



ZONING BOARD OF APPEALS

Regular Meeting

March 1, 2023

7:00p.m.

1. CALL MEETING TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
 - A. Meeting called to order by Acting Vice-Chair Liz Presnell
 - B. Appointment of Acting Chair to Run Meeting
4. APPROVAL OF AGENDA
5. CORRESPONDENCE / BOARD REPORTS
 - Boards and Commissions Expiration Dates
6. APPROVAL OF MINUTES
 - December 7, 2022 Regular ZBA Meeting
7. PUBLIC COMMENT: Restricted to (3) minutes regarding issues not on this agenda
8. NEW BUSINESS
 - A. Election of Officers (Chair, Vice-Chair, Secretary)
 - B. Training Work Session – MTA Module Follow-up Discussion
 - C. Introduction of Updated Section 14.4 (Zoning Board of Appeals)
 - a. Introduction by Staff
 - b. Board Member Questions
9. OTHER BUSINESS
10. EXTENDED PUBLIC COMMENT: Restricted to 5 minutes regarding any issue
11. FINAL BOARD COMMENT
12. ADJOURNMENT

The ZBA Members are invited to attend the Annual Joint Boards and Commissions meeting April 5, 2023, at 7:00 p.m. held at the Commission on Aging, 2200 S. Lincoln Rd.

The next regular ZBA meeting is scheduled for May 3, 2023 at 7:00 p.m.

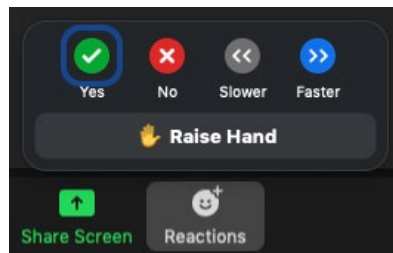
Hybrid Meeting Instructions for the Charter Township of Union Zoning of Board of Appeals

The public can view all Union Township meetings live by clicking on our [YouTube Channel](#). For those who would like to participate, you can do so via Zoom.

[Click here](#) to participate in the Zoom Meeting via computer or smart phone. (Meeting ID Enter “884 6841 7954” Password enter “562748”). Access to the electronic meeting will open at 6:50 p.m. and meeting will begin at 7:00 p.m.

Telephone conference call, dial (312-626-6799). Enter “884 6841 7954” and the “#” sign at the “Meeting ID” prompt, and then enter “562748” at the “Password” prompt. Lastly, re-enter the “#” sign again at the “Participant ID” prompt to join the meeting.

- All public comments for items on the agenda will be taken at the Public Comment and any issue not on the agenda will be taken at the Extended Public Comment section of the Agenda.
- Computer/tablet/smartphone audience: To indicate you wish to make a public comment, please use the “Reactions” icon. **Next, click on the “Raise Hand” icon** near the bottom right corner of the screen.



- **To raise your hand for telephone dial-in participants, press *9.** You will be called on by the last three digits of your phone number for comments, at which time you will be unmuted by the meeting moderator.
- Please state your name and address for the minutes and keep public comments concise.

You will be called upon once all in-person comments have been made, at which time you will be unmuted by the meeting moderator.

Persons with disabilities needing assistance should call the Township office at (989) 772-4600. Persons requiring speech or hearing assistance can contact the Township through the Michigan Relay Center at 711. A minimum of one (1) business day of advance notice will be necessary for accommodation.

Board Expiration Dates

Planning Commission Board Members (9 Members) 3 year term			
#	F Name	L Name	Expiration Date
1-BOT Representative	James	Thering	11/20/2024
2-Chair	Phil	Squatrito	2/15/2026
3-Vice Chair	Ryan	Buckley	2/15/2025
4-Secretary	Doug	LaBelle II	2/15/2025
5 - Vice Secretary	Tera	Albrecht	2/15/2024
6	Stan	Shingles	2/15/2024
7	Paul	Gross	2/15/2025
8	Nivia	McDonald	2/15/2026
9	Jessica	Lapp	2/15/2026
Zoning Board of Appeals Members (5 Members, 2 Alternates) 3 year term			
#	F Name	L Name	Expiration Date
1- PC Rep	Ryan	Buckley	2/15/2025
2 -	Richard	Barz	12/31/2025
3 -	Liz	Presnell	12/31/2025
4 -	Brandon	LaBelle	12/31/2023
5 -	Eric	Loose	12/31/2024
Alt. #1	David	Coyne	12/31/2024
Alt #2 (BOT Representative)	Jeff	Brown	11/20/2024
Board of Review (3 Members) 2 year term			
#	F Name	L Name	Expiration Date
1	Doug	LaBelle II	12/31/2024
2	Sarvjit	Chowdhary	12/31/2024
3	Bryan	Neyer	12/31/2024
Alt #1	Randy	Golden	12/31/2024
Construction Board of Appeals (3 Members) 2 year term			
#	F Name	L Name	Expiration Date
1	Colin	Herren	12/31/2023
2	Joseph	Schafer	12/31/2023
3	Andy	Theisen	12/31/2023
Hannah's Bark Park Advisory Board (2 Members from Township) 2 year term			
1	Mark	Stuhldreher	12/31/2024
2	John	Dinse	12/31/2023
Chippewa River District Library Board 4 year term			
1	Ruth	Helwig	12/31/2023
2	Lynn	Laskowsky	12/31/2025



Board Expiration Dates

EDA Board Members (9 Members) 4 year term			
#	F Name	L Name	Expiration Date
1-BOT Representative	Bryan	Mielke	11/20/2024
2	Thomas	Kequom	4/14/2023
3	James	Zalud	4/14/2023
4	Richard	Barz	2/13/2025
5	Robert	Bacon	1/13/2027
6	Marty	Figg	6/22/2026
7	Cheryl	Hunter	6/22/2023
8	Jeff	Sweet	2/13/2025
9	David	Coyne	3/26/2026
Mid Michigan Area Cable Consortium (2 Members)			
#	F Name	L Name	Expiration Date
1	Kim	Smith	12/31/2025
2	vacant seat		
Cultural and Recreational Commission (1 seat from Township) 3 year term			
#	F Name	L Name	Expiration Date
1	Robert	Sommerville	12/31/2025
Sidewalks and Pathways Prioritization Committee (2 year term -PC Appointments)			
#	F Name	L Name	Expiration Date
1 - BOT Representative	Kimberly	Rice	11/20/2024
2 - PC Representative	Stan	Shingles	2/15/2024
3 - Township Resident	Jeff	Siler	8/15/2023
4 - Township Resident	vacant seat		10/17/2022
5 - Member at large	Phil	Hertzler	8/15/2023
Mid Michigan Aquatic Recreational Authority (2 seat from Township) 3 year term			
#	F Name	L Name	Expiration Date
1-City of Mt. Pleasant	John	Zang	12/31/2023
2-City of Mt. Pleasant	Judith	Wagley	12/31/2022
1-Union Township	Stan	Shingles	12/31/2023
2-Union Township	Allison	Chiodini	12/31/2025
1-Mt. Pleasant Schools	Lisa	Diaz	12/31/2022
1-Member at Large	Mark	Stansberry	2/14/2025
2- Member at Large	Michael	Huenemann	2/14/2025

