

ARTICLE 17

ZONING BOARD OF APPEALS

Section 17.01 Authority.

The Zoning Board of Appeals (ZBA) is hereby established, which shall perform its duties as provided for in this Ordinance and the Michigan Zoning Enabling Act in such a way that the objectives of this Ordinance shall be served, public health, safety and welfare protected, and substantial justice done.

Section 17.02 Membership.

The Zoning Board of Appeals (ZBA) shall consist of five (5) members and up to two (2) alternates appointed by the Township Board for three (3) year terms.

1. One (1) member shall be a member of the Planning Commission.
2. One (1) member may be a member of the Township Board, but shall not serve as Chair of the ZBA.
3. All members shall have been a resident of the Township for at least one (1) year prior to the date of appointment, and shall be a qualified and registered elector of the Township on such day and throughout his or her tenure of office.
4. An employee or contractor of the Township may not serve as a member of the Zoning Board of Appeals.
5. Alternate members called to serve in place of an absent ZBA member, or where a member has abstained from deliberation and voting on a case because of a conflict of interest, shall have the same voting rights as a regular ZBA member.
6. Members of the Zoning Board of Appeals may be removed from office for misfeasance, malfeasance or nonfeasance in office, including failure of a member with a conflict of interest to abstain from deliberations or voting on the matter. The Township Board may remove a ZBA member after written charges have been filed with the Township Clerk and the Board has held a public hearing.
7. In the event a Zoning Board of Appeals member is elected to The Township Board and such election increases the number of Township Board members serving on the ZBA to more than one (1), then such member's seat on the ZBA shall be deemed vacant. Such vacancy shall be filled for the remainder of the un-expired term by appointment in the same manner as for regular appointments for full terms.

Section 17.03 Rules of Procedure.

The Zoning Board of Appeals (ZBA) shall conduct business, organize meetings, and perform its duties as provided for in this Ordinance, the Michigan Zoning Enabling Act, and any adopted Zoning Board of Appeals bylaws and rules of procedure.

1. At the first ZBA meeting following January 1 of each calendar year, the ZBA shall elect a Chair, Vice-Chair, and Secretary from its membership, who shall serve until successor officers shall be elected.
 - a. The Chair shall preside at and conduct ZBA 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 ZBA.
 - b. In the absence of the Chair, the Vice-Chair shall exercise all powers and authority of the Chair.
 - c. The Secretary shall be responsible for ensuring that complete and accurate written records are kept of all ZBA proceedings.
2. Meetings shall be held at the call of the Chair, and at such other times as the ZBA may determine.
3. The ZBA shall select a reasonable time and place for hearings, and shall give due notice thereof to the parties. All hearings shall be open to the public. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.
4. The ZBA shall render all decisions within a reasonable time, not to exceed 90 calendar days from the filing date of a complete and accurate application. The time limit may be extended by written agreement between the applicant and ZBA.
5. The concurring vote of a minimum of three (3) members of the ZBA shall be necessary to take action on or make a determination regarding any matter upon which the ZBA is required to act. The ZBA shall not conduct business unless at least three (3) members are present.
6. An appeal to the ZBA shall stay all proceedings in furtherance of the appealed action, unless the Zoning Administrator 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.
7. The ZBA shall keep minutes of its proceedings, which shall include a record of all hearings, all motions, and each member's attendance, votes, and abstentions. Copies of all approved meeting minutes shall be filed with the Township Clerk for the permanent Township record.

Section 17.04 Hearings and Decisions.

Applications to the Zoning Board of Appeals (ZBA) shall be subject to the following requirements and review procedures:

A. Application Requirements.

Applications to the ZBA shall be filed with the Township Clerk or Zoning Inspector. At a minimum, applications shall include the following:

1. Names, addresses and telephone numbers for the applicant and property owner, and proof of ownership.
2. The applicant's interest in the subject property. If the applicant is not the owner in fee simple title, the name and address of the owner(s) and the signed consent of the owner(s) to the application.
3. Address, location, legal description, and tax identification number of the parcel.
4. Appropriate review fees or escrow deposit, as determined by Township Board.
5. Zoning classification of the subject parcel(s) and all abutting parcels.
6. A plot plan of the site, drawn to scale with a north-arrow, showing all lot lines, street rights-of-way, easements, structures, setback dimensions, parking areas, driveways, sidewalks and other site improvements.
7. A letter from the applicant stating the reasons for the request, and addressing the applicable criteria specified in this Article for the type of request.
8. Any additional information deemed necessary by the Zoning Board of Appeals to make a determination on the issue in question.

The application and all associated materials shall be forwarded to the members of the ZBA by the Township Clerk or Zoning Inspector within ten (10) calendar days of the filing date.

B. Application Review Procedure.

Applications shall be shall be reviewed in accordance with following procedures:

1. **Technical review.** Prior to ZBA consideration, the ZBA Chair, Zoning Inspector or Township Supervisor may distribute copies of the application materials to the Township Planner for review and comment, and may request that the Township Planner be present at the meeting where the application will be considered.
2. **Public hearing.** The ZBA shall make no determination on a specific application until after a public hearing has been conducted in accordance with Section 12.03 (Public Hearing Procedures).

