

ARTICLE 8 Zoning Board of Appeals

Section 8.0 Creation and Membership

The Zoning Board of Appeals (ZBA) shall perform its duties and exercise its powers as provided in Article 6 of Act 110, P.A. 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and justice done. The Board shall consist of five (5) members, appointed by the Township Board by a vote of a majority of its membership.

- A. **PLANNING COMMISSION MEMBER:** The first member shall be a member of the Greenbush Township Planning Commission for the terms of his/her office.
- B. **REMAINING MEMBERS:** The remaining members must be selected from the electors of the Greenbush Township and shall be representative of the population distribution and of the various interests present in the Township. One (1) regular or alternate member may be a member of the Township Board. Such a member shall not serve as Chairperson.
- C. **EMPLOYEES:** An employee or contractor of the Township Board may not serve as a member of the Board of Appeals.
- D. **ALTERNATES:** The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. 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 is absent from or unable to attend one (1) or more meetings of the Zoning Board of Appeals. 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 in the 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.
- E. **TERMS OF OFFICE:** The terms of office for members of the Zoning Board of Appeals shall be for three (3) years, except for members serving because of their membership on the Planning Commission, whose terms shall be limited to the time they are members of the Planning Commission. When members are first appointed, 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 in the same manner as the original appointment.
- F. **OFFICERS & COMPENSATION:** The Zoning Board of Appeals shall annually elect a Chairperson, Vice-Chairperson and Secretary. The compensation of the appointed members of the Zoning Board of Appeals may be established by the Township Board.

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- G. **REMOVAL OF MEMBER:** A member of the Zoning Board of Appeals 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 or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

Section 8.1 Meetings

- A. Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as the Zoning Board of Appeals may determine or specify in its rules of procedure. 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:
1. The vote of each member upon each question, or if absent or failing to vote, indicating said fact; and
 2. The grounds for every determination made by the ZBA; and
 3. The final ruling of each case.

The ZBA shall file a record of its proceedings in the office of the Township Clerk, which shall be a public record.

- B. Three (3) members of the ZBA shall constitute a quorum for the conduct of its business. The Board of Appeals shall not conduct business unless a majority of those Zoning Board of Appeals members qualified to sit for a particular matter are present to constitute a quorum, regardless of whether the members are regular members or alternate members.
- C. The Board shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it.

Section 8.2 Jurisdiction

- A. **POWERS:** The Zoning Board of Appeals shall have all powers and authority granted by Public Act 110 of 2006, as amended, together with such other powers and duties as are given to such Board by the provisions of this ordinance, including the following specific powers:
1. **APPEALS FROM A DECISION:** 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.

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2. **INTERPRETATION:** The ZBA may interpret the location of zoning district boundaries and may interpret the provisions of this Ordinance.
 3. **DIMENSIONAL VARIANCES:** Upon the finding of practical difficulty, the ZBA shall have the authority to grant nonuse variances related to dimensional requirements of the Zoning Ordinance as provided for in **§8.4**.
 4. A variance in the Zoning Ordinance may be applied for and granted under section 4 of the Uniform Condemnation Procedures Act, 1980 PA 87, MCL 213.54.
- B. **EXERCISE OF 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, requirements, decision or determination as ought to be made, and to that end shall have all the powers of the official or body from whom the appeal is taken.
- C. **SPECIAL LAND USE AND PUD:** The ZBA has no jurisdiction to hear appeals from Planning Commission decisions concerning Special Land Use approvals or Planned Unit Developments.
- D. Nothing herein contained shall be construed to give or grant to the ZBA the power or authority to alter or change this Ordinance or the Zoning Map, such power and authority being reserved to the Greenbush Township Board in the manner provided by law.

Section 8.3 Procedure & Decisions

- A. **NOTICE OF APPEAL:** Appeals to the Board of Zoning Appeals may be made by any person aggrieved, or by an officer or department of the Township, by filing a written application for appeal with the Township Clerk. Upon receipt of an application for appeal, the Township Clerk shall promptly transmit the records concerning the appealed action to the chairperson of the ZBA. Any appeal from the ruling of the Zoning Administrator concerning the enforcement of the provisions of this Ordinance shall be filed within thirty (30) days after the date of the Zoning Administrator's decision.
- B. **FEE:** A fee as established by the Township Board shall be paid to the Township Clerk at the time the petitioner files an application with the Board. The purpose of such fee is to cover the necessary advertisements, mailings, investigations, hearing records and other expense incurred by the Board in connection with the appeal. No fee shall be charged if the Township or any official body of the Township is the moving party. If an applicant requests and receives a postponement of the hearing subsequent to the mailing of notices and advertisement of public hearing, said applicant shall pay the necessary expenses incurred by the Township to re-notice the hearing.

