

ARTICLE 22
ZONING BOARD OF APPEALS (ZBA)

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Sec. 22-01 Creation and Membership

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There is hereby created a Zoning Board of Appeals (ZBA), which shall perform its duties and exercise its powers as provided in the Michigan Zoning Enabling Act P.A. 110 of 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, the requirements of any other statute or Ordinance and substantial justice done. The ZBA shall consist of the following seven (7) members:

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(a) The first member shall be a member of the Township Planning Commission, recommended by the Commission and appointed by the Township Board to serve for a term of one (1) year.

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(b) The second member shall be a member of the Township Board who may not be the Chairperson of the ZBA.

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(c) The remaining five (5) members shall be electors of the Township, selected and appointed by the Township Board from among the electors, residing in the Township, who shall be representative of the population distribution and of the various interests present in the Township. No employee or contractor of the Township Board may serve simultaneously as a member or employee of the ZBA.

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(d) Terms of members of the ZBA shall be for three (3) years, except for members serving because of his or her membership on the Township Board whose term shall be limited to the time he or she is a member of the Township Board. 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. All vacancies for unexpired terms shall be filled for the remainder of the term by the Township Board.

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(e) The ZBA shall elect a chairperson, a vice-chairperson, and a secretary from its members. The term of all officers shall be for one (1) year.

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5 (f) The Township Board may appoint not more than two (2) alternate members
for the same term as regular members to the ZBA. An alternate member may
serve as a regular member 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 ZBA or is absent from or will be unable to attend meetings for a period of
more than thirty (30) consecutive days. An alternate member may also be
called upon to serve as a regular member for the purpose of reaching a
decision in which a regular member has abstained for reasons of conflict of
interest. The alternate member so appointed shall serve in the case until a
10 final decision is made. The alternate member when serving has the same
voting rights as a regular member of the ZBA.

(Ord. #246, 12/25/09), (Ord. #234, 12/28/06), (Ord. #229, 7/6/05)

15 **Sec. 22-02 Procedures**

(a) **Meetings**

20 (1) All meetings of the ZBA shall be held at the call of the chairperson and at
other times as the ZBA, in its adopted rules of procedure, may specify.

(2) The Board of Appeals shall not conduct business unless four (4) members
of the Board of Appeals are present.

25 (3) All meetings and hearings conducted by the ZBA shall comply with the
Open Meetings Act, PA 276 of 1976, as amended.

30 (4) The ZBA shall provide for notice in accordance with **Section 23-11** of
meetings and hearings to the parties and shall render a decision on the
application without unreasonable delay. Any person may appear and
testify at the hearing either in person or by duly authorized agent or
attorney.

35 (b) **Procedure**

(1) The ZBA shall adopt its own rules of procedure and keep a record of its
proceedings showing the vote of each member upon each question, or if
absent or failing to vote due to a conflict of interest, indicating the fact;
and shall file a record of its proceedings in the office of the Township
40 Clerk, which shall be public record.

5 (2) The concurring vote of a majority of the members of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of an administrative official or body, or to decide in favor of an applicant on any matter upon which the ZBA are required to pass under this Ordinance or to effect any variation in this Ordinance.

10 (3) A member of the ZBA who is also a member of the Planning Commission, or 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 and vote on other unrelated matters involving the same property.

15 (c) **Notice.** The ZBA shall make no decision except in a specific case and after a public hearing conducted by the ZBA. Notice of public hearing shall be in accordance with *Section 23-11*.

20 (d) **Stay of Proceedings.** An appeal to the ZBA shall stay all proceedings in furtherance of the appealed action, unless the Planning Commission, zoning official, or any other administrative official certifies to the ZBA, after the notice of appeal shall have been filed, that by reason of the facts stated in the appeal, a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order granted by the circuit court.

25 (e) **Limitations.** Nothing herein contained shall be construed to give or grant to the ZBA the power or authority to alter or change this Ordinance or the zoning map, such power and authority being reserved to the Township Board in the manner provided by law.

30 (Ord. #248, 1/22/10), (Ord. #234, 12/28/06), (Ord. #229, 7/6/05)

Sec. 22-03 Powers

35 The ZBA 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 it. The ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, in accordance with the guidelines set forth herein.

