

**ZONING ORDINANCE
KEARNEY TOWNSHIP
ANTRIM COUNTY MICHIGAN**

**ARTICLE VA
ZONING BOARD OF APPEALS**

Section 5A.01 PURPOSE. In order that the objectives of this Ordinance may be fully and equitably achieved, that a means shall be provided for competent interpretation of this Ordinance, that the health, safety and welfare of the public be secured, and that justice be done, there is hereby established a Township Zoning Board of Appeals, which shall perform its duties and exercise its powers as provided in Section 603 of Act 110 of the Public Acts of 2006, as amended (MCLA 125.3603).

Section 5A.02 MEMBERSHIP, TERMS OF OFFICE, ALTERNATES, AND REMOVAL.

1. The Township Board shall appoint five (5) members of the Zoning Board of Appeals. The first member shall be a member of the Township Planning Commission for the term of his or her office. The remaining members shall be selected from the electors of the township residing outside of incorporated cities and villages and shall be representative of the population distribution and of the various interests present in the township. One (1) member of the Zoning Board of Appeals may be a member of the Township Board for the term of his or her office. However, an elected officer of the township shall not serve as chairman. Finally, an employee or contractor of the Township Board may not serve as a member of the Zoning Board of Appeals. Except for members serving on the Zoning Board of Appeals because of their membership on the Township Planning Commission or Township Board, each member of the Zoning Board of Appeals shall serve for a term of three (3) years, except that for the first appointments two (2) member(s) shall serve for a term of three (3) years, two member(s) shall serve for a term of two (2) years, and one (1) member shall serve for a term of one (1) year.
2. The Township Board shall appoint two (2) alternate members of the Zoning Board of Appeals for three (3) year terms, except that for the first appointments one (1) alternate member shall serve for a two (2) year term. The alternate members shall be called on a rotating basis by the chairperson of the Zoning Board of Appeals to sit as regular members if a regular member will be unable to attend one (1) or more meetings and when a regular member has abstained for reason of conflict of interest. An alternate member called to sit as a regular member shall serve in the case until a final decision has been made and shall have the same voting rights as regular members of the Zoning Board of Appeals.
3. The Township Board may remove a regular or alternate member of the Zoning Board of Appeals for nonperformance of duty or misconduct in office following written charges and a public hearing before the Township Board. A regular member shall disqualify himself or herself from a vote and an alternate member shall not sit as a regular member in which the member has a conflict of interest. Failure of a regular or alternate member to disqualify himself or herself from participating in a case in which the member has a conflict of interest constitutes a misconduct in office.

Section 5A.03 MEETINGS, MINUTES, AND VOTING REQUIREMENTS.

1. The Zoning Board of Appeals shall not conduct business unless a majority of the regular members of the Zoning Board of Appeals are present.
2. Meetings of the Zoning Board of Appeals shall be open to the public and shall be held at the call of the chairperson and as the Board may determine necessary.
3. Minutes shall be kept of all proceedings. The minutes shall contain evidence and data relevant to every case considered together with the votes of the members and the final disposition of each case. The basis and reasoning of every determination shall be stated. Such minutes shall accompany and be attached to the standard forms required of persons appealing as part of the Zoning Board of Appeals' permanent records. Such minutes shall become a public record and as such be filed in the office of the Township Clerk.
4. The concurring vote of a majority of the members of the entire Zoning Board of Appeals shall be necessary to reverse an order, requirement, decision, or determination of the Zoning Administrator, Planning Commission, or other administrative official; to decide in favor of an applicant on any matter upon which the Board is required to pass under this Ordinance; or to grant a dimensional variance under this Ordinance. However, to grant a use variance under this Ordinance, a vote of 2/3 of the members of the Zoning Board of Appeals shall be required.

Section 5A.04 JURISDICTION OF THE ZONING BOARD OF APPEALS.

