b. When the appeal is of an administrative or other decision by any committee or the legislative body, other committee, and the member of the ZBA sits both on that committee and ZBA.

D. Accepting Gifts

1. Gifts shall not be accepted by a member of the ZBA or alternates from anyone connected with an agenda item before the ZBA.
2. As used here, gifts shall mean: cash, any tangible item or service, regardless of value.

E. Rules of Procedure – Zoning Board of Appeals – Adopted 06/01/2023

1. Free and open debate should take place on issues before the ZBA. Such debate shall only occur at open meetings of the ZBA.
2. 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. Minority reports and requests for reconsideration may take place only at an open meeting of the ZBA.
3. From time to time, or on a specific issue, the ZBA may appoint a spokesperson for the ZBA for all matters, which occur outside the meetings of the ZBA.

F. Oath of Office

Each member, upon appointment or re-appointment, shall sign a Zoning Board of Appeals Oath of Office.

V. Officers

A. Selections. At the June meeting of each year, the ZBA Chairperson shall be appointed by the Mayor with confirmation of the Board of Trustees. All ZBA members with at least one year of service on the ZBA are eligible for appointment. In the event the office of the Chairperson becomes vacant, the Mayor shall appoint another member of the ZBA, with at least 1 year of experience, to succeed to this position for the unexpired term. The ZBA Chairperson will then assign a ZBA member to the position of Secretary for the ZBA, unless the Chairman assumes the Secretary duties himself or herself.

B. Tenure. The ZBA Chairperson shall take office at the next meeting following their selection and shall hold office for a term of one year until the next Reorganizational Meeting of the Board of Trustees.

C. Chairperson's Duties. The Chairperson retains his or her ability to discuss, make motions, and vote on issues before the ZBA. The Chairperson shall:

1. Preside at all meetings with all powers under parliamentary procedure;
2. Sign all decisions of the ZB;
3. Rule 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. Restate all motions including the maker and supporter before calling for a vote;
5. Appoint ZBA members to special committees, or choose to let the ZBA members volunteer on their own;
6. Call special meetings as needed;
7. Review with the Zoning Officer before a ZBA meeting, the items to be on the agenda if he or she so chooses;

8. Act as the ZBA's chief spokesperson to represent the ZBA at local, regional, and state government levels;
9. Represent the ZBA before the Village Board of Trustees;
10. Perform such other duties as may be ordered to the ZBA by the Mayor or the Village Board of Trustees.

D. Secretary's Duties (to be performed by the Zoning Chairperson or designated member)

1. At each ZBA meeting, take notes for minutes and prepare a draft for approval at the next ZBA meeting for presentation to the Board of Trustees;
2. Obtain required signatures on approved minutes;
3. Receive all communications, petitions, and reports to be addressed by the ZBA;
4. Keep attendance records for all ZBA meetings and hearings;
5. Provide notice to the public and members of the ZBA for all meetings,
6. Prepare an agenda for ZBA meetings;
7. Prepare an official report on each case to be heard by the ZBA for presentation to the Village Board of Trustees which can serve as a basis for the Findings of Fact of the Zoning Board of Appeals – Adopted 06/01/2023
8. Perform such other duties as by be ordered by the ZBA Chairperson.

VI. Meetings of the ZBA

A. Regular Meetings.

The ZBA shall meet monthly on the fourth Monday of each month except in the month of December at 7:00 PM EST, or at such other time as announced by the Chairperson at the prior monthly meeting, in the Avoca Village Hall. Any other meetings of the ZBA will be called as needed in response to receipt of an application for appeal or variance. The meeting can be called by the ZBA Chairperson as required.

B. Scheduling Process.

Meetings shall be scheduled with the Village Clerk and ZBA members can be advised by emailing, texting or calling ZBA members to announce the date and time of each meeting. An agenda will be provided and can be emailed to all ZBA members and alternates at least 24 hours prior to the scheduled meeting.

C. Public.

All meetings, hearing, records, and accounts shall be open to the public, and posted in compliance with the open meetings law. All regular and special meetings, hearings, records, and accounts shall be open to the public.

1. All public comment on all agenda items should be presented at the beginning of the meeting were provided in the printed agenda, so that the ZBA can hear concerns and questions before acting on an issue. After that point in the meeting, public comment is normally not allowed; however, sometimes the ZBA may direct questions to members of the public. Those making public comment are expected to be familiar with the issue and have prepared comments ahead of time. To help the public in preparing for the meeting, the full agenda packet of materials will be made available for distribution prior to the meeting.
2. The Chairperson may limit the amount of time allowed for each person wishing to make public comment at a ZBA meeting to two (2) minutes. The Chairperson may ask members of the audience to caucus with other sharing similar positions, so they may select a single spokesperson. If a single spokesperson is selected, that individual shall be able to make public comment at the ZBA meeting with an extended time limit as determined by the Chairperson.

D. Quorum

Half the total membership of the ZBA, rounded up to the next whole number, shall constitute a quorum for the transaction of any business and the taking of official action for all matters.

