

**BYLAWS  
OF THE  
OTSEGO COUNTY  
ZONING BOARD OF APPEALS**

ARTICLE I  
Name/Origin

- Section 1. This Board shall be officially known as the Otsego County Zoning Board of Appeals, hereinafter called the Zoning Board of Appeals or the ZBA.
- Section 2. The ZBA is established pursuant to the Otsego County Zoning Ordinance, adopted October 9, 2001 hereinafter called the Ordinance. Specifically, refer to Article 23 of the Ordinance.

ARTICLE II  
Purpose of the Zoning Board of Appeals

- Section 1. 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 III  
Powers of the ZBA

- Section 1. The ZBA shall perform duties and exercise powers as provided in the Ordinance enacted pursuant to Public Act 110 of 2006, as amended (being the Michigan Zoning Enabling Act, M.C.L. 125.3601 *et seq.*) and in such a way that the objectives of the Ordinance shall be observed, public safety secured, and substantial justice done.
- Section 2. The ZBA will apply the provisions and follow the guidelines found in Article 23, Section 23.5.3 of the Ordinance.
- Section 3. On appeal, the ZBA may affirm, modify, remand or reverse the decision(s) of the Zoning Administrator or Planning Commission, in accordance with the provisions of Public Act 110 of 2006; M.C.L. 125.3601 *et seq.*

- Section 4. An appeal shall be taken before the ZBA within the time frame discussed in Section 23.3 of the Ordinance.
- Section 5. The decision of the ZBA shall be final. A party aggrieved by the decision may appeal to the Circuit Court. (M.C.L. 125.3605)

#### ARTICLE IV Membership

- Section 1. The membership of the ZBA is as detailed in Article 23, Section 23.1 of the Ordinance.
- Section 2. Attendance: Members are expected to attend all ZBA meetings. If any member of the ZBA is absent from three consecutive regularly scheduled meeting, then that member shall be subject to removal as described in Section 3 of this Article.
- Section 3. Removal: A member of the ZBA may be removed by the Otsego County Board of Commissioners for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. (M.C.L. 125.3601 (9))
- Section 4. Filling Vacancies: A vacancy of the ZBA shall be filled for the remainder of the unexpired term in the same manner as the original appointment. (M.C.L. 125.3601 (11))
- Section 5. A member of the ZBA may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties (M.C.L. 125.3601 (8)) at a rate established by the Otsego County Board of Commissioners.
- Section 6. *Ex Parte* contact: Members of the ZBA shall attempt to avoid *Ex Parte* contact about cases where an appeal is before the ZBA. Members of the ZBA have a duty to not pre-judge a case, and to base their decision only on the material and facts presented at public meetings and hearings on the case.

Despite one's best efforts, it is sometimes not possible to avoid *Ex Parte* contact. When that happens, the member should publicly report the content and context of the *Ex Parte* contact in full at the public hearing or meeting on the case prior to the ZBA making a decision on the issue.

ARTICLE V  
Officers

- Section 1 Chairperson's duties:
1. Preside at meetings and hearings.
  2. Sign all documents required as a consequence of ZBA activities.
  3. Represent the ZBA between scheduled meetings.
  4. Collect, request, and/or research additional information, and/or request clarification and/or explanation of information, rules, and/or law, as necessary or as requested by the ZBA in order to adequately understand or address any case or matter before the ZBA. All information gathered shall be sent to all members of the ZBA and the Zoning Administrator.
  5. Additional duties as discussed in Robert's Rules of Order as amended.
- Section 2 Vice-Chairperson's duties:
1. Act for and assume all duties of the chairperson when the chairperson is unable to serve,
  2. Additional duties as discussed in Robert's Rules of Order, as amended.
- Section 3 Secretary's duties:
1. Act for and assume all duties of the vice-chairperson when the vice chairperson is unable to serve.
  2. Review the draft minutes from the recording secretary.
  3. Additional duties as discussed in Robert's Rules of Order, as amended.

