

ARTICLE XXI. ZONING BOARD OF APPEALS

Section 2101. PURPOSE

It is the purpose of this Article to provide a means to alleviate undue hardship which may, in certain instances, be caused by the strict and literal interpretation and enforcement of the provisions of this Ordinance.

Section 2102. BOARD OF APPEALS ESTABLISHED

There is hereby established a Board of Appeals, which shall perform its duties and exercise its powers as provided by Act 110 of the Public Acts of 2006, as amended in such a way that the objectives of this Ordinance shall be enforced, the public health and safety secured and substantial justice done.

Section 2103. POWERS AND DUTIES

The Board of Appeals shall have powers to interpret the provisions of this Ordinance, and to grant variances from the strict applications of any provisions of this Ordinance.

Section 2104. MEMBERSHIP AND APPOINTMENT (amended December 20, 2006)

- A. Membership and Appointment. The Township Board shall appoint members to the Zoning Board of Appeals, the membership of which shall be composed of five (5) members. One of the regular members of the Zoning Board of Appeals shall be a member of the Township Planning Commission. The remaining regular members, and any alternate members, shall be selected from the electors of the Township residing within the zoning jurisdiction of the Township. The members selected shall be representative of the population distribution and of the various interests present in the Township. One regular member of the Zoning Board of Appeals may be a member of the Township Board but that person shall not serve as chairperson of the Zoning Board of Appeals. An employee or contractor of the Township Board may not serve as a member of the Zoning Board of Appeals. The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called as specified to serve as a member of the Zoning Board of Appeals in the absence of a regular member if the member will be unable to attend one (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. The alternate member appointed shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the Zoning Board of Appeals.
- B. Payments for Service and Reimbursement of Expenses. Members of the Zoning Board of Appeals may be paid a reasonable per diem and reimbursed for

expenses actually incurred in the discharge of his or her duties.

- C. Removal. A member of the Zoning Board of Appeals may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall 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.
- D. Term of Office. The terms of office for members appointed to the Zoning Board of Appeals shall be for three (3) years. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.
- E. Conduct of Business. 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 2105. EMPLOYEES

The Board may employ clerical or other assistance as may be necessary, provided that it shall not at any time incur any expense beyond the amount made available for that purpose.

Section 2106. MEETINGS

Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine for the efficient conduct of its business. All meetings shall be open to the public and comply with the Open Meetings Act.

Section 2107. VARIANCE

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, structure or building involved and which are not applicable to other lands, structures, or buildings in the same 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 district under the terms of this Ordinance.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
 4. That no nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
- B. Following receipt of a written request concerning a request for a variance, the Zoning Board of Appeals shall fix a reasonable time for the hearing of the request and give notice as required by the Michigan Zoning Enabling Act, being Act 110 of 2006, as amended. Upon receipt of a written request seeking an interpretation of the Zoning Ordinance or an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the Township and shall be sent to the person requesting the interpretation not less than fifteen (15) days before the public hearing. In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question and to the occupants of all structures within three hundred (300) feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.
- 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.
- 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 to the neighborhood, or otherwise detrimental to the public welfare.
- E. In granting any variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. 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 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 said district.

- G. At the hearing, a party may appear in person or by agent or attorney. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.
- H. If there are practical difficulties for dimensional variances in the way of carrying out the strict letter of the Zoning Ordinance, the Zoning Board of Appeals may grant a variance in accordance with this section, so that the spirit of the Zoning Ordinance is observed, public safety secured, and substantial justice done. The Zoning Board of Appeals may impose conditions as is otherwise allowed under the Zoning Enabling Act and the provisions of this Ordinance.

Section 2108. VOIDING OF AND REAPPLICATION FOR VARIANCE

The following provisions shall apply:

- A. Each variance granted under the provisions of this Ordinance shall become null and void unless the construction or activity authorized by such variance or permit has been commenced within 90 days after the granting of such variance and pursued diligently to completion.
- 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 365 days from such denial, except on grounds of new evidence or proof of changed conditions found by the Board of Appeals to be valid.

Section 2109. PROCEDURE FOR APPEALING TO THE BOARD OF APPEALS

The following provisions shall apply:

- A. APPEALS, HOW TAKEN - Appeals from the ruling of the Township Zoning Administrator may be made to the Board of Appeals in the following manner:
 - 1. The person, firm or agent thereof making the appeal, shall file in writing to the Zoning Administrator a letter stating what the specific appeal is and the reasons for said appeal.
 - 2. The Zoning Administration submits the written appeal, along with all papers constituting the record from which the action appealed was taken, to the Zoning Board of Appeals.
- 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.

- C. FEE FOR APPEAL - A fee as prescribed by the Township Board, no part of which shall be returnable, shall be submitted to the Zoning Administrator at the time of filing the letter of appeals. The appeals fee shall immediately be placed in the Township General Fund.
- D. EFFECT OF APPEAL: RESTRAINING ORDER - An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Township Board of Appeals, after the 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 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 to the officer from whom the appeal is taken and on due cause shown.
- E. HEARING BY THE BOARD OF APPEALS: REQUESTS: NOTICE: HEARING - When a request for appeal or interpretation has been filed in the proper form with the Township Zoning Board of Appeals, the Secretary of the Zoning Board of Appeals, or the Township Clerk shall place said request upon the calendar for hearings and shall cause a notice of the same to be published and mailed in accordance with the provisions of the Michigan Zoning Enabling Act, Section 103 being P.A. 110 of 2006, as amended.
- F. DECISIONS OF THE BOARD OF APPEALS AND APPEALS TO THE CIRCUIT COURT - The Board of Appeals shall decide upon all appeals within a reasonable time and reverse or affirm wholly or partly or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the Zoning Administrator from whom the appeal is taken. The Board of Appeals' decision of such appeals shall be in the form of a resolution containing a full record of the findings and determination of the Board of Appeals in each particular case and the signatures of each member of the Board of Appeals affixed thereon. Any persons having an interest affected by such resolution shall have the right to appeal to the Circuit Court on questions of law and fact.

Section 2110. VOTE NECESSARY FOR DECISIONS

The final disposition of any matter of the Board of Appeals shall require the concurring vote of a majority of its members.

Section 2111. MINUTES AND RECORDS

The Secretary shall keep minutes of the Board's proceedings showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact. The

Secretary shall keep records of the Board's examinations and official actions, all of which shall be filed with the Township Clerk and be a public record.

Section 2112. LIMITATION OF BOARD ACTION

The Board of Appeals may not through any decision, interpretation of action alter, vary or otherwise negate any provision of this Ordinance except as specified. Where the Board of Appeals finds recurrent requests for relief of any specific provisions of this Ordinance or where the Board considers that any specific XXII - 2201 provision is creating unnecessary hardship, the Board of Appeals shall submit a request for restudy and reconsideration to the Township Planning Commission.