

CHAPTER 21 ZONING BOARD OF APPEALS

SECTION 21.01 DUTIES

- A. There is hereby established a Zoning Board of Appeals, the membership, powers, duties of which are prescribed in Act No. 207 of the Public Acts of the State of Michigan for 1921, as amended.
- B. The Zoning Board of Appeals, in addition to the general powers and duties conferred upon it, by the Act, in specific cases and subject to appropriate conditions and safeguards shall have the following duties:
1. The Board shall have the power to interpret and determine the application of this Ordinance in harmony with its purposes and intent.
 2. Appeals:
 - a. The Board shall have the power to hear and decide appeals from any person or any governmental department affected or aggrieved, and review any order, requirement, decision or determination where it is alleged by the appellant that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by the Zoning Administrator or other administrative official or body charged with the enforcement of any ordinance adopted pursuant to the Zoning Act.
 - b. An appeal to the Board shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Appeals after notice of appeal shall have been filed with him that by reason of fact stated in the certificate, a stay would cause imminent peril to life or property.
 3. The Board shall hear requests for variances from the requirements of this Ordinance where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Ordinance relating to the constructions, structural changes in equipment, or alterations of buildings or structures, or the use of land, buildings or structures.
 4. The Board shall also have any other duties that may be specifically conferred by this Ordinance.

SECTION 21.02 COMPOSITION AND TERM OF OFFICE

- A. The Zoning Board of Appeals shall consist of 7 members. The City Commission shall choose all members from electors residing within the City, one of whom may be a member of the Planning Commission. The City Commission may appoint up to two alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called as specified to serve as a member of the Zoning Board of Appeals in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. The alternate member has the

same voting rights as a regular member of the Zoning Board of Appeals. The presence of a majority of the members shall constitute a quorum.

- B. The term of each member shall be for three (3) years, and the Board as presently constituted shall continue in the manner and for the terms heretofore established.**

SECTION 21.03 VOTING REQUIREMENTS

- A. Except as noted in B, below, a majority of the membership of the Zoning Board of Appeals shall be necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of an applicant on any matter upon which they are required to pass under this Ordinance, or to effect a non-use variance.
- B. A concurring vote of two-thirds (2/3) of the membership of the Zoning Board of Appeals shall be necessary to grant a use variance.

SECTION 21.04 GRANTING OF VARIANCES

- A. Subject to the provisions of this Chapter, the Board, after public hearing shall have the power to decide applications for variances filed as hereafter provided to ensure that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done. See Section 13.07 relative to: the application and hearing process; the effect of decisions; resubmittal restrictions; and review standards.
- B. **Non-use Variance:** A non-use variance may be allowed by the Zoning Board of Appeals only in cases where there is evidence of practical difficulty in the official record of the hearing and that all of the following conditions are met:
1. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district. Exceptional or extraordinary circumstances or conditions include:
 - a. Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Ordinance; or
 - b. By reason of exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure; or
 - c. 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.
 2. The condition or situation of the specific piece 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 these conditions or situations.
 3. The 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.
 4. The variance will not be detrimental to adjacent property and the surrounding neighborhood.
 5. The variance will not impair the intent and purpose of this Ordinance.

6. The immediate practical difficulty causing the need for the variance request was not created by the applicant.
- C. **Use Variances:** A use variance may be allowed by the Zoning Board of Appeals only in cases where there is evidence of unnecessary hardship in the official record of the hearing that all of the following conditions are met:
1. The condition, location, or situation of the specific piece of property or of the intended use of the property is unique to that property in the zoning district in which it is located.
 2. The building, structure or land cannot be reasonably used in a manner consistent with the uses allowed in the zoning district in which it is located.
 3. The use variance will not alter the essential character of the neighborhood nor the intent of the City Master Plan, nor be of detriment to adjacent properties.
 4. The requested use is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation or adding it to the permitted uses in the zoning district in which it is located or to permitted uses in other more appropriate zoning districts.
 5. The variance will not impair the intent and purpose of this Ordinance.
 6. The immediate unnecessary hardship causing the need for the variance request was not created by the applicant.

SECTION 21.05 CONDITIONS OF APPROVAL

In authorizing a variance or other approval permitted by this Ordinance, the Board may, in addition to the specific conditions of approval called for in this Ordinance, attach other conditions regarding the location, character, landscaping or treatment reasonably necessary to the furtherance of the intent and spirit of this Ordinance and the protection of the public interest or as otherwise permitted by law.