

**CHARTER TOWNSHIP OF WEST BLOOMFIELD**

**ORDINANCE NO. CZ15-03**

An Ordinance to amend the Zoning Ordinance, Chapter 26 of the Charter Township of West Bloomfield Code of Ordinances, Section 7.16, Zoning Board of Appeals.

**THE CHARTER TOWNSHIP OF WEST BLOOMFIELD ORDAINS:**

**Section 1 of Ordinance**

Chapter 26, Section 7.16, Board of Appeals is hereby amended to read as follows:

**SECTION 7.16. ZONING BOARD OF APPEALS**

**1. ESTABLISHED; MEMBERSHIP; TERMS; VACANCIES.**

**A. Established.** The Zoning Board of Appeals is hereby established having the powers and duties authorized by the Michigan Zoning Enabling Act, Public Act 110 of 2006, found at MCL 125.3101 et seq., as amended.

**B. Membership; Appointment.** The Board of Appeals shall consist of five (5) regular members and not more than two (2) alternate members appointed by the Township Board.

1. *Qualification.* The regular and alternate members shall be selected from the electors residing within the Township and shall be representative of the population distribution and of a variety of interests. An employee or contractor of the Township shall not be eligible for appointment to the membership of the Zoning Board of Appeals.

2. *Planning Commissioner.* One (1) of the regular members of the Zoning Board of Appeals shall be a member of the Planning Commission. The Zoning Board of Appeals member who is also a member of the Planning Commission cannot participate in a public hearing or vote on the same matter that the member voted on as a member of the Planning Commission. However, the Zoning Board of Appeals member may consider and vote on other unrelated matters involving the same property.

3. *Alternate.* The Township Board may appoint not more than two (2) alternate members for the purpose of serving on a case in which a regular member has abstained for reasons of a conflict of interest; or whenever a regular member is unable to attend one or more meetings. An alternate is called to serve by the chairperson or designee of the chairperson, and shall serve in any case assigned until a final decision is made in the case.

**C. Term.** Each member appointed shall hold office for a term of three (3) years, except when an appointment is made to fill a vacancy, in which case the term of the member shall be

for the duration of the unexpired term. The appointments shall be staggered so that no more than two (2) appointments are made each year. Members shall be eligible for re-appointment to succeeding terms. Upon expiration of a term or in the event of a vacancy, an appointment shall be made not more than one (1) month after the term has expired or the vacancy occurred. Although appointments shall be staggered, each term shall expire on December 31.

**D. Compensation.** The members of the Board shall receive a per diem compensation as determined by Resolution of the Township Board. Travel requests to attend conferences or seminars shall follow standard Township procedures.

**E. Removal from office.** A member of the Zoning Board of Appeals may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing before the Township Board. A member shall disqualify himself or herself from a vote in which the member knows he or she has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member knows he or she has a conflict of interest constitutes malfeasance in office.

## **2. ADOPTION OF BYLAWS.**

The Board shall adopt Bylaws that govern its procedures consistent with the provisions of this section. A copy of the Bylaws shall be placed on file in the Clerk's Office and the Planning Department, and shall be made available upon request.

**A. Officers.** The Board shall elect from its membership a chairperson, vice-chair, secretary, and any other officers the Board deems necessary according to the Bylaws. The chairperson shall preside over the meetings and shall vote. The chairperson shall have all duties and powers authorized by the Michigan Zoning Enabling Act, MCL 125.3101 et seq., as amended. The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses.

**B. Meetings.** Meetings of the Board shall comply with the following:

1. *Schedule of meetings.* Within ten (10) days after the first meeting of the calendar year, a notice setting forth the dates, time, and place of the regular meetings scheduled for the calendar year shall be posted. If there is a change in the schedule of regular meetings of the Board, a notice shall be posted within three (3) days after the meeting at which the schedule was changed stating the changes made.
2. *Rescheduled regular meeting.* For a rescheduled regular meeting, a notice stating the date, time and place of meeting shall be posted at least eighteen (18) hours before the meeting.
3. *Special meetings.* Special meetings of the Board may be called by the chairperson or secretary of the Board. Notice of the special meeting shall be provided to members of the Board at least forty-eight (48) hours before the special meeting is held. A notice

stating the date, time and place of meeting shall be posted at least eighteen (18) hours before the meeting.

