

Article 2 Zoning Board of Appeals

Section 2.01 Establishment

The Zoning Board of Appeals is established in accordance with Article VI., of Public Act 110 of 2006 (M.C.L. 125.3101 et seq.). The Board shall perform its duties and exercise its powers as provided by state law and this Zoning Ordinance such that the intent of this Zoning Ordinance is observed and the health, safety and welfare of the public are secured.

Section 2.02 Composition: Terms of Office.

- A. The Zoning Board of appeals shall consist of -- members appointed by the City Commission for terms of three years. Terms shall be overlapping to provide for the appointment of an equal number of members each year. A successor member must be appointed within one month following the expiration of the previous term. **At least one member shall also be a member of the Planning Commission.**
- B. The City Commission shall also appoint two alternate members for years of three years each. An alternate member may be called by the Chairperson of the Board, the Planning Directors or the Zoning Administrators to sit as a regular member of the Board in the absence of a regular member if:
1. A regular member is unable to attend a regularly scheduled meeting; or
 2. A regular member has abstained from a decision for reason of conflict of interest.
- C. The alternate member having been appointed shall serve on an appeal until a final decision has been made. Such alternate member shall have the same voting rights as a regular member of the Board. Absence, inability to attend or abstention because of a conflict of interest may be established by communication of a Board member at least twenty-four hours prior to the regularly scheduled Board meeting.

Section 2.03 Meetings

Meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board may determine. There shall be a fixed place of meeting and all meetings shall be open to the public. The Board shall adopt its own rules of procedure and shall keep a public record of its proceedings showing the action of the Board and the vote of each member upon each question considered. The presence of -- members shall be necessary to constitute a quorum and a majority vote of the members of the Board shall be necessary to reverse an order, requirement, decision or determination of an administrative official or to decide in favor of the applicant in the case of a variance, exception or interpretation, **except that the concurring vote of two-thirds of the members shall be necessary to grant a variance from uses of land permitted by this Ordinance.**

Section 2.04 Rules of Procedure

The Zoning Board of Appeals shall follow such procedures as are established by statute, ordinance and resolution of the Board. These procedures shall include:

- A. Appeals Generally. For purposes of these rules of procedure, an appeal shall include all applications for appeals, interpretations, variances, exceptions and matters involving nonconforming uses.
- B. Initiating Appeals. Appeals shall be filled with the **Zoning Administrators** within twenty-one days after written notice is given of the action being appealed. The appeal shall be placed upon the Board's agenda in the second month immediately following the month in which the appeal is filed.
- C. Filing Fees. The filling fee for appeals shall be established by joint resolution of the City Commission and Township Board.
- D. Notices. Notice of an appeal will be given pursuant to State statute. Such notice shall be mailed or delivered at least fifteen days prior to the first meeting of the Board at which it will be formally considered.
- E. Advertisements. One advertisement in a local newspaper of general circulation indicating the nature of the appeal and the date of the hearing will be placed at least 15 days before the hearing. A minor deviation in the notice published in the newspaper or in the time of appearance of such notice in the newspaper shall not affect the validity of the proceedings of the board unless there is a clear demonstration of prejudice as a result of such minor deviation.
- F. Regular Meetings. The Board's regular meeting date is the -- after the -- of each month at -- p.m. If the regular meeting dates falls on a holiday, or if the regular meeting date falls on a -- immediately following a -- holiday, the meeting date shall be moved to the next working day. Meetings shall be held in the -- unless otherwise indicated.
- G. Exceptions to Regular Meeting Dates. If a quorum of the members is not present or anticipated, then the regular meeting may be canceled and rescheduled to the next regularly scheduled meeting or to the earliest possible date determined by the Chairperson of the Board. If no requests have been received 21 days before the date of a regularly scheduled meeting, the meeting may be canceled by the Zoning Administrators.
- H. Application Contents. In addition to all other requirements of this statute and ordinance, applications shall be in a form determined by the Zoning Administrators and shall contain such information as the Zoning Administrators shall direct. Such applications shall also include the following:
 - 1. A site plan or site diagram reflecting accurate dimensions of the property, the location of structures on the property and the location of buildings on adjacent properties. If requested by the Board or the Zoning Administrators, such drawing shall be a survey performed by a registered land surveyor.
 - 2. The name, address and telephone number of the applicant and all authorized agents of the applicant.
 - 3. The application must be signed by the owner or someone acting upon written consent of the owner, which written consent must be submitted with the application.
 - 4. All previous appeals involving the property noted on the application as to the subject, date and outcome of the appeal.

