

## **ARTICLE 7.19 - BOARD OF APPEALS**

### **A. CREATION AND MEMBERSHIP:**

There is hereby established a Board of Zoning Appeals which shall perform its duties and exercise its powers as provided in Section 5 of Act 207 of Public Acts of 1921, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and substantial justice done. The Board shall consist of six (6) members appointed by the City Commission. Appointments shall be as follows: Two (2) members appointed for a period of one (1) year; two (2) members appointed for a period of two (2) years; and two (2) members appointed for a period of three (3) years, respectively; thereafter each member to hold office for the full three (3) year term. Any vacancies in the Board shall be filled by appointment by the City Commission for the remainder of the unexpired term. The Zoning Board of Appeals shall annually elect its own Chairman, Vice Chairman and Secretary. The compensation of the appointed members of the Board of Zoning Appeals may be fixed by the City Commission.

### **B. MEETINGS:**

All meetings of the Board of Appeals shall be held at the call of the Chairman and at such times as such Board may determine. All hearings conducted by said Board shall be open to the public. The City Clerk, or his representatives, 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.

### **C. APPEAL:**

An appeal may be taken to the Board of Appeals 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 of Appeals 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 of Appeals after 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.

**D. FEES:**

The City Commission 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 of the Board of Appeals, which the Secretary shall forthwith pay over to the City Treasurer to the credit of the general revenue fund of the City of Lapeer.

**E. 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 or exception and to authorize a variance as defined in this Section and laws of the State of Michigan. Said 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, by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this Ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance. In granting a variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this Ordinance. In granting a variance, the Board shall state the grounds upon which it justifies the granting of a variance.

c. Exceptions

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 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 use of premises for public utility purposes; provided the Board may seek the review and recommendation of the Planning Commission prior to taking any action.
- (3) Permit the modification of the automobile parking space or loading space requirements where, in the particular instances such modification will not be inconsistent with the purpose and intent of such requirements.
- (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 two (2) years in undeveloped sections of the City and for periods not to exceed six (6) months in developed sections.
- (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 Board of Appeals, in granting permits for the above temporary uses, shall do so under the following conditions:

- (a) The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.
- (b) The granting of the 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 of Lapeer shall be made at the discretion of the Board of Appeals.
- (d) In classifying uses as not requiring capital improvement, the 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 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 Board 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 of Lapeer. 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 construed 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 Commission of the City of Lapeer in the manner provided by law.

**F. ORDERS:**

In exercising the above powers, the Board may reverse or affirm wholly or partly, or may modify the order, 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.

**G. NOTICE:**

The Board shall make no recommendation except in a specific case and after a public hearing conducted by the Board. It shall, either by general rule or in specific cases, determine the interested parties who, in the opinion of the Board, may be affected by any matter brought before it, which, in all cases, shall include those persons to whom any real property within three hundred (300) feet of the premises in question shall be assessed, according to the latest assessment roll of the City of Lapeer, and to the occupants of all single- and two-family dwellings within three hundred (300) feet of said premises in question. Such notice may be delivered either personally or by mail addressed to said respective owners as disclosed by the assessment roll and to the tenants at the address given for the property in the last assessment roll. If the tenant's name is not known, the term "occupant" may be used. The Board may require any party applying to the Board for relief to give such notice to other interested parties as the Board shall prescribe.

**H. MISCELLANEOUS:**

No order of the Board of Appeals permitting the erection of a building shall be valid for a period longer than twelve (12) months, 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 Board of Appeals permitting a use of a building or premises shall be valid for a period longer than twelve (12) 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 the terms of such permit.

The reason(s) utilized as a basis for making any decision shall be stated in the minutes of the Board of Appeals.

If a variance which is granted is not utilized within twelve (12) months of its granting, the variance shall be considered null and void and an application must be refiled if it is desired at a future date. A variance which is legally utilized and maintained runs with the property and any subsequent owners who legally continue the variance under its original or amended terms.

The Board of Appeals may require such conditions and the posting of necessary bonds or other financial guarantees acceptable to the City Commission to control compliance with specified conditions.

Copies of the decisions of the Board of Appeals shall be furnished to the City Commission and Planning Commission.