

ARTICLE 12
ZONING BOARD OF APPEALS

Section 12.1 Creation.

There is hereby established a Zoning Board of Appeals, hereinafter called the "ZBA", which shall perform its duties and exercise its powers as provided in Act 110 of the Public Acts of 2006, as amended from time to time, and in such a way that the objectives of this Ordinance shall be observed, the public safety and welfare secured, and substantial justice done.

Section 12.2 Membership and Terms.

(a) Number of Members. The ZBA shall consist of not fewer than three (3) members. They shall be appointed by the Township Board and shall be composed of the following three (3) members whose terms shall be as stated:

- (1) One (1) member shall be a member of the Planning Commission and one (1) may be a member of the Township Board. The member of the Township Board that serves on the ZBA shall not serve as chairperson of the ZBA.
- (2) The remaining regular and any alternate members of the ZBA shall be appointed by the Township Board from among the electors residing in the unincorporated area of the Township at large. The members selected shall be representative of the population distribution and of the various interests present in the Township.

(b) Terms of Office. The term of office of each member shall staggered for three (3) 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, whichever is shorter. All vacancies for unexpired terms shall be filled for the remainder of the term.

(c) Employees/Contractors as Members. An employee or contractor of the Township Board shall not serve as a member or an employee of the ZBA.

(d) Removal of Members/Conflict of Interest.

- (1) The Township Board shall provide for the removal of a member of the ZBA for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing.

- (2) A member of the ZBA shall disqualify herself or himself from a vote in which the member has a conflict of interest. Failure of a member to disqualify herself or himself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

(e) Alternate Members. The Township Board may appoint not more than two (2) alternate members for the same term as regular members of the ZBA. An alternate member may be called by the chairman of the ZBA to serve as a member of the ZBA in the absence of a regular member, if the regular member will be unable to attend one (1) or more meetings or is absent from or will be unable to attend meetings for a period of more than thirty (30) consecutive days. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision is made. The alternate member shall have the same voting rights as a regular member of the ZBA.

Section 12.3 Meetings.

All meetings of the ZBA shall be held at the call of the Chairman and at such times as such ZBA may determine. All hearings conducted by said the ZBA shall be open to the public. The Chairman, or in his absence, the Vice Chairman, may administer oaths and compel the attendance of witnesses. The ZBA shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent, or failing to vote, indicate such fact; and shall also keep records of its hearings and other official action. The ZBA shall maintain a record of its proceedings which shall be filed in the Office of the Township Clerk and shall be a public record. The ZBA shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files, and other evidence pertinent to the matters before it. The ZBA shall not conduct business unless a majority of the members of the ZBA are present.

Section 12.4 Appeal.

An appeal may be taken to the ZBA by any person, firm or corporation, or any officer, department, board, or bureau affected by a decision of the Zoning Administrator. Such appeal shall be **in writing** and taken within such time as shall be prescribed by the ZBA, by general rule, by filing with the Township Clerk, the Zoning Administrator and the Board of Appeals a notice of appeal, specifying the grounds thereof. The Township Clerk and/or Zoning Administrator shall forthwith transmit to the ZBA all of the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies after the notice of appeal has 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 the proceedings shall not be stayed, otherwise than by a restraining order,

which may be granted by the ZBA or by a court of record on application, on notice to the Zoning Administrator and for due cause shown.

The ZBA shall select a reasonable time and place for the hearing of the appeal and give due notice thereof to the parties and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.

A fee shall be paid at the time the notice of appeal is filed to the Township Clerk to the credit of the general revenue fund of the Township. The fees to be charged for appeals shall be set by resolution of the Township Board.

Section 12.5 Jurisdiction.

The ZBA shall have the following powers and it shall be its duty:

(a) To hear and decide on all matters referred to it upon which it is required to pass under this Ordinance.

(b) Interpret the Ordinance text and map and all matters relating thereto whenever a question arises in the administration of this Ordinance as to the meaning and intent of any provision or part of this Ordinance. Any interpretations shall be in a manner as to carry out the intent and purpose of this Ordinance and zoning map, and commonly accepted rules of construction for ordinances and laws in general.

(c) To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the Zoning Administrator the enforcement of this Ordinance.

(d) Where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would involve practical difficulties or undo hardships within the meaning of this Ordinance, the ZBA shall have power upon appeal in specific cases to authorize such variation or modification of the provisions of this Ordinance with such spirit of this Ordinance and so that public safety and welfare be secured and substantial justice done. No such variance or modification of the provisions of this Ordinance shall be granted other than in accordance with Section 12.8.

