

ARTICLE X

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ZONING BOARD OF APPEALS

Section 1001 Creation and Membership

- (A) *Board established; composition.* There is hereby established a Zoning Board of Appeals, which shall perform and exercise its powers as provided in Public Act No. 110 of 2006 (MCL 125.3601 et seq.), and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and substantial justice done. The Zoning Board of Appeals shall consist of the following three members appointed by the township board:
1. The first member of the zoning board of appeals shall be a member of the township planning commission.
  2. The remaining members of the zoning board of appeals shall be selected from the electors of the township residing outside of incorporated cities and villages. The members selected shall be representative of the population distribution and of the various interests present in the township. One regular or alternate member may be a member of the township board. An elected officer of the township shall not serve as chairperson of the board of appeals. An employee or contractor of the township board may not serve as a member or an employee of the township zoning board of appeals.
  3. Terms shall be for three 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 planning commission or township board respectively, and the period stated in the resolution appointing them. When members are first appointed, the appointments may be for less than three years to provide for staggered terms. A successor shall be appointed not more than one month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.
  4. The township board may appoint not more than two alternate members for the same term as regular members to the board. The alternate member(s) has the same voting rights as a regular member of the board when serving. The alternative member appointed to a case shall serve in the case until a final decision is made. An alternate member may be called to serve as a regular member of the board if;
    - a. The regular member is absent from or will be unable to attend two (2) or more consecutive meetings of the board, or
    - b. The regular member will be unable to attend meetings for a period of more than thirty (30) consecutive days, or
    - c. A regular member needs to abstain for reasons of conflict of interest.
- (B) *Compensation of members.* The total amount allowed the zoning board of appeals in any one year as per diem or as expenses actually incurred in the discharge of its duties shall not exceed a reasonable sum, which sum shall be appropriated annually in advance by the township board.

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### Section 1001 Creation and Membership: Continued

- (C) *Removal of members.* Members of the zoning 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.
- (D) *Conflict of interest.* A member shall disqualify himself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself from a vote in which the member has a conflict of interest shall constitute misconduct in office.
- (E) *Quorum.* The township zoning board of appeals shall not conduct business unless a majority of the members of the board is present.

### Section 1002 Meetings and Procedures

- (A) Meetings of the zoning board of appeals shall be held at the call of the chairperson and at such other times as the board in its rules of procedure may specify. The chairperson, or in his absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the zoning board of appeals shall be open to the public. The board shall maintain a record of its proceedings, which shall be filed in the office of the township clerk and shall be a public record.
- (B) The zoning board of appeals may fix rules to govern its procedures.
- (C) The appeal may be taken by any person aggrieved or by any officer, department, board, or bureau of the township, county, or state.
- (D) Such appeal shall be taken within such time as shall be prescribed by the township board of appeals by general rule, by filing with the zoning administrator and with the board of appeals a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
- (E) The township zoning board of appeals shall fix a reasonable time for dealing with an appeal, schedule a public hearing, give due notice thereof to the parties, and decide the appeal within a reasonable time, in accordance with Public Act No. 110 of 2006 (MCL 125.3601 et seq.) Sections 103, 602 and 604. At the hearing, a party may appear in person or by agent or by attorney.
- (F) The concurring vote of a majority of the members of the zoning board of appeals shall be necessary to reverse an order, requirement, decision or determination of the zoning administrator or body from whom the appeal was taken, or to decide in favor of the applicant, any matter upon which it is required to pass or to effect any variation in this Article.
- (G) The zoning board of appeals shall state in writing the grounds of each determination.
- (H) An appeal stays all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the township board of appeals after the notice of appeal shall have been filed with him that, by 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

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### Section 1002 Meetings and Procedures: Continued

board of appeals or by the circuit court, on application, on notice to the zoning administrator and on due cause shown.

