

ARTICLE XXII
ZONING BOARD OF APPEALS

SECTION 22.1 CREATION OF ZONING BOARD OF APPEALS

There is hereby established a Zoning Board of Appeals, which shall perform its duties and exercise its power as provided in the Michigan Zoning Enabling Act (Public Act 110 of 2006) in such a way that the objectives of this Ordinance shall be attained, public safety secured and substantial justice done

SECTION 22.2 BOARD MEMBERSHIP

The Zoning Board of Appeals shall consist of five (5) members appointed by the Township Board:

1. The first member shall be a member of the Township Planning Commission.
2. The second member may be a member of the Township Board and shall not serve as Chairman of the Zoning Board of Appeals.
3. The additional members shall be from among the electors residing in the unincorporated area of the Township for at least one (1) year, provided that no elected officer of the Township, nor any employee of the Township Board may serve simultaneously as an additional member.

Members of the Zoning Board of Appeals shall be removable by the Township Board for non-performance of duty or misconduct in office upon written charges and after public hearing by the Township Board.

SECTION 22.3 MEETINGS

All meetings of the Zoning Board of Appeals shall be held at the call of the Chairman, and at such times as the Zoning Board of Appeals may determine. All meetings of the Zoning Board of Appeals shall be open to the public. The Zoning Board of Appeals shall maintain a record of its proceedings, and shall keep records of its findings, proceedings at hearings, and other official actions, all of which shall be immediately filed in the office of the Township Clerk and shall be a public record. The five (5) members of the Board shall have the power to require the attendance of witnesses, administer oaths, compel testimony and production of books, files and other evidence pertinent to the matters before it.

SECTION 22.4 APPEALS

An appeal may be taken to the Zoning Board of Appeals by any person, firm or corporation, or by any officer, department, board or bureau aggrieved by a decision of the Building Inspector or an Administrative Official or body charged with enforcement of the Zoning Ordinance. Such appeals shall be taken within such time as shall be prescribed by the Zoning Board of Appeals by general rule, by filing with the Building Inspector and with the Zoning Board of Appeals a Notice of Appeal, specifying the grounds thereof. The Building Inspector shall forthwith transmit to the Zoning Board of Appeals all of the papers constituting the record upon which action appealed from was taken. An appeal shall stay all proceedings in furtherance, of the action appealed from unless the Building Inspector certifies to the Zoning Board of Appeals after the Notice of Appeals shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril of life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by the Circuit Court.

The Zoning Board of Appeals shall select a reasonable time and place for the hearing of the

appeal and give due notice thereof, to the parties and shall render a decision of the appeal without unreasonably delay. Any person may appear and testify at the hearing, in person or by duly authorized agent or attorney.

SECTION 22.5 NOTICE OF HEARINGS

The Zoning Board of Appeals shall make no determination except in a specific case and after a public hearing, conducted by the Zoning Board of Appeals, has been held. Notice of the hearing of the appeal shall be given in accordance with Section 21.6.

SECTION 22.6 POWERS OF BOARD OF ZONING APPEALS

The Zoning Board of Appeals shall not have the power to alter or change the zoning District classification of any property, nor to make any changes in the terms of this Ordinance nor to permit any use in a district in which it is not permitted, but does have the power to act on those matters where this Ordinance provides for an administrative review or interpretation and to authorize a variance as defined in this Section and laws of the State of Michigan.

shall be necessary to reverse any order, requirements, decision or determination of any such administrative official or to decide in favor of the applicant any matter upon which they are required to pass under this Ordinance or to effect any variation in this Ordinance.

The Zoning Board of Appeals shall have the power to interpret the provisions of this Ordinance and the Zoning Map accompanying this Ordinance.

1. Administrative Review

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, or determination made by any administrative official or body charged with enforcement and of any provisions of this Ordinance. The Zoning Board of Appeals may reverse an order, requirement, or determination only if it find that the action or decision appealed meets one (1) or more of the following requirements:

- a. Was arbitrary or capricious.
- b. Was based on an erroneous finding of a material fact.
- c. Constituted an abuse of discretion.
- d. Was based on erroneous interpretation of the Zoning Ordinance or zoning law.

Variances

Where owing to special conditions, a literal enforcement of the use provisions of this Ordinance would involve practical difficulties within the meaning of this Ordinance, the Zoning Board of Appeals shall have the power upon appeal in specific cases to authorize such variation or modifications of the provisions of this Ordinance with such conditions and safeguards as it may determine as may be in harmony with the spirit of this Ordinance and so that public safety and welfare be secured and substantial justice done.

