

ZONING BOARD OF APPEALS

Rules of Procedure



CITY OF CHICAGO
BRANDON JOHNSON, MAYOR



Zoning Board of Appeals
Brian H. Sanchez, Chair
2024 Revision



Zoning Board of Appeals
City of Chicago
City Hall
121 N. LaSalle, Room 905-A
Chicago, Illinois 60602
(312) 744-3888
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BY AUTHORITY VESTED IN THE ZONING BOARD OF APPEALS OF THE CITY OF CHICAGO PURSUANT TO SECTION 17-14-0303-E OF THE MUNICIPAL CODE OF CHICAGO (CH. 17 OF SUCH MUNICIPAL CODE BEING THE CHICAGO ZONING ORDINANCE ("ZONING ORDINANCE")), THE FOLLOWING RULES OF PROCEDURE ARE HEREBY ADOPTED.

Signed: Brian Sanchez
Brian Sanchez, Chair

Dated: 8/16/24

Signed: Angela Brooks
Angela Brooks, Commissioner

Dated: 8/16/24

Signed: Helen Shiller
Helen Shiller, Commissioner

Dated: 8/16/24

Signed: Adrian Soto
Adrian Soto, Commissioner

Dated: 8/16/2024

Signed: Swathi Staley
Swathi Staley, Commissioner

Dated: 8/16/24

Adopted: August 16, 2024

Effective: November 1, 2024

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Title 1. ORGANIZATION

1.1. Appointment of the ZBA. The Zoning Board of Appeals (“ZBA”) is appointed as provided in Section 17-14-301-A of the Zoning Ordinance.

1.2. Organization. The ZBA consists of five commissioners and up to two alternate commissioners whose duties are set forth in the Zoning Ordinance and in these Rules of Procedure.

1.3. Chair. One of the five ZBA commissioners is the Chair (may also be referred to as chairperson, chairman, or chairwoman). The Chair is designated by the Mayor. All meetings are held at the call of the Chair. The Chair presides over ZBA meetings and is responsible for deciding all points of order and procedure, administering oaths, and compelling the attendance of witnesses. The Chair may designate an Acting Chair to serve as chair in their absence. When applicable, the Acting Chair has all the powers and duties assigned to the Chair.

1.4. ZBA Staff. Staff services for the ZBA are provided by the Department of Planning and Development (“DPD”). ZBA staff cannot provide legal advice.

1.5. Secretary. Pursuant to Section 17-14-0301-F of the Zoning Ordinance, the ZBA selects from its DPD staff one staff member to serve as the ZBA’s secretary. The Secretary manages all correspondence to the ZBA, keeps all ZBA meeting minutes, and keeps all written decisions made by the ZBA, all of which will be made available for public review pursuant to the Illinois Freedom of Information Act. The Secretary ensures the ZBA follows all notice requirements required by the Zoning Ordinance.

1.6. Alternates. Regular ZBA commissioners must notify the Chair and the Secretary of their inability to attend a regular or special meeting of the ZBA as soon as possible. After such notification, the Chair may designate an alternate to fill the position of the regular member for said meeting. Such designation will occur on a rotating basis, as the alternates are available. Alternate members have the same powers and duties and are subject to the same pertinent Code provisions as regular members. When an alternate member has been designated to fill the position of a regular member, the alternate member must continue to sit on any continued applications started at that meeting, in the place of the full member, at subsequent meetings until the applications are decided.

1.7. Office Location. The office of the ZBA is located in Room 905 of City Hall, 121 N. LaSalle Street, Chicago, Illinois 60602 and is open for the transaction of business from 8:30 AM to 4:30 PM, Monday through Friday (excluding City holidays).

1.8. Communication with the ZBA. Unless otherwise directed by ZBA staff, all communications to the ZBA must be via written communication. Such written communication must be addressed to the ZBA office and: (a) delivered to the ZBA office; or (b) sent to the ZBA’s email at zba@cityofchicago.org.

1.9. Ex Parte Communications. Anybody appearing before the ZBA is prohibited from communicating with the commissioners about matters before the ZBA outside of ZBA

meetings. If a commissioner receives an *ex parte* communication, it must be immediately reported to the Secretary and made part of the public record. Failure to adhere to this rule by any party appearing before the ZBA may result in the commissioner on the receiving end of such communications having to recuse themselves from hearing an application or the dismissal of the application.

1.10. Accessibility. Persons with Disabilities who need assistance to participate in ZBA meetings or are unable to fully comply with the requirements set forth in these rules due to their disability should reach out to the Secretary to request accommodation.

