

Sec. 6-306. - Creation and authority.

The village zoning board of appeals (hereinafter referred to as the ZBA) is hereby created pursuant to the Michigan Zoning Enabling Act, 2006 PA 110, MCL 125.3101 et seq., as amended. The ZBA, in addition to the general powers and duties conferred upon it by said Act, in specific cases and subject to appropriate conditions and safeguards, shall interpret and determine the application of the regulations established under this article in harmony with their purpose and intent as hereinafter set forth

(Ord. No. 2018.10-1, 10-1-2018)

Sec. 6-307. - Composition; terms of office; vacancies; removal.

- (a) The ZBA shall consist of three members who shall be appointed by the village president, with the concurrence of four or more council members. One member shall also be a member of the planning commission. The remaining members and any alternate members shall be selected from the electors of the village. One member may also be a member of the council, but that member shall not serve as the chairperson of the ZBA. An employee or contractor of the council may not serve as a member of the ZBA.
- (b) The council may appoint not more than two alternate members for the same term as regular members to the ZBA. An alternate member may be called to serve as a member of the ZBA in the absence of a regular member if the regular member will be unable to attend one or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which a regular member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made and shall have the same voting rights as a regular member of the ZBA.
- (c) A ZBA member may be paid a reasonable per diem and reimbursed for expenses incurred in the discharge of his or her duties.
- (d) The terms of office for members appointed to the ZBA shall be for three years, except for members serving because of their membership on the planning commission or council, whose terms shall be limited to the time they are members of those bodies. When members are first appointed, the appointments may be for less than three years to provide for staggered terms. A successor shall be appointed not more than one month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.
- (e) The ZBA shall not conduct business unless a majority of the regular members are present.
- (f) A member of the ZBA may be removed by the council for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

(Ord. No. 2018.10-1, 10-1-2018)

Sec. 6-308. - Chairperson; meetings; oaths; witnesses; records.

- (a) The ZBA shall elect from its members a chairperson and a secretary. Meetings of the ZBA shall be held at the call of the chairperson and at other times as the ZBA in its rules of procedure may specify. The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses.
- (b) The ZBA shall maintain a record of its proceedings, which shall be filed in the office of the clerk. All meetings shall be noticed and recorded in accordance with the Open Meetings Act, 1976 PA 567, MCL 15.261 et seq., as amended.

(Ord. No. 2018.10-1, 10-1-2018)

Sec. 6-309. - Powers; concurring vote of majority of members; variances.

- (a) The ZBA shall have such powers and duties as are granted by the statutes of the state and this Code, including, but not limited to, those powers and duties provided for in 2006 PA 110, MCL 125.3101 et seq., as amended.
- (b) The ZBA shall hear and decide questions that arise in the administration of this chapter, including the interpretation of this chapter or the zoning map by the zoning administrator, and may adopt rules to govern its procedures. The ZBA shall also hear and decide on matters referred to it or upon which it is required to pass under this chapter. It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by any administrative official or body charged with enforcement of this chapter.
- (c) The concurring vote of a majority of the members of the ZBA 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 ZBA is required to pass under the zoning and land use ordinance, or to grant a nonuse variance from the strict provisions of this chapter. The concurring vote of two-thirds of the members of the ZBA is necessary to grant a use variance.
- (d) The ZBA is authorized to grant a variance from the strict provisions of this chapter if there is unnecessary hardship for use variances as provided in subsection (1) or if there are practical difficulties for nonuse variances as provided in subsection (2), so that the spirit of the zoning and land use ordinance is observed, public safety secured, and substantial justice done.
 - (1) *Use variance.* To obtain a use variance, the applicant must present evidence to show that if this chapter is applied strictly, unnecessary hardship to the applicant will result, and that all four of the following requirements are met:
 - a. That the property could not be reasonably used for the purposes permitted in that zone;
 - b. That the appeal results from unique circumstances peculiar to the property and not from general neighborhood conditions;
 - c. That the use requested by the variance would not alter the essential character of the area; and
 - d. That the alleged hardship has not been created by any person presently having an interest in the property.
 - (2) *Nonuse variance.* To obtain a nonuse variance, the applicant must present evidence to show that if this chapter is applied strictly, practical difficulties will result to the applicant and:
 - a. That the ordinance restrictions unreasonably prevent the owner from using the property for a permitted purpose;
 - b. That the variance would do substantial justice to the applicant as well as to other property owners in the district, and a lesser relaxation than that requested would not give substantial relief to the owner of the property or be more consistent with justice to other property owners;
 - c. That the plight of the landowner is due to the unique circumstances of the property; and
 - d. That the alleged hardship has not been created by any person presently having an interest in the property.

