

CHAPTER 26

Zoning Board of Appeals

Section 26.1 Authority

Pursuant to the authority granted to the Township in the Michigan Zoning Enabling Act, being Public Act 110 of 2006, as amended, the Township has established and through this Ordinance continues the authority of the Township Zoning Board of Appeals, sometimes referred to throughout this Ordinance as “the ZBA.”

Section 26.2 Membership and Appointment

- A. **Regular Members:** The ZBA shall have five (5) regular members who shall be selected and appointed by the Township Board from the electors of the Township residing within Gaines Charter Township. The membership shall be comprised of the following:
1. One (1) regular member shall be a current member of the Township Planning Commission.
 2. One (1) regular member may be a current member of the Township Board, but shall not serve as chairperson.
 3. The remaining three (3) regular members (or remaining four (4) regular members if a Township Board member is not appointed) shall be representative of the population distribution and of the various interests present in the Township.
 4. An employee or contractor of the Township shall not serve as a member of the ZBA.
- B. **Alternate Members:** The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the ZBA. An alternate member may be called as specified to serve as a member of the ZBA 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 a regular member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. When called to serve as a member of the ZBA, alternate members shall have the same voting rights as a regular member of the ZBA.
- C. **Terms of Office:** The term of each member of the ZBA shall be for three (3) years, except for members serving because of their membership on the Planning Commission or the Township Board, whose terms shall be limited to the time they are members of the Planning Commission or Township Board, respectively, or the time period stated in the resolution of the Township Board appointing them, whichever is shorter. When members are first appointed, the appointments may be for less than three (3) years to provide for staggered terms.

- D. **Compensation:** Each member of the ZBA, whether regular or alternate, may receive a reasonable sum as compensation for services rendered to the Township as a member of the ZBA. This amount shall be determined from time to time by the Township Board.

Section 26.3 Vacancies and Removal

- A. **Vacancies:** If a vacancy occurs in the membership of the ZBA, the Township Board shall appoint another person to the ZBA for the balance of the unexpired term. Upon expiration of the term of a member of the ZBA, a successor shall be appointed not more than one (1) month after the term of the preceding member has expired.
- B. **Removal:** A member of the ZBA 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 known conflict of interest constitutes malfeasance in office. Whenever a member of the ZBA has a conflict of interest with respect to a matter presented to the ZBA, the member shall state on the record the nature of the conflict of interest, and the member shall not participate in the ZBA's discussion, consideration, deliberation, or decision of the matter.

Section 26.4 Rules of Procedure

The ZBA may adopt rules and regulations for the conduct of its meetings. The ZBA shall elect from its membership a Chairperson, Vice-Chairperson, Secretary and other officers as deemed necessary. The ZBA shall not conduct business unless a majority of its members are present. The presence of three (3) members shall constitute a quorum.

The regular place and time of meeting of the ZBA may be established by the ZBA in its rules and regulations. Except as otherwise specified in the rules and regulations of the ZBA, procedure in meetings of the ZBA shall be governed by Robert's Rules of Order.

Minutes of proceedings shall be kept for the ZBA meetings. These minutes shall list the members absent and present and shall show the action taken by the ZBA, as well as the vote of each member upon each matter presented to the ZBA.

Section 26.5 Meetings and Attendance

Meetings of the ZBA shall be held at the call of the Chairperson and at such other times as the ZBA may specify. The Chairperson may administer oaths and compel the attendance of witnesses. All meetings of the ZBA shall be open to the public.

Section 26.6 Conflict of Interest

A member of the ZBA shall not participate or vote with respect to a matter in which the member has a conflict of interest. Failure of a member to refrain from participating or voting in a matter

in which the member has a known conflict of interest shall constitute misconduct in office. A conflict of interest exists whenever a member of the ZBA owns land within the Township which is significantly affected by a matter presented to the ZBA, or a member has a direct financial interest in the matter presented to the ZBA. A conflict of interest may exist in other circumstances as well.

