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## CHAPTER 17 ZONING BOARD OF APPEALS

### SECTION 17.1 MEMBERSHIP

- A. The City Commission shall act as the Zoning Board of Appeals provided, however, the term of a member shall cease upon termination of his or her position on the City Commission.
- B. Alternate Members - Two (2) alternate members to the Zoning Board of Appeals may be appointed by the City Commission. Alternate members shall be appointed for a term of three (3) years.
  - 1. The alternate members of the Zoning Board of Appeals may be called to sit as regular members of the Zoning Board of Appeals, if a regular member is absent from a meeting of the Zoning Board of Appeals. An alternate member may also be called to serve in the place of a regular member for reasons of conflict of interest.
  - 2. The alternate member having been called to serve on a case shall serve on that case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.
  - 3. The records maintained by the Zoning Board of Appeals shall reflect the attendance and participation of an alternate member.

### SECTION 17.2 ORGANIZATION

- A. Rules of Procedure: The Zoning Board of Appeals shall adopt rules and/or procedures for the conduct of its meetings and the performance of its powers and duties. The procedures shall be in accord with the provisions of this Ordinance and applicable State law. The Board shall annually elect a chairperson, a vice chairperson, and a secretary.
- B. Meeting Times: Meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board may specify in its rules of procedure. The applicable provisions of Public Act 267 of 1976, as amended, MCLA 15.261 et seq. (Open Meetings Act) shall apply.
- C. Compensation: Each regular and alternate member may receive compensation as the City Commission may establish by resolution.
- D. Quorum: A majority of the total membership of the Board shall comprise a quorum.

- E. Meeting Minutes
1. Minutes shall be kept of each meeting and the Zoning Board of Appeals shall record into the minutes all findings, conditions, facts, and other relevant factors, including the vote of each member upon each appeal case. All minutes shall be filed in the office of the City Clerk.
  2. All meetings and records shall be open to the public.
  3. The City Clerk, or the Clerk's agent, shall act as recording secretary to the Zoning Board of Appeals, including recording the minutes, publishing legal notices, and providing notices to property owners and others required by law.
- F. Application to Zoning Board of Appeals: Applications shall not be accepted unless all of the following information is submitted:
1. A completed application form (provided by the City);
  2. An accurate, scaled site plan (if appropriate) with enough information to clearly indicate the nature of the issue being considered. The Zoning Administrator shall determine the completeness of such plans.
  3. An application fee as may be determined by resolution of the City Commission from time-to-time.
  4. A written explanation from the applicant indicating why the application meets the applicable review standards of this Chapter.
- G. Public Hearing Date: Upon receipt of an application as required by this Chapter the Chairperson of the Zoning Board of Appeals shall fix a reasonable time and date for a public hearing.
1. Upon determination of the time and date of the hearing, the Clerk shall make notice in accordance with the Zoning Act. (Amended 9/06)
  2. The Board may adjourn any meeting held in order to allow the obtaining of additional information, or to provide further notice as it deems necessary.

### **SECTION 17.3 POWERS AND DUTIES**

The Zoning Board of Appeals shall hear only those matters which it is authorized to hear by the Zoning Act and this Ordinance and render its decision based upon the criteria contained in this Chapter. The Zoning Board of Appeals shall hear the following applications in accordance with the indicated review standards.

## A. Administrative Appeals

1. The Zoning Board of Appeals shall hear and decide appeals where it is alleged that there is an error in fact, judgment, procedure, or interpretation in any order, requirement, permit, or decision made by the Zoning Administrator or other body enforcing the provisions of this Ordinance.
2. Site Plan Review: If an appeal is filed on a decision regarding site plan review the Zoning Board of Appeals shall review the decision of the City Commission in accordance with the provisions of Section 17.4, A, 4 and Chapter 14 of this Ordinance.
3. Administrative appeals shall be submitted within twenty (20) days of the action being appealed.
4. The Zoning Board of Appeals has the power to sustain, reverse or remand for further consideration the decision of the Zoning Administrator or Planning Commission when it is found that the decision is inconsistent with the provisions of this Ordinance or that there was an error of fact involved in the decision. In making this determination, the Zoning Board of Appeals shall examine the application and all accompanying data as well as the records of the actions with respect to the decision rendered.