Title 2. JURISDICTION AND AUTHORITY

2.1. Jurisdiction. The ZBA is vested with the following jurisdiction and authority under Section 17-14-0302 of the Zoning Ordinance:

- a) To hear and decide appeals from any order, requirement, decision or determination made by the Office of the Zoning Administrator under the Zoning Ordinance;
- b) To hear and decide applications for special uses and variations to the applicable provisions of the Zoning Ordinance;
- c) To hear, receive and decide all other matters referred to it, or required of it, by the Zoning Ordinance.

2.2. Rehearing. The ZBA must not hear or decide any matter where a decision has been rendered therein by the ZBA within the preceding year (365 days) unless upon remand by a court, upon good cause shown, or pursuant to Rule 8.7 or 8.10.

2.3. Supplemental Rules. From time to time, the ZBA may issue supplemental rules to these Rules of Procedure. These supplemental rules have the same force and effect as the Rules of Procedure but will address a more discrete practical problem or issue. If the ZBA finds that the problem or issue no longer exists, the ZBA must rescind such supplemental rule. The Secretary must keep copies of all supplemental rules issued by the ZBA and must ensure that all current (i.e., non-rescinded) supplemental rules are posted to the ZBA's website.

2.4. Emergency Rules. The Chair has the power to promulgate emergency rules consistent with the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.* (the "Open Meetings Act"). The Secretary must ensure that such emergency rules are posted on the ZBA's website, and such emergency rules last until the emergency is over.

2.5. Modifications of these Rules. Non-substantive edits, clarification, and examples may be added to these rules of procedure when approved by the Chair.

2.6. Repository. These Rules of Procedure will be made available on the ZBA's website. The Department of Law will also keep a copy of these Rules of Procedure in the City of Chicago Rules Portal.

2.7. Effective Date. These Rules of Procedure apply to ZBA hearings and meetings following the effective date. These rules do not apply retroactively to any application heard by the ZBA prior to the effective date.

Title 3. APPLICATIONS FOR APPEALS

- 3.1. Who may file.** Any person, firm, corporation, or any officer, department, or bureau aggrieved by a decision of the Office of the Zoning Administrator, except those decisions excluded under the Zoning Ordinance, may file an appeal from any order, requirement, decision, or determination of the Office of the Zoning Administrator.
- 3.2. Timing of Filing.** An application for an appeal must be filed with the ZBA within forty-five (45) days after the dated, written final decision by the Office of the Zoning Administrator.
- 3.3. Effect of Filing.** Pursuant to Section 17-13-1204 of the Zoning Ordinance, the filing of a complete application for appeal stays all proceedings in furtherance of the action appealed, unless the Zoning Administrator certifies to the ZBA, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property. In such cases, proceedings may not be stayed other than by a restraining order, which may be granted by the ZBA or by a court of record.
- 3.4. Notice to Zoning Administrator.** A notice of appeal must also be filed with the Office of the Zoning Administrator. Such notice must specify the grounds of the appeal.
- 3.5. Materials from Zoning Administrator.** Within seven (7) days of the filing of the completed application for appeal, the Office of the Zoning Administrator must provide the ZBA with all relevant materials from which the decision was made.
- 3.6. Form of Application.** An application for an appeal must be on the approved ZBA supplied form and must include all materials required by the ZBA. All applications must be typed; handwritten applications will not be accepted. An application will not be scheduled for a hearing until it is completed.
- 3.7. Incomplete Applications.** An application is not complete – and a public hearing will not be scheduled – until all required materials are completed and submitted. If an incomplete application is somehow scheduled for hearing, the Chair must dismiss or continue the matter.
- 3.8. Proposed Findings.** The application for an appeal must include proposed Findings of Fact. The proposed Findings of Fact must be written on the form supplied by the ZBA. The proposed Findings of Fact must be fact-based, detailed, non-conclusory and not unnecessarily repetitive.
- 3.9. Incomplete Proposed Findings.** Failure to submit proposed Findings of Fact that are complete, clear, comprehensive and sufficiently useful to the ZBA for reviewing the application may result in the application not being heard on its scheduled hearing date and may – in the Chair’s discretion – result in the dismissal of the application.
- 3.10. Economic Disclosure Statements.** In accordance with Chapter 2-154 of the Municipal Code of the City of Chicago, disclosures of ownership interests must be filed with every application.