3. **Deliberation and action.** Subsequent to the hearing, the ZBA shall review the application, together with any report from the Township Planner and any public comments. ZBA determinations shall be based on the applicable criteria of this Article, as follows:
 - a. **Appeals.** Appeal of any administrative order, requirement, decision or determination made under this Ordinance shall be subject to Section 17.05 (Administrative Appeals).
 - b. **Interpretations.** Interpretations of the provisions of this Ordinance or Official Zoning Map shall be subject to Section 17.06 (Interpretations).
 - c. **Variances.** Variances from specific requirements of this Ordinance shall be subject to Section 17.07 (Variances).
 - d. **Exceptions.** Exceptions, as authorized by this Ordinance, shall be subject to Section 17.08 (Exceptions).

C. Motions.

Any motion for action on an application shall include specific findings of fact and conclusions made by the ZBA in the case. Approved motions, including findings of fact and conclusions, shall be incorporated into the written record for the case. A copy of the approved written record shall be provided to the applicant.

D. Tabling and Dismissal.

The ZBA may postpone consideration of an application until a later meeting upon request by the applicant, failure of the applicant to attend the meeting, or determination by the ZBA that the application is not sufficiently complete or accurate for action. Failure of the applicant to attend two (2) or more meetings where the application is on the agenda shall constitute grounds for the ZBA to dismiss the application without further consideration.

Section 17.05 Administrative Appeals.

The Zoning Board of Appeals shall hear and decide appeals where it is alleged there is error of principle in any order, requirement, decision or determination made by the person or body charged with administration or enforcement of the Zoning Ordinance. Consideration of administrative appeals shall be subject to the following:

A. Standing to Appeal.

Such appeals may be taken to the ZBA by the person, firm or corporation aggrieved by the order, requirement, decision or determination; or by an officer, department, board, commission or bureau of the state or the Township. Applications for administrative appeals shall be filed with the Township within 21 calendar days of the order, requirement, decision or determination.

B. Review Criteria for Administrative Appeals.

The ZBA shall reverse an administrative decision only upon determining that the order, requirement, decision or determination:

1. Constituted an abuse of discretion;
2. Was arbitrary or capricious;
3. Was based upon an erroneous finding of a material fact; or
4. Was based upon an erroneous interpretation of the Zoning Ordinance.

After making such a determination, the ZBA may reverse or modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as, in its determination, ought to be made under the provisions of this Ordinance. In doing so, the ZBA shall exercise all authority granted by this Ordinance to the person or body from whom the appeal is taken.

Section 17.06 Interpretations.

The ZBA shall have the power to hear and decide requests for interpretations of Zoning Ordinance provisions as follows:

A. Interpretations of Zoning Ordinance Regulations.

The ZBA shall have the power to hear and decide requests for interpretations of Zoning Ordinance regulations in such a way as to preserve and promote the character of the zoning district in question, and carry out the intent and purposes of this Ordinance and the Township's General Development Plan.

B. Interpretation of Zoning District Boundaries.

Where an ambiguity exists as to zoning district boundaries, the ZBA shall have the power to interpret the Official Zoning Map in such a way as to carry out the intent and purposes of this Ordinance and the Township's General Development Plan. The following rules shall apply to such interpretations:

1. Boundaries indicated as approximately following the centerlines of streets, highways, alleys, watercourses, lot lines, or municipal boundaries shall be construed to follow such lines.
2. Boundaries indicated as following railroad lines or utility easements shall be construed to be midway between the main tracks, or along the centerline of such easements.
3. Boundaries that parallel or are extensions of features indicated in this Section shall be so construed.
4. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the Map.

5. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, the ZBA shall interpret the district boundaries.

C. Determinations of Similar Uses.

In recognition that every potential use cannot be addressed in this Ordinance, the ZBA shall have the authority to determine whether a proposed use not listed in this Ordinance is similar to a use listed in Article 4 (Land Use Table), subject to the following:

1. Prior to making such a determination, the ZBA shall find that the proposed use closely resembles the use listed in Article 4 (Land Use Table) in terms of characteristics, intensity, nature and other applicable common elements of such uses.
2. The ZBA may determine that the use is (or is not) similar to a use listed in Article 4 (Land Use Table), or may recommend to the Township Board that the proposed use be addressed through an amendment to this Ordinance.
3. If it is determined that there is no similar use listed in Article 4 (Land Use Table), the use shall be prohibited.
4. If it is determined that the proposed use is similar to a use listed in Article 4 (Land Use Table), the proposed use shall comply with any zoning district limitations, special use requirements, and use standards that apply to the listed use.
5. The ZBA may impose additional conditions or limitations upon the proposed use necessary to satisfy the intent and purposes of this Ordinance, to protect the health, safety, or welfare, or to preserve the social and economic well being of adjacent residents and landowners, or the Township as a whole.

