

City of Manistee
Zoning Board of Appeals
City Hall
70 Maple Street
Manistee, Michigan

There will be a meeting of the City of Manistee Zoning Board of Appeals to be held on Thursday, February 9, 2006 at 5:30 p.m. in the Council Chambers, City Hall, 70 Maple Street, Manistee, Michigan.

AGENDA

- I Roll Call
- II Site Inspection:
 - 1.
- III Public Hearing:
 - 1. AC's First Street Tavern, 303 First Street
 - 2.
- IV Approval of Minutes:
 - 1. Approval of Minutes (10/5/05)
- V Business Session:
 - A. Action on Pending Case:
 - 1. AC's First Street Tavern, 303 First Street
 - 2.
 - B. Old Business:
 - 1.
 - C. Other Business of the Appeals Board:
 - 1. Election of Officers
 - 2. Review Draft By-Laws
 - 3.
- VI Questions, Concerns of Citizens in Attendance
- VII Adjournment

cc: Zoning Board of Appeals Members
Bruce Gockerman, City Attorney
Mitch Deisch, City Manager
Julie Beardslee, City Assessor



PLANNING AND ZONING
COMMUNITY DEVELOPMENT
231.398.2805
FAX 231.723-1546

MEMORANDUM

TO: Zoning Board of Appeals Members
FROM: Denise Blakeslee 
DATE: January 26, 2006
RE: Meeting February 9, 2006

Good Morning!

A meeting has been scheduled for 5:30 p.m., Thursday, February 9, 2006. The meeting will be held in the Council Chambers on the Third Floor at City Hall.

The meeting is being held in response to a request from AC's First Street Tavern. They are requesting an increase in size for a projecting sign from 16 square feet to 20 square feet. A copy of the request is enclosed for your review.

We will also hold the election of officers and review the By-Laws. The City has been working with Williams & Works on the development of a new Zoning Ordinance. Part of that process included the development of draft By-Laws for the Planning Commission. Using the template from the Planning Commission we have prepared draft of By-Laws for the Zoning Board of Appeals. Enclosed are copies of our current By-Laws and a copy of the Draft By-Laws for your review.

The Draft By-Laws reflect the language in the New Zoning Ordinance I have also enclosed Article Twenty Five Zoning Board of Appeals for your review. Because the Draft By-Laws reference the New Zoning Ordinance adoption could not take place until the new Zoning Ordinance is in place.

In the event that the ZBA would like to further review the By-Laws a Special Meeting could be scheduled.

If you have any questions, or are unable to attend the meeting please call me at 398-2805.

:djb

REQUEST FOR APPEAL
CITY OF MANISTEE
ZONING BOARD OF APPEALS

Name: AC'S FIRST STREET TAVERN
Address: 303 FIRST STREET
City, State, Zip Code: MANISTEE, MICHIGAN 49820
Phone Numbers: (work) 231-723-1031 (home) _____
Agent Name & Phone Number if applicable: AMOR SIGN STUDIOS, INC 723-8361
TEAM AMOR (JR)

FEE FOR APPEAL \$250.00

OFFICE USE ONLY	
Appeal Number: <u>ZBA-2006-01</u>	Date Received: <u>1-24-06</u>
Receipt Number/Fee Amt: _____ \$ <u>250.00</u>	Hearing Date: <u>2-9-06</u>
Zoning District for Property: <u>C-1</u>	Parcel Code Number: <u>5151-568-701-02</u>
Type of Request: <input checked="" type="checkbox"/> Variance Request	
<input type="checkbox"/> Ordinance or Map Interpretation	
<input type="checkbox"/> Appeal from Administrative Decision	
<input type="checkbox"/> Other Authorized Review	

PLEASE NOTE: All questions must be answered. Incomplete applications will be returned to be completed before processing. If additional space is needed, number and attach additional sheets.

State exactly what is intended to be done on, or with the property which necessitates a variance from the Zoning Board of Appeals:

WE WISH TO INSTALL A 5' HIGH X 4' WIDE PROJECTING
SIGN OVER THE FRONT DOOR TO THE BUSINESS.

