

ARTICLE 17

ZONING BOARD OF APPEALS

Section 17.01 Authority.

The Zoning Board of Appeals (ZBA) is hereby established, which shall perform its duties as provided for in this Ordinance and the Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) in such a way that the objectives of this Ordinance shall be served, public health, safety and welfare protected, and substantial justice done.

Section 17.02 Membership.

The Zoning Board of Appeals shall consist of five (5) members and up to two (2) alternates appointed by the Township Board for three (3) year terms. Vacancies shall be filled for the remainder of the un-expired term by resolution of the Township Board. ZBA membership shall be subject to the following:

1. One (1) member shall be a member of the Planning Commission. The remaining four (4) members shall be selected from electors of the Township residing outside of incorporated cities and villages. One (1) member may be a member of the Township Board, provided that an elected officer shall not serve as Chair of the ZBA.
2. An employee or contractor of the Township shall not serve as a member of the ZBA.
3. Members of the ZBA may be removed from office for neglect of duty or malfeasance in office, including failure of a member with a conflict of interest to abstain from deliberations or voting on the matter, after written charges have been filed with the Township Clerk and a public hearing has been held by Township Board.
4. In the event a ZBA member is elected to Township Board and such election increases the number of Township Board members serving on the ZBA to more than one (1), then such member's seat on the ZBA shall be deemed vacant.
5. Alternate members may be called on a rotating basis to sit as members of the Zoning Board of Appeals in the absence of regular members. An alternate member may also be called on to serve in the place of a ZBA member, with the same voting rights, for the purpose of reaching a decision on a case in which the member has abstained because of a conflict of interest.

Section 17.03 Rules of Procedure.

The Zoning Board of Appeals shall conduct business, organize meetings, and perform its duties as provided for in this Ordinance, the Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended), any rules of procedure adopted by the ZBA, and the following:

1. The Board shall elect a Chair and Vice-Chair from the regular ZBA membership.
2. The ZBA shall not conduct business unless a majority of its members are present. All meetings shall be open to the public, and shall be held at the call of the Chair and at such other times as the ZBA may determine.
3. The concurring vote of a minimum of three (3) members of the ZBA shall be necessary to reverse an order, requirement, decision, or determination of an administrative official or body; to grant a dimensional (non-use) variance from any standard of this Zoning Ordinance; and to decide in favor of an applicant on any other matter upon which the ZBA is required to act. The concurring vote of a minimum of two-thirds (2/3) of the members of the ZBA [a minimum of four (4) members of a five (5) member board] shall be necessary to grant a use variance from this Ordinance.
4. The Zoning Board of Appeals shall make no determination on a specific case until after a public hearing has been held in accordance with Section 12.03 (Public Hearing Procedures). Each decision shall include a written record of the specific findings and determinations made by the ZBA in the case. No permit authorized by such a decision shall be issued until the decision has taken effect.
5. The ZBA shall return a decision on a case within 90 days after a request or appeal has been filed, unless a further time is agreed upon by the parties concerned.
6. Minutes shall be recorded of all proceedings, which shall contain evidence and data relevant to each case considered, together with the votes of the members and the final disposition of each case. Such minutes shall be filed with the Township Clerk and Zoning Administrator.
7. The Township Attorney shall act as legal counsel for the ZBA, and shall be present at meetings as requested by the Chair.
8. A member shall abstain from participating in a public hearing or voting on any question in which he or she has a conflict of interest. A ZBA member who is also a Township Board or Planning Commission member shall abstain from participating in a public hearing or voting on the same matter that the member previously voted on as a member of that other board or commission. The member may consider and vote on other unrelated matters involving the same property. Failure of a member to abstain in such cases shall constitute malfeasance of office.
9. Any person aggrieved by a decision of the Board of Appeals in a particular case shall have the right to appeal to the Circuit Court on question of law and fact. The appeal shall be filed within 30 calendar days after the Board of Appeals issues its written decision, signed by the Chair or acting Chair; or within 21 calendar days after the Board of Appeals approves the minutes of its decision.

Section 17.04 Applications.

Applications to the Zoning Board of Appeals shall be filed with the Township, with payment of

the review fee established by 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 plot plan of the site, drawn to scale with a north-arrow, showing all lot lines, street rights-of-way, easements, structures, setback dimensions, parking areas, driveways, sidewalks and other site improvements.
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.

Section 17.05 Administrative Appeals.

The Zoning Board of Appeals 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 21 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 Zoning Administrator certifies to the ZBA that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property.

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 17.06 Interpretation of Zoning District Boundaries.

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

1. Boundaries indicated as approximately following the centerlines of roads, 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 or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, the ZBA shall interpret the district boundaries.

Section 17.07 Interpretation of Zoning Ordinance Provisions.

A. Interpretations.

The Zoning Board of Appeals 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 the Township Master Plan.

B. Determinations of Similar Uses.

In recognition that every potential use cannot be addressed in this Ordinance, the ZBA shall have the authority to determine whether a proposed use not listed in this Ordinance is similar to a principal or special condition use permitted by this Ordinance, subject to the following:

1. Prior to making such a determination, the ZBA must find that the principal or special condition use closely resembles the proposed use in terms of characteristics, intensity, nature and other applicable common elements of such uses.

2. The ZBA may determine that the use is (or is not) similar to a use listed in this Ordinance, or may recommend to the Township Board that the proposed use be addressed through an amendment to this Ordinance.
3. If it is determined that there is no similar use listed in this Ordinance, the use shall be prohibited.
4. If it is determined that the proposed use is similar to a use listed in this Ordinance, the proposed use shall comply with any conditions or special condition use standards that apply to the listed use.
5. The ZBA may impose additional conditions or limitations upon the proposed use necessary to satisfy the intent and purposes of this Ordinance, to protect the health, safety, or welfare, or to preserve the social and economic well-being of adjacent residents and landowners, or the Township as a whole.

Section 17.08 Variances.

The Zoning Board of Appeals 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 for 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 standards 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.

In accordance with Section 604(9) of the Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended), the ZBA retains the authority to consider use variances. The granting of a variance from the use provisions of this Ordinance shall require a finding of unnecessary hardship, based upon the following criteria:

1. **The current zoning ordinance prohibits the property owner from securing any reasonable economic return or making any reasonable use of the property.** Under this standard, the ZBA must find that the property (land, structures and other improvements) is not suitable for uses permitted in the zoning district.
2. **The landowner's plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.** Circumstances common to the larger neighborhood may reflect the unreasonableness of the zoning itself, which should be addressed through a rezoning or other legislative action.
3. **The use variance, if granted, would not alter the essential character of the neighborhood.** This standard requires consideration of whether the intent and purpose of the Ordinance and zoning district will be preserved, and the essential character of the area will be maintained.
4. **The hardship is not the result of the applicant's actions.** Under this standard, the ZBA must determine that the hardship that led to the use variance request was not self-created by the applicant. Purchase of a property with a pre-existing hardship does not constitute a self-created hardship. Financial hardships that would prevent reasonable use of the property shall be considered, but shall not be the only determining factor in granting a use variance.

Section 17.09 Exceptions.

To hear and decide requests for exceptions and other matters upon 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 purpose of this Ordinance, and the character of the zoning district in question.

Section 17.10 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 uses, preferred class nonconforming designations, or planned developments. ZBA jurisdiction to consider appeals of site plan determinations shall be limited to the following:

1. Appeals of administrative decisions of the Planning Commission 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 Township Clerk and Zoning Administrator 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.

The ZBA shall not have the authority to alter this Zoning Ordinance or Map.

