

**ARTICLE XV  
BOARD OF APPEALS**

**Section 15.1 Creation and Membership**

There is hereby established a Zoning Board of Appeals (ZBA) which shall perform its duties and exercise its powers as provided in Section 601 of Act 110 of Public Acts of 2006, as amended, and Act 226 of the Public Acts of 2003, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and justice done. The ZBA shall consist of the six (6) regular members, three each appointed by a majority vote of the members of the respective Township Board of Trustees.

- A. The first regular member appointed by each township board shall be a member of the Planning Commission for the terms of his/her office. The member shall be representative of each township participating in the Planning Commission.
- B. A member of each Township Board shall serve as a regular member, but may not serve as chairperson.
- C. The remaining two (2) regular members of the Board must be selected from the electors of the appointing township residing outside of incorporated cities and villages and shall be representative of each township and of the population distribution and of the various interests present in the township.
- D. An employee or contractor of the Township Board may not serve as a member or an employee of the Board of Appeals.
- E. The Township Boards may appoint not more than one alternate member each, for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called to sit as a regular member of the Zoning Board of Appeals in the absence of a regular member if a regular member will be unable to attend one (1) or more meetings. An 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 has been made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals. The intent is to assemble a Board of Appeals with the majority representation from the township where the appeal is taken.
- F. A member of the Zoning Board of Appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his/her duties.
- G. A member may be removed by the Township Board for misfeasance, malfeasance or nonfeasance in office upon written charges and after a public hearing. A 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.

- H. Terms for ZBA members 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 members of the Planning Commission, or Township Board, respectively, and the period stated in the resolution appointing them. When members are first appointed, the appointment may be for less than 3 years to provide for staggered terms. Vacancies for unexpired terms shall be filled for the remainder of the term.

### **Section 15.2 Meetings**

Meetings of the Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine or specify in its rules of procedure. All hearings conducted by said Board shall be open to the public. The Board of Appeals shall adopt its own rules of procedure and keep a record of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating said fact; and shall file a record of its proceedings in the office of the Township Clerks, and shall be a public record. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance or to effect any variation of this Ordinance.

The Board of Appeals shall not conduct business unless a majority of the regular members of the Board of Appeals members qualified to sit for a particular matter are present to constitute a quorum.

### **Section 15.3 Appeals**

- A. An appeal concerning the administration of the provisions of this Ordinance may be taken to the Board of Appeals within the timeframe defined in the general rules and procedures adopted by the Zoning Board of Appeals. If such a timeframe is not specified, appeals shall be filed within thirty (30) days of the decision of the Zoning Administrator or other body from which the appellant seeks relief.
- B. Except as provided in Section 15.4, the ZBA may hear appeals made by any person who alleges he or she has been aggrieved by a decision of the Zoning Administrator or other body from which the appellant seeks relief. The ZBA may also interpret the location of zoning district boundaries, may interpret the provisions of this Ordinance and have the authority to classify in which district unclassified property use should be located based on similarities and dissimilarities with other listed property uses and following the procedures contained in Section 15.13.
- C. An appeal may be made by any person, firm or corporation, or by any Officer, Department or Board of the Townships. The appellant shall file with the Board of

Appeals, on blanks or forms to be furnished by the Zoning Administrator, a notice of appeal specifying the grounds for the appeal.

- D. Upon receipt of a demand for appeal, the Zoning Administrator will review the demand for appeal to insure it is complete and the fee is paid.
  - 1. If the application is not complete, the Administrator will return the application to the applicant with a letter that specifies the additional material required.
  - 2. If the application is complete, the Administrator and Chairperson of the Appeals Board shall establish a date to hold a hearing on the appeal.
  - 3. The Zoning Administrator shall transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The final decision of such appeal shall be in the form of a resolution either reversing, modifying or affirming, wholly or partly, the decision or determination appealed. Reasons for the decision must be stated.
  
- E. In rendering a decision, the ZBA may, by a concurring vote of a majority of its members, reverse or affirm in whole or in part a decision or determination made by the Zoning Administrator, or designee, or other body from which the appellant seeks relief. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney.

#### **Section 15.4 Limitations on Authority**

The ZBA has no authority to review the Planning Commission's decision on applications for Special Uses. These appeals are taken to the Circuit Court for Benzie County.

