

## ARTICLE 4 ZONING BOARD OF APPEALS

### SECTION 400 CREATION AND ORGANIZATION

There is hereby created and established a Zoning Board of Appeals (ZBA) with all the powers and authority prescribed by law or delegated to it under specific provisions of this Ordinance. Said powers and authority shall be exercised so that the objectives of this Ordinance are observed, public safety and welfare are secured, and substantial justice is done.

The Zoning Board of Appeals shall consist of three (3) members appointed by the Township Board. The Chairman of the Planning Commission shall also act as the Chairman of the ZBA. One (1) member of the Township Board may be appointed to the ZBA but may not serve as Chairman. No employee of the Township Board may serve as a member of the ZBA. In addition to three (3) regular members, the Township Board may appoint two (2) alternates who can act as substitute members when called upon either because of absence or conflict of interest. The term of office for ZBA members is three (3) years with the exception that any Township Board Member will serve the same term as his/her elected term, and initially terms may be less than three (3) years in order to establish staggered terms. All regular members and alternate members shall be qualified electors of the Township and primary residents governed by Port Austin Township zoning.

A majority of the total membership of the ZBA shall constitute a quorum.

The ZBA shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it.

Meetings of the ZBA shall be held at the call of the Chairman and at other times specified in its rules of procedure. All hearings shall comply with the Michigan Open Meetings Act. The ZBA shall adopt its own rules of procedure and keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating said fact; and shall file a copy of the minutes of its proceedings with the Township Clerk. ZBA minutes will be public record.

### SECTION 401 LIMITATIONS AND AUTHORITY

The Zoning 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, but *shall have the power to act on an administrative review, interpretation, or exception and to authorize a variance as defined in this section* and laws of the State of Michigan, as follows:

1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Inspector or any other administrative official in carrying out or enforcing any provisions of this Ordinance.
2. To authorize a variance from the use provisions of this Ordinance with such conditions and safeguards it may determine appropriate to ensure that the spirit of this Ordinance is achieved, public safety and welfare secured and substantial justice done. In granting a variance, the ZBA shall state the grounds upon which it justifies the granting of same. No such variance of the use provisions of this Ordinance shall be granted unless it appears that all the following facts and conditions exist:
  - a. An application for the variance has not been made by any person for the same lot within the prior twelve (12) months.

- b. There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which have not been caused by the applicant and which do not apply generally to other properties or class of uses in the same district
  - c. Such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same district and vicinity.
  - d. The granting of such variance will not be materially detrimental to the public welfare or materially injurious to the value of property or improvements in the district in which the property is located.
  - e. No more than fifty-one (51%) percent of owners and occupants of property within three hundred (300) feet of the applicant's property lines object to the variance either in writing or in person.
  - f. Denial would cause unnecessary hardship on the applicant.
  - g. The granting of such variance will not adversely affect the purposes or objectives of the Township zoning plan.
3. To hear and decide requests for interpretations of this Ordinance and the Zoning Map.
  4. To grant exceptions to the area, density, bulk, height, yard or general provisions of this Ordinance. Any exception shall be subject to such conditions as the ZBA may require to preserve and promote the character of the district in question and otherwise promote the purpose of this Ordinance, and in that connection the ZBA may, in its discretion:
    - a. Interpret the provisions of this Ordinance in such a way as to carry out its intent as shown upon the Zoning Map fixing the use districts where street layout actually on the ground varies from the street layout as shown on the map.
    - b. Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.
    - c. Permit such modification of other regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape, or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification.

## **SECTION 402 APPEAL PROCEDURE**

Anyone seeking ZBA relief from an administrative decision or authorization for a zoning variance must submit an application together with the appropriate fee to the Township Clerk.

The application must contain the legal description and property ID number of the property together with a clear statement of the action being sought.

The Township Clerk shall notify the ZBA Chairman when an application has been received, and, the ZBA Chairman will schedule a hearing. Written notice the hearing shall be sent to the applicant and owners of all property lying within three hundred feet (300') of the property fifteen (15) days prior to the hearing. Notice of the hearing containing a description of the property and reasons for the hearing shall also be published fifteen (15) days prior to the hearing in a newspaper having local circulation.

A decision by the ZBA shall be in written form and become public record. A ZBA decision is final in the township. Any appeal of a ZBA decision shall be taken to the Huron County Circuit Court.

Any portion of the application fee not used to cover costs of the public hearing and notices will be refunded to the applicant.