

# Bainbridge Township Berrien County, Michigan



7315 Territorial Road, Watervliet, MI 49098  
Phone: 269-468-8040/Fax: 269-468-3498

Bill Hodge, Supervisor  
Patty Hiler-Molter, Clerk  
Nancy Weber, Treasurer

## REQUEST FOR VARIANCE Article XIII

**An application for a Variance shall be submitted through the Zoning Administrator to the Board of Appeals, accompanied by a \$500.00 filing fee. Checks should be payable to “Bainbridge Township”.**

Include the following:

1. Application.
2. Site plan in conformance with Article XI (11).
3. Copy of current paid tax bill, deed, or other proof of ownership, which includes a legal description of the property, property tax number and proof of taxes paid of said property.
4. Request for Public Hearing.

Board of Appeals meets as requested. Meetings will be set no more than sixty (60) days from application date. The applicant should be in attendance at the meeting to answer any questions that may arise. If a special meeting of the Board of Appeals is requested, a charge of \$500.00 is required to defray Township expenses.

## APPLICATION FOR A VARIANCE

Applicant Name \_\_\_\_\_

\_\_\_\_\_  
(Address) (City) (State) (Zip)

Home Phone #: \_\_\_\_\_ / Work/Mobile Phone #: \_\_\_\_\_

Tax Code #: 11-01- \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ / Zoned District: \_\_\_\_\_



I submit this written Application to Request Variance from the Bainbridge Township Zoning Ordinance. Such Variance shall not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship to the above applicant.

1. Describe the special conditions and circumstances for which a Variance is required.

\_\_\_\_\_  
\_\_\_\_\_

2. Explain why the special conditions and circumstances do not result from the actions of the applicant.

\_\_\_\_\_  
\_\_\_\_\_

3. Explain why the requested Variance is the minimum Variance required.

\_\_\_\_\_  
\_\_\_\_\_

4. Describe why the Variance, if granted, is unique to the property.

---

---

Until a permit has been granted pursuant to Bainbridge Township Zoning Ordinance, there shall be no construction or excavation of said land. Nor shall use of the land be made toward the intended purposes of such Special Land Use Permit.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_



**PUBLIC HEARING REQUEST  
FOR A VARIANCE**

11-01- \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
Property Tax Code Number

I hereby request a public hearing for the purpose of securing a Variance for property described by the property tax code number shown above.

The address of this property is:

\_\_\_\_\_  
(Address) (City) (State) (Zip)

The requested Variance is for the following purpose:

\_\_\_\_\_  
\_\_\_\_\_

I enclose application, site plan, proof of ownership and legal description of the property, proof of paid taxes and a list of names and addresses of the owners of property within 300 feet of the property covered by this application.

\_\_\_\_\_  
(Name of applicant)

\_\_\_\_\_  
(Street and Number)

\_\_\_\_\_  
(City) (State) (Zip)

\_\_\_\_\_/\_\_\_\_\_  
(Signature) (Date)

## **ARTICLE XI**

### **Site Plan and Scaled Drawing Requirements**

#### **Section 11.01 - Intent**

- A. The intent of requiring site plan or scaled drawing submittal and review in certain instances specified herein is to facilitate determination of whether certain development proposals meet all applicable requirements and are in harmony with the purpose, intent and spirit of this Ordinance.
- B. It is further the intent to assist township officials in encouraging and assisting proposers of land development to design and implement land use proposals which foster orderly, efficient, compatible and aesthetic uses of land in Bainbridge Township.

#### **Section 11.02 - When Required**

- A. Variance or Special Land Use – Except for Single-Family, Two-Family: A site plan shall be prepared and submitted in accordance with Sections 11.03 A. and 11.04 with any application for:
  - 1. Variance or Special Land Use Permit, other than for a Special Land Use Permit for a Home Occupation;
  - 2. With any application for Rezoning, other than Rezoning for the sole purpose of constructing a single-family, two-family or agricultural permitted principal use;
  - 3. With any application for a Zoning Compliance Permit or Building Permit, other than for the sole purpose of constructing a single-family, two-family or agricultural permitted principal use or accessory use thereto; and
  - 4. With any application for a Planned Unit Development or Condominium.
- B. Rezoning – Single-Family, Two-Family: A scaled drawing shall be prepared for the sole purpose of constructing a single-family, two-family or agricultural permitted principal use or accessory use thereto and submitted in accordance with Sections 11.03 B. and 11.04 with any application for:
  - 1. Rezoning;
  - 2. Zoning Compliance Permit;
  - 3. Building Permit; or
  - 4. Variance.

