

ARTICLE XV
ZONING BOARD OF APPEALS

Section 15.1 Creation and Membership

There is hereby established a Zoning Board of Appeals (ZBA) which shall perform its duties and exercise its powers as provided in Section 601 of Act 110 of Public Acts of 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and justice done. The ZBA shall consist of three (3) regular members, appointed by a majority vote of the Township Board of Trustees.

- A. The first regular member appointed shall be a member of the Planning Commission for the term of his/her office.
- B. A member of the Township Board may serve as a regular member, but may not serve as chairperson.
- C. The remaining member of the Board must be selected from the electors of the Township and shall be representative of the population distribution and of the various interests present in the Township.
- D. An employee or contractor of the Township Board may not serve as a member or an employee of the ZBA..
- E. The Township Board may appoint not more than two (2) alternate members, for the same term as regular members to the ZBA. An alternate member may be called to sit as a regular member of the Zoning Board of Appeals in the absence of a regular member if a regular member will be unable to attend one (1) or more meetings. 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. The alternate member having been appointed shall serve on that case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.
- F. A member of the ZBA may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his/her duties.
- G. A member may be removed by the Township Board for misfeasance, malfeasance or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself/herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself/herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.
- H. Terms for ZBA members shall be three (3) years, except for members serving because of their membership on the Planning Commission or Township Board whose terms shall be limited to the time they are members of the Planning Commission, or Township

Board, respectively, and the period stated in the resolution appointing them. When members are first appointed, the appointment may be for less than 3 years to provide for staggered terms. Vacancies for unexpired terms shall be filled for the remainder of the term.

- I. Attendance: Since regular attendance is required for optimal function of the Board of Appeals, members of said Board, unless excused by the chairperson, shall be expected to notify the chairperson, or his/her designee of his/her expected absence prior to a meeting.

Section 15.2 Meetings

Meetings of the ZBA shall be held at the call of the Chairman and at such other times as such Board may determine or specify in its rules of procedure. All hearings conducted by said Board shall be open to the public. The ZBA shall adopt its own rules of procedure and keep a record of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating said fact; and shall file a record of its proceedings in the office of the Township Clerk, and shall be a public record. 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 Zoning Administrator, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance or to effect any variation of this Ordinance.

The ZBA shall not conduct business unless a majority of the regular members of the Board members qualified to sit for a particular matter are present to constitute a quorum.

Section 15.3 Appeals

- A. An appeal concerning the administration of the provisions of this Ordinance may be taken to the Board of Appeals within the timeframe defined in the general rules and procedures adopted by the Zoning Board of Appeals. If such a timeframe is not specified, appeals shall be filed within thirty (30) days of the decision of the Zoning Administrator or other body from which the appellant seeks relief.
- B. Except as provided in Section 15.4, the ZBA may hear appeals made by any person who alleges he or she has been aggrieved by a decision of the Zoning Administrator or other body from which the appellant seeks relief, and shall hear and decide appeals wherein 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 by any other official or body in administering or enforcing any provisions of this Ordinance. The ZBA may also interpret the location of zoning district boundaries, may interpret the provisions of this Ordinance and have the authority to classify in which district an unclassified property use should be located based on similarities and dissimilarities with other listed property uses, and following the procedures contained in this Section.
- C. An appeal may be made by any person, firm or corporation, or by any Officer,

Department or Board of the Township. The appellant shall file with the Board of Appeals, on blanks or forms to be furnished by the Zoning Administrator, a notice of appeal specifying the grounds for the appeal.

- D. Upon receipt of a demand for appeal, the Zoning Administrator will review the demand for appeal to insure it is complete and the fee is paid.
1. If the application is not complete, the Administrator will return the application to the applicant with a letter that specifies the additional material required.
 2. If the application is complete, the Administrator and Chairperson of the ZBA shall establish a date to hold a hearing on the appeal.
 3. The Zoning Administrator shall transmit to the ZBA all the papers constituting the record upon which the action appealed was taken. The final decision of such an appeal shall be in the form of a resolution either reversing, modifying or affirming, wholly or partly, the decision or determination appealed. Reasons for the decision must be stated and shall be certified in writing within ten (10) days of the meeting at which the decision was made.
- E. In rendering a decision, the ZBA may, by a concurring vote of a majority of its members, reverse or affirm in whole or in part a decision or determination made by the Zoning Administrator, or designee, or other body from which the appellant seeks relief. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney. All persons, not licensed to practice law in the State of Michigan, shall file a written statement signed by the principal stating the agent's right to act upon their behalf.

