

ZONING BOARD OF APPEALS
OF THE
VILLAGE OF OAK PARK, ILLINOIS

RULES OF PROCEDURE

As amended March 31, 2004



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ARTICLE I

GENERAL PROVISIONS

Section 1.1 These rules are formulated and adopted in conjunction with and as supplementary to, the provisions of applicable Illinois Statutes and The Oak Park Zoning Ordinance as those provisions relate to procedures of the Zoning Board of Appeals.

Section 1.2 Any Board member who has a proprietary interest, or other conflict of interest, in any matter before the Board shall not vote thereon and shall remove himself or herself from any meeting or hearing at which said matter is under consideration. If more than three members of the Board remove themselves from a hearing, the Board shall refer the matter to the President and Board of Trustees for their direction and referral.

Section 1.3 Nothing herein shall be construed to give or grant to the Board the power or authority to amend the Zoning Ordinance, including both the text and the zoning map. Such power and authority is reserved to the President and Board of Trustees of the Village of Oak Park.

Section 1.4 The Office of the Board shall be in Village Hall of the Village of Oak Park.

Section 1.5 The Board shall hold its hearings in the Village Hall in Oak Park, Illinois unless, in a particular case, the Oak Park Zoning Ordinance or the applicable statutes of Illinois require a hearing or hearings of the Board to be held in another location, or unless the Board directs that a particular hearing or hearings to be held elsewhere.

ARTICLE II

OFFICERS AND DUTIES

Section 2.1 The officers of the Board shall be a Chairperson, an Acting Chairperson and a Secretary.

Section 2.2 The Chairperson shall be designated by the President of the Village of Oak Park with the consent of the Board of Trustees. The Board shall elect from among its members an Acting Chairperson to act whenever the Chairperson is absent. The Secretary shall be an employee of the Village who has had experience in zoning matters and record keeping. In the event of death, removal for cause or resignation of any of the above-mentioned officers, a successor shall be named by the respective appointing authority.

Section 2.3 The Chairperson shall supervise the affairs of the Zoning Board of Appeals, preside at all hearings or meetings of the Board, appoint such committees and subcommittees as may be necessary to carry out the purposes of the Board, and administer or authorize the administration of oaths. The Chairperson shall be an ex-officio member of all committees and subcommittees appointed.

Section 2.4 In case of the absence or disability of the Chairperson, the Acting Chairperson shall perform all the duties and exercise all of the powers of the Chairperson.

Section 2.5 The Secretary shall:

- (a) Record or cause to be recorded, the minutes of the Board's proceedings and actions, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact.
- (b) Keep a record of the Board's official actions.
- (c) Act as custodian of the minutes and records of the Board, which shall be maintained in the office of the Board.
- (d) Record the names and addresses of persons appearing before the Board.
- (e) Keep a brief record of the testimony of those appearing before the Board, or cause a verbatim transcript of all hearings to be kept; whenever possible, make a tape recording of public hearings and preserve the tape recording for sixty days from the date that a written resolution is adopted by the Board. If an appeal is taken, the Secretary may make a brief record from the tape recording or cause a verbatim transcript to be made from the tape recording.
- (f) Subject to the instructions of the Chairperson, conduct the correspondence of the Board and provide and have published notices of public hearings as required by law and these rules of procedure.
- (g) Furnish members of the public with blank forms of appeals and applications for variations as are approved by the Board.
- (h) Receive, on behalf of the Board, applications for variations, appeals, zoning amendments and special-use permits, as the case may be, as well as other proposals to be considered by the Board.

It is not the duty of, nor is it proper for, the Secretary or his/her staff to complete any application on behalf of an applicant, but the Secretary shall inform the applicant of the rules and practices of the Board in order that complete presentations be made to the Board.

Section 2.6 In the case of the absence or temporary disability of the Secretary, the person who is the Secretary's designee is authorized to carry out the functions of the Secretary's office until a successor is appointed.

ARTICLE III

MEETINGS

Section 3.1 Regular meetings, designated as public hearings, shall be held on the first Wednesday of each month at 8:00 p.m. or at such other times as the Chairperson or any four (4) members of the Board may direct.

