

## Article XXIV

### ZONING BOARD OF APPEALS

#### Section 24.01 CREATION

A Zoning Board of Appeals is hereby established in accordance with Act 110, P.A. 2006, as amended.

#### Section 24.02 MEMBERSHIP AND TERMS

- A. **Number of Members.** The Zoning Board of Appeals shall consist of not less than five members and no more than two alternate members to be appointed by the legislative body, and shall be composed of the following five members whose terms shall be as stated:
1. One member shall be a member of the Planning Commission and one member shall be a member of the City Council. The member of the City Council that serves on the Zoning Board of Appeals shall not serve as chairperson of the Zoning Board of Appeals.
  2. The remaining regular and any alternate members of the Zoning Board of Appeals shall be selected from the electors residing within the City. The members selected shall be representative of the population distribution and of the various interests present in the City.
- B. **Terms of Office.** The term of office for each member shall be for three years except for members serving because of their membership on the Planning Commission or City Council, whose terms shall be limited to the time they are members of the Planning Commission or City Council respectively, and the period stated in the resolution appointing them, whichever is shorter. A successor shall be selected and appointed by resolution of the City Council for any unexpired vacated position.
- C. **Employees/Contractors as Members.** An employee or contractor of the City Council shall not serve as a member of the Zoning Board of Appeals.
- D. **Removal of Members / Conflict of Interest.**
1. The City Council shall provide for the removal of a member of the Zoning Board of Appeals for misfeasance, malfeasance or nonfeasance in office upon written charges and after a public hearing.
  2. A member of the Zoning Board of Appeals shall disqualify herself or himself from a vote in which the member has a conflict of interest. Failure of a

member to disqualify herself or himself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

- E. **Alternate Members.** An alternate member may be called to serve as a member of the Zoning Board of Appeals in the absence of a regular member, if the regular member will be unable to attend one or more meetings. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision is made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.

## **SECTION 24.03 MEETINGS**

All meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at such times as the Zoning Board of Appeals may determine. All hearings conducted by the Zoning Board of 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 Zoning Board of 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. The Zoning Board of Appeals shall not conduct business unless a majority of the members of the Board are present.

## **Section 24.04 APPEAL**

The Zoning Board of Appeals shall hear and decide appeals from and a review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of this Zoning Ordinance. Such appeal shall be in writing and taken within such time as shall be prescribed by the Zoning Board of Appeals, by filing with the Zoning Administrator and with the Zoning Board of Appeals, a Notice of Appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Zoning Board of Appeals all the documents and records pertaining to the action being appealed. Decisions related to Planned Unit Developments or Special Land Uses shall not be appealed to the Zoning Board of Appeals

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Zoning Board of 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 Zoning Board of 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 24.05 JURISDICTION**

- A. **General Powers.** The Zoning Board of Appeals has the power to act on matters as provided in this Article and Public Act 110 of 2006, as amended. The specific powers of the Zoning Board of Appeals are enumerated in this section.
- B. **Delegated Duties.** To hear and decide on all matters referred to it upon which it is required to pass under this Ordinance.
- C. **Administrative Review.** The Zoning Board of Appeals shall hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by an administrative official or body charged with enforcement of the Zoning Ordinance. In exercising the powers set forth in this Article, the Zoning Board of Appeals may reverse or affirm wholly or partly, or may modify the order requirements, decision, or determination appealed from and may make such order, requirements, decision or determination as ought to be made, and to that end shall have all the powers of the administrative official or body from whom the appeal is taken.
- D. **Interpretation.**
  - 1. The Zoning Board of Appeals shall hear and decide requests for interpretation of this Ordinance or the zoning map, taking into consideration the intent and purpose of this Ordinance and the Master Plan.
  - 2. In an interpretation of the Zoning Map, the Zoning Board of Appeals shall be governed by the rules of interpretation set forth in Section 2.01.
  - 3. A record shall be kept by the Zoning Board of Appeals of all decisions for interpretation of this Ordinance or Zoning Map and land uses which are approved under the terms of this Section. The Zoning Board of Appeals shall request the Planning Commission to review any ordinance amendment it deems necessary.
- E. **Variances.** Where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would involve practical difficulties by reason of narrowness, shallowness, shape, or area of a specific piece of property at the time of enactment of this Ordinance, or by reason of exception topographic conditions or other extraordinary or exceptional conditions of a property, the Zoning Board of Appeals shall have power upon appeal in specific cases to authorize such variation or modification of the dimensional provisions of this Ordinance with such spirit of this Ordinance and so that public safety and welfare be secured and substantial

justice done. No such variance or modification of the provisions of this Ordinance shall be granted unless the requirements of Section 24.06 A. are met.

