

18.0 ZONING BOARD OF APPEALS

18.1 ESTABLISHMENT

The Township Board, exercising the authority of Act 184 of the Public Acts of 1943, as amended, hereby provides that a Township Zoning Board of Appeals be established. Upon adoption of this Ordinance, the Zoning Board of Appeals established under the terms of the previous Zoning Ordinance shall remain in office, including all members thereof.

18.2 MEMBERSHIP

The Tittabawassee Township Zoning Board of Appeals shall consist of five (5) members. The first member of the Board of Appeals shall be a member of the Township Planning Commission, one member shall be a member of the Township Board, the remaining members shall be selected and appointed by the Township Board from among the electors residing in the unincorporated area of the Township. An elected officer of the Township may not serve as chairperson of the Zoning Board of Appeals. An employee or contractor of the Township Board may not serve as a member or employee of the Zoning Board of Appeals. Members of the Board of Appeals shall be removable by the Township Board for nonperformance of duty or misconduct in office upon written charges and after public hearing. The Zoning Board of Appeals shall annually elect its own Chair, Vice-Chair, and Secretary at its January meeting or as soon thereafter as practicable.

The Township Board shall appoint not more than two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called to serve as a regular member of the Zoning Board of Appeals in the absence of a regular member if the regular member is absent from or will be unable to attend 2 or more consecutive meetings of the Zoning Board of Appeals or is absent from or will be unable to attend meetings for a period of more than 30 consecutive days. 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 appointed shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the Zoning Board of Appeals.

A per diem or reimbursement for expenses actually occurred shall be allowed to the Board of Appeals and shall exceed a reasonable sum, which shall be appropriated annually in advance by the Township Board.

18.3 TERMS OF OFFICE

Terms shall be for three (3) years, except for members serving because of their

membership on the planning commission, or township board. whose terms shall be limited to the time they are members of the zoning board, planning commission, or township board, respectively, and the period stated in the resolution appointing them. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. Vacancies for unexpired shall be filled for the remainder of the term. A Township Board of Appeals shall not conduct business unless a majority of the regular members of the Board is present.

18.4 BOARD OF APPEALS PROCEDURES

MEETINGS.

Meetings shall be held at the call of the chairperson and at such times as the Board of Appeals may determine. A simple majority of the membership of the Board of Appeals shall constitute a quorum and may conduct any items of business brought before the Board. All meetings of the Board shall be open to the public. The Board may declare any meeting, or part of any meeting, a study meeting to pursue matters of business with out comment or interruption from the public in attendance.

RECORDS.

Minutes shall be recorded of all proceedings which shall contain evidence and dates relevant to every case considered together with the votes of the members and the final disposition of each case. Such minutes shall be filed in the office of the Township Clerk and shall be public records.

RULES OF PROCEDURE.

The Board of Appeals shall adopt its own rules of procedure as may be necessary to conduct its meetings and carry out its function.

D. MAJORITY VOTE.

The concurring vote of a majority of the membership of the Zoning Board of Appeals shall be necessary to decide upon any issue brought before the Board. For example, if three members are present, out of a total of five members, all three must concur to pass a motion.

E. CONFLICT OF INTEREST.

A member of the Zoning Board of Appeals shall disqualify himself or herself from discussion and voting 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 shall constitute misconduct in office.

18.5 APPEALS, METHOD FOR TAKING

Any appeal from a ruling of the Zoning Administrator or body concerning the enforcement of the provisions of this Ordinance shall be made to the Board of Appeals

within 10 days after the date of the Zoning Administrator's decision which is the basis of the appeal. Any appeal shall be in writing on standard forms. The Zoning Administrator shall transmit to the Board all documents, or direct copies thereof, constituting the record upon which the action appealed from was taken. Any appeal to the Board of Appeals shall be accompanied with a payment of a fee established by resolution of the Township Board to cover costs of processing such appeal.

Appeals to the Board may be taken by any person aggrieved, or by any officer, department, or board of the Township. Any party may appear in person or by agent or by attorney at a hearing considering his request or appeal.

