

## **CHAPTER 21**

### **ZONING BOARD OF APPEALS**

#### **SECTION 21.01 CREATION**

It is hereby created under P.A. 110 of 2006 Township Zoning Act the Decatur Township Zoning Board of Appeals, referred in this Ordinance as the “Zoning Board of Appeals.” The Zoning Board of Appeals shall be constituted and appointed as provided by Michigan Zoning Enabling Act and shall be comprised of five members (5) members.

#### **SECTION 21.02 MEMBERSHIP**

- A. The Zoning Board of Appeals (ZBA) shall consist of five members, one of whom shall be a member of the Planning Commission. If another member is a Township Trustee, said member shall not serve as chair of the Zoning Board of Appeals.
- B. Members shall be selected from electors of the Township residing within the zoning jurisdiction.
- C. The Township Board may appoint up to two (2) alternate members to the ZBA. An alternate member may be called as specified to serve as a regular member in the absence of a regular member if the regular member will be unable to attend one or more meetings. An alternate may also be called to serve for the purpose of reaching a decision on a case in which the member has abstained due to conflict of interest.
- D. The alternate member shall serve on a case until a final decision is made.
- E. An alternate member has the same voting rights as a regular member.
- F. A member of the ZBA may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from a vote in which there is a conflict of interest. Failure to do so shall constitute malfeasance in office.

#### **SECTION 21.03 INTENT**

The purpose of this Chapter is to provide guidelines and standards to be followed by the Zoning Board of Appeals (ZBA) to act on matters where this Ordinance or state law gives jurisdiction to the ZBA.

**SECTION 21.04 ADOPTION OF RULES AND PROCEDURES**

The Zoning Board of Appeals shall establish fixed rules and regulations governing its procedures, meetings, operations, and actions. Said rules shall be made available to the public and shall be in conformance with this Ordinance and the Michigan Zoning Enabling Act.

**SECTION 21.05 JURISDICTION OF THE ZONING BOARD OF APPEALS**

**A. General Authority**

The ZBA shall have the authority to act on those matters where this Ordinance provides for administrative review/appeal, interpretation, or special approval/appeal, and shall have the authority to authorize a variance as defined in this Ordinance and laws of the State of Michigan. Such authority shall be subject to the rules and standards in this Section. The ZBA shall not have the authority to alter or change zoning district classifications of any property, nor to make any change in the text of this Ordinance.

**B. Administrative Review**

The ZBA shall have authority to hear and decide appeals where it is alleged that there is an error in an order, requirement, permit, decision, or refusal made by an official, board or commission in carrying out or enforcing any provisions of this Ordinance.

**C. Interpretation**

The ZBA shall have authority to hear and decide appeals or requests for interpretation of the Zoning Ordinance, including the zoning map. The ZBA shall make such decisions so that the spirit and intent of this Ordinance shall be observed. Text interpretations shall be limited to the issues presented, and shall be based upon a reading of the Ordinance as a whole, and shall not have the effect of amending the Ordinance. Map and boundary interpretations shall be made based upon rules in the Ordinance, and any relevant historical information. In carrying out its authority to interpret the Ordinance, the ZBA shall consider reasonable and/or practical interpretations which have been consistently applied in the administration of the Ordinance. Prior to deciding a request for an interpretation, the ZBA may confer with staff and/or consultant to determine the basic purpose of the provision subject to interpretation and any consequences which may result from differing decisions. A decision providing an interpretation may be accompanied by a recommendation for consideration of an amendment of

the Ordinance. Such authority shall include interpretation of whether a use is permitted in a given zone, or determination of off-street parking and loading requirements for any use not specifically listed. The meeting where the interpretation shall be made shall be a public hearing and be properly noticed in accordance with Section 19.01.D.

**D. Variances**

The ZBA shall have authority in specific cases to authorize one or more variances from the strict letter and terms of this Ordinance by varying or modifying any of its rules or provisions so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done. A dimensional or non-use variance allows a deviation from the dimensional (i.e., height, bulk, setback) requirements of the Ordinance. A use variance authorizes the establishment of a use of land that is otherwise prohibited in a zoning district. The ZBA is not authorized to grant use variances by this Ordinance.

1. The ZBA may grant a requested “non-use” variance only upon a finding that practical difficulties exist. A finding of practical difficulties shall require demonstration by the applicant of all of the following:
  - a. Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with the Ordinance unnecessarily burdensome.
  - b. The variance will do substantial justice to the applicant, as well as to other property owners.
  - c. A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
  - d. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
  - e. The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant’s predecessors.
2. Use variances shall be prohibited in Decatur Township.

3. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or evidence from which the ZBA may make the required findings. Administrative officials and other person may, but shall not be required to, provide information, testimony and/or evidence on a variance request.

**E. Conditions**

The ZBA may impose reasonable conditions in connection with an affirmative decision on an appeal, interpretation or variance request. The conditions may include requirements necessary to achieve any of the following:

1. To insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.
2. To protect the natural environment and conserve natural resources and energy
3. To insure compatibility with adjacent uses of land
4. To promote the use of land in a socially and economically desirable manner.

Conditions imposed shall meet the following requirements:

- a. 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 community as a whole.
- b. Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
- c. Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance, be related to the standards established in the ordinance of the land use or activity under consideration, and be necessary to insure compliance with those standards.

Conditions imposed with respect to the approval of a variance shall be recorded as part of the ZBA minutes, and shall remain unchanged except upon the mutual consent of the ZBA and the landowner following notice and hearing as required in a new case. The breach of any such conditions shall automatically invalidate the permit granted.

