



## Zoning Ordinance Variance Process

### I. Preamble

This document provides guidance for the Village of Estral Beach's Zoning Board of Appeals (ZBA) to assist with the appeal and variance process. This document should be reviewed every year to ensure it is accurate, up to date, and continues to fulfill the needs of the Village. Review, revision, and approval of this document by the ZBA is required.

### II. Applicable Public Acts and Ordinances

#### Ordinance 1031, March 1973 – Zoning Ordinance

An ordinance enacted under Act 207, Public Acts of 1921, as amended, Governing the incorporated portions of the Village of Estral Beach, Monroe County, Michigan to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence and for public and semi-public or other specified uses; and to regulate and limit the height and bulk of buildings, and other structures; to regulate and to determine the size of yards, courts, and open spaces; to regulate and limit the density of population; and for said purposes to divide the Village into districts and establishing the boundaries thereof; providing for changes in the regulations, restrictions and boundaries of such districts; defining certain terms used herein; providing for enforcement; establishing a board of appeals; and imposing penalties for the violation of this ordinance.

#### NOTES:

- (1) **City and Village Zoning Act**, Act 207 of 1921, referenced in ordinance 1031 was repealed (parts 125.581-125.600) in 2006 by Act 110, effective July 1, 2006.
- (2) **Municipal Planning**, Act 285 of 1931, also referenced in ordinance 1031 was repealed (parts 125.31-125.45) in 2008 by Act 33, effective Sept. 1, 2008.

#### PA 33 of 2008 – Michigan Planning and Enabling Act

AN ACT to codify the laws regarding and to provide for county, township, city, and village planning; to provide for the creation, organization, powers, and duties of local planning commissions; to provide for the powers and duties of certain state and local governmental officers and agencies; to provide for the regulation and subdivision of land; and to repeal acts and parts of acts.

#### PA 110 of 2006 – Michigan Zoning Enabling Act

AN ACT to codify the laws regarding local units of government regulating the development and use of land; to provide for the adoption of zoning ordinances; to provide for the establishment in counties, townships, cities, and villages of zoning districts; to prescribe the powers and duties of certain officials; to provide for the assessment and collection of fees; to authorize the issuance of bonds and notes; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

### III. Zoning & Planning Commissions and Zoning Board of Appeals

#### A. *Zoning Commission*

**Function** – PA 110 of 2006, Section 305 states, “The zoning commission shall adopt and file with the legislative body the following recommendations:

- (a) A zoning plan for the areas subject to zoning of the local unit of government.
- (b) The establishment of zoning districts, including the boundaries of those districts.
- (c) The text of a zoning ordinance with the necessary maps and zoning regulations to be adopted for a zoning district or the zoning jurisdiction as a whole.
- (d) The manner of administering and enforcing the zoning ordinance.”

**Requirements** – PA 110 of 2006, Section 301 states, “Each local unit of government in which the legislative body exercises authority under this act shall create a zoning commission unless 1 of the following applies:”

Section 301(b) states, “A planning commission was, as of June 30, 2006, in existence on the local unit of government and pursuant to the applicable planning enabling act exercising the powers and performing the duties of a ... village zoning commission created under former 1921 PA 207. Unless abolished by the legislative body, the existing planning commission shall continue and exercise the powers and perform the duties of a zoning commission under this act.”

Section 301(2) states, “Except as otherwise provided under this subsection, if the powers and duties of the zoning commission have been transferred to the planning commission as provided by law, the planning commission shall function as the zoning commission of the local unit of government. By July1, 2011, the legislative body shall transfer the powers and duties of the zoning commission to the planning commission. Except as provided under this subsection, beginning July 1, 2011, a zoning commission’s powers or duties under this act or an ordinance adopted under this act shall only be exercised or performed by the planning commission.”

Village ordinance 1029, as amended, is, “An ordinance enacted under Act 285 of the Public Acts of 1931, as amended, said Act 285 of 1931 to provide for city, village and municipal planning; the creation, organization, powers and duties of Planning Commissions; the regulation and subdivision of lands’ and to provide penalties for the violation of the provisions of this Act.”

Ordinance 1031, Section 1308. ZONING COMMISSION:  
“The Village Planning Commission is hereby designated as the Commission specified in Section 4, of Act 207 of the Public Acts of 1921, and in Act 285 of 1931, and shall perform the duties of said Commission as provided in the statute in connection with the amendment of this Ordinance.”

**Therefore, the Village meets the requirement for the Village Planning Commission to serve the function of the Zoning Commission as required in PA 110 of 2006 Section 301. As of July 1, 2011 the duties of the zoning commission or zoning board shall be transferred to a planning commission, thus the zoning commission or zoning board will no longer exist.**

*B. Planning Commission*

**Function** – Serves the same function as the Zoning Commission as described above. In addition, prepares the Master Plan as required by PA 33 of 2008, and any other duties allowed by the Public Acts and authorized by the legislative body.

**Requirements** – PA 33 of 2008, Section 83 provides for the continued exercise by a planning commission, or the transfer to a planning commission, of the powers and duties of a zoning board or zoning commission.

Ordinance 1031, Section 1309.

**PLANNING COMMISSION APPROVAL:**

“In cases where the Village Planning Commission is empowered to recommend approval of certain use of premises under the provisions of this ordinance, the applicant shall furnish such surveys, plans or other information as may be reasonably required by said Commission for the proper consideration of the matter. The Planning Commission shall investigate the circumstances of each such case and shall notify such parties, who may in its opinion be affected thereby, of the time and place of any hearing which may be held relative thereto as required under its rules or procedure. The Planning Commission may impose such conditions or limitations in recommending approval as may in its judgement be necessary to fulfill the spirit and purpose of this Ordinance.”

PA 33 of 2008, Section 15(1) states, “In a municipality, the chief elected official shall appoint members of the planning commission, subject to approval by a majority vote of the members of the legislative body elected and serving.”

PA 33 of 2008, Section 15(2) states, “A city, village, or township planning commission shall consist of 5, 7, or 9 members.”

PA 33 of 2008, Section 15(4) states, “Members of a planning commission shall be qualified electors of the local unit of government except for the following number of planning commission members may be individuals who are not qualified electors of the local unit of government but are qualified electors of another local unit of government  
(b) 2, in a city or village that has, or on September 1, 2008 had, a population of less than 5,000.”

PA 33 of 2008, Section 15(5) states, “In a city, village, or county, the chief administrative official or a person designated by the chief administrative official, if any, the chief elected official, 1 or more members of the legislative body, or any combination thereof, may be appointed to the planning commission, as ex officio members, unless prohibited by charter. However, in a city, village, or county, not more than 1/3 of the members of the planning commission may be ex officio members. Except as provided in this subsection, an elected officer or employee of the local unit of government is not eligible to be a member of the planning commission. The term of an ex officio member of a planning commission shall be as follows:

- (a) The term of a chief elected official shall correspond to his or her term as chief elected official.
- (b) The term of a chief administrative official shall expire with the term of the chief elected official that appointed him or her as chief administrative official.
- (c) The term of a member of the legislative body shall expire with his or her term on the legislative body.”

