

**ARTICLE 4****ZONING BOARD OF APPEALS****SECTION 4.05: INTENT and PURPOSE**

The intent and purpose of this Article is to:

- (A) Create and outline the membership, organization, and procedures of the Zoning Board of Appeals;
- (B)
- (C) Provide reasonable flexibility from the strict application of the developmental standards of this Ordinance where a bonafide practical difficulty exists;
- (D) Ensure that the spirit of this Ordinance be observed, public safety secured, and substantial justice done;
- (E) Establish decision criteria and required findings for variances, appeals of decisions, and interpretations; and
- (F) Provide a method for interpretation of this Ordinance.

*(Expand this section a bit per discussions; pull parts from other sections.)*

**Section 4.10: CREATION and MEMBERSHIP**

- (A) **Establishment:** A Zoning Board of Appeals, first established by the Zoning Ordinance adopted March 27, 1973, retained by the Zoning Ordinance adopted April 15, 2003, is hereby retained in accordance with MCL 125.3601 et seq (part of Public Act 110 of 2006). *(Use MCL or PA)*
- (B) **Membership:** The Zoning Board of Appeals shall consist of five (5) regular members and two (2) alternate members, as outlined below:
  - (1) One (1) member shall be a member of the Planning Commission.
  - (2) One (1) member may be a member of the Township Board, but this member shall not serve as the chairperson or vice-chairperson.
  - (3) Remaining members shall be appointed by the Township Board and shall be electors residing in the Township's Zoning Jurisdiction.
  - (4) The Zoning Administrator and other employees or contractors of the Township Board shall not serve on the Zoning Board of Appeals. For the purposes of this Section, members of the Planning Commission, Zoning Board of Appeals, and Township Board shall not be considered employees or contractors.
- (C) **Alternate Members:** Alternate members shall not be a member of the Planning Commission. Alternate members may be called, as needed, to sit as regular members of the Zoning Board of Appeals in the absence of a regular member or if a regular member has disqualified ~~himself or herself~~ themselves for reasons of conflict of interest. An alternate member shall serve on a case until a final decision is made. Alternate members shall have the same voting rights as regular members when seated.

- (D) **Terms of Office:** Members shall be appointed for three (3) year terms, except the Planning Commission and Township Board members, whose terms shall ~~be one (1) year match the Planning Commission or Township Board term~~ and shall expire when that member is no longer seated on the Planning Commission or Township Board. Vacancies for unexpired terms shall be filled for the remainder of the term. Members will remain seated until a replacement has been appointed and qualified, except for Planning Commission or Township Board members no longer seated on those bodies. Members may be reappointed.
- (E) **Conflict of Interest:** A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure to do so shall constitute malfeasance in office.
- (F) **Removal:** A member may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing.

### **Section 4.15: ORGANIZATION**

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- (A) **Rules of Procedure:** The Zoning Board of Appeals shall adopt rules of procedure for the conduct of its meetings and the implementation of its duties.
- (B) **Officers:** The Zoning Board of Appeals shall annually elect a chairperson, vice-chairperson, and secretary.
- (C) **Meetings and Quorum:** Zoning Board of Appeals meetings shall be held at least annually according to a schedule adopted by the Township Board and at other times as outlined in its Rules of Procedure. A ~~minimum of three (3) majority of the total (regular) membership members~~ of the Zoning Board of Appeals shall comprise a quorum. The Zoning Board of Appeals shall not conduct official business unless it has a quorum.
- (D) **Open Meetings:** All meetings shall be open to the public and conducted pursuant to the requirements of the Open Meetings Act, except for lawfully-called executive sessions.
- (E) **Oaths and Witnesses:** The chairperson may administer oaths and compel the attendance of any witness in order to ensure a fair and proper hearing.
- (F) **Records:** The minutes of all meetings shall contain the grounds for every determination made by the Zoning Board of Appeals, including all evidence and data considered, all findings of fact and conclusions drawn by the Zoning Board of Appeals for every case, along with the vote of each member, and the final ruling on each case. The Zoning Board of Appeals shall file its minutes ~~in~~ with the Township Clerk's office.
- (G) **Legal Counsel:** An attorney for the Township shall act as legal counsel for the Zoning Board of Appeals pursuant to procedures established by the Township Board.

