

## CHAPTER 15 ZONING BOARD OF APPEALS

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### Section 15.01 Membership and Appointment

The Zoning Board of Appeals shall be the City of Hastings Zoning Board of Appeals which shall be subject to the requirements of this Ordinance.

- A. Pursuant to the Michigan Zoning Enabling Act, Act 70 of 2006, as amended, there shall be a Zoning Board of Appeals consisting of six members, each to be appointed by the mayor with the approval of council for overlapping terms of three years, running from January 1 of the year appointed. Vacancies shall be filled by appointment for the unexpired term. The Zoning Board of Appeals shall elect its own chairperson and vice chairperson.
- B. The mayor with the approval of the council shall appoint two alternate members for the same term as regular members. A member of the city council may serve as an alternate member of the Zoning Board of Appeals. Alternate members shall serve in the case of absence of a regular member or the inability of a regular member to serve due to conflict of interest. The alternate member, having been appointed shall serve on the case until a final vote has been made. Alternate members shall have the same voting rights as regular members.
- C. One member of the Zoning Board of Appeals may be a member of the Joint Planning Commission. An employee or contractor of the city council may not serve as a member of the Zoning Board of Appeals. A member of the city council shall not serve as the chairperson of the Zoning Board of Appeals.
- D. A member of the Zoning Board of Appeals who is also a member of the Planning Commission or the city council shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission or city council. The member may consider and vote on the other unrelated matters involving the same property.
- E. Members of the Zoning Board of Appeals may be removed by the city council for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing.

### Section 15.02 Jurisdiction and Powers

The Zoning Board of Appeals shall have all the powers and jurisdiction prescribed by applicable law, and by the provisions of this Ordinance, including the following:

- A. Hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator. The Zoning Board of Appeals may

reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be done, and to that end it shall have all the powers of the Zoning Administrator and may issue or direct the issuance of a permit. See Section 15.05.

- B. Act upon all questions as they may arise in the administration and enforcement of this Ordinance, including interpretation of the Zoning Map.
- C. Hear and decide applications for a nonuse variance from dimensional requirements of the Zoning Ordinance, or from any other nonuse-related requirement in the Ordinance, if there are practical difficulties in the way of carrying out the strict letter of the requirement, so that the spirit of the Zoning Ordinance is observed, public safety secured, and substantial justice done. See Section 15.06.
- D. Hear and decide applications for a land use variance. See Section 15.08.
- E. Hear and decide requests to expand, extend, enlarge, or otherwise alter a lawful nonconforming use or nonconforming building/structure. See Section 14.05A.2.
- F. Hear and decide requests to change a nonconforming use to another nonconforming use. See Section 14.06.

### **Section 15.03 Employees**

The Zoning Board of Appeals may employ such clerical or other assistance as may be necessary, provided that it shall not at any time incur any expense beyond the amount of the appropriation made and available for that purpose.

### **Section 15.04 Meetings**

Meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at such other times as the Zoning Board of Appeals may determine, and shall be at sufficiently frequent intervals, in the discretion of the board, for the efficient conduct of its business. All meetings shall be open to the public. A quorum shall consist of four members.

### **Section 15.05 Appeals**

Appeals to the Zoning Board of Appeals in any matter over which it has jurisdiction may be taken by any party aggrieved by the decision or order appealed from, or by an officer, department, board or agency of a municipality affected by such decision or order. A notice of appeal, specifying the grounds thereof, shall be filed with the Secretary of the Zoning Board of Appeals within 30 days after the date of the action appealed from. A copy of the notice of appeals shall promptly be served upon the officer from whom the appeal is taken, whom shall forthwith transmit to the Zoning Board of Appeals all papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action in respect to which the decision or order appealed from was made unless the officer from whom the appeal is taken certifies to

the Zoning Board of Appeals that by reason of the facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except upon a restraining order granted by the Zoning Board of Appeals or by the Circuit Court.

