

ARTICLE 24

ZONING BOARD OF APPEALS

24.01 CREATION

- A. The legislative body may act as a board of appeals upon all questions arising under this zoning ordinance; and, in such event, the legislative body may fix rules and regulations to govern its procedure sitting as a board of appeals.
- B. In the event that the legislative body so desires; it may appoint a board of appeals consisting of not less than five members, each to be appointed for a term of 3 years. Appointments for the first year shall be for a period of 1, 2, and 3 years, respectively, so as to provide for the appointment of an equal number each year, depending on the number of members. Each member thereafter shall hold office for the full 3-year term.

24.02 MEETINGS

Meetings of the board of appeals shall be held at the call of the chairperson and at such other times as the board, in its rules of procedures, may specify. The chairperson, or, in his or her absence, the acting chairperson, may administer oaths and may compel the attendance of witnesses. All meetings of the board of appeals shall be open to the public. The board shall maintain a record of its proceedings, which shall be filed in the office of the city clerk and which shall be a public record.

24.03 JURISDICTION AND POWERS

The board of appeals shall have all powers and jurisdiction granted by the City or Village Zoning Act, Act 207 of 1921. The board of appeals shall have the following major responsibilities, as described in more detail below:

- A. Interpretations.
- B. Appeals.
- C. Variances.

24.04 DECISIONS

The concurring vote of a majority of the members of the board of appeals shall be necessary to make an interpretation or to reverse an order, requirement, decision, or determination of the administrative official or

body or to decide in favor of the applicant any matter upon which they are required to pass under or to effect variation in this ordinance.

24.05

INTERPRETATION

The board of appeals, when requested by an administrative official, the planning commission, the city, the county, or an individual, shall make an interpretation of the zoning ordinance wording and the zoning ordinance map. Such interpretation shall be made a part of the record and shall be forwarded to the ordinance enforcement officer, the city clerk, the building inspector, the planning commission, and the party seeking the interpretation.

24.06

APPEALS

- A. The board of appeals shall hear and decide appeals from and shall review any order, requirements, decision, or determination made by an administrative official or body charged with the administration or enforcement of this ordinance.
- B. The board of appeals shall fix a reasonable time for hearing the appeal, shall give due notice as required in Section 24.08, and shall decide the appeal within a reasonable time.
- C. At the hearing, a party may appear in person or by agent or by attorney.
- D. The board of appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination as, in its opinion, ought to be made in the premises and, to that end, shall have all the powers of the officer or body from whom the appeal was taken and may issue or direct the issuance of a permit.

24.07

VARIANCES

- A. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this ordinance, the board may vary or modify the rules or provisions of this ordinance, as provided by this section, regarding the construction or alteration of buildings or structures or the use of land, buildings, or structures so that the spirit of the ordinance is observed, public safety secured, and substantial justice done.
- B. The board shall have the power to grant a variance from the rules and provisions of this ordinance if it finds, from reasonable

evidence after a public hearing with notice given as required in Section 24.08, that all of the following facts and conditions exist.

1. There are exceptional or extraordinary circumstances or conditions that apply to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district (i.e., exceptional narrowness, shallowness, or shape of the property; exceptional topographic conditions; or other extraordinary conditions or circumstances regarding the land, buildings, or structures).
2. The variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. (The possibility of increased financial return if the variance is granted is not, by itself, sufficient to support this finding.)
3. Authorizing the variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purposes of this ordinance or the public health, safety, and welfare.
4. The condition or situation of the property or the intended use of the property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for the condition or situation.
5. The practical difficulty or undue hardship did not result from the actions of the applicant (i.e., the difficulty or hardship was not self-created).
6. With respect to a request for a variance to use property in a manner not permitted under the applicable zone district classification, the applicant must demonstrate that the property for which the use variance is sought cannot reasonably be used in a manner consistent with the existing zoning.

The concurring vote of two-thirds of the members of the board shall be necessary to grant a use variance.

- C. The board may impose reasonable conditions upon the approval of a variance. The conditions may include but are not limited to conditions necessary to ensure 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, to conserve natural resources and energy, to ensure compatibility with adjacent used of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:
1. Be designed to protect natural resources and the health, safety, welfare, and social and economic well-being of those who will use the land use or activity under consideration; residents and landowners immediately adjacent to the proposed land use or activity; or the community as a whole.
 2. Be related to the valid exercise of the police power.
 3. Be necessary to meet the intent and purpose of the zoning ordinance, 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.

24.08

PUBLIC HEARINGS

- A. When an application for appeal or a variance has been filled in proper form and the required fee has been paid, the secretary of the board shall immediately place the same upon the calendar for public hearing and shall serve required notices.
- B. Notice shall be given to the owners of real property that is assessed within 300 feet of the premises involved and to the occupants of all single and two-family dwellings within 300 feet of the premises involved. This notice shall be delivered personally or by mail to the respective owners and tenants at the address given in the last assessment roll.
- C. The secretary shall record the grounds for each decision. The board shall render its decision upon any matter within 60 days after the matter is heard. A copy of each decision shall be sent to the ordinance enforcement officer, the city clerk, the building inspector, the planning commission, and the applicant. No

building permit shall be issued by the building inspector until such
decision is received.