

## ARTICLE XXIX

### BOARD OF ZONING APPEALS

#### **SECTION 2900 CREATION AND MEMBERSHIP**

There is hereby established a Board of Zoning Appeals, which shall perform its duties and exercise its power as provided in Section 5 of Act 207 of Public Acts of 1921, as amended, and in such a way that the objectives of the Article shall be served, public safety served, and substantial justice done. The members of the Board of Zoning Appeals may be the City Council or a separate Board.

The City Council may appoint a Board of Zoning Appeals consisting of not less than six (6) members, each to be appointed for a term of three (3) years. Appointments of the first members shall be for terms of one (1), two (2), and three (3) years, respectively, so as nearly as possible to provide for the appointment of an equal number of members each year. After the initial appointments, each member shall hold office for the full three (3) year term. In the event the City Council serves as the Board of Zoning Appeals, the members shall serve for the term of their Council office. The Mayor may serve as Chairperson but shall not vote except in the case of tie and the City Clerk shall serve as Secretary.

#### **SECTION 2901 MEETINGS**

All meetings of the Board of Zoning Appeals shall be held at the call of the Chairperson and at such times as the Board may determine. All hearings conducted by the Board of Zoning Appeals shall be open to the public. The Secretary, or his representative, shall keep minutes of the proceedings, recording the vote of each member upon each question, and indicating absences and abstentions, and shall keep records of hearings and other official action. Five (5) members of the Board shall constitute a quorum for the conduct of its business. The Board of Zoning Appeals shall have the power to subpoena and require the attendance of witnesses, administer oaths, and compel testimony and the production of books, papers, files, and other evidence pertinent to the matters before it.

#### **SECTION 2902 APPEAL**

An appeal may be taken to the Board of Zoning Appeals by any person, firm or corporation, or by any officer, department, board or bureau affected by a decision of the Building and Zoning Administrator.

Such appeal shall be taken within such time as shall be prescribed by the Board of Zoning Appeals, by filing with the Building and Zoning Administrator and with the Board of Zoning Appeals, a Notice of Appeal, specifying the grounds thereof. The Building and Zoning Administrator shall forthwith transmit to the Board of Zoning Appeals all the documents and records pertaining to the action being appealed. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Building and Zoning Administrator certifies to the Board of Zoning Appeals, after notice of appeal has been filed with the Building and Zoning Administrator, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case, the proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of record.

The Board of Zoning Appeals shall select a reasonable time and place for the hearing of the appeal and give due notice thereof to the parties and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.

A fee, as established by the City Council, shall be paid to the City Clerk at the time the notice of appeal is filed.

#### **SECTION 2903 APPEAL**

The Board of Zoning Appeals shall not have the power to alter or change the zoning district classification of any property, or to make any change in terms of this Ordinance, but shall have power to act on those matters where this Ordinance provides for an administrative review, interpretation, or exception permit and to authorize a variance as defined in this Section and laws of the State of Michigan. Said powers include:

- a. **Administrative Review:** To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the Building and Zoning Administrator in the enforcement of the Zoning Ordinance.
  
- b. **Variance:** To authorize, upon an appeal, a variance from the strict application of the provisions of the Zoning Ordinance where, by reason of exceptional narrowness, shallowness, shape, or area of a specific piece of property at the time of enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to or exceptional undue hardship upon the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zoning Ordinance. In granting or denying a variance, the Board of Zoning Appeals may attach thereto such conditions regarding the location, character, site design, operations and other features of the proposed structure or uses as it deems reasonable in furtherance of the purpose of this Ordinance. In granting or denying a variance, the Board of Zoning Appeals shall state the grounds upon which it justifies the granting or denying of a variance. (amended 2/14/96), (amended 6/10/98)

**SECTION 2904 STANDARDS FOR VARIANCES AND APPEALS**

Variations and appeals shall be granted only in accordance with Michigan Public Act 207 of 1921, as amended, and based on the findings set forth in this section.

