

CHAPTER 32 AUTHORITIES

SECTION 32.10 INTENT

The provisions of the Zoning Ordinance shall be administered by the Zoning Administrator and acted upon by the Planning Commission, Zoning Board of Appeals, and Township Board as applicable. This chapter outlines authorities involved in Gaines Charter Township's zoning practice and the penalties for violation of this ordinance.

SECTION 32.20 ZONING ADMINISTRATOR

A. ROLE

The Zoning Administrator is an appointed officer who acts as the primary administrator of the Zoning Ordinance. The provisions of this Ordinance shall be carried out, administered, and enforced by the Zoning Administrator, who shall be appointed by the Township Board. Assistant Zoning Administrators may be appointed by the Township Board to assist the Zoning Administrator in the performance of their duties.

B. ADMINISTRATION, INTERPRETATIONS, AND APPROVALS

This Ordinance shall be administered, interpreted, and enforced by the Zoning Administrator who shall, in no case, issue any permit nor grant any occupancy permit where the proposed structure, alteration, or use would be in violation of any provisions of this Ordinance, except under written order of the Zoning Board of Appeals or a court of competent jurisdiction. The Zoning Administrator shall interpret and enforce the Zoning Ordinance. The Building Inspector shall administer applicable building codes and shall issue Building Permits once a Zoning permit has been issued by the Zoning Administrator.

C. VIOLATIONS

The Zoning Administrator shall investigate any alleged violation of this Ordinance as may be discovered. If a violation is found to exist, the Zoning Administrator shall serve written notice upon the owner to cease said violation as provided by law. If said owner fails to act diligently to correct such violation, the Zoning Administrator shall serve notice upon the owner, notify the Township Board, and may prosecute (or issue and pursue municipal civil infraction citations/tickets) such violator to terminate said violation before a court of proper jurisdiction.

D. INSPECTIONS

The Zoning Administrator shall make periodic inspections of the Township to ascertain that all the requirements of this Ordinance are being complied with.

E. RECORDS

The Zoning Administrator shall keep records of all inspections, applications, and permits issued, with a notation of all conditions involved. He/she shall file and safely keep copies of all plans, other than for single-family dwellings, and records of all fees submitted with applications. The same shall form a part of the records of the Township and shall be available to the Township Board and all other officials of the Township.

SECTION 32.30 PLANNING COMMISSION

A. DUTIES

The Planning Commission is responsible for the following:

1. Review the effectiveness and appropriateness of this ordinance and the official Zoning Map and recommend to the Township Board any appropriate changes or amendments in accordance with Chapter 31;
2. Approve development applications as noted in this Ordinance;
3. Hear and decide upon requests to change a lawful nonconforming use or to expand a lawful nonconforming use. See Section 33.20 C & D; and
4. Perform such other duties assigned by this ordinance in accordance with the Michigan Zoning Enabling Act and Michigan Planning Enabling Act.

B. ADMINISTRATION

1. The Planning Commission shall keep minutes of its proceedings showing the official action of the Commission and the vote of each member. Minutes and the records of all official actions shall be filed with the Township Clerk and kept as a public record.
2. The concurring vote of the majority of Planning Commission members present during a quorum shall be necessary to take any action authorized by the Zoning Ordinance.
3. The Planning Commission shall adopt rules and procedures governing its activities.

SECTION 32.40 ZONING BOARD OF APPEALS

A. PURPOSE AND INTENT

This section is adopted to facilitate the performance of the duties of the Gaines Charter Township Zoning Board of Appeals as provided by the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, M.C.L.A. §§ 124.3101, et seq., and the Gaines Charter Township Zoning Ordinance (the "Zoning Ordinance").

B. CREATION AND CONFIRMATION

This confirms the prior and continuing existence of the Gaines Charter Township Zoning Board of Appeals.