### **Section 11.03 - Contents**

- A. A required site plan shall be drawn at a scale of one (1) inch equals one hundred (100) feet and shall contain the following information:
1. The boundary lines of the area included in the site plan, including angles, dimensions and reference to a section corner, quarter corner or point on a recorded plat, an arrow pointing north, and the individual lot areas and dimensions of the land included in the site plan.
  2. Existing and proposed topography, drainage systems, and structures, with topographic contour intervals of not more than two (2) feet.
  3. The shape, size and location of all structures on the lot including yard dimensions, height, floor area and ground coverage ratios and the finished ground and basement floor grades.
  4. Natural features such as wood lots, trees of more than one (1) foot in diameter, streams and lakes or ponds, and man-made features such as exiting roads and structures, with indication as to which features are to be retained and which removed or altered. Adjacent properties and their uses shall be identified.
  5. Proposed streets, driveways, parking spaces, curb cuts, loading spaces and sidewalks, with indication of direction of travel for one-way streets and drives and the inside radius of all curves. The width of streets, driveways and sidewalks, and the total number and layout of parking spaces shall be shown.
  6. The size and location of all existing and proposed public and private utilities and required landscaping.
  7. A vicinity sketch showing location of the site in relation to the surrounding street system.
  8. A legal description of the land and lots included in the site plan.
  9. Any other information necessary to establish compliance with this and any other ordinances.
  10. The availability of adequate utility capacity.
  11. The name, signature, title and mailing address of the person who prepared the site plan. A site plan for any development shall be prepared by a registered architect, engineer, professional community planner or land surveyor.
- B. A required scaled drawing shall be drawn at a scale appropriate to the dimensions of development and shall contain the following information:
1. A legal description of the land involved.
  2. A vicinity sketch showing location of the site in relation to the surrounding street system.
  3. The size and location of all structures proposed for and presently located on the site.

4. The boundary lines of the parcel of land involved including dimensions and an arrow pointing north.
5. Proposed streets and driveways. The width of streets and driveways shall be shown.
6. Any other information necessary to establish compliance with this and any other ordinances.
7. The name, signature and mailing address of the person who prepared the scaled drawing.

#### **Section 11.04 - Review Process and Approval**

- A. Any required site plan or scaled drawing shall be submitted, of original quality, to the Zoning Administrator along with a cover letter signed by the owner of the land and/or prospective developer providing a general explanation and background information on the proposed development.
- B. The Zoning Administrator shall examine the site plan or scaled drawing as to proper form and content and particularly as to compliance with all applicable requirements of this Ordinance.
- C. If the proposed development does not require the issuance of a Special Land Use Permit by the Planning Commission, Variance by the Board of Appeals or a Rezoning of land by the Township Board, within thirty (30) days after receipt the Zoning Administrator shall notify in writing the proposer of the development of the approval or disapproval of the site plan or scaled drawing. If the site plan or scaled drawing is disapproved, the reasons therefore shall be given. Such disapproval shall be limited to inadequacy or defect in form or content and/or noncompliance with identified applicable provisions of this Ordinance. The Zoning Administrator may, at his discretion, request consultation with the Planning Commission prior to his approval or disapproval of the site plan.
- D. If the proposed development requires issuance of a Special Land Use Permit, the Zoning Administrator shall transmit his findings as described in paragraph C. above, to the Planning Commission along with a copy of the site plan and covering letter. The proposer of the development shall be notified of the status of his requested site plan approval.
- E. If the proposed development requires a rezoning of land, the Zoning Administrator shall transmit his findings as described in paragraph C., above, to the Township Board which shall follow the amendment procedure as provided in Article XV (15). The site plan or scaled drawing and cover letter shall accompany the Zoning Administrator's findings. The proposer of the development shall be notified of the status of his requested site plan or scaled drawing for approval.
- F. If the proposed development requires a Variance, the Zoning Administrator shall transmit his findings as described in paragraph C., above, to the Board of Appeals which shall follow the Variance procedure as provided in Article XIII (13). The site plan or scaled drawing and cover letter shall accompany the Zoning Administrator's findings. The proposer of the development shall be notified of the status of his requested site plan or scaled drawing for approval.