Section 17.07 Variances.

The Zoning Board of Appeals shall have the authority to grant variances from particular area, setback, frontage, height, bulk, density or other dimensional (non-use) standards of this Ordinance in accordance with the Michigan Zoning Enabling Act and the provisions of this Article. The ZBA shall state the findings of fact and conclusions upon which it justifies the granting or denying of a variance, and may consider lesser variances than that requested by an applicant. In granting a variance, the ZBA may impose conditions or limitations as it may deem reasonable in furtherance of the intent and purposes of this Ordinance.

A. Criteria for Granting of a Variance.

To grant a variance, the ZBA shall determine that the request satisfies the following criteria:

1. **Practical difficulties.** Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other

property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose.

2. **Substantial justice.** The variance will give substantial relief and justice to the applicant, consistent with justice to other property owners in the same district.
3. **Unique circumstances.** The need for the variance is due to unique circumstances peculiar to the land or structures involved, that are not applicable to other land or structures in the same district.
4. **Preservation of property rights.** The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property owners in the same zoning district.
5. **Public safety and welfare.** The requested variance can be granted in such fashion that the spirit of this Ordinance will be observed and public safety and welfare secured.
6. **Not self-created.** The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.
7. **More than mere inconvenience.** The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience or an inability to attain a higher financial return.

B. Additional Considerations.

To ensure that the proposed variance is the minimum necessary to satisfy the criteria of Section 17.07A (Criteria for Granting of a Variance), the ZBA also shall consider all of the following:

1. The granting of a lesser variance will not give substantial relief and justice to the applicant, consistent with justice to other property owners in the same district.
2. The granting of a variance will not increase the hazard of fire or otherwise endanger public safety.
3. The granting of a variance will not unreasonably diminish or impair the value of surrounding properties.
4. The granting of a variance will not alter the essential character of the area or surrounding properties.
5. The granting of a variance will not impair the adequate supply of light and air to any adjacent property.

Section 17.08 Exceptions.

The Zoning Board of Appeals (ZBA) shall have the authority to hear and decide requests for exceptions and other matters upon which this Ordinance specifically authorizes the ZBA to act. Any exception shall be subject to such conditions as the ZBA may require to preserve and promote the purpose of this Ordinance, and the character of the zoning district in question.

Section 17.09 Coordination with Site Plan Review.

Consideration of an application for an administrative appeal, variance or exception associated with an application for Planning Commission approval of a site plan per Section 12.01 (Site Plan Review) shall be subject to the following:

1. The applicant shall first apply for preliminary site plan approval.
2. The Planning Commission shall review the preliminary site plan and shall determine the layout and other features required to obtain approval of the plan.
3. The Planning Commission shall transmit the preliminary site plan application materials and the Commission's findings to the Zoning Board of Appeals (ZBA).
4. The ZBA shall, upon deciding on the application for an administrative appeal, variance or exception, transmit the plan and its decision to the Planning Commission for action on the preliminary site plan.
5. The Planning Commission shall then take action on the preliminary site plan, taking into account the action(s) of the ZBA.

Section 17.10 Resubmission and Appeal to Circuit Court.

Decisions of the Zoning Board of Appeals (ZBA) shall be final. No application for which the ZBA has rendered a final decision shall be resubmitted for a period of 365 calendar days from the date of the decision except upon grounds of new evidence or proof of changed conditions found by the ZBA to be valid. A party aggrieved by the decision may appeal to the Circuit Court as provided for in Section 606 of the Michigan Zoning Enabling Act.

Section 17.11 Limitations of Authority.

The following specific limitations shall apply to the authority and jurisdiction of the Zoning Board of Appeals (ZBA) under this Ordinance:

1. **Expiration of approval.** No order of the ZBA permitting the construction or alteration of a permanent structure or establishment of a use shall be valid for a period longer than 365 calendar days, unless the final site plan has been approved, appropriate permits for such construction or alteration have been obtained, or the use has been lawfully established within such period.
2. **Use variances.** In accordance with Section 604 of the Michigan Zoning Enabling Act, the ZBA shall not have authority to consider or authorize variances

from the uses of land permitted in the various zoning districts per Article 4 (Land Use Table).

3. **Limitations on review.** The ZBA shall not have the authority to consider appeals of any decisions by the Planning Commission or Township Board regarding:
 - a. Recommendation, adoption, or disapproval of amendments to this Ordinance or Official Zoning Map;
 - b. Approval, denial or imposition of any conditions of approval for special uses authorized under Section 12.02 (Special Uses) and preferred class nonconforming use designations authorized under Section 16.07 (Preferred class Designations); and
 - c. Recommendation, approval, denial or imposition of any conditions of approval for planned unit developments authorized under Article 14 (Planned Unit Developments).
4. **Ordinance changes prohibited.** The Zoning Board of Appeals shall not have the authority to alter this Ordinance or Official Zoning Map.

Effective Date: February 1, 2008

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