### **Section 4.20: JURISDICTION**

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The Zoning Board of Appeals shall act upon questions as they arise in the administration of this Ordinance. The Zoning Board of Appeals shall perform its duties and exercise its powers as provided in Public Act 110 of 2006 and this Ordinance. *(use MCL or Public Act reference)*

- (A) **Variances:** The Zoning Board of Appeals shall have the power to authorize variances from the developmental standards of this Ordinance where a bonafide practical difficulty prevents a property

from complying with the strict letter of this Ordinance, with such conditions and safeguards as it may determine are necessary so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done. (Incorporate some of this in the intent and purpose section. Check with Flintoft re Tom Ehman edits.)

- (B) **Appeals of Decisions:** The Zoning Board of Appeals shall hear and decide appeals of decisions where it is alleged by a person aggrieved that there is an error in any order, requirement, permit, decision, action, determination, or refusal made by the Zoning Administrator, any other official, or the Planning Commission in administering or enforcing the provisions of this Ordinance, unless noted otherwise.
- (C) **Interpretations:** The Zoning Board of Appeals shall have the authority to determine the meaning of the text of this Ordinance where the language is not clear or could have multiple meanings and to determine the precise location of the boundary lines between zoning districts where there is dissatisfaction with the administrative decision of the boundary location made by the Zoning Administrator.
- (D) **Administrative Adjustment:** The Zoning Board of Appeals shall have the power to hear and decide appeals of administrative adjustments made by the Zoning Administrator where there is dissatisfaction with the decision made by the Zoning Administrator. The Zoning Board of Appeals shall not have the authority to hear or decide appeals of administrative adjustments made by the Planning Commission.
- (E) **Other Duties:** The Zoning Board of Appeals shall have and perform other duties as outlined in state law and this Ordinance.
- (F) **Use Variance Not Permitted:** The Zoning Board of Appeals shall not have the power to authorize any use not otherwise permitted within a zoning district.
- (G) **Zoning Map Amendment Not Permitted:** The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property or to make any change in the terms or intent of this Ordinance.
- (H) **Appeal of Legislative Decision Not Permitted:** The Zoning Board of Appeals shall not have the authority to hear an appeal from a legislative decision of the Township Board.
- (I) Appeal of Certain Actions Not Permitted: The Zoning Board of Appeals shall not have the authority to hear an appeal from any decision or order of the Planning Commission with respect to applications for special land uses, planned unit developments, zoning map amendments, conditional zoning map amendments, or related site plans. (Re-verify with Flintoft.)
- (I)(J) Appeal of Special Land Use Conditions: The Zoning Board of Appeals shall have the authority to hear an appeal of conditions placed on Special Land Use approvals. Such an appeal shall be heard as an appeal of a decision.

## SECTION 4.25: VARIANCES

- (A) **Limitations:** Variances shall only be granted when the applicant demonstrates that a practical difficulty would result from a failure to grant the requested variance. Mere economic, personal, or financial hardship alone does not constitute a practical difficulty. Inconvenience, aesthetic considerations, personal preferences, or neighbors' opinions cannot, as a rule, qualify as a practical difficulty. All of these issues can be resolved through other methods without granting a variance, even if the alternative is more expensive or requires the owner to build elsewhere or put the lot to a

different use than desired. (Check with Flintoft re Tom Ehman Edits. Incorporate some of this into the intent and purpose section.)

