

# ARTICLE 23

## ZONING BOARD OF APPEALS

### **Section 23.01 Authority.**

There is hereby established a Zoning Board of Appeals (herein referred to as the “ZBA” or “Board of Appeals”), which shall perform its duties and exercise its power as provided for in this Ordinance and the Michigan Zoning Enabling Act, Michigan Public Act 110 of 2006, as amended. (Amended 2007).

### **Section 23.02 Membership.**

The ZBA shall consist of five (5) members who shall be appointed by the Township Board in accordance with Section 601 of Michigan Public Act 110 of 2006, as amended, as follows:

- A. One (1) member shall be a member of the Planning Commission.
- B. One (1) member shall be a member of the Township Board
- C. The remaining members shall be electors of the Township residing outside of incorporated cities and villages, and shall be representative of the population distribution and of the various interests present in the Township.

No employee or contractor of the Township may be a member or employee of the Zoning Board of Appeals. No elected officer of the Township may serve as chairman of the Zoning Board of Appeals.

The qualifications of members, the term of each member, filling of vacancies, compensation of members, and operation of the ZBA shall be in accordance with Public Act 110 of 2006, as amended. The ZBA shall not conduct business unless a majority of the members of the Board are present. (Amended 2007)

### **Section 23.03 Alternates and Removal.**

- A. The Township Board of Trustees may appoint not more than two (2) alternate members to sit for the same term as regular members of the Zoning Board of Appeals.
  - 1. An alternate member may be called on to serve in the place of a Board member, with the same voting rights, for the purpose of reaching a decision on a case in which the member has abstained because of a conflict of interest.
  - 2. An alternate member may also be called on to serve for the duration of a case if the regular member is absent for one (1) or more meetings.
- B. A member of the Zoning Board of Appeals may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

(Amended 2007)

**Section 23.04      Organization and Procedures.**

The Zoning Board of Appeals shall adopt rules of procedure as may be deemed necessary to properly conduct business and organize meetings, in addition to the following:

- A.      The Board shall elect a Chair, Vice-Chair and Secretary from its membership.
- B.      All meetings of the Board shall be held at the call of the Chair at such times as the ZBA may determine.
- C.      The ZBA shall render decisions upon all matters within a reasonable time, not to exceed ninety (90) days from the filing date of a complete and accurate application. The time limit for a decision may be extended by agreement between the applicant or appellant and the ZBA.
- D.      The ZBA may distribute the application materials to the Zoning Administrator or other designated Township consultants to review the application and provide a report to the ZBA that addresses applicable Ordinance issues, whether the issue in question can be resolved by other means defined in this Ordinance, and how the request may affect the Master Plan.
- E.      The ZBA may request that any or all of the following information be provided to the ZBA by the Zoning Administrator or Township Clerk, where available and applicable to the issue in question:
  - 1.      The history of development on the site in question.
  - 2.      A summary of past Township approvals, orders and decisions related to the site or issue in question.
  - 3.      Whether all outstanding infractions related to this Ordinance or other Township ordinances have been resolved, other than the issue to be addressed by the Board.
- F.      A concurring vote of a majority of the total ZBA membership shall be necessary to render a decision. The ZBA shall not conduct business unless a majority of its members are present.
- G.      The Secretary shall keep minutes of the proceedings, record the vote of each member upon each question, indicate absences and abstentions, and keep records of hearings and other official action.
- H.      The ZBA shall have the power to require attendance of witnesses, and compel testimony and the production of documents, files and other information pertinent to the matters before it.

**Section 23.05      Applications.**

Applications to the Zoning Board of Appeals shall be filed with the Township, and a fee established by Township Board of Trustees shall be paid at the time the application is filed. Applications shall be accompanied by the following information, where applicable:

- A.      Applicant's name, address, telephone and facsimile numbers.
- B.      The address, location and tax identification number for each parcel involved in the request.
- C.      Zoning classification of the subject parcel(s) and all abutting parcels.

- D. A plot plan, drawn to scale, with a north-arrow, existing lot lines, street rights-of-way, easements, building and structures, setback dimensions, parking areas, driveways, sidewalks and other site improvements.
- E. A letter from the applicant summarizing the request, and stating the reasons for the request.
- F. Any additional information deemed necessary by the Zoning Board of Appeals to make a determination on the issue in question.