- I. Conflict of Interest. 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. Before deliberating any appeal, the Chairperson shall ask if any member has such a conflict.
- J. Representation at Hearing. The applicant or the applicant's authorized agent must be present at the public hearing to properly answer questions concerning the appeal. If the applicant or agent is not present, the appeal may be deferred until the next meeting or dismissed, at the discretion of the Board.
- K. Reconsideration. An applicant may re-appeal a decision after twelve months from the decision of the Board. The Board will not reconsider any appeal within twelve months from the date of the decision unless it can be shown by the applicant that there have been substantially changed circumstances affecting the appeal, which circumstances were not known to the Board at the previous hearing. The substantial change in circumstances shall be described, in writing, by the applicant at the time of the application. Before rehearing the matter, the Board shall decide whether there is a substantial change in circumstances allowing the rehearing.
- L. Instructions. The Zoning Administrators shall prepare a written description of the procedures of the Board and instructions to all potential applicants. Such written instruction shall be submitted to the Board for its approval prior to public distribution.
- M. Other Rules. The Board may adopt such other rules to govern its procedure as it deems advisable, provided such rules are not in conflict with statute or ordinance.

Section 2.05 Powers and Duties.

- A. Generally. The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property or make any change in the terms of intent of this Ordinance. The Board shall have the power to act on those matters where this Ordinance provides for an appeal, interpretation, variance or exception. The Zoning Board of Appeals shall not have the power to vary a standard for a Planned Unit Development or a Special Land Use Permit.
- B. Appeals. The Board shall hear and decide appeals where it is alleged by the applicant that there is an error in any order, requirement, decision or determination made by the administrative official or body charged with the enforcement of this Ordinance.
- C. Interpretations. Upon application by a City or Township official or person of interest in a specific affected parcel of land, when other administrative appeals have been exhausted, the Board shall have the power to:
 - 1. Interpret this Zoning Ordinance in such a way as to carry out its intent and purpose;
 - 2. Determine the precise location of a zoning district and special area boundaries;
 - 3. Classify a use which is not specifically mentioned, determine the district within which the use is permitted and determine the necessary parking to support the use; and
 - 4. **Determine the off-street parking and loading requirements of this Zoning Ordinance.**
- D. Variances. The Board shall have the power to authorize specific variances or departures from this Ordinance, if all of the basic conditions are satisfied, and if there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Ordinance. A variance

from the dimensional requirements of this Ordinance may only be granted if it is determined that all basic conditions have been satisfied and that there is a practical difficulty in carrying out the requirement. A variance from the use requirements of this Ordinance may only be granted if it is determined that all basic conditions have been satisfied and that there is an unnecessary hardship created by those use restrictions.

1. Basic Conditions. Any variance granted from the Zoning Ordinance shall meet the following basic conditions:
 - a. The spirit of this Ordinance shall be observed, public safety secured and substantial justice done.
 - b. There is no substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
 - c. The difficulty or hardship relating to the property is not so general or recurrent in nature that the formulation of a general regulation for such conditions is preferable.
 - d. The practical difficulties or unnecessary hardships are unique to the property under consideration and not to the general neighborhood, and shall apply only to property that is under the control of the applicant.
 - e. It shall be necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.
 - f. There is a clear showing of an unnecessary hardship in that the property as a whole cannot reasonably be put to a use authorized by this ordinance.
 - g. The alleged hardship or difficulty is not solely economic, and is based on the reasonable use of a particular parcel of land.
 - h. It may be denied where the alleged practical difficulties or unnecessary hardships resulted from an act of the applicant, or a person in privity or concert with the applicant.
2. Practical Difficulties and Unnecessary Hardships. In order to determine if there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance the following shall apply:
 - a. Dimensional Variance. A practical difficulty shall exist where there are exceptional or extraordinary circumstances or physical conditions, such as narrowness, shallowness, shape or topography of the property involved, that do not generally apply to other property or uses in the same zoning district.
 - b. Use Variance. An unnecessary hardship shall exist where the lot considered in combination with other land owned by the applicant adjacent thereto has no reasonable value as zoned.

