

Approved May 15, 2018

**CITY OF BLOOMFIELD HILLS
ZONING BOARD OF APPEALS BY-LAWS
OAKLAND COUNTY, MICHIGAN
ADOPTED 5/15/18**

ARTICLE 1

The name of this Board shall be the City of Bloomfield Hills Zoning Board of Appeals.

ARTICLE 2

The following rules of procedure are hereby adopted by the Bloomfield Hills Zoning Board of Appeals (hereinafter known as the "Zoning Board of Appeals" or "ZBA") to facilitate the performance of its duties as outlined in the Bloomfield Hills Zoning Ordinance.

ARTICLE 3

SECTION 1. CREATION

The Board was created pursuant to an ordinance adopted by the Bloomfield Hills City Commission as referenced by Act 110, Michigan Public Act of 2006, as amended, and as confirmed by Act 33 of 2008, as amended.

SECTION 2. MEMBERSHIP

The Board shall consist of seven (7) members, representing, insofar as it is possible, important segments of the community such as economic, governmental, educational and social development. To the extent possible, membership shall be representative of the entire geography of the City. The members shall be appointed by the Mayor, subject to the approval of a majority of the City Commission. No member shall be employed by the City.

One regular member may be a member of the City Commission but shall not serve as chairperson. One of the regular members shall be a member of the Planning Commission.

The City Commission may appoint not more than two alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called as specified 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 one (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. The alternate member has the same voting rights as a regular member of the Zoning Board of Appeals.

SECTION 3. TERM OF OFFICE

The term of each member, other than the ex officio members, shall be three (3) years. Insofar as possible, terms shall be staggered so that the terms of one-third (1/3) of all members will expire

each year. Should a member be unable to complete a full three-year term, the Mayor, with the approval of the City Commission, shall appoint a new member to fill the remainder of the term. A member shall, to the extent possible, serve until a successor has been appointed and qualified. The term of the ex officio member shall correspond to his or her term on the other board.

ARTICLE 4

SECTION 1. OFFICERS

The Zoning Board of Appeals shall annually elect its own Chairperson, Vice Chairperson and Secretary.

SECTION 2. CHAIRPERSON

The Chairperson shall preside at all meetings, appoint such committees as shall from time to time be deemed necessary, and perform such duties as may be delegated by the Board. The Chairperson shall have a vote on all resolutions of the Board. Along with City staff, the Chairperson shall have the responsibility for preparation of the agenda for approval by the Board.

SECTION 3. VICE-CHAIRPERSON

The Vice-Chairperson shall preside in the absence of the Chairperson.

SECTION 4. SECRETARY

The Secretary shall keep a record of the minutes of all meetings, a record of all transcripts, records, plans, etc., brought before the Board. Such duties may be performed by an employed Recording Secretary when delegated by the Board, or the City Clerk. The Secretary may also have the authority for signing necessary documents on behalf of the Board.

SECTION 5. ELECTION OF OFFICERS

Election of Officers of the Board shall be held annually at the first regular meeting following the appointment or re-appointment of Zoning Board of Appeals members by the City Commission.

A. TERM

The term of office shall be one (1) year commencing immediately upon election and expiring concurrently with the appointment or re-appointment of Zoning Board of Appeals members by the City Commission of the subsequent year. The immediate past Chair shall continue to preside at the meeting until the election of the new Chairperson is complete.

B. VACANCY

Should an Officer be unable to complete his term of office, a special election shall be held to fill the remainder of the term. The election shall be held at the first regular meeting after the vacancy has been confirmed by action from the City Commission.

ARTICLE 5

SECTION 1. REVIEW OF DECISIONS

The Zoning Board of Appeals shall have the powers to hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the chief building inspector in the enforcement of the zoning ordinance or any other code adopted by the City.

The Zoning Board of Appeals may reverse an order of an administrative official or the Planning Commission only if it finds that the action or decision appealed meets one or more of the following requirements:

- (1) The decision was arbitrary or capricious.
- (2) The decision was based on an erroneous finding or a material fact.
- (3) The decision constituted an abuse of discretion.
- (4) The decision was based on an erroneous interpretation of the zoning code or zoning law.

SECTION 2. EXCEPTIONS AND SPECIAL APPROVALS.

When approval of the Zoning Board of Appeals is required for an exception, or special approval, it shall determine in addition to the other requirements set forth in the zoning ordinance that the proposed structure and use will not create any threat to public health and safety, will not unduly aggravate traffic problems, and will be so designed and laid out as to be consistent with the general trend and character of development in the city.

SECTION 3. APPEALS AND VARIANCES.