PROPERTY INFORMATION:

Tax Roll Parcel Code # 51-51- 568-701-02

Property Address: 303 FIRST STREET

Names & Addresses of all other persons, firms or corporations having a legal or equitable interest in the land. AARON WEMPLE 903 CEDAR STREET, MOUNTLISBEE, MI 49756

Present use of parcel: TAVERN

List of all deed restrictions (attache additional sheets if necessary): NONE

Has a previous appeal been made with respect to this property? Yes No

If a previous appeal, re-zoning or special use permit application was made state the date, nature of action requested and the decision: _____

DETAILED REQUEST AND JUSTIFICATION:

Please identify each requested variance:

	Required by Zoning	Requested by Appellant
<input type="checkbox"/> Front-Yard Set-Back	from _____	to _____
<input type="checkbox"/> Side-Yard Set-Back	from _____	to _____
<input type="checkbox"/> Side-Yard Set-Back	from _____	to _____
<input type="checkbox"/> Rear-Yard Set-Back	from _____	to _____
<input type="checkbox"/> Waterfront Set-Back	from _____	to _____
<input type="checkbox"/> Height	from _____	to _____
<input type="checkbox"/> Area Requirements	from _____	to _____
<input type="checkbox"/> Off-street Parking	from _____	to _____
<input checked="" type="checkbox"/> Other	<u>16 SQUARE FEET</u>	<u>20 SQ. FT.</u>

INCREASE IN ALLOWABLE SIGN SQUARE FOOTAGE FOR A PROJECTING SIGN.

Please mark all characteristics of your property which require the granting of a variance.

Dimensional information

- Too Narrow _____
- Too Small _____
- Too Shallow _____
- Elevation (height) _____
- Slope _____
- Shape _____
- Soil _____
- Subsurface _____
- Other (Specify) _____

Justification

The Zoning Board of Appeals must answer yes to the following four questions to grant an appeal. Please list your justification to each question for the Zoning Board of Appeals.

1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same Land Use District?

YES. BUSINESS IS LOCATED ONE BLOCK EAST OF U.S. 31
AND REQUIRES A LARGER SIGN SO MESSAGE CAN BE
READ SAFELY BY MOTORISTS.

2. Would the literal interpretation of the provisions of this Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same Land Use District under the terms of this Ordinance?

YES. NEIGHBORING BUSINESS WITS GRANTED A VARIANCE
FOR A 42 SQ FT PROJECTING SIGN.

3. The special conditions and/or circumstances are NOT the result of actions taken by the applicant or the previous property owner since adoption of the current Ordinance?

YES. THESE CONDITIONS ARE NOT CAUSED BY OWNER
ACTIONS.

4. Would granting of the variance be in harmony with the general purpose and intent of the Ordinance and would NOT be injurious to the neighborhood, or otherwise detrimental to the public welfare?

YES. IT IS A COMMERCIAL BUSINESS DISTRICT AND THE SIGN IS NECESSARY FOR THE BUSINESS TO SUCCEED.

List any other comments in support of the application.

PLANS INCLUDE REMOVING EXISTING "LIQUOR" SIGN.

IMPACT ON SURROUNDING LANDS

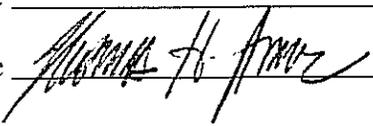
If your request is granted what would the positive and/or negative impacts of this decision be on the surrounding land and neighbors?

IMPROVED APPEARANCE OF BUILDING.

AFFIDAVIT:

The undersigned acknowledges that if a variance is granted or other decisions favorable to the undersigned is rendered upon this appeal, the said decision does not relieve the applicant from compliance with all other provisions of the City of Manistee Zoning Ordinance; the undersigned further affirms that he/she or they is (are) the (owner/lessee/authorized agent for the owner) involved in the appeal and the answers and statements herein contained and the information herewith submitted are in all respects true and correct to the best of his, her or their knowledge and belief. By signing this affidavit permission is given for Zoning Board of Appeals Members to make a site inspection if necessary.

Signature _____ Date _____

Signature  Date 1/20/06

Representation at the Public Hearing by either the applicant or agent is encouraged.



PLANNING AND ZONING
COMMUNITY DEVELOPMENT
231.398.2805
FAX 231.723-1546

MEMORANDUM

TO: Zoning Board of Appeals Members
FROM: Jon R. Rose 
DATE: January 26, 2006
RE: Request from AC's First Street Tavern

A request has been received from AC's First Street Tavern, 303 First Street for a variance to allow the installation of a 20 square foot projecting sign. The Zoning Ordinance limits the size of Projecting signs to 16 square feet.

The request references a variance that was granted to 301 First Street that allowed a 42 square foot projecting sign. Enclosed is a copy of the meeting minutes from December 14, 2000 when that variance was granted.

