

ARTICLE XXII

BOARD OF ZONING APPEALS

22.0 STATEMENT OF PURPOSE

The purpose of this Article is to insure that the objectives of this Ordinance are fully and equitably achieved, that a means be provided for competent interpretation of this Ordinance, that flexibility be provided for the strict application of this Ordinance, that the spirit of the Ordinance be observed, public safety secured and substantial justice done.

22.1 CREATION AND MEMBERSHIP

A Zoning Board of Appeals is hereby established in accordance with Act 207 of Public Acts of 1921, as amended. The City Commission may act as the Board of Appeals on questions arising under this Ordinance. In the alternative, if the City Commission desires it may appoint a Board of Appeals consisting of not less than 5 members, each to be appointed for a term of 3 years.

22.2 ORGANIZATION

- A. Rules of Procedure: The Zoning Board of Appeals may adopt rules of procedure for the conduct of its meetings and the implementation of its duties. The Board may annually elect a chairperson, a vice-chairperson, and a secretary.
- B. Meetings and Quorum: Meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at such other times as the board in its Rules of Procedure may specify. A majority of the total membership of the Board shall comprise a quorum. All meetings shall be open to the public.
- C. Oaths and Witnesses: The chairperson may administer oaths and compel the attendance of any witness in order to insure a fair and proper hearing.

- D. Records: The minutes of all meetings shall contain the grounds for every determination made by the Board and the final ruling on each case. The Zoning Board of Appeals shall file its minutes in the office of the City Clerk.

22.3 JURISDICTION

- A. The Zoning Board of Appeals shall act upon questions as they arise in the administration of this Ordinance. The Board shall perform its duties and exercise its powers as provided in Act 207 of the Public Acts of 1921, as amended. The Zoning Board of Appeals **shall not** have the power to alter or change the zoning district classification of any property, nor make any change in the terms or intent of this Ordinance, but does have the power to act on those matters for which this Ordinance provides an administrative review, interpretation or variance. Within this capacity the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination of the Zoning Administrator, Planning Commission or any official administering or enforcing the provisions of this Ordinance as set forth below.
- B. The Zoning Board of Appeals shall be permitted to consider any requests for variances from the requirements and conditions of Planned Unit Developments and from the Site Design Standards of Special Land Uses.

22.4 AUTHORIZED APPEALS

The Zoning Board of Appeals shall hear the following specified categories of appeals in accordance with the following standards:

- 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, requirements, permit, decision or refusal made by the Zoning Administrator or by any other official in administering or enforcing the provisions of this Ordinance.

B. Interpretation of the Ordinance: The Board of Appeals shall hear and decide upon request to:

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 insure that its interpretation is consistent with the intent and purpose of the Ordinance and the Article in which the language in question is contained.
2. Determine the precise location of boundary lines between zoning districts where there is dissatisfaction with a decision made by the Zoning Administrator.
3. Classify a use, which is not specifically mentioned as part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district.
4. Determine the parking space requirements of any use not specifically mentioned; either by classifying it with one of the groups listed, or by an analysis of the specific needs.

C. Variance: The Zoning Board of Appeals shall have the power to authorize specific variances from site development requirements such as lot area and width regulations, building height and bulk regulations, yard width and depth regulation, off-street parking and loading space requirements, of this Ordinance, provided that all the required findings listed below are met:

1. That there are practical difficulties or unnecessary hardships, which prevent carrying out the strict letter of this Ordinance. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.
2. That a genuine hardship exists because of unique circumstances or physical condition such as narrowness, shallowness, shape or topography of the property involved, or to the intended use of the property, that do not generally apply to other property uses in the same zoning district, and shall not be recurrent in nature.

3. That the hardship or special conditions do not result from actions of the applicant.
4. That the variance will be in harmony with the general purpose and intent of this Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, and the use and enjoyment of property in the neighborhood or district.
5. That granting the variance will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district.
6. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship.
7. That the variance shall not permit the establishment, within a district, of any use which is not permitted by right within the zoning district, or any use for which a special use permit is required.

In granting a variance, the Zoning Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and shall automatically invalidate the permit.

Each variance granted under the provisions of this Ordinance shall become null and void unless:

- The construction authorized by such variance or permit has commenced within six (6) months of granting of the variance.
- The occupancy of land, premises or building has taken place within one (1) year after the granting of the variance.

No application for the variance which has been denied, wholly or in part, by the Zoning Board of Appeals shall be resubmitted for a period of one (1) year from the date of the last denial, except on the ground of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.

