

**CHARTER TOWNSHIP OF ELMWOOD
ZONING BOARD OF APPEALS
SPECIAL MEETING**

Wednesday January 3, 2024, 2023 at 7:00 PM
Location: Township Hall (10090 E. Lincoln Rd., Traverse City, MI)

- A. Call to order - 7:00 pm
- B. Roll Call
- C. Public Comment (Speakers to identify themselves by name and address, limited to 3 minutes each)
- D. Agenda Modifications/Approval
- E. Declaration of Conflict of Interest: *(Items on the Agenda)*
- F. Approval of Minutes: October 11, 2023
- G. New Business:
 - 1. Review and Approve 2024 Meeting Calendar
 - 2. Election of Officers
 - 3. Review Rules of Procedure
- H. Old Business:
- I. Comments from the Chair
- J. Comments from ZBA Members
- K. Announcements
- L. Public Comment (Speakers to identify themselves by name and address, limited to 2 minutes each)
- M. Adjourn - 9:00 pm or majority vote to extend meeting

ZBA Members:

Gary Bergstrom, Chair
Jeff Aprill, Vice-Chair
Jason Razavi, Secretary
Jeff Beamsley
Jim O'Rourke
Randy Baidas-Alternate

CHARTER TOWNSHIP OF ELMWOOD
10090 E. LINCOLN ROAD
TRAVERSE CITY, MI 49684 231-946-0921

NOTICE OF SPECIAL ZBA MEETING

PLEASE TAKE NOTE that the Zoning Board of Appeals of the Charter Township of Elmwood will hold a meeting on January 3, 2024 at 7:00 pm at Township Hall (10090 E. Lincoln Road, Traverse City, MI 49684). The purpose of this meeting is as follows:

1. Review and Approve October 2023 Minutes
2. Review and Approve 2024 Meeting Calendar
3. Election of Officers
4. Review Rules of Procedures

The public is invited to attend this Special meeting.

Individuals with disabilities who are planning to attend and require reasonable auxiliary aids should contact the Township Clerk by calling 231-946-0921.

Posted: 12/28/2023
11:30 am
Elmwood Township Hall
Connie Preston, Township Clerk

**Charter Township of Elmwood
Zoning Board of Appeals Regular Meeting
Elmwood Township Hall (10090 E. Lincoln Rd.)
October 11, 2023 at 7:00 PM**

A. CALL TO ORDER: Gary Bergstrom called the meeting to order at 7:00 p.m.

B. ROLL CALL: Jeff Beamsley, Jeff Aprill, Jim O'Rourke, Gary Bergstrom
Excused: Jason Razavi

C. PUBLIC COMMENT: None

D. AGENDA MODIFICATIONS: MOTION BY JEFF APRILL, SECONDED BY JIM O'ROURKE TO APPROVE THE AGENDA AS PRESENTED. MOTION APPROVED 4-0

E. DECLARATION OF CONFLICT OF INTEREST: Jeff Aprill stated he has worked with Chris Fredrickson, but not on this project. No conflict found.

F. APPROVAL OF MINUTES: MAY 3, 2023: MOTION BY JIM O'ROURKE, SECONDED BY GARY BERGSTROM TO APPROVE MINUTES OF MAY 3, 2023 AS PRESENTED. MOTION PASSED UNANIMOUSLY.

G. NEW BUSINESS:

1. Case #2023-05 Request by Stephen Earl regarding property at 10945 S. West-Bay Shore Dr., Parcel #45-004-016-039-00 for a 10-foot water's edge setback variance to remove and replace rear deck in same location.

Gary Bergstrom said it sounded straight forward, but asked Staff if she wanted to give a summary. Staff said that essentially, the Township originally adopted a water's edge setback in 1980, the deck was constructed in 1982, but she couldn't find a permit for the deck, if they did, then it could have been replaced in that same footprint, but because she couldn't find anything saying that it was permitted by the Township, that's why it's before them. She did note that the Zoning Ordinance does allow for a smaller deck with a water's edge setback. She had Findings prepared.

