

ARTICLE 15 ZONING BOARD OF APPEALS

Section 15.01 Creation and Membership of Zoning Board of Appeals

15.01.01 **Creation:** There is hereby established a Zoning Board of Appeals, which shall perform its duties and exercise its powers as provided by the Michigan Zoning Enabling Act, Act 110 of the Public Acts of 2006, MCL 125.3101 *et seq.*, in such a way that the objectives of this Ordinance shall be attained, public safety secured, and substantial justice done.

15.01.02 **Membership:** The Zoning Board of Appeals shall consist of seven (7) members, five (5) at large, one (1) from the Planning Commission, and one (1) from Village Council, all of whom shall be appointed by the Village Council. Appointments for the members at large shall be as follows: one (1) member appointed for a period of one (1) year; two (2) members appointed for a period of two (2) years; and two (2) members appointed for a period of three (3) years respectively; thereafter, each member to hold office for a full three (3) year term. The term of office for the latter two (2) members shall be limited to their term as a member of the Planning Commission or Council, and neither may serve as a Chair. Should a vacancy occur among any of the seven (7) members, a successor shall be appointed not more than one (1) month after resignation or after the term of the preceding member has expired. The members selected shall be representative of the population distribution and of the various interests present within the Village to the extent practical.

The Village Council may appoint two (2) alternate members for the same term as regular members, to be called to serve as a member of the Zoning Board of Appeals in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings, or in a case where a regular member has abstained for reasons of a conflict of interest. The alternate member shall serve in the case until a final decision has been reached, and shall have the same voting rights as a regular member.

15.01.03 **Residency Requirement:** Each member of the Zoning Board of Appeals shall be a resident of the Village of Dundee prior to the date of his appointment, and shall be a qualified and registered elector of the Village on such day and throughout the member's tenure of office.

15.01.04 **Elections of Officers:** The Zoning Board of Appeals shall annually elect its own Chair, Vice Chair, and Secretary. The compensation of the appointed members of the Zoning Board of Appeals shall be fixed by the Village Council.

15.01.05 **Removal of Members and Conflicts of Interest:** A member of the Zoning Board of Appeals may be removed by the Village Council for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member of the Zoning Board of Appeals 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 15.02 Powers of Zoning Board of Appeals – Appeals and Interpretations.

15.02.01 The Board of Appeals, shall hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with

enforcement of any provision of this Ordinance. The Zoning Board of Appeals shall also have the power to determine the precise location of the boundary lines between zoning districts and the interpretation of provisions within this Ordinance when there is a dissatisfaction or uncertainty with the administrative decisions of the Zoning Enforcement Officer or governing bodies.

15.02.02 **Standards:** The Zoning Board of Appeals shall review the record and decision of the administrative body or official and determine whether the record supports the decision that was reached in accordance with the requirements of this ordinance. The Zoning Board of Appeals shall uphold the decision appealed from the administrative official unless the record clearly shows that the original decision was:

- (a) arbitrary and capricious; or
- (b) failed to ensure consistency with ordinance standards; or
- (c) made in error, such as relying on false or inaccurate information; or
- (d) constituted an abuse of discretion; or
- (e) was based upon erroneous interpretation of the Zoning Ordinance or zoning law.

Section 15.03 Powers of Zoning Board of Appeals – Nonuse (dimensional) Variances.

15.03.01 Where owing to special conditions, a literal enforcement of the provisions of this Ordinance would involve practical difficulties, the Board of Appeals shall have the power upon appeal to authorize such variation or modifications of this Ordinance with such conditions and safeguards as it may determine as may be in harmony with the spirit of this Ordinance and so that public safety and welfare be secured and substantial justice done.

15.03.02 **Standards:** The Board may grant a dimensional or nonuse variance only upon a finding that practical difficulties exist. A dimensional variance is a variance from any dimensional standard or requirement of this Ordinance, such as, but not limited to, a deviation from density, height, bulk, setback, parking, landscaping, and signage standards and requirements. A finding of practical difficulty shall require demonstration by the applicant of all the following:

- (a) That strict compliance with area, setbacks, frontage, height, bulk, density, or other non-use matters would unreasonably prevent the owner from using the property for a permitted purpose, or would render the conformity unnecessarily burdensome;
- (b) That a variance would do substantial justice to the applicant, as well as to other property owners in the district,
- (c) A lesser variance than requested would not give substantial relief to the applicant and/or be more consistent with justice to other property owners;
- (d) That the plight of the owner is due to the unique circumstances of the property and not generally applicable in the area or to the properties in the same zoning district such as exceptional narrowness, shallowness, topography or area;
- (e) That the problem and the resulting need for a variance is not self-created by the applicant;

- (f) That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulty; and,
- (g) The granting of the variance will not materially impair the intent and purpose of this ordinance.