CHARTER TOWNSHIP OF UNION
Zoning Board of Appeals
Regular Meeting Minutes

A regular meeting of the Charter Township of Union Zoning Board of Appeals was held on December 7, 2022, at 7:00 p.m. at the Union Township Hall.

Meeting was called to order at 7:00 p.m.

Roll Call

Present:

Buckley, LaBelle, Presnell, Moeggenberg and Theisen

Others Present

Rodney Nanney, Community and Economic Development Department Director; Eric Morris, Braun Kendrick Township Attorney; and Tera Green, Administrative Assistant

Approval of Agenda

Presnell moved LaBelle supported to approve the agenda as presented. Vote: Ayes: 5, Nays 0. Motion carried.

Correspondence / Board Reports

None

Approval of Minutes

Presnell moved Buckley supported to approve the January 5, 2022 regular meeting minutes as presented. Vote: Ayes: 5, Nays 0. Motion carried.

Public Comment: Restricted to (3) minutes regarding issues not on this Agenda

Open – 7:03 p.m.

No comments were offered.

Closed – 7:03 p.m.

New Business

- A. **PZBA22-0001 -Thrive Community Church request for a Zoning Ordinance text interpretation.**

Mr. LaBelle recused himself from acting on PZBA22-001 due to a conflict of interest and removed himself from the discussion.

Nanney introduced the PZBA22-0001 Thrive Community Church request for Zoning Ordinance text interpretation. Nanney summarized a history of staff interactions with Thrive Church representatives, the allowable uses in various business zoning districts as would apply to the applicant's proposed scope of activities, and the rezoning, text amendment, planned unit

development, and site plan approval options available to the applicant to properly pursue this project through Planning Commission review and action.

Eric Morris from Braun Kendrick and the Township Attorney made reference to his legal memo, summarized the issues to be considered, and invited questions from the Board.

Public Hearing

Open: 7:12 p.m.

Aileen Leipprandt, Hilger Hammond Attorneys and legal counsel for Thrive Church, spoke in great detail why Thrive Church chose to request a Zoning Ordinance text interpretation verse going before the Planning Commission.

Dave Shephard, 913 E Pickard Street, pastor of Thrive Church, spoke on the mission of the church and the limitation they are faced with that could slow down their ability to expand their space and reach the community.

Deb Schafer, 1596 Belmont Dr., spoke on the outreach programs of the church and the positive outcome it would bring to the community.

Michael Barrett, 806 Doe Trail, spoke on the mission, outreach, history and vision of Thrive Church.

Matt Moore, 711 S. Arnold, worship pastor of Thrive Church, spoke on the mission, vision, and values of the church are to exists for the community.

Janene Chisek, 4870 National Drive, spoke on her observation of the change in the youth over the years and the benefits the church community and outreach would have on adults and the upcoming generations.

Closed: 7:45 p.m.

Deliberation by the Board

Moeggenberg moved that the summary of proposed uses that Thrive Community Church included in their Statement of Use are fully consistent with the definition of “religious institution” in Section 2.2 (Definitions) and the allowable land uses listed in Section 3.15 (B-7, Retail and Highway Service Business District) of the Zoning Ordinance, and that none of the listed uses are consistent with “Theaters, Assembly Halls, Concert Halls, and Similar Places of Public Assembly” or “(Outdoor) Recreation Facilities” which are not allowable uses in the B-7 District.

Motion dies due to lack of a second.

Further deliberation by the Board.

Buckley moved that the Union Townships Zoning Board of Appeals adopt the following findings and decision with regard to the pending Zoning Ordinance Interpretation application offered by Thrive Church:

1. Applicant Thrive has sought an interpretation request from the Union Township Zoning Board of Appeals.
2. Thrive's proposed development is the B-7 Retail and Service Highway Business District.
3. Religious institutions are a principal permitted use in the B-7 District.
4. The interpretation request asks the ZBA to interpret the Union Township Zoning Ordinance to allow each of approximately ten uses as "accessory uses" to a Religious Institution in the B-7 District.
5. There are a wide range of proposed uses included in the Application.
6. After reviewing the application, the materials submitted, and the arguments offered by Applicant, it is clear that additional information about the precise scope and nature of each of the proposed uses is necessary to reach a decision on this matter.
7. Given the range of uses and preliminary nature of the proposed use statement, granting it in its entirety could effectively grant an impermissible use variance to Thrive.
8. By the same token, a decision by the ZBA that certain proposed uses are not "accessory" uses under the Zoning Ordinance would likely complicate or even forestall Planning Commission evaluation and approval of the project.

In light of the above factors, after public hearing and after considering the arguments offered by Thrive Church, the Union Township Zoning Board of Appeals neither affirms nor denies the Statement of Use proposed by the applicant. Instead, the Zoning Board of Appeals directs that this matter be referred to the Union Township Planning Commission as is typical in such matters. The Zoning Board of Appeals remains available, as outlined by statute and the Zoning Ordinance, to review any subsequent Planning Commission decision in this matter.

Motion dies due to lack of a second.

Further deliberation by the Board.

Buckley moved **Presnell** supported that the following proposed uses from the list in the public hearing notice would be consistent with and are acceptable accessory uses under the definition of "religious institution" in Section 2.2 (Definitions) of the Zoning Ordinance, and that the Outdoor Recreation Facilities need to be further vetted by the Planning Commission:

- Worship services in our worship center/assembly hall on a weekly basis
- Classrooms for weekly religious education
- Meeting rooms and church offices
- Kitchen and café
- Host weddings, baptisms, funerals, and other religious and secular ceremonies and celebrations
- Host Christian music artists

- Host religious and secular community gatherings, conferences, meetings, public events, social events, and outreach activities
- Community piano recitals or school graduation ceremonies
- “If the Girl Scouts, members of a yoga or exercise studio or members of a non-profit organization desire to meet or host an event in our space, we would love to accommodate such a request, just as a private school, a fraternal organization, or lodge hall in our zoning district would do.”