Gary Bergstrom said it looks like there is some question about whether it was really built in '82, or if it pre-dated the Z.O. Of course, if it did, as long as they stayed in the same footprint, they wouldn't have to seek a variance. But the burden would be on them to show that. Staff said they were able to locate an old letter that referenced the construction in 1982. She noted even if it was a pre-existing non-conforming structure, they couldn't remove and replace, they could repair without coming before them. She said think of it like a house; a pre-existing non-conforming house there and they wanted to tear down and build in the same location, they'd have to come before the ZBA. They can repair, they just can't alter it or expand.

Gary Bergstrom said, as he understands; it's 44' wide and 8' long. Staff replied, it fits the lot, it's a small lot, it's unique. Gary Bergstrom said he guessed the house itself is under 1,000 sq. ft. Staff said it was 838 sq. ft. according to BS&A.

Gary Bergstrom opened the public hearing at 7:05 p.m.

Gail of 10945 S. West-Bay Shore Dr. stated they purchased the home in 2005 and have been renovating it inside and outside since then. They realized the deck needed to be updated because it wasn't safe or up to code. They are not making it any bigger, they just want to build it exactly as it is, just new materials.

Staff asked if the bottom of the deck was enclosed.

Gail answered saying it wasn't.

Staff said that is helpful because the Township did receive a couple letters, one was from Heather Smith who works for the Watershed Center. If the deck was enclosed, if there was going to be any type of flooding, there would be more erosion, but if it's not, water can move freely.

Gary Bergstrom saw the letters from the neighbors that said there's a spring going through the property. Gail said the deck was 35' from where the culvert goes out.

Gary Bergstrom asked if that was still their property where it comes out of the culvert and heads east towards the bay. Gail responded, yes. They've never seen water come out of it, but they did measure it, and it's 35' from the deck.

Jeff Aprill said to Staff that she stated they could repair the deck but not tear it down completely. Staff responded, if they wanted to replace the boards only, there would be no issue, but they want to replace the footings, so they need approval.

Jeff Beamsley asked what the condition of the footings are. Gail replied, they're stable, but they're old and they want to make sure the deck is structurally sound.

Staff said any type of addition on this parcel would require a variance.

Jeff Beamsley asked, in general, how does the Township deal with non-conforming instances. He wondered how ultimately; they advance the cause of coded properties when they have so much non-conformity. Staff answered, if somebody is unable to conform to the Zoning Ordinance, that's part of the reason why the ZBA exists, the Board can't handle use variances, any member of the public can request a dimensional use variance from any dimensional aspect of the Ordinance. The Board reviews each request based on the Standards set forth in the Ordinance. If the Board finds all of those Standards have been

met, they have to grant the variance. If the Board finds that even one of those Standards have not been met, then they cannot grant the variance. Those Standards are located within Article 12 and she has Draft Findings that goes through those and presents just facts that have already been presented by the applicants and they incorporate information from the file and help the Board with their decision, but it's ultimately the Board that makes the decision.

Gary Bergstrom closed the public hearing at 7:19 p.m.

The Board went over the Basic Conditions required to grant a variance.

MOTION BY JEFF APRILL, SECONDED BY GARY BERGSTROM TO APPROVE THE VARIANCE NECESSARY TO ALLOW THE INSTALLATION OF A NEW DECK IN THE DECK'S CURRENT LOCATION BASED ON THE PREVIOUSLY FOUND FINDINGS OF FACT WITH THE CONDITIONS THAT 1) THE AREA UNDERNEATH THE DECK WILL NOT BE ENCLOSED AND 2) THE DECK SHALL BE REPLACE IN-KIND AND SHALL NOT INCREASE IN SIZE OR ENCROACH FURTHER INTO THE SETBACKS THEN IT CURRENTLY DOES. ROLL CALL VOTE: JEFF BEAMSLEY-YES, JEFF APRILL-YES, JIM O'ROURKE-YES, GARY BERGSTROM-YES. MOTION APPROVED UNANIMOUSLY.

2. Case # 2023-06 Request by TCWC Holding Company LLC at 9432 S. Center Hwy, Parcel #45-004-008-009-20 for a 10-foot height variance to construct a 45-foot -high portion of the building for equipment used in distillation in the Agricultural-Rural Zoning District. Maximum height allowed is 35 feet per section 5.4 of the Elmwood township Zoning Ordinance.

Gary Bergstrom opened the public hearing at 7:34 p.m.