### **Section 15.06 Applications**

All appeals and applications for any matter within the jurisdiction of the Zoning Board of Appeals shall be submitted and processed under the following procedures:

- A. The appeal or application shall be filed with the Zoning Administrator, and shall include all of the following:
  1. A completed appeal or application form, using the applicable form prescribed by the Zoning Administrator.
  2. All materials on which the applicant intends to rely in support of the appeal or other application.
  3. For any appeal or other application involving specific property, such as an application for variance relief, a site plan or diagram of the subject property showing, at a minimum, all of the following:
    - a. The location of the subject property with respect to all abutting streets.
    - b. The dimensions of the subject property.
    - c. The location of all existing buildings and structures on the subject property, and on all adjoining properties.
    - d. The location of all proposed buildings/structures on the subject property.
    - e. The existing and proposed uses of the existing and proposed buildings/structures on the subject property.
    - f. The existing and proposed setback of each building/structure which is the subject of the appeal or other application, measured in each instance to the street line and all pertinent lot lines.
- B. The Zoning Administrator shall promptly review the submittal to determine whether it is administratively complete, and shall notify the applicant of any deficiencies in the content of the application submittal. An application shall not be processed for public hearing or other consideration by the Zoning Board of Appeals unless and until it is administratively complete as determined by the Zoning Administrator.
- C. The Zoning Administrator shall promptly refer an administratively complete appeal/application to the City Clerk for further processing and consideration by the Zoning Board of Appeals.

### Section 15.07 Non-Use Variance Standards and Conditions

- A. Standards: No variance from a dimensional or other non-use provision or requirement of this ordinance shall be authorized by the Zoning Board of Appeals unless the Zoning Board of Appeals finds from reasonable evidence that:
1. By reason of the exceptional narrowness, shallowness, or shape of the property in question, or by reason of exceptional topographic conditions or other extraordinary conditions of the property in question, there are practical difficulties preventing compliance with the strict letter of the Ordinance.
  2. The exceptional or extraordinary conditions applying to the specific property do not apply generally to other properties that are subject to the requirement at issue.
  3. The variance will not be of substantial detriment to adjoining property.
  4. The variance will not materially impair the intent and purpose of this ordinance, or the public health, safety and welfare.
  5. The variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties that are subject to the requirement at issue.

In determining whether the standards for variance relief have been shown to be satisfied the Zoning Board of Appeals shall be governed by the following additional legal principles:

- The circumstances or conditions submitted by the applicant to justify the variance relief must pertain to the property at issue, and not the personal circumstances of the applicant and/or other occupants or users of the property.
  - The circumstances or conditions submitted by the applicant to justify the variance relief must not have been self-created by the applicant or some other person under the control of the applicant or for whose conduct the applicant is responsible.
  - Increased costs associated with complying with the strict letter of the ordinance are not a basis for variance relief.
  - Increased financial return if variance relief is granted is not a basis for variance relief.
  - The Zoning Board of Appeals may find the standards for relief from the strict letter of the ordinance have been shown to be satisfied, but not to the extent of the variance requested by the applicant, and in such circumstances the Zoning Board of Appeals shall grant only such lesser variance relief as is necessary.
- B. Conditions. The Zoning Board of Appeals may attach conditions or limitations upon a variance, where such are necessary to insure that public services and facilities affected by

a requested variance and the associated land use or activity will be capable of accommodating increased service and facility loads caused by the variance and associated land use or activity, and to protect the natural environment and conserve natural resources and energy, and to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner.

Prior to attaching a condition or limitation to a variance, the Zoning Board of Appeals shall also specifically determine the following:

- a. That the condition or limitation is designed to protect natural resources, the health, safety and welfare and the social and economic well-being of those who will use the land use or activity associated with the variance under consideration, residents and land owners immediately adjacent to the land use or activity, and the community as a whole; and,
- b. That the condition or limitation is related to the valid exercise of the police power, and purposes which are effected by the proposed variance; and,
- c. That the condition or limitation is necessary to meet the intent and purpose of the zoning ordinance, is related to the standards established in the ordinance for the variance under consideration and associated land use or activity, and is necessary to insure compliance with those standards.