## **SECTION 21.06 APPLICATION AND NOTICES**

### **A. Application**

All applications to the ZBA shall be filed with the Township Clerk, on forms provided by the Township, and shall be accompanied by the applicable fee established by resolution of the Township Board. Applications shall include a completed application form, fee, all plans, studies and other information and data to be relied upon by the applicant.

### **B. Site Plan**

A site plan shall be required with all variance requests. The plan shall be to scale and include all property lines and dimensions; setbacks; bearings of angles correlated with the legal description and a north arrow; all existing and proposed structures and uses on the property and abutting lots and parcels, dimensions of the structures and their dimensioned locations; lot area calculations necessary to show compliance with the regulations of this Ordinance. Where an application provides a variance sought in conjunction with a regular site plan review, a site plan prepared according to Chapter 18 shall satisfy the requirements of this section.

The ZBA shall have the authority to require a land survey prepared by a registered land surveyor or registered engineer when the ZBA determines it to be necessary to insure accuracy of the plan.

The ZBA shall have no obligation to consider and/or grant a request for relief unless and until a conforming and complete application has been filed; including relevant plans, studies and other information.

### **C. Application Involving an Appeal of Administrative Order**

In a case involving an appeal from an action of an administrative official or entity, shall transmit to the ZBA copies of all papers constituting the record upon which

the action was taken, together with a letter specifying an explanation of the action taken.

**D. Consent of Property Owner Required**

Application to the ZBA shall be made with the full knowledge and written consent of all owners of the property in question, acknowledged by the owner(s) on the application. This requirement shall include the consent of a land contract seller to the relief sought by a land contract purchaser.

**E. Notice**

For variances, appeals, and other matters requiring a public notice, notices shall be posted and distributed as required in Section 19.01.D prior to holding the public hearing.

**F. Stay of Proceedings**

An appeal shall have the effect of staying all proceedings in furtherance of the action being appealed unless the officer or entity from whom the appeal is taken certifies to the ZBA that, by reason of facts stated in such certification, a stay would in his or her opinion cause imminent peril to life or property. If such certification is made, proceedings shall not be stayed unless specifically determined by the ZBA, or by a court of competent jurisdiction.

**G. Decision by the Zoning Board of Appeals**

The concurring vote of a majority of the membership of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of an administrative official, board or commission made in the enforcement of this ordinance, to decide in favor of an applicant on any matter upon which the ZBA is required to pass under this ordinance, or to grant a variance from the terms of this ordinance. A decision shall be made upon each case within sixty (60) days after a request or appeal has been filed with the Board unless additional time is agreed upon with the parties concerned.

**SECTION 21.07 DISPOSITION AND DURATION OF APPROVAL**

**A. ZBA Powers**

The ZBA may reverse, affirm, vary or modify any order, requirement, decision, or determination presented in a case within the ZBA's jurisdiction, and to that end,

shall have all of the powers of the officer, board or commission from whom the appeal is taken, subject to the ZBA's scope of review, as specified in this Ordinance and/or by law. The ZBA may remand a case for further proceedings and decisions, with or without instructions.

**B. Decision Final**

A decision by the ZBA shall not become final until the expiration of thirty (30) days from the date of entry of such order and service of the same upon the parties concerned unless the ZBA shall find the immediate effect of such order is necessary for the preservation of property or personal rights or public safety and shall so certify on the record. To the extent that decisions are requested or required to be in writing, the minutes of the ZBA meeting, and decision, as proposed under supervision of the secretary, shall constitute the written decision.

**C. Period of Validity**

Any decision of the ZBA favorable to the applicant shall remain valid only as long as the information and data relating to such decision are found to be correct, and the conditions upon which the decision was based are maintained. The relief granted by the ZBA shall be valid for a period not longer than one year, unless otherwise specified by the ZBA, and within such period of effectiveness, actual, on-site improvement of property in accordance with the approved plan and the relief granted, under a valid building permit, must be commenced or the grant of relief shall be deemed void.

**D. Record of Proceedings**

The secretary of the ZBA, shall prepare and keep minutes of the ZBA proceedings, showing the findings, decisions, conditions, if any, and votes of each member in each case, including a member's absence or failure to vote. The minutes shall be the responsibility of the secretary of the ZBA, and shall be subject to approval of the ZBA. To the extent that a written decision in a case is requested or required, the minutes, prepared under the supervision of the ZBA secretary, along with the plan submitted, shall serve as the written decision, even if the minutes are awaiting final ZBA approval. The official records of the ZBA proceedings shall be filed with the Township Clerk and shall be public records.

**E. Appeal of a ZBA Decision**

Appeals of a ZBA decision may be taken to Van Buren County Circuit Court. Anyone aggrieved by a decision of the board may appeal a decision, provided the

appeal is filed appropriately within 30 days in accordance with the Michigan Zoning Enabling Act.

**F. New Application for Variance**

If the ZBA denies a request for a variance, the decision of the ZBA shall not be subject to reconsideration for a period of 365 days, whereupon the applicant may submit a new application for the variance. However, the ZBA may waive the one year period if conditions upon which their original decision was made change, or if information relating to their original decision are found to be incorrect or inaccurate.

**G. Site Plan Requirements**

If an application or appeal to the Board of Appeals involves a development project which requires a recommendation of site plan approval by the Planning Commission, the applicant or appellant shall first apply for site plan approval as set forth in Chapter 18, "Site Plan Review". The Planning Commission shall review the site plan and shall determine the layout and other features required before granting a recommendation of approval of the site plan. The Planning Commission shall then transmit a copy of the site plan and the Planning Commission's findings thereon to the Zoning Board of Appeals.