

## **ARTICLE 13**

### **ZONING BOARD OF APPEALS**

#### **Section 13.01 Board Established.**

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

#### **Section 13.02 Membership and Terms.**

Board of Appeals membership shall be subject to the following:

##### **A. Membership.**

The Board of Appeals shall consist of seven (7) members appointed by the Township Board. One (1) member shall be a member of the Township Planning Commission, and one member may be a member of the Township Board.

1. The remaining members shall be selected from the 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.
2. An employee or contractor of the Township Board shall not serve as a member of the Board of Appeals.
3. In the event a member is elected to The Township Board and such election increases the number of Township Board members serving on the Board of Appeals to more than one (1), then such member's seat on the Board of Appeals 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 up to two (2) alternate members for the same term as regular members of the Board of Appeals. An alternate member may be called to serve as a regular member for the Board of Appeals in the absence of a regular member if the regular member is absent from or will be unable to attend one (1) or more meetings of the Board of Appeals. An alternate member 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 13.02D (Abstaining). 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 Board of Appeals.

**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 the time they are members of those bodies. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. All vacancies shall be filled for the remainder of the unexpired term by Township Board appointment.

**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 member of the Board of Appeals 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 13.03 General Regulations.**

Board of Appeals membership shall be subject to the following:

**A. Rules and Officers.**

The Board of Appeals may adopt rules and regulations to govern its procedures. The Board of Appeals shall elect annually a Chair, Vice-Chair, and Secretary from its membership. An elected officer of the Township shall not serve as Chair of the Board of Appeals.

1. The Chair shall preside at and conduct Board of Appeals meetings; and shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before the Board of Appeals.

2. In the absence of the Chair, the Vice-Chair shall exercise all powers and authority of the Chair.
3. The Secretary shall be responsible for ensuring that complete and accurate written records are kept of all Board of Appeals proceedings.

**B. Votes and Quorum.**

A concurring vote of a majority of the members of the Board of Appeals shall be necessary for any decision. The Board of Appeals shall not conduct business unless a majority of its members is present.

**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 Board of Appeals 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, which shall be held within 90 calendar days after receipt of a complete and accurate application. Notice shall be given and the hearing shall be held in accordance with Section 1.14 (Public Hearing Procedures). All hearings shall be open to the public.

**E. Time Limit for Decision.**

The Board of Appeals shall decide upon all matters within 180 calendar days after receipt of a complete and accurate application. The decision of the Board of Appeals shall be in the form of a resolution containing a full record of its findings and determinations in each case. The time limit may be extended by written agreement between the applicant or appellant and the Board of Appeals.

**F. Meetings.**

Meetings of the Board of Appeals shall be held at the call of the Chair and at such other times as the Board of Appeals in its rules might specify.

1. 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.
2. 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.

**G. Oaths.**

The Chair of the Board of Appeals or, in the Chair's absence the acting Chair, may administer oaths and compel the attendance of witnesses.

**Section 13.04 Powers and Duties.**

The Board of Appeals shall hear and decide and rule on the following as provided herein:

1. The Board of Appeals 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. The Board of Appeals 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. The Board of Appeals 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. The Board of Appeals shall also hear and decide on any other matters referred to the Board of Appeals shall or upon which the Board of Appeals shall is required to pass under this Ordinance.
5. The Board of Appeals shall not change the zoning district classification of any property, or make any change in the terms of this Ordinance, and shall not take any action which would have as a result the making of legislative changes in this Ordinance.
6. The Board of Appeals shall not 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 said district.
7. The Board of Appeals shall not hear matters relating or pertaining to conditional uses, use variances or Special District developments.

**Section 13.05 Required Fees and Escrow Deposits.**

The Township Board shall establish, by resolution or ordinance, fees and escrow deposits for review of petitions or appeals to the Board of Appeals. Required fees and escrow deposits shall be paid to the Township Treasurer at the time of the filing of the application. No fee or escrow deposit shall be required for amendments proposed or requested by the Township. No action shall be taken on any petition or appeal for which required fees have not been paid in full.

**Section 13.06 Administrative Appeals.**

Consideration of administrative appeals shall be subject to the following:

1. Appeals may be taken to the Board of Appeals 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 60 calendar days of the order, requirement, decision or determination in question.
2. The appeal shall be filed with the official from whom the appeal is taken or such other person as the Board of Appeals may from time to time designate.
3. The appellant shall submit a clear description of the order, requirement, decision, or determination from which the appeal is made and the grounds of the appeal. The appellant may be required by the Board of Appeals to submit additional information to clarify the appeal.
4. The Township Clerk or such other person as the Board of Appeals may from time to time designate shall transmit to the Board of Appeals copies of all relevant papers constituting the record upon which the action appealed from was taken.
5. An appeal stays all proceedings in the furtherance of the action appealed from, unless the Zoning Inspector certifies to the Board of Appeals 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 Board of Appeals or by a court of record upon application, upon notice to the Zoning Inspector from whom the appeal is taken, and upon due cause shown.
6. The Board of Appeals shall reverse an administrative decision only upon determining that the order, requirement, decision or determination constituted an abuse of discretion; was arbitrary or capricious; or was based upon an erroneous finding of a material fact or an erroneous interpretation of the Zoning Ordinance.
  - a. After making such a determination, the Board of Appeals may, so long as such action is in conformity with the terms of this Ordinance:
    - (1) Reverse or affirm wholly or in part;
    - (2) Modify the order, requirement, decision, or determination appealed from; or
    - (3) Make such order, requirement, decision, or determination as ought to be made, and may issue or direct the issuance of a permit.
  - b. To that end, the Board of Appeals shall have all of the powers of the official(s) from whom the appeal is taken.

