

**ARTICLE 23
BOARD OF APPEALS**

Sec. 23.01 CREATION AND MEMBERSHIP

There is hereby established a Board of Zoning Appeals, herein referred to as the "Board of Appeals", which shall perform its duties and exercise its powers 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 observed, public safety secured, and substantial justice done. The Board of Appeals shall consist of five (5) members, as follows:

- 23.01.01 **Planning Commission Member.** The first member shall be a member of the Township Planning Commission.
- 23.01.02 **Other Members.** The remaining members shall be selected and appointed by the Township Board from among the electors residing in the unincorporated area of the Township.
- 23.01.03 **Township Trustee.** One member may be from the Township Board and their membership term shall be limited to the time he is a member of the Township Board. An elected official of the Township shall not serve as chairperson of the Board of Appeals. An employee or contractor employed by the Township may not serve as a member of the Board of Appeals.
- 23.01.04 **Alternates.** 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 serve as a regular member in the absence of a regular member if the regular member is absent from or will be unable to attend one (1) or more consecutive meetings of the Board of Appeals. An alternate member may also be called upon to serve as a regular member for the purpose of reaching a decision in which a regular member has abstained for reasons of conflict of interest. The alternate member so appointed shall serve in the case until a final decision is made. The alternate member when serving has the same voting rights as a regular member of the Board of Appeals. (as amended 12/31/06)
- 23.01.05 **Terms.** Terms shall be for 3 years, except for members serving because of their membership on the zoning board, Planning Commission, or Township Board, whose terms shall be limited to the time they are members of the Planning Commission, or Township Board, respectively, and the period stated in the resolution appointing them. Any vacancy shall be filled within one (1) month after the vacancy occurs. Vacancies for unexpired terms shall be filled for the remainder of the term.
- 23.01.06 **Removal.** Members of the Board of Appeals shall be removable by the Township Board for non-performance of duty or misconduct in office, upon filing of written charges and after public hearing before the Township Board.

Sec. 23.02 JURISDICTION

The Board of Appeals shall have all jurisdiction and powers granted by the Michigan Zoning Enabling Act (Public Act 110 of 2006), all jurisdiction and powers prescribed in other Articles of this Ordinance and the following specific jurisdiction and powers:

- 23.02.01 **Appeals of Administrative Decisions.** To hear and decide appeals where it is alleged by an appellant that there is an error in any order, requirement, permit, decision, or refusal made by

the Planning Commission or any administrative official charged with administration or enforcement of this Ordinance.

23.02.02 **Variations (Dimensional and Use).** To authorize, upon a variance from the strict application of the provisions of this Ordinance, where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this Ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance.

23.02.03 **Interpretation.** Upon request of the Planning Commission or any administrative or enforcement officer charged with administration or enforcement of this Ordinance, the Board of Appeals may interpret and clarify the meaning of Ordinance text. The Board of Appeals may also be requested to interpret boundaries of zoning districts where the zoning district classification can not be clearly discerned on the Official Zoning Map. (as amended 12/31/06)

23.02.04 **Approvals.** To hear and decide requests for other decisions that this Ordinance specifically authorizes the Board of Appeals to pass.

23.02.05 **Special Land Uses.** The Board of Appeals may grant dimensional or other site plan related variances for special land uses. The Board of Appeals shall not have the power to reverse or modify the Township Board's decision to approve or deny a special land use permit nor grant variances to any conditions placed on special land use approval.

23.02.06 **Powers**

(a) The Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this Ordinance.

(b) The decision of the Board of Appeals shall be final. However, a person having an interest affected by this Ordinance may appeal to the circuit court for review pursuant to section 23(a) of the Michigan Zoning Enabling Act (Public Act 110 of 2006).

(c) In granting a variance the Board of Appeals may attach thereto such conditions regarding the location, character, and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this Ordinance.