1. That 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 class of uses in the same district or zone.
2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity.
3. That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.
4. That the granting of such variance will not adversely affect the purpose of objectives of the master plan.
5. Absent exceptional circumstances which would otherwise result in substantial injustice, the circumstances or conditions upon which the variance is based do not result from the actions of the applicant or his predecessors in title.

No provision contained in this Section shall be construed to give or grant the Zoning Board of Appeals the power or authority to alter or change the Zoning Ordinance or the Zoning Map, to rezone or to grant use variances, such power and authority being reserved to the City Council in the manner provided under Public Act 110 of 2006, as amended.

**F. Expansions, Alterations, and Substitutions:** The Zoning Board of Appeals is required to determine whether a non-conforming structure may be enlarged, expanded, or extended or whether a non-conforming use can be substituted. In considering expansions, alterations, and/or substitutions related to non-conforming structures and uses, the Zoning Board of Appeals shall review the following criteria:

1. The reasons for a non-conformity 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 non-conforming due to lot coverage, floor area ratio, lot area per dwelling unit, or height requirements be permitted to expand without removing the existing non-conformity, 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 retention of the non-conforming structure is reasonably necessary for the proposed improvement or that requiring removal of such structure would cause undue hardship;
5. The proposed enlarged or otherwise improved nonconforming structure will not adversely affect the public health, safety and welfare; and
6. The proposed improvement is reasonably necessary for continuation of the use on the lot.
7. The Zoning Board of Appeals shall have authority to require modification of the non-conformity, where such requirement is reasonable, as a condition of approval. The Zoning Board of Appeals may attach other conditions of approval which it deems necessary to protect the public health, safety, and welfare.
8. 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 Zoning 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.
9. A structure which does not conform to zoning ordinance regulation shall not substitute for, or replace, any conforming or non-conforming structure.
10. A non-conforming use of a structure may be substituted for another non-conforming use upon permission by the Zoning Board of Appeals, provided that no structural alterations are made, and that such nonconforming use is more appropriate than the existing non-conforming use in the district in which it is located. The Zoning Board of Appeals may require appropriate conditions and safeguards in accordance with the intent of this Ordinance. A non-conforming use, when superseded by a more appropriate use as provided in this subsection, shall not thereafter be resumed.

## **Section 24.06 STANDARDS FOR VARIANCES AND APPEALS**

Variations or reversal on 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 Zoning Board of Appeals; however, all of the applicable criteria must be found by the Zoning Board of Appeals in order to receive a variance or appeal.

### **A. Criteria Applicable to Variances.**

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. Absent exceptional circumstances which would otherwise result in substantial injustice, the circumstances or conditions upon which the variance is based do not result from the actions of the applicant or his predecessors in title.
  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. The granting of such variance or modification will not be detrimental to the public welfare or injurious to the property or improvement in such zone or district in which the property is located.
  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. Such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity.
  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 the purpose and objectives of the master plan, 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 Zoning Board of Appeals shall reverse an order of an Enforcement Official only if it finds that the action or decision appealed (Also refer to Section 24.06A 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 Zoning Board of Appeals may be taken to Washtenaw County Circuit Court.

## **Section 24.07 ORDERS**

In exercising the above powers, the Zoning Board of 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 administrative official or body from whom the appeal is taken.

A member of the Zoning Board of Appeals who is also a member of the Planning Commission or City Council shall not participate in a public hearing on the same matter that the member voted on as a member of the Planning Commission or City Council. However, the member may consider and vote on other unrelated matters involving the same property.

The concurring vote of a majority of the members of the Zoning Board of Appeals is necessary to reverse an order, requirements, decision, or determination of the administrative official or body, decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance, or to grant a variance in the Zoning Ordinance.

## **Section 24.08 NOTICE**

The Zoning Board of Appeals shall make no determination, except in a specific case, until after a public hearing. Notice of the public hearing shall be published in the manner required by Section 22.08 Notices.

## **Section 24.09 EFFECTIVENESS**

No order of the Zoning Board of Appeals permitting the erection of a building shall be valid for a period 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 completed in accordance with the terms of such permit.

No order of the Zoning Board of Appeals permitting a use of a building or premises shall be valid for a period longer than one 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 Zoning Board of Appeals may appeal to the Washtenaw County Circuit Court as provided in Act 110 of Public Acts of Michigan of 2006, as amended. An appeal under this section shall be filed within whichever of the following deadlines comes first:

- A. Thirty days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the Zoning Board of Appeals, if there is no chairperson.
- B. Twenty-one days after the Zoning Board of Appeals approves the minutes of its decision.