

Article 17 Zoning Board of Appeals

Section 17.1 Creation and Membership

There is hereby created a Zoning Board of Appeals, which shall perform its duties and exercise its powers as provided in Michigan Zoning Enabling Act 110 of 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and substantial justice done. The Board shall consist of the following three (3) members and one (1) alternate member: [19-1]

- A. The first member shall be a member of the Township Planning Commission for the term of his office. [G-1]
- B. The second member may be a member of the Township Board, appointed by the Township Board for the term of his office.
- C. The remaining member or members shall be selected and appointed by the Township Board from among the electors, residing in the unincorporated area of Kenockee Township, for a period of three (3) years. Provided, that no employee or contractor of the Township may serve on the Zoning Board of Appeals or be an employee of it. An elected official of the Township may not serve as Chairperson of the Zoning Board of Appeals. [G-1]
- D. The Township Board may appoint not more than one alternate member for the same term as regular members of the ZBA. The alternate member shall be a resident in Kenockee Township called, on a rotating basis, to sit as regular member of the ZBA in the absence of a regular member if the regular member will be unable to attend one or more meetings of the ZBA. 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. An alternate member shall serve on a case until a final decision is made. The alternate member shall have the same voting rights as a regular member of the ZBA. [19-1] [G-1]

Section 17.2 Meetings

All meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at other times as the Board in its rules of procedure may specify.

- A. All hearings conducted by said Board shall be open to the public. [19-2]
- B. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of an applicant regarding any matter upon which they are required to pass under this Ordinance or to effect any variation in this Ordinance.
- C. The Board 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. [19-2]

Section 17.3 Jurisdiction [19-4]

The ZBA shall act upon questions as they arise in the administration of this Ordinance. The ZBA shall perform its duties and exercise its powers as provided in Michigan Zoning Enabling Act 110 of 2006. The Zoning 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, but does have power to act on those matters where this Ordinance provides for appeal of an administrative decision, interpretation or special land use permit and to authorize a variance as defined in this Section and laws of the State of Michigan and grant approval of request for temporary building and uses. [G-1 & G-2]

Section 17.4 Authorized Powers

The ZBA shall hear the following specified categories of appeals in accordance with the following standards.

- A. Appeal. An appeal may be taken to the Zoning Board of Appeals by any person, firm, or corporation, or by any officer, Department, Board or Bureau affected by a decision of the Zoning Administrator or the Planning Commission including decisions regarding requires for special land use approval. An application to appeal the Zoning Administrator or Planning Commission decision shall be filed with the Zoning Administrator within thirty (30) days of the decision of the Zoning Administrator or Planning Commission. For Zoning Administrator decisions written correspondence informing the decision is required prior to the thirty day timer starting. Such appeal shall be made within such time as shall be prescribed by the Zoning Board of Appeals by general rule, by filing with the Zoning Administrator and with the Zoning Board of Appeals a notice of appeal specifying the grounds thereof. [19-3] [G-1]
1. The Zoning Administrator or the Planning Commission 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 certifies to the Zoning 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 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.
 2. The Board shall select a reasonable time and place for the hearing of the appeal and give notice as specified in Section 16.8 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. The Zoning Board of Appeals shall reverse a decision only if it finds that the action or decision appealed meets one or more of the following conditions:
 - a. The action or decision was arbitrary or capricious;
 - b. The action or decision was based on an erroneous finding of a material fact;
 - c. The action or decision constituted an abuse of discretion; or
 - d. The action or decision was based on erroneous interpretation of this Ordinance or zoning law. [19-3]

