

## **CHAPTER 18**

### **ZONING BOARD OF APPEALS**

#### **SECTION 18.01 AUTHORITY**

There is hereby established a Zoning Board of Appeals, the membership, powers and duties of which are prescribed in the Zoning Act. The Zoning Board of Appeals, in addition to the general powers and duties conferred upon it by Public Act 184 of the State of Michigan (1943), in specific cases and subject to appropriate conditions and safeguards, shall interpret and determine the application of the regulations established under this Ordinance in harmony with their purpose and intent as hereinafter set forth.

#### **SECTION 18.02 MEMBERSHIP**

- A. The Board shall consist of five (5) members, appointed by the Township Board.
  - 1. The first member shall be a member of the Planning Commission.
  - 2. The second member may be a member of the Township Board.
  - 3. The additional members shall be selected from among the electors residing in the unincorporated area of the Township.
  - 4. An employee or contractor of the Township Board shall not serve as a member of the Board.
- B. The terms of membership for a Board member shall be three (3) years, except for members serving because of their membership on the Planning Commission or Township Board, whose terms shall be limited to the time they are members of the Planning Commission or Township Board, respectively, and the period stated in the resolution appointing them.
- C. All vacancies for unexpired terms shall be filled by appointment of the Township Board for the remainder of that term.
- D. Members of the Board shall be removable by the Township Board for non-performance of duty or misconduct in office upon written charges and after public hearing. A member shall disqualify himself from a vote in which he has a conflict of interest. Failure of a member to disqualify himself from a vote in which he has a conflict of interest may be considered misconduct in office.
- E. 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.
  - 1. An alternate member may be called by the Chairman of the Zoning Board of Appeals to serve as a regular member of the Board 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 meetings of the Board or is absent from or will be unable to attend meetings for a period of more than thirty (30) consecutive days.

2. 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.
3. The alternate member appointed shall serve in the case until final decision is made.
4. When serving, the alternate member has the same voting rights as a regular member of the Board.

### **SECTION 18.03 MEETINGS**

- A. All decisions of the Board shall be made at a meeting open to the public. All deliberations of the Board constituting a quorum of its members shall take place at a meeting open to the public except as may be provided in compliance with the Open Meetings Act, Act 267 of 1976 as amended.
- B. A majority of the members of the Board shall constitute a quorum for purposes of transacting the business of the Board and the Open Meetings Act, Act 267 of 1976, as amended. Each member of the Board shall have one (1) vote.
- C. Regular meetings of the Board shall be called as needed in response to receipt of a Notice of Appeal or application for a variance or other matter, so long as the meeting is scheduled within twenty (20) days of the filing of an application. The meeting can be called by the Township Clerk; the Chairman of the Zoning Board of Appeals, or, in his absence, the Vice-Chairman or Secretary.
- D. Public notice of a meeting must state the date, time, and place of a public meeting of the Board and shall be posted by the Township Clerk in the Grass Lake Charter Township Hall at least seven (7) days before the meeting.
- E. The business of the Board shall be conducted in accordance with its adopted bylaws.

### **SECTION 18.04 POWERS AND DUTIES**

- A. General. The Board has the power to act on matters as provided in this Ordinance and the Zoning Act. The Board shall not have the power to alter or change zoning district boundaries or the text of this Ordinance. The specific powers of the Board are enumerated in this Section.

**B. Appeals**

1. The Board shall hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision, or refusal made by the Zoning Administrator or other duly authorized enforcing agent, in enforcing any provision of this Ordinance.
2. The Board may also hear appeals from a decision of the Planning Commission with respect to Site Plan Reviews in accordance with the provisions of Section 15.11 and this Chapter.
3. An appeal from a determination of the Zoning Administrator, Planning Commission (for Site Plan Review), or other duly authorized enforcing agent shall be made by the applicant within thirty (30) days of the date of the order issuance or refusal to issue permit, requirement, denial, or other final action.

**C. Interpretations**

1. The Board shall hear and decide requests for interpretation of the text or the Zoning Map of this Ordinance from an applicant, taking into consideration the requirements of Section 4.02, the intent and purpose of the Ordinance and the Township Master Plan.
2. Upon request of the Zoning Administrator or Planning Commission, the Zoning Board of Appeals shall make an interpretation of the provisions of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one (1) meaning. In deciding upon the request, the Board shall ensure that its interpretation is consistent with the intent and purpose of this Ordinance and the Chapter in which the language in question is contained.
3. The Zoning Board of Appeals shall keep a record of all decisions for interpretation of the text or Zoning Map of this Ordinance and variances approved under the terms of this Chapter.
4. The Board may request that the Planning Commission and Township Board consider any amendment to the Zoning Ordinance it deems necessary or advisable.