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- C. In the event an application is made involving more than one building, the total development may be incorporated in one appeal provided that the subject property is continuous and is not divided by another zoning district.
- D. **DOCUMENTS REQUIRED:** The applicant shall submit four (4) copies of surveys, plans and data or other information which is requested by the Zoning Administrator or Chairman of the ZBA and which is reasonably necessary.
- E. **HEARING AND PUBLIC NOTICE:** Upon receipt of application for appeal, the chairperson of the Zoning Board of Appeals shall fix a reasonable time and date for a Public Hearing, not to exceed thirty (30) days from the date of filing of the Notice of Appeal. Upon determination of the date and time of the Public Hearing, the Township Clerk shall give public notice pursuant to §9.5.
- F. **STAY:** An appeal to the Zoning Board of Appeals stays all proceedings in furtherance of the action appealed. However, if the body or officer from whom the appeal is taken certifies to the Zoning Board of Appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, proceedings may be stayed only by a restraining order issued by the Zoning Board of Appeals or a circuit court.
- G. **APPEARANCE:** Upon the hearing, any party may appear in person or by agent or attorney. The Board may recess such hearing from time to time, and, if the time and place of the continued hearing are announced at the time of adjournment, no further notice shall be required.
- H. **DECISION:**
1. The Board of Appeals shall render its decision within thirty (30) days of filing of Notice of Appeal unless an extension of time is necessary to review new information pertinent to making the decision, and is agreed upon by the appellant and a majority of members of the ZBA present.
 2. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.
 3. The concurring vote of a majority of the members of the Zoning Board of Appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance, or to grant a dimensional variance in the zoning ordinance.
 4. A member of the Zoning Board of Appeals who is also a member of the Planning Commission shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission. However, the property.

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5. **FINDINGS OF FACT:** In granting or denying a variance, the Board shall state in a written statement of findings of fact the grounds upon which it justifies the granting of a variance. Copies of the written Findings of Fact shall be supplied to the Township Board and Planning Commission
6. **DECISION FINAL:** The decision of the Zoning Board of Appeals shall be final. A party aggrieved by the decision may appeal to the circuit court of Alcona County.
- I. **CONDITIONS:** In granting the variance, the Zoning Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and shall automatically invalidate the permit.
- J. Each variance granted under the provisions of this Ordinance shall become null and void unless:
 1. The construction authorized by such variance or permit has commenced within six (6) months of granting of the variance.
 2. The occupancy of land, premises or building has taken place within two (2) years after the granting of the variance.
- K. **RESUBMITTAL:** No application for the variance which has been denied, wholly or in part, by the Board of Zoning Appeals shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found upon inspection by the ZBA to be valid.

Section 8.4 Variance Standards

DIMENSIONAL VARIANCE STANDARDS: 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. Strict compliance with the regulations governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome;
- C. 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 substantial relief to the property owner and be more consistent with justice to other property owners;

- D. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created).
- 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 and will not impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Greenbush Township .

Section 8.5 Appeal to Circuit Court

- A. Any party aggrieved by a decision of the Zoning Board of Appeals may appeal to the circuit court for Alcona County. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:
 - 1. Complies with the constitution and laws of the state.
 - 2. Is based upon proper procedure.
 - 3. Is supported by competent, material, and substantial evidence on the record.
 - 4. Represents the reasonable exercise of discretion granted by law to the Zoning Board of Appeals.
- B. If the court finds the record inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented, the court shall order further proceedings on conditions that the court considers proper. The Zoning Board of Appeals may modify its findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary record and decision shall be filed with the court. The court may affirm, reverse, or modify the decision.
- C. An appeal from a decision of a Zoning Board of Appeals shall be filed within thirty (30) days after the Zoning Board of Appeals issues its decision 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 within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of its decision. The court may affirm, reverse, or modify the decision of the Zoning Board of Appeals. The court may make other orders as justice requires.