- a. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties or class of uses in the same district. The need for the variance was not self-created by the applicant.
- b. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity.
- c. That 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.
- d. That the granting of such variance will not adversely affect the purposes or objective of this Ordinance.
- e. In consideration of all appeals and all proposed variations to this Ordinance, the Zoning Board of Appeals shall, before making any variations from the Ordinance in specific case, first determine that the proposed variation will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fires or endanger the public safety, or reasonably 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. Nothing herein contained shall be construed to give or grant to the Zoning Board of Appeals the power or authority to alter or change the Zoning Ordinance or the Zoning Map, such power and authority being reserved to the Township Board of the Township of Dundee in the manner provided by law.

3. Permits

- a. The Zoning Board of Appeals shall have the power to permit the erection and use of a building or an addition to an existing building, of a public service corporation or for public utility purposes, in any permitted district to a greater height or larger area than the district requirements herein established, and permit the location in any use district of a public utility building, structure, or use if the Zoning Board of Appeals shall find such use, height, area, building or structure reasonably necessary for the public convenience and service, provided such building, structure, or use is designed, erected and landscaped to conform harmoniously with the general architecture and plan of such district.
- b. The Zoning Board of Appeals shall have the power to permit the modification of the off-street automobile parking space or loading space requirements where, in the particular instance, such modifications will not be inconsistent with the purpose and intent of such requirements.

- c. The Zoning Board of Appeals shall have the power to permit temporary buildings and uses for periods not to exceed one (1) year.

4. Special Approval

An appeal may be taken to the Zoning Board of Appeals by any person, firm or corporation, or by an officer, department, board or bureau aggrieved by a decision of the Planning Commission regarding application for a Use Permitted on Special Approval as provided for within the various land use districts in this Ordinance. Such appeals shall be taken within such time, and in such manner, as prescribed in Section 22.4 herein.

5. Orders

In exercising the above powers, the Zoning Board of Appeals may reverse or affirm wholly or partly, or may modify the orders, requirements, decisions or determination appealed from and may make such order, requirements, decision or determination as ought to be made, and to that end shall have all the powers of the Building Inspector from whom the appeal is taken. The decision of the Zoning Board of Appeals rendered pursuant to the above shall be final.

6. Reduction of Natural Feature Setback (Ord. 11-02)

The natural feature setback may be reduced by the Zoning Board of Appeals upon a determination that it is consistent with the public interest. In determining whether the setback reduction is in the public interest, the benefit which would reasonably be expected to accrue from the proposed development shall be balanced against the reasonably foreseeable detriments to the natural feature. The following general criteria shall be applied in undertaking this balancing test.:

- a. The relative extent of the public and private need for the proposed activity.
- b. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
- c. The extent and permanence of the beneficial or detrimental effects which the proposed activity may have on the public and private use to which the area is suited.
- d. The probable impact of the proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
- e. The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
- f. The size and quality of the natural feature.
- g. Proximity to any drainage way.
- h. Extent to which upland soil erosion adjacent to protected wetlands or drainage ways is controlled.

1. Economic value, both public and private, of the proposed land change.

SECTION 22.7 ZONING BOARD OF APPEALS APPROVAL

The Zoning Board of Appeals may _require the appellant or applicant requesting a variance or special approval to submit all necessary survey, plans, or other information the Board may reasonably require. The Zoning Board of Appeals may impose such conditions or limitations in granting a variance or special approval as it may deem necessary to comply with the spirit and purpose of this Ordinance.

SECTION 22.8 APPROVAL PERIOD

No order of the Zoning Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than two (2) years, 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.

No order of the Zoning Board of Appeals permitting a use of a building or premises shall be valid for a longer period than two (2) years 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 said erection or alteration is obtained within such period and such erection or alterations are started and proceed to completion in accordance with the terms of such permit.

SECTION 22.9 FILING FEE

Application for a Zoning Board of Appeals hearing shall be in writing and shall be accompanied by a filing fee as established by the Township Board which shall be paid to the Township Treasurer at the time the notice of appeal or request for special approval is filed.

SECTION 22.10 EFFECTIVE DATE OF ACTION

The decision of the Zoning Board of Appeals shall not become effective until the expiration of five (5) days from the entry of the order unless the Zoning Board of Appeals shall find the immediate effect of the order is necessary for the preservation of property rights and so shall certify on the record.