

## CHAPTER XIII

### **BOARD OF APPEALS**

ZBA

#### **SECTION 13.01. CREATION, MEMBERSHIP, TERM OF OFFICE, OFFICERS, RULES.**

- A. There is hereby created a board of appeals consisting of five (5) members: the first member of such board shall be the chairman of the Planning Commission; the second member shall be a member of the Township Board appointed by the Township Board; and the remaining three (3) members shall be selected and appointed by the Township Board from among the electors residing in the unincorporated area of the Township, provided that no elected officer of the Township except as stated above, nor any employee of the Township Board shall serve simultaneously as a member of, or as an employee of, the Township Board of Appeals.
- B. Initially, one (1) member of the Board shall be appointed for a term of three (3) years; one (1) member shall be appointed for a term of two (2) years; and three (3) members shall be appointed for a term of one (1) year. Thereafter, each member, when appointed, shall have a term of three (3) years. Terms of members serving because of their membership on the Planning Commission or Township Board shall be limited to the time they are members of the Planning Commission or Township Board and the periods stated in the resolution appointing them.
- C. The Board of Appeals shall elect one (1) of its members as its chairman and one (1) of its members as secretary, and shall prescribe rules for the conduct of its affairs. Copies of the rules shall be made available to the public at the Office of the Township Clerk.

#### **SECTION 13.02. POWERS AND DUTIES.** The Zoning Board of Appeals shall have all powers and duties prescribed by law, in other sections of this Ordinance and by this chapter which are more particularly specified as follows:

- A. Interpretation - Decide any question involving the interpretation of any provisions of this Ordinance, including determination of the exact location of any district boundary of the Zoning Map if there is uncertainty with respect thereto;
- B. Variances - Grant variances from the terms and provisions of this Ordinance as provided in this chapter; and
- C. Appeals - Hear and decide appeals of decisions made by the Zoning Administrator. In this regard, the Board of Appeals may assume the powers of the Zoning Administrator.

#### **SECTION 13.03. COMPENSATION.** Each member shall receive a reasonable sum as determined by the Township Board for his services in attending each regular or special meeting of said Board; sums to pay said compensation and the expenses of the Board shall be provided annually in advance by the Township Board.

#### **SECTION 13.04. REMOVAL.** Members of the Board of Appeals may be removed by the Township Board for nonperformance of duty or misconduct in office upon written charges and after public hearing.

**SECTION 13.05. MEETINGS; RECORDS.** Meetings of the Board of Appeals shall be held at the call of the Chairman and at such other times as the Board in rules of procedure may specify. The Chairman, or in his absence the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Appeals shall be open to the public. The Board shall maintain a record of its proceedings which shall be filed in the office of the Township Clerk and which shall be public record.

**SECTION 13.06. PROCEDURE.**

- A. The presence of three (3) members shall constitute a quorum, but the concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant in any matter upon which it is required to pass under this Ordinance or to effect any variation in such Ordinance.
- B. Applications or appeals shall be taken within such time as shall be prescribed by the Board of Appeals by general rule by filing with the Zoning Administrator and with the Board of Appeals of a notice of application or appeal specifying the grounds thereof. The Zoning Administrator shall, forthwith, transmit to the Board all the papers constituting the record from which the application or appeal was taken.
- C. When an application or appeal has been filed in proper form with the required date, the secretary of the Board shall place said application or appeal on the calendar for hearing at the next meeting of the Board. A notice that a request for a decision by the Zoning Board of Appeals has been made and of the hearing shall be given in accordance with applicable requirements of the Michigan Zoning Enabling Act, 2006 P.A. 110, as amended.
- D. Upon the day for hearing any application or appeal, the Board may adjourn the hearing in order to permit the obtaining of additional information or to cause such further notice as it deems proper to be served upon such other property owners as it decides may be interested in said application or appeal. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of said hearing.
- E. Upon the hearing, any party may be heard in person or by agent or attorney.
- F. The Board 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 officer from whom the appeal was taken and may issue or direct the issuance of a permit.
- G. The decision of the Board shall not be final until five (5) days after it is made, and any person having an interest affected by any such decision shall have the right to appeal to the Circuit Court on questions of law and fact during said period.
- H. Each appeal or application for variance shall be accompanied by a filing fee according to the fee schedule adopted by the Township Board which shall be deposited by the Zoning Administrator with the Township Treasurer.

**SECTION 13.07. STAY OF PROCEEDINGS.** An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals, after the notice of appeal shall have been filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by the Circuit Court on application, on notice to the Zoning Administrator, and on due cause shown.

**SECTION 13.08. CONDITIONS OF APPROVAL.** In authorizing a variance or exception, the Board may, in addition to the conditions of approval called for in, this Ordinance, attach thereto such other conditions regarding the location, character, landscaping or treatment reasonably necessary to the furtherance of the intent and spirit of this Ordinance and the protection of the public interest, including the right to authorize such variance or exception for a limited period of time.

**SECTION 13.09.** Chapter XIII of Ordinance No.33 is hereby amended by deleting Section 13.09.

**SECTION 13.10. VARIANCES PERMITTED.** Where there are practical difficulties or unnecessary hardship in carrying out the strict letter of this Ordinance, the Board of Appeals shall have power to vary or modify any of the provisions hereof so that the spirit of the Ordinance shall be observed, public safety promoted, and substantial justice done. The Board of Appeals may grant such variances only upon finding that all of the following conditions exist:

- A. Where it is alleged that, by reason of the exceptional narrowness, shallowness or shape of a specific parcel of property or by reason of exceptional topographic conditions or other extraordinary situation of the land or structure or of the use of property immediately adjoining the property in question, the literal enforcement of this Ordinance would involve practical difficulties or would cause undue hardship, provided that the Board of Appeals shall not grant a variance on a lot if the owner or members of his family own or owned adjacent land which could, without undue hardship, be included as part of the lot;
- B. Where it is alleged that there is practical difficulty or unnecessary hardship in carrying out the strict letter of this Ordinance and a request made to vary such regulations so that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done; and
- C. Where it is alleged that the condition or situation of the specific piece of property or the intended use of said property for which the variance is sought is not so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation for such condition or situation in this Ordinance.

**SECTION 13.11. VARIANCES PROHIBITED.** No variance in the provisions or requirements of this Ordinance shall be affected by the Board of Appeals unless it finds, from reasonable evidence, that such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this Ordinance or of the public health, safety and welfare, and, further, that at least two (2) of the following facts and conditions exist:

- A. That there are exceptional or extraordinary circumstances or conditions applying to the specific property that do not apply generally to other properties in the same zone;

- B. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the zone, provided that increased financial return shall not be deemed sufficient to warrant a variance; or
- C. That the condition or situation of the specific property or the intended use is not of so general or recurrent a nature as to make reasonably practical a general regulation as part of this Zoning Ordinance.

**SECTION 13.12. SPECIAL CONDITIONS.** In considering any applications, the Board of Appeals shall review the case within the intent of the Ordinance. Before granting a variance, the Board of Appeals shall determine whether the variance would be unduly hazardous or a nuisance to the surrounding neighborhood by reason of noise, atmospheric pollution, vibration, glare, fire potential, parking, traffic, aesthetic effect, devaluation of property values or psychological effects. For such purpose, the Board may require the appellant to enlist experts, technicians and consultants. The Board may impose such additional requirements and conditions necessary to preserve the intent of this Ordinance as provided in Section 13.08.