Chris Frederickson owner/operator of Traverse City Whiskey 9440 S. Center Hwy.

Gary Bergstrom asked Chris, when he was before them almost 4 years ago, they had just purchased the property.

Chris Frederickson replied, yes, when they approached the ZBA several years ago, they had just purchased the property and were in the planning phase of the property. Since then, not a whole lot has changed. They have been navigating the challenges of bringing a facility like that, it's a big deal for them, there's been a lot of hurdles in the way that they've had to navigate, and he was there on behalf of Traverse City Whiskey to ask for a renewal of the approved variance.

Gary Bergstrom asked, that 10 feet beyond the height restriction in the Zoning Ordinance that's something based on their distilling knowledge, they need that extra 10 feet.

Chris Frederickson replied, yes, over the course of time the project has been planned, they purchased the equipment to successfully run the venture. They have the equipment, it just needs to be installed, and to clarify, the variance is supporting a very specific part of the building, it is not the whole building. It is one front section of the building that encloses the production equipment for the facility.

Gary Bergstrom asked if it was 20 x 20. Chris was going off memory, but thought that sounded right.

Jeff Beamsley said that was his only question, because he isn't familiar with the history, before they built, they requested the variance.

Chris responded, yes. He clarified, there are two buildings on the property that are part of the project. There's the building that Jeff Beamsley referenced that's in the back which is the barrel warehouse, and then the big building which is the former Stanek and Cherry Growers fruit processing facility. They are rehabbing the old building, that is a big part of the project, and as part of that rehabilitation, there's a 20 x 20 foot section in front of the building that houses the equipment and they're asking for the variance; currently they're capped at 35' and that variance would allow an extra 10' for them to fit the production equipment inside.

Jim O'Rourke noted someone mentioned fire protection. On the County building level was there something and is the 45' for fire protection. He asked if there was going to be flammables in that area. Chris answered, it is a height issue, but there is no direct impact to anything that touches the fire safety or fire suppression. There is fire suppression everywhere.

Jim O'Rourke commented the ZBA is just re-doing the approval they obtained in the past.

Gary Bergstrom asked Staff, even though the ZBA gave them a variance, the time frame on that has expired, they still have to go through the process and basic conditions. Staff said, yes, there have been a couple of changes. She also noted that she incorporated into the record the Minutes from 2021 when the Board approved it as well as the decision. They have not received letters for or against the project.

Gary Bergstrom closed the public hearing at 7:43 p.m.

The Board went through the Basic and Special Conditions.

Jeff Aprill suggested adding the condition to limit it to the exact size of that area. Staff agreed and said they could say the height variance is specific to the area as shown on the site plan dated 8/29/23.

MOTION BY JEFF APRILL, SECONDED BY JIM O'ROURKE TO APPROVE THE VARIANCE REQUEST FOR CASE 2023-06 BASED ON THE PREVIOUSLY FOUND FINDINGS OF FACT WITH THE CONDITION THAT THE INCREASED 10 FOOT VARIANCE IS SPECIFIC TO THE AREA AS SHOWN ON THE SITE PLAN DATED 8/29/23. ROLL CALL VOTE: JEFF BEAMSLEY-YES, JEFF APRILL-YES, JIM O'ROURKE-YES, GARY BERGSTROM-YES. MOTION PASSED BY A UNANIMOUS VOTE.

3. DISCUSSION ON NEXT MEETING DATE: Staff relayed that at this time, there are no new applications for November or December. If the Board meets in December, staff will not be able to be present for the regular scheduled meeting and they would have to change the date. The Board discussed other dates in December, but made no motion to change the schedule.

H. OLD BUSINESS: None

I. COMMENTS FROM THE CHAIR: Gary Bergstrom said it's been a continuing pleasure to work with them all, and welcomed new member, Jeff Beamsley.

J. COMMENTS FROM ZBA MEMBERS: None

K. ANNOUNCEMENTS: None

L. PUBLIC COMMENT: None

M. ADJOURN: MOTION BY JEFF APRILL, SECONDED BY JEFF BEAMSLEY TO ADJOURN MEETING AT 7:57 PM. MOTION PASSED.

Elmwood Charter Township Zoning Board of Appeals

NOTICE TO THE PUBLIC YEAR OF 2024 Regular Meeting Schedule

Regular meetings of the Elmwood Charter Township Zoning Board of Appeals are held at the Elmwood Township Hall located at 10090 E. Lincoln Rd., Traverse City, MI on the first Wednesday of each month at **6:30 PM**, with no new business being considered after **8:30 PM** without approval of a majority of the members. Meetings will be canceled if there is no business.

