

# **ARTICLE XIX**

## **BOARD OF ZONING APPEALS**

### **SECTION 19.01 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 Zoning Appeals. The Board of Zoning Appeals was established pursuant to the Zoning Act. Any conflict between this Article and state law shall be resolved in favor of the applicable state law.

### **SECTION 19.02 MEMBERSHIP – TERMS OF OFFICE**

- A. The Township Board of Zoning Appeals shall consist of five (5) members. The first member of such Board of Zoning Appeals shall be a member of the Township Planning Commission; the second member may be a member of the Township Board; the additional members shall be selected from the electors residing in the Township, provided that an employee or contractor of the legislative body may not serve as a member of the Zoning Board of Appeals. A member of the legislative body may serve as an alternate member of the Zoning Board of Appeals. A member of the legislative body who is a member of the Zoning Board of Appeals shall not serve as chairperson of the Zoning Board of Appeals. All members shall be appointed by the Township Board. The terms of office for members appointed to the zoning board of appeals shall be for 3 years, except for members serving because of their membership on the planning commission or legislative body, whose terms shall be limited to the time they are members of those bodies. When members are first appointed, the appointments may be for less than 3 years to provide for staggered terms. A successor shall be appointed not more than one month after the terms of the preceding members has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.
- B. The Township Board may appoint up to two (2) alternate members for the same terms as the regular members. An alternate member may be called as specified to 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 (1) or more meetings. An alternate member may also be called to serve as 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 shall serve in the case until a final decision is made. The alternate member shall have the same voting rights as a regular member.
- C. A member of the zoning board of appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties.

### **SECTION 19.03 DUTIES AND POWERS**

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

- A. Appeals. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator or other administrative officer or body of the Fruitland Township in the administration of

this Ordinance, including the interpretation of the zoning maps and may adopt rules to govern its procedures sitting as a Board of Zoning Appeals.

- B. Interpretation. The Board of Zoning Appeals shall have the power to:
1. Hear and decide on matters referred to the Board of Zoning Appeals or upon which the Board of Zoning Appeals is required to pass under a zoning ordinance adopted under this act.
  2. Determine the precise location of boundary lines between zoning districts upon appeal from a decision by the Zoning Administrator upon said subject.
    - a. Where disputes arise as to the location of the flood hazard area boundary or the limits of flood risk zones A1-A30, the Zoning Board of Appeals shall resolve the dispute and establish the boundary location. In all cases, the decision of the Zoning Board of Appeals shall be based upon the most current floodplain studies issued by the Federal Insurance Administration. Where Federal Insurance Administration information is not available, the best available floodplain information shall be utilized.
    - b. Where a dispute involves an allegation that the boundary is incorrect as mapped and Federal Insurance Administration floodplain studies are being questioned, the Zoning Board of Appeals shall modify the boundary of the flood hazard area or the zones defining the floodway only upon receipt of an official letter of map amendment issued by the Federal Insurance Administration. All parties to a map dispute may submit technical evidence to the Zoning Board of Appeals.
  3. It shall hear and decide appeals from and review any administrative order requirement, decision or determination made by an administrative official or body charged with enforcement of a zoning ordinance adopted under this act.
  4. For special land use decisions and decisions regarding Planned Unit Developments, an appeal shall not be taken to the Board of Zoning Appeals.
- C. Variances. The Board of Zoning Appeals shall have the power to authorize specific variances from the requirements of this Ordinance. The Zoning Board of Appeals shall have no authority to grant a use variance for a use not otherwise permitted in a zoning district.
- D. 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 a 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. A member of the Zoning Board of Appeals who is also a member of the Planning Commission or the Fruitland Township Board shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission or the Fruitland Township Board. The member may consider and vote on the other unrelated matters involving the same property.

- E. A Board of Zoning Appeals shall not conduct business unless a majority of the regular members of the Board of Zoning Appeals are present.

#### **SECTION 19.04 MEETINGS**

Meetings shall be open to the public, and shall be held at the call of the Chairperson and at such other times as the Board of Zoning Appeals shall specify in its rules of procedure. Minutes shall be taken at all meetings and filed with the Township Clerk.

#### **SECTION 19.05 APPLICATIONS AND HEARINGS**

- A. An application to the Board of Zoning Appeals shall consist of a completed application form, provided by the Township, a fee established by the Township Board, which shall be paid to the Township Clerk at the time of filing, and a scaled drawing with sufficient detail to indicate the nature and necessity of the request. The Board of Zoning Appeals may request additional detail on the drawing or other information which they deem necessary to make a decision on the application. Applications must be filed at least thirty (30) days before a meeting in order to be placed on the meeting agenda.
- B. Upon receipt of a completed application, the Secretary shall cause notices stating the time, place and subject of the hearing to be served personally or by mail addressed to the parties submitting the application, and those persons residing within three hundred (300) feet of the property which is the subject of the application. All notices shall be sent to the addresses listed in the last assessment roll. Such notices shall be sent in accordance with the Zoning Act and Article XXI of this ordinance. The Board may recess such hearings from time to time, and, if the time and place of the continued hearing is publicly announced at the time of adjournment, no further notice shall be required.
- C. At the hearing, a party may appear in person or by agent.