- 3.11. Notice of Hearing.** Written notice of the ZBA public hearing must be provided to the applicant and to any property owners who were required to receive notice of the action being appealed. The ZBA must provide all necessary parties at least fifteen (15) days' notice of the date, time, and place of the public hearing at which the appeal will be heard.
- 3.12. Public Availability of Applications.** ZBA staff must make an applicant's completed application, Findings of Fact and exhibits, as well as any plans and drawings submitted with the application available to the public for inspection online at two (2) weeks prior to the scheduled public hearing on the application. This timeframe constitutes the "public inspection period." Notice postcards and the ZBA website must provide information as to where these materials can be accessed.
- 3.13. Changes to Applications.** Applications may not be modified during the public inspection period, which is two (2) weeks prior to the scheduled public hearing on the application. With the exception of scrivener's errors, if, during this time, the Applicant seeks to modify the application, the hearing will be continued.
- 3.14. Dismissal.** If an appeal application is dismissed by the ZBA, any fee paid to the City will be forfeited to the City. A dismissed application cannot be refiled unless: (1) the filing comports with these rules, and (2) the ZBA staff receive a new filing fee.
- 3.15. Withdrawal.** If an appeal application is withdrawn by the Applicant, any fee paid to the City will be forfeited to the City. A withdrawn application cannot be refiled unless: (1) the filing comports with these rules, and (2) the ZBA staff receive a new filing fee.

Title 4. APPLICATIONS FOR VARIATIONS AND SPECIAL USES

- 4.1. Applicants.** Applications for a variation or special use must be filed by the property owner of record or on the owner of record's behalf by a party having a legal interest in the property. If the applicant is not the owner of record, the applicant must submit written and signed authorization from the owner of record to file said application.
- 4.2. Timing of Filing.** Applications must be filed within one hundred twenty (120) days of the dated written denial of zoning certification. Applications not filed within this time frame are barred from relief by the ZBA.
- 4.3. Zoning Administrator Denial.** At the time of filing a special use or variation application, the applicant must submit the official written denial issued by the Office of the Zoning Administrator. However, in the case of a special use application for an adult use (as defined by 17-17-0104-A of the Zoning Ordinance), such application may be filed whether or not the Office of the Zoning Administrator has issued an official denial of zoning certification or has taken any other action in connection with the application.
- 4.4. Form of Application.** Applicants must use the ZBA supplied forms and must include all materials required by the ZBA. All applications must be typed; handwritten applications will not be accepted. An application will not be scheduled for a hearing until it is completed.
- 4.5. Public Hearing Packet.** Part of a special use or variation application is the Public Hearing Packet, which consists of all evidence the applicant intends the ZBA to consider for its application. Further instructions are located in the Public Hearing Packet which is available on the ZBA website.
 - 4.5.1. Proposed Findings.** The proposed Findings of Fact in the packet must be fact-based, detailed, non-conclusory and not unnecessarily repetitive. The burden is on the applicant to respond to each relevant criteria and prove that all statutory requirements have been met. Failure to submit proposed Findings of Fact that are complete, clear, comprehensive and sufficiently useful to the ZBA for reviewing the application may result in the application not being heard on its scheduled hearing date and may result in the dismissal of the application by the Chair.
- 4.6. Incomplete Applications.** An application is not complete – and a public hearing will not be scheduled – until all required materials are completed and submitted. If an incomplete application is somehow scheduled for hearing, the case may not be heard and may be either dismissed or continued by the Chair.
- 4.7. Expert Witnesses.** As there are circumstances where an expert witness might be helpful to bolster a case, parties may hire expert witnesses to testify in support of their position. However, no party is required to hire an expert witness.

- 4.8. Economic Disclosure Statements.** In accordance with Chapter 2-154 of the Municipal Code of the City of Chicago, disclosures of ownership interests must be filed with every application.
- 4.8.1. Cannabis.** In the case of special use for cannabis business establishments, applicants must provide additional information pursuant to Section 17-14-0303-G of the Chicago Zoning Ordinance.
- 4.9. Other Legal Proceedings.** If applicable, applicants must file with their application a list and explanation of any related court cases or code violations (within the last 24 months) regarding the subject property, proposed use, proposed use operator or its related corporate entities.
- 4.10. Intake Meeting Review for Designated Special Uses.** A Special Use Intake Meeting/Review is required prior to filing of the following types of Special Use applications: gas stations, drive-thrus and any use that requires compliance with Section 17-9-0117-G of the Chicago Zoning Ordinance.
- 4.11. Applicant Notice Requirements.** The applicant must provide written notice to nearby property owners in accordance with Section 17-13-0107-A of the Zoning Ordinance and post a sign on the property in accordance with Section 17-13-0107-C of the Zoning Ordinance.
- 4.12. Proof of Compliance with Notice Requirements.** Pursuant to Section 17-13-0107-A, the applicant must furnish to the Secretary a complete list containing the names and the last known addresses of the owners of record of all property required to be served for the application as well as the method of service used. The applicant must also submit an affidavit certifying compliance with all applicable written notice requirements to the Secretary.
- 4.13. Notice by ZBA.** The ZBA must give due notice to the applicant of the date, time and place of the initial public hearing at which time the application for the variation or special use will be heard. Pursuant to section 17-13-0107-B of the Zoning Ordinance, the Secretary must cause to be published a notice of public hearing in a newspaper of general circulation. Additionally, pursuant to section 17-13-0107-A(9) the Secretary must send written notice to those persons and entities required to be notified under the Zoning Ordinance.
- 4.14. Stale Applications.** If the initial hearing on an application under consideration by the ZBA is postponed, deferred, or continued for more than twelve (12) months from the date of the originally scheduled public hearing, the Application is deemed withdrawn.
- 4.15. Public Availability of Applications.** ZBA Staff must make an applicant's completed application, which includes the Public Hearing Packet and attached exhibits, available to the public online for inspection at least two (2) weeks prior to the scheduled public hearing on the application. This timeframe constitutes the "*public inspection period.*" The public posting, published notice, notice postcards and the ZBA website must provide information as to where these materials can be accessed/viewed.
- 4.16. Changes to Applications.** Applications may not be substantially modified during the public

