

ARTICLE 23.00

ZONING BOARD OF APPEALS

Section 23.01 -- CREATION

- (a) A Zoning Board of Appeals (ZBA) is hereby established, which shall consist of five (5) members and two (2) alternate members to be appointed by the legislative body, in accordance with Section 110, P.A. of 2006, as amended. One member of the ZBA shall be a member of the Planning Commission. One regular member may be a member of the legislative body but shall not serve as chairperson of the board. An employee or contractor of the legislative body may not serve as a member of the Board.
- (b) An alternate may be called as specified to serve as a member of the Board in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve the case until a final decision is made. The alternate member has the same voting rights as a regular member of the Board.
- (c) A member of the Board may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.
- (d) The terms of office for members appointed to the Board shall be for three (3) years, except for members serving because their membership on the Planning Commission of legislative body, whose terms shall be limited to the time are members of those bodies. When members are first appointed, the appointments may be for less than three (3) years for staggered terms. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.

Section 23.02 -- MEETINGS OF ZONING BOARD OF APPEALS

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 23.03 -- POWERS OF ZONING BOARD OF APPEALS

The Board shall have all powers and duties granted by State law and by this Ordinance to such boards, including the following powers:

- (a) **General Powers.** The ZBA shall have authority to act on those matters where this Ordinance provides for administrative review/appeal, interpretation, or special approval/appeal, and shall have the authority to authorize a variance as defined in this Ordinance and laws of the State of Michigan. The ZBA shall not have the authority to alter or change zoning district classifications of any property, nor to make any change in the text of this Ordinance.

- (b) **Administrative Review.** The ZBA shall have the authority to hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision, or refusal made by the Planning Commission, City Council, Building Inspector or any other administrative body or official in interpreting or in enforcing any provision of this Ordinance. Such appeal shall be requested within 30 days of the date of the order, refusal, requirement, or determination being appealed.

In hearing and deciding appeals under this sub-section, ZBA review shall be based upon the record of the administrative decision being appealed, and the ZBA shall not consider new information which had not been presented to the administrative official, board or commission from whom the appeal is taken. The ZBA shall not substitute its judgment for that of the administrative official, board or commission being appealed, and the appeal shall be limited to determining, based upon the record, whether the administrative official, board or commission breached a duty or discretion in carrying out this Ordinance.

- (c) **Variations.** To authorize, upon an appeal, a variance from the strict application of the provisions of this Ordinance in accordance with the provisions of Sections 23.04 and 23.05 of the Ordinance.

- (d) **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 interpretations which have been consistently applied in the administration of the Ordinance. Prior to deciding a request for an 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.

- (e) **Conditions.** The ZBA may impose reasonable conditions in connection with an affirmative decision on an appeal, interpretation or variance request. The conditions may include requirement necessary to insure that public services and facilities affected by a proposed land 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 required in a new case.

Section 23.04 -- APPLICATION OF THE VARIANCE POWER

The ZBA shall have authority in specific cases to authorize 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.

- (a) **"Use" Variance.** The ZBA may grant a "use" variance only upon a finding that an unnecessary hardship exists. A "use" variance is a variance that permits a use that is otherwise prohibited in a zoning district. A finding of an unnecessary hardship shall require demonstration by the applicant of all of the following:
1. The property cannot be reasonably used for any purpose permitted in the zoning district without the variance.
 2. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
 3. The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessors.
 4. The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area will be considered.
- (b) **"Non-Use" Variance.** The ZBA may grant a "non-use" variance only upon a finding that practical difficulties exist. A "non-use" variance is a variance from any standard or requirement of the Ordinance, such as, but not limited to, a deviation from density, height, bulk, setback, or parking, landscaping and sign standards and requirements. A finding of practical difficulties shall require demonstration by the applicant of all of the following:
1. Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other "non-use" matters will unreasonably prevent the owner from using the property for a permitted purpose or will be unnecessarily burdensome.
 2. The variance will do substantial justice to the applicant, as well as to other property owners.
 3. A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
 4. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
 5. The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessors.

