

**ARTICLE XXII
ZONING BOARD OF APPEALS**

Section 22.01 ESTABLISHMENT OF BOARD OF APPEALS.

There is hereby established a Board of Appeals, which shall perform its duties and exercise its powers as provided by Article VI: Zoning Board of Appeals (Section 125.3601-125.3607), P.A. 110 of 2006, "Michigan Zoning Enabling Act" and as provided in this Ordinance in such a way that the objectives of this Ordinance shall be enforced, the public health and safety secured, and substantial justice done.

(Ord. No. 1 eff. Jan. 8, 1983.)

Section 22.02 MEMBERSHIP AND TERMS OF OFFICE.

- A. The Zoning Board of Appeals ("ZBA") must consist of 5 members appointed by the Township Board. The first member of the ZBA must be a member of the Township Planning Commission. The remaining regular members, and any alternate members, must be selected from the electors of the Township residing in the unincorporated portions of the Township. The members selected must be representative of the population distribution and of the various interests present in the Township.
- B. One regular member of the ZBA may be a member of the Township Board, but that member may not serve as chairperson of the ZBA. An employee or contractor of the Township may not serve as a member of the ZBA.
- C. The Township Board may appoint not more than 2 alternate members for the same term as the regular members to the ZBA. An alternate member may be called to serve as a member of the ZBA in the absence of a regular member if the regular member will be unable to attend 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; in such a case, the alternate member appointed must serve in the case until a final decision is made. In all instances, the alternate member has the same voting rights as a regular member of the ZBA.
- D. The term of office of each ZBA member is for 3 years, except for members serving because of their membership on the Planning Commission or Township Board, whose terms are limited to the time they are members of those bodies. A successor must be appointed not more than 1 month after the term of the preceding member has expired. Vacancies for unexpired terms must be filled for the remainder of the term.
- E. A member of the ZBA may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member must disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 24 eff. Dec. 7, 1989; further amend. by Ord. eff. May 7, 1992 further amended by Ord. No. 201 eff. Dec. 21, 2006)

Section 22.03 RULES OF PROCEDURE; MAJORITY VOTE.

The Board of Appeals shall adopt its own bylaws of rules and procedures as may be necessary to properly conduct its meetings and activities. 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, Planning Commission or Township Board or to decide in favor of the applicant any matter upon which they are required to pass under this Ordinance or to affect any variation in this Ordinance. All proposed actions on the part of the Board of Appeals shall be subject to the review and recommendation of the Planning Commission upon the request of the Planning Commission to review a specific appeal brought before the Board of Appeals. Upon receiving such a request, the Board shall delay any decision upon the appeal until it has received the written recommendations of the Planning Commission on those appeals requested to be reviewed by the Commission.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 22.04 MEETINGS.

Meeting of the Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board in its bylaws may specify.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 22.05 PUBLIC MEETINGS AND MINUTES.

- A. The ZBA must hold a public hearing and give notice as set forth below on each question submitted to it for decision. The ZBA Chairman must fix a reasonable time and date for the hearing.
- B. Notice Requirements.
 - 1) Variance Requests. Following receipt of a written request for a variance, the ZBA must fix a reasonable time for the hearing of the request and give notice as set forth below.
 - a) The Township must publish notice in a newspaper of general circulation in the Township.
 - b) The Township must also send notice by mail or personal delivery to the owners of property for which approval is being considered.
 - c) The Township must also send notice to all persons to whom real property is assessed within 300 feet of the property, and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the Township.

- d) The notice must be given not less than 15 days before the date the variance request will be considered for approval. If the name of the occupant is not known, the term "occupant" may be used in making notification.
 - e) Contents of Notice. The notice must do all the following:
 - i) Describe the nature of the variance request;
 - ii) Indicate the property that is the subject of the request. The notice must include a listing of all existing street addresses within the property. Street addresses 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;
 - iii) State when and where the request will be considered; and
 - iiii) Indicate when and where written comments will be received concerning the request.
- 2) Interpretations, Appeals, or other Matters. Upon receipt of a written request seeking an interpretation of this Zoning Ordinance or an appeal of an administrative decision, or any other matter properly presented to the ZBA for consideration, the Township must provide notice as follows:
- a) The Township must publish in a newspaper of general circulation within the Township a notice stating the time, date, and place of the public hearing, and send the notice to the person requesting the interpretation, appeal, etc., not less than 15 days before the public hearing.
 - b) In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, the Township must send written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request by first-class mail or personal delivery, to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 2300 feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.

(Ord. No. 1 eff. Jan. 8, 1983 amended by Ord. No. 202 eff. Dec. 21, 2006)

Section 22.06 POWERS AND DUTIES.

- A. The ZBA must perform its duties and exercise its powers as provided in the Michigan Zoning Enabling Act, 2006 PA 110, as amended, so that the objectives of this Ordinance are attained, the public health, safety, and welfare secured, and substantial justice done.
- B. The ZBA must hear and decide the following: (1) questions that arise in the administration of this Zoning Ordinance, including the interpretation of zoning maps; (2) matters referred to the ZBA or upon which the ZBA is required to pass under this Ordinance; (3) appeals from and review of any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of this Ordinance; (4) variances; and (5) matters related to non-conforming uses and structures as stated in this Ordinance.
- C. The ZBA may not change the zoning district classification of any property, may not change any of the terms of the Ordinance, and may not take any actions that result in the making of legislative changes to this Ordinance. The ZBA may not hear an appeal from a Township decision regarding a special land use or PUD.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000, further amended by Ord. No. 201 eff. Dec. 21, 2006)

Section 22.07 VARIANCES.

