

ARTICLE XX

BOARD OF APPEALS

SECTION 2000. CREATION AND MEMBERSHIP

There is hereby established a Board of Zoning Appeals, which shall perform such duties and exercise such powers, as provided in Act 110 of the Public Acts of 2006 as may be amended to the end that the purposes and objectives of this ordinance shall be observed, public safety secured and substantial justice done. The Board of Appeals shall consist of seven (7) members, appointed by the Township Board, as follows:

- a. The first member shall be a member of the Planning Commission as recommended by the Planning Commission.
- b. The remaining members shall be electors of the Township residing outside of incorporated cities and villages, and shall be representative of the population distribution and of the various interests present in the Township. One of the remaining members may but need not be a member of the Township Board other than the Supervisor.

No employee or contractor of the Township Board may be a member or employee of the Board of Appeals.

No elected officer of the Township may serve as chairman of the Board of Appeals.

The total amount allowed the Board of Appeals in any one (1) year as per diem or as expenses actually incurred in the discharge of their duties shall not exceed a reasonable sum which sum shall be determined by the Township Board and appropriated annually in advance by the Township Board.

Members of the Board of Appeals shall be removable by the Township Board for nonperformance of duty or misconduct in office upon written charges and after public hearing. A member shall disqualify himself from a vote in which he has a conflict of interest. Failure of a member to disqualify himself from a vote in which he has a conflict of interest shall constitute misconduct in office.

The term of each member shall be for three (3) years, except that of the members first appointed, two (2) shall serve for one (1) year, three (3) shall serve for two (2) years and two (2) shall serve for three (3) years. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term.

The Board of Appeals shall not conduct business unless a majority of the members of the Board are present.

SECTION 2001. MEETINGS

All meetings of the Board of Appeals shall be held at the call of the Chairman, and at such times as the Board in its rules of procedure may specify. All meetings of the Board of Appeals shall be open to the public. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact and shall keep records of its findings, proceedings at hearings and other official actions, all of which shall be immediately filed in the office of the Township Clerk and shall be a public record.

The Chairman of the Board of Appeals or in his absence the Vice Chairman shall have the power to compel the attendance of witnesses and administer oaths.

SECTION 2002 APPEAL

An appeal may be taken to the Board of Appeals by any person, firm or corporation, or by an officer, department, board or bureau affected by a decision of the Zoning Administrator or any other official or body charged with the administration of this ordinance, except that there shall be no appeal to the Board of Appeals from a decision by the Township Board pertaining to a special land use or a planned residential development. Appeal shall be taken within such time as shall be prescribed by the Board of Appeals by general rule, by filing with the Zoning Administrator or other administrative official or body from whom the appeal is taken, and with the Board of Appeals a notice of appeal, specifying the grounds thereof. The Zoning Administrator or other administrative official or body from whom the appeal is taken shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator or other administrative official or body from whom the appeal is taken certifies to the Board of Appeals, after notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his/her opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed, other than by a restraining order which may be granted by a court of record.

The Board of Appeals shall select a reasonable time and place for the hearing of the appeal and give due notice thereof to the parties and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.

SECTION 2003. FEES

The Township Board may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the Board of Appeals. At the time the notice for appeal is filed, said fee shall be paid to the Secretary of the Board of Appeals, which the Secretary shall forthwith pay over to the Township Treasurer to the credit of the general revenue fund of the Township.

SECTION 2004. JURISDICTION AND STANDARDS

The 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 nor to permit any use in a district in which it is not permitted, but does have the power to act as follows:

2004-1. Administrative Review

To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Administrator or any other administrative official or body in carrying out or enforcing any provisions of this ordinance. The Board of Appeals shall not have the power to hear and decide appeals pertaining to special land uses except for dimensional variances as noted in Section 2004-6 for planned residential developments, rural residential overlay developments, or residential site condominiums.

2004-2. Variance

- a. Variances shall be classified as either use variances or dimensional variances. A use variance shall be: 1) any variance which permits a use not specifically permitted by this ordinance for the district in which it located, and 2) any variance which permits in an agricultural or residential district a residential use with a twenty (20) percent or greater reduction in the required lot or buildable area. Any other variance shall be a dimensional variance.
- b. Use variances shall not be approved in the Township.
- c. Dimensional variances shall be approved only upon a Board of Appeals finding that strict application of the regulations would result in peculiar or exceptional practical difficulties to the owner of such property. Such a finding shall be made only when ALL of the following criteria are met:
 1. Exceptional characteristics of property for which the variance is sought make compliance with dimensional requirements substantially more difficult than would be the case for the great majority of properties in the same zoning district. Characteristics of property which shall be considered shall include exceptional narrowness, shallowness, smallness, irregular shape, topography, vegetation and other similar characteristics.
 2. The characteristics which make compliance with dimensional requirements difficult must be related to the premises for which the variance is sought, not some other location.
 3. The characteristics which make compliance with the dimensional requirements shall not be of a personal nature.

