

**ARTICLE XXIX
ZONING BOARD OF APPEALS**

Section 29.1 PURPOSE & SCOPE

It is the purpose of this Article to create a Zoning Board of Appeals, to establish its responsibilities and to establish standards for its operation.

Section 29.2 CREATION OF BOARD OF APPEALS

- A. Establishment: There is hereby established a Board of Appeals in accordance with the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended. The Board of Appeals shall perform its duties and exercise its powers so that the health, safety and welfare of the public may be secured; and that substantial justice be done.
- B. Membership, term of office of the Board of Appeals:
1. The Board of Appeals shall consist of not less than three (3) and not more than seven (7) members who shall be appointed and shall serve in accordance with the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended.
 2. The membership of the Board of Appeals shall be as representative as possible, geographically, to include as many Townships or areas under the administration of the Township Zoning Ordinance, as possible, and also, to include the greatest and most varied available expertise. One member of the Board of Appeals shall be a member of the Township Planning Commission.
- C. Attendance: Since regular attendance is required for optimal function of the Board of Appeals, members of said Board are appointed subject to the following attendance criteria:
1. Member(s) shall be expected to notify the chairperson or his/her designee of his/her expected absence prior to a meeting.
 2. Member(s), unless excused by the chairperson, shall not be absent for more than three (3) consecutive meetings, irrespective of calendar year.
 - a. The Board of Appeals Secretary shall be responsible to report the non-compliance of attendance criteria of any Board of Appeals member to the Appeals Board chairperson.
 - b. The Chair of the Appeals Board shall notify the Township Board of any non-compliance of attendance criteria of any Appeals Board member by letter, recommending removal of said member from the Appeals Board.
 - c. Under extenuating circumstances, the Appeals Board may, by motion and majority vote, defer the action specified above. Said member is exempt from voting privileges in the action.

D. Removal of members-conflict of interest: Members of the Board of Appeals shall be removable by the Township Board for nonfeasance, including nonperformance of duty, or misfeasance, including misconduct in office upon written charges and after public hearing. 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 misconduct in office.

E. Powers: The Board of Appeals may reverse or affirm, wholly or partly, 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 the powers of the office or body from whom the appeal was taken, and may issue or direct the issuance of a permit. The Board of Appeals shall have the power to make final determinations, within its jurisdiction and duties herein prescribed, in such a way that the objectives of this Ordinance may be equitably achieved in order there shall be uniform interpretation and flexibility in the enforcement of this Ordinance or to fulfill any other responsibilities bestowed upon the Board of Appeals by this Ordinance.

Section 29.3 RULES, LIMITS ON AUTHORITY OF THE BOARD OF APPEALS, AND USE VARIANCES

A. The Board of Appeals shall fix rules of procedure or by-laws to govern its procedures. The Board shall choose its own chairman, and in his or her absence, an acting chairman who may administer oaths and compel the attendance of witnesses.

B. The concurring vote of a majority of the members of the 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 any matter upon which they are required to pass or to effect any variation under this Ordinance.

C. The Township 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 or intent of this Ordinance; these powers are reserved to the governing body.

D. The proper procedure to follow for an individual desiring a use variance, is to file an application for amendment of the text of this Ordinance or the Zoning Map as provided for in this Ordinance. If an allegation is made that the application of the Zoning Ordinance to a particular property amounts to an unconstitutional taking, then the allegation shall be processed as a Hardship PUD under the procedures in Article XVII and no use variance shall be considered.

Section 29.4 ZONING APPEALS

The Board of Appeals shall 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 the Zoning Administrator or by any other official in administering or enforcing any provisions

of this Ordinance. The procedure for appealing to the Zoning Board of Appeals, or requesting a variance, ordinance interpretation or filing any other request is as follows:

A. The appeal shall be taken within such time as prescribed by the rules or by-laws of the Zoning Board of Appeals.

B. A fee, prescribed by the Township Board, shall be submitted to the Zoning Administrator at the time of the filing of the application form.

C. Appeals to the Zoning Board of Appeals may be taken by any person aggrieved or by an officer, department, board, agency, or bureau of the township, county, state, federal, or other legally constituted form of government.

D. The person, firm, agent, or attorney thereof making the appeal shall file by completing and signing the application form provided by the Township.

