

SECTION 1800. 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 the 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 five members, one per City Council, one per Planning Commission and three members at large who shall be appointed by the City Council, and shall serve in staggered terms as established by the Council.

Section 1801. MEETINGS:

The Board shall elect a Chairperson and a Recording Secretary each year. All meetings of the Board shall be held at the call of the Chairperson and at such times as such Board may determine. All hearings conducted by the 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 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 matter before it.

SECTION 1802. APPEAL:

An appeal may be taken to the Board of Appeals by anyone affected by a decision of the Administrative Officer. Such appeal shall be taken within such time as shall be prescribed by the Board of Appeals by general rule, by filing with the Administrative Officer and with the Board of Appeals a notice of Appeal, specifying the grounds thereof.

The Administrative Officer 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 Administrative Officer 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. Notification shall be served to all property owners within 300 feet in all directions from the property and/or lot line of the parcel on which the variance is requested.

SECTION 1803. FEES:

The City Council may from time to time prescribe and amend by resolution a reasonable schedule of fees and manner of payment to be charged to applicants for appeals to the Zoning Board of Appeals.

SECTION 1804. JURISDICTION:

The Board of Appeals shall have the following powers and it shall be its duty:

1. To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made in the enforcement of this Ordinance.
2. In hearing and deciding appeals, the Board of Appeals shall have the authority to grant such variances therefrom as may be in harmony with the general purpose and intent of this Ordinance, public safety and welfare secured, and substantial justice done, including:
 - a. Interpret the provisions of the Ordinance in such a way to carry out the intent and purpose of the plan, as shown upon the zoning map fixing the use districts, where street layout actually on the ground varies from the street layout as shown on the map aforesaid.
 - b. Permit the erection and use of a building or use of premises for public utility purposes and make exceptions therefrom to the height and bulk requirements, which said Board considers necessary for the public convenience or welfare.
 - c. 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.
 - d. 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 characteristic that it cannot otherwise be appropriately improved without such modification.
 - e. Permit temporary buildings and uses for periods not to exceed 12 months, provided adequate conditions of performance are required to assure public safety and compatibility with surrounding uses or properties.
3. Where, owing to special conditions, a literal enforcement of the use provisions of this Ordinance would involve practical difficulties or cause unnecessary hardships within the meaning of this Ordinance, the Board shall have power upon appeal in specific cases to authorize such variation or modification as may be in harmony with the spirit of this Ordinance, so that

public safety and welfare be secured and substantial justice done. No such variance or modification of the use provisions of this Ordinance shall be granted unless it appears beyond a reasonable doubt that all the following facts and conditions exist:

- a. That there are exceptional or extraordinary circumstances or conditions applicable to the property or its use that do not apply generally to other properties or uses in the same district.
- b. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the vicinity.
- c. That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the district in which the property is located.
- d. That the granting of such variance will not adversely affect the purposes or objectives of the Zoning Plan of the city.

Nothing herein contained shall be construed to give or grant to the Board the power or authority to alter or change the Zoning Ordinance or the zoning map, such power and authority being reserved to the City Council in the manner provided by law.

4. In consideration of all appeals and all proposed variations to this Ordinance the Board shall, first determine that the proposed variation will not impair an adequate supply of light and air to adjacent property, or unreasonably increase 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. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Administrative Officer, or to decide in favor of the applicant any matter upon which it is authorized by this Ordinance to render a decision.

SECTION 1805. ORDERS:

1. 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 Administrative Officer from whom the appeal is taken.
2. The City Council upon hearing and receiving the testimony and following procedures specified for appeals, may reverse order given by the Board of Appeals with a three-fourths vote of the council members elect.

SECTION 1806. NOTICE:

The Board shall make no recommendation except in a specific case and after a public hearing conducted by the Board. It shall determine the interested parties who, in the opinion of the Board, may be affected by any matter brought before it which shall in all cases include all owners of record of property within 300 feet of the premises in question, such notices to be delivered personally or by certified mail with return receipt addressed to the respective owners at the address given in the last assessment roll. The Board may require any party applying to the Board for relief to give such notice to other interested parties as it shall prescribe.

SECTION 1807. MISCELLANEOUS:

No order of the Board permitting the erection of a building shall be valid for a period 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 Board permitting a use of a building and/or premises shall be valid for a period longer than one year 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.

SECTION 1808. APPLICATIONS:

All applications or requests to the Zoning Board of Appeals shall be on forms provided by the city and reviewed and approved by the City Council.

(Added by Ord. 202)