- B. Interpretation of the Ordinance. To hear and decide in accordance with the provisions of this Ordinance; requests for interpretation of the Zoning Map or Ordinance. [G-1]
1. Interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of this plan, as shown upon the Zoning Map fixing the use districts, accompanying and made a part of this Ordinance.
 2. Classify a use which is not specifically mentioned as a part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district. Where there is no comparable permitted or prohibited use, the ZBA shall so declare the effect being that use is not permitted in the Township until or unless the text of the Ordinance is amended to permit it. The ZBA cannot classify a use as a Special Land Use. [G-1]
 3. Determine the parking space requirements of any use not specifically mentioned either by classifying it with one of the groups listed in Section 3.6 by an analysis of the specific needs. If no comparable use is found, the ZBA shall so inform the petitioner and indicate that the parking space requirements will have to be established by amendment of the Ordinance. [19-6 & 19-10] [G-1]
- C. Variance. The ZBA shall have the power to authorize specific variances from site development requirements such as lot area and width regulations, building height and bulk regulations, yard width and depth regulations, off-street parking and loading space requirements, and sign requirements of this Ordinance. [G-1]
1. Required findings. The ZBA shall have the power to authorize specific variances from site development requirements if all the required findings listed below are met and the record of proceedings of the ZBA contains evidence supporting each conclusion. [G-1]
 - a. That strict compliance with 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. These difficulties shall not be considered economic but shall be evaluated in terms of the use of a particular parcel of land. [G-1]
 - b. That a genuine practical difficulty exists because of unique circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district and shall not be recurrent in nature.
 - c. That the practical difficulty or special conditions or circumstances do not result from actions of the applicant.
 - d. That the variance will be in harmony with the general purpose and intent of this Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, and the use and enjoyment of property in the neighborhood or district.

- e. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulty. [19-9]
2. Conditions. In granting any variance, the ZBA may prescribe appropriate conditions and safeguards in conformity with this Ordinance.[19-11] [G-1]
3. The Zoning Board of Appeals does not have the authority to grant "use" variances, except as is specifically provided for by this Ordinance (subsection D below). [19-5]

D. Temporary Building and Uses

1. Permit temporary buildings and uses for periods not to exceed six (6) months. Extensions may be granted for construction purposes. A cash deposit, established by resolution of the Township Board, shall be held for a temporary building with refund upon removal.
2. Permit, upon proper application, the following character of temporary use, not otherwise permitted in any district, not to exceed six (6) months with the granting of six (6) month extensions being permissible: uses which do not require the erection of any capital improvement of a structural nature, including mobile home. A cash deposit, established by resolution of the Township Board shall be held for a temporary use placement with refund upon removal.
3. The Zoning Board of Appeals, in granting permits for the above temporary uses, shall do so under the following conditions:
 - a. 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.
 - b. The granting of a 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. [G-1]
 - c. All setbacks, land coverage, off street parking, lighting, and other requirement to be considered in protecting the public health, safety, peace, morals, comfort, convenience, and general welfare of the inhabitants of the Township of Kenockee shall be made at the discretion of the Zoning Board of Appeals. [G-1]
 - d. In classifying the uses as not requiring capital improvement, the Zoning Board of Appeals shall determine that they are either removable structures related to the permitted use of the 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. [G-1]
 - e. The use shall be in harmony with the general character of the district.
 - f. No temporary use permit shall be granted without first giving notice to owners of adjacent properties of the time and place of a public hearing to be held as further provided for in this Ordinance. Further, the Zoning Board of Appeals

shall seek the review and recommendation of the Planning Commission prior to the taking of any action.

- E. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, 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. Nothing herein contained shall be construed to give or grant to the Board the power or authority to alter or change this Ordinance or the Zoning Map, such power and authority being reserved to the Township Board of Trustees of the Township of Kenockee in the manner provided by law. [19-7]

Section 17.5 Fees

An appeal fee, established by resolution of the Township Board, shall be required for a any application. At the time the notice for appeal is filed, said fee shall be paid to the Township Clerk and deposited to the credit of the general revenue fund of the Township of Kenockee.

Section 17.6 Orders

In exercising the above powers, the Board may reverse or affirm wholly or partly, or may modify the order, 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 from whom the appeal is taken. [G-1]

Section 17.7 Notice

The public notice shall conform to the procedure listed in Section 16.8.

Section 17.8 Validity [19-8]

No order of the Board permitting the erection 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 such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

No order of the Board permitting a use of a building or premises shall be valid for a period longer than one (1) year 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.

Section 17.9 Appeal to Circuit Court

Decisions of the Zoning Board of Appeals shall be final. However, a person having an interest affected by the Zoning Ordinance may appeal to Circuit Court.