4. The characteristics which make compliance with dimensional requirements difficult must not have been created by the current or a previous owner.
 5. The proposed variance will not be harmful to or alter the essential character of the area in which the property is located, will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property value within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Township.
 6. The Board of Appeals shall not find that any of above criteria have been met without substantial evidence to that effect.
 7. The proposed variance will be the minimum necessary, and no variance shall be granted where a different solution not requiring a variance would be possible.
- d. Any variance which authorizes construction contrary to the requirements of this ordinance shall be void after a period of 12 months unless the construction so authorized is commenced within 12 months of the granting of the variance and diligently pursued until completion.

2004-3. Ordinance Interpretation

To interpret the language and map of this ordinance.

2004-4 Temporary Mobile Homes for Owner Occupancy During Construction of the Owner's Single Family Home

- a. The temporary use of a mobile home for owner occupancy may be approved by the Zoning Board of Appeals subject to the following conditions:
 1. The mobile home will be occupied by the owner of the home under construction.
 2. There is sufficient area on the property where the home is to be built to place a mobile home without encroaching more than 50% into a required yard.
 3. There are sufficient safeguards to minimize any environmental or physical impacts on adjacent parcels such as, but not necessarily limited to, grading, erosion, drainage, water service, septic system components, natural vegetation or other similar elements.

4. The time frame does not exceed twelve (12) months. The temporary use may be extended one time for a period of six (6) months at the discretion of the Zoning Administrator provided all of the conditions have remained the same as originally approved by the Zoning Board of Appeals. The request for an extension may also be referred to the Zoning Board of Appeals at the discretion of the Zoning Administrator in the same manner as the original request.
- b. The temporary use of a mobile home for owner occupancy in the case where the home became inhabitable due to fire, flood or other emergency may be approved at the discretion of the Zoning Administrator subject to the following conditions:
1. The mobile home will be occupied by the owner of the home.
 2. There is sufficient area on the property where the home is to be built to place a mobile home without encroaching more than 50% into a required yard.
 3. There are sufficient safeguards to minimize any environmental or physical impacts on adjacent parcels such as, but not necessarily limited to, grading, erosion, drainage, water service, septic system components, natural vegetation or other similar elements.
 4. The time frame does not exceed six (6) months. The temporary use may be extended one time for a period not to exceed twelve (12) months upon application, review and approval by the Zoning Board of Appeals.

2004-5. Temporary Uses Which Do Not Require Buildings

The Zoning Board of Appeals may approve, upon proper application, temporary uses, which do not require the erection of any capital improvement of a structural nature upon showing of good cause and subject to the following regulations:

- a. Time limits
1. Up to 12 months for an initial request.
 2. Up to 6 months for additional requests.
 3. On an annual basis upon administrative review as regulated in subsection "c" of this section of the Ordinance.

- b. The Board of Appeals, in granting permits for the above temporary uses, shall do so 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 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.
 3. All setbacks, land coverage, off-street parking, lighting, and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the Township shall be made at the discretion of the Board of Appeals.
 4. In classifying uses as not requiring capital improvement, the board of appeals shall determine that they are either demountable structures related to the permitted use of land/recreation developments such as, but not limited to: golf driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.
 5. The use shall be in harmony with the general character of the district.
 6. No temporary use permit shall be granted without first giving notice to owners of adjacent property of the time and place of a public hearing to be held as further provided for in this ordinance. Further, the Board of Appeals shall seek the review and recommendation of the Planning Commission prior to the taking of any action.
- c. Administrative renewal of a temporary use may occur on an annual basis subject to the following conditions:
1. The use shall have a defined start and end date with a maximum activity time frame of 90 days.
 2. The use shall be specific to the applicant and not be transferable.
 3. The use would not expand in size or change location on the property from event to event.

4. The clean-up of the area would be complete and the restored area would be similar to the site conditions prior to the activity taking place.
5. The Zoning Administrator shall have confirmed that the site has been adequately restored and cleaned by performing a physical inspection within 30 days after completion of the temporary use.
6. The Zoning Administrator shall not have received any complaints regarding the temporary use.
7. The Zoning Administrator shall, at her (his) discretion, be permitted to refer the matter to the Zoning Board of Appeals from time to time whether there is a concern or not. The time frame for referring the applicant to the ZBA shall occur any time up to 60 days prior to the next event.

