

**CHARTER TOWNSHIP OF OSHTEMO ZONING BOARD OF APPEALS  
BY-LAWS AND RULES OF PROCEDURE**

**ARTICLE I: NAME**

Sec. 1 The name of the organization shall be the “Charter Township of Oshtemo Zoning Board of Appeals (ZBA)”.

**ARTICLE II: POWERS AND AUTHORITY**

Sec.1 These by-laws and rules of procedure are adopted by the ZBA pursuant to Article 69 of the Township Zoning Ordinance and the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended.

Sec. 2 The ZBA shall perform such legally permissible duties and shall carry out such processes and procedures as may be required by the Township Zoning Ordinance and the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, including the following:

- A. To hear and decide on applications for variances from the Township Zoning Ordinance.
- B. To hear and decide on applications of interpretation of the Township Zoning Ordinance.
- C. To hear and decide any appeals from a decision or determination made by any administrative official or body charged with enforcement of the Township Zoning Ordinance.
- D. To hear and decide any other matters required by the Township Zoning Ordinance.

**ARTICLE III: MEMBERS**

Sec. 1 MEMBERSHIP COMPOSITION. The ZBA shall consist of five (5) members appointed by the Charter Township of Oshtemo Board of Trustees. One (1) member of the ZBA must be a representative from the Planning Commission and one (1) member may be a representative from the Board of Trustees. The other three (3) members shall be residents from the Charter Township of Oshtemo. In addition, the Board of Trustees may appoint not more than two (2) alternate members.

Sec. 2 COMPENSATION. All appointed members of the ZBA may be compensated at a rate determined by the Township Board of Trustees.

Sec. 3 RESTRICTIONS. An alternate member shall only serve on the ZBA if a regular member is absent from or unable to attend a meeting, or during the abstention of a regular member for reasons of conflict of interest. In the case of a conflict, the alternate member shall serve on the case until a final decision has been made. An employee or contractor of the Township may not serve as a member of the ZBA.

Sec. 4 TERMS OF OFFICE. The terms of office of regular and alternate members shall be three (3) years and until a successor has been appointed. Regular and alternate members may serve two full terms. If fulfilling the term of a vacant seat, a regular or alternate member may complete this term and then serve for an additional two consecutive terms.

A successor must be appointed not more than one (1) month after the expiration of the preceding term. Terms shall be arranged such to provide as nearly as possible for the appointment of an equal number of members each year. Members from the Planning Commission and Township Board of Trustees shall have terms limited to their respective other official term or to a lesser period determined by resolution of the Township Board of Trustees.

Sec. 5 VACANCIES. A vacancy on the ZBA occurring other than through the expiration of the term shall be filled for the unexpired term by the Township Board of Trustees.

Sec. 6 VOTING RIGHTS OF ALTERNATE MEMBERS. Alternate members shall only have the right to vote upon those specific matters in which they have been called upon to serve in the absence of a regular member or called upon to serve due to the abstention of a regular member as a result of a conflict of interest. The alternate member shall then continue to hear those cases for which they were called to serve until final disposition of those cases.

#### **ARTICLE IV: OFFICERS**

Sec. 1 SELECTION. The ZBA shall elect a Chair and a Vice Chair from amongst the regular members at the first regular meeting of the calendar year. The Township Board of Trustees member may not serve as an officer.

Sec. 2 TERMS OF OFFICE. The terms of the Chair and Vice Chair shall be one (1) year in length or until their successors are elected. The Chair and Vice Chair shall be eligible for re-election at the conclusion of their one-year term.

Sec. 3 DUTIES. The Chair shall preside over all meetings of the ZBA and shall perform the duties prescribed by these by-laws. The Vice Chair shall perform the duties of the Chair in the absence or disability of the Chair.

Sec. 4 ABSENCE OF CHAIR AND VICE CHAIR. If both the Chair and Vice Chair are absent from a meeting, the ZBA members shall vote in a chairperson to perform the necessary duties for that meeting. The Chair and/or Vice Chair shall resume normal duties at the next scheduled ZBA meeting.

Sec. 5 VACANCIES. If a vacancy should occur in any office, the ZBA shall elect another person to fill such vacancy in the same manner and under the same conditions outlined above for the remainder of the term of said office.

#### **ARTICLE V: MEETINGS**

Sec. 1 REGULAR MEETING. The ZBA shall meet on the fourth Tuesday of each month, as necessary, at 3:00 pm at the Oshtemo Township Hall. When the regular meeting day falls on a legal holiday,

the ZBA shall select a suitable alternate date. Regular meetings shall be formally established at the last meeting of the ZBA in each calendar year for the following calendar year and notice thereof given pursuant to the Open Meetings Act.

Sec. 2 SPECIAL MEETINGS. Special meetings may be called by the Chair based on a request by an applicant, who will be responsible for all costs associated with the meeting as outlined in an annual fee schedule adopted by the Township Board of Trustees.

