

15.2600 CHAPTER 26
TOWNSHIP ZONING BOARD OF APPEALS

15.2601 SECTION 26.01 CREATION AND MEMBERSHIP

1. There is created a Township Board of Appeals which shall be constituted and appointed as provided in the Zoning Act.
2. The Township Board of Appeals shall consist of five (5) members, including a member of the Township Board and a member of the Planning Commission, and three (3) additional members.
3. All members shall be appointed by the Township Board. The additional members shall not be elected officers or employees of the Township.
4. The additional members shall be appointed for three (3) year terms; the Planning Commission and Township Board representatives, who shall not be the same member, shall only serve while holding membership on those respective bodies.
5. Up to two (2) alternate members may be appointed by the Township Board for three (3) year terms. If two (2) alternate members have been appointed, they may be called on a rotating basis, as they are available, to sit as regular members of the Board of Appeals in the absence of a regular member for one (1) or more meetings or for the purpose of reaching a decision on a case in which the regular member has declared a conflict of interest. The alternate member appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Board of Appeals.
 - A. Alternate members shall be expected to regularly attend Board of Appeals meetings as if they were regular members rather than alternates.
 - B. Alternate members shall be allowed to participate in the discussion of a case by the Board of Appeals, up until the time a motion has been made, has been seconded, and is ready for a vote. Alternate members shall not participate in the vote, unless they have been appointed to replace regular members of the Board of Appeals.
 - C. To facilitate their participation in the discussion of a case, alternate members shall sit with the regular members during a meeting of the Board of Appeals. (ord. no. 441 eff. March 23, 2007)

15.2602 SECTION 26.02 JURISDICTION AND POWERS

The Township Zoning Board of Appeals shall have the following jurisdiction and powers:

1. The jurisdiction and power to hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator or the Planning Commission, excluding those relating to special land uses made by the Planning Commission. The Township Zoning Board of Appeals may reverse or affirm wholly or partly, or may modify such order, requirement, decision, or determination as in its opinion ought to be done, and to that end it shall have the power to direct the issuance of a permit, but shall not attempt to review or alter the decision of the Planning Commission with regard to special land uses.
2. The jurisdiction and power to act upon all questions as they may arise in the administration and enforcement of this Ordinance, including interpretation of the Zoning Map and Ordinance text.
3. The jurisdiction and power to authorize, upon appeal, a variance or modification of this Ordinance where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Ordinance so that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done.
4. Pursuant to Section 26.04 of this Ordinance, the Township Zoning Board of Appeals shall not have jurisdiction to reverse decisions involving Special Land Use or Planned Unit Development.

15.2603 SECTION 26.03 RULES OF PROCEDURE

All appeals and all applications to the Township Zoning Board of Appeals shall be in writing and in form prescribed by the Township. In the event of an appeal from any order, requirements, decision, or determination of an administrative official or body, a notice of appeal shall be filed with such official or body and with the Township Zoning Board of Appeals and such official or body shall forthwith transmit to the Township Zoning Board of Appeals all papers constituting the record upon which the action appealed from was taken. The Township Zoning Board of Appeals shall fix such further rules and regulations governing its procedures as said Board deems necessary, which rules and regulations shall be made available to the public and shall be in conformance with this Ordinance and the Zoning Act.

15.2604 SECTION 26.04 MAJORITY VOTE

The concurring vote of a majority of the membership of the Township Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the appellant or applicant on any matters appealed or presented. However, the

Zoning Board of Appeals shall not reverse a decision regarding a Special Land Use or Planned Unit Development.

15.2605 SECTION 26.05 VARIANCES

1. Except as otherwise provided, to authorize a non-use or dimensional variances from the strict applications of the provisions of this Ordinance, the Zoning Board of Appeals shall apply the following standards and shall make an affirmative finding as to each of the matters set forth in each of such standards:
 - A. That there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning classification. Exceptional or extraordinary circumstances or conditions include:
 - 1) exceptional narrowness, shallowness or shape of a specific property on the effective date of this Ordinance, or amendment thereto;
 - 2) exceptional topographic conditions;
 - 3) any other physical situation on the land, building or structure deemed by the Zoning Board of Appeals to be extraordinary; or
 - 4) by reason of the use or development of the property immediately adjoining the property in question.
 - B. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity, provided that possible increased financial return shall not of itself, be deemed sufficient to warrant a variance.
 - C. That authorization of such variance will not be of substantial detriment to adjacent property, and will not materially impair the intent and purpose of this Ordinance or the public health, safety, and general welfare of the community.
 - D. That the condition or situation of the specific piece of property or the intended use of said property for which the variance is sought, is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such condition or situation, a part of this Ordinance.

