

ARTICLE 5. ZONING BOARD OF APPEALS

Section 5.01 Purpose of Board

The Zoning Board of Appeals (“ZBA”) is established to ensure that the objectives of this ordinance may be more fully and equitably achieved, that a means be provided for competent interpretation of this ordinance, that reasonable flexibility be provided in the application of this ordinance, and that the public health, safety and welfare is protected.

Section 5.02 Establishment of Board

There is hereby established a ZBA, which shall perform its duties and exercise its power as provided for in the MZEA, MCL 125.3101 et seq, as amended.

Section 5.03 Membership, Terms of Office

A. Membership. The ZBA shall consist of three (3) members, as follows:

1. The first member shall be a member of the Planning Commission;
2. The remaining two (2) members shall be representative of the population distribution and of the various interests present in the Township. These members shall be appointed by the Township Board.

An employee or contractor of the Township Board shall not serve as a member or employee of the ZBA. A member of the Township Board may serve as a member of the ZBA, but shall not serve as a chairperson.

B. Tenure. The term of the first member of the ZBA shall be limited to that person’s tenure of office on the Planning Commission. The remaining members shall be appointed for a term of three (3) years. When members are first appointed, the appointments may be for less than three (3) years to provide staggered terms. If a member of the Township Board is appointed to the ZBA, the term of that person to the ZBA shall be limited to his or her term on the Township Board.

C. Vacancies. Any vacancy for an unexpired term shall be filled within one (1) month after the vacancy occurred and the new appointee shall fill out the remainder of the unexpired term. When a member’s term expires, a successor shall be appointed not more than one (1) month after the expiration of the term.

- D. **Alternate Members.** The Township Board may appoint not more than two alternate members for the same term as regular members to the ZBA. The alternate member may be called to sit as regular members of the ZBA in the absence of a regular member if a regular member is absent from or unable to attend 1 or more meetings of the ZBA. An alternate member may also be called to serve in 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 the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the ZBA.

- E. **Performance of Duty.** Members of the ZBA shall be removable by the Township Board for non-performance of duty or misconduct in office, upon filing of written charges and after public hearing before the Township Board. 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 shall constitute misconduct of office.

- F. **Business.** The ZBA shall not conduct business unless a majority of the members of the ZBA are present.

- G. **Conflict of Interest.** The ZBA member who is also a member of the Planning Commission, and any ZBA member who is also a member of the Township Board, shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission or the Township Board; however, the member may consider the vote on other unrelated matters involving the same property.

Section 5.04 Powers, Duties

The ZBA possesses the limited and specific powers and duties specifically stated in this Section, and as prescribed by the MZEA, MCL 125.3101 et seq, as amended, which include:

- A. **Administrative Review.** To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Administrator, Planning Commission or any other administrative official in carrying out or enforcing any provisions of this ordinance.

- B. **Interpretation of Zoning Ordinance.** To make any interpretation involving the zoning text and map, including but not limited to, the defining of ambiguous words and phrases and determination of boundaries.

C. Variances.

1. To authorize a variance from the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other non-use related standard of this ordinance where the strict application of the regulations enacted would result in practical difficulties to the owner of such property.
2. To grant a variance, the ZBA must find that practical difficulties exist, the intent and purpose of this ordinance will be observed, public safety will be secured, and substantial justice will be done. For practical difficulties to exist, the ZBA must make the following findings:
 - a. There are exceptional characteristics of the property that make compliance with the dimensional or other requirements substantially more difficult than would be the case for the great majority of properties in the same zoning district.
 - b. The characteristics that make compliance with the dimensional or other requirements difficult are related to the premises for which the variance is sought, and not some other location.
 - c. There is not a lesser relaxation of the requirements than that applied for that would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
 - d. The characteristics that make compliance with the dimensional or other requirements difficult have not been created by the current or previous owner.
 - e. The proposed variance will not be harmful to or alter the essential character of the area in which the property is located.
3. The ZBA may attach conditions regarding the location, character, and other features as it may deem reasonable in furtherance of the purposes of this Ordinance. The ZBA shall state the grounds upon which it justifies the action.
4. Prior to granting a variance, all other existing infractions of this ordinance or other Township ordinances relating to the property shall be resolved.

The ZBA shall not have jurisdiction over appeals of decisions affecting special land uses, planned unit developments, and open space communities.

