

ARTICLE 16 - BOARD OF APPEALS

SECTION 1600 CREATION AND MEMBERSHIP.

- A. A Zoning Board of Appeals (ZBA) is hereby created to carry out the responsibilities and exercise the authority provided in this Ordinance and in Act 184 of the Public Acts of 1943, as amended. The ZBA shall carry out its duties so that the objectives and spirit of this Ordinance shall be observed, public safety secured, and substantial justice done.
- B. The ZBA shall consist of three (3) members. The first member shall also be a member of the Township Planning Commission. The remaining members of the ZBA shall be selected from the electors of the Township residing outside of incorporated cities and villages. The members selected shall be representative of the population distribution and of the various interests present in the Township. One member may be a member of the Township Board. An employee or contractor of the Township Board may not serve as a member of the ZBA.
- C. The compensation, if any, paid to ZBA members for discharge of their duties shall be established by resolution of the Township Board. A failure of action on the part of the Township Board in any year shall be effective action to re-establish the same compensation from the prior year.
- D. Members of the ZBA shall be removable by the Township Board for nonperformance of duty or misconduct in office upon written charges and after public hearing.
- E. The term of each member shall be three years, except for members serving by reason of membership on the Planning Commission or Township Board, in which case the terms of such members shall be concurrent with and limited to their respective terms as members of the Planning Commission or Township Board and consistent with the periods stated in the resolutions appointing such members. When members are first appointed to the ZBA, the appointments may be for less than three years in order to provide for staggered terms.
- F. Following the expiration of the term of a ZBA member, a successor shall be appointed not more than one month after the term of the proceeding member has expired.
- G. All vacancies for unexpired terms shall be filled for the remainder of the term.
- H. The Township Board may appoint not more than two (2) alternate members of the Zoning Board of Appeals who shall serve as a member of the Board upon the call of the Chairman where a regular member is absent from or unable to attend two (2) or more consecutive meetings of the Board or for a period of thirty (30) consecutive days. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in cases he hears as a regular member of the Board of Appeals. Appointments of alternate members for the first year shall be for a period of one (1) and two (2) years respectively, thereafter each alternate member shall hold office for the full three (3) year term.

- I. A member shall disqualify himself from all discussion and voting in which the member has a conflict of interest.

SECTION 1601 OFFICERS

- A. The ZBA shall annually elect a chairperson, a vice chairperson, and a secretary, each to serve for one year. An elected officer of the Township shall not serve as chairperson of the ZBA. Such election shall be held at the first regular meeting of the ZBA following January 1 in each calendar year, or at the first regular meeting of the ZBA following departure of an existing officer from the ZBA.
- B. The chairperson shall preside at all meetings of the ZBA. In the absence of the chairperson, the vice chairperson shall preside. The presiding officer, subject to these rules, shall decide all points of order or procedure. The chairperson, or in his or her absence, the acting chairperson, may administer oaths.

SECTION 1602 AUTHORITY OF ZONING BOARD OF APPEALS

- A. In General

The ZBA shall have authority to act on those matters where this Ordinance provides for administrative review, appeal, interpretation, or special approval appeal, and shall have authority to authorize a variance as defined in this Ordinance and law of the State of Michigan. The ZBA shall not have the authority to alter or change zoning district classifications of any property, nor to make any change in the text of this Ordinance.

- B. Administrative Review

The ZBA shall have authority to hear and decide appeals where it is alleged that there is an error in an order, requirement, permit, decision, or refusal made by an official, board or commission in carrying out or enforcing any provisions of this Ordinance. In hearing and deciding appeals under this sub-section, ZBA review shall be based upon the record of the administrative decision being appealed, and the ZBA shall not consider new information which has not been presented to the administrative official, board or commission from whom the appeal is taken. The ZBA shall not substitute its judgment for that of the administrative official, board or commission being appealed, and the appeal shall be limited to determining, based upon the record, whether the administrative official, board or commission breached a duty or discretion in this Ordinance.

- C. Interpretation

The ZBA shall have authority to hear and decided requests for interpretation of the zoning ordinance, including the zoning map. The ZBA shall make such decision so that the spirit and intent of this Ordinance shall be observed. Text interpretations shall be limited to the issues presented, and shall be based upon a reading of the Ordinance as a whole, and shall not have the effect of amending the Ordinance. Map interpretations shall be made based upon rules in the Ordinance, and any relevant historical information. In carrying out its authority to interpret the Ordinance, the ZBA shall consider reasonable and/or practical interpretations which have been

consistently applied in the administration of the Ordinance. Prior to deciding a request for an interpretation, the ZBA may confer with staff and/or consultants to determine the basic purpose of the provision subject to interpretation and any consequences which may result from differing decisions. A decision providing an interpretation may be accompanied by a recommendation for consideration of an amendment of the Ordinance.

