

PART II - CODE OF ORDINANCES

Chapter 24 - ZONING

ARTICLE XVIII. - BOARD OF ZONING APPEALS (BZA)

**ARTICLE XVIII. