

# CHAPTER 1324

## Board of Zoning Appeals

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### CROSS REFERENCES

Board of Zoning Appeals - MCLA 125.585  
Meetings of the Board; freedom of information - MCLA 125.585a  
Review by Circuit Courts; appeals to Supreme Court; procedure - MCLA 125.590  
Actions for review; proper and necessary parties; notice; failure to appear - MCLA 125.591  
Authority re nonconforming uses - Zoning Code 1370.03  
Construction Board of Appeals - B & H Ch. 1442

#### **1324.01 ESTABLISHMENT.**

The Board of Zoning Appeals is established in accordance with Article VI of Act 110 of the Public Acts of 2006. The Board shall perform its duties and exercise its powers as provided by state law and this Zoning Code such that the intent of this Zoning Code is observed and the health, safety and welfare of the public is secured.

(Ord. 719. Passed 2-5-07.)

#### **1324.02 COMPOSITION; TERMS OF OFFICE.**

- (a) The Board of Zoning Appeals shall consist of nine members appointed by the City Commission for terms of three years. Terms shall be overlapping to provide for the appointment of an equal number of members each year. A successor member must be appointed within one month following the expiration of the previous term. At least one member shall also be a member of the Planning Commission.
- (b) The City Commission shall also appoint two alternate members for terms of three years each. An alternate member may be called by the Chairperson of the Board, the Planning Director or the Zoning Administrator to sit as a regular member of the Board in the absence of a regular member if:
  - (1) A regular member is unable to attend a regularly scheduled meeting; or
  - (2) A regular member has abstained from a decision for reason of conflict of interest.
  - (3) The alternate member having been appointed shall serve on an appeal until a final decision has been made. Such alternate member shall have the same voting rights as a regular member of the Board. Absence, inability to attend or abstention because of a conflict of interest may be established by communication of a Board member at least twenty-four hours prior to the regularly scheduled Board meeting.

(Ord. 719. Passed 2-5-07.)

#### **1324.03 MEETINGS.**

Meetings of the Board of Zoning Appeals shall be held at the call of the Chairperson and at such other times as the Board may determine. There shall be a fixed place of meeting and all

meetings shall be open to the public. The Board shall adopt its own rules of procedure and shall keep a public record of its proceedings showing the action of the Board and the vote of each member upon each question considered. The presence of five members shall be necessary to constitute a quorum and a majority vote of the members of the Board shall be necessary to reverse an order, requirement, decision or determination of an administrative official or to decide in favor of the applicant in the case of a variance, exception or interpretation, except that the concurring vote of two-thirds of the members shall be necessary to grant a variance from uses of land permitted by this Zoning Code.

**1324.04 RULES OF PROCEDURE.**

The Board of Zoning Appeals shall follow such procedures as are established by statute, ordinance and resolution of the Board.  
(Ord. 719. Passed 2-5-07. Ord. 811. Passed 9-2-08. Ord. 989. Passed 2-18-14)

**1324.05 POWERS AND DUTIES.**

- (a) **Generally.** The Board of Zoning Appeals shall not have the power to alter or change the zoning district classification of any property or make any change in the terms of intent of this Zoning Code. The Board shall have the power to act on those matters where this Zoning Code provides for an appeal, interpretation, variance or exception. The Board of Zoning Appeals shall not have the power to vary a standard for a Planned Unit Development or a Special Land Use Permit.
- (b) **Appeals.** The Board shall hear and decide appeals where it is alleged by the applicant that there is an error in any order, requirement, decision or determination made by the administrative official or body charged with the enforcement of this Zoning Code.
- (c) **Interpretations.** Upon application by a City official or person interested in a specific affected parcel of land, when other administrative appeals have been exhausted, the Board shall have the power to:
  - (1) Interpret this Zoning Code in such a way as to carry out its intent and purpose;
  - (2) Determine the precise location of a zoning district and special area boundaries;
  - (3) Classify a use which is not specifically mentioned, determine the district within which the use is permitted and determine the necessary parking to support the use; and
  - (4) Determine the off-street parking and loading space requirements of this Zoning Code.
- (d) **Variances.** The Board shall have the power to authorize specific variances or departures from this Zoning Code, if all of the basic conditions are satisfied, and if there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Zoning Code. A variance from the dimensional requirements of this Zoning Code may only be granted if it is determined that all basic conditions have been satisfied and that there is a practical difficulty in carrying out the requirement. A variance from the use requirements of this Zoning Code may only be granted if it is determined that all basic conditions have been satisfied and that there is an unnecessary hardship created by those use restrictions.
  - (1) **Basic conditions.** Any variance granted from this Zoning Code shall meet the following basic conditions:
    - (A) The spirit of this Zoning Code shall be observed, public safety secured and