Roll Call Vote: Ayes: Buckley, Presnell, and Theisen. Nays: Moeggenberg. Motion Carried.

Mr. LaBelle returned to the meeting and Board table at 8:49p.m.

B. Adoption of the amended 2023 Zoning Board of Appeals meeting calendar

Buckley moved **LaBelle** supported to approve the adoption of 2023 Zoning Board of Appeals meeting Calendar. **Vote: Ayes: 5 Nays: 0. Motion carried.**

Other Business

Extended Public Comment: Restricted to 5 minutes regarding any issue

Open: 8:52 p.m.

Aileen Leipprandt, Hilger Hammond Attorney and legal counsel for Thrive Church, thanked the Board for their attention to the issues.

Closed: 8:53 p.m.

Final Board Comment

Buckley – The Planning Commission has started conversations to begin the Master Plan review for next year.

Presnell – Thanked the public that came to the meeting and appreciates their value for the community.

Theisen – Thanked staff, legal counsel and board members for a good discussion and participation.

Announced his decision for family reasons not to seek reappointment to another term on the Zoning Board of Appeals.

Adjournment

Chair Theisen adjourned the meeting at 8:55 p.m.

APPROVED BY:

–Secretary
– Vice Secretary

(Recorded by Tera Green)



Community and Economic Development Department

2010 S. Lincoln Rd.

Mt. Pleasant, MI 48858

989-772-4600 ext. 232

RNanney@uniontownshipmi.com

February 23, 2023

Zoning Board of Appeals
Charter Township of Union

Subject: MTA training modules – follow up discussion

Dear Board of Appeals members:

Thank you for taking the time to sign into the Michigan Townships Association Online Learning Center and for participating in the three online training modules for the Zoning Board of Appeals (Basics, Variances, and Decision-Making). If you have not had a chance yet to complete all three modules, I would invite you to please make the time to do so in advance of our upcoming meeting.

For some of you this is new information and for others a refresher, but we would like to have all regular and alternate members participate in the training to be ready for a follow up discussion during our meeting. The intent of the discussion is for members to be able to:

1. Ask questions related to the training,
2. Discuss together topics or details that stood out for you as important; and
3. Discuss any issues or concerns you may have that noted while participating in the training modules.

All regular and alternate Board of Appeals members are asked to attend this meeting. Alternate members only serve in an active role in Board of Appeals deliberation and action in the absence of a regular member (to ensure that we have a full five-member board to hear any appeal). However, we would encourage alternate members to actively participate in the follow up discussion for the MTA training modules when that items comes up on the agenda. By Board policy, alternates are provided the same per-diem for attendance as a regular ZBA member, even if they are not needed to provide a full five-member board.


If you have any questions in the meantime, please do not hesitate to contact me.

Respectfully submitted,

Rodney C. Nanney, AICP


Community and Economic Development Director

MTA MICHIGAN TOWNSHIP ASSOCIATION SERVING MICHIGAN'S TOWNSHIPS AND TOWNSHIP OFFICIALS



Hybrid Learning Series

MTA Roles and Functions of the Zoning Board of Appeals



The Basics


Steve Langworthy
slangworthy@gmail.com

MTA MICHIGAN TOWNSHIP ASSOCIATION

Roles and Functions of the Zoning Board of Appeals

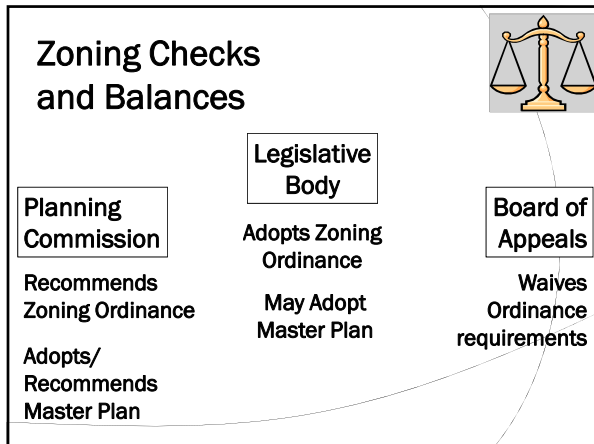


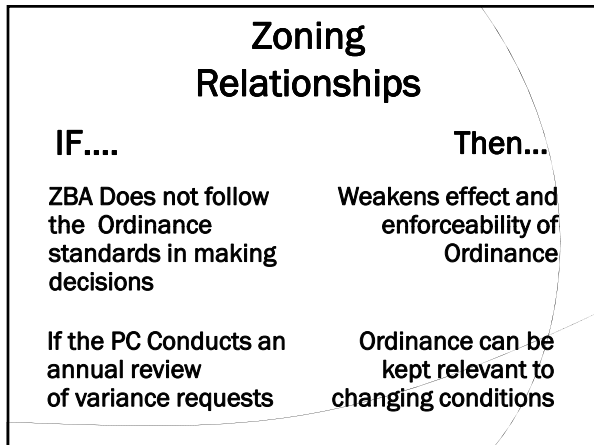
Steve Langworthy
slangworthy@gmail.com



The Balancing of Interests

The zoning process is designed to balance the principle of property rights with the protection of the public interest.





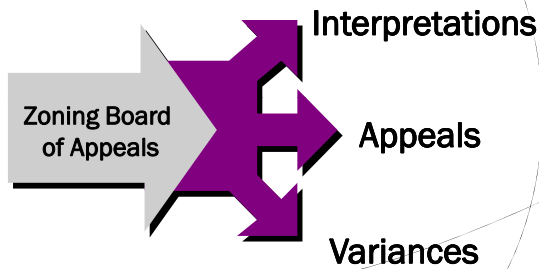
- ### The Basics
- 3 Members if less than 5,000 population
 - 5 Members if 5,000 or greater
 - 1 Planning Commission member required; Board member is optional, but cannot be Chair
 - Up to 2 alternate members (conflict of interest or absence)
 - By-Laws – procedures, conflict of interest process, special meetings, role of Chair/Secretary, etc.

Voting Requirements



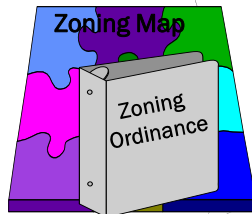
- ⦿ Appeals – Simple Majority
- ⦿ Nonuse Variance -Simple Majority
- ⦿ Use Variance 2/3 Vote
- ⦿ If 4 members of a 7 member Board are present - How many must vote to approve?

