

# Variance Application

## Aurelius Township

### Ingham County, Michigan

#### APPLICANT

Name

\_\_\_\_\_

Last

\_\_\_\_\_

First

\_\_\_\_\_

Middle Initial

Address

\_\_\_\_\_

Street and Number

\_\_\_\_\_

City

\_\_\_\_\_

State

\_\_\_\_\_

ZIP

Telephone

\_\_\_\_\_

Home

\_\_\_\_\_

Work

#### OWNER

Name

\_\_\_\_\_

Last

\_\_\_\_\_

First

\_\_\_\_\_

Middle Initial

Address

\_\_\_\_\_

Street and Number

\_\_\_\_\_

City

\_\_\_\_\_

State

\_\_\_\_\_

ZIP

Telephone

\_\_\_\_\_

Home

\_\_\_\_\_

Work

#### PARCEL NO.

Property Address

#### REQUEST

#### SIGNATURE

Applicant's

\_\_\_\_\_

Date \_\_\_\_\_

Owner's

\_\_\_\_\_

Date \_\_\_\_\_

A scaled drawing of lot lines, existing buildings, drives and proposed construction must accompany this application.

**APPLICANT MUST ATTACH LEGAL DESCRIPTION OF PROPERTY!**

**PLEASE COMPLETE THE REQUIREMENTS FOR VARIANCES AND SITE PLAN REVIEW**

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#### OFFICIAL USE ONLY

\$500 Fee Paid \_\_\_\_\_

Date Received \_\_\_\_\_

Data Complete \_\_\_\_\_

FINAL ACTION:

Approved \_\_\_\_\_

Denied \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

• **Sec. 16-118. - Organization.**

(a)

*Rules of procedure.* The zoning board of appeals shall adopt rules and regulations to govern its procedures. The zoning board of appeals shall annually elect a chairperson and a vice-chairperson to serve in the absence of the chairperson, who may administer oaths and compel the attendance of witnesses. A secretary shall also be elected annually.

(b)

*Meetings and quorum.* Meetings of the zoning board of appeals shall be held in compliance with Public Act No. 267 of 1976 (MCL 15.261 et seq), which is generally known as the Open Meetings Act. They shall be held at the call of the chairperson and at such other times as the Board in its rules of procedure may specify. The Zoning Board of Appeals shall not conduct business unless a majority of its regular members are present.

(c)

*Records.* Minutes of all meetings shall be recorded and shall contain the grounds of every determination made by the zoning board of appeals including all evidence and data considered, and all findings of fact and conclusions drawn by the board for every case, together with the votes of the members and the final disposition of each case. Such minutes shall be filed with the township clerk, and shall be available to the public. The record of proceedings shall contain the following information when applicable:

(1)

The application; for an appeal, variance, and interpretation.

(2)

Any reports, plans, surveys or photos.

(3)

Notice of public hearing to affected parties in newspaper.

(4)

Letter from the zoning administrator granting or denying the application or referring it to the board of appeals and all other relevant records related to the case.

(5)

Affidavit of publication of notice of hearing.

(6)

Record of testimony heard and evidence presented.

(7)

A copy of the zoning article and section in question.

(8)

Briefs, correspondence or other communications made to the board of appeals.

(9)

Statement of facts found by the board, of its own knowledge, regarding the request including any information gained from personal inspection.

(10)

Decision of the board as specifically related to the findings of fact.

(11)

A copy of any other correspondence to the appellant regarding the request.

(d)

*Counsel.* Legal counsel may be retained, by the board of appeals, for any purpose deemed necessary provided that such appointment or retainer shall be approved in advance by the board of trustees.

(e)

*Member participation.* A member of the zoning board of appeals who is also a member of the zoning commission, planning Commission or the legislative body shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the zoning commission, the planning commission or the legislative body. However, the member may consider and vote on other unrelated matters involving the same property.

(Ord. No. 39, art. 14, § 14.3, 2-12-2002; Ord. No. 39.08, § 6, 10-10-2006; Ord. No. 39.08(Amend.), § 5, 5-12-2009)

• **Sec. 16-119. - Appeals.**

(a)

*Filing of appeal.* An appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the township, the county or the state. The justification for each appeal shall be stated on the notice of appeal, along with a legal description of any property involved. The zoning board of appeals shall adopt a form for this purpose. Appellants may be represented by agent, counsel, or in person.

(b)

*Procedure on appeals.* A notice of appeal shall be filed within 30 days of the action being appealed. It shall be filed with the zoning administrator along with the required fees. Upon receipt of a notice of appeal, the zoning administrator shall transmit all the records that pertain to the appeal to the zoning board of appeals. The chairperson of the zoning board of appeals shall fix a reasonable time and date for the public hearing.

(c)

*Fees on appeal.* Appeal fees shall be established, from time to time, by the board of trustees, sufficient to cover all costs incurred by the township pursuant to processing the appeal, including but not limited to the costs of advertisements, investigations and appeal board member attendance fees.

