

**ARTICLE 41**

**ZONING BOARD OF APPEALS**

**SECTION 41.01. Authority**

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 the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, 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 41.02. Membership**

**A. Members and Terms**

The ZBA shall be appointed by the Township Board and shall be composed of the following five (5) members whose terms shall be as stated:

1. One (1) member shall be a member of the Planning Commission and one (1) member shall be a member of the Township Board whose terms shall be limited to the time they are members of the Planning Commission or Township Board, respectively, or the period stated in the resolution appointing them, whichever is shorter. The member of the Township Board shall not serve as the ZBA Chairperson.
2. The remaining members selected shall be representative of the population distribution and of the various interests present in the Township. The term of each member shall be for three (3) years.
3. Successors in office shall be appointed not more than one (1) month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term.
4. An employee or contractor of the Township Board may not serve as a member of the ZBA.

**B. Expenses**

The total amount allowed the ZBA in anyone year as per diem or as expenses actually incurred in the discharge of their duties shall not exceed a reasonable sum, which sum shall be appropriated annually in advance by the Township Board.

**C. Cause for Removal**

Members of the ZBA shall be removable by the Township Board for nonperformance of duty or misconduct in office upon written charges and after a public hearing.

**D. Conflict of Interest**

A member shall disqualify himself or herself from a vote in which he or she has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which he or she has a conflict of interest shall constitute misconduct in office, but shall not affect the validity of the decision made unless the vote improperly cast constitutes a deciding vote.

A ZBA member who is a member of the Planning Commission or the Township Board shall not participate in a public hearing on or vote on the same matter the member voted on as a member of the Planning Commission or the Township Board. The member may consider and vote on other unrelated matters involving the same property.

**E. Majority of the ZBA**

The ZBA shall not conduct business unless a majority of the regular members of the ZBA are present.

**SECTION 41.03. Alternates**

The Township Board may additionally appoint not more than two (2) alternate members for the same term as regular members of the ZBA. The alternate members may be called on a rotating basis to serve on the ZBA in the absence of a regular member, if the regular member will be unable to attend one (1) or more meetings. 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 called shall serve in a case until a final decision has been made. The alternate member called shall have the same voting rights as a regular member of the ZBA.

**SECTION 41.04. Rules of Procedure**

The ZBA shall conduct business, organize meetings, and perform its duties as provided for in this Ordinance and the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended.

**A. Meetings**

1. All meetings of the ZBA shall be held at the call of the Chairperson and at such times as such ZBA may determine. All hearings conducted by said ZBA shall be open to the public. 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 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.
2. The ZBA shall make no recommendation except in a specific case and after a hearing conducted by said ZBA. Following the receipt of a written request for a

variance the ZBA shall fix a reasonable time for the hearing of the request and give written notice of the hearing as described in Article 34 of this Ordinance.

3. 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 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 300 feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.

**B. Election of Officers**

The ZBA shall elect a Chairperson, Vice-Chairperson, and Secretary on an annual basis.

**C. Bylaws**

The ZBA shall adopt the Charter Township of Commerce Zoning Board of Appeals Bylaws, which shall govern its procedures as a zoning board of appeals, and shall review those Bylaws on an annual basis.

**SECTION 41.05. Applications**

Applications to the ZBA shall be filed with the Township Planning Department, with payment of the appropriate review fee established by the Township Board. At a minimum, applications shall include the following:

1. The applicant's name, address, and contact information; and the address and location of the property involved in the request.
2. Zoning classification of the subject parcel(s) and all abutting parcels.
3. A certified survey of the site, drawn to scale with a north-arrow, showing all lot lines, road rights-of-way, easements, structures (existing and proposed), setback dimensions (existing and proposed), parking areas, driveways, shared driveways, sidewalks and other site improvements (existing and proposed).
4. A letter from the applicant stating the reasons for the request, and addressing the applicable review criteria specified in this Article for the type of request.
5. Any additional information deemed necessary by the ZBA to make a determination on the issue in question.

6. The property owner or applicant shall stake the corners of the subject parcel so that parcel corners and property lines are readily apparent.

**SECTION 41.06. Administrative Appeals**

The ZBA shall hear and decide appeals where it is alleged there is error of principle in any order, requirement, decision or determination made by the person or body charged with administration or enforcement of the Zoning Ordinance. Consideration of administrative appeals shall be subject to the following:

**A. Standing to Appeal**

Such appeals may be taken to the ZBA by the person, firm or corporation aggrieved, or by an official, department, board or commission of the Township affected by the order, requirement, decision or determination. Applications for administrative appeals shall be filed with the Township within thirty (30) calendar days of the order, requirement, decision or determination.

**B. Stay of Proceedings**

An appeal shall stay all administrative or enforcement proceedings associated with the appeal, unless the Building Director certifies to the ZBA that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. Under such circumstances, the proceedings shall not be stayed, other than by a restraining order, which may be granted by the ZBA or by a court of record on application.

**C. Review Criteria for Administrative Appeals**

The ZBA shall reverse an administrative decision only upon determining that the order, requirement, decision or determination:

1. Constituted an abuse of discretion;
2. Was arbitrary or capricious;
3. Was based upon an erroneous finding of a material fact; or
4. Was based upon an erroneous interpretation of the Zoning Ordinance.

