

CHAPTER 23. ZONING BOARD OF APPEALS

23.1 **PURPOSE.** To ensure that the objectives of this Ordinance are fully and equitably achieved, that a means is provided for competent interpretation of this Ordinance; that flexibility be provided for in the strict interpretation of this Ordinance; and, that the spirit of the Ordinance be observed, public safety secured, and substantial justice done.

23.2 CREATION AND MEMBERSHIP .

- A. Creation of Board. A Zoning Board of Appeals is hereby created, which shall perform its duties and exercise its powers in accordance with City and Village Zoning Act (Public Act 207 of 1921, as amended).
- B. Number of Members, Appointment. The board shall consist of five (5) members, all appointed by the Village Council. Appointments shall be in accord with Section 5 of Act 207 of 1921, as amended. Two (2) members shall be appointed, one each from the membership of the Village Council and the Village Planning Commission. The Council member so appointed shall not be a member of the Planning Commission. The Village Council member of the Zoning Board of Appeals shall not serve as Chairperson. Each member of the Board of Appeals shall be a resident of the Village of Vermontville and shall be a qualified and registered elector of the. Appointed members may be removed for cause by the Village Council only after consideration of written charges. Any appointive vacancies in the Zoning Board of Appeals shall be filled by the Village Council for the remainder of the unexpired term. Revised 1-10-09
- C. Alternate Members. The Village Council may also appoint, in accordance with Act 207 of 1921, as amended, not more than two (2) alternate members for the same term as regular members of the Zoning Board of Appeals. The alternate members may be called on a rotating basis to sit as regular members of the Board of Zoning Appeals in the absence of a regular member. An alternate member may also 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 a 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.
- D. Election of Officers. The Zoning Board of Appeals shall annually elect its own Chairman, Vice-Chairman, and Secretary. The compensation of the appointed members of the Board of Appeals shall be fixed by the Village Council.
- E. The Zoning Board of Appeals member who also serves on the planning commission or as a village council member is prohibited from voting on matters that that person previously voted on in his or her capacity as a planning commission member or as a village council member. Revised 1-10-09

23.3 MEETING OF ZONING BOARD OF APPEALS. The Zoning Board of Appeals shall adopt rules of procedure for the conduct of its meetings and the implementation of its duties.

A. Meetings and Quorum. Meetings shall be held at the call of the chairperson and at such other times as the Zoning Board of Appeals Rules of Procedure shall specify. A majority of the total membership of the Zoning Board of Appeals shall comprise a quorum. The concurring vote of a majority of the members serving on the Zoning Board of Appeals shall be required to take any action; provided, however, that a use variance shall not be granted unless approved by at least a two-thirds vote of the members of the Zoning Board of Appeals. The Zoning Board of Appeals shall not conduct any business unless a quorum is present. All meetings shall be open to the public and conducted pursuant to the requirements of the Open Meetings Act, Public Act 267 of 1976.

A-Revised 7-13-06/Revision E

B. Records. The Zoning Board of Appeals shall maintain a record of its proceedings that shall be filed in the office of the Village Clerk and shall be a public record. The record shall contain the grounds for every determination made by the Zoning Board of Appeals, including all evidence and data considered, all findings of fact and conclusion drawn for each case, and the final rule on each case.

C. Witnesses The chairperson, or in his absence the acting chairperson, may administer oaths and compel the attendance of any witness in order to ensure a fair and proper hearing.

23.4 POWERS OF ZONING BOARD OF APPEALS Except as otherwise provided, the Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator or Planning Commission, or other official administering or enforcing the provisions of this Ordinance as provided herein. Within this capacity, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination including the following:

A. Administrative Review. The Zoning Board of Appeals shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, or decision made by the Zoning Administrator or Planning Commission in the administration or enforcement of this Ordinance.

B. Interpretation of Zoning Ordinance: The Zoning Board of Appeals shall hear and decide upon the following requests:

- 1) Interpret the provisions of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one meaning. In deciding upon

such request, the Zoning Board of Appeals shall ensure that its interpretation is consistent with the intent and purpose of this Article, the Chapter in which the language is contained, and all relevant provisions of this Article 2 - Zoning.

- 2) Determine the precise location of the boundary line between zoning districts when there is dissatisfaction with the decision made by the Zoning Administrator.
- 3) Classify a use that is not specifically mentioned within the use regulations of any zoning district based on a comparable permitted or conditional land use, in accordance with the purpose and intent of each district. If no comparable use is found, the Zoning Board of Appeals shall so declare, the effect being that the use is not permitted until or unless the text of this Ordinance is amended to permit it.