**D. Variances**

1. **Non-Use Variance:** The Board shall have the power to hear and authorize variances from the provisions of this Ordinance. The Board of Appeals may grant a variance where, due to special conditions, a literal enforcement of the provisions of this Ordinance would result in a practical difficulty as related to the property under consideration. To ensure that a practical difficulty exists, the Board shall not grant a variance unless all of the following conditions are met:

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- a. That 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:
    - (1) Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Ordinance; or
    - (2) By reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure; or
    - (3) By reason of the use or development of the property immediately adjoining the property in question; or
    - (4) Any other physical situation on the land, building or structure deemed by the Zoning Board of Appeals to be extraordinary.
  - b. The literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance.
  - c. The special conditions and circumstances referenced in subparagraph a, above, do not result from the actions of the applicant.
  - d. The variance is the minimum variance that will make possible the reasonable use of the land, building, or site.
  - e. The granting of the variance will be in harmony with the general purpose and intent of this Ordinance and Master Plan, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
2. Use Variance: A use variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of unnecessary hardship related to the property under consideration in the official record of the hearing, and that all of the following conditions are met:
- a. That the building, structure, or land cannot be reasonably used for a use allowed in the zoning district in which it is located;
  - b. That the condition or situation of the specific parcel of property or the intended use of such property for which the variance is sought is unique to that property and not commonly present in the general vicinity or in the zoning district. Such unique conditions or situations include:
    - (1) Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Ordinance;
    - (2) Exceptional topographic conditions or other extraordinary situation on the land, building or structure;
    - (3) The use or development of the property immediately adjoining the property in question; or
    - (4) Any other physical situation on the land, building or structure deemed by the Zoning Board of Appeals to be extraordinary
  - c. That the proposed use will not alter the essential character of the neighborhood; and

- d. That the immediate unnecessary hardship causing the need for the variance request was not created by an affirmative action of the applicant.

## **SECTION 18.05 APPLICATION AND HEARING PROCEDURES**

- A. An applicant requesting any action by the Board shall file an application, on the form supplied by the Township, accompanied by a fee as determined by the Township Board, and all plans, studies and any other information and data as applicable, all of which shall be made a part of the record.
- B. The Board shall fix a time for a hearing on the application, and shall notify the parties of the time and place of the hearing. Notice of all public hearings conducted by the Board shall be sent by first class mail to all owners of record whose property is located within three hundred (300) feet of the property under consideration, as listed on the current assessment roll of the Township, at least ten (10) days prior to the hearing. A list of those owners mailed notices shall be a part of the record of the Board.
- C. The Board shall not decide on an application until after a public hearing. Any person may appear in person at the public hearing, or be represented by an agent or attorney, and present any evidence in support of their application. The Board of Appeals shall have the power to require the attendance of witness, administer oaths, compel testimony, and otherwise cause the production of books, papers, files, and other evidence pertaining to matters properly coming before the Board of Appeals.
- D. The concurring vote of a majority of the total number of members (three [3] members) of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Building Inspector or other duly authorized enforcing agent, or to decide in favor of the applicant any matter upon which they are required to pass under this Ordinance, or to effect any variance from the terms of this Ordinance.
- E. The Zoning Board of Appeals may attach conditions to any affirmative decision. Conditions attached shall meet all of the following requirements:
  1. Be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the township as a whole.
  2. Be related to the valid exercise of the police power, and purposes that are affected by the proposed use or activity.
  3. Be necessary to meet the intent and purpose of the Zoning Ordinance, be related to the standards established in the Ordinance for the land use or activity under consideration, and be necessary to ensure compliance with those standards.

- F. Violations of any of conditions attached to an action of the Zoning Board of Appeals shall be deemed a violation of this Ordinance, enforceable as such, and/or may be grounds for revocation or reversal of the decision.

### **SECTION 18.06 EFFECT OF DECISIONS**

- A. All decisions of the Board shall be in writing and so far as it is practicable, in the form of a general statement or resolution in the minutes of the meeting reciting the conditions, facts, and findings of the Board. The applicant shall be advised of the decision within a reasonable time after the public hearing unless the Board moves for a continuation of the hearing.
- B. Any decision of the Board favorable to the applicant shall remain valid only as long as the information or data relating thereto are found to be correct, and the conditions upon which the decision was based are maintained.
- C. The Board may reconsider an earlier decision if, in the opinion of the Board, circumstances justify taking such action. Reconsideration must take place within thirty (30) days of the date of the approval of the minutes in which the action being reconsidered was final. A request for reconsideration shall not include the time for taking an appeal under the provisions of Section 18.06, F. Only one (1) request for reconsideration on each request shall be permitted.
- D. No order of the Board of Appeals permitting the erection or alteration of a building shall be valid for a period of longer than one (1) year, unless a building permit for the erection or alteration is obtained within that period, and the erection or alteration is started and proceeding to completion in accordance with the terms of the permit.
- E. No order of the Board of Appeals permitting a use of building or premises shall be a valid for a period no longer than one (1) year, unless the use is established within the same period; provided, however, that the order shall continue in force and effect if a building permit for the erection or alteration is obtained within that period, and the erection or alteration is started and proceeding to completion in accordance with the permit.
- F. Any person or persons, or any board or department of the Township having an interest affected by a decision of the Board shall have the right to appeal to the Circuit Court on questions of law and fact. An appeal to the Circuit Court must be taken within twenty-one (21) days after the date of the Board's decision.