Sec. 23.03 **MEETINGS**

23.03.01 **Meetings.** All meetings of the Board of Appeals shall be held at the call of the Chairman, and at such times as the Board of Appeals may determine. The Board of Appeals shall not conduct business unless three (3) members of the Board of Appeals are present. All meetings of the Board of Appeals shall be open to the public. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its findings, proceedings at hearings, and other official actions, all of which shall be immediately filed with the Township and shall be a public record. (as amended 12/31/06)

23.03.02 **Witnesses.** The Chairman of the Board of Appeals or in his absence the Acting Chairman shall have the power to compel the attendance of witnesses and administer oaths.

23.03.03 **Rules.** The Board of Appeals may adopt rules for the conducting meetings, and rendering decisions.

Sec. 23.04 **APPEAL PROCEDURE**

23.04.01 **Application to Board of Appeals.** An appeal may be taken to the Board of Appeals by any person, firm or corporation, or by any officer, department, board or bureau affected by a decision of the Zoning Administrator. Such appeals shall be taken within such time as shall be prescribed by the Board of Appeals by general rule, by filing with the Zoning Administrator a notice of appeal, specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Appeals all of the papers constituting the record upon which the action appealed from was taken.

23.04.02 **Stay of Proceedings.** An appeal to the Zoning Board of Appeals shall stay all proceedings in furtherance of the action appealed. However, if the Zoning Administrator certifies to the Board of Appeals after notice of appeal has been filed that, by reason of facts stated in the certificate, a stay would, in the opinion of the Zoning Administrator, cause imminent peril to life or property, proceedings shall not be stayed, except by a restraining order issued by a court of record. (as amended 3/5/10)

23.04.03 **Fees.** The Township Board may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the Board of Appeals. At the time the notice for appeal is filed said fee shall be paid to the Township Treasurer.

23.04.04 **Notice and Public Hearing**

(a) The Board of Appeals shall make no decision except in a specific case and after conducting a public hearing.

(b) Notice of public hearing shall be provided for in accordance with section 21.05. (as amended 12/31/06)

(c) The 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 on the appeal without unreasonable delay. Any person may appear and testify at the hearing, either in person or by duly authorized agent.

23.04.05 **Vote.** The majority vote of three (3) members of the Board of Appeals shall be necessary to reverse any order, requirements, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant any matter upon which it is authorized by this Ordinance to render a decision. The majority vote of two-thirds (2/3) of the members of the Board of Appeals shall be necessary to grant a use variance. (as amended 12/31/06)

Sec. 23.05 **GRANTING OF VARIANCES**

23.05.01 Variances and appeals shall be granted only in accordance with the Michigan Zoning Enabling Act (Public Act 110 of 2006), and based on the findings set forth in this section. Variances and appeals shall not be granted solely upon economic or financial considerations.

The extent to which the following criteria apply to a specific case shall be determined by the ZBA.

23.05.02 **Criteria Applicable to Appeals to Administrative Decisions.** The Board of Appeals may reverse an order of an administrative official or the Planning Commission only if it finds 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.

23.05.03 **Criteria Applicable to Dimensional Variances.** No variance in the provisions or requirements of this Ordinance shall be authorized by the Board of Appeals unless it is found from the evidence that all of the following conditions exist:

- (a) **Practical Difficulty/Substantial Justice.** Compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, or other dimensional provisions would unreasonably prevent the use of the property. Granting of a requested variance or appeal would do substantial justice to the applicant as well as to other property owners in the district and is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and vicinity of the subject parcel.
- (b) **Extraordinary Circumstances.** There are exceptional or extraordinary circumstances or conditions applicable to the property or the intended use which are different than other properties in the same zoning district or the variance would make the property consistent with the majority of other properties in the vicinity. The need for the variance was not self-created by the applicant.
- (c) **Public Safety and Welfare.** The granting of the variance 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, comfort, morals or welfare of the inhabitants of the Township of Genoa.
- (d) **Impact on Surrounding Neighborhood.** The variance will not interfere with or discourage the appropriate development, continued use, or value of adjacent properties and the surrounding neighborhood.