**Therefore, only 1/3 of the Village Trustees can serve on the Planning Commission (i.e., 2 of 6), two (2) may be non-resident electors from another municipality, and the remaining must be electors of the Village who are not Trustees. In addition, the 1983 decision by the Village Counsel James Rostash that the Village Council can serve as the Planning Commission (see motions 4-83-8 and 5-83-13) is no longer valid.**

**C. ZBA**

**Function** –

- To hear and decide appeals of administrative decisions made in implementing the zoning ordinance, and

- To hear and decide requests for variances from the strict terms of the zoning ordinance. In addition, the ZBA is occasionally called upon to interpret the provisions of the zoning ordinance.

**Requirements** –

PA 110 of 2006, Section 601(1) states, “A zoning ordinance shall create a zoning board of appeals.”

PA 110 of 2006 Section 601(2) states, “The legislative body of a city or village may act as a zoning board of appeals and may establish rules to govern its procedure as a zoning board of appeals.”

PA 110 of 2006 Section 601(3) states, “A zoning board of appeals shall be composed of not fewer than 5 members if the local unit of government has a population of 5,000 or more or not fewer than 3 members if the local unit of government has a population of less than 5,000. The number of members of the zoning board of appeals shall be specified in the zoning ordinance.”

**Ordinance 1031**, Article XIV, BOARD OF APPEAL, Section 1400.  
Creation and Membership

There is hereby established a Board of Appeals which shall perform its duties and exercise its powers as provided in Section 5 of Act 207 of the Public Acts of 1921, as amended and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and substantial justice done.

The Board shall consist of five (5) members appointed by the Village Commission. Appointments shall be for a period of one (1), two (2) and three (3) years, respectively, so as nearly as may be to provide for appointment of an equal number each year, thereafter each member to hold office for the full three (3) year term. The Zoning Board of Appeals shall annually elect its own Chairman, Vice Chairman and Secretary. The compensation of the appointed members of the Board of Zoning Appeals may be fixed by the Village Commission.

**Therefore, the Village Council serves the function of the ZBA and shall consist of 5 members.**

## IV. ZBA Process

### A. *Interpretation*

PA 110 of 2006, Section 604(5) states, "If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3)."

Attachment 4 may serve as the document for this written request.

PA 110 of 2006, Section 103 states,

- (1) Except as otherwise provided under this act, if a local unit of government conducts a public hearing required under this act, the local unit of government shall publish notice of the hearing in a newspaper of general circulation in the local unit of government not less than 15 days before the date of the hearing.
- (3) The notice under subsection (2) is considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States postal service or other public or private delivery service. The notice shall be given not less than 15 days before the date the request will be considered. If the name of the occupant is not known, the term "occupant" may be used for the intended recipient of the notice."

### B. *Variance*

#### **Step 1: Plan Submittal**

Ordinance 1031, Section 1303(4), APPLICATIONS FOR ZONING PERMIT:

An Application for a zoning permit shall be made to the Building Department or delegated authority. Such application shall be accompanied by a plot plan in duplicate, drawn to scale, showing:

- 1) The exact dimensions of the lot.
- 2) The shape, size, height and location on the lot of all buildings and/or other structures to be erected, altered or moved.
- 3) Dimension and location on the lot of all existing structures.
- 4) Such other information as may be deemed necessary for the proper enforcement of the zoning code or any other provision of the ordinance of the Village of Estral Beach.
- 5) Duplicate plans drawn to scale of the proposed building or alteration.

## **Step 2: Building Official Evaluation**

The Building Official or delegated authority evaluates the proposed permit application to determine whether it complies with all sections of zoning ordinance 1031, as amended. From Section 1303(1), No building permit shall be issued for the erection, alteration or use of any building or structure or part thereof, or for the use of any land, which is not in accordance with all provisions of this Ordinance.

- If it meets the provisions, then a building permit is issued.
- If it does not meet the provisions, the application and plans are returned to the applicant to be either modified such that they do meet all provisions of ordinance 1031 (Return to Step 1), or a ZBA (Attachment 4) variance application submitted (Proceed to Step 3) to the ZBA's Secretary who may or may not also be the Village Clerk.

## **Step 3: Variance Application and Fee**

Complete a variance application (Attachment 4), also referred to as petition for amendment of the Zoning Ordinance, and submit the required fee.

Ordinance 1031, Article II, Definitions:

Variance: A modification of the literal provisions of the Zoning Ordinance granted when strict enforcement of the Zoning Ordinance would cause undue hardship owing to circumstances unique to the individual property on which the variance is granted. The crucial points of a variance are undue hardship and unique circumstances applying to the property. A variance is not justified unless both elements are present in the case.

The term "hardship" was changed to be for "use" variances, and the term "practical difficulties" for "nonuse" variances. PA 110 of 2006, section 604, states,

(7) If there are practical difficulties for nonuse variances as provided in subsection (8) or unnecessary hardship for use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as otherwise allowed under this act. (8) The zoning board of appeals of all local units of government shall have the authority to grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance.

Ordinance 1031, Section 1403. Fees:

The Village Commission may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the Board of Appeals. At the time the notice of appeal is filed, said fee shall be paid to the Secretary of the Board of Appeals, which the Secretary shall forthwith pay over to the Village treasurer to the credit of the general revenue fund of the Village.

Resolution **9-17-12** sets the cost for variance request reviews at \$250 to cover the anticipated costs of publication, notification, etc.

#### **Step 4: ZBA Publishing and Notification**

Ordinance 1031, Section 1406. Notice:

The Board shall make no decision except in a specific case and after a public hearing conducted by the Board. It shall by general rule or in specific cases, determine the interested parties who, in the opinion of the Board, may be affected by any matter brought before it, which shall in all cases include all owners of record of property within three hundred (300) feet of the premises in question such notices to be delivered personally or by mail addressed to the respective owners at the address given in the last assessment roll. The Board may require any party applying to the Board for relief to give such notice to other interested parties as it shall prescribe.

#### Publication

Publish an article in the Monroe newspaper, not less than 15 days prior to the date of the meeting, to include at least the following information;

- Date, time, and place the request will be considered (i.e., meeting held)
- Name of property owner requesting a variance
- Parcel and/or street address for which the variance is being requested. If no street address, use other means of identification.
- Description of variance(s) being requested
- Indicate when and where written comments will be received concerning the request.

Example Wording:

Village of Estral Beach Zoning Board of Appeals (ZBA) Notice of Public Hearing  
On \*\*/\*\*/17, at 7:00 pm, at 7194 Lakeview Boulevard, Newport, MI 48166, for the purpose of reviewing and hearing public comments on constructing a pole barn, reducing setbacks, etc. at \*\*\*\* Lakeview Blvd. which does not meet the present ordinance requirements. Further information on this variance application can be obtained by contacting the Village Clerk at 734-586-8380. If unable to attend the meeting, written comments mailed to the 7194 address and received by [Date, \*\*/\*\*/17] will be forwarded to the ZBA for consideration.

