

## **ARTICLE TWENTY-FOUR (24)**

### **BOARD OF ZONING APPEALS**

#### **Sec. 24.01            Creation and Membership:**

- a.     A Board of Zoning Appeals is hereby established in accordance with Act 110 of the Public Acts of 2006, as amended. The Board shall consist of five (5) members: the Chairman of the Planning Commission; a member of the Township Board appointed by the Township Board; and the remaining members appointed by the Township Board from the electors residing in the unincorporated area of the Township. The term of office of the member from the Township Board shall not exceed his/her term of office on the Township Board.
  
- b.     Members may be reappointed. An elected officer of the Township shall not serve as chairperson of the Board of Zoning Appeals. An employee or contractor of the Township may not serve as a member of the Board. A member of the Board shall disqualify himself or herself from a vote in which the member has a conflict of interest.

#### **Sec. 24.02            Procedures:**

- a.     The Board of Zoning Appeals shall adopt rules and regulations to govern its procedures. The Board of Zoning Appeals shall appoint one of its members as Chairman. The concurring vote of a majority of the members of the Board of Zoning Appeals shall be necessary to revise any order, requirements, decision or interpretation 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. In the case of use variances, approval shall required 2/3 majority vote of the members of the Board of Zoning Appeals.
  
- b.     Meetings of the Board of Appeals shall be at the call of the Chairman and at such other times as the Board of Appeals in its rules of procedure may specify. Minutes shall be kept of each meeting and the Board shall record into the minutes all findings, conditions, facts, and other relevant factors, including the vote of each member upon each question, or if absent or failing to vote indicating such fact, and all of its official actions. All meetings and records shall be open to the public. All minutes shall be filed in the office of the Township Clerk.
  
- c.     The Board of Zoning Appeals shall fix a reasonable time and date for a hearing. The Board shall give due notice of the hearing by regular mail to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property. If the occupant is not known, the term “occupant” may be used. The notice shall be sent and published not less than fifteen (15) days before the application will be considered for approval. The notice of the meeting shall also be published in a newspaper of general circulation in Moran Township. The notice shall describe the nature of the request, indicate the property that is the subject of the request, it shall include a listing of all existing street addresses within the property, state when and where the request will be considered, and indicate when and where comments will be received concerning the request.

#### **Sec. 24.03            Powers:**

- a.     The Board of Zoning Appeals shall perform its duties and exercise its powers as provided in

Act 110 of the Public Acts of 2006, as amended, so that the objectives of this Ordinance shall be attained, the public health, safety, and welfare secured, and substantial justice done. The Board of Zoning Appeals shall hear and decide only those matters which it is specifically authorized to hear and decide as provided herein including appeals, variances, and changes to nonconforming buildings and structures and approval of temporary buildings.

- b. The Board of Zoning Appeals shall not have the power to alter or change the Zoning District classification of any property, nor make any change in the terms or intent of this Ordinance, but does have power to act on those matters for which this Ordinance provides an administrative review, interpretation, variance or exception.
- c. As enabled in the Michigan Zoning Enabling Act PA 110 of 2006, section 604.(9) the Zoning Board of Appeals in Moran Township has the authority to grant variances from uses of land. This authority is due to the Zoning Board of Appeals granting use variances prior to February 15, 2006. Use Variances shall be subject to the same approval criteria as 24.05 of the Zoning Ordinance.

**Sec. 24.04            Duties:**

- a. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirements, decision or determination of the Zoning Administrator.
- b. The Board of Zoning Appeals shall have the power to:
  - 1. Interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance.
  - 2. Determine the precise location of the boundary lines between Zoning Districts when there is dissatisfaction with a decision made by the Zoning Administrator.
  - 3. Classify a use that 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.
  - 4. Determine the parking space requirements of any use not specifically mentioned either by classifying it with one of the groups listed in Article 19 by an analysis of the specific needs.
  - 5. Approve the change of an existing non-conforming use to another non-conforming use, so as long as the use will have a less deteriorating effect on neighboring properties than the existing non-conforming use.
  - 6. Approve the placement of a temporary building/structures.