## B. Interpretations

1. Upon application or request of the Zoning Administrator or Planning Commission, the Zoning Board of Appeals shall have the power to make an interpretation of the provisions of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one (1) meaning. In deciding upon the request, the Board shall insure that its interpretation is consistent with the intent and purpose of this Ordinance and the Chapter in which the language in question is contained.
2. Upon application, the Zoning Board of Appeals may also make a determination of the precise location of the boundary lines between zoning districts in accordance with Chapter 4 of this Ordinance, and records, surveys, maps, and aerial photographs.

## C. Variances

1. Subject to the provisions of this Chapter, the Zoning Board of Appeals, after holding a public hearing, shall have the power to decide upon applications for variances to ensure that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done.
2. Non-use Variance: A non-use variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of practical difficulty in the official record of the hearing and that all of the following standards are met:

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- a. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district. Exceptional or extraordinary circumstances or conditions include:
    - (1) Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Ordinance; or
    - (2) By reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure; or
    - (3) By reason of the use or development of the property immediately adjoining the property in question; whereby the literal enforcement of the requirements of this Ordinance would involve practical difficulties; or
    - (4) Any other physical situation on the land, building or structure deemed by the Zoning Board of Appeals to be extraordinary.
  - b. That the condition or situation of the specific parcel of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations;
  - c. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same Zoning District and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance;
  - d. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood;
  - e. The variance will not impair the intent and purpose of this Ordinance; and
  - f. That the immediate practical difficulty causing the need for the variance request was not created by an affirmative action of the applicant.
3. Use Variance: A use variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of unnecessary hardship in the official record of the hearing that all of the following standards are met:
- a. That the building, structure, or land cannot yield a reasonable return if required to be used for a use allowed in the Zoning District in which it is located;
  - b. That the condition or situation of the specific parcel of property or the intended use of such property for which the variance is sought is unique to that property and not commonly present in the general vicinity or in the zoning district. Such unique conditions or situations include:

- (1) Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Ordinance;
  - (2) Exceptional topographic conditions or other extraordinary situation on the land, building or structure;
  - (3) The use or development of the property immediately adjoining the property in question;
  - (4) Any other physical situation on the land, building or structure deemed by the Zoning Board of Appeals to be extraordinary.
- c. That the proposed use will not alter the essential character of the neighborhood;
  - d. That the immediate unnecessary hardship causing the need for the variance request was not created by an affirmative action of the applicant.

#### **SECTION 17.4 VOTING REQUIREMENTS, EFFECT OF VARIANCES, RESUBMISSION**

##### **A. Voting Requirements**

1. Non-Use Variance, Interpretation or Administrative Appeal: Except as noted in 2, below, a minimum of three (3) concurring votes shall be necessary to decide in favor of the applicant for a non-use variance, or other matter upon which the Board is required to pass.
2. Use Variance: The concurring vote of at least a 2/3 majority of the Zoning Board of Appeals (i.e. four (4) votes) shall be necessary to decide in favor of the applicant for a use variance.

##### **B. Finality of Decisions:** All decisions of the Zoning Board of Appeals shall become final five (5) days after the date of entry of an order, unless the Zoning Board of Appeals shall find, and so certify on the record, that it is necessary to cause such order to have immediate effect, in order to preserve property or personal rights.

##### **C. Variance Time Limit**

1. Every use or non-use variance granted under the provisions of this Ordinance shall become null and void unless the construction or action authorized by the variance has been commenced within three (3) months after the granting of the variance.
2. An applicant may, at no cost, request up to one (1) three (3) month extension of said variance from the Zoning Board of Appeals, if applied for in writing prior to the expiration of the variance approval.
3. The Zoning Board of Appeals may only grant an extension when the original circumstances authorizing the variance have not changed and that the circumstances creating the need for the extension were beyond the control of the applicant.

- D. Resubmission: No application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall be resubmitted for a period of one (1) year from the date of the denial, except on the grounds of newly discovered evidence or proof of changed conditions found, upon inspection by the Board, to be valid.

#### **SECTION 17.5      CONDITIONS OF APPROVAL**

The Zoning Board of Appeals may impose, in writing, specific conditions with an affirmative decision pursuant to the Zoning Act. The breach of any such condition shall be a violation of this Ordinance.

#### **SECTION 17.6      PERFORMANCE GUARANTEE**

The Zoning Board of Appeals may require that a bond be furnished in accordance with the requirements of Section 19.5 to insure compliance with any conditions imposed with its decisions.

#### **SECTION 17.7      CERTIFICATION OF COMPLIANCE**

The Zoning Administrator shall certify whether all conditions and other requirements of the variance have been fulfilled, as a precondition to the issuance of any permit required for development, construction, occupancy or use within the area governed by the variance.