A variance from the terms of this Ordinance shall not be granted by the Board of Appeals unless and until:

- A. A written application for a variance is submitted, demonstrating:
 - 1) That special conditions and circumstances exist which are peculiar to the land use, land, structure or building in the same zoning district.
 - 2) That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the provisions of this Ordinance.
 - 3) That granting of the variance requested will not confer on the applicant any special privilege that is denied by the provisions of this Ordinance to other lands, structures, or buildings in the same zoning district.
 - 4) That no nonconforming uses of other lands, structures, or buildings in the same zoning district, and not permitted use of lands, structures or buildings in other zoning districts, shall be considered grounds for the issuance of a variance.

- 5) Applicants shall also follow the outline of requirements prescribed by the Zoning Board of Appeals when applying for an appeal for an interpretation of or a variance from the provisions or requirements of this Zoning Ordinance.
- B. The Board of Appeals shall make findings that the requirements of this Ordinance have been met in the zoning district in which it is located by the applicant for the variance requested.
 - C. The Board of Appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure in the zoning district in which it is located.
 - D. The Board of Appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious or otherwise detrimental to the public welfare of the zoning district in which it is to be located.
 - E. In granting any variance, the Board of Appeals may prescribe appropriate conditions and safeguards in order for the variance to be in conformance with this Ordinance as much as reasonably possible. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance, and punishable under Section 21.06 of this Ordinance.
 - F. Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the zoning district in which the variance is to be located.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 22.08 VOIDING OF AND REAPPLICATION FOR VARIANCES.

- A. Each variance granted under the provisions of this Ordinance shall become null and void unless the use and construction authorized by such variance or permit has been commenced within one year after the granting of such variance.
- B. No application for a variance which has been denied wholly or in part by the Board of Appeals shall be resubmitted for a period of one (1) year from such denial, except on grounds of new evidence or proof of changed conditions found by the Board of Appeals to be valid.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 22.09 PROCEDURE FOR APPEALING TO THE BOARD OF APPEALS.

- A. An appeal to the ZBA must be filed within 60 days of the date of the decision in question, and be filed with the Township Clerk, officer from whom the appeal is taken, and with the ZBA. The appeal must include a written statement describing the order, requirements, decision, or determination from which the appeal is taken and specify the grounds of the appeal. The appellant may be required to submit additional information to clarify the appeal. The appellant must also submit the required fee for the appeal. The Clerk must notify the body or officer from whom the appeal is taken of the appeal, and the body or officer from whom the appeal is taken must immediately transmit to the ZBA all of the papers constituting the record upon which the action appealed from was taken. The Clerk must also transmit a copy of the appeal and all related information to each of the ZBA members within a reasonable time after the appeal is filed.
- B. **Who may appeal.** Appeals to the Board of Appeals may be taken by any person aggrieved or by an officer, department, board, agency or bureau of the Township, County, State, Federal or other legally constituted form of government.
- C. **Fee for appeal.** A fee schedule prescribed by the Township Board shall be submitted to the Township Clerk at the time of filing an application for an appeal. The appeals fee shall immediately be placed in the Township General Fund.
- D. **Effect of appeal.** An appeal to the ZBA stays all proceedings in furtherance of the action appealed from unless the body or officer from whom the appeal is taken certifies to the ZBA after the notice of appeal is filed, that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life and property. If such a certificate is filed, proceedings may be stayed only by a restraining order issued by the ZBA or a circuit court on notice to the body or officer from whom the appeal is taken and on due cause shown.
- E. So long as such action conforms with this Zoning Ordinance, the ZBA may affirm or reverse (in whole or in part), or modify the order, requirements, decision, or determination appealed from; the ZBA may also issue such order, requirement, decision or determination as it deems appropriate (as if the ZBA has the powers of the public official from whom the appeal is taken), including issuance of a permit. The ZBA must state the grounds of any determination it makes.
- F. The ZBA's decision must be in the form of a roll call vote, approved by the ZBA and filed with the ZBA's meeting minutes. However, no zoning permit, building permit, or certificate of occupancy, or other permit or certificate may issue until 30 days after the ZBA certifies its decision in writing or approves the minutes of its decision. The ZBA's decision is final. A party aggrieved by the decision of the ZBA may appeal to the circuit court as provided by law. Notwithstanding the provisions of this section, the applicant is entitled to receive a zoning permit, building permit, certificate of occupancy, or other permit or certificate if the applicant submits to the ZBA a written agreement to indemnify the ZBA, Township, its officers, officials, and employees from any and all liability for claims, damages, costs (including attorney fees and litigation threatened or asserted concerning the decision of the

ZBA, together with sureties (individual or corporate), in amount to be determined by the ZBA in a form approved by the Township's attorneys. If the applicant requests a waiver of the 30 day stay as part of the applicant's appeal to the ZBA, the ZBA in its resolution must establish the amount of security to be given. Upon filing of the security that the ZBA sets, the requested permit or certificate must issue. In no case may the security amount be less than \$4,000 in the form of cash, irrevocable letter of credit from a commercial bank, or corporate bond. If litigation is instituted within the 30 day period, the form of security must provide that the security continues until the litigation is determined by final judgment. If litigation is instituted after an amount of security is determined, the ZBA may re-determine and increase the security amount as it believes necessary to protect the Township's interests.

- G. Any party aggrieved by a decision of the ZBA may appeal from the ZBA's decision to the circuit court. Such an appeal must be filed within 30 days after the ZBA certifies its decision in writing or approves the minutes of its decision. A party aggrieved by an order, determination, or decision of the Township ZBA regarding non-conforming uses or structures may obtain review in the circuit court as per 2006 AP 110, as amended.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986; further amended by Ord. 202, eff. Dec. 21, 2006; further amend. Ord. No. 226 eff July 2, 2009)