

**ARTICLE 28
ZONING BOARD OF APPEALS**

SECTION 28.00 CREATION OF ZONING BOARD OF APPEALS

- A. Establishment.** There is hereby established a Zoning Board of Appeals (ZBA), which shall perform its duties and exercise its power as provided for in the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended. The ZBA shall consist of five (5) members and not more than two (2) alternate members, as follows:
- 1. First Member.** The first member shall be a member of the Township Planning Commission selected by the Planning Commission and appointed by the Township Board;
 - 2. Other Members.** The second, third, fourth and fifth members shall be selected and appointed by the Township Board from among the electors residing in the township.
 - 3. Alternate Members.** The Township Board may appoint two (2) alternate members for three (3) year terms. The alternate members may be called on a rotating basis, or as specified in the rules of procedure of the Zoning Board of Appeals, to sit as regular members of the Zoning Board of Appeals if a regular member is unable to attend one (1) or more meetings. An alternate member may also be called on 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 as allowed by State Law. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals (ZBA).
- B. Terms of Office.** The Planning Commission member of the Zoning Board of Appeals shall serve for his/her term of office on the Planning Commission. All other members shall be appointed for terms of three (3) years. Terms shall be staggered so that not more than two (2) of the members terms in office shall expire in the same year.

- C. Simultaneous Membership.** Except for the Planning Commission representative described in A.1 above, members of the Township Board, the Planning Commission, or any employee of the Township Board shall not serve simultaneously as a member, or as an employee of the ZBA. Members of the ZBA shall be removable by the Township Board for non-performance of duty or malfeasance in office, upon filing of written charges and after a public hearing before the Township Board.
- D. Majority Requirement.** The Zoning Board of Appeals shall not conduct business unless a majority of the members of the ZBA is present.
- E. Removal.** A member of the Zoning Board of Appeals may be removed by the Township Board of Trustees for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

SECTION 28.01 MEETINGS

Public Meetings. All meetings of the ZBA shall be held at the call of the Chairman, and at such times as the ZBA may determine. All meetings of the ZBA shall be open to the public. The ZBA shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its findings, proceedings at hearings, and other official actions, all of which shall be immediately filed in the office of the Township Clerk and shall be a public record.

SECTION 28.02 NOTICE OF APPEAL HEARING

Public Hearing. The Zoning Board of Appeals shall make no determination in any specific case until it shall have conducted a public hearing. The ZBA shall fix a reasonable time for such hearing, and shall give due notice thereof, by mail or personal delivery, to the applicant or owner of the property that is the subject of the appeal or to the applicant or person requesting the interpretation or hearing. If the application, request, or other matter before the ZBA involves a specific parcel, notice shall be sent to all persons to whom real property is assessed within three hundred (300) feet of the subject property, and to the occupants of all structures within three hundred (300) feet of the subject property. The notice is to be delivered personally or by mail addressed to the respective owners and occupants at the address given in the last assessment roll, regardless if the

property or structure is located in Tyrone Township. If the owner or occupant's name is not known, the term "Occupant" may be used.

Notice of Hearing. The notice shall also be published in a newspaper of general circulation within the Township. The notice shall be published and distributed no less than fifteen (15) days nor more than sixty (60) prior to the public hearing. The notice shall describe the nature of the hearing and the request, indicate the property that is the subject of the request by street address, state when and where the hearing will be held, and indicate when and where written comments will be received concerning the request. A fee for such hearings shall be established by the Township Board.