(e) In consideration of all appeals and all proposed variations to this Ordinance, the ZBA shall, before making any variations from the Ordinance in a specific case, first determine that the proposed variation will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, comfort, morals, or welfare of the inhabitants of the Township. The concurring vote of a majority of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant any matter upon which it is authorized by this Ordinance to render a decision.

Nothing herein contained shall be construed to give or grant to the ZBA the power or authority to alter or change the Zoning Ordinance or the Zoning Map, or to rezone, such power and authority being reserved to the Township Board of Sanilac Township in the manner hereinafter provided by law.

Section 12.6 Exercising Powers

In exercising the above powers, the ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may take such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator from whom the appeal is taken. However, in the event that the Planning Commission representative has already voted on a matter which is now being appealed to the Board, that member shall abstain from voting at the ZBA.

Section 12.7 Notice

Following receipt of a written request concerning a request for a variance, the ZBA shall fix a reasonable time for the hearing of the request and give notice as provided below:

- (a) The local unit of government shall publish notice of the request in a newspaper of general circulation in the local unit of government.

- (b) Notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within three hundred (300) feet of the property and to the occupants of all structures within three hundred (300) feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction.

- (c) The notice shall be given not less than fifteen (15) days before the date the application will be considered for approval. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection. The notice shall do all of the following:
 - (1) Describe the nature of the request.

 - (2) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.

 - (3) State when and where the request will be considered.

- (4) Indicate when and where written comments will be received concerning the request.

(d) Upon receipt of a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the Township and shall be sent to the person requesting the interpretation not less than fifteen (15) days before the public hearing. In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question and to the occupants of all structures within three hundred (300) feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.

Section 12.8 Variances

The ZBA shall have the power to authorize upon appeal, specific variances for use and non-use variance (dimensional) standards.

(a) *Use Variances.* Variances of uses allowed by district shall be permitted when an applicant can demonstrate that an unnecessary hardship exists that prevents use of the land in accordance with ordinance requirements. Use variances shall require the affirmative vote of two (2) members of the ZBA. Furthermore, any variance granted shall meet each of the following standards:

- (1) The property cannot be used for a conforming use in the zoning district where it is located.
- (2) The plight of the property is due to unique circumstances and not general neighborhood conditions.
- (3) The use to be authorized by the variance will not alter the essential character of the area.
- (4) That the alleged hardship has not been created by any person presently having an interest in the property.

(b) *Non-Use Variances.* Variances from lot area and width regulations, building height, and bulk regulations, yard width and depth regulations, off-street parking, loading space and landscaping standards, and similar requirements shall be permitted only if a practical difficulty in complying with the ordinance can be demonstrated by the applicant. Furthermore, any variance shall meet each of the following standards:

- (1) That the restrictions of this Zoning Ordinance unreasonably prevent the owner from using the property for a permitted purpose.
- (2) That the variance would do substantial justice to the applicant as well as to other property owners in the district, and a lesser relaxation than that requested would not give substantial relief to the owner of the property or be more consistent with justice to other property owners.
- (3) That the plight of the landowner is due to the unique circumstances of the property.
- (4) That the alleged practical difficulty has not been created by any person presently having an interest in the property.
- (5) The variance will not be contrary to the public interest and will not be contrary to the spirit and intent of this Section.
- (6) The variance will not cause any adverse effect to property in the vicinity or in the zoning district of the Township.
- (7) The variance will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved.
- (8) The variance will be designed to eliminate any possible nuisance emanating there from which might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights.

In exercising the above powers, 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 Zoning Administrator from whom the appeal is taken.

Section 12.9 Voiding of and Reapplication for Variances

The following provisions shall apply:

- (a) Each variance granted under the provisions of the Ordinance shall become null and void unless:
 - (1) The construction authorized by such variance or permit has been commenced within three hundred and sixty-five (365) days after the granting of such variance.
 - (2) The occupancy of land or buildings authorized by such variance has taken place within three hundred and sixty-five (365) days after granting of such variance.

(b) No application for a variance which has been denied wholly or in part by the ZBA shall be resubmitted for a period of three hundred and sixty-five (365) days from such denial except on grounds of new evidence or proof of changed conditions found by the ZBA to be valid.

Section 12.10 Appeals to Circuit Court

(a) The decision of the ZBA rendered pursuant to this Article shall be final. However, a person having an interest affected by the decision may appeal to the Circuit Court. Appeal shall be filed with the Circuit Court within thirty (30) days of the ZBA decision