

**CLEARWATER TOWNSHIP
ZONING BOARD OF APPEALS BY-LAWS**

**As approved by the Zoning Board of Appeals on April 13, 2009 and amended by
same on April 12, 2010, on July 9, 2012, on July 8, 2013**

The following rules of procedure are hereby adopted by the Clearwater Township Zoning Board of Appeals to facilitate the performance of its duties as outlined in the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, MCL 125.3101, et. seq.

SECTION 1: Officers

- A. Selection and Tenure** – At the first regular meeting in January of each year, the ZBA shall select from its membership a chairperson, vice chairperson and secretary. An elected township official shall not serve as chairperson. All officers shall serve a term of one year, or until their successors are selected and assume office, except as noted in C below. All officers shall be eligible for re-election for consecutive terms for the same office.
- B. Chairperson** – The chairperson shall preside at all meetings; prepare an agenda (see Section 2, F), to be distributed to ZBA members one week prior to the meeting; appoint committees and perform such other duties as ordered by the ZBA or township board.
- C. Vice Chairperson** – The vice chairperson shall act in the capacity of the chairperson in his/her absence. In the event the office of chairperson becomes vacant, the vice chairperson shall succeed to this office for the unexpired term and the ZBA shall select a successor to the office of vice chairperson for the unexpired term.
- D. Secretary** – The secretary shall execute documents in the name of the ZBA, perform the duties hereinafter listed and shall perform such other duties as the ZBA may determine.
 - 1. Minutes** – The secretary shall see that minutes are taken at each meeting and that a copy is filed as a permanent record with the township clerk. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and record of votes, conditions or recommendations made on any action, and record of attendance. In addition to the secretary, a recording secretary shall be present during public hearings or other meetings when deemed necessary by the secretary. Proposed minutes shall be available for review by the public not more than eight business days after the meeting; approved minutes, not more than five business days after the meeting at which they were approved.
 - 2. Correspondence** – The secretary shall be responsible for issuing formal written correspondence with other groups or persons, as directed by the ZBA. All communications, petitions, reports or other written materials received by the secretary shall be brought to the attention of the ZBA.

- 3. **Attendance** – The secretary shall be responsible for maintaining an attendance record for each ZBA member and report those records annually to the ZBA for inclusion in the annual report to the township board.
- 4. **Compensation form** – The secretary shall quarterly submit to the township office the appropriate form to provide for the compensation of ZBA members.
- 5. **Notices** – The secretary shall insure that such notices as may be required by the ZBA are issued.
- E. **Planning Commission Representative** – The planning commission representative to the ZBA shall report the actions of the ZBA to the planning commission and update the ZBA on actions by the planning commission that relate to the functions and duties of the ZBA.

SECTION 2: Meetings

- A. **Meetings** – Meetings of the ZBA shall be held quarterly on a date to be published in February each year or at the call of the chairperson. All meetings take place at 7:00 pm in the Clearwater Township Community Center, 5407 River Street, Rapid City MI.
- B. **Notice** – All meetings shall be noticed in accordance with the requirements of the zoning ordinance. Meeting notices shall state the purpose, time and location of meetings and shall be posted in accordance with the Open Meetings Act and the MI Zoning Enabling Act.
- C. **Public Records** – All meeting minutes, records, documents, correspondence and other materials of the ZBA shall be open to public inspection in accordance with the Freedom of Information Act, except as may otherwise be provided by law.
- D. **Quorum** – A majority of the membership of the ZBA shall constitute a quorum for transacting business and taking official action for all matters. The ZBA shall not conduct business unless a majority of the regular members is present.
- E. **Voting** – To pass or deny any variance, appeal or other official action required by the zoning ordinance, an affirmative vote of at least a majority of the total membership of the ZBA is required. Voting shall be by voice vote; a roll call vote shall be required if requested by any ZBA member or directed by the chairperson. All ZBA members, including the chairperson, shall vote on all matters, but the chairperson shall vote last.
- F. **Agenda** – The order of business for meetings shall be as follows:
 - 1. Chairperson calls the meeting to order and announces the subject of the meeting: quarterly, variance, interpretation or administrative decision.
 - 2. Pledge of Allegiance.
 - 3. Roll call: members and township officials.
 - 4. Approval of agenda.
 - 5. Chairperson calls for disclosure by all members of the ZBA of any actual or potential conflicts of interests concerning any item on the agenda.
 - 6. Approval of minutes.

7. Public comment and open discussion for issues not on the agenda.
8. Other matters to be reviewed by the ZBA.
9. Report of planning commission representative and zoning administrator.
10. Next meeting or hearing.
11. Adjournment.

