



















planning department prior to its first regular meeting in February of each year to determine whether sidewalks should be installed in accordance with the term of the agreements.

(Ord. No. 220, § 5-10.08, 8-5-1998; Ord. No. 242, 5-6-2003)

*Cross reference—Administration, ch. 2.*

## **Sec. 58-531. - Appeals to zoning board of appeals.**

- (a) *Variance or waiver grant after hearing.* The zoning board of appeals shall be empowered to grant variances to or waive the requirements of this article upon a hearing held in compliance with the Open Meetings Act, Public Act No. 267 of 1976 (MCL 15.261 et seq., MSA 4.1800(11) et seq.).
- (b) *Appeal procedure.* Any person seeking an appeal from the provisions of this article shall submit an application for appeal upon a form provided by the zoning board of appeals and pay any fee established by resolution of the township board within the following time requirements:
  - (1) In the event of an appeal to vary or waive the requirement for installation of a sidewalk or portion of a sidewalk, such appeal shall be made within ten days of the application for a building permit or site plan approval, denial of a temporary deferral, or denial of an administrative deferral.
  - (2) An appeal relating to the requirements of this article to repair or remove encroachments shall be made within ten days from date of mailing or personal service of the defective sidewalk notice.
- (c) *Factors to be considered.* In making its determination, the zoning board of appeals shall consider the following:
  - (1) Any recommendation submitted by the building department;
  - (2) The provisions, intent and purpose of this article;
  - (3) The character and use of land and buildings in the general and immediate vicinity;
  - (4) The effect of the proposed variance or waiver on the general and immediate vicinity;
  - (5) The number of persons residing or working in the general and immediate vicinity;
  - (6) The presence or absence of underground facilities beneath the area where the sidewalks would be installed and whether plans exist to install or repair underground facilities in such area;
  - (7) Physical characteristics of the area, which make the installation of sidewalks unusually difficult in design or construction;
  - (8) The existence of practical difficulties or unnecessary hardship if sidewalks were required to be installed; and
  - (9) Any other relevant evidence it may determine to be necessary and pertinent to its determination.
- (d) *Temporary postponement of installation.* If the zoning board of appeals determines that the installation of sidewalks be postponed for a period of one year or less, it shall establish a time for commencement within the one-year period and a time for completion of construction and shall order the following:
  - (1) *Performance guarantee.* A cash deposit, certified check or performance bond acceptable to the township be posted by the applicant with the township in an amount equal to the estimated cost of construction of the sidewalks as determined by the township building department or the township engineer. The deposit shall be refunded to the applicant upon completion of the construction conforming to the standards and specifications of this article, after inspection by the building department and written notification of compliance is given by the building department to the zoning board of appeals.
  - (2) *Failure to commence construction.* If construction does not commence within the established time frame, any funds deposited with the township shall be deemed

forfeited to the township without further notice to the applicant; and the township shall be entitled to use such funds for the installation of the sidewalks at the proposed location.

- a. Unexpended funds. Any funds not expended for installation of the sidewalks shall be deposited in the general fund of the township.
  - b. Costs in excess of funds deposited. Any installation costs incurred by the township in excess of the funds deposited by the applicant shall be charged and collected against the owners of the property in accordance with provisions of [section 58-528\(c\)\(2\)](#).
- (3) *Failure to complete construction.* If construction of the sidewalks is not completed within the established time frame, the funds deposited with the township may be used to complete the installation of the sidewalks.
- a. Unexpended funds. Any funds not expended for such completion in excess of 20 percent of the original deposit shall be refunded to the applicant, and the balance shall be deposited in the general fund of the township.
  - b. Costs in excess of funds deposited. Any costs incurred by the township in excess of the funds deposited by the applicant shall be charged and collected against the owners of the property in accordance with the provisions of [section 58-528\(c\)\(2\)](#).
- (e) *Indefinite postponement of installation.* If the zoning board of appeals determines that the installation of sidewalks be postponed for a period greater than one year, it shall condition such determination on the applicant complying with the provisions of [section 58-530\(b\)\(3\)-\(b\)\(5\)](#).
- (f) *Zoning board of appeals power limitation.* The zoning board of appeals shall not be empowered to vary, modify, alter or waive any provision of subsection [58-530\(a\)](#) and (b).

(Ord. No. 220, § 5-10.09, 8-5-1998; Ord. No. 242, 5-6-2003)

### **Sec. 58-532. - Issuance of certificate of occupancy.**

No certificate of occupancy shall be issued by the building department of the township until sidewalks required by and complying with the provisions of this article are fully installed, administratively deferred, varied or waived through the appeal provisions of this article or a performance guarantee is posted for the installation or a temporary certificate of occupancy is issued pursuant to [section 58-529\(b\)\(1\)](#).

(Ord. No. 220, § 5-10.10, 8-5-1998; Ord. No. 242, 5-6-2003)

### **Sec. 58-533. - Construction contract notice.**

All persons offering to construct, improve or sell any enclosed structure for which a building permit is required shall, unless the cost of construction of sidewalks is included in the contract price, include in a written contract the following notice in boldface type at least four points larger than the type of the body of the contract:

#### **NOTICE**

THIS AGREEMENT DOES NOT INCLUDE THE COST OF CONSTRUCTION OF A SIDEWALK. YOU WILL BE REQUIRED TO PAY FOR THE INSTALLATION OF A SIDEWALK AND OBTAIN A SIDEWALK CONSTRUCTION PERMIT FROM THE SHELBY TOWNSHIP BUILDING DEPARTMENT. YOU MAY RETAIN ANY QUALIFIED PERSON OR COMPANY FOR THE INSTALLATION OF THE SIDEWALK.

(Ord. No. 220, § 5-10.11, 8-5-1998; Ord. No. 242, 5-6-2003)

### **Sec. 58-534. - Subdivision regulations applicability.**

Sidewalks required to be installed pursuant to chapter 30 shall not be administratively deferred by the supervisor and shall be installed in accordance with the provisions of this article, with the exception of the separate permit requirements set forth in sections 58-521—58-523.

*(Ord. No. 220, § 5-10.12, 8-5-1998; Ord. No. 242, 5-6-2003)*

### **Sec. 58-535. - Dedication.**

The provisions of this article remain in full force and effect, notwithstanding any attempt to dedicate a sidewalk to the township or to the public in general by any owners. Unless the township board expressly authorizes by resolution the acceptance of the property attempting to be dedicated, the township shall not be deemed to have accepted any property dedicated for public use. Notwithstanding any such dedication, the terms and provisions of this article remain in full force and effect with regard to duties of adjoining property owners.

*(Ord. No. 220, § 5-10.13, 8-5-1998; Ord. No. 242, 5-6-2003)*

### **Sec. 58-536. - Penalty.**

Violations of this article shall upon conviction be punished in accordance with the provisions of section 1-7.

*(Ord. No. 220, § 5-10.14, 8-5-1998; Ord. No. 242, 5-6-2003; Ord. No. 257, § 13, 2-16-2010)*