2. A use variance may be allowed only in cases where two-thirds of the members of the Board of Appeals approve the use variance after finding there is reasonable evidence of unnecessary hardship in the official record of the hearing and that all of the following conditions are met.
 - A. The building, structure, or land cannot yield a reasonable return if required to be used for a use allowed in the zoning district in which it is located.
 - B. There are unnecessary hardships 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, that do not generally apply to other property or uses in the vicinity in the same zoning district. Exceptional or extraordinary circumstances or conditions include:
 - 1) exceptional narrowness, shallowness or shape of a specific property on the effective date of the applicable provision(s) of this Ordinance;
 - 2) exceptional topographic conditions;
 - 3) any other physical situation on the land, building or structure deemed by the Board of Appeals to be extraordinary; or
 - 4) the use or development of the property immediately adjoining the property in question.
 - C. The proposed use will not alter the essential character of the neighborhood.
 - D. The variance is not necessitated as a result of any action or inaction of the applicant.
 - E. Prior to the Board of Appeals granting a request for a use variance, the Board of Appeals shall request that the Planning Commission consider the request and forward a report to the Board of Appeals as to whether or not the property may be reasonably used for a use permitted under the existing zoning classification (i.e., without a use variance), and whether or not the request may alter the essential character of the neighborhood if granted. For this report the Planning Commission shall consider the Master Plan, the ability of the property owner to use the property for a use already permitted under the existing zoning classification, the effect of the request on the essential character of the neighborhood, and any

other detrimental effects for the neighborhood which would result from the granting of the request. (ord. no. 441 eff. March 23, 2007)

3. In some instances, the Zoning Board of Appeals may be asked to consider a variance for a proposal which will subsequently require approval by the Planning Commission (e.g. site plan review, special land use review, Planned Unit Development review, etc.). Prior to the Zoning Board of Appeals granting a request for such a variance, the Zoning Board of Appeals may request that the Planning Commission consider the request and forward a report to the Zoning Board of Appeals. This report should list any specific concern(s) that the Planning Commission may have with the implications of the requested variance on the Planning Commission's decision to grant approval on the subsequent request. (amend. by ord. no. 425 eff. October 20, 2006)

15.2606 SECTION 26.06 FLOOD HAZARD AREA ZONE VARIANCES

1. Variances from the provisions of Chapter 22 (Flood Hazard Areas) shall only be granted by the Township 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:
 - A. A variance shall not be granted within a regulatory floodway where the result would be any increase in flood levels during a base flood discharge, except upon certification by a registered professional engineer or the Department of Natural Resources that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not harmfully increase the water surface elevation of a base flood. In determining whether a harmful increase will occur, compliance with applicable State law, shall be required, provided that the allowable increase, including the increase used as the design standard for delineating the floodway, shall not exceed one (1) foot.
 - B. A variance shall be granted only upon:
 - 1) A showing of good and sufficient cause;
 - 2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - 3) A determination that the granting of a variance will not result in flood heights in excess of those permitted by this Ordinance, 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.

- C. The variance granted shall be the minimum necessary, considering the flood hazard, to afford relief to the applicant.

- 2. The Zoning Board of Appeals may attach conditions to the granting of a variance to insure compliance with the standards contained in this Ordinance.

- 3. 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 governing variances in flood hazard areas.

15.2607 SECTION 26.07 CONDITIONS

- 1. The Township Zoning Board of Appeals may impose reasonable conditions in conjunction with the approval of a variance. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility needs caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land, in a socially and economically desirable manner. Conditions imposed shall meet the requirements of the Zoning Act.

- 2. The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action, and shall remain unchanged except upon the mutual consent of the Township Zoning Board of Appeals and the landowner. The Township Zoning Board of Appeals shall maintain a record of conditions which are changed.

15.2608 SECTION 26.08 PERIOD OF VALIDITY

- 1. When approval of the Township Zoning Board of Appeals is given for a use which is temporary in nature, the period for which such use is authorized shall be stated in the written decision of said Board and upon the expiration of such period such authorization shall cease and be of no further effect.

- 2. No decision of the Township Zoning Board of Appeals permitting the erection of a structure shall be valid for a period longer than one (1) year, unless a zoning permit for such erection or alteration is obtained within such year and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

3. No decision of the Township Zoning Board of Appeals permitting a use of a structure or premises shall be valid for a period longer than one (1) year unless such use is established within such year; provided, however, that where such use permitted is dependent upon the erection or alteration of a structure such decision shall continue in force and effect if a zoning permit for such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

15.2609 SECTION 26.09 FEES

All appeals or applications to the Township Zoning Board of Appeals shall be accompanied by payment of such fees as shall from time to time be established by resolution of the Township Board.