Any such conditions and limitations may impose greater or more restrictions and requirements than are included in this Ordinance generally, and may include the provision of reasonable financial security to guarantee performance. Violation of any such conditions or limitations shall be deemed a violation of this Ordinance.

### **Section 15.08 Land Use Variances**

An application for a land use variance, to permit a land use not otherwise allowed in that zoning district, may be considered by the Zoning Board of Appeals but only according to the following procedures:

- A. The applicant shall first apply to rezone the property to that zoning district that permits the desired use, and/or shall apply for a text amendment to add the desired use as a permitted use or special land use in the existing zoning district. If the rezoning and/or text amendment application is denied by the city council, the applicant may then file an application for a use variance from the Zoning Board of Appeals.
- B. Such application shall be filed with the City Clerk.
- C. The City Clerk shall forward the application materials to the Joint Planning Commission for consideration at its next regularly scheduled meeting. The Joint Planning Commission shall review the request with attention to the planning classification of the Joint Planning Commission Master Plan for the property in question. The Joint Planning Commission shall then make an advisory recommendation to the Zoning Board of Appeals.

- D. The variance request shall then be considered by the Zoning Board of Appeals in accordance with the hearing procedures in this chapter or as otherwise required by law.
- E. In order to approve a use variance request the Zoning Board of Appeals shall determine that an unnecessary hardship exists and that the variance request meets all of the following standards:
  - 1. The property could not be used (be put to a reasonable use) for any of the uses allowed in that zone.
  - 2. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.
  - 3. The use would not alter the essential character of the area.
  - 4. The problem is not self-created.
  - 5. The spirit of this Ordinance is observed, public safety secured and substantial justice done.
- F. In granting a use variance the Zoning Board of Appeals may prescribe reasonable conditions, as authorized by law. See Section 15.07B.

#### **Section 15.09 Public Hearings**

- A. Upon the filing of any appeal, or other application in any matter over which the Zoning Board of Appeals has jurisdiction by law or ordinance, the Zoning Board of Appeals shall hold a hearing on such appeal or application preceded by notice as required by law, or pursuant to City policy if such policy requires notice beyond what is required by law.

#### **Section 15.10 Fees**

Upon the filing of any appeal or application to the Zoning Board of Appeals by any person other than an officer, department, board or agency of the City of Hastings or Rutland Charter Township, the appellant or applicant shall pay a fee as set by resolution of the City Council to defray the cost of the hearing of the matter.

#### **Section 15.11 Time Limit for Approved Variances and Reapplication**

- A. Any variance granted under the provisions of this Ordinance shall become void unless the construction, occupancy or other actions authorized by such variance have commenced within one year of the granting of such variance.
- B. Upon written application filed with the Zoning Administrator prior to the termination of the one-year time period, the Zoning Board of Appeals may authorize a single extension of the time limit for an additional period of not more than one year upon a finding that the circumstances creating the need for the extension were largely beyond the control of the applicant.

- C. No application for a variance that has been denied wholly or in part by the Zoning Board of Appeals shall be resubmitted within one year from the date of the original filing of an application for the variance, except on grounds of new evidence or proof of changed conditions relating to the reasons for the denial of the original application, found by the Zoning Board of Appeals to be valid.

#### **Section 15.12 Vote Necessary for Decision**

The final disposition of any matter of the Zoning Board of Appeals shall require the concurring vote of four of its members.

#### **Section 15.13 Minutes and Records**

Minutes shall be kept of the proceedings of the Zoning Board of Appeals showing the findings of fact and resulting conclusions, and the vote of each member upon every motion, or if absent or failing to vote, indicating that fact. Records of the official actions of the Zoning Board of Appeals shall be filed in the office of the city clerk/treasurer and shall be a public record.

#### **Section 15.14 Appeals of Zoning Board of Appeals Decision**

A decision of the Zoning Board of Appeals shall be final. Any party aggrieved by any such decision may appeal to the circuit court for Barry County as provided by law. Such appeal shall be filed within 30 days after the Zoning Board of Appeals certifies its decision in writing signed by the chairperson, or 21 days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made, whichever occurs first. The records of the Zoning Board of Appeals shall be made available for the court's review.