

ARTICLE XVII. - ZONING BOARD OF APPEALS

Sec. 1700. - Creation and membership:

1. There is hereby established a Zoning Board of Appeals, which shall perform its duties and exercise its powers as provided in the Michigan Zoning Enabling Act Public Act 110 of 2006, as amended, MCL 125.3101, et seq., and in such a way that the objectives of this Ordinance shall be observed, public safety, and welfare secured, and substantial justice done.
2. The Zoning Board of Appeals shall be composed of five (5) members. The first regular member of the Zoning Board of Appeals shall be a member of the Planning Commission. The remaining members shall be selected from the electors of Ypsilanti Township. The members selected shall be representative of the population distribution and of the various interests present in the Township. One (1) regular member may be a member of the Township Board. An elected officer of the Township shall not serve as chairperson of the Zoning Board of Appeals. An employee or contractor of the Township Board may not serve as a member of the Zoning Board of Appeals.
3. 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 upon as specified herein to sit as a regular member of the Zoning Board of Appeals in the absence of a regular member if a regular member is absent from or unable to attend one (1) or more consecutive meetings. 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. The alternate having been appointed shall serve in the case until a final decision has been made. While serving, the alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.
4. Terms shall be for the 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. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.
5. Members of the Zoning Board of Appeals shall be removable by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing.
6. Conflict of Interest. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself constitutes malfeasance in office.

Sec. 1701. - Meetings:

1. The Zoning Board of Appeals shall adopt rules and regulations to govern its procedures. The Zoning Board of Appeals shall elect a chairman, vice-chairman, and secretary from its membership.

2. A concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary for any decision. The Zoning Board of Appeals shall not conduct business unless a majority of its members is present.
3. Any person may appear on his or her behalf at a hearing or may be represented by an agent or attorney.
4. The Zoning Board of Appeals shall decide upon all matters within a reasonable time, not to exceed ninety (90) days from the filing date. The decision of the Zoning Board of Appeals shall be in the form of a resolution containing a full record of its findings and determinations in each case. The time limit may be extended by agreement between the applicant or appellant and the Zoning Board of Appeals.
5. Meetings of the Zoning Board of Appeals should be held at the call of the chairman and at such times as the Zoning Board of Appeals and its rules and regulations may specify. Minutes shall be kept of each meeting and the Zoning Board of Appeals shall record into the minutes all findings, conditions of approval, facts, and other relevant factors and all of its official actions. A vote of each member upon a question, or absence or abstention, shall be recorded into the minutes of the meeting. All meetings and records shall be open to the public. All minutes shall be filed in the office of the Township Clerk.

Sec. 1702. - Appeals:

Appeals may be taken by the person, firm or corporation aggrieved or by any officer, department, board, agency, or bureau of the Township or, state governments. In addition, a variance in the Zoning Ordinance may be applied for and granted under Section 4 of the Uniform Condemnation Procedures Act, 1980 PA 87, MCL 213.54, and as provided under the Michigan Zoning Enabling Act, Public Act 110 of 2006, (MCL 125.3101, et seq). The Zoning Board of Appeals shall state the grounds of any determination made by the Board.

Sec. 1703. - Fees:

The Township Board may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the Zoning Board of Appeals. A fee shall be paid to the Township Treasurer at the time of filing the appeal and shall be deposited in the Township's general fund.

Sec. 1704. - Jurisdiction:

The Zoning Board of Appeals has the power to act on matters as provided in this Ordinance and the Michigan Zoning Enabling Act, Public Act 110, of 2006, as amended (MCL 125.3101 et. seq.). The specific powers of the Board are enumerated in the following Sections of this Article. The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this Ordinance but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, exception or to authorize a variance as defined in this Section and laws of the State of Michigan. Said powers include:

1. *Administrative review:* To 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 an administrative official or body charged with enforcement of any of the provisions of this Ordinance.

Appeals shall be filed within sixty (60) days of the decision in question. The appeal shall be filed with the Zoning Administrator and a copy shall be filed with the Zoning Board of Appeals, and a copy shall be filed with the person or body whose decision is appealed. The appellant shall submit a clear description of the order, requirement, decision, or determination for which the appeal is made and the grounds of the appeal. The appellant may be required by the Zoning Board of Appeals to submit additional information to clarify the appeal. The administrative person or body appealed from shall transmit to the Zoning Board of Appeals copies of all papers constituting the record upon which the action appealed from was taken.

