

ARTICLE 11

ZONING BOARD OF APPEALS

Section 11.1 Authority.

There is hereby established a Zoning Board of Appeals, the membership, powers, duties of which are prescribed in Act 110 of the Public Acts of the State of Michigan of 2006, as amended. The Zoning Board of 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 Ordinance in harmony with their purpose and intent as hereinafter set forth.

Section 11.2 Membership.

11.2.1 The City Council shall act as the Zoning Board of Appeals.

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

Section 11.3 Meetings.

11.3.1. All decisions of the Board shall be made at a meeting open to the public. All deliberations of the Board constituting a quorum of its member shall take place at a meeting open to the public except as provided in compliance with the Open Meetings Act, Act 267 of 1976 as amended.

11.3.2. 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 1976, as amended. Each member of the Board shall have one (1) vote.

11.3.3. Regular meetings of the Board shall be called as needed in response to receipt of a Notice of Appeal. The meeting can be called by the Zoning Administrator, the Chair of the Appeals Board, 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 prescribed in Section 3.7.

11.3.4. The business of the Board of Appeals shall be conducted in accordance with its adopted bylaws.

11.3.5. The Chair, or in his or her absence, Vice-Chair may administer oaths and compel the attendance of witnesses.

Section 11.4 Powers and Duties.

11.4.1. General. The Board has the power to act on matters as provided in this Ordinance and Act 110, of the Public Acts of 2006, as amended. The specific powers of the Board are enumerated in the following sections of this Article.

11.4.2. Voting. The concurring vote of a majority of the members of the board shall be necessary to reverse an order, requirements, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which the board is required to pass under an ordinance, or to effect a variation in an ordinance except that a concurring vote of 2/3 of the members of the board shall be necessary to grant a variance from uses of land permitted in an ordinance.

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.

11.4.3. 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 Ordinance.

11.4.4. Interpretation.

1. The Board shall hear and decide requests for interpretation of this Ordinance or the Zoning Map taking into consideration the intent and purpose of the Ordinance and the General Development Plan.
2. A record shall be kept by the Board of all decisions for interpretation of this Ordinance or Zoning Map and land uses which are approved under the terms of this section. The Board shall request the Planning Commission to review any ordinance amendment it deems necessary.

11.4.5. Variances. Upon an appeal, the Board is authorized to grant a variance from the strict provisions of this ordinance, whereby 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 this ordinance. 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 ordinance. 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 the ordinance is observed, public safety secured, and substantial justice done.

Decisions of the Board shall be based on the following:

1. *Use variance.* The applicant must present evidence to show that if the zoning ordinance 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 zone;
 - 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. *Nonuse variances.* The applicant must present evidence to show that if the zoning ordinance is applied strictly, practical difficulties will result to the applicant and:
 - a. That the ordinance restrictions 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.

Section 11.5 Procedure for Appeal.

11.5.1. 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.

11.5.2. 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 permit, requirement, or refusal.

11.5.3. The Board shall fix a time for a hearing on the appeal, notice of which shall be given as prescribed in Section 3.7.

11.5.4. Any person may appear in person at the public hearing, or be represented by an agent or attorney, and present any evidence in support of their appeal. The Board of Appeals shall have the power to require the attendance of witness, 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 Appeals.

11.5.5. The Board shall not decide an appeal until after a public hearing.

11.5.6. The Board may reverse, affirm, vary, or modify, any order, requirement, or determination, as to which it has the power to consider, and 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.

11.5.7. 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 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. Violations of any of these conditions shall be deemed a violation of this Ordinance, enforceable as such, and/or may be grounds for revocation or reversal of such decision.

11.5.8. 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.

11.5.9. 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.

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

11.5.11. No order of the Board of 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 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.

11.5.12. 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. An appeal from a decision of a zoning board of appeals shall be filed within thirty (30) 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, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of its decision.