ARTICLE VI  
Election of Officers

- Section 1 Officers shall be nominated at the regular April meeting of the ZBA.
- Section 2 Election shall take place immediately following nominations.
- Section 3 Candidates shall require the support of a majority of ZBA members present and voting.
- Section 4 Officers shall serve for a term of one (1) year, unless sooner removed.
- Section 5 Vacancies shall be filled by election at the next regular meeting of the ZBA following the procedures listed above. However, the term of the elected officer shall end the following April.
- Section 6 If the regular April meeting is cancelled, the nomination and election of officers shall take place at the next regular meeting of the ZBA with the term of office ending the following April.

Section 7 In situations wherein election of officers is delayed, the previously elected officer's terms shall be extended pending new elections.

## ARTICLE VII Committees

Section 1 The Chairperson may direct any ZBA member, and/or appoint a committee of ZBA members to collect, research, or request clarification of information, rules, law, etc., or to perform site inspections, etc., as deemed necessary or requested by members of the ZBA, in order to adequately understand and address any matter or case before the ZBA. These directives and/or appointments by the Chairperson may be made outside of a regular meeting of the ZBA as deemed necessary by the Chairperson in order to expeditiously gather information prior to a meeting of the ZBA. No ZBA member(s) may perform these functions or act in this capacity without the consent and knowledge of the Chairperson. All information gathered and/or clarified shall be sent to all members of the ZBA and the Zoning Administrator.

This section is not meant in any way to prevent or discourage any ZBA member from visiting sites for the purpose of performing a site inspection. All members of the ZBA are encouraged to visit each site prior to the ZBA meeting to gain an understanding of the request and site characteristics specific to each case.

## ARTICLE VIII Meetings

Section 1 Meetings of the ZBA will be held in compliance with the Michigan Open Meetings Act (P.A. 267 of 1976).

Section 2 Regular meetings of the ZBA shall be held on the last Tuesday of each month at 6:00 p.m., unless otherwise cancelled.

Section 3 After the meeting has been in session for two (2) hours; the Chairperson shall suspend the ZBA's business and evaluate the remaining items on its agenda. The ZBA shall then decide to either finish the current meeting's agenda, continue the meeting on another day (fix the time at which to adjourn), complete some agenda items and continue the meeting on another day to complete other agenda items, or postpone certain agenda items to the next meeting. The motion to recess shall include the time, date, and location that the ZBA will reconvene. If more than eighteen (18) hours will pass before the reconvened ZBA meeting, public notice shall be given in compliance with P.A. 267 of 1976, as amended, (being the Michigan Open Meetings Act M.C.L. 15.261 et seq.). Upon reconvening, a roll call of attendance shall be the first item of business before

proceeding with the same agenda. The ZBA shall resume with the same meeting agenda, proceeding at the same point where it left off, without the addition of any agenda items.

Section 4 Special meetings may be called as appropriate by the Chairperson, by majority vote, signed petition of a majority of the members of the ZBA, or by the Zoning Administrator.

Section 5 Agenda

- a. Shall be sent to members no later than seven (7) days prior to a regular meeting.
- b. Shall be sent to members no later than three (3) days prior to a special meeting.
- c. Placing items on the Agenda: Agenda items are to be sent to the Zoning Administrator. The deadline to add items to the agenda shall be seven business days prior to the next regularly scheduled ZBA meeting.

Section 6 Order of Business:

- a. Call meeting to order
- b. Pledge of Allegiance
- c. Roll call
- d. Approval of Agenda
- e. Approval of minutes
- f. Public Comment on agenda items other than scheduled hearings
- g. Old Business (may include a public hearing – see Article IX)
- h. New Business (may include a public hearing—see Article IX)
- i. Communications/Staff Report/Update
- j. ZBA Member items
- k. Adjournment

Section 7 The case order indicted on the agenda may be adjusted or suspended by a majority of ZBA members present and voting.

Section 8 The ZBA shall not conduct business unless a majority of the regular members of the ZBA are present. (M.C.L. 125.3601 (12)) A quorum shall consist of four (4) of the seven (7) regular members regardless of any vacancies.

Section 9 Motions addressing issues or cases before the ZBA must be written after all related and relevant information has been presented. Motions shall state the reason(s) for granting or denying a variance, upholding or overturning a decision of the Zoning Administrator or Planning Commission, or detail any interpretation made of the ordinance. Motions should state the applicable sections of the ordinance for which a variance is granted or denied or upon which a decision is based. The presiding officer may not make or second motions.

