



BACKUS TOWNSHIP ZONING ORDINANCE

ARTICLE XVII ZONING BOARD OF APPEALS

Sec. 17.01 Creation and Membership

- A. **Continuation of Present Zoning Board of Appeals.** The Zoning Board of Appeals existing at the time of adoption of this Ordinance shall perform its duties and exercise its powers as provided in Section 20 of the Township Zoning Act.
- B. **Composition and Terms.** The Zoning Board of Appeals shall consist of three (3) members appointed by the Township Board for a three (3) year term. One (1) member shall be from the Zoning Board. The Chairman of the Zoning Board of Appeals shall not be an elected official.
- C. **Alternate Members.** Up to two (2) alternate members may be appointed by the Township Board for three (3) year terms. If two (2) alternate members have been appointed, they may be called on a rotating basis, as they are available to sit as regular members of the Zoning Board of Appeals in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals. An alternate member shall only serve to discuss or vote upon a case in the absence of a regular member or upon the conflict of interest of a regular member.
- D. **Vacancies.** Any vacancies in the Zoning Board of Appeals shall be filled by appointment by the Township Board.
- E. **Officers.** The Zoning Board of Appeals shall annually elect its own Chairman, Vice Chairman and Secretary.

Section 17.02 Organization and Procedures

- A. **Meetings.** All meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such times as the Zoning Board of Appeals may determine. All hearings conducted by the Zoning Board of Appeals shall be open to the public. The Secretary to the Board or their representative, shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall also keep records of its hearings and other official action. Two (2) members of the Zoning Board of Appeals shall constitute a quorum for the conduct of its business. The Zoning Board of Appeals 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.
- B. **Public Hearings.** The Zoning Board of Appeals shall make no decisions except after a public hearing is conducted by the Zoning Board of Appeals. The Zoning Board of Appeals shall select a reasonable time and place for a hearing without unreasonable delay. The Zoning Board of Appeals shall, by general rule or in specific cases, determine the interested parties who, in the



BACKUS TOWNSHIP ZONING ORDINANCE

opinion of the Board, may be affected by any matter brought before it, which shall in all cases include all owners of record of property and the occupants of all single-family and two-family dwellings within three hundred (300) feet of the premises in question. Such notices shall be delivered personally or by mail addressed to the respective owners at the address given in the last assessment roll. If the tenant's name is not known, the term occupant may be used. The Zoning Board of Appeals may give such notice to other interested parties as it shall prescribe.

- C. **Representative at hearing.** Any person may appear and testify at the hearing, either in person or by duly authorized agent or representative.
- D. **Majority Vote.** The concurring vote of a majority of the membership of the Board shall be required to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which the Board is required to pass, or to effect a variation in the ordinance.
- E. **Record of Actions.** For each decision of the Zoning Board of Appeals, a record shall be prepared. Such record shall include, at a minimum, the following items:
1. Description of the applicant's request.
 2. The Zoning Board of Appeal's motion and vote.
 3. A summary or transcription of all relevant material and evidence presented at hearing; and,
 4. Any conditions attached to an affirmative decision.
- F. **Decisions on appeals.** The Zoning Board of Appeals may reverse, affirm or modify the order or requirement, decision or determination appealed, in whole or in part. Decisions involving a variance from a standard of this Ordinance shall be in accordance with Section 17.05 and decisions involving temporary uses, buildings and structures in accordance with Section 17.07. The Zoning Board of Appeals shall also make determinations on Ordinance interpretation requests. In reaching such decisions, the Zoning Board of Appeals shall have all powers of the Land Use Administrator or other administrative body from whom the appeal is taken.
- G. **Final Decision.** All decisions of the Zoning Board of Appeals shall become final five (5) days after the date of entry of an order, unless the Board shall find, and so certify on the record, that it is necessary to cause such order to have immediate effect, in order to preserve property or personal rights. Decisions of the Zoning Board of Appeals shall be final. Appeals of a Zoning Board of Appeals decision shall be to the Circuit Court.

Sec. 17.03 Zoning Board of Appeals Authority.

- A. **Authority.** The Zoning Board of Appeals shall have the power to act on those matters listed in the following sections including appeals of administrative decisions, interpretation of the zoning ordinance or map, special land use permits and to authorize dimensional variances as permitted under the Township Zoning Act. Any approval shall be subject to such conditions as the Board may require to preserve and promote the character of the zoning district in question and otherwise



BACKUS TOWNSHIP ZONING ORDINANCE

promote the purpose of this Ordinance and the Township Master Plan.