inspection period, which is two (2) weeks prior to the scheduled public hearing on the application. If, during the public inspection period, the Applicant seeks to substantially modify the application, the hearing will be continued. An application may be modified at the hearing if such modification requires less relief from the ZBA than the original application requested.

4.17. Zoning Administrator Recommendations. Pursuant to Section 17-13-0903, the Zoning Administrator must review each proposed Special Use application and forward a recommendation on the proposal to the ZBA before its public hearing. The recommendation must be posted online and available to the public for inspection at least forty-eight (48) hours before the public hearing. The ZBA website must provide information as to where these materials can be accessed/viewed. If the Applicant causes the Zoning Administrator's Recommendation to be delayed through failure to timely respond to inquiries or changes, the application will be dismissed, or in the alternative, continued for 4 months upon good cause shown.

4.18. Dismissal. If a variation or special use application is dismissed by the ZBA, any fee paid to the City will be forfeited to the City. A dismissed application cannot be refiled unless: (1) the filing comports with these rules, and (2) ZBA staff receives a new filing fee.

4.19. Withdrawal. If a variation or special use application is withdrawn by the Applicant, any fee paid to the City will be forfeited to the City. A withdrawn application may be refiled upon the ZBA staff's receipt of a new filing fee.

Title 5. MEETINGS

- 5.1. Meeting defined.** Pursuant to the Open Meetings Act, a meeting means any gathering of a majority of the Commissioners of the ZBA held for the purpose of discussing public business.
- 5.2. Scheduling.** All meetings of the ZBA are scheduled by the Chair with notices of such meetings sent to the ZBA Commissioners. All special meetings by the ZBA must be scheduled by the Chair in accordance with the provisions of the Open Meetings Act.
- 5.3. Date of Meeting.** Generally, the ZBA's regular meetings are held on the third (3rd) Friday of every month.
- 5.4. Time and duration of Meeting.** All regular ZBA meetings will commence at 9:00am and conclude when all agenda items have been addressed.
- 5.5. Location of Meeting.** Meetings are held in the City Council Chamber on the Second Floor of City Hall at 121 North LaSalle Street (unless otherwise specified).
- 5.6. Agenda.** No matter for public hearing may be placed on the agenda until the application is complete. Pursuant to the Open Meetings Act, agendas must be posted at least 48 hours in advance of the meeting.
- 5.7. Open Meetings Act requirements.** All ZBA meetings must be open to the public and be governed by the Illinois Open Meetings Act.
- 5.8. Quorum.** A quorum consists of three (3) commissioners.
- 5.9. Decision-making.** All matters of business requiring the concurrence of ZBA commissioners are determined by three concurring votes unless otherwise specified by the Zoning Ordinance.
- 5.10. Order of Business.** Generally, the order of business at meetings is as follows:
- (i) Call to Order
 - (ii) Public Hearings
 - (iii) Discussion Items/Updates
 - (iv) Approval of Written Resolutions
 - (v) Adjournment

