

ARTICLE 27

ZONING BOARD OF APPEALS

Sec. 27.01 Establishment

A Zoning Board of Appeals (ZBA), hereinafter in this Article sometimes referred to as the "board," is hereby established pursuant to the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended.

The terms of the statute shall prevail, except as modified by the terms of the Code of Ordinances and the Charter which are not in direct conflict thereto.

Sec. 27.02 Membership, Quorum, and Alternate Members

- a. The ZBA shall consist of seven (7) members appointed by the City Council. Each member shall be appointed to hold office for a three-year term. Vacancies shall be filled by the City Council for the unexpired term.
- b. Five (5) members shall constitute a quorum.
- c. The Council may, if it desires, appoint two (2) alternate members for three (3) year terms. One (1) or both alternate members may be called by the chairman, or in the absence of the chairman by the vice-chairman, or, in the absence of the vice-chairman, by the secretary to sit as a regular member of the ZBA if a regular member is absent from or unable to attend one (1) 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 has been made. While serving, the alternate member shall have the same voting rights a regular member of the ZBA.

Sec. 27.03 Qualifications of Members

- a. Members of the board shall be residents of the city. One (1) of the regular members of the ZBA shall be a member of the City Council, but that member shall not serve as chairperson of the ZBA. One (1) of the regular members of the ZBA shall be a member of the Planning Commission.
- b. An employee or contractor of the Council may not serve as a member of the ZBA.

Sec. 27.04 Procedural Matters, Public Hearings, and Vote Required

- a. The ZBA is hereby authorized and empowered to establish its own rules of procedure and to elect its own officers subject to the provision that it shall, at its organizational meeting, elect a chairman, a vice-chairman and a secretary. In establishing rules of procedure and election of officers, a majority of those in attendance and constituting a quorum shall be required.
- b. Prior to the ZBA making a decision in a specific case, the ZBA shall conduct a public hearing. Written notice of the hearing shall be in accordance with *Section 26.05 Public Hearings*.
- c. A concurring vote of a majority of the members of the ZBA 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, a matter upon which the board is required to pass under this chapter or other chapters of the Code of Ordinances, except that a concurring vote of two-thirds (2/3) of the members of the ZBA shall be necessary to grant a variance from uses of land permitted in this Ordinance.

Sec. 27.05 Jurisdiction, Duties and Responsibilities

The ZBA shall have all jurisdiction and powers granted by the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended, and the following specific jurisdiction and powers:

- a. To hear and decide appeals from and review any order, requirements, permit, decision or determination made by the Building Official/Zoning Administrator or any other administrative official or body in enforcing the provisions of this Ordinance. The ZBA may reverse or affirm, wholly or in part, or may modify the order, requirement, permit, decision or determination as in the ZBA's opinion ought to be made in the premises, and to that end shall have all the powers of the administrative official or body from whom the appeal is taken.
- b. To hear and decide matters referred to it or upon which it is required to pass under any ordinance adopted pursuant to Act 207 of 1921 (MCL 125.581 et seq., MSA 5.2931 et seq.), as amended, of the state, or by other chapters of the Code of Ordinances.
- c. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the chapter applicable to the matter appealed from, the ZBA shall have power in passing upon appeals to vary or modify any of its rules, regulations or provisions relating to the construction, structural changes in, equipment, or alteration of buildings or structures or the uses of land, buildings or structures, so that the spirit of the particular Article shall be preserved, public safety secured and substantial justice done.
- d. The ZBA may grant dimensional or other site plan related variances for special land uses, however the ZBA shall not have the power to reverse or modify the Planning Commission decision to approve or deny a special land use permit nor grant variances to any special land use standards or conditions of special land use approval.
- e. The ZBA shall not have the authority to reverse the decision on a PUD preliminary or final site plan, change any conditions placed by the Planning Commission or City Council, or grant variances to the PUD site plan, written PUD agreement or the requirements of this article.