JRR:djb

MANISTEE CITY ZONING BOARD OF APPEALS

70 Maple Street, P.O. Box 358
Manistee, MI 49660

MEETING MINUTES

December 14, 2000

A meeting of the Manistee City Zoning Board of Appeals was held on Thursday, December 14, 2000 at 5:30 p.m. in the City Council Chambers of City Hall, 70 Maple Street, Manistee, Michigan.

The meeting was called to order at 5:30 p.m. by Vice-Chair Ed Grabowski

MEMBERS PRESENT: Ed Grabowski, Mary Ann Johnson, John Perschbacher, Mark Wittlief

MEMBERS ABSENT: John Serocki

ALTERNATE PRESENT: Marlene McBride

ALTERNATE ABSENT: Brenda Alfred-Birks

OTHERS PRESENT: Tom Amor (Amor Sign Studios), Stacy Voss (Stacey's Flowers) and Mark Niesen (Building and Zoning)

PUBLIC HEARING:

Stacey's Flowers and Gifts

Stacey Voss owner of Stacey's Flowers and Gifts explained to the members of the Zoning Board of Appeals her request for a variance to enlarge sign from 16 square feet which is allowed by ordinance to 42 square feet for better visibility from U.S. 31.

Ed Grabowski asked where the sign was going to be placed on the building? Stacey said that it would be in the same location as her existing sign only placed higher.

Ed Grabowski asked why the ordinance only allows a 16 square foot sign? Mark Niesen said that an example for the limited size would be in the downtown area where there are signs every 30 feet. If one sign is big and the next is small you would not see the small sign.

John Perschbacher asked how much of the sign would be above the molding on the building? Tom Amor said the bottom of the sign would be placed at the top of the molding.

Marlene McBride asked if the sign will be illuminated. Tom Amor said that the sign will be backlit by bulbs from inside the sign.

Ms. McBride asked if there were apartments upstairs? Ms. Voss said that yes there were. Ms. McBride asked if the sign would bother the tenants? Ms. Voss said that her mother lived upstairs until about a year ago and that the new tenants are aware of the new sign and do not have a problem with it.

Ed Grabowski asked if the sign will block the view of the neighbors sign from the other direction? Tom Amor said that this sign will be place higher than the neighbors sign.

There being no further discussion the public hearing closed at 5:35 p.m.

BUSINESS SESSION:

Minutes

MOTION by John Perschbacher, supported by Mary Ann Johnson that the minutes from the November 27, 2000 meeting be approved.

MOTION PASSED UNANIMOUSLY

Stacey's Flowers and Gifts

Stacey's Flowers and Gifts located at 301 First Street is requesting a variance to allow a 42 square foot sign for better visibility from U.S. 31.

MOTION by John Perschbacher, seconded by Mark Wittlief that a variance be granted Stacey's Flowers and Gifts, 301 First Street to allow a 42 square foot sign. Motion was made with the following findings of fact:

Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands structures, or buildings in the same Land Use District.

The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the Land Use District under the terms of this Ordinance.

The special conditions and/or circumstances are NOT the result of actions taken by the applicant or the previous property owner since adoption of the current Ordinance.

Granting of the variance would be in harmony with the general purpose and intent of the Ordinance and would NOT be injurious to the neighborhood, or otherwise detrimental to the public welfare.

MOTION PASSED UNANIMOUSLY.

OTHER BUSINESS:

None

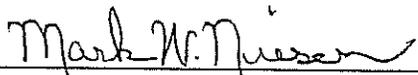
ADJOURNMENT:

MOTION by Mark Wittlief, seconded by Mary Ann Johnson that the meeting be adjourned.

MOTION PASSED UNANIMOUSLY.

There being no further business meeting adjourned at 5:48 p.m.

Respectfully Submitted



Mark W. Niesen, Acting as Secretary

**CITY OF MANISTEE ZONING BOARD OF APPEALS
BY LAWS AND RULES OF PROCEDURE**

Section 1.0 Purpose

The following rules of procedure are hereby adopted by the City of Manistee Zoning Board of Appeals (hereinafter known as Appeals Board) to facilitate the performance of its duties as outlined in the Manistee City Zoning Ordinance.

