

Village of Estral Beach

CONSTRUCTION BOARD OF APPEALS POLICY

I. GENERAL INFORMATION

The Village of Estral Beach is the enforcing agency under PA 230 of 1972.⁽¹⁾⁽²⁾ A Construction Board of Appeals (CBOA) for each governmental subdivision enforcing the code shall be created.⁽²⁾ If desired, the Village may enter into an inter-municipality agreement with a surrounding municipality to use their CBOA, in which case, the agreement will state if CBOA existing policy, forms, rules will be used or if Village generated policy, forms, and rules will be followed.

Michigan Department of Licensing and Regulatory Affairs Publication No. 9, “Requirement for a Construction Board of Appeals”, July 2006, is not being revised and will no longer be used, rather referring back to PA 230 of 1972, for the CBOA requirements. Publication No. 47, “Construction Board of Appeals”, updated January 2012, will be used as input.⁽⁷⁾

The CBOA hears appeals to decisions of the inspection staff or may grant variances to the code. If an enforcing agency refuses to grant an application for a building permit, or if the enforcing agency makes any other decision pursuant or related to PA 230 of 1972, or the code, an interested person, or the person's authorized agent, may appeal in writing to the board of appeals.⁽²⁾

Appeals proceedings are not initiated until all other administrative remedies have been exhausted, unless an interested party makes a specific request.

Decisions made by the CBOA may be appealed to the State Construction Code Commission. The commission, acting as a whole, hears such appeals at their discretion.

II. APPEALS

This policy provides a documented process to be followed as the means to appeal decisions made by the Village’s Building Department enforcement staff. The appeal process is also intended to allow for the granting of variances to the code as warranted. If the Village refuses to grant an application for a building permit, or if the enforcing agency makes any other decision pursuant or related to PA 230 of 1972, or the construction code(s), an interested person, or the person's authorized agent, may appeal in writing to the Construction Board of Appeals (CBOA).⁽²⁾

The following matters may be appealed:

1. Refusal to grant an application for permit. (Failure to grant, in whole or in part, or deny an application for permit within 15 business days is deemed a denial of the application for purposes of authorizing the institution of an appeal.)
2. Decisions made by enforcement staff pursuant to or related to the act or the code.
3. Request for specific variance to a substantive requirement of the code.

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This appeal process does not apply to requests for exceptions to the barrier free design rules.⁽⁴⁾ To address potential hardship to building owners, the Michigan legislature created the Barrier Free Design Board (BFDB) and authorized it as the only entity in the state with the authority to grant exceptions (variances) to the barrier free design requirements. PA 1 of 1966, specifically prohibits any person, local unit of government, state department, or agency other than the BFDB from granting an exception to the barrier free design requirements. To request an exception (variance), you must submit a formal application to the BFDB.⁽²⁾⁽⁵⁾

III. CONSTRUCTION BOARD OF APPEALS MEMBERS

A. Number

The CBOA shall consist of not less than 3 nor more than 7 members, as determined by the governing body of the governmental subdivision.⁽²⁾ A diverse three member board will be used for the Village, with two alternate members if possible. However, if entering into an inter-municipality agreement to use another municipalities CBOA, the membership may differ.

B. Appointments

Unless otherwise provided by local law or ordinance, the members of the CBOA shall be appointed for 2-year terms by the Village President.⁽²⁾ No mention is made of approval by the Village Council in the PA or in the Village Charter for the CBOA, however, Council approval of the President's recommendation will be required under Charter Chapter VI Section 13.

C. Qualifications

A member of the CBOA shall be qualified by experience or training (e.g., licensed residential builders, maintenance and alteration contractors, licensed electrical, mechanical and plumbing contractors, licensed architects and professional engineers, etc.), and have a working knowledge of current code requirements, to perform the duties as members of the CBOA. A person may serve on the CBOA of more than 1 governmental subdivision.⁽²⁾

D. Chairperson

The CBOA shall select one of its members to serve as Chair. The Chair will conduct the meetings and ensure the legal requirements are followed. The Chair shall generate, or cause to be generated, rules of procedure which shall be approved by the CBOA.

