

## **ARTICLE X: BOARD OF APPEALS**

### **Section 10.01 Creation and Membership**

There is hereby established a Zoning Board of Appeals (ZBA) which shall perform its duties and exercise its powers as provided in Michigan Zoning Enabling Act, Act 110 of the Public Acts of 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and justice done. The ZBA shall consist of the five (5) members, each appointed by the Township Board of Trustees.

- A. The first member shall be a member of the Township Planning Commission for the terms of his/her office.
- B. The remaining members of the Board must be selected from the electors of the Township residing outside of incorporated cities and villages and shall be representative of the population distribution and of the various interests present in the Township. One (1) member may be a member of the Township Board.
- C. An elected officer of the Township shall not serve as chairman. An employee or contractor of the Township Board may not serve as a member or an employee of the Board of Appeals.
- D. The Township Board shall appoint two (2) alternate members of the Zoning Board of Appeals for three (3) year terms, except that for the first appointments one (1) alternate member shall serve for a two (2) year term. The alternate members shall be called on a rotating basis by the chairperson of the Zoning Board of Appeals to sit as regular members if a regular member will be unable to attend one (1) or more meetings and when a regular member has abstained for reasons of conflict of interest. An alternate member called to sit as a regular member shall serve in the case until a final decision has been made and shall have the same voting rights as regular members of the Zoning Board of Appeals.
- E. Terms for ZBA members shall be three (3) years, except for members serving because of their membership on the planning commission or township board whose terms shall be limited to the time they are members of the planning commission, or township board, respectively, and the period stated in the resolution appointing them. Vacancies for unexpired terms shall be filled for the remainder of the term.

## **Section 10.02 Meetings**

Meetings of the Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine or specify in its rules or procedure. All hearings conducted by said Board shall be open to the public. The Board of Appeals shall adopt its own rules of procedure and keep a record of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating said fact; and shall file a record of its proceedings in the office of the Township Clerk, and shall be a public record. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance or to effect any variation of this Ordinance.

The Zoning Board of Appeals shall not conduct business unless a majority of the regular members of the Zoning Board of Appeals are present.

## **Section 10.03 Appeal**

- A. An appeal concerning the administration of the provisions of this Ordinance may be taken to the Board of Appeals within the timeframe defined in the general rules and procedures adopted by the Zoning Board of Appeals. If such a timeframe is not specified, appeals shall be filed within thirty (30) days of the decision of the Zoning Administrator from which the appellant seeks relief.
- B. The ZBA may hear appeals made by any person who alleges he or she has been aggrieved by a decision of the Zoning Administrator, other than a decision to take enforcement action under this Ordinance, or by a decision of the Planning Commission concerning a site plan. The ZBA may also interpret the location of zoning district boundaries, may interpret the provisions of this Ordinance and have the authority to classify in which district this unclassified property use should be located based on similarities and dissimilarities with other listed property uses.
- A. An appeal may be made by any person, firm or corporation, or by any Officer, Department or Board of the Township. The appellant shall file with the Board of Appeals, on blanks or forms to be furnished by the Zoning Administrator, a notice of appeal specifying the grounds for the appeal.
- B. The Zoning Administrator shall transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The final decision of such appeal shall be in the form of a resolution either reversing, modifying or affirming, wholly or partly, the decision or determination appealed from. Reasons for the decision must be stated. In rendering a decision, the ZBA may, by a concurring vote of a majority of its members, reverse or affirm in whole or in part a decision or determination made by the Zoning Administrator, or designee.
- C. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney.

### **Section 10.04 Limitation on Authority**

The ZBA has no authority to review a Planning Commission decision on applications for Special Approval Uses or Planned Unit Developments. The ZBA shall have the authority to consider variance requests regarding private roads only as provided for in **Section 4.23** of this Ordinance.

### **Section 10.05 Stay**

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals, after notice of appeal shall have 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 a restraining order which may be granted by the Board of Appeals or by the Circuit Court, on application, on notice of the Zoning Administrator and on due course shown.

