

CHAPTER 33
ZONING BOARD OF APPEALS

SECTION 33.01 CREATION, MEMBERSHIP, TERM OF OFFICE There is hereby created and/or continued a Township Zoning Board of Appeals (hereafter the ZBA) of five (5) members. The first member of such Board shall be a member of the Township Planning Commission; the second member shall be a member of the Township Board; and the remaining three members shall be selected and appointed by the Township Board from the electors of the Township residing in the unincorporated areas of the Township; and shall be representative of the population distribution and of the various interests present in the Township; except as otherwise provided, an employee or contractor of the Township Board shall not serve as a member of the ZBA.

The term of each member shall be for three 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 month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of their term. The Township Board may appoint not more than 2 alternate members for the same terms as regular members to the ZBA. Alternate members shall be selected from the electors of the Township residing outside of incorporated cities and villages. An alternate member may serve as a regular member of the ZBA in the absence of a regular member if the regular member is absent from or will be unable to attend 1 or more consecutive meetings of the ZBA. Any such alternative members may also be called to serve as a regular member for the purposes of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the ZBA.

SECTION 33.02 RULES OF PROCEDURE The ZBA may adopt those rules of procedure it deems necessary to assist it in the performance of its duties. The ZBA shall elect from its membership a Chairman, Vice-Chairman, and such other officers as deemed necessary; except that an elected officer of the Township shall not serve as chairman of the Board of Appeals. In addition, the ZBA may appoint a person from without its membership to serve as recording secretary. The presence of three (3) members shall constitute a quorum.

A record of the proceedings of each meeting shall be kept by the ZBA, relating evidence presented by the applicant and the resolution by the ZBA, the vote of each member on each question, or if absent or failing to vote, indicating such fact. These shall be a public record and filed with the Community Development Department.

SECTION 33.03 POWERS AND DUTIES The ZBA shall hear and decide questions that arise in the administration of this ordinance, unless otherwise specified herein, including the interpretation of zoning maps. It shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official or body charged with the enforcement of this Ordinance. It shall also hear and decide all matters referred to it or upon which it is required to pass under the terms of this Ordinance. An appeal may be made by any person aggrieved or by an officer, department, board, or bureau of the Township, County, or State. In addition, a variance may be applied for and granted pursuant to Section 4 of the uniform condemnation procedures act, being Act No. 87 of the Public Acts of 1980. The grounds for every such determination of the ZBA shall be stated as a public record.

Nothing contained in this chapter shall be construed to give or grant to the ZBA the power or authority to alter or change this Ordinance or the zoning map. Where there are practical difficulties in the way of carrying out the strict letter of the Zoning Ordinance, the ZBA, in passing

upon appeals, may vary or modify any of its rules or provisions so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done.

- A. Appeals. An appeal may be taken from any person or any governmental department affected or aggrieved, and review any order, requirement, decision or determination where it is alleged by the appellant that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by the director or other administrative official or body charged with the enforcement of any ordinance adopted pursuant to the Michigan Zoning Enabling Act.
1. Appeals shall be taken within such time as shall be prescribed by the board of appeals by general rule, by the filing with the officer from whom the appeal is taken and with the ZBA of a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the ZBA all the papers constituting the record upon which the action appealed from was taken.
 2. An appeal stays all proceedings in furtherance of the action appealed from except under two conditions:
 - a. the officer who took the appeal certifies to the ZBA that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property.
 - b. a restraining order which may be granted by the ZBA or by the Circuit Court for due cause shown.
 3. The ZBA shall select a reasonable time and place for hearing the appeal, give due notice thereof to the parties, and render a decision on the appeal without unreasonable delay. A person may appear and testify at the hearing, whether in person or by duly authorized agent or attorney.
 4. In deciding the appeal, the ZBA shall be limited to determining whether or not the decision that was made was done so using the proper standards and guidelines in the Ordinance. The decision of the ZBA is limited to the information that was available to the administrative official or body who made the decision initially. Additional testimony is not appropriate.
 5. If a determination is made that the administrative official or body making the decision did so improperly, the ZBA may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative official or body from whom the appeal was taken.
 6. The ZBA may hear and decide appeals from the decisions of the Community Development Director pertaining to interpretations of the zoning map to determine the precise location of boundary lines between zoning districts. In making its determination of the boundary lines, the ZBA shall be governed by the rules of this section and the provisions of Chapter 5.
- B. Non-use Variances. Subject to other provisions of this Ordinance, the ZBA shall have jurisdiction to decide applications for non-use variances. The ZBA shall not grant a non-use variance unless there is evidence of a practical difficulty in the official record of the hearing. The ZBA may conclude that an applicant has established a practical difficulty if the following facts and conditions exist:
1. That there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district. Exceptional or extraordinary circumstances or conditions may include, but shall not be limited to the following:

