

CHAPTER 17.62 ZONING BOARD OF APPEALS

17.62.010 ESTABLISHMENT

There is established a Zoning Board of Appeals (Board), which shall perform its duties and exercise its powers as provided in Section 5 of Act 207 of the Public Acts of 1921, as amended, in such a way that the objectives of this title shall be observed, public safety secured and substantial justice done. The Board, as created in this chapter, is a body of limited powers. The Board shall have the specific powers and duties as set forth in this chapter and title.

17.62.020 MEMBERSHIP

- A. The Board shall consist of 6 members. Unexpired terms for those Board members previously appointed and functioning as of the date of this title shall be continued until their expiration dates. The City Council may appoint not more than 2 alternate members for 3 year terms who may be called to service in the absence of a regular member or in case a regular member has abstained from voting for reasons of conflict. The alternate member shall serve until a final decision is made.
- B. When the terms of the current individual members of the Board expire, the Mayor, with the consent of the City Council, shall appoint a successor for a 3-year term from the date of expiration of said current member's term.
- C. All members shall be residents of the City; provided that no employee of the City may serve simultaneously as a member of the Board.
- D. The mayor with consent of the City Council shall appoint one member of the Planning Commission to simultaneously serve on the Board. Said member's term to expire with the term on the Planning Commission. One regular member may be member of the City Council, but may not service as Chair-person.
- E. Each member shall hold office for a period of 3 years, except as provided in Section 17.62.020 (D).
- F. Members may be removed for misfeasance, malfeasance, or nonfeasance by the City Council only after consideration of written charges and a public hearing. Failure to disqualify one-self from a vote in which a member has a conflict of interest constitutes malfeasance. Any vacancy on the Board shall be filled by the Mayor with the consent of the City Council, for the remainder of the unexpired term. Vacancies on the Board must be filled not more than one month after the term of the proceeding member has expired.
- G. Any motions made by the members of the Zoning Board of Appeals must be approved by a majority of the total membership, except for a use of variance. A 2/3 vote of the total membership of the Board is required for approval of a use variance.

17.62.030 OFFICERS

The members of the Board shall elect the Chairperson, the Vice-Chairperson and the Secretary of the Board annually at the June meeting.

17.62.040 RECORD KEEPING

- A. All meetings of the Board shall be held at the call of the Chairperson or by the Vice-Chairperson, in the absence of the Chairperson, or upon the written request of any 2 members of the Board, and at such other times as such ZBA may determine or specify in its rules and procedures.
- B. Four members of the Board shall constitute a quorum for the conduct of business.
- C. The Board shall keep minutes of its proceedings, showing the vote of each member on each question or, if absent or failing to vote, and shall keep records of its findings, proceedings at hearings and other official actions, all of which shall be immediately filed in the office of the City Clerk and shall be a public record.
- D. The Board shall have the power to subpoena and require the production of books, papers, files and other evidence pertinent to the matters before it.
- E. Board business shall be conducted at a public meeting of the Board held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being Sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.
- F. A writing prepared, owned, used, in the possession of or retained by the Board in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, as amended, being Sections 15.231 to 15.246 of the Michigan Compiled Laws.
- G. The Chairperson, or in his absence, the acting chair person, may administer oaths and compel the attendance of the witness.

17.62.050 NOTICES

The Board, in conducting any hearing, shall fix a reasonable time for the hearing of the appeal and shall give due notice as follows: Notice shall be published in a local newspaper not less than 15 days prior to the public hearing. Notices shall also be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property of occupant is located in the zoning jurisdiction. If the name of the occupant is unknown, the term "occupant" may be used in making notification.

- A. The notice shall do all of the following:
- a. Describe the nature of the request.
 - b. Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. If there are not street addresses, other means of identification may be used.
 - c. State when and where the request will be considered.
 - d. Indicate when and where written comments will be received concerning the request.
- B. If any individual property or 10 or fewer adjacent properties are the subject of the appeal or variance request, the Board shall give notice in the same manner as provided in Sub-section 1 and 1A above.
- C. If 11 or more adjacent properties are the subject of appeal or variance request, the Board shall give a notice in the same manner as required in Sub-section 1 and 1A above except for the requirement of notice to be sent to the owners of property for which approval is being considered and all persons or occupants within 300 feet of the property. Further no individual addresses of properties are required to be listed as required under Sub Section 1Ab above.

The Board shall decide the appeal or request within 60 days of the hearing.

17.62.060 FEES

The schedule of fees for hearings before the Board shall be adopted by resolution by the City Council.

17.62.070 APPEALS

- A. An appeal may be taken to the Board by any person aggrieved or by an officer, department, board or bureau of the City affected by a decision of the Building Official concerning this title. Such appeals shall be taken within 60 days from the decision by filing with the Building Official and with the Board a notice of appeal specifying the grounds for the appeal. The Building Official shall transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.
- B. An appeal shall stay all proceedings unless the Building Official certifies to the Board, after the notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed other than by a restraining order which may be granted by the Board or by Circuit Court, on application, on notice to the officer or body from whom the appeal is taken and on due cause shown.
- C. The Board shall select a time and place for the hearing of the appeal within 60 days of receiving said appeal and give due notice thereof to the parties and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney.
- D. In exercising the above powers of this chapter, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and

may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Building Official from whom the appeal is taken.