Title 6. PUBLIC HEARINGS

- 6.1. Public Hearings Defined.** A “public hearing” is a formal proceeding mandated by law for the purpose of taking evidence with a view to formulating a decision on an issue within the jurisdiction of a public body. A public hearing affords the right to appear and give evidence as well as the right to hear and examine witnesses whose testimony is presented by opposing parties. A public hearing is distinguished from a meeting in that all public hearings are meetings, but not all meetings are public hearings.
- 6.2. Timing of Public Hearings.** Public hearings on applications submitted to the ZBA are held at the ZBA’s regular meetings and may be held at the ZBA’s special meetings.
- 6.3. Conduct.** All individuals participating in or attending a meeting or public hearing must conduct themselves in a courteous, civil manner and pursuant to the ZBA’s most recent Rules of Procedure. Attorneys appearing before the ZBA are reminded that the Illinois Rules of Professional Conduct apply to an attorney’s conduct before the ZBA. No applause, cheering, personal attacks, or other distractions will be permitted.
- 6.4. Public Participation.** Any person or any authorized representative of an entity may appear and speak at a hearing on any application provided they follow these ZBA Rules of Procedure. Failure to follow the rules will result in the speaker’s testimony being stricken from the record. There are two categories of participants: Interested Parties (Rule 6.7.3) and Non-Parties (Rule 6.7.6). In order to speak, all persons or entities must: (1) sign in by writing their names and addresses on the appearance sheet provided by the ZBA by the start of the call; (2) attend the entire hearing on the application, (3) identify themselves and be sworn in by the Chair before speaking. Further requirements for each participant category are found below.
- 6.5. Organization.** The order in which applications are heard is at the discretion of the Chair. The Chair may decide to assign cases to call times or organize the meeting into sessions, such as a morning and afternoon session. However, if the meeting is organized into sessions, applications may not be heard prior to their assigned session. The Chair may also pass or recall cases that are on the agenda.
- 6.6. Chair’s Authority.** The Chair may take actions and impose reasonable conditions on the hearing process based on: (a) maintaining an orderly and civil hearing; (b) the complexity of the issues; (c) the special expertise of any witness; (d) whether the testimony reflects a matter of taste or personal opinion, or concerns a disputed issue of fact or law; (e) the standards or factors to be considered in making a decision; and (f) such other factors appropriate for the particular hearing.
- 6.7. Order of Hearing.** The order is generally as follows:
- i. Zoning Administrator Recommendation (for Special Use)
 - ii. Applicant Presentation
 - iii. Interested Party Presentation

- iv. Cross Examination of Applicant
- v. Cross Examination of Interested Party
- vi. Non-Party Comment
- vii. Applicant Response and Closing

The Chair may deviate from this order as the Chair deems appropriate. ZBA commissioners may ask any witness or party any questions at any time during the hearing.

6.7.1. Zoning Administrator Recommendation (for Special Use). The ZBA Chair will enter the recommendation of the Zoning Administrator into the record. DPD Zoning staff must be present to respond to inquiries by the ZBA, Applicant, and Interested Parties (Rule 6.7.3).

6.7.2. Applicant Presentation. The Applicant may make a brief opening statement. Then the Chair will ask the witnesses to swear to their submitted written testimony, after which the Chair will enter the Applicant's submissions into the record. The Applicant will then be open to questioning by the ZBA.

6.7.3. Interested Parties. An "Interested Party" is defined as a property owner within the notice area under the Chicago Zoning Ordinance §17-13-0107-A(2) (property owner owns property within 250ft/100ft/500ft of the subject property for Special Use/Variations/Waste-related Use matters respectively, excluding streets and alleys). An Interested Party wishing to exercise the right to submit testimony, cross-examine witnesses, and/or present evidence must be prepared to demonstrate to the satisfaction of the ZBA that they qualify as an Interested Party. Only Interested Parties have the right to put on a presentation and cross-examine Applicants and Witnesses.

6.7.3.1. Interested Party Registration. Any Interested Parties who seek to present a case before the ZBA or participate in cross examination must register with the ZBA no later than 72 hours prior to the start of the ZBA meeting. Interested Parties must also submit to the ZBA a written statement of support/opposition and any exhibits or presentation materials they intend to enter into evidence no later than 72 hours prior to the start of the ZBA meeting. The Interested Party registration and written statement form is available on the ZBA website and must be submitted to the Secretary. The ZBA must post the Interested Party materials online no later than 48 hours prior to the start of the ZBA meeting. The ZBA requests that parties with similar interests and/or concerns attempt to coordinate their participation in the hearing so that the number of individuals speaking and participating in cross examination is maintained at a reasonable level. Note that for Special Uses, the ZBA cannot consider competition as a valid reason to deny a Special Use application because control or restriction of competition is not a proper or lawful zoning objection.

6.7.3.2. Interested Party Presentation. Interested Parties who complied with rule 6.7.3.1 may make a brief opening statement explaining why the ZBA should approve/deny the application based on the Applicant's meeting all of/failure to

meet one or more of the approval criteria outlined in the Chicago Zoning Ordinance. Then the Chair will ask the witnesses to swear to their submitted written testimony, after which the Chair will enter the Interested Parties submissions into the record. The Applicant will then be open to questioning by the ZBA.

