

## CHAPTER 18

### ZONING BOARD OF APPEALS

#### Section 18.01 - MEMBERS, APPOINTMENT, TENURE, PER DIEM EXPENSES AND REMOVAL

- A. There is hereby created a Township Zoning Board of Appeals of seven (7) regular members.
1. All the regular members of the Zoning Board of Appeals shall be selected by the Township Board from among the electors of the unincorporated areas of the Township residing within the zoning jurisdiction of the Township.
  2. One of the regular members of the Zoning Board of Appeals shall be a member of the Township Planning Commission appointed by the Township Board.
  3. One regular member of the Zoning Board of Appeals may be a member of the Township Board appointed by the Township Board.
  4. An elected officer of the Township Board shall not serve as Chairperson of the Township Zoning Board of Appeals.
  5. An employee or contractor of the Township Legislative Body may not serve as a member of the Township Zoning Board of Appeals.
- B. Term of Office - Members shall serve for a period of three (3) years. They shall continue in office until their successors are selected and qualified. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.
- C. Members of the Zoning Board of Appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties.
- D. A member of the Zoning Board of Appeals may be removed by the Township Board for misfeasance, malfeasance or nonfeasance in office, upon a written statement of the reasons or grounds for the proposed removal and after a public hearing by the Township Board.
- E. A member of the Zoning Board of Appeals shall disqualify himself or herself from voting on a matter in which the member has a conflict of interest as described in Section 2.20. Failure of a member to disqualify himself or herself from voting in a matter in which the member has a conflict of interest constitutes malfeasance in office.
- F. A member of the Zoning Board of Appeals who is also a member of the Planning Commission or Township Board shall not participate in a public hearing or vote on the same matter that the member voted on as a member of the Planning Commission or the Township Board. The member may consider and vote on other unrelated matters involving the same property.

### Section 18.02 - OFFICERS

The Zoning Board of Appeals shall elect from its membership a Chairman, Vice-Chairman and Secretary.

### Section 18.03 - RULES OF PROCEDURE

The Zoning Board of Appeals shall adopt rules of procedure. These rules shall be available for public inspection at the Office of the Township Clerk.

- A. The Zoning Board of Appeals shall annually establish a regular schedule of Zoning Board of Appeals Meetings and the time and place of each. All such meetings and hearings shall be open to the public and subject to the Open Meetings Act. Meetings shall be held at the call of the Chairman or at other times as the Zoning Board of Appeals establishes.
- B. The presence of four (4) regular members shall constitute a quorum; the Zoning Board of Appeals shall not conduct business unless a quorum is present. The concurring vote of four (4) members of said 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 the applicant on any matter upon which it is required to pass by this Ordinance, or to grant variations from the requirements of this Ordinance.
- C. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the action taken by the Zoning Board of Appeals, the reasons on which it bases its action, and the vote of each member upon each question, or, if absent, or failing to vote, indicating such fact, and shall keep record of its examination and other official action, all of which shall be filed promptly in the Office of the Township Clerk and shall be a public record.

### Section 18.04 - JURISDICTION

- A. The Zoning Board of Appeals shall act upon all questions arising in the administration of this Ordinance, including interpretation of the Zoning Map and the text of this Ordinance.
- B. The Zoning Board of Appeals shall hear and decide all appeals from any order, requirement, decision, or determination made by the Zoning Administrator, other administrative official or body authorized to enforce the provisions of this Ordinance.
- C. The Zoning Board of Appeals shall hear and decide all petitions for dimensional variances. A variance may be applied for and granted under Section 4 of the Uniform Condemnation Procedures Act, Public Act 87 of 1980, as amended, and as provided in the Zoning Enabling Act, Public Act 110 of 2006, as amended. The Zoning Board of Appeals shall have the authority to grant nonuse variances relating to the construction, structural change, or alteration of buildings and structures or to any other nonuse-related standard in the Ordinance.
- D. The Zoning Board of Appeals shall hear and decide all matters assigned to it for decisions under the terms of this Ordinance.

- E. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify an order, requirement, decision, or determination made by the Zoning Administrator or other Administrative Board or official relating to this Ordinance and may issue or direct the issuance of a permit, unless jurisdiction is not applicable in specific areas.
- F. The Chairman or acting Chairman may administer oaths and compel the attendance of witnesses consistent with MCL 125.3602(1).

Section 18.05 - POWERS OF THE ZONING BOARD OF APPEALS

The Zoning Board of Appeals shall have the power to hear applications:

- A. Where it is alleged that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by the Zoning Administrator or any other Administrative Board or official charged with the enforcement of the provisions of the Ordinance.
- B. Where by reason of the exceptional narrowness, shallowness, or shape of a specific piece of property on the effective date of this Ordinance, or by reason of exceptional topographic conditions, or other extraordinary conditions of land, buildings or structure, or of the development of property immediately adjacent to the property in question, the literal enforcement of the requirements of this Ordinance would involve practical difficulty.