Duties and Responsibilities



Zoning Ordinance Interpretations

- ⦿ Map interpretation based on rules
- ⦿ Text interpretations narrow and practical
- ⦿ Keep records
- ⦿ Benefit of doubt to applicant



Appeals - Principles

Appeal of
Administrative
Decisions



- Ⓞ Decision on administrative action
 - PC - Site Plan Review
 - ZA - Administrative Decisions
- Ⓞ Decision has already been made
- Ⓞ Action is limited to determine if decision was properly made
- Ⓞ SLU and PUD



MTA SERVING MICHIGAN'S TOWNSHIPS AND TOWNSHIP OFFICIALS

Hybrid Learning Series

MTA Roles and Functions of the Zoning Board of Appeals


Variances

Steve Langworthy
slangworthy@gmail.com

Variances: Definition and Proof

Nonuse (Dimensional)

- Vary from the requirements of the Ordinance.
- Proof of Practical Difficulty



Use



- Allow use not otherwise listed in District.
- Proof of Unnecessary Hardship

Decision Standard

A decision by the ZBA will be upheld if the Court finds that the decision:


- (a) Complies with the constitution and laws of the state.
- (b) Is based upon proper procedure.
- (c) Is supported by competent, material, and substantial evidence on the record.
- (d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

MTA SERVING MICHIGAN'S TOWNSHIPS AND TOWNSHIP OFFICIALS

Hybrid Learning Series


MTA Roles and Functions of the Zoning Board of Appeals



Decision-making & Documentation

Steve Langworthy
slangworthy@gmail.com

Making Effective Decisions



- ⦿ Know your Ordinance
- ⦿ Conduct a site visit
- ⦿ Hold proper public hearings
- ⦿ Use Ordinance standards
- ⦿ Document your findings (motions, Finding of Fact, minutes)

Site Visits

Written Permission to Enter Site

Avoid Ex-parte Contacts


What to Look For...





Nimby
(not in my back yard!)

Click here

To find out how much has been in our back yard already




**Build Absolutely Nothing
Anywhere Near Anything**



Deliberation

Public Hearing

Procedures
Rules
Closing



Deliberation

Comments through the Chair
Deliberate in the open
Express opinions
Use Ordinance standards to focus discussion

Documentation

Motions

Must contain:

- Maker
- Supporter
- Request
- Action
- Conditions
- Relationship to standards

Must be:

- Clear to everyone
- Formed properly

What did we just vote on?

Documentation



Conditions....
may be attached to
any affirmative decision
and
must be reasonable and
related to the standards of
review

The Reasonableness Test

If this condition was not attached to the decision, the standards for review would not be met and the request denied.

Documentation

- An appeal from a decision of a zoning board of appeals goes to the Circuit Court of the county.
- Must be filed within 30 days of the ZBA's decision, if in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson.
- Or, must be filed within 21 days after the ZBA approves the minutes of its decision.
- The court may affirm, reverse, or modify the decision.
- Decision is based on the RECORD – so make a good one

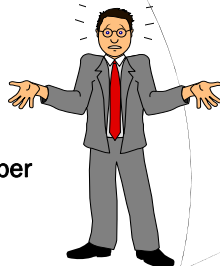
Identification

You are the Applicant
Relative
Business Associate
Close Ties
If you have to ask...
Planning Commission member

Procedure

Call in alternate
State conflict
Abstain from voting and discussion
Leave the room

Conflict of Interest



Decisions Have Consequences

- Variances were *not* intended to allow property owners to *avoid* compliance with the zoning ordinance.
- Variances are available to recognize that not all properties had the same physical character.
- Variances granted with little or no justification may have the effect of encouraging others to avoid compliance with the ordinance.
- Variances granted without justification has the long term effect of shifting zoning policy making to the ZBA and away from elected officials.

An Effective Board of Appeals...

- Uses the review standards of the Ordinance to support its decisions
- Grants variances due to conditions of land rather than those related to individuals
- Upholds the integrity of the Ordinance
- Does not make zoning policy; even when they disagree with the Ordinance

Zoning Approvals

Run with the land - not with a person!

Are permanent!


Must be based on Ordinance standards!

Must be properly documented!



MTA
Michigan Township Association

**Roles and Functions of the
Zoning Board of Appeals**



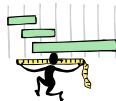
Steve Langworthy
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**Common Incorrect Reasons
Used to Grant Variances**



- No one came to object
- It's the only sign they make
- The Ordinance is too strict
- This is what the Ordinance *really* meant
- We have to give it to them or they will leave
- We gave this variance before
- They already have a building permit (or already built)
- We know he will do a good job
- Looks good to me / this won't hurt anyone
- It will make the area better

**Nonuse (Dimensional)
Variances**



**Practical
Difficulty**

- Exceptional or extraordinary circumstances applying to the property
- Necessary for the preservation of a substantial property right
- Not adversely affect adjacent properties
- Not materially impair the intent and purpose of the Zoning Ordinance
- Not of a general or recurrent nature

**Use Variance
Authority**



**Unnecessary
Hardship**

Townships that as of February 15, 2006 had an ordinance that uses the phrase "use variance" or "variances from uses of land" by the zoning board of appeals.

Townships that granted a use variance before February 15, 2006.

Having an ordinance provision that requires a vote of 2/3 of the members of the zoning board of appeals to approve a use variance.

The authority to grant use variances is permissive, and this section does not require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

Use Variance



**Unnecessary
Hardship**

- Property can not be put to a reasonable use
- Plight is due to circumstances unique to the property
- Not alter the essential character of the area
- Problem is not self-created

Variations

Questions to Consider

- How is this property different from others in the same zoning district and neighborhood?
- Is this a situation we are likely to encounter often?
- If the variance was not granted, would the property owner still be able to do the same things other owners similarly situated can do, but perhaps in not the same way?
- If the variance was granted, would it compromise the intended purposes for which the regulation was written?

Of every 10 non-use variance requests heard; 8 should be denied!



Rule of Thumb

Think About:

- The hundreds of property owners who DID comply with the Ordinance.
- The amount of time and effort the drafters of the Ordinance spent in developing the language.
- The effectiveness of your Ordinance if it is commonly known that all you need to do is file for a variance and it will be granted
- The ability of your community to enforce its Ordinances if variances are readily granted.

