

## **Article XXIV**

### **BOARD OF ZONING APPEALS**

#### **Section 24.01 CREATION AND MEMBERSHIP**

A Board of Appeals is hereby established, and shall consist of not less than five members and two alternate members to be appointed by the legislative body, in accordance with Act 110, P.A. 2006 as amended. Vacancies shall be filled by resolution of the Council for any expired term of the vacant term. One member of the Board shall be a member of the Planning Commission and City Council.

#### **Section 24.02 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. 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 24.03 APPEAL**

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

Such appeal shall be taken within such time as shall be prescribed by the Board of Zoning Appeals, by filing with the Zoning Administrator and with the Board of Zoning Appeals, a Notice of Appeal specifying the grounds thereof. The 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 Zoning Administrator certifies to the Board of Zoning Appeals, after notice of appeal has been filed with the 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 24.04 JURISDICTION**

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 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 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, and other features of the proposed 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. A variance to permit a use not otherwise permitted within a zoning district (For example, a "use variance") may not be permitted by the Board of Zoning Appeals.

### **Section 24.05 STANDARDS FOR VARIANCES AND APPEALS**

Variations and appeals shall be granted only in accordance with Michigan Public Act 110 of 2006, as amended, and based on the findings set forth in this section. 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.

- A. Criteria Applicable to Variances, Appeals and Exceptions
  - 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 Appeals: The Board of Zoning Appeals shall reverse an order of an Enforcement Official only if it finds that the action or decision appealed (Also refer to Section 24.05A for decision criteria):
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 may be taken to Washtenaw County Circuit Court.
- C. 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 (Refer to Section 24.05A for decision criteria):

1. Interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the Zoning Map fixing the use districts accompanying and made part of this Ordinance, where street layout actually on the ground varies from the street layout as shown on the map aforesaid.
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 such modification of the height and area regulations as may be necessary to secure an appropriate improvement of a lot which is shaped such or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification.
4. Permit modification of obscuring wall requirements only when such modification will not adversely affect or be detrimental to surrounding or adjacent development.
5. Permit, upon proper application, the following character of temporary use, not otherwise permitted by Section 3.06, not to exceed twelve (12) months with the granting of one (1) twelve-month extensions being permissible for uses which do not require the erection of any capital improvement of a structural nature.

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.
- D. Votes required: A 2/3 vote of the members 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 24.06 - EXPANSION AND SUBSTITUTIONS**

- A. Where the Zoning Board of Appeals is required to determine whether a non-conforming-structure may be enlarged, expanded, or extended, the following provisions shall apply.
1. The reasons for a nonconformity shall be limited to minimum lot area, lot width, required yards, off-street loading and parking requirements, and transition strip and landscape strip requirements. In no case shall a structure that is nonconforming because of lot coverage, floor area ratio, lot area per dwelling unit, or height requirements be permitted to expand without removing the nonconformity, except as permitted under a variance.
  2. The existing and proposed uses of such buildings and structures shall be permitted in the district in which situated.
  3. The proposed improvement shall conform to all requirements of the district in which situated.
  4. The Board of Appeals shall determine the following in approving a request:
    - a. that the retention of the nonconforming structure is reasonably necessary for the proposed improvement or that requiring removal of such structure would cause undue hardship;

- b. that the proposed enlarged or otherwise improved nonconforming structure will not adversely affect the public health, safety and welfare; and
  - c. that the proposed improvement is reasonably necessary for continuation of the use on the lot.
5. The Board of Appeals shall have authority to require modification of the nonconformity, where such requirement is reasonable, as a condition for approval. The Board of Appeals may attach other conditions for its approval which it deems necessary to protect the public health, safety and welfare.
6. All expansions permitted under this Section shall meet all requirements of Article XXI, herein, Site Plan Review, if a site plan is required. The site plan may be a final site plan and shall be first reviewed by the Planning Commission. Upon completion of its review, the Planning Commission shall transmit the site plan and a summary of its review to the Zoning Board of Appeals. The Board of Appeals shall then act upon the request and return the site plan and the Board's findings on the request to the Planning Commission for its action.
- B. A structure which does not conform to zoning ordinance regulation shall not substitute for, or replace, any conforming or nonconforming structure.
- C. A nonconforming use of a structure may be substituted for another nonconforming use upon permission by the Board of Appeals, provided that no structural alterations are made, and provided further, that such other nonconforming use is more appropriate than the existing nonconforming use in the district in which it is located. The Board of Appeals may require appropriate conditions and safeguards in accordance with the intent of this Ordinance. A nonconforming use, when superseded by a more appropriate use as provided in this subsection, shall not thereafter be resumed.

## **Section 24.07 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 Zoning Administrator from whom the appeal is taken.

## **Section 24.08 NOTICE**

The Board of Zoning Appeals shall make no determination, except in a specific case, until after a public hearing. Notice of the public hearing shall be published in a newspaper of general circulation within the City.

Notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction.

The notice shall be given not less than 15 days before the date the application will be considered for approval. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection. The notice shall do all of the following:

- a. Describe the nature of the request.
- b. Indicate the property that is the subject of the request. The notice shall include a listing of all existing street 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.
- c. State when and where the request will be considered.
- d. Indicate when and where written comments will be received concerning the request.

## **Section 24.09 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.

## **Section 24.10 APPEAL OF BOARD OF ZONING APPEAL DECISION**

Any party aggrieved by a decision of the Board of Zoning Appeals may appeal to the Washtenaw County Circuit Court as provided in Act 110 of Public Acts of Michigan of 2006. An appeal under this section shall be filed within 30 days after the Board of Zoning Appeals certifies its decision in writing or approves the minutes of its decision.