E. Exceptions. The Board shall have the power to grant the following exceptions:

1. Extend a district where the boundary line of a district divides a lot of record in single ownership at the time of adoption of this Ordinance.
2. Interpret or apply the Ordinance where the street layout actually on the ground varies from the street layout as shown on the District Map.
3. Permit the alteration or enlargement of an existing building associated with a Class I. nonconforming use, or permit the increase in intensity of use of a Class I. nonconforming use, where:
 - a. The change will not be unreasonably delay future probability of compliance with this Ordinance.

- b. There will be greater compliance with this Ordinance or, in the alternative, with the **Building Code** or other applicable ordinances of the change is permitted, and such compliance is the maximum which can be reasonably expected.
 - c. The change will not detract from any historical or unique architectural qualities of the building.
 - d. The change will not be detrimental or tend to alter the character of the campus.
4. Permit a change in use of a Class I. nonconforming use to another nonconforming use which is more nearly conforming to the use restrictions of this Ordinance. After a change in use has been permitted, the use shall not be changed back to the former nonconforming use or to any less conforming use. Such a change in use may be permitted only where:
- a. The change in use will not unreasonably delay future probability of compliance with this Ordinance.
 - b. There will be greater compliance with this Ordinance if the change is permitted, and such compliance is the maximum which can reasonably be expected.
 - c. The change will not be detrimental to the campus or tend to alter the character of the campus.

Section 2.06 Time Limitations of Orders.

- A. Building Alterations. An order of the Zoning Board of Appeals permitting the erection or alteration of a building is valid for no longer than one 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.
- B. Uses. An order of the Board permitting the use of a premises is valid for no longer than one year unless such use is established within such period. However, where such permitted use is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for such erection or alteration is obtained within such period and is such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.
- C. Modification. Time limits established by this section may be lengthened or shortened by the Board as a condition imposed under the standards for conditions set forth in this ordinance.
- D. Expiration. In addition to any expiration provision contained in an order itself, an order of the Zoning Board of Appeals may be declared by the Zoning Administrators to be expired where there has been a change in a material circumstance of fact upon which the order was issued, such as, but limited to, destruction of a building or natural feature, vacation of a street or a change in topography. Before so declaring an order expired, the Zoning Administrators shall notify the landowner and if requested shall conduct a hearing with notice and procedures as practical.

Section 2.07 Court Review.

- A. Circuit Court Review. A decision of the Zoning Board of Appeals shall be final. However, any party having a substantial interest affected by an order, determination or decision of the Zoning board of Appeals may appeal to the Circuit Court if made to the Court within 30 days after the Zoning Board of appeals certifies its decision in writing signed by the Chairperson or within 21 days after the Zoning Board of Appeals approves the minutes of its decision, or upon a grant by the Court of leave to appeal.

B. Standards for Review. The Circuit Court shall review the record and decision of the Board of Zoning Appeals to insure that the decision:

1. Complies with the constitution and laws of the State;
2. Is based upon proper procedure;
3. Is supported by competent, material, and substantial evidence on the record; and
4. Represents the reasonable exercise of discretion granted by the law to the Zoning Board of Appeals.

C. Inadequate Record. If the Court finds the record of the Zoning Board of Appeals inadequate to make the review required, or that additional evidence exists which is material and with good reason was not presented to the Zoning Board of Appeals, the Court shall order further proceedings before the Zoning Board of Appeals on conditions which the Court consider proper. The Zoning Board of Appeals may modify its findings and decision as a result of the new proceedings, or may affirm its original decision. The supplementary record and decision shall be filed with the Court. The Court may affirm, reverse or modify the decision.

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