

## CHAPTER 20 ZONING BOARD OF APPEALS

### SECTION 20.1 MEMBERSHIP

#### A. Composition and Terms

1. **Regular Members.** The Zoning Board of Appeals shall consist of three (3) regular members appointed by the Village Council. One (1) member may also be a member of the Planning Commission. Of the regular members initially appointed, one (1) shall serve a term expiring one (1) year after appointment, two shall serve a term expiring two (2) years after appointment, and two (2) shall serve a term expiring three (3) years after appointment. Thereafter, all regular members shall be appointed for a term of three (3) years.
2. **Alternate Members.** Up to two (2) alternate members may be appointed. Of those alternate members initially appointed, one (1) shall serve a one (1) year term, and one (1) shall serve a two (2) year term. Thereafter, all alternate members shall be appointed for a term of three (3) years.
  - a. Alternate members may be called on a rotating basis, as they are available to sit as regular members of the Zoning Board of Appeals in the absence of a regular member.
  - b. An alternate member may be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made.
  - c. Alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.
3. No employee or contractor of the Village shall serve as a regular member or alternate member.
4. Each regular and alternate member may receive such compensation as the Village Council may establish by resolution.

### SECTION 20.2 MEETINGS

- A. **Meetings.** All meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such times as such Zoning Board of Appeals may determine. All hearings conducted by the Zoning Board of Appeals shall be open to the public. The Village Clerk or his representative, shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall also keep records of its hearings and other official action.

- B. **Quorum.** The concurring vote of two (2) members of the zoning board of appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance, or to grant a variance in the zoning ordinance.
- C. **Hearings.** Before deciding on a Variance application, the Zoning Board of Appeals shall hold a public hearing, notice of which shall be given according to *Section 21.6, Publications*.

### SECTION 20.3 JURISDICTION

The Zoning Board of Appeals shall not have the power to make any change in the terms of this Ordinance, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, and to authorize a variance as defined in this Section and the laws of the State of Michigan. The Zoning Board of Appeals shall not have the authority to hear appeals from a decision made in respect to any special land use, planned unit development, or rezoning. The powers of the Zoning Board of Appeals include:

- A. **Hearing of Appeals.** To 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 Ordinance Administrator or any other administrative official in carrying out or enforcing any provisions of this Ordinance.
- B. **Granting of Variances.** A variance from the specific requirements of this Ordinance may be granted by the Zoning Board of Appeals in accordance with the requirements and procedures of this Chapter.
- C. **Zoning Ordinance Interpretation.** The Zoning Board of Appeals may interpret the provisions of this Ordinance to carry out the intent and purposes of the Zoning Ordinance where the meaning of the provisions is uncertain.

### SECTION 20.4 PROCEDURE

- A. **Timing of Appeal.** An appeal may be taken by a person aggrieved, or by an officer, department, or board of the Village. Such appeal shall be taken within twenty-one (21) days, as prescribed by the rules of the Zoning Board of Appeals, by the filing with the officer or body from whom the appeal is taken and with the Zoning Board of Appeals of a notice of appeal specifying the grounds for the appeal.
- B. **Filing.** Appeals shall be submitted to the Village Clerk, along with all required applications, fees, and all papers constituting the record upon which the action appealed was taken.
- C. **Stay of Proceedings.** An appeal stays all proceedings in furtherance of the action appealed from unless the officer or body from whom the appeal is taken certifies to the Zoning Board of Appeals, after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would, in the opinion of the officer or body, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order. This restraining order may be granted by the Zoning Board of Appeals or Circuit Court on application or notice to the officer or body from whom the appeal is taken and due cause shown.

- D. **Validity of Approval.** Any variance granted by the Board shall only be valid for a period of twelve (12) months from the date of approval, unless substantial construction, as determined by the Ordinance Administrator, has occurred and is progressing meaningfully toward completion. The Zoning Board of Appeals may grant up to an additional twelve (12) month extension, if requested by the property owner in writing prior to the expiration date.
- E. **Appeals to Circuit Court.** The decision of the Zoning Board of Appeals shall be final. However, a person having an interest affected by the decision of the Zoning Board of Appeals may appeal to the County Circuit Court. Appeals must be filed within thirty (30) days after the Zoning Board of Appeals issues its decision in writing or approves the minutes of its decision.
- F. **Resubmission.** No variance request which has been decided by the Zoning Board of Appeals shall be submitted for reconsideration within a one (1) year period from the date of the original application unless the Board finds that at least one of the following conditions exist:
  - 1. That the conditions involving all of the reasons for the original denial have been significantly altered.
  - 2. That new conditions or circumstances exist which change the nature of the original request.

#### **SECTION 20.5 CONDITIONS OF APPROVAL**

- A. The Zoning Board of Appeals may impose reasonable conditions in conjunction with approval of an appeal, variance, or any other decision which they are required to make.
- B. Conditions shall be imposed in a manner in accordance with the Zoning Act and related to the standards by which the decision is reached.

#### **SECTION 20.6 VARIANCE PROCEDURES**

- A. **Authority for Variances.** The Zoning Board of Appeals, after public hearing, shall have the power to grant requests for variances from the provisions of this Ordinance where it is proved by the applicant that there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the Ordinance relating to the construction, equipment, or alteration of buildings or structures so that the spirit of the Ordinance shall be observed, public safety secured and substantial justice done.
- B. **Review of Non-Use Variances.** 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 conditions are met:
  - 1. 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;

2. That 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 such conditions or situations. Unique circumstances include: exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter, or by reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure or by reason of the use or development of the property immediately adjoining the property in question, the literal enforcement of the requirements of this chapter would involve practical difficulties;
3. 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.
4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.
5. The variance will not impair the intent and purpose of this Ordinance.
6. That the immediate practical difficulty causing the need for the variance request was not created by any action of the applicant.

#### **SECTION 20.7 FEES**

The Village Council may prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the Zoning Board of Appeals. The fee shall be paid to the Village Treasurer at the time the application for the appeal or variance is filed.