### Notification

For each property owner within 300 feet of the property where the variance is being requested, at least 15 days prior to the date of the meeting, personally deliver or mail a letter on Village letterhead to the property owner through the US Postal Service to include at least the following information:

- Date, time, and place the request will be considered (i.e., meeting held)
- Name of property owner requesting a variance
- Parcel and/or street address for which the variance is being requested. If no street address, use other means of identification.
- Description of variance(s) being requested
- Where written comments can be mailed concerning the request

See Attachment 5 for an example of the letter wording.

### **Step 5: ZBA Evaluation**

**See Section III.c of this document for discussion of Village Council Serving as the Zoning Board of Appeals.**

PA 110 of 2006, 125.3603 Zoning board of appeals; powers; concurring vote of majority of members, Section 603.

- (1) The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The zoning board of appeals shall also hear and decide on matters referred to the zoning board of appeals or upon which the zoning board of appeals is required to pass under a zoning ordinance adopted under this act. It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance adopted under this act. For special land use and planned unit development decisions, an appeal may be taken to the zoning board of appeals only if provided for in the zoning ordinance.

**PA 110 of 2006, 125.3604 Zoning board of appeals; procedures, Section 604.**

- (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board.

- (2) An appeal under this section shall be taken within such time as prescribed by the zoning board of appeals by general rule, by filing with the body or officer from whom the appeal is taken and with the zoning board of appeals a notice of appeal specifying the grounds for the appeal. 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.
- (3) An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed.  
However, if the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed 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, proceedings may be stayed only by a restraining order issued by the zoning board of appeals or a circuit court.
- (4) Following receipt of a written request for a variance, the zoning board of appeals shall fix a reasonable time for the hearing of the request and give notice as provided in section 103.
- (5) If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3).
- (6) At a hearing under subsection (5), a party may appear personally or by agent or attorney. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.
- (7) If there are practical difficulties for nonuse variances as provided in subsection (8) or unnecessary hardship for use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as otherwise allowed under this act.
- (8) The zoning board of appeals of all local units of government shall have the authority to grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance.
- (9) The authority to grant variances from uses of land is limited to the following:
  - (a) Cities and villages.
  - (b) Townships and counties that as of February 15, 2006 had an ordinance that uses the phrase "use variance" or "variances from uses of land" to expressly authorize the granting of use variances by the zoning board of appeals.
  - (c) Townships and counties that granted a use variance before February 15, 2006.

- (10) The authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of 2/3 of the members of the zoning board of appeals to approve a use variance.
- (11) The authority to grant use variances under subsection (9) is permissive, and this section does not require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

From Ordinance 1031, Article XIV BOARD OF APPEAL

Section 1400. Creation and Membership

There is hereby established a Board of Appeals which shall perform its duties and exercise its powers as provided in Section 5 of Act 207 of the Public Acts of 1921, as amended and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and substantial justice done.

NOTE:

- (1) **City and Village Zoning Act**, Act 207 of 1921, referenced in ordinance 1031 was repealed (parts 125.581-125.600) in 2006 by Act 110, effective July 1, 2006.

The Board shall consist of five (5) members appointed by the Village Commission. Appointments shall be for a period of one (1), two (2) and three (3) years, respectively, so as nearly as may be to provide for appointment of an equal number each year, thereafter each member to hold office for the full three (3) year term. The Zoning Board of Appeals shall annually elect its own Chairman, Vice Chairman and Secretary. The compensation of the appointed members of the Board of Zoning Appeals may be fixed by the Village Commission.

Ordinance 1031, Section 1402. Appeal:

An appeal may be taken to the Board of Appeals by any person, firm or corporation, or by an officer, Department, Board or Bureau affected by a decision of the Building Inspector. Such appeal shall be taken within such time as shall be prescribed by the Board of Appeals by general rule, by filing with the Building Inspector and with the Board of Appeals a notice of Appeal, specifying the grounds thereof. The Building Inspector shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Building Inspector certified to the Board of Appeals after notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by restraining order, which may be granted by a court of record.

The Board shall select a reasonable time and place for the hearing of the appeal and give due notice thereof to the parties and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.

## **Step 6: ZBA Actions and Powers**

Ordinance 1031, Article XIV Board of Appeal, Section 1404, Jurisdiction:

The Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this Ordinance, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, exception or conditional approval permit and to authorize a variance as defined in this section of laws of the State of Michigan. Said powers include:

### **1. Administrative review**

To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Building Inspector or any other administrative official in carrying out or enforcing any provisions of this Ordinance.

### **2. Variance**

To authorize, upon an appeal, a variance from the strict applications of the provisions of this Ordinance where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this Ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance. In granting a variance, the Board may attach thereto such condition regarding the location, character, and other features of the purposed uses as it may deem reasonable in furtherance of the purpose of this Ordinance. In granting a variance, the Board shall state the grounds upon which it justifies the granting of a variance.

### **3. Exceptions and Conditional Approval**

The "Exception" differs from the "Variance" in several respects. An exception does not require "undue hardship" in order to be allowable. The exceptions that are found in this Ordinance appear as "conditional approval" by the Planning Commission, Legislative Body", or board of appeal. These land uses could not be conveniently allocated to one zone or another, or the effects of such uses could not be definitely

foreseen as of a given time. The general characteristics of these uses include one or more of the following:

1. They require large areas.
2. They are infrequent.
3. They sometimes create an unusual amount of traffic.
4. They are sometimes obnoxious or hazardous.
5. They are required for public safety and convenience.

#### 4. Consideration

In consideration of all appeals and all proposed variations to this Ordinance the Board shall, before making any variations from the Ordinance in a specific case, first determine that the proposed variation will not impair and adequate supply of light and air to adjacent property, or unreasonably increase the congestion in the public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Village of Estral Beach. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirements, decision, or determination of the Building Inspector, or to decide in favor of the applicant any matter upon which it is authorized by this Ordinance to render a decision (PA 110 of 2006, as amended, § 125.3603). Nothing herein contained shall be construed to give or grant the Board the power or authority to alter or change this Ordinance or the Zoning Map, such power or authority being reserved to the Village President and the Village Commission of the Village of Estral Beach in a manner provided by law (Ordinance 1031 Section 1404.4).

Ordinance 1031, Article XIV Board of Appeal, Section 1405, Orders:

In exercising the above powers, the Board may reverse or affirm wholly or partly, or may modify the orders, requirements decision, or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Building Inspector from whom the appeal is taken.