Section 2.0 Officers

- 2.1 Selection.** At the first scheduled meeting of each year, the Appeals Board shall select from its membership a Chairman, Vice Chairman, and Secretary. All officers are eligible for reelection.
- 2.2 Tenure.** The Chairman, Vice Chairman, and Secretary shall take office at the next meeting after their selection and shall hold office for a term of one year or until their successors are selected and assume office.
- 2.3 Duties. The Chairman** shall preside at all meetings, and perform such other duties as may be ordered by the Appeals Board. Appoint an acting Secretary for a meeting at which the Secretary is absent.
- 2.4 Duties. The Vice Chairman** shall act in the full capacity of the Chairman in the absence of the Chairman and in the event the office of the Chairman becomes vacant, the Vice-Chairman shall succeed to this office for the unexpired term and the Appeals Board shall select a successor to the office of Vice-Chairman for the unexpired term.
- 2.5 Duties. The Secretary** shall execute formal documents in the name of the Appeals Board. The Secretary or his or her designee shall perform the duties hereinafter listed and shall perform such other duties as the Appeals Board may determine. The Secretary shall be responsible for the record and minutes of each meeting. The Secretary shall be responsible for copies of the minutes being distributed to each member of the Appeals Board, prepare an Agenda for each meeting, be responsible for all communications, petitions and reports addressed to the Appeals Board. The Secretary shall keep attendance records and shall notify the City council whenever any member of the Appeals Board is absent from three consecutive regularly scheduled meetings so the City Council can take further action pursuant to Section 4.2 of these rules of procedure and by laws.

Section 3.0 Notice of Appeal

- 3.1 Filing.** Any interested person, or the person's authorized agent, may appeal or seek a variance in writing on a form provided by the Zoning Administrator at any time, and upon payment of a fee as may be established from time to time by the governing body. A meeting will be scheduled within 30 days of receipt of the appeal.

3.2 Notification.

- A. The Secretary or his or her designee shall schedule a meeting date with the Zoning Administrator and the members of the Appeals Board. Members of the Appeals Board will be mailed a notice no later than five (5) days before the scheduled meeting date. The Secretary or his or her designee shall prepare copies of the following for inclusion in the package sent to Appeals Board members:
- (1) copies of the Notice of Appeal or request for a variance form;
 - (2) relevant contents of the Zoning Administrator's file, and/or other file(s) on the case;
 - (3) other relevant correspondence, permits by other applicable enforcement agencies;
 - (4) previous zoning permits and record of appeals board actions concerning the property in question; and
 - (5) anything else which is relevant.
- B. Notice of such meeting shall be delivered in person or by first class mail to:
- (1) the Manistee City Manager's office,
 - (2) any other interested persons,
 - (3) the landowner,
 - (4) adjacent landowners and occupants,
 - (5) and a notice sent by first class mail to the person and/or agent seeking the appeal or variance.

3.3 Deadline for Action. The above notwithstanding, the Appeals Board shall hear the case and render and file its decision with a statement of reasons for the decision with the Zoning Administrator not more than 30 days after receipt of the case, unless a longer period of time is mutually agreed upon by the petitioner and Appeals Board.

3.4 Site Inspection. The Appeals Board, if the chairman considers it necessary, may conduct a site inspection at the site at issue. In such instance, the site inspection shall be posted as part of the public meeting/hearing. A quorum of the Appeals Board shall not ride in the same vehicle to or from a site inspection or to or from a meeting. The site inspection, if posted as part of the same meeting/hearing shall always be held the same day and as the part of the same meeting as the start of the public hearing on the case. Nothing in this paragraph shall prevent members of the Appeals Board from individually and separately visiting a site in question at their own expense and time. A quorum of the Appeals Board shall not make site inspections or otherwise discuss a Notice of Appeal except during posted open meetings of the Appeals Board.

3.5 Notice of Decision. The Secretary, or his or her designate, shall cause to have notices of the Appeals Board decision delivered in person or by first class mail to the Zoning Administrator; and to anyone else requesting a copy in writing. Further, notice of the decision to the petitioner, or his agent, filing the case shall be sent by first class mail.

Section 4.0 Meetings.