#### **Section 15.5 Stay**

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals, after notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by the Circuit Court, on application, on notice of the Zoning Administrator and on due course shown.

#### **Section 15.6 Dimensional Variances**

The ZBA may grant dimensional variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in practical difficulty. To establish practical difficulty, the applicant must establish all of the following:

- A. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties

in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.

- B. The need for the requested variance is not the result of action of the property owner or previous property owners or otherwise self-created.
- C. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
- D. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give a substantial relief to the property owner and be more consistent with justice to other property owners.
- E. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.

#### **Section 15.7 Conditions for a Dimensional Variance**

The ZBA may attach reasonable conditions with the approval of a dimensional variance. These conditions may include those necessary 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, 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. Any conditions imposed, however, shall meet all of 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 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 for the land use or activity under consideration, and be necessary to insure compliance with those standards.

### **Section 15.8 Zoning Board of Appeals Approval**

The ZBA may require an appellant to submit surveys, plans, or other information deemed reasonably necessary to making an informed decision on his or her appeal. The ZBA may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area. The decision of the ZBA is final. A party aggrieved by the decision may appeal to the circuit court of Benzie County within thirty (30) days after the ZBA issues its decision in writing signed by the chairperson, or twenty one (21) days after the ZBA approves the minutes of its decision. The court may affirm reverse, or modify the decision of the ZBA, or make other orders as justice requires.

### **Section 15.9 Exercising Powers**

In exercising the above powers, the Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, 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 all the powers of the Zoning Administrator or other body from whom the appeal is taken.

### **Section 15.10 Notice of Hearing**

Following payment of the required fee and receipt of a written request concerning an appeal of an administrative decision, a request for an interpretation of the zoning ordinance or a request for a variance, the Zoning Board of Appeals shall hold a public hearing, after giving the following applicable notice:

- A. For an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the township and shall be sent to the person filing the appeal and to the Zoning Administrator or other administrative agency or official whose decision is being appealed no less than fifteen (15) days before the public hearing. If a specific parcel is involved in the appeal, then the notice shall also be sent by first class mail or personal delivery to all persons whom own real property and the occupants of all structures within three hundred (300) feet of the boundary of the property in question.
- B. For a request seeing an interpretation of the zoning ordinance, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the township and shall be sent to the person requesting the interpretation no less than fifteen (15) days before the public hearing. If a specific parcel is involved in the appeal, then the notice shall also be sent by first class mail or personal delivery to all persons whom own real property and the occupants of all structures within three hundred (300) feet of the boundary of the property in question.
- C. For variance request, a notice stating the nature of the variance being requested and the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the township and shall be sent to the

person requesting the variance no less than fifteen (15) days before the public hearing. In addition, a notice stating the nature of the variance being requested and the time, date, and place of the public hearing shall be sent by first class mail or personal delivery to all person to whom real property in question and to the occupants of all structures with in 300 feet of the boundary of the property in question.

### **Section 15.11 Miscellaneous**

No order of the Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit. A six (6) month extension may be granted by the Board of Appeals if applied for prior to the expiration of the one (1) year period.

### **Section 15.12 Denial and Re-submittal**

No application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall be submitted for a period of one (1) year from the date of the last denial, except on grounds of newly discovered evidence or when the township's attorney certifies in writing that a mistake in the original procedure of the original hearing had been made.

### **Section 15.13 Unclassified Uses**

The Zoning Board of Appeals shall have the power to hear and decide the following interpretation matters:

- A. To determine the meaning of zoning ordinance provisions when ambiguity exists in those provisions.
- B. To determine the precise location of the boundary lines between zoning districts.
- C. To classify a proposed use of land or use of a structure that is not expressly provided in this Ordinance (an unlisted property use). In determining the proper classification of an unlisted property use, the Zoning Board of Appeals shall consider the characteristics of the proposed unlisted property use in relation to similar and comparable uses listed in any zoning district and in relation to the requirements of the townships master plan. Once classified, the unlisted property use shall be subject to all applicable regulations pertaining to similar uses in the zoning district in which placed, including the regulations pertaining to uses subject to a special use permit approval, if classified as such a use by the Zoning Board of Appeals.