Section 18.06 - VARIANCES

No variance in the provisions or requirements of this Ordinance shall be authorized by the Zoning Board of Appeals unless the Zoning Board of Appeals makes findings, based upon competent, material and substantial evidence on the whole record, and meets the following standards:

- A. Special conditions or 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 zone.
- B. Literal interpretation of the provisions of this Ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zone under the terms of this Ordinance.
- C. The special conditions or circumstances do not result from the actions of the applicant.
- D. The authorizing of such variance will not be of substantial detriment to the neighboring property and will not be contrary to the spirit and purpose of this Ordinance.

No nonconforming use of neighboring lands, structures or buildings shall in itself be considered grounds for the issuance of a variance. If there are practical difficulties for nonuse variances in the way of carrying out the strict letter of the Ordinance, the Zoning Board of Appeals may grant a variance, so that the spirit of the Ordinance is observed, public safety secured, and substantial justice done.

Section 18.07 - CONDITIONS OF APPROVAL

In authorizing a variance, the Zoning Board of Appeals may, in addition to the specific conditions of approval called for in this Ordinance, attach thereto such other conditions regarding location,

character, landscaping or treatment reasonably necessary to the furtherance of the intent and spirit of this Ordinance and the protection of the public interest.

Section 18.08 - TIME LIMITATIONS ON VARIANCES

Any variance granted by the Zoning Board of Appeals shall automatically become null and void after a period of twelve (12) months from the date granted unless the owner or his/her agent shall have taken substantial steps toward effecting the variance as granted by the Zoning Board of Appeals.

Section 18.09 – APPEAL PROCEDURE

The following procedure shall be required:

- A. An appeal for variance from or review of any ruling of the Zoning Administrator or other administrative office administering any portion of this Ordinance may be taken by any person or any governmental department affected or aggrieved.
- B. An application for variance or review authorized by this Ordinance may be taken by any person or governmental department affected.
- C. Fees. Each application for variance or review shall be accompanied by a filing fee as established in the Elk Rapids Fee Resolution Schedule.
- D. When an application or appeal has been filed in proper form and with the required data, the Secretary of the Zoning Board of Appeals shall immediately place the said application or appeal upon the calendar for public hearing and give notices in accordance with the following:
  - 1. The notice shall be published once, at least fifteen (15) days prior to the date of the public hearing, in a newspaper of general circulation in the Township.
  - 2. For applications to the Zoning Board of Appeals involving a specific parcel of land, a notice of public hearing shall be mailed by way of U.S. first class mail or personally delivered to the following persons, at least fifteen (15) days prior to the date of the public hearing:
    - a. The applicant and the owner of the subject property, if different from the applicant;
    - b. All persons to whom real property is assessed for property taxes within three hundred (300) feet of the property that is the subject of the application regardless of whether the property or structure is in the Township;
    - c. One occupant of each dwelling unit or spatial area in each building that contains four (4) or fewer dwelling units and is located within three hundred (300) feet of the subject property regardless of whether the property or structure is in the Township; and

- d. The owner or manager of a building containing more than four (4) dwelling units, who shall be requested in writing to post the notices at the primary entrance of the building, but failure of such posting, shall not constitute a lack of notice to the owners or occupants of such dwelling units.
3. The notice of public hearing shall include the following information:
- a. A description of the application or request.
  - b. An identification of the property that is the subject of the application or request.
  - c. The date and time when the application or request will be considered; the location of the public hearing.
  - d. The location or address where written comments concerning the application or request will be received; the period of time within which such written comments may be submitted.
- E. An applicant may appear personally or by agent or attorney at the public hearing.

#### Section 18.10 - DECISIONS OF THE ZONING BOARD OF APPEALS

- A. The Zoning Board of Appeals shall decide all applications and appeals within thirty (30) days after the final hearing thereon.
- B. A copy of the Zoning Board of Appeals decisions shall be transmitted to the applicant or appellant and to the Zoning Administrator within forty-eight (48) hours of such decision.
- C. All decisions shall be binding upon the Zoning Administrator and observed by him, and he shall incorporate the terms and conditions of the same in the permit to the applicant or incorporate the terms and conditions of the same in the permit to the applicant or appellant whenever a permit is authorized by the Zoning Board of Appeals.
- D. A decision of the Zoning Board of Appeals shall not become final until the expiration of five (5) days from the date such decision is made unless the Zoning Board of Appeals shall find the immediate effect of such decision is necessary for the preservation of property or personal rights and shall so certify on the record.
- E. The decision of the Zoning Board of Appeals shall be final; a party aggrieved by the decision may appeal to Circuit Court in accord with MCL 125.3607.

#### Section 18.11 - STAY OF PROCEEDINGS

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Appeals after notice of appeal shall have been filed with him, that by reason of fact stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a

restraining order which may, on due cause shown, be granted by the Zoning Board of Appeals or by the Circuit Court on application, after notice to the Zoning Administrator.