### **Section 23.06 Appeals of Administrative Decisions.**

The Zoning Board of Appeals shall hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the person or body charged with administration or enforcement of the Zoning Ordinance. Such appeals may be taken to the Board by the person, firm or corporation aggrieved, or by an officer, department, or board affected by the order, requirement, decision or determination, provided that a notice of appeal application is filed with the Township within a reasonable time of the order, requirement, decision or determination, not to exceed twenty-one (21) days. An appeal shall stay all administrative or enforcement proceedings associated with the appeal, unless the Zoning Administrator certifies to the Zoning Board of Appeals that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property.

The Zoning Board of Appeals shall reverse an administrative decision only after finding that the order, requirement, decision or determination was arbitrary or capricious, based upon an erroneous finding of a material fact, constituted an abuse of discretion, or based upon an erroneous interpretation of the Zoning Ordinance.

### **Section 23.07 Interpretation of Zoning District Boundaries.**

Where the actual lines of streets, alleys, or property boundaries vary from the portions indicated on the Zoning Map, or some ambiguity exists as to zoning district boundaries, the ZBA shall have the power to interpret the Zoning Map in such a way as to carry out the intents and purposes of the Quincy Township Zoning Ordinance and Master Plan. Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the center lines of roads, streets, highways, watercourses or alleys shall be construed to follow such center lines.
- B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- C. Boundaries indicated as approximately following municipal boundaries shall be construed as following such municipal boundaries.
- D. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.
- E. Boundaries indicated as parallel to or extensions of features indicated in subsections “A” through “D” above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
- F. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, the Board of Appeals shall interpret the district boundaries.

- G. Where a district boundary line divides a lot which was in single ownership at the time of passage of this Ordinance, the Board of Appeals may permit, as a special exception, the extension of the regulations for either portion of the lot not to exceed one hundred feet (100') beyond the district line into the remaining portion of the lot.

### **Section 23.08 Interpretation of Zoning Ordinance Provisions.**

- A. **Interpretations.** The Board shall have the power to hear and decide requests for interpretations of Zoning Ordinance provisions in such a way as to preserve and promote the character of the zoning district in question, and carry out the intent and purpose of this Ordinance and the Master Plan.
- B. **Determinations of similar uses.** In recognition that every potential use cannot be addressed in this Ordinance, the Board shall have the authority to determine whether a proposed use not listed in this Ordinance is similar to a principal or special land use permitted by this Ordinance, subject to the following:
1. Prior to making such a determination, the Board must find that the principal or special land use closely resembles the proposed use in terms of characteristics, intensity, nature and other applicable common elements of such uses, including but not limited to potential impacts on property values, traffic generated, aesthetics, noise, vibration, dust, smoke, odor, glare and other objectionable impacts on public health, safety and welfare.
  2. The Board may make a determination that the use is or is not similar to a use listed in this Ordinance, or may recommend to the Township Board of Trustees that the proposed use be addressed through an amendment to this Ordinance.
  3. If it is determined that there is no similar use listed in this Ordinance, the use shall be prohibited in accordance with Section 2.202 of this Ordinance (Prohibited Uses).
  4. If it is determined that the proposed use is similar to a use listed in this Ordinance, the proposed use shall comply with any conditions or special land use standards that apply to the listed use.

### **Section 23.09 Nonconforming Determinations.**

The Zoning Board of Appeals shall have the authority to determine whether a use of land is conforming, nonconforming or illegal in the district where it is located, and to determine whether a nonconforming use of land has been removed, discontinued or otherwise ceased to occupy the land in question, subject to the procedures and standards specified in Article 22 (Nonconformities). The Zoning Board of Appeals shall also have the authority to determine whether a sign is illegal or has been abandoned in accordance with Section 12.11A (Sign Removal by Township Action).

### **Section 23.10 Variances.**

The Zoning Board of Appeals shall have the power to authorize, upon appeal, specific variances from dimensional requirements of the Zoning Ordinance regulations that would result in practical difficulties provided such relief may be granted without substantial detriment to the public good and without substantially impairing the purpose of the Zoning Ordinance.

Variances shall be granted only in accordance with the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, and the provisions of this Article. The ZBA shall state the grounds upon which it justifies the granting or denying of a variance.