### Section 1003 Power and Jurisdiction

The zoning board of appeals shall have the following powers and areas of jurisdiction:

- (A) It shall hear and decide appeals from and review any order, requirements, decisions, or determination made by any administrative official or body charged with enforcement of this Ordinance.
- (B) It shall hear and decide all matters referred to it or upon which it is required to pass pursuant to this Ordinance.
- (C) With regard to conditional land use and planned unit development decisions, no appeal may be taken to the zoning board of appeals except as otherwise provided in this Ordinance.
- (D) The township zoning board of appeals shall act upon all questions as they may arise in the administration of this Ordinance, including the interpretation of the zoning maps.
- (E) The zoning board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination as in its opinion ought to be made, and to that end shall have all the powers of the zoning administrator or body from whom the appeal was taken and may issue or direct the issuance of a permit.
- (F) Where there are practical difficulties in the way of carrying out the strict letter of this Ordinance, the zoning board of appeals in passing upon appeals may vary or modify any of its rules or provisions so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done.
- (G) The zoning board of appeals may impose conditions with an affirmative decision. The conditions may include conditions necessary to ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:
  - 1. Be designed to protect natural resources and the health, safety, and welfare and the social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
  - 2. Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
  - 3. Be necessary to meet the intent and purpose of this Ordinance.
  - 4. Be related to the standards established in this Ordinance for the land use or activity under consideration, and be necessary to ensure compliance with those standards.

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### Section 1004 Standards for Granting Variance

- (A) No variance (see the Definition in Article II, Section 202) or modification of the provisions of this Ordinance shall be granted by the zoning board of appeals unless it appears beyond a reasonable doubt that a literal enforcement of the provisions of this Ordinance would involve practical difficulties and that all the following facts and conditions exist:
1. There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties or classes of use in the same district or zone.
  2. Such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity.
  3. The granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.
  4. The granting of such variance will not adversely affect the purpose or objectives of the master plan of the township.
- (B) In consideration of all appeals and all proposed variations to this Ordinance, the zoning board of appeals shall, before making any variations from this Ordinance in a specific case, first determine that the proposed variation will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the township.
- (C) Nothing contained in this section shall be construed to give or grant to the zoning board of appeals the power or authority to alter or change this Ordinance or the official zoning map, such power and authority being reserved to the township board in the manner provided by law.

### Section 1005 Appeal to Circuit Court

- (A) Decisions of the zoning board of appeals shall be final. However, a person having an interest affected by this Ordinance may appeal to the circuit court within thirty (30) days after the zoning board of appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson, or within 21 days after the zoning board of appeals approves the minutes of its decision. Upon appeal, the circuit court shall review the record and decision of the zoning board of appeals to ensure that the decision:
1. Complies with the constitution and laws of the state.
  2. Is based upon proper procedure.
  3. Is supported by competent material and substantial evidence on the record.
  4. Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

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### Section 1005 Appeal to Circuit Court: Continued

- (B) If the court finds the record of the zoning board of appeals inadequate to make the review required by this section, or that there is additional evidence which is material and with good reason was not presented to the zoning board of appeals, the court shall order further proceedings before the zoning board of appeals on conditions which 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 its original decision. The supplementary record and decision shall be filed with the court.
- (C) As a result of the review required by this section, the court may affirm, reverse, or modify the decision of the zoning board of appeals.

### Section 1006 Lapse of Approval

- (A) 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 such erection or alteration is started and proceeds to completion in accordance with the terms of such permit. The zoning board of appeals, upon written application and upon a showing of good cause, may grant up to two (2) extensions of up to six (6) months each for the starting of, and/or the completion of construction, provided that application for an extension is made prior to the lapse of approval.
- (B) No order of the zoning board of appeals permitting a use of a building or premises shall be valid for a period longer than one (1) year unless such use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for the erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit. The zoning board of appeals, upon written application and upon a showing of good cause, may grant up to two (2) extensions of up to six (6) months each for the establishment of such use, the starting of construction, and/or the completion of construction, provided that application for an extension is made prior to the lapse of approval.

### Section 1007 Notice Requirements

- (A) The zoning board of appeals shall make no recommendation except in a specific case and only after a public hearing has been conducted by the zoning board of appeals. A written notice of the time and place of such hearing shall be mailed to the owners of all lots or parcels of land, or portion thereof, lying within 300 feet of the property in question. Such notice shall be served not less than 15 days prior to the date of the hearing.
- (B) Public notices regarding the time and place of regular and special meetings of the zoning board of appeals shall comply with the open meetings act, Public Act No. 267 of 1976 (MCL 15.261 et seq.).

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### Section 1008 Fees

The township board may from time to time set a reasonable schedule of fees to be charged to applicants for appeals to the zoning board of appeals. A fee shall be paid to the township clerk at the time the notice of appeal is filed.