Section 15.04 Powers of Zoning Board of Appeals – Use Variances.

15.04.01 Where owing to special conditions, a literal enforcement of the provisions of this Ordinance would cause unnecessary hardships, the Board of Appeals shall have the power upon appeal to authorize such variation or use provisions of this Ordinance with such conditions and safeguards as it may determine as may be in harmony with the spirit of this Ordinance and so that public safety and welfare be secured and substantial justice done.

15.04.02 **Standards:** The Zoning Board of Appeals may grant a use variance only upon finding that an unnecessary hardship exists. A use variance is a variance that permits a use that is otherwise not provided for in a zoning district. A finding of an unnecessary hardship shall require demonstration by the applicant of all of the following:

- (a) The property cannot be reasonably used for any purpose permitted in the zoning district. There must be financial proof of the applicant’s inability to realize any reasonable return; speculation or a qualitative assessment is inadequate;
- (b) The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district. The applicant must demonstrate that there are certain features that make it impossible to earn a reasonable return without some adjustment. In those situations where others share the difficulty, the Zoning Board of Appeals may find that relief should be accomplished by an amendment to the Zoning Ordinance, not a variance;
- (c) The problem and resulting need for the variance has not been self-created by the applicant;
- (d) The variance will not alter the essential character of the area. In determining whether this criteria has been met, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area shall be considered; and
- (e) That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulty.

Section 15.05 Powers of Zoning Board of Appeals – Others.

15.05.01 **Nonconforming Uses:** An appeal may be taken to the Zoning Board of Appeals for the continuance of a non-conforming one family use in a non-residential district, the change from one non-conforming use to another of same or a more restrictive classification, and to allow reconstruction of a non-conforming structure when damaged beyond 50% of its value. Article 14 outlines the parameters for each type of appeal.

15.05.02 **Miscellaneous:** They shall also hear and decide all matters referred to them or upon which they are authorized to consider under any Village Ordinance.

Section 15.06 Review Procedures.

15.06.01 **Application:** Variances, appeals, interpretations, or other petitions under the authority of the Zoning Board of Appeals as described in herein, may be taken to the Zoning Board of Appeals by any person aggrieved, or by any officer, department, board, or bureau of the state, a local unit of government or the Village. All such requests shall be submitted on an application form provided by the Village. Applications involving a specific site shall be accompanied by ten (10) copies of a plan drawing prepared in accordance with the requirements set forth below. If any of the items listed are not applicable to a particular plan drawing, the applicant shall specify on the plan drawing, which items do not apply, and furthermore, why the items are not applicable. Where an application for appeal involves a variance sought in conjunction with a regular site plan review, the applicable data requirements for site plan review as set forth in Article 12 shall be met. All requests shall be filed with the Village Clerk specifying the grounds thereof, signed by the applicant and including the required fees.

- (a) Applicant's name, address, and telephone number;
- (b) Scale, north-point, and dates of submission and revisions;
- (c) Zoning classification of petitioner's parcel and all abutting parcels;
- (d) Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site;
- (e) Proposed lot lines and lot dimensions, and general layout of proposed structures, parking areas, driveways, and other improvements on the site;
- (f) The Zoning Enforcement Officer or Zoning Board of Appeals has the authority to require additional information that will be applicable to the application such as:
 - (1) Building elevations and floor plan drawings;
 - (2) Dimensions, centerlines, and right-of-way widths of all abutting streets and alleys;
 - (3) Location of existing drainage courses, floodplains, lakes and streams, and woodlands;
 - (4) All existing and proposed easements;
 - (5) Location of sanitary sewer or septic systems, existing and proposed;
 - (6) Location and size of existing and proposed water mains, well sites, transformers, generators and building service;

15.06.02 **Filing Fee.** An appeal to the Zoning Board of Appeals shall be in writing and shall be accompanied by a filing fee as established by the Village Council, which shall be paid at the time the application for appeal is filed.

