

## **ARTICLE XXIII -- ZONING BOARD OF APPEALS**

### **SECTION 23.01 -- INTENT**

It is the intent of this article that all questions of interpretation and enforcement of this Ordinance shall be first presented to the Zoning Administrator. Such questions shall be presented to the Zoning Board of Appeals only on appeal from the decision of the Zoning Administrator. Recourse from decisions of the Zoning Board of Appeals shall be to the courts as provided by law and particularly by Section 23a of Act 184 of the Public Acts of Michigan of 1943, as amended.

### **SECTION 23.02 -- ESTABLISHMENT**

A Zoning Board of Appeals is hereby established, which shall consist of five (5) members to be appointed by the Township Board, each for a term of three (3) years. Members of the Zoning Board of Appeals shall meet eligibility requirements established by the Township Board. Members of the present Zoning Board of Appeals shall continue in office until the expiration of their terms. The Township Board shall appoint as necessary, persons to fill vacant positions for varying terms so that not more than three (3) terms expire in any given year. One member of the Zoning Board of Appeals shall be a member of the Planning Commission. Members of the Zoning Board of Appeals may be removed from office by the Township Board for cause upon written charges and after a public hearing.

The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called to 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 two (2) or more consecutive Board of Appeals meetings. An alternate member may also be called to serve as 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. The alternate member appointed shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the Zoning Board of Appeals.

### **SECTION 23.03 -- PROCEDURES**

The Zoning Board of Appeals shall adopt rules necessary to conduct its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairperson and at such other times as the Zoning Board of Appeals may determine. The chairperson, or in his/her absence the action chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Zoning Board of Appeals shall not conduct business unless a majority of the members are present. The concurring majority vote of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant any matter upon which they are required to pass under this Ordinance, or to effect any variation in the application of this Ordinance. A decision of the Zoning Board of Appeals shall take immediate effect.

## SECTION 23.04 -- DUTIES

- A. **Appeals.** The Zoning Board of Appeals shall act upon all questions as they may arise in the administration of the Zoning Ordinance. It shall hear and decide appeals from and review any order, requirements, decision or determination made by the Planning Commission, the Township Board, the Zoning Administrator or any administrative official charged with enforcement of this Ordinance. It shall also hear and decide all matters referred to it, or upon which it is required to act under the provisions of this Ordinance. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of any such board or administrative official, or to effect any variation in this decision or determination of any such board or administrative official, or to effect any variation in this matter upon which they are required to pass or to effect any variation in this Ordinance. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the County or State. The grounds of every such determination shall be stated.

Such appeal shall be taken within thirty (30) days as prescribed by the Zoning Board of Appeals by general rule, by the filing with the officer from whom the appeal is taken and with the Zoning Board of Appeals of a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall promptly transmit to the Zoning Board of Appeals, all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed for unless the officer from whom the appeal is taken certifies to the Zoning Board of Appeals after the notice of appeals has been filed with him that by reason of facts stated in the certificate, a stay would in his opinion, cause imminent peril to life and property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by the Circuit Court, on application on cause shown, after notice to the officer from whom the appeal is taken.

The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties and decide the same within a reasonable time. Upon the hearing any party may appear in person or by the agent or by attorney. The Zoning Board of Appeals may reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all powers of the officer from whom the appeal was taken, and may issue or direct the issuance of a permit. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Ordinance, the Zoning Board of Appeals shall have the power in passing upon appeals to vary or modify any of its rules, regulations or provisions so that the spirit of this Ordinance shall be observed, public safety secured and substantial justice be done. The decision of the Zoning Board of Appeals shall not be final, and any person having an interest affected by any this Ordinance shall have the right to appeal to the Circuit Court on questions of law and fact.

- B. **Interpretation.** The Zoning Board of Appeals shall have the power to hear and decide upon requests for interpretation of the provisions of this Ordinance and accompanying Zoning Map.
- C. **Variance.** The Zoning Board of Appeals shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space

requirements, PROVIDED ALL of the BASIC conditions listed below and any ONE (1) of the SPECIAL conditions listed thereafter can be satisfied.

1. Basic Conditions: Any variance granted from this Ordinance:
  - a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
  - b. Will not cause a substantial adverse effect upon property values in the immediate vicinity, in the district in which the property of the applicant is located or in similar districts throughout the Township.
  - c. Is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.
  - d. Will relate only to property that is under control of the applicant.
2. Special Conditions: When ALL of the foregoing basic conditions can be satisfied, a variance may be granted when any ONE (1) of the following special conditions can be clearly demonstrated:
  - a. Where there are practical difficulties or unnecessary hardships, which prevent carrying out the strict letter of this ordinance. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of the particular parcel of land.
  - b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same Zoning District. Such circumstances or conditions shall not have resulted from any act of the applicant after the adoption of this Ordinance.
  - c. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.
3. Rules: The following rules shall be applied in the granting of variances:
  - a. The Zoning Board of Appeals may specify, in writing, such conditions regarding the character, location, and other features that will in its judgement, secure the objectives and purposes of this Ordinance.
  - b. 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 the date of the last denial, except on grounds, or newly discovered evidence or proof of changed conditions found upon inspection by the Zoning Board of Appeals to be valid.