

16-104 ZONING BOARD OF APPEALS

16.104.01 ESTABLISHMENT OF ZONING BOARD OF APPEALS

The zoning board of appeals is established and shall have the authority and responsibilities conferred by law and this ordinance.

16.104.02 MEMBERSHIP

The Zoning Board of Appeals shall consist of five members. The members shall be appointed by affirmative majority vote of the members of the Township Board serving.

- A. One member of the Zoning Board of Appeals shall be a member of the Township Planning Commission.
- B. One regular or alternate member of a zoning board of appeals may be a member of the Township Board. Such a member shall not serve as chairperson of the zoning board of appeals.
- C. The remaining members of the Zoning Board of Appeals and alternate members shall be electors of the Township residing within its zoning jurisdiction and shall be representative of the population distribution and of the various interests present in the local unit of government.
- D. There may be not more than two alternate members of the Zoning Board of Appeals, appointed in the same manner as regular members.

16-104.03 TERMS OF OFFICE

The appointed members of the Zoning Board of Appeals shall have a term of office of three years from the effective date of the appointment. Appointments for new members may be less than 3 years to provide for staggered terms. A successor shall be appointed or a member re-appointed not more than one month after the term of a member has expired.

- A. The term of the Zoning Board of Appeals members who are a Township Board member and a Planning Commission member shall coincide with their respective terms as members of the Township Board and the Planning Commission.
- B. A vacancy on the Zoning Board of Appeals shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

16-104.04 JURISDICTION

- A. The Zoning Board of Appeals shall act upon all questions arising in the administration of this ordinance, including interpretation of the zoning map and the ordinance.
- B. The Zoning Board of Appeals shall hear and decide all appeals from and review any administrative order, requirement, decision, or determination made by the Zoning Administrator, other administrative official or body charged with enforcement of this ordinance.
- C. As may be further conditioned by provisions of law or this ordinance, the Zoning Board of Appeals shall hear and decide all petitions for nonuse variances.
- D. The Zoning Board of Appeals shall hear and decide all matters assigned to it for decisions under the terms of this ordinance.
- E. The Zoning Board of Appeals shall have no jurisdiction or authority over or with regard to the following:
 - 1. Any aspect or part of an application for approval of a special land use, planned unit development.
 - 2. An appeal from any aspect or part of a determination or decision made with regard to a special land use, planned unit development.
- F. An appeal to the Zoning Board of Appeals stays all proceedings in furtherance of the action appealed. However, if the body or officer from whom the appeal is taken certifies to the Zoning Board of Appeals, after the notices of appeal is filed, that by reason of facts stated in such certificate, a stay, in the opinion of the body or officer, will cause imminent peril to life or property, proceedings may be stayed only by a restraining order issued by the Zoning Board of Appeals or a circuit court.

16-104.05 RESERVED**16-104.06 VARIANCES**

The Zoning Board of Appeals may grant a nonuse variance based upon a written application demonstrating that practical difficulties exist in the way of carrying out the strict letter of this zoning ordinance relating to the construction, structural changes, or alteration of buildings or structures relating to dimensional requirements of this ordinance or to any other nonuse related standard in this ordinance, provided the applicant demonstrates and the Zoning Board of Appeals finds that the claimed practical difficulties, conform to the standards as set forth below:

- A. Strict compliance with the restrictions governing area, setbacks, frontage, height, bulk, density and other similar items unreasonably prevents the owner from using the property for a permitted purpose or would render conformity with said restrictions excessively burdensome;
- B. The variance would do substantial justice to the applicant as well as to other property owners in the zoning district as well as nearby owners in other districts; The relaxation of restrictions would not exceed what is needed to provide relief to the applicant and continue justice for others;
- C. The practical difficulty of the property owner is due to unique circumstances of the property in that special conditions exist which are peculiar to the land, structures, or buildings involved and which are not generally applicable to other lands, structures, or buildings in the

same zoning district; and

- D. The practical difficulty is not self-created.

The Zoning Board of Appeals may impose conditions upon the granting of a variance as may be permitted by law and ordinance.

No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

16-104.07 TIME LIMITATIONS ON VARIANCES

Unless the Zoning Board of Appeals has established other time limits as a condition of granting a variance, a variance expires and becomes null and void if within twelve months after it was granted, the applicant has not obtained all required permits and commenced the project authorized by the variance or if the project has not been completed within one year after it was commenced. The Zoning Board of Appeals may grant one or more extensions of up to one additional year each, upon request by the applicant. Any request for an extension shall be considered at a public meeting of the Zoning Board of Appeals, but public notice and a public hearing shall not be required.

16-104.08 APPEALS AND OTHER APPLICATIONS FOR RELIEF

- A. An appeal to the Zoning Board of Appeals may be taken by a person aggrieved or by an officer, department, or board of this state or Charter Township of Oakland. In addition, a variance in this ordinance may be applied for and granted under Section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under the Michigan Zoning Enabling Act, as amended. The Zoning Board of Appeals shall state the grounds of any determination made by the board.
- B. The Zoning Board of Appeals shall hear and decide a written request seeking an interpretation of the zoning ordinance.
- C. An appeal under this section shall be taken within such time as prescribed by the Zoning Board of Appeals by general rule, by filing with the body or officer from whom the appeal is taken and with the Zoning Board of Appeals a notice of appeal specifying the grounds for the appeal. The body or officer from whom the appeal is taken shall immediately transmit to the Zoning Board of Appeals all of the papers constituting the record upon which the action appealed from was taken.
- D. An appeal shall be filed not later than 30 days after the order, decision, or determination as to which the application or appeal is taken.
- E. An applicant seeking relief within the jurisdiction of the Zoning Board of Appeals shall apply for such relief by means of application form provided by the Township and shall pay a required application fee and deposit any required sum into a Township escrow account for the purpose of any required reimbursement of Township expenses incurred in the consideration of the application.

