

ARTICLE 29.00

VARIANCES AND APPEALS

Section 29.01 – INTENT

The purpose of this Section is to provide guidelines and standards to be followed by the Zoning Board of Appeals to act on matters where this Ordinance or state law gives jurisdiction to the Zoning Board of Appeals.

Section 29.02 -- AUTHORITY OF THE ZONING BOARD OF APPEALS

A. General Authority

The Zoning Board of Appeals shall have the authority to act on those matters where this Ordinance provides for appeal of an administrative order or interpretation and shall have authority to authorize a variance as defined in this Ordinance and laws of the State of Michigan. Such authority shall be subject to the rules and standards in this Section. The Zoning Board of Appeals shall not have the authority to alter or change zoning district classifications of any property, nor to make any change in the text of this Ordinance.

B. Administrative Review

Except for conditional land use approval, the Zoning Board of Appeals shall have authority to hear and decide appeals where it is alleged that there is an error in an order, requirement, permit, decision, or refusal made by an official, board, or commission in carrying out or enforcing any provisions of this Ordinance. Such appeal shall be requested by the applicant within thirty (30) days of the date of the order, refusal, requirement, or determination being appealed. In hearing and deciding appeals under this sub-section, the Zoning Board of Appeals review shall be based upon the record of the administrative decision being appealed. If new information is presented, the official, board or commission from whom the appeal is taken should first review the revised application and make a decision, which may be then appealed under this section.

C. Interpretation

The Zoning Board of Appeals shall have authority to hear and decide requests for interpretation of the Zoning Ordinance, including the zoning map. The Zoning Board of Appeals shall make such decisions so that the spirit and intent of this Ordinance shall be observed.

Text interpretations shall be limited to the issues presented, and shall be based upon a reading on the Ordinance as a whole, and shall not have the effect of amending the Ordinance.

Map interpretations shall be made based upon rules in the Ordinance, and any relevant historical information. In carrying out its authority to interpret the Ordinance, the Zoning Board of Appeals shall consider reasonable and/or practical interpretations which have been consistently applied in the administration of the Ordinance. Prior to deciding a request for an interpretation, the Zoning Board of Appeals may confer with City staff and consultants to determine the basic purpose of the provision subject to interpretation and any consequences which may result from differing decisions. A decision providing an interpretation may be accompanied by a recommendation for consideration of an amendment to the Ordinance.

D. Variances

The Zoning Board of Appeals shall have authority in specific cases to authorize one or more dimensional or “non-use” variances from the strict letter and terms of this Ordinance by varying or modifying any of its rules or provisions so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done. A dimensional or non-use variance allows a deviation from the dimensional (i.e., height, bulk, setback) requirements of the Ordinance. A use variance authorizes the establishment of a use of land that is otherwise prohibited in a zoning district. The Zoning Board of Appeals is authorized to grant use variances by this Ordinance.

Such authority shall be exercised in accordance with the following standards:

1. The Zoning Board of Appeals may grant a requested "non-use" variance only upon a finding that practical difficulties exist. A finding of practical difficulties is when the applicant has demonstrated all of the following:
 - a. Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.
 - b. The variance will do substantial justice to the applicant, as well as to other property owners.
 - c. The variance requested is the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners.
 - d. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
 - e. The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance, not by the applicant or the applicant's predecessors.
2. The Zoning Board of Appeals may grant a requested “use” variance only upon finding that an unnecessary hardship exists. An unnecessary hardship is when the restrictions of the zoning ordinance on the property, when its environment is considered, is so unreasonable as to constitute an arbitrary and capricious interference with basic private property rights. A “use” variance is a variance that permits a use that is otherwise prohibited in a zoning district. A finding of unnecessary hardship shall require demonstration by the applicant of all of the following:
 - a. The property cannot be reasonably used for any purpose permitted in the zoning district without a variance.
 - b. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
 - c. The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area will be considered.
 - d. The problem and resulting need for the variance has not been self-created by the applicant.

3. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or evidence from which the Zoning Board of Appeals may make the required findings.

E. Conditions

The Zoning Board of Appeals may impose reasonable conditions in connection with an affirmative decision on an appeal, interpretation or variance request. The conditions may include requirements necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, and to insure compatibility with adjacent uses of land. Conditions imposed shall meet the following requirements:

1. Be designed to protect natural resources, the health, safety and welfare of those who will use the land use or activity under consideration, residents and surrounding property owners, and the community as a whole.
2. Be related to the valid exercise of the City's police power, the ability to protect health, safety and welfare endowed to local governments by the Constitution of the United States, and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

Conditions imposed with respect to the approval of a variance shall be recorded as part of the Zoning Board of Appeals minutes, and shall remain unchanged except upon the approval of the Zoning Board of Appeals following notice and hearing as required in a new case.

F. Performance Guarantee

The Zoning Board of Appeals may require that a performance guarantee be deposited with the City to ensure faithful completion of the improvements, in compliance with Section 3.14.

Section 29.03 -- APPLICATIONS AND NOTICES

A. Application

An application to the ZBA, in cases in which it has original jurisdiction under the provisions of this Ordinance, may be made by a person or property owner, including a tenant, or by a governmental officer, board, department or bureau.

All applications to the Zoning Board of Appeals shall be filed with the Planning and Community Development Department, on forms provided by the City, and shall be accompanied by the applicable fee as established in Chapter 21 of the Code of Ordinances. The ZBA shall not consider any application until said sum has been paid by the applicant. Applications shall include items required by sub-sections B, C, and D below. Applicants shall provide all plans, studies, and other relevant information to be considered by the ZBA.

The Zoning Board of Appeals shall have no obligation to consider and/or grant a request for relief unless and until a conforming and complete application has been filed, including relevant plans, studies, and other information.

B. Plot Plan

A plot plan shall be required with all variance requests. The plan shall be to scale and shall include all property line and dimensions, setbacks and all existing and proposed structures. Where an application provides a variance sought in conjunction with a regular site plan review, a site plan prepared according to Article 27.00 shall satisfy the requirements of this section.

The Zoning Board of Appeals has the authority to require a land survey prepared by a professional surveyor or registered engineer if the Zoning Board of Appeals determines it to be necessary to insure accuracy of the plan.

C. Applications Involving an Appeal of Administrative Order

In a case involving an appeal from an action of an administrative official or entity (as specified in section 29.02, subsection B), the administrative official, or the clerk or secretary of the administrative entity, as the case may be, shall transmit to the Zoning Board of Appeals copies of all papers constituting the record upon which the action was taken, together with a letter specifying an explanation of the action taken.

D. Consent of Property Owner Required

Applications for a variance shall be made with the full knowledge and written consent of all owners of the property in question. This requirement shall include the consent of a land contract seller to the relief sought by a land contract purchaser.

E. Hearing and Notice

The City, upon receipt of an application or an appeal for an area or dimension variance, a use variance, or ordinance interpretation, or a conditional land use approval, shall fix a reasonable time for a hearing.

All hearings shall be advertised in a local newspaper at least fifteen (15) days prior to the hearing. Except for an Ordinance interpretation, the Zoning Board of Appeals shall give notice delivered at least fifteen (15) days before the time fixed for such appeals to all interested parties. For purposes of this subsection, interested parties shall include the applicant(s) and owners of record of property and the occupants of all single-family, two-family, and multiple-family dwellings within three hundred (300) feet of the premises in question and other persons specified by the Zoning Board of Appeals. Notice to property owners shall be mailed to the address given in the most recent assessment role.

The Zoning Board of Appeals shall decide the application or appeal within sixty (60) days of the hearing date and shall promptly mail a copy of its decision to the applicant or appellant.

