



# *Charter Township of Washington*

## *Zoning Board of Appeals: Rules of Procedure*

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### **Preamble:**

The purpose of the ZBA is to serve the quasi-judicial function of the Ordinance implementation, interpretation, and enforcement. The ZBA provides a means of resolving zoning related disputes and ensuring equal justice outside of the court system.

### **ARTICLE 1 - Authority**

Section 1.1 - These Rules of Procedures are adopted by the Charter Township of Washington, Macomb County, Michigan, Zoning Board of Appeals (hereinafter referred to as the "ZBA"), in accordance with the Michigan Zoning Enabling Act, Act 110 of 2006, as amended and Public Act 267 of 1976, as amended, the Open Meetings Act.

#### Section 1.2 – Members.

The ZBA shall consist of five (5) members appointed by the Washington Township Board of Trustees.

- a. One member shall be a member of the Township Planning Commission
- b. The remaining members shall be selected from the electors of Washington Township.
- c. One (1) member may be a member of the Township Board, though, that member may not serve as chair of the ZBA.
- d. An employee or contractor of the Township may not serve as a member or an employee of the ZBA.

#### Section 1.3 - Alternate Members.

The Township Board may appoint not more than two (2) alternate members to the ZBA.

- a. Alternates shall not be a member of the Township Board or Planning Commission.
  - (1) An alternate shall be called as specified to serve as a member of the ZBA in absence of a regular member if the regular member will be unable to attend one or more meetings.
- b. An alternate member shall also be called to serve as a member for the purpose of reaching a decision on a case in which a member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made.
- c. The alternate, when serving as a member of the ZBA, has the same voting rights as a regular member of the ZBA.
- d. The Planning and Zoning Department, in coordination with the Chair, will contact the alternate to schedule any necessary meeting attendance.

Section 1.4 – Training: Each member is encouraged to attend and complete professional training courses sponsored by the Michigan Township Association, Michigan Association of Planning, MSU Extension or other related Township Board approved organizations that offer training needed to fulfill the duties and responsibilities of the Zoning Board of Appeals Members contingent upon the availability of Township Funds. The following process shall be followed by any member requesting tuition reimbursement for any professional training courses they have attended:

- a. A copy of the course detail including the fee, mileage, lodging, etc. shall be submitted to the Planning and Zoning Director, who will process the request following the Townships policy for tuition reimbursement.
- b. If a ZBA member is requesting payment in advance of the date of the class, sufficient notice is required to ensure the Township can provide payment by the deadline necessary to satisfy to class requirements. Please verify this with the Planning and Zoning Director.

## **ARTICLE 2 - Officers**

Section 2.1 - Selection. At the first regular meeting of each year, the ZBA shall select from its membership a Chair, Vice-Chair and Secretary, who shall serve for a twelve (12) month period and who shall be eligible for re-election. Vacancies in an office of the ZBA shall be filled at the next regular meeting of the ZBA. The membership shall elect one of its members to fill the vacancy until the next annual election.

### Section 2.2 - Duties

- A. Officer duties include the following: A Chair shall preside at all meetings 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. The Secretary shall validate the record of the proceedings (minutes) which will be prepared by the Township Planning and Zoning Department and made available to the ZBA by the Planning and Zoning Department. The ZBA collectively shall perform such duties as contained in the Washington Township Zoning Ordinance, as amended and as required by the Michigan Zoning Enabling Act of 2006, as amended.
- B. Members of the ZBA may conduct site visits as deemed necessary to evaluate the application and supporting material of a petition to be held before the ZBA. Site visits may be conducted individually and at no time shall there be a quorum present at the site, unless the site visit is conducted as part of an open meeting.

### Section 2.3 - Tenure.

The officers shall take office immediately following their election. They shall hold their office for a term of one year, or until their successors are elected and assume office.

### Section 2.4 - Absences, Resignations and Vacancies.

- A. Members of the ZBA shall notify the Township Planning and Zoning Department or ZBA Chair when they intend to be absent from a meeting.
- B. Members of the ZBA may be removed as provided by statute upon written charges and after a public hearing. For purposes of this Section, the ZBA may refer a member to the Township Board for nonfeasance (nonperformance of duty) should such member have more than three (3) absences in any calendar year.
- C. A member may resign from the ZBA by sending a letter of resignation to the Township Supervisor, Township Board and/or the ZBA chair.

