Article 29: Zoning Board of Appeals

Section 29.01 Intent and Purpose

The purpose of this Article is to ensure that the objectives of this Ordinance are fully and equitably achieved, that a means be provided for competent interpretation of this Ordinance, that flexibility be provided for in the strict application of this Ordinance, that the spirit of the Ordinance be observed, public safety secured and substantial justice done.

Section 29.02 Creation and Membership

A. A Zoning Board of Appeals is hereby created in accordance with the Michigan Zoning Enabling Act (Act 110 of 2006, as amended).

B. The Zoning Board shall consist of five (5) members with the following stipulations on membership:

   1. One (1) member shall be a member of the Planning Commission.
   2. The remaining regular members shall be representative of the geographic population distribution of the City.
   3. An employee or contractor of the City may not serve as a member on the Zoning Board of Appeals.
   4. An alternate member may be appointed to the Zoning Board of Appeals.

C. Appointment and Terms.

   1. Regular and alternate members of the Zoning Board of Appeals shall be appointed by the City Commission.
   2. The term of each member shall be for three (3) years.

D. Meetings.

   1. Meetings of the City Zoning Board of Appeals shall be held at the call of the Chairperson and at other times as the Board in its bylaws may specify.
   2. All meetings of the Zoning Board of Appeals shall be open to the public.
   3. The Zoning Board of Appeals shall maintain a record of its proceedings which shall be a public record.

Section 29.03 Organization

A. Rules of Procedure.

   1. The Zoning Board of Appeals shall adopt by-laws that outline the manner in which meetings are conducted and duties are implemented.

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2. The Board shall annually elect a chairperson, a vice-chairperson, and a secretary.

B. Meetings and Quorum.

1. Meetings of the Zoning Board of Appeals shall be held at the call of the chairperson or their designee.
2. A majority of the total membership of the Board shall constitute a quorum.
3. All meetings shall be open to the public, in accordance with the Open Meetings Act (Act 267 of 1976, as amended).

C. Records: The minutes of all meetings shall contain the grounds for every determination made by the Board including all evidence and data considered, all findings of fact and conclusions drawn by the Board for every case, along with the vote of each member and the final ruling on each case. The Zoning Board of Appeals shall file its minutes in the office of the Planning & Zoning Administrator.

Section 29.04 Jurisdiction

The Zoning Board of Appeals shall hear and decide upon the following types of requests:

A. Interpret the provisions of this Ordinance.

1. In the event that the text of the language is unclear, the Zoning Board shall make the official determination on the intended meaning.
2. In deciding upon such request, the Zoning Board of Appeals shall ensure that its interpretation is consistent with the intent and purpose of the Ordinance, the Article in which the language in question is contained, and all other relevant provisions in the Ordinance.
3. The opinion of the City Attorney may be sought to assist the Zoning Board in making the ordinance interpretation.

B. Make an interpretation of the Zoning Map to determine the precise location of zoning district boundaries.

C. Consider requests for use and non-use variances from the provisions of this Ordinance, with the following exceptions:

4. The Zoning Board of appeals shall not hear requests for variances from requirements for a Special Land Use.
5. The Zoning Board of Appeals shall not hear requests for variances on any property or use that is within a Planned Unit Development, nor shall the Zoning Board of Appeals hear requests for variances from the requirements of Article 27, Planned Unit Developments.

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6. The Zoning Board of Appeals shall not have the authority to hear appeals related to any decision or conditions attached to any decision pertaining to special land uses or planned unit development, unless otherwise specifically permitted in this ordinance.
7. The Zoning Board of Appeals shall not take any actions that have the effect of a legislative action, such as a rezoning or amendment to the text of this Ordinance.

D. Consider an appeal from any administrative decision or determination of the Planning & Zoning Administrator, Planning Commission, or other administrative official, except as otherwise provided in this Article.