Roles and Functions of the Zoning Board of Appeals

FAQs

1. When the instructor was addressing non-use variances, he mentioned the “2-inch rule”. Please clarify that reference:

The 2-inch example is meant to demonstrate that whether a variance request is for 20 feet or 2 inches, they must be treated in the same manner. At times small variances may take on the air of "what's the big deal, two inches won't hurt anything." But in fact, regardless of the extent of the variance, the standards must still be met. It may be the case in some instances that smaller variance may more easily meet the standards, but they all must be treated seriously.

2. Steve mentioned that some townships require their alternates to attend meetings, in case something happens where one member must leave or there is a last-minute cancelation by a member. Should the alternates be paid for attending a meeting, even if they are not utilized?

Yes, you should pay them if attendance is required. Ultimately it is a local policy. If not attending, they should attempt to make themselves readily available to fill in by keeping that night free or notifying the township that they have a conflict. If cost is an issue, consider just having one of the two alternates attend and have them trade off meetings.

3. How would an alternate get up to speed on what has transpired in a meeting for which they were not in attendance. Is it just through the minutes? Can they meet with other members to find out what was missed and what additional information was required?

The minutes (and/or a recording of the meeting) should be made available at any rate to alternates. I wouldn't suggest any individual meetings as you may get a particular point of view. However, the alternate could meet with the staff of the ZBA to get caught up. A recap at the meeting would also be useful.

Nine Golden Rules of Defensible Decision-Making

By: Rodney Nanney, Principal

[Building Place Consultants](#)

In almost any crowded public meeting on a controversial site plan, special use, rezoning, or other difficult land use issue you will find a proverbial elephant sitting on the backs of the decision-makers at the front of the room. What is this elephant?

It is a question...

So, the worst has happened and the answer to this question is "Yes!" A disgruntled applicant has threatened or filed a lawsuit against the town and each of the board or commission members personally. Lawsuits are relatively cheap to file, and it costs even less to make the threat. It is also true that a board member or commissioner may be named as a defendant in land use or development litigation if the individual participated in the decision-making process.

Now before all of our citizen-volunteers dash off to pen their resignation letters, please read on: It is extremely rare that personal liability is imposed in such cases, as it must first be proven that the individual acted maliciously or was grossly negligent. Otherwise, he or she should be dismissed from such cases on the grounds of governmental immunity.

To minimize the chance of finding yourself in these circumstances, ALWAYS follow the nine golden rules of defensible decision-making:

RULE 1: MAKE INFORMED DECISIONS

ALWAYS strive to make informed decisions based upon the best information available. The board or commission Chair should request a vote only after first verifying that the agenda item and its probable impacts are well understood by all members.

One of the worst violators of this rule is the decision-maker who waits to open and read the meeting packet until just before the start of the meeting. To be prepared for the business to be discussed at the meeting, take time to become familiar with the agenda items at least several days beforehand.

The Elephant in the
Public Hearing Room



Nine Golden Rules of Defensible Land-Use Decision-Making:

- 1. Make informed decisions**
- 2. Do not exceed your authority**
- 3. Deliberate in public**
- 4. Ask for advice**
- 5. Document decisions**
- 6. Avoid exclusionary zoning**
- 7. Correct errors immediately**
- 8. Respect constitutional rights**
- 9. Express your opinions**

Stay familiar with your zoning ordinance and master plan, and keep them close at hand. If you haven't already done so, consider this your permission to make margin notes, highlight, and "bookmark" your copies so you can find key information quickly during the meeting.

During the meeting it's easy to get bogged down in technicalities and procedural distractions. While Robert's Rules of Order are important, the best decisions come through keeping focus on the key "big picture" issues related to the agenda item.

RULE 2: DO NOT EXCEED YOUR AUTHORITY

ALWAYS strive to act in good faith, and NEVER exceed the scope and authority you have been granted. If you are unsure of the boundaries of your office or your authority in a given circumstance, ask for professional advice before you act.

RULE 3: DELIBERATE IN PUBLIC

ALWAYS deliberate and discuss agenda items exclusively during the public meeting. All deliberations should be in the open. To the best of your ability, avoid talking to the owner, developer, applicant, and your neighbors about the agenda item outside of the public meeting, and be especially careful with email correspondence that involves the applicant, neighbors or fellow decision-makers.

The keys to a defensible decision on a difficult issue are to:

- Consistently apply all adopted standards and regulations, no matter the specifics of a particular case;
- Look out for the best interests of the entire community, not just the people at the public hearing, an applicant or an opponent;
- Beware of decisions that would have the effect of completely excluding a lawful land use; and
- Avoid even the appearance of "under-the-table" dealings by choosing to not meet as a group outside of the public meeting, other than for purely socializing purposes.

What about site visits?

A joint site visit by a majority of the Planning Commission must be preceded by public notice under the Open Meetings Act. Do not enter the site without written permission from the owner, unless the site is normally open to the public.

RULE 4: ASK FOR ADVICE

NEVER hesitate to ask for advice from a land use professional. Technical assistance (legal, planning, zoning, engineering, environmental, etc.) should always be made available to board and commission members and other decision-makers when needed. For development

applications, the application fee should cover the cost for planning and engineering consultant reviews. If it does not, then this would be a good time to update your community's fee schedule.

RULE 5: DOCUMENT DECISIONS

ALWAYS document decisions through detailed motions. This builds a firm and defensible foundation under the decision and any conditions or limitations imposed by the board or commission. The absence of such documentation severely diminishes the legal defensibility of the board or commission's action.

Most land use decisions in Michigan require a written statement of the commission's relevant findings and conclusions related to the specifics of the agenda item. "Findings" are facts specific to the case, while "conclusions" are results or reasoned judgments reached by the decision-makers through the deliberative process.

Carefully phrase the motion, as it may have to withstand court scrutiny. Include references to relevant sections of the ordinance and staff, consultant or agency reports. Whenever possible, make a motion in the affirmative (i.e. "to approve" or "to recommend approval of"). A motion to deny means that a "yes" is actually a "no," which can create confusion and opportunities for error.

What's in a Motion?

- Summary of the request and the proposed action (to approve, to deny, or to recommend an action in some cases)
- Conditions placed on an approval (if any)
- Statement of relevant findings of fact and conclusions that support the proposed action and conditions

RULE 6: CORRECT ERRORS IMMEDIATELY

ALWAYS go back and correct yourself when you discover that a procedural error has been made during the decision-making process. Upon identifying an error, the board or commission should immediately re-start the process from that point with the deficiencies corrected. It is better to hold a "do-over" public hearing than to take an action that would be vulnerable to challenge on a technicality.