- B. **Limits on authority.** The Board of Zoning Appeals shall not have the power to alter or change the zoning district classification of any property, approve a use variance, approve a variance within a Planned Development, approve a Special Land Use, consider appeals on conditions of a Planned Development, nor make any change in the terms of this Ordinance. The Zoning Board of Appeals may grant a variance to the specific design standards for a Special Land Use as specified in Section 12.06, provided such variance shall be approved prior to any decision by the Zoning Board on the Special Land Use.

The Zoning Board of Appeals shall not have the power to make any change in the terms of this Ordinance, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, and to authorize a variance as defined in this Article and the laws of the State of Michigan.

Sec. 17.04 Appeals of Administrative Decisions

- A. **Eligibility to file an appeal:** An appeal, within the limits of authority described in Section 17.03 above, may be taken to the Zoning Board of Appeals by any person, firm, corporation, department or other party affected by a decision, permit, requirement, possible error or refusal to act by the Township Building Department, other administrative officials or the Zoning Board.
- B. **Filing an appeal.** All applications for appeal shall be filed with the Zoning Administrator. The application shall include the grounds for such appeal and any required administrative fee to cover the necessary notification and investigation expenses incurred by the township. The Zoning Board of Appeals shall consider appeals filed within twenty-one (21) business days of the applicants receipt of official notice of the decision which is being appealed.
- C. **Stay of proceedings.** An appeal shall stay all proceedings in furtherance of the action appealed unless the Zoning Administrator certifies to the Zoning Board of Appeals that, for reasons stated in the certificate, a stay would cause imminent peril to life or property, in which case the proceeding shall not be stayed other than by a retaining order, which may be granted by the Zoning Board of Appeals or a court of record.
- D. **Processing the appeal materials.** The Zoning Administrator shall transmit to the Board all of the papers constituting the record upon which the action appealed from was taken. The Board shall render a decision using the materials which were part of the record available to the administrative person or body when the decision being appealed was made; no new information shall be provided by the applicant.
- E. **Organization and procedures.** The request shall be reviewed and acted upon in accordance with the organization and procedures described in Section 17.02.



BACKUS TOWNSHIP ZONING ORDINANCE

Sec. 17.05 Variances

- A. **Eligibility to file an appeal:** A variance from the provisions of this Ordinance, within the limits of authority described in Section 17.03 above, may be requested of the Zoning Board of Appeals by any person, firm, corporation, department or other party affected by said ordinance provision.
- B. **Filing a variance request.** All applications for a variance shall be filed with the Zoning Administrator. The application shall include a complete description of the requested variance (referencing section numbers and text), written evidence that the request meets the variance criteria described in Section 17.05.D and any required administrative fee to cover the necessary notification and investigation expenses incurred by the township. The Zoning Administrator shall transmit this information to the Zoning Board of Appeals and the Board shall consider the request within twenty-one (21) business days of filing by the applicant.
- C. **Organization and procedures.** The request shall be reviewed and acted upon in accordance with the organization and procedures described in Section 17.02.
- D. **Decisions on non-use variances.** The Zoning Board of Appeals, after the public hearing, shall have the power to grant requests for variances from the provisions of this Ordinance where it is proven by the applicant that all of the following criteria:
1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district;
 2. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations. Unique circumstances include: exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter, or by reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure or by reason of the use or development of the property immediately adjoining the property in question, the literal enforcement of the requirements of this chapter would involve practical difficulties;
 3. 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 of itself be deemed sufficient to warrant a variance.
 4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.
 5. The variance will not impair the intent and purpose of this Ordinance.
 6. That the immediate practical difficulty causing the need for the variance request was not



BACKUS TOWNSHIP ZONING ORDINANCE

created by any action of the applicant.

Sec. 17.06 Ordinance Interpretation

The Zoning Board of Appeals shall be responsible to interpret the provisions or meaning of standards of this Ordinance in such a way as to carry out the stated intent and the goals of the Township Master Plan; and to interpret boundaries of the Zoning Map where the actual alignment of streets or natural features used to separate zoning districts varies from the alignment shown on the Zoning Map, or where the zoning district boundary does not follow exact property lines. Ordinance interpretation requests shall be reviewed and acted upon in accordance with Section 17.02.