The ZBA should strive to avoid even the appearance of impropriety. Whenever a member of the ZBA has a conflict of interest or appears to have a conflict of interest with respect to a matter presented to the ZBA, the member shall state on the record the nature of the conflict of interest, or the circumstances which exist which could be perceived to be a conflict of interest. If the member has a conflict of interest, the member shall not participate in the ZBA's consideration of the matter. If circumstances exist which could be perceived to be a conflict of interest, the member, after disclosure of these circumstances, may continue to participate in the ZBA's consideration of the matter if the member can be fair, objective and impartial, subject to the vote of the other members of the ZBA.

Nondisclosure of a known conflict of interest shall be misconduct in office, and nondisclosure of circumstances which exist which could be perceived to be a conflict of interest may also constitute misconduct in office.

If a member of the ZBA fails to disclose any circumstances which could be perceived to be a conflict of interest and the ZBA later becomes aware of such circumstances, or if a member of the ZBA participates in the consideration of a matter in which the member has a known conflict of interest, the ZBA may, upon the vote of a majority of the regular members of the ZBA (other than the member who has failed to make the disclosure or who participated in the consideration of a matter in which the member had a conflict of interest), the ZBA may make a recommendation to the Township Board that the member be removed from the ZBA for misconduct in office. If the ZBA makes such a recommendation to the Township Board, the Township Board shall hold a public hearing to consider the recommendation.

Section 26.7 Notice of Public Hearing

The ZBA shall give notice and conduct public hearings as required by Section 24.7 of this Ordinance. In the case of a scheduled public hearing, the ZBA shall not adjourn the public hearing at the time scheduled for the public hearing until it has afforded the public in attendance a reasonable opportunity to be heard. Notwithstanding the preceding sentence, the Chairperson of the ZBA may cancel or adjourn a public hearing or meeting based upon a weather emergency, general emergency, or other unforeseen problem or calamity.

Section 26.8 Powers, Duties and Jurisdiction

The ZBA shall hear and decide questions that arise in the administration of this Ordinance, unless otherwise specified herein, including the interpretation of the zoning maps. It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with the enforcement of this Ordinance for which the ZBA has jurisdiction under Michigan law. It shall also hear and decide

all matters referred to it or upon which it is required to pass under the terms of this Ordinance. In addition, a variance may be applied for and granted pursuant to Section 4 of the Uniform Condemnation Procedures Act, being Act No. 87, as amended, of the Public Acts of 1980. The grounds for every such determination of the ZBA shall be stated as a matter of public record.

A. **In general, the ZBA has jurisdiction over the following:**

1. Zoning map and text interpretations.
2. General appeals under law or this Ordinance.
3. Variances.
4. Determination of lots of record and nonconforming lots.
5. Determination of nonconforming use and nonconforming lot situations.

B. **Appeals:** Appeals to the ZBA may be taken by any party or person aggrieved by a decision or order of the Zoning Administrator where it is alleged that there is error or misinterpretation in any order, requirement, decision, grant, or refusal made by the Zoning Administrator or other administrative official or body charged with the enforcement of any ordinance adopted pursuant to the Michigan Zoning Enabling Act, as amended, or a variance or other relief is requested from the ZBA as authorized by Michigan law.

1. A written notice of appeal specifying the grounds thereof shall be filed by the applicant, landowner, or other aggrieved party involved with the Zoning Administrator within 30 days after the date of the action or decision appealed from. If such a written notice of appeal is not filed within that 30 day time period, the applicant, landowner, or other aggrieved party involved waives his/her/its right of appeal and the decision, determination, or action of the Zoning Administrator or other Township body involved will stand and shall be conclusive. The Zoning Administrator shall immediately transmit to the ZBA all the papers constituting the record upon which the action appealed from was taken.
2. An appeal stays all proceedings in furtherance of the action appealed from unless the body or officer from whom the appeal is taken certifies to the ZBA (after the notice of appeal shall have been filed with him/her) that by reason of facts stated in the certificate, a stay would in his/her opinion cause imminent peril to life or property, in which case proceeding shall not be stayed otherwise than by restraining order which may be granted by the ZBA or by the Circuit Court.
3. A person may appear and testify at a ZBA hearing, whether in person or by duly-authorized agent or attorney. The ZBA shall select a reasonable time and place for hearing an appeal, give due notice thereof to the parties, and render a decision of the appeal without unreasonable delay. Notice shall be given for public hearings as required by Section 22.9 of this Ordinance.