G. Public Hearings – All public hearings held by the ZBA must be held as part of a regular or special meeting of the ZBA. The following rules of procedure shall apply to public hearings held by the ZBA. [All steps of these rules of procedure shall apply to hearings on a request for a dimensional variance. However, in the case of a hearing for an appeal of an administrative decision, or a hearing concerning interpretation of the zoning ordinance or map, not all steps shall apply.]:

1. Chairperson opens public hearing and announces the subject.
2. Pledge of Allegiance.
3. Roll call: members and township officials.
4. Approval of agenda.
5. Chairperson calls for disclosure by all members of the ZBA of any actual or potential conflicts of interests concerning any item on the agenda.
6. Approval of minutes.
7. Chairperson summarizes procedures/rules to be followed during the hearing.
- 8.
9. Applicant presents request/notice of appeal/interpretation to be reviewed.
10. Township zoning administrator presents a summary or analysis of the request.
11. Persons wishing to comment on the request are recognized. [Public comments should be directed to the chairperson and not to the applicant or people in the audience.]
12. Chairperson closes public hearing (or announces the continuation of the public hearing at another specified time and date if additional pertinent information must be obtained).
13. Chairperson reads each standard, pertinent findings of fact are presented and discussed, and a roll call vote is taken on whether or not the requested variance meets the standard.
14. If each standard is determined to be met by a majority vote, the variance is approved; otherwise, the variance is denied.
15. Chairperson signs and dates ZBA decision form..
16. Statement of next meeting or hearing.
17. Adjournment.

To ensure that everyone has the opportunity to speak, the ZBA may elect to limit the time permitted for each person to speak, except that the applicant may be permitted additional time as the chairperson allows. The chairperson may also elect to allow persons to speak only once, until

all persons have had the opportunity to speak, at which time the chairperson, in his/her discretion, may permit additional comments.

SECTION 3: Duties of the Zoning Board of Appeals

- A. Act on applications for variances, appeals, interpretations, or other matters as required by the zoning ordinance and the MI Zoning Enabling Act, Public Act 110 of 2006, as amended, MCL 125.3101, et. seq.
- B. Work with the township board to set an annual budget.
- C. Attend training sessions, conferences or meetings as needed to properly fulfill the duties of a ZBA member, and for which appropriations of funds have been approved by the township board, as needed.
- D. Perform other duties and responsibilities as requested by the township board or as may be specified in another township ordinance.
- E. View the site in question so as to make an informed decision on the matter before the board. Site visits shall be conducted individually; the matter shall not be discussed either with the applicant or among members of the board until the hearing.
- F. The ZBA may be assisted by other professionals or township staff as needed, including the zoning administrator, building inspector, township attorney, township engineer, or other person or agency.

SECTION 4: Absences, Removals, Resignations, Vacancies and Alternates

- A. To be excused, ZBA members shall notify the township supervisor, ZBA chairperson or other ZBA officer when they intend to be absent from a meeting. Failure to make this notification prior to a meeting shall result in an unexcused absence.
- B. Members of the ZBA may be removed from office by the township board, after written charges have been prepared and a hearing conducted, for nonperformance of duty, misconduct in office, or failure to declare a conflict of interest. For purposes of this section, nonperformance of duty shall mean two or more consecutive, unexcused absences. Alternates shall be notified to attend a meeting any time a regular member will be absent for one or more meetings.
- C. A member may resign from the ZBA by sending a letter of resignation to the township supervisor, township board or ZBA chairperson.
- D. Vacancies shall be filled by the township board within one month of resignation or removal of a member of the ZBA. Successors shall serve out the unexpired term of the member being replaced, with the exception of the planning commission representative, whose term shall run consecutively with the term as planning commissioner.
- E. The township board may appoint not more than two alternates to the ZBA. The alternate member may be called to sit as a regular member as provided in the zoning ordinance and the MI Zoning Enabling Act.

SECTION 5: Conflict of Interest

- A. A public official has a unique responsibility to avoid a perception of impropriety. Decisions made by a ZBA must be free of real or perceived bias. If a member participates in or votes on a request for a variance in which he or

she has a conflict of interest, the validity of that decision could be challenged in court.

- B. A ZBA member shall declare a conflict of interest and recuse himself/herself on a request for a variance when:
 - 1. The ZBA member's own property is involved in the request;
 - 2. The property of a relative of the ZBA member is involved in the request;
 - 3. 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;
 - 4. The ZBA member owns or has a financial interest in neighboring property; i.e., any property falling within the notification radius for the public hearing at which the request is being considered;
 - 5. MCL 125.3601(13) requires that a ZBA member recuse himself/herself from deliberating and voting on a request which he/she previously voted on as a member of the planning commission or the township board.
- C. To recuse oneself is more than simply abstaining from voting. The person must also remove himself/herself physically from any discussions, hearings, deliberations and information-gathering regarding the request.
- D. In any case in which a ZBA member recuses himself/herself, he/she may have someone else present to represent his/her interests.
- E. Failure of a ZBA member to recuse himself/herself from a vote on a request in which he/she has a conflict of interest constitutes malfeasance in office, which may result in his/her removal from office by the legislative body [MCL 125.3601(9)].

SECTION 6: Amendments

These by-laws may be amended at any meeting by a vote of a majority of the membership of the ZBA.

These amended by-laws adopted by the Clearwater Zoning Board of Appeals at a regular meeting on July 8, 2013.