

ARTICLE 17.0 ZONING BOARD OF APPEALS

Section 17.01 Board Established.

A Zoning Board of Appeals (ZBA) is hereby created to carry out the responsibilities and exercise the authority provided in this Ordinance and in the Michigan Zoning Enabling Act, 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.

Section 17.02 Membership and Terms.

ZBA membership shall be subject to the following:

A. Membership.

The ZBA shall consist of three (3) regular members appointed by the Township Board. One (1) member shall also be a member of the Planning Commission. The remaining members shall be selected from electors of the Township residing in the unincorporated area of the Township. The members selected shall be representative of the population distribution, and of the various interests present in the Township. Employees and contractors of the Township shall be prohibited from serving as ZBA members.

One (1) member may be a member of the Township Board. In the event a member is elected to the Township Board and such election increases the number of Township Board members serving on the ZBA to more than one (1), then such member's seat on the ZBA shall be deemed vacant. Such vacancy shall be filled for the remainder of the un-expired term by Township Board appointment.

B. Alternates.

The Township Board may appoint not more than two (2) alternate ZBA members for the same term as regular members. An alternate may be called to serve as a regular member for the ZBA in the absence of a regular member if the regular member is absent from or will be unable to attend one (1) or more ZBA meetings. An alternate may also be called to serve as a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons described in Section 17.02D (Abstaining). The alternate member appointed shall serve in the case until a final decision is made, and shall have the same voting rights as a regular ZBA member.

C. Terms.

The term of office of each member shall be for three (3) years, except for members serving because of their membership on the Planning Commission or Township Board, whose terms shall be limited to their respective term of commission or board membership. All vacancies shall be filled for the remainder of the unexpired term by Township Board appointment. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired.

D. Abstaining.

A member shall abstain from participating in a public hearing or voting on any question in which he or she has a conflict of interest. A ZBA member who is also a member of the Township Board or Planning Commission shall abstain from participating in a public hearing or voting on the same matter that the member previously voted on as a member of the Board or Commission. The member may consider and vote on other unrelated matters involving the same property. Failure of a member to abstain in such cases shall constitute malfeasance of office.

E. Removal From Office.

A member may be removed from office by the Township Board for misfeasance, malfeasance, or nonfeasance in office, upon written charges and following a public hearing held in accordance with Section 1.14 (Public Hearing Procedures). Minutes of the meeting at which the hearing is held shall record the reasons for the hearing, the motion or resolution, if any, regarding removal from office, and the roll call vote of the Township Board.

Section 17.03 General Procedures.

ZBA membership shall be subject to the following:

A. Rules and Officers.

The ZBA shall annually elect a Chair, Vice-Chair, and Secretary from its membership. An elected officer of the Township shall not serve as ZBA Chair. Such election shall be held at the first regular ZBA meeting 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.

1. The Chair shall preside at and conduct ZBA meetings; and shall have the power to subpoena and require attendance of witnesses, administer oaths, compel testimony and production of books, papers, files, and other evidence pertinent to matters before the ZBA. The Chair shall also decide all points of order or procedure. In the absence of the Chair, the Vice-Chair shall exercise all powers and authority of the Chair.
2. The Secretary shall be responsible for ensuring that complete and accurate written records are kept of all ZBA proceedings.
3. The ZBA may adopt additional rules to govern its procedures.

B. Meetings.

Meetings of the ZBA shall be held at the call of the Chair and at such other times as the ZBA in its rules of procedure may specify.

1. Two (2) ZBA members (regular or alternate) shall constitute a quorum, without which the ZBA shall not conduct business. The concurring vote of a majority of the ZBA membership shall be necessary for any decision.
2. Minutes shall be kept of each meeting and the Board shall record into the minutes all findings of fact, conditions of approval, facts, and other relevant

factors, and all its official actions. The vote of each member upon a question, or absence or abstention, shall be recorded into the minutes of the meeting.

3. All meetings and records shall be open to the public. All minutes shall be filed in the offices of the Township Clerk.

C. Representation.

Any person may appear on his or her own behalf at a hearing or may be represented by an agent or an attorney authorized to appear on his or her behalf.

D. Hearings.

The ZBA shall hold a public hearing on each question submitted to it for decision. The Chair shall fix a reasonable time and date for the hearing immediately after receipt of a complete and accurate application. Notice shall be given and the hearing shall be held per Section 1.14 (Public Hearing Procedures). All hearings shall be open to the public.

E. Decisions.

The ZBA shall decide upon all matters within 120 calendar days after receipt of a complete and accurate application. The time limit may be extended by written agreement between the applicant and the ZBA.