4. In deciding an appeal involving an interpretation or determination, the ZBA shall be limited to determining whether or not the decision that was made was correct using the standards and guidelines in this Ordinance.
 5. With regard to an interpretation or determination, if the ZBA finds that the administrative official or body making the decision did so improperly, the ZBA, with a concurring vote of the majority of its members, may reverse or affirm, wholly or partly, or may modify, the order, 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 administrative official or body from whom the appeals was taken.
 6. The burden of proof rests with the applicant to prove that he/she should be granted the relief sought from the ZBA.
- C. **Use Variances:** Subject to other provisions of this Ordinance, the ZBA shall have the jurisdiction to decide applications for use variances. The ZBA shall not grant a use variance unless it finds that an unnecessary hardship will occur unless the variance is granted. Additionally, the ZBA shall not grant a use variance unless it also finds that all of the following standards below are met:
1. The variance request, if granted, will be the minimum variance (i.e., the least variation or change from the particular requirement of the Ordinance involved) that will make possible the reasonable use of the land, structure, or building involved.
 2. The granting of the variance will not be injurious or detrimental to neighboring properties or residents.
 3. The variance will not be detrimental to the public welfare or change the essential character of the neighborhood.
 4. The variance will not impair the intent or purpose of this Ordinance.
 5. The problem or condition for which the variance is requested is not a self-created problem by the applicant or property owner (or their predecessors in title) as to the property involved.
 6. The condition or situation involved is not of so general or recurrent a nature that it would be more reasonable or practical for the Township to amend the provision of the Ordinance involved rather than to grant a variance for the condition or situation.
 7. There are exceptional, unique, or extraordinary physical conditions or circumstances which directly relate to the property itself (including the land or a structure or building thereon) rather than the individual situation or desire of the applicant or property owner. In other words, the problem or exception or extraordinary circumstances or conditions must be inherent in the land, structure, or building involved.

8. The variance must be necessary for the preservation and enjoyment of a substantial property right which is similar to that possessed by other properties in the same zoning district and vicinity. (NOTE—a possible increased financial return shall not, of itself, be deemed sufficient to warrant a variance.)
9. As specified above, the ZBA must also find that unnecessary hardship will occur if a use variance is not granted.

No use variance shall be granted unless at least four (4) members of the ZBA vote in favor of such use variance. Furthermore, before the members of the ZBA may vote on a given use variance request, the matter shall be referred to the Planning Commission. The Planning Commission shall be asked for its recommendation regarding the proposed use variance request. The ZBA may take final action regarding such a use variance request once the Planning Commission has forwarded its recommendation on the particular use variance request to the ZBA or 45 days has elapsed since the referral to the Planning Commission, whichever occurs first.

D. Non-Use (Dimensional) Variances: Subject to other provisions of this Ordinance, the ZBA shall have jurisdiction to decide applications for non-use variances (dimensional variances). No non-use (dimensional) variance shall be approved unless at least three (3) members of the ZBA vote in favor of such variance. The ZBA shall not grant a non-use (dimensional) variance unless it finds that a practical difficulty will occur unless the variance is granted. In addition, the ZBA shall not grant a non-use (dimensional) variance unless it finds that all of the following standards are met:

1. The variance request, if granted, will be the minimum variance (i.e., the least variation or change from the particular requirement of the Ordinance involved) that will make possible the reasonable use of the land, structure, or building involved.
2. The granting of the variance will not be injurious or detrimental to neighboring properties or residents.
3. The variance will not be detrimental to the public welfare or change the essential character of the neighborhood.
4. The variance will not impair the intent or purpose of this Ordinance.
5. The problem or condition for which the variance is requested is not a self-created problem by the applicant or property owner (or their predecessors in title) as to the property involved.
6. The condition or situation involved is not of so general or recurrent a nature that it would be more reasonable or practical for the Township to amend the provision of the Ordinance involved rather than to grant a variance for the condition or situation.
7. There are exceptional, unique, or extraordinary physical conditions or circumstances which directly relate to the property itself (including the land or a structure or building thereon) rather than the individual situation or desire of the applicant or property owner. In other words, the problem or exception or

extraordinary circumstances or conditions must be inherent in the land, structure, or building involved.