Ordinance 1031, Article XIV Board of Appeal, Section 1407, Miscellaneous

No order of the board permitting the erection of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

No order of the Board permitting a use of a building or premises shall be valid for a period longer than one (1) year unless such use is established within such period; provided however, that where such use permitted is dependent upon the erection or alteration of a building such order shall continue in force and affect if a building permit for said erection alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

## **Step 7: ZBA Meetings**

**See Attachment 3, Rules of Procedure of the ZBA.** Rules of Procedure are the rules governing the operation of the ZBA. The Rules of Procedure should specify certain responsibilities, such as defining officers and their duties, quorum rules, special meeting procedures, conflict of interest procedures and other aspects of the ZBA's operation. Rules of Procedure are adopted by the ZBA as its rules for operation.

### **PA 110 of 2006, §125.3602 Meetings; call of the chair; oaths; attendance of witnesses; record of proceedings.**

Section 602.

- (1) Meetings of the zoning board of appeals shall be held at the call of the chair and at other times as the zoning board of appeals in its rules of procedure may specify. The chair or, in his or her absence, the acting chair may administer oaths and compel the attendance of witnesses.
- (2) The zoning board of appeals shall maintain a record of its proceedings which shall be filed in the office of the clerk of the legislative body.

## **Step 8: ZBA Decision**

### **PA 110 of 2006, Section 603(2)**

The concurring vote of a majority of the members of the zoning board of appeals 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 zoning board of appeals is required to pass under the zoning ordinance, or to grant a variance in the zoning ordinance.

**PA 110 of 2006, Section 604** The zoning board of appeals shall state the grounds of any determination made by the board.

**PA 110 of 2006, Section 605** 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 in which the property is located as provided under section 606.

### **PA 110 of 2006, Section 606**

- (1) Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:
  - (a) Complies with the constitution and laws of the state.
  - (b) Is based upon proper procedure.
  - (c) Is supported by competent, material, and substantial evidence on the record.

- (d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.
- (2) If the court finds the record inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented, the court shall order further proceedings on conditions that the court considers proper. The zoning board of appeals may modify its findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary record and decision shall be filed with the court. The court may affirm, reverse, or modify the decision.
- (3) An appeal from a decision of a zoning board of appeals shall be filed within whichever of the following deadlines comes first:
  - (a) Thirty days after the zoning board of appeals issues its decision in writing signed by the chair, if there is a chair, or signed by the members of the zoning board of appeals, if there is no chair.
  - (b) Twenty-one days after the zoning board of appeals approves the minutes of its decision.
- (4) The court may affirm, reverse, or modify the decision of the zoning board of appeals. The court may make other orders as justice requires.

**PA 110 of 2006, 125.3607 Party aggrieved by order, determination, or decision; circuit court review; proper party.**

**Section 607.**

- (1) Any party aggrieved by any order, determination, or decision of any officer, agency, board, commission, zoning board of appeals, or legislative body of any local unit of government made under section 208 may obtain a review in the circuit court for the county in which the property is located. The review shall be in accordance with section 606.
- (2) Any person required to be given notice under section 604(4) of the appeal of any order, determination, or decision made under section 208 shall be a proper party to any action for review under this section.

## ATTACHMENT 1

### Variance Overview

The following is an excerpt from the Michigan Association of Planning, MSPO Community Planning Handbook, on the variance process.

A variance is a form of equitable relief allowing the applicant to use his land in an efficient way by bypassing the local zoning laws. A variance is likely to be granted for unusual circumstances such as an especially narrow lot or a stream on the property making it especially difficult to comply with the local zoning ordinance.

#### **Two Types of Variances: Area Variances and Use Variances**

Area (non-use) variances, the more common variance requested, offer an exception to the property owner encountering difficulties complying with physical requirement issues such as adding a second story to the house or a setback of the building. The second type, a use variance, allows the property owner to use his property in a way that deviates from local zoning standards. It is an exception to the regulations governing the use of the property. For example, a use variance might allow a dentist to place his office in a residential neighborhood.

#### **Process for Approval of a Variance**

Though the procedure for variance approval varies with the locality, typically, a property owner submits a request to a zoning enforcement officer or building inspector, who then makes a decision based on a strict reading of the local zoning laws. If the permit is denied, the owner applicant can appeal this decision to the local ZBA. This board weighs the hardship that the local regulations present for the property owner against the negative impact of the proposed building on the neighborhood. While variance rules differ from one city to the next, the standard is often similar. For an area variance, the property owner must show that the restrictions unreasonably deny a permitted use of the owner's property. For a use variance, the property owner has a more difficult burden to demonstrate that unless granted a variance, he will have no viable use for his property.

#### **Neighbors Can Influence the City's Decision**

As part of the process, local governments often seek input from other members of the community in determining whether to grant the requested variance. Neighbors can become obstacles for a property owner seeking a variance from the otherwise enforced local zoning ordinance, if those living nearby feel the project may somehow harm their own property values.

## ATTACHMENT 1

### Variance Overview

#### **Creating a Record to Support the Variance**

It is vital that the property owner creates a record to support his request for a variance. This documentation should explain the property's special circumstances and the unnecessary hardship (use) or practical difficulties (non-use) that would otherwise result if a variance were not approved. For instance, a property owner may need to show there is a specific unique quality to the property – rocks, streams, etc. – that prevents the construction of a normal-sized home. This record may then become part of the “findings” of the official who approves or denies the variance. If the decision on a variance faces a legal challenge, the court would then examine these official findings.

When seeking a variance, a property owner must show a variance is necessary to allow the enjoyment of a reasonable financial return on the property. The owner must also show that the proposed use for the property will not change the spirit of the neighborhood, nor infringe on a neighboring property owner's rights, use, or enjoyment of his own land.

#### **Excerpts from the mml.org Zoning Board of Appeals Handbook**

Every person who can meet the criteria for relief has the right to seek relief from a zoning ordinance requirement. If the standards used by the ZBA are carefully considered and followed, the integrity of the ordinance should be maintained. However, not following such standards leads to problems. Too often variances are granted simply because no one sees any harm. The ZBA soon gains a reputation for not following its ordinance. One merely has to go to the zoning board of appeals to obtain relief from the ordinance – getting a variance is no problem.

Eventually, the offhand granting of variances harms the community's ability to enforce the ordinance. Moreover, poorly supported decisions can, over time, destroy the credibility of the zoning ordinance. It is up to the members of the ZBA to prevent this by strictly applying the standards of the ordinance.

These decisions will not always be easy. In some instances, you will know the land owners, neighbors or applicants personally. The key to acting in a responsible manner is to act in ways that will allow you to treat each person and property in a fair and consistent manner.

It is essential that any action related to zoning, including those actions taken by the ZBA, should take into consideration the Master Plan.

The ZBA must determine whether, after considering all evidence presented, the applicant has satisfied the necessary level of proofs for the particular case in order to be entitled to relief.

## ATTACHMENT 1

### Variance Overview

The ZBA exercises three basic roles or functions. These include

1. Interpreting the ordinance (test and map)
2. Deciding appeals from administrative decisions
3. Granting variances (use and non-use)

The terms appeal and variance are often used interchangeably, but in fact are two entirely different concepts.