- (B) **Stay of Proceedings:** Filing of a completed variance application shall stay all proceedings related to the variance unless the Zoning Administrator certifies to the Zoning Board of Appeals, after a variance application has been filed, that, by reason of facts, a stay would cause imminent peril to life or property, in which case, the proceedings shall only be stayed by a restraining order granted by the Zoning Board of Appeals or a court of record.
- (C) **Decision Criteria:** The Zoning Board of Appeals shall have the power to authorize specific variances from the standards of this Ordinance if it finds, at a public hearing, that all of the following criteria have been met:
- (1) Approval of the variance will not be injurious to the public health, safety, and welfare.
  - (2) Approval of the variance will not affect the use or value of the adjacent properties or the area in a substantially adverse manner.
  - (3) The need for the variance is due to some physical condition peculiar to the property involved. (Check with Flintoft re Tom Ehman edits.)
  - (4) The practical difficulty or need for the variance is not self-created.
  - (5) The variance is a reasonable amount necessary to mitigate the practical difficulty. (Check with Flintoft re Tom Ehman edits.)
  - (6) The strict application of the terms of this Ordinance would constitute a practical difficulty.
  - (7) Approval of the variance is consistent with this Ordinance and the Master Plan.
- (D) **Burden of Proof:** The applicant shall have the burden of proof and burden of persuasion to establish that the decision criteria have been met.
- (E) **Conditions:** The Zoning Board of Appeals may place conditions and safeguards on variance approvals, as it determines necessary to observe the spirit of this Ordinance, secure public safety, and do substantial justice. Violations of such conditions and safeguards, that are made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and shall automatically invalidate the variance and any zoning permit issued based on that variance.
- (F) **Variance Runs with Land:** Variances shall run with the land, unless noted otherwise. Future owners shall enjoy the benefits of and be obliged to follow and comply with the approval and any conditions placed on the approval. The Township ~~may shall~~ record, ~~at the applicant's expense~~, the approved notice of variance and conditions with the County Register of Deeds.
- (G) **Amendment:** The Zoning Board of Appeals may amend an approved variance or conditions of an approved variance upon request of the applicant and following a public hearing if it determines the amendment would continue to meet the decision criteria for granting the original variance. Granting of an amendment shall not extend the period of approval beyond the original period, unless an extension is granted.
- (H) **Period:** A variance shall be good for one (1) year from the date of final decision. A zoning permit must be ~~granted-issued~~ within this period or the variance shall become null and void, unless an extension is granted.
- (I) **Extension:** The Zoning Board of Appeals may grant a single period extension for a variance approval of up to one (1) year if it finds all of the following criteria are met:
- (1) The application for extension has been submitted prior to expiration;
  - (2) The project has been diligently pursued or conditions have prevented such action; and

- (3) Conditions have not changed, including zoning text and zoning map amendments, that affect the original reasons for approval.
- (J) **Right to Enter Property:** Filing of a variance application shall constitute permission for the Township to access the property to complete an onsite investigation for purposes of administering this Section.
- (K) **Zoning Permit Necessary:** Zoning permits shall be required, as outlined in **THIS SECTION**, and shall not be issued until the decision becomes final.
- (L) **Decision Final:** The decision of the Zoning Board of Appeals shall be final. However, appeals may be made from the Zoning Board of Appeals decision to an appropriate court of record, as outlined in state law.

### **SECTION 4.30: APPEALS of DECISION or ACTION**

- (A) **Standing:** An appeal of decision may made by any person, firm, or corporation or by any office, department, board, or bureau aggrieved by a decision of or action by the Zoning Administrator, any other official, or the Planning Commission in administering or enforcing the provisions of this Ordinance, unless noted otherwise.
- (B) **Filing Deadline:** An appeal of decision application shall be filed within thirty (30) days of the decision or action being appealed.
- (C) **Stay of Proceedings:** Filing of a completed appeal of decision application shall stay all proceedings related to the decision or action being appealed unless the Zoning Administrator certifies to the Zoning Board of Appeals, after an appeal of decision application has been filed, that, by reason of facts, a stay would cause imminent peril to life or property, in which case, the proceedings shall only be stayed by a restraining order granted by the Zoning Board of Appeals or a court of record.
- (D) **Authority:** The Zoning Board of Appeals may reverse, affirm, or modify, in whole or in part, the order, requirement, decision, determination, or action and may issue or direct the issuance of a zoning permit.
- (E) **Decision Criteria:** The Zoning Board of Appeals shall review the record and decision or action being appealed and determine whether the record supports the decision that was made, in light of the standards of this Ordinance. The Zoning Board of Appeals shall uphold the original decision or action unless the record clearly shows that one or more of the following is true:
- (1) The original decision or action was arbitrary or capricious;
  - (2) The original decision or action was based on an erroneous finding of material fact;
  - (3) The original decision or action constituted an abuse of discretion; or
  - (4) The original decision or action was based on an erroneous interpretation of this Ordinance or zoning law.
- (F) **Burden of Proof:** The applicant shall have the burden of proof and burden of persuasion to establish that the decision criteria have been met.
- (G) **Right to Enter Property:** Filing of an appeal of decision application shall constitute permission for the Township to access the property to complete an onsite investigation for purposes of administering this Section.