- 4.1 **Regular Meetings.** Meetings of the Appeals Board will be called as needed in response to receipt of a Notice of Appeal, so long as the meeting is scheduled within 30 days of the Notice of Appeal. The meeting can be called by the Zoning Administrator of the City of Manistee, the Chairman of the Appeals Board, or, in his absence, the Vice-Chairman.
- 4.2 **Attendance.**
- A. If any member of the Appeals Board has unapproved absences from three consecutive meetings, then that member shall be considered delinquent. Delinquency shall be grounds for the City Council to remove any member of the Appeals Board for nonperformance of duty or misconduct of office, or both.
 - B. When a petitioner or their agent fails to appear at a properly scheduled meeting of the Board of Appeals, the Chairman may entertain a motion from the Board to dismiss the case for want of prosecution. In the absence of a motion by the Board, the chair shall rule. In cases which are dismissed for want of prosecution, the petitioner will be furnished written notice of the action by the Secretary of the Board or his or her designee.
- 4.3 **Other meetings.** Meetings shall be called by delivering meeting notice by first class mail or by personal delivery to members of the Appeals Board at least five days prior to such meeting and shall state the purpose, time, location of the meeting and shall be posted at the City Hall not more than fifteen (15) days/not less than five (5) days prior to such meeting.
- 4.4 **Public.** All meetings, hearings, records and accounts shall be open to the public, and posted in compliance with P. A. 267 of 1976, being the Michigan Open Meetings Act.
- 4.5 **Quorum.** Three (3) members shall constitute a quorum for the transaction of business and the taking of official action for all matters. Whenever a quorum is not present at a meeting, those present may adjourn the meeting to another day or hold the meeting for the purpose of considering such matters as are on the agenda. No action taken at such a meeting shall be final or official unless and until ratified and confirmed at a subsequent meeting when a quorum is present by acting to approve the minutes of the meeting at which the quorum is not present.
- 4.6 **Order of Business.** Agenda. The Secretary or his designate shall prepare an agenda for each meeting and the order of business therein shall be as follows:
- A. Call to order and roll call.
 - B. Site inspection, then recess (optional, if the meeting is posted to include a site inspection).
 - C. Reconvene and roll call (if following a site inspection).
 - D. Election of officers, if necessary.
 - E. Public Hearings.
 - F. Recess to another night as provided in Section 4.9 of these rules of procedure (optional).
 - G. Approval of Minutes

- H. Business Session.
 - (1) Action on pending case
 - (2) Old Business
 - (3) Other business of the Appeals Board.
- I. Adjournment.

4.7 Speaking at Meetings. The following order shall be followed for speaking during meetings:

- A. The petitioner --through himself, his agent, his lawyer-- may present his case, including presenting witnesses on his behalf. No time limit will be imposed on the petitioner.
- B. Members of the Appeals Board shall report on their site inspection and any conversations with the petitioner they may have had.
- C. Members of the public who support the petitioner speak and correspondence is read. At the chairman's option he may:
 - (1) may recess the meeting for a short time to allow those in support to caucus in order to have one speak on their behalf for an unlimited period of time if there are a large number of people present on an issue.
 - (2) may allow many to speak in favor of the petitioner and can impose a time limit for the speaker that is three (3) minutes or more per speaker.
- D. Members of the public who oppose the petitioner speak and correspondence is read. At the chairman's option he may:
 - (1) may recess the meeting for a short time to allow those in opposition to caucus in order to have one speak on their behalf for an unlimited period of time if there are a large number of people present on an issue.
 - (2) may allow many to speak in opposition of the petitioner and can impose a time limit for the speaker that is three (3) minutes or more per speaker.
- E. Rebuttal. Any member of the public may ask the Chairman questions on presentations or speeches given at this hearing. The Chairman will seek an answer to the question. Answers shall be given to the Chairman. No discussion, questioning or answering shall take place between any two or more members of the public except between the Chairman and the individual who has the floor.

4.8 Comments Out of Order. The chairman shall rule out of order any irrelevant remarks; remarks which are personal, about another's race, religion, sex, physical condition, ethnic background, beliefs, or similar topics; profanity; or any other remarks which are not about land use.

4.9 Recesses. The Chairman may recess a public hearing and/or meeting to another time if the meeting (not including site inspections) has been in session over three hours, or for other reasons. In order for a recess to be in order, the time, day, month, date, year and location to reconvene shall be stated as part of the action to recess. If a meeting and/or public hearing reconvenes over 36 hours after the action to recess, the reconvened meeting shall be posted at least 18 hours before the time of the reconvened meeting, to comply with Section 4.4 of these rules of procedure. Upon reconvening, a roll call vote shall be taken as the first order of business.