2. *Variance:* To authorize, upon an appeal, a variance from the strict application of the provisions of this Ordinance where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this Ordinance or amendments to this Ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance. Undue hardships are situations created by circumstances unique to an individual property that do not generally occur to land or buildings in the neighborhood or zoning district of the property in question and which circumstances make the use of such property in question infeasible under conditions imposed by this Ordinance. Hardship shall not include personal or financial hardship or economic disadvantage, nor shall it constitute circumstances that are self-created.

In granting a variance, the Zoning Board of Appeals may attach thereto such conditions regarding the location, character, and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this Ordinance. A violation of any condition imposed shall be a violation of this Ordinance under Section 1900, Violations, civil infractions, herein and shall result in revocation of any variance granted. In granting a variance, the Zoning Board of Appeals shall state the grounds upon which it justifies the granting of a variance.

- A. An application for a variance shall be filed with the Zoning Administrator by the record owner of the property in question or by a person authorized to act on the record owner's behalf. The application shall consist of a completed application form, fee, and the information required. The Zoning Administrator shall transmit the application and information to the Zoning Board of Appeals and to the Township Clerk.
- B. An application for a variance shall contain, at a minimum, the following information:
  - (1) Legal description, address, and tax parcel number of the subject property.
  - (2) An accurate scale drawing of the property, showing all property lines, dimensions, and bearings or angles correlated with the legal description; and all existing and proposed structures and uses on the property; and dimensions of structures and the dimensional locations; lot area calculations necessary to show compliance with the regulations of this Ordinance; and location of drives, sidewalks, and other paved areas on the property and on the adjacent streets.
  - (3) Location and dimensions of the nearest structures on adjacent properties.

- (4) Name and address of the applicant, property owner, and the interest of the applicant in the property.
- C. The filing fee for a variance as determined by the Township Board shall be paid to the Township at the time of the filing of the application for variance and shall be deposited in the Township's general fund.
- D. Findings. The Zoning Board of Appeals may grant a dimensional or non-use variance only upon a finding that compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, or other dimensional provisions would create a practical difficulty and unreasonably prevent the use of the property. A finding of practical difficulty shall require demonstration that all the following conditions are met:
  - (1) That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties or classes of uses in the same zoning district. Exceptional or extraordinary circumstances or conditions include but may not be limited to:
    - a. exceptional narrowness, shallowness, or shape of a specific property;
    - b. exceptional topographic conditions;
    - c. any other physical situation on the land, building or structure deemed by the Zoning Board of Appeals to be extraordinary; or,
    - d. development characteristics of land immediately adjoining the property in question that creates an exceptional constraint.
  - (2) That a variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity;
  - (3) That the authorizing of such variance will not be a substantial detriment to adjacent property, will not be harmful to or alter the essential character of the area, and will not materially impair the purposes of this Ordinance or the public interest;
  - (4) The problem and resulting need for the variance has not been self-created by any action of the applicant or the applicant's predecessors; and
  - (5) The proposed variance will be the minimum necessary and no variance shall be granted where a different solution not requiring a variance would be possible.
- E. Private Road Ordinance (Chapter 47 of the Township Code). When there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Article, such as topographical and other physical characteristics of a parcel, the Zoning Board of Appeals shall have the power to vary or modify the application of the provisions of Chapter 47 of the Township Code so that the intent and purpose of this Chapter shall be observed, public safety secured, and substantial justice done.
- F. An application for variance which has been denied wholly or in part by the Zoning Board of Appeals shall not be resubmitted for a period of three hundred sixty-five (365) days from the date of denial, except on grounds of new evidence or changed conditions found by the Zoning Board of Appeals to be valid.
- G. A variance granted shall not be the basis of a request for a further variance.