E. All persons, not licensed to practice law in the State of Michigan, shall file a written statement signed by the principal stating the agent's right to act upon their behalf.

F. A completed application form shall be submitted to the Zoning Administrator. The application shall state the reasons for the appeal and the order or ruling appealed from. When applicable, the legal description of the property involved shall be stated in the notice of appeal. Before the appeal is processed, the fees shall be collected. An application that does not fully comply with the submittal requirements shall be returned to the applicant. The Zoning Administrator shall forthwith transmit to the recording secretary for the Zoning Board of Appeals the application and all papers constituting the record from which the appeal was taken.

G. An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Appeals after the application of appeal shall have been filed, that by reason of facts stated in the appeal application, a stay would in his or her opinion cause imminent peril to life and property.

H. When a properly executed application form has been filed, the recording secretary, upon consultation with the chairman for the Zoning Board of Appeals, shall schedule the matter for a public hearing.

I. Notice of the public hearing shall be published in a newspaper having a general circulation in the Township not less than fifteen (15) days before the hearing date. The notice shall include the contents in Section 14.16.1.A.

J. The notice shall be provided to individuals per the requirements of Section 14.16.1.C.

K. Once all the necessary information has been received, the Board of Appeals shall return a decision on a case in a timely manner, or if time frames are included within its rules of procedure, then within the time specified in the rules of procedure.

L. Appeal fees shall be established from time to time by the Township Board of Trustees sufficient to cover all costs incurred by the Township pursuant to the processing of any appeal, including but not limited to the costs of advertisements, investigations and Appeal Board member attendance fees.

M. No Zoning Permit shall be issued by the Zoning Administrator based on a decision of the Board of Appeals before eight (8) days have expired.

Section 29.5 VARIANCES

The Board of Appeals shall have the power to authorize, upon appeal, a dimensional non-use variance from requirements of the Zoning Ordinance, provided the applicant has proven a "practical difficulty", by demonstrating as follows:

A. That strict compliance with the Ordinance would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity with such restrictions unnecessarily burdensome;

B. That the problem is due to a unique circumstance of the property;

C. That the specific conditions relating to the property are not so general or recurrent in nature, in the zoning district, so as to require an amendment to the zoning ordinance, instead of a variance;

D. The property problem was not created by the action of the applicant;

E. That the granting of the variance will not cause a substantial adverse effect upon property values in the immediate vicinity, or in the district in which the property of the applicant is located;

F. That the requested variance will relate only to the property under the control of the applicant;

G. That the non-conforming dimensions of other lands, structures, or buildings in the same zoning district shall not be considered grounds for the issuance of a variance;

H. That the variance is the minimum variance that will make possible the reasonable use of the land, building or structure in the zoning district in which it is located;

I. That the proposed use of the premises is in accord with the Zoning Ordinance;

J. That the variance would do substantial justice to the applicant as well as to other

property owners in the district;

K. That the granting of the variance will ensure that the spirit of the ordinance is observed, public safety secured and substantial justice applied;

L. That the requested variance shall not amend the permitted uses of the zoning district in which it is located.

Section 29.6 RULES FOR GRANTING VARIANCES

The following rules shall be applied in the granting of a variance:

A. The Zoning Board of Appeals shall specify, in writing, such conditions regarding the character, location, and other features which will, in its judgment, secure the objectives and intent of this Ordinance, provided there is an applicable standard in this Ordinance to serve as the basis for such condition. The breach of such condition shall automatically invalidate the permit granted.

B. Each variance granted under the provisions of this Ordinance shall become null and void unless the construction authorized has been commenced within one (1) year after the hearing date when the variance was granted.

Section 29.7 INTERPRETATION AND OTHER POWERS

The Board of Appeals shall have the power to:

A. Interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance.

B. Determine the precise location of the boundary lines between zoning districts.

C. Classify a use which is not specifically mentioned as part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district. The classification of the unmentioned use does not automatically permit the use, it only identifies the district in which it may be located and the zoning regulations with which it must conform.

D. Determine the signage, landscaping, buffering, off-street parking and loading space requirements of any use not specifically mentioned in this Ordinance, by applying the most comparable provisions for other similar uses.

