

## Chapter 13 – Zoning Board of Appeals

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### SECTION 13.01 COMPOSITION

Reference: MZEA 125.3601

The Tuscola Township Zoning Board of Appeals\* (ZBA) is hereby established as follows:

- A. The ZBA shall be composed of five (5) members. One (1) of these members shall be a member of the Tuscola Township Planning Commission and one (1) shall be a member of the Township Board\*. The remaining members shall be electors residing in Tuscola Township. A member of the Tuscola Township Board may not serve as chairperson of the ZBA. An employee or contractor of the Tuscola Township may not serve as a member of the ZBA.
- B. The Tuscola Township Board may appoint not more than two (2) alternate members to the ZBA that are electors residing in Tuscola Township. An alternate member may be called to serve as a member of the ZBA in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which a regular member has abstained for reasons of conflict of interest. The alternate member 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 ZBA.
- C. Members and alternate members of the ZBA, other than the Township Board member and the Planning Commission member, shall be representative of population\* distribution and the various interests present in Tuscola Township.
- D. The terms of office for regular and alternate members of the ZBA shall be for three (3) years, except for those members serving on the Planning Commission or Township Board, whose terms shall be limited to the time they are members of these bodies. 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, or a vacancy has otherwise occurred. Vacancies for unexpired terms shall be filled for the remainder of the term.
- E. A member of the ZBA may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance upon written charges and after public hearing. A ZBA regular member or alternate member shall disqualify himself/herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself/herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.
- F. A member of the ZBA may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his/her duties as determined by the Township Board in the annual budget.

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- G. A member of the Zoning Board of Appeals\* who is also a member of the Planning Commission or the Township Board shall not participate in a public hearing or vote on the same matter that the member voted on as a member of the planning commission or Township Board. However, the member may consider and vote on other unrelated matters involving the same property.

### SECTION 13.02 MEETINGS

Reference: MZEA 125.3601, 3602 & 3604.

- A. The ZBA\* shall not conduct business unless a majority of the regular members of the ZBA are present.
- B. Regular meetings of the ZBA shall be held in March and September of each year. When an applicant following the receipt of a written request for a zoning variance\*, the ZBA chairman will schedule the request for the next regular ZBA meeting or if the applicant chooses to pay the current ZBA special meeting fee, as authorized by the Tuscola Township Board\*, the ZBA Chairperson will schedule a separate meeting to hear the applicant's petition within a reasonable time and give notice as provided in Chapter 3, Section 3.01.
- C. Meetings of the ZBA shall be held at the call of the chairperson and at other times that the ZBA may specify in its rules of procedure. The chairperson, or in his/her absence, the acting chairperson may administer oaths and compel the attendance of witnesses.
- D. The ZBA shall maintain a record of its proceedings which shall be filed with the office of the Township Clerk with a completed Tuscola Township ZBA decision form.

### SECTION 13.03 POWERS; CONCURRING VOTE

Reference: MZEA 125.3603

- A. The Zoning Board of Appeals shall hear and decide questions that arise from the Administration of the zoning ordinance\* including:
1. Conducting hearings and making decisions on nonuse variance requests.
  2. Conducting hearings and making decisions on appeals of decisions of administrative officials or bodies including site plans\*, zoning permits, and conditional use permits.
  3. Interpretation of the text and map of the zoning ordinance.
  4. The Zoning Board of Appeals shall have the power to review and consider appeals pertaining to decisions on conditional uses, including Planned Unit Developments\*, made by the Planning Commission.

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- B. The concurring vote of a majority of the members of the ZBA is necessary to reverse the order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter which the zoning board of appeals is required to pass under the zoning ordinance\*, or to grant a variance in the zoning ordinance.

### **SECTION 13.04 EXCLUDED APPEALS**

Reference: MZEA 125.3603 & 125.3604

- A. Use variances\* are prohibited in Tuscola Township. Any other variance shall be a nonuse (dimensional) variance.