E. Petitioner Attendance.

When a petitioner fails to appear at a properly scheduled meeting of the ZBA, the Chairperson may entertain a motion from any member of the ZBA to dismiss the case for want of prosecution. In the absence of a motion by the ZBA, the Chairperson shall rule. In cases which are dismissed for the want of prosecution, the petitioner will be furnished written notice of the action by the Zoning Chairperson. The applicant shall have seven (7) days from the date of the notice of dismissal to apply for reinstatement of the case. In such cases, the applicant must file a written request with the Zoning Chairperson for reinstatement. Reinstatement shall be at the discretion of the Chairperson for good cause shown, and upon payment of the fee set. In call cases reinstated in the above-described manner, the case will be docketed and re-advertised in the usual manner prescribed for new cases.

F. Order of Business.

Agenda. The Zoning Chairperson shall prepare an agenda for each meeting and the order of business therein shall be as follows:

1. Call to Order & Roll Call
2. Approval of/Adjustments to Agenda
3. Conflict of Interest Declarations
4. Public Hearings.

a. The Chairperson will declare a hearing open, state its purpose, and summarize the procedure.

b. The case will be presented as follows:

- (1) The Zoning Chairperson will present the petitioner's request, actions taken on the matter, and reasons for those decisions. Only a brief oral overview is necessary during the meeting, as these items shall be fully outlined in the official report submitted in the agenda packet.
- (2) The petitioner – through him or herself, his agent, or his lawyer – may present his case, including presenting witnesses on his or her behalf. No time limit will be imposed on the petitioner.
- (3) Members of the ZBA must disclose any ex parte contact made with the petitioner and the details of the conversation.
- (4) Members of the public who support the petitioner will be given time to speak and any correspondence will be read by the Zoning Chairperson. Depending on the number of people present, the Chairperson may:
 - (a) Recess the meeting for a short time to allow those in support to caucus in order to have one speak on their behalf for a set duration of time set by the Chairperson.
 - (b) Allow many to speak in favor of the petitioner and impose the two (2) minute time limit for each speaker.
- (5) Members of the public who oppose the petitioner will be given time to speak and any correspondence is read by the Zoning Chairperson. Depending on the number of people present, the Chairperson may:
 - (a) Recess the meeting for a short time to allow those in opposition to caucus in order to have one speak on their behalf for a set duration of time set by the Chairperson.
 - (b) Allow many to speak in opposition to the petitioner and impose the two (2) minute time limit for each speaker.
- (6) Rebuttal. Anyone may ask the Chairperson questions on presentations or speeches given at this hearing. The Chairperson will seek and answer to

the questions. Answers shall be given to the Chairperson. No discussion, questioning or answering shall take place between any two or more people except between the Chairperson and the individual who has the floor.

(7) Close the Hearing. (At this point all public participation on the issue ends.)

(8) Deliberation and Decision

- (a) Discussion, motion, and Decision on any State Environmental Quality Review Act matters applicable to the subject of the hearing
- (b) ZBA discussion until a member proposes a motion that includes:
 - (i) Findings of fact
 - (ii) Conclusions and rationale for reaching those conclusions
 - (iii) Conditions recommended
- (c) Discussion on motion
- (d) Action on motion

5. Public Comment on Agenda Items Not Having a Public Hearing

6. Housekeeping Business

- A. Approval of Previous Minutes
- B. Election of Officers
- C. Other

7. Unfinished Business

8. New Business

9. Public Comment on Items Not on this Agenda

10. Adjournment

G. Placement of Items on the Agenda

- 1. The Village Clerk's Office shall be the office of record for the ZBA.
- 2. The Zoning Chairperson may receive items on behalf of the ZBA.
- 3. When a request for appeal or variance is received and deemed complete, the Zoning Chairperson shall initiate scheduling of a ZBA meeting within 3 business days. The meeting shall be scheduled at the earliest opportunity for which a quorum of the ZBA can be assembled and which allows adequate posting time for the required notifications.

H. Recesses.

The Chairperson, after the meeting has been in session for two hours, shall suspend the ZBA's business and evaluate the remaining items on the agenda. The ZBA shall then decide to finish that meeting's agenda, may act to continue the meeting on another day (and fix the time at which to adjourn), or complete some agenda items and continue the meeting on another day to complete other agenda items or postpone certain agenda items to the next meeting. If applicable, such action shall include the time, day, month, date, year, and location the ZBA will reconvene. If more than (7) days will pass before the reconvened ZBA meeting, public notice shall be given to comply with the open meeting law.

Upon reconvening, a roll call of attendance shall be the first item of business before proceeding with the same agenda. The ZBA shall resume with the same meeting agenda, proceeding at the same point where they left off, without the addition of additional business.

J. Motions.

1. Motions shall be restated by the Chair before a vote is taken, including the name of the maker and supporter.
2. Findings of Fact. All actions taken in an administrative capacity (including, but not limited to appeals, zoning interpretation, variances) shall include each of the following parts:
 - a. A "Findings of Fact" that lists what the ZBA determines to be relevant facts (including parcel owner, parcel legal description, what is applied for) in the case in order to eliminate misleading statements, hearsay, irrelevant or untrue statements.
 - b. Conclusions – Listing reasons based on the facts for the ZBA's actions.
 - c. The ZBA's action, recommendation, or position, approval, approval with conditions, etc.
3. Any other motion shall be stated in prose or in the form of a resolution.