- a. Exceptional narrowness in width, breadth, length, or shape of a specific piece of property on the effective date of this Ordinance.
 - b. Exceptional topographic conditions, or other extraordinary situation or condition of the land, building, or structure;
 - c. The use of or development of property immediately adjoining the property in question, such that the literal enforcement of the requirements of this Ordinance would involve practical difficulties.
 - 2. That the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility that compliance with this Ordinance may prove to be more expensive, or the possibility of increased financial return if a variance is granted shall not, of itself be deemed sufficient to warrant a variance.
 - 3. The variance will not be detrimental to adjacent property and the surrounding neighborhood.
 - 4. The variance will not materially impair the intent and purpose of this ordinance.
 - 5. That the immediate practical difficulty causing the need for the variance request was not created by the applicant.
- C. Use variances. Under no circumstances shall the ZBA grant a variance to permit a use not generally or by special exception permitted in the district involved, or any expressly or by implication prohibited, by the terms of this Ordinance in said district.
- D. Interpretations.
- 1. Text: The board may hear and decide upon requests for the interpretation of the provisions of this Ordinance.
 - a. Text interpretations shall be narrow and address only the situation being interpreted, be based on a thorough reading of this Ordinance, and not have the effect of amending this Ordinance.
 - b. Interpretations shall give weight to practical interpretations by the Community Development Director and other administrative officials if applied consistently over a long period of time.
 - c. Records shall be kept of all interpretations.

SECTION 33.04 COMPENSATION Each member shall receive a reasonable sum as determined by the Township Board for services in attending each regular or special meeting of the ZBA. Said compensation and the expenses of the ZBA shall be appropriated annually in advance by the Township Board.

SECTION 33.05 MEETINGS AND RECORDS Meetings of the ZBA shall be held at the call of the chairman and at such other times as the ZBA 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 ZBA 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 shall be a public record.

SECTION 33.06 PROCEDURE

- A. The ZBA shall not conduct business unless a majority of the members is present. The concurring vote of a majority of the members shall be necessary to reverse an order, requirement, decision, or determination of the administrative official or

body, or to decide on any matter upon which it is required to pass under this Ordinance or to effect any variation in said Ordinance.

- B. Each appeal or application shall be filed with the ZBA and shall state the requested relief. The filing fee as determined by Resolution of the Township Board shall be paid at the time the appeal or application is filed.

When a matter is referred by the Planning Commission as required by the Zoning Ordinance to the ZBA for consideration, no fee shall be charged.

- C. When an application or appeal has been filed in proper form and by the required date, the ZBA shall fix a reasonable time, for the hearing of the appeal and cause notices stating the time, place, and object of the hearing to be served. Such notices shall be served personally or by mail at least fifteen (15) day prior to the day of such hearing, to the applicant, all persons to whom real property is assessed within 300 feet of the property that is the subject of the application and to the occupants of all structures within 300 feet of the property that is the subject of the application. Said notices shall be addressed to the respective property owners of record at the address given in the last assessment roll.
- D. Upon the day for hearing any application or appeal, the ZBA 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. At the hearing, any party may be heard in person or by agent or attorney.
- F. The ZBA may reverse or affirm, wholly or partly, or may modify the order to be made in the premises, and to that end shall have all the powers of the officer or body from whom the appeal was taken and may issue or direct the issuance of a permit.

SECTION 33.07 IMPOSITION OF CONDITIONS The ZBA may impose conditions with an affirmative decision. Conditions may include those necessary to insure that public services and facilities will be capable of accommodating increased service and facility loads caused by the proposed land use or activity; to protect the natural environment and conserve natural resources and energy; to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

- A. Be designed to protect natural resources, the health, safety, and welfare and social and economic well-being of those who will exercise the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and or the community as a whole.
- B. Be related to the valid exercise of the police power, and purposes (of the relevant zone district or section of the Ordinance) 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 any standards established in the Ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

- D. The conditions imposed shall be recorded in the record of the approval action, and shall remain unchanged except as provided by law.

SECTION 33.08 DECISIONS OF THE BOARD The ZBA shall decide all applications and appeals within 30 days after the final hearing thereon. A copy of the decision shall be transmitted to the applicant or appellant and to the Building Inspector. Such decision shall be binding upon the Building Inspector and observed by him, and he shall incorporate the terms and conditions of the same in the permit to the applicant or appellant whenever a permit is authorized by the ZBA.

- A. Any decision of the ZBA shall not become final until minutes of the meeting at which final action on the request was taken are officially approved and adopted by the ZBA, unless the ZBA shall find the immediate effect of such order is necessary for the preservation of property or personal rights and shall so certify on the record. The decision of the ZBA shall be final; however, any person having an interest affected by any such decision shall have the right of appeal to the Circuit Court as permitted by law.

Upon appeal the Circuit Court shall review the record and decision of the ZBA 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 law to the ZBA.
- B. If the court finds the record of the ZBA inadequate to make the review required by this section, or that there is additional evidence which is material and with good reason was not presented to the ZBA, the court shall order further proceedings before the ZBA on conditions which the court considers proper. The ZBA may modify its findings and decision as a result of the new proceedings, or may affirm its original decision. The supplementary record and decision shall be filed with the Circuit Court.
 - C. No application which has been denied wholly or in part by the ZBA shall be resubmitted for a period of one year from the date of the last denial except as permitted by the ZBA on grounds of newly discovered evidence or upon demonstration by the applicant to the ZBA of a change of circumstances from the previous application.
 - D. As a result of the review required by this section, the Circuit Court may affirm, reverse, or modify the decision of the ZBA.
 - E. Each variance granted under the provisions of this Ordinance shall become null and void unless the construction authorized by such variance has been commenced within one (1) year after the granting of the variance and is being carried progressively to completion, or the occupancy of land, premises, or structures authorized by the variance has taken place within one (1) year after the variance was granted.