- 4.10 Parliamentary Procedure.** Meetings shall be conducted in a formal manner, and parliamentary procedure shall be governed by Roberts Rules of Order if not specifically dealt with in these rules of procedure.
- 4.11 Motions.** Motions shall be reiterated by the Chairman before a vote is taken.
- 4.12 Voting.** Voting shall be by voice or shall be by roll call and each vote recorded in the minutes. Roll call votes shall only be done upon request of a member or by ruling of the Chairman. A quorum of three (3) regular or alternate members, with a maximum of five (5) members, must be present to take any action. A Motion is only adopted if three or more of the members of the Appeal Board casts their votes in favor of the motion. Members must be present to cast a vote.
- 4.13 Conflict of Interest.** As used here a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:
- A. A member of the Appeals Board issuing, deliberating, voting or reviewing a case where he/she is:
 - (1) an applicant, or
 - (2) has a direct interest in the case, or
 - (3) chooses to intervene in a case and is done in such a manner that the appeals member feels, in his/her judgement, that his/her job, scope of duties and/or position may be a risk, pending the outcome of the permitting process.
 - B. A member of the Appeals Board issuing, deliberating, voting or reviewing a case:
 - (1) involving a corporation, company, partnership, or other entity in which he is a part owner, or any other relationship where he may stand to have a financial gain or loss, or
 - (2) which is an action which results in a pecuniary benefit to himself, or
 - (3) concerning his spouse, children, step-child, grandchildren, parents, brother, sister, grandparents, parents in-law, grandparents in-law or member of his household.
 - C. The Planning Commission Representative to the Appeals Board will abstain from any case where as a member of the Planning Commission he or she made a decision which resulted in the appeal.
 - D. When a member of the Appeals Board determines a conflict of interest exists he or she shall do the following immediately:
 - (1) notify staff and Chair to allow opportunity to contact an alternate member, and
 - (2) declare a conflict exists at the beginning of the meeting where the case appears on the agenda, or when the topic brought up so such declaration is recorded in the minutes, and
 - (3) refrain from participating in the discussion, site inspection or review of the case, except where specific information has been requested by the commission, and
 - (4) refrain from casting a vote on any motion having to do with the case.

Section 5.0 Records

5.1 Preparation. A record of each meeting, including hearings and site inspections, shall be prepared by the Secretary, or his or her designate.

5.2 Content/Retention.

- A. The original minutes from the meeting shall be kept on file by the City Clerk.
- B. The following items will be placed into the property record file in the City Assessors office:
 - (1) The original request for a variance or notice of appeal, whichever is applicable, including any maps drawings, site plans or other information submitted by the applicant
 - (2) A copy of the meeting posting
 - (3) A copy of the notice of publication to the newspaper
 - (4) A copy of the mailing list, and Affidavit of Mailing
 - (5) Copy of the minutes from the meeting
 - (6) Copy of any correspondence received or sent in regard to the case.
 - (7) A copy of any follow-up correspondence to or from the petitioner regarding the decision.
- C. The following items will be placed on file in the Zoning Administrators Office:
 - (1) A copy of the meeting agenda
 - (2) A copy of the meeting minutes
 - (3) A copy of the memo sent to the members of the Appeals Board
 - (4) A copy of the variance or notice of appeal, whichever is applicable, including any maps drawings, site plans or other information submitted by the applicant
- D. Copies of the minutes shall be distributed to each member of the Appeals Board prior to their next meeting.
- E. A copy of the minutes shall be available to the public within seven days of the meeting by posting a copy in the lobby of City Hall.

Section 6.0 Per Diem and Mileage

Mileage and per diem may be paid to members of the Appeals Board at rates established by the Manistee City Council for attending Appeals Board meetings, and other authorized meetings and trips, if those members submit a bill for the same. Only mileage may be paid for attendance at site inspection meetings, if those members submit a bill for the same. No mileage or per diem is paid to any members unless authorized and budgeted by the Manistee City Council.

Section 7.0 Other Duties

The Appeals Board may also formulate and provide advice and may advise policy to the planning commission or any committee thereof, on issues dealing with administration, text, map and enforcement of the zoning ordinance.

Section 8.0 Adoption and Repeal

Upon adoption of these rules of procedure by the Appeals Board all previous rules of procedure, as amended, shall be repealed.

Section 9.0 Amendments

These rules may be amended at any regular or special meeting by a majority vote of the total members of the Appeals Board, so long as such amendment does not result in a conflict with state law, zoning ordinance or court decision.