With an affirmative decision, the ZBA may impose conditions pursuant to Michigan Zoning Enabling Act P.A. 110 of 2006, as amended. The decision of the ZBA shall be final. However, a person having an interest affected by this Ordinance may appeal to the circuit court for review pursuant to Michigan Zoning Enabling Act P.A. 110 of 2006, as amended.

(Ord. #234, 12/28/06)

Sec. 22-04 Jurisdiction

The ZBA shall have power to act on those matters as defined in this section and by the laws of the State of Michigan. Jurisdiction shall include:

(a) **Appeals.** 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 any administrative or enforcement official or body charged with administration or enforcement of this Ordinance.

(b) **Variance.** To authorize, upon application, a variance from the strict application of the provisions of this Ordinance. In granting a variance, the ZBA may attach thereto such conditions and safeguards regarding the location, character, and other features of the proposed uses as it may deem reasonable so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done. In granting a variance, the ZBA shall state the grounds upon which it justifies the granting of a variance. The ZBA 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.

(c) **Interpretation.** To interpret boundaries of zoning districts as presented in the official zoning map. Upon request of the Planning Commission or any administrative or enforcement officer charged with administration or enforcement of this Ordinance, the ZBA may interpret and clarify the meaning of Ordinance text.

(d) **Approvals.** To hear and decide in accordance with the provisions of this Ordinance, requests for decisions under the Ordinance as provided for and referred to it within the Ordinance and for decisions on which this Ordinance specifically authorizes the ZBA to pass.

- 5 (e) **Special Land Uses.** While the ZBA may grant dimensional or other site plan related variances for special land uses. The ZBA shall not have the power to reverse or modify the Planning Commission decision to approve or deny a special land use permit nor grant variances to any special land use standards or conditions of special land use approval.

Sec. 22-05 Application Requirements

- 10 (a) **Application to the ZBA.** Decisions for which ZBA action is sought shall be commenced by a person filing an application to the ZBA on forms as specified by the ZBA and accompanied by required fees. The application shall specify the grounds upon which the request is based and shall contain a notarized signature of the property owner or owner's agent. Applications involving a request for a variance shall specify the section number(s)
15 containing the requirements from which a variance is sought and the nature and extent of the variance.

- 20 (b) **Fees.** The Township Board may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants to the ZBA. At the time the application is filed, the fee shall be paid to the Township.

- 25 (c) **Sketch Plan Requirements.** Applications involving a specific site must be accompanied by a sketch that includes the following information, where applicable:

- (1) Applicant's name, address, and telephone number.
- 30 (2) Property identification (Sidwell) number, scale, north point, and dates of submission and revisions.
- (3) Zoning classification of petitioner's parcel and all abutting parcels.
- 35 (4) Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within fifty (50) feet of the site.
- (5) For variances requested from any dimensional standard of this Ordinance, the sketch plan shall include verified measurements of existing conditions

and the proposed dimensions or calculations regarding the specific standards from which the variance is sought.

5 (6) Any additional information required by the building official or the ZBA to make the determination requested herein.

10 Where an application to the ZBA involves a variance sought in conjunction with a site plan review by the Planning Commission, the application data requirements for site plan review as set forth in *Article 18* shall be followed.

15 (e) **Approval Period.** If construction has not commenced within twelve (12) months after the day the ZBA grants a variance to allow the erection or alteration of a building, then the variance becomes null and void. The period of approval may be automatically extended by twelve (12) months if the variance was sought in conjunction with a site plan for which approval has been extended by the Planning Commission.

20 **Sec. 22-06 Standards for ZBA Action**

25 Variances and appeals shall be granted only in accordance with the Michigan Zoning Enabling Act P.A. 110 of 2006, as amended, and based on the findings set forth in this section. Variances and appeals shall not be granted solely upon economic or financial considerations. The extent to which the following criteria apply to a specific case shall be determined by the ZBA:

30 (a) **Criteria Applicable to Appeals.** The ZBA may reverse an order of an enforcement official only if it finds that the action or decision appealed meets one (1) or more of the following requirements:

(1) Was arbitrary or capricious.

