

ZONING BOARD OF APPEALS

ARTICLE XVII

ZONING BOARD OF APPEALS

A Zoning Board of Appeals is hereby established, the membership, powers, duties of which are prescribed in Act 110 of the Public Acts of the State of Michigan of 2006 (PA 110 of 2006), as amended. The Zoning Board of Appeals in addition to the general powers and duties conferred upon it, by said Act, in specific cases and subject to appropriate conditions and safeguards, shall interpret and determine the application of the regulations established under this ordinance in harmony with their purpose and intent as hereinafter set forth.

SECTION 17.01 - MEMBERSHIP

A Board of Appeals shall consist of not less than five (5) members and two (2) alternate members to be appointed by the City Council, in accordance with PA 110 of 2006, as amended. Vacancies shall be filled by resolution of the City Council for any expired term of the vacant term. One (1) member of the Board shall be a member of the Planning Commission. A member of the zoning board of appeals may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

SECTION 17.02 - MEETINGS

All meetings of the board shall be held at the call of the chairman and at such times as such board may determine. All hearings conducted by said board shall be open to the public. The board 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 also keep records of its hearings and other official action. The board shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, and other evidence pertinent to the matters before it.

SECTION 17.03 - POWERS OF ZONING BOARD OF APPEALS

The Zoning Board of Appeals (ZBA) shall have the authority to act on those matters where this Ordinance provides for administrative review/appeal, interpretation, and shall have authority to authorize a variance as defined in this Ordinance and law of the State of Michigan. The ZBA shall not have the authority to alter or change zoning district

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classifications of any property, nor to make any change in the text of this Ordinance.

(a) Administrative Review

The ZBA shall have the authority to hear and decide appeals where it is alleged that there is an error in any order, requirement, permit, decision, or refusal made by an official, council or commission in carrying out or enforcing any provisions of this Ordinance. In hearing and deciding appeals under this sub-section, ZBA review shall be based upon the record or the administrative decision being appealed, and the ZBA shall not consider new information which had not been presented to the administrative official, council or commission from whom the appeal is taken.

(b) Interpretation

The ZBA shall have the authority to hear and decide requests for interpretation of the zoning ordinance, including the zoning map. The ZBA shall make such decision so that the spirit and intent of this Ordinance shall be observed. Text interpretations shall be limited to the issues presented, and shall be based upon a reading of the Ordinance as a whole, and shall not have the effect of amending the Ordinance. Map interpretations shall be made based upon rules in the Ordinance, and any relevant historical information. In carrying out its authority to interpret the Ordinance, the ZBA shall consider reasonable and/or practical interpretation, the ZBA may confer with staff and/or consultants to determine the basic purpose of the provision subject to interpretation and any consequences which may result from differing decisions. A decision providing an interpretation may be accompanied by a recommendation for consideration of an amendment of the Ordinance.

(c) Variances

The ZBA shall have the authority in specific cases to authorize one or more variances from the strict letter and terms of this Ordinance by varying or modifying any of its rules or provisions so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done. Such authority shall be exercised in accordance with the following standards:

Dimensional Variance:

A. Authority. The Zoning Board of Appeals may grant a dimensional (nonuse) variance to provide relief from a specific standard in this Ordinance relating to an area, a dimension or a construction requirement or limitation, upon the concurring vote of a majority of the members of the Zoning Board of Appeals.

B. Practical Difficulty. A nonuse variance shall not be granted unless the Zoning Board of Appeals finds that there is a practical difficulty in the way of carrying out the strict letter of this ordinance. In determining whether a practical difficulty exists, the Zoning Board of Appeals must find that:

1. Compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk, lot coverage, density or other dimensional or construction standards will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with such restrictions unnecessarily burdensome.

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2. A grant of the variance will do substantial justice to the applicant as well as to other property owners in the district, and a lesser variance will not give substantial relief to the applicant as well as be more consistent with justice to other property owners in the zoning district.
3. The plight of the applicant is due to the unique circumstances of the property.
4. The problem is not self-created.
5. The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.