8. The variance must be necessary for the preservation and enjoyment of a substantial property right which is similar to that possessed by other properties in the same zoning district and vicinity. (NOTE—a possible increased financial return shall not, of itself, be deemed sufficient to warrant a variance.)
9. As specified above, the ZBA must also find that the applicant has practical difficulty complying with the Ordinance provision or provisions at issue.

E. **No ZBA Jurisdiction:** The ZBA is without jurisdiction to hear any appeals or matters involving any of the following:

1. A planned unit development (PUD).
2. A special land use.
3. Site plan decisions.

Notwithstanding the fact that the ZBA generally has no jurisdiction with regard to the above-mentioned matters, the ZBA shall have jurisdiction to entertain variance requests related to subsections (1), (2), and/or (3) above, if the Township body which makes the final decision regarding the matter (for example, the Township Board with regard to a PUD or the Planning Commission with regard to a special land use) expressly grants written permission to the landowner or applicant involved to apply to the ZBA for a variance of one or more of the underlying requirements of the Zoning Ordinance. For example, but not by way of limitation, the Planning Commission could approve a particular special use request contingent upon the ZBA granting a variance for an otherwise applicable requirement within the Ordinance which would normally prohibit the applicant or landowner from taking advantage of a special use approval absent a variance.

F. **No Advisory Opinions:** The ZBA shall not give advisory, informal, or hypothetical opinions or decisions.

Section 26.9 Decisions of the ZBA

A. **Procedure:** After hearing and consideration of the variance request with respect to the review standards specified in this Chapter, the ZBA shall deny, approve or approve with conditions the variance request. In the absence of a quorum of the membership, no action may be taken by the ZBA, except that any member may adjourn the meeting to a new date, time, and place.

B. **Conditions:** The ZBA may impose conditions on the granting of a variance. Conditions may include those necessary to ensure the public services and facilities will be capable of accommodating increased service and facility loads caused by the proposed 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.

- C. **Finality:** The decision of the ZBA with regard to any matter presented to it according to the provisions of this Ordinance shall be final; however, any aggrieved party shall have the right to appeal to the circuit court according to law.
- D. **Expiration:** A variance granted under the provisions of this Ordinance shall become null and void unless the construction, occupancy, use, or other action authorized by the variance has been substantially begun within one (1) year of the granting of the variance and has been diligently pursued to completion. For the purpose of this subsection, construction of a building shall be deemed to have begun at the time a structural foundation is installed.
- E. **Reapplication:** No application for a variance which has been denied wholly or in part by the ZBA shall be resubmitted to the ZBA, except on grounds of new evidence which could not have been reasonably presented at the original public hearing, or upon proof of substantially changed conditions which are relevant to the variance request.
- F. **Other Decisions:** The above subparagraphs A through E, inclusive, shall also apply to other decisions (other than variances) involving matters within the authority of the ZBA (including determination of lots of record and nonconforming lots, determination of nonconforming use and nonconforming lot situations, and other matters for which the ZBA has jurisdiction under this Ordinance and at law) where applicable.

Section 26.10 Fees

The required fee or fees for a ZBA application hearing or proceeding shall be paid to the Township before the ZBA considers or takes any action regarding an application. All fees shall be retained by the Township regardless of the ultimate decision or decisions of the ZBA.

Section 26.11 Termination of a Variance

In the event that the ZBA grants a variance, the individual or successor in interest as to the property involved shall not use the property in question such that it would exceed the rights given by the Zoning Ordinance or the variance or fail to follow any conditions placed thereon by the ZBA. In the event that the use of the property exceeds those rights given by the Zoning Ordinance or the variance, or the property owner fails to follow the conditions placed upon the variance, the variance shall immediately terminate. Alternately, in such case, the ZBA shall also have the authority to terminate a variance after reasonable notice and hearing.