

ARTICLE 56.0 ZONING BOARD OF APPEALS

SECTION 56.01 - BOARD ESTABLISHED

A Zoning Board of Appeals, hereinafter referred to as the Board of Appeals, is hereby established, in accordance with the Michigan Zoning Enabling Act.

SECTION 56.02 - MEMBERSHIP AND TERMS

The Board of Appeals shall consist of five (5) members appointed by the Township Board. The first member shall be a member of the Township Planning Commission. The remaining members shall be selected from the electors of the Township residing in the un-incorporated area of the Township. The members selected shall be representative of the population distribution and of the various interests present in the Township. One member may be a member of the Township Board but shall not serve as chairperson for the Board of Appeals. Employees and contractors of the Township shall be prohibited from serving as members of the Board of Appeals.

The term of office of each member shall be for three (3) years, except for members serving because of their membership on the Planning Commission or Township Board respectively, whose terms shall be limited to the time they are members of those bodies. All members shall serve until their successors are duly appointed and qualified. A successor shall be appointed not more than one month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term.

A member shall abstain from voting on any question on which he/she has a conflict of interest. Failure of a member to abstain in such cases shall constitute malfeasance of office.

A member may be removed from office by the Township Board for misfeasance, malfeasance or nonfeasance in office, upon written charges and following a public hearing held in accordance with Section 57.10 (Public Hearing Procedures). Minutes of the meeting at which the hearing is held shall record the reasons for the hearing, the motion or resolution, if any, regarding removal from office, and the roll call vote of the Township Board.

SECTION 56.03 - GENERAL REGULATIONS FOR THE BOARD OF APPEALS

- A. Rules** - The Board of Appeals shall adopt rules and regulations to govern its procedures. The Board of Appeals shall elect a Chair, Vice-Chair, and Secretary from its membership. A chair and a secretary shall be elected at the beginning of the first meeting of the new fiscal year.
- B. Votes** - A concurring vote of a majority of the members of the Board of Appeals shall be necessary for any decision. The Board of Appeals shall not conduct business unless a majority of its members is present.

- C. Representation** - Any person may appear on said persons own behalf at a hearing or may be represented by an agent or attorney.
- D. Time Limit** - The Board of Appeals shall decide upon all matters within a reasonable time, not to exceed ninety (90) days from the filing date. The decision of the Board of Appeals shall be in the form of a resolution containing a full record of its findings and determinations in each case. The time limit may be extended by written agreement between the applicant or appellant and the Board of Appeals.
- E. Meetings** - Meetings of the Board of Appeals shall be held at the call of the chair and at such times as the Board in its rules and regulations might specify. Minutes shall be kept of each meeting and the Board shall record into the minutes all findings, conditions of approval, facts, and other relevant factors, and all its official actions. The vote of each member upon a question, or absence or abstention, shall be recorded into the minutes of the meeting. All meetings and records shall be open to the public. All minutes shall be filed in the office of the Township Clerk.
- F. Oaths** - The Chair of the Board of Appeals, or in the Chair's absence, the vice-chair may administer oaths and compel the attendance of witnesses.

SECTION 56.04 - POWERS AND DUTIES OF BOARD OF APPEALS

The Board of Appeals shall perform its duties and exercise its powers as provided in the Michigan Zoning Enabling Act, so that the objectives of this Ordinance shall be attained, the public health, safety, and welfare secured, and substantial justice done. The Board of Appeals shall hear and decide, as provided herein:

- A.** Appeals of any administrative decision of any official or body on any requirement of this Ordinance.
- B.** Variances.
- C.** Expansion of non-conforming buildings and structures.
- D.** Substitution of non-conforming uses.

Notwithstanding the preceding, the Board of Appeals shall not hear and shall have no authority regarding any issue that involves a special use permit or a planned unit development. The Board of Appeals shall not alter or change the zoning district classification of any property, or make any change in the terms of this Ordinance, and shall not take any action that would result in making a legislative change.

SECTION 56.05 - FEES

A schedule of fees of the Zoning Board of Appeals shall be established by resolution of the Charter Township of York Board and shall be paid at the time of application.

The fee shall be paid to the Township Clerk at the time of the filing the appeal and shall be deposited in the Township's General Fund.

SECTION 56.06 - PUBLIC HEARINGS

The Board of Appeals shall give notice and hold a public hearing on each question submitted to it for decision in accordance with Section 57.10 (Public Hearing Procedures). If the notice is delivered by mail, an affidavit of mailing shall be filed with the Board of Appeals prior to public meeting. Where the hearing, as determined by the Board of Appeals, concerns matters of general applicability in The Charter Township of York and does not concern only individual lots or parcels, the notice of the hearing need only be given in a newspaper of general circulation within The Charter Township of York.

Section 56.07 - Expansion and Substitution of Non-conformities.

The Board of Appeals shall hear and decide upon applications for expansion of non-conforming structures and substitution of one non-conforming use for another such use in accordance with the provisions of Section 55.08, herein. An application for such expansion or substitution shall be filed with the Township Clerk. The application shall consist of a complete application form and fee, and shall contain adequate information to assist the Board of Appeals in reaching a decision in accordance with Section 55.08, "Expansion and substitution" herein. The Clerk shall transmit the application and information to each member of the Board of Appeals within three (3) days of the filing date.

Section 56.08 - Administrative Review

The Board of Appeals shall hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Inspector in the interpretation and enforcement of this Ordinance. The Board of Appeals shall interpret zoning district boundaries according to the provisions of Section 10.205(E) (Rules for Interpretation).

Section 56.09 - Duties on Matters of Appeal

All questions concerning the application of the provisions of this Ordinance shall first be presented to the Zoning Inspector. Such questions shall be presented to the Board of Appeals only on appeal, from the decisions of the Zoning Inspector. Recourse from decisions of the Board of Appeals shall be to the courts as provided by the law.