1. **Motions.** A motion for action on an application shall include specific findings of fact and conclusions made by the ZBA in the case. Approved motions, including findings of fact and conclusions, shall be incorporated into the written record for the case. A copy shall be provided to the applicant of the approved written record of the meeting, or a written decision signed by the Chair or acting Chair.
2. **Postponement and dismissal.** The ZBA may postpone consideration of an application until a later meeting upon request by the applicant, failure of the applicant to attend the meeting, or determination that the application is not sufficiently complete or accurate for action. Failure of the applicant to attend two (2) or more meetings where the application is on the agenda shall constitute grounds for dismissal of the application without further consideration.
3. **Validity.** Any ZBA decision favorable to the applicant 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.

Section 17.04 Powers and Duties of the ZBA.

The ZBA shall hear and decide and rule on the following as provided herein:

1. **Interpretations.** The ZBA shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the text and the Official Zoning Map.
2. **Administrative appeals.** The ZBA shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of this Ordinance.

3. **Variances.** The ZBA shall hear and decide requests for variances for relief from the strict application of one (1) or more non-use provisions of this Ordinance.
4. **Nonconforming uses and structures.** The ZBA shall have the authority to hear and decide specific requests associated with nonconforming uses and nonconforming structures as authorized by Article 16.0 (Nonconformities).
5. **Exceptions and other matters.** The ZBA shall have the authority to hear and decide requests for exceptions as authorized by this Ordinance, and other matters upon which this Ordinance or Michigan Zoning Enabling Act specifically authorizes the ZBA to act.
6. **Prohibited actions.** The ZBA shall not alter or change the zoning district classification of any property, or make any change in the terms of this Ordinance, and shall not take any action that would result in making a legislative change. The ZBA shall not hear and shall have no authority regarding use variances or any issue that involves a special use permit or planned unit development (PUD).

Section 17.05 Applications.

All applications to the ZBA shall be filed with the Township Clerk, on forms provided by the Township, along with the required review fee, as determined by resolution of the Township Board. No action shall be taken on any application for which required fees have not been paid in full. A complete and accurate application shall, at a minimum, include the following:

1. Name, address, telephone and facsimile numbers, and other contact information for the applicant and owners of record, along with proof of ownership.
2. The applicant's interest in the property, and if the applicant is not the property owner of record, a signed authorization of the owner(s) for the application.
3. Address, location, legal description, and tax identification number of the parcel.
4. Zoning classification of the subject parcel(s) and all abutting parcels.
5. A letter from the applicant stating the reasons for the request, and addressing the applicable criteria specified in this Article for the type of request.
6. Copies of all plans, studies and other information and data to be relied upon by the applicant.
7. Any additional information required by this Article or deemed necessary by the ZBA to make a determination on the issue in question.
8. For variance requests, the following additional requirements shall apply:
 - a. The applicant shall submit a plan, 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 ZBA shall have the authority to

require a land survey prepared by a registered land surveyor when the ZBA determines it to be necessary to ensure accuracy of the plan.

- b. All lots or parcels that are the subject of the variance application shall be marked and staked in the following manner, at least one (1) week prior to the scheduled ZBA hearing date:
 - (1) Each corner of the lot or parcel shall be staked;
 - (2) Each corner of the proposed building(s) shall be staked; and
 - (3) Vacant parcels shall be posted with a clearly visible sign noting the address or lot number.

Section 17.06 Interpretations.

The ZBA shall have the power to hear and decide requests for interpretations of Zoning Ordinance provisions in such a way as to preserve and promote the character of the zoning district in question, and to carry out the intent and purposes of this Ordinance and the Master Plan. The ZBA shall also have the power to interpret the Official Zoning Map in such a way as to carry out the intents and purposes of this Ordinance and the Master Plan, subject to the standards of Section 2.205E (Rules for Interpretation).

Section 17.07 Administrative Appeals.

Consideration of administrative appeals shall be subject to the following:

A. Standing to Appeal.

Appeals may be taken to the ZBA by a person, firm or corporation aggrieved by the order, requirement, decision or determination; or by an officer, department, board, commission or bureau of the Township, county, state, or federal governments. Such appeals shall be filed within 30 calendar days of the order, requirement, decision or determination in question.

The appellant shall submit a description of the order, requirement, decision, or determination from which the appeal is made and the grounds of the appeal. The ZBA may require the appellant to submit additional information to clarify the appeal. The Township Clerk and Zoning Administrator shall transmit to the ZBA copies of all relevant papers constituting the record upon which the action appealed from was taken.

B. Stay of Action.

An appeal stays all proceedings in the furtherance of the action appealed from, unless the Zoning Administrator certifies to the ZBA after the notice is filed that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the ZBA or by a court of record upon application, upon notice to the Zoning Administrator from whom the appeal is taken, and upon due cause shown.

C. Determinations.

In hearing and deciding administrative appeals, ZBA review shall be based upon the record of the administrative decision being appealed. The ZBA shall not consider new information that was not presented to the administrative official or body charged with enforcement of this Ordinance. The ZBA shall reverse an administrative decision only upon determining that the order, requirement, decision or determination:

1. Constituted an abuse of discretion;
2. Was arbitrary or capricious;
3. Was based upon an erroneous finding of a material fact; or
4. Was based upon an erroneous interpretation of the Zoning Ordinance.

