

Chapter 24, Zoning Board of Appeals

SECTION 24.00 CREATION AND MEMBERSHIP

- A. There is hereby established and confirmed a Zoning Board of Appeals in accordance with Act 110 of the Public Acts of Michigan of 2006, as amended, being the Michigan Zoning Enabling Act. The Zoning Board of Appeals shall perform its duties and exercise its powers as provided by said Act, as amended, and in such a way that the objectives of this Ordinance may be met.
- B. Composition and Terms. The Zoning Board of Appeals shall consist of five (5) members appointed by the Township Board. Not more than one member shall be a member of the Planning Commission and one shall be a member of the Township Board. Members shall be qualified electors of the Township. Members shall be appointed for three-year staggered terms.
- C. Alternate Members.
1. Up to two alternate members may be appointed by the Township Board for three-year terms. If two alternate members have been appointed, they may be called on a rotating basis, as they are available, to sit as regular members of the Zoning Board of Appeals in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest.
 2. The alternate member having been appointed shall serve on the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.
- B. Vacancies. Any vacancies on the Zoning Board of Appeals shall be filled by appointment by the Township Board. The appointed member shall serve out the term of the vacated position.
- C. Elections. The Zoning Board of Appeals shall annually elect its own Chairperson, Vice Chairperson, and Secretary. A member of the Township Board shall not serve as Chairperson of said Zoning Board of Appeals.
- D. Meetings.
1. The Zoning Board of Appeals shall meet once each month at dates determined unless no business is pending for the scheduled meeting. Special meetings may be held at the call of and at such time as the Chairperson or two members may determine. At a minimum, the Zoning Board of Appeals shall meet at least twice each calendar year.
 2. The Secretary or his/her designee shall keep minutes of the proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall also keep records of hearings and other official actions.
 3. Three members of the Zoning Board of Appeals shall constitute a quorum for the conduct of its business.

4. The Zoning Board of Appeals 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.
- E. Public Hearings. The Zoning Board of Appeals shall make no decision regarding any application until after a public hearing is conducted pursuant to Section 29.03 of this Ordinance.

SECTION 24.01 JURISDICTION AND POWERS

- A. The Zoning Board of Appeals shall not have the power 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 appeal, interpretation, or to authorize a variance as defined in this Section and granted by the Michigan Zoning Enabling Act, as amended.
- B. The powers of the Zoning Board of Appeals include:
1. Appeals. Upon request, the Zoning Board of Appeals may 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 the Zoning Administrator or any other administrative official in carrying out or enforcing any provisions of this Ordinance.
 2. Variations. Upon request, a variance from the strict requirements of the Zoning Ordinance may be granted by the Zoning Board of Appeals in accordance with the standards, requirements, and procedures of this Chapter.
 3. Zoning Ordinance Interpretation. Upon request, the Zoning Board of Appeals may interpret the provisions of this Ordinance to carry out the intent and purposes of the Zoning Ordinance where the meaning of the provisions is uncertain.
 4. Any other matters referred to them or upon which they are required to consider under the terms of this Ordinance.
- C. The Zoning Board of Appeals shall have no authority to consider any appeal from decision related to Planned Unit Developments, Special Land Uses, or Zoning Ordinance amendments.

SECTION 24.02 APPLICATION AND REVIEW PROCEDURES

- A. Applications.
1. An application for an appeal may be submitted by a person aggrieved. Such written application shall be submitted to the Township within 21 days of the date of the decision being appealed. The application shall be filed with the Zoning Board of Appeals and shall specify the grounds for the appeal.
 2. Variations and other actions requiring a decision by the Zoning Board of Appeals shall be submitted to the Township on a form provided for that purpose and shall include a fee or fees as may be determined by the Township Board from time to time.

3. Applications shall be transmitted to the Zoning Board of Appeals along with all the papers constituting the record upon which the action appealed was taken, and a hearing shall be scheduled in accordance with the procedures of this Chapter.
4. Applications shall not be accepted unless all of the following information is submitted:
 - a. A completed application form (provided by the Township);
 - b. An accurate, scaled site plan with enough information to clearly indicate the nature of the issue being considered. The Zoning Administrator shall determine the completeness of such plans.
 - c. An application fee (and zoning escrow fee where applicable) as may be determined by the Township Board from time to time.
 - d. A written explanation from the applicant indicating why the application meets the standards of Section 24.03.
5. An application for an appeal or variance or any other action requiring Board approval shall stay all proceedings in furtherance of the matter to which the application applies unless the Zoning Administrator certifies to the Zoning Board of Appeals, after the application of appeal is filed, that by reason of facts present a would stay, in the opinion of the Zoning Administrator, cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order. This restraining order may be granted by the Zoning Board of Appeals or Circuit Court upon application and with due cause shown.