SECTION 56.10 - PROCEDURES

- A.** Appeals concerning administrative review may be made within such time as prescribed by the Board of Appeals by general rule, by filing with the Zoning Inspector and the Board of Appeals a notice of appeal specifying the grounds thereof. The Zoning Inspector shall transmit to the Board of Appeals copies of all papers constituting the record upon which the action appealed from was taken, within seven (7) days of the filing date. The appellant shall submit a clear description of the order, requirement,

decision, or determination from which appeal is made, and may be required by the Board of Appeals to submit additional information to clarify the appeal.

- B.** Appeals may be taken by any person aggrieved by a decision of the Zoning Inspector.
- C.** An appeal shall stay all proceedings in the furtherance of the action appealed from, unless the Zoning Inspector certifies to the Board of Appeals after the appeal is filed that by reason of facts stated in the certificate, a stay would cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Zoning Inspector from whom the appeal is taken, and on due cause shown.
- D.** The ZBA shall reverse an administrative decision only upon determining that the order, requirement, decision or determination constituted an abuse of discretion; was arbitrary or capricious; or was based upon an erroneous finding of a material fact or an erroneous interpretation of the Zoning Ordinance. After making such a determination, the Board of Appeals may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made. To that end the Board of Appeals shall have the powers of the public official from whom the appeal is taken.

SECTION 56.11 - VARIANCES

- A. Intent** - The Board of Appeals shall have the power and duty to waive or relax the provisions of this Ordinance in specific cases. To this end, the Board of Appeals may grant variances, which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship or practical difficulty.
- B. Filing** - An application for a variance shall be filed with the Township Clerk by the record owner of the property in question or by a person(s) authorized to act on the record owner's behalf. The application shall consist of a completed application form, fee, and the information required. The Clerk shall transmit the application and information to each member of the Board of Appeals and to the Zoning Inspector within three (3) days of the filing date.
- C. Information Required** - An application for a variance shall contain the following information:
 - 1.** Legal description, address, and tax parcel number of the subject property.
 - 2.** An accurate, scaled drawing of the property, showing all property lines, dimensions, and bearings of angles correlated with the legal description; all existing and proposed structures and uses on the property; and dimensions of structures and their dimensioned locations; lot area calculations necessary to show compliance with the regulations of this Ordinance.

3. Name and address of the applicant, property owner(s), and the interest of the applicant in the property.
- D. Standards of Determination** - A variance shall not be granted unless all the following standards are met:
1. A written application for a variance is submitted, demonstrating:
 - a. Special conditions and circumstances exist which are unique to the land, structures or buildings involved, and are not applicable to other lands, structures or buildings in the same district.
 - b. The special conditions and circumstances on which the variance request is based do not result from the actions of the applicant.
 - c. Literal interpretation of this Ordinance would deprive the applicant of rights commonly enjoyed by other property owners in the same district under the terms of this Ordinance.
 - d. Granting the variance requested will not confer upon the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district.
 2. The existence of non-conforming uses of neighboring lands, structures, or buildings, in the same district, permitted or non-conforming uses of land, structures or buildings in other districts, and non-conforming structures, shall not be considered grounds for the issuance of a variance.
 3. A variance granted shall be the minimum variance that will make possible a reasonable use of the land, building, or structure.
 4. The variance granted shall be consistent with the intent of this Ordinance.
 5. The variance granted will not be injurious to the neighborhood, the public safety, or otherwise detrimental to the public interest.
 6. The ZBA shall determine and make a finding that all of the above standards of determination in this section have been satisfactorily met [amended 10/5/2012, Ord. 141].
- E. Motions** - Any motion for action on a variance application shall include specific findings of fact and conclusions made by the Board of Appeals on the request, which shall be incorporated into the written record of the meeting.
- F. Use Variances Prohibited** - Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

Section 56.12 - Voiding of Variance

Each variance granted under the provisions of this Ordinance shall become null and void unless the construction authorized by such variance has been commenced within one hundred eighty (180) days after granting of such variance and pursued diligently to completion, or the occupancy of land or buildings authorized by such variance has taken place within one hundred eighty (180) days after the granting of such variance.

SECTION 56.13 - REAPPLICATION FOR VARIANCE

An application for a variance which has been denied wholly or in part by the Board of Appeals shall not be resubmitted for a period of three hundred sixty-five (365) days from the date of denial, except on grounds of new evidence of changed conditions found by the Board of Appeals to be valid.

SECTION 56.14 - SITE PLAN REQUIREMENTS

If an application or appeal to the Board of Appeals requires site plan approval by the Planning Commission, the applicant or appellant shall first apply for preliminary site plan approval as set forth in Article 54.0 (Site Plan Review). The Planning Commission shall review said plan and shall determine the layout and other features required to obtain approval of said plan. The Planning Commission shall then transmit the plan and the Commission's findings thereon to the Board of Appeals. The Board of Appeals shall, upon deciding on the application or appeal, return the plan and its decision thereon to the Planning Commission for Commission action on the preliminary site plan.

SECTION 56.15 - APPEALS TO COURTS

Any person aggrieved by a decision of the Board of Appeals shall have the right to appeal to the Circuit Court on question of law and fact, as provided for in Section 606 of the Michigan Zoning Enabling Act.

SECTION 56.16 - CONDITIONS OF APPROVAL

The Board of Appeals may attach conditions to any affirmative decision, provided such conditions are in accordance with the requirements of this Ordinance and the Michigan Zoning Enabling Act. Such conditions shall be consistent with procedures, requirements, standards, and policies of the Township, where applicable. Violation of any condition imposed shall be deemed a violation of this Ordinance punishable under Section 57.09 (Violations).