

## **ARTICLE 24 BOARD OF APPEALS**

### **Section 24.01 Creation and Membership**

There is hereby created a Board of Appeals which shall perform its duties and exercise its powers as provided in Section 18 of the Township Zoning Act, Act 184 of the Public Acts of 1943, 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 of Appeals shall consist of the following seven (7) members:

1. The first member of the Board of Appeals shall be a member of the Township Planning Commission and shall be appointed by the Township Board.
2. The second member shall be a member of the Township Board and shall be appointed by a majority vote thereof.
3. The remaining members shall be selected and appointed by the Township Board from the electors of Blair Township.
4. An employee or contractor of the Township Board may not serve as a member or an employee of the Board of Appeals.
5. The term of each member shall be 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 terms of members serving because of their membership on the Planning Commission or Township Board shall be limited to the time they are members of the Planning Commission or Township Board, respectively.
6. The Board of Appeals shall not conduct business unless a majority of the members are present.
7. 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 a 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.
8. The Township Board may also appoint two (2) alternate members of the Board of Appeals. Appointments shall be as follows: One (1) alternate member shall be appointed for a period of two (2) years and the second alternate shall be appointed for a period of three (3) years; thereafter, each alternate member shall hold office for a full three (3) year term. Any vacancies in the alternative membership of the Board shall be filled by appointment by the Township Board for the remainder of

the unexpired term.

The alternate members shall:

- a. Sit as regular members of the Board of Appeals in the absence of a regular member if a regular member is absent from, or unable to attend, two (2) or more consecutive meetings of the Board of Appeals, or for a period of more than thirty (30) consecutive days.
- b. Be called to serve in the place of a regular member for the purpose of reaching a decision in a case in which the regular member has abstained for reasons of conflict of interest, or due to an immediate, unnotified absence of a regular member. The alternate member having been appointed shall serve in the case until a final decision has been made.

Alternate members shall have the same voting rights as a regular member of the Board of Appeals. Alternate members shall receive equal compensation for the meetings attended, as does a regular member. Whenever possible, these two (2) alternates should be provided the opportunity to rotate as members of the Board of Appeals.

9. 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, of which sum shall be appropriated annually in advance by the Township Board.

### **Section 24.02 Meetings**

All meetings of the Township Board of Appeals shall be held at the call of the Chairman and at other times as the Board, in its rules of procedure, may specify. All hearings conducted by said Board shall be open to the public. The Board of Appeals 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 public record. The concurring vote of a majority of the members of the 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 any matter upon which they are required to pass under this Ordinance, or to effect any variation in this Ordinance. The Board shall have the power to subpoena and require the attendance or witnesses, administer oaths, compel testimony, and the production of books, papers, files, and other evidence pertinent to the matters before it.

1. An appeal may be taken to the 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. Such 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 and with the Board of Appeals, a Notice of Appeal, specifying the

grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.

2. 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 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 this case, the proceedings shall not be stayed, other than by a restraining order granted by a court of record.
3. The Board 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.
4. No variance shall be granted in connection with a special use approved by the Planning Commission and Township Board.
5. No variance shall be granted in connection with a site plan approved by the Planning Commission unless the appeal has been reviewed by the Planning Commission and a recommendation on the variance is provided by the Planning Commission.

### **Section 24.03 Powers and Duties**

The Board of Appeals shall have the following specified powers and duties:

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 in carrying out, or enforcing, any provisions of this Ordinance. Provided, however, that the Board of Appeals shall not be empowered to hear and decide appeals of any decision related to a special use or planned unit development request or any conditions attached to the approval of a special use or planned unit development.

2. Interpretation

To hear and decide:

- a. Appeals for the interpretation of the provisions of the Ordinance.
- b. To hear and decide requests to determine the precise location of the boundary lines between the zoning districts as they are displayed on the Zoning Map, when there is dissatisfaction with the decision of the Zoning

Administrator or Planning Commission on such subject.