C. MEMBERSHIP AND COMPOSITION

The Gaines Charter Township Zoning Board of Appeals shall be comprised of five (5) regular members plus two (2) alternate members. Members of the Zoning Board of Appeals shall be appointed by majority vote of the members of the Gaines Charter Township Board. One (1) regular member of the Zoning Board of Appeals shall also be a member of the Gaines Charter Township Planning Commission, but shall not be the Chairperson of either body. All members of the Zoning Board of Appeals shall be electors of Gaines Charter Township. The members of the Zoning Board of Appeals shall be representative of the population distribution and of the various interests present in Gaines Charter Township. One (1) member of the Gaines Charter Township Board may be a member of the Zoning Board of Appeals, but such a member shall not serve as Chairperson of the Zoning Board of Appeals. An employee or contractor of Gaines Charter Township shall not serve as a member of the Zoning Board of Appeals. The Gaines Charter Township Board may appoint to the Zoning Board of Appeals not more than two (2) alternate members for the same term as regular members. Terms of office for all members of the Zoning Board of Appeals shall be three (3) years. However, for a member serving because

of his or her membership on the Planning Commission or Township Board, their terms shall be limited to the time where he or she is a member of the Planning Commission or Township Board. A vacancy on the Zoning Board of Appeals shall be filled for the remainder of the unexpired term in the same manner as the original appointment. If it is unclear when the term of a specific Zoning Board of Appeals member ends, the Township Board shall determine the end of that member's term and the decision of the Township Board shall be final, binding and conclusive. A member of the Zoning Board of Appeals who is also a member of the Planning Commission or the Township Board shall not participate in a public hearing on or vote in the same manner that the member voted on as a member of the Planning Commission or the Township Board. However, the member may consider and vote on other unrelated matters involving the same property.

D. OFFICERS

1. **Selection and Tenure.** At the first regular meeting of each year, the Zoning Board of Appeals shall select from its membership a Chairperson, a Vice-Chairperson, and a Secretary. An elected township official shall not serve as Chairperson. All officers shall serve a term of one (1) year, or until their successors are selected and assume office, except as noted in this section. All officers shall be eligible for re-election for consecutive terms for the same office. All officers will assume office at the adjournment of the meeting in which they are elected.
2. **Chairperson.** The Chairperson shall preside at all meetings, appoint committees (with the approval of the Zoning Board of Appeals), and perform such other duties as are directed by the Zoning Board of Appeals or Township Board.
3. **Vice-Chairperson.** The Vice-Chairperson shall act in the capacity of the Chairperson in his or her absence. In the event the office of Chairperson becomes vacant, the Vice-Chairperson shall succeed to this office for the unexpired term, and the Zoning Board of Appeals shall select a successor to the office of Vice-Chairperson for the unexpired term of the Vice-Chairperson.
4. **Secretary.** The Secretary shall execute documents in the name of the Zoning Board of Appeals, perform the duties listed below, and shall perform such other duties as the Zoning Board of Appeals may determine.
 - a. **Minutes.** The Secretary shall be responsible for preparing the minutes of each meeting and shall have them recorded in suitable permanent records retained by the Township Clerk. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and record of votes, conditions, or recommendations made on any action, and the record of attendance.
 - b. **Correspondence.** The Secretary shall be responsible for issuing formal written correspondence with other groups or persons, as directed by the Zoning Board of Appeals. All communications, petitions, reports, or other written materials received by the Secretary shall be brought to the attention of the Zoning Board of Appeals at or before the next meeting.
 - c. **Attendance.** The Secretary shall be responsible for maintaining an attendance record for each Zoning Board of Appeals member and shall forward those records to the Township Clerk's office.
 - d. **Notices.** The Secretary shall issue such notices as may be required by the Zoning Board of Appeals.
 - e. **Recording Secretary.** A Recording Secretary may take over some of the duties of the Secretary.
5. **Planning Commission Representative.** The Planning Commission representative to the Zoning Board of Appeals shall report the actions of the Zoning Board of Appeals to the Planning Commission and update the Zoning Board of Appeals on actions by the Planning Commission that relate to the functions and duties of the Zoning Board of Appeals. The Planning Commission representative shall be allowed only one (1) vote on any specific issue or application and may choose to vote with either the Planning Commission or the Zoning Board of Appeals on that specific issue or application.