Section 29.05 Appeals Procedures

A. Procedures Applicable to all Appeals and Variances.

1. Applications.

a. All applications and written appeals shall be submitted to the City at least thirty (30) days prior to the next regularly scheduled meeting of the Zoning Board of Appeals.

b. An application shall be submitted on a form provided by the City, accompanied by a fee and an escrow deposit as established by the fee schedule adopted by the City Council, and in accordance with Section 28.04. All applications shall include the following information:

(1) The address(es) and parcel number(s) of the subject property.

(2) The property owner's name, address, phone number, and e-mail address.

(3) The applicant's name, address, phone number, and email address, if not the property owner.

(4) The zoning designation of the subject parcel(s).

(5) The gross acreage of all parcels associated with the request.

(6) Legal description of subject parcel(s).

(7) Signature of the applicant and owner or agent.

(8) Nature of request (dimensional variance, use variance, appeal of determination, zoning text interpretation, or interpretation of zoning boundaries).

(9) Applicable section of the Zoning Ordinance from which the variance, appeal, or interpretation is sought.

(10) Response to the variance criteria listed in Section ___ of this Article (variance requests only)

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c. All variance request applications shall also be accompanied by a survey sealed by a licensed surveyor which depicts the following:

(1) All lot dimensions;

(2) All existing improvements upon the subject property and setbacks from property lines, buildings, and other structures;

(3) All easements and easement dimensions;

(4) Any other features on the lot that would demonstrate the uniqueness or unusual circumstances, such as wetlands, water bodies, or steep slopes; and

(5) Proposed location of improvement(s) for which the variance is sought, including dimensions of said improvement and all proposed setbacks from property lines and other structures.

d. The Planning & Planning & Zoning Administrator shall have the authority to return incomplete application submittals.

2. Public Hearing Required.

a. The Zoning Board of Appeals shall hold a public hearing for every type of request listed in Section 29.04.

b. The Planning & Zoning Administrator shall follow the procedures outlined in Section 28.05 to properly notice the public of a public hearing in accordance with the Michigan Zoning Enabling Act (Act 110 of 2006, as amended). Public Hearing Notice Requirements, to provide notice for the required public hearing.

c. The Zoning Board of Appeals shall fix a reasonable time of the hearing, and decide the appeal within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

3. Stay of Proceedings.

a. An appeal stays all proceedings in furtherance of the action appealed from, unless the Planning & Zoning Administrator certifies to the Zoning Board of Appeals after the application is filed, that a stay would, in the opinion of the Planning & Zoning Administrator, cause imminent peril to life and property.

b. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by a court of record, having jurisdiction and powers to exercise such order.

B. Appeals of Administrative Decisions.

a. Appeals of decisions made by City staff or officials, as outlined in Section 29.04 An application may be made by any person, firm or corporation, office, department, or representative allegedly aggrieved by such decision.

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b. Such appeals shall be filed in writing within thirty (30) days of the aggrieved action, and shall specify the grounds for the appeal.

c. The Zoning Board of Appeals shall reverse or affirm the determination or decision made by City staff or other City officials, and shall state into the record the rationale for such decision.

C. Performance Guarantee.

1. In authorizing any variance, the Zoning Board of Appeals may require that a performance guarantee is provided to the City in the manner outlined in Section 28.04 of this Ordinance

2. The Zoning Board of Appeals may not require the deposit of the performance guarantee before the date on which the permit is to be issued.

Section 29.06 Variance Criteria

A. Non-use (dimensional) variances.

1. The Zoning Board of Appeals shall have the power to authorize specific variances from site development requirements, including, but not limited to, structure height, bulk placement regulations for structures, requirements for parking and loading areas, landscaping, lighting, driveways and access, provided that all the criteria listed below are met and the record of proceedings of the Zoning Board of Appeals contains evidence supporting each conclusion:

a. That there are practical difficulties that prevent carrying out the strict letter of this Ordinance relative to the following aspects of the land on which the variance is sought, such as:

(1) Unique circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the subject property that do not generally apply to other property or uses in the same zoning district, and not recurrent in nature.

(2) The presence of a nonconformity that is not the result of any action of the applicant or current property owner.

