

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

ARTICLE I: NAME

Sec. 1 The name of the organization shall be the "PENTWATER TOWNSHIP ZONING BOARD OF APPEALS (ZBA)."

ARTICLE II: AUTHORITY AND DUTIES

Sec. 1 These by-laws and rules of procedure are adopted by the Pentwater Township Zoning Board of Appeals pursuant to the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended.

Sec 2 The Zoning Board of Appeals shall perform such legally permissible duties and shall carry out such processes and procedures as may be required by the Michigan Zoning Enabling Act or the Pentwater Community Zoning Ordinance including the following:

- A. Act on applications for variances, appeals, interpretations, or other matters as required by the zoning ordinance and Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, MCL 125.3101, et seq.
- B. Attend training sessions, conferences, or meetings as needed to properly fulfill the duties of a Zoning Board of Appeals member, and for which appropriations of funds have been approved by the Township Board of Trustees as needed.
- C. Perform other duties and responsibilities as requested by the Township Board of Trustees or as may be specified in another Township ordinance.
- D. Conduct site visits as deemed necessary to evaluate an application and supporting material. Site visits shall be conducted individually.

ARTICLE III: MEMBERS

Sec.1 **MEMBERSHIP COMPOSITION.** The Pentwater Township Zoning Board of Appeals shall consist of five members appointed by the Pentwater Township Board of Trustees. In addition, the Township Board of Trustees may appoint not more than two (2) alternate members.

Sec. 2 **COMPENSATION.** All appointed and alternate members of the Zoning Board of Appeals may be compensated at a rate to be determined by the Township Board of Trustees.

Sec. 3 **RESTRICTIONS.** An alternate member shall only serve on the ZBA in the absence of a regular member or during the abstention of a regular member for reasons of a conflict of interest. The alternate members shall serve in the case until a final decision, in accordance with the Pentwater Community Zoning Ordinance, has been made.

Sec. 4 TERMS OF OFFICE. The terms of office of regular and alternate members shall be three (3) years arranged such to provide as nearly as possible for the appointment of an equal number of members each year.

Sec. 5 VACANCIES. A vacancy on the ZBA occurring otherwise than through the expiration of the term shall be filled for the unexpired term by appointment of 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. At the first regular meeting in June of each year, the Pentwater Township Zoning Board of Appeals shall elect its Chairperson and Vice Chairperson from amongst the regular members of the ZBA. The ZBA may create and fill such other of its offices as it may determine to be necessary.

Sec. 2 TERMS OF OFFICERS. The terms of the Chairperson and Vice Chairperson shall be one (1) year in length or until their successors are elected, with eligibility for re-election.

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

Sec. 4 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.

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.

Sec. 6 SECRETARY. The Secretary shall be responsible for keeping a written record in the English language of the resolutions, transactions, findings, and determinations of the ZBA, which record shall be a public record subject to the provisions of the Michigan Freedom of Information Act, Public Act 442 of 1976, as amended. The Secretary shall also perform other duties as prescribed by these by-laws, State and local laws, and the parliamentary authority adopted by the ZBA.

ARTICLE V: MEETINGS

- Sec. 1 **REGULAR MEETING.** In addition to the annual meeting described in Sec. 2 below, the Pentwater Township Zoning Board of Appeals shall meet as necessary, at the call of the Chairperson at 7:00 P.M. A maximum of three (3) Old Business and/or New Business items shall be placed on the agenda for any meeting, unless approved by the Chairperson in advance of the meeting.
- Sec. 2 **ANNUAL MEETING.** The regular meeting of the ZBA in June of each year shall be known as the Annual Meeting and shall be for the purpose of electing offices, receiving annual reports of offices and committees, and for any other business that may arise.
- Sec. 3 **SPECIAL MEETINGS.** Special meetings may be called by the Chairperson. The purpose of the meeting shall be stated in the call. The business which the ZBA may perform shall be conducted at a public meeting of the ZBA 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, and the Zoning Administrator shall send written notice of a special meeting to ZBA members not less than two (2) weeks 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. Applicants to the Zoning Board of Appeals may request a special meeting, of which all costs shall be paid by the applicant; if there is more than one applicant, the costs shall be shared equally between all applicants.
- Sec. 4 **QUORUM.** Three (3) members of the ZBA shall constitute a quorum of the ZBA for the conduct of business, except that it shall be necessary to have a minimum of five (5) members present and voting in the affirmative to approve land use variances permitted in the Zoning Ordinance. 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 Zoning Board of Appeals shall not engage in discussion on any matter during any time in which a quorum of the ZBA is not present for the conduct of business. All public hearings without a quorum present shall be rescheduled. 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. 5 **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
- Roll Call
- Approval of Agenda
- Approval of Minutes
- Old Business
- New Business
- Public Comment
- Adjournment

