

1000 ARTICLE X ZONING BOARD OF APPEALS

The ZBA is the arbiter of disputes. This task shall be undertaken with a genuine commitment to uphold the intent and spirit of the Township’s Zoning Ordinances and must function solely to provide relief for the rare, exceptional situation where conformity to the Zoning Ordinance is either impossible or extremely onerous.

1001 MEMBERSHIP / ITEMS

1. A Zoning Board of Appeals is hereby established consisting of three (3) members and one (1) alternate.
2. Two (2) of the three (3) members shall constitute a majority to conduct a meeting. All members shall be qualified electors of Lake Township.
3. Members are appointed for three (3) year terms.
4. The first member appointed shall be a member of the Planning Commission.
5. One (1) member may be from the Township Board but shall not serve as chairperson.
6. No Township employee shall serve on the ZBA.
7. The terms of member serving from the Township Board or Planning Commission are limited to their other respective terms.
8. Any member may be removed from office by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a Public hearing.
9. A member shall disqualifier themselves from a vote in which the member has a conflict of interest. Failure to do so constitutes malfeasance in office. (MCL 125.288 (4)).
10. A successor member shall be appointed not more than one (1) month after a preceding members term has expired.
11. The Chairperson, or Vice Chairperson of the ZBA, (acting in the Chairperson’s absence), may administer oaths and compel witnesses to attend a public meeting or hearing.

1002 GENERAL FUNCTIONS / RESPONSIBILITIES

1. Hear and decide appeals and review any administrative order, requirement, decision or determination made by the Ordinance Enforcement Officer and to rule on any Site Plan or Special Exception ruling made by the Planning Commission.
2. The concurring vote of a majority of the members of the ZBA shall be necessary to reverse any order, requirement, decision or determination of the Ordinance Enforcement Officer / Planning Commission, or to decide in favor of the party aggrieved, any matter on which they are required to pass under this Ordinance, or to effect any variation of the Ordinance.

3. The ZBA shall adopt from time to time such rules and regulations as may be deemed necessary to govern its procedures.
4. All meetings of the Zoning Board of Appeals shall be open to the public. Notice shall be posted at the Township Hall.
5. Meetings shall be held in the Lake Township Hall and shall abide by Open Meetings Act and the ADA requirements. Each public body must keep minutes of each meeting showing the date, time, place, members present, members absent, others in attendance, any decisions made at a meeting open to the public. The minutes shall include all roll call votes taken at the meeting. Corrections in the minutes shall be made no later than the next meeting after the meeting to which the minutes refer. Proposed minutes of every meeting shall be available for public inspection no more than eight (8) business days after the meeting to which they refer.
6. NOTICE OF REQUEST FOR AN APPEAL:
 - a. The Township Clerk on receipt of the appeals application shall record the date of receipt and transmit three (3) copies to the Chairman of the ZBA and one (1) copy to the Ordinance Enforcement Officer.
 - b. The Chairman of the ZBA shall schedule a hearing within forty five (45) days of the receipt of the appeals application as well as the recommendations of the Ordinance Enforcement Officer.
 - c. Notice of said hearing shall be posted in a newspaper of general circulation in the Township and be given not less than fifteen (15) days before the hearing when the appeal shall be considered.
 - d. Notice shall be sent by mail or personal delivery to:
 1. The owners of the property for which the appeal is being considered.
 2. All persons to whom real property is assessed within three hundred (300) feet of the boundary of the property and the occupants of all structures within three hundred (300) feet. A verification of the notice shall be retained by the ZBA.

1003 POWERS OF THE ZONING BOARD OF APPEALS

1. The ZBA shall interpret the provisions of this Ordinance in such a way to carry out its intent and purpose as expressed in the PREAMBLE and in accordance with the plan as shown in the Zoning Map and its supplementary map sections.
2. The decision of the ZBA may reverse or affirm, wholly or in part, or may modify the administrative order requirements, the decision of the Ordinance Enforcement Officer from whom the appeal was taken. The ZBA's decision shall have all the powers of the said Officer and may direct the issuance of a permit.

3. To interpret the Ordinance and to authorize variations in accordance with the applicable section.
4. Where practical difficulties exist in carrying out the strict letter of the Ordinance, the ZBA shall be enabled to pass regulations and provisions relative to the construction, structural changes in equipment, alterations of buildings or structures, so that the spirit of this Ordinance shall be observed. Public safety secured, and substantial justice done.
5. The decision of the ZBA is final as far as it involves discretion or the findings of fact.
6. The ZBA in cases of questionable or controversial nature, subject to appropriate consideration and safeguards following proper procedure, shall have the authority to:
 - a. Determine and vary the application of the purpose and intend thereby avoid causing practical difficulty to the aggrieved petitioner, as well as prevent a nuisance being created in the respective neighborhood, site or location in question.
 - b. Approve issuance of a permit for the extension of a use zone for a distance not to exceed twenty five (25) feet where the boundary line of a zoning district divides a lot which is in a single ownership at the time of the adoption of this Ordinance.
7. Approve issuance of a permit for the creation of a single family dwelling on the lot held under separate and distinct ownership from adjacent lots, which has less area than the area for family requirements of this Ordinance for the zone in which such lot is located, provided such building or structure does not distract greatly from the character of the neighborhood.
8. Approve the resumption of non-conforming buildings, structures or use thereof in cases where such buildings, structures or use thereof has been abandoned or discontinued through vacancy, lack of operation, etc., as stated in Article V, Chapter 18.
9. The ZBA **shall not have** the power to:
 - a. Change classification of any property a delineated on the Zoning Map.
 - b. Change the permitted uses allowed by this Ordinance.
 - c. Grant “Use Variances”. (Permits a use of land not otherwise permitted in that zoning district on that parcel) A use variance effectively rezones the parcel without prior approval of the Planning Commission and legislative body.
 - d. Reverse a decision simply because the ZBA disagrees with the decision.