16-104.09 DECISIONS OF THE ZONING BOARD OF APPEALS

- A. The Zoning Board of Appeals shall decide all applications and appeals within a reasonable time.

- B. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify, the order, requirement, decision, or determination that is being appealed and may issue or direct the issuance of relevant Township permits.
- C. The concurring vote of a majority of the members of the Zoning Board of Appeals is necessary to reverse an order, requirements, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the Zoning Board of Appeals is required to pass under this zoning ordinance, or to grant a variance in the zoning ordinance.
- D. The Township building official shall incorporate the terms and conditions of the Zoning Board of Appeal's decision in any permit issued to the applicant pursuant to the decision.
- E. A decision of the Zoning Board of Appeals shall be final. A party aggrieved by the decision may appeal to the circuit court, within the time, to the extent and in the manner permitted by law.
- F. A member of the Zoning Board of Appeals who is also a member of the Township Board or the Planning Commission shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Township Board or the Planning Commission. However, the member may consider and vote on other unrelated matters involving the same property.

16-104.10 OFFICERS

- A. The Zoning Board of Appeals shall elect from its members a chairperson, vice chairperson and secretary.
- B. The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses.
- C. A Zoning Board of Appeals member who is a Township Board member shall not serve as chairperson of the Board of Appeals.
- D. An officer of the Zoning Board of Appeals shall have a term of one year and until the officer is re-elected, or a successor is elected and qualifies. The election of officers shall be undertaken at the first regular meeting of each year or at a special meeting if placed on the agenda.
- E. An alternate member of the Zoning Board of Appeals shall not be eligible for election as an officer of the Zoning Board of Appeals.

16-104.11 MEETINGS AND PROCEDURES

- A. The Zoning Board of Appeals shall adopt bylaws and rules to govern its procedures sitting as a Zoning Board of Appeals and for the conduct of its meetings and related purposes subject to Board of Trustee approval.
- B. The Zoning Board of Appeals shall not conduct business unless a majority of the regular members are present, including any alternate members serving in the absence of a regular member in accordance with Section 16 104.12. Three members shall constitute a quorum.
- C. At the first regular meeting of each calendar year, the Zoning Board of Appeals shall adopt and provide public notice of a schedule of its regular meetings in accordance with the Open

Meeting Act, as amended provided however, that a meeting need not be held if pending matters do not warrant a meeting.

- D. The Zoning Board of Appeals may convene special meetings at such times as it shall determine, subject to compliance with the Open Meetings Act, as amended.
- E. The Zoning Board of Appeals shall conduct a public hearing on an appeal or interpretation request and decide the matter within a reasonable time. At a hearing, the party making the appeal or interpretation request may appear personally or by agent or attorney. Notice of a public hearing for an interpretation request which does not involve a specific parcel of property need only conform to Section 16-103 of this ordinance and given to the person making the request.
- F. All meetings subject to this ordinance shall be conducted in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at other times as the Zoning Board of Appeals in its rules of procedure may specify or as may be required by law.
- G. The Zoning Board of Appeals shall maintain a record of its proceedings which shall be filed in the office of the clerk of the legislative body.

16-104.12 ALTERNATE MEMBERS

- A. The Township Board may appoint not more than two alternate members of the Zoning Board of Appeals, in the same manner as regular members are appointed.
- B. An alternate member may serve as a member of the Zoning Board of Appeals in the absence of a regular member if the regular member will be unable to attend one or more meetings
- C. An alternate member may also serve as a member of the Zoning Board of Appeals for the purpose of reaching a decision on a case in which a regular member has abstained because of a conflict of interest.
- D. An alternate member who is called to serve in a matter before the Zoning Board of Appeals shall serve in that specific matter until a decision is made, whether at one or more meetings.
- E. An alternate member of the Zoning Board of Appeals has the same voting rights as a regular member of the Zoning Board of Appeals.

16-104.13 REMOVAL OF MEMBERS; CONFLICTS OF INTEREST

- A. A member of the Zoning Board of Appeals may be removed by the Township Board for misfeasance, malfeasance or nonfeasance in office, upon a written charge specifying the reasons or grounds for the proposed removal and after a public hearing by the Township Board. At the public hearing, the member who is proposed to be removed shall be given an opportunity to address the Township Board. Pursuant to Section 8(a) of the Open Meetings Act, as a public officer, an Appeals Board member who is subject to dismissal, suspension or discipline may request a closed hearing.
- B. A member of the Zoning Board of Appeals shall disqualify himself or herself from voting on a matter in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from voting in a matter in which the member has a conflict of interest constitutes malfeasance in office. A member who is concerned that circumstances related to a matter maybe the source of a conflict of interest, may disclose the circumstances to the Board

of Appeals. The Zoning Board of Appeals may then disqualify the member if it finds that a conflict of interest may exist which would impair the ability of the member to render a fair and impartial decision.

16-104.14 APPEALS FROM DECISIONS OF THE BOARD OF APPEALS

- A. Any party aggrieved by a decision of the Zoning Board of Appeals may appeal to the circuit court as provided by law
- B. An appeal from a decision of the Zoning Board of Appeals shall be filed within 30 days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson if there is then a chairperson, or signed by another member of the Zoning Board of Appeals, if there is then no chairperson, or within 21 days after the Zoning Board of Appeals approves the minutes of the meeting at which its decision was taken.