After making such a determination, the ZBA may, reverse or affirm wholly or in part; modify the order, requirement, decision or determination; or make such order, requirement, decision, or determination as ought to be made, and may issue or direct the issuance of a permit. To that end, the ZBA shall have all of the powers of the official(s) from whom the appeal is taken.

Section 17.08 Variances.

The ZBA shall have the authority to grant variances where, owing to special conditions, strict enforcement of this Ordinance would result in unnecessary hardship or practical difficulty, subject to Michigan Zoning Enabling Act requirements and the following:

A. Standards for Review.

A variance shall not be granted unless all of the following standards are met:

1. **Practical difficulties.** Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose.
2. **Substantial justice.** The variance will give substantial relief and justice to the applicant, consistent with justice to other property owners in the same district.
3. **Unique circumstances.** The need for the variance is due to unique circumstances peculiar to the land or structures involved, that are not applicable to other land or structures in the same district.
4. **Not self-created.** The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.
5. **More than mere inconvenience.** The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience or an inability to attain a higher financial return.

6. **Preservation of property rights.** The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property owners in the same zoning district.
7. **Public safety and welfare.** The requested variance can be granted in such fashion that the spirit of this Ordinance will be observed and public safety and welfare secured. In addition:
 - a. The granting of a variance will not increase the hazard of fire or otherwise endanger public safety.
 - b. The granting of a variance will not unreasonably diminish or impair the value of surrounding properties.
 - c. The granting of a variance will not alter the essential character of the area or surrounding properties.
 - d. The granting of a variance will not impair the adequate supply of light and air to any adjacent property.
8. **Minimum necessary action.** The reasons set forth in the application justify the granting of the variance, and the variance is the minimum necessary relief to allow reasonable use of the land, building, or structure. The granting of a lesser variance will not give substantial relief and justice to the applicant, consistent with justice to other property owners in the same district.

B. Use Variances Prohibited.

Under no circumstances shall the ZBA grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in the subject zoning district.

C. Variance Expiration.

An approved variance shall become null and void 365 calendar days after the date of approval unless the occupancy of land or buildings authorized by the variance has commenced or a building permit has been issued for the construction authorized by the variance and construction has been completed or is being diligently pursued towards completion.

1. Where a building permit has been issued for construction authorized by a variance, the variance shall become null and void upon permit expiration.
2. Where a variance has been approved for a project subject to site plan approval per Article 8.0 (Site Plan Review), the variance shall become null and void only upon expiration of an approved final site plan for the project.
3. The ZBA may, upon the applicant's written request and a showing of good cause, grant an extension of variance approval for an additional 365 calendar days.

D. Reapplication for Variance.

No application for a variance that has been denied wholly or in part by the ZBA shall be resubmitted for a period of 365 calendar days from the date of denial, except on grounds of new evidence of changed conditions found by the ZBA to be valid.

[moved to Planning Commission approval – see Section 5.608]

Section 17.09 Site Plan Requirements.

If an application or appeal to the ZBA involves a land use or a development that requires site plan approval by the Planning Commission, the applicant or appellant shall first apply for preliminary site plan approval as set forth in Article 8.0 (Site Plan Review).

The Planning Commission shall review the site plan and shall determine the layout and other features required to obtain approval of the preliminary site plan. The applicant shall then apply for the requested variance to the ZBA. The Planning Commission shall transmit its findings thereon to the ZBA. The ZBA shall, upon deciding on the application or appeal, return the plan and its decision to the Planning Commission for action on the site plan.

Section 17.10 Conditions of Approval.

The ZBA may impose additional conditions or limitations upon any affirmative decision, as it may deem reasonable and necessary in accordance with the purposes of this Ordinance and the Michigan Zoning Enabling Act. Conditions imposed by the ZBA shall be related to the valid exercise of the Township’s police power; consistent with the intent and purposes of this Ordinance; and necessary to ensure compliance with Ordinance standards.

Such conditions may include requirements necessary to ensure adequacy of public services and facilities affected by a proposed use or activity; protect the natural environment and conserve natural resources and energy; ensure compatibility with adjacent uses of land; or protect the health, safety and welfare of adjacent residents and landowners and the community as a whole.

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. Violation of any condition imposed shall be deemed a violation of this Ordinance.

Section 17.11 Appeals to Circuit Court.

Any person aggrieved by a decision of the ZBA in a particular case shall have the right to appeal to the Circuit Court on question of law and fact. The appeal shall be filed within 30 calendar days after the ZBA issues its written decision signed by the Chair or acting Chair, or within 21 calendar days after the ZBA approves the minutes of its decision, whichever comes first.