- c. Classify a use that is not specifically mentioned as part of the use regulations of any zoning district so that it conforms to a comparable permitted use, in accordance with the purpose and intent of each district. Where there is no comparable permitted use, the Board of Appeals shall so declare, the effect being that the use is not permitted in the Township until or unless the text of the Ordinance is amended to permit it.
3. Variances

The Board of Appeals shall have the power to authorize, upon appeal, specific variances from such dimensional requirements as lot area and width regulations, building height and square foot regulations, yard width and depth regulations, such requirements as off-road parking and loading space, and sign regulations, and other similar requirements as specified in the Ordinance. To obtain a variance, the applicant must show practical difficulty by demonstrating:

- 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 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, or whether a lesser relaxation would give substantial relief and be more consistent with justice to others;
- c. That the plight of the owner is due to the unique circumstances of the property;
- d. That the problem is not self-created;
- e. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship; and
- f. That the variance shall not permit the establishment, within a district, of any use which is not permitted by right within that zoning district, or any use for which a special use or temporary use permit is required.

The Board of Appeals may impose conditions upon a variance approval. The conditions may include conditions necessary to ensure that public services and facilities affected by the variance will be capable of accommodating increased service and facility loads, to protect the natural environment and conserve natural resources, to ensure compatibility with adjacent land uses, and to promote the use of land in an economically and socially desirable manner.

#### **Section 24.04 Rehearing**

The decision of the Board of Appeals shall be final. Appeals from decisions of the Board of Appeals shall be to the Circuit Court of Grand Traverse County, as provided by law.

#### **Section 24.05 Jurisdiction**

The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision of determination as in its opinion ought to be made in regards to the premises, and to that end shall have all the powers of the officer from whom the appeal was taken and may issue or direct the issuance of a permit. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Ordinance, the Board of Appeals shall have the power in passing upon appeals to vary or modify any of its rules, regulations, or provisions so that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done.

1. The Board of Appeals shall not alter or change the zone district classification of any property, make any change in the terms of this Ordinance, or take any action which results, in effect, to making such legislative changes.
2. The Board of Appeals shall not have the authority to grant a variance on the use of land, buildings, or structures.

#### **Section 24.06 Approval Period**

No order of the Board of Appeals permitting the erection of a structure shall be valid for a period longer than twelve (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.

#### **Section 24.07 Notice**

(Amendment 104-05-06-08; Effective 01-29-07)

*Upon receiving a written request for a variance from the provisions of the Zoning Ordinance the Zoning Department of Blair Township shall schedule a hearing before the Blair Township Zoning Board of Appeals for the hearing of this request, and shall provide notice as required under Section 22.03 for Public Hearings for Special Use Permit Reviews.*

*Upon receiving a written request seeking an interpretation of the Zoning Ordinance or appealing an administrative decision, the Zoning Department of Blair Township shall schedule a hearing before the Blair Township Zoning Board of Appeals and publish a notice stating the date, time, and place of the scheduled public hearing date in a newspaper of general circulation within Blair Township not less than 15 (fifteen) days before the public hearing. Additionally, a written notice providing the same information shall be sent to the person requesting in the interpretation or appealing the administrative decision not less than 15 (fifteen) days before the scheduled public hearing. If the request for an*

*interpretation of the Zoning Ordinance or an appeal of an administrative decision involves a specific land parcel, written notice stating the nature of the interpretation request, or the nature of the appeal of an administrative decision, as well as the date, time, and place of the public hearing shall be sent by first class mail or personal delivery to all persons to whom real property is assessed within 300' (three-hundred-feet) of the boundary of the property in question, and to the occupants of all structures within 300 (three-hundred) feet of the property in question. If the name of an addressee is not known, the notice shall be sent using the term "occupant" in place of an individual's name. If a structure contains more than one occupancy unit then one occupant of each occupancy unit shall receive notice.*

*Public hearings shall also be conducted prior to the authorization of any temporary land use, and at any time that the Board of Appeals deems such hearing to be advisable.*

#### **Section 24.08 Required Fees**

Fees for appeals to the Board of Appeals shall be established by resolution of the Township Board.