Sec. 27.06 Granting of Variances

The ZBA shall prescribe appropriate conditions and safeguards to carry out the requirements of this subsection and shall not grant any variance unless it shall have made a finding of fact based upon the evidence as presented to it in each specific case as specified below:

- a. **Area Variance.** The ZBA may grant an area variance only upon a finding that practical difficulties exist. An area variance is a variance from any dimensional standard or requirement of this 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. The variance will do substantial justice to the applicant, as well as to other property owners.
 2. A lesser variance than that requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
 3. The need for the variance is due to unique circumstances or conditions peculiar to the property and not generally applicable in the area or to other properties in the same zoning district such as exceptional narrowness, shallowness, shape, topography or area.
 4. The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessor may or may not be considered depending upon whether

- the practical difficulty would have existed regardless of the action.
5. 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.
 6. The granting of the variance will not materially impair the intent and purpose of this Ordinance.
- b. **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 not provided for 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. There must be financial proof of the applicant's inability to realize any reasonable return; speculation or a qualitative assessment is inadequate.
 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. The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone and that these features make it impossible to earn a reasonable return without some adjustment. In those situations where the difficulty is shared by others, the board may find that relief should be accomplished by an amendment to the Zoning Ordinance, not a variance.
 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.

Sec. 27.07 Wetland Protection Setback Variances

Standards for reviewing requests for variances pertaining to the wetland setback requirements of *Section 24.01.e. Wetland Protection*.

Sec. 27.08 Flood Hazard Area Overlay Zone Variances

Standards for reviewing requests for variances pertaining to the flood hazard area overlay requirements of *Section 24.02.g. Flood Hazard Overlay Zone*.

Sec. 27.09 Appeals

- a. An appeal, as provided in *Section 27.05 Jurisdiction, Duties and Responsibilities*, shall be taken within such reasonable time as shall be prescribed by the ZBA by general rule, and if no general rule has been adopted, within sixty (60) days of the order, requirements or determination of an administrative official or body, by the filing with the Building Official/Zoning Administrator and with the board of a notice of appeal specifying the grounds thereof. The Building Official/Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. Filing with the secretary of the ZBA the notice of appeal, or, in the absence of the secretary filing of the same with the chairman or presiding officer, shall satisfy the provision of this section that a copy of the notice of appeal be filed with the board.
- b. An appeal stays all proceedings in furtherance of the action appealed from, unless the Building Official/Zoning Administrator certifies to the ZBA after the notice of appeal shall have been filed with

him 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 proceedings shall not be stayed other than by a restraining order which may be granted by the board or by the circuit court for the county, on application, on notice to the Building Official/Zoning Administrator and on due cause shown.

- c. The ZBA shall fix a reasonable time for the hearing of the appeal, which time shall be within thirty (30) days of the receipt of the notice of appeal.
- d. Any interested party may appear and be heard at the hearing in person or by an agent or attorney.
- e. The ZBA shall not have the power to alter or change the zoning district classification of any property.

Sec. 27.10 Decisions

- a. Matters coming before the ZBA shall be decided within a reasonable time.
- b. The decision of the ZBA shall not become final until the expiration of five (5) days from the date of entry of the order, unless the board shall find the immediate effect of the order is necessary for the preservation of property or personal rights and shall so certify on the record.
- c. In its decisions, the ZBA shall state a finding of facts underlying its decisions.
- d. Decisions of the ZBA may be appealed to the appropriate court on the record and for that reason the board shall cause a record to be made of its proceedings.

Sec. 27.11 Orders, Validity, and Limitations

- a. No order of the ZBA permitting the erection or alteration of buildings 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 commenced and proceeds to a completion in accordance with the terms of such permit.
- b. No order of the ZBA 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 if the use of such permit is dependent upon the erection or alteration of a building, such order shall continue in full force and effect if a building permit for such use, erection or alteration is obtained within such period and such erection or alteration is commenced and proceeds to completion in accordance with the terms of such permit.