23.05.04 **Criteria Applicable to Use Variances.** The Board of Appeals may grant a use variance only upon a finding that an unnecessary hardship exists. A use variance is approval to allow a use that is otherwise not permitted in a zoning district. A finding of an unnecessary hardship shall require demonstration by the applicant of all of the following:

- (a) **Unreasonable Current Zoning Designation.** The applicant has demonstrated that the site can not reasonably be used for any of the uses allowed within the current zoning district designation. The Board of Appeals may require submission of documentation from professionals or certified experts to substantiate this finding.

- (b) Unique Circumstances. 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. The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone and that these features make it impossible to earn a reasonable return without some adjustment.
- (c) Not Self-Created. The problem and resulting need for the variance has not been self-created. The Board of Appeals shall consider changes made to the property by the applicant and near term predecessors.
- (d) Capacity of Roads, Infrastructure and Public Services. The capacity and operations of public roads, utilities, other facilities and services will not be significantly compromised.
- (e) Character of Neighborhood. The use variance will not alter the essential character of the neighborhood nor be a detriment to adjacent properties.

Sec. 23.06 OFFICIAL RECORD; FINDINGS OF FACT

Minutes shall be kept of each meeting. The Board of Appeals shall record into the minutes all relevant findings, conditions, facts and other relevant factors, including the vote of each member upon each question, or if absent or failing to vote, and all of its official actions. To this end the Board of Appeals shall prepare an official record for all appeals and shall base its decision on this record. The official record shall, at a minimum, include the following items:

- 23.06.01 The relevant administrative records and orders issued relating to the appeal;
- 23.06.02 The notice of the appeal;
- 23.06.03 Such documents, exhibits, photographs or written reports as may be submitted to the Board of Appeals for its consideration; and,
- 23.06.04 The findings of the Board of Appeals, stating the facts of the appeal, the decision, any conditions of the decision and the reasons for reaching such a decision.

Sec. 23.07 ORDERS

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

Sec. 23.08 TIME REQUIREMENTS

- 23.08.01 **Effective Date of Decisions.** Decisions and orders of the Board of Appeals shall become effective after the decision is reached, unless the Board of Appeals shall find immediate effect is necessary to preserve a substantial property right and shall so certify in the record.
- 23.08.02 **Validity for Construction.** An order of the Board of Appeals permitting the erection of a building shall be valid for a period of one (1) year. If actual physical construction of a substantial nature of the improvements included in the approval has not commenced and

proceeded meaningfully toward completion within one (1) year following Board of Appeals approval, and if written request for an extension of the approval has not been submitted by the applicant, the approval shall be deemed null and void.

- 23.08.03 **Validity for Use.** An order of the Board of Appeals permitting a use of a building or premises shall be valid for a period of one (1) year unless such use is established within such period or a written request for an extension of the approval has been submitted by the applicant. Where such use permitted is dependent upon the erection or alteration of a building such order shall continue in force and effect if a land use permit for said 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.
- 23.08.04 **Extensions.** The Township may grant extensions to the Board of Appeals approval where written application for an extension is filed with the Zoning Administrator prior to the termination of the one (1) year approval period. The Zoning Administrator shall review the request for compliance with any Zoning Ordinance amendments adopted or changes to site conditions since the variance was approved.
- (a) If there have been no changes to the site or Zoning Ordinance that would affect the variance approval, then the Zoning Administrator may grant the extension. The Zoning Administrator may grant up to two (2) extensions; extensions beyond two (2) shall require Board of Appeals approval.
 - (b) If there have been changes to the site or zoning ordinance that could affect the variance, then the request for extension shall be reviewed by the Board of Appeals to determine if an extension should be granted or if an amended application must be submitted for approval.
 - (c) Each extension shall be for a further period of not more than twelve (12) months.
- 23.08.05 **Re-application.** No application for a variance which has been denied wholly or in part by the Board of Appeals shall be resubmitted within one (1) year from the date of the original filing of an application for the variance, except on grounds of new evidence or proof of changed conditions relating to the reasons for the denial of the original appeal found by the Board of Appeals to be valid. (as amended 3/5/10)