

CHAPTER 1278
Board of Zoning Appeals

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1 1278.0 AUTHORITY.

There is hereby established a Board of Zoning Appeals, the membership, powers, duties of which are prescribed in Act 207 of the Public Acts of the State of Michigan of 1921, as amended. The Board of Zoning Appeals, in addition to the general powers and duties conferred upon it by said Act, in specific cases and subject to appropriate conditions and safeguards, shall interpret and determine the application of the regulations established under this Zoning Code in harmony with their purpose and intent as hereinafter set forth. (Ord. 275. Passed 9-23-03.)

1278.02 MEMBERSHIP.

The Mayor shall appoint with confirmation by the City Council a Board of Zoning Appeals consisting of seven (7) members. Two (2) members shall be appointed for a three (3) year term, two (2) members shall be appointed for a two (2) year term, three (3) members shall be appointed for a one (1) year term, each being a resident at-large of the city for a period of no less than 60 days prior to appointment. After the initial appointment, each member shall hold office for a period of three (3) years or until a successor is appointed. Members may be removed at the pleasure of the City Council. Any vacancy in the Board shall be filled by the City Council for the remainder of the unexpired term. The Board shall annually elect its own Chair, Vice-Chair and Secretary. Compensation of the members of the Board may be fixed by the Council. (Ord. 275. Passed 9-23-03.)

1278.03 MEETINGS.

(a) All decisions of the Board of Zoning Appeals shall be made at a meeting open to the public. All deliberations of the Board constituting a quorum of its members shall take place at a meeting open to the public, except as provided in compliance with the Open Meetings Act, Act 267 of the Public Acts of 1976, as amended.

(b) A majority of the members of the Board shall constitute a quorum for purposes of transacting the business of the Board and the Open Meetings Act, Act 267 of the Public Acts of 1976, as amended. Each member of the Board shall have one (1) vote.

(c) Regular meetings of the Board shall be called as needed in response to receipt of a Notice of Appeal, so long as the meeting is scheduled within a reasonable time frame following the Notice of Appeal. The meeting can be called by the Zoning Administrator, the Chair of the Board of Zoning Appeals, or, in his or her absence, the Vice-Chair. Public notice of the date, time, and place of a public meeting of the Board shall be given in the manner required by Act 267 of the Public Acts of 1976, as amended.

(d) The Chair, or in his or her absence, the Vice-Chair, may administer oaths and compel the attendance of witnesses.
(Ord. 275. Passed 9-23-03.)

1278.04 POWERS AND DUTIES.

(a) General. The Board has the power to act on matters as provided in this chapter and Act 267 of the Public Acts of 1921, as amended. The specific powers of the Board are enumerated in the following divisions.

(b) Voting. The concurring vote of a majority of the members of the Board shall be necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant on a matter upon which the Board is required to pass under this chapter, or to effect a variation in an ordinance, except that a concurring vote of two-thirds (2/3) of the members of the Board shall be necessary to grant a variance from uses of land permitted in this chapter. A member shall be disqualified from a vote in which there is a conflict of interest. Failure of a member to disclose a conflict of interest and be disqualified from a vote shall constitute misconduct in office.

(c) Administrative review. The Board shall 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 Zoning Administrator or other duly authorized enforcing agent in enforcing any provision of this Zoning Code.

(d) Interpretation.

(1) The Board shall hear and decide requests for interpretations of this Zoning Code or the zoning map, taking into consideration the intent and purpose of this Zoning Code and the Master Plan.

(2) A record shall be kept by the Board of all decisions for interpretation of this Zoning Code or the zoning map and land uses which are approved under the terms of this Zoning Code. The Board shall request the Planning Commission to review any ordinance amendment it deems necessary.

(e) Variance. Upon an appeal, the Board is authorized to grant a variance from the strict provisions of this Zoning Code, whereby extraordinary or exceptional conditions exist for which 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

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substantially impairing the intent and purpose of this Zoning Code. In granting a variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this Zoning Code. Further, in granting a variance, the Board shall state the grounds upon which it justifies the granting of a variance as outlined below. When granting any variance, the Board must ensure that the spirit of this Zoning Code is observed, public safety secured, and substantial justice done.

