

ARTICLE 16

ZONING BOARD OF APPEALS

16.1 ESTABLISHMENT

There is hereby established a Board of Appeals, which shall perform its duties and exercise its powers as provided in the Township Zoning Act, in such a way that the objectives of this Ordinance shall be enforced, the health, safety and welfare of the public shall be promoted, and substantial justice shall be secured.

16.2 MEMBERSHIP

16.2.1 Composition

The Board of Appeals shall consist of the following five (5) members:

- a) The first member shall be a member of the Planning Commission.
- b) One (1) regular member may be a member of the Township Board.
- c) The remaining regular members shall be selected from the electors of the Township.

16.2.2 Appointment

Members shall be appointed by the Township Board upon recommendation of the Township Supervisor.

16.2.3 Alternates

- a) The Township Board, upon recommendation from the Township Supervisor, may appoint up to two (2) alternate Board of Appeal members, each to serve a term of three (3) years.
- b) In the case where any regular member of the Board of Appeals cannot hear an appeal due to a conflict of interest, illness or other absence, the Board of Appeals Chairman and/or acting chairman may call an alternate member(s) for that appeal.
- c) The alternate member(s) shall sit as regular members when regular members are unable to attend two (2) or more consecutive meetings or will be unable to attend any meetings for a period of more than thirty (30) consecutive days.
- d) An alternate member who hears an appeal or variance request shall serve on that case until a final decision has been rendered by the Board of Appeals.

16.3 DUTIES

The Board of Appeals shall hear and decide such matters as the Board of Appeals is specifically authorized to pass on as provided in this Ordinance and such matters as may be provided by law, including, but not limited to, variances, interpretation of Ordinance text, and interpretation of the Zoning Map. This shall not apply where the Zoning Board of Appeals is specifically prohibited within this Ordinance from acting on an appeal.

16.4 COMPENSATION

Members of the Board of Appeals may be paid per diem plus expenses actually incurred or such sums as the Township Board shall by resolution establish from time to time, if appropriation for such payment is made in advance by the Township Board. Otherwise, the members shall serve without pay.

16.5 RULES OF PROCEDURE

The Board of Appeals shall adopt rules of procedures. These rules shall be available for public inspection at the Office of the Township Clerk.

16.5.1 Meeting Schedule

The Board of Appeals shall annually establish a regular schedule of Board of Appeals meetings and the time and place of each. The schedule shall be posted within ten (10) days of setting the schedule as required under the Open Meetings Act. All such meetings and hearings shall be open to the public.

16.5.2 Quorum

The presence of three (3) voting members shall constitute a quorum.

16.5.3 Majority Vote

The Board of Appeals shall act by resolution. 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 or to decide in favor of the applicant on any matter upon which it is required to pass by this Ordinance, or to grant variations from the requirements of this Ordinance.

16.5.4 Meeting Minutes

The Board of Appeals shall keep minutes of its proceedings, all of which shall be filed promptly with the Township Clerk and shall be a public record, showing:

- a) The action of the Board of Appeals;
- b) The reasons on which the Board of Appeals bases its action;
- c) The vote of each member upon each question, or, if absent or failing to vote, indicating such fact; and

- d) Any other official action.

16.5.5 Transmittal of Resolutions

A copy of each resolution passed upon by the Board of Appeals shall be submitted to the Township Clerk and to the Secretary of the Planning Commission.

16.6 VARIANCES

No variance in the provisions or requirements of this Ordinance shall be authorized by the Board of Appeals unless the Board of Appeals makes findings, based upon competent, material and substantial evidence on the whole record.

16.6.1 Dimensional Variances

- a) To obtain a dimensional variance, the applicant must show “practical difficulty” by demonstrating all of the following:
 1. That special conditions and circumstances exist which are peculiar to the land, structure, building, or use, involved and would not be of general application to other parcels in the immediate area or the Township in general;
 2. That strict application of these regulations would result in exceptional or undue hardship upon the property;
 3. 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 terms of this Ordinance;
 4. That the special conditions and circumstances do not result from the actions of the applicant;
 5. That granting the variance will not alter the essential character of the area.
- b) No nonconforming use of neighboring lands, structures, or buildings in the same Zoning District, and no permitted use of lands, structures or buildings in other Zoning Districts shall be used as the basis for the issuance of a variance.
- c) The Board of Appeals shall make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, will not cause undue impact to the surrounding neighborhood, and will not be otherwise detrimental to the public health, safety and welfare.
- d) The Board of Appeals shall further make a finding that the reasons set forth in the application for variance 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.

16.6.2 Use Variances

The Board of Appeals shall not grant a use variance or take any action that would effectively grant a use variance. Further the Board of Appeals shall not otherwise allow a use that is not in keeping with the spirit of the Ordinance or with the Zoning District in question.

16.6.3 Conditions of Approval

In authorizing a variance, the Board of Appeals may, in addition to the specific conditions of approval called for in this Ordinance, attach thereto such other conditions regarding location, character, landscaping or treatment as are reasonably necessary to the furtherance of the intent and spirit of this Ordinance and the protection of the public interest. Violations of such conditions, 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 22.2.2.

