

**ARTICLE 18**  
**ZONING BOARD OF APPEALS**

**SECTION 18.01 ORGANIZATION**

There is hereby established a Zoning Board of Appeals (*ZBA*), which shall perform its duties and exercise its powers as provided in the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done.

**A.Membership:**

The Zoning Board of Appeals shall consist of five (5) regular members, all appointed by the Township Board. The Township Board may appoint not more than two (2) alternate members to said Board.

One of the regular members of the Zoning Board of Appeals shall be a member of the Planning Commission. The remaining regular members and any alternate members shall be selected from the electors of the Township. One member may be a member of the Township Board.

No employee or contractor of the Township Board may serve as a member of the Zoning Board of Appeals. A member of the Township Board shall not serve as chairman.

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 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.

**B.Terms:**

The term of each regular and alternate 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 the Planning Commission or Township Board, respectively. The term of a member shall be stated in the resolution appointing that member. When members are first appointed, the appointments may be for less than three (3) years to provide for staggered terms. 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.

**C.Seating of Alternate Members:**

An alternate member may be called by the Township Clerk to serve as a member of the Zoning Board of Appeals in the absence of a regular member if a regular member is absent from or will be unable to attend one (1) or more meetings. An alternate member may also be called to serve as a member of the Zoning Board of Appeals for the purpose

of reaching a decision on a case in which a regular member has abstained for reasons of conflict of interest.

D. Duties of Alternate Members:

1. To serve as a voting member, but not as an officer, during the absence of a regular member.
2. The alternate member having been appointed shall serve in the case until a final decision has been made.
3. An alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.

E. Business:

The Zoning Board of Appeals shall not conduct business unless a majority of the regular members of the Board is present.

**SECTION 18.02 PROCEDURES**

The Zoning Board of Appeals shall annually elect its own Chairman, Vice-Chairman, and Secretary. Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as the Board may determine by rule. Such Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Zoning Board of Appeals shall be open to the public. The ZBA shall adopt its own rules or procedures. The Township Clerk shall maintain an accurate record of the ZBA's proceedings and findings, which shall be filed in the office of the Township Clerk and shall be a public record. Duplicates shall be kept on file at the Township Hall.

The fees to be charged for appeals shall be set by resolution of the Township Board. In those instances wherein lot area and yard requirements in lots existing of record cannot be complied with and must therefore be reviewed by the Zoning Board of Appeals, the required fees for appeal, in whole or in part, may be refunded to the petitioner at the discretion of the Township Board.

**SECTION 18.03 SECRETARY AND COUNSEL**

The Township Clerk shall be responsible for providing secretarial services for the Zoning Board of Appeals and the Township Attorney may give legal counsel to the Zoning Board of Appeals upon its request. An employee or contractor of the Township Board may not serve as a member of the Zoning Board of Appeals.

**SECTION 18.04 JURISDICTION**

The Zoning Board of Appeals shall not have the power to alter or change the Zoning district classification of any property, nor to make any change in the terms of this Ordinance, but does have the power to act on those matters where this Ordinance provides for an administrative review, interpretation and to authorize a variance as defined in this section, and the laws of the State of Michigan. Said powers include:

- A. Interpretation of Zoning Ordinance: To hear and decide appeals where it is alleged by the appellant there is an error in any order, requirement, permit, decision or refusal made by the Zoning Administrator or any other administrative official in carrying out or enforcing any provisions of this Ordinance including interpretations of the Zoning Map.
- B. Appeal of Administrative Decisions. To hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with administration or enforcement of the Zoning Ordinance.
- C. Variance: To authorize, upon an appeal, a variance from the strict applications of the provisions of this Ordinance where by reason of exceptional narrowness, shallowness, shape, contour, or area of a specific piece of property at the time of enactment of this Ordinance or by reason of exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to the owner of such property. No variance shall be granted to permit the establishment within a district of any use which is excluded or for which a Special Use Permit is required. No variance shall be granted by the Zoning Board of Appeals unless all the following conditions are met:
  - 1. That there are exceptional or extraordinary circumstances or conditions applying to the property involved, or to the intended use of the property, that do not apply generally to other property or uses in the same district and have not resulted from any act of the applicant subsequent to the adoption of this Ordinance;
  - 2. That such variance is necessary for the preservation of a substantial property right belonging to other property in the same district;
  - 3. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity or in the district in which the property of the applicant is located; and
  - 4. That the granting of such variance will be in harmony with the general purpose and intent of this Ordinance.