- (1) Use variances. The applicant must present evidence to show that if the Zoning Code is applied strictly, unnecessary hardship to the applicant will result, and that all four (4) of the following requirements are met:
 - A. That the property could not be reasonably used for the purposes permitted in that zoning district;
 - B. That the appeal results from unique circumstances peculiar to the property and not from general neighborhood conditions;
 - C. That the use requested by the variance would not alter the essential character of the area; and
 - D. That the alleged hardship has not been created by any person presently having an interest in the property.
 - (2) Non-use variances. The applicant must present evidence to show that if the Zoning Code is applied strictly, practical difficulties will result to the applicant, including the following:
 - A. That the restrictions of this Zoning Code unreasonably prevent the owner from using the property for a permitted purpose;
 - B. That the variance would do substantial justice to the applicant as well as to other property owners in the district and a lesser relaxation than that requested would not give substantial relief to the owner of the property or be more consistent with justice to other property owners.
 - C. That the plight of the landowner is due to the unique circumstances of the property; and
 - D. That the alleged hardship has not been created by any person presently having an interest in the property.
- (Ord. 275. Passed 9-23-03.)

1278.06 PROCEDURE FOR APPEAL.

(a) An applicant requesting any action by the Board shall commence such request by filing a notice of appeal on the form supplied by the city, accompanied by such appeal fee as determined by the City Council, and all plans, studies and any other information and data as applicable, all of which shall be made a part of the record.

(b) Every appeal from a determination of the Zoning Administrator or other duly authorized enforcing agent shall be made by the applicant within thirty (30) days of the date of the order issuance or refusal to issue a permit.

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(c) The Board shall fix a time for a hearing on the appeal, and shall notify the applicant of the time and place of such hearing. Notice of the public hearings shall be sent to the persons to whom real property within three hundred (300) feet of the premises in question is assessed, and to the occupants of one and two-family dwellings within three hundred (300) feet, the notice to be delivered personally or by mail addressed to the respective owners and tenants at the address given in the last assessment roll. If the tenant's name is not known the term "occupant" may be used.

(d) Any person may appear at the public hearing or be represented by an agent or attorney, and present any evidence in support of their appeal. The Board of Zoning Appeals shall have the power to require the attendance of witnesses, administer oaths, compel testimony, and otherwise cause the production of books, papers, files, and other evidence pertaining to matters properly coming before the Board of Zoning Appeals.

(e) The Board shall not decide an appeal until after a public hearing.

(f) The Board may reverse, affirm, vary, or modify, any order, requirement, or determination, as to which it has the power to consider, and shall have all the powers of the officer or body from whom the appeal was taken, and may issue or direct the issuance of a permit.

(g) The Board may impose conditions with any decision. Such conditions imposed shall meet all of the following requirements:

- (1) Be designed to protect natural resources, public health, safety, and welfare and the social and economic well being of those who will use the land, 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 this Zoning Code, be related to the standards established in this Zoning Code for the land use or activity under consideration, and be necessary to insure compliance with those standards. Violations of any of these conditions shall be deemed a violation of this Zoning Code, enforceable as such and/or may be grounds for revocation or reversal of such decision.

(h) All decisions of the Board shall be in writing and so far as it is practicable, in the form of a general statement or resolution reciting the conditions, facts and findings of the Board. The applicant shall be advised of the decision after the public hearing unless the Board moves for a continuation of such hearing.

(i) Any decision of the Board favorable to the applicant shall remain valid only as long as the information or data relating thereto are found to be correct

and the conditions upon which the decision was based are maintained.

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(j) The Board may reconsider an earlier decision, if, in the opinion of the Board, circumstances justify taking such action.

(k) No order of the Board of Zoning Appeals permitting the erection or alteration of a building shall be valid for a period of 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 proceeds to completion 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 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 proceeds to completion in accordance with such permit.

(l) Any person or persons, or any board or department of the city, having an interest affected by a decision of the Board, shall have the right to appeal to the circuit court on questions of law and fact. Such appeal must be taken within twenty-one (21) days after the date of the Board's decision. A request for reconsideration under division (j) above shall not toll the time for taking such appeal. In the event a request for reconsideration is granted, the time period for appeal shall commence upon the date of the approval of the minutes of the meeting where the appeal was reconsidered. In any event, only one (1) request for reconsideration on each appeal shall be allowed.
(Ord. 275. Passed 9-23-03.)

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