

CHAPTER 16

ZONING BOARD OF APPEALS

SECTION 16.01 ZONING BOARD OF APPEALS. *(Amended 05-08)*

- (1) **Membership and Officers.** A Zoning Board of Appeals is hereby created. Such Board shall consist of five members, and may consist of two alternates, appointed by the Township Board. Regular and alternate members shall be registered electors of the Township, provided that no elected officials of the Township, nor any employee of the Township may serve as a member of the board except as provided herein. One of the regular members of the Zoning Board of Appeals shall be a member of the Township Planning Commission. One regular member may be a member of the Township Board, but that member shall not serve as chairperson of the Zoning Board of Appeals. The Zoning Board of Appeals shall elect one of its members as chairperson and one of its members as secretary.
- (2) **Term of Office.** Initially, one member of the Zoning Board of Appeals shall be appointed for a term of three years, two members shall be appointed for a term of two years each and two members shall be appointed for a term of one year each. Thereafter, each member, when appointed, shall have a term of three years. Alternates shall be appointed for three year terms.
- (3) **Service on Board; Removal.** Members of the Zoning Board of Appeals may be removed at the pleasure of the Township Board. Any vacancy shall be filled by the Township Board for the remainder of the un-expired term. An alternate member of the Zoning Board of Appeals may be called to serve if the regular member is unable to attend or has abstained for reasons of conflict of interest. An alternate member appointed in a case shall serve in that case until a final decision is made. An alternate member shall vote and otherwise have all of the authority and responsibility of a regular member.

SECTION 16.02 VOTING REQUIREMENTS. *(Amended 05-08)* The concurring vote of three members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the building inspector or zoning administrator or decide in favor of the applicant on any matter upon which the Board is required to pass upon under this chapter or under the Zoning Enabling Act, or to grant any variance in the zoning ordinance as provided in this chapter.

SECTION 16.03 MEETINGS AND QUORUM. *(Amended 05-08)* Meetings of the Zoning Board of Appeals shall be open to the public and shall be at the call of the chairperson and at such other times as the Zoning Board of Appeals shall specify in its rules of procedure. No less than three regular members of the Zoning Board of Appeals must be present to constitute a quorum for the conduct of business.

SECTION 16.04 RECORDS. *(Amended 05-08)* The secretary shall record minutes of all proceedings of the Zoning Board of Appeals which shall contain evidence and data relevant to every case considered, together with a tabulation of the vote of each member and the final disposition of each case. Such minutes shall be a public record.

SECTION 16.05 HEARINGS. *(Amended 05-08)* When a notice of appeal has been filed in proper form with the Zoning Board of Appeals, the secretary or designee of the secretary shall

immediately place such request for appeal on the calendar for hearing and shall cause notice to be provided in the manner specified in Section 17.06 of the zoning ordinance except that if the request does not involve a specific parcel of property, notice need only be published as provided in Section 17.06(a) and given to the person making the request. The Zoning Board of Appeals may recess such hearing from time to time, and if the time and place of the continued hearing is publicly announced at the time of adjournment, no further notice thereof shall be required.

SECTION 16.06 DECISIONS. *(Amended 05-08)* The Zoning Board of Appeals may reverse or affirm wholly or in part, or may modify, any order, requirement, decision or determination on which any appeal has been taken and to that end shall have all the powers of the officer from whom the appeal was taken and may issue or direct the issuance of an appropriate and lawful permit. The Zoning Board of Appeals shall also make findings and reach decisions upon all other matters which, under the terms of this Ordinance or by law, it is required to herein decide. In its minutes, the Board shall state the reasons and grounds for each of its decisions or determinations. The decision of the Board shall be final, but any person having an interest affected by any such decision may appeal to the circuit court in the manner and upon the procedure specified by law.

SECTION 16.07 APPEALS. *(Amended 05-08)* Appeals to the Board of Appeals may be taken by any person aggrieved, or by an officer, department or board of the Township.

SECTION 16.08 TIME FOR APPEAL, NOTICE. *(Amended 05-08)* Any appeal from the ruling of the Building Inspector concerning the enforcement of the provisions of this Ordinance shall be made to the Zoning Board of Appeals within five (5) days after the date of the decision which is the basis of the appeal. The person making the appeal shall file with the secretary of the Board and the enforcing officer a notice of appeal specifying the grounds for the appeal. The Building Inspector shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

SECTION 16.09 EFFECT OF APPEAL. *(Amended 05-08)* An appeal stays all proceedings in furtherance of the action appealed from unless the Building Inspector shall certify to the Board, after notice of the appeal shall have been filed with him or her, that by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril of life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or on application and notice to the Building Inspector by the circuit court of due cause shown.

SECTION 16.10 REPRESENTATION. *(Amended 05-08)* Any party may appear in person or by agent or by attorney at a hearing considering the request or appeal.

SECTION 16.11 DUTIES AND POWERS OF THE BOARD OF APPEALS. *(Amended 05-08)* The Zoning Board of Appeals shall have all the powers and duties prescribed by law and by this chapter which are more particularly specified as follows:

- (a) Make interpretations of the Zoning Map of the Township of Leighton, Allegan County, Michigan, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
- (b) Hear and decide appeals from, and review any order, requirements, decisions, or determination made by, an administrative official or body charged with enforcement of this Ordinance, excluding any requirements, decisions or determinations made with regards to special uses.

- (c) The Zoning Board of Appeals may not consider or grant a use variance, being a variance from the provisions or requirements of this Ordinance because of the actual or proposed use of the property.

SECTION 16.12 VARIANCES. *(Amended 05-08)* No variance in the provisions or requirements of this Ordinance shall be authorized by the Zoning Board of Appeals unless the Board makes findings, based upon competent material and substantial evidence on the whole record, as to each of the following matters.

- (a) That the enforcement of the literal requirements of this Ordinance would cause practical difficulties.
- (b) That special conditions or circumstances exist which are peculiar to the land, structures or buildings involved and which are not applicable to other lands, structures or buildings in the same zoning district.
- (c) That literal interpretation of the provisions of this Ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zoning district.
- (d) That the authorizing of such variance will not be of substantial detriment to adjacent or nearby lands, structures or buildings, and will not be contrary to the spirit and purpose of this Ordinance.
- (e) That the special circumstances or conditions referred to in subsection (b) do not result from the actions of the applicant.

SECTION 16.13 EXPIRATION OF VARIANCES. *(Amended 05-08)* Each variance granted under the provisions of this chapter shall automatically expire one year from the date granted unless:

- (a) The construction or action authorized by such variance or permit has occurred or been commenced within one year after the granting of the variance and is progressing toward completing.
- (b) The occupancy of land, premises or buildings authorized by the variance has taken place within one year after the variance was granted.

SECTION 16.14 APPEALS TO COURTS. *(Amended 05-08)* Any decision of the Board of Appeals may be appealed through the courts, as provided in the Zoning Enabling Act, Act 110 of the Public Acts of 2006, as amended.

SECTION 16.15 CONDITIONS OF APPROVAL. *(Amended 05-08)* 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 Zoning Enabling Act, as amended. Such conditions shall be consistent with procedures, requirements, standards, and policies of the Township Board, the Township Planning Commission, and other Township agencies, where applicable. Violation of any condition imposed shall be deemed a violation of this Ordinance and punishable under Chapter 27 herein.