- A **variance**, if granted, allows a departure from a particular requirement of the zoning ordinance.
- An **appeal** is based on the fact that someone has made a decision related to the zoning ordinance, and another person disagrees with that decision.

Before any variance should be approved, the applicant should be required to demonstrate that either a practical difficulty or unnecessary hardship exists. These are distinct and different terms.

- **Practical Difficulty** is applied only to nonuse, or dimensional variances
- **Unnecessary Hardship** is relevant only for use variances.

Conflict of Interest (see Attachment 3, Rules of Procedure for more guidance)

Knowing about conflicts of interest is important since the zoning act requires that use of an alternative when a member has a conflict. In some instances, failure to declare a conflict of interest may result in the removal of a ZBA member. If you have to ask whether you have a conflict of interest, chances are others are asking as well. **If you are in doubt about whether or not you have a conflict, it is often advisable to take a conservative approach and declare a conflict.** This helps to avoid a public appearance of unfairness.

You may also consider the possibility of declaring a conflict of interest if your home falls within a notification radius used by your community for ZBA's actions. Since the sending of the notice automatically presumes some degree of interest, this fact should be recognized by declaring a conflict, particularly if a financial impact is likely.

## ATTACHMENT 2

### Variance Checklist

#### Type of Variance:

- Use – Allows a use of land that is not permitted in the district in which the property is placed. Granting of a use variance requires that the applicant demonstrate that an “unnecessary hardship” would be imposed if the owner cannot use the property as requested. However, even if permitted and eligible to hear use variances, the Zoning Enabling Act allows a community to opt out of this procedure. To prohibit use variances the community must adopt zoning ordinance language that prohibits submission of use variance requests.
- Nonuse (or dimensional variance) – Modification of a provision or requirement of the zoning ordinance authorized by the ZBA when the strict or literal application of the ordinance would cause “practical difficulties” for the applicant. Nonuse variance requests are typically associated with modifications of required yard setbacks, building heights, parking requirements, landscaping or buffering restrictions and related building or facility placement provisions.

#### Prerequisites of ZBA Members:

- Are all ZBA members ethically able to serve on the variance in question (i.e., no concern of malfeasance due to conflict of interest by deciding on this variance)?
- Are all ZBA members legal voters of the Village? (Note that as long as the Village Council serves this function, the answer is yes and controlled by the Berlin Charter Township Election Board)

#### Publication and Notifications:

- Have all of the following requirements been met?
  - Describe the nature of the variance being filed, and whom is applying.
  - Indicate the property that is the subject of the request, including the street address if one exists. If an address does not exist, provide other means to identify the property for which the variance is being filed.
  - State where and when the request will be considered.
  - Indicate when and where written comments will be received concerning the request.

## ATTACHMENT 2

### Variance Checklist

Questions the ZBA SHALL consider for all appeals and all purposed variations to Ordinance 1031:

- Standards for nonuse or dimensional variances. Granting a nonuse variance requires the existence of a practical difficulty, which is demonstrated by showing that:

- Special or unique conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings in the same district.**

Special conditions or circumstances that are related to the property are generally characteristics that may normally include:

- Exceptional narrowness, shallowness or shape,
- Exceptional topographic conditions or other extraordinary situations related to the property, or
- Use or development of the property immediately adjoining the property in question.

Also the characteristics of the property asserted as the basis for relief must not be common among other properties in the same district or vicinity. Common conditions or situations should be addressed by a change in the text of the ordinance, rather than by the granting of individual variance applications.

- A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; and that the variance is the minimum necessary.**

Property owners are given certain rights to use their property within the limits allowed by the zoning ordinance. If the conditions present on the property are such that owners are deprived of these rights, the ZBA should find this standard in favor of the applicant, but not necessarily the variance as requested.

- Example: While the ordinance provides that property owners may have accessory buildings, it does not grant the authority to allow any size building desired by the applicant.

This standard also permits the ZBA to modify the request of the applicant to accommodate the special condition or circumstance but only approve the amount of variance necessary to do so.

- Example: An applicant may wish to construct a garage closer to the lot line to avoid a large tree. The ZBA could approve a variance that would miss the tree, but in order to protect an adjoining property, not come as close to the property line as requested.

## ATTACHMENT 2

### Variance Checklist

- The special conditions and circumstances do not result from the actions of the applicant.**

This standard, often referred to as self-created, is often misunderstood and the subject of differing opinions. There are circumstances when the applicant has clearly taken some action creating a need for the variance.

- Example: If an applicant splits a lot which previously conformed to the requirements of the zoning ordinance into two smaller ones, one or both of which then do not meet the ordinance, the action is clearly self-created.

On the other hand, a buyer of a lot that cannot be developed without a variance may ask the ZBA grant a variance to allow use of the lot. In this case, the applicant did not take an affirmative action by creating the lot. Accordingly, this standard should not be used as a reason for denial, although the variance still must meet the other standards of the ordinance.

- The granting of the variance will be in harmony with the general purpose and intent of this ordinance.**

Each provision of the ordinance has a reason for its existence and it is important that the ZBA understand that reason and not act to impair that purpose. Whether the ZBA agrees or disagrees with any provision in the ordinance is irrelevant. The ZBA's function is to enforce the provisions of the ordinance, except in very specific instances where conditions exist that would make compliance with the requirements impractical.

- The variance will not be injurious to the neighborhood or otherwise detrimental to the general welfare.**

As with any zoning action, the result of the proposed variance should not be harmful to adjacent properties. Potential harm could be in the form of restricted access or view, noise, lights or any other effect not normally experienced by property owners in similar circumstances.

While the opinion of surrounding property owners are useful, they should not be given absolute weight. The role of the public is not to give their blessing or veto, but to provide the ZBA information to consider which is useful to its decision making process. As an illustration, a current adjoining property owner may be a relative or close friend and not object to a variance, but since the variance goes with the land, the next property owners may find themselves with an objectionable situation.

## ATTACHMENT 2

### Variance Checklist

- The spirit of this ordinance shall be observed, public safety secured and substantial justice done.**

Observing the spirit of the ordinance will mean that the ZBA understands the potential effects one or several variances could have on the effectiveness of the zoning ordinance. For example, if the ZBA's reputation is one of easy approvals, applicants are more likely to seek variances in other than special conditions and circumstances.

"Public safety secured" indicates that the variance, if approved, will not create an unsafe condition.

While "substantial justice" directly addresses fairness to the applicant, it also applies to others who might be affected by the variance, such as neighboring property owners. **Substantial justice requires the variance to be the minimum necessary to afford relief.**

The Village's Legal Counsel stated that one of the underlying goals of the zoning ordinance is to have conforming lots, and that the Village should strive to this end.

- Does the proposed variation impair an adequate supply of light and air to adjacent properties?
- Does the variation unreasonably increase the congestion in the public streets?
- Does the variation unreasonably diminish or impair established property values within the surrounding area or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Village of Estral Beach?