Section 3.2 Regular meetings may be cancelled by the Chairperson when there are no cases pending or when it is apparent that there will not be a quorum, in which event notification of said cancellation shall be given to members of the Board.

Section 3.3 The Board may hold special meetings at the call of the Chairperson or at the written request of four (4) members of the Board, provided at least 48 hours' notice of any such meeting is given in person or by mail to each member.

Section 3.4 All meetings of the Board shall be open to the public, and no official action shall be taken except in public.

Section 3.5 No public hearing shall be held or official action taken unless a quorum is present. A quorum shall consist of four (4) members of the Board.

ARTICLE IV

ORDER OF BUSINESS

Section 4.1 The order of business for public hearings, unless otherwise set by the Chairperson, shall be as follows:

- (a) Roll call and declaration of quorum.
- (b) Call of cases on agenda and hearing of requests for continuances.
- (c) Hearings of applications for variations, amendments to the Zoning Ordinance, special-use permits, and appeals from any order requirement, decision or determination of the Zoning Officer.
- (d) Approval of minutes of previous meeting(s).
- (e) Any other business presented by members of the Board.
- (f) Adjournment.

ARTICLE V

CONTINUANCES

Section 5.1 Continuances of public hearings may be granted at the discretion of the Board and only upon good cause shown. It is recognized that, where notice of a hearing has been published, considerable inconvenience may result to many interested persons in the event continuances are freely granted. Except in extreme circumstances, once a hearing is commenced, reasonable efforts shall be made to take all evidence and close testimony on the night the hearing is set.

ARTICLE VI

FAILURE OF APPELLANT OR APPLICANT TO APPEAR

Section 6.1 Whenever an applicant or his/her representative fails to appear, the Board may choose to dismiss the case for want of prosecution.

Section 6.2 In cases which are dismissed for want of prosecution, the applicant shall be furnished written notice by the Secretary of the Board.

Section 6.3 Dismissal for want of prosecution is not a determination on the merits and shall not of itself bar the filing of a new application.

ARTICLE VII

PROCEDURE FOR APPEALS

Section 7.1 An appeal may be taken to the Board by any person aggrieved or by any officer, department or board of the Village, from any order, requirement, decision or determination of the Zoning Officer.

Section 7.2 An appeal shall be considered only if filed within 45 days after the date of the allegedly erroneous order, requirement, decision or determination of the Zoning Officer. The appeal shall be on such forms and in such number of copies as are prescribed by the Board and shall be filed with the Secretary, notice thereof being simultaneously filed with the Zoning Officer.

Section 7.3 Upon receiving notice of appeal, the Zoning Officer shall promptly transmit to the Secretary of the Board all papers constituting the record upon which he made the decision appealed.

Section 7.4 An appeal may be filed with an accompanying alternate application for a variation.

Section 7.5 Filing of the appeal forms with the Secretary of the Board shall stay all proceedings in furtherance of the action appealed from, provided said application form sets forth grounds which, if proven, would reverse the order from which the appeal is taken. The Zoning Officer may certify to the Board that, by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In case of such certification, proceedings shall not be stayed except by a restraining order granted by the Board or by a court of record after application, notice to the Zoning Officer, and a showing of due cause.

ARTICLE VIII

PROCEDURE FOR VARIATIONS

Section 8.1 Any person having a proprietary interest in property, the proposed use of which is affected by the Zoning Ordinance of the Village of Oak Park, may, in accordance with the provisions of the applicable Illinois statutes and said Zoning Ordinance, file an application for variation. Said completed application shall set forth grounds, which, if proven, would satisfy all standards set forth in the Zoning Ordinance.

Section 8.2 Applications for variations may be filed alone or as an alternative to other zoning relief sought by the applicant.

ARTICLE IX

PROCEDURE FOR SPECIAL-USE PERMITS

Section 9.1 Applications for special-use permits may be filed alone or as an alternative to other zoning relief sought by the applicant.

Section 9.2 Any person having a proprietary interest in the property in question may file an application for a special-use permit with the Zoning Officer, or may file an application for a planned development with the Director of Planning, who shall forward a copy of the same to the President and Board of Trustees without delay. Said

completed application shall set forth grounds which, if proven, would satisfy all standards set forth in the Zoning Ordinance.