B. Decisions.

1. The concurring vote of a majority of the entire membership of the Zoning Board of Appeals (three votes) shall be necessary to decide in favor of the applicant.
2. All decisions of the Zoning Board of Appeals are final as provided by law.
3. No request which has been denied by the Zoning Board of Appeals shall be submitted for reconsideration within a one year period from the date of the original application unless the Zoning Board of Appeals or the Zoning Administrator finds that at least one of the following conditions exist:
 - a. The conditions involving all of the reasons for the original denial have been significantly altered; or
 - b. New conditions or circumstances exist that change the nature of the original request.
4. For each decision of the Zoning Board of Appeals, a record shall be prepared. Such record shall include, at a minimum, the following items:
 - a. Description of the applicant's request;
 - b. The Zoning Board of Appeals' motion and vote, including written justification for the decision in accordance with each of the standards of Section 24.03;

- c. A summary or transcription of all competent material and evidence presented at the hearing; and
- d. Any conditions attached to an approved decision.

C. Appeals.

- 1. The decision of the Zoning Board of Appeals shall be final. However, an aggrieved party may appeal to the Circuit Court. Upon appeal, the Circuit Court shall review the record in accordance with the requirements of the Michigan Zoning Enabling Act. The Court may affirm, reverse or modify the decision of the Zoning Board of Appeals or may remand the decision to the Zoning Board of Appeals for further hearings or action.

SECTION 24.03 VARIANCE REVIEW STANDARDS

A. The Zoning Board of Appeals, after a public hearing, shall have the power to grant requests for variances from the provisions of this Ordinance where it is proved by the applicant that there are practical difficulties or undue hardship in the way of carrying out the strict letter of the Ordinance relating to the construction, equipment, or alteration of buildings or structures or of uses so that the spirit of the Ordinance shall be observed, public safety secured, and substantial justice done.

B. Non-Use Variance. A non-use variance may be approved by the Zoning Board of Appeals only in cases where there is reasonable evidence of practical difficulty in the official record of the hearing and that all of the following standards are met:

- 1. There are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same Zoning District. Exceptional or extraordinary circumstances or conditions include:
 - a. Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Chapter; or
 - b. By reason of exceptional topographic conditions or other extraordinary situation on the land, building, or structure; or
 - c. By reason of the use or development of the property immediately adjoining the property in question, whereby the literal enforcement of the requirements of this Ordinance would involve practical difficulties.
- 2. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations.
- 3. That such variance 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 in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.
5. The variance will not impair the intent and purpose of this Ordinance.
6. The practical difficulty causing the need for the variance request was not created by any affirmative action of the applicant.
7. The variance request is reasonable.
8. The variance request made is the least modification of the Ordinance provision necessary to grant appropriate relief.

C. Use Variances. Subject to other provisions of this Ordinance, the Zoning Board of Appeals shall have the jurisdiction to decide applications for use variances. The Zoning Board of Appeals shall not grant a use variance unless it finds that unnecessary hardship will occur unless the variance is granted. Additionally, the Zoning Board of Appeals shall not grant a use variance unless it also finds that all of the following standards below are met:

1. The variance request, if granted, will be the minimum variance (i.e., the least variation or change from the particular requirement of the Ordinance involved) that will make possible the reasonable use of the land, structure, or building involved.
2. The granting of the variance will not be injurious or detrimental to neighboring properties or residents.
3. The variance will not be detrimental to the public welfare or change the essential character of the neighborhood.
4. The variance will not impair the intent or purpose of this Ordinance.
5. The problem or condition for which the variance is requested is not a self-created problem by the applicant or property owner (or their predecessors in title) as to the property involved.
6. The condition or situation involved is not of so general or recurrent a nature that it would be more reasonable or practical for the Township to amend the provision of the Ordinance involved rather than to grant a variance for the condition or situation.
7. There are exceptional, unique, or extraordinary physical conditions or circumstances that directly relate to the property itself (including the land or a structure or building thereon) rather than the individual situation or desire of the applicant or property owner. In other words, the problem or exception or extraordinary circumstances or conditions must be inherent in the land, structure, or building involved.
8. The variance must be necessary for the preservation and enjoyment of a substantial property right, which is similar to that possessed by other properties in the same zoning district and vicinity. (NOTE-a possible increased financial return shall not, of itself, be deemed sufficient to warrant a variance.)
9. The property cannot be reasonably used as currently zoned.

10. As specified above, the Zoning Board of Appeals must also find that unnecessary hardship will occur if a use variance is not granted.

