

ARTICLE 19. BOARD OF APPEALS

SECTION 1900. BOARD OF APPEALS ESTABLISHED

A Board of Appeals is hereby established in accordance with and pursuant to the provisions of the Michigan Zoning Enabling Act P.A. 110 of 2006, as amended (M.C.L. 125.3101 et seq.).

SECTION 1901. MEMBERSHIP OF BOARD OF APPEALS

Said Board shall consist of five members. The first member shall be a member of the Township Planning Commission whose term shall coincide with his appointment to the Planning Commission. One regular member may be a member of the Township Board, whose term shall coincide with his elected term of office. A Township Board member may not serve as the chairperson of the Board of Appeals. The remaining members of the Board shall be selected from the electors of the Township residing outside of incorporated cities and villages, and each shall serve a 3-year term. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term. 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 to do so constitutes malfeasance in office.

SECTION 1902. MEETINGS AND RECORDS

Meetings of the Board of Appeals shall be held at the call of the Chairman and at such other times as the Board of Appeals in its rules of procedure may specify. The Chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Appeals shall be open to the public. Upon a written request seeking an interpretation of the Zoning Ordinance, an appeal of an administrative decision, or a variance, the Board of Zoning Appeals shall select a reasonable time and place for a hearing of the request. Notice of the hearing shall be given by one (1) publication in a newspaper of general circulation in the Township. The notice shall be given not less than fifteen (15) days before the public hearing date, in accordance with the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended, (M.C.L. 125.3101 et seq.). For requests for a variance or an interpretation or appeal of an administrative decision which involves a specific parcel, written notice shall also be given by mail or personal delivery to the applicant and owners of the subject property, to all persons whom real property is assessed within 300 feet of the subject property, and to the occupants of all structures within 300 feet of the subject property regardless of whether the property or occupant is located within Lenox Township. The notice shall describe the nature of the proposed request, state the time and place of the public hearing, indicate when and where written comments will be received, and indicate the property that is subject of the request including a listing of all existing street addresses within the subject property. The Board of Appeals shall maintain a record of its proceedings which shall be filed at the office of the Township Clerk and shall be a public record.

SECTION 1903. POWERS AND DUTIES

The Board of Appeals shall act upon all questions as they may arise in the administration of the Zoning Ordinance, including the interpretation of the Zoning Maps and text, and may fix

rules and regulations to govern its procedures sitting as such Board of Appeals. It shall hear and decide appeals from and review any order, requirements, decision or determination made by an administrative official charged with enforcement of this Ordinance. It shall also hear and decide all matters referred to it, or upon which it is required to pass, under the provisions of this Ordinance. The concurring vote of a majority of the members of the said Board of Appeals shall be necessary to reverse any order, requirement, 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 decision of the Board of Appeals shall set forth specifically the grounds upon which its decision is based. The Board of Appeals shall have the power to permit the erection of a building, or an addition to an existing building, or a public service corporation or for public utility purposes, in any permitted district to a greater height or of 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 Board of Appeals shall find use, height, area, building or structure reasonably necessary for the public convenience and service. The Board of Appeals in deciding on any matter which they are requested to pass under this Ordinance may establish such reasonable requirements for the development of a structure on such site as will assure reasonable protection to abutting properties and adjacent districts.

SECTION 1904. WHO MAY APPEAL

An appeal may be taken by any person aggrieved or by any officer, department, board or bureau of the Township, County, or State.

SECTION 1905. TIME AND NOTICE OF APPEAL AND PROCEDURE, FEES

Such appeal shall be taken within, thirty (30) days of the decision by the filing of a notice of appeal with the officer or administrative commission from whom the appeal is taken and with the Board of Appeals of a notice of appeal specifying the grounds thereof and payment of such fee as may be established by resolution of the Lenox Township Board in those cases hereinafter described. The officer or administrative commission from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the records upon which the action appealed from was taken. The Board of Appeals shall fix a reasonable time for the hearing of the Board of Appeals and give due notice thereof to the parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. (Amended 5/06/02)

- A. The Township Board may by resolution establish a fee to be paid by the person appealing under this Article in all cases, except those cases where a particular use under this Ordinance may be permitted only after approval of the Board of Appeals.
- B. The Township Board may, by resolution establish such additional fees as it may deem reasonable to be paid by any person appealing under this Article in the event such appellant shall request a special meeting of the Board of Appeals.