4. *Public hearing.* The Zoning Board of Appeals shall conduct a public hearing on requests in accordance with MCL 125. 3103 and Section 7.16.9 of this Chapter.

a. *Notice.* Notice shall be given as required under Section 7.16.9. However, if the request does not involve a specific parcel of property, notice need only be published as provided in Section 7.16.9(A)(1) and given to the person making the request as provided in Section 7.16.9(A)(2)(a).

b. *Appearance.* At the hearing, an applicant may appear personally or by their designated representative or agent. In order for the representative or agent to appear on behalf of the applicant at the hearing without the applicant's appearance, the applicant shall file a written designation of representation with the Zoning Board of Appeals.

**C. Compliance with Open Meetings Act.** All meetings of the Board shall be public and shall adhere to the Open Meetings Act, P.A. 267 of 1976, as amended, MCL 15.261 et seq.

**D. Quorum; conduct of business.** A quorum must be in attendance at the meeting to legally transact the business of the Zoning Board of Appeals. Three (3) regular members of the Board of Appeals represents a quorum.

**E. Record.** The Zoning Board of Appeals shall issue its decision in writing signed by the chairperson. The Board shall keep a record of its proceedings in compliance with the Open Meetings Act, P.A. 267 of 1976, as amended, MCL 15.261, et seq. All public records shall be open to the public in compliance with the Freedom of Information Act, MCL 15.231 et seq. A copy of the record of proceedings shall be filed in the office of the Township Clerk.

**F. Vote.** Each member of the Board shall be entitled to one (1) vote and each member shall vote on all motions brought before the Board at any regular or special meeting at which the Board member is in attendance, unless the member disqualifies himself or herself from a vote in which the member knows he or she has a conflict of interest, or is disqualified from participating pursuant to MCL 125.3601(13). The concurring vote of three (3) members of the Board of Appeals shall be required to reverse an order, decision or determination of an administrative official on appeal; issue an interpretation; grant a required approval; or approve an application for a non-use variance from a zoning ordinance requirement.

**G. Conflict of interest.** Each member of the Board shall be fair, impartial, and objective. No Board member shall vote on a request that the Board member knows he or she has a conflict of interest due to a personal, professional, or financial interest. A conflict arises when the personal, professional or financial interest of the Board member will be affected by the outcome of the request thereby denying the public the fair, impartial, and objective judgment to which it is entitled. The Board member shall disqualify him or herself from a vote in which the member has such a conflict of interest.

**H. No reconsideration.** Decisions of the Zoning Board of Appeals being final, a decision is not subject to reconsideration as provided by Robert's Rules of Procedure.

### **3. JURISDICTION.**

The Board of Appeals, in conformity with the provisions of this Section and the Michigan Zoning Enabling Act, MCL 125.3601 et seq., has the following authority:

- A. Appeals.** To hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official charged with enforcement of the zoning ordinance.
- B. Ordinance and map interpretations.** To hear and decide questions related to the interpretation of the zoning ordinance or zoning maps.
- C. Non-use variances.** To grant non-use variances according to the provisions of this section and the Michigan Zoning Enabling Act, MCL 125.3601, et seq.
- D. Uses permitted by ordinance only with required approval.** To grant approval of the use of property for a specific use that is only permitted by the zoning ordinance after the applicant has demonstrated compliance with all criteria listed and the Zoning Board of Appeals has granted the required approval, such as temporary uses.
- E. Jurisdictional limits.** Nothing contained in this section shall be construed to grant to the Board of Appeals the power or authority to alter or change the zoning ordinance or the zoning map, such power and authority being reserved to the Township Board in the manner provided by law.

### **4. APPEALS.**

The Zoning Board of Appeals may reverse or affirm, wholly or in part, or modify the administrative order, requirement, decision, or determination appealed when a clear error was made, and upon reversing a decision may direct the issuance of a permit.

- A. Standing to file.** An appeal may be filed by a person with a legal interest in the property that is the subject of the administrative order, requirement, decision, or determination; or by an officer, department, board or bureau of the state or local unit of government; or by a person who qualifies under Section 7.16.4(H) as aggrieved by an administrative order, requirement, decision or determination made in the enforcement of the zoning ordinance.
- B. Time to file appeal.** An appeal shall be filed within thirty (30) calendar days of the date the administrative order, requirement, decision or determination is made.
- C. Written application.** A complete application for appeal shall be filed in writing and shall comply with the requirements set forth in Section 7.16.8, Application Requirements.