### Section 2.5 – Committees

- A. Formation of Committees: The ZBA may establish committees to meet the needs and objectives of the ZBA and shall specify the number of members, terms of appointment, functions, goals and projected time period for such committees.
- B. Appointments: Appointments to ZBA committees or to committee vacancies shall be made by the ZBA Chair and supported by a majority vote of the ZBA.
- C. Chair: The ZBA may appoint a chair for a committee or delegate such selection to committee members.
- D. Public Notice: Notice of the formation of committees, their purpose, membership and meeting schedule shall be posted on the Township Website. All meetings and meeting records shall comply with the Open Meetings Act of the State of Michigan.
- E. Accountability and Records: Committees shall be accountable to the ZBA. Records shall be maintained for all meetings. Reports and recommendations shall be submitted to the ZBA in writing and added to the ZBA Members Comments section of the agenda.

Section 2.6 – Legal Counsel: The Township attorney shall act as legal counsel for the ZBA and shall be present at meetings upon request by the ZBA.

### **ARTICLE 3. - Meetings**

Section 3.1 - Meeting Notices. The Planning and Zoning Department shall post the dates and times of all meetings, agendas and notices on the Washington Township website and published in accordance with the Open Meetings Act. Any changes in the date or time of the regular meeting shall be posted and noticed in the same manner as originally established.

Section 3.2 - Meetings. Regular meetings of the ZBA shall be held on the First Monday of each month, at 6:30 p.m. in the Board Room at the Washington Township Hall or in a suitable place available to the general public if deemed necessary by the Township Planning and Zoning Director.

Section 3.2.1 - No agenda item listed under old or new business shall commence after 10:00 p.m., unless a motion is made, supported and approved by the ZBA to allow such consideration.

Section 3.2.2 - The ZBA may act upon an application without the property owner or a designated representative of the applicant present at the meeting. It shall be the onus of the property owner to attend the meeting or to have a representative present. The property owner or designated representative may request that the ZBA postpone action on an application. The decision to postpone any agenda item shall be at the sole discretion of the ZBA.

Section 3.2.3- The ZBA will only consider applications to be placed on an agenda that have met the criteria and deadlines for an application as outlined in Article 7 Admin and Enforcement of the Zoning Ordinance, Section 7.9.d.4 Zoning Board of Appeals. Failure to submit a complete application and/or any of the required information as listed on the application will result in the case being withdrawn from consideration until such time as the application is complete.

Section 3.2.4- Meeting Information: The Planning and Zoning Department shall provide printed copies and an emailed packet including all of the applications and associated staff reports to the Board no later than one week in advance of the meeting that includes the agenda item(s).

Section 3.2.5- Special Meetings: Special meetings shall be called by the Chair or shall be called at the request of two members of the ZBA. Any request for a special meeting shall follow the publication and notification requirements set herein.

Section 3.3 - Quorum. A majority of the regular members of the ZBA shall comprise a quorum (this means that 3 regular members must be present to constitute a quorum as long as the ZBA is comprised of 5 members. The ZBA shall not conduct any business unless a quorum is present. When a quorum is not present, no official action or debate may take place. A member of the ZBA (Chair or Vice-Chair, if present) shall call the meeting to order and hold roll call. An announcement shall be made to any public attendees / applicants that the meeting must be immediately adjourned due to the absence of a quorum and that all currently scheduled public hearings shall be rescheduled for the next regular meeting. The meeting must then be adjourned without debate.

Section 3.4 - Public Hearings. Hearings shall be scheduled and due notice given in accordance with the provisions of the Acts and Ordinance cited in Section 3.1, 3.2 and 3.3. Public hearings conducted by the ZBA shall be run in an orderly and timely fashion. This shall be accomplished by the following procedure. The chairperson may modify the order of the procedure and increase the time allowed for public comment at his or her discretion.

## OPENING OF PUBLIC HEARING

- A. Acting Chair announces agenda item.
- B. Indicates that all comments must be addressed to the Chair. A time limit of 3 minutes for each public speaker shall be announced.
- C. The Chair shall then:
  1. OPEN THE PUBLIC HEARING (STATE THE TIME)
  2. ASK STAFF TO PRESENT THE REQUEST.
  3. ACCEPT COMMENTS AND EXPLANATIONS BY APPLICANT.
  4. ALLOW FOR ZBA QUESTIONS AND COMMENTS
  5. OPEN PUBLIC HEARING TO PUBLIC COMMENT .
  6. CLOSE PUBLIC HEARING TO PUBLIC COMMENT.
  7. QUESTION/DISCUSSION/DELIBERATION BY THE ZBA.
  8. DISPOSITION BY THE ZBA; APPROVE, APPROVE WITH CONDITION(S), POSTPONE, DENY. ALL STATED WITH FINDINGS OF FACT, CONDITIONS AND RECOMMENDATIONS.

Section 3.5 - Motions. Motions may be made by any ZBA member. The Chair shall note a motion on floor and a second and shall inquire as to any discussion by members on the motion. Upon completion of the discussion, the Chair will direct a vote on the motion.