SECTION 1906. STAY OF PROCEEDINGS

An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certified to the Board of Appeals, after the Notice of Appeal shall have been filed with him by reason of fact 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. Such restraining order may be granted by the Board of Appeals or by the Circuit Court, on application, on due notice to the officer from whom the appeal is taken and on due cause shown.

SECTION 1907. JURISDICTION

The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision of determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal was taken and may issue or direct the issuance of a permit. Where there are practical difficulties in the way of carrying out the strict letter of this Ordinance, the Board of Appeals shall have the power in passing upon appeals to vary or modify any of its rules, regulations or provisions so that the spirit of this Ordinance shall be observed, public safety secured and substantial justice done. Nothing herein contained shall be construed to give or grant to the Board of Appeals the authority to make changes in the zoning Ordinance or the Zoning Map, such power and authority being reserved to the Township Board in the manner herein provided by law.

SECTION 1908. RE-REFERRED TO PLANNING COMMISSION

Any matters acted upon by the Zoning Board of Appeals which requires the recommendation of the Planning Commission hereunder, shall be re-referred to the Planning Commission, for informational purposes.

SECTION 1909. APPROVAL OF TEMPORARY STRUCTURES OR USES

The Zoning Board of Appeals may permit temporary structures, signs and uses for periods not to exceed two (2) years in undeveloped sections of the Township and for periods not to exceed six (6) months in development sections. The Zoning Board of Appeals may also permit, upon proper application, the following character of temporary use, not otherwise permitted in any district, not to exceed twelve (12) months with the granting of twelve (12) month extensions being permissible; uses which do not require the erection of any capital improvement of a structural nature. The Board of Appeals, in granting permits for the above temporary uses, shall do so under the following conditions:

- A. The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.
- B. The granting of the temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.
- C. All setbacks, land coverage, off-street parking, lighting and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of Lenox Township shall be made at the discretion of the Board of Appeals.
- D. The use shall be in harmony with the general character of the district.
- E. No temporary use permit shall be granted without first giving notice to others of the adjacent property of the time and place of a public hearing to be held as further provided for in this Ordinance. Further, the Board of Appeals shall seek the review and recommendation of the Planning Commission prior to the taking of any action.

SECTION 1910. VARIANCES

- A. Where owing to special conditions, a literal enforcement of the provisions of this Ordinance would involve practical difficulties, within the meaning of this Ordinance, the Board of Appeals shall have power upon appeal in specific cases to authorize such variation or modification of the provision 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.
- B. No such variance or modification of the provisions of this Ordinance shall be granted unless it appears by the preponderance of the evidence that all the following facts and conditions exist:
1. That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water or topography and is not due to the applicant's personal or economic difficulty.
 2. That the need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).
 3. That strict compliance with the regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
 4. That the requested variance is the minimum variance necessary to do substantial justice to the applicant as well as to other property owners in the district.
 5. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.
 6. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties or class of uses in the same district or zone.
 7. 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.
 8. 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.
 9. That the granting of such variance will not adversely affect the purpose or objectives of the Lenox Township Master Plan.

10. That the granting of such variance or modification 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 fire or endanger the public safety, or unreasonable 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.

SECTION 1911. ORDINANCE INTERPRETATION

The Zoning Board of Appeals shall be responsible to interpret the provisions or meaning of standards of this Ordinance, upon appeal, in such a way as to carry out the stated intent and the goals of the Zoning Ordinance and Township Master Plan; and to interpret boundaries of the Zoning Map where the actual alignment of streets or natural features used to separate zoning districts varies from the alignment shown on the Zoning Map, or where the zoning district boundary does not follow exact property lines (see Section 202).

SECTION 1912. MISCELLANEOUS

- A. No order of the Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is started and proceeds to completion in accordance with the terms of such permit. The applicant may petition the Zoning Board of Appeals for a six (6) month extension.
- B. No order of the Board of Appeals permitting a use of a building or premises shall be valid for a period longer than one (1) year, 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 started and proceeds to completion in accordance with the terms of such permit.
- C. Any party aggrieved by a decision of the Board of Appeals may appeal to the circuit court for Macomb County. An appeal shall be filed within 30 days after the Board of Appeals certifies its decision in writing or approves the minutes of its decision.