ADOPTED BY CITY OF MANISTEE ZONING BOARD OF APPEALS - JANUARY 9, 2003

ARTICLE TWENTY-FIVE ZONING BOARD OF APPEALS

SECTION 2500 ESTABLISHMENT

There is hereby established a Zoning Board of Appeals in accordance with Act 207 of the Public Acts of Michigan of 1921, as amended, being the City or Village Zoning Act. The Zoning Board of Appeals shall perform its duties and exercise its powers as provided by said Act, as amended, and in such a way that the objectives of this Ordinance may be equitably achieved; that there shall be provided a means for competent interpretation and controlled flexibility in the application of this Ordinance; that the health, safety, and welfare of the public be secured; and that substantial justice be secured.

SECTION 2501 MEMBERSHIP, TERMS OF OFFICE

The Zoning Board of Appeals shall consist of five (5) members appointed by the City Council. The first member of such board shall be a member of the Planning Commission, and the Commissioner's term on the board shall be concurrent with his term on the Planning Commission. The Mayor of the City of Manistee with approval of the City Council shall appoint the remaining members of the Board. The members selected shall be representative of the population distribution and of the various interests present in the City. One member may be a member of the City Council. An elected officer of the City shall not serve as Chair of the Zoning Board of Appeals.

The total amount allowed the Zoning Board of Appeals in any one (1) year as per diem or as expenses actually incurred in the discharge of their duties shall not exceed a reasonable sum, which sum may be appropriated annually in advance by the City Council. Members of the Zoning Board of Appeals shall be removable by the City Council for nonperformance of duty or misconduct in office upon written charges and after public hearing. A member shall disqualify himself from a vote in which he has a conflict of interest. Failure of a member to disqualify himself from a vote in which he has a conflict of interest shall constitute misconduct in office.

The term of each member shall be for three (3) years. A successor shall be appointed not more than one month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term. The Mayor and City Council shall seek to stagger the expiration dates of members of the Zoning Board of Appeals so at least one member's term expires each year and to achieve a reasonable degree of continuity of membership from one year to the next. With approval of Council, the Mayor shall appoint at least two (2) alternate members, who shall serve for three (3) years.

SECTION 2502 MEETINGS

Meetings of the Zoning Board of Appeals shall be held at the call of the Chair and at such other times as the Board in its rules of procedure may specify. The Chair or in his absence, the acting Chair, may administer oaths and compel the attendance of witnesses. All meetings of the Zoning

Board of Appeals shall be open to the public. The Board shall maintain a record of its proceedings which shall be filed in the office of the City Clerk and shall be a public record. The Board shall not conduct business unless a majority of the members of the Board are present.

SECTION 2503 DUTIES, RULES, HEARING AND DECISIONS OF APPEALS, RIGHT TO AND GROUNDS OF APPEAL

The Zoning Board of Appeals shall act upon all questions as they may arise in the administration of this Ordinance, including the interpretation of the zoning maps, and may fix rules and regulations to govern its procedures. It shall also hear and decide appeals from and review any order, requirements, decision or determination made by the administrative official charged with enforcement of this Ordinance. It shall also hear and decide all matters referred to it or upon which it is required to pass under this Ordinance. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of the City, County, or State. The grounds of every determination shall be stated.

SECTION 2504 TIME TO AND NOTICE OF APPEAL: TRANSMISSION OF RECORD

Such appeal shall be taken within such time as shall be prescribed by the Zoning Board of Appeals by general rule, by the filing with the City Clerk, the Zoning Administrator or other officer from whom the appeal is taken and with the Zoning Board of Appeals of a notice of appeal specifying the grounds thereof together with a fee established by the City Council which shall be paid to the City Clerk at the time the notice of appeal is filed. The officer from whom the appeal is taken shall forthwith transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed was taken.

SECTION 2505 STAY OF PROCEEDINGS PENDING APPEAL

An appeal shall stay all proceedings in furtherance of the action appealed, except as provided herein. Proceedings shall not be stayed in the event the officer from whom the appeal is taken certifies to the Zoning Board of Appeals, after the notice of appeal is filed, that a stay would cause imminent peril to life or property. The Zoning Board of Appeals or the Circuit Court may issue a restraining order to re-institute a stay on application and notice to the officer from whom the appeal is taken with due cause shown.

SECTION 2506 HEARINGS AND NOTICES, RIGHT TO BE HEARD, DISPOSITION OF APPEALS, DECISION NOT FINAL

The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties and decide the same within a reasonable time. Upon hearing, any

party may appear in person or by agent or by attorney. The Zoning Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made in the premises. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Ordinance, the Zoning Board of Appeals shall have the power, in passing upon appeals, to vary or modify any of its rules, regulations or provisions so that the spirit of the Ordinance shall be observed, public safety secured, and substantial justice done. The decision of the Zoning Board of Appeals shall not be final, and any person having an interest affected by this Ordinance shall have the right to appeal to the Circuit Court.

