

**Section 2100: Creation And Membership**

There is hereby established a Zoning Board of Appeals, which shall perform its duties and exercise its powers as provided in Section 5 of Act 207 of the Public Acts of 1921, as amended, in such a way that the objectives of this Ordinance shall be observed, public safety secured, and substantial justice done. The Board of Appeals shall consist of seven (7) regular members who shall be appointed by the City Council for terms of three (3) years and who shall be property owners and qualified electors of the City of Marysville. Appointment shall be pursuant to the terms of Section 5 (1) of Act 207 of Public Acts of 1921, as amended. Members of the Board of Appeals shall serve without compensation. Any vacancy in appointed office shall be filled within thirty (30) days of such vacancy for the remainder of the unexpired term.

**Section 2110: Meetings**

The Board of Appeals shall meet in public at regular intervals. All hearings conducted by said Board shall be open to the public. The City Clerk or a representative shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall also keep records of its hearings and other official action. Four (4) members of the Board shall constitute a quorum for the conduct of its business. The Board shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it. The Board shall annually elect a Chairman, a Vice-Chairman and a Secretary.

**Section 2120: Appeals**

An appeal may be taken to the Board by any person, firm or corporation, or by any officer, department, board, or bureau affected by a decision of the Building Inspector. Such appeal shall be taken within such time as shall be prescribed by the Board of Appeals by general rule by filing with the Building Inspector and with the Board a Notice of Appeal specifying the grounds thereof. The Building Inspector shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Building Inspector certifies to the Board, after the Notice of Appeal has been filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed, otherwise than by a restraining order, which may be granted by a court of record.

The Board shall select a reasonable time and place for the hearing of the appeal and give due notice thereof to the parties and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney. The City Planning Commission shall be notified of any such hearing and be invited to attend.

**Section 2130: Fees**

The City Council may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the Zoning Board of Appeals. AT the time the notice for appeal is filed said fee shall be paid to the Secretary shall forthwith pay over to the City Treasurer to the credit of the general revenue fund of the City of Marysville.

**Section 2140: Jurisdiction**

1. The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this Ordinance, nor to permit any use in a district in which it is not permitted, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, exception or special approval permit and to authorize a variance as defined in this Section and laws of the State. Such powers include:
  - a. Administrative review. To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Building Inspector or any other administrative official in carrying out or enforcing any provisions of this Ordinance.
  - b. Variance. To authorize, upon an appeal, a variance from the strict application of the provisions of this Ordinance where it is found that all the following criteria exists:
    - (1) That there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning classification;
    - (2) That such 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, provided that possible increased financial return shall not of itself, be deemed sufficient to warrant a variance;
    - (3) That authorization of such variance will not be of substantial detriment to adjacent property, and will not materially impair the intent and purpose of this Ordinance or the public health, safety and general welfare of the community.
    - (4) That the condition or situation of the specific piece of 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 such conditions or situation, a part of this

Ordinance.

- c. Establish performance bonds to insure compliance of any requirement which may be deemed necessary for approving any variance.
- d. Exceptions and special approvals. To hear and decide in accordance with the provisions of this Ordinance, requests for exceptions, for interpretations of the zoning map, and for decisions on special approval situations on which this Ordinance specifically authorizes the board to pass. Any exception or special approval shall be subject to such conditions as the board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this Ordinance, including the following:
  - (1) Interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the zoning map fixing the use districts, accompanying and made part of this Ordinance, where street layout actually on the ground varies from the street layout as shown on the map aforesaid;
  - (2) Permit the erection and use of a building, or an addition to an existing building, of a public service corporation to be used for public utility purposes, in any permitted district to a greater height or of larger area than the district requirements herein established, and permit the location in any use district of a public utility building structure, or use, provided the Board of Appeals shall find such use, height, area, building or structure reasonably necessary for the public convenience and service, and provided further, that such building, structure, or use is designed, erected and landscaped to conform harmoniously with the general architecture and plan of such a district.
  - (3) Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements when it is found that the following criteria exists:
    - (a) Such use does not attract or provide services of any kind to the general public requiring the parking of automobiles by the general public;
    - (b) An agreement to provide additional parking is clearly stated on said plot plan if a greater number of employees or visitors shall occur at a future time;

- (c) An open landscaped area meeting the required area of this Section is shown reserved for future parking and is so arranged and located as to form an integral part of the proposed parking area;
  - (d) Such plot plan approval of lesser requirements shall be valid only for the stated use. An occupancy permit for a new use shall not be issued unless a new plot plan is reviewed and approved.
- (4) Permit such modification of the height and area regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape, or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification;
  - (5) Permit temporary buildings and uses for periods not to exceed six (6) months.
  - (6) Permit, upon proper application, the following character of temporary use, not otherwise permitted in any district, not to exceed twelve (12) months with the granting of twelve (12) month extensions being permissible: uses which do not require the erection of any capital improvement of a structural nature.

The Zoning Board of Appeals, in granting permits for the above temporary uses, shall do so under the following conditions:

- (a) The granting or denial of a temporary use shall in no way be interpreted as a change in the uses permitted in the district nor on the property wherein the temporary use is permitted.
- (b) The granting or denial of a temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.
- (c) All setbacks, land coverage, off-street parking, lighting and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the City shall be made at the discretion of the Zoning Board of Appeals.
- (d) In classifying uses as not requiring capital improvement, the Zoning Board of Appeals shall determine that they are either demountable structures related to the permitted use of land; recreation

developments; such as, but not limited to: golf driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.

- (e) The use shall be in harmony with the general character of the district.
  - (f) No temporary use permit shall be granted without first giving notice to owners of adjacent property of the time and place of a public hearing to be held as further provided for in this Ordinance. Further, the Zoning Board of Appeals shall seek the review and recommendation of the Planning Commission prior to the taking of any action.
2. In consideration of all appeals and all proposed variations to this Ordinance the Zoning Board of Appeals shall, before making any variations from the Ordinance in a specific case, first determine that the proposed variation will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City.
  3. The concurring vote of two-thirds (2/3) of the members of the board shall be necessary to reverse any order, requirements, decision or determination of the Building Inspector, or to decide in favor of the applicant any matter upon which it is authorized by this Ordinance to render a decision. Nothing herein contained shall be constructed to give or grant to the board the power or authority to alter or change this Ordinance or the zoning map, such power and authority being reserved to the City Council, in the manner provided by law.
  4. Applicants for relief under this Ordinance are presumed to know the terms and requirements of the Ordinance and may not rely as a matter of right on a decision that contravenes those terms or requirements if those terms and requirements would render the action void.

A decision by four (4) Zoning Board of Appeals members in favor of a variance (when there are seven appointed members) that is declared by the secretary to be a granted variance may not be relied on because the required number is five (5) votes. The action of the secretary is void.

**Section 2150: Orders**

In exercising the above powers, the Zoning Board of Appeals may reverse or affirm wholly or partly, or may modify the orders, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Building Inspector from whom the appeal is taken.

**Section 2160: Notice of Hearing**

The Board of Appeals in conducting any public hearing shall fix a reasonable time for the hearing of the appeal and shall give due notice thereof to all persons to whom any real property within three hundred (300) feet of the premises in question shall be assessed. Such notices shall be delivered personally or by mail addressed to the respective owners at the address given in the last assessment roll and shall decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

**Section 2170: Approval Period**

No order of the Board permitting the erection or alteration of a building shall be valid for a period longer than six (6) months unless such use is established within such period; provided however that where such use permitted is dependent upon the erection or alteration of a building, 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.