E. When making an interpretation, the Board of Appeals shall carefully consider the definitions in Article II, the meaning of all the relevant sections in the Ordinance, past decisions of the Board of Appeals on similar matters, research and any conclusions by the Zoning Administrator, consultant or attorney paid by the Township, and shall make a

decision on the narrowest grounds feasible so as not to upset the meaning and application of this Ordinance.

Section 29.8 DETERMINATION OF A LOT OF RECORD

The Board of Appeals shall have the power to make "Lot of Record" determinations in accordance with the following procedure:

A. Upon application of any person claiming to be the owner of the legal or equitable title to a parcel of land which was the subject to a deed or land contract, not recorded in the Office of the Register of Deeds on the effective date of this Ordinance, the Board of Appeals is authorized to conduct a hearing to determine whether a variance should be granted to such owner entitling him to have the parcel treated as a "lot of record" as provided for in this Ordinance.

B. The Board shall grant said variance when it finds by a preponderance of the evidence that the instrument purporting to transfer title to the parcel of said owner was executed prior to the effective date of this Ordinance. In making its determination, the Board is authorized to consider all matters it deems relevant, including but not limited to, the tax roll of the Township, the relationship of the parties to the purported transfer, the degree of formality of the purported document of transfer, and the testimony of the applicant and his witnesses.

C. Such a determination shall have only the effect of equating such an owner with the owner of a lot of record and shall not relieve such owner from complying with the other requirements set forth in this Ordinance.

Section 29.9 NONCONFORMITY APPEALS

Nonconforming buildings or structures may be structurally changed, altered, or enlarged upon appeal in cases of hardship or other extenuating circumstances, and when approval of said appeal will not have an adverse effect on surrounding property, and when consistent with the requirements of this Ordinance.

Section 29.10 APPEAL CONCERNING SITE PLAN REVIEW, SPECIAL LAND USE OR PUD

A. Any applicant for Site Plan Review Article XIV, Part IV, that feels aggrieved by the decision of the Zoning Administrator or Site Plan Review Committee may appeal the decision to the Zoning Board of Appeals within twenty-one (21) calendar days of receipt of the decision. The Zoning Board of Appeals shall review the decision of the Zoning Administrator or Site Plan Review Committee to ensure that it is consistent with the standards contained in this Ordinance and rules established by agencies responsible for site plan review. The Zoning Board of Appeals shall give written justification for their decision. The Zoning Board of Appeals may not grant a variance to any element of a

site plan unless an application for a variance has been filed therefore; any such variance request shall be reviewed relative to the requirements of Article XXIV, and the standards of Section 29.5.

B. An applicant for a special land use or PUD may not appeal a decision to approve, approve with conditions, or deny the decision thereon to the Board of Appeals. Such an appeal may only be taken to Circuit Court. The determination on the number of permitted lots, dwelling units, or building sites in a PUD pursuant to Section 17.1.7 may be appealed to the Zoning Board of Appeals pursuant to the procedures in Section 29.4.

Section 29.11 ESSENTIAL SERVICES

The Board of Appeals shall have the power to permit the erection and use of a building, or an addition to an existing building, or a public service corporation for essential services, in any permitted district to a greater height or of larger or smaller area than the district requirements herein established, and permit the location in any use district of a public utility building, structure or use if the Board shall find such use, height, area, building or structure reasonably necessary for the public convenience and service. The Board of Appeals may also impose setbacks, fences, landscaping requirements or buffers as a condition of approval pursuant to standards in Article XXII as may be reasonably necessary to protect abutting property from the potential nuisance effects of such essential services.

Section 29.12 FINDINGS OF FACT

A. The Board of Appeals shall grant no variance or make any determination on an appeal, ordinance interpretation or other issue requested of it unless the Board records specific findings of fact based directly on the particular evidence presented to it. These findings of fact must support conclusions that the standards imposed by the requirements of this Ordinance have been met.

- B. Said findings of fact shall include, but not be limited to the following information:
1. How the application of the Zoning Ordinance creates unnecessary hardship or practical difficulty in the use of petitioner's property.
 2. Identify the unique physical circumstances or conditions or exceptional topography that create practical difficulties.
 3. Specific findings (characteristics of the land) showing that because of physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance. That the authorization of a variance is, therefore, necessary to enable the reasonable use of the property and that the condition is specific to this property and not general to other properties in the area.
 4. Finding that the practical difficulty was not created by the appellant and is related only to property that is owned or occupied by the appellant.
 5. A statement of the impacts of the variance if authorized, the property

values, use and enjoyment of the property in the neighborhood or district, and on the public, health, safety and welfare.