### **Section 13.07 Interpretations.**

The Board of Appeals 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 Growth Management Plan. The Board of Appeals 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 Growth Management Plan, subject to the standards of Section 2.205E (Rules for Interpretation).

### **Section 13.08 Variances.**

The Board of Appeals 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 the requirements of the Michigan Zoning Enabling Act and the following:

#### **A. Variance Petition.**

Application for a variance shall be filed with the Township Clerk or such other person as the Board of Appeals may from time to time designate by the record owner of the property in question or by a person authorized to act on the record owner's behalf.

1. The Township Clerk or such other as the Board of Appeals may from time to time designated shall transmit the application and information to the Board of Appeals and to the Zoning Inspector.
2. The petition shall consist of a completed application form, fee, and the following required information:
  - a. Legal description, address, tax parcel number, and zoning classification of the subject property, and zoning classifications of adjacent parcels.
  - b. An accurate, scaled drawing of the property, showing all property lines, dimensions, and bearing or angles correlated with the legal description; all existing and proposed structures and uses on the property; and dimensions of structures and their dimensioned locations; and lot areas and all calculations necessary to show compliance with the regulations of this Ordinance. Such drawings shall include all septic systems, wells, and easements and all significant trees and natural features.
  - c. A statement of the specific reasons for the request for a variance.
  - d. Name and address of the applicant and the property owner, and the interest of the applicant in the property.

#### **B. Standards for Review.**

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

1. Special conditions and circumstances exist that are unique to the land, structures, or buildings involved, and are not applicable to other lands, structures, or buildings in the same district, subject to the following:
  - a. The existence of nonconforming dwellings, lots of record, structures, uses, or sites on neighboring lands in the same zoning district or other zoning districts shall not be considered grounds for a variance.
  - b. The special conditions and circumstances on which the variance request is based do not result from the actions of the applicant.
2. Literal interpretation of this Ordinance would deprive the applicant of rights commonly enjoyed by other property owners in the same district under the terms of this Ordinance.
3. Granting the variance requested would not confer upon the applicant any special privilege that is denied by the Ordinance to other lands, structures, or buildings in the same district.
4. A variance granted shall be the minimum that will make possible a reasonable use of the land, building, or structure. The Board of Appeals may consider lesser variances than that requested by an applicant.
5. The variance granted shall be in harmony with the intent of this Ordinance and will not be injurious to the environment, neighborhood, or otherwise detrimental to the public interest.

**C. Motions.**

Any motion for action on a variance application shall include specific findings of fact and conclusions made by the Board of Appeals on the request, which shall be incorporated into the written record of the meeting.

**D. Expiration.**

Each variance approved shall become null and void unless a building permit has been issued for the construction authorized by the variance within 180 calendar days after the date of approval and construction has been pursued diligently to completion; or the occupancy of land or buildings authorized by the variance has commenced within 180 calendar days after the date of approval.

1. Where a building permit has been issued for construction authorized by a variance, the variance shall become null and void upon expiration of the building permit.
2. Where a variance has been approved for a project subject to site plan approval per Article 10.0 (Site Plan Review), the variance shall become null and void only upon expiration of an approved final site plan for the project.

3. The Board of Appeals may, upon written request by the petitioner with a showing of good cause, grant one (1) extension of variance approval for up to an additional 180 calendar days.

**D. Reapplication.**

An application for a variance that has been denied wholly or in part by the Board of Appeals shall not 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 Board of Appeals to be valid.

**Section 13.09 Site Plan Requirements.**

If an application or appeal to the Board of Appeals 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 10.0 (Site Plan Review).

1. 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.
2. The Planning Commission shall then transmit a copy of the site plan and the Commission's findings thereon to the Board of Appeals. The Board of Appeals shall, upon deciding on the application or appeal, return the plan and its decision to the Planning Commission for Commission action on the preliminary site plan.

**Section 13.10 Conditions of Approval.**

The Board of Appeals may impose 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. Such conditions shall be consistent with procedures, requirements, standards, and policies of the Township, where applicable. Violation of any condition imposed shall be deemed a violation of this Ordinance and punishable under Section 1.13 (Violations and Penalties).

**Section 13.11 Appeals to Circuit Court.**

Any person aggrieved by a decision of the Board of Appeals 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 Board of Appeals issues its written decision, signed by the Chair or acting Chair; or within 21 calendar days after the Board of Appeals approves the minutes of its decision.