1. The Zoning Board of Appeals shall have the power to hear and decide appeals from any review, any order, requirement, interpretation, decision or determination made by the Zoning Administrator, Planning Commission, or other administrative official in the administration of this Ordinance. Provided, however, the Zoning Board of Appeals shall not have jurisdiction to hear appeals from Planning Commission decisions concerning special land uses and planned developments and shall not have jurisdiction to hear appeals from decisions made by the Zoning Administrator concerning whether to take enforcement action for alleged violations of this Ordinance.
2. 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 township 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.

3. The Zoning Board of Appeals shall have the power to authorize specific dimensional and use variances from the requirements of this Ordinance if it finds based upon competent, material, and substantial evidence following a public hearing that all of the applicable standards provided in this section have been met.

A. Standards for Dimensional Variances: To obtain a variance from the dimensional requirements of this Ordinance (area, setback, frontage, height, bulk, density or other dimensional requirements) the applicant must demonstrate that a practical difficulty exists by showing all of the following:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography and not due to applicant's personal or economic hardship.
2. That the need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).
3. 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.
4. 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 substantial relief to the property owner and be more consistent with justice to other property owners.
5. 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.

B. Standards for Use Variances: To obtain a variance from the use regulations of this Ordinance the applicant must demonstrate that unnecessary hardship exists by showing all of the following:

1. The building, structure, or land cannot be reasonably used for any of the uses permitted by right or by special use permit in the zoning district in which it is located.
2. The need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography and are not due to the applicant's personal or economic hardship.

3. The proposed use will not alter the essential character of the neighborhood.
4. The immediate hardship causing the need for the use variance was not created by the property owner or previous owners (self-created).

Section 5A.05 PROCEDURES CONCERNING THE ZONING BOARD OF APPEALS.

1. An appeal under Section 5A.04 subsection 1 may be taken by a person aggrieved, or by an officer, department, or board of the township. Any such appeal shall be filed within twenty-one (21) days of the decision being appealed. The person taking the appeal shall file with the Zoning Administrator a completed notice of appeal form furnished by the township specifying the grounds for the appeal. The Zoning Administrator shall then transmit to the Zoning Board of Appeals all the papers constituting the record concerning the decision being appealed. Provided, however, if the appeal concerns a decision by the Zoning Administrator, then the appeal shall be filed with the Township Clerk and the Township Clerk shall transmit the appeal and the record to the Zoning Board of Appeals.
2. A request for an interpretation of the zoning ordinance under Section 5A.04 subsection 2 may be made by any person or by an officer, department, or board of the township. The person making the request shall file with the Zoning Administrator a completed application form furnished by the township specifying the zoning ordinance provision for which the interpretation is being requested and the alleged ambiguity in that provision or specifying the unlisted property use to be classified. The Zoning Administrator shall then transmit to the Zoning Board of Appeals the completed application concerning the interpretation or classification request.
3. A request for a variance under Section 5A.04 subsection 3 may be made by the owner of the property on which the variance would apply or by a person authorized in writing by the owner to request the variance. The person requesting the variance shall file with the Zoning Administrator a completed application form furnished by the township specifying the zoning ordinance provision from which the variance is being requested. The Zoning Administrator shall then transmit to the Zoning Board of Appeals the completed application concerning the variance request.
4. Following receipt of a completed notice of appeal, a request for an interpretation of the zoning ordinance, or a request for a variance, the Zoning Board of Appeals shall schedule a reasonable time, date and place for, and shall hold, a public hearing, after giving the following applicable notice:
 - A. For an appeal or a request for an interpretation, the notice shall comply with all of the following:
 1. The content of the notice shall include all of the following information:
 - a. A description of the nature of the appeal or interpretation request.