Use Variance:

A. Authority. The Zoning Board of Appeals may grant a use variance to authorize a land use which is not otherwise permitted by this ordinance in the district where the property is located, upon the concurring vote of two-thirds (2/3) of the members of the Zoning Board of Appeals.

B. Remedies Exhausted. An application for a use variance shall not be submitted or considered unless the applicant has first received a written determination from the planning department that the proposed land use is not permitted under this ordinance in the district where the property is located.

C. Unnecessary Hardship. A use variance shall not be granted unless the Zoning Board of Appeals finds, on the basis of substantial evidence presented by the applicant, that there is an unnecessary hardship in the way of carrying out the strict letter of this ordinance. In determining that an unnecessary hardship exists, the Zoning Board of Appeals must find that:

1. The property in question cannot be reasonably used or cannot yield a reasonable return on a prudent investment if the property would be used only for a purpose allowed in the zoning district.
2. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.
3. The use to be authorized by the variance will not alter the essential character of the area and locality.
4. The problem is not self-created.
5. The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.

2. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or evidence from which the ZBA may make the required findings. Administrative officials and other persons may, but shall not be required to, provide information, testimony and/or evidence on a variance request.

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3. The following are specified as appropriate considerations by the ZBA in hearings and deciding variance requests, provided, this list shall in no respect constitute a limitation upon the considerations which may be made by the ZBA:
 - a. Other lands, structures, buildings, lots and uses in the same district and in the general vicinity of the property in question.
 - b. Whether granting the variance will confer special privileges on the applicant that have been denied by the Ordinance and/or ZBA in other cases.
 - c. Whether the requested variance is the minimum necessary to authorize reasonable use of the property in relation to the surrounding area.
 - d. Reasonable and available alternatives, which, although not requested by the applicant, would minimize or eliminate the need for variance relief.
 - e. The provisions of this Ordinance from which a variance is requested, including the purpose and intent of such provisions within the context of the Ordinance as a whole.
 - f. The imposition of appropriate and authorized conditions.
 - g. The existence of nonconforming structures, uses of land, or the combination of structures and uses, shall not be used as a singular basis or rationale for granting a variance.

(d) Conditions

The ZBA may impose reasonable conditions in connection with an affirmative decision on an interpretation or variance request. The conditions may include requirements necessary to insure that public services and facilities affected by a proposed planned 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. Conditions imposed shall meet the following requirements:

1. 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.
2. Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
3. 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.

Conditions imposed with respect to the approval of a variance shall be recorded as part of the ZBA minutes, and shall remain unchanged except upon the mutual consent of the ZBA and the landowner following notice and hearing as

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required in a new case. Moreover, to insure adequate notice of the decision, and conditions imposed, the ZBA may require as a condition to the effectiveness of relief granted that the property owner record with the Oakland county Register of Deeds, in a form acceptable to the ZBA, an affidavit detailing the relief granted and conditions imposed.

- (e) The 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 larger area than the district requirements herein established, and permit the location, in any use district, of a public utility building, structure or use, if the Board shall find such use, height, area, building, or structure reasonably necessary for the public convenience and service, and if an applicant under this subsection shall demonstrate to the satisfaction of the Board that no reasonable alternative exists, which if employed would allow full compliance with this Ordinance. In the exercise of its power granted under this subsection, the Board shall attach such conditions and requirements as shall reduce to a minimum any detrimental effects.
- (f) 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.
- (g) Permit the modification of the automobile parking space or loading space requirement where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.
- (h) Permit the moving of buildings within a district and placed upon a foundation, or the moving of any building into a district from any other district.

SECTION 17.04 - LIMITATIONS ON THE POWERS OF THE ZONING BOARD OF APPEALS

- (a) The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary (Ord. 403, 6/19/2003):
 - 1. To reverse any order, requirement, decision, or determination of any administrative official.
 - 2. To decide in favor of the applicant on any matter upon which the Board is required to pass under this Ordinance; or
 - 3. To effect any variance in this Ordinance.
- (b) The concurring vote of two-thirds of the members of the Zoning Board of Appeals shall be necessary:
 - 1. To grant a variance from uses of land permitted in an ordinance.
- (c) Every decision of the Board shall be based upon finding of fact and each and every such finding shall be supported in the record of the proceedings of the Board.