It shall be the duty of the Zoning Board of Appeals, in hearing and deciding appeals, to grant such variances as may be in harmony with the general purpose and intent hereof, so that the function of this chapter be observed, public safety and welfare secured, and substantial justice done, including the following:

- a. Interpret the provisions of the chapter in such a way as to carry out the intent and purpose of the plan, as shown upon the zoning map fixing the use districts, accompanying and made part of this chapter, where street layout actually on the ground varies from the street as shown on the map aforesaid;

- b. Permit the erection and use of a building or use of premises for public utility purposes, upon recommendation of the planning commission;
- c. Permit such modification of the height, building location and area regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape or so located with relation to surrounding development or physical characteristics that it cannot otherwise be appropriately improved without such modification;
- d. Permit temporary buildings and uses for period not to exceed one (1) year.

The Zoning Board of Appeals does not have the power to alter or change the zoning map.

ARTICLE 6.

SECTION 1. MEETINGS

A. REGULAR MEETINGS

Regular meetings shall be held on the third Tuesday of each month beginning at 4:00 p.m., unless another date and time becomes necessary, or unless no meeting is necessary due to lack of agenda items. The purpose of the regular meetings shall be to make decisions on pending business matters, to accept new business matters for consideration, and to approve minutes of previous meetings.

B. SPECIAL MEETINGS

The purpose of special meetings shall be to review business matters that cannot wait for the regular meeting date. The special meetings may be called by the Chairperson or the Vice-Chairperson of the Board at such time and place deemed necessary. Prior notice of 48 hours is required to each member stating the time, place, and nature of business. A public notice shall be posted at least eighteen (18) hours prior to the meeting.

C. CANCELLATION OF MEETING DUE TO HOLIDAY

In the event a scheduled meeting falls upon a holiday, such meeting may be cancelled and items of that agenda carried forward to the next appropriate meeting date.

SECTION 2. QUORUM

A quorum consists of four (4) members.

SECTION 3. OPEN MEETING ACT AND FREEDOM OF INFORMATION ACT

All meetings shall be conducted in accordance with the Open Meetings Act. All minutes, records, documents, correspondence and other materials of The Zoning Board of Appeals shall be open to public inspection in accordance with applicable law, including the Freedom of Information Act.

SECTION 4. AGENDA

The agenda shall consist of business matters to be acted upon by the Zoning Board of Appeals. Conduct of a regular meeting shall require the following order to business:

1. Open meeting and state if it is a regular or special meeting
2. Roll Call
3. Minutes
4. New Business
5. Unfinished Business
6. Public Hearings
7. Chairman's Comments
8. Board Member Comments
9. Adjournment

SECTION 5. MANNER OF PRESENTATION.

1. Community representatives shall present an overview of the zoning regulations involved. This may include an indication of the objectives sought to be achieved in the zoning district, and any planning, engineering, financial environmental or other considerations which are generally relevant within the zoning district and/or in the general area of the property at issue.
2. The applicant may present witnesses, including the applicant, or may submit affidavits, for the purpose of attempting to prove facts or conclusions. The applicant shall be provided with the opportunity to present all testimony and evidence proposed to be presented at the prehearing conference either through witnesses or affidavits; however, the chairperson of the Zoning Board of Appeals may restrict testimony and evidence which would result in unreasonable duplication. The Zoning Board of Appeals may require the presence of any witness who has offered either testimony on a material question of fact or testimony of an expert nature, with the view of permitting members of the Zoning Board of Appeals to ask questions of such witnesses.
3. In the event an item lacks sufficient information to take action, the Board shall table the matter until such time the required information has been submitted. Such time shall not exceed sixty (60) days from the original request. At the

expiration of this time limit, if such information has not been submitted, the matter shall be removed from the agenda.

4. The applicant shall have the burden of proof, and in order to obtain relief, the applicant must demonstrate each of the appropriate factors set forth above.

SECTION 6. PUBLIC PARTICIPATION

As provided by statute, all meetings, including special meetings, shall be open to the public. Members of the public shall have the opportunity to speak on agenda items; however, the Chair shall control the procedure of the meeting.

During debate on motions, which deal with new or unfinished business, the Zoning Board of Appeals members shall first have the opportunity to discuss the motion, then to hear and question petitioners and/or other interested parties who have requested statements from persons who request recognition to speak on the specified motion.

Members of the public shall speak only after the item is opened for public discussion by the Chair. The time allotted for the public to be heard on any separate item of the scheduled agenda shall be limited to a time of five (5) minutes, unless this time is extended or reduced by the Chair. No member of the public shall speak twice on any single subject matter unless authorized by the Chair. Should any person be unable to appear, they may submit their comments to the Board in writing, addressed to the Zoning Board of Appeals Chairman, at the City Offices.

The Board shall keep a public record of its resolutions, transactions, findings and determinations in the Office of the City Clerk.

