

# Village of Estral Beach

## CONSTRUCTION BOARD OF APPEALS

### BY-LAWS AND RULES OF PROCEDURES

#### 1 Authority

These By-laws and Rules of Procedures are adopted by the Construction Board of Appeals (CBOA) of the Village of Estral Beach, Monroe County (hereinafter known as the CBOA) pursuant to Public Act 230 of 1972, as amended, the Stille-Derossett-Hale Single State Construction Code Act, and the Public Act 267 of 1976, as amended, the Open Meetings Act. The duties and responsibilities of the CBOA are specified and limited to those identified in the above referenced acts.

#### 2 Officers

- 2.1 Selection: At the first CBOA meeting for the members, and bi-yearly after that if new members were appointed, the CBOA shall vote a chair, vice-chair, and secretary who shall serve for the remainder of the two year term. Vacancies in a seat of the CBOAs shall be filled by an alternate member if possible, or as soon as practical by appointment of a new member by the Village's Council.
- 2.2 Duties: The chair shall preside at all meeting and shall conduct all meetings in accordance with the rules provided herein.  
The vice-chair shall act in the capacity of the chair in the absence of the chair. In the event of a vacancy in the office of chair, the vice chair will assume the office of chair. An alternate member will join, or a new appointed member will join, and the CBOA shall select a successor to the office of vice-chair at the earliest practicable time.  
The Secretary, or a Recording Secretary appointed by the Secretary, shall be responsible for the preparation of minutes, keeping of pertinent public records, delivering communications, reports, and related items of business of the CBOA, issuing notices of public hearings and performing related administrative duties to assure efficient and informed CBOA operations. In the event the Secretary is absent, the Chair or Acting Chair shall appoint a temporary secretary for such meeting.
- 2.3 Tenure: The members shall take office immediately following their appointment. They shall hold their position on the CBOA for a term of two years, or until their successors are appointed to assume office. The members of the CBOA are required to be re-affirmed every two years in compliance with PA 230 of 1972.

### 3 Meetings

- 3.1 Meetings: Meetings shall be scheduled upon receipt of a complete Appeals Application, or as needed to support Village requirements, or to comply with the Public Acts. The business which the CBOA may perform shall be conducted at a public meeting of the CBOA held in compliance with the Construction Code Act and the Open Meetings Act. Public Notice of time, date, and place of the meeting shall be given in a manner as required by the Open Meetings Act, and to support the time limits within the Construction Code Act.
- 3.2 Meeting Notice: Notice of all meeting shall be posted at the Village Hall. The notice shall include the date, time, and place of the meeting. Any changes in the date or time of the meetings shall be posted and noticed in the same manner as originally established. Clerk maintains list of notifications sent, date, and method sent.
- 3.3 Board Absences: In order to maintain the maximum participation if all appointed CBOA members at all scheduled meetings, the following is the attendance guide and Board Member replacement policy for “excused” or “unexcused” absences:
  - 3.3.1 When appointed, each Board Member should state his/her willingness and intention to attend each scheduled meeting of the CBOA.
  - 3.3.2 In the event of unplanned personal matters, business trips, sickness, etc. that prohibit the Board Member from attending the scheduled meeting; the CBOA Chair or staff Liaison to the CBOA should be notified as soon as possible prior to the time of the scheduled meeting of their inability to attend. The Board Member upon this notification will receive an “excused absence” for the involved scheduled meeting.
  - 3.3.3 If any Board Member is absent from three consecutive scheduled meetings without an “excused absence” for any of the three meetings, the Board Member shall be reported in writing to the Village President. The Village President will contact the Board Member in writing to question his/her continued ability or interest in being on the CBOA, giving the member a chance to rectify the attendance issue or submit a resignation
  - 3.3.4 There will be no limit on the number of consecutive “excused absences” for any Board Member. However, if the Board Member is repeatedly absent for at least 50% of the yearly scheduled meetings, that member will also be reported in writing to the Village president. The Village President will contact the Board Member in writing and question the member’s continued ability or interest to be on the CBOA. The Board Member will be considered for an appointment nullification when the absence total six in the calendar year.
  - 3.3.5 The appointment nullification action would be initiated by the Village President and forwarded on to the Village Council for official action.