17.62.080 VARIANCES

- A.** These variance review procedures are instituted to provide an opportunity for the relaxation of the terms of this title through a variance, where the Board determines that either a practical difficulty or an undue hardship has been proven.
- B.** The Board shall consider the application at its next regular meeting, which provides sufficient time for notice as required heretofore, or within not more than 45 days after receipt of the application by the Building Official and hear and question any witness appearing before the Board.
- C.** The Board shall have the power to authorize a variance from the strict application of any provision of this title if the Board finds that strict application would result in a practical difficulty or undue hardship, provided that the spirit of this title shall be observed, public safety secured, and substantial justice done.
- D.** In the case of a nonuse or dimensional variance request, the applicant shall be required to prove that a practical difficulty exists by proving that:
 - 1.** Conformity with the code or codes is unreasonably burdensome.
 - 2.** The applicant is not receiving a privilege that is not available to other property owners and that the variance would do substantial justice not only to the applicant but the neighborhood as well.
 - 3.** The property is unique
 - 4.** The request is not self-created.
- E.** In the case of a use variance request, the applicant shall be required to prove that an undue hardship exists by proving that:
 - 1.** The property cannot be used or put to a reasonable use for the purposes permitted in that zoning district.
 - 2.** The proposed use will not alter the essential character of the area.
 - 3.** The property is unique.
 - 4.** The request is not self-created.
- F.** The Board shall not grant a variance, if based upon the above criteria, a finding of practical difficulty or undue hardship has not been made by the applicant.
- G.** The Board shall not have the power to authorize a variance of the requirements of special use approvals or Planned Unit Developments.

17.62.090 APPLICATION

- A. An application for to the Board shall be made by all owners of an interest in the site to the Building Official, accompanied by the necessary fees and documents, as provided in this chapter. The owner shall further provide a title search for the property showing the address, owners, and all easements and rights-of-way of record, if determined necessary by the Board.
- B. The application shall be accompanied by a site plan drawn to the scale of one inch equals 20 feet and placed on a standard sheet and containing the following information:
1. Dimensional elements for which a variance is requested.
 2. Dimensional relationship of the subject lot to the structure on all adjacent lots.
- C. The application shall be accompanied by an affidavit by the applicant explaining the following:
1. How the strict enforcement of the provisions of this title would cause practical difficulty and/or unnecessary hardship and deprive the owner of the rights enjoyed by all other property owners owning property within the same zoning district;
 2. The conditions and circumstances unique to the property which are not similarly applicable to other properties in the same zoning district;
 3. The conditions and circumstances unique to the property were not created by the owner, or his predecessor in title, within the time following the effective date of the provisions alleged to adversely affect such property;
 4. Why the request will not confer special privileges that are denied other properties similarly situated in the same zoning district;
 5. Why the request will not be contrary to the spirit and intent of this title.
 6. A copy of all evidence, excluding testimony, that the applicant intends to present to the Board.

17.62.100 CONDITIONS

The Board, in acting in favor of an appeal or a variance, may attach any conditions to its approval that it finds necessary to accomplish the reasonable application of the standards set forth in this chapter. In addition, the Board shall have the authority to require performance bonds to insure compliance with any requirements deemed necessary for approving any variance. Following establishment of any land use pursuant to a variance, any change or modification, as well as the original provisions of the building and site plan which have not been modified shall be maintained as a condition of the establishment of any use to which they are appurtenant and applicable.

17.62.110 LIMITATION OF POWER

The concurring vote of a majority of the total membership of the Board shall be necessary to reverse any order of an administrative official or body, or to decide in favor of the applicant on any matter upon which the Board is authorized by this chapter to render a decision, except that in granting a use variance a 2/3 vote of the total membership of the Board is required.

17.62.120 PERIOD OF VALIDITY

No order of the Board shall be valid for a period longer than 6 months unless such use is established or a building permit issued within such period. If a use variance is granted and the property is abandoned or falls into disrepair, the use variance shall be invalid. The City shall notify the property owner of the invalid variance.

17.62.130 CIRCUIT COURT APPEAL

- A.** The decision of the Board is final. Any person aggrieved by a decision of the Board may appeal to the Circuit Court in Oakland County. Upon appeal, the Court shall review the record and decision of the Board to insure that the decision:
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. The zoning board of appeals may modify its findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary record and decision shall be filed with the court. The court may affirm, reverse, or modify the decision.
- C.** An appeal under this section shall be filed within 30 days after the zoning board of appeals certifies its decision in writing or approves the minutes of its decision. The court shall have jurisdiction to make such further orders as justice may require. An appeal may be had from the decision of any circuit to the court of appeals.