RULE 7: AVOID EXCLUSIONARY ZONING

NEVER take an action that would have the effect of completely excluding a lawful land use, or that would impose unreasonable conditions on an approval. Examples of lawful land uses to be aware of include churches and other religious land uses, mobile home parks, and "adult uses" or sexually oriented businesses.

RULE 8: RESPECT CONSTITUTIONAL RIGHTS

NEVER take an action that would have the effect of violating the constitutional rights of an applicant or another citizen. If you are not familiar with the Bill of Rights, the first ten amendments to the U.S. Constitution, take time to get to know them.

Examples of constitutional rights that typically come up as part of land use litigation include the right to due process of law (see Rules 1–6) and a prohibition on the “taking” of property for public use without just compensation (see Rule 7).

Religious land uses and RLUIPA

The federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) prohibits unequal treatment of religious land uses (churches, synagogues, temples, etc.) and similar non-religious assembly uses (theaters, auditoriums, fraternal organizations, etc.). To conform to the intent of RLUIPA, we recommend that these uses be combined into a single new use category called “institutional uses,” subject to a single set of standards.

Professional and legal advice early in the decision-making process is key to defensible decision-making for cases that could involve RLUIPA.

Freedom to petition the government

Respect the rights of citizens to “petition the government for a redress of grievances.” A key to success in cases that require a public hearing is to always err on the side of ensuring that all have ample opportunity to be heard. Speaking in public is an unfamiliar and sometimes emotional experience for many, so be sure to thank everyone that chooses to speak up at a hearing.

1st Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

“Government regulation of expressive activity is content neutral so long as it is justified without reference to the content of the regulated speech.”

“(The 1st) Amendment affords special protection to speech in the home, (so) the Supreme Court has accorded special “reverence” to yard signs, holding that the available alternatives to yard signs are not ‘adequate alternatives.’”

[Fehribach v. City of Troy, MI (2004)]

Freedom of speech

Local sign regulations can often become a source of indefensible decisions. As the coming year brings another election season, our focus here will be on one small but very significant example: political and opinion signs.

As noted in *Fehribach v. Troy*, yard signs for campaigns, ballot issues, and other expressive purposes are given a strongly protected status (“reverence”) by the courts.

In other words, our right as American citizens to display a yard sign that states our personal opinion that “The Mayor is a Fink” should not be infringed!

What does this mean for decision-makers? Locally, you can regulate maximum sign area, height, and location of yard signs. You can also prohibit “obscene material” as defined in state law, and require such signs to be kept out of the road right-of-way. However, no permit or fee should be required to put up a political, opinion, or election-oriented sign.

Time limits (such as “a maximum of 30 days before an election”) also cannot be enforced against such signs, so as long as you keep your “Mayor = Fink” yard sign in good repair, it can be lawfully displayed for as long as you wish to express your constitutionally protected opinion.

RULE 9: EXPRESS YOUR OPINION

This is the last “rule,” but it may also be the most important: ALWAYS express your opinions as a board member, commissioner or other decision-maker. Do not let any threat of litigation or other intimidation tactic prevent you from expressing your thoughts, concerns, preferences, and recommendations during the public meeting.

The keys to success under this rule are to keep the discussion focused on the specifics of the matter under consideration, and to avoid personal issues and personality clashes that may unintentionally provide ammunition to attack the decision.



MICHIGAN PLANNER 'E-dition'



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Making Great Communities Happen

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It is never too late to improve your community's efforts at defensible decision-making. Even if you are well educated and schooled in decision-making procedure, there is always more that can be done to strengthen the foundation under your community's land use and development decisions. These Nine Golden Rules are not a foolproof form of pest control against land use and development litigation, but following them consistently will help significantly to lift the "Will we be sued?" elephant off your back and keep him out of the public meeting room all together.

About the Author

As the principal planner and [Zoning Guru for Building Place Consultants](#), Rodney C. Nanney is an innovative provider of solutions to community planning, zoning, and local economic development challenges. Mr. Nanney is a recognized zoning expert and the creator of the Building Place Notebook, an online newsletter covering planning, zoning, and economic development in Michigan.

An accomplished writer and public speaker, he also has the gift of being able to effectively communicate planning and zoning concepts in plain language for many to understand.

For more information from Rodney and Building Place Consultants, [click here](#).

NOTE: All graphics and photographs were created or taken by Rodney Nanney

**CHARTER TOWNSHIP OF UNION
ISABELLA COUNTY, MICHIGAN**

ORDINANCE NO. 23-02

(excerpt from Amendatory Ordinance adopted by the Board of Trustees on February 8, 2023)

THE CHARTER TOWNSHIP OF UNION, ISABELLA COUNTY, MICHIGAN, HEREBY ORDAINS:

PART THIRTY-ONE – Amendments to Section 14.4 (Variances and Appeals)

Section 14.4 (Variances and Appeals) is hereby deleted and replaced in its entirety with a new Section 14.4 entitled “Zoning Board of Appeals” to correct inconsistencies with sections 601, 603, and 604 of the Michigan Zoning Enabling Act (Public Act 110 of 2006, as amended), to correct discrepancies in the application requirements, and to clarify and expand upon the variance criteria related to substantial justice, as follows:

Section 14.4 Zoning Board of Appeals

There is hereby established a Zoning Board of Appeals (ZBA), which shall perform its duties and exercise its powers as provided for in the Michigan Zoning Enabling Act and this Ordinance, in such a way that the objectives of this Ordinance are observed, public health and safety secured, and substantial justice done.

A. Membership.

The Zoning Board of Appeals shall consist of five (5) regular members, appointed by the Township Board. One (1) member of the ZBA shall also be a member of the Planning Commission. The remaining two (2) members shall be selected from the electors of the Township. One (1) member may also be a member of the Township Board. In the event a member is elected to the Township Board and such election increases the number of Township Board members serving on the ZBA to more than one (1), then such member’s seat on the ZBA shall be deemed vacant.

The members selected shall be representative of the population distribution, and of the various interests present in the Township. Employees and contractors of the Township shall be prohibited from serving as ZBA members.

B. Alternates.

The Township Board may appoint not more than two (2) alternate ZBA members for the same term as regular members. An alternate may be called to serve as a regular member for the ZBA in the absence of a regular member if the regular member is absent from or will be unable to attend one (1) or more ZBA meetings. An alternate may also be called to serve as a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons described in subsection 14.4.D. (Abstaining). The alternate member appointed shall serve in the case until a final decision is made, and shall have the same voting rights as a regular ZBA member.