- D. Standard of review.** The standard of review for an appeal is whether a clear error was made when the administrative order, requirement, decision, or determination appealed from was made. An administrative order, requirement, decision, or determination is clearly erroneous when, on review of the whole record, the Board of Appeals is left with the definite and firm conviction that a mistake has been made.
- E. Transmittal of record.** The body or officer from whom the appeal is taken shall immediately transmit to the Zoning Board of Appeals all of the papers constituting the record upon which the action appealed from was taken.
- F. Stay of proceedings.** An appeal to the Zoning Board of Appeals shall stay all proceedings in furtherance of the action appealed, except that a complete application filed for a variance pursuant to Section 7.16.6, Variances, may be processed and considered by the Zoning Board of Appeals and is not subject to a stay of proceedings. However, if after the application of appeal is filed, the body or officer from whom the appeal is taken certifies to the Zoning Board of Appeals that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, the proceedings may be stayed only by a restraining order issued by the Zoning Board of Appeals or the Circuit Court.
- G. Decision.** The Zoning Board of Appeals shall state the grounds for its determination and issue its decision in writing.
- H. Standing to file an appeal as an aggrieved person.** For an appeal to be filed by a person who does not have a legal interest in the property, the person must demonstrate they are an “aggrieved person”.
1. *Qualification as an aggrieved person.* To qualify as an aggrieved person, the person must initially demonstrate that the administrative order, requirement, decision, or determination will result in a unique harm or injury impacting the use of their property that is not common to other property owners similarly situated.
  2. *Application from aggrieved person.* To accept an application for appeal to the Zoning Board of Appeals from a person who has no legal interest in the subject property, the applicant must allege in the application facts which support that the administrative order, requirement, decision or determination appealed from will result in unique harm or injury not common to other property owners similarly situated.
  3. *Notice.* Written notice of the submittal of an application for appeal from an aggrieved person shall be sent to the owners of record of the subject property. The aggrieved person application shall be placed on the agenda for an administrative hearing by the Zoning Board of Appeals to determine if the person qualifies as an aggrieved person. At least seven (7) days prior to the date of the administrative hearing, written notice of the date, time, and place of the administrative hearing shall be sent to the owners of

record of the subject property, to the appropriate officer/department, and to the person that filed the application as an aggrieved person.

4. *Administrative hearing.* Prior to taking the appeal, the Zoning Board of Appeals shall conduct an administrative hearing to determine whether the applicant is an aggrieved person. The applicant or applicant's representative shall be allowed to address the Board to demonstrate that they are an aggrieved person. In addition, the property owner/owner's representative shall be allowed to address the Board regarding whether the applicant qualifies as an aggrieved person. The administrative hearing shall be held at a public meeting; however, it is not a public hearing on the appeal.
5. *Burden.* The applicant bears the burden of demonstrating that he/she is an aggrieved person by showing that the decision which he/she desires to appeal, poses a threat of unique harm or injury to the applicant not common to other property owners similarly situated.
6. *Decision.* Based on the information presented at the administrative hearing, the Zoning Board of Appeals shall decide whether the applicant qualifies as an aggrieved person. If the Board determines by a vote of three (3) members that the applicant is an aggrieved person, the application for appeal shall be accepted; and the Zoning Board of Appeals shall hold a public hearing on the appeal. The appeal hearing is a public hearing and must be noticed in conformity with Section 7.16.9, Notice Requirements. Both hearings may be held at the same meeting.

**I. Appeals from special land use and planned unit development decisions.** Pursuant to MCL 125.3603, there shall be no appeal to the Zoning Board of Appeals from a decision of the Township Board to grant or to deny special land use approval or Planned Unit Development approval. Appeals of the decision of the Township Board granting or denying such approval are to the Circuit Court as provided in the Michigan Zoning Enabling Act, MCL 125.3101, et seq.

## **5. ORDINANCE AND MAP INTERPRETATIONS.**

**A. Interpretation of the zoning ordinance or zoning maps.** A request for an interpretation of the zoning ordinance or the zoning maps may be made to the Zoning Board of Appeals.

1. *Ordinance Interpretation.* The General Rules of Construction for interpreting statutes in the State of Michigan shall be applied in the interpretation of the zoning ordinances. Once the Zoning Board of Appeals has made an official interpretation of a word, phrase, or requirement of the ordinance, the word, phrase or requirement shall be construed according to the official interpretation of the Zoning Board of Appeals.
2. *Map Interpretation.* The exact location of boundary lines shall be interpreted in accordance with the following standards:
  - a. Boundaries that appear to follow the centerlines of streets, roads, railroad rights-of-way, or alleys shall be construed to follow such centerlines.

- b. Boundaries that appear to follow platted lot lines shall be construed to follow such lot lines.
- c. Boundaries that appear to follow Township limits shall be construed to follow such limits.
- d. Boundaries that appear to follow the centerlines of streams, rivers, or other bodies of water shall be construed to follow such centerlines.
- e. Distances not specified on the official zoning map shall be determined using the scale on the map.