February 7, 2024

March 6, 2024

April 3, 2024

May 1, 2024

June 5, 2024

July 10, 2024

August 7, 2024

September 4, 2024

October 2, 2024

November 6, 2024

December 4, 2024

Date adopted: _____

Elmwood Charter Township
Zoning Board of Appeals Chair

**ELMWOOD CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
Rules of Procedure**

1. **PURPOSE.** These Rules of Procedure are adopted to provide for the efficient and uniform administration of the Elmwood Charter Township Zoning Board of Appeals (ZBA).
2. **MEMBERSHIP.**
 - 2.1 **Regular and Alternate Members.** The ZBA shall be composed of five (5) regular members and one (1) alternate member may be appointed by the Township Board as provided in the Elmwood Charter Township Zoning Ordinance. For purposes of these Rules of Procedures, unless indicated otherwise, the phrase "members of the ZBA" shall mean the regular ZBA members and any alternate members designated to serve on a particular case.
 - 2.2 **Service by Alternate Members.** Alternate members of the ZBA may be called as specified in the Elmwood Charter Township Zoning Ordinance to serve on a case in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings and when the regular member has abstained for reasons of conflict of interest.
 - 2.3 **Voting by Alternate Member.** When serving on the ZBA, an alternate member has the same voting rights as a regular member and shall serve on the case until a final decision is made.
3. **OFFICERS AND COMMITTEES.**
 - 3.1 **Officers.** The officers of the ZBA shall be a Chairperson, Vice Chairperson, and Secretary.
 - 3.2 **Election of Officers.** The officers of the ZBA shall be chosen from its members by the ZBA at its annual meeting held in January of each year. A regular member of the ZBA who is also a member of the Township Board shall not be eligible to serve as Chairperson or Vice Chairperson. The term of office for each officer shall be one (1) year, or until his or her successor is chosen and assumes office.
 - 3.3 **Chairperson.** The Chairperson shall preside over all meetings of the ZBA.
 - 3.4 **Vice Chairperson.** The Vice Chairperson shall perform the duties of the Chairperson during the absence or disability of the Chairperson.
 - 3.5 **Secretary.** The Secretary shall assure that the minutes of all meetings of the ZBA are properly recorded and that notices for all meetings are duly given. He or she shall also perform such other duties as may be assigned by the Chairperson or the ZBA. A recording secretary may be appointed to take the minutes for the Board.

3.6 Vacancies. If a vacancy occurs in the office of Chairperson, the Vice Chairperson shall assume the office of Chairperson for the remainder of the term. All other vacancies in offices shall be filled by the ZBA from its members for the unexpired term of the office.

4. MEETINGS

4.1 Regular Schedule. The regular meetings of the ZBA shall be on the first Wednesday of the month at 7:00 pm but are subject to change. If there are no applications or business, the meetings will be canceled.

4.2 Annual Meeting. An annual meeting of the ZBA shall be held in January to elect officers, set meeting calendar, and approve the previous meeting minutes even if there is no other business on the agenda.

4.3 Special Meetings. Special meetings of the ZBA shall be held at the call of the Chairperson or upon written request of a majority of the regular members of the ZBA filed with the Secretary. No less than eighteen (18) hours before the scheduled special meeting, the Secretary or his/her designee shall provide each regular or designated alternate member of the ZBA with a written notice of the special meeting, specifying the date, time, place, and purpose of the special meeting. This written notice shall be given personally to each regular or designated alternate member of the ZBA or left at the member's usual place of residence.

4.4 Place of Meeting. Meetings of the ZBA shall be held at the Township Hall. Whenever the Chairperson determines that the place of the meeting will likely have inadequate space for members of the public, the location of the meeting may be changed to a larger meeting facility. A notice of the change in meeting location shall be prominently posted at the Township Hall so that it is visible from outside and shall be published in a newspaper of general circulation within the township, if such publication can be accomplished prior to the meeting.

