

Butler Township Zoning Ordinance

CHAPTER 20

ZONING BOARD OF APPEALS

SECTION 20.01 CREATION

It is hereby created under P.A. 110 of 2006, as amended, the Michigan Zoning Enabling Act, the Butler Township Zoning Board of Appeals, referred in this Ordinance as the "Zoning Board of Appeals." The Zoning Board of Appeals shall be constituted and appointed as provided by Michigan Township Zoning Act and shall be comprised of five members (5) members.

SECTION 20.02 INTENT

The purpose of this Chapter is to provide guidelines and standards to be followed by the Zoning Board of Appeals (ZBA) to act on matters where this Ordinance or state law gives jurisdiction to the ZBA.

SECTION 20.03 ADOPTION OF RULES AND PROCEDURES

The Zoning Board of Appeals shall establish fixed rules and regulations governing its procedures, meetings, operations, and actions. Said rules shall be made available to the public and shall be in conformance with this Ordinance and the Michigan Township Zoning Act.

SECTION 20.04 JURISDICTION OF THE ZONING BOARD OF APPEALS

A. General Authority

The ZBA shall have the authority to act on those matters where this Ordinance provides for administrative review/appeal, interpretation, or special approval/appeal, and shall have the authority to authorize a variance as defined in this Ordinance and laws of the State of Michigan. Such authority shall be subject to the rules and standards in this Section. The ZBA shall not have the authority to alter or change zoning district classifications of any property, nor to make any change in the text of this Ordinance.

B. Administrative Review

The ZBA shall have authority to hear and decide appeals where it is alleged that there is an error in an order, requirement, permit, decision, or refusal made by an

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official, board or commission in carrying out or enforcing any provisions of this Ordinance.

C. Interpretation

The ZBA shall have authority to hear and decide appeals or requests for interpretation of the Zoning Ordinance, including the zoning map. The ZBA shall make such decisions so that the spirit and intent of this Ordinance shall be observed. Text interpretations shall be limited to the issues presented, and shall be based upon a reading of the Ordinance as a whole, and shall not have the effect of amending the Ordinance. Map and boundary interpretations shall be made based upon rules in the Ordinance, and any relevant historical information. In carrying out its authority to interpret the Ordinance, the ZBA shall consider reasonable and/or practical interpretations which have been consistently applied in the administration of the Ordinance. Prior to deciding a request for an interpretation, the ZBA may confer with staff and/or consultant to determine the basic purpose of the provision subject to interpretation and any consequences which may result from differing decisions. A decision providing an interpretation may be accompanied by a recommendation for consideration of an amendment of the Ordinance. Such authority shall include interpretation of whether a use is permitted in a given zone, or determination of off-street parking and loading requirements for any use not specifically listed.

D. Variances

The ZBA shall have authority in specific cases to authorize one or more variances from the strict letter and terms of this Ordinance by varying or modifying any of its rules or provisions so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done. A dimensional or non-use variance allows a deviation from the dimensional (i.e., height, bulk, setback) requirements of the Ordinance. A use variance authorizes the establishment of a use of land that is otherwise prohibited in a zoning district. The ZBA is not authorized to grant use variances by this Ordinance. Such authority shall be exercised in accordance with the following standards:

1. The ZBA may grant a requested “non-use” variance only upon a finding that practical difficulties exist. A finding of practical difficulties shall require demonstration by the applicant of all of the following:
 - a) Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with the Ordinance unnecessarily burdensome.

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- b) The variance will do substantial justice to the applicant, as well as to other property owners.
 - c) A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
 - d) The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
 - e) The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessors.
2. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or evidence from which the ZBA may make the required findings. Administrative officials and other person may, but shall not be required to, provide information, testimony and/or evidence on a variance request.

E. Conditions

The ZBA may impose reasonable conditions in connection with an affirmative decision on an appeal, interpretation or variance request. The conditions may include requirements necessary to achieve any of the following:

- 1. To insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.
- 2. To protect the natural environment and conserve natural resources and energy
- 3. To insure compatibility with adjacent uses of land
- 4. To promote the use of land in a socially and economically desirable manner.

Conditions imposed shall meet the following requirements:

- a) Be designed to protect natural resources, the health, safety and welfare and the social and economic well-being of those who will use the land use or activity under consideration, residents and landowners

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immediately adjacent to the proposed land use or activity, and the community as a whole.

- b) Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
- c) Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance, of the land use or activity under consideration, and be necessary to insure compliance with those standards.

Conditions imposed with respect to the approval of a variance shall be recorded as part of the ZBA minutes, and shall remain unchanged except upon the mutual consent of the ZBA and the landowner following notice and hearing as required in a new case. The breach of any such conditions shall automatically invalidate the permit granted.

SECTION 20.05 APPLICATION AND NOTICES

A. Application

All applications to the ZBA shall be filed with the Township Zoning Administrator, on forms provided by the Township, and shall be accompanied by the applicable fee established by resolution of the Township Board. The Zoning Administrator shall transmit the application and information to each member of the Board of Appeals within five (5) days of the filing date. Applications shall include a completed application form, fee, all plans, studies and other information and data to be relied upon by the applicant.

B. Plot Plan

A plot plan shall be required with all variance requests. The plan shall be to scale and include all property lines and dimensions; setbacks; bearings of angles correlated with the legal description and a north arrow; all existing and proposed structures and uses on the property and abutting lots and parcels, dimensions of the structures and their dimensioned locations; lot area calculations necessary to show compliance with the regulations of this Ordinance. Where an application provides a variance sought in conjunction with a regular site plan review, a site plan prepared according to Chapter 14 shall satisfy the requirements of this section.

The ZBA shall have the authority to require a land survey at owners expense prepared by a registered land surveyor or registered engineer when the ZBA determines it to be necessary to insure accuracy of the plan.