**B. Written application.** An application for an interpretation shall be filed in writing and shall comply with the requirements set forth in Section 7.16.8, Application Requirements.

**C. Decision.** The Zoning Board of Appeals may reverse or affirm, wholly or in part, or modify the interpretation appealed. The Zoning Board of Appeals shall state the grounds for its interpretation, and issue its decision in writing.

## 6. VARIANCES.

**A. Authorization.** The Zoning Board of Appeals shall have the authority to grant dimensional and other non-use variances from the regulations of the Zoning Ordinance so that the spirit of the Zoning Ordinance is observed, public safety secured, and substantial justice done. The Board of Appeals shall hear and decide all applications for variances. The Zoning Board of Appeals is not authorized by the Township to grant use variances.

**B. Written application.** An application for approval shall be filed in writing and shall comply with all requirements set forth in Section 7.16.8, Application Requirements.

**C. Practical difficulty standard.** Non-use variances relate to the modification of required dimensional and other non-use zoning ordinance regulations. The concurring vote of three (3) members of the Board shall be required to approve a non-use variance. No variation from the provisions or requirements of the Zoning Ordinance shall be authorized by the Board unless the Board finds that the applicant has demonstrated all of the following to establish there is a practical difficulty in complying with the ordinance requirement:

1. *There is an unreasonable impact or burden.* Strict compliance with dimensional or other non-use requirements would unreasonably prevent the applicant from using the property for a permitted purpose, or would be unnecessarily burdensome.
2. *It is not self-imposed.* The condition was not created by the applicant or a previous owner of the property or reasonably discoverable by the owner.

3. *Unique features or circumstances.* The property has unique physical features, characteristics, or circumstances which are not due to general neighborhood conditions.
4. *Not a detriment.* Granting the variance will not result in any of the following: 1) a detriment to nearby properties; 2) will not impair an adequate supply of light and air to adjacent properties; 3) will not impair the property values in the surrounding area; and 4) will not cause public health, safety and/or welfare concerns.
5. *Necessary.* The variance is necessary for the preservation and enjoyment of a substantial property right similar to that enjoyed by other properties in the same zoning district and in the vicinity.

**D. Variance pursuant to the Uniform Condemnation Procedures Act.** A non-use variance may be applied for and granted under Section 4 of the Uniform Condemnation Procedures Act found at MCL 213.54, as amended.

**E. Conditions of approval.** In authorizing a variance, the Zoning Board of Appeals may attach conditions related to the land use request to protect natural features and to reduce potential impacts of the variance granted.

**F. Record decision.** Decisions granting a variance may be recorded by the Township with the Oakland County Register of Deeds.

**G. Building permit.** In the event a building permit cannot be issued until an applicant obtains a variance from a zoning ordinance regulation, the approved variance shall take effect upon the issuance of the building permit. If the building permit application is not submitted within one (1) year of the date that the written approval letter notifying the applicant of the Board decision is issued, the variance approval shall not take effect and shall be null and void. Upon request, the Zoning Board of Appeals may extend the time period to obtain the building permit provided that the request for extension is filed within one (1) year of the date that the written approval letter notifying the applicant of the Board decision is issued. If an extension is not requested before the expiration of one (1) year, the applicant shall file a new application in compliance with the requirements of Section 7.16.8.

**H. Development agreements; conditions of approval.** There is no authority for an applicant to request the Zoning Board of Appeals to grant a variance from a requirement of a Development Agreement approved by the Township Board, or any condition required as part of special land use, site plan, or other board or commission approval. The authority of the Zoning Board of Appeals to grant variances is limited to non-use variances from regulations of the zoning ordinance.

## **7. USE PERMITTED BY ORDINANCE WITH REQUIRED APPROVAL.**

**A. Use permitted by ordinance only with required approval.** This provision applies solely to those uses that are only permitted by the zoning ordinance after the applicant has demonstrated compliance with all criteria listed and the Zoning Board of Appeals has granted the required approval, such as temporary uses.

- B. Written application.** An application for approval shall be filed in writing and shall comply with the requirements set forth in Section 7.16.8, Application Requirements.
- C. Approval standard.** For the Zoning Board of Appeals to grant approval, the applicant must demonstrate compliance with all specific criteria listed in the applicable Zoning Ordinance provision.
- D. Decision.** The Zoning Board of Appeals shall state the grounds for its determination and issue its decision in writing.