SECTION 28.03 DUTIES AND POWERS OF THE ZONING BOARD OF APPEALS

Limitations. The Zoning Board of Appeals possesses limited and specific powers and duties. The ZBA may not change the zoning district classification of any property. It may not change any of the stated terms of this ordinance. It has powers to act on those matters where this ordinance provided for an administrative review, interpretation, or exception, and to authorize a variance as defined in this section and in the laws of the State of Michigan. These powers include:

- A. Administrative Review.** To 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 any other administrative official in carrying out or enforcing any provisions of this ordinance. Any such ruling or decision must be found to meet criteria listed in Section 28.04.A below.
- B. Interpretation of Zoning Text and Map.** To make interpretations of the zoning text and map; the defining of ambiguous words and phrases; the verification of definite boundaries between zoning districts; and the location of proper setback lines in the event that such boundaries or locations should be unclear or subject to dispute.
- C. Criteria for Granting Variances for Dimensional (Non-Use) Requirements.** Variances and appeals from the Ordinance dimensional requirements shall be granted only in accordance with the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, and shall be based on findings of fact related to the criteria set forth in this section. Consistent with the decisions of courts of law in the State of Michigan, *all* of the criteria indicated below must be found by the ZBA to indicate a practical difficulty exists, thereby justifying a dimensional or non-use variance. A financial hardship of the land owner, developer or other related party shall not be a

consideration in determining if a practical difficulty exists or otherwise justify granting a variance.

1. **Unreasonable Burden.** Strict compliance with Zoning Ordinance requirements will be unreasonable or unnecessarily burdensome, preventing the use of land for any and all permitted purposes. The demonstration of mere inconvenience is insufficient to justify a variance.
 2. **Substantial Justice.** Granting of a requested variance or appeal will provide substantial justice to the appellant as well as to other property owners in the vicinity. Resulting development permitted by a variance will relate harmoniously with adjacent land uses and will not alter the essential character of the neighborhood. In evaluating this criterion, consideration shall be given to prevailing traffic patterns, convenience of access, continuity of development, and the need for particular services and facilities in specific areas.
 3. **Minimum Variance Required.** The requested variance or appeal will be the minimum variance required to provide substantial justice and the variance can be granted in such fashion that the spirit of these regulations will be observed and public safety and welfare secured.
 4. **Extraordinary Circumstances.** There are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the area. The circumstances shall not be self-created by the owner or a former owner of the land. The described circumstances or conditions shall uniquely identify this request and any variance granted to satisfy the request. Finally, the circumstance shall be related to the land and not the property owner, developer, or any other person. No precedent shall be established for general application in the Township when exceptional or extraordinary circumstances or conditions are delimited that clearly serve to identify the unique characteristics of each request.
 5. **No Safety Hazard or Nuisance.** The granting of a variance or appeal will not increase the hazard of fire or otherwise endanger public safety or create a public nuisance.
- D. **Use Variances.** Variances and appeals from the Ordinance use requirements shall be prohibited.

- E. Exceptions.** To hear and decide, in accordance with the provisions of this Ordinance, requests for exceptions, and for situations on which this Ordinance specifically authorizes the Zoning Board of Appeals to act. Any exception shall be subject to such conditions as the ZBA may require to preserve and promote the character of the zoning district in question and otherwise promote the purpose of this Ordinance, including the following:
- 1.** Interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the Zoning Map fixing the use districts accompanying and made part of this Ordinance, where street layout actually on the ground varies from the street layout as shown on the map aforesaid.
 - 2.** Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.
 - 3.** Permit such modification of the height and area regulations as may be necessary to secure an appropriate improvement of a lot which is shaped such or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification.
 - 4.** Permit modification of obscuring wall requirements only when such modification will not adversely affect or be detrimental to surrounding or adjacent development.

SECTION 28.04 APPEALS

The ZBA shall select a suitable time and place for the hearing of the appeal. Due notice shall be given of the hearing to all affected parties in accordance with the procedures in Section 28.02. Testimony may be given at the hearing by any person, in person, or through any duly authorized agent or attorney. The Township Board shall be given notice of such hearing by the Zoning Administrator.