(Ord. No. 2018.10-1, 10-1-2018)

Sec. 6-310. - Procedures for appeal.

- (a) An appeal to the ZBA may be taken by a person aggrieved or by an officer, department, board, or bureau of the state or village, and such appeal shall commence upon filing a notice of appeal, on the form supplied by the village, accompanied by such fee as determined by the council, and all plans, studies and any other information and data as applicable, all of which shall be made a part of the record.
- (b) Every appeal to the ZBA shall be made by the applicant within 30 days of the date of the order, requirement, decision, or determination of the administrative official or body charged with enforcement of this chapter. The administrative official or body from whom the appeal is taken shall immediately transmit to the ZBA, all required documents constituting the record upon which the action appealed from was taken.
- (c) An appeal to the ZBA stays all proceedings in furtherance of the action appealed from unless the body or officer from whom the appeal is taken certifies to the ZBA after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, in which case proceedings may be stayed by a restraining order issued by the ZBA or a circuit court.
- (d) Upon receipt of a written request for a variance, the ZBA shall fix a reasonable time for the hearing of the request and give notice as provided in 2006 PA 110, MCL 125.3103, as amended.
- (e) Upon receipt of a written request seeking an interpretation of this chapter or an appeal of an administrative order, requirement, decision or determination, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the village and shall be sent to the person requesting the interpretation or appeal not less than 15 days before the public hearing. In addition, if the request for an interpretation or appeal involves a specific parcel, written notice stating the nature of the request or appeal and the time, date, and place of the public hearing on the request or appeal shall be sent by first-class mail or personal delivery to all persons to whom 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 of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.
- (f) At the public hearing, a party may appear in person or be represented by an agent or attorney and present any evidence in support of their appeal. The ZBA shall have the power to require the attendance of witnesses, administer oaths, compel testimony, and otherwise cause the production of books, papers, files, and other evidence pertaining to matters properly coming before the ZBA.
- (g) The ZBA may not decide an appeal until after a public hearing, and may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.
- (h) The ZBA may impose conditions with any decision. Such conditions shall meet all the following requirements:
 - (1) Be designed to protect natural resources, public health, safety, or welfare, and the social and economic wellbeing of those who will use the land or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
 - (2) Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
 - (3) Be necessary to meet the intent and purpose of the zoning and land use ordinance, be related to the standards established in the ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards.

Violations of any conditions imposed by the ZBA shall be deemed a violation of this chapter, enforceable as such, and/or may be grounds for revocation or reversal of such decision.

- (i) All decisions of the ZBA shall be in writing and so far as is practicable, in the form of a general statement or resolution reciting the conditions, facts, and findings of the ZBA. The applicant shall be

advised of the decision after the public hearing unless the ZBA moves for a continuation of such hearing.

- (j) Any decision favorable to an applicant shall remain valid only if the information or data relating thereto are found to be correct, and the conditions upon which the decision was based are maintained.
- (k) No order of the ZBA permitting the erection or alteration of a building shall be valid for a period of 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.

No order of the ZBA permitting a use of a building or premises shall be valid for a period of longer than one year, unless such use is established within such period; provided, however, that such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with such permit.

(Ord. No. 2018.10-1, 10-1-2018)