4.5 Time of Meetings. Regular meetings of the ZBA shall begin at 7:00 p.m., unless the ZBA, by a vote of a majority of its members, specifies a different starting time. The ZBA shall not begin considering any matter on the agenda after 9:00 p.m., except by majority consent of the members present. Matters on the agenda which have not been considered may be heard at an adjourned meeting/hearing, provided a motion specifies the time, date, and place of the adjourned meeting/hearing, or shall be placed on the agenda of the next regular meeting, or on the agenda of a special meeting, if one is called.

4.6 Meeting Attendance. Each regular member of the ZBA shall attend all regular and special meetings of the ZBA, unless excused by the Chairperson for good cause. An alternate ZBA member shall attend regular and special meetings of the ZBA when requested, unless excused by the Chairperson for good cause. A regular or alternate member of the ZBA with three (3) consecutive unexcused absences may be removed from office by the Township Board, following notice and a hearing before the Township Board.

5. PUBLIC NOTICE OF MEETINGS

5.1 Public Notice of Meetings. The Zoning Administrator shall be responsible for providing the proper notice of all meetings of the ZBA. Notices shall comply with the Open Meetings Act, as amended, the Michigan Zoning Enabling Act, as amended, and the Elmwood Charter Township Zoning Ordinance, as amended.

5.2 Special Meetings. No less than eighteen (18) hours before any scheduled special meeting, the Secretary or his/her designee shall post at the Township Hall so that it is visible from outside a notice of the special meeting, including the purpose for which the special meeting is called.

6. QUORUM, VOTING, AND CONFLICTS OF INTEREST.

6.1 Quorum. A majority of the regular members of the ZBA shall constitute a quorum for the transaction of business at all meetings of the ZBA. The ZBA shall not conduct business unless a majority of the regular members are present.

6.2 Voting. Except as provided herein, an affirmative vote of a majority of the entire ZBA shall be necessary to grant a dimensional variance, to reverse an order, requirement, decision, or determination of the zoning administrator or other administrative official or body, or to decide in favor of the applicant on any matter before the ZBA. Unless the Elmwood Charter Township Zoning Ordinance requires otherwise, an affirmative vote of a majority of the ZBA members present shall be necessary to make all other decisions.

6.3 Conflict of Interests. A regular member of the ZBA shall declare a conflict of interest in connection with a matter pending before the ZBA and shall disqualify himself of herself from deliberating and voting on the matter and an alternate member shall not serve when any of the following circumstances exist:

- a. The applicant is the ZBA member or the child, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, nephew, niece, aunt, or uncle of the ZBA member or the member's spouse.
- b. The ZBA member or the member's spouse, parent, child, or any relative residing in the member's household has a pecuniary interest in the outcome of the matter.
- c. The ZBA member or the member's spouse resides on or has an ownership interest in land within 300 feet of the parcel regarding which the decision is to be made.
- d. While being a member of the ZBA the member has made statements or taken any action outside the formal decision-making process that would suggest that he or she has prejudged the matter before the ZBA or would in any way preclude him or her from affording the applicant and the public a fair hearing.

- e. If the ZBA member has expressed an opinion concerning a matter before the ZBA prior to becoming a member of the ZBA and cannot in good faith set aside that prior opinion and decide the matter based on the information provided at the public hearing and the zoning ordinance requirements.
- f. The ZBA member concludes in good faith that because of prior business or personal relationships with the applicant or with other participants in the public hearing process, or for other reasons, he or she cannot afford the applicant and the public a fair hearing.

7. REGULAR MEETING AGENDA.

7.1 Regular Meeting Agenda. The agenda for a regular meeting of the ZBA may substantially follow:

- a. Call to Order
- b. Roll Call
- c. Public Comments
- d. Agenda Modifications/Approval
- e. Declaration of Conflict of Interest
- f. Approval of Minutes
- g. Unfinished/Old Business
- h. New business, including scheduled public hearings
- i. Comments from the Chair and ZBA Members
- j. Correspondence/Reports/Announcements
- k. Public Comment
- l. Adjournment

7.2 Special Meeting Agenda. Whenever the ZBA meets in a special meeting, the matters to be considered shall be stated in the notice of the special meeting. No other matters shall be considered, except when all regular members of the ZBA are present and concur.