C. Dimensional Variances. The Zoning Board of Appeals shall have the power to authorize dimensional variances from site development requirements, such as lot area and lot width, building height and bulk regulations, yard width and depth requirements, off-street parking and loading requirements, sign landscape requirements, and other similar requirements of this Ordinance.

- 1) Approval Criteria. To obtain a dimensional variance, the applicant must demonstrate that compliance with the terms of this Article presents practical difficulties by showing:
 - a) That the need for the variance is due to unique circumstances or physical conditions, such as narrowness, shallowness, shape, water or topography, of the property involved and that the practical difficulty is not due to the applicant's personal or economic hardship.
 - b) That the need for the variance is not the result of actions of the property owner (self-created) or previous property owners.
 - c) That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. The potential that a property owner may incur additional costs in complying with this Article shall not, in and of itself, make compliance unnecessarily burdensome.
 - d) That the variance will do substantial justice to the applicant as well as to other property owners in the district, or that a lesser application of the standards would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
 - e) That the variance will not cause adverse impacts on surrounding property, property values, or the use and enjoyment of property in the neighborhood.
 - f) That the variance shall not permit the establishment within a district of any use, which is not permitted by right, or any use for which a special land use permit is required.

- 2) Conditions. The Zoning Board of Appeals may impose conditions upon a dimensional variance approval. The conditions may include those necessary to protect the natural environment and conserve natural resources, to ensure compatibility with adjacent land uses, and to promote the use of land in a socially and economically desirable manner. Conditions imposed upon a dimensional variance approval shall be stated in the record or order and shall remain unchanged except upon application to the Zoning Board of Appeals and the property owner. Similarly, any changes in conditions shall be reflected in the record of order.
 - 3) Effect of Approval: The dimensional variance shall expire at the end of 12 months, unless a land use permit authorizing the construction has been obtained and construction has started and proceeds to completion in accordance with the terms of the land use permit.
 - 4) Recording Requirement: The Zoning Administrator shall record a copy of the land use permit with the County Register of Deeds.
- D. Use Variances The Zoning Board of Appeals shall have the power to grant use variances to the zoning district use restrictions to the extent provided by the City and Village Zoning Act (Act 207 of 1921, as amended) and applicable Michigan case law. Any petition for a use variance shall be reviewed by the Village Attorney to determine whether, in the opinion of the Village Attorney, statute or case law allows the petition.
- 1) Approval Criteria. To obtain a use variance, the applicant must demonstrate that an unnecessary hardship exists by showing:
 - a) That the property as a whole cannot be reasonably used for any of the uses permitted by right or special land use approval in the zoning district in which the property is located.
 - b) That the variance is needed due to unique circumstances peculiar to the property and not general to neighborhood conditions.
 - c) That the need for the variance is not the result of actions of the property owner (self-created) or previous property owners.
 - 2) Conditions. The Zoning Board of Appeals may impose conditions upon a use variance approval. The conditions may include those necessary to protect the natural environment and conserve natural resources, to ensure compatibility with adjacent land uses, and to promote the use of land in a socially and economically desirable manner. Conditions imposed upon a use variance approval shall be stated in the record of order and shall remain unchanged except upon application to the Zoning Board of Appeals and at the mutual agreement of the Zoning Board of Appeals and the property owner. Similarly, any changes in conditions shall be reflected in the record of order.
 - 3) Effect of Approval. The use variance shall expire at the end of 12 months, unless a land use permit authorizing the construction has been obtained and construction

has started and proceeds to completion in accordance with the terms of the land use permit.

- 4) Recording Requirement. The Zoning Administrator shall record a copy of the land use permit with the County Register of Deeds.
- E. Conditions. The Zoning Board of Appeals may impose conditions including performance guarantees in connection with any of its decisions, as the Board shall deem to be necessary and/or reasonable to minimize any possible detrimental effects that may arise from its decision and to otherwise promote the purposes of this Ordinance.

23.5 PROCEDURE FOR APPEALS TO THE BOARD .

- A. Notice of Appeal. The following procedures shall be observed in filing a notice of appeal:
 - 1) Ordinance interpretation and variance requests may be made by any aggrieved persons or by any official of the Village on a form provided for that purpose.
 - 2) The appeal of a ruling of the Planning Commission or Zoning Administrator in the enforcement of this Ordinance shall be taken within 21 days of the date of the Zoning Administrator's decision on a form provided for that purpose.
 - 3) Upon receipt of a notice of appeal, the official from whom the appeal is taken shall transmit to the Zoning Board of Appeals all the papers constituting the record upon which the appealed action was taken.
- B. Hearing. Upon receipt of a request for ordinance interpretation, variance or notice of appeal, the chairperson of the Zoning Board of Appeals shall schedule a reasonable time and date for a public hearing.
- C. Notice of Hearing. Notice of the public hearing shall be delivered and published in accordance with Section 24.9 of this Ordinance.

