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**IOSCO TOWNSHIP ZONING**  
**ARTICLE 14**  
**ZONING BOARD OF APPEALS**

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## ARTICLE 14

### ZONING BOARD OF APPEALS

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#### **Section 14.1 Board Established**

The Zoning Board of Appeals, hereinafter referred to as the Board of Appeals, is hereby established, in accordance with as amended by Public Act 14 of 2008.

#### **Section 14.2 Membership and Terms**

14.2.1 The Board of Appeals shall consist of not less than three (3), members. The number of members shall be set by resolution of the Township Board. All members shall be appointed by the Township Board.

14.2.2 The first member of the Board of Appeals shall be a member of the Township Planning Commission.

14.2.3 The remaining members of the Board of Appeals shall be selected from the electors of the Township residing outside of incorporated cities and villages. The members selected shall be representative of the population distribution and of the various interests present in the Township.

14.2.4 One member may be a member of the Township Board, however, an elected officer of the Township shall not serve as chairperson of the board of appeals.

14.2.5 The term of office of each member shall be for 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 members of the Planning Commission, or Township Board respectively, and the period stated in the resolution appointing them. A successor shall be appointed not more than one month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term.

14.2.6 An employee or contractor of the Township Board shall not serve as a member or an employee of the Board of Appeals.

14.2.7 A member shall abstain from voting on any question on which they have a conflict of interest. Failure of a member to abstain in such cases, shall constitute misconduct of office.

14.2.8 **Alternate Members.** The Board may appoint one alternate member for the same term as regular members of the Zoning Board of Appeals. The alternate member may be called to serve as a regular member of the Zoning Board of Appeals in the absence of a regular member, if the regular member will be unable to attend 2 or more consecutive meetings or will be unable to attend meetings for a period of more than 30 consecutive days. The 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 is made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.

### **Section 14.3 General Procedures of the Board of Appeals**

14.3.1 **Rules.** The Board of Appeals shall adopt rules and regulations to govern its procedures. The Board of Appeals shall elect a Chair, Vice-Chair, and Secretary from its membership. An elected officer of the township shall not serve as Chair of the Board of Appeals.

14.3.2 **Votes.** A concurring vote of a majority of the members of the Board of Appeals shall be necessary for any decision. The Board of Appeals shall not conduct business unless a majority of its members is present.

14.3.3 **Representation.** Any person(s) may appear on their own behalf at a hearing, or may be represented by an agent or attorney.

14.3.4 **Timeliness.** The Board of Appeals shall decide upon all matters within a reasonable time from the filing date. The decision of the Board of Appeals shall be in the form of a resolution containing a full record of its findings and determinations in each case.

14.3.5 **Meetings** Meetings of the Board of Appeals shall be held at the call of the Chair and at such times as the Board in its rules and regulations might specify. Minutes shall be kept of each meeting and the Board shall record into the minutes all findings, conditions, facts, and other relevant factors, including the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and all of its official actions. All meetings and records shall be open to the public. All minutes shall be filed in the office of the Township Clerk.

- A. If there is to be a large lapse of time between meetings, per the Open Meetings Act, the chairperson may issue a decision in writing. That decision must be signed by the chairperson or all Zoning Board members if there is not a chair, the appeal clock starts running from the date of the decision.

- B. Meeting minutes may be approved by the chairperson according to the Open Meetings Act if no meeting is scheduled to follow.

14.3.6           **Oaths.** The Chair of the Board of Appeals, or in the Chairman's absence, the acting chair, may administer oaths and compel the attendance of witnesses.

**Section. 14.4            Powers and Duties of the Board of Appeals**

14.4.1            The Board of Appeals shall perform its duties and exercise its powers as provided in Public Act 110 of 2006, as amended, so that the objectives of this ordinance shall be attained, the public health, safety, and welfare secured, and substantial justice done. The Board of Appeals shall:

- A. Hear and decide appeals of any administrative decision of any official or body on any requirement of this ordinance.
- B. Grant or deny requests for variances.
- C. Grant or deny requests for the expansion or alteration of non-conforming buildings and structures.
- D. Grant or deny requests for substitutions of non-conforming uses. The use being considered as a substitute must be equal to or less intense than the non-conforming use being replaced.

14.4.2            The Board of Appeals shall not alter or change the zoning district classification of any property, or make any change in the terms of this ordinance, and shall not take any action which would have as a result the making of legislative changes in this ordinance.

**Section 14.5            Fees:** A schedule of fees of the Zoning Board of Appeals shall be established by resolution of the Township Board.