6. The proposed variance does not permit the establishment of any use which is not permitted by right within the district or any use or dimensional variance for which a Special Use Permit is necessary.

7. Findings on whether the proposed development complies with the requirements, standards or procedures given in the Zoning Ordinance or an interpretation of the disputed ordinance provisions, if applicable.

8. Findings on any error in judgment or procedure in the administration of the relevant zoning provisions.

9. The possible precedents or affects which might result from the approval or denial or the appeal.

10. Findings on the impact if the appeal is approved, on the ability of the Township or other governmental agency to provide adequate public services and facilities and/or programs that might reasonably require in the future if the appeal is approved.

Section 29.13 BURDEN OF PROOF IN APPEALS AND VARIANCES

When an appeal is taken to the Board of Appeals, the applicant shall have the burden of presenting to the Board sufficient evidence and argument to justify the requested order or decision.

Section 29.14 RE-APPLICATIONS AND REHEARINGS

A. Any request for reapplication or rehearing shall be made pursuant to the requirements of Section 14.16.6. If the Board of Appeals votes to consider a reapplication or to grant a rehearing, the Board shall then, at the same hearing, proceed with the appeal, variance or interpretation without charging the applicant a second fee.

B. A request for rehearing shall be made within eight (8) days from the meeting at which the original decision was made.

Section 29.15 BOND AUTHORIZED

In authorizing any variance, the Board of Appeals may require that a bond or other performance guarantee pursuant to Section 14.13 be furnished to insure compliance with the requirements, specifications and conditions imposed with the granting of a variance.

Section 29.16 RECORDS

A. Minutes of all meetings shall be recorded and shall contain the grounds of every determination made by the Board of Appeals including all evidence and data

considered, all findings of fact and conclusions drawn by the Board for every case together with the votes of the members and final disposition of each case. Such minutes shall be filed in the Office of the Township Clerk and shall be available to the public.

B. The record of proceedings shall be contained in a file with the following information:

1. The application (for a permit, variance, interpretation, exception).
2. Any reports, plans, surveys, or photos.
3. Notice of Public Hearing to affected parties in newspaper.
4. Letter from Zoning Administrator granting or denying the application or referring it to the Board of Appeals and all other relevant records related to the case.
5. Affidavit of publication of Notice of Hearing.
6. Record of testimony heard and evidence presented.
7. A copy of the zoning Article(s) and Section(s) in question.
8. Briefs, correspondence or other communications made to the Board of Appeals.
9. Statement of facts found by Board of its knowledge regarding the request including any information gained from personal inspection.
10. Decision of the Board as specifically related to the Findings of Fact.
11. A copy of any other correspondence to the appellant regarding the request.

C. The Board of Appeals may file its decision relative a particular property with the Register of Deeds to run as a permanent record with the property which was the subject of the decision by the Board of Appeals.

Section 29.17 LEGAL COUNSEL

Legal counsel may be retained by the Board of Appeals for any purpose deemed necessary provided that such appointment or retainer shall be approved in advance by the Township Board of Trustees.

Section 29.18 REVIEW BY CIRCUIT COURT

A. The decision of the Board of Appeals shall be final. However, any party having an interest affected by an order, determination or decision of the Board of Appeals may obtain a review thereof both on the facts and the law, in the Circuit Court; provided that application is made to the Court within thirty days after the delivery of a final decision.

B. The Circuit Court shall review the record and decision of the Board of Appeals to insure that the decision:

1. Complies with the constitution and laws of the State.
2. Is based upon proper procedure
3. Is supported by competent, material, and substantial evidence on the

- record.
4. Represents the reasonable exercise of discretion granted by the Board of Appeals.

C. If the Court finds the record of the Zoning Board of Appeals inadequate to make the review required, or that additional evidence exists which is material and with good reason was not presented to the Board of Appeals, the Court shall order further proceedings before the Board of Appeals on conditions which the Court considers proper. The Board of Appeals may modify its findings and decision as a result of the new proceedings, or may affirm its original decision. Any supplementary record and decision shall be filed with the Court.

D. As a result of the review required by this section, the Court may affirm, reverse, or modify the decision of the Board of Appeals.