The purpose of the meeting shall be stated in the call. The business of the special meeting shall be held in compliance with the Michigan Open Meetings Act. Public notice of the time, date, and place of the special meeting shall be given in the manner required in the Open Meetings Act. A notice of the special meeting shall be sent to ZBA members not less than one (1) week in advance of the meeting, except that any such meeting at which all regular members of the ZBA are present or have waived notice in writing, shall be a legal meeting for all purposes without notice, subject to the Michigan Open Meetings Act.

Sec.3 QUORUM. Three (3) members of the ZBA shall constitute a quorum to conduct business. When a quorum is not present, no official action of the ZBA, except for closing of the meeting, may take place. Due to its quasi-judicial nature, the ZBA shall not engage in discussion on any matter during any time in which a quorum is not present to conduct business. All public hearings without a quorum present shall be rescheduled for the next regular or special meeting and no additional public notice shall be required, provided that the date, time, and a place for the rescheduled public hearing is announced at the meeting.

Sec. 4 ORDER OF BUSINESS. A written agenda for all regular and special meetings shall be prepared and followed. The order of business shall, at a minimum, be:

- Call to Order
- Pledge of Allegiance
- Public Comment on Non-Agenda Items
- Approval of Minutes
- New Business (Public Hearings)
- Any Other Business
- ZBA Member Comments
- Adjournment

Sec.5 HEARINGS. Hearing shall be scheduled and due notice given in accordance with the provisions of the Michigan Open Meetings Act and the Michigan Zoning Enabling Act under which the public hearing is being held. The absence of the applicant or a representative of the applicant at the scheduled public hearing may result in a postponement of proceedings. The absence of the applicant or a representative at the postponed public hearing shall be treated as the voluntary withdrawal of the application by the applicant. Public hearings conducted by the ZBA shall be run in an orderly and timely fashion, which shall be accomplished by adhering to the following public hearing procedure:

- A. **OPENING ANNOUNCEMENT.** The Chair shall give an official opening announcement of the public hearing indicating the basic nature of the request.
- B. **ORDER OF HEARING.** The Chair shall conduct the public hearing in the following order:
- 1) Presentation of the application by Township staff (staff report presentation).
  - 2) Questions from ZBA to Township staff.
  - 3) Comments and explanations by the applicant.
  - 4) Questions from ZBA to applicant.
  - 5) Opening of Public Hearing, comments from public.
  - 6) Closing of Public Hearing to public comments.
  - 7) ZBA deliberation.
  - 8) Consideration of action by the ZBA.
- C. **RULES OF CONDUCT.** The Chair shall announce the rules of conduct of the public hearing as follows:
- 1) All comments shall be addressed to the Chair;
  - 2) Each person shall be given an opportunity to be heard, but second comments will not be permitted until every person has had the opportunity to speak for the first time;
  - 3) In the interest of fairness to the public, statements from the floor should be as concise as possible;
  - 4) The Chair reserves the right to terminate a presentation or ask for a summation if comments become excessively repetitive or stray from the issues at hand;
  - 5) A time limit of four (4) minutes per person shall be placed on public comments;
  - 6) At all times during the public hearing, the Chair expects courtesy from all participants and catcalls, booing, or other outbursts from the public shall not be tolerated; and
  - 7) Decision of the ZBA shall be based upon the appropriate legal standards based upon proper facts and the authority vested in the ZBA by State law and the Township Zoning Ordinance.
- D. **DECLARATON OF CONFLICT OF INTEREST.** Any member must declare a conflict of interest at the beginning of the meeting and shall abstain from participating in the hearing, deliberation, or voting on the item in which there is a conflict. An alternate member shall serve and hear the merits of that specific case until a final determination on the case is made.
- E. **PRESENTATION OF APPLICATION.** The Chair shall recognize Township staff and request a presentation of their staff report. The staff report will outline the applicants request, the specific sections of the Zoning Ordinance related to the request, and the regulations that are impacted by the subject request. At the conclusion of the staff report, the Chair will ask the ZBA members if they have any questions of staff. Once all questions have been answered, the Chair will then ask the applicant to provide a concise summary of the reasons for their request and respond to questions raised by the ZBA.

- F. **OPENING OF HEARING TO FLOOR.** The Chair then opens the public hearing to comments from the floor, reminds the public of the rules of conduct, and indicates that once a person has been recognized by the Chair, they are invited to give their name and address and a concise statement of their concerns and/or input. In the event of a large hearing, the Chair may encourage groups in attendance to be represented by a spokesperson. When individual time limits have been imposed, the Chair reserves the right to limit the amount of time allocated to a spokesperson to avoid filibustering. The Chair may elect during the course of public comments to obtain brief answers from the Township staff or from the applicant if such comments may expedite the hearing. The Chair shall accept for the official record any documentation received by the ZBA regarding the matter at hand and shall read and/or summarize these materials.
- G. **CLOSING OF PUBLIC HEARING.** When all public comments have been received the Chair shall close the public hearing. After the public hearing is closed, no further comments shall be received from the public.
- H. **CONSIDERATION OF MATTER BY ZBA.** Once the public hearing has been closed to public comments, the Chair may recognize any ZBA member to discuss and seek additional information from others concerning the matter at hand. ZBA members shall address the Chair when speaking and shall request additional information through the Chair. When discussion on the matter at hand by ZBA members has been completed, they may take one of the following four actions on the matter:
- 1) Approve the request as presented;
  - 2) Approve the request with conditions;
  - 3) Deny the request as presented; or
  - 4) Defer/adjourn the matter to a future meeting.