SECTION 7. ORDER

Robert's Rules of Order shall govern all Board meetings, except as noted herein.

SECTION 8. VOTING

At the conclusion of the hearing, the Zoning Board of Appeals may make its decision at that meeting, or it may adjourn the hearing to a new date for the purpose of reviewing the testimony and evidence, and reviewing proposed findings and conclusions submitted by hearing participants, in preparation for making its decision.

The concurring vote of four (4) members of the Zoning Board of Appeals shall be necessary to reverse any order, requirements, decision or determination of the chief building inspector, or to decide in favor of the applicant any matter upon which it is authorized by the zoning ordinance to render a decision, except for a use variance. A concurring vote of five (5) of all seven (7) members of the Zoning Board of Appeals shall be necessary to grant a use variance.

ARTICLE 7

SECTION 1. DIMENSIONAL OR NON-USE VARIANCES.

The Zoning Board of Appeals may grant a dimensional or non-use variance upon finding that compliance with the strict letter of the ordinance would create a practical difficulty. A finding of practical difficulty shall require demonstration that all of the following conditions are met:

1. That strict compliance with the ordinance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with said restrictions unnecessarily burdensome.
2. That a variance would do substantial justice to the proponent as well as to other property owners in the zoning district or whether a lesser variance would give substantial relief to the proponent and be more consistent with justice to others;
3. That the plight of the property owner is due to unique circumstances of the property;
4. That the proponent's problem is not self-created; and
5. That the granting of the variance will not adversely affect the purposes or objectives of the master plan of the City.

SECTION 2. USE VARIANCE.

Where, owing to special conditions, a literal enforcement of the provisions of the zoning ordinance would involve an unnecessary hardship, the Zoning Board of Appeals shall have power upon appeal in specific cases to authorize such variation or modifications, with such conditions and safeguards as it may determine, as may be in harmony with the spirit of this chapter so that public safety and welfare be secured and substantial justice done. No such variance or modification of the provisions of the zoning ordinance shall be granted unless it appears that the following conditions exist:

1. Applicant's property cannot be used for the purposes permitted in the zoning district.
2. Applicant's plight is due to unique circumstances peculiar to his property and not to general neighborhood conditions.
3. Applicant's suggested use would not alter the essential character of the area.
4. Applicant's problem is not self-created.

ARTICLE 8

SECTION 1. CONFLICT OF INTEREST

A member shall disclose any possible conflict of interest before casting a vote on a matter. Failure to disclose a conflict of interest shall constitute malfeasance in office. Once a member discloses a potential conflict of interest regarding a particular matter, he or she may be disqualified from voting on the matter upon a majority vote of the remaining members of the Board.

A conflict of interest exists if any member has a personal or financial interest in the matter or has an interest such that the member cannot be unbiased in the decision-making process. A member shall declare a conflict of interest when:

- (1) A relative or other family member is involved in any request for which the Zoning Board of Appeals is asked to make a decision;
- (2) The Zoning Board of Appeals member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant's company, agency or association;
- (3) The Zoning Board of Appeals member owns or has a financial interest in neighboring property. For purposes of this section, neighboring property shall include any property falling within the notification radius for the proposed development, as required by the Zoning Ordinance or other applicable ordinance; or
- (4) There is a reasonable appearance of a conflict of interest, as determined by the Zoning Board of Appeals member declaring such conflict.

SECTION 2. REMOVAL OF MEMBERS

The City Commission may remove a member of the Zoning Board of Appeals for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member absent from three (3) consecutive meetings without a valid excuse may be reported to the City Commission for nonfeasance, at the discretion of the Board.

ARTICLE 9

SECTION 1. AMENDMENT TO BY-LAWS

The by-laws may be amended at any regular meeting by a two-thirds vote of the members of the Board, providing the proposed changes have been read at a preceding meeting.

SECTION 2. REPORT TO CITY COMMISSION

A report shall be prepared annually and approved by a majority vote of the Zoning Board of Appeals. The report shall be prepared by the Recording Secretary and submitted to the Zoning Board of Appeals at the regular meeting in February of each year. After review by the Zoning Board of Appeals, the report shall be submitted to the City Commission for their review.

Following preparation of the annual report, the Zoning Board of Appeals may prepare a detailed budget to submit to the City Commission for final approval, disapproval or approval with adjustments.

STATE OF MICHIGAN)

) ss.

COUNTY OF OAKLAND)

I, Amy Burton, the duly qualified Clerk of the City of Bloomfield Hills, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of the Zoning Board of Appeals By-Laws adopted by the Zoning Board of Appeals of the City of Bloomfield Hills on the 15 day of May, 2018, the original of which is in my office.


AMY BURTON, CITY CLERK

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