### **SECTION 13.05 PROCEDURES**

Reference: MZEA 125.3604

- A. An appeal to the ZBA\* may be taken by a person\* aggrieved or by an officer, department, board, or bureau of the state or township government.
- B. An appeal must be taken within thirty (30) days of the date of receipt of notice of the decision. A notice of appeal, specifying the grounds for the appeal must be filed with the officer or body from whom the appeal is taken and the ZBA. The body or officer from whom the appeal is taken shall immediately transmit to the ZBA all of the papers constituting the record from which the action appealed was taken.
- C. The filing of an appeal stops all proceedings unless the person or entity who made the decisions certifies to the ZBA that stopping of the proceedings would cause imminent peril to life or property in which case, all actions may be stopped by a restraining order issued by the ZBA or an order of the Tuscola County Circuit Court.
- D. At the hearing, a party may appear in person or be represented by an agent or attorney. The ZBA 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.

### **SECTION 13.06 NONUSE (DIMENSIONAL) VARIANCES**

Reference: MZEA 125.3604 (Items 7 & 8)

- A. The Tuscola Township ZBA\* has the authority to grant nonuse variances\* relating to the construction, structural changes, or alteration\* of buildings or structures\* related to dimensional requirements of the zoning ordinance\* or any other nonuse-related standard in this ordinance.

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- B. Nonuse variances shall be approved only upon a ZBA finding that strict application of the regulations would result in practical difficulties to the owner of such property. Under no circumstances shall a nonuse variance be granted unless not granting the variance would deny reasonable access, endanger public health, welfare or safety, or cause an unnecessary hardship on the applicant. No variance shall be granted where such hardship is self-created. Consideration of granting a nonuse variance shall be made only when all of the following criteria are met:
1. Exceptional characteristics of the property for which the variance is sought make compliance with dimensional requirements unnecessarily burdensome or would unreasonably prevent the owner from using the property.
  2. The characteristics that make compliance with dimensional requirements difficult must be related to unique characteristics of the property.
  3. The characteristics that make compliance with dimensional requirements difficult must not have been created by the current or a previous owner.
  4. The proposed variance would do substantial justice to the applicant as well as other property owners in the district and will be the minimum necessary, and no variance shall be granted where a different solution not requiring a variance would be possible.
- C. The ZBA must insure in issuing a variance that the spirit of the ordinance is observed, public safety secured, and substantial justice done.
- D. Any variance that authorizes construction contrary to the requirements of this Ordinance shall be void unless the construction so authorized is commenced within twelve (12) months of the granting of the variance and completed within eighteen (18) months of its start, unless an extension is authorized by the ZBA.

### **SECTION 13.07 INTERPRETATION OF ZONING ORDINANCE AND MAP**

- A. The ZBA\* shall have the authority to interpret the provisions of this ordinance when a requirement, standard, or other text is unclear. When determining if a particular use is included in the definition of a type or group of uses permitted in a district, it shall not interpret a use specifically listed in one district as being inferred as permitted in another district.
- B. In interpreting the boundaries of zoning districts, the ZBA shall assume, unless there is information indicating otherwise, that zoning district boundaries follow lot\* lines, the centerline of creeks, streets\* or alleys, railroad right-of-ways\*, section lines, one-quarter or one-eighth section lines, or corporate boundary lines as they existed when the zoning boundary line was established.

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### **SECTION 13.08 ZBA DECISION AS FINAL**

Reference: MZEA 125.3605

The decision of the Tuscola Township Zoning Board of Appeals\* shall be final. A party aggrieved by the decision may appeal to the Tuscola County Circuit Court.

### **SECTION 13.09 CIRCUIT COURT REVIEW**

Reference: MZEA 125.3606

- A. When an aggrieved party appeals to the circuit court, 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 on proper procedure.
  3. Is supported by competent, material and substantial evidence on record.
  4. Represents the reasonable exercise of discretion granted by law to the ZBA.
- B. If the court finds the record to be 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 ZBA 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 the Zoning Board of Appeals shall be filed within 30 days after the ZBA\* issues its decision in writing signed by the chairperson. The court shall have jurisdiction to make such further orders as justice may require. An appeal may be had from the decision of the circuit court to the court of appeals.