2004-6. Dimensional Variances in Special Use Planned Residential Developments, RRODs or Residential Site Condominiums

The Zoning Board of Appeals may review certain dimensional variances in special use planned residential developments, rural residential overlay developments, or special use residential site condominiums upon review and recommendation by the Planning Commission as follows:

- a. **Application:** In addition to all of the information required by Section 2002 of the Ordinance, the applicant for a dimensional variance shall present suitable evidence, in the form of official minutes or a signed resolution of the condominium or other homeowner's association, to the effect that such association has reviewed the proposed variance and either supports or has no objection to its being granted. In the event no such association is in existence or has become inactive, such application shall so state and include the signatures of all unit or lot owners within 300 feet of the subject unit or lot, supporting or waiving any objection to the grant of the requested variance.
- b. **Planning Commission Review:** Prior to submission to the Zoning Board of Appeals, such variance request shall first be presented to the Planning Commission for its review and recommendation. Among other factors, the Planning Commission shall examine and determine:
 1. Whether the grant of such variance will materially and adversely affect the character and quality of the site condominium or planned residential development as a whole, taking into account the features, amenities and other aspects of such development which initially led to its approval;

2. Whether the facts and circumstances alleged in support of such variance request are unique to the unit or lot in question and, if not, whether relief ought more appropriately be sought by amendment of the original special use plan; or
 3. Whether the facts and circumstances alleged in support of such variance request were or should have been known to the applicant or their predecessors in title based upon a reasonable examination of the approved site plan, master deed and by-laws and other documents or instruments pertaining to such development on file with the State of Michigan, Oakland County Register of Deeds and Charter Township of Highland. If so, the document or instrument giving notice of such facts and circumstances shall be identified and made a part of the Planning Commission's report and recommendation.
- c. Zoning Board Of Appeals: In addition to all other criteria governing the granting of variances as set forth in this Ordinance, the Zoning Board of Appeals shall be guided by the following:
1. No variance shall be granted which shall permit any building within or encroachment upon any part of a lot or unit designated as limited common area; woodland or other natural features preservation area; sidewalk, trail or similar easement; or other area in which the public generally possesses any right or holds interest in the land similar to public entities, utilities and/or owners of other units within such development.
 2. No variance shall be granted for the purpose of erecting any structure or engaging in any use expressly prohibited by the Master Deed and by-laws which are part of such development's original approval.
 3. Every owner of such a unit or lot shall be conclusively presumed to have notice of all dimensions, areas, setback lines, common areas, easements, deed restrictions and/or other limitations on the use of such unit or lot set forth in the approved site plan, master deed and by-laws and other documents or instruments pertaining to such development on file with the State of Michigan, the Oakland County Register of Deeds and Charter Township of Highland, and no variance shall be granted based upon the failure of the applicant or his/her predecessors in title (including the original developer and/or any builder or real estate agent) to examine the same. Only those conditions, features or other factors which could not, with due diligence, be known or discovered prior to purchase or construction shall be considered as grounds for the grant of any dimensional variance request.

4. In the case of Planned Residential Developments in which the bulk, area, setbacks or other dimensions of the unit or lot in question is already less than those usually required for the zoning district for the development as a whole due to “clustering” or the preservation of open space, no variance shall be granted which is less than the minimum or more than the maximum dimensional requirement of a regulation for the zoning district which would otherwise be applicable to lots of the same size as the unit or lot in question. In no case shall final dimensional variances be different than the standard area and bulk requirements for R-1C lots.

SECTION 2005. ORDERS

In exercising the above powers, the Board of Appeals may reverse or affirm wholly or partly, or may modify the orders, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator or Building Inspector or other body charged with the administration of this ordinance from whom the appeal is taken.

The majority vote of four (4) members of the Board of Appeals shall be necessary to reverse any order, requirements, decision or determination of the Zoning Administrator, or to decide in favor of the applicant any matter upon which it is authorized by this ordinance to render a decision.

The Board of Appeals may impose conditions with an affirmative decision. The conditions may include conditions necessary to insure that the public services and facilities affected by a proposed variance will be capable of accommodating any increased service and facility loads caused by the variance to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

- 2005-1. Be designed to protect natural resources, the health, safety and welfare and the social and economic well being of those who will use the land use or activity under consideration; residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
- 2005-2. Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
- 2005-3. Be necessary to meet the intent and purpose of this ordinance, be related to the standards established in this ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

The conditions imposed with respect to the approval of a variance shall be recorded in the record of the approval action, and shall remain unchanged except upon the mutual consent of the Board of Appeals and the landowner. The Board of Appeals shall maintain a record of conditions which are changed.

SECTION 2006. NOTICE

The Board of Appeals shall hear any person wishing to express an opinion on a specific case. The Zoning Administrator shall provide notice as required under Act 110, Public Acts of 2006, as may be amended. In the case of a general rule, the Zoning Board of Appeals shall determine the interested parties who, in their opinion, may be affected by any matter brought before them, and direct the Zoning Administrator to provide notice to those parties in addition to those otherwise required by statute.

SECTION 2007. MISCELLANEOUS

No order of the Board of Appeals permitting the erection of a building shall be valid for a period longer than 12 months, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

No order of the Board of Appeals permitting the use of a building or premises shall be valid for a period longer than 12 months unless such use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

The reason(s) utilized as a basis for making any decision shall be stated in the minutes of the Board of Appeals.

If a variance which is granted is not utilized within 12 months of its granting, the variance shall be considered null and void and an application must be refiled if it is desired at a future date. A variance which is legally utilized and maintained runs with the property and any subsequent owners who legally continue the variance under its original or amended terms.