E. MEETINGS

1. **Meetings.** Meetings of the Zoning Board of Appeals shall be held each month or as otherwise provided below. All meetings shall take place at the Township offices or at such other dates, locations, or times within the Township that may be deemed necessary by the Zoning Board of Appeals to carry out the functions of the Zoning Board of Appeals. All meetings shall comply with the Michigan Open Meetings Act.
2. **Notice.** Meetings shall be noticed in accordance with the requirements of the Zoning Ordinance and the Michigan Open Meetings Act. Meeting notices shall state the purpose, date, time, and location of meetings and shall be posted in accordance with the Open Meetings Act.
3. **Public Records.** All meetings, minutes, records, documents, correspondence, and other materials of the Zoning Board of Appeals shall be open to public inspection in accordance with the Freedom of Information Act ("FOIA") Act, except as may otherwise be provided by law.
4. **Quorum.** A majority of the total membership of the Zoning Board of Appeals (i.e., at least three members) shall constitute a quorum for transacting business and taking official action for all matters unless a greater number is required by law. The Zoning Board of Appeals shall not conduct business unless a majority of all of the regular members (or seated alternates) are present.
5. **Voting.** To approve or deny any variance, appeal, or other official action required by the Zoning Ordinance, an affirmative vote of at least a majority of the total membership of the Zoning Board of Appeals (i.e., at least three members) is required. With a use variance, however, no such variance shall be approved except with an approval vote of two-thirds (2/3 of the total membership of the Zoning Board of Appeals (four members). Voting shall be by voice vote. A roll call vote shall be required if requested by any Zoning Board of Appeals member or directed by the Chairperson or as required by law. All Zoning Board of Appeals members, including the Chairperson, shall vote on all matters with the exception of a conflict of interest or involving the Planning Commission representative, who may have already voted with the Planning Commission on a particular issue or application. The Chairperson shall generally vote last on issues before the Zoning Board of Appeals.
6. **Agenda.** The Chairperson shall be responsible for preparing an agenda for the Zoning Board of Appeals meetings.
7. **Public Hearings.** All public hearings by the Zoning Board of Appeals must be held as part of a regular or special meeting of the Zoning Board of Appeals. The suggested format for public hearings is as follows:
 - a. Chairperson opens the public hearing and announces the subject.
 - b. Chairperson summarizes procedures/rules to be followed during the hearing.
 - c. The applicant presents his/her/its request.
 - d. Township Zoning Administrator/Township Planner presents a summary or analysis of the request.
 - e. Persons wishing to comment on the request are recognized and heard.
 - f. Chairperson closes the public hearing and returns to the regular/special meeting.
 - g. The Zoning Board of Appeals deliberates and decides.
 - h. To ensure that everyone has the opportunity to speak, the Zoning Board of Appeals may elect to limit the time permitted for each person to speak, except that the applicant may be permitted such additional time as the Chairperson allows. The Chairperson may also elect to allow persons to speak only once, until all other persons have had the opportunity to speak, at which time the Chairperson, in his or her discretion, may permit additional public comments.

- i. All comments by the public and the Zoning Board of Appeals shall be directed to and through the Chairperson.
- 8. **Special Meetings.** Applicants to the Zoning Board of Appeals may request a special meeting, for which all costs shall be paid by the applicant. However, if there is more than one (1) applicant, the costs for a special meeting shall be shared equally between all applicants. The business that the Zoning Board of Appeals may conduct at a special meeting shall be in compliance with the Open Meetings Act. Special meetings shall also be noticed as required by the Michigan Zoning Enabling Act, as amended, the Open Meetings Act, and this section.
- 9. **Meeting Minutes.** Any time that there is a meeting involving a decision, with the exception of housekeeping decisions, a meeting shall be called the following month to approve the minutes of that meeting, even if no other business is set for the agenda.
- 10. **Cancelled or Adjourned Meetings.** Either the Chairperson or two (2) members of the Zoning Board of Appeals may cancel or adjourn any meeting of the Zoning Board of Appeals beforehand due to inclement weather, the likely lack of a quorum, the lack of any applications or other matters on the agenda, an emergency, or for similar reasons. Any such cancellation or adjournment shall be in writing or email, signed or concurred in by either the Chairperson or two (2) members of the Zoning Board of Appeals. Either the Chairperson or two (2) members of the Zoning Board of Appeals shall also have the authority to reschedule any such adjourned or cancelled meeting in writing or via email.