**Section 14.6            Hearings:** The Board of Appeals shall hold a public hearing on each question submitted to it for decision. The Chair of the Board of Appeals shall fix a reasonable time and date for the hearing, said date not to exceed 45 days from the filing date.

- A. The Board of Appeals shall also give a notice of the hearing in a newspaper of general circulation not less than 15 days before the date of the hearing.
- B. Notice of hearing must be given to the following persons by first class letter :
  - 1. Owners of property that is the subject of the request.

2. All persons to whom real property is assessed within 300 feet of the property that is the subject of the request
  3. Occupants of all structures within 300 feet of the subject property.
- C. The notice does not need to be given to more than 1 occupant of a structure, but if the structure contains more than 1 dwelling unit or distinct spatial areas owned or leased by different persons, 1 occupant of each unit or spatial area must be given notice. If a single structure contains more than 4 units, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at a primary entrance.
  - D. Notice is considered to have been given when it is either personally delivered or when it is deposited with the US post office or other delivery service during normal business hours or not less than 15 days before the request is being considered.
  - E. A hearing granted by the Township Board to an interested property owner regarding a zoning ordinance or zoning amendment is not subject to all of the notice requirements in the ZEA, but notice must be given to the interested property owner as provided by the ZEA.

**Section 14.7 Appeals (General Rules):** All questions concerning interpretation and application of the provisions of this ordinance shall first be presented to the Zoning Administrator. Such questions shall be presented to the Board of Appeals only on appeal from the decisions of the Zoning Administrator. Recourse from decisions of the Board of Appeals shall be to the courts as provided by law.

**Section 14.8 Appeals (Procedures)**

14.8.1 Appeals shall be filed within thirty (30) days of the decision in question. The appeal shall be filed with the Township Clerk. The appellant shall submit a clear description of the order, requirement, decision, or determination for which the appeal is made and the grounds of the appeal. The Zoning Administrator shall transmit to the Board of Appeals copies of all papers constituting the record upon which the action appealed from was taken, within seven (7) days of the filing date. The appellant may be required by the Board of Appeals to submit additional information to clarify the appeal.

14.8.2 Appeals may be taken from any person aggrieved or by any officer, department, board, agency, or bureau of the Township, County, State or Federal government.

14.8.3 A non-refundable fee shall be paid to the Township Clerk at the time of filing the notice of appeal and shall be deposited in the Township's General Fund.

14.8.4 An appeal stops all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator from whom the appeal is taken certifies to the Board of Appeals after the notice is filed that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be

stayed other than by order of the Board of Appeals, or by a court of record (with notice to the Zoning Administrator from whom the appeal is taken), and if reasonable cause is shown.

14.8.5 During the appeal process, the appellant shall discontinue the alleged illegal action or condition unless expressly permitted by the Board of Appeals, or a court of record, due to imminent peril to life or property.

14.8.6 The Board of Appeals may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the public official from whom the appeal is taken.

## **Section 14.9 Variances (Intent)**

14.9.1 The Board of Appeals shall have all powers and duties provided by statute and this ordinance, including the power to effect any variation in this ordinance. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Zoning Ordinance, the Board of Appeals may vary or modify any of the ordinance rules or provisions so that the spirit of the ordinance is observed, public safety is secured, and substantial justice is done. Reasonable conditions may be required with the granting of any variance. The conditions may include conditions necessary to insure that public services and facilities affected by the proposed land use or activity will be capable of accommodating increased service and facility loads, caused by the land use or activity; to protect the natural environment and conserve natural resources and energy; to insure compatibility with adjacent uses of land; and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

- A. Be designed to protect: natural resources; the health, safety, welfare, and social and economic well-being of those who will use the land-use or activity under consideration; residents and land owners 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 this Zoning Ordinance; be related to the standards established in this ordinance for the land use or activity under consideration; and be necessary to insure compliance with these standards.

14.9.2 Intent With Respect to Temporary Housing For Aged Parents. The Board of Appeals may find that there are practical difficulties or unnecessary hardships in carrying out the strict letter of this Zoning Ordinance, where there is an existing or proposed temporary use of

one (1) mobile home as additional dwelling space to an existing principal dwelling, all located on one (1) lot, solely occupied by a retired parent or step-parent and spouse, one of whom is at least seventy (70) years of age or older, or unable to care for him or herself, for the purpose of enabling the retired parents to live in a secure environment, where their well-being or security requires housing proximate to the principal dwelling occupied by the family of the aged parent.