- b. If the appeal or interpretation request involves a specific parcel, then the notice shall describe the property involved. The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
 - c. The time, date, and place the appeal or interpretation request will be considered.
 - d. The address where and the deadline when written comments will be received concerning the appeal or interpretation request.
 - 2. The notice shall be published in a newspaper of general circulation within the township not less than fifteen (15) days before the scheduled public hearing.
 - 3. The notice shall be sent by first-class mail or personal delivery to the person filing the appeal or requesting the interpretation and, if the appeal or interpretation request involves a specific parcel, to the owners of the property involved not less than fifteen (15) days before the scheduled public hearing.
 - 4. If the appeal or interpretation request involves a specific parcel, then the notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within three hundred (300) feet of the property involved and to the occupants of all structures within three hundred (300) feet of the property involved not less than fifteen (15) days before the scheduled public hearing, regardless of whether the property or occupant is located in the township. If the name of the occupant or tenant is not known, the term “occupant” may be used in making notification under this subsection.
- B. For a variance request, the notice shall comply with all of the following:
- 1. The content of the notice shall include all of the following information:
 - a. A description of the nature of the variance request.
 - b. A description of the property on which the requested variance will apply. The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
 - c. The time, date, and place the variance request will be considered.

- d. The address where and the deadline when written comments will be received concerning the variance request.
 2. The notice shall be published in a newspaper of general circulation within the township not less than fifteen (15) days before the scheduled public hearing.
 3. The notice shall be sent by first-class mail or personal delivery to the owners of the property seeking the variance not less than fifteen (15) days before the scheduled public hearing.
 4. The notice shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within three hundred (300) feet of the property on which the requested variance will apply and to the occupants of all structures within three hundred (300) feet of the property to which the requested variance will apply not less than fifteen (15) days before the scheduled public hearing, regardless of whether the property or occupant is located in the township. If the name of the occupant is not known, the term “occupant” may be used in making notification under this subsection.
- C. After providing the notice required under this section and without further notice the Zoning Board of Appeals may adjourn from time to time a duly called public hearing by passing a motion specifying the time, date, and place of the continued public hearing.
5. Any party or person may appear in person, by an agent, or by an attorney at a public hearing considering an appeal, interpretation, or variance.
6. In exercising the powers described in this Article the Zoning Board of Appeals may reverse or affirm, wholly or partly, or 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 Planning Commission, Zoning Administrator, or other official or body from whom the appeal is taken.
7. The Zoning Board of Appeals shall return a decision upon each case within a reasonable time after a request or appeal has been filed with the Board unless additional time is agreed upon with the parties concerned. Decisions made by the Zoning Board of Appeals shall be forwarded, in writing, to the party filing the appeal or requesting the interpretation or variance and to the Zoning Administrator.
8. The Zoning Board of Appeals may attach reasonable conditions with the approval of a 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.
9. In connection with the construction of improvements authorized by a variance the Zoning Board of Appeals may require the applicant to furnish the township with a performance guarantee in the form of a cash deposit, certified check, irrevocable bank letter of credit, or surety bond acceptable to the Township in an amount equal to the estimated costs associated with the construction of public and site improvements. Public improvements mean by way of example and not limitation to roads, parking lots, and water and sewer systems which are located within the development or which the applicant has agreed to construct even though located outside the development. Site improvements mean landscaping, buffering, and the completion of conditions imposed by the Zoning Board of Appeals which are located within the development. For purposes of this section, the costs covered by the performance guarantee shall include all of the following: (1) the purchase, construction, and/or installation of the improvements, (2) architectural and engineering design and testing fees and related professional costs, and (3) an amount for contingencies consistent with generally accepted engineering and/or planning practice. The performance guarantee shall be deposited with the Township Clerk at or before the time the Township issues the permit authorizing the development, or if the development has been approved in phases, then the performance guarantee shall be deposited with the Township Clerk prior to the commencement of construction of a new phase. The performance guarantee shall ensure completion of the public and site improvements in accordance with the plans approved by the Zoning Board of Appeals. Any cash deposit or certified funds shall be refunded for the development or each phase or a multi-phase development in the following manner:
- A. One-third of the cash deposit after completion of one-third of the public and site improvements;
 - B. Two-thirds of the cash deposit after completion of two-thirds of the public and site improvements; and
 - C. The balance at the completion of the public and site improvements.