(3) Practical difficulties caused by encumbrances from easements, wetlands, floodplain, water bodies, dunes, or other natural features.

b. That the variance will relate only to property under control of the applicant.

c. That the variance will be in harmony with the general purpose and intent of this Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, and the use and enjoyment of property in the neighborhood or district.

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d. That the variance requested is the minimum amount necessary to overcome the practical difficulty or mitigate the hardship caused by the unique circumstances presented by the subject property.

e. That strict compliance with dimensional requirements or bulk placement requirements would unreasonably prevent the owner from using the property for a permitted purpose, and would render conformity unnecessarily burdensome.

f. That the denial of a variance would prevent the property owner from being afforded a similar property right as others in the same zoning district and in general vicinity.

B. Use variances.

1. The Zoning Board of Appeals shall have the authority to grant use variances only if the following can be demonstrated by the applicant:

a. That the variance shall not permit the establishment of a use on the subject property that would cause detriment to surrounding properties.

b. That the subject property for which the use variance is sought cannot be reasonably used for any other purpose other than the proposed use.

c. That the denial of the of the use variance would constitute a regulatory taking without just compensation if application of existing regulations does not permit a reasonable use of land under existing common law or statutory standards.

d. That the applicant has first applied for and been denied a rezone or conditional rezone to a district that would allow such use.

Section 29.07 Decisions of the Zoning Board of Appeals

A. At the conclusion of the hearing, the Zoning Board of Appeals may make its decision at that meeting, upon finding that the criteria in Section 29.06 are met, or it may adjourn the hearing to a new date for the purpose of providing the applicant an opportunity to submit additional information that would aid in the Zoning Board's decision

B. Decisions shall be made upon the concurring vote of the majority of the Board members to reverse any order, requirement, decision or determination of the Planning & Zoning Administrator or Planning Commission, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variance in the application of this Ordinance.

C. All final decisions of the Zoning Board of Appeals shall be accompanied by specific findings of fact in support of the approval or denial. Such findings shall be tied specifically to the standards listed in Section 29.06 of this Article, and stated clearly into the record.

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D. All variances granted shall be the minimum necessary to overcome the practical difficulty. As such, the Zoning Board of Appeals may offer, and the applicant may accept, a variance which is a lesser extent of what is requested in the application for said variance.

Section 29.08 Effect of Approval

E. A variance granted under the provisions of this Ordinance shall expire by limitation and become null and void if the building or work authorized by the ZBA is not commenced within one year from the date of authorization, unless otherwise authorized by the ZBA.

F. All approved variances implemented stay with the land and are not subject to revocation due to a change in ownership of the property.

G. A reapplication or rehearing following the Zoning Board of Appeals' denial of a request shall not be accepted for one year from the date of the denial, unless there is a significant change in circumstances affecting the subject property.

H. A rehearing shall be processed in the same manner as the original application.

Section 29.09 Conditions of Approval

A. In granting any variance, the Zoning Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance.

B. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and constitutes a municipal civil infraction.

C. A violation of the terms of the variance is cause for revocation.

Section 29.10 Review by Circuit Court

A. Any party aggrieved by a decision of the Zoning Board of Appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:

   1. Complies with the constitution and laws of the state.
   2. Is based upon proper procedure.
   3. Is supported by competent, material, and substantial evidence on the record.
   4. Represents the reasonable exercise of discretion granted by law to the Zoning Board of Appeals.

B. If the court finds the record inadequate to make the review required by this Section or finds that additional material evidence exists that with good reason was not presented, the court shall order further proceedings on conditions that the court considers proper.

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C. The Zoning Board of Appeals may modify its findings and decision as a result of the new proceedings or may affirm the original decision.

D. The supplementary record and decision shall be filed with the court. The court may affirm, reverse, or modify the decision.

E. An appeal from a decision of a Zoning Board of Appeals shall be filed within 30 days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, or within 21 days after the Zoning Board of Appeals approves the minutes of its decision.

F. The court may affirm, reverse, or modify the decision of the Zoning Board of Appeals. The court may make other orders as justice requires.

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