F. DUTIES

The Zoning Board of Appeals shall perform the following duties:

- 1. Act on applications for variances, appeals, interpretations, or other matters as required by the Zoning Ordinance and/or the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, being M.C.L.A. §§ 125.3101, et seq.
- 2. Attend training sessions, conferences, or meetings as needed to properly fulfill the duties of a Zoning Board of Appeals member, and for which appropriations of funds have been approved by the Township Board, as needed.
- 3. Perform other duties and responsibilities as requested by the Township Board or as may be specified by the Zoning Ordinance or another Township ordinance or state law.
- 4. Conduct site visits as deemed necessary to evaluate an application. Site visits shall be conducted individually and not as a group or with enough members of the Zoning Board of Appeals to form a quorum (unless the site visit is formally posted as a public meeting of the Zoning Board of Appeals).

G. DUTIES OF THE ZONING ADMINISTRATOR

- 1. **Assistance.** The Zoning Board of Appeals shall be assisted by the Zoning Administrator and Community Development Director in performing the duties of the Zoning Board of Appeals. The Zoning Administrator and Community Development Director shall be responsible for the professional and administrative work in coordinating the functions of the Zoning Board of Appeals.
- 2. **Zoning Administrator.** The Zoning Administrator shall:
 - a. Attend Zoning Board of Appeals meetings if requested.
 - b. Supervise and review the zoning work of the Planning Consultant and township staff.
 - c. Accept applications for matters to be reviewed by the Zoning Board of Appeals and ensure that such applications are complete.

- d. Forward complete application materials to the Zoning Board of Appeals at least one (1) week prior to the meeting at which such matters will be considered.
 - e. Inform the Zoning Board of Appeals of administrative and enforcement actions taken on behalf of the township related to the Zoning Ordinance or other appropriate ordinance.
3. **Community Development Director.** The Community Development Director shall:
- a. Attend Zoning Board of Appeals meetings, if requested.
 - b. Consult with the Zoning Board of Appeals, Zoning Administrator, and other township officials concerning interpretation, procedural questions, and other matters arising from the Zoning Ordinance, as requested.
 - c. Conduct one (1) planning/zoning workshop each year for the Township Board, Zoning Board of Appeals and Zoning Administrator as requested by the Township Board.
 - d. Prepare and forward to the Zoning Administrator written reviews and recommendations, if appropriate, for all requests and development proposals to be considered by the Zoning Board of Appeals, if requested by the Chairperson of the Zoning Board of Appeals.
 - e. Perform such other duties and functions as may be directed by the Zoning Board of Appeals.
 - f. The Zoning Board of Appeals may be assisted by other professional or township staff as needed, including the Building Inspector, Township Attorney, Township Engineer, or other persons or agencies.