16.6.4 Voiding of Variance

Each variance granted under the provisions of this Ordinance shall become null and void unless:

- a) The construction authorized by such variance or permit has begun within one (1) year after the granting of such variance and pursued diligently to completion; or
- b) The occupancy and operation of land or buildings authorized by such variance has taken place within one (1) year after the granting of such variance.

16.6.5 Extension of Approval

The Board of Appeals may, at its discretion, extend the approved variance for one (1) additional year if requested to do so in writing by the applicant and if there is good reason to believe that the applicant will in fact commence construction of the permitted use and proceed meaningfully toward completion by the end of the second year. Such extension must be requested in writing by the applicant and granted by the Zoning Board of Appeals prior to the variance becoming void pursuant to Section 16.6.4. No extension of approval shall be granted to a variance that has become void.

16.6.6 Reapplication

No application for a variance which has been denied wholly or in part by the Board of Appeals shall be re-submitted for a period of one (1) year after such denial, except on grounds of new evidence or proof of changed conditions.

16.7 INTERPRETATIONS

16.7.1 Interpretation

Pursuant to the requirements the Michigan Zoning Enabling Act, nothing contained herein shall be construed as prohibiting the Board of Appeals from interpreting the text of this Ordinance in such a fashion that will allow in a land use district buildings, uses and structures which are sufficiently similar to the specifically permitted or special uses in that land use district, under the same permitted or special use regulations. Such interpretation shall not have the effect of granting a variance but rather shall be deemed only to be an interpretation of this Ordinance text.

16.7.2 Standards

In determining whether a proposed building, use or structure is sufficiently similar to a specifically identified permitted or special use, the Board of Appeals shall consider, among other factors, the relevant policies for the Land Use District in question as set forth in the Master Plan.

16.7.3 Precedent

An earlier determination under this section shall be considered a precedent for other applications proposing an identical building, use or structure in the same Land Use District, provided the earlier determination was made with respect to a building, use or structure sufficiently similar to a specifically identified permitted use in the Land Use District and not with respect to a specifically identified special use.

16.8 APPEALS

16.8.1 Appeal from Ruling

Except as prohibited by the provisions of Section 11.13 of this Ordinance, an appeal from a ruling of the Zoning Administrator or the Planning Commission or the Township Board concerning the enforcement, administration, and interpretation of this Ordinance text and Zoning Map may be made to the Board of Appeals, by the applicant filing with the Zoning Administrator a demand for appeal specifying the grounds thereof within thirty (30) days of the date a decision is received by the applicant. The date of receipt shall be presumed to be five (5) days after the date shown on the decision. The demand for appeal shall be on a form prepared by the Township for that purpose and shall also include a site plan. The Zoning Administrator shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

16.8.2 Who May Appeal

Any person aggrieved, or any officer, department, Board, agency, or bureau of the Township, County or State may take an appeal to the Board of Appeals.

16.8.3 Fee for Appeal

A fee prescribed by the Township Board shall be paid to the Zoning Administrator at the time of filing the demand for appeal. If the Township Board finds an applicant to be indigent, the fee may be waived by the Township Board.

16.8.4 Effect of Appeal

An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals, after the demand for appeal is filed, that by reason of facts stated in the certificate, a stay would in the Zoning Administrator's opinion, cause imminent danger of harm to persons or property. The proceedings shall not be stayed except by a restraining order granted by the Board of Appeals or by the Circuit Court, on application.

16.8.5 Hearing by the Board of Appeals

When a demand for appeal in proper form has been filed with the Zoning Administrator, the Zoning Administrator shall immediately place such matter on the Board of Appeal's calendar for hearing, and cause notice to be given in accordance with Section 16.8.6 below. Interested parties, at a minimum, shall include, Board of Appeals members, the Township's attorney, the appellant, the property owner and resident, adjoining property owners and residents.

16.8.6 Notice of Hearing

Notice of the hearing by the Board of Appeals, stating the time, place, and object of the hearing, shall be given in accordance with the requirements of the Michigan Zoning Enabling Act.

16.8.7 Representation at Hearing

Upon the hearing, any party or parties may appear in person or by agent or by attorney.

16.8.8 Decisions of Board of Appeals and Appeals to the Circuit Court

The Board of Appeals shall decide upon all matters appealed within sixty (60) days of the receipt of a demand for appeal, and fee paid to the Zoning Administrator, unless mutually agreed to by both parties to extend the time. The Board of Appeals may reverse or affirm wholly or in part, or may modify the order, requirement, decision or determination appealed. 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. Any person having an interest affected by such decision shall have a right to appeal such a decision to Circuit Court as provided by law.

16.9 DEPENDANT APPLICATIONS

Where a variance or determination is sought from the Zoning Board of Appeals and a separate application for site plan approval, special land use approval or other similar approval is required by any provision of this Ordinance, no such application shall be considered or decided upon until such time as the variance or determination of the Zoning Board of Appeals has been made and is final.