D. Special Land Use Approval Appeals

The ZBA shall have authority to hear and decide appeals from the decision of the Planning Commission regarding special land use approvals. In deciding such appeals, the ZBA shall review the Planning Commission's application of the specific special land use approval standards applicable. The method and scope of appellate review under this sub-section shall be governed by the same standards applicable to review under sub-section 1602B. The ZBA shall be authorized to impose conditions determined appropriate by the ZBA, and as authorized by law, in connection with a decision on a special land use approval appeal.

E. Variances

The ZBA shall have authority in specific cases to authorize one or more variances from the strict letter and terms of this Ordinance by varying or modifying any of its rules or provisions so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done. Such authority shall be exercised in accordance with the following standards:

1. The ZBA may grant a requested "non-use" variance only upon a finding that practical difficulties exist. A finding of practical difficulties shall require demonstration by the applicant of all of the following:
 - a. Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.
 - b. The variance will do substantial justice to the applicant, as well as to other property owners.
 - c. A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
 - d. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
 - e. The problem and resulting need for the variance has not been self-created by the applicant.
2. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and evidence from which the ZBA may make the required

findings. Administrative officials and other persons may, but shall not be required to provide information, testimony and evidence on a variance request. The fact that a Township representative does not appear and/or present information, testimony and/or evidence on a particular variance request, shall not be considered or construed as being a waiver of the right to make such a presentation at a later date or an acknowledgment that the information, testimony and/or evidence does not exist, and shall not be evidence, in and of itself, that a variance should be granted.

3. The following are specified as appropriate considerations by the ZBA in hearing and deciding variance requests, provided, this list shall in no respect constitute a limitation upon the considerations which may be made by the ZBA:
 - a. Other lands, structures, buildings, lots and uses in the same district and in the general vicinity of the property in question.
 - b. Whether granting the variance will confer special privileges on the applicant that have been denied by the Ordinance and/or ZBA in other cases.
 - c. Whether the requested variance is the minimum necessary to authorize reasonable use of the property in relation to the surrounding area.
 - d. Reasonable and available alternatives, which, although not requested by the applicant, would minimize or eliminate the need for variance relief.
 - e. The provisions of this Ordinance from which a variance is requested, including the purpose and intent of such provisions within the context of the Ordinance as a whole.
 - f. The imposition of appropriate and authorized conditions.
 - g. The existence of nonconforming structures, uses of land, or the combination of structures and uses, shall not be used as a basis or rationale for granting a variance.

F. Conditions

The ZBA may impose reasonable conditions in connection with an affirmative decision on an appeal, interpretation or variance request. The conditions may include requirements necessary to insure adequacy of public services and facilities affected by a proposed 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. Conditions imposed shall meet 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.

Conditions imposed with respect to the approval of a variance shall be recorded as part of the ZBA minutes, and shall remain unchanged except upon the mutual consent of the ZBA and the landowner following notice and hearing as required for a new case or application. Moreover, to insure adequate notice of a decision and any conditions, the ZBA may require as a condition to the effectiveness of relief granted that the property owner record with County Register of Deeds, in a form acceptable to the ZBA, an affidavit detailing the relief granted and conditions imposed.

SECTION 1603 APPLICATIONS AND NOTICES; EFFECT OF APPEAL

- A. All applications to the ZBA shall be filed with the Township Clerk, on forms provided by the Township, and shall be accompanied by the applicable fee established by resolution of the Township Board. Applications shall include all plans, studies and other information and data to be relied upon by the applicant.
- B. The plan which shall accompany all variance requests shall be based on a mortgage survey, or land survey prepared by a registered land surveyor. The plan shall be to scale and shall include all property lines and dimensions, setbacks and all existing and proposed structures. The Zoning Board of Appeals has the authority to require a land survey prepared by a registered land surveyor when the ZBA determines it to be necessary to insure accuracy of the plan.
- C. At least one (1) week prior to the date of a scheduled hearing before the ZBA, all property, parcels and/or lots which are the subject of a ZBA hearing shall be marked and staked in the following manner:
 1. Each corner of the lot or parcel shall be staked.
 2. Each corner of the proposed building(s) shall be staked.
 3. Vacant parcels shall be posted with a clearly visible sign noting the address or lot number.
- D. The ZBA shall have no obligation to consider and/or grant a request for relief unless and until a conforming and complete application has been filed; including relevant plans, studies and other information.
- E. As a condition to invoking the jurisdiction of the ZBA, an appeal under Sections 1602B or D shall be taken by the applicant within 30 days of the date of the order, refusal, requirement or determination from which the appeal is being taken.