F. Stay of Proceedings

An appeal shall have the effect of staying all proceedings in furtherance of the action being appealed unless the officer or entity from whom the appeal is taken certifies to the Zoning Board of Appeals that, by reason of facts stated in such certification, a stay would in his or her opinion cause imminent peril to life or property, in which case proceedings shall not be stayed unless specifically determined by the Zoning Board of Appeals, or by a court of competent jurisdiction.

G. Decision by the Zoning Board of Appeals

The concurring vote of a majority of the full membership of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of an administrative official, board or commission made in the administration of this ordinance, and to decide in favor of an applicant on any matter upon which the Zoning Board of Appeals is required to pass under this ordinance except that a concurring vote of 2/3 of the full membership of the board shall be necessary to grant a “use” variance from the terms of this ordinance.

Section 29.04 -- DISPOSITION AND DURATION OF APPROVAL

A. Zoning Board of Appeals Powers

The Zoning Board of Appeals may reverse, affirm, vary or modify any order, requirement, decision, or determination presented in a case within the Zoning Board of Appeals' jurisdiction, and to that end, shall have all of the powers of the officer, board or commission from whom the appeal is taken, subject to the Zoning Board of Appeals' scope of review, as specified in this Ordinance or by law. The Zoning Board of Appeals may remand a case for further proceedings and decisions.

B. Decision Final

A decision by the Zoning Board of Appeals shall be considered final as of the meeting at which the decision has been made, and the date of such meeting shall be deemed to be the date of notice of the decision to the applicant. To the extent that decisions are requested or required to be in writing, the minutes of the Zoning Board of Appeals meeting, and decision, as proposed under supervision of the secretary, shall constitute the written decision, even if the minutes are awaiting final Zoning Board of Appeals approval.

C. Period of Validity

Any decision of the Zoning Board of Appeals favorable to the applicant shall remain valid only as long as the information and data relating to such decision are found to be correct, and the conditions upon which the decision was based are maintained. The relief granted by the Zoning Board of Appeals shall be valid for a period not longer than six (6) months, unless otherwise specified by the Zoning Board of Appeals, and within such period of effectiveness, actual on-site improvement of property in accordance with the approved plan and the relief granted, under a valid building permit, shall be commenced or the grant of relief shall be deemed void.

D. Record of Proceedings

The Planning and Community Development Department staff, under the supervision of the secretary of the Zoning Board of Appeals, shall prepare and keep minutes of the Zoning Board of Appeals proceedings, showing the findings, decisions, conditions, if any, and votes of each member in each case, including a member's absence or failure to vote. The minutes shall be within the ultimate authority, and shall be the responsibility, of the secretary of the Zoning Board of Appeals, and shall be subject to approval of the Zoning Board of Appeals.

The official records of the Zoning Board of Appeals proceedings shall be filed in the City Hall and shall be public records.

E. Appeal of a Zoning Board of Appeals Decision

All decisions of the Zoning Board of Appeals shall be final. However, any person objecting to such a decision of the Zoning Board of Appeals may appeal to the Circuit Court within 90 days of the final decision.

F. New Application for Variance

If the Zoning Board of Appeals denies a request for a variance, the decision of the Zoning Board of Appeals shall not be subject to re-consideration for a period of one (1) year, whereupon the applicant may submit a new application for the variance. However, the Zoning Board of Appeals may waive the one year period if conditions upon which its original decision was made change or if information relating to its original decision are found to be incorrect or inaccurate.

Section 29.05 -- FILING FEES

All applications shall be accompanied by a filing fee which shall be established by resolution of the City Council, found in Chapter 21 of the City of Midland Code of Ordinances.

A schedule of the current filing fees and deposit requirements shall be made available in the office of the Planning and Community Development Department.

The assessment and payment of application fees does not affect the requirements for a performance guarantee as specified in Section 3.14.

There shall be no fee in the case of application filed in the public interest by a municipal department or City Official.