Section 9.3 The President and Board of Trustees may refer the application to the Zoning Board of Appeals, sitting as a Zoning Commission, for the purpose of holding a public hearing on the application. The Board may request at any time a written recommendation from the Village Director of Planning and other Village departments.

Section 9.4 The Board shall, in formulating its recommendation to the President and Board of Trustees, consider the Standards for special uses as set forth in Article 2, Section 2.2.3(D), of the Zoning Ordinance, to wit:

- (a) The proposed building or use at the particular location requested is necessary or desirable to provide a service or a facility which is in the interest of the public convenience and will contribute to the general welfare of the neighborhood or community; and
- (b) The proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, utility facilities and other matters affecting the public health, safety and general welfare; and
- (c) The proposed building or use will be designed, arranged and operated so as to permit the development and use of the neighboring property in accordance with the applicable district regulations; and
- (d) The proposed building or use complies with the more specific standards and criteria established for the particular building or use in question by Article 4, Section 4.5 and Article 3, Section 3.9.1 of the Zoning Ordinance, and
- (e) The proposed building or use has been considered in relation to the goals and objectives of the comprehensive Plan of the Village of Oak Park, and
- (f) There shall be reasonable assurance that the proposed building or use will be completed and maintained in a timely manner, if authorized.

The Board shall also consider any additional Standards set forth in Article 4, Section 4.5 of the Zoning Ordinance pertaining to individual special uses, and in the case of a planned development, Article 3, Section 3.9(H).

Section 9.5 Following the hearing, the Board shall transmit to the President and Board of Trustees a written report giving its findings as to compliance of the proposed special use with the applicable standards governing the particular special use, and giving its recommendations for action to be taken by the President and Board of Trustees.

ARTICLE X

PROCEDURE FOR AMENDMENTS TO THE ZONING ORDINANCE

Section 10.1 Applications for amendments to the Zoning Ordinance may be filed alone or as an alternative to other zoning relief sought by the applicant.

Section 10.2 Amendments to the Zoning Ordinance may be proposed in writing by the President and Board of Trustees, by the Plan Commission, by the Zoning Board of Appeals, by the Director of Building and Property Standards, the Zoning Officer, the Director of Planning, the Director of Community Services, or by any person having a proprietary interest in property in the Village.

Section 10.3 An application for an amendment shall be filed with the Zoning Officer who shall forward a copy of same to the President and Board of Trustees without delay. The application shall be filed in conformity with the requirements set forth in the Zoning Ordinance.

Section 10.4 The President and Board of Trustees may refer the application to the Zoning Board of Appeals, sitting as a Zoning Commission, for the purpose of holding a public hearing on the application. The Board may request at any time a written recommendation from the Village Director of Planning or other Village departments.

Section 10.5 The Board shall consider the factors in its consideration of a request for a zoning amendment, which are set forth in Article 2, Section 2.2.2(D) of the Zoning Ordinance.

- (a) The character of the neighborhood;
- (b) The extent to which property values are diminished by the particular zoning restrictions;
- (c) The extent to which the removal of the existing limitations would depreciate the value of other property in the area;
- (d) The suitability of the property for the zoned purposes;
- (e) The existing uses and zoning of nearby property;
- (f) The length of time under the existing zoning that the property has remained unimproved, considered in the context of land development in the area;
- (g) The relative gain to the public as compared to the hardship imposed on the individual property owner;
- (h) The extent to which the ordinance promotes the health, safety, morals or general welfare of the public;
- (i) Where applicable, the goals, objectives, and policies presented in the Comprehensive Plan.

Section 10.6 Following such hearing, the Board shall transmit to the President and Board of Trustees a written report giving its findings and recommendations for action to be taken by the President and Board of Trustees.

ARTICLE XI

INFORMATION TO BE SUPPLIED BY THE APPELLANT OR APPLICANT THE CALENDAR PAYMENT OF FEES

Section 11.1 All appeals and applications for variations shall be made on such forms and in such number of copies as are prescribed by the Board and obtained from the Secretary. The completed forms shall be filed with the Secretary, accompanied by one or more plats showing the location and exterior dimensions of the land in use or to be built upon and of existing and proposed buildings and structures on that land. Additional information that may be requested by the Board to aid it in reaching a decision shall be supplied by the appellant or the applicant. Additional evidence supplied by the applicant received less than seven (7) business days prior to the scheduled hearing date will not be accepted for review by the Board. Other items may be accepted at the discretion of the Board.