(d)

*Notices.* Upon receipt of a written request seeking an interpretation of the zoning ordinance or 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 requesting the interpretation not less than 15 days before the public hearing. In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, a written notice stating the nature of the interpretation, request or appeal, and the time, date and place of the public hearing on the interpretation, request or appeal shall be sent by first class mail or served by personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question, regardless of whether the property or structure is located in the township. Notification need not be given to more than one occupant of a structure, except that, if a structure contains more than one dwelling unit or spatial area owned or leased by different persons, one occupant of each unit or spatial area shall be given notice. If a single structure contains more than four

dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure.

(e)

*Majority vote.* The concurring vote of a majority of the total membership 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 the applicant of any matter upon which they are required to pass under this chapter or to effect any variation.

Following the receipt of a written request for a variance, the Zoning Board of Appeals shall fix a reasonable time for a hearing of the request, and shall provide notice as required by Section 103 of Act 110 of the Public Acts of 2006 (MCL 125.3101 et seq) and as same may be amended from time to time.

(f)

*Decisions.* The board of appeals shall return a decision upon each case within 120 days after a request or appeal has been filed, unless a further time is agreed upon between the parties concerned. An appeal from a decision of the zoning board of appeals shall be filed within 30 days after the zoning board of appeals issues its decision in writing, signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals if there is no chairperson, or within 21 days after the zoning board of appeals approves the minutes of its decision. The court may affirm, reverse or modify the decision of the zoning board of appeals. The court may make other orders as justice requires.

(g)

*Stay of proceedings.* An appeal stays all proceedings in furtherance of the action appealed unless the officer from whom the appeal is taken certifies to the board of appeals, after the petition of appeal shall have been filed with the zoning administrator, that by reason of facts stated in the appeal petition, a stay would, in his opinion, cause imminent peril to life and property.

(Ord. No. 39, art. 14, § 14.4, 2-12-2002; Ord. No. 39.08, § 7, 10-10-2006; Ord. No. 39.08(Amend.), § 6, 5-12-2009)

- **Sec. 16-120. - Jurisdiction.**

The board of appeals shall have the duty to rule on those matters provided in this chapter as provided in Public Act No. 184 of 1943 (MCL 125.271 et seq.). The zoning board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of the zoning administrator, planning commission, or other official administering or enforcing the provisions of this chapter, and may issue or direct the issuance of a development permit, provided other applicable state and local regulations are met. The board of appeals shall have the power to make final determinations, within its jurisdiction and duties as prescribed in this chapter in such a way that the objectives of this chapter may be equitably achieved in order there shall be uniform interpretation and flexibility in the enforcement of this chapter or to fulfill any other responsibilities bestowed upon the appeals board by this chapter.

(Ord. No. 39, art. 14, § 14.5, 2-12-2002)

- **Sec. 16-121. - Authorized appeals.**

The zoning board of appeals shall hear the following specified types of appeals and make its decision based upon the following standards:

(1)

*Review of administration of the ordinance.* The zoning board of appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official or body charged with enforcement of this chapter. The zoning board of appeals may reverse any order, requirement, permit, or decision made by the zoning administrator or any official or body administering or enforcing the provisions of this chapter when it is found that there was an error in fact, judgment, procedure, or interpretation.

(2)

*Interpretation of the ordinance.* The board of appeals shall have the power to:

a.

Interpret, upon request, the provisions of this chapter when it is alleged that certain provisions are not clear or that they could have more than one meaning. In deciding upon such requests, the zoning board of appeals shall ensure that its interpretation is consistent with the intent and purpose of the ordinance and the article in which the language in question is contained. The zoning board of appeals may adopt a dictionary of land development terms to assist such interpretations;

b.

Determine the precise location of the boundary lines between zoning districts;

c.

Classify a use of land not specifically mentioned as a part of the provisions of any district, so that it conforms to a comparable permitted or prohibited use of land, in accordance with the purpose and intent of each district. If there is not a comparable use of land included in the zoning ordinance, the zoning board of appeals shall direct the applicant to begin proceedings to amend the zoning ordinance.

d.

Determine the off-street parking and loading requirements of a use of land not specifically mentioned in [section 16-605](#) et seq., such that it conforms to a similar use of land contained in [section 16-605](#) et seq.

(3)

*Variances.* The board of appeals may authorize specific variances relating to the construction, structural changes or alteration of buildings or structures relating to dimensional requirements, such as lot area and width regulations, and to off-street parking and loading space requirements, advertising structure requirements, or to any other non-use related standard in the ordinance, provided all of the required findings listed in this chapter are met and the record of proceedings of the zoning board of appeals contains evidence supporting each conclusion that:

a.

There are practical difficulties in carrying out the strict letter of this chapter;

b.

A practical difficulty exists because of unique circumstances with regard to the particular property that results in a situation whereby the property cannot be utilized in a manner which conforms to the chapter.