An appeal stays all proceedings, and thereupon all changes in the status quo of the property concerned shall constitute a violation of this Ordinance; except that the Zoning Administrator may certify to the Board of 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 restraining order, which may be granted by the Board of Appeals, or, on application to the Circuit Court when due cause can be shown.

18.6 DECISIONS

The Zoning Board of Appeals shall return a decision upon each case within thirty (30) days of the filing of a request or appeal unless a further time is agreed upon by the parties concerned. Any decision of the Zoning Board of Appeals shall not take effect until the expiration of five (5) days after the date of said decision, unless the Board of Appeals certifies on the record that the decision must be given immediate effect for the preservation of property or personal rights. No Zoning Permit authorized by such a decision shall be issued until the decision has taken effect.

18.7 DUTIES

The Tittabawassee Township Zoning Board of Appeals shall have the power to act on those matters where this Ordinance provides for an administrative review, interpretation, or variance as defined in this Section. The Board of Appeals shall NOT have the power to alter or change the zoning district classification of any property, or to make any change in the terms or intent of this Ordinance.

A. REVIEW

The Board of Appeals shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination, made by the Zoning Administrator, or by any other official in administering or enforcing any provisions of this Ordinance.

B. INTERPRETATION

The Board of Appeals, upon proper appeal, shall have the power to hear and decide upon appeals for the interpretation of the provisions of this ordinance as follows:

1. So as to carry out the intent and purposes of this ordinance.
2. To determine the precise location of the boundary lines between zoning districts; or,
3. To classify a use which is not specifically mentioned as 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.

C. VARIANCES

The Board of Appeals may have the power to authorize, upon proper application, specific variances from such dimensional requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations as specified in this Ordinance PROVIDED all the basic conditions listed and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

1. Basic Conditions

- (a) Will not be contrary to the public interest and will not be contrary to the spirit and intent of this Ordinance.
- (b) Shall not permit the establishment within a district of any use which is not permitted by right within that district.
- (c) Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
- (d) Is not one where the specific conditions relating to the property are so general or recurrent in nature as to undermine the stated intent of an existing ordinance.
- (e) Will relate only to property which is under the stated ownership and control of the applicant and is an exceptional or extraordinary circumstance or condition that does not generally apply to other property or uses in the vicinity.

2. Special Conditions: Special conditions for the granting of a variance shall include any one of the following clearly demonstrated conditions after all basic conditions have been satisfied, when applied to the applicant's use and

- (a) When there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of use of that particular parcel of land.

Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape or

topography of the property involved, or to the intended use of the property, that did not generally apply to other property or uses in the same zoning district.

(c) Such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this ordinance.

(d) Where such variance is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

3. Rules for Granting of Variances: The following rules shall be applied in the granting of variances.

(a) In granting a variance, the Board may specify, in writing, to the applicant such conditions in connection with the granting, that will, in its judgment, secure substantially the objectives of the regulations or provisions to which such variances applies. The breach of any such conditions shall automatically invalidate the permit granted.

(b) Each variance granted shall become null and void unless the provisions of the variance have been utilized by an applicant within six months after the granting of the variance.

(c) No application for a variance which has been denied wholly or in part by the Board shall be resubmitted for a period of one year, from the date of the last denial, except on grounds and newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.

(d) In authorizing any variance, the Board of Appeals may require that a bond be furnished to insure compliance with the requirements, specifications and conditions imposed with the grant of variance.

(e) The Board of Appeals may not create a nonconforming use or a use that is more nonconforming than the current nonconforming use. In the same way the Board may not create a nonconforming lot or parcel or a lot or parcel that is more nonconforming than the current nonconforming use or create a nonconforming parcel from a conforming parcel.

18.8 LIMITATIONS

The Board of Appeals, notwithstanding any provisions to the contrary, shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms or intent of this ordinance, nor to prohibit a use which is permitted in this ordinance, nor may it determine the validity of this ordinance.