- a. **Criteria Applicable to Dimensional (area or non-use) Variations.** A dimensional variance is an approved deviation from any dimensional standard or requirement of this Ordinance, such as, but not limited to, lot area, lot width, building or structure height, building size, setback, parking, lighting or landscaping. The extent to which the following criteria apply to a specific case shall be determined by the Board of Zoning Appeals, however, at least one of the applicable criteria must be found by the Board of Zoning Appeals. (amended 6/10/98)
  - 1. **Practical Difficulties:** Compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, or other dimensional provisions would create practical difficulties, unreasonably prevent the use of the property for a permitted purpose, or render conformity with such restrictions unnecessarily burdensome. The showing of mere inconvenience is insufficient to justify a variance.
  
  - 2. **Substantial Justice:** Granting of a requested variance or appeal would do substantial justice to the applicant as well as to other property owners in the district; or, as an alternative, granting of lesser variance than requested would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
  
  - 3. **Public Safety and Welfare:** The requested variance or appeal can be granted in such fashion that the spirit of these regulations will be observed and public safety and welfare secured.
  
  - 4. **Extraordinary Circumstances:** There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties or other similar uses in the same zoning district. The conditions resulting in a variance request cannot be self-created.
  
  - 5. **No Safety Hazard or Nuisance:** The granting of a variance or appeal will not increase the hazard of fire or otherwise endanger public safety or create a public nuisance.
  
  - 6. **Relationship to Adjacent Land Uses:** The development permitted upon granting of a variance shall relate harmoniously in a physical and economic sense with adjacent land uses and will not alter the essential character of the neighborhood. In evaluating this criterion,

consideration shall be given to prevailing shopping patterns, convenience of access for patrons, continuity of development, and the need for particular services and facilities in specific areas of the City.

- b. **Criteria Applicable to Use Variances.** A use variance is requested when the use proposed by an applicant is not listed as either permitted or as a special land use in the district in which the property is located. In granting a use variance, the Board of Zoning Appeals shall determine that all of the following factors are present, or require conditions to ensure the criteria below are met. (amended 6/10/98)
1. **Criteria for Dimensional Variance.** The request meets all of the criteria for a dimensional variance listed in Section 2904, a. (amended 6/10/98)
  2. **Conformance with Master Plan.** The proposed use is consistent with the uses called for in the Master Plan for the subject property, or that conditions on site design and operations ensure such use is compatible with the planned uses in the vicinity. (amended 6/10/98)
  3. **Compatibility with Surrounding Land Uses.** The proposed use is compatible with existing or planned uses on surrounding properties. The Zoning Board of Appeals may require a sketch plan or site plan, as applicable, and may request a recommendation from the Planning Commission, to assist with this finding. (amended 6/10/98)
  4. **Unreasonable Current Zoning Designation.** The applicant has demonstrated that the site can not reasonably be used for any of the uses allowed within the current zoning district designation. The Zoning Board of Appeals may require submission of documentation from real estate or market experts, or a certified appraiser, to substantiate this finding. (amended 6/10/98)
  5. **Capacity of Roads, Infrastructure and Public Services.** The capacity and operations of public streets, utilities, other facilities and services will not be significantly compromised. (amended 6/10/98)
  6. **Unnecessary Hardship.** An unnecessary hardship exists on the subject site due to very unique circumstances. (amended 6/10/98)
  7. **Minimum Variance Necessary.** The variance requested is the minimum necessary to permit reasonable use of the land. (amended 6/10/98)
- c. **Criteria Applicable to Appeals:** The Board of Zoning Appeals shall reverse an order of an Enforcement Official only if it finds that the action or decision appealed: (amended 6/10/98)
1. was arbitrary or capricious, or
  2. was based on an erroneous finding of a material fact, or
  3. constituted an abuse of discretion, or
  4. was based on erroneous interpretation of the Zoning Ordinance or zoning law.
  5. Appeals from Denial of Board of Zoning Appeals of Zoning Appeals may be taken to Genesee County Circuit Court.
- d. **Interpretations and Exceptions:** To hear and decide, in accordance with the provisions of this Ordinance, requests for exceptions, for interpretations of the Zoning Map, and for situations on which this Ordinance specifically authorizes the Board of Zoning Appeals to act. Any exception shall be subject to such conditions as the Board of Zoning Appeals may require to preserve and promote the character of the zoning district in question and otherwise promote the purpose of this Ordinance, including the following: (amended 6/10/98)
1. Interpret the provisions of this ordinance in such a way as to carry out the intent and purpose