## **Section 14.10            Variances (Procedures)**

14.10.1            Filing. An application for a variance shall be filed with the Township Clerk by the record owner of the lot in question or by a person(s) authorized to act on the record owner's behalf. The application shall consist of a completed application form, fee, and the information required in this Section. The Clerk shall transmit the application and information to each member of the Board of Appeals and to the Zoning Administrator within three (3) days of the filing date.

14.10.2            Information Required. Each application for a variance shall contain the following information:

- A.    Legal description, address, and tax parcel number of the subject lot.
- B.    An accurate, scaled drawing of the lot, showing all property lines, dimensions, and bearings or angles, correlated with the legal description; all existing and proposed structures and uses on the lot; actual measurements of structure dimensions and locations on the drawing; lot area; and all calculations necessary to show compliance with regulations of the zoning ordinance.
- C.    Name and address and phone numbers of the applicant, and property owner(s), and the interest of the applicant in the property.

14.10.3            Standards For Review: A variance shall not be granted by the Board of Appeals unless and until all of the following standards are met:

- A.    Special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures, or buildings in the same district.
- B.    That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties 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 granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
- E. Any non-conforming use of neighboring lands, structures or buildings in the same district, any permitted or non-conforming uses of lands, structures or buildings in other districts; or any non-conforming structures shall not be considered grounds for the issuance of a variance.
- F. A variance granted shall be the minimum variance that will make possible the reasonable use of the land, building or structure.
- G. The variance granted shall be in harmony with the intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public interest.
- H. In granting any variance, the Board of Appeals may establish appropriate conditions and safeguards in conformity with this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance, and punishable under Section 3.14, herein.
- I. Under no circumstances shall the Board of Appeals grant a variance to allow a use not permitted under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in the district.

**Section 14.11            Variances (Expiration)**

Each variance granted under the provisions of this ordinance shall become null and void unless the construction authorized by such variance has been commenced within one hundred eighty (180) days after granting of such variance and pursued diligently to completion, or the occupancy of land or buildings authorized by such variance and pursued diligently to completion, or the occupancy of land or buildings authorized by such variance has taken place within one hundred eighty (180) days after the granting of such variance. The Board of Appeals may, upon evidence of extenuating circumstances, grant not more than one (1) extension of up to 180 days to the expiration date of a variance.

**Section 14.12            Re-application for Variance**

No application for a variance which has been denied wholly or in part by the Board of Appeals shall be resubmitted for a period of three hundred sixty-five (365) days from the date of such denial, except on grounds of new evidence or proof of changed conditions found by the Board of Appeals to be valid.



### **Section 14.13            Site Plan Requirements**

If an application or appeal to the Board of Appeals involves the construction, alteration or expansion of a building, structure or use which requires site plan approval by the Planning Commission, the applicant or appellant shall first apply for preliminary and final site plan approval as set forth in Article 7, Site Plan Review. The following sequence for submission shall be followed:

- A.     The Planning Commission shall review said plan and shall determine the layout and other features required to obtain approval of the preliminary site plan, contingent on the variances granted by the Zoning Board of Appeals (ZBA).
- B.     The Planning Commission transmits the approved preliminary site plan and the Commission's findings therein to the ZBA. The ZBA shall upon deciding on the application for appeal, returns the plan and its decision and its recommendations therein to the Planning Commission for Commission action.
- C.     The applicant after making changes to the preliminary site plan relating to the recommendations of the ZBA shall submit the final site plan to the Planning Commission for final site plan approval.

### **Section 14.14            Appeals to Courts**

Any decision of the Board of Appeals may be appealed, by any person having an interest affected by the decision. He shall have the right to appeal to the circuit court on questions of law and fact, as provided in Public Act 110 of 2006, as amended (MCL 125.3606) to comply with the Michigan Zoning Enabling Act.

### **Section 14.15            Decisions of the ZBA**

- A.     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 in the premises. To that end, the ZBA 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.
- B.     The ZBA shall return a decision to the applicant upon each case within thirty (30) days after a request or appeal is filed, unless further time is agreed upon the parties concerned.

- C. Any decision of the ZBA shall not become final until the expiration of five (5) days from the date of entry of such order, unless the ZBA shall find immediate effect is necessary for the preservation of property or personal rights, and shall so certify for the record.
  
- D. The concurring vote of a majority of the members of the ZBA shall be necessary to reverse any order, requirement, decision, or determination, or to decide in favor of the applicant on any matter upon which they are required to pass under this ordinance, or to effect any variation in the ordinance.