

ARTICLE XXIII

BOARD OF ZONING APPEALS

Sec. 23.01 Creation and Membership:

- A. Establishment and Appointment of Members: The Board of Zoning Appeals first established by the Bloomer Township Zoning Ordinance of 1992 is hereby retained in accordance with Public Act 110 of 2006, as amended, and shall consist of five members: a member of the Planning Commission, and the remaining members appointed by the Township Board from the electors residing in the Township outside of incorporated cities and villages. A member of the Township Board may serve on the Board of Zoning Appeals but not serve as the chairperson. The Zoning Administrator or other employee or contractor of the Township Board may not serve on the Board of Zoning Appeals.
 - 1. Alternate Members: The Township Board may appoint not more than two (2) alternate members for the same term as regular members of the Board of Zoning Appeals. No alternate member may be either a member of the Township Board or the Planning Commission. The alternate members may be called as needed, on a rotating basis, to sit as regular members of the Board of Zoning Appeals in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings of the Board of Zoning Appeals. 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. An alternate member shall serve on a case until a final decision is made. The alternate member shall have the same voting rights as a regular member of the Board of Zoning Appeals.
- B. Terms of Office: Members shall be appointed for three (3) year terms except in the case of the Planning Commission and Township Board members, whose terms shall be limited to the time they are members of the Planning Commission or Township Board. A successor shall be appointed not more than one (1) month after the term of the preceding member has been expired. Vacancies for unexpired terms shall be filled for the remainder of the term. Members may be reappointed.
- C. Removal from Office / Conflict of Interest: A member of the Board of Zoning Appeals may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance 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 constitutes malfeasance in office.

Sec. 23.02 Procedures:

- A. The Board of Zoning Appeals shall adopt rules and regulations to govern its procedures. The Board of Zoning Appeals shall appoint one of its members as Chairman. The concurring vote of a majority of the members of the Board of Zoning Appeals shall be necessary to revise any order, requirements, decision or interpretation of the Zoning Administrator or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance or to effect any variation in this Ordinance.
- B. Meetings of the Board of Appeals shall be held at the call of the Chairman and at such other times as the Board in its rules of procedure may specify. Minutes shall be kept of each meeting and the Board shall record into the minutes all findings, conditions, facts, and other relevant factors, including the vote of each member upon each question, or if absent or failing to vote indicating such fact, and all of its official actions. All meetings and records shall be open to the public. All minutes shall be filed in the office of the Township Clerk.
- C. All applications to the Board of Zoning Appeals for an interpretation, variance, or appeal of an administrative decision, shall be subject to a public hearing. Notice of such hearing shall be provided

according to Section 22.07.

Sec. 23.03 Duties and Powers:

The Board of Zoning Appeals shall act upon questions as they arise in the administration of this Ordinance and take other actions as specified in this Ordinance. The Board of Zoning Appeals shall perform its duties and exercise its powers as provided in Public Act 110 of 2006, as amended. The Board of Zoning Appeals shall not have the power to alter or change the zoning district classification of any property, nor make any change in the terms or intent of this Ordinance, but does have the power to act on those matters so specified in this Ordinance including interpretations, variances and appeals of administrative decisions.

Sec. 23.04 Administrative Review and Interpretations:

- A. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirements, decision or determination of the Zoning Administrator or by any other official or body in administering or enforcing the provisions of this Ordinance. A member of the Board of Zoning Appeals who is also a member of the Planning Commission or the Township Board shall not participate in a public hearing, deliberation, or vote, on the same matter that the member voted on as a member of the Planning Commission or the Township Board. However, the member may consider and vote on other unrelated matters involving the same property.
- B. The Board of Zoning Appeals shall have the power to make interpretations of the Zoning Ordinance including:
 - (1) Interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance.
 - (2) Determine the precise location of the boundary lines between Zoning Districts when there is dissatisfaction with a decision made by the Zoning Administrator.
 - (3) Classify a use which is not specifically mentioned as a part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district.
 - (4) Determine the parking space requirements of any use not specifically mentioned either by classifying it with one of the groups listed in ARTICLE XVII by an analysis of the specific needs.

Sec. 23.05 Variances:

- A. The Board of Zoning Appeals shall have the power and duty to authorize upon appeal in specific cases such variance from the provisions of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship or practical difficulty.
- B. A variance shall not be granted by the Board of Zoning Appeals unless and until the following conditions are met:
 - (1) A written application for a variance is submitted, demonstrating:
 - (a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.
 - (b) That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
 - (c) That the special conditions and circumstances necessitating the variance did not result from the actions of the applicant.

- (d) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
- C. Any nonconforming use of neighboring lands, structures, or buildings shall not be considered grounds for the issuance of a variance.
- D. The Board of Zoning Appeals shall make findings that the requirements of this Section have been met by the applicant.
- E. The Board of Zoning Appeals shall further find that the reasons set forth in the application justify the granting of the variance, and that it is the minimum variance that will make possible the reasonable use of the land, building or structure.
- F. The Board of Zoning Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public interest.
- G. In granting any variance, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.
- H. Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
- I. In exercising the above-mentioned powers, the Board of Zoning Appeals may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm wholly or partly or may modify the order, requirements, decision, or determination appealed from and may make such order, requirements, decision, or determination as ought to be made, and to that end shall have the powers of the public official from whom the appeal is taken.
- J. Each variance granted under the provisions of this Ordinance shall become null and void unless the occupancy of land or buildings, or the construction authorized by such variance has commenced within one hundred eighty (180) days after the granting of such variance.

Sec. 23.06 Appeals:

- A. Appeals concerning interpretation and administration of this Ordinance shall be made by filing a notice of appeal specifying the grounds thereof with the Township Clerk within a period of thirty (30) days from the occurrence of the contested action. The Clerk shall transmit to the Board copies of all papers constituting the record upon which the action appealed from was taken.
- B. A fee shall be paid to the Township Clerk at the time of filing the notice of appeal and shall be deposited in the Township's general fund. The appeal fee shall be established by the Township Board.
- C. Any party or parties may appear at the hearing in person or by agent or attorney.
- D. The Board of Zoning Appeals shall decide upon all matters within a reasonable time. The decision of the Board shall be in the form of a resolution containing a full record of its findings and determinations in each case.
- E. An appeal shall stay all proceedings in furtherance of the action appealed, unless the Building Inspector or Zoning Administrator certifies to the Board, that a stay would in his opinion, cause imminent peril to life or property, in which case the proceedings should not be stayed, other than by a restraining order granted by the courts.

Sec. 23.07 Duties on Matters of Appeal:

All questions concerning application of the provisions of this Ordinance shall first be presented to the Zoning Administrator. Such questions shall be presented to the Board of Zoning Appeals only on appeal from the decisions of the Zoning Administrator. Recourse from decisions of the Board of Zoning Appeals shall be to the Circuit Court of Montcalm County, as provided by law.

(Article XXIII amended 8-20-12, Sec. 23.01, 23.02, 23.03, 23.04)