SECTION 2507 DUTIES AND POWERS

The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of intent of this Ordinance, but does have power to act on those matters where by statute or this Ordinance provision is made for an administrative review, interpretation, variance or exception as defined therein.

- A. **Review.** The Board shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Administrator or the Planning Commission or by any other official in administering or enforcing any provision of this Ordinance. The allegation shall be duly made within thirty (30) days of the date of decision being appealed. The date of decision is presumed to be five (5) days after the literal date of decision.
- B. **Interpretation.** The Zoning Board of Appeals shall have the power to:
 1. Interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of the Ordinance.
 2. Determine the precise location of the boundary lines between zoning districts.
 3. Classify a use which is not specifically mentioned as part of the use regulations of any zoning district, except as provided herein, so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district.
- C. **Variances.** The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height regulations, yard and depth regulations, and off-street parking and loading space requirements provided it finds that all of the Basic Conditions and any one (1) of the Specific Conditions set forth herein can be satisfied. The appellant shall submit, along with the established fee and other materials, a narrative demonstrating why a variance is sought.
 1. **Basic Conditions.** The Board shall find that a variance request meets all of the following conditions.
 - a. The requested variance shall not be contrary to the public interest or to the intent and purpose of this Ordinance.

- b. The requested variance shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a special land use permit is required.
 - c. The requested variance shall not cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located.
 - d. The conditions or situations which necessitate the requested variance is not so general or of such recurrent nature as to make the formulation of a general regulation for such conditions reasonably practical.
 - e. The requested variance shall relate only to property that is under control of the applicant.
 - f. The requested variance shall not be necessitated by any self-created condition or action taken by the applicant or property owner.
 - g. There is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.
 - h. The requested variance is the minimum variance that will make possible the reasonable use of the land.
2. Special Conditions. When all of the foregoing basic conditions can be satisfied, a variance may be granted when any one (1) of the following special conditions can be clearly demonstrated:
- a. Where there are practical difficulties which prevent full compliance with the requirements of this Ordinance. Such practical difficulties shall be evaluated in terms of the use of a particular parcel of land. Neither the fact that the appellant could: (a) incur additional costs to achieve full compliance, or (b) receive additional income with less than full compliance shall be determined a practical difficulty for the purposes of this paragraph.
 - b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district.
 - c. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.
3. Rules. The following rules shall be applied in the granting of variances:
- a. The Board may specify, in writing, such conditions regarding the character, location, and other features that will in its judgment, secure the objectives and purposes of this Ordinance. The breach of any such condition shall automatically invalidate the permit granted.

- b. Each variance granted under the provisions of this Ordinance shall become null and void unless: The construction authorized by such variance has received a City zoning permit within one (1) year after the granting of the variance; and the occupancy of land, premises, or buildings authorized by the variance has taken place within one (1) year after the granting of the variance, unless an extension of time has been granted by the Zoning Board of Appeals.
- c. No application for a variance which has been denied wholly or in part by the Board shall be re-submitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence of changed conditions found, upon inspection by the Board, to be valid. For such newly discovered evidence to be considered, an applicant shall submit a detailed description of such evidence to the Zoning Administrator who shall place it on the agenda of the Zoning Board of Appeals along with a report and recommendation on the nature of such newly discovered evidence and whether it may have been pertinent to the decision of the Zoning Board of Appeals. If the Zoning Board of Appeals determines that the newly discovered evidence would have been pertinent to its decision, it shall direct the Zoning Administrator to accept a new application for the previously denied variance. An application considered under the terms of this subparagraph shall be considered a new application and shall be subject to all hearing, notice and fee requirements of this Ordinance.

SECTION 2508 PERFORMANCE GUARANTEE FOR COMPLIANCE

In authorizing any variance, or in granting any conditional, temporary or special approval permits, the City Zoning Board of Appeals may require that a performance guarantee be furnished to insure compliance with the requirements, specifications and conditions imposed with the grant of variance or permit and to insure the discontinuance of a temporary use by a stipulated time. Such performance guarantee may be in the form of a cash deposit, certified check, or irrevocable bank letter of credit, at the discretion of the Zoning Board of Appeals.