

ORDINANCE 2004 - 19

**ORDINANCE AMENDING TITLE 17, ZONING, PROVIDING
RULES OF PROCEDURES
BEFORE THE ZONING BOARD OF APPEALS
OGLE COUNTY, ILLINOIS**

WHEREAS, the Illinois Municipal Code permits the City of Byron to regulate zoning within its City boundaries;

WHEREAS, the Illinois Supreme Court has recently decided that hearings before a Zoning Board of Appeals must provide mechanisms to assure due process rights are met for all those appearing before the Zoning Board of Appeals;

WHEREAS, it is in the best interest of the City Council and the Zoning Board of Appeals to formalize the hearing procedures to be followed before the Zoning Board of Appeals;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF BYRON, OGLE COUNTY, ILLINOIS, as follows

SECTION 1: Title 17, Zoning, Chapter 17.48, Administration and Enforcement, shall be amended by adding Section 17.48.190, Rules of Procedure before Zoning Board of Appeals, which shall read, in its entirety, as follows:

17.48.190 Rules of Procedures before Zoning Board of Appeals.

A. GENERAL PROVISIONS.

1. These rules are supplementary to the provisions of the zoning ordinance of the City of Byron as they relate to procedures of the Zoning Board of Appeals.
2. Any member who has any interest in a matter before the Board shall not vote thereon and shall remove himself from any decision making on said matter.
3. Nothing herein shall be construed to give or grant to the Board the power or authority to alter or change the zoning ordinance including the zoning map, which authority is reserved to the City Council.
4. The City Attorney shall be consulted in cases where the powers of the Board are not clearly defined.
5. In the event that there is no stenographer or court reporter present at the meeting, the meeting shall be postponed.

B. OFFICERS AND DUTIES.

1. The Chairman shall supervise the affairs of the Zoning Board of Appeals. He shall preside at all meetings of the Board, shall appoint such committees and subcommittees as may be necessary to carry out the purposes of the Board, and shall provide for the oath to be administered to all witnesses in cases before the Board. The Chairman shall be an ex-officio member of all committees and sub-committees so appointed.

2. The Acting Chairman, in the absence or disability of the Chairman, shall perform all the duties and exercise all the powers of the Chairman.

3. The Secretary or his/her designee shall record and maintain permanent minutes of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact; shall keep records of its examinations and other official actions; shall summarize accurately the testimony of those appearing before the Board or keep a verbatim transcript of all hearings; shall record the names and addresses of all persons appearing before the Board; shall, subject to the Board and Chairman, conduct the correspondence of the Board and have published in a local newspaper public notices of meetings or hearings as required by law and these rules of procedures, shall file said minutes and records in the office of the Board, which minutes and records shall be a public record; and shall be the custodian of the files of this Board and keep all records.

C. MEETINGS.

1. Regular meetings may be canceled by the Chairman when there are no cases pending. Notification must be given to members, however, not less than 24 hours prior to the time set for such meeting.

2. Special meetings may be called by the Chairman at his discretion, or upon the request of two (2) or more members, provided that 48 hours notice is given each member and all requirements of the Illinois Open Meetings Act are complied with.

3. All meetings shall be open to the public.

4. A Quorum shall consist of four (4) members for any regular or special meeting, and is required for any decision, determination, or official action by the Board.

5. Public hearings may be held by less than a quorum of the Board.

6. Once publication of a meeting agenda has occurred, there shall be no amendments to the agenda.

D. ORDER OF BUSINESS.

1. All meetings of the Board shall proceed as follows:

- a.) Roll Call and declaration of quorum.
- b.) Reading and approval of minutes of previous meeting.
- c.) Communications.
- d.) Reports of Committees.
- e.) Hearing of cases on agenda.
- f.) Unfinished business.
- g.) New Business.
- h.) Adjournment.

2. Except as otherwise prescribed by these rules, the meetings of the Zoning Board of Appeals may be conducted in accordance with Robert's Rules of Order. If any question arises as to procedure, the ruling of the Chair shall be final unless reversed by a vote of at least four (4) members of the Board.

3. Continuances may be granted at the discretion of the Board in any case for good cause shown and to any interested party who has entered his appearance as follows:

- a.) New cases (first time on agenda). Continuances may be granted upon request.
- b.) Continued cases (all cases which have previously appeared on the agenda of this Board constitute continuing cases). Request for further continuance will be considered upon application therefore by the party or his representative at the time the case is called, and upon showing:
 - i.) That he has given reasonable notice in writing to all persons who have filed an appearance in the matter; and,
 - ii.) That he will be unable to proceed with his evidence at this hearing.

4. In the event that an applicant fails to appear:

- a.) The Chairman may entertain a motion from the Board to dismiss the case for want of prosecution. In the absence of a motion by the Board, the chair shall rule.
- b.) In cases which are dismissed for want of prosecution, the applicant will be furnished written notice by the Secretary of the Board.