6.7.4. Cross examination of Applicant. Interested Parties have the right, but not the obligation, to cross-examine Applicants and Applicants' witnesses. Cross examination must relate to the criteria to be considered by the ZBA in making its decision. The ZBA may reasonably restrict cross examination based on subject matter or relevant factual issues. If after giving direct testimony the Applicant is not available for cross examination by the ZBA or an Interested Party, the Applicant's testimony will not be considered by the ZBA.

6.7.5. Cross examination of Interested Parties. Applicants have the right, but not the obligation to cross-examine Interested Parties and witnesses offered in favor of/opposition to their application. Cross examination must relate to the factors to be considered by the ZBA in making its decision. The ZBA may reasonably restrict cross examination based on subject matter or relevant factual issues. If after giving direct testimony the Interested Party is not available for cross examination by the ZBA or the Applicant, the Interested Party's testimony will not be considered by the ZBA.

6.7.6. Non-Party Comment. Any person, organization, or other legal entity not eligible or desiring to participate as Interested Parties for an application are allowed to provide a brief statement in support, opposition, or register a neutral position for application. Non-parties do not have cross-examination rights – Non-Parties cannot cross-examine or be cross-examined by the Applicant or Interested Parties. Non-Parties also do not have the right to put on a presentation or enter exhibits and do not have standing for Administrative Review under 65 ILCS 5/11-13-7. The ZBA requests that members of organizations/entities or those with similar interests and/or concerns attempt to coordinate their participation so that the number of individuals speaking is maintained at a reasonable level.

6.7.6.1. Comment Decorum. Individuals providing a brief statement will be asked to do so one at a time and must address their comments to the ZBA. Repetitive comments and comments unrelated to the application are not allowed. Additionally, comments must not contain remarks of a personal nature directed towards any individual or group of individuals. The Chair may reasonably restrict comments to issues relevant to the ZBA's decision or the approval criteria in the matter before it. Those unable to follow the rules of decorum will be asked to return to the gallery.

6.7.6.2. Time Limitations. Especially for matters where there is a significant number of non-party participants, the Chair may impose a time limit on the non-party comment period in the interests of fairness to all other matters on the agenda. Such limitations may be extended by the Chair taking into consideration the

need for additional information and the nature and relevance to the factual issues.

- 6.7.7. Applicant Response and Closing.** The Applicant is afforded the opportunity to provide a response to comments and offer a brief closing statement.
- 6.8. Continuances.** Once an Application is placed on the Agenda, it signals to the ZBA that it is ready for a decision. Continuances are granted at the discretion of the Chair. If a continuance is sought, the request must be made by motion. Such motion may be made in writing at least 3 days before the hearing or in person, and will be heard immediately upon the opening of the session in which the hearing on the application will be heard. The basis for a continuance is “for good cause shown.” Contested motions for a continuance to: (1) receive professional advice, or (2) to review the Applicant’s materials will be denied. The ZBA may, in its discretion, grant a continuance on its own motion at any time.
- 6.8.1. Continuances by Right.** An Applicant must be granted a continuance, if requested, for the following reasons: (a) If the number of ZBA commissioners hearing the application on the scheduled hearing date is fewer than 5, unless Rule 1.9 has been violated; (b) An Applicant, their attorney, or Applicant’s key witness is unavailable to testify on the scheduled hearing date; (c) An Applicant will be granted one continuance if it seeks additional time to negotiate with Interested Parties.
- 6.9. Applicant Appearance.** The Applicant must be present at the public hearing for their application pursuant to Rule 4.1. In the event that the Applicant does not appear, the matter may be dismissed for want of prosecution.
- 6.10. Remote Appearances and other Accommodations.** Unless the hearing is being held remotely, remote appearances by Applicants are not permitted except in extraordinary circumstances such as serious illness, disability, or other personal emergency. Requests for remote appearance or other accommodations should be submitted in writing to the Secretary at least (seven) 7 days before the public hearing or as soon as possible. Permission to appear remotely is given at the Chair’s discretion.
- 6.11. Representation.** Applicants and Interested Parties may appear *pro se* (self-represented) or they may be represented by an attorney who is authorized to practice law in Illinois. Individuals representing an Applicant or Interested Party (with the exception of 6.11.1 and 6.11.1.1) who engage in the unauthorized practice of law may be barred from appearing before the ZBA in the future in any capacity other than as an Applicant, Interested Party, or Non-Party.
- 6.11.1. Legal Entities.** When the Applicant, Operator (Rule 6.11.2), or Interested Party is a legal entity, it may be represented by a principal representative or by an attorney. In either case, a principal representative must be present for the hearing.
- 6.11.1.1. Principal Representative.** “Principal representative” means either: (1) a person listed on Section II.B of the Applicant’s or operator’s economic

disclosure statement (or in the event an economic disclosure statement is not required, a person that would be listed); or (2) an officer or employee of the Applicant, Operator, or Interested Party with decision making authority.