## **8. APPLICATION REQUIREMENTS.**

- A. Application.** A written application for a request shall be submitted using the Township Planning Department Zoning Board of Appeals Application form and shall include a plan drawn to scale that shows the dimensional and land use elements for the property. If required, additional plans and surveys submitted shall comply with the Township Planning Department submittal requirements. The application shall include other documents and evidence submitted by applicant to support the request. The applicant shall submit the required number of copies of the application, plans, and supporting documents together with all other submittal requirements to enable a thorough review by staff and the Zoning Board of Appeals.
- B. Information required.** An application shall include all information required for the requested relief, shall include support for the request, and shall specify grounds supporting the requested relief.
- C. Complete submission; application fee.** No application shall be accepted unless it is a complete submission in compliance with all provisions of this Section, 7.16.8, and includes the application fee established by Resolution of the Township Board.
- D. Form.** The application shall be made on the form provided by the Township.
- E. Signature.** The application shall include written evidence of all persons with an ownership interest in the property, and a written authorization signed by each person for submission of the application.
- F. Plans required.** All plans and surveys shall meet the submittal requirements described in the Planning Department Zoning Board of Appeals Application form or as otherwise required by the Township Planning Department Director or designee. Nothing shall prevent the Zoning Board of Appeals from requiring additional information in order to render a decision.
- I. New application required.** In the event an application for approval of the Zoning Board of Appeals is withdrawn by the applicant or removed from consideration of the Board due to unreasonable applicant delay, submittal of a new application that complies with the requirements of Section 7.16.8 is required. Any delay in the consideration of an application

which continues for a period of 180 days or more, through no fault of the Board, shall be considered unreasonable applicant delay. If an applicant makes a material change in a request as previously submitted, or there has been a material change in circumstances since the application was filed, or an applicant files a new request, the Zoning Board of Appeals or the Planning Department staff may determine that a new application is required that complies with the requirements of Section 7.16.8. When a new application is filed, payment of a new application fee is also required.

## 9. NOTICE REQUIREMENTS.

A. **Notice.** Notice shall be provided in compliance with the Michigan Zoning Enabling Act, MCL 125.3103.

1. *Publication of public hearing notice.* A notice of the public hearing shall be published at least once, fifteen (15) days prior to the date of the public hearing.
2. *Delivery of notice of public hearing.* When an application applies to a “specific parcel,” the notice of public hearing must be mailed, deposited with the U.S. Post Office, or other public or private delivery service, or delivered personally to the following persons at least fifteen (15) days prior to the date of the public hearing:
  - a. The applicant, property owner, and their representatives of record.
  - b. All persons to whom real property is assessed within 300 feet of the property that is the subject of the application; notice must be provided to all persons within the 300-foot radius without regard to the Township boundary.
  - c. The occupants of all structures within 300 feet of the property that is the subject of the application, such as tenants. Notice does not have to be given to more than one occupant of a structure, except that if a structure contains more than one dwelling unit or spatial area owned or leased by different persons, one occupant of each unit or spatial area shall be given notice. If a single structure contains more than four (4) dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure.
  - d. If the request does not apply to a specific parcel, notice need only be published and given to the person making the request.
  - e. If a matter is postponed to a date certain at the public hearing, a new notice is not required. However, if postponed indefinitely or to a date uncertain, new notice is required. The applicant shall be responsible for the cost of the additional/new notice.
3. *Contents of notice.* A notice shall:

- a. Describe the nature of the request.
- b. Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
- c. State when and where the request will be considered.
- d. Indicate when and where written comments will be received concerning the request.

## **10. DECISION.**

The Zoning Board of Appeals shall:

- A. State grounds.** State the grounds for its decision on the record.
- B. Record.** Ensure the record is complete and includes all evidence presented regarding a request.
- C. Written decision.** Issue its decision in writing, which shall be signed by the chairperson. If there is no chairperson, the written decision shall be signed by another member of the Zoning Board of Appeals.
- D. Bonds.** In order to secure the performance of conditions of approval that require a site improvement such as the improvement of an off-street parking lot, or the installation of a greenbelt, decorative wall, fence, landscape or similar improvement, the Board may require the posting of a cash or surety bond in an amount equal to the cost of complying with the condition.

## **11. APPEAL TO CIRCUIT COURT.**

- A. Decision final; appeal to Circuit Court.** The decision of the Zoning Board of Appeals shall be final. A party aggrieved by the decision may appeal to the Circuit Court for the County of Oakland as provided under MCL 125.3606.
- B. Time to file appeal.** An appeal from a decision of a Zoning Board of Appeals shall be filed within whichever of the following deadlines comes first: thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson; or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of its decision.

### **Section 2 of Ordinance**

Chapter 26, Section 2.1.134, Zoning Exceptions and Variances, is hereby repealed.

