

ARTICLE 22. ZONING BOARD OF APPEALS

Section 22.01 — Intent and Purpose: The intent and purpose of this section is to create a Zoning Board of Appeals and identify the duties of this body, and the appeals process for challenges to zoning decisions.

Section 22.02 — Authority: A Zoning Board of Appeals is hereby created in conformance with and shall perform its duties and exercise its powers and jurisdiction as provided by, the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended. The Zoning Board of Appeals powers and duties are those authorized by the Michigan Zoning Enabling Act and as follows:

1. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination, made by Edenville Township and/or its officers, representatives or agents in the administration or enforcement of this Ordinance, except in the decision on any Special Use Permit or Planned Unit Development.
2. To hear and decide appeals from the action of the Zoning Enforcement Officer when a Zoning Compliance Permit has been refused or the construction or use of a building or premises stopped because of the failure of such building, or use, to comply with the provisions of this Ordinance, where such appeal is based on unusual conditions that cause practical difficulties or unnecessary or unintended hardship in the application of the strict letter of this Ordinance to the case under appeal.
3. To authorize variances only if the Zoning Board of Appeals finds from reasonable evidence that all the following facts and conditions exist:
 - a. That there are exceptional or extraordinary circumstances or conditions applying to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district and are not the result of self-induced hardship.
 - b. That such variance 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 in the vicinity. The possibility of increased financial return shall not itself be deemed sufficient to warrant a variance.
 - c. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purposes of this Ordinance or the public interest.
 - d. That the condition or situation of the specific piece of property, or the intended use of said property for which the variance is sought is not of so general or recurrent a nature as to require the formulation of a general regulation for such condition or situation.
4. The Zoning Board of Appeals shall not have the authority to grant a variance to allow a use not permitted by this Ordinance in the zoning district in which the property is located.
5. The Zoning Board of Appeals may reverse or affirm, wholly or in part, or may modify the application of any dimensional provisions of this Ordinance pertaining to parcels of land, such as lot dimensions or setbacks. The Zoning Board of Appeals shall make such order, requirement, decision or determination as in its opinion ought to be made on the property. The Zoning Board of Appeals shall notify the Township and/or its officers, representatives or agents in writing of any such action taken and such action shall not be valid until such

notice shall have been delivered to the office of the Zoning Enforcement Officer within 14 days after the Zoning Board of Appeals decision is made.

6. The Zoning Board of Appeals may require the posting of a performance bond to ensure compliance of all conditions associated with the issuance of a variance. The bond must be deposited with the township clerk before a variance is issued. Bond may be by cash, certified check, irrevocable letter of credit, or a surety bond, acceptable to the township board.

Section 22.03 — Membership:

- A. The Zoning Board of Appeals shall have five (5) regular members. A member of the Planning Commission shall serve on the Zoning Board of Appeals. The Township Board shall always have one of its members serve as the second member of the Zoning Board of Appeals, but such Township Board member shall not serve as chairperson of the Zoning Board of Appeals. The remaining regular members and any alternate members of the Zoning Board of Appeals shall be appointed by the Township Board. The members appointed shall be selected from and be representative of the population distribution and the various interests in the Township.
- B. The Township Board also 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 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 may not serve 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.
- C. 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 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.
- D. The terms of office for members appointed to the Zoning Board of Appeals shall be for three (3) years, except for members serving because of their membership on the Planning Commission or Township Board, whose terms shall be limited to the time they are members of those bodies. When members are first appointed, the appointments may be for less than three (3) years to provide for staggered terms. A successor shall be appointed not more than one (1) calendar month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.
- E. Any vacancy shall be filled for any unexpired term in the same manner as provided for in the initial appointment and each member shall serve until his successor has been appointed.
- F. The members of the Zoning Board of Appeals shall elect one member to serve as Chairperson and another to serve as Secretary. The Secretary can be a non-voting member of the Zoning Board of Appeals.

- G. The members of the Zoning Board of Appeals shall be paid per diem as established by the Township Board plus expenses actually incurred in the discharge of their duties.

