

111.1600

ZONING BOARD OF APPEALS

111.1601

Creation. There is hereby created a Zoning Board of Appeals, which shall perform its duties and exercise its powers and jurisdiction as provided by Act. No. 184 of the Public Acts of 1943, together with any amendments thereto, and by certain provisions of this Ordinance to the end that the objectives of this Ordinance are observed, public safety, morals and general welfare secured and substantial justice done. The membership of the Board shall be provided as by said Act.

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Variations. Subject to the provisions of Article XVI, Section 3 of this Ordinance, the Board, after public hearing, shall have the power to decide application for variations:

(a) Where it is alleged that there is error or misrepresentation in any order, requirement, decision or refusal made by the Zoning Administrator or other administrative agency of the Township in the carrying out of the provisions of this Ordinance; or

(b) Where it is alleged that by reason of the exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographic conditions or other extraordinary situation of the land or building or of the use of property immediately adjoining the property in question, the literal enforcement of this Ordinance would involve practical difficulties or would cause undue hardship; provided that the Board shall not grant a variance on a lot if the owner or members of his family own or owned adjacent land which could, without undue hardship, be included as part of the lot; or

(c) Where it is alleged that there is practical difficulty or unnecessary hardship in carrying out the strict letter of this Ordinance and a request is made to vary such regulations; provided that the spirit of this Ordinance shall be observed, public safety secured and substantial justice done.

111.1603

Variations prohibited. No variance in the provision or requirements of this Ordinance shall be authorized by the Board unless the Board finds from reasonable evidence that such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purposes of this Ordinance or of the public health safety and welfare, and further, that two of the following facts and conditions exist:

(a) That there are exceptional or extraordinary circumstances or conditions applying to the specific property that do not apply generally to other properties in the same zone.

(b) That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the zone, provided that increased financial return shall not be deemed sufficient to warrant a variance.

(c) That the condition or situation of the specific property or the intended use is not of so general or recurrent a nature as to make reasonably practical a general regulation as part of this Zoning Ordinance.

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Reserved.

111.1605

Additional jurisdiction. In addition to the duties and powers prescribed in the previous sections of this Ordinance, the Zoning Board of Appeals shall hear and decide all matters relating to the following:

(a) The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by any Administrative official charged with the enforcement of any provisions of this Ordinance.

(b) The Zoning Board of Appeals shall not act upon all questions as they may arise in the administration of this Ordinance, including the interpretation of the Zoning Map and may fix rules and regulations to govern its procedure as such Zoning Board of Appeals, subject to the requirements herein.

(c) The Zoning Board of Appeals shall have the power to hear and decide applications for special exceptions, conditional uses, temporary uses, interpretations and other special questions on temporary uses, on which the Board is herein authorized to pass. In considering such applications the Board shall review the case within the intent of the Ordinance. Before authorizing a use, the board shall determine whether the proposal would be hazardous, harmful or a nuisance to the surrounding neighborhood by reason of noise, atmospheric pollution, vibration, glare, fire potential, parking, traffic, aesthetic effect, devaluation of property values or psychological effects. For such purpose the Board may enlist experts, technicians and consultants. The Board may impose such additional requirements and conditions necessary to preserve the intent of this Ordinance.

- 111.1606 Procedure.** Whenever this approval of the Zoning Board of Appeals is required under the provisions of this Ordinance, the Board shall fix a reasonable time for a hearing and give due notice thereof to the parties involved and such other notice as may be deemed proper under the circumstances, provided that all property owners within 500 feet are notified of the time and place of such hearing. Any person who is interested in such application or the determination thereof may and shall be permitted to state the reasons for approval or disapproval of such application. Whenever the Board, or the applicant or person appealing to the Board shall so request in writing, the Township Planning Commission shall participate in an advisory capacity. A majority of the Planning Commission shall constitute the minimum number who shall be present at such a hearing.
- 111.1607 Decisions.** The Board shall render its decision upon all application within 60 days after the required hearing thereon and notify the applicant of its decision. The Board reserves the right to extend any such decision beyond the 60 day period.
- 111.1608 Fees.** The applicant shall pay to the Township clerk, a fee in accordance with the schedule of fees adopted by the Porter Township Board. (Amended: No. 6-E, 9-12-89,)
- 111.1609 Time limit.** If the variance is granted or other action by the applicant is authorized, the necessary permit shall be secured and the authorized action begun within three months after the date the variance is granted, and the structure or alteration shall be completed within 12 months of the date the variance is granted. The Board may, upon application stating the reasons thereof, extend either the 3 or 12 months periods, but if the Board finds no good cause for the failure to act or complete within such periods and in the interval since the action was granted, the Board shall revoke or rescind its approval. Should the applicant fail to obtain the necessary permit in three months, the granted variance shall be rescinded.

111.1610 AMENDMENT TO ZONING BOARD OF APPEALS

111.1611 Purpose. The purpose of the Zoning Board of Appeals shall be: to hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, the Porter Township Zoning Board of Appeals may adopt rules to govern its procedures sitting as a Zoning Board of Appeals. It shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official or body charged with enforcement of an ordinance adopted pursuant to this zoning ordinance. It shall hear and decide matters referred to it or upon which it is required to pass under any ordinance adopted pursuant to the Zoning Ordinance. For special land use and planned unit development decisions, an appeal may be taken to the Zoning Board of Appeals only if provided for in the zoning ordinance. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse an order, requirement, decision, or determination of the administrative official or body, or to decide in favor of the applicant any matter upon which the board is required to pass under ordinance, or to grant a variance to an ordinance. An appeal may be taken by a person aggrieved or by an office, department, or bureau of the township, county or state. In addition, a variance in an ordinance may be applied for and granted pursuant to section 4 of the uniform condemnation procedures act, 1980 PA 87, M.C.L.A. 213.54, and this ordinance. The Zoning Board of Appeals shall state the grounds for its decision on each determination.