- A. Appeals of a Decision by the Zoning Administrator.** An appeal may be taken to the ZBA by any person, firm or corporation, or by any officer, department, board or bureau of the township, county, or state affected by a decision of the Zoning

Administrator. Such appeals shall be taken within such times as shall be prescribed by the Zoning Board of Appeals by general rule, by filing with the Zoning Administrator and with the ZBA a "Notice of Appeal" specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the ZBA all of the papers constituting the record upon which action being appealed was taken. An appeal shall stay all proceedings in furtherance of the action being appealed. If, in the opinion of the Zoning Administrator, such action taken after notice of appeal has been filed with him would cause immanent peril to life or property, the proceedings shall not be stayed except by the issuance of a restraining order by a court of record. The ZBA shall reverse an order of the Zoning Administrator or other Enforcement Official only if it finds that the action or decision appealed:

1. **Arbitrary or Capricious.** Was arbitrary or capricious, or
2. **Erroneous Finding.** Was based on an erroneous finding of a material fact, or
3. **Discretionary Abuse.** Constituted an abuse of discretion, or
4. **Erroneous Interpretation.** Was based on erroneous interpretation of the Zoning Ordinance or zoning law.

Appeals from a Zoning Board of Appeals denial may be taken to Livingston County Circuit Court.

- B. **Special Land Use - Planned Unit Development.** The ZBA shall not have jurisdiction over appeals of decisions affecting special land uses and planned unit developments.
- C. **Other Appeals.** The ZBA shall hear and decide other appeals from and review any order, requirements, decision, or determination made by an administrative official or body charged with enforcement of this ordinance.

SECTION 28.05 DECISIONS OF THE ZBA

- A. The Zoning 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. To that end the ZBA shall have all the powers of the officer or body from whom the appeal was taken and shall have the same authority to

issue or direct approvals and denials on applications presented before them as the officer or body to whom they were originally submitted.

- B.** The ZBA shall return a decision upon each case within a reasonable time period after a request or appeal has been filed, unless further time is agreed upon by the parties concerned.
- C.** The concurring vote of a majority of the members of the ZBA present at the meeting shall be necessary to reverse any order, requirement, decision or determination of a Township administrative official or governing body to decide in favor of the applicant on any matter upon which they are required to pass under this ordinance, or to effect any variation in the ordinance.
- D.** The decision of the Zoning Board of Appeals shall be final. A person having an interest affected by the ordinance, however, may appeal to the circuit court provided the appeal is filed within 30 days after the ZBA certifies its decision or approves the minutes of its decision and provided that the record of the decision and the application satisfies the conditions stated in Section 606 of the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended.

SECTION 28.06 TERMS OF APPEAL

The Zoning Board of Appeals may require the appellant, or applicant requesting special action by the ZBA, to submit all necessary surveys, plans or other information necessary for the ZBA to thoroughly investigate the matter before it. The ZBA may impose such conditions or limitations in granting such appeal or application as it may deem necessary to comply with the spirit and purpose of this ordinance.

SECTION 28.07 APPROVAL PERIOD

Exceptions, variances, and boundary and setback determinations shall be vested in the affected property, and shall pass with title to such property. No time limit shall be made a part of such determination. Where the determination of the Zoning Board of Appeals provides for the issuance of a land use permit, such permit shall be obtained within six (6) months of ZBA approval. If no permit is obtained within the six (6) month period, the approval shall become void and of no effect.

SECTION 28.08 ATTORNEY CONSULTATION

Legal consultation is available to the Zoning Board of Appeals from the Township's designated Township Attorney. If such consultation is not sufficient to resolve the issue, the Township Board shall secure and appoint a specialist in the area of dispute to assist the ZBA.

SECTION 28.09 RECONSIDERATION

The Zoning Board of Appeals shall not consider an appeal within one year of a decision. No application for reconsideration of a previously determined appeal shall be accepted for placement on a ZBA agenda. However, in the event new information becomes available that the appellant or other interested party believes could significantly alter the determination, such new information can be submitted to the ZBA for the ZBA's discussion.

In the event a majority of the ZBA agrees that the new information is relevant and could alter the decision, the appellant shall be permitted to submit a new application, complete with all required information and fees, for placement on a future agenda of the ZBA.

REVISIONS:

2004 - September: Sections 28.03.C, 28.03.D, 28.03.E, 28.09

2007 - April: Sections 28.00; 28.A.3; 28.C; 28.E (New); 28.02; 28.03.C; 28.03.D; 28.04.A; 28.05.A; 28.05.C(New); 28.05.D (New)