1) *"The public shall be notified of all public hearings by the publication of at least one notice of the hearing in a newspaper of general circulation in the Village. Written notice shall also be provided to the appellant by personal delivery or mail.*

2) *In the case of a dimensional or use variance request, notice of the hearing shall be sent by mail or personal delivery to all owners to which real property is assessed within 300 feet of the boundary of the property in question, and to the occupants of all structures within 300 feet. Notifications need only be given to one occupant of a structure, except if the structure contains more than one dwelling unit or spatial area owned or leased by different individuals, partnerships, or organizations, one occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than 4 dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.*

3) *The notice shall be given not less than 5 and not more than 15 days before the application will be considered. The notice shall include a description of the type of appeal requested, a description of the property which is the subject of the appeal, the time and place of the hearing, and the time and location for written comments to be received. "*

Repealed 1-3 on 7-13-06/revision E

- D. Power to Subpoena. The Board shall have the power to subpoena witnesses; administer oaths; compel testimony; and require the production of reports, papers, files and other evidence pertinent to the matters before it.
- E. Stay of Action. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator 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 cause imminent peril to life or property. In such case, the proceedings shall not be stayed, except by a restraining order which may be granted by the Zoning Board of Appeals or by the Circuit Court on due cause shown.
- F. Board Decisions. All such decisions of the Board shall be made at a public meeting by motion and seconded and by roll call vote. The motion shall be in the form of findings of fact and shall state the reasons for the findings by the Board. If the grant of a special exception or variance includes conditions or safeguards, such conditions and safeguards, and the reasons therefore, shall be stated in the motion. The Board shall decide an appeal within a reasonable time.
- G. Final Record. The requisite written findings of fact, the conditions attached, and the decisions and orders of the Zoning Board of Appeals in disposing of the appeal, shall be entered into the official record for each case. Such record shall show the reasons for the determination, with a summary of the evidence introduced, and reasons for imposition of any conditions imposed.
- H. A Variance Runs with the Land. A variance shall run with the land, except that if no building permit has been obtained within one year of the effective date of the variance, the variance shall become null and void. The Zoning Board of Appeals shall review any subsequent application for a variance on the applicable conditions and circumstances which exist at the time of the subsequent application.

23.6 FINAL DECISIONS AND REHEARING.

- A. Final Decisions Except as provided in this section, a decision of the Zoning Board of Appeals shall be final. The Zoning Board of Appeals may grant a rehearing under exceptional circumstances for any decision made by it. Exceptional circumstances shall mean any of the following:
 - 1) The applicant who brought the matter before the Zoning Board of Appeals made misrepresentations concerning a material issue which was relied upon by the Zoning Board of Appeals in making its decision.
 - 2) There has been a material change in circumstances regarding the Zoning Board of Appeals findings of fact that occurred after the hearing.
 - 3) The Village Attorney, by written opinion, states that in the attorney's opinion the Zoning Board of Appeals decision made or procedure used was clearly erroneous.

- B. Rehearing Procedure A rehearing may be requested by an applicant or by the Zoning Administrator or the Zoning Board of Appeals may order a rehearing on its own motion according to the following procedures:
- 1) A request for rehearing which is made by the applicant or the Zoning Administrator must be made within 21 days from the date of approval of the Zoning Board of Appeals minutes regarding the decision for which the rehearing is being requested.
 - 2) A request for rehearing which is made by the Zoning Board of Appeals on its own motion or upon request of the Zoning Administrator may be granted at any time as long as the applicant has not been prejudiced by any delay. Whenever the Zoning Board of Appeals considers granting a rehearing on its own motion or upon the request of the Zoning Administrator, it shall provide written notice to the applicant that a rehearing will be considered. The notice may be served at least 9 days before the time set for the hearing if served by mail, or at least 7 days before the time set for the hearing if served by personal service. If the Zoning Board of Appeals grants the rehearing, then the rehearing shall not be held until all notice requirements for the type of decision being heard shall have been satisfied.
- C. Appeals from final decisions of the Zoning Board of Appeals shall be to Circuit Court of Eaton County, as provided by law.

23.7 FEES. Fees for appeals to the Zoning Board of Appeals shall be established by Resolution of the Village Council.