

ARTICLE XXIII BOARD OF APPEALS

Section 23.01 - Creation and Rules of Procedure. There is hereby created a five member Zoning Board of Appeals, hereinafter referred to as the Board of Appeals, which shall perform its duties and exercise its powers and jurisdiction according to the provisions of this Ordinance to the end that the objectives of this Ordinance are observed, public safety and general welfare secured, and substantial justice done. The Board of Appeals shall fix rules and regulations to govern its procedures.

Section 23.02 - Membership. Members of the Board of Appeals shall be appointed by the President of the Village of Three Oaks subject to confirmation by the Village Council. The membership shall serve at the pleasure of the Village Council for three year terms. The Village Council may appoint two alternate members who shall serve in the absence of any member(s) or serve in the instance that a member must be recused from any matter before the Board.

Section 23.03 - Jurisdiction. In addition to the duties and powers prescribed in other sections of this Ordinance, the Board of Appeals shall hear and decide on all matters relating to the following:

1. **Appeals From Administrative Decisions.** The Board of Appeals shall hear and decide appeals from, and review any order, requirement, decision or determination made by Zoning Administrator (or Building Inspector) and shall act upon all questions as they may arise in the administration of this Ordinance.
2. **Interpretation of Zoning District Boundaries.** The Board of Appeals shall interpret the boundary of any zoning ordinance district as depicted on the Official Zoning Map should a question of interpretation arise.
3. **Issue Variances From the Strict Terms of the Ordinance.** The Board of Appeals shall upon written application in specific cases may issue a variance from the terms of this Ordinance or vary the strict interpretation of the terms of this Ordinance as shall not be contrary to the public interest owing to special conditions where a literal enforcement of the provision of this Ordinance would result in hardship to the applicant.
4. **Issue Variances From the Strict Terms of Yard Setback Requirements.** The Board of Appeals shall upon written application in specific cases vary from the strict interpretation issue a variance from the terms of this Ordinance as shall not be contrary to the public interest owing to special conditions, a literal enforcement of the provision of lot and yard setback requirements as provided Article XXIII, Section.23.03.

Section 23.04 - Public Notification and Public Hearing Requirements. Whenever the approval of an application is required by the Board of Appeals under the provisions of this Ordinance, the Board of Appeals will set a date for public hearing on such application and give public notice thereof not less than seven (7) nor more than fifteen (15) days prior to the date of such meeting, and which notice shall give a brief statement of the contents of the application to be acted upon and provide notification to each property and resident of abutting properties as set forth in Article XXIII, Section 23.04. Any person who is interested in such application or the determination thereof may appear before the Board of Appeals in person or by attorney and shall be permitted to state the reasons for approval or disapproval of such application.

Section 23.05 - Standards for Approvals.

1. **General Standards for Approval.** In reaching its determination on an application or appeal, the Board of Appeals shall consider the following:
 - A. Whether the location, use, nature, intensity of operation, and congestion and density of population will be in conflict with the principal permitted uses of the district or with the purposes of this Ordinance.
 - B. Whether the available sewage disposal and water supply facilities will be adequate and safe.
 - C. Whether the lot size and yard area will be in harmony with the orderly and proper development of the district.

- D. Whether adequate access to the building or use will be provided by either existing roads (public or private) or other roads to be constructed.
 - E. Whether the building or use will be objectionable to nearby properties and their owners by reason of traffic, noise, vibration, dust, blowing sand and erosion, disposal of waste or sewage, fumes, smoke, air pollution, fire hazard, or bright flashing lights.
 - F. Whether the building or use will discourage or hinder the appropriate development and use of lands and buildings in the general vicinity.
2. **Standards for Zoning Boundary Interpretation.** When the exact boundary of a district is uncertain and upon the filing of an application for an interpretation is filed, the Board of Appeals shall first consider the boundary location based on the scale of the zoning map and secondly the intended purpose of the Planning Commission in placing the boundary in a location not within a property line, geographic feature or other easily identifiable geographic identifier.
3. **Standards for Approval of Variances.** In approving a variance the Board of Appeals shall consider the following standards with respect to the application:
- A. That the application demonstrated special conditions and circumstances which exist that are particular to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
 - B. That the literal interpretation of the provisions of this Ordinance would deprive the applicant of right commonly enjoyed by other proprietries in the same district under the terms of this Ordinance;
 - C. That the special conditions and circumstances do not result from the actions of the applicant;
 - D. That issuance of a variance would grant permit the use of an existing nonconforming of building, structure or use land through removal by the issuance of a variance the nonconforming status as it currently exists.
 - E. That the variance requested is the minimum variance which would make possible reasonable use of the land, buildings or structures;
 - F. That the Board of Appeals can issue a statement of positive findings that the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
 - G. The Board of Appeals has established such appropriate conditions and safeguards to assure conformity with the terms of this Ordinance which shall be attached as conditions of the variance.

Section 23.06 - Abandonment Or Recision of A Board of Appeals Action. If any appeal or variance is not put into effect within six (6) months of the date of approval by the Board, is discontinued through vacancy of the premises, lack of operation or otherwise for a continuous period of six (6) months, then the special permit or variance shall lapse and be null and void. Future use of said property shall conform in its entirety to the provisions of this Ordinance; however, the Board of Appeals, for good cause, may grant an extension of time, not to exceed six (6) months, to comply or to continue such special permit or variance if, in its judgment, such extension is necessary in order to avoid injustice or undue hardship to the owners of the property.

Section 23.07- Procedure of Appeals, Meetings and Public Notice. The following rules of procedure will govern the operation and decision making of the Zoning Board of Appeals:

1. Upon an appeal from any order, requirement, determination or decision of the Zoning Administrator, such appeal shall be taken within such time as shall be prescribed by the Board of Appeals by general rule by the filing with the Village Clerk and with the Board of Appeals, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
2. A concurring vote of a simple majority of the entire Board of Appeals shall be necessary to reverse any order, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which they are required to pass under this Ordinance or effect any variation of the Ordinance.
3. Upon receiving any such appeal, the Board of Appeals shall fix a reasonable time for a hearing and give notice as required by law as set forth in Article XIII, Section 23.04.
4. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination of the Zoning Administrator. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Ordinance, the Board of Appeals shall have the power in passing upon appeals to vary or modify any of the rules, regulations or provisions relating to the construction, erection or alteration of buildings or structures so that the spirit of this Ordinance shall be observed, public health and safety secured, and substantial justice is accomplished.

Section 23.08 - Appeals From the Board of Appeals. In the event the Board of Appeals fails to reach a decision on any matter within thirty (30) days after the hearing thereon, the person affected shall have the right to appeal to the appropriate Berrien County Trial Court on question of law and fact.