### **Section 10.06 Variances**

#### **A. Dimensional Variances**

The ZBA may grant dimensional variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in practical difficulty. To establish practical difficulty, the applicant must establish all of the following:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
2. The need for the requested variance is not the result of actions of the property owner or previous property owners or otherwise self-created.
3. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
4. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give a substantial relief to the property owner and be more consistent with justice to other property owners.
5. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.
6. If the requested variance is from the private road construction standards, road geometrics, or design standards of this Ordinance, then the variance will not result in a substantial adverse impact on traffic safety or traffic congestion after considering the conditions specified in **Section 4.23** of this Ordinance. When applying this standard the Board of Appeals shall consider the recommendation of the Planning Commission and the facts upon which it was based, but shall not be bound by the Planning Commission recommendation.

## B. Use Variance

Upon a vote of 2/3 of its entire membership, the ZBA may grant use variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in undue hardship. To establish undue hardship, the applicant must establish all of the following:

1. The building, structure, or land cannot be reasonably used for any of the uses permitted by right or by special approval in the zoning district in which it is located.
2. The need for the requested variances is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography and is not due solely to the applicant's personal or economic hardship.
3. The proposed use will not alter the essential character of the neighborhood.
4. The immediate hardship causing the need for the requested variances was not created by the property owner or previous property owners (self-created).

## C. Conditions

The ZBA may attach reasonable conditions with the approval of a dimensional or use variance. These conditions may include those necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Any conditions imposed, however, shall meet all of the following requirements:

1. Be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
2. Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

### **Section 10.07 Zoning Board of Appeals Approval**

The ZBA may require an appellant to submit surveys, plans, or other information deemed reasonably necessary to making an informed decision on his or her appeal. The ZBA may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area.

### **Section 10.08 Exercising Powers**

In exercising the above powers, the Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, 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 Zoning Administrator from whom the appeal is taken.

## **Section 10.09 Notice of Hearing**

Following receipt of an administratively complete notice of appeal, request for an interpretation of the zoning ordinance, or request for a variance, the Zoning Board of Appeals shall hold, a public hearing, after giving the following applicable notice:

A. For an appeal or a request for an interpretation, the notice shall comply with all of the following:

1. The content of the notice shall include all of the following information:
  - a. A description of the nature of the appeal or interpretation request.
  - b. If the appeal or interpretation request involves a specific parcel, then the notice shall describe the property involved. The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
  - c. The time, date and place the appeal or interpretation request will be considered.
  - d. The address where and the deadline when written comments will be received concerning the appeal or interpretation request.
2. The notice shall be published in a newspaper of general circulation within the township not less than fifteen (15) days before the scheduled public hearing.
3. The notice shall be sent by first-class mail or personal delivery to the person filing the appeal or requesting the interpretation and, if the appeal or interpretation request involves a specific parcel, to the owners of the property involved not less than fifteen (15) days before the scheduled public hearing.
4. If the appeal or interpretation request involves a specific parcel, then notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property involved and to the occupants of all structures within 300 feet of the property involved not less than fifteen (15) days before the scheduled public hearing, regardless of whether the property or occupant is located in the township. If the name of the occupant or tenant is not known, the term "occupant" may be used in making notification under this subsection.

B. For a variance request, the notice shall comply with all of the following:

1. The content of the notice shall include all of the following information:
  - a.) A description of the nature of the variance request.
  - b.) A description of the property on which the requested variance will apply. The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
  - c.) The time, date and place the variance request will be considered.
  - d.) The address where and the deadline when written comments will be received

concerning the variance request.

2. The notice shall be published in a newspaper of general circulation within the Township not less than fifteen (15) days before the scheduled public hearing.
2. The notice shall be sent by first-class mail or personal delivery to the owners of the property seeking the variance not less than fifteen (15) days before the scheduled public hearing.
3. The notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property on which the requested variance will apply and to the occupants of all structures within 300 feet of the property to which the requested variance will apply not less than fifteen (15) days before the scheduled public hearing, regardless of whether the property or occupant is located in the township. If the name of the occupant is not know, the term "occupant" may be used in making notification under this subsection.

- C. After providing the notice required under this section and without further notice the Zoning Board of Appeals may adjourn from time to time a duly called public hearing by passing a motion specifying the time, date and place of the continued public hearing.

#### **Section 10.10 Miscellaneous**

No order of the Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than one (1) year, unless a Zoning Permit is issued pursuant to **Section 9.03** of this Ordinance.

#### **Section 10.11 Denial and Re-submittal**

- A. No application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall be submitted for a period of one (1) year from the date of the last denial, except on grounds of newly discovered evidence or when the township's attorney certifies in writing that a mistake in the original procedure of the original hearing had been made.