- G. The decision rejecting, approving, or conditionally approving a site plan shall be based upon the requirements contained in Section 11.03, A. The decision rejecting, approving or conditionally approving a scaled drawing shall be based upon the requirements contained in Section 11.03, B.
- H. A site plan or scaled drawing shall be approved if it contains the information required by this Ordinance and is in compliance with this Ordinance and the conditions imposed thereunder, other applicable Township, County, State or Federal laws, rules or regulations.
- I. The site plan or scale drawing as approved shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the approved site plan or scaled drawing, unless a change conforming to this Ordinance receives the mutual agreement of the landowner and approving body.
- J. Upon approval of a site plan, the secretary of the approving body shall, within five (5) days, file with the Zoning Administrator a copy of the approved site plan or scaled drawing.

## ARTICLE XIII

### Appeals

#### **Section 13.01 – Board of Appeals; Establishment and Procedure**

- A. Board of Appeals is hereby established which shall consist of five (5) members to be appointed in accordance with Michigan Zoning Enabling Act, Act 110 of 2006, as amended. The first member of the Board of Appeals shall be a member of the Planning Commission and his term of office on the Board of Appeals shall be concurrent with his term of office as a member of the Planning Commission. The second member of the Board of Appeals may be a member of the Township Board appointed annually for a term of one (1) year by the Township Board. An elected officer of the Township shall not serve as chairman of the Board of Appeals. The additional member(s) of the Board of Appeals shall be appointed for terms of three (3) years by the Township Board from among the electors residing in the unincorporated area of the Township. An additional member shall not serve simultaneously as an elected officer of the Township or as an employee of the Township Board or as a member or employee of the Township Board of Appeals. Members of the Board of Appeals shall be removable by the Township Board for nonperformance of duty or misconduct in office upon written charges and after public hearing. A successor shall be appointed by the Township Board at the next regular meeting subsequent to a vacancy on the Board of Appeals. Vacancies shall be filled for the remainder of the term.
- B. The Board of Appeals shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board of Appeals may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
- C. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, filed in the office of the Township Clerk.

#### **Section 13.02 – Board of Appeals; Powers and Duties**

- A. **Appellate Jurisdiction:** The Board of Appeals shall have the powers and duties to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this Ordinance.
- B. **Appeals; Filing:** Appeals to the Board of Appeals concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer or bureau of the governing body of the Township affected by any decision of the Zoning Administrator. Such appeals shall be taken within a reasonable time of the aggrieved action, not to exceed sixty (60) days, by filing with the Zoning Administrator and with

the Board of Appeals a Notice of Appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Appeals all papers constituting the record upon which the action appealed from was taken.

**C. Board of Appeals has Powers of Zoning Administrator on Appeals; Reversing Decision of Zoning Administrator:**

1. In exercising the above mentioned powers, 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, 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 the powers of the Zoning Administrator from whom the appeal is taken under appellate jurisdiction.
2. The concurring vote of three (3) 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 the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in the application of this Ordinance.

**D. Stay of Proceedings:** An appeal stays all 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 of Appeals is filed with him, that by reason of facts stated in the Notice of Appeal, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Zoning Administrator from whom the appeal is taken and on due cause shown.

**Section 13.03 – Application Procedure**

- A. **Applicant:** Any person owning or having an interest in the subject whereas in specific cases such variance from the terms of this Ordinance as shall not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship to the applicant.
- B. **Application:** A written application for a Variance shall be submitted through the Zoning Administrator, to the Board of Appeals. Each application shall be accompanied by the payment of a fee in accordance with the schedule of fees adopted by the Township Board to cover the costs of processing the application. No part of any fee shall be refundable.
- C. **Required Information:** An application for a Variance shall be presented to the Zoning Administrator and accompanied by, but not limited to, the following documents and information:

1. A description of the special conditions and circumstances for which a Variance is required;
  2. An explanation of why the Variance, if granted, is unique to the applicant's property;
  3. An explanation that the requested Variance is not required due to an action of the applicant;
  4. An explanation that the Variance requested is the minimum variance required by the applicant;
  5. A site plan in conformance with Article XI (11).
- D. **Incomplete Application:** An application which is incomplete or otherwise not in compliance with this Ordinance shall be returned to the applicant. No application shall be processed until properly prepared and submitted and all required fees paid in full.