- c.) The applicant shall have seven (7) days from date of notice of dismissal to apply for reinstatement of the case. In such cases, applicant must file written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chairman for good cause shown, and payment of any additional publication fees.
- d.) In all cases reinstated in above described manner, the case will be docketed, noticed and re-published in the usual manner prescribed for new cases.

E. PROCEDURES ON HEARINGS.

1. At the time of the hearing, the applicant may appear in his own behalf or be represented by counsel or agent.

2. In the event that objectors retain counsel to represent them at a hearing before the Board, then such counsel shall notify the appellant or applicant, or his agent or attorney, that he has been so retained and will be present to object. Such notice shall be delivered to the offices of the Board and to the appellant or applicant, or his agent or attorney, at least five (5) business days prior to the scheduled hearing date. If such notice is not given by counsel retained by the objectors, then the appellant or applicant, or his agent or attorney, shall have the option of postponing the hearing to the next regular meeting of the Board.

3. All witnesses shall testify under oath.

4. Evidence shall be presented in the following order:

a.) State purpose of hearing, acknowledge publication, posting of property and written notifications, acknowledge comments received from the City departments and other public agencies.

b.) Presentation of evidence by the petitioner or designated representative(s).

- Opening statement.
- Testimony by petitioner's witness(es).
- Questioning/cross-examination of each witness by the members of the Board.
- Questioning/cross-examination of each witness by any interested party that has filed an appearance with the Board office no later than five (5) business days prior to the hearing.

Note: This is an opportunity only to question the witness, not to make statements or offer personal testimony.

- Close of petitioner's evidence.
- c.) Presentation of evidence by the objectors or their representative(s).
 - Opening statements.
 - Testimony by objector's witness(es).
 - Questioning/cross-examination of each witness by the members of the Board.
 - Questioning/cross-examination of each witness by any interested party that has filed an appearance with the Board office no later than five (5) business days prior to the hearing.
Note: This is an opportunity only to question the witness, not to make statements or offer personal testimony.
 - Close of petitioner's evidence.
- d.) Presentation of statements by any person attending the hearing.
- e.) Closing statements and rebuttal by the petitioner or designated representative, if desired.
- f.) Closing statements and rebuttal by the objectors or designated representative, if desired.
- g.) Closing of public testimony.
- h.) Findings of fact by the Board.
- i.) Recommendation or decision (where the Board's action constitutes a final administrative decision) by the Board.

5. The Board shall not be bound by the strict rules of evidence, but it may exclude irrelevant, immaterial, incompetent or unduly repetitious testimony or other evidence.

6. All persons in attendant at public hearing shall have an opportunity to be heard. However, any person who also wishes to appear as an "interested party" with rights to question/cross-examine others at the hearing must complete and file an appearance form with the Secretary of the Board at City Hall, 232 W. Second Street, Byron, Illinois, 61010, no later than five (5) business days before the date of the hearings.

7. The Chairman shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board.

F. DECISIONS.

1. Final decisions or recommendations shall be made within a reasonable time from the date of the hearing.
2. The Board shall conduct its findings of fact and vote in public session at the meeting in which evidence testimony is concluded, unless the Board considers additional time for deliberation necessary.
3. A concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decisions or determination of the Zoning Administrator and to grant any variation in the ordinance.
4. All decisions of the Board shall be made at a public meeting by motion made, seconded and the Chairman polling the membership by a roll call vote. The motion which decides the issue shall be in the form of findings of fact and shall state the reasons for the findings by the Board. If conditions are imposed on the granting of a variation, or in the recommending of the granting of a Special Use by the Board, such conditions shall be included in the motion.
5. The transcript of the case shall be acknowledged as to accuracy by the Chairman and the Secretary and shall be a part of the public record of the Board.
6. Notice of the decision of the Board shall be given to the applicant, and other interested parties as soon as possible after the decision is reached.

G. RECORDS.

1. A file of materials and decision relating to each case shall be kept by the Secretary as part of the records of the Board.
2. All records of the Board shall be public record.

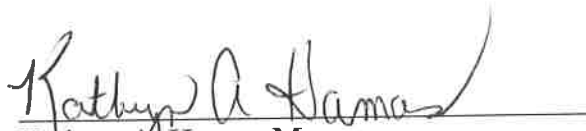
H. AMENDMENT OF RULES.

1. These rules may be amended by an affirmative majority vote of all members of the Board.
2. The proposed amendment must be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

SECTION 2: All Ordinances, or parts thereof, or Resolutions, in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 3: This Ordinance shall be in full force and effect from and after its passage as provided by law.

Passed and Approved this 8th day of November, 2004.


Kathryn A. Hamas, Mayor
City of Byron

ATTEST:


Betsy A. Faudree, City Clerk

Ayes: McGhee, Bennett, Nason, Millard, Zeibert.

Nays: None.

Absent: None.

Abstention: None.