- 6.11.2. Special Use Operator.** If the Applicant for a special use will not be the operator of the special use, the operator as well as the Applicant must be present at the hearing. When the operator is a legal entity, a principal representative of the operator must be present at the hearing. In the event that the operator does not appear, the matter may be dismissed for want of prosecution.
- 6.11.3. Land Trust.** When the Applicant is a land trust, a beneficiary of the trust must be present.
- 6.11.4. Insufficient Knowledge or Authority.** The Chair may pass, postpone, continue, or dismiss any hearing if the Applicant's or Operator's principal representative does not have sufficient knowledge or authority with respect to the application.
- 6.11.5. Power of Attorney.** Appearance of an Applicant, Operator, or Interested Party via power of attorney is not permitted.
- 6.12. Witnesses.** Any person that submits written testimony or a report as part of an Applicant's Public Hearing Packet must be present at the hearing and available for questioning from the ZBA and, if applicable, for cross examination. At the Chair's discretion, a witness may be substituted for another if they have the same personal knowledge and expertise of the matter discussed in the original witness' written testimony or report.
- 6.13. Subpoena Authority.** For special uses and variations, the ZBA may issue subpoenas to compel the attendance of witnesses or production of documents. Service of such subpoenas must be in the same manner of service of summons as in a civil action.
- 6.14. Depositions.** The ZBA may authorize the taking of depositions either upon its own motion or upon good cause shown.
- 6.15. Requests for Additional Information.** The Chair may call for briefs, oral arguments or both at any time during a meeting. If the Chair requests briefs, a briefing schedule must be entered, and the ZBA must set another hearing date. Copies of all briefs and any replies thereto must be served on the ZBA pursuant to Rule 1.8, the Applicant, and all other Interested Parties as entered on the appearance form. In the event of oral argument, the Applicant and all Interested Parties must be notified and will have a chance to be heard.
- 6.16. Evidence.** The ZBA follows the evidentiary rules as outlined in Title 7 of these Rules of Procedure.
- 6.17. Interpreters.** The ZBA does not provide interpreters. Any party needing an interpreter is responsible for providing their own interpreter, at their cost and expense. Interpreters must affirm under oath that they will translate accurately, completely, and impartially all

communications during the proceeding using their best skill and judgment.

6.18. Hearing Transcripts. A transcript of a hearing can be ordered from the court reporter. The cost of such transcript is the responsibility of the person or entity requesting it. (See Rule 8.10).

6.19. Motion to Clarify. In matters where the ZBA imposes conditions alongside its approval of an application and an Applicant believes the ZBA made a mistake of fact or a mistake of law, a motion to clarify may be made. A motion to clarify may be made orally immediately after the ZBA vote on the application but before the ZBA adjourns the meeting.

Title 7. RULES OF EVIDENCE.

- 7.1. Illinois Rules of Evidence.** The Illinois Rules of Evidence are only a guide and the ZBA is not strictly bound by them.
- 7.2. Chair's powers.** The Chair is the judge of all the relevance and materiality of all evidence. The Chair may impose reasonable, fair and equally administered limitations on testimony or other evidence presented by any party, such as time limits and exclusion of irrelevant, immaterial or repetitious testimony in order to reasonably accommodate all parties. The Chair may require a preliminary statement of the nature of the evidence proposed to be elicited from any witness.
- 7.3. Exhibits.** Applicants must submit all exhibits to the ZBA (as part of their Public Hearing Packet) at least two (2) weeks prior to the hearing date. Interested Parties must submit all exhibits to the ZBA at least 72 hours before the hearing date. All exhibits must be pre-marked for identification. Exhibits must be presented at the hearing in an orderly fashion and must be made available for examination by the public during the Public Inspection Period. No party may submit new exhibits during the hearing which were not made available during the Public Inspection Period except in cases of unique circumstances and at the Chair's discretion. After the conclusion of the hearing, a copy of all exhibits accepted into evidence must be given to the Secretary.
- 7.4. Judicial Notice.** The ZBA may take notice of facts that are not subject to reasonable dispute, because they are either: (1) generally known within Chicago; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. The ZBA may take judicial notice of a fact on its own accord or if requested to do so by any party before it. If a party asks the ZBA to take judicial notice of a fact, such party must supply the ZBA with the necessary information.
- 7.5. Relevant Evidence.** "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. All relevant evidence is admissible, however, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the ZBA or public, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Evidence which is not relevant is not admissible.
- 7.6. Lack of Personal Knowledge.** A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony.
- 7.7. Opinion Testimony by Lay Witnesses.** If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to

a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge. However, lay witnesses may rely on facts, studies, public records, reports and other sources widely available to the public so long as such sources are fully cited and the ZBA is provided with a full and annotated copy of the source 72 hours ahead of the hearing — though ultimately the Chair retains final authority over the admissibility and credibility of such evidence.