Things to consider (Excerpts from the Michigan Municipal League's Planning Commissioners Handbook)

- Take care that the decision you make is well supported, and that the decision(s) made are based on the standards of the ordinance and facts, not on emotion or opinion of the applicant. Zoning decisions should treat each person, property and point of view in a fair and consistent manner.
- Do not feel compelled to make a hasty decision on the night of the hearing. If you are unclear about whether a standard is met and are not ready to make a decision – don't. **Zoning decisions are permanent.**
- Support your vote by letting everyone know why you are voting, either for or against the issue. Approvals and denials must be thoroughly supported, clearly stating how the ordinance standards were or were not met.
- The law holds that owners of property have a right to reasonable return on their investment and that zoning cannot unreasonably deprive the owner of that return.

## ATTACHMENT 2

### Variance Checklist

#### Excerpts from mml.org Zoning Board of Appeals Handbook

- Zoning Map – Does the zoning map support the variance requested.
- Interpret the text of the ordinance based on a thorough reading of the ordinance.
- Give weight to reasonable practical interpretations by administrative officials if applied consistently over a long period of time.
- Keep records of all interpretation. Once an interpretation is rendered, it is the official position of the community as to the provision. Consistency in decision making is important for the long-term.
- Generally, if equally convincing points are put forth by the zoning administrator and an individual affected by an interpretation, fairness dictates that the person most affected by the interpretation should prevail. In other words, where two interpretations are reasonably equal, the benefit of the doubt should be given to the property owner rather than the zoning administrator.

#### Closure

- Has the decision been made at a ZBA meeting in accordance with Open Meetings Act 267 of 1976?
- Are the findings of fact well documented in the meeting minutes?
- Have the meeting minutes at which the decision was made been approved at a subsequent meeting which also was held in accordance with Open Meetings Act 267 of 1976, or certified as approved at the same meeting at which the decision was made?
- Did the applicant and secretary sign copies of the site plan or sketch submitted as part of the application?
- Was a signed copy of the approved meeting minutes sent to the applicant?
- Was a signed copy of the application with the ZBA's decision sent to the Building Official?

## ATTACHMENT 3

### Rules of Procedure of the Zoning Board of Appeals

The Rules of Procedure should specify certain responsibilities, such as defining officers and their duties, quorum rules, special meeting procedures, conflict of interest procedures and other aspects of the ZBA's operation. Rules of Procedure are adopted by the ZBA as its rules for operation.

The zoning ordinance shall create a ZBA in compliance with the Michigan Zoning and Enabling Act 110 of 2006 and to act to meet the objectives of Village ordinance 1031, as amended, for the purpose of promoting and protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the Village of Estral Beach.

#### 1) Meetings:

Ordinance 1031, Article XIV Board of Appeal, Section 1401. Meetings:

- All meetings of the Board of Appeals shall be held at the call of the chairman and at such times as such Board may determine.
- All hearings conducted by said Board shall be open to the public.
- The Clerk or his/her representatives, shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall also keep records of its hearings and their official action.
- Four (4) members of the Board shall constitute a quorum for the conduct of its business.
- The Board shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it.
- Other:
  - A regular meeting will be held on the 3<sup>rd</sup> Tuesday of January of each calendar year after the first meeting, to provide for the "election of officers". All other meetings will be held on an "as needed" basis pending receipt of special requests or following variance application submittal(s).
  - Meetings called to hear variance requests shall not be called unless the application is submitted, complete, and all fees paid.
  - A meeting shall not be called unless there is proper notification, or in the case of variances, proper publishing and notification for the variance filed, including place, date, time, and content of hearing.
  - Variance applicant or a representative shall be present at the hearing before the variance filed will be heard.
  - Meetings called to hear variance requests shall not be scheduled until at least four (4) weeks following the complete filing of the variance application to ensure:

### ATTACHMENT 3

#### Rules of Procedure of the Zoning Board of Appeals

- Ample time for ZBA's review.
  - Publication in a newspaper of general circulation in the Village.
  - Notification by mail or personal delivery to the owners of property for which approval is being considered, to all persons to whom real property is assessed within 300 feet of the property, and to the occupants of all structures with 300 feet of the property regardless of whether the property or occupant is located in the community.
  - Provide for the required 15 days from the time notification to the time for considered approval.
- Variance application notification shall provide all of the following:
- Describe the nature of the variance being filed.
  - Indicate the property that is the subject of the request, including the street address if one exists. If an address does not exist, provide other means to identify the property for which the variance is being filed.
  - State where and when the request will be considered.
  - Indicate when and where written comments will be received concerning the request.
  - Name of property owner requesting the variance.

#### 2) **Members:**

Ordinance 1031, Article XIV Board of Appeal, Section 1400, Creation and Membership:

- The Board shall consist of five (5) members appointed by the Village Council. Appointments shall be for a period of one (1), two (2) and three (3) years, respectively, so as nearly as may be to provide for appointment of an equal number each year, thereafter each member to hold office for the full three (3) year term. Presently the Village Council serves as the ZBA.
- The Zoning Board of Appeals shall annually elect its own Chairman, Vice Chairman and Secretary. The compensation of the appointed members of the Board of Zoning Appeals may be fixed by the Village Commission.

PA 110 of 2006, §125.3601

(4) In a city or village, 1 of the regular members of the zoning board of appeals may be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission, unless the legislative body acts as the zoning board of appeals.

(5) The remaining regular members of a zoning board of appeals, and any alternate members under subsection (7), shall be selected from the electors of the local unit of government residing within the zoning jurisdiction of that local unit of government. The members selected shall be representative of the population distribution and of the various interests present in the local unit of government.

## ATTACHMENT 3

### Rules of Procedure of the Zoning Board of Appeals

(6) Subject to subsection (2), 1 regular or alternate member of a zoning board of appeals may be a member of the legislative body. Such a member shall not serve as chairperson of the zoning board of appeals. An employee or contractor of the legislative body may not serve as a member of the zoning board of appeals.

(7) The legislative body may appoint to the zoning board of appeals not more than 2 alternate members for the same term as regular members. An alternate member may be called as specified in the zoning ordinance to serve as a member of the zoning board of appeals in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. An alternate member serving on the zoning board of appeals has the same voting rights as a regular member.

- Duties:

#### **Chair**

- Verify the requirements for notification of the hearing have been met, and that the required fees have been paid.
- Request a list of audience members that wish to speak during the hearing. The speakers can be limited to the names on that list.
- Ensure fairness for all concerned.
- Ensure that the Rules of Procedures are followed.
- Ensure that the meeting is held in a controlled manner. Take a recess as needed if the debate becomes heated.

#### **Vice Chair**

- Serves the functions of the Chair in his or her absence.

#### **Secretary**

- The ZBA members elect their own Secretary, however, the Village Clerk may serve as the reporter for the ZBA Secretary with ZBA member concurrence.
- Receive ZBA application, determine if a hearing is needed, and collect and forward any associated fees on to the Village Treasurer. Verify that the Building Official also received the same information.
- Forward the application and associated documents to the ZBA members.