111.1612 Powers and Duties The powers and duties of the Zoning Board of Appeals shall be as provided in M.C.L.A. 125.271 *et seq.*; more specifically M.C.L.A. 125.288 through 125.293a.

111.1613 Members

- (A) Pursuant to M.C.L.A. 125.288 Section 18, the Porter Township Zoning Board of Appeals shall be composed of five (5) regular members.
- (B) The first regular member of the Zoning Board of Appeals shall be a member of the Planning Commission. The remaining regular members and any alternative members of the Zoning Board of Appeals shall be selected from the electors of the township residing outside of incorporated cities and villages. Each member shall be appointed by the Township Board.
- (C) The members selected shall be representative of the population distribution and of the various interests present in the township. One regular member may be a member of the Township Board. An employee of contractor of the Township Board may not serve as a member of the Zoning Board of Appeals.
- (D) 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 as specified in the zoning ordinance to serve as a regular member of the Zoning Board of Appeals in the absence of a regular member if the regular member is absent from or will be unable to attend 2 or more consecutive meetings of the Zoning Board of Appeals or is absent from or will be unable to attend meetings for a period of more than 30 consecutive days. An alternate member 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 of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the Zoning Board of Appeals.
- (E) A member of the Zoning Board of Appeals may be removed by the township board for nonperformance of duty or misconduct in office upon written charges and after public hearing.

(F) 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 misconduct in office.

111.1614 Term of Members The term of the members of the Zoning Board of Appeals shall be three (3) years, except for members serving because of their membership on the Planning Commission, or Township Board, whose terms shall be limited to the time they are stated in the resolution appointing them. When members are first appointed, the appointments may be for less than 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.

111.1615 Compensation The total amount annually allowed the Zoning Board of Appeals as per diem of as expenses actually incurred in the discharge of duties shall not exceed a reasonable sum, which shall be appropriated annually in advance by the Township Board.

111.1616 Officers of the Zoning Board of Appeals The members of the Zoning Board of Appeals shall elect from its members a chairman and secretary and fill other offices of committees as they deem necessary. An elected officer of the Township shall not serve as chairperson of the Zoning Board of Appeals. The elections of officers shall be held not less than once a year.

111.1617 Meetings The Zoning Board of Appeals shall not conduct business unless a majority of the members of the board is present. Meetings of the board shall be held as the call of the chairman and at such other times as the board in its rules of procedure may specify. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Zoning Board of Appeals shall be open to the public. The board shall maintain a record of its proceedings which shall be filed in the office of the township clerk and shall be a public record.

111.1618 Appeals

(A) **Time for Appeal: Procedure** Appeals shall be taken within such time as shall be prescribed by the Zoning Board of Appeals by general rule; by the filing with the officer from whom the appeal is taken and with the Zoning Board of Appeals of a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the documents constituting the record upon which the action appealed from was taken.

(B) **Stay of Proceedings: Restraining Order** An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Zoning Board of Appeals after the notice of appeal shall have been filed that by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by the circuit court, on application, on notice to the officer from whom the appeal is taken and upon due cause shown.

(C) **Hearing** The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide the appeal within a reasonable time. At the hearing, a party may appear in person or by agent or by attorney. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as in its opinion ought to be made, and to that end shall have all the powers of the officer or body from whom the appeal was taken and may issue or direct the issuance of a permit or other approval. Where there are practical difficulties or unnecessary hardship in the

way of carrying out the strict letter of the zoning ordinance, the Zoning Board of Appeals in passing upon appeals may vary or modify any of its rules or provisions so that the spirit of the ordinance is observed, public safety secured, and substantial justice done. The Zoning Board of Appeals may impose conditions with an affirmative decision pursuant to M.C.L.A. section 125.286d (2).

- 111.1619** **Finality of Decision: Judicial Review** The decision of the Zoning Board of Appeals rendered pursuant to this ordinance shall be final. However, a person or entity having an interest affected by the zoning ordinance may appeal to the circuit court. Upon appeal the circuit court shall review the record and decision of the Zoning Board of Appeals as set forth in M.C.L.A. 125.293a.
- 111.1620** **Definitions** The definitions contained in M.C.L.A. 1948 Section 125.310 are hereby adopted by reference.
- 111.1621** This resolution shall take effect 60 days following publication of the same in a newspaper having general circulation in the Township, unless a legal referendum petition is filed in connection therewith, and then at such time as the same has been approved by a majority of the electors voting thereon, at a subsequent regular or special election, the Township Board reserves the right to amend or repeal this resolution at any time hereafter by a majority vote of the membership on the Township Board.
- 111.1622** **Inconsistent Acts** Insofar as the provisions of this ordinance are inconsistent with the provisions of any other law of ordinance, the provisions of this ordinance shall be controlling except that this ordinance shall not supersede those acts and laws enumerated in Michigan Compiled Laws Annotated, Section 125.333., and et seq.