Section 3.6 - Voting. An affirmative vote of the majority of the ZBA shall be required for the approval of any requested action or motion placed before the ZBA (This means that 3 votes are required for a decision as long as the ZBA consists of 5 members). An alternate ZBA member, who is officially participating in a matter, has the same voting rights as a regular member. Voting shall be by voice vote; provided however, that a roll call vote shall be required if requested by any ZBA member or directed by the Chair. All members of the ZBA, including the Chair, shall have the obligation of voting on all matters before the ZBA except as provided in these rules. A member is excused from voting only if that person has a bona-fide conflict of interest.

Section 3.7 - Order of Business. A written agenda for all regular meetings shall be prepared as follows. The order of business shall be:

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. ADDRESS ANY CONFLICTS OF INTEREST
5. APPROVAL OF AGENDA
6. APPROVAL OF PREVIOUS MEETING MINUTES
7. CORRESPONDENCE
8. OLD BUSINESS
9. NEW BUSINESS
10. PUBLIC COMMENTS (Any person may speak for up to 3 minutes.)
11. ZBA MEMBER COMMENTS
12. ADJOURNMENT

Section 3.8 - Rules of Order. All meetings of the ZBA shall be generally conducted in accordance with commonly accepted parliamentary procedure, as directed by the Chair.

Section 3.9 - Notice of Decision. The Planning and Zoning Department shall issue a written notice containing the decision of the ZBA which will be sent to the applicant.

## **ARTICLE 4 – Minutes**

The Township Planning and Zoning Department shall prepare the ZBA minutes. The minutes will contain a brief synopsis of the meeting, including a complete restatement of all motions and recording of votes; complete statement of the conditions made on any action; and recording of attendance. The official record shall be maintained by the Township Clerk.

## **ARTICLE 5 - Open Meetings and Freedom of Information Provisions**

Section 5.1- All meetings of the ZBA shall be open to the public and held at the Washington Township Hall at 57900 Van Dyke, Washington Twp., MI 48094, or in a suitable place available to the general public if deemed necessary by the Planning and Zoning Director .

Section 5.2 - A person shall not be excluded from a meeting of the ZBA except for breach of the peace committed at the meeting.

Section 5.3 - All records, files, publications, correspondence, and other materials are available to the public for reading, copying, and other purposes as governed by the Freedom of Information Act, as amended.

## **ARTICLE 6 - Conflict of Interest**

ZBA members shall apply the following rules or guidelines in situations that involve or might involve a conflict of interest. If a member is unsure whether a conflict of interest exists, the township attorney should be consulted in advance of the meeting. A conflict of interest arises when:

- a. A relative or other family member is involved in any request for which the ZBA is asked to make a decision;
- b. The ZBA member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant's company, agency or association;
- c. The ZBA member owns or has a financial interest in neighboring property. For purposes of this section, a neighboring property shall include any property falling within the notification radius for the proposed development, as required by the zoning ordinance or other applicable ordinance;
- d. The employer of the ZBA member is a party to the matter that will be considered by the ZBA or has a property interest that could be impacted by the ZBA's decision;
- e. The ZBA member makes public statements concerning the merits of the matter to be decided by the ZBA outside of the hearing on the matter which can reasonably be construed as expressing the ZBA member's preferred dispositional outcome or which reasonably show that the ZBA member has such a firmly held position in advance of the hearing of the matter such that it would appear to the public that the member cannot reach a decision based on facts that will be presented at the fair hearing on the matter.
- f. Circumstances exist such that an appearance of a conflict of interest or an appearance of impropriety would exist, as determined by the ZBA member declaring such conflict and with advice from the township attorney as needed. It is the Township's policy that public confidence in the impartiality and integrity of the ZBA's decision-making process should be maintained.

When circumstances exist such that a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest, abstain from participating in the matter as a member of the ZBA and abstain from voting on the matter. In addition, the member shall leave the board room during deliberations on the item.

This policy must not be used by a member as a method of avoiding difficult or controversial decisions. A member's failure to apply this conflict of interest policy in a reasonable manner constitutes malfeasance in office. In addition, a ZBA member, who makes statements as described in Section 6.e. above, commits malfeasance of office.

#### **ARTICLE 7 - Amendments**

These rules may be amended by the ZBA by a concurring vote pursuant to subsection 3.5, during any regular meeting, provided that all members have received an advanced copy of the proposed amendments at least three (3) days prior to the meeting at which such amendments are to be considered.

**ADOPTION DATE: December 6<sup>th</sup>, 2021**  
**Amended February 7<sup>th</sup>, 2022**  
**Amended March 7<sup>th</sup>, 2022**