8. CONDUCT OF MEETINGS.

8.1 Public Hearing Procedure. The procedure for a public hearing of the ZBA shall be as follows:

- a. The Chairperson shall open the public hearing by announcing the matter to be heard and by summarizing the standards or other regulations of the zoning ordinance on which the ZBA's decision must be based. The Chair may delegate the summarization to Township Staff, Attorney or other individuals.
- b. Staff report, if applicable.
- c. Presentation by the applicant or applicant's attorney or other agents.
- d. Correspondence and/or persons speaking in favor of the application.
- e. Correspondence and/or persons speaking in opposition to the application.
- f. Rebuttal comments by the applicant or applicant's attorney or other agents.
- g. Chairperson declares public hearing portion of the case closed.

- h. Compilation of list of all exhibits to be considered by the ZBA when making its decision.
- i. The ZBA begins its deliberations on the case.
 - 1. During deliberations the ZBA may solicit information from the applicant, applicant's attorney or other agents, or from members of the public. However, the solicitation of additional information shall not be construed as the reopening of the public hearing, unless so declared by the Chairperson. If the public hearing portion of the case is reopened, then the procedures for the original public hearing shall be followed.
 - 2. During deliberations the ZBA shall also specify in writing the findings of fact on which it bases its decision.
 - 3. If during deliberations the ZBA determines that additional information is needed to make its decision, it may adjourn the case to a specific time, date, and place to receive that additional information. At the adjourned time, date, and place, the public hearing portion of the case shall be reopened, but only to receive the requested additional information and other information relevant to that issue.
- j. At the conclusion of its deliberations, the ZBA shall adopt a motion documenting its decision.

8.2 Members of the Public. Members of the public wishing to address the ZBA during the meeting or during a public hearing shall first be recognized by the Chairperson, and each person who speaks may state his or her name and address, to the entire ZBA.

8.3 Opportunity for Public Comment. Each member of the public desiring to address the ZBA during public comment and the public hearing shall be given three (3) minutes to address the Board. Members of the general public expressing a desire to address the ZBA may transfer their allotted time to another individual, who may act as a spokesperson for the group. The spokesperson may have up to fifteen (15) minutes to address the Board. The time limitation imposed pursuant to this section, however, shall not apply to the applicant or the applicant's attorney or other agents, since the applicant has the burden of proof on the matter before the ZBA.

8.4 Written Statements Submitted by the Public. All written statements (both during public hearings and outside public hearings) should be given to the Secretary or his/her designee prior to the commencement of the meeting or public hearing. All written statements and documents presented to the ZBA by an individual are considered public documents and shall be retained in the public record of the meeting.

8.5 Disorderly Conduct at Meetings. Individuals addressing the ZBA (both during public hearings and outside public hearings) should take into consideration the rules of common courtesy. The comments by members of the public cannot be used to make personal attacks against members of the ZBA or township staff. The Chairperson may call out of order any person who is being disorderly by speaking or otherwise disrupting the meeting, failing to be germane, speaking longer than the allotted time, yelling, shouting or speaking vulgarities. Such person shall thereupon be seated until the Chairperson determines whether the person is in order. If a person is called out of order, he or she shall not be permitted to continue to speak at the same meeting or

public hearing, except by a majority vote of the ZBA members present. If the person continues to be disorderly to the extent that the ZBA cannot continue to conduct business, the Chairperson shall consider the person to be in breach of the peace and may request the assistance of a law enforcement officer to remove the person from the meeting. The ZBA shall have the right to adjourn the meeting if it is interrupted due to the disorderly conduct of any person. No person shall be removed from a public meeting, except for an actual breach of the peace committed at the meeting.

8.6 Rehearings.

- a. Except as provided in this subsection, a decision of the ZBA shall be final. The ZBA may grant a rehearing under exceptional circumstances for any decision made by it. Exceptional circumstances shall mean any of the following:
 1. The applicant who brought the matter before the ZBA made misrepresentations concerning a material issue which was relied upon by the ZBA in reaching its decision.
 2. There has been a material change in circumstances regarding the ZBA's findings of fact which occurred after the public hearing.
 3. The township attorney by a written opinion states that in the attorney's professional opinion the decision made by the ZBA or the procedure used in the matter was clearly erroneous.