In granting a variance, the Zoning Board of Appeals shall specify, in writing, to the applicant, such conditions, which secure substantially the objectives of the regulation or provision to which such variance applies and the breach of any such condition shall automatically invalidate the permit therefore.

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

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

No application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall be resubmitted for a period of one (1) year from such denial, except on grounds of new evidence or proof of changed conditions found by the Zoning Board of Appeals to be valid.

- D. Other Items Contained in the Zoning Ordinance. To hear and decide on other matters referred to the Zoning Board of Appeals or upon which the Zoning Board of Appeals is required to pass under the Zoning Ordinance, without making the findings set forth in Section 18.04(B), which are applicable to variances.

### **SECTION 18.05 APPEALS**

The appeal to the Zoning Board of Appeals based in whole or in part on the provisions of this Ordinance may be taken by any person, firm, or corporation aggrieved by any governmental officer, department, board, or bureau aggrieved by the decision of the Zoning Administrator. Such appeal shall be taken by filing a notice of appeal with the Zoning Administrator within ten (10) days after the date of the Zoning Administrator's decision on appropriate forms provided by the Zoning Administrator, payment of the required fee, and shall transmit all papers constituting the records of such appeal to the Zoning Board of Appeals. The Zoning Board of Appeals may require the applicant to furnish such surveys, plans or other information as may be reasonably required for the proper consideration of the matter. Upon a hearing before the Zoning Board or Appeals, any person or party may appear in person, or by agent, or by attorney.

The submittal of a complete and accurate application for appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Appeals that a stay would cause imminent peril to life or property by reason of facts stated in the certificate. Upon acceptance of the Zoning Administrator's certificate by the Zoning Board of Appeals, proceedings shall not be stayed, except by a restraining order which shall be granted by the Zoning Board of Appeals or by the Circuit Court.

#### **1. Variance Public Hearing Notice Requirements.**

When a notice concerning a request for a variance has been filed in proper form with the Zoning Board of Appeals, the secretary shall immediately place the said request for appeal upon the calendar for hearing. Notice of the public hearing shall be published in a newspaper of general circulation in the Township and shall also be served personally or by first-class mail to the parties making the request for variance, and to all persons to whom real property is assessed within a radius of five hundred (500) feet of the boundary of the property in question and to the occupants of all structures within 500 feet of the boundary of the property in question regardless of whether the property or occupant is located in the zoning jurisdiction. If the name of the occupant is not known, the term "occupant" may be used in making notification. The notice shall be given not less than fifteen (15) days before the date the appeal will be considered. All notices by mail shall be deemed to have been given when deposited in the United State Post Office. The notice shall do all of the following:

- a. Describe the nature of the request.
- b. Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
- c. State when and where the request will be considered.
- d. Indicate when and where written comments will be received concerning the request.

2. Appeal or Interpretation Public Hearing Notice Requirements.

Upon receiving a written request seeking an interpretation of the Zoning Ordinance or an appeal of an administrative decision, a notice of the hearing shall be published in a newspaper of general circulation in the Township and shall also be served personally or by first-class mail to the parties making the request for interpretation or appeal. If the request for interpretation or appeal involves a specific parcel, a written notice shall be sent by first-class mail or personal delivery to all persons whom real property is assessed within 500 feet of the boundary of the property in question and to the occupants of all structures within 500 feet of the property in question. If the name of the occupant is not known, the term "occupant" may be used in making notification. The notice shall be given not less than fifteen (15) days before the date of the interpretation or appeal will be considered. The notice shall state the nature of the request and the time, date, and place of the public hearing.

3. The Zoning Board of Appeals shall decide upon all matters appealed within a reasonable time and may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make such order 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 final decision of such appeals shall be in the form of a resolution containing a full record of the findings and determination of the Board in each particular case.

The concurring vote of a majority of the members of the Zoning Board of Appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, or to decide in favor of the applicant any matter upon which the Board is required to pass under the ordinance, or to grant a variance in the ordinance.

Amended 9/6/2007, Effective 9/19/2007