

## CHAPTER XVII

### BOARD OF APPEALS

#### **Section 17.01 Creation, membership, term of office, rules.**

- (a) There is hereby created a Zoning Board of Appeals consisting of five members; the first member of such Board may be the Chairman of the Planning Commission; the second member may be a member of the Township Board; and the remaining 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 shall serve as chairperson of the Zoning Board of Appeals, and an employee or contractor of the township board may not serve as a member of the Zoning Board of Appeals.
- (b) Terms for members of the Zoning Board of Appeals shall be determined by the provisions of the Zoning Act.
- (c) The Board of Appeals shall elect one of its members as its chairman and one 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 17.02 Powers and Duties of the Board of Appeals.**

The Board of Appeals shall have all the powers and duties prescribed by law and by this Chapter which are more particularly specified as follows:

- (a) *Interpretation.* Upon appeal from a decision by an administrative official or the Zoning Inspector to decide any question involving the interpretation of any provisions of this Ordinance, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
- (b) *Variations.* To authorize, upon appeal, a variance or modification of this Ordinance where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Ordinance so that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done.

#### **Section 17.03 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 17.04 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 a public hearing.

#### **Section 17.05 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 a witnesses. All meeting 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 a public record.

#### **Section 17.06 Procedure.**

- (a) The presence of three 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 Inspector and with the Board of Appeals a notice of application or appeal specifying the grounds thereof. The Zoning Inspector shall forthwith transmit to the Board all the papers constituting the record from which the application or appeal was taken.
- (c) When an application has been filed in proper form, and 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 and cause notice stating the time, place and object of the hearing to be served. Such notices shall be served by ordinary mail at least seven days prior to such hearing upon the applicant or appellant, the Building Inspector, and the owners of property of record within 300 feet of the premises in question which notices, if by mail, shall be addressed to the respective property owners of record at the address given on the last assessment roll. In the event any property immediately adjacent to said premises shall be part of a different governmental subdivision, the owner of any such property shall nevertheless receive notice, and shall be entitled to be heard.
- (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 a hearing which is adjourned to a specific date and time, 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 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 be final. However, a person having an interest affected by any such decision may appeal to the circuit court as provided in MCL 125.293a.

**Section 17.07 Stay of Proceedings.**

An appeal stays all proceedings in furtherance of the action appealed from unless The Zoning Inspector 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 Inspector, and on cause due shown.

**Section 17.08 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 17.09 Time limit: variances.**

Any variance or exception granted by the Board of Appeals shall automatically become null and void after a period of 12 months from the date granted unless the applicant shall have taken substantial steps towards effecting the variance within said period; provided, however, that the Board of Appeals may extend such period for a further period of time not exceeding one year upon application and without further notice.

**Section 17.10 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 use of property immediately adjoining the property in question, the Board determines that 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) The Board must determine that issuance of a variance as requested would be consistent with the spirit of this ordinance, that public safety would be secure, and that substantial justice would be done.
- (c) The Board must determine 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 practical the formulation of a general regulation for such condition or situation as part of this zoning ordinance.

**Section 17.11 Variance permitted.**

No variance in the provisions of 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 one 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 same zone, provided that increased financial return shall not be deemed sufficient to warrant a variance.

**Section 17.12 Special conditions.**

In considering any application, 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 17.08.