**Sec. 24.05            Variances:**

- a. The Board of Zoning Appeals shall have the authority to authorize upon appeal in specific cases such variance from the provisions of this Ordinance as will not be contrary to the

public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship or practical difficulty.

- b. A variance shall not be granted by the Board of Zoning Appeals unless and until the following conditions are all met:
  - 1. Non-use Variance: A non-use variance may be allowed by the Board on Zoning Appeals only in cases where there is evidence of practical difficulty in the official record of the hearing and that **all** of the following conditions are met:
    - (a) That there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district. Exceptional or extraordinary circumstances or conditions may include:
      - (1) Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Ordinance or amendment.
      - (2) By reason of exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure.
      - (3) By reason of the use or development of the property immediately adjoining the property in question.
  - 2. Use Variances: The Board of Zoning Appeals shall not grant a use variance unless there is evidence of unnecessary hardship in the official record of the hearing that **all** of the following conditions are met:
    - (a) That the condition, location, or situation of the specific piece of property or of the intended use of the property is unique to that property and the Zoning District in which it is located.
    - (b) That the building, structure or land cannot be reasonably used in a manner consistent with the uses allowed in the Zoning District in which it is located.
    - (c) That the use variance will not alter the essential character of the area the intent of the Master Land Use Plan, nor be a detriment to adjacent properties.
    - (d) The variance will not materially impair the intent and purpose of this Ordinance or the District in which the property is located.
    - (e) That the immediate unnecessary hardship causing the need for the variance request was not created by applicant.
- c. Any nonconforming use of neighboring lands, structures, or buildings shall not be considered grounds for the issuance of a variance.
- d. The Board of Zoning Appeals shall make findings that the requirements of this Section have been met by the applicant.
- e. The Board of Zoning Appeals shall further find that the reasons set forth in the application justify the granting of the variance, and that it is the minimum variance that will make possible the reasonable use of the land, building or structure.
- f. In granting any variance, the Board of Zoning Appeals may prescribe appropriate conditions

and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.

- g. Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
- h. In exercising the above-mentioned powers, the Board of Zoning Appeals may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm wholly or partly or may modify the order, requirements, decision, or determination appealed from and may make such order, requirements, decision, or determination as ought to be made, and to that end shall have the powers of the public official from whom the appeal is taken.
- i. Each variance granted under the provisions of this Ordinance shall become null and void unless the occupancy of land or buildings, or the construction authorized by such variance has commenced within one hundred eighty (180) days after the granting of such variance.

#### **Sec. 24.06      Appeals:**

- a. Appeals concerning interpretation and administration of this Ordinance shall be made by filing a notice of appeal specifying the grounds thereof with the Township Clerk within a period of thirty (30) days from the occurrence of the contested action. The Clerk shall transmit to the Board copies of all papers constituting the record upon which the action appealed from was taken.
- b. A fee shall be paid to the Township Clerk at the time of filing the notice of appeal and shall be deposited in the Township's general fund. The appeal fee shall be established by the Township Board.
- c. Any party or parties may appear at the hearing in person or by agent or attorney.
- d. The Board of Zoning Appeals shall decide upon all matters within a reasonable time. The decision of the Board shall be in the form of a resolution containing a full record of its findings and determinations in each case.
- e. An appeal shall stay all proceedings in furtherance of the action appealed, unless the Building Inspector or Zoning Administrator certifies to the Board, that a stay would in his opinion, cause imminent peril to life or property, in which case the proceedings should not be stayed, other than by a restraining order granted by the courts.

#### **Sec. 24.07      Duties on Matters of Appeal:**

All questions concerning application of the provisions of this Ordinance shall first be presented to the Zoning Administrator. Such questions shall be presented to the Board of Zoning Appeals only on appeal from the decisions of the Zoning Administrator.

All variance requests shall be submitted directly to the Zoning Board of Appeals. The Township Planning Commission does not review variance requests.

Recourse from decisions of the Board of Zoning Appeals shall be to the Circuit Court of Mackinaw County, as provided by law.