K. Voting.

Voting shall be by roll call vote, and shall be recorded by "yes" or "no". Members of the ZBA must be present (either physically or remotely in accordance with the open meeting law) to cast a vote. A motion is only adopted if over half the total membership of the ZBA (regardless of the number present at the meeting) casts their votes in favor of the motion.

VII. Records.

A. Preparation.

The Zoning Chairperson shall keep, or cause to be kept, a record of the ZBA meetings, which, shall at a minimum include an indication of the following:

1. A copy of the meeting announcement.
2. A signed statement indicating that notices, as required in the state statute or local ordinance, were sent out, with a list of to whom, by whom, and a copy of the newspaper notice.
3. A copy of the Zoning Board of Appeals Application submitted, including any maps, drawings, site plans, etc.
4. A copy of the minutes of the meeting which shall include, in chronological sequence of occurrence:
 - a. Time and place the meeting was called to order.
 - b. Attendance (noting those who are present remotely) and quorum status.
 - c. Indication of others present (listing names when possible, and a count of unnamed individuals present).
 - d. Summary or text points of all reports given at the meeting and who gave the report and in what capacity. Alternatively, a copy of the report may be attached to the minutes and referenced in the minutes.
 - e. Summary of all points made in public participation or at a hearing by the applicant, officials, and guests and an indication of who made the comments. If provided in written form, a copy of the public's statement, petition or letter may be attached to the minutes and referenced in the minutes.
 - f. Full text of all motions introduced, whether seconded or not, who made the motion, and who seconded the motion. For each motion the following should be included:
 - (1) Who testified and a summary of what was said.
 - (2) A statement of what is being approved (ie. variance, interpretation, etc.);
 - (3) The location of the property involved (by address, including tax parcel number if possible).
 - (4) What exhibits were submitted (list each one, describe each, number or letter each, and refer to the letter or number in the minutes.
 - (5) What evidence was considered (summary of discussion by members at the meeting).

- (6) The ZBA's Findings of Fact.
 - (7) Reasons for the decision made. (If the action is to deny, then each reason should refer to a section of an ordinance which would be violated or with which was not complied.).
 - (8) The decision (e.g. approve, deny, approve with modification, etc.).
 - (9) A list of all requirements or conditions, and details on any performance guarantee required.
- g. A summary of all points made by members and staff in debate or discussion on the motion or issue.
- h. Who called the question to vote.
- i. The results of the roll call vote, indicating how each member voted.
- j. That a person making a motion withdrew it from consideration.
- k. All the Chairperson's rulings.
- l. All challenges, discussion, and vote/outcome on a Chairperson's ruling.
- m. All parliamentary inquiries or points of order.
- n. When a voting member enters or leaves the meeting.
- o. When a voting member or staff has a conflict of interest and when the voting member ceases or resumes participating in discussion, voting, and deliberations at a meeting.
- p. All calls for an attendance count, the attendance, and the ruling if a quorum exists or not.
- q. The start and end of each recess.
- r. All the Chairperson's rulings of discussion being out of order.
- s. Full text of any resolutions offered.
- t. Summary of announcements.
- u. Summary of informal actions, or agreement on consensus.
- v. Time of adjournment.
5. The records of any action on a case by the Zoning Chairperson.

6. The records of all past records regarding the property involved in a case (previous permit, special use permit, variances, appeals).
7. Any relevant maps, drawings, photos presented as evidence at a hearing.
8. Copies of any correspondence received or sent out in regard to a case.
9. A copy of relevant sections, or a list of citations of sections of the zoning ordinance.
10. A copy of any follow-up correspondence to or from the petitioner regarding the decision.

B. Retention.

The record of each meeting shall be permanently kept on file, with the original filed with Avoca Village Clerk at the Avoca Village Hall. All the pertinent documents and minutes for each case before the ZBA shall be held by the Zoning Chairperson until the resolution of the case and then placed on file with the Village Clerk at the Village of Avoca.

C. Public Availability.

1. A draft copy of the minutes shall be made available to the public within fourteen (14) business days of a ZBA meeting, including the posting of such to the Village of Avoca website.
2. Approved and signed minutes shall be made available to the public within five (14) days of the meeting at which they are approved, including the posting of such to the Village of Avoca website.

VII. Other Duties

- A. The ZBA may also formulate and provide advice and may advise policy to the Village of Avoca Board of Trustees, or any committee thereof, on issues dealing with administration, text, map, and enforcement of the zoning ordinance.

IX. Adoption, Repeal, Amendments

- A. Upon adoption of these Rules of Procedure of 06/01/2023, they shall become effective and all previous rules of procedure, as amended, shall be repealed.
- B. These Rules of Procedure may be amended at any regular or special meeting by a majority vote of the total members of the Board of Trustees, so long as such amendment does not result in a conflict with any state law, zoning ordinance, or court decisions.