Section 22.04 — Rules of Procedure:

- A. The Zoning Board of Appeals shall fix the rules and regulations to govern its procedure when acting upon appeals. It shall hear and decide appeals and review any order, requirements, decision or determination made by the Zoning Enforcement Officer.
- B. All meetings of the Zoning Board of Appeals shall be open to the public.
- C. A record of the proceedings shall be maintained and a copy of each proceeding shall be filed in the office of the Township Clerk for public record.

Section 22.05 — Jurisdiction:

- A. The Zoning Board of Appeals may reverse or affirm, wholly or in part, or may modify the order requirements, decision, or determination appealed from, excepting here from any denials, requirements, decision, or determination as in its opinion ought to be made to the premises. To that end, the Zoning Board of Appeals shall have all the powers to hear and decide all matters referred to it or upon which it is required to pass under this Ordinance; including but not limited to matters, where it is alleged by an appellant that there is error or misinterpretation in the Zoning Enforcement Officer or other administrative officer's order, requirement, decisions, grant, or refusal, except as relate to special use permits.
- B. The Zoning Board of Appeals may also classify a use that is not specifically mentioned within the use regulations of any zoning district based on a comparable permitted or special use, in accordance with the purpose and intent of each district. If no comparable use is found, the Zoning Board of Appeals shall so declare, the effect being that the use is not permitted until or unless the text of this Ordinance is amended to permit it.

Section 22.06 — Appeal Requirements:

- A. Appeals shall be taken within such time as shall be prescribed by the Zoning Board of Appeals by general rule, by filing with the Township Clerk within such time as the Zoning Board of Appeals provides from when the appeal is taken and with the Board of Appeals, a notice of appeal, specifying the grounds thereof. The Township Clerk shall transmit to the Zoning Board of Appeals all papers constituting the record upon which the action for appeal was taken.
- B. The appellant must supply the following written information to the Zoning Board of Appeals chairperson before the case will be heard:
 - 1. Appellant's name, address, phone number, and legal property description.
 - 2. A copy of written Zoning Compliance Permit application denial from the Zoning Enforcement Officer. The denial should state the reason for denial.
 - 3. Written request for an appeal hearing.
 - 4. An accurate plan of property showing location, size, and use of all existing and proposed structures, street right-of-way, structures on adjoining property, surface drainage patterns, lot dimensions, yard setbacks, and other pertinent data.

- 5. Names and addresses of all adjoining property owners.
- C. A notice of the Public Hearing shall be mailed to the chairperson of the Planning Commission.
- D. The Zoning Board of Appeals may waive portions of the data required.

Section 22.07 — Hearings and Decisions upon Appeals:

- A. Upon receipt of a complete appeal, the Zoning Board of Appeals shall fix a time for the hearing of the appeal, which shall occur no later than ninety (90) calendar days following the date of the appeal, and provide due notice thereof, in accordance with the Michigan Zoning Enabling Act.
- B. The hearing shall be conducted in accordance with the Michigan Zoning Enabling Act. Any person may appear in person or by agent or his attorney at the hearing.
- C. A majority vote of the members of the Zoning Board of Appeals shall be necessary to reverse the order, decision, or determination of the Zoning Enforcement Officer, or to decide in favor of the applicant in the matter on which the Zoning Board of Appeals is required to pass under this Ordinance. A tie vote is considered a “non-vote” and the issue will be placed on the agenda for the next meeting. In the event of a tie vote, a meeting will be arranged in a timely fashion.

Section 22.08 — Stay: An appeal to the Zoning Board of Appeals *from any action by another official or body appealable to the Zoning Board of Appeals under this Ordinance* stays all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Zoning Board of Appeals after the notice of appeal has been filed that by reason of the facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property. In the latter 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, on notice to the Zoning Enforcement Officer and on due cause shown. *The provisions of this section shall not prevent the Township from enforcing this Ordinance with respect to any existing violation of this Ordinance, even if that violation may be the subject of a pending request for a variance from the Zoning Board of Appeals.*

Section 22.09 — Appeals from Zoning Board of Appeals: Any party aggrieved by a decision of the Zoning Board of Appeals may appeal to the Midland County Circuit Court. An appeal shall be filed within the time provided for by law.