- c. The practical difficulty was not created by action of the applicant.
- d. The condition is specific to the property in question and not so general to other properties or recurrent in nature as to make the formulation of a general regulation for such conditions practical.
- e. Granting of the variance will not alter the essential character of the surrounding area, have a substantially adverse effect on the property values, or destroy the quiet use and enjoyment of property in the neighborhood.
- f. Every variance granted shall be in the minimum amount necessary to overcome the inequality inherent in the particular property.

(4)

*Restrictions to variances.* The following time restrictions shall apply to all variances:

- a. At least ten percent of the construction authorized by such variance or permit has been completed within 180 days after the granting of such variance and the balance of the project is pursued diligently to completion; or
- b. The occupancy of land or buildings authorized by such variance has taken place within 180 days after the granting of such variance.
- c. 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 one year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found, upon inspection by the board of appeals, to be valid.

(5)

*Determination of a lot of record.* The board of appeals shall have the power to make "lot of record" determinations in accordance with the following:

- a. Upon application of any person claiming to be the owner of the legal or equitable title to a parcel of land which was the subject to a deed or land contract not recorded in the office of the register of deeds on the effective date of the ordinance from which this chapter derived, the board of appeals is authorized to conduct a hearing to determine whether a variance should be granted to such owner entitling him to have the parcel treated as a "lot of record" in accordance with definition contained in this chapter.
- b. The board shall grant such variance when it finds by a preponderance of the evidence that the instrument purporting to transfer title to the parcel of such owner was executed prior to the effective date of the ordinance from which this chapter derived. In making its determination, the board is authorized to consider all matters it deems relevant including, but not limited to, the tax roll of the county, the relationship of the parties to the purported transfer, the degree

of formality of the purported document of transfer, and the testimony of the applicant and his witnesses.

c.

Such a determination shall have only the effect of equating such an owner with the owner of a lot of record and shall not relieve such owner from complying with the other conditions set forth in this chapter.

(6)

*Site plan review.* The board of appeals shall review and make final determination on properly filed appeals from action by the planning commission on site plan review cases pursuant to [section 16-85](#) et seq. The board of appeals has the power to sustain, reverse or remand for further consideration the decision of the planning commission when it is found that the decision is inconsistent with the provisions of this chapter or that there was an error of fact involved in the decision of the planning commission. In making this determination, the board of appeals shall examine the application and all accompanying data as well as the records of the planning commission. Decisions of the board of appeals are appealable to circuit court.

(7)

*Nonconformity appeals.* Nonconforming uses or structures may be structurally altered, expanded, moved, re-established, or substituted with another nonconformity upon appeal, in cases of extenuating circumstances, when approval of such appeal will not have an adverse effect on surrounding property, public health, or safety, and will not substantially increase the level of nonconformity of the property.

(8)

*Review of enforcement decision.* The zoning board of appeals shall review and make final determination on properly filed appeals from the decision of the zoning administrator to serve notice of violation of this chapter, pursuant to [section 16-38](#). The zoning board of appeals shall review the decision of the zoning administrator for consistency with the provisions of this chapter, Public Act No. 184 of 1943 (MCL 125.271 et seq.), and any relevant court decision applicable to the matter in question.

(9)

*Essential services.* The zoning board of appeals shall have the power to permit the erection and use of a building, or an addition to an existing building, of a public service corporation or for public utility purposes, in any permitted district to a greater height or of larger area than the district requirements established in this chapter, and permit the location in district of a public utility building, structure, or use if the zoning board of appeals shall find such use, height, area, building or structure reasonably necessary for the public convenience and service.

(10)

*Conditions of approval.* The zoning board of appeals may impose, in writing, specific conditions with an affirmative decision pursuant to section 16d.(2) of Public Act No. 184 of 1943, (MCL 125.286d(2)). The breach of any such condition shall be a violation of this chapter.

(11)

*Bond for compliance.* The board of appeals may require that a bond be furnished to ensure compliance with the requirements, specifications, and conditions imposed with the granting of any variance, appeal, special exception, conditional permit, special use permit or site plan review approval. The amount and type of the bond shall be determined by the zoning board of appeals.

The board shall, in estimating the amount and type of the bond, take into account the scale of such operation. The bond shall be reasonable, appropriate and commensurate with the scope of the project.

(12)

*Bond may be reduced.* The amount of the bond may be reduced at a rate equal to the ratio of work completed on the required improvements as work progresses. The term "improvements" should not be construed to mean the project itself, but rather those features associated with the project which are deemed necessary to protect the health, safety and welfare of the township's resources and future users or inhabitants of the proposed project.

(13)

*Limitation on zoning board of appeals jurisdiction.* In addition to any other limitations contained in this chapter, the zoning board of appeals shall not have jurisdiction to grant "use variances" and no appeal may be taken to the zoning board of appeals from decisions related to special use permits, planned developments or decisions of the board of trustees.

(Ord. No. 39, art. 14, § 14.6, 2-12-2002; Ord. No. 39.08, § 8, 10-10-2006)