- 3.4 Special Meetings: Since all meetings are called on an as needed basis, any meetings that are not associated with submittal of an Appeals Application may be called by any two of the three members.
- 3.5 Quorum: In order for the CBOA to conduct business or take any official actions, a quorum consisting of at least two members of the CBOA shall be present. When a quorum is not present, no official action, except for the closing of the meeting may take place. The members of the CBOA may discuss matters of interest, but shall take no action until the next regular or special meeting. All public hearings without a quorum shall be scheduled for the next regular or special meeting and no additional public notice is required provided the date, time and place is announced at the meeting.
- 3.6 Public Hearings: Hearings shall be scheduled and due notice given in accordance with the provision of the Acts and Ordinance cited in Section 1. Public hearings conducted by the CBOA shall be run in an orderly and timely fashion. This shall be accomplished by the following procedure.
- 3.6.1 The Chair of the CBOA shall announce that a public hearing will be conducted on a request.
- 3.6.2 The Chair shall read the public hearing announcement as published in the newspaper and give a brief description of the hearing subject and the public notice procedure.
- 3.6.3 The Chair shall announce the following hearing rules:
- 3.6.3.1 The Chair shall recognize each speaker. When a speaker has the floor, he/she is not to be interrupted unless time has expired. Persons speaking without being recognized shall be out of order.
- 3.6.3.2 Each Speaker shall state their name and address for the record and may present written comments for the record.
- 3.6.3.3 Speakers shall address all comments and questions to the CBOA and comments will be limited to the subject matter of the Public Hearing.
- 3.6.3.4 Unless waived by the CBOA for a specific meeting or a specific speaker, public comments shall be limited to five minutes per speaker. If a group of people wish to be heard on one subject, a spokesperson may be designated who may request that more than five minutes be permitted for collective comments of the group as presented by the speaker.

- 3.6.3.5 The Chair may allow people to speak a second time after everyone has had the opportunity to speak. The Chair may request that repetitive comments be limited or abbreviated in the interest of saving time and allowing others to speak.
  - 3.6.3.6 The Chair may establish additional rules of procedures for particular hearings as he/she determines appropriate.
  - 3.6.3.7 Normal civil discourse and decorum is expected at all times. Applause, shouting, outbursts, demonstrations, name-calling or other provocative speech or behavior may result in removal from the hearing or an adjournment.
- 3.6.4 Once all public comments have been stated, the Chair shall close the hearing. Any voting member of the CBOA may initiate a motion to close the hearing.
- 3.6.5 Public hearings shall be carried out in the following format:
  - 3.6.5.1 The Chair shall open the hearing.
  - 3.6.5.2 The Applicant shall present any comments and explanation of the case. Applicant's presentation shall not be subject to the five minute limitation.
  - 3.6.5.3 The Village and any consultants serving the Village shall present their reports.
  - 3.6.5.4 The hearing will be opened for public comment.
  - 3.6.5.5 The public comments period will be closed.
  - 3.6.5.6 Deliberation and discussion by the CBOA.
  - 3.6.5.7 Disposition of the case by the CBOA.

If more than one public hearing has been scheduled for the meeting, the public hearings will be held in the order in which received. Deliberation and disposition by the CBOA will be held after all public hearings have been closed.

- 3.6.6 Misfeasance, Malfeasance, or Nonfeasance/Conflict of Interest. A member of the CBOA may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