Variance applications may be brought before the ZBA by a person aggrieved or by an officer, department, board, or bureau of the State or Township. The ZBA shall state the grounds of any decision that is made.

The ZBA may grant a requested variance only upon finding that practical difficulties exist and that the need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district. In determining whether practical difficulties exist the ZBA shall consider the following factors:

- A. Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters will unreasonable prevent the owner from using the property for a permitted purpose or will render the Ordinance conformity unnecessarily burdensome.
- B. Allowing the variance will result in substantial justice being done; considering the public benefits intended to be secured by this article, the individual hardships that will be suffered by a failure of the board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.
- C. A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
- D. The alleged practical difficulties, which will result from a failure to grant the variance, include substantially more than mere inconvenience or inability to attain a higher financial return.
- E. The proposed and resulted need for the variance has not been self-created by the applicant.
- F. The variance is the minimum necessary to permit a reasonable use of the land, building, or structure and does not confer upon the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.

In all variance proceedings, the applicant may provide information, plans, testimony, and/or evidence. Administrative officials and other person may provide information, testimony and/or evidence on a variance request.

(Amended 2007)

### **Section 23.11        Conditions.**

The ZBA may impose reasonable conditions in connection with an affirmative decision on an appeals, interpretation, or variance request. The conditions may include requirements necessary to ensure that public services and facilities affected by a proposed land use or activity will be capable or 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 the following requirements:

- A. Be designed to protect natural resources, the health, safety, welfare and the social and economic well-being of those who will use the land use or activity under consideration, residents or

landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

- B. Be related to the valid exercise of police power, and purposes that are affected by the proposed use or activity.
- C. Be necessary to meet the intent and purpose of the Zoning Ordinance, be related to the standards established in the Ordinance, be related to the standards established in the Ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

Conditions imposed with respect to the approval of a variance shall be recorded as part of the ZBA minutes, and shall remain unchanged except upon the mutual consent of the ZBA and the landowner following notice and hearing as required in a new case.

### **Section 23.12 Hearings and Decisions.**

The Zoning Board of Appeals shall make no determination on a specific case until after a public hearing conducted in accordance with Section 1.11 (Public Hearing Procedures). Each decisions of the Board of Appeals shall include a written record of the Board's findings and determinations in the case.

### **Section 23.13 Fees.**

The Township Board of Trustees may, from time to time, prescribe or amend a reasonable schedule of fees to be charged to applicants for applications to the Zoning Board of Appeals. Such fees shall be paid to the Township at the time of filing the application.

### **Section 23.14 Limitations of Authority.**

- A. No order of the ZBA permitting the erection or alteration of a structure shall be valid for a period longer than one (1) year, unless a building permit from Branch County for such erection or alteration is obtained within such period, and such erection or alteration is started and completed in accordance with the terms of such permit.
- B. No order of the ZBA pertaining to the use of a structure or land shall be valid for a period longer than one (1) year unless such use is established within such period, except where such use is dependent upon the erection or alteration of a structure, in which case the one (1) year period shall begin after the certificate of occupancy is issued by Branch County for the structure.
- C. It shall be the established policy of the Township that the Zoning Board of Appeals may not consider variances from the use provisions of this Ordinance that would have the effect of permitting the establishment of a use not otherwise permitted in the zoning district. This is consistent with the requirements of Section 604 of Public Act 110 of 2006, as amended. (Amended 2007).
- D. The ZBA shall not consider appeals of any decisions by the Planning Commission or Township Board regarding requests for approval of amendments, special land uses, or planned developments, as defined in this Ordinance.
- E. ZBA jurisdiction to consider appeals of site plan determinations shall be limited to the following:

1. Appeals of determinations related to the type of review required under Section 18.02 (Type of Site Plan Review Required).
  2. Cases referred by the Planning Commission, where the Planning Commission has approved a site plan contingent upon approval of one or more variances by the Zoning Board of Appeals. In such cases, the Planning Commission Secretary shall provide copies of the site plan, application materials and Planning Commission meeting minutes to the ZBA, and consideration shall be limited to the specific variances identified as conditions of site plan approval by the Planning Commission.
- F. The Zoning Board of Appeals shall not have the authority to alter this Zoning Ordinance or Zoning Map.