Sec. 17.07 Temporary Uses, Buildings and Structures

- A. **Filing a temporary use, building or structure.** All applications for a temporary use, building or structure shall be filed with the Zoning Administrator. The Zoning Administrator shall transmit this information to the Zoning Board of Appeals and the Board shall consider the request within twenty-one (21) business days of filing by the applicant. Each application shall include the required application form, information required as outlined in Section 11.04, for Site Plan Review and the required fee as determined by the Township Board. The Zoning Board of Appeals may waive certain application requirements.
- B. **Organization and procedures.** The request shall be reviewed and acted upon in accordance with the organization and procedures described in Section 17.02 and the applicable standards contained in the following subsections.
- C. **Temporary buildings and structures specific standards.** The Zoning Board of Appeals may permit temporary buildings and structures, including trailers incidental to construction work on a lot for periods not to exceed one (1) year in undeveloped areas of the Township and for a period not to exceed six (6) months in developed areas, subject to the restrictions below:
1. Temporary buildings and structures may only be used for storage of construction materials, tools, supplies and equipment, for construction management and supervision offices, and for temporary on-site sanitation, solid waste or fuel facilities, related to construction activity on the same lot. No temporary building or structure shall be used as a dwelling unit, unless specifically approved by the Zoning Board of Appeals.
 2. A building permit for such building or structure shall be issued by the Building Inspector prior to installation.
 3. Temporary buildings and structures shall be removed from the lot within fifteen (15) days after an occupancy permit is issued by the Zoning Administrator for the permanent structure on such lot, or within fifteen (15) days after the expiration of a building permit issued for construction on such lot.
 4. The determination of "undeveloped" and "developed" shall be made by the Zoning Board of Appeals in consideration of the uses on adjacent properties, the amount of vacant land in the general area, and the expected rate of development.



BACKUS TOWNSHIP ZONING ORDINANCE

- D. **Temporary uses without buildings or structures specific standards.** The Zoning Board of Appeals may permit temporary uses which do not require the erection of any capital improvement of a structural nature, and not otherwise permitted in any district (excluding garage sales, moving sales, estate sales and auctions for less than seven calendar days during any year), for up to twelve (12) months with the granting of twelve (12) month extension up to a maximum of three (3) total years being permissible, under the following conditions:
1. The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.
 2. The use shall be in harmony with the general character of the district.
 3. The granting of the temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit. A performance bond may be required by the Land Use Administrator to cover costs of site clean-up upon termination of use.
 4. All setbacks, land coverage, off-street parking, lighting, signs and other requirements of this Ordinance shall be met, unless the Zoning Board of Appeals specifically modifies a requirement in consideration of protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the township.
 5. In classifying uses as not requiring capital improvement, the Zoning Board of Appeals shall determine that they are either de-mountable structures related to the permitted use of the land; or structures which do not require foundations, heating systems or sanitary connections.
 6. Notice shall be given to owners of adjacent property, within three (300) hundred feet, of the time and place of a public hearing to be held as further provided for in this Ordinance prior to approval of any temporary use permit.
- E. **Temporary Permit Requirements.**
1. Each permit shall specify the location and use for such temporary dwelling or structure, and shall be valid for up to twelve (12) calendar months, unless otherwise provided for herein.
 2. Permits may be renewed by the Zoning Board of Appeals for one (1) additional successive period of six (6) calendar months, or less, at the same location and for the same purpose.
- F. **Performance Guarantee.** A performance guarantee may be required to ensure the proper removal of the temporary dwelling or structure, following the expiration of the permit and any extensions, or upon completion of the permanent building or structure.



BACKUS TOWNSHIP ZONING ORDINANCE

Sec. 17.08 Resubmission.

No variance request which has been decided by the Zoning Board of Appeals shall be submitted for reconsideration within a one (1) year period from the date of the original application unless the Board finds that at least one of the following conditions exist:

- A. That the conditions involving all of the reasons for the original denial have been significantly altered.
- B. That new conditions or circumstances exist which change the nature of the original request.

Sec. 17.09 Conditions of Approval.

- A. The Zoning Board of Appeals may impose reasonable conditions in conjunction with approval of an appeal, variance, or any other decision which they are required to make.
- B. Conditions shall be imposed in a manner in accordance with the Township Zoning Act, and related to the standards by which the decision is reached.

Sec. 17.10 Fees

The Township Board may prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the Zoning Board of Appeals. The fee shall be paid to the Township Treasurer at the time the application for the appeal or variance is filed.