(2) Was based on an erroneous finding of a material fact.

35 (3) Constituted an abuse of discretion.

(4) Was based on erroneous interpretation of the zoning Ordinance or zoning law.

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(b) **Criteria Applicable to Dimensional Variances**

5 (1) **Practical Difficulty/Substantial Justice.** Practical difficulty must be shown that compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, or other dimensional provisions would unreasonably prevent the use of the property. Granting of a requested variance or appeal would do substantial justice to the applicant as well as to other property owners in the district and is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and vicinity of the subject parcel.

15 (2) **Public Safety and Welfare.** The requested variance does not interfere with the public safety and welfare, increase the hazard of fire, impair the adequate supply of light and air, or create nuisances.

20 (3) **Impact on Surrounding Neighborhood.** The variance will not interfere with or discourage the appropriate development, continued use, or value of adjacent properties and the surrounding neighborhood.

25 (4) **Extraordinary Circumstances.** There are exceptional circumstances or conditions applicable to the property or the intended use that do not generally apply to other properties or uses. The need for the variance was not self-created by the applicant.

30 (c) **Criteria Applicable to Use Variances.** The zoning board of appeals may grant a use variance only upon a finding that an unnecessary hardship exists. A use variance is a variance that permits a use that is otherwise not provided for in a zoning district. A 2/3rd vote of the members of the Zoning Board of Appeals is required to grant a use variance. A finding of an unnecessary hardship shall require demonstration by the applicant of all of the following:

35 (1) **Unreasonable Current Zoning Designation.** The applicant has demonstrated that the site can not reasonably be used for any of the uses allowed within the current zoning district designation. The ZBA may require submission of documentation from real estate or market experts, or a certified appraiser, to substantiate this finding.

40 (2) **Unique Circumstances.** The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the

area or to other properties in the same zoning district. The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone and that these features make it impossible to earn a reasonable return without some adjustment. In those situations where the difficulty is shared by others, the board may find that relief should be accomplished by an amendment to the zoning ordinance, not a variance.

(3) **Not Self-Created.** The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's immediate predecessor.

(4) **Capacity of Roads, Infrastructure and Public Services.** The capacity and operations of public roads, utilities, other facilities and services will not be significantly compromised.

(5) **Character of Neighborhood.** The use variance will not alter the essential character of the neighborhood nor be of detriment to adjacent properties.

(d) **Record of Appeal.** The ZBA shall prepare and retain a record of each appeal, and shall base its decision on this record. This record shall include all of the following:

(1) The relevant administrative records and the administrative orders issued thereon relating to the appeal.

(2) The notice of the appeal.

(3) Such documents, exhibits, plans, photographs, or written reports as may be submitted to the ZBA for its consideration.

(4) The written findings of fact, the decisions, and the conditions imposed by the ZBA in acting on the appeal shall be entered into the official record, after being signed by the chairperson of the ZBA, thereby effectuating the decision and any conditions imposed thereon.

(5) Any approval granted by the ZBA may be made subject to such conditions as the ZBA may require, including deed restrictions and performance guarantees, to ensure that the applicable review standards are satisfied.

5 Conditions imposed shall be as required by the Zoning Act. Any conditions imposed must be stated in writing as part of the record of the approval. The ZBA may require that a performance guarantee per **Section 23-08** be furnished to insure compliance with certain conditions imposed with the granting of any appeal or variance.

10 (e) **Appeal of ZBA Decision to Court.** Any appeal of a decision by the Zoning Board of Appeals must be filed within thirty (30) days after the ZBA certifies its decision in writing, signed by the chairperson, or within twenty-one (21) days after the ZBA approves the minutes of its decision, whichever occurs first.

(Ord. #248, 1/22/10), (Ord. #234, 12/28/06)

15 **Sec. 22-07 Time Requirements**

20 (a) **Building Permit Required.** No order of the ZBA allowing the erection of a building or other structure shall be valid for a period longer than twelve (12) months unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

25 (b) **Use Establishment.** No order of the ZBA allowing the use of a building premises shall be valid for a period longer than twelve (12) months unless such a use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building or structure, such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the
30 terms of such permit.