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**ZONING BOARD OF APPEALS**

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## ARTICLE 24: ZONING BOARD OF APPEALS

### SECTION 24.01: CREATION AND MEMBERSHIP

The Zoning Board of Appeals is hereby established in accordance with *Act 110 of the Public Acts of 2006, as amended (Michigan Zoning Enabling Act)*. The Board shall consist of five (5) members, the first member shall be a member of the Planning Commission and the remaining members shall be selected from the electors residing in the Charter Township of Marquette. One member may be a member of the Township Board, however, an elected officer of the Township shall not serve as chairperson, and an employee or a contractor of the Township Board may not serve as a member of the Board of Appeals. The term of office shall be for three (3) years, whose terms shall be limited to their official terms as commissioner and/or board members respectively or to such lesser periods as determined by resolution of the Township Board. Members of the Zoning Board of Appeals may be removed from office in accordance with the procedures set forth in the *Michigan Zoning Enabling Act*. If the Planning Commission member is removed or unable to serve, a replacement shall be appointed by the Planning Commission. Other vacancies shall be filled by appointment of the Township Board not more than one (1) month after the term of the preceding member has expired. Persons serving on the Zoning Board of Appeals may be reappointed.

### SECTION 24.02: PROCEDURES

The Zoning Board of Appeals may adopt rules and regulations to govern its procedures and shall appoint one of its members as chairperson. The concurring vote of a majority of the **appointed** members of the Zoning Board of Appeals shall be necessary to revise any order, requirement, decision or interpretation 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 in this Ordinance.

- A. Meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at such times as its rules of procedure may specify. Minutes shall be kept of each meeting and the board shall record into the minutes all findings, conditions, facts, and other relevant factors, including the vote of each member upon any questions or if absent or failing to vote indicating such fact, and all of its official actions. All meetings and records shall be open to the public and the minutes shall be filed in the office of the Township Clerk.
- B. The Zoning Board of Appeals shall fix a reasonable time and date for the hearing of an appeal. The Township Clerk shall publish one (1) notice of public hearing, not less than fifteen (15) days in advance of such hearing and shall notify by regular mail or personal delivery the parties of interest and all property owners and occupants of all structures within three hundred (300) feet of the boundaries of the subject property. In situations where a single structure contains four (4) or more dwelling units, businesses, or organizations, notice must be given to the manager or owner of the structure who shall be requested to post notice at the primary entrance of the structure.

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### **SECTION 24.02: PROCEDURES – (Cont.)**

The notice shall describe the special nature of the land use request; the legal description, and a location map of the property; specify the date, time, and place of the hearing; indicated when and where written comments will be received concerning the request.

### **SECTION 24.03: DUTIES AND AUTHORITY**

- A. The Zoning Board of Appeals shall perform its duties and exercise its powers in accordance with the Provisions of the *Act 110 of the Public Acts of 2006, as amended (Michigan Zoning Enabling Act)* so that the objectives of this Ordinance shall be attained, the public health, safety and welfare secured, and substantial justice done. The Zoning Board of Appeals shall hear and decide only those matters which it is specifically authorized to hear and decide as provided herein relative to administrative review, interpretation of the Zoning Ordinance including the zoning maps and the granting of variances.
- B. The Zoning Board of Appeals shall not have the power nor authority to alter or change the zoning district classification of any property, nor make any change in the terms or intent of this Ordinance, but does have authority to act on matters specifically provided for in this Ordinance regarding administrative review, interpretation, variance or exception.
- C. Except as provided in *Article 18, Site Plan Review, Section 18.13, Ordinance Interpretation and Appeals, and Section 18.14, Zoning Board of Appeals Procedure, the Zoning Board of Appeals* shall have no authority to review decisions of the Planning Commission and shall have no authority to review decisions of the Township Board.
- D. The Township Zoning Board of Appeals shall not conduct business unless a majority of the appointed members of the board are present and vote to approve a proper motion. A member shall disqualify himself/herself from a vote in which there may be a conflict of interest.

### **SECTION 24.04: ADMINISTRATIVE REVIEW**

- A. The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirements, decision or determination of the Zoning Administrator.
- B. When the Zoning Administrator has a question or determines that there is ambiguity regarding the application of this Ordinance to a specific application or issue, the Zoning Administrator may file an application for interpretation which shall outline sufficient information for the Zoning Board of Appeals to make a decision.