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E. Secretary

A member of the CBOA shall also be selected as Secretary unless this position is performed by a qualified person outside of the CBOA. The Secretary shall file a detailed record of all proceedings of the CBOA, and take all other actions necessary for the proper and expeditious conduct of the CBOA.

F. Disqualification of Member

A member of the zoning board of appeals may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. 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 or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

G. Compensation

The compensation of members of the CBOA is set at \$75 for the Chair per appeal, \$50 each for the other two members per appeal, and \$25 for the acting Secretary. The remaining \$100 of the \$300 fee is to cover expenses such as public notice, mailings to persons of interest, etc.

H. Additional Powers

The Village may grant the CBOA additional powers or duties not inconsistent with PA 230 of 1972, and allows for establishing procedures to be followed by its CBOA insofar as the procedures do not conflict with the act. Except as otherwise provided by PA 230 of 1972, or by other laws or ordinances, a CBOA may by rules establish its own procedures.⁽²⁾

I. Inter-municipality Agreement

Section 8a(2) of PA 230 of 1972, provides that municipalities (governmental subdivisions) may provide for joint enforcement of the code.⁽²⁾ Therefore, municipalities may join together by written agreement to establish and share one CBOA to serve several enforcing agencies. Additionally, a person may serve on the CBOA of more than one municipality.

J. Meetings

The CBOA shall meet as needed to serve its function for the Village in compliance with the Construction Code Act⁽²⁾ and the Open Meetings Act⁽³⁾. The Chair or designee shall arrange to set hearing dates and for making the required notifications upon receipt of a valid Appeals Application.

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IV. RECEIPT OF APPEALS

The Appellant performs the following:

- Accurately completes form EB-BD05, “Application for Construction Code Appeal”,
- Signs the form, and
- Submits the form with applicable fee of \$300 to the Village Clerk, or designee.

All written requests for appeals are submitted to the Village Clerk, or designee, who shall:

- Document the date of receipt,
- Collect the applicable fee for submittal of the Appeals application,
- Maintains a Case Number Log and assigns a Case Number (i.e., YR-### format, e.g., 18-001 for the 1st case of 2018), and
- Makes a copy of the Appeals application and the attached supporting documents (e.g., Photographs, site plan, etc.).

Note that the Appeals application has not been formally submitted until the correct fees have been collected.

The Village Clerk, or designee, shall then:

- provide the fees to the Village Treasurer for deposit into the Village’s General Fund for the Building Department,
- forward the Appeals application and all attached documents to the CBOA Chair or Secretary,
- documents which CBOA member received the Appeals application, and
- document the date that the Appeals application was provided to the Chair (or CBOA member if the Chair or Secretary is unavailable),
- documents the date and means by which confirmation of receipt was received.

The CBOA Chair brings all appeals before the entire CBOA. The final report containing the decision shall indicate the date of receipt of the Appeals application since there is a time limit associated with the CBOA’s notification to interested parties, notification of hearing, and submittal of a decision.

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V. SCHEDULE HEARINGS

A. Notice of Meeting

The CBOA shall meet upon notice from the Village Clerk that an application has been received with the required fees paid.

The CBOA Chair schedules a date for the hearing of the appeal. A “Notice of Hearing” is prepared and includes the date, place (i.e., address), time, the matter to be heard, telephone number of the public body, and where the official minutes are available for inspection (i.e., by appointment or via FOIA). Public notice of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. ⁽²⁾

Notice must be mailed at least ten business days prior to the date of the hearing. The notice is sent to the affected inspector and to all interested parties. A written notice should be hand delivered or mailed by certified or registered mail to verify there is proof of service. A proof of delivery accompanying the notice provides proof of service and a certification of mailing documents that the notice was properly provided. The written notice should include at least the following:

- A statement of the date, hour, place, and nature of the hearing.
- A statement of the legal authority and jurisdiction under which the hearing is to be held.
- A reference to the particular section(s) of statues, rules, or codes involved.
- A short statement of the matters asserted.

The CBOA Chair shall ensure that all meeting notices are properly posted and that all of the notice requirements of PA 267 of 1976 are met. Prompt notice shall be given to the Appellant, or the Appellant’s representative, of any scheduled meeting of the CBOA.