C. Terms and Vacancies.

The term of each member shall be for three (3) years, except for members serving because of their membership on the Planning Commission or Township Board where terms shall be limited to the time they are members of those bodies. If multiple members are appointed at the same time, the appointments may be for less than three (3) years to provide for staggered terms. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.

D. Abstaining.

A member shall abstain from participating in a public hearing or voting on any question in which he or she has a conflict of interest, subject to the following:

1. Before casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the remaining members of the ZBA.
2. The member is disqualified from voting on the matter if:
 - a. A majority vote of the remaining members of the ZBA agree that a conflict exists; or if
 - b. A ZBA member who is also a member of the Township Board or Planning Commission previously voted on the same matter as a member of the Board or Commission. The member may consider and vote on other unrelated matters involving the same property.
3. The ZBA may define "conflict of interest" in its bylaws, or the Township Board may adopt a conflict of interest policy for the Township by resolution.
4. Failure of a member to disclose a potential conflict of interest or to abstain as required by this subsection shall constitute malfeasance in office.

E. Removal From Office.

The Township Board may remove a member from office for misfeasance, malfeasance or nonfeasance in office, upon written charges and following a public hearing held in accordance with Section 14.6 (Public Hearing Notice). Minutes of the meeting at which the hearing is held shall record the reasons for the hearing, any motions or resolutions, and the roll call vote of the Township Board.

F. General Rules.

The following general rules shall apply to the Zoning Board of Appeals:

1. **Officers.** The ZBA shall annually elect a Chair, Vice-Chair, Secretary, and Vice-Secretary from its membership. The Township Board Representative shall not serve as ZBA Chair. Such election shall be held at the first regular ZBA meeting of each calendar year, or at the first regular meeting of the ZBA following departure of an existing officer from the ZBA.
 - a. The Chair shall preside at and conduct ZBA meetings; and shall have the power to subpoena and require attendance of witnesses, administer oaths, compel

testimony and production of books, papers, files, and other evidence pertinent to matters before the ZBA. The Chair shall also decide all points of order or procedure. In the absence of the Chair, the Vice-Chair shall exercise all powers and authority of the Chair.

- b. The Secretary shall be responsible for ensuring that complete and accurate written records are kept of all ZBA proceedings.
2. **Meetings.** Meetings of the ZBA shall be held at the call of the Chair and at such other times as any ZBA bylaws may specify. All ZBA meetings shall be open to the public. Three (3) ZBA members shall constitute a quorum, without which the ZBA shall not conduct business other than to open and close the meeting. The concurring vote of a minimum of three (3) ZBA members shall be necessary for any decision.
3. **Timing of application or appeal.** For any land use, structure or other project that is subject by a provision of this Ordinance to review and action or interpretation by the Planning Commission or Zoning Administrator, an application to the Zoning Board of Appeals shall only be accepted for review and a public hearing subsequent to the conclusion of that administrative process.
4. **Stay of action.** An application or appeal stays all proceedings in the furtherance of the action subject to the application or appeal, unless the Zoning Administrator, Township Planner, Township Engineer, or Building Official certifies to the Zoning Board of Appeals that, in their opinion and by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Zoning Board of Appeals or by the Circuit Court upon due cause shown.
5. **Hearing.** After receipt of a complete and accurate application, a reasonable time and date for public hearing shall be established. Notice shall be given and the hearing shall be held per Section 14.6 (Public Hearing Notice). All hearings shall be open to the public.
6. **Representation.** An applicant may appear or be represented by an agent or attorney.
7. **Motions.** A motion for action on an application shall include specific findings of fact and conclusions made by the ZBA in the case. Approved motions, including findings of fact and conclusions, shall be incorporated into the written record for the case. A copy shall be provided to the applicant of the approved written record of the meeting, or a written decision signed by the Chair or acting Chair.
8. **Postponement and dismissal.** The ZBA may postpone consideration of an application until a later meeting upon request by the applicant, failure of the applicant to attend the meeting, or determination that the application is not sufficiently complete or accurate for action. Failure of the applicant to attend two (2) or more meetings where the application is on the agenda shall constitute grounds for dismissal of the application without further consideration.
9. **Record of Proceedings.** The Township administrative staff, under the supervision of the secretary of the ZBA, shall prepare and keep minutes of the ZBA proceedings,

showing the findings, decisions, conditions, if any, and votes of each member in each case, including a member's absence or failure to vote. The minutes shall be within the ultimate authority, and shall be the responsibility, of the secretary of the ZBA, and shall be subject to approval of the ZBA.

To the extent that a written decision statement in a case is prepared and issued in accordance with Section 606(3)(a) of the Michigan Zoning Enabling Act, it shall include the date of the meeting when the decision was made, it shall include the full text of the adopted motion, the signature of the Chair or acting Chair, and the date the written decision statement was signed.

10. Period of Validity. A decision of the ZBA shall have immediate validity, subject to the provisions of subsection 14.4.M. (Appeals to Circuit Court).

- a. Any decision of the ZBA favorable to the applicant shall remain valid only as long as the information and data relating to such decision are found to be correct, and the conditions upon which the decision was based are maintained.
- b. Relief granted by the ZBA shall be valid for a period not longer than 365 calendar days, unless otherwise specified by the ZBA. Within such period of effectiveness any required permits must be secured and any actual on-site improvement of property in accordance with the approved plan and the relief granted must be commenced or the grant of relief shall be deemed void.

11. Bylaws. The ZBA may also adopt bylaws to govern its procedures.

G. Powers and Duties of the ZBA.

The Zoning Board of Appeals shall hear, decide, and rule on the following:

1. **Interpretations.** The ZBA shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the text and the Official Zoning Map, subject to the provisions of subsection 14.4.I.
2. **Administrative appeals.** The ZBA shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of this Ordinance, subject to the provisions of subsection 14.4.J.
3. **Variances.** The ZBA shall hear and decide requests for variances for relief from the strict application of one (1) or more non-use provisions of this Ordinance, subject to the provisions of subsection 14.4.I.K.
4. **Other matters.** The ZBA shall have the authority to hear and decide on other matters referred to them upon which this Ordinance or Michigan Zoning Enabling Act specifically authorizes the ZBA to act.
5. **Prohibited actions.** The ZBA shall not alter or change the zoning district classification of any property, or make any change in the terms of this Ordinance, and shall not take any action that would result in making a legislative change. The ZBA shall not hear and shall have no authority regarding use variances or any issue involving a special use permit or planned unit development approval or denial.