- 3.6.7 Motions: Motions shall be restated by the Chair before a vote is taken. The name of the maker and second of each motion shall be recorded.
- 3.6.8 Voting: An affirmative vote of the majority of the CBOA shall be required for the approval of any requested action or motion placed before the CBOA. Voting shall ordinarily be by voice vote; provided however that a roll call vote shall be required if requested by any CBOA member or directed by the Chairperson. All members of the CBOA including the Chairperson shall vote on all matters, but the Chairperson shall vote last.
- 3.6.9 Order of Business: A written agenda for all regular meetings shall be prepared as followed. The order of business shall be:
- Call to Order.
  - Roll Call
  - Approval of Agenda
  - Approval of Minutes.
  - Site Inspection
  - Public Hearings.
  - Business Session.
  - Action on Pending Case
  - Old Business
  - Other Business of the Appeals Board
  - Public Comments and Communications concerning items not on the agenda.
  - Adjournment.
  - A written agenda for special meeting shall be prepared and followed, however the form as enumerated above shall not be necessary.
- 3.6.10 Rules of Order: All meetings of the CBOA shall be conducted in accordance with generally accepted parliamentary procedure, as adopted by Village Council for all Boards and Commissions within the Village of Estral Beach.
- 3.6.11 Agenda Items: For an item to be considered at a regular CBOA meeting, it must be submitted to the Village Clerk no later than two weeks prior to the next scheduled Appeals Board Meeting.
- 3.6.12 Appellant: The appellant or his authorized agent must appear before the Board as scheduled or the case is dismissed.
- 3.6.13 Conflict of Interest:
- 3.6.13.1 As used here, a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:
- a. A CBOA member issuing, deliberating, voting or reviewing a case concerning himself.

- b. A CBOA member issuing, deliberating, voting or reviewing a case concerning work on land owned by himself.
- c. A CBOA member issuing, deliberating, voting or reviewing a case involving a corporation, company, partnership, or other entity in which he is a part owner, or any other relationship where he may stand to have a financial gain or loss.
- d. A CBOA member issuing, deliberating, voting or reviewing a case which is an action which results in a pecuniary (i.e., financial) benefit to himself.
- e. A CBOA member issuing, deliberating, voting or reviewing a case concerning his spouse, children, step-child, grandchildren, parents, brother, sister, grandparents, parents in-law, grandparents in-law or member of his household.
- f. A CBOA member may consider the possibility of declaring a conflict of interest if his/her home falls within a notification radius used for a Public Hearing. Because the sending of the notice automatically presumes some degree of interest, this fact should be recognized by declaring a conflict, particularly if a financial impact is likely.
- g. A CBOA member who feels, in his/her judgment that his/her job, scope of duties and/or position may be at risk, pending the outcome of the permitting process.
- h. The Planning Commission Representative to the CBOA will abstain from any case where as a member of the Planning Commission he/she made a decision which resulted in the appeal.

3.6.13.2 A commission member shall, when he/she has a conflict of interest do the following immediately, upon the first review of the case and determining a conflict exists:

- a. declare a conflict exists at the beginning of the meeting where the case appears on the agenda, or when the topic brought up so such declaration is recorded in the minutes, and
- b. refrain from participating in the discussion, site inspection or review of the case, except where specific information has been requested by the CBOA, and
- c. refrain from casting a vote on any motion having to do with the case.

- 3.6.13.3 Nothing in the above shall preclude a member from recusing him or herself from the board due to a conflict and participating as a member of the public.

## 4 Minutes

- 4.1 Preparation: CBOA minutes shall be prepared by the Secretary or Recording Secretary of the CBOA. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and recording votes; complete statement of the conditions or recommendations made on any action; and recording of attendance. All communications, action and resolutions shall be attached to the minutes.

## 5 Open Meetings and Freedom of Information Provisions

- 5.1 All meetings of the CBOA shall be open to the public and held in a place available to the general public.
- 5.2 All deliberations and decision of the CBOA shall be made at a meeting open to the public.
- 5.3 A person shall be permitted to address a hearing of the Appeals Board under the rules established in subsection 3.6, and to address the Appeals Board concerning non-hearing matters at the time designated for such comments.
- 5.4 A person shall not be excluded from a meeting of the Appeals Board except for breach of the peace, committed at the meeting.
- 5.5 All records, files, publications, correspondences, and other materials are available to the public for reading, copying, and other purposes as governed by the Freedom of Information Act.

## 6 Annual Review of By-Laws

The CBOA shall review their By-Laws at their first meeting or after re-affirmation every two years.

## 7 Amendments

These rules may be amended by the CBOA by a concurring vote, during any regular meeting, provided that all members have received an advance copy of the proposed amendments at least three (3) days prior to the meeting at which such amendments are to be considered.

Yeas: \_\_\_\_\_

Nays: \_\_\_\_\_

I HEREBY CERTIFY that the above By-laws were adopted the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Secretary – Village of Estral Beach Construction Board of Appeals