- b. A rehearing may be requested by the applicant or by the Zoning Administrator, or a rehearing may be granted by the ZBA on its own motion, pursuant to the following procedure:
 1. A request for a rehearing which is made by an applicant or the Zoning Administrator must be made within twenty-one (21) days from the date of approval of the ZBA's minutes regarding the decision for which the rehearing is being requested.
 2. A request for a rehearing made by the Zoning Administrator or a rehearing granted by the ZBA on its own motion may be granted at any time as long as the applicant has not been prejudiced by any delay.
 3. Whenever the ZBA considers granting a rehearing, it shall provide written notice to the applicant that a rehearing will be considered. The notice may be served upon the applicant by first class mail at the applicants' last known address, or may be served personally on the applicant. The notice must be served at least nine (9) days before the time set for the hearing if served by mail, or at least seven (7) days before the time set for the hearing if served by personal service. Service by mail shall be complete upon mailing. In addition to serving the above notice on the applicant, all other notice requirements for the type of decision being heard shall be completed before the ZBA holds a hearing at which it considers whether to grant a rehearing.
 4. If the ZBA grants a rehearing, then the rehearing on the merits shall not be held until all notice requirements for the type of decision being reheard have been satisfied.

8.7 Robert's Rules of Order. Except as modified by these Rules of Procedures and state or federal law, the ZBA shall follow Robert's Rules of Order, as Revised, for all procedural questions.

9. **RECORD OF MEETINGS.**

9.1 **Recording Responsibility.** The Zoning Administrator shall be responsible for maintaining the official records and minutes of each meeting of the ZBA. The minutes shall include all the actions of the ZBA with respect to motions. The minutes shall include the names of ZBA members who present motions and ZBA members who second motions as well as the vote of the ZBA on such motions. If a roll call vote is taken, the record shall show the "yes" and "no" votes. However, if all members vote "yes" or "no", the minutes may then reflect motion carried or defeated by unanimous vote.

9.2 **Voting.** Whenever a question is put by the Chairperson, every ZBA member present shall vote on the question. If a member has a conflict of interest and that member has not been replaced by an alternate ZBA member, such conflict of interest shall be fully stated on the record. If a question exists whether the circumstances actually present a conflict of interest, the ZBA may, by majority vote of the members present, adjourn the case to a specific time, date, and place in order to obtain a written opinion from the township attorney. Once the conflict of interest is declared or confirmed, the ZBA member with the conflict of interest shall abstain from participating and voting in the case.

9.3 **Requests for Remarks to be Included.** Any ZBA member may request to have his or her comments printed as part of the minutes. If there are no objections by any ZBA member, the comments may be included. If there is an objection to including the requested comments in the minutes, the ZBA shall decide the matter by a majority vote of the ZBA members present.

9.4 **Public Access to Meeting Records.** The Zoning Administrator shall make available to the public the minutes of official meetings in accordance with the Freedom of Information Act. Minutes prepared by the Secretary or his/her designee but not approved by the ZBA shall be available for public inspection not more than eight (8) business days following the meeting. Minutes approved by the ZBA shall be available within five (5) business days after the meeting at which they were approved. The Secretary or his/her designee shall promptly mail copies of minutes to persons who have subscribed and paid the required fee as determined by the Township Board.

2. **AMENDMENTS.** These Rules of Procedure may be added to, amended or repealed in whole or in part. Proposed changes to these Rules of Procedure must be submitted in writing to the regular members of the ZBA at least one (1) month in advance of the meeting at which the proposed changes will be considered. A majority vote of the entire regular ZBA members shall be required to amend these Rules of Procedure.

3. **SEVERABILITY.** If any section, provision or clause of these Rules of Procedure or the application thereof to any person or circumstance shall be invalid, such invalidity shall not effect any remaining portion or application of these Rules of Procedure which can be given effect without the invalid portion or application.

These Rules of Procedure were adopted by the Elmwood Charter Township Zoning Board of Appeals on June 11, 2013.

ELMWOOD CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

By: _____

Its: Chairperson

By: _____

Its: Secretary

Amended: January 7, 2016

Amended February 3, 2016