

## **ARTICLE 3**

### **ZONING BOARD OF APPEALS**

#### **301 ZONING BOARD OF APPEALS ESTABLISHED**

There is hereby established a Zoning Board of Appeals which shall perform duties and exercise powers in accordance with PA 110 of 2006, MCLA 125.3101 et. seq., as amended.

#### **302 MEMBERSHIP**

A. The Township Zoning Board of Appeals shall consist of five (5) members. The first member shall be a member of the Planning Commission. The second member shall be a member of the Township Board, provided that such member of the Township Board shall not serve as Chairperson of the Zoning Board of Appeals. The remaining three (3) members and two (2) alternates shall be citizens at large from the Township. All members shall be appointed by the Township Board. No employees or contractors of the Township Board may serve on the Board of Appeals. Terms of office are three (3) years except for those serving as representatives from the Planning Commission or Township Board. For such representatives, terms are limited to the time they are members of their respective boards or commissions. All reference hereafter in this Ordinance to the Township Board of Appeals or Board of Appeals or Zoning Board of Appeals shall be deemed to refer to the Township Zoning Board of Appeals.

B. The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called as specified to serve as a regular member of the Zoning Board of Appeals in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the Zoning Board of Appeals.

#### **303 MEETINGS; POWERS AND DUTIES OF CHAIRPERSON; RECORDS**

Meetings of the Township Zoning Board of Appeals shall be held at the call of the

chairperson, who shall be elected by the members of the Township Board of Appeals, and at such other times as the Board in its rules of procedure may specify. The chairperson may administer oaths and compel the attendance of witnesses. All such meetings shall be open to the public. Such Board shall maintain a record of its proceedings, which shall be filed with the Township Clerk and shall be a public record.

#### **304 DUTIES; RULES; HEARING AND DECISION OF APPEALS; RIGHT TO AND GROUNDS FOR APPEALS**

A. The Township Zoning Board of Appeals shall act upon all questions that arise in the administration of the Zoning Ordinance, including the interpretation of the zoning map. It may fix rules and regulations to govern its procedures.

B. It shall hear and decide appeals from and review any order, requirement, or determination made by an administrative official charged with administration of this Ordinance. It may reverse or affirm, wholly or partly, or may modify the order, requirement, or 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 zoning permit.

C. It shall hear and decide all matters referred to it or upon which it is required to pass pursuant to MCLA 125.3601 et. seq. The concurring vote of three (3) members of the Board of Appeals shall be necessary to reverse or modify an order, requirement, or determination of the administrative officer or to decide in favor of the applicant on any matter upon which they are required to pass under such statute.

D. An appeal may be taken by any person aggrieved by the order, requirement or determination made by an administrative official charged with administration of this Ordinance.

#### **305 TIME TO APPEAL AND NOTICE OF APPEAL; TRANSMISSION OF RECORD**

Such appeal shall be taken within sixty (60) days of date of issuance of the order, requirement, or determination appealed from, by the filing with the officer from whom the appeal is taken on the appropriate form provided by the Zoning Administrator. The zoning official from whom the appeal is taken shall forthwith transmit to the Board of Appeals all documents constituting the record of the action being appealed.

### **306 STAY OF PROCEEDINGS PENDING APPEAL**

An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Township Zoning Board of Appeals, after the appeal shall have been filed, that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such case proceedings shall not be stayed other than by a restraining order, which may be granted by the Zoning Board of Appeals or by the circuit court, with notice to the zoning official from whom the appeal is taken.

### **307 AUTHORITY TO GRANT VARIANCES**

The Zoning Board of Appeals shall have the power to authorize, upon appeal in specific cases, such nonuse variance from the provisions of this Zoning Ordinance as will not be contrary to the public interest, where a literal enforcement of the provisions of this Ordinance would result in practical difficulty.

### **308 CONDITIONS UPON WHICH VARIANCES MAY BE GRANTED; PROCEDURES AND HEARINGS**

A. A nonuse variance shall not be granted by the Zoning Board of Appeals unless and until a written application for a variance is submitted, and a hearing thereon held wherein the applicant demonstrates all of the requirements set forth below.