- substantial justice done.
- (B) There is no substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
  - (C) The difficulty or hardship relating to the property is not so general or recurrent in nature that the formulation of a general regulation for such conditions is preferable.
  - (D) The practical difficulties or unnecessary hardships are unique to the property under consideration and not to the general neighborhood, and shall apply only to property that is under the control of the applicant.
  - (E) It shall be necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.
  - (F) There is a clear showing of an unnecessary hardship in that the property as a whole cannot reasonably be put to a use authorized by this Zoning Code.
  - (G) The alleged hardship or difficulty is not solely economic, and is based on the reasonable use of a particular parcel of land.
  - (H) It may be denied where the alleged practical difficulties or unnecessary hardships resulted from an act of the applicant, or a person in privity or concert with the applicant.
- (2) **Practical difficulties and unnecessary hardships.** In order to determine if there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Zoning Code the following shall apply:
- (A) **Dimensional variance.** A practical difficulty shall exist where there are exceptional or extraordinary circumstances or physical conditions, such as narrowness, shallowness, shape or topography of the property involved, that do not generally apply to other property or uses in the same zoning district.
  - (B) **Use variance.** An unnecessary hardship shall exist where the lot considered in combination with other land owned by the applicant adjacent thereto has no reasonable value as zoned.
- (e) **Exceptions.** The Board shall have the power to grant the following exceptions:
- (1) Extend a district where the boundary line of a district divides a lot of record in single ownership at the time of adoption of this Zoning Code (July 6, 1999);
  - (2) Interpret or apply this Zoning Code where the street layout actually on the ground varies from the street layout as shown on the District Map.
  - (3) Permit the alteration or enlargement of an existing building associated with a Class 1 nonconforming use, or permit the increase in intensity of use of a Class nonconforming use, where:
    - (A) The change will not unreasonably delay future probability of compliance with this Zoning Code.
    - (B) There will be greater compliance with this Zoning Code or, in the alternative, with the Building Code or other applicable ordinances if the change is permitted, and such compliance is the maximum which can be reasonably expected. The change will not detract from any historical or unique architectural qualities of the building.
    - (C) The change will not be detrimental to or tend to alter the character of the

neighborhood.

- (4) Permit a change in use of a Class 1 nonconforming use to another nonconforming use which is more nearly conforming to the use restrictions of this Zoning Code. After a change in use has been permitted, the use shall not be changed back to the former nonconforming use or to any less conforming use. Such a change in use may be permitted only where:
  - (A) The change in use will not unreasonably delay future probability of compliance with this Zoning Code.
  - (B) There will be greater compliance with this Zoning Code if the change is permitted, and such compliance is the maximum which can reasonably be expected.
  - (C) The change will not be detrimental to the neighborhood or tend to alter the character of the neighborhood.

#### **1324.06 TIME LIMITATIONS OF ORDERS.**

- (a) **Building Alterations.** An order of the Board of Zoning Appeals permitting the erection or alteration of a building is valid for no longer than one year, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.
- (b) **Uses.** An order of the Board permitting the use of a building or premises is valid for no longer than one year unless such use is established within such period. However, where such permitted use is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for such erection or alteration is obtained within such period and if such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.
- (c) **Modification.** Time limits established by this section may be lengthened or shortened by the Board as a condition imposed under the standards for conditions set forth in this Zoning Code.
- (d) **Expiration.** In addition to any expiration provision contained in an order itself, an order of the Board of Zoning Appeals may be declared by the Zoning Administrator to be expired where there has been a change in a material circumstance or fact upon which the order was issued, such as, but not limited to, destruction of a building or natural feature, vacation of a street or a change in topography. Before so declaring an order expired, the Zoning Administrator shall notify the landowner and if requested shall conduct a hearing with notice and procedures as practical.

#### **1324.07 COURT REVIEW.**

- (a) **Circuit Court Review.** A decision of the Board of Zoning Appeals shall be final. However, any party having a substantial interest affected by an order, determination or decision of the Board of Zoning Appeals may appeal to the Circuit Court if made to the Court within 30 days after the Zoning Board of Appeals certifies its decision in writing signed by the Chairperson or within 21 days after the Board of Zoning Appeals approves the minutes of its decision, or upon grant by the Court of leave to appeal.
- (b) **Standards for Review.** The Circuit Court shall review the record and decision of the Board of Zoning Appeals to insure that the decision:

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- (1) Complies with the constitution and the 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 Board of Zoning Appeals.

(c) **Inadequate Record.** If the Court finds the record of the Board of Zoning Appeals inadequate to make the review required, or that additional evidence exists which is material and with good reason was not presented to the Board of Zoning Appeals, the Court shall order further proceedings before the Board of Zoning Appeals on conditions which the Court considered proper. The Board of Zoning Appeals may modify its findings and decision as a result of the new proceedings, or may affirm its original decision. The supplementary record and decision shall be filed with the court. The court may affirm, reverse or modify the decision.

(Ord. 476. Passed 7-6-99. Ord. 655. Passed 11/1/04. Ord. 717. Passed 2-5-07. Ord. 808. Passed 8-4-08.)