22.5 APPEAL PROCEDURES:

- A. Notice of Appeal: Appeals to the Zoning Board of Appeals may be made by any person aggrieved, or by an officer or department of the City, filing a written Notice of Appeal with the City Clerk. Upon receipt of a Notice of Appeal, the City Clerk shall promptly transmit the records concerning the appealed action to the chairperson of the Appeals Board. Any appeal from the ruling of the Zoning Administrator concerning the enforcement of the provisions of this Ordinance shall be filed within ten (10) days after the date of the Zoning Administrators decision.
- B. Hearing: Upon receipt of a Notice of Appeal, the chairperson of the Board of Appeals shall fix a reasonable time and date for a Public Hearing, not to exceed thirty (30) days from the date of filing of the Notice of Appeal. Upon determination of the date and time of the Public Hearing, the City Clerk shall notify the following, by first class mail or by personal service, not more than fifteen (15) or less than eight (8) days before the Public Hearing:
- The appellant
 - All persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question, and to the occupants of all structures within thirty (30) feet.
- C. Notice of Hearing: Where the hearing, in the opinion of the City Clerk, concerns matters of general applicability in the City and does not concern only individual lots or parcels, such notice shall be given in a newspaper of general circulation in the City not more than fifteen (15) or less than eight (8) days before the public hearing.

- D. Appearance: Upon the hearing, any party may appear in person or by agent or attorney. The Board may recess such hearing from time to time, and, if the time and place of the continued hearing are announced at the time of adjournment, no further notice shall be required.
- E. Fee: A fee as established by the City Commission, shall be paid to the City Clerk at the time the petitioner files and application with the Board. The purpose of such fee is to cover the necessary advertisements, investigations, hearing records and other expense incurred by the Board in connection with the appeal. No fee shall be charged if the City or any Official body of the City is the moving party.
- F. Decision: The Board of Appeals shall render its decision within thirty (30) days of filing of Notice of Appeal unless an extension of time is necessary to review new information pertinent to making the decision, and is agreed upon by the appellant and a majority of members of the Appeals Board present. The vote of a majority of members of the Board shall be necessary to take action on an appeal.
- G. Bonding: In authorizing any variance, or in granting any conditional, temporary or special approval permits, the Board may require that a cash deposit, certified check, irrevocable bank letter of credit or surety bond acceptable to the City in covering the estimated cost of improvements associated with a project for which zoning approval is sought, be deposited with the City Clerk to insure faithful completion of the improvements. The performance guarantee shall be deposited at the time of the issuance of the permit authorizing the activity or project. The Board may not require the deposit of the performance guarantee before the date on which the permit is to be issued. The Board shall establish procedures under which a rebate of any cash deposits in reasonable proportions to that ratio of work completed on the required improvements will be made as work progresses.

22.6 ADMINISTRATIVE VARIANCE:

- A. Procedure and Criteria: The Zoning Administrator is hereby authorized to grant an administrative variance to the provisions of this Ordinance in an amount not to exceed a ten percent (10%) variation from the site development standards, parking and loading requirements, and the specific provisions and requirements contained in this Ordinance.

Upon receipt of a request for an administrative variance, the Zoning Administrator shall prepare a report of the situation and all factual data concerning the site in terms of the criteria stated in this Ordinance. Upon completion of the report, the Zoning Administrator shall determine whether or not the request meets the above stated criteria and shall approve or deny the request exclusively on that basis. Decisions rendered by the zoning administrator shall be in the form of a letter, which states specifically a determination on each of the items contained in Section 22.4.C of this Ordinance, with reference to the above-mentioned report.

- B. Appeals: The decision of the Zoning Administrator may be appealed to the Board of Appeals pursuant to this Section.

22.7 REVIEW BY CIRCUIT COURT:

Any party aggrieved by an order, determination or decision of any officer, agency, board, commission, Board of Appeals or City Commission of the City of Fennville which has acted pursuant to the provisions of Act 207 of the Michigan Public Acts of 1921, as amended may obtain a review thereof both on the facts and the law, in the Circuit Court of Allegan County, provided that all other means of local appeal and review as provided in this Ordinance have first been exhausted. The Circuit Court shall review the record and decision of the Board of Appeals to insure that the decision:

- A. Complies with the constitution and laws of the State.
- B. Is based upon proper procedure.
- C. Is supported by competent, material, and substantial evidence on the record.