Section 10 Conflict of Interest:

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/herself from a vote in which the member has a conflict of interest constitutes malfeasance in office. (M.C.L 125.3601 (9))

As used here, a conflict of interest shall at a minimum, but not necessarily be limited to, the following:

a. An immediate family member is involved in any request for which the ZBA is asked to make a decision. "Immediate family member" is defined as the ZBA member's spouse, the member and member's spouse's children (including adopted) and their spouses, step-children and their spouses, grandchildren and their spouses, parents and step-parents, brothers and sisters and their spouses, grandparents, parents in-law, grandparents in-law, or any person residing in the ZBA member's household.

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 including any property immediately adjoining the property involved in the request.

d. The ZBA member's employee or employer is an applicant or has a direct interest in the outcome.

e. There is a reasonable appearance of a conflict of interest, as determined by the ZBA member declaring such conflict.

The ZBA member declaring a conflict of interest shall state the nature of the conflict, abstain from any discussion or votes relative to the matter that is the subject of the conflict, and must leave the room until the pending case/issue is decided.

Section 11

A member of the ZBA who is also a member of the County Planning Commission or the Board of Commissioners shall not participate in a public hearing or vote on the same matter that the member voted on as a member of the County Planning Commission or Board of Commissioners. However, the member may consider and vote on other unrelated matters involving the same property. (M.C.L. 125.3601 (13))

Section 12 The concurring vote of a majority of the regular members of the ZBA is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the ZBA is required to pass under the Ordinance, or to grant a variance in the Ordinance. (M.C.L. 125.3603 (2)) For these specific motions, voting shall be by roll call with each member's vote recorded in the minutes. Members having cause may abstain. Regardless of the number of ZBA members actually present and voting at the meeting, it shall take a minimum of four (4) votes in the affirmative in order to pass the motions specified above in this section.

All other motions need only a simple majority of members present and voting in favor of the motion.

Section 13 The presiding officer must vote if the ZBA members present and voting are equally divided.

Section 14 The ZBA may utilize closed sessions as appropriate to discuss matters before the ZBA. However, a summary of the discussions taking place will be made public immediately thereafter and a summary of the closed session will be included in the minutes.

Section 15 Meeting Minutes: Pursuant to the Open Meetings Act 15.269 (3), proposed minutes shall be available for public inspection not more than eight (8) business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than five (5) business days after the meeting at which the minutes are approved by the public body.

Section 16 The chairperson shall act as parliamentarian during meetings but may be reversed by appropriate motion supported by a majority vote of the ZBA members present and voting.

Section 17 Robert's Rules of Order as amended shall apply to all meeting procedures that are not specifically addressed by State law, the Ordinance, or by these Bylaws.

ARTICLE IX  
Public Hearings

Section 1

- a. The Chairperson will declare a hearing open and state its purpose and case number.
- b. The zoning administrator presents his/her action on the matter and a written copy of the applicant's request.
- c. The applicant – personally or through an agent or lawyer-- may present his/her case, including presenting witnesses. No time limit will be imposed on the applicant.
- d. Members of the public may address the ZBA. All comments are to be made to the Chairperson. The Chairperson may impose a time limit for each speaker.
- e. Correspondence related to this case is read.
- f. Staff comments
- g. ZBA member comments
- h. Anyone may ask the Chairperson questions on presentations or comments given at this hearing. The Chairperson will seek an answer to the question. Answers shall be given to the Chairperson. No discussion, questioning or answering shall take place between any two (2) or more people except between the Chairperson and the individual who has the floor.
- i. Close the hearing. (At this point all public participation ends.)

ARTICLE X  
Amendments

Section 1

These Bylaws may be amended by a two-thirds ( $\frac{2}{3}$ ) majority vote of the ZBA members so long as such amendment does not result in a conflict with state law.

Section 2

Proposal to amend these Bylaws may be made at a regular meeting of the ZBA. However, the final vote on proposed amendments shall be held over until the next regular meeting of the ZBA.

Adopted: May 29, 2002

Revised: xxxxxxxx, 2009 or 2010