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### **SECTION 24.04: ADMINISTRATIVE REVIEW – (Cont.)**

- C. The Zoning Board of Appeals shall have the authority to:
1. Interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance;
  2. Determine the precise location of the boundary lines between zoning districts when there is dissatisfaction with a decision made by the Zoning Administrator;
  3. Determine the off-street parking requirements for any proposed land use not specifically mentioned either by classifying it with one of the groups listed in *Article 21, Off Street Parking Requirements, Section 21.05, Table XX; Use vs. Parking Nomograph*, or by an analysis of the specific needs.

### **SECTION 24.05: VARIANCES**

- A. The Zoning Board of Appeals shall have the authority and duty to authorize, upon appeal in specific cases such variance from the provisions of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in practical difficulties.
- B. Any nonconforming use of neighboring lands, structures, or buildings shall not be considered grounds for the issuance of a variance.
- C. The Zoning Board of Appeals shall make findings that the requirements of this Article have been met by the applicant.
- D. The Zoning Board of Appeals shall find that the reasons set forth in the application justify the granting of a variance, and that it is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- E. The Zoning Board of Appeals shall find that the granting of a variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public interest.
- F. In granting any variance, the Zoning Board of Appeals may prescribe appropriate conditions and safeguards. Violations of conditions and safeguards, when made a part of the terms under which the variance is granted shall be deemed a violation of this Ordinance.
- G. Under no circumstances shall the Zoning Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or allow any use expressly or by implication prohibited by the terms of this Ordinance.

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### SECTION 24.05: VARIANCES – (Cont.)

In exercising their authority, the Zoning Board of Appeals may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from and may make such order, requirements, decision, or determination as ought to be made, and to that end shall have the authority of the public official from whom the appeal was taken.

- H. Each variance granted under the provisions of this Ordinance shall become null and void unless the occupancy of land or buildings, or the construction authorized by such variance has commenced within one hundred eighty (180) days after the granting of the variance.

### SECTION 24.06: VARIANCE STANDARDS

- A. Prior to the authorization and granting of any variance, the Zoning Board of Appeals shall determine that the following standards have been satisfied:

*Practical Difficulty or Dimensional Variance Standards:*

The applicant must show practical difficulty by demonstrating:

- a. That strict compliance with area, setback, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.
- b. That a variance would do substantial justice to the applicant as well as to other property owners in the district, or that a lesser relaxation would give substantial relief and be more consistent with justice to others.
- c. That the variance would not alter the essential character of the area.
- d. That the appeal of the owner is due to unique circumstances of the property and not to general neighborhood conditions.
- e. That the problem is not self-created.

**NOTE:** In the granting of any variance, the Zoning Board of Appeals shall ensure that the spirit of the Ordinance is observed, public safety secured, and substantial justice done.

### SECTION 24.07: APPEALS

- A. Appeals concerning interpretation or the administration of this Ordinance shall be made in accordance with *Article 18, Site Plan Review, Section 18.13, Ordinance Interpretation and Appeals, Section 18.14, Zoning Board of Appeals Procedure*, or for other contested actions by filing a notice of appeal specifying the ground thereof with the Zoning Administrator within thirty (30) days from the date of the contested decision.

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### **SECTION 24.07: APPEALS – (Cont.)**

The Zoning Administrator shall transmit to the Zoning Board of Appeals copies of all the information constituting the record upon which the action being appealed was based.

- B. The appeal fee, established by the Township Board in accordance with *Article 26, Administration and Enforcement, Section 26.13, Fees*, shall be paid to the Township at the time of filing the notice of appeal.
- C. Any party or parties may appear at the hearing in person or may be represented by an agent or an attorney.
- D. The Zoning Board of Appeals shall decide upon all matters within a reasonable time. The decision of the board shall be in the form of a motion containing a full record of its findings and determinations in each case.
- E. An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the 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 Board of Appeals or by the Circuit Court, on application, on notice to the officer from whom the appeal is taken and on due cause shown.

### **SECTION 24.08: DUTIES ON MATTERS OF APPEAL**

All questions concerning application of the provisions of this Ordinance shall first be presented to the Zoning Administrator. Questions shall be presented to the Zoning Board of Appeals only on appeal from the decisions of the Zoning Administrator. Recourse from decisions of the Zoning Board of Appeals shall be to the Circuit Court of Marquette County, as provided by law.

### **SECTION 24.09: DECISION RECORD**

All decisions and findings of the Zoning Board of Appeals shall be final and may be appealed only to the appropriate circuit court. All decisions and findings shall be incorporated in a written document specifying the reasons for the decision and specific findings of fact. The public hearing record shall be filed with the Township Clerk and be available for public inspection at the Township Office during regular business hours.