Section 23.05 -- DECISIONS BY THE ZONING BOARD OF APPEALS

- (a) **ZBA Powers.** The ZBA may reverse, affirm, vary or modify any order, requirement, decision, or determination presented in a case within the ZBA's jurisdiction, and to that end, shall have all of the

powers of the officer, board or commission from whom the appeal is taken, subject to the ZBA's scope of review, as specified in this Ordinance and/or by law. The ZBA may remand a case for further proceedings and decisions, with or without instructions.

- (b) **"Non-Use" Variance and Other Appeals.** The concurring vote of a majority of the members of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of an administrative official, board or commission made in the administration of this ordinance, to decide in favor of an applicant on any matter upon which the ZBA is required to pass under this ordinance, or to grant a "non-use" variance from the terms of this ordinance.
- (c) **"Use" Variance.** Notwithstanding Section 23.05(b), above, the concurring vote of two-thirds of the members of the ZBA shall be necessary to grant a use variance.
- (d) **Findings, Responsibilities of Applicant.** 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.
- (e) **ZBA Decision Final.** The decision of the Zoning Board of Appeals shall be final. A party aggrieved by the decision may appeal to the Circuit Court of Oakland County, as provided in Public Act 110 of 2006. An appeal to the Circuit Court for Bat County shall be filed within 30 days after the Board certifies its decision in writing or approves the minutes of its decision.
- (f) **Period of Validity.** Any decision of the ZBA favorable to the applicant shall remain valid only as long as the information and data relating to such decisions are found to be correct, and the conditions upon which the decision was based are maintained. The relief granted by the ZBA shall be valid for a period not longer than six (6) months, unless otherwise specified by the ZBA, and within such period of effectiveness, actual, on-site improvement of property in accordance with the approved plan and the relief granted, under a valid building permit, must be commenced or grant of relief shall be deemed void.

Section 23.06 -- PROCEDURE FOR APPEALS TO THE BOARD

(rev. May 2006)

- (a) **Notice of Appeal.** Following receipt of a written request concerning a request for a variance, the Board shall fix a reasonable time for hearing of the request and a notice that a request for a variance has been received shall be published in a newspaper which circulates in the city, and sent by mail or personal delivery to the owners of the property for which approval is being considered, to all persons to whom real property is assessed within 300 feet of the boundary of the property in question, and to the occupants of all structures within 300 feet. The notice shall be given not less than 15 days before the date the application will be considered. If the name of the occupant is not known, the term "occupant" may be used in making notification. The notice shall:
 1. Describe nature of request.
 2. Indicate the property that is subject of the request. The notice shall include a listing of all existing addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
 3. State when and where the request will be considered.
 4. Indicate when and where written comments will be received concerning the request.

5. Indicate that a public hearing on the variance request may be requested by any property owner or the occupant of any structure located within 300 feet of the boundary of the property being considered for a variance.
- (b) **Hearings.** Upon receipt of 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 city 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, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.
- (c) **Official Record.** The Board shall prepare an official record for each appeal and shall base its decision on this record. The official record shall include:
1. The relevant administrative records and the administrative orders issued thereon relating to 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) **Plot Plan.** The applicant shall submit a plot plan drawn to a scale with any variance request. The plan which shall accompany all variance requests shall be based on a mortgage survey or land survey prepared by a registered land surveyor or registered engineer. The plan shall be to scale and shall include all property lines and dimensions, setbacks and all existing and proposed structures. The Zoning Board of Appeals has the authority to require a land survey prepared by a registered land surveyor or registered engineer when the ZBA determines it to be necessary to insure accuracy of the plan.
- The ZBA shall have no obligation to consider and/or grant a request for relief unless and until a conforming and complete application has been filed, including relevant plans, studies and other information.
- (e) **Copies of Official Record.** 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) **Stay of Proceedings.** An appeal shall have the effect of staying all proceedings in furtherance of the action being appealed unless the officer or entity from whom the appeal is taken certifies to the ZBA that, by reason of facts stated in such certification, a stay would in his or her opinion cause imminent peril to life or property, in which case proceedings shall not be stayed unless specifically determined by the ZBA, or by a court of competent jurisdiction.