Section 15.4 Limitations on Authority

The ZBA has no authority to review the Planning Commission's decision on applications for Special Uses. These appeals are taken to the Circuit Court for Benzie County.

Section 15.5 Stay

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals, after notice of appeal shall have been filed with him/her, 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 the ZBA or by the Circuit Court, by application, or notice of the Zoning Administrator and on due cause shown.

Section 15.6 Dimensional Variances

The ZBA may grant dimensional variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in practical difficulty. To establish practical difficulty, the applicant must establish all of the following:

- A. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
- B. The need for the requested variance is not the result of action of the property owner or previous property owners or otherwise self-created.
- C. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
- D. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give a substantial relief to the property owner and be more consistent with justice to other property owners.
- E. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.

Section 15.7 Conditions for a Dimensional Variance

The ZBA may attach reasonable conditions with the approval of a dimensional variance. These conditions may include those necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, 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. Any conditions imposed, however, shall meet all of the following requirements:

- A. Be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will utilize 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.
- B. Be related to the valid exercise of the police power, and purposes which are

affected by the proposed use or activity.

- C. Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

Section 15.8 Zoning Board of Appeals Approval

The ZBA may require an appellant to submit surveys, plans, or other information deemed reasonably necessary to making an informed decision on his or her appeal. The ZBA may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area. The decision of the ZBA is final. A party aggrieved by the decision may appeal to the circuit court of Benzie County within thirty (30) days after the ZBA issues its decision in writing signed by the chairperson, or twenty one (21) days after the ZBA approves the minutes of its decision. The court may affirm, reverse, or modify the decision of the ZBA, or make other orders as justice requires.

Section 15.9 Exercising Powers

In exercising the above powers, the ZBA 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 or other body from whom the appeal is taken.

Section 15.10 Notice of Hearing

Following payment of the required fee and receipt of a written request concerning an appeal of an administrative decision, a request for an interpretation of the zoning ordinance or a request for a variance, the Zoning Board of Appeals shall hold a public hearing, after giving the following applicable notice:

- A. For 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 filing the appeal and to the Zoning Administrator or other administrative agency or official whose decision is being appealed no less than fifteen (15) days before the public hearing. If a specific parcel is involved in the appeal, then the notice shall also be sent by first class mail or personal delivery to all persons who own real property and the occupants of all structures within three hundred (300) feet of the boundary of the property in question.
- B. For a request seeking an interpretation of the zoning ordinance, 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 no less than fifteen (15) days before the public hearing. If a specific parcel is involved in the appeal, then the notice shall also be sent by first class mail or personal delivery to all persons who own real property and the

occupants of all structures within three hundred (300) feet of the boundary of the property in question.

- C. For a variance request, a notice stating the nature of the variance being requested and 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 variance no less than fifteen (15) days before the public hearing. In addition, a notice stating the nature of the variance being requested and the time, date, and place of the public hearing shall be sent by first class mail or personal delivery to all persons to whom real property in question and to the occupants of all structures within 300 feet of the boundary of the property in question.

Section 15.11 Miscellaneous

No order of the ZBA permitting the erection or alteration 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. A six (6) month extension may be granted by the Board of Appeals if applied for prior to the expiration of the one (1) year period.

Section 15.12 Denial and Re-submittal

No application for a variance which has been denied wholly or in part by the ZBA shall be resubmitted for a period of one (1) year from the date of the last denial, except on grounds of newly discovered evidence or when the Township's attorney certifies in writing that a mistake in the original procedure of the original hearing had been made.

Sec. 15.13 Appeal of Decisions Made Under this Article.

Any party aggrieved by any order, determination, or decision made under this Article by the Zoning Administrator, the Planning Commission, the Township Board or the ZBA may obtain a review of that order, determination or decision in the Benzie County Circuit Court as provided for in section 607 of the MZEA.