1. That conditions and circumstances exist which are peculiar to the land (including but not limited to location, width, depth, shape or topography) or structure involved and which are not applicable to all other lands or structures in the same vicinity. However, this condition does not mean that the peculiar conditions and circumstances must exclusively effect only the applicant's land. Additionally, satisfaction of this condition shall not necessarily require that the property have specific physical characteristics, such as size or topographic peculiarities, that make it unique. "Uniqueness" may be found in changing circumstances, which though applicable to some others in the vicinity of the applicant's land, are not applicable to all others in the vicinity of the applicant's land.

2. The land subject to the variance application cannot reasonably be used in a manner consistent with the literal interpretation of the applicable provisions of this Ordinance. For property used in a trade or business or

held for the production of income, this condition may be satisfied if the applicant can establish that the applicant could not receive a reasonable economic return for the property under a literal interpretation of the Ordinance provisions applicable to the land.

3. That the conditions and circumstances do not result from the actions of the applicant.

4. The use authorized by the variance will not alter the essential character of the general locality in which the applicant's land is located. In considering the essential character of the general locality, the Zoning Board of Appeals need not focus solely on the immediate neighboring properties, but may take a more expansive view of the general locality.

5. That the variance requested shall be the minimum variance that will make possible the reasonable use of the land or structure.

6. That the granting of the variance shall be in harmony with the intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public interest.

B. The notice required for such a variance hearing shall be as follows:

1. Following receipt of a written application concerning a request for a variance, the Zoning Board of Appeals shall fix a reasonable time for the hearing of the request and shall publish notice of the request in a newspaper of general circulation in Whitehall Township.

2. Notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in Whitehall Township.

3. The notice shall be given not less than fifteen (15) days before the date the application will be considered for approval. If the name of the occupant is not known, the term "occupant" may be used in making notification. The notice shall do all of the following:

(a) Describe the nature of the request;

(b) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used;

(c) State when and where the request will be considered; and

(d) Indicate when and where written comments will be received concerning the request.

### **309 CONDITIONAL GRANT OF VARIANCES**

In granting any variance, the Zoning Board of Appeals may require appropriate conditions and safeguards, which shall be deemed a part of the terms under which the variance is granted. Any subsequent violation of such terms shall be deemed a violation of this Zoning Ordinance.

### **310 PERFORMANCE GUARANTY**

In approving the variance, the Zoning Board of Appeals may require that a temporary or permanent cash deposit, certified check, performance bond, letter of credit, and/or other guaranty acceptable to the Zoning Board of Appeals, in such amount and upon such terms as the Zoning Board of Appeals shall deem appropriate, be furnished by the applicant or property owner or both, to insure continued compliance with the terms of this Ordinance, the terms and conditions of the variance as approved, and with any other requirements related to any construction or improvement of any lot authorized by such approved variance. Any such financial guaranty shall be deposited with the Township Treasurer prior to the issuance of the variance. As work progresses, the Zoning Board of Appeals may authorize a partial rebate in or reduction of the amount of any such financial guaranty.

### **311 ABANDONMENT AND TERMINATION OF VARIANCES**

A. Each variance granted under the provisions of this Zoning Ordinance shall become null and void unless the construction or occupancy authorized by such variance or permit has been commenced, on a material and substantial basis, within one (1) year after the granting of such variance and thereafter pursued diligently to completion.

B. Any non-use of a variance previously granted, for a period of one (1) year or more, shall result in such variance being deemed abandoned and terminated.

### **312 DECISION OF THE ZONING BOARD OF APPEALS; APPEALS TO THE CIRCUIT COURT**

The decision of the Zoning Board of Appeals shall contain the findings and determinations of the Board in each case. The signature of the chairperson and the secretary of the Zoning Board of Appeals shall be affixed thereon. Any persons aggrieved by the decision of the Zoning Board of Appeals shall have the right to appeal to the Circuit Court for Muskegon County, which appeal shall be brought within thirty (30) after issuance of the decision by the Zoning Board of Appeals.