

Chapter 28 - BOARD OF APPEALS

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Sec. 28.1 AUTHORIZATION.

In order that the objectives of the Ordinance may be more fully and equitably achieved, that there shall be provided a means of competent interpretation of this Ordinance, that adequate but controlled flexibility be provided in the application of this Ordinance, that the health, safety, and welfare of the public be secured, and that justice be done, there is hereby established a Township Board of Appeals.

Sec. 28.2 MEMBERSHIP - TERMS OF OFFICE - ALTERNATE MEMBERS.

- (A) The Township Board of Appeals shall consist of five (5) members. The first member of such Board of Appeals shall be a member of the Township Planning Commission; the second member may be a member of the Township Board; the additional three (3) members or four (4) if no member is a member of the Board (revised 10-25-06) shall be selected from the electors residing in the Township. All members shall be appointed by the Township Board. None of the additional three (3) members or four (4) if no member is a member of the Board (revised 10-25-06) shall be elected officers of the Township or employees of the Township Board; Members shall be appointed for three (3) year terms, except the Planning Commission and Township Board representatives who shall only serve while holding membership on those respective bodies. (revised Nov. 24, 2003)
- (B) Members of the Board of Appeals shall be removable by the Township Board for nonperformance of duty or misconduct in office upon written charges and after 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 shall constitute misconduct in office.
- (A) Up to two (2) alternate members may be appointed by the Township Board for three (3) year terms. The alternate members, if appointed, shall be selected from the electors residing in the Township, and shall not be elected officers of the Township or employees of Georgetown Township. If two (2) alternate members have been appointed, they may be called on a rotating basis, as they are available, to sit as regular members of the Zoning Board of Appeals in the absence of a regular member. 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 has been made. The alternate member shall have the same voting rights as a

regular member of the Zoning Board of Appeals. An alternate member shall only serve to discuss or vote upon a case in the absence of a regular member or upon the conflict of interest of a regular member. (revised 8-27-2001)

Sec. 28.3 *RULES OF PROCEDURE.*

The Board of Appeals shall adopt its own rules of procedure.

Sec. 28.4 *MAJORITY VOTE.*

The concurring vote of a majority of the membership of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator; to decide in favor of any application on any matter upon which the Board is required to pass under this Ordinance; to effect any variance in this Ordinance; or to constitute a denial of an application for purposes of Section 28.9(C).

Sec. 28.5 *MEETINGS.*

Meetings shall be open to the public, and shall be held at the call of the Chairman and at such other times as the Board of Appeals shall specify in its rules of procedure. The Board shall choose its own Chairman and, in his absence, an acting Chairman.

Sec. 28.6 *RECORDS.*

Minutes shall be recorded of all proceedings which shall contain evidence and data relevant to every case together with votes of the members and the final disposition of each case. Such minutes shall be filed in the office of the Township Clerk and shall become matters of public record.

Sec. 28.7 *SECRETARY AND COUNSEL.*

The Township Clerk shall act as the Secretary of the Board of Appeals and all records of the Board's action shall be taken and recorded under his direction. The Township Attorney shall act as legal counsel for the Board and shall be present at all meetings upon request of the Board.

Sec. 28.8 *HEARINGS.*

When a notice of appeal has been filed in proper form with the Board of Appeals, the Secretary shall immediately place said request for appeal upon the calendar for hearing, and notice of such hearing shall be in accordance with the statutory requirements of the State of Michigan. (revised 10-25-06) The Board may recess such hearings from time to time, and, if the time and place of the continued hearing be publicly announced at the time of adjournment, no further notice shall be required.

Sec. 28.9 *DECISIONS.*

(A) The Board of Appeals shall return a decision upon each case within one hundred twenty (120) days after a request of appeal has been filed with the Board unless a further time is agreed upon with the applicant and the Board. Any decision of the Board shall not become final until the expiration of five (5) days from the date of entry of such order and service of

the same upon the parties concerned unless the Board 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 Board of Appeals shall be final; however, any person having an interest affected by any such decision shall have the right of appeal to the Circuit Court on questions of law and fact.