1004 HEARINGS AND DECISIONS UPON ADMINISTRATIVE APPEALS

1. The ZBA has two (2) options when hearing an appeal of an administration decision:
 - a. Upholding the decision of the Ordinance Enforcement Officer or Planning Commission. The decision of the Ordinance Enforcement Officer is confirmed and enforcement or other appropriate action can continue.
 - b. The decision of the Ordinance Enforcement Officer may be reversed or modified. This decision shall only be reached after a finding by the ZBA that the Ordinance Enforcement Officer or Planning Commission did not use the proper procedures or consideration when making the initial decision.
2. If a ZBA motion to **approve fails a majority decision** of the members, then a motion to deny **must** be approved by the majority of the members to decide the matter. Otherwise the matter is still pending.
3. The ZBA shall render its decisions stating its reasons and by stating the section of the Ordinance to which it refers, within eight (8) business days after the meeting to which they refer.
4. An approved variance is valid and must be acted upon within twelve (12) months from the date of ZBA approval. If construction of the improvements authorized by the variance does not begin within twelve (12) months from the date of ZBA approval, it shall be considered void and a new variance must be obtained. The ZBA may extend this deadline on good cause shown if a written request for an extension is received before the expiration of the twelve (12) month period.

1005 APPEALS. HOW TO BE TAKEN

1. Any person aggrieved by the decision of the Ordinance Enforcement Officer, Township Board or Planning Commission may appeal said decision to the Chairman of the Zoning Board of Appeals. The appellant shall file a Notice of Appeal with the Zoning Board of Appeals within fourteen (14) calendar days of the decision being appealed. The Notice of Appeal shall specify the grounds for the appeal and the facts supporting the appeal. The appeal shall be limited to the issues raised by the appellant.
2. An appeal shall not be effective until the appellant has paid the appropriate fee and any applicable escrow to the Zoning Board of Appeals. This fee shall be nonrefundable and in an amount as determined by the Township Board, from time to time.
3. The Ordinance Enforcement Officer, after review of the appeal, may establish an amount to be deposited by the applicant with the Township Clerk as an escrow deposit to defray the anticipated costs incurred by the Zoning Board of Appeals to review and process the appeal(s). The Zoning Board of Appeals shall not

commence consideration of the merits of the appeal(s) until the escrow deposit is received by the Township Clerk. Any unused portions of the escrow deposit remaining after consideration and processing of the appeal shall be returned to the applicant(s).

4. An appeal shall not be reviewed, processed, or scheduled for a hearing until an appellant provides the Zoning Board of Appeals with a sufficient deposit to cover the Township's expenses in reviewing the appeal.
 - a. The deposit shall be in an amount sufficient to cover the expenses of professional review by the Township Engineer, Attorney, Planner, or other expert consultant.
 - b. The deposit shall be in the form of cash or some other form of payment acceptable to the Township.
 - c. In the event the deposit is inadequate to reimburse the Township for the aforementioned expenses, appellant shall be required to provide additional deposits in an amount equal to the shortfall.
 - d. Any portion of the deposit not used by the Zoning Board of Appeals in reviewing an appeal shall be returned to the appellant, regardless of whether or not the appeal is successful.

Stay: An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Appeals after the notice of appeal has been filed that by reason of the facts stated in the certificate, a stay would, in his opinion, cause eminent peril to life or property, in the latter case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by the Circuit Court, on application of notice of the officer from whom the appeal is taken and on due cause shown.

1006 CRITERIA OF REVIEW

1. Site Visits:
 - a. Shall be on an individual basis.
 - b. ZBA members shall not go onto the site unless specific written permission has been granted by the property owner by signing a permission statement.
 - c. If permission is not granted, it is allowable to ask the applicant to supply additional information such as photographs, videotapes or surveys.
 - d. During site visits members shall not engage in conversation with the property owner, applicant or neighbors.
 - e. Conversation regarding the appeal shall be withheld until the hearing. At the hearing, a party may appear in person or by agent or by attorney.
2. Standards for Review:

- a. Would applying the Ordinance requirements render use of the property impracticable or be unnecessarily burdensome?
- b. Does the site experience circumstances unique to the property that are not generally found with similarly zoned property?
- c. Given the character of the site and the standards of the Ordinance, would approval of the variance provide the applicant with a right or privilege not made available to others?
- d. Would a variance of lesser magnitude be more appropriate?
- e. Was the situation self-created?

1007 A MEMBER SHALL DISQUALIFY THEMSELVES:

1. From a vote in which he/she has a conflict of interest. Failure to do so constitutes malfeasance in office. (MCL 125.288 (4)).

1008 A PARTY AGGRIEVED BY THE DECISION:

1. Must file an appeal to the Roscommon County Circuit Court.
2. Must be filed within thirty (30) days after the ZBA in writing signed by the Chairperson of the members of the ZBA. (MCL 125.3606 (3)).
3. Or within twenty one (21) days after the ZBA approves the minutes of the decision. (MCL 125.3606 (3)).