### ATTACHMENT 3

#### Rules of Procedure of the Zoning Board of Appeals

- Create and distribute an agenda for the meeting.
- Make to be published notification for the meeting in the Monroe newspaper, giving the required information.
- Send notification letters to all real property owners within 300 feet of the property for which the variance is being filed.
- Collect and distribute to the ZBA members any written comments received, following public notification, regarding the variance filed.
- Take accurate meeting minutes, and if desired, the meeting may be recorded to assist with accurate completion of the meeting minutes.
  - Meeting minutes are particularly important since the zoning enabling act directs the circuit court to decide an appeal on the basis of the record presented by the ZBA and the applicant. The only information seen by the court will be the written record created at the ZBA hearing, therefore it is essential that the ZBA provide a suitable written record of the proceedings.
  - Meeting Minutes should include:
    - ✓ What matters were discussed (nature of the request, applicant, location, etc.)
    - ✓ Receipt of any correspondence or other communications on the matter (including name and address, if known, and general content)
    - ✓ Who spoke at the meeting and the general content of his or her comments (including name and address).
    - ✓ What action was taken by the ZBA (including the motion, vote and any conditions attached to any approved applications), showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact.
    - ✓ Why an action was taken and how the standards of review of the zoning ordinance were or were not met (i.e., the detailed findings that support the decision).

## ATTACHMENT 3

### Rules of Procedure of the Zoning Board of Appeals

- **Meeting minutes shall include the findings of fact; a concise statement of the action taken by the members, and include the reason for the decision, including the specific facts and evidence supporting the decision. If challenged, any decision must have a solid, well supported foundation.**
- Since ZBA meetings have been rare up to this date in the Village, the meeting minutes should be certified as approved at the same meeting at which the decision was made, or set a second ZBA meeting to just approve the first meeting minutes at which the decision was made.

#### Members

- Members shall put forth the time and effort required to be knowledgeable of the applicable laws and Village zoning ordinance.
- Members shall put forth the time and effort to research and make site visits to the parcel to determine the extenuating circumstances for which the variance being filed should be avoided. Note that site visits with other Board members shall not occur due to real or perceived violation of the open meetings act, and any visit should occur after obtaining written permission from the property owner. Refusal by the applicant to allow you on the site cannot influence your decision.
- Shall seek the review and recommendation of the Planning Commission prior to the taking of any action.
- All information gathered, or conversations had with the applicant, shall be shared with the other ZBA members.
- Members shall come to the meeting prepared with ordinance 1031, other references (as needed), knowledge of wording contained in PA 33 of 2008 and PA 110 of 2006, questions, pen & paper, etc.
- Members shall make a fair decision based on the existing laws and ordinance 1031, with no favoritism or prejudice, and in the best interest of the Village.
- The number of people in the audience for or against the variance, or the number of written comments received, shall not be considered in the decision, only the content of the information provided. You are obligated to protect the interests of the applicant, those having a direct interest, and the entire community, not simply the desires of those who happen to attend the meeting.
- All possible effort must be made to gather sufficient information to allow making an educated decision on the scheduled day of the meeting. Delays will incur additional costs to the Village and the applicant, and also increase the Village's liability if the delay is due to negligence on the part of the ZBA members. However, if there are justifiable extenuating circumstances that could not have been foreseen which interfere with making a supportable decision, a second meeting should be scheduled to allow time for additional discovery.

## ATTACHMENT 3

### Rules of Procedure of the Zoning Board of Appeals

- If you cannot hear the audience member speaking, ask him or her to speak up, or to approach the ZBA members.
- All ZBA members shall provide the reason and basis for their vote. This may help other members to decide, or sway them to change their vote. This is critical information for the record if the case goes to court.
- Always use the review standards of the zoning ordinance. The standards are your guarantee of reaching fair, consistent and reasonable decisions. Failing to follow the standards of review can easily lead to discriminatory, subjective, and inconsistent decisions.
- There must be enough information presented to indicate specifically which standards were or were not met, and the reasons, in terms of the specific facts and evidence presented, the ZBA made the finding. A motion that states “this variance is approved (or denied) because it meets (or does not meet) the standards of Section \_\_\_” is not sufficient.
- Conditions may be imposed on any affirmative decision, as long as they have a clear purpose; to ensure that the standards used to make the decision are met. The condition should strengthen the decision to grant relief.

Example: “The variance will not be injurious to the neighborhood or otherwise detrimental to the general welfare.” If, during deliberations, the ZBA members become concerned that the approval of a variance could have an adverse effect on adjacent properties, a possible condition might be a requirement that a fence or landscaping be installed. If the fence or landscaping were not required, this review standard would not be met. Accordingly, this condition would be an appropriate one to attach to the approval.

- If the motion includes the need for further action, it should state who will be responsible to see that the action is completed.

### 3) **Conflict of Interest:**

**PA 110 of 2006**, Section 601(9), 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.

- Misfeasance - a transgression, especially the wrongful exercise of lawful authority.
- Malfeasance - wrongdoing, especially by a public official.
- Nonfeasance - failure to perform an act that is required by law.

ATTACHMENT 3

**Rules of Procedure of the Zoning Board of Appeals**

**Village Charter, Chapter XIII, Recall and Removal**

**REMOVAL BY COMMISSION:**

Section 15. The Commission may remove from office any of its members, including the President, and remove any other officers of the Village, either elective or appointive, for any of the following causes, to-wit;

- (a) Conviction by a court of competent jurisdiction of any offense under the Charter or ordinances or any Law of this State or of the United States.
- (b) Willful violation of any provision of the Charter or Ordinances
- (c) Intoxication or habitual drunkenness.
- (d) Incompetency to perform the duties of his office.
- (e) Willful neglect of duty.
- (f) Corrupt or willful malfeasance or misfeasance in office.
- (g) Willful misconduct to the injury of the public service.

Said proceedings may be initiated by any member of said Commission or by any twenty-five electors as hereinafter provided. Upon the filing with said Commission of a complaint in writing, specifying any matter or thing made cause for removal under this Charter, which complaint shall be signed by not less than twenty-five electors of said Village and verified by the oath of at least one of the signers, the said Commission shall proceed to hear and determine said matter as herein provided.

If said officer be found guilty by a majority of the Commission, in such case the reason for the removal shall be entered upon the records of the Commission with the names and votes of the members voting on the question; and no officer shall be removed unless first furnished with a copy of the charges in writing and allowed to be heard in his defense with the aid of counsel; and for such purpose the Commission shall have power to compel the attendance of witnesses and the production of papers by subpoena or written order. The Commission shall hear and determine said charges within ten days after service of a copy thereof, unless said proceedings shall be adjourned for a cause to a time not exceeding thirty days in all; and then at such adjourned meeting to hear and determine the matter as aforesaid. If such officer shall neglect to appear and answer such charges, his default shall be deemed good cause for his removal. Any person refusing or neglecting to comply with the requirements of any subpoena or written order issued and served under this Section shall be liable to a fine not to exceed Fifty Dollars or confinement in the county jail not to exceed Sixty days, on conviction of such refusal or neglect before any justice of the peace of said Village.