- (B) Unless the Board of Appeals specifies a different time limit for a variance to expire as a condition of the Board of Appeals' decision in a particular variance case, each variance granted under the provisions of this Ordinance shall become null and void unless the use or activity authorized by the variance has been fully commenced and is ongoing or unless the construction authorized by such variance has been commenced and substantial construction has occurred within one (1) year after the granting of the variance and is being carried on progressively to completion. As a condition of approval of a variance, the Board of Appeals can specify a shorter or longer variance expiration time period. If the Board of Appeals has not specified a particular expiration time period as a condition of approval for a particular variance, the Zoning Administrator shall have the discretion and authority to extend the ordinary one-year time period contained in this subsection for good cause shown for up to one additional year as long as the request for the extension is made in writing prior to the expiration (revised 2/28/2011).
- (C) No application for a variance which has been denied wholly or in part by the Board shall be resubmitted for a period of one (1) year from the date of the last denial, except on grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.

Sec. 28.10 APPEALS.

Appeals to the Board of Appeals may be taken by any person aggrieved, or by any officer, department or board of the Township. Any appeal from the ruling of the Zoning Administrator concerning the enforcement of the provisions of this Ordinance may be made to the Board of Appeals within five (5) days after the date of the Zoning Administrator's decision which is the basis of the appeal. The appellant must file with the Zoning Administrator a notice of appeal specifying the grounds for appeal. The Zoning Administrator shall immediately transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

- (A) **Stays.** An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals after the notice of the appeal shall have been filed with him that, for 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, on application, by the Circuit Court when due cause can be shown.
- (B) **Representation.** Any party may appear in person or by agent or by attorney at a hearing considering his request or appeal.
- (C) **Fees.** A fee as established by the Township Board shall be paid to the Township Clerk at the time of filing application with the Board. The purpose of the fee is to cover any necessary advertisement and investigation expenses incurred by the Board of Appeals in connection with the appeal.

Sec. 28.11 DUTIES AND POWERS.

The Township Board of Appeals shall have the following specified duties and powers:

- (A) **Review.** Shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator in the administration of this Ordinance.
- (B) **Interpretation.** Shall have the power to:
 - (1) Hear and decide upon request for the interpretation of the provisions of this Ordinance.
 - (2) Determine the precise location of boundary lines between zoning districts when there is dissatisfaction with a decision upon said subject made by the Zoning Administrator.
 - (3) Classify a use which is not specifically mentioned along with a comparable permitted or prohibited use for purpose of the use regulations in any zoning district.
 - (4) Determine the off-street parking and loading requirements of any use which is not mentioned in Chapter 27, either by classifying it with one of the groups listed or by analysis of the specific need.
- (C) **Variances.** The Board of Appeals shall have the power to authorize, upon an appeal, specific variances from the requirements of this Ordinance, when the applicant demonstrates that ALL of the following conditions will be satisfied.
 - (1) Granting the variance be in the public interest and will ensure that the spirit of this Ordinance shall be observed.
 - (2) Granting the variance shall not permit the establishment within a district of any use which is prohibited, nor shall any use variances be granted.
 - (3) That there are practical difficulties in complying with the standards of the Zoning Ordinance resulting from exceptional, extraordinary, or unique circumstances or conditions applying to the property in question, that do not generally apply to other property or uses in the vicinity in the same zoning district; and have not resulted from the adoption of this Ordinance.
 - (4) That the granting of such variance will not be of substantial detriment to adjacent properties or improvements in the vicinity; or, that the application of conditions to an approved variance will eliminate or sufficiently mitigate potential detrimental impacts.
 - (5) That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.
 - (6) That granting such variance will not cause any existing non-conforming use, structure, or condition to be increased or perpetuated, contrary to the provisions of Chapter 27 of this Ordinance, except in accordance with Section 27.12
 - (7) That the variance is not necessitated as a result of any action or inaction of the applicant.(revised 4-23-2001)