of the Master Plan. Interpret boundaries of the Zoning Map where the actual alignment of streets or natural features used to separate zoning districts varies from the alignment shown on the Zoning Map, or where the zoning district boundary does not follow exact property lines.  
(amended 6/10/98)

2. Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.
3. Permit modification of obscuring wall requirements only when such modification will not adversely affect or be detrimental to surrounding or adjacent development. (amended 6/10/98)
4. Permit, upon proper application, a temporary use not otherwise permitted by Section 332 for a maximum of twelve (12) months. The Zoning Board of Appeals may grant one (1) twelve-month extension if requested in writing by the operator or land owner prior to expiration of the original approval. (amended 6/10/98)

The Board of Zoning Appeals, in granting permits for the above temporary uses, shall do so under the following conditions:

1. The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.
  2. The granting of the temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.
  3. All setbacks, land coverage, off-street parking, lighting and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the City, shall be made at the discretion of the Board of Zoning Appeals.
  4. In classifying uses as not requiring capital improvement, the Board of Zoning Appeals shall determine that they are either demountable structures related to the permitted use of the land; recreation developments, such as, but not limited to: golf-driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.
  5. The use shall be in harmony with the general character of the district.
  6. No temporary use permit shall be granted without first giving notice to owners of adjacent property and all owners of record listed in the latest assessment roll of the City located within three hundred (300) feet of the area of the request of the time and place of a Public Hearing to be held as further provided for in this Ordinance. Further, the Board of Zoning Appeals of Zoning Appeals shall seek the review and recommendation of the Planning Commission prior to the taking of any action.
- e. **Votes required:** The concurring votes of four (4) members of the Board of Zoning Appeals shall be necessary to reverse any order, requirement, decision, or determination of Applicant in matter upon which is authorized by this Ordinance to render a decision. Nothing contained herein shall be construed to give or grant to the Board of Zoning Appeals the power or authority to alter or change this Ordinance or the Zoning Map.

## **SECTION 2905 ORDERS**

In exercising the above powers, the Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such an order, requirement, decision, or determination as ought to be made, and to that end, shall have all the powers of the

Building and Zoning Administrator from whom the appeal is taken.

**SECTION 2906 NOTICE**

The Board of Zoning Appeals shall make no determination, except in a specific case, and after a public hearing. It shall, by general rule or in specific cases, determine the interested parties who, in the opinion of the Board of Zoning Appeals, may be affected by any matter brought before it, in all cases including all owners of record of real property within three hundred (300) feet of the premises in question and all occupants of single and two-family dwellings within three hundred (300) feet, such notices to be delivered personally or by mail addressed to the respective owners and tenants at the address given in the last assessment roll. The Board of Zoning Appeals may require any party applying to the Board of Zoning Appeals for relief to give notice to such other interested parties as it shall prescribe.

**SECTION 2907 MISCELLANEOUS**

No order of the Board of Zoning Appeals permitting the erection of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is obtained within such period, and such erection or alteration is started and completed in accordance with the terms of such permit.

No order of the Board of Zoning Appeals permitting a use of a building or premises shall be valid for a period longer than one (1) year unless such use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period, and such erection or alteration is started and completed in accordance with the terms of such permit.

The Board of Zoning Appeals shall not have any jurisdiction to consider any decision by the City Council regarding a request for Special Land Use Approval.