B. Open Hearing

All hearings before the CBOA shall be conducted at a public meeting held in accordance with the Michigan Open Meetings Act, PA 267 of 1976. The Appellant, the Appellant’s representative, the Building Official, his/her designee and any person whose interests are affected shall be given the opportunity to be heard.

C. Hearing Procedures

The CBOA shall adopt and make available to the public through the Secretary procedures under which a hearing will be conducted. The procedure shall not require compliance with the strict rules of evidence but shall mandate that only relevant information be received.

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D. Postponed Hearings

The Appellant, the Appellant's representative or the Building Official shall have the right to request a postponement of the hearing. If the appeal specifically relates to the expertise of the absent member, the Board may postpone the hearing on its own motion. If a postponement is granted, the 30 day requirement for a decision to be rendered is also postponed by the same amount of time. Note that if postponement means re-notification, the postponement is treated as a re-filing of the application regarding time requirements.

VI. Hearing the Appeal

Appeals are heard by the Board as a whole. The business which the CBOA performs is conducted at a public hearing of the CBOA. It is held in compliance with PA 267 of 1976, "Open Meetings Act".⁽²⁾⁽³⁾ If proceedings are recorded, a transcript may be provided if requested. When appropriate, a court reporter is requested.

All interested parties served with a notice of hearing may file written answers before the date set for hearing. Parties shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and arguments on issues of fact. A party may cross-examine a witness, including the author of a document prepared by, on behalf of, or for use of the enforcing agency and offered in evidence. A party may submit rebuttal evidence.

Failure of the appellant or his authorized agent to appear before the Board as scheduled shall be justifiable cause for dismissal of the case, without prejudice, due to lack of prosecution and with no refund of appeal fee.

The board hears the appeal, renders a decision based on information provided by the Inspector and the Appellant, and files its decision with a statement of reasons for the decision, not more than 30 days after submission of the appeal. Note that the date of receipt is from the date obtained by the CBOA Chair or Secretary, or delegated CBOA's member in the case of unavailability of the Chair or Secretary, not the date received by the Village Clerk.

The CBOA shall hear the appeal and render and file its decision with a statement of reasons for the decision with the enforcing agency from whom the appeal was taken not more than 30 days after submission of the appeal. Failure by the CBOA to hear an appeal and file a decision within the time limit is a denial of the appeal for purposes of authorizing the institution of an appeal to the State's Construction Code Commission. A copy of the decision and statement of the reasons for the decision shall be delivered or mailed, before filing, to the party taking the appeal.⁽²⁾

If a board meeting is not scheduled within this 30-day period, the Village may request a delay from the appealing party. If the request is refused, a special meeting is scheduled. Refusal to act within 30 days is considered a denial for purposes in appealing to the CBOA.

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VII. FINAL DECISION

The final decision of the CBOA, with a statement of the reason for the decision, and any pertinent evidence of testimony used to reach the decision, is prepared and sent to the Appellant and other interested parties within five days after the making of the decision.

VIII. RECORDS

All correspondence, notices, transcripts, and decisions are kept in the office files. The public has access to records of decision made by the CBOA properly indexed, and any other writing prepared, owned, or used in the possession of, or retained by the CBOA in the performance of an official function. This is in compliance with Act No. 442 of the Public Acts of 1976, "Freedom of Information Act".⁽²⁾

IX. REQUESTS FOR VARIANCES FROM THE CODE

After a public hearing, a CBOAs may grant a specific variance to a substantive requirement of the code if the literal application of the substantive requirement would result in an exceptional, practical difficulty to the applicant, and if both of the following requirements are satisfied:

1. The performance of the particular item or part of the building or structure with respect to which the variance is granted must be adequate for its intended use. It should not substantially deviate from performance required by the code of that particular item or part for the health, safety and welfare of the people of the State.
2. The specific condition justifying the variance shall be neither so general or recurrent in nature as to make an amendment of the code with respect to the condition reasonably practical or desirable.

The CBOA may attach in writing any condition in connection with the granting of a variance that in its judgment is necessary to protect the health, safety and welfare of the people of the state.

