

**ARTICLE 59.0
BOARD OF APPEALS**

SECTION 59.01-BOARD OF APPEALS ESTABLISHED

There is hereby established a Board of Appeals, which shall perform its duties and exercise its powers, as provided in the Michigan Zoning Enabling Act, in such a way that the objectives of this Ordinance shall be enforced, the public health and safety secured, and substantial justice done.

SECTION 59.02-MEMBERSHIP; TERMS OF OFFICE

The Board of Appeals shall consist of five (5) members, appointed by the Township Board. The first member shall be a member of the Township Planning Commission. The remaining members shall be selected from the electors of the Township residing in the unincorporated area of the Township. The members selected shall be representative of the population distribution and of the various interests present in the Township. One member of the Board of Appeals may be a member of the Township Board, but shall not serve as chairperson of the Board of Appeals. Employees and contractors of the Township shall be prohibited from serving as members of the Board of Appeals.

The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the Board of Appeals. An alternate member may be called to serve as a regular member for the Board of Appeals in the absence of a regular member if the regular member is absent from or will be unable to attend one (1) or more meetings of the Board of Appeals. 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 Board of Appeals.

The term of office of each member 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 those bodies. A successor shall be appointed not more than one month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term.

A member may be removed from office by the Township Board for misfeasance, malfeasance, or nonfeasance in office, upon written charges and following a public hearing held in accordance with Section 57.10 (Public Hearing Procedures). Minutes of the meeting at which the hearing is held shall record the reasons for the hearing, the motion or resolution, if any, regarding removal from office, and the roll call vote of the Township Board.

SECTION 59.03-RULES OF PROCEDURE; MAJORITY VOTE

The Board of Appeals may adopt its own rules of procedure as may be necessary to properly conduct its meetings. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the administrative official or to decide in favor of the applicant any matter upon which they are required to pass under this Ordinance or effect any variation in this Ordinance.

SECTION 59.04-MEETINGS

Meetings of the Board of Appeals shall be held at the call of the Chairman and at such other times as the Board in its rules of procedure may specify. The Board of Appeals shall not conduct business unless a majority of the regular membership is present. The Chairman or, in his or her absence, the acting Chairman may administer oaths and compel the attendance of witnesses.

Article: 59.0 BOARD OF APPEALS**SECTION 59.05-PUBLIC MEETINGS AND MINUTES**

All meetings of the Board of Appeals shall be open to the public and accurate minutes of the proceedings showing the action of the Board shall be kept, which record shall be filed in the office of the Township Clerk and shall be a public record.

SECTION 59.06-POWERS AND DUTIES

The Board of Appeals shall perform its duties and exercise its powers as provided in this Ordinance and the 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 Board of Appeals shall hear and decide and rule on the following as provided herein:

- A.** The Board of Appeals shall hear and decide questions that arise in the administration of the Zoning Ordinance, including the interpretation of the zoning maps.
- B.** The Board of Appeals shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a Zoning Ordinance adopted under this act.
- C.** The Board of Appeals shall hear and decide requests for variances for relief from the strict application of one (1) or more provisions of this Ordinance.
- D.** The Board of Appeals shall also hear and decide on any other matters referred to the Board of Appeals or upon which the Board of Appeals is required to pass under this Ordinance.
- E.** The Board of Appeals shall have no authority to consider or act upon appeals of Special Use Permit and Planned Unit Development decisions made in accordance with this Ordinance.

SECTION 59.07-VARIANCE

If there are practical difficulties in the way of carrying out the strict letter of this Ordinance, the Board of Appeals may grant a variance in accordance with this Section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The Board of Appeals shall have authority to grant variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements or any other nonuse-related standard in of this Ordinance. A variance from the terms of this Ordinance shall not be granted by the Board of Appeals unless and until:

- A.** A written application for a variance is submitted, demonstrating:
 - 1.** that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.
 - 2.** that literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
 - 3.** that the special conditions and circumstances do not result from the actions of the applicant.
 - 4.** that granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
 - 5.** that no nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
 - 6.** That no additional construction on a lot containing an on-site sewage treatment system will be permitted without assurance that sufficient space will be retained for a new/replacement on-site sewage treatment

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system, according to the specifications of the County Environmental Health Division.

