

ARTICLE 11

ZONING BOARD OF APPEALS

SECTION 11.0 – CREATION AND MEMBERSHIP OF THE ZONING BOARD OF APPEALS

- A. The Zoning Board of Appeals (ZBA) shall perform its duties and exercise its powers as provided in Article 6 of Act 110, P.A. 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and justice done. The Board shall consist of three (3) members, appointed by the Township Board by a vote of a majority of its membership.
1. The first member shall be a member of the Township Planning Commission for the terms of his/her office.
 2. The remaining members must be selected from the electors of Alcona Township and shall be representative of the population distribution and of the various interests present in the Township. One (1) member may be a member of the Township Board.
 3. An elected officer of the Township shall not serve as chairman. An employee or contractor of the Township Board may not serve as a member of the Board of Appeals.
 4. The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called to sit as a regular member of the Zoning Board of Appeals in the absence of a regular member if a regular member is absent from or unable to attend one (1) or more meetings of the Zoning Board of Appeals. 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.
 5. The terms of office for members of the Zoning Board of Appeals 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 those bodies. When members are first appointed, the appointments may be for less than three (3) years to provide for staggered terms. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term in the same manner as the original appointment.

6. A member of the Zoning Board of Appeals 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 conflict of interest constitutes malfeasance in office.

SECTION 11.1 – MEETINGS

- A. Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as the Zoning Board of Appeals may determine or specify in its rules of procedure. All hearings conducted by said Board shall be open to the public. The Board of Appeals shall adopt its own rules of procedure and keep a record 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 record of its proceedings in the office of the Township Clerk, and shall be a public record.
- B. The Board of Appeals shall not conduct business unless a majority of those Zoning Board of Appeals members qualified to sit for a particular matter are present to constitute a quorum, regardless of whether the members are regular members or alternate members.

SECTION 11.2 – JURISDICTION

- A. An appeal concerning the administration of the provisions of this Ordinance may be taken to the Board of Appeals within the timeframe defined in the general rules and procedures adopted by the Zoning Board of Appeals. If such a timeframe is not specified, appeals shall be filed within thirty (30) days of the decision of the Zoning Administrator from which the appellant seeks relief.
- B. The ZBA shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a Zoning Ordinance adopted under this act.
- C. The ZBA shall have the authority to grant non-use variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the Zoning Ordinance as provided for in **§11.5**. The ZBA shall not grant use variances.
- D. The ZBA may also interpret the location of zoning district boundaries and may interpret the provisions of this Ordinance.

- E. The ZBA has no jurisdiction to hear appeals from Planning Commission decisions concerning Special Land Use approvals or Planned Unit Developments.

SECTION 11.3 – PROCEDURE & DECISIONS

1. An appeal to the Zoning Board of Appeals may be taken by a person aggrieved or by an officer, department, board or bureau of Michigan or Alcona Township.
2. A variance in the Zoning Ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under the Michigan Zoning Enabling Act, PA 110 of 2006, as amended.
3. The appellant shall file with the Board of Appeals, on blanks or forms to be furnished by the Zoning Administrator, a notice of appeal specifying the grounds for the appeal.
4. The Zoning Administrator shall immediately transmit to the Zoning Board of Appeals all papers constituting the record of the appealed action.
5. The applicant is required to submit six (6) copies of surveys, plans and data as required under **Article 7**, or other information deemed reasonably necessary for making any informed decision on his or her appeal.
6. Following receipt of a written request for a variance, an interpretation of the Zoning Ordinance, or an appeal of an administrative decision, the Zoning Board of Appeals shall fix a reasonable time for the hearing of the request and give notice pursuant to **§10.3**.
7. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney.
8. 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 on the same matter 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.
9. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit. The final decision of such appeal shall be in the form of a resolution reversing, modifying or affirming, wholly or partly, the decision or determination appealed from. Reasons for the decision must be stated.

10. The concurring vote of a majority of the members of the Zoning Board of Appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the Zoning Board of Appeals is required to pass under the Zoning Ordinance, or to grant a variance in the Zoning Ordinance.
11. The ZBA may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area, as provided for in **§10.2**.
12. No order of the Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is obtained within such period and substantial construction has occurred.
13. The decision of the Zoning Board of Appeals shall be final. A party aggrieved by the decision may appeal to the circuit court of Alcona County.

SECTION 11.4 – STAY

- A. An administrative appeal to the Zoning Board of Appeals and an appeal of a decision by the Zoning Board of Appeals to circuit court stays all proceedings of the action appealed from, including the effectiveness of any Zoning Permit issued, unless the Zoning Administrator certifies to the Zoning Board of Appeals after such appeal has been filed that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed, unless ordered stayed by the Zoning Board of Appeals or the circuit court. Provided, however, this section shall not apply to an administrative decision to take enforcement action for alleged violations of this Ordinance.

SECTION 11.5 – VARIANCE STANDARDS

- A. Dimensional Variance Standards: The ZBA may grant dimensional variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in practical difficulty. To establish practical difficulty, the applicant must establish all of the following:
 1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant’s personal or economic hardship;

2. Strict compliance with the regulations governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome;
3. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give substantial relief to the property owner and be more consistent with justice to other property owners;
4. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created).
5. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.

SECTION 11.6 – APPEAL TO CIRCUIT COURT

- A. Any party aggrieved by a decision of the Zoning Board of Appeals may appeal to the circuit court for Alcona County. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:
 1. Complies with the constitution and laws of the state.
 2. Is based upon proper procedure.
 3. Is supported by competent, material, and substantial evidence on the record.
 4. Represents the reasonable exercise of discretion granted by law to the Zoning Board of Appeals.
- B. If the court finds the record inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented, the court shall order further proceedings on conditions that the court considers proper. The Zoning Board of Appeals may modify its findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary record and decision shall be filed with the court. The court may affirm, reverse, or modify the decision.
- C. An appeal from a decision of a Zoning Board of Appeals shall be filed within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the Zoning Board of

Appeals, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of its decision. The court may affirm, reverse, or modify the decision of the Zoning Board of Appeals. The court may make other orders as justice requires.