H. ABSENCES, REMOVALS, RESIGNATIONS, VACANCIES, AND ALTERNATES

- 1. To be excused from a meeting, a Zoning Board of Appeals member shall notify the Township Clerk or Zoning Board of Appeals Chairperson, Vice-Chairperson, or Secretary when they intend to be absent from a meeting. Failure to make this notification prior to a meeting shall result in an unexcused absence.
- 2. Members of the Zoning Board of Appeals may be removed by the Township Board, after written charges have been prepared and a hearing conducted, for non-performance of duty, misconduct, malfeasance, nonfeasance, or misfeasance in office, or upon the failure to declare a known conflict of interest. For purposes of this section, non-performance of duty shall mean three (3) or more consecutive, unexcused absences or not meeting continuing educational or training requirements. Alternates shall be notified to attend a meeting at any time that a regular member will be absent for one (1) or more meetings.
- 3. A member may resign from the Zoning Board of Appeals by sending a letter of resignation to the Township Supervisor, the Township Board, or the Zoning Board of Appeals Chairperson. Vacancies shall be filled by the Township Board. Successors shall service out the unexpired term of the member being replaced, with the exception of the Planning Commission representative whose term shall run consecutively with his/her term as Planning Commissioner.
- 4. The Township Board may appoint not more than two (2) alternates to the Zoning Board of Appeals. An alternate member may be called to sit as a regular member for a specific matter as provided by the Zoning Ordinance and the Michigan Zoning Enabling Act. When an alternate is called, and an issue goes on for more than one (1) meeting, that alternate shall be the voting member on that issue through its completion, and the regular member who was absent or had a conflict of interest shall abstain from voting on such matters.

I. CONFLICT OF INTEREST

1. Zoning Board of Appeals members shall declare a conflict of interest and abstain from participating in a hearing or deliberations on a request or matter when:
 - a. A relative or other family member is involved in any request or matter for which the Zoning Board of Appeals is asked to make a decision.
 - b. The Zoning Board of Appeals member has a business or financial interest in the property involved in the request or matter, or has a business or financial interest in the applicant's company, agency or association.
 - c. The Zoning Board of Appeals member owns or has a financial interest in neighboring property. For purposes of this section, a neighboring property shall include any property falling within the notification radius for the proposed development, as required by the Zoning Ordinance or other applicable ordinance, or there is a reasonable appearance of a conflict of interest, as determined by the Zoning Board of Appeals member declaring such conflict.
 - d. Any other conflict of interest situation under Michigan law.
2. The Zoning Board of Appeals member declaring a conflict of interest should publicly state the nature of the conflict and whether he or she believes that he or she could impartially consider the request or matter before the Zoning Board of Appeals. He or she should individually decide to abstain from any discussion or votes relative to the matter that is the subject of a conflict. If he or she prefers, the member declaring a conflict of interest may ask the other Zoning Board of Appeals members to decide if he or she should abstain, although this is not required. If the Zoning Board of Appeals is asked to decide whether a conflict of interest exists, the members will immediately cease discussion on the main issue, discuss the possible conflict of interest, and vote as to whether or not it exists. If, by a simple majority vote, a conflict of interest is found, that member will abstain from any action on the matter. The member declaring a conflict of interest may excuse him/herself from the room in which the discussion takes place, unless doing so would violate his or her constitutionally-protected rights to participate. He or she should not make any presentations to the Zoning Board of Appeals as a representative of the proposal for which he/she has a conflict of interest.

J. CONFLICT WITH OTHER LAWS OR REQUIREMENTS

Should any provision or requirement of this Chapter conflict with state law, state law shall govern.

K. JURISDICTION AND POWERS

1. **Authority.** The Zoning Board of Appeals shall not have the power to make any change in the terms of this Ordinance, but does have the power to act on those matters where this Ordinance provides for an administrative appeal, interpretation, or to authorize a variance as defined in this Section and granted by the Michigan Zoning Enabling Act, as amended.
2. **Powers.** The powers of the Zoning Board of Appeals include:
 - a. Appeals. Upon request, the Zoning Board of Appeals may hear and decide appeals where it is alleged by the appealing party that there is an error in any order, requirement, permit, decision, or refusal made by the Zoning Administrator in interpreting, carrying out or enforcing any provisions of this Ordinance. Appeals must be filed in writing within 30 days after the order, requirement, permit, decision, or refusal made by the Zoning Administrator.
 - b. Variances. Upon request, a variance from the strict requirements of the Zoning Ordinance may be granted by the Zoning Board of Appeals in accordance with the standards, requirements, and procedures of Chapter 30.