After making such a determination, the ZBA may reverse or modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as, in its determination, ought to be made under the provisions of this Ordinance. In doing so, the ZBA shall exercise all authority granted by this Ordinance to the person or body from whom the appeal is taken.

**SECTION 41.07. Interpretation of Zoning District Boundaries**

Where an ambiguity exists as to zoning district boundaries, the ZBA shall have the power to interpret the Zoning Map in such a way as to carry out the intent and purposes of the Zoning Ordinance and Master Plan. The following rules shall apply to such interpretations:

1. Boundaries indicated as approximately following the centerlines of roads, highways, alleys, watercourses, lot lines, or municipal boundaries shall be construed to follow such lines.
2. Boundaries indicated as following railroad lines or utility easements shall be construed to be midway between the main tracks, or along the centerline of such easements.
3. Boundaries that parallel or are extensions of features indicated in this Section shall be so construed.
4. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the Map.
5. Where physical features existing on the ground are at variance with those shown on the Official Zoning Map, the ZBA shall interpret the district boundaries.

**SECTION 41.08. Interpretation of Zoning Ordinance Provisions**

The ZBA shall have the power to hear and decide requests for interpretations of Zoning Ordinance provisions in such a way as to preserve and promote the character of the zoning district in question, and carry out the intent and purpose of this Ordinance and Master Plan.

**SECTION 41.09. Variances**

The ZBA shall have the authority to grant variances from specific requirements of this Ordinance in accordance with the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended and the provisions of this Article.

The ZBA shall state the grounds upon which it justifies the granting or denying of a variance, and may consider lesser variances than that requested by an applicant. In granting a variance, the ZBA may impose conditions or limitations as it may deem reasonable in furtherance of the intent and purposes of this Ordinance.

**A. Dimensional Variances**

The granting of a variance from particular area, setback, frontage, height, bulk, density or other dimensional (non-use) standards of this Ordinance shall require a finding of practical difficulties, based upon the following criteria:

1. Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose.
2. The variance will do substantial justice to the applicant, as well as to other property owners, and a lesser variance than requested will not give substantial relief to the applicant or be consistent with justice to other property owners.
3. The need for the variance is due to unique circumstances peculiar to the land or structures involved that are not applicable to other land or structures in the same district.
4. The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.
5. The variance will not cause significant adverse impacts to adjacent properties, the neighborhood or the Township, and will not create a public nuisance or materially impair public health, safety, comfort, morals or welfare.
6. The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience, or an inability to attain a higher financial return.

**B. Use Variances**

The ZBA does not have the authority to consider or grant a use variance.

**SECTION 41.10. Exceptions**

To hear and decide requests for exceptions and other matters upon which this Ordinance specifically authorizes the ZBA to act (for example, in Article 30, the ZBA is given the authority to grant an exception from the strict application of the sign regulations). Any exception shall be subject to such conditions as the ZBA may require to preserve and promote the purpose of this Ordinance, and the character of the zoning district in question.

**SECTION 41.11. Hearings and Decisions**

The ZBA shall make no determination on a specific case until after a public hearing has been conducted. Each decision shall include a written record of the specific findings and determinations made by the ZBA in the case.

**SECTION 41.12. Fees**

A fee shall be paid, as established by the Township Board through its Fee Ordinance at the time the notice of appeal is filed with the Township.

**SECTION 41.13. Limitations of Authority**

The following specific limitations shall apply to the authority of the ZBA:

**A. Expiration of Approval**

No order of the ZBA permitting the erection or alteration of a structure, or use of a structure or land, shall be valid for a period longer than 365 days, unless a building permit for such erection or alteration is obtained within such period, or the use is lawfully established within such period.

**B. Limitations on Review**

The ZBA shall not have the authority to consider appeals of any decisions by the Planning Commission or Township Board regarding amendments to this Ordinance, special land uses, or planned unit developments. The ZBA's jurisdiction to consider appeals of site plan determinations shall be limited to the following:

1. Appeals of administrative decisions of the Planning Commission or Building Director regarding approval or denial of site plans.
2. Cases referred by the Planning Commission, where the Planning Commission has approved a site plan contingent upon approval of one or more variances by the ZBA. In such cases, the Planning Commission Secretary shall provide copies of the site plan, application materials and Planning Commission meeting minutes to the ZBA, and consideration shall be limited to the specific variances identified as conditions of site plan approval by the Planning Commission.

**C. Ordinance Changes Prohibited**

Nothing herein contained shall be construed to give or grant the ZBA the power or authority to alter or change the Zoning Ordinance or Zoning Map, since such power and authority has been reserved to the Township Board of the Charter Township of Commerce in the manner herein provided by law.

**SECTION 41.14. Appeal of Zoning Board of Appeals Decisions**

Any party aggrieved by any decision of the ZBA may appeal the decision to the Oakland County Circuit Court in the manner provided by the laws of the State of Michigan, provided such appeal is filed with the court within thirty (30) days of the date the ZBA certifies its decision in writing or approves the minutes for the meeting at which the decision was made.