H. Applications.

All applications to the ZBA shall be made by filing at least ten (10) paper copies and two (2) digital copies (in a format compatible with Township systems) of a complete and accurate application with the Zoning Administrator or designee, on forms provided by the Township, and shall be accompanied by the applicable fee and any required escrow deposit as established by Township Board resolution. In addition to the applicable fee and any required escrow deposit, a complete and accurate application shall at a minimum include the following:

1. Name, address, telephone and facsimile numbers, and other contact information for the applicant and owners of record, along with proof of ownership.
2. The applicant's interest in the property, and if the applicant is not the property owner of record, a signed authorization of the owner(s) for the application.
3. Address, location, legal description, and tax identification number of the parcel.
4. Zoning classification of the subject parcel(s) and all abutting parcels.
5. A letter from the applicant stating the reasons for the request, and addressing the applicable criteria specified in this Article for the type of request.
6. Copies of all plans, studies and other information and data to be relied upon by the applicant.
7. Any additional information required by this Article or deemed necessary by the ZBA to make a determination on the issue in question.
8. For variance requests, the following additional requirements shall apply:
 - a. The applicant shall submit a plot plan drawn to scale and including lot boundaries, easements, dimensions, setbacks, locations of septic systems and wells where applicable, significant natural features, and all existing and proposed structures and improvements.
 - b. The ZBA shall have the authority to require a certified survey prepared by a registered land surveyor when determined necessary to verify the accuracy of the plot plan.
 - c. For projects subject to site plan approval per Section 14.2, a complete site plan shall be provided.

I. Interpretations.

The ZBA shall have the power to hear and decide questions that arise in the interpretation of the text of the Zoning Ordinance in a manner consistent with the intents and purposes stated in the Ordinance, and in such a way as to preserve and promote the character of the zoning district in question. The ZBA shall also have the power to hear and decide questions that arise in the interpretation of the Official Zoning Map in such a way as to carry out the intents and purposes of this Ordinance and the Master Plan, subject to the standards of Section 10.105.E (Rules for Interpretation).

Applications for questions that arise from an interpretation of the text of the Zoning Ordinance or of the Official Zoning Map made by the Planning Commission, Zoning Administrator or other Township official shall be reviewed by the ZBA as an administrative appeal subject to subsection 14.4.J. (Administrative Appeals).

J. Administrative Appeals.

Consideration of administrative appeals shall be subject to the following:

- 1. Standing to Appeal.** Appeals shall be taken to the ZBA through submittal of a complete and accurate application to the Township Clerk by a person, firm or corporation aggrieved by the order, requirement, decision or determination; or by an officer, department, board, commission or bureau of the Township, county, state, or federal governments. Such appeals shall be filed within 60 calendar days of the order, requirement, decision or determination in question.
 - a. The appellant shall submit a clear description of the order, requirement, decision, or determination from which the appeal is made and the grounds of the appeal. The appellant may be required by the ZBA to submit additional information to clarify the appeal.
 - b. The Township Clerk shall compile and transmit to the ZBA copies of all relevant papers constituting the record upon which the action appealed from was taken.
- 2. Determinations.** The ZBA shall reverse an administrative decision only upon determining that the order, requirement, decision or determination:
 - a. Constituted an abuse of discretion;
 - b. Was arbitrary or capricious;
 - c. Was based upon an erroneous finding of a material fact; or
 - d. Was based upon an erroneous interpretation of the Zoning Ordinance.

After making such a determination, the ZBA may, reverse or affirm wholly or in part; modify the order, requirement, decision or determination; or make such order, requirement, decision, or determination as ought to be made, and may issue or direct the issuance of a permit. To that end, the ZBA shall have all of the powers of the official(s) from whom the appeal is taken.

K. Variances.

The ZBA shall have the authority to grant non-use variances where, owing to special conditions, strict enforcement of this Ordinance would result in unnecessary hardship or practical difficulty, subject to Michigan Zoning Enabling Act requirements and the following:

1. **Standards for Review.** A variance shall not be granted unless all of the following standards are met:
 - a. **Practical difficulties.** Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose.
 - b. **Substantial justice.** The variance will give substantial relief and justice to the applicant, consistent with justice to other property owners in the same district.
 - c. **Unique circumstances.** The need for the variance is due to unique circumstances peculiar to the land or structures involved, that are not applicable to other land or structures in the same district.
 - d. **Preservation of property rights.** The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property owners in the same zoning district.
 - e. **Public safety and welfare.** The requested variance can be granted in such fashion that the spirit of this Ordinance will be observed and public safety and welfare secured. In addition:
 - i. The granting of a variance will not increase the hazard of fire or otherwise endanger public safety.
 - ii. The granting of a variance will not unreasonably diminish or impair the value of surrounding properties.
 - iii. The granting of a variance will not alter the essential character of the area or surrounding properties.
 - iv. The granting of a variance will not impair the adequate supply of light and air to any adjacent property.
 - f. **Not self-created.** The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.
 - g. **More than mere inconvenience.** The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience or an inability to attain a higher financial return.

h. **Minimum necessary action.** The reasons set forth in the application justify the granting of the variance, and the variance is the minimum necessary relief to allow reasonable use of the land, building, or structure. The granting of a lesser variance will not give substantial relief and justice to the applicant, consistent with justice to other property owners in the same district.

2. **Use Variances Prohibited.** Under no circumstances shall the ZBA 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.

3. **Reapplication for Variance.** No application for a variance that has been denied wholly or in part by the ZBA shall be resubmitted for a period of 365 calendar days from the date of denial, except on grounds of new evidence of changed conditions found by the ZBA to be valid.

L. Conditions of Approval.

The ZBA may impose conditions or limitations upon any affirmative decision, as it may deem reasonable and necessary in accordance with the purposes of this Ordinance and the Michigan Zoning Enabling Act. Such conditions shall be consistent with procedures, requirements, standards, and policies of the Township, where applicable. Violation of any condition imposed shall be deemed a violation of this Ordinance.

M. Appeals to Circuit Court.

Any person aggrieved by a decision of the ZBA in a particular case shall have the right to appeal to the Circuit Court as permitted by Section 606 of the Michigan Zoning Enabling Act [MCL125.3606(1)]. The appeal shall be filed within 30 calendar days after the Zoning Board of Appeals issues its written decision signed by the Chair or acting Chair, or within 21 calendar days after the Zoning Board of Appeals approves the minutes of its decision, whichever comes first.