Section 11.2 On receipt of the properly completed application forms, the appeal or application for variation shall be numbered and placed on the calendar of the Board by the Secretary. The date for the hearing shall be

set as soon as practicable, consistent with the case load of the Board. Appeals or applications for variation shall be generally heard in the order in which they appear on the calendar, except that a hearing may be advanced for reasonable cause by order of the Chairperson. Additional evidence supplied by the applicant received less than seven (7) business days prior to the scheduled hearing date will not be accepted for review by the Board. Other items may be accepted at the discretion of the Board.

Section 11.3 All requests for zoning relief shall be accompanied by the requisite fee as set for by Village Ordinance.

Section 11.4 The Secretary shall remit all fees collected to the Village Treasurer, to be credited to the general revenue fund of the Village of Oak Park.

ARTICLE XII

NOTICES FOR HEARINGS

Section 12.1 In the case of appeals, not less than 10 days written notice of the time and place of hearing shall be given the appellant, and any other person who has requested notice.

Section 12.2 Notice of public hearings on requests for all variations, special uses or amendments shall be given not more than thirty (30) days nor less than fifteen (15) days before the hearing by publication in a newspaper of general circulation in the Village of Oak Park. Such notice shall include the time and place of the hearing, a general description of the contents of the request to be heard and the address or location of the property to which the request applies. Except in the case of requests for text amendments, the Village shall also post a sign containing this information on the property which is the subject of the application, no less than fifteen days prior to the public hearing. The sign shall be weatherproof, approximately 48-inches by 48-inches, containing one inch minimum type face. Failure to post such sign and or the removal or knocking down (by the Village or others) of the sign after posting, but before the hearing, shall not invalidate, impair or otherwise affect any zoning relief subsequently granted following such public hearing. The sign shall, whenever possible, remain posted until the hearing is completed.

Section 12.3 In the case of requests for a use variation, special use or map amendment, notice of the required public hearing shall also be provided by the Village by regular mail to the owners of record of the property which is the subject of the application (if different from the applicant), and the owners of all property within five hundred feet of the Subject Property as shown on the written list provided by the applicant pursuant to the requirements of 65 Illinois Compiled Statutes 5/11-13-7 of the Illinois Municipal Code (such notice should be sent to the owners as recorded in the office of the Recorder of Deeds of Cook County, as shown on the list prepared by the applicant as required in 65 Illinois Compiled Statutes 5/11-13-7 of the Illinois Municipal Code). The applicant shall be required to submit to the Village a search by a reputable title company or other evidence satisfactory to the Village, indicating the identity of all such owners required to receive notice, and an affidavit certifying that the applicant has complied with the requirements of 65 Illinois Compiled Statutes 5/11-13-7 of the Illinois Municipal Code. Such notice shall contain the information as required in Section 12.2 and shall be mailed not more than 30 nor less than 15 days prior to the date of the public hearing. The notice shall also include the name and address of the applicant. The applicant shall also provide for the service of a separate notice that the

applicant is required to serve under 65 Illinois Compiled Statutes 5/11-13-7 of the Illinois Municipal Code. The applicant shall be required to comply with all conditions of Section 5/11-13-7 of the Illinois Municipal Code.

ARTICLE XIII

RULES OF PROCEDURES FOR PUBLIC HEARINGS

Section 13.1 Open Meetings Act

All hearings shall be subject to the Illinois Open Meetings Act.

Section 13.2 Registration of Public Participants other than the Applicant

Anyone who wishes to testify in a public hearing must sign-in at the public hearing. There will be three Sign-up Sheets available:

1. Those wishing to testify in favor of the proposal. Each individual shall have five minutes to present his/her testimony.
2. Those wishing to testify in opposition of the proposal. Each individual shall have five minutes to present his/her testimony.
3. Those wishing to testify neither in favor or opposition to the proposal. Each individual shall have five minutes to present his/her testimony.

