

ARTICLE XIII
BOARD OF APPEALS

SECTION 1301. CREATION AND MEMBERSHIP

There is hereby created a Board of Appeals, which shall perform its duties and exercise its powers as provided in Michigan Zoning Enabling Act 110 of 2006, as amended, (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and substantial justice done. The Board shall consist of the following five (5) members:

- A. The first member shall be a member of the Township Planning Commission, for the term of his office.
- B. The second member may be a member of the Township Board, appointed by the Township Board for the term of his/her office.
- C. The next three (3) members shall be selected, and appointed by the Township Board from among the electors, residing in the unincorporated area of Riley Township, for a period of three (3) years, provided, that no elected officer of the Township nor any employee of the Township Board may serve simultaneously as the third member or as an employee of the Township Board of Appeals.
- D. The Township Board may appoint not more than two (2) alternate members for the same term as regular members of the Board of Appeals. The alternates may sit as regular members as specified in the Zoning Ordinance when regular members are unable to attend two (2) or more consecutive meetings, or for a period of more than thirty (30) consecutive days. The alternate may also serve if a regular member has a conflict of interest and abstains from voting.

SECTION 1302. MEETINGS:

All meetings of the Township Board of Appeals shall be held upon demand (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) and at other times as the Board in its rules of procedure may specify. 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 Clerk, which 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, (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) 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 in this Ordinance. The Board shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it.

SECTION 1303. APPEAL

An appeal may be taken to the Board of Appeals by any person, firm or corporation, or by any officer, department, board or bureau affected by a decision of the Zoning Administrator.

(P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) Such appeal shall be taken within such time as shall be prescribed by the Board of Appeals by general rule, by filing with the Zoning Administrator (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) and with the Board of Appeals a notice of appeal specifying the grounds thereof. The Zoning Administrator (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) shall forthwith transmit to the Zoning Board of Appeals (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) all of the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) certifies to the Board of Appeals after notice of appeal has been filed with him 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 a court of record.

The Board shall select a reasonable time and place for the hearing of the appeal and give notice thereof to the parties and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.

SECTION 1304. FEES

The Township Board may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the Zoning Board of Appeals. At the time the notice for appeal is filed said fee shall be paid to the Township Clerk (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) who shall forthwith pay over to the Township Treasurer to the credit of the general revenue fund of the Township of Riley.

SECTION 1305. JURISDICTION

The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this Ordinance, but does have power to act on those matters where this Ordinance provides for an administrative review, or interpretation and to authorize a variance as defined in this section and laws of the State of Michigan. Said powers include:

A. **Administrative Review:** To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Building Inspector or any other administrative official in carrying out or enforcing any provisions of this Ordinance.

B. **Variance:** To authorize, upon an appeal, a variance from the strict application of the provisions of this Ordinance where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to or exceptional undue hardship upon the owner of such property provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance. In granting a variance, the Zoning Board of appeals (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) may attach thereto such conditions regarding the location, character and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this Ordinance. In granting a variance, the Zoning Board of appeals (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) shall state the grounds upon which it justifies the granting of a variance.

C. **Interpretations and Special Approvals:** To hear and decide in accordance with the provision of this Ordinance: requests for interpretation of the Zoning Map or Ordinance, appeals from the decision of the Zoning Administrator and on any provision of this Ordinance that the Zoning Board of Appeals are required to pass. Also, the Zoning Board of Appeals shall hear and decide on any special approval uses on appeal from the decision of the Planning Commission, subject to such conditions as the Zoning Board of Appeals (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this Ordinance, including the following:

1. Interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the Zoning Map fixing the use districts, accompanying and made part of this Ordinance.
2. Permit the modification of the automobile parking space or loading space requirements where, in particular instance, such modification will not be consistent with the purpose and intent of such requirements.

3. Permit such modification of the height and area regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape, or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification.
4. Permit temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the Township and for periods not to exceed six (6) months in developed sections. Extensions may be granted for construction purposes.
5. Permit, upon proper application, the following character of temporary use, not otherwise permitted in any district, not to exceed twelve (12) months with the granting of twelve (12) month extensions being permissible: uses which do not require the erection of any capital improvement of a structural nature.

The Board of Appeals, in granting permits for the above temporary uses, shall do so under the following conditions:

- (a) The granting of a temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.
- (b) The granting of the temporary use shall be in writing, stipulating all conditions as to time, nature of development permitted and arrangement for removing the use at the termination of said temporary permit.
- (c) All setbacks, land coverage, off-street parking, lighting and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the Township of Riley, shall be made at the discretion of the Board of Appeals.
- (d) In classifying uses not requiring capital improvement, the Board of Appeals shall determine that they are either demountable structures related to the permitted use of the land; recreation developments, such as but not limited to: golf driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.
- (e) The use shall be in harmony with the general character of the district.

(Removed (f) P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011)

D. The Zoning Board of Appeals has the authority to classify uses that are not listed in the Zoning Ordinance. (10/00)

E. In consideration of all appeals and all proposed variations to this Ordinance, the Zoning Board of Appeals (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) shall, before making any variations from the Ordinance in a specific case, first determine that the proposed variation will not impair an adequate supply of light and air to adjacent property, or unreasonable increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonable diminish or impair established property values within the surrounding area, or in any other respect impair the public safety, health, comfort, morals, or welfare of the inhabitants of the Township of Riley. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirements, decisions, or determinations of the Building Inspector, or to decide in favor of the applicant any matter upon which it is authorized by this Ordinance to render a decision. Nothing herein contained shall be construed to give or grant to the Board the power or authority to alter or change this Ordinance or the Zoning Map, such power and authority being reserved to the Township Board of the Township of Riley, in the manner provided by law.

SECTION 1306. ORDERS

In exercising the above powers, the Board 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 Building Inspector from whom the appeal is taken.

SECTION 1307. NOTICE

The Board shall make no recommendation except in a specific case and after a public hearing conducted by the Board. It shall by general rule or in specific cases, determine the interested parties who, in the opinion of the Board may be affected by any matter brought before it, which shall in all cases include all owners of record of property within three hundred (300') (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011) feet of the premises in question, such notices shall be according to the requirements of the Michigan Zoning Enabling Act (ZEA), Public Act 110 of 2006 as amended. (P.H. 6/13/2011; Adopted 10/4/2011; Published 10/13/2011)

SECTION 1308. MISCELLANEOUS

No order of the Board permitting the erection 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.