No use variance shall be granted unless at least two-thirds (2/3) of all members of the Zoning Board of Appeals vote in favor of such use variance. Furthermore, before the members of the Zoning Board of Appeals may vote on a given use variance request, the matter shall be referred to the Planning Commission. The Planning Commission shall be asked for its recommendation regarding the proposed use variance request. The Zoning Board of Appeals may take final action regarding such a use variance request once the Planning Commission has forwarded its recommendation on the particular use variance request to the Zoning Board of Appeals or 45 days has elapsed since the referral to the Planning Commission, whichever occurs first.

- D. Period of Validity. No variance granted by the Zoning Board of Appeals shall be valid for a period longer than 24 months from the date of its issuance unless the construction and/or use associated with said variance is completed or has been started with completion being diligently pursued. However, the applicant may, upon application, request up to one six-month extension of said variance. The Zoning Administrator may grant such extension provided that the original circumstances authorizing the variance have not changed and that the circumstances creating the need for the extension were beyond the control of the applicant. The Zoning Administrator may refer any request for an extension to the Zoning Board of Appeals for a decision.

SECTION 24.04 CONDITIONS OF APPROVAL

- A. The Zoning Board of Appeals may impose reasonable conditions in conjunction with approval of an appeal, variance, or any other decision which they are required to make.
- B. Conditions imposed shall be those necessary to ensure that the decision meets the standards of this Chapter.

SECTION 24.05 RULES OF PROCEDURE

- A. The Zoning Board of Appeals may adopt rules and regulations for the conduct of its meetings. The Zoning Board of Appeals shall annually elect from its membership a Chairperson, Vice-Chairperson, Secretary, and other officers as deemed necessary. The Zoning Board of Appeals shall not conduct business unless a majority of its members are present.
- B. The regular place and time of meetings of the Zoning Board of Appeals may be established by the Zoning Board of Appeals in its rules and regulations. Except as otherwise specified in the rules and regulations of the Zoning Board of Appeals, the procedure in meetings of the Zoning Board of Appeals shall be governed by Robert's Rules of Order.
- C. Minutes of proceedings shall be kept for all Zoning Board of Appeals meetings. These minutes shall list the members absent and present and shall show the action taken by the Zoning Board of Appeals, as well as the vote of each member upon each matter presented to the Zoning Board of Appeals.

SECTION 24.06 CONFLICT OF INTEREST

- A. A member of the Zoning Board of Appeals shall not participate or vote with respect to a matter in which the member has a conflict of interest. Failure of a member to refrain from participating or voting in a matter in which the member has a known conflict of interest shall constitute misconduct in office. A conflict of interest exists whenever a member of the Zoning Board of Appeals owns land within the Township, which is significantly affected by a matter presented to the Zoning Board of Appeals, or a member has a direct financial interest in the matter presented to the Zoning Board of Appeals. A conflict of interest may exist in other circumstances as well.
- B. The members of the Zoning Board of Appeals should strive to avoid even the appearance of impropriety. Whenever a member of the Zoning Board of Appeals has a conflict of interest or appears to have a conflict of interest with respect to a matter presented to the Zoning Board of Appeals, the member shall state on the record the nature of the conflict of interest, or the circumstances that exist that could be perceived to be a conflict of interest. If the member has a conflict of interest, the member shall not participate in the Zoning Board of Appeals' consideration of the matter. If circumstances exist which could be perceived to be a conflict of interest, the member, after disclosure of these circumstances, may continue to participate in the Zoning Board of Appeals' consideration of the matter if the member can be fair, objective and impartial, subject to the vote of the other members of the Zoning Board of Appeals.
- C. Nondisclosure of a known conflict of interest shall constitute misconduct in office, and nondisclosure of circumstances that exist which could be perceived to be a conflict of interest may also constitute misconduct in office.
- D. If a member of the Zoning Board of Appeals fails to disclose any circumstances which could be perceived to be a conflict of interest and the Zoning Board of Appeals later becomes aware of such circumstances, or if a member of the Zoning Board of Appeals participates in the consideration of a matter in which the member has a known conflict of interest, the Zoning Board of Appeals may, upon the vote of a majority of the regular members of the Zoning Board of Appeals (other than the member who has failed to make the disclosure or who participated in the consideration of a matter in which the member had a conflict of interest), the Zoning Board of Appeals may make a recommendation to the Township Board that the member be removed from the Zoning Board of Appeals for misconduct in office. If the Zoning Board of Appeals makes such a recommendation to the Township Board, the Township Board shall hold a public hearing to consider the recommendation.

SECTION 24.07 NO ADVISORY OPINIONS

The Zoning Board of Appeals shall not give advisory, informal, or hypothetical opinions or decisions.