Declaring a conflict of interest shall not be used as a means of avoiding a difficult or uncomfortable decision. If a member of the ZBA feels they have a conflict of interest with the appeal filed, they shall;

Self-Declare

1. Self-declare the apparent conflict of interest by notifying the Staff/Chair prior to the meeting in order to allow an alternate to be called.

Other Declared

1. If a member of the ZBA does not self-declare a conflict of interest, but there is an identified potential conflict of interest, this should be brought to the Staff/Chair's attention as soon as practical.

## ATTACHMENT 3

### Rules of Procedure of the Zoning Board of Appeals

2. The ZBA members and alternative member, minus the member with the potential conflict of interest, shall vote on whether there is an actual or perceived conflict of interest, with the majority vote (3 of 5) required for removal from sitting on the ZBA for the appeal filed. To reduce liability of the Village, the members should error on the conservative side.
  - Chair will notify the alternative member to sit on the ZBA for the appeal filed.
  - Abstain from voting and do not participate in deliberations, either as a member of the ZBA, or as a “citizen”.
  - Do not discuss the proposal, either formally or informally with any of the other member.

#### 4) **Audience Participation:**

Control of audience participation will be the duty of the Chair or Vice-Chair. Audience participation will involve the following guidance:

- Everyone will have the opportunity to speak and present evidence, however, the number of times and the length of time an individual is allowed to speak will be limited by the ZBA. The audience may also assign a spokesperson to speak for those for or against the variance.
- Outbursts, foul language, or other disturbances not considered proper in a public meeting will not be tolerated. Any offenders will be asked to leave the meeting.
- The time limit allotted per speaker is 3 minutes, unless the ZBA members and/or Chair determine otherwise based on the content and relevance of the discussion. This time limit does not apply to the applicant who will be provided ample time for presentation of their case.
- A group of like-minded audience members may request that a spokesperson speak on their behalf. If this is the case, additional time for the spokesperson to speak will be allowed in recognition of his or her role.
- Persons may be allowed to speak a second time to respond to an earlier comment, but continued retorts will normally not be allowed. The Chair will control this option based on the relevance of the speaker’s previous statements.
- All audience comments will be directed to the Chair.
- At the discretion of the Chair, a sign-up sheet for those persons requesting to speak may be required, with the Chair only recognizing those who have signed up to speak.
- Audience members that are called upon to speak must stand up while speaking, unless a physical disability makes standing difficult or impossible.
- If you cannot hear the ZBA members, ask them to speak up.

ATTACHMENT 3

**Rules of Procedure of the Zoning Board of Appeals**

5) **Meeting Minutes:**

Meeting minutes SHALL be kept, and should contain enough detail so that a person not present can understand what was discussed, who spoke at the meeting (name and address), what action was taken by the ZBA (including how each commissioner voted and any conditions attached to the decision), and what action was taken and on what standards of the ordinance it was based.

Print the Rules of Procedure on the back of the meeting agenda so that everyone is aware of the rules.

ATTACHMENT 4

Zoning Board of Appeals Application

# Village of Estral Beach

7194 Lakeview Boulevard, Newport, MI 48166  
(734) 586-8380

Forms must be completed in their entirety or processing will be delayed

PROPERTY OWNER

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Requesting:

Interpretation of Zoning Ordinance

Property Variance

VARIANCE PROPERTY

Parcel #: \_\_\_\_\_

Address same as Property Owner

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Legal Standing: \_\_\_\_\_

Proposed Action(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Variance Requested (e.g., setbacks, coverage, height, etc.): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By signing this application, you agree to allow access to the property in question by the ZBA members, and/or legal Counsel, and/or Consultants hired by the ZBA, following prior notification and concurrence with the date and time of the site visit.

By the signature(s) below, I (we) certify that the information provided in this application, including the accompanying plans and other documentation is, to the best of my (our) knowledge, true and accurate.

Owner 1: \_\_\_\_\_

Owner 2: \_\_\_\_\_  
Print Name Signature Date

ATTACHMENT 4

Zoning Board of Appeals Application

- Complete all of the above sections.
- A **non-refundable \$250.00 filing fee**, payable to the Village of Estral Beach, must be paid at the time of filing this application for a variance request.
- At a minimum, you must provide a minimum of two (2) copies of a survey, plot plan or accurate site plan for all specific variances. Other information such as pictures and building plans may also be useful.
- All ZBA meetings to hear a variance request will be scheduled at least four (4) weeks following receipt of the completed application, with fee, to allow for time for review and notifications.
- It is essential to appear at the hearing in person or to be represented by a duly authorized agent.

-----  
**For Office Use Only:**

Date Received: \_\_\_\_\_ Scheduled ZBA Hearing Date: \_\_\_\_\_

Documents Submitted (e.g., survey, site plan, photos, etc.). N/A if interpretation request:

\_\_\_\_\_  
\_\_\_\_\_

Fee: **\$250.00** \_\_\_\_\_ variance request only. Check No: \_\_\_\_\_ Date: \_\_\_\_\_

-----  
**For ZBA Use Only:**

At a meeting of the ZBA held on \_\_\_\_\_, 20\_\_\_\_ the above described appeal or interpretation was considered and the following is the interpretation or reason the requested variance was  Granted or  Denied: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

N/A if denied or no caveats,  Granted but with the following caveats: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

ZBA Chair: \_\_\_\_\_

ZBA Secretary: \_\_\_\_\_

Print Name / Signature

Date

ATTACHMENT 5

Example Notification Letter

# Village of Estral Beach

7194 Lakeview Boulevard, Newport, MI 48166  
(734) 586-8380

\*\* [Month] 20\*\*

Dear Mr. & Mrs. \*\*\*\*\*,

A filing for a variance from Village zoning ordinance 1031 is being requested by your neighbor, Mr. & Mrs. \*\*\*\*\*, located at \*\*\*\* Lakeshore Drive. As required by law, you are receiving this letter since you own property within 300 feet of the property, located at \*\*\*\* Lakeshore Drive, on which the variance is being requested.

The variance(s) being requested are for the following:

Total side setbacks of 10 feet versus the required 14 feet under section \*\*\*.

This letter provides notification that the meeting to hear the variance will be held at the Village Hall, 7194 Lakeview Boulevard, on [Date, \*\*/\*\*/\*\*], at 7:00 pm. If you have any reason why this variance should or should not be granted, and would like to make your opinion known in a public meeting, the meeting location, date, and time above provides you that opportunity. You may also provide written comments to 7194 Lakeview Boulevard, Newport, MI 48166 prior to the date of the hearing.

Sincerely,

---

[Name], Clerk – Village of Estral Beach