If a person is unable to complete his/her testimony in five minutes, he/she may submit testimony in written form or, if time allows and at the discretion of the Chairperson, may present it orally (in five minute increments) after others have had an opportunity to testify.

Those property owners within the 500 foot notice area and those persons with a special interest beyond that of the general public ("Interested Parties") wishing to cross-examine witnesses must complete and file an appearance with original signatures with the Village Clerk not later than 5:00 PM on the business day preceding the public hearing.

Section 13.3 Limitations on Evidence or Testimony

The Chairperson may impose reasonable limitations on evidence or testimony presented by persons and parties, such as additional time limits and barring repetitious, irrelevant or immaterial testimony. The Board shall not be bound by strict rules of evidence; however, irrelevant, immaterial, or unduly repetitious evidence shall not be admissible. The Chairperson shall rule on all questions related to the admissibility or materiality of evidence which ruling may be overruled by a majority of the Board members present. The Chairperson may impose reasonable conditions on the hearing process based on the following factors:

1. The complexity of the issue;
2. Whether the witness possesses special expertise;
3. Whether the testimony reflects a matter of taste or personal opinion or concerns a disputed issue of fact;

4. The degree to which the witness's testimony relates to the factors to be considered in approving or denying the proposal; and
5. Such other factors appropriate for the hearing.

Section 13.4 Pre-hearing Consultation

The Chairperson and the Board may conduct a pre-hearing consultation (lasting approximately the first fifteen minutes of the public hearing) with the applicant, interested parties, and all others in attendance, to discuss the conduct of the hearing and to determine the length of the proceedings.

Section 13.5 Hearing Conduct

The Chairperson may take such actions as are required to maintain an orderly and civil hearing. Discourtesy or disorderly conduct shall be deemed a breach of order, and such misconduct shall be dealt with as appropriate.

Section 13.6 Proof of Notice

Proof of lawful notice shall be introduced into evidence before the public body.

Section 13.7 Record of Proceedings

A record of proceedings shall be made as directed by the public body. The Applicant shall pay for the attendance of a court reporter at all public hearings and for any transcript, if a transcript is ordered by the Village.

Section 13.8 Applicant Appearance

At a public hearing, an Applicant may appear on his or her own behalf or may be represented by an attorney or authorized agent.

Section 13.9 Village Participation

The Village shall be a party in every proceeding, and need not appear.

Section 13.10 Testimony under Oath

All persons offering testimony at a hearing shall testify under oath. An attorney shall be sworn if he or she offers testimony but not if he or she is questioning witnesses, summarizing testimony of witnesses, or addressing the Board.

Section 13.11 Testimony by Others

In addition to the Applicant, any person may appear and present testimony at the hearing.

Section 13.12 Identification of Participants

People participating shall identify themselves for the record, giving their name and address, either orally or in writing, and indicate if an attorney represents them.

Section 13.13 Questioner Limitation

The examination of a witness shall not be used by the questioner to offer testimony or evidence of the questioner.

Section 13.14 Order of Presentation

The order of presentation of evidence at a public hearing shall generally be as follows, but may be modified as determined appropriate by the Chairperson:

1. Identification of Applicant.
2. Statement of the Secretary regarding the nature of the case, relief sought, and submittal of proof of notice.
3. Testimony and other evidence by the Applicant.
4. Board Member's examination of Applicant's witnesses and other evidence.
5. Cross-examination of Applicant's witnesses and other evidence by Interested Persons who have filed a timely appearance with the Village Clerk.
6. Testimony and other evidence by others in favor of the application.
7. Testimony and other evidence by objectors, if any.
8. Board Member's examination of objectors' witnesses and other evidence.
9. Cross-examination of objectors' witnesses and other evidence by the Applicant.
10. In some cases re-examination may be allowed.
11. Testimony and other evidence by persons who are neither in favor nor opposed to the application.
12. Report by staff, if any.
13. Summary/Closing by Applicant.
14. Summary/Closing by Objectors.
15. Rebuttal/Closing by Applicant.