Any irrevocable bank letter of credit or surety bond shall be returned to the applicant upon completion of the public improvements. If a development is to be completed in phases, then the Zoning Board of Appeals may require the applicant to furnish a performance guarantee as provided in this section for each phase of the development. If an applicant has contracted with a third-party to construct the public and site improvements and the third-party has provided a

bond meeting the requirements described above and the bond also names the Township as a third-party beneficiary of the bond, then the Zoning Board of Appeals may accept that bond as meeting all or a portion of the performance guarantee required by this section.

10. Any variance granted by the Zoning Board of Appeals shall expire unless substantial construction of an improvement authorized by the variance has begun within six (6) months of the approval. Thirty (30) days prior to the expiration of an approved variance, an applicant may make application to the Zoning Board of Appeals for a six (6) month extension of the variance at no fee. The Zoning Board of Appeals shall grant the requested extension, if it finds good cause for the extension and that the zoning regulations necessitating the variance and the standards for granting variances have not changed since the approval.
11. An application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall not be resubmitted for a period of one (1) year from the date of the last denial, except when a rehearing is granted pursuant to subsection 12 below.
12. Rehearings.
 - A. The Zoning Board of Appeals may grant a rehearing under exceptional circumstances for any decision made by it. Exceptional circumstances shall mean any of the following:
 1. The applicant who brought the matter before the Zoning Board of Appeals made misrepresentations concerning a material issue which was relied upon by the Zoning Board of Appeals in reaching its decision.
 2. There has been a material change in circumstances regarding the Zoning Board of Appeals' findings of fact which occurred after the public hearing.
 3. The township attorney by a written opinion states that in the attorney's professional opinion the decision made by the Zoning Board of Appeals or the procedure used in the matter was clearly erroneous.
 - B. A rehearing may be requested by the applicant or by the Zoning Administrator, or a rehearing may be granted by the Zoning Board of Appeals on its own motion, pursuant to the following procedure:
 1. A request for a rehearing which is made by an applicant must be made within twenty-one (21) days from the date of approval of the Zoning Board of Appeals' minutes regarding the decision for which the rehearing is being requested.
 2. A request for a rehearing made by the Zoning Administrator or a rehearing granted by the Zoning Board of Appeals on its own motion may be granted at any time as long as the applicant has not been prejudiced by any delay.
 3. Whenever the Zoning Board of Appeals considers granting a rehearing, it shall provide written notice to the applicant that a rehearing will be considered. The notice may be served upon the applicant by first class mail at the applicants' last

known address, or may be served personally on the applicant. The notice must be served at least nine (9) days before the time set for the hearing if served by mail, or at least seven (7) days before the time set for the hearing if served by personal service. Service by mail shall be complete upon mailing. In addition to serving the above notice on the applicant, all other notice requirements for the type of decision being heard shall be completed before the Zoning Board of Appeals holds a hearing at which it considers whether to grant a rehearing.

4. If the Zoning Board of Appeals grants a rehearing, then the rehearing on the merits shall not be held until all notice requirements for the type of decision being reheard have been satisfied.

Section 5A.06 APPEALS TO CIRCUIT COURT. The decision of the Zoning Board of Appeals is final. However, a person having an interest affected by this Ordinance may appeal that decision to the Circuit Court. Any such appeal shall be filed within thirty (30) days after the Zoning Board of Appeals certifies its decision in writing or approves the minutes at which the decision was made.

Section 5A.07 STAY OF PROCEEDINGS. An administrative appeal to the Zoning Board of Appeals and an appeal of a decision by the Zoning Board of Appeals to Circuit Court stays all proceedings of the action appealed from, including the effectiveness of any zoning permit issued, unless the Zoning Administrator certifies to the Zoning Board of Appeals after such appeal has been filed that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed, unless ordered stayed by the Zoning Board of Appeals or the Circuit Court. Provided, however, this section shall not apply to an administrative decision to take enforcement action for alleged violations of this Ordinance.