

## **ARTICLE XXVII**

### **ZONING BOARD of APPEALS**

#### **Section 27.1 Membership, Appointment and Tenure**

The Zoning Board of Appeals is hereby confirmed and created under terms of the Michigan Zoning Enabling Act, being Public Act 2006 [MCL 125.3101 et seq], as amended. The Zoning Board of Appeals shall consist of five members.

The first member of the Board of Appeals shall be a member of the Township Planning Commission. The second member may be a member of the Township Board. If there is no Township Board member appointed, then the other four members of the Board shall be appointed from among the electors residing in the Township, provided that none of these four members shall simultaneously serve as an elected officer of the Township or as an employee of the Township Board or Board of Appeals. The members selected from among the electors of the Township shall each serve a term of three years, staggered in such a way that the term of at least one member expires each year.

#### **Section 27.2 Officers**

The Board of Appeals shall elect from its members a chairperson, vice-chairperson and secretary.

#### **Section 27.3 Rules of Procedure**

The Board shall adopt rules of procedure. Meetings of the Board shall be held at such times as the Board may determine. All meetings of the Board shall be open to public attendance.

#### **Section 27.4 Quorum and Voting Requirements**

- (A) The presence of three members shall constitute a quorum. The concurring vote of three members of the Board 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 variances from the terms of this Ordinance.
- (B) The Board shall keep minutes of its proceedings, showing the action of the Board and the vote of each member upon each matter voted upon. The minutes shall also include the reasons and grounds for actions taken by the Board, whether in favor of or in denial of applications under consideration; such reasons and grounds may be included in the body of the minutes or may be included by reference to an attached, separate

resolution or order adopted by concurring vote of a majority of Board membership.

### **Section 27.5 Authority of Zoning Board of Appeals**

- (A) The Board of Appeals shall act upon all questions as may arise in the administration of the zoning ordinance, including the interpretation of zoning maps. It shall hear and decide all appeals from and review any order, requirements, decision or determination made by the Zoning Administrator or other administrative officers charged with the enforcement of the provisions of this Ordinance.
- (B) The Board of Appeals shall also hear and decide all matters referred to it or upon which it is required to pass under this Ordinance, including but not limited to:
  - (1) Where it is alleged that there is error or misinterpretation in any order, requirements, decisions, grant or refusal made by the Zoning Administrator or any other administrative board or official charged with the enforcement of the provisions of this Ordinance.
  - (2) Where by reason of the exceptional narrowness, shallowness, or shape of a lot or parcel of land, by reason of exceptional topographic conditions or extraordinary conditions of land, buildings or structures, there are practical difficulties in carrying out the literal requirements of this Ordinance.
  - (3) Where by reason of the uses adjacent or on nearby lands or for other reasons, there is or would be a defined practical difficulty in carrying out the literal requirements of this Ordinance.
- (C) An appeal to the Board of Appeals stays all proceedings in furtherance of the action appealed. The officer or body from whom the appeal is taken may certify to the Board of Appeals that a stay would cause imminent peril to life or property. In that event, proceedings shall not be stayed unless an order directing such stay of proceedings is granted by the Board of Appeals or entered by the circuit court, after the giving of notice to the officer or body from whom the appeal was taken, and upon a showing of sufficient cause for the order for a stay of proceedings.
- (D) The Board of Appeals shall have no jurisdiction or authority over or with regard to an ordinance amendment approved by the Board of Trustees and shall have no jurisdiction or authority to hear an appeal from any aspect or part of a determination or decision made with regard to a special land use or planned unit development.
- (E) The Board of Appeals shall have no jurisdiction or authority to grant use variances.

### **Section 27.6 Dimensional Variances**

If an applicant seeks a non-use or dimensional variance from any of the provisions or requirements of this Ordinance, the applicant must demonstrate

that all of the following standards will be met and bears the burden of proof regarding such standards:

1. Is the property subject to exceptional or extraordinary circumstances or conditions that do not apply generally to other properties in the same zoning district? Exceptional or extraordinary circumstances or conditions can include:
    - a. Exceptional narrowness, shallowness or shape of the specific property that existed when the applicable Zoning Ordinance provision went into effect;
    - b. Exceptional topographic conditions or other extraordinary situations on or involving the land, building or structure;
    - c. Because of the use or development of the property immediately adjoining the property in question, the literal enforcement of the Zoning Ordinance requirements as to the property in question would involve practical difficulties; or
    - d. Any other physical situation on or involving the land, building or structure deemed by the ZBA to be extraordinary.
  2. The condition or situation of the specific piece of property for which the variance is sought is not of a general or recurrent nature (i.e. it generally does not apply to other properties).
  3. Is a variance necessary for the preservation and enjoyment of a substantial property right, similar to the property rights possessed by other properties in the same zoning district and vicinity?
  4. Will a variance not be significantly detrimental to adjacent properties and the surrounding neighborhood?
  5. Will a variance not impair the intent and purpose of the Zoning Ordinance requirement that is the subject of the variance request?
  6. Is the practical difficulty such that it was not self-created by any action by the applicant or their predecessors-in-title?
  7. Will the requirement of the Zoning Ordinance at issue involve practical difficulty for the applicant or the property involved?
- [amended 3-28-2020]