Sec. 6 HEARINGS. Hearings 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 applicant or representative of the applicant must be present at the scheduled public hearing for an appeal or the complaint, or the issue will be postponed by the ZBA. 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 Chairperson shall give an official opening announcement of the public hearing indicating the basic nature of the request and citing how public notice was provided of the hearing.

B. ANNOUNCEMENT OF ORDER OF HEARING. The Chairperson shall explain the order of the public hearing as being as follows:

- (1) Comments and explanations by the Zoning Administrator
- (2) Comments and explanations by the Applicant
- (3) Questions by the ZBA
- (4) Responses by the applicant and/or Zoning Administrator
- (5) Opening of hearing for public comments
- (6) Closing of hearing to public comments
- (7) Consideration of action by ZBA.

C. RULES OF CONDUCT. The Chairperson shall then 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 Chairperson 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) For all hearings, a time limit of three (3) minutes per person shall be placed on public comments;
- (6) At all times during the public hearing, the Chair expects courtesy from all participants. Catcalls, booing, or other outbursts from the public shall not be tolerated; and
- (7) Decision of the ZBA shall be based upon accurate fact and the authority vested in the ZBA by State statute and Pentwater Community Zoning Ordinance.

- D. PRESENTATION OF PROPOSAL. The Chairperson shall recognize the Zoning Administrator and applicant for presentations. The Zoning Administrator presents a report outlining the request and the specific sections and requirements of the Zoning Ordinance that are impacted by the subject request. The applicant then presents a concise review of the reasons for the appeal and responds to questions raised by the ZBA.
- E. OPENING OF HEARING TO FLOOR. The Chairperson 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 shall stand and give their name and address and a concise statement of their questions and/or concerns. In the event of a large hearing, the Chairperson may encourage groups in attendance to be represented by a spokesperson. When individual time limits have been imposed, the Chairperson reserves the right to limit the amount of time allocated to a spokesperson to avoid filibustering. The Chairperson may elect during the course of public comments to obtain clarification of facts from the Zoning Administrator or from the applicant if such comments may expedite the hearing. The Chairperson shall receive for the official record any letter and/or petitions received by the ZBA regarding the matter at hand and shall read and/or summarize these materials.
- F. CLOSING OF PUBLIC HEARING. When all public comments have been received, the Chairperson shall close the public hearing.
- G. CONSIDERATION OF MATTER BY ZBA. Once the public hearing has been closed to public comments, the Chairperson may recognize any ZBA member to discuss and seek additional information from others concerning the matter at hand. ZBA members shall address the Chairperson when speaking and shall request additional information through the Chairperson. When discussion and fact finding on the matter at hand by ZBA members has been completed, the ZBA 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) Postpone the matter to a future meeting.

Sec. 7 MOTIONS. Motions for approvals or denials and motions to postpone a matter to a future meeting should include reasons for such actions. Motions for postponement also include the date, time, and place at which the matter will be further considered. Motions shall be restated by the Chairperson before a vote is taken. The name of the maker and those who seconded the motions shall be recorded. Motions should be considerate of the following:

- A. The ZBA shall determine whether the respective requirements of the Pentwater Community Zoning Ordinance, Section 18.08 have been met by the applicant and;
- B. The ZBA shall determine that the variance is the minimum variance necessary that will make possible the reasonable use of land, building, or structure.

Sec. 8 VOTING. With one exception, an affirmative vote of three (3) of the ZBA's regular membership shall be required for the approval of any requested action or motion placed before the ZBA, regardless of the number of members present. Four (4) members voting in the affirmative shall be required to approve a variance of any land use permitted under the Pentwater Community Zoning Ordinance, regardless of the number of members present.

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 Chairperson. All members of the ZBA including the Chairperson shall vote on all matters, but the Chairperson shall vote last.

Sec. 9 NOTICE OF DECISIONS. A written notice containing the decision of the Zoning Board of Appeals shall be sent by the Zoning Administrator to the originators of a request.