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- (d) Nothing contained herein shall be construed to empower the Board to change the terms of this Ordinance, to effect changes in the Zoning Map, or to add to the uses permitted in any Zoning District, except when specifically empowered to do so.

SECTION 17.05 - PROCEDURE FOR APPEALS TO THE BOARD

- (a) Appeals of any nature in which Board action is sought shall be commenced by a person filing a notice with the Building Inspector and with the Board on such forms and accompanied by such fee as may be specified by the City. The notice of appeal shall specify the grounds upon which the appeal is based and shall be signed. Applications involving a request for a variance shall specify the requirements from which a variance is being sought and the nature and extent of such variance.

Applications involving a specific site shall be accompanied by a plot plan which shall contain the following information, where applicable:

1. Applicant's name, Address, and telephone number.
2. Scale, northpoint, and date of submission.
3. Zoning classification of petitioner's parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and immediately adjacent to the site.
5. Proposed lot lines and lot dimensions, and general layout of proposed structures, parking areas, driveways, and other planned improvements on the site.
6. Dimensions, centerlines, and right-of-way widths of all abutting streets and alleys.
7. Building facade elevations where the application involves a nonresidential use. The Board may also require elevations where the application involves a residential use if deemed necessary to make the decision required herein.
8. Photographs of the site showing the relationship to surrounding uses.
9. If any of the items listed are not applicable to a particular plot plan, the applicant shall specify on the plot plan which items do not apply, and furthermore, why the items are not applicable.

- (b) Hearings

The Zoning Board of Appeals shall fix a reasonable time for a hearing, not to exceed forty-five (45) days from the filing of the notice of appeal, and give due written notice of the hearing, to be personally delivered or mailed, at least fifteen (15) days thereof to the appellant and all owners of any real property within 300 feet of the premises in question according to the last assessment role. At the hearing, any party may appear in person or by agent or attorney.

- (c) The Board of Appeals shall prepare an official record for each appeal and shall base its decision on this record. The official record shall include:

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1. The relevant administrative records and the administrative orders issued thereon relating by the appeal.
 2. The notice of appeal.
 3. Such documents, exhibits, photographs, or written reports as may be submitted to the Board for its consideration.
- (d) The requisite written findings of fact, the conditions attached and the decisions and orders by the Board of Appeals in disposing of the appeal shall be entered into the official record after they have been signed by the Chairman of the Board and after written notice of the disposition of the appeal has been served, either in person or by mail, upon the parties to the appeal and the Building Inspector. The Chairman shall within ten (10) days after the date Board has reached its final decision on an appeal, sign the necessary orders to effectuate the decision of the Board.
- (e) A copy of the official record of an appeal shall be made available for the parties to the appeal upon request and after the payment of \$1.00 per page.
- (f) A variance shall run with the land, except that if no building permit has been obtained within one year of the effective date of the variance, the variance shall become null and void. The Board of Appeals shall review any subsequent application for a variance on the applicable conditions and circumstances which exist at the time of the subsequent application.
- (g) Any party aggrieved by any order, determination, or decision of any officer, agency, board, commission, zoning board of appeals, or legislative body of any local unit of government shall have the right to appeal to the Circuit Court on questions of law and fact. Such appeal must be taken within thirty (30) days after the date of the officer, agency, board, commission, zoning board of appeals, or legislative body decision is issued in writing signed by the Chairperson. Following the decision of the Circuit Court, an appeal may be taken to the Court of Appeals. A request for reconsideration of an appeal by the officer, agency, board, commission, zoning board of appeals or legislative body shall not toll the time for taking such appeal. In the event a request for reconsideration is granted, the time period for appeal shall commence from the approval of the minutes of the meeting where the appeal was reconsidered. In any event, only one request for reconsideration on each appeal shall be allowed.