### **Section 27.7 Conditions Attendant to Variance**

When authorizing any variance, the Board of Appeals may attach to its approval, any conditions it deems reasonably necessary for protection of adjoining property, the neighborhood and to further the intent and spirit of this Ordinance. The Board may require the applicant submit a site plan meeting requirements of Article XX before application is made for a zoning permit.

### **Section 27.8 Time Limitations on Variances**

The construction or other work authorized by the variance shall be commenced, and shall reasonably proceed toward completion, not later than one year after the granting of the variance. The Board of Appeals may grant an extension of up to

one additional year, upon request by the applicant and if the Board finds that extenuating circumstances have prevented the commencement and/or the reasonable progression of the authorized work, or if the Board determines that an extension is otherwise justified. Any request for such an extension shall be filed in writing and be considered at a public meeting of the Board of Appeals, but a public hearing shall not be required.

**Section 27.9 Procedure**

- (A) Any ruling of the Zoning Administrator or other administrative officer administering any portion of this Ordinance may be appealed by any person affected or aggrieved thereby.
- (B) Each completed application form for an appeal or variance shall be accompanied by a filing fee set by resolution of the Township Board.
- (C) When a variance application or an appeal has been filed in proper form and with the required data, the Zoning Administrator shall place the application upon the calendar for hearing within a reasonable time and cause notice of the public hearing to be published, mailed and delivered in accordance with Section 28.12 of this Ordinance. Each party may appear at the hearing in person or by agent to offer testimony and/or may submit written documentation to the Board

**Section 27.10 Decisions of the Zoning Board of Appeals**

- (A) The Zoning Board of Appeals shall decide all applications for variance and appeal within a reasonable period of time.
- (B) The Zoning Board of Appeals, when considering an appeal of an administrative decision or order, may affirm or reverse in whole or in part, or may modify the decision, order, requirement or determination that is being appealed. For such purpose, the Zoning Board of Appeals shall have all the powers of the Township officer or body from whom the appeal was taken.

The motion or resolution of the Board of Appeals, whereby the matter is decided, shall include findings of fact and shall state the reasons and grounds for the decision rendered. At its discretion, the Board may also direct the issuance of all relevant Township permits.

Each decision of the Board of Appeals on an appeal from a Township officer or body shall be final; provided, however, a party aggrieved by the Board of Appeals' decision may appeal to the circuit court, to the extent and in the manner permitted by law.

- (C) The Zoning Board of Appeals, when considering a dimensional variance, if relief is warranted, shall grant only such relief as is necessary to relieve the practical difficulty. Such decision shall be binding upon the Zoning Administrator, or other Township officials having authority in the

circumstances. The Zoning Administrator shall incorporate the terms and conditions of the Board of Appeals' decision in any permit issued to the applicant pursuant to the decision of the Board of Appeals.

Each decision of the Board of Appeals on a variance from terms of this Ordinance, shall be final; provided, however, a party aggrieved by the Board of Appeals' decision may appeal to the circuit court, to the extent and in the manner permitted by law.

**Section 27.11 Alternate Members**

- (A) As provided by law, the Township Board may appoint two alternate members to the Zoning Board of Appeals.
- (B) An alternate member of the Board of Appeals may serve as a regular member of the Board in absence of a regular member.
- (C) An alternate member may also serve as a regular member of the Board for the purpose of reaching a decision on a case in which a regular member has abstained because of a conflict of interest. When the alternate member serves by reason of a conflict of interest on the part of a regular member, the alternate member shall hear and decide only the matter as to which the conflict of interest has arisen.
- (D) When an alternate member is appointed to serve in the place of a regular member, the alternate member shall serve in the case or cases under consideration until a final decision is made, whether at one or more meetings.
- (E) An alternate member of the Board of Appeals has the same voting rights as a regular member of the Board.

**Sections 27.12 – 27.99 [Reserved]**