Sec. 10 MEETING MINUTES AND NOTICES OF PUBLIC HEARINGS. ZBA minutes shall be prepared by the Office of the Zoning Administrator. 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 or recommendations made on any action; and recording of attendance. All communications, actions, and resolutions shall be attached to the minutes. The official records shall be deposited with the Township Clerk upon approval by the ZBA. The Zoning Administrator shall also be responsible for the preparation and dissemination of the public hearing notices pursuant to the Michigan Open Meetings Act, Public Act 267 of 1976, as amended; the Michigan Zoning Enabling Act, Public Act 110 of 2006 as amended; and, the Pentwater Community Zoning Ordinance.

ARTICLE VI: ABSENCES, REMOVALS, RESIGNATIONS, VACANCIES AND ALTERNATES

Sec. 1 To be excused, Zoning Board of Appeals members shall notify the Township Clerk or Zoning Board of Appeals Chairperson or Zoning Administrator when they intend to be absent from a meeting. Failure to make this notification prior to a meeting shall result in an unexcused absence.

Sec. 2 Members of the Zoning Board of Appeals may be removed by the Township Board of Trustees, after written charges have been prepared and a hearing conducted by the Township Board of Trustees, for nonperformance of duty, misconduct in office or upon 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.

Sec. 3 A member may resign from the Zoning Board of Appeals by sending a letter of resignation to the Township Supervisor, Township Board of Trustees or Zoning Board of Appeals Chairperson.

Sec. 4 Vacancies shall be filled by the Township Board of Trustees as soon as possible after a resignation or removal of a member of the Zoning Board of Appeals. 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. The Zoning Board of Appeals, in its recommendation to the Township Board of Trustees, should give priority to elevate Alternates to become members to fill such vacancies.

Sec. 5 The Township Board of Trustees may appoint not more than two alternates to the Zoning Board of Appeals. The alternate member may be called to sit as a regular member as provided in the zoning ordinance and the Michigan Zoning Enabling Act.

ARTICLE VII: CONFLICT OF INTEREST

Zoning Board of Appeals members shall declare a conflict of interest and abstain from participating in hearings, deliberations or voting on a request when:

- A. A relative or other family member is involved in any request for which the Zoning Board of Appeals is asked to make a decision;
- B. The Zoning Board of Appeals member has a business, organizational 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. There is a reasonable appearance of a conflict of interest, as determined by the Zoning Board of Appeals member declaring such conflict.

ARTICLE VIII: OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

All meetings of the ZBA shall be open to the public and shall be held in a place available to the general public. All deliberations and decisions of the ZBA shall be made at a meeting open to the public. A person shall be permitted to address a hearing of the ZBA under the rules established by these by-laws. A person shall not be excluded from a meeting of the ZBA except for breach of the peace committed at a meeting. 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.

ARTICLE IX: CONTRACTS

The ZBA may utilize the contractual services of planners, engineers, architects and other consultants for such services as it may require, subject to Board of Trustees approval as to expenditures.

ARTICLE X: EXPENDITURES

All expenditures of the ZBA shall be within the amount appropriated for ZBA purposes by Board of Trustees. The Board of Trustees shall provide the funds, equipment and accommodations necessary for the ZBA's work.

ARTICLE XI: PARLIAMENTARY AUTHORITY

The rules contained in the current edition of ROBERTS RULES OF ORDER NEWLY REVISED shall govern the Zoning Board of Appeals in all cases to which they are applicable and in which they are not inconsistent with these by-laws and any special rules of order the ZBA may from time to time adopt.


ARTICLE XII: CONFLICTING PROVISIONS

In the event of a conflict of provisions between these Bylaws and the Pentwater Community Zoning Ordinance, the provisions contained in the Zoning Ordinance shall prevail.

ARTICLE XIII: AMENDMENT OF BY-LAWS

These by-laws may be adopted and amended at any regular meeting of the ZBA by four (4) affirmative votes of the membership, regardless of the number of members present, provided that the amendment has been submitted in writing at the previous regular meeting. All by-laws amendments shall be subject to final approval by the Township Board of Trustees.

THESE BY-LAWS WERE DULY ADOPTED BY THE PENTWATER TOWNSHIP ZONING BOARD OF APPEALS DURING ITS MEETING HELD ON THE 22nd DAY OF September, 2016.


Chairperson


Secretary