- B.** A request for a variance shall be filed in proper form with the Township Clerk and forwarded through the Township Board to the Board of Appeals, who shall immediately place the request for appeal upon the calendar for a public hearing in accordance with Section 57.10 (Public Hearing Procedures).
- C.** The Board of Appeals shall make findings that the requirements of the Ordinance have been met by the applicant for a variance.
- D.** The Board of Appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- E.** The Board of Appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, and otherwise detrimental to the public welfare.
- F.** In granting any variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance, and punishable under SECTION 57.09 of this Ordinance.
- G.** Any motion for action on a variance application shall include specific findings of fact and conclusions made by the Board of Appeals on the request, which shall be incorporated into the written record of the meeting.
- H.** Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

SECTION 59.08-VOIDING OF AND REAPPLICATION FOR VARIANCE

The following provisions shall apply:

- A.** Each variance granted under the provisions of this Ordinance shall become null and void unless:
 - 1.** the construction authorized by such variance or permit has been commenced within one hundred eighty (180) days after the granting of such variance and pursued diligently to completion; or
 - 2.** the occupancy of land or buildings authorized by such variance has taken place within one hundred eighty (180) days after the granting of such variance.
- B.** No application for a variance which has been denied wholly or in part by the Board of Appeals shall be resubmitted for a period of three hundred sixty five (365) days from such denial, except on grounds of new evidence or proof of changed conditions found by the Board of Appeals to be valid.

SECTION 59.09-APPEALS TO THE BOARD OF APPEALS

The following provisions shall apply.

- A.** **APPEALS, HOW TAKEN**-Appeals from the ruling of the Zoning Inspector or the Township Board concerning the enforcement of the provisions of this Ordinance may be made to the Board of Appeals within such time as shall be prescribed by the Board of Appeals by general rule, by the filing with the officer from whom the appeal is taken and with the Board of Appeals of a notice of appeal specifying the grounds thereof. The body or officer from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appeals from was taken.

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- B. WHO MAY APPEAL-**Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the Township, County, or State.
- C. FEE FOR APPEAL-**A fee prescribed by the Township Board shall be paid to the Township Clerk at the time of filing the notice of appeal. The appeal fee shall be determined by resolution of the Township Board.
- D. EFFECT OF APPEAL; RESTRAINING ORDER-**An appeal stays all proceedings in furtherance of the action appealed from unless the body or officer from whom the appeal is taken certifies to the Township Board of Appeals, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, a stay would, in the opinion of the body or officer, 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 body or officer from whom the appeal is taken and on due cause shown.
- E. HEARING BY THE BOARD OF APPEALS; REQUEST; NOTICE; HEARING-**A request for appeal shall be filed in proper form with the Township Clerk and forwarded through the Township Board to the Board of Appeals, who shall immediately place the request for appeal upon the calendar for a public hearing in accordance with Section 57.10 (Public Hearing Procedures).
- F. REPRESENTATION AT HEARING-**Upon the hearing, any party or parties may appear in person or by agent or by attorney.
- G. DECISIONS OF THE BOARD OF APPEALS AND APPEALS TO THE CIRCUIT COURT-**The Board of Appeals shall decide upon all matters appealed from within a reasonable time and may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the Zoning Inspector or Township Board from whom the appeal is taken. The Board of Appeals decision on such appeals shall be in the form of a resolution containing a full record of the findings and determination of the Board of Appeals in each particular case. Any person aggrieved by such resolution shall have the right to appeal to the Circuit Court on question of law and fact, as provided for in Section 606 of the Michigan Zoning Enabling Act.