- (H) **Decision Final.** The decision of the Zoning Board of Appeals shall be final. However, appeals may be made from the Zoning Board of Appeals decision to an appropriate court of record, as outlined in state law.
- (I) **Refund:** If the decision or action being appealed is fully reversed, the applicant shall be refunded the application fees.

## **SECTION 4.35: INTERPRETATIONS**

- (A) **Zoning District Boundaries:** The Zoning Board of Appeals shall determine the precise location of the boundary lines between zoning districts when there is dissatisfaction with a decision made by the Zoning Administrator. When interpreting zoning district boundaries, the Zoning Board of Appeals shall apply the standards outlined in **Section 9.04** of this Ordinance.
- (B) **Ordinance Text:** The Zoning Board of Appeals shall interpret the provisions of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one meaning. In deciding upon such request, the Zoning Board of Appeals shall ensure that its interpretation is consistent with the intent and purpose of this Ordinance, the Article in which the language in question is contained, and all other relevant provisions in this Ordinance.
- (C) **Substitution:** Changes of non-conforming uses. *(Criteria or include in non-conforming article and charge to Zoning Administrator.)*
- (D) **Decision Final.** The decision of the Zoning Board of Appeals shall be final. However, appeals may be made from the Zoning Board of Appeals decision to an appropriate court of record, as outlined in state law.
- (E) **Refund:** If the interpretation is fully reversed, the applicant shall be refunded the application fees.

## **Section 4.40: APPEAL of ADMINISTRATIVE ADJUSTMENT**

- (A) **Filing Deadline:** An appeal of an administrative adjustment decision made by the Zoning Administrator shall be filed within thirty (30) days of the administrative adjustment being appealed.
- (B) **Stay of Proceedings:** Filing of a completed appeal of administrative adjustment shall stay all proceedings related to the administrative adjustment being appealed unless the Zoning Administrator certifies to the Zoning Board of Appeals, after an appeal of decision application has been filed, that, by reason of facts, a stay would cause imminent peril to life or property, in which case, the proceedings shall only be stayed by a restraining order granted by the Zoning Board of Appeals or a court of record.
- (C) **Authority:** The Zoning Board of Appeals may reverse, affirm, or modify, in whole or in part, the order, requirement, decision, determination, or action and may issue or direct the issuance of a zoning permit.
- (D) **Decision Criteria:** The Zoning Board of Appeals shall review the record and decision or action being appealed and determine whether the record supports the decision that was made, in light of the standards of this Ordinance.
- (E) **Burden of Proof:** The applicant shall have the burden of proof and burden of persuasion to establish that the decision criteria have been met.

- (F) *Right to Enter Property:* Filing of an appeal of decision application shall constitute permission for the Township to access the property to complete an onsite investigation for purposes of administering this Section.
- (G) *Decision Final.* The decision of the Zoning Board of Appeals shall be final. However, appeals may be made from the Zoning Board of Appeals decision to an appropriate court of record, as outlined in state law.
- ~~(A)~~(H) *Refund:* If the administrative adjustment decision is fully reversed, the applicant shall be refunded the application fees.