#### **SECTION 19.06 DECISIONS**

- A. The concurring vote of a majority of the membership of the Board of Zoning 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 affect any variance in this Ordinance.
- B. The Board of Zoning Appeals shall return a decision upon each case within a reasonable time after the scheduled hearing has been held, unless an extension of time is agreed upon with the applicant and the Board. The Board may specify such conditions, in writing, that in its judgement are necessary to obtain the objectives intended by the Ordinance requirements for which the variance is granted and otherwise address matters relating to the health, safety, and welfare of neighbors. The breach of such conditions shall automatically void the variance granted.
- C. Any decision of the Board shall not become final until the expiration of two (2) days from the date of the decision order, 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.
- D. The decision of the Board of Zoning Appeals shall be final; however, any person having an interest affected by any such decision shall have the right to appeal to the Circuit Court on questions of law and fact. Such appeal shall be filed within 30 days after the

Zoning Board of Appeals certifies its decision in writing signed by the chairperson, or 21 days after the Zoning Board of Appeals approves the minutes of the decision. The records of the Zoning Board of Appeals shall be made available for the court's review.

- E. Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:
- a. complies with the constitution and laws of the state;
  - b. is based upon proper procedure;
  - c. is supported by competent, material and substantial evidence on record;
  - d. represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

If the court finds that record inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented, the court shall order further proceedings on the conditions that the court considers proper. The zoning board of appeals may modify its findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary record and decision shall be filed with the court. The court may affirm, reverse or modify the decision. An appeal under this section shall be filed within 30 days after the zoning board of appeals certifies its decision in writing or 21 days after the Zoning Board of Appeals approves the minutes of its decision. The court shall have jurisdiction to make such further orders as justice may require. An appeal may be had from the decision of any circuit court to the court of appeals.

- F. Any party aggrieved by any order, determination or decision of any officer, agency, board, commission, zoning board of appeals or legislative body of any local unit of government made under section 208 may obtain a review in the circuit court for the county in which the property is located. The review shall be in accordance with Paragraph E.
- G. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination and may issue or direct the issuance of a permit.
- H. Each decision entered under the provisions of this Article shall become null and void unless the construction or other action authorized by such decision has been started within one hundred eighty (180) days after the decision was made and is being carried forward to completion or occupancy of land, premises or buildings.
- I. No application 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 the grounds of changed conditions that would significantly change the nature of the request or affect the reasons for denial first ordered by the Board.

#### **SECTION 19.07 APPEALS**

- A. Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department or board of the Township, or bureau of the state or local unit of government. In addition, a variance in the zoning 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 this act. The zoning board of appeals shall state the

grounds of any determination made by the board. Applications for appeals shall be filed within five (5) days after the date of the decision which is the basis of the appeal. The appellant must file with the Zoning Administrator a notice of appeal specifying the nature and grounds for the appeal. The Zoning Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

- B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Zoning 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 Zoning Appeals, or, on application, by the Circuit Court when due cause can be shown.
- C. The Board of Zoning Appeals shall base its decision upon the record submitted to the person or body responsible for making the decision which is being appealed. No additional information or evidence shall be submitted by the appellant which was not otherwise available to the person or body making the decision from which the appeal was taken.
- D. Following the receipt of a written request concerning a request for a variance, the zoning board of appeals shall fix a reasonable time for the hearing of the request and give notice as provided in Section 22.01.
- E. 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.
  - 1. The notice for a hearing for a request for an Ordinance interpretation which does not apply to a specific piece of property shall be sent to the person requesting the interpretation.
  - 2. For an Ordinance text amendment or an Ordinance interpretation which applies to a specific property, notice shall be provided as required by the Zoning Act and Section 21.04 B. of this ordinance.

#### **SECTION 19.08 REVIEW STANDARDS FOR VARIANCES**

- A. Non-Use Variance: non-use or dimensional variance may be allowed by the Board of Zoning Appeals only in cases where there is reasonable evidence of practical difficulty in the official record of the hearing and that ALL of the following conditions are met:
  - 1. Granting the variance will not be contrary to the public interest and will ensure that the spirit of this Ordinance is observed.
  - 2. Granting the variance will not cause substantial adverse effect to property or improvements in the vicinity or in the district in which the subject property is located.
  - 3. The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practicable.

4. That there are practical difficulties in the way of carrying out the strict letter of these regulations which are caused by exceptional or extraordinary circumstances or conditions applying to the property involved, or to the intended use of the property or uses in the vicinity in the same zoning district. Exceptional or extraordinary circumstances or conditions include:
    - a. exceptional narrowness, shallowness or shape of a specific property on the effective date of this Article;
    - b. exceptional topographical conditions;
    - c. any other physical situation to the land, building or structure deemed by the Board of Zoning Appeals to be extraordinary; or
    - d. by reason of the use or development of the property immediately adjoining the property in question.
  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 and that the variance is the minimum necessary.
  6. That the variance is not necessitated as a result of any action or inaction of the applicant.
- B. Flood Hazard Area Variances: Variances from the provisions of Article XVIII dealing with flood hazard areas shall only be granted by the Zoning Board of Appeals upon a determination of compliance with the general standards for variances contained in this Ordinance and each of the following specific standards.
1. In addition to the foregoing a variance shall be granted only upon:
    - a. A showing of good and sufficient cause;
    - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
    - c. A determination that the granting of a variance will not result in flood heights in excess of that permitted by Section 18.03, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances; and
    - d. Any variance granted shall be the minimum necessary, considering the flood hazard, to afford relief to the applicant.
  2. The Fruitland Township Zoning Board of Appeals may attach conditions to the granting of a variance flood hazard area to insure compliance with the standards maintained in the Fruitland Township Zoning Ordinance.
  3. For land located in a flood hazard area variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the Michigan Historic Markers listing of historic sites, or any other state register of historic places without regard to the requirements of this Section.