The breach of a condition automatically invalidates the variance and any permit, license, and certificate granted on the basis of it. No more than a minimum variance from the code may be granted than necessary to alleviate the exceptional, practical difficulty. All such variances must be in writing with a statement of reasons for the decision. The final decision includes findings of fact and conclusions of law. They are considered on an individual basis and are not precedent setting.

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X. APPEAL OF THE CBOA'S DECISION TO THE STATE'S CONSTRUCTION CODE COMMISSION

An interested person, or the interested person's authorized agent, may appeal a decision of the CBOAs to the State's Construction Board Commission within 10 business days after filing of the decision with the enforcing agency or, in case of an appeal because of failure of CBOA to act within the prescribed time, at any time before filing of the decision. The hearing of an appeal based on the denial of a request for a variance by CBOAs is within the sole discretion of the State's Construction Code Commission. A person aggrieved by a decision of a board on any appeal may petition the commission to review the decision.

XI. EFFECT OF APPEAL ON ORDERS, DETERMINATIONS, DECISIONS, AND ACTIONS

An appeal to the CBOA or the State's Construction Code Commission pursuant to PA 230 of 1972, or to a court of competent jurisdiction pursuant to 1969 PA 306, does not stay a stop construction order issued by an enforcing agency or prevent an enforcing agency from seeking an order in a court of competent jurisdiction enjoining the violation of a stop construction order. In other cases, an appeal to CBOA, or to the State's Construction Code Commission or to a court of competent jurisdiction shall act as a stay upon an order, determination, decision or action appealed from, unless the enforcing agency establishes that immediate enforcement of the order, determination, decision or action is necessary to avoid substantial peril or life or property.

XII. REFERNECES

1. Village Ordinances 1035, and 1046 "Floodplain District"
2. Michigan Public Act 230 of 1972, as amended, "Stille-Derossett-Hale Single State Construction Code Act"
3. Michigan Public Act 267 of 1976, as amended, "Open Meetings Act"
4. Architectural Barriers Act (ABA) Standards (2015)
5. Michigan PA 1 of 1966, "Utilization of Public Facilities by Physically Limited"
6. Michigan PA 306 of 1969, "Administrative Procedures Act"
7. Michigan Department of Licensing and Regulatory Affairs Publication No. 47, "Construction Board of Appeals", January 2012
8. Michigan PA 318 or 1968, "Conflict of Interest"

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Checklist for Compliance with the Construction Board of Appeals Policy

Village Clerk Actions

- Appeal application received: Receipt date: _____
- Filing fee of \$300 collected:
- Copy made of check for the Village's records. Check number: _____ (if applicable)
- Case # assigned: _____ (format: YY-###, year-sequential number)
- Copy made of the Appeals Application and attached documents

Appeals application given to the CBOA and verify receipt:

- Means application to CBOA: _____ (i.e., drop box, USPS, email, other)
- Date application to CBOA: _____
- Name of CBOA recipient: _____
- Mailing address (if applicable): _____ (i.e., email or USPS address)

- Date of recipient confirmation: _____
- Means of confirmation: _____ (i.e., phone call, email, USPS, other)

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CBOA Actions:

- Documents the date the Appeal Application was received (i.e., **date that the 30 day clock starts**)
- CBOA Reviews Appeal Application
- CBOA identifies the date of the hearing which best supports the Applicant's and the Inspector's schedule.
- CBOA generates or causes to be generated notification letters to the interested parties, and Clerk maintains list of notifications sent, date, and method sent.
- Letters are mailed via USPS registered mail at least 10 days prior to the scheduled hearing date.
- CBOA causes public notice to be run in the Monroe Newspaper of the hearing date, time, location, etc.
- CBOA renders a decision within 30 days from the time of receipt of the Appeal application in accordance with the Construction Code Act ⁽²⁾ and the Open Meetings Act ⁽³⁾.
- CBOA has accepted the meeting minutes for the meeting where the decision was rendered. This can be done at the same meeting (hearing) that the decision was rendered.
- CBOA sends or causes to be sent the written decision to the interested parties within 5 days of the decision rendering, including a copy for the Village files.