

## **ARTICLE TWENTY-FIVE ZONING BOARD OF APPEALS**

### **SECTION 2500 ESTABLISHMENT**

There is hereby established a Zoning Board of Appeals in accordance with Section 601 of the Michigan Zoning Enabling Act (Act 110 of the Public Acts of 2006, as amended). 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. [Annotation: This paragraph was changed to reflect the Michigan Zoning Enabling Act by Amendment 07-21, effective 5/29/07]

### **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. A member of the Zoning Board of Appeals may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office. [Annotation: this paragraph was changed to reflect the requirements for members in the Michigan Zoning Enabling Act by Amendment 07-21, effective 5/29/07]

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. Council, by a majority of the members serving, may appoint up to two (2) alternate members, who shall serve for three (3) years. [Annotation: The last sentence in this paragraph was changed by Amendment 12-09, effective 1/16/13]

**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.