- c. Zoning Ordinance Interpretation. Upon an appeal from an interpretation by the Zoning Administrator, the Zoning Board of Appeals may interpret the provisions of this Ordinance to carry out the intent and purposes of the Zoning Ordinance where the meaning of the provision is uncertain.
 - d. Any other matters properly referred to the Zoning Board of Appeals or upon which it is required to consider under the terms of this Ordinance.
3. **No Amendment Authority.** The Zoning Board of Appeals shall have no authority to consider any appeal from any decision related to Planned Unit Developments, Site Plans, Special Land Uses, Rezoning, Conditional Rezoning, or Zoning Ordinance amendments, except for interpretations.

L. APPLICATION AND REVIEW PROCEDURES

1. Applications.

- a. An application for an appeal may be submitted in writing to the Township by a person aggrieved. Such written application shall be submitted to the Township within 21 days of the date of the decision being appealed. The application shall be on a Township-approved form and be filed with the Zoning Board of Appeals, and shall specify the grounds for the appeal. The applicable fee(s) must also be timely paid.
- b. Variances, appeals, and other actions requiring a decision by the Zoning Board of Appeals shall be submitted to the Township on a form provided for that purpose and shall include a fee or fees as may be determined by the Township Board from time to time.
- c. Applications shall be transmitted to the Zoning Board of Appeals along with all the papers constituting the record upon which the action appealed was taken, and a hearing shall be scheduled in accordance with the procedures of this Chapter.
- d. Applications shall not be accepted unless all of the following information is submitted to the Township:
 - i. A completed application form (provided by the Township);
 - ii. An accurate, scaled site plan with enough information to clearly indicate the nature of the issue being considered. The Zoning Administrator shall determine the completeness of such plans.
 - iii. An application fee (and a separate zoning escrow fee where applicable) as may be determined by the Township Board from time to time.
 - iv. A written explanation from the applicant indicating why the application meets the standards.
- e. An application for an appeal or variance or any other action requiring Zoning Board of Appeals approval shall stay all proceedings in furtherance of the matter to which the application applies unless the Zoning Administrator certifies to the Zoning Board of Appeals, after the application of appeal is filed, that by reason of facts present a would stay, in the opinion of the Zoning Administrator, cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order. This restraining order may be granted by the Zoning Board of Appeals or Circuit Court upon application and with due cause shown.

2. Decisions.

- a. The concurring vote of a majority of the entire membership of the Zoning Board of Appeals (i.e. three votes) shall be necessary to decide in favor of the applicant, except for a use variance.
- b. All decisions of the Zoning Board of Appeals are final as provided by law.

- c. For each decision of the Zoning Board of Appeals, a record shall be prepared. Such record shall include, at a minimum, the following items:
 - i. A description of the applicant's request;
 - ii. The Zoning Board of Appeals' motion and vote, including written justification for the decision in accordance with each of the applicable standards in this Chapter.
 - iii. A summary or transcription of all competent material and evidence presented at the hearing; and
 - iv. Any conditions attached to an approval decision.
- 3. **Finality.** The decision of the Zoning Board of Appeals shall be final. However, an aggrieved party may appeal to the Circuit Court. Upon appeal, the Circuit Court shall review the record in accordance with the requirements of the Michigan Zoning Enabling Act. The Court may affirm, reverse, or modify the decision of the Zoning Board of Appeals or may remand the decision to the Zoning Board of Appeals for further hearings or action.

M. NO ADVISORY OPINIONS

The Zoning Board of Appeals shall not give advisory, informal, or hypothetical opinions or decisions.

SECTION 32.50 TOWNSHIP BOARD

A. ROLE

Upon receipt of a recommendation by the Planning Commission, the Township Board shall decide the following:

- 1. Zoning Ordinance amendments.
- 2. Zoning Map amendments with and without voluntary conditions of approval.
- 3. Planned Unit Developments.
- 4. Preliminary Condominium plans

B. OTHER

The Township Board shall perform such other duties assigned by this ordinance in accordance with the Michigan Zoning Enabling Act.

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