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The ZBA shall have no obligation to consider and/or grant a request for relief unless and until a conforming and complete application has been filed; including relevant plans, studies and other information.

C. Application Involving an Appeal of Administrative Order

In a case involving an appeal from an action of an administrative official or entity, the administrative official or the clerk or secretary of the administrative entity, as the case may be, shall transmit to the ZBA copies of all papers constituting the record upon which the action was taken, together with a letter specifying an explanation of the action taken.

D. Consent of Property Owner Required

Application to the ZBA shall be made with the full knowledge and written consent of all owners of the property in question, acknowledged by the owner(s) on the application. This requirement shall include the consent of a land contract seller to the relief sought by a land contract purchaser.

E. Notice

When a request for an appeals has been filed in proper form with the Zoning Board of Appeals, the Chairman shall immediately place the said request for appeal upon the calendar for hearing, and cause a notice, stating the time, place and object of the public hearing to be served personally or by mail shall be published in a newspaper of general circulation in the Township at least not less than fifteen (15) days prior to before the date of such hearing, upon the party or parties making the request for appeal and to notify by mail all property owners within 300 feet of the premises seeking an appeal. A notice shall also be sent by mail or personal delivery to the owners of property that is the subject of the request. If the request for an appeal involves a specific parcel, written notice shall be sent to all persons to whom real property is assessed within three-hundred (300) feet of the property that is the subject of the request and to all occupants of all structures within three-hundred (300) feet of the subject property regardless of whether the property or structure is located in the zoning jurisdiction. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different persons, one (1) occupant of each unit or spatial area shall be given notice. If a single structure contains more than four (4) dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure.

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The notice is considered to be given when personally delivered or when deposited during normal business hours for delivery by the United States Postal Service or other public or private delivery service. The notice shall be given not less than fifteen (15) days before the date the request will be considered. If the name of the occupant is not known, the term "occupant" may be used for the intended recipient of the notice.

The notice shall do all of the following:

1. Describe the nature of the request.
2. Indicate the property which is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently existing within the property. If there are no street addresses, other means of identification may be used.
3. State when and where the request will be considered.
4. Indicate when and where written comments will be received concerning the request.

F. Stay of Proceedings

An appeal shall have the effect of staying all proceedings in furtherance of the action being appealed unless the officer or entity from whom the appeal is taken certifies to the ZBA that, by reason of facts stated in such certification, a stay would in his or her opinion cause imminent peril to life or property. If such certification is made, proceedings shall not be stayed unless specifically determined by the ZBA, or by a court of competent jurisdiction.

G. Decision by the Zoning Board of Appeals

The concurring vote of a majority of the membership of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of an administrative official, board or commission made in the enforcement of this ordinance, to decide in favor of an applicant on any matter upon which the ZBA is required to pass under this ordinance, or to grant a variance from the terms of this ordinance. A decision shall be made upon each case within sixty (60) days after a request or appeal has been filed with the Board unless additional time is agreed upon with the parties concerned.

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SECTION 20.06 DISPOSITION AND DURATION OF APPROVAL

A. ZBA Powers

The ZBA may reverse, affirm, vary or modify any order, requirement, decision, or determination presented in a case within the ZBA's jurisdiction, and to that end, shall have all of the powers of the officer, board or commission from whom the appeal is taken, subject to the ZBA's scope of review, as specified in this Ordinance and/or by law. The ZBA may remand a case for further proceedings and decisions, with or without instructions

B. Decision Final

A decision by the ZBA shall not become final until the expiration of ten (10) days from the date of entry of such order and service of the same upon the parties concerned unless the ZBA shall find the immediate effect of such order is necessary for the preservation of property or personal rights or public safety and shall so certify on the record. To the extent that decisions are requested or required to be in writing, the minutes of the ZBA meeting, and decision, as proposed under supervision of the secretary, shall constitute the written decision.

C. Period of Validity

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. The relief granted by the ZBA shall be valid for a period not longer than one year, unless otherwise specified by the ZBA, and within such period of effectiveness, actual, on-site improvement of property in accordance with the approved plan and the relief granted, under a valid building permit, must be commenced or the grant of relief shall be deemed void.

D. Record of Proceedings

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 the responsibility of the secretary of the ZBA, and shall be subject to approval of the ZBA. To the extent that a written decision in a case is requested or required, the minutes, prepared under the supervision of the ZBA secretary, along with the plan submitted, shall serve as the written decision, even if the minutes are awaiting final ZBA approval. The official records of the ZBA proceedings shall be filed in the Township Hall and shall be public records.

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E. Appeal of a ZBA Decision

Appeals of a ZBA decision may be taken to Branch County Circuit Court at the discretion of the applicant. Such an appeal must be filed within 21 days of the approval of the minutes of the meeting in question or 30 days after the issuance of a decision letter signed by the Chair of the ZBA or by three or more members of the ZBA other than the Chair.

F. New Application for Variance

If the ZBA denies a request for a variance, the decision of the ZBA shall not be subject to reconsideration for a period of 365 days, whereupon the applicant may submit a new application for the variance. However, the ZBA may waive the one year period if conditions upon which their original decision was made change, or if information relating to their original decision are found to be incorrect or inaccurate.

G. Site Plan Requirements

If an application or appeal to the Board of Appeals involves a development project which requires a recommendation of site plan approval by the Planning Commission, the applicant or appellant shall first apply for site plan approval as set forth in Chapter 12, "Site Plan Review". The Planning Commission shall review the site plan and shall determine the layout and other features required before granting a recommendation of approval of the site plan. The Planning Commission shall then transmit a copy of the site plan and the Commission's findings thereon to the Board of Appeals.