- H. Violations. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance, and punishable under Section 1900, Violations, civil infractions.
  - I. Each variance granted under the provisions of this Ordinance shall become null and void unless: 1) The construction authorized by such variance or permit has been commenced within one hundred eighty (180) days after the granting of such variance and pursued diligently to completion; or 2) The occupancy of land or buildings authorized by such variance has taken place within one hundred eighty days (180) days after the granting of such variance. of this Ordinance.
3. *Interpretation.*
- A. The Zoning Board of Appeals shall hear and decide requests for interpretation of this Ordinance or the Zoning Map, taking into consideration the intent and purpose of the Ordinance and the Master Plan. In an interpretation of the Zoning Map, the Zoning Board of Appeals shall be governed by the Rules of Interpretation set forth in Section 402, District boundaries interpreted. The Zoning Board of Appeals shall not have the power to alter or change zoning district boundaries, except where uncertainty exists as to the location of a boundary, land use classifications of any property, or Zoning Ordinance text.
  - B. A record shall be kept by the Zoning Board of Appeals of all decisions for interpretation of this Ordinance or Zoning Map. The Zoning Board of Appeals may request the Planning Commission to initiate an Ordinance amendment that would correct or clarify the Ordinance.
4. *Delegated authority:* The Zoning Board of Appeals has the delegated authority to:
- A. Permit temporary buildings for periods not to exceed two (2) years in undeveloped sections of the Township and for periods not to exceed six (6) months in developed sections.
  - B. Permit a temporary use not to exceed twelve (12) months with the granting of twelve (12) month extensions being permissible. The Zoning Board of Appeals, in granting permits for the above temporary uses, shall do so under the following conditions:
    - (1) The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.
    - (2) The granting of the temporary use shall be granted in writing stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.
    - (3) All setbacks, land coverage, off-street parking, lighting, and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience, and general welfare of the inhabitants of the Charter Township of Ypsilanti, shall be made at the discretion of the Zoning Board of Appeals or Planning Commission as the case may be.
    - (4) In classifying uses as not requiring capital improvement, the Zoning Board of Appeals shall determine that they are either demountable structures related to the permitted use of the land; recreation developments, such as, but not limited to: golf driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.
    - (5) The use shall be in harmony with the general character of the district.

- (6) No temporary use permit shall be granted without first giving notice to owners of adjacent property of the time and place of a public hearing to be held as further provided for in this Ordinance.

Sec. 1705. - Orders:

In exercising the above powers, the Zoning Board of Appeals may reverse or affirm wholly or partly, or may condition or modify the orders, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought be to be made, and to that end shall have all the powers of the administrative official or body from whom the appeal is taken.

Sec. 1706. - Site Plan Requirements:

If an application to the Zoning Board of Appeals requires site plan approval by the Planning Commission pursuant to the provisions of Article 6, the applicant shall first apply for site plan approval as set forth in Article 9. The Planning Commission shall review the site plan, including site layout and other design features, but shall not grant Preliminary Site Plan approval nor make a recommendation on the variance. The Planning Commission shall then transmit the site plan and the minutes related to said site plan to the Zoning Board of Appeals. The Zoning Board of Appeals shall transmit its decision related to the application to the Planning Commission. The Planning Commission shall then take action on the site plan.

Sec. 1707. - Miscellaneous:

No order of the Zoning Board of Appeals permitting the erection of a building shall be valid for a period longer than one (1) year unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

1. Use variances as described in the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, (MCL 125.3101, et seq.), shall not be permitted in the Township. In the event an application is made for such a use variance, the Zoning Administrator shall deny the application and advise the applicant that use variances are prohibited in the Township by the Act.
2. Dimensional Variance in Special Use Approval and Planned Unit Developments.
  - A. The Zoning Board of Appeals may grant dimensional or other site plan related variances (e.g., lot dimensions, setbacks, building height, lot coverage, parking, etc.) for special approval uses. The Zoning Board of Appeals shall not have the power to reverse or modify the Planning Commission's decision to approve or deny a special use permit, nor grant variances to any conditions placed on special use approval.
  - B. The Zoning Board of Appeals shall not have the authority to grant variances to any regulations or any requirement placed upon a project approved as a Planned Unit Development or conditional rezoning. However, the Zoning Board of Appeals shall have the authority to decide appeal requests by individual lot or unit owners for variances from other sections of the Zoning Ordinance following final approval of a Planned Unit Development, provided such variances do not affect the terms or conditions of the original approval.

(Ord. No. 2008-385, 10-7-08)

Sec. 1708 - Notice:

Notice shall be provided for each variance, appeal of an administrative decision, exception, or special approval in advance of a Zoning Board of Appeals meeting in accordance with the provisions of the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, MCL 125.3101, et. seq.

(Ord. No. 2008-385, 10-7-08)