Motions for approvals or denials and motions to table or adjourn a matter to a future meeting should include reasons for such actions. Motions for tabling or adjournment should also include the date, time, and place at which the matter will be further considered.

Sec.6 **MOTIONS.** Motions shall include the reasons for the approval, denial, or tabling of an application. The name of the maker and who seconded the motion shall be recorded. Motions to table or adjourn a matter to a future meeting shall also include the date, time, and place at which the matter will be further considered. Motions will be restated by the Chair before a vote is taken. Motions should be considerate of the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty:

- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.

- The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
- The problem is not self-created.

Sec.7 VOTING. An affirmative vote of the majority of the ZBA’s regular membership shall be required for the approval, denial, or tabling of any requested action or motion. Voting shall ordinarily 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 vote on all matters, but the Chair shall vote last in any roll call vote. Any member may be excused from voting only if that person has a bona fide conflict of interest.

Sec.8 NOTICE OF DECISIONS. A written notice, prepared by Township staff or their designee, containing the decision of the ZBA will be sent to the applicant.

Sec.9 MEETING MINUTES. Minutes shall be prepared by the Recorder of Minutes designated by the ZBA. The Recorder of Minutes may be an employee or contractor of the Township, or a member of the ZBA. If a contractor of the Township, the Recorder of Minutes shall be approved by the Township Board. The minutes shall 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.

Upon receipt of a copy of the tentative minutes, each member of the ZBA shall review the minutes for form and content. ZBA action shall be taken indicating approval of same, with all, if any, corrections. All communications, actions, and resolutions shall be kept in the official file. The official minutes shall be maintained by the Township Clerk upon approval by the ZBA.

#### **ARTICLE VI: ABSENCES, REMOVALS, AND RESIGNATIONS**

Sec. 1 ABSENCE. To be excused, ZBA members shall notify the Planning Director, ZBA Chair, or the Township Clerk when they intend to be absent from a meeting. Failure to make this notification will result in an unexcused absence.

Sec. 2 REMOVALS. Members of the ZBA may be removed by a vote of the Township Board of Trustees for nonperformance of duty, misconduct in office, or failure to declare a conflict of interest. For the purposes of this section, nonperformance of duty shall mean two or more consecutive, unexcused absences. Notice of nonperformance of duty, misconduct in office, or failure to declare a conflict of interest shall be brought to the Township Board of Trustees for a hearing by the Township Supervisor.

Sec. 3 RESIGNATION. A member may resign from the ZBA by sending a letter of resignation to the Township Supervisor, Planning Director, or ZBA Chair.

**ARTICLE VII: CONFLICT OF INTEREST**

Sec. 1 ZBA members shall declare a conflict of interest and abstain from participating in hearings, deliberations, or voting on a request when:

- 1) A relative or immediate family member is involved in any request for which the ZBA is asked to make a decision.
- 2) The ZBA member has a 1 percent business, organizational, or financial interest in the property involved in the request or has a 1 percent business or financial interest in the applicants' company, agency, or association.
- 3) The ZBA member lives within 300 feet of the application to be reviewed.
- 4) The ZBA member is the Planning Commission representative and the matter to be heard is from a previous Planning Commission decision in which the member participated.

**ARTICLE VIII: CONFLICTING PROVISIONS**

Sec. 1 In the event of a conflict of provisions between these by-laws and the Township Zoning Ordinance, the provisions of the Zoning Ordinance shall prevail.

**ARTICLE IX: AMENDMENT OF BY-LAWS**

Sec.1 These by-laws may be recommended for amendment at any regular meeting or special meeting of the ZBA by a two-thirds vote. By-law amendments shall be subject to final approval by the Township Board of Trustees.

**THESE BY-LAWS WERE RECOMMENDED BY THE CHARTER TOWNSHIP OF OSHTEMO ZONING BOARD OF APPEALS DURING ITS MEETING HELD ON THE 12<sup>th</sup> DAY OF NOVEMBER 2019.**

**THESE BY-LAWS WERE DULY ADOPTED BY THE CHARTER TOWNSHIP OF OSHTEMO BOARD OF TRUSTEES DURING ITS MEETING HELD ON THE 10<sup>th</sup> DAY OF DECEMBER 2019.**