- 7.8. Testimony by Experts.** If scientific, technical, or other specialized knowledge will help the ZBA understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. Experts must be able to explain how and why a conclusion was reached. Where an expert witness testifies to an opinion based on a new or novel scientific methodology or principle, the proponent of the opinion has the burden of showing the methodology or scientific principle on which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs.
- 7.9. Testimony by Writing.** Testimony submitted in writing pursuant to rules 3.12, 4.13, 6.7.3.1, and 6.7.6 are automatically entered into the record if: (1) the testator adopts it as their testimony, and (2) the Chair does not strike the writing.

Title 8. FINAL DISPOSITIONS

- 8.1. Public Records.** A copy of every rule, variation, order, requirement, decision or determination of the ZBA must be filed immediately with the Office of the Zoning Administrator as a public record.
- 8.2. Final Decisions.** The ZBA's final disposition on any application for appeal, variation, or special use must be in the form of a written decision. Decisions of the ZBA are not considered to be final until signed by the Chair. The Chair must sign a written decision within 120 days of the hearing date.
- 8.3. Mailing.** A copy of the decision of the ZBA must be mailed to the Applicant and all other persons or entities that attended the hearing and entered their appearance along with a valid mailing address on the hearing participant/appearance sheet. If any person or entity (including the Applicant) was represented by counsel, a copy of the decision must be mailed to counsel instead of such person or entity.
- 8.4. Written Decisions.** Written decisions must contain the necessary findings of fact to grant, modify, or deny the application.
- 8.5. Approval - Special Use or Variation.** An application is approved upon receipt of three (3) concurring votes for approval by the Commissioners.
- 8.6. Denial - Special Use or Variation.** An application is denied upon receipt of three (3) concurring votes against approval by the Commissioners.
- 8.7. No Decision - Special Use or Variation.** In situations where an application fails to receive 3 votes for approval and fails to receive 3 votes for denial, an order stating "not approved for failure to receive three concurring votes" will be entered and no findings of fact will be made. In this situation, Rule 2.2 does not apply and the ZBA grants the Applicant the right to file a new application.
- 8.8. Appeals Decisions.** Pursuant to section 17-13-1207 of the Municipal Code of Chicago, the Zoning Board of Appeals is the final decision-making body on Appeals. The Zoning Board of Appeals may affirm or may, upon the concurring vote of 3 members, reverse, wholly or in part, or modify the order, requirement, decision or determination, as in its opinion ought to be done, and to that end will have all the powers of the officer from whom the appeal is taken. The Zoning Board of Appeals must grant to the Zoning Administrator's decision a presumption of correctness, placing the burden of persuasion of error on the appellant.
- 8.9. Administrative Review Law.** All decisions and findings of the ZBA are final administrative determinations and are subject to judicial review pursuant to the Administrative Review Law.
- 8.10. Effect of Administrative Review on Re-Hearing a Case.** An Applicant for a Special Use or Variation that files for Administrative Review will toll its timeline for rehearing under

Rule 2.2 (i.e. the count to 365 days in which a matter can be re-filed will be paused) until the conclusion of the Administrative Review action.

8.11. Transcripts for Administrative Review. In cases filed in the Circuit Court of Cook County pursuant to the Illinois Administrative Review Law, 735 ILCS 5/3-101 et seq. (the “Administrative Review Law”), the plaintiff must: (1) in accordance with Section 17-14-0303-E of the Zoning Ordinance pay for the cost of a certified transcript; and (2) provide the ZBA’s attorney in the City of Chicago Department of Law with a copy of the certified transcript so that the ZBA may prepare the record.

8.12. Scrivener’s Error. Whenever a decision of the ZBA contains an obvious numerical error or a typographical error, the Applicant or any other person or entity that attended the hearing and entered their appearance has the right to petition the ZBA to make corrections. Any such request must be made in writing and filed with the ZBA with copies mailed to all persons and entities (including the Applicant, if applicable) that attended the hearing and entered their appearance along with a valid mailing address on the hearing participant/appearance sheet.