#### **Section 13.04 – Processing**

- A. **Copy of Application Board of Appeals:** The Zoning Administrator shall forward a copy of the application for the Variance to the Chairman of the Zoning Board of Appeals within thirty (30) days of receiving the request.
- B. **Hearings:** The Board of Appeals shall fix a reasonable time for a hearing, not to exceed thirty (30) days from the filing of the Notice of Appeal. Notice of the hearing shall be given not less than fifteen (15) days by mail or personal delivery to the owners of property for which Notice of Appeal approval is being considered, to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question, and to the occupants of all structures within three hundred (300) feet. Notice of the public hearing shall also be published not less than fifteen (15) days before the date of the public hearing on the application, in a newspaper of general distribution in Bainbridge Township. Any party may appear in person, by agent or by attorney.

If the name of the occupant is not known, the term "occupant" may be used in making notification. 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 individuals, partnerships, businesses, or organizations, one occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses or organizations, 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. Each notice given under this section shall:

1. Describe the nature of the request;
2. Indicate the property which is subject of the request;
3. State when, where and at what time the public hearing on the request will be considered; and
4. Indicate when and where written comments will be received concerning the request.

### **Section 13.05 – Review and Approval**

- A. **Review:** The Board of Appeals shall make affirmative findings that the following standards have been met by the applicant for a Variance:
1. That 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;
  2. 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;
  3. That the special conditions and circumstances do not result from the actions of the applicant; and
  4. That granting the Variance requested will not confer on the applicant any special privilege denied by this Ordinance to other lands, structures or buildings in the same district.
- B. The Board of Appeals shall further make a finding that the reasons set forth in the application justify the granting of the Variance and that the Variance is the minimum variance which will make possible reasonable use of the land, building, or structure.
- C. The Board of Appeals shall further make a finding that the granting of the Variance will be in harmony with the general purpose and intent of this ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- D. In granting any Variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation 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 Article XII (12) of this Ordinance.

- E. Under no circumstances shall the Board of Appeals grant a Variance to allow a use not permissible 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 said district.
- F. Under no circumstances shall a nonconforming use of neighboring land, structure or other building, or other nonconforming condition in any other districts be the grounds for consideration of the issuance of a Variance by the Zoning Board of Appeals.
- G. **Decision:** Upon approval by the Board of Appeals, it shall be the responsibility of the Zoning Administrator to monitor compliance with the terms, conditions and restrictions of any Variance and take any enforcement action necessary in the event of a violation of the Variance.
  - 1. A Building Permit shall not be issued until approval of such Variance by the Board of Appeals.
  - 2. Until a Building Permit has been granted pursuant to the approved Variance, there shall be no construction or excavation of said land, nor shall use of the land be made toward the intended purposes of such Variance.
  - 3. Land subject to a Variance may not be used or occupied for purposes until after a Certificate of Occupancy for same has been issued pursuant to the provisions of this Ordinance.

#### **Section 13.06 – Effect of Approval of Planning Commission**

- A. The approval of the application by the Planning Commission shall allow the Zoning Administrator to issue a Zoning Compliance Permit and/or Building Permit in conformity with the application as approved in this Article.

#### **Section 13.07 – Duties of Zoning Administrator, Board of Appeals, Township Board, Planning Commission and Courts on Matters of Appeal**

- A. It is the intent of this Ordinance that all questions under appellate jurisdiction shall be presented to the Board of Appeals only on appeal from the decision of the Zoning Administrator or Planning Commission on Special Land Use Permits. Requests of Variances, constituting matters under original jurisdiction of the Board of Appeals, shall be filed with the Board of Appeals via the Zoning Administrator and shall not be construed as an appeal from the decision of the Zoning Administrator. Recourse from the decision of the Board of Appeals shall be to the courts as provided by the laws of the State of Michigan.
- B. It is further the intent of this Ordinance that the duties of the Township Board in connection with this Ordinance shall not include hearing and deciding questions of

interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this Ordinance. Under this Ordinance, the Township Board shall have only the duties of:

1. Considering and adopting or rejecting proposed amendments or the repeal of this Ordinance, as provided by law;
2. Establishing a schedule of fees and charges as stated in Article XIV (14);
3. Appointing members to the Board of Appeals;
4. Appointing Planning Commission members; and
5. Appointing the Zoning Administrator.