## **Section 4.40: PROCEDURES**

- (A) *Application:* The applicant shall submit a complete and accurate application form provided by the Township for that purpose. The application shall include all relevant materials. Submission of an application constitutes a representation that all the information is complete and accurate.
- (B) *Fee:* A fee, as established by the Township Board, shall be submitted at the time of application. No fee shall be required if the Township Board, Zoning Administrator, or any official or body of the Township is acting as the applicant on behalf of the Township.
- (C) *Scheduling:* Upon receipt of a completed application, the request shall be placed on the next available agenda for the Zoning Board of Appeals. The applicant may request it be placed on a later meeting agenda or may request a special meeting, with payment of ~~an~~ a special meeting additional fee, as established by the Township Board.
- (D) *Notice of Hearing:* The Township shall give public notice as outlined in (SECTION).
- (E) *Applicant's Responsibilities:* The applicant shall post a public notice sign, clearly visible from the front lot line, on affected property and, in the case of variance applications, mark the extent of the proposed structure and lot corners within one hundred (100) feet of the proposed structure at least fifteen (15) days before the Zoning Board of Appeals meeting.
- (F) *Contact with Zoning Board of Appeals Members:* No person shall communicate directly with any member of the Zoning Board of Appeals before a hearing with the intent to influence the member's action or decision. Written comments may be submitted to the Zoning Administrator for distribution to the Zoning Board of Appeals. This shall not prohibit the Zoning Administrator from promulgating staff reports and other related materials to the Zoning Board of Appeals.
- (G) *Transmission of Materials:* The Zoning Administrator shall transmit all relevant records and other materials to the Zoning Board of Appeals
- (H) *Hearing:* Any party may appear in person, by agent, or by attorney at the hearing. The Zoning Board of Appeals may recess hearings from time to time with notice conforming to the requirements of the Open Meetings Act.
- (I) *Decision:* The Zoning Board of Appeals shall render its decision within thirty (30) days of the public hearing, unless, in the opinion of the Zoning Board of Appeals, an extension of time is necessary to review information pertinent to making the decision. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse an order, requirement, decision, or determination of the administrative official or body, or to decide in favor of the applicant on any matter. Decisions of the Zoning Board of Appeals shall become final upon the expiration of eight (8) days from the date of the decision, unless the Zoning Board of Appeals finds the immediate

effect of such decision is necessary for the preservation of property or personal rights and shall so certify on the record.

(J) **Rehearing:** A rehearing shall be processed in the same manner as the original application, including a new fee unless initiated by the Zoning Board of Appeals or Township Board. A request for rehearing shall be made within thirty (30) days of the decision becoming final. The only grounds upon which a rehearing on an application denied by the Zoning Board of Appeals may be granted is if the Zoning Board of Appeals, upon inspection, finds one or more of the following to be true:

- (1) Newly-discovered evidence is available,
- (2) Evidence previously relied upon is found to be inaccurate, or
- (3) Proper procedures were not followed.

(K) **Reapplication:** An application for a variance, appeal of decision, interpretation, or other decision, which has been denied wholly or in part by the Zoning Board of Appeals, shall not be resubmitted for reconsideration for a period of one (1) year from the date the decision became final, unless:

- (1) The Zoning Board of Appeals, upon inspection, finds proof of changed conditions that contributed to the denial; or
- (2) Substantial changes have been made that address the reasons for denial.

(L) **Revocation:** A variance, appeal of decision, interpretation, or other decision may be revoked, following a duly-noticed public hearing, as outlined below:

- (1) A variance may be ~~terminated-revoked~~ if the Zoning Board of Appeals determines any of the following to be true:
  - a. The ~~execution-use~~ of the zoning permit related to the variance is not consistent with a standard of this Ordinance as it existed at the time of approval;
  - b. The ~~execution-use~~ of the zoning permit related to the variance is not consistent with any condition of approval;
  - c. The ~~execution-use~~ of the zoning permit related to the variance is not consistent with any written commitment; or
  - d. The approval was the result of fraud or misrepresentation of facts.
- (2) An appeal of decision, interpretation, or other decision may be revoked if the Zoning Board of Appeals determines the following to be true:
  - a. The appeal of decision, interpretation, or other decision was the result of fraud or misrepresentation of facts.
- (3) A variance, appeal of decision, interpretation, or other decision shall not be reviewed for termination for the same cause more than once in any one (1) year period.

*End of Article 4*