

# Article 9: Zoning Board of Appeals

South Branch Township

## Section 9.01 Zoning Board of Appeals Creation and Membership

The Zoning Board of Appeals (ZBA) shall perform its duties and exercise its powers as provided in the Michigan Zoning Enabling Act 110, of Public Acts of 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and justice done. This Board shall consist of five (5) members, appointed by the Township Board.

1. The first member shall be a member of the Township Planning Commission for the terms of his/her office.
2. The remaining members must be selected from the electors of the Township residing outside of incorporated cities and villages and shall be representative of the population distribution and of the various interests present in the Township. One (1) member may be a member of the Township Board.
3. An elected officer of the Township shall not serve as chairman. An employee or contractor of the Township Board may not serve as a member or an employee of the Zoning Board of Appeals.
4. The Township Board may 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 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 member for the purpose of reaching a decision on a case in which the member has abstained for reasons of 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 Zoning Board of Appeals.

## Section 9.02 Meetings

Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine or specify in its rules of procedure. All hearings conducted by said ZBA shall be open to the public. The Zoning Board of Appeals shall adopt its own rules of procedure and keep a record of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating said fact; and shall file a record of its proceedings in the office of the Township Clerk, and shall be a public record. The concurring vote of a majority of the members of the 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 an applicant any matter upon which they are required to pass under this Ordinance or to effect any variation of this Ordinance.

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

### **Section 9.03 Jurisdiction**

1. An appeal concerning the administration of the provisions of this Ordinance may be taken to the Zoning Board of Appeals within the timeframe defined in the general rules and procedures adopted by the Zoning Board of Appeals. If such a timeframe is not specified, appeals shall be filed within thirty (30) days of the decision of the Zoning Administrator from which the appellant seeks relief.
2. The ZBA may hear appeals made by any person who alleges he or she has been aggrieved by a decision of the Zoning Administrator, except for Zoning Administrator decisions regarding enforcement of this Ordinance.
3. The ZBA may grant variances as provided for in **Section 9.07 Variances**.
4. The ZBA may also interpret the location of Zoning District boundaries and may interpret the provisions of this Ordinance.
5. When the proposed use of land or use of a structure is not specified in this Ordinance, the Zoning Board of Appeals shall have the power upon written request of the property owner or Zoning Administrator to classify the unlisted property use. In determining the proper classification of an unlisted property use, the Zoning Board of Appeals shall consider the characteristics of the proposed unlisted property use in relation to similar and comparable uses listed in any Zoning District and in relation to the requirements of the Township Master Plan. Once classified, the unlisted property use is subject to all applicable regulations pertaining to similar uses in the Zoning District in which placed, including the regulations pertaining to uses subject to special use permit approval, if classified as such a use by the Zoning Board of Appeals.
6. An appeal may be made by any person, firm or corporation, or by any Officer, Department or Board of the Township. The appellant shall file with the Zoning Board of Appeals, on blanks or forms to be furnished by the Zoning Administrator, a notice of appeal specifying the grounds for the appeal.
7. The Zoning Administrator shall transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The final decision of such appeal shall be in the form of a resolution either reversing, modifying or affirming, wholly or partly, the decision or determination appealed from. Reasons for the decision must be stated.
8. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney.
9. The Zoning Board of Appeals has no jurisdiction to hear appeals from Planning Commission decisions concerning special use permit or planned unit developments.

### **Section 9.04 Exercising Power**

In exercising the above powers, the Zoning Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator from whom the appeal is taken.

### **Section 9.05 Application requirements**

The applicant shall submit seven (7) copies of a completed application, with associated fee, surveys, plans and data as required under Article 6: Site Plan Review, or other information deemed reasonably necessary for making any informed decision on his or her appeal, not less than thirty-one (31) days prior to the date of the hearing.

### **Section 9.06 Notice Requirements for Zoning Board of Appeals Public Hearings**

The notices for all public hearings before the Zoning Board of Appeals concerning appeals, interpretations, and variances shall comply with all of the following applicable provisions:

1. For an appeal or a request for an interpretation, the notice shall comply with all of the following:
  - A. The content of the notice shall include all of the following information:
    - 1) A description of the nature of the appeal or interpretation request.
    - 2) If the appeal or interpretation request involves a specific parcel, then the notice shall describe the property involved. The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no such street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
    - 3) The time, date, and place the appeal or interpretation request will be considered.
    - 4) The address where written comments will be received concerning the appeal or interpretation request, and the deadline by which such comments must be received.
  - B. The notice shall be published in a newspaper of general circulation within the Township not less than 15 days before the scheduled public hearing.
  - C. The notice shall be sent by first-class mail or personal delivery to the person filing the appeal or requesting the interpretation and, if the appeal or interpretation request involves a specific parcel, to the owners of the property involved not less than 15 days before the scheduled public hearing.
  - D. If the appeal or interpretation request involves a specific parcel, then the notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the subject property and to the occupants of all structures within 300 feet of the subject property. Such notice shall be provided not less than 15 days before the scheduled public hearing, regardless of whether the property or

occupant is located in the Township. If the name of the occupant or tenant is not known, the term “occupant” may be used in making notification under this subsection.

2. For a variance request, the notice shall comply with all of the following:
  - A. The content of the notice shall include all of the following information:
    - 1) A description of the nature of the variance request.
    - 2) A description of the property on which the requested variance will apply. The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
    - 3) The time, date, and place the variance request will be considered.
    - 4) The address where and the deadline when written comments will be received concerning the variance request.
  - B. The notice shall be published in a newspaper of general circulation within the Township not less than 15 days before the scheduled public hearing.
  - C. The notice shall be sent by first-class mail or personal delivery to the owners of the property seeking the variance not less than 15 days before the scheduled public hearing.
  - D. Then notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property on which the requested variance will apply and to the occupants of all structures within 300 feet of the property to which the requested variance will apply not less than 15 days before the scheduled public hearing, regardless of whether the property or occupant is located in the Township. If the name of the occupant is not known, the term “occupant” may be used in making notification under this subsection. If a single structure contains more than 4 dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure.
3. After providing the notice required under this section and without further notice, except that as required under the Open Meetings Act, the Zoning Board of Appeals may adjourn from time to time a duly called public hearing by passing a motion specifying the time, date, and place of the continued public hearing.

### **Section 9.07 Variances**

The ZBA may grant dimensional variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in practical difficulty. To establish practical difficulty, the applicant must establish all of the following:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
2. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created).
3. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
4. The requested variance is the smallest variance needed to grant the applicant substantial relief from the dimensional regulation of the zoning ordinance from which the variance is being requested.
5. That the requested variance will not cause an unreasonable and/or increased adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or Zoning District.

#### **Section 9.08 Conditions of Approval**

The ZBA may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area, as provided for in **Section 10.03 Conditions**.

#### **Section 9.09 Expiration of ZBA Approvals**

No order of the Zoning Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is obtained within such period and substantial construction has occurred.

#### **Section 9.10 Reapplication**

No application for a variance, interpretation, or appeal which has been decided, in whole or in part, by the Zoning Board of Appeals shall be re-submitted for a period of one (1) year from the date of such decision, unless a rehearing is granted pursuant to **Section 10.04** of this Ordinance.

#### **Section 9.11 Stay**

An administrative appeal to the Zoning Board of Appeals and an appeal of a decision by the Zoning Board of Appeals to Circuit Court stays all proceedings of the action appealed from, including the effectiveness of any zoning permit issued, unless the Zoning Administrator certifies to the Zoning Board of Appeals after such appeal has been filed that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed, unless ordered stayed by the Zoning Board of Appeals or the Circuit Court.