- F. In a case involving an appeal from an action of an administrative official, the administrative official, upon notice from the ZBA, shall transmit to the ZBA copies of all papers constituting the record upon which the action was taken.
- G. Applications to the ZBA shall be made with full knowledge and written consent of all owners of the property in question. This requirement shall include the consent of a land contract seller to the relief sought by a land contract purchaser.
- H. The Township Clerk, or designate, shall provide public notice of a ZBA public hearing in accordance with the public hearing publication and notification procedures required for a rezoning or special land use approval request. Other persons may be notified at the discretion of the ZBA. Where the case does not relate to a specific site, notification shall be made in the newspaper only.
- I. An appeal shall have the effect of staying all proceedings in furtherance of the action being appealed unless the officer or entity from whom the appeal is taken certifies to the ZBA that, by reason of facts stated in such certification, a stay would in his or her opinion cause imminent peril to life or property, in which case proceedings shall not be stayed unless specifically determined by the ZBA, or by a court of competent jurisdiction.

SECTION 1604 MEETING AND RECORDS

- A. The ZBA shall conduct regular meetings as scheduled each year, or at the call of the chairperson. The chairperson shall set the time and date for meetings. The ZBA shall also conduct such special meetings as shall be called by the chairperson and/or by a majority of the ZBA members. All meetings of the ZBA shall be conducted in accordance with Act 267 of the Public Acts of 1976, as amended, the Open Meetings Act.
- B. Applicants shall appear at the hearing, either personally or by designated representative whose identity and authority shall be conformed by the applicant in writing. Nothing in this sub-section shall relieve the applicant from providing competent testimony or evidence in support of the relief requested, including responses to questions or requests by the ZBA regarding the applicant's position on a relevant issue and/or possible conditions on a favorable decision. The ZBA may conduct the required hearing and reach a decision on all applications without the applicant being present if applicant does not request a continuance in writing prior to the hearing.
- C. The ZBA shall make no decision except in a specific case and after required hearing.
- D. Two members of the ZBA shall constitute a quorum, without which the ZBA shall not conduct business. The concurring vote of a majority of the membership of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of an administrative official, board or commission made in the administration of this Ordinance, or to decide in favor of an applicant on any matter upon which the ZBA is required to pass under this Ordinance, or to grant a variance from the terms of this Ordinance.
- E. The Secretary of the ZBA shall prepare minutes of the ZBA proceedings, showing the findings, decisions, conditions, if any, and votes of each member in each case, including a member's absence or failure to vote. The minutes shall be within the ultimate authority, and shall be the

responsibility of, the secretary of the ZBA, and shall be subject to approval of the ZBA. To the extent that a written decision in a case is requested or required, the minutes, along with the plan submitted, shall serve as the written decision, even if the minutes are awaiting final ZBA approval.

- F. The official records of the ZBA proceedings shall be filed in the Township Clerk's office and shall be public records.

SECTION 1605 DISPOSITION; DURATION OF APPROVAL; APPEAL

- A. The ZBA may reverse, affirm, vary or modify any order, requirement, decision, or determination presented in a case within the ZBA's jurisdiction, and to that end, shall have all of the powers of the officer, board or commission from whom the appeal is taken, subject to the ZBA's scope of review, as specified in this Ordinance and by law. The ZBA may remand a case for further proceedings and decisions, with or without instructions.
- B. A decision by the ZBA shall be considered final as of the meeting at which the decision has been made, and the date of such meeting shall be deemed to be the date of notice of the decision to the applicant. To the extent that decisions are requested or required to be in writing, the minutes of the ZBA meeting, and decision, as prepared by the secretary, shall constitute the written decision.
- C. Any decision of the ZBA shall remain valid only as long as the information and data relating to such decisions are found to be correct, and the conditions upon which the decision was based are maintained.
- D. The relief granted by the ZBA shall be valid for a period not longer than one (1) year, unless otherwise specified by the ZBA, and within such period of effectiveness, actual, on-site improvement of property in accordance with the approved plan and the relief granted, under a valid building permit, must be commenced or the grant of relief shall be deemed void. Relief granted by the ZBA shall not constitute approval of the use or activity where any other zoning compliance, building permit, or other review or permit is required.
- E. Appeals of a ZBA decision shall be taken in the manner provided by law.