At any point in the proceedings, the Board Members may call upon witnesses who have not previously testified, such as Village staff and Village consultants. The Board Members may ask questions at any time during the hearing.

Section 13.15 Board Deliberation

At the conclusion of an evidentiary portion of the public hearing, the Board may, among other actions, move to deliberate on the evidence presented, continue or reopen the hearing to a date, time and location certain.

Section 13.16 Recommendations/Decision

A written report or resolution shall be prepared which shall include findings of fact and the Board's recommendation or decision based upon the record.

ARTICLE XIV

DECISIONS

Section 14.1 A final decision on any appeal shall be in the form of a resolution affirming, modifying or revising an order, requirement, decision or determination of the Zoning Officer.

Section 14.2 A final decision of any application for variation shall be in the form of a resolution granting or denying the variation, and shall include the Board's findings of fact. The Board may require such conditions, restrictions or limitations as it deems necessary to be imposed upon any variation granted, but any such conditions, restrictions or limitation shall be made part of the resolution. The resolution may also order the Zoning Officer to take any action necessary for the effectuation of any variation granted.

Section 14.3 Final decisions or recommendations shall be made within a reasonable time after the date of the closing of a public hearing. Any applicant may withdraw his/her application or appeal at any time prior to the decision thereon by the Board.

Section 14.4 The Board shall conduct its deliberations and vote in a public session. The Board may vote on any matter before it at the same meeting at which evidence as to such matter is concluded or, if the Board considers additional time for deliberation necessary, then the Board may defer its vote to a subsequent public session.

Section 14.5 Members of the Board who are absent for one or more hearing sessions, but who affirm that they have either listened to the audio tape or read the transcript of the absented session(s), shall be eligible to vote.

Section 14.6(a) The concurring vote of four (4) members shall be necessary for granting a variation(s), affirming an appeal, or recommending in favor of a special-use permit or zoning amendment. If the motion fails to receive four (4) votes in favor of the application, a motion denying the application shall be formally entered on the record. However, if the votes of the absent but eligible members, when added to the number voting in favor of the applicant or appellant, would total four (4) or more, the matter shall be postponed to the next meeting of the Board. If the motion to approve an application fails to receive four (4) affirmative votes at the next regular meeting, a motion denying the application shall be formally entered on to the record.

Section 14.6(b) For all other matters, the concurring vote of a majority of members present shall be sufficient to pass the matter.

Section 14.7 If a summary record (as opposed to a verbatim transcript) of any hearing is made, such summary record shall be approved as to accuracy by the members of the Board and shall be kept as a part of the public record at the office of the Board.

Section 14.8 As soon as practicable after a written recommendation or written resolution is adopted, notice thereof shall be given to the applicant, and to such other parties of record as have requested such advice.

Section 14.9 No order of the Board permitting the erection or alteration of a building shall be valid for a period longer than 12 months from the date of such order unless an application for building permit for such erection or

alteration is filed within such period and such erection or alteration is commenced and proceeds to completion in accordance with the terms of the permit when issued.

Section 14.10 No order of the Board permitting a use of land or a use of a building or premises shall be valid for a period longer than 12 months from the date of such order unless such use is established within such period; provided however, that where such permitted use is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for such erection or alteration is commenced within such period, and proceeds to completion in accordance with the terms of the permit when issued.

Section 14.11 In the case of variations granted by the Board, one extension of time not exceeding 12 months may be granted by the Board, upon written application made within the initial 12-month period, without further notice or hearing; said right to so extend said time shall not include the right to grant additional relief by expanding the scope of the variation.

ARTICLE XV

RECORDS

Section 15.1 A file of applications and recommendations/resolutions relating to each case shall be kept by the Secretary in the office of the Board as a part of the public records of the Board.

Section 15.2 All records of the Board pertaining to variations, appeals, special-use permits, and zoning amendments shall be public record.

ARTICLE XVI

AMENDMENTS

Section 16.1 These rules of procedure may be amended by the affirmative majority vote of all members of the Board.

Section 16.2 The suspension of any rule of procedure in any specific case may be authorized at any meeting of the Board by a majority vote of those members present, provided such suspension is not in conflict with applicable Illinois statutes or the Zoning Ordinance of the Village of Oak Park.