15.06.03 **Notification:** The Zoning Enforcement Officer shall forthwith transmit to the Board of Appeals all of the documents constituting the record upon which the action appealed from were taken. In accordance with the provisions of the Michigan Zoning Enabling Act, Act 110 of the Public Acts of 2006, MCL 125.3101 *et seq.*, the Zoning Board of Appeals shall fix

a reasonable time for the hearing of the appeal, give notice thereof, and decide the appeal within a reasonable time. Notification of the hearing shall be as follows:

- (a) The local unit of government shall publish notice of the request in a newspaper of general circulation in the local unit of government.
- (b) Notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within three hundred (300) feet of the property and to the occupants of all structures within three hundred (300) feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction.
- (c) The notice shall be given not less than fifteen (15) days before the date the application will be considered for approval. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection. The notice shall do all of the following:
 - (1) Describe the nature of the request.
 - (2) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
 - (3) State when and where the request will be considered.
 - (4) Indicate when and where written comments will be received concerning the request.
- (d) Upon receipt of a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the township and shall be sent to the person requesting the interpretation not less than fifteen (15) days before the public hearing.

If the request for an interpretation or appeal of an administrative decision involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question and to the occupants of all structures within three hundred (300) feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.

15.06.04 **Stay of Proceedings.** An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Enforcement Officer certifies to the Zoning Board of Appeals after an application for appeal shall have been filed, 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 except by a restraining order granted by a court of competent jurisdiction.

- 15.06.05 **Public Hearing Required:** The Zoning Board of Appeals shall make no decision except after a public hearing has been held.
- 15.06.06 **Notice of Public Hearing:** Notice of the public hearing shall be given in accordance with the provisions of the Michigan Zoning Enabling Act, Act 110 of the Public Acts of 2006, MCL 125.3101 *et seq.* as provided in subsection 15.06.03 above.
- 15.06.07 **Final Decision:** The decision of the Zoning Board of Appeals shall not become effective until the approval of the minutes of the meeting at which such decision was made, or until the Chair of the Zoning Board of Appeals submits written documentation of its decision with any associated conditions, whichever occurs first. Notification of the decision may be deferred to Village staff if deemed acceptable by the Board. Decisions of the Zoning Board of Appeals shall be final. Appeals of a Zoning Board of Appeals decision shall be to the Circuit Court and in accordance with the provisions of the Michigan Zoning Enabling Act, Act 110 of the Public Acts of 2006, MCL 125.3101 *et seq.*
- 15.06.08 **Time for Filing and Duration of Validity.**
- (a) Appeals and interpretations shall be filed within twenty-eight (28) (was 30 days) days of the event giving rise to the appeal.
 - (b) **Nonuse (dimensional) Variance:** No order of the Zoning Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than one (1) year, unless a valid 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.
 - (c) **Use Variance:** No order of the Zoning Board of Appeals permitting a use of a building or premises shall be valid for a period longer than two (2) years 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 alterations are started and proceed to completion in accordance with the terms of such permit.
 - (d) **Resubmission:** No application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall be resubmitted except after the expiration of one (1) year from the date of the decision on the original application, unless based upon new evidence or changed conditions.

Section 15.07 Organization.

- 15.07.01 **Meetings:** All meetings of the Zoning Board of Appeals shall be held at the call of the Chair, and at such times as the Zoning Board of Appeals may determine. All meetings of the Zoning Board of Appeals shall be open to the public.
- 15.07.02 **Record of Proceedings and Action:** The Zoning Board of Appeals shall maintain a record of its proceedings, and shall keep records of its findings, proceedings at hearings, and other

official actions, all of which shall be immediately filed with the office of the Village Clerk and shall be a public record. Such record shall include, at a minimum, the following items:

- (a) The relevant administrative records and the administrative orders issued thereon relating to the request;
- (b) The notice of the request;
- (c) Such documents, exhibits, plans, photographs, or written reports as may be submitted to the Board for its consideration; and,
- (d) The motion which contains the decisions, and the conditions imposed by the Zoning Board of Appeals in acting on the request, after being signed by the Secretary of the Board, thereby effectuating said decision (s) or conditions.

15.07.03 **Quorum:** The presence of four (4) members of the Zoning Board of Appeals shall constitute a quorum for the conduct of its business.

15.07.04 **Representative and Information Required:** The applicant, or designated representative must be present at all scheduled review meetings or consideration of the appeal or variance will be postponed. Any need to re-advertise a public hearing due to absence or requested tabling shall be funded by the applicant. Absence of the applicant at two (2) consecutive meetings without prior notice to the Zoning Enforcement Officer shall result in denial of the application. The Zoning Board of Appeals 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.

15.07.05 **Majority Vote:** 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 any such administrative decision or to decide in favor of the applicant any matter upon which they are required to pass under this Ordinance or to effect any variation in this Ordinance. The concurring vote of two-thirds (2/3) of the members of the Zoning Board of Appeals shall be necessary to grant a use variance.