Section 5.05 Terms of Appeals

- A. Who May Appeal.** An appeal may be taken to the ZBA by any person, firm or corporation, or by any officer, department, and board of bureau of the township, county or state affected by a decision of the Zoning Administrator or Planning Commission.
- B. Time; Notice of Appeal.** Appeals shall be taken within such times as shall be prescribed by the ZBA by general rule, by filing with the Zoning Administrator, the ZBA, and the body or officer from whom the appeal is taken, a “Notice of Appeal” specifying the grounds thereof. The ZBA may require the appellant, or applicant requesting special action by the ZBA, to submit all necessary surveys, plans or other information necessary for the ZBA to thoroughly investigate the matter before it. The Zoning Administrator or the Planning Commission shall transmit to the ZBA the record upon which the action being appealed was taken.
- C. Fee for Appeal.** The Township Board may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the ZBA. At the time the notice for appeal is filed, said fee shall be paid to the Township Clerk.
- D. Appeal Stays Proceedings.** An appeal shall stay all proceedings in furtherance of the action unless the Zoning Administrator certifies to the ZBA after Notice of Appeal is filed that by reason of the facts stated in such certification, a stay would, in the Zoning Administrator’s opinion, cause imminent peril to life or property. If a stay would cause imminent peril to life or property, the proceedings shall not be stayed except by the issuance of a restraining order by a court of record.

Section 5.06 Procedures

- A. Meetings.** The ZBA shall adopt its own rules of procedure as may be necessary to conduct its meetings properly. All meetings of the ZBA shall be held at the call of the chairman, and at such times as the ZBA may determine. All meetings of the ZBA shall be open to the public.
- B. Majority Vote.** The concurring vote of a majority of members of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or Planning Commission or to decide in favor of the applicant any matter upon

which they are now required to pass under this ordinance or to effect any variation in this ordinance.

- C. Records.** The ZBA shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote indicating such fact, and shall keep records of its findings proceedings and other official actions. Meeting minutes shall be attached to the standard forms required of persons appealing, and this information shall be promptly filed in the office of the Township Clerk as a public record. A copy of each ZBA decision shall be sent promptly to the applicant or appellant and to the Zoning Administrator.
- D. Secretary and Counsel.** The Township Clerk shall be responsible for providing secretarial services for the ZBA. Legal consultation is available to the ZBA through the Township Board, upon request and subject to Township Board approval and action.
- E. Hearings; Notice.**

 - 1. When a Notice of Appeal has been filed in proper form with the ZBA, the Township Clerk shall immediately place the said request for appeal upon the calendar for hearing, and shall cause notices to be sent in accordance with the requirements of the MZEA, MCL 125.3101 et seq. as amended.
 - 2. The ZBA may recess such hearings from time to time, and, if the time and place of the continued hearing is publicly announced at the time of adjournment, no further notice shall be required. At the hearing, a party may appear in person or by agent or attorney. The Township Board shall be given notice of such hearing by the Township Clerk.

Section 5.07 Decisions of the Zoning Board of Appeals

- A. Determinations.** The ZBA may reverse or affirm, wholly or partly, or may modify the order requirement, decision, or determination as in its opinion ought to be made in the premises. To that end, the ZBA shall have all the powers of the officer or body from whom the appeal was taken and may issue or direct the issuance of a permit. The ZBA may impose such conditions or limitations in granting such appeal or application as it may deem necessary to comply with the spirit and purpose of this ordinance.
- B. Return.** The ZBA shall return a decision upon each case within thirty (30) days after a request or appeal is filed, unless further time is agreed upon by the parties concerned.

- C. Finality.** Any decision of the ZBA shall not become final until the expiration of five (5) days from the date of entry of such order, unless the ZBA shall find immediate effect is necessary for the preservation of property or personal rights, and shall so certify for the record.
- D. Approval Period.**
1. Exceptions, variances, and other determinations shall be vested in the affected property, and shall pass with title to such property. No time limit shall be made a part of such determinations.
 2. Where the determination of the ZBA provides for the issuance of a land use permit, such permit shall be obtained within six (6) months of ZBA approval. If no permit is obtained within the six (6) month period, the approval shall become void and of no effect.
- E. Resubmittal.** An application for a variance which has been denied wholly or in part by the ZBA shall not be re-submitted for a period of one (1) year from the date of the last denial, except on grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.
- F. Appeal.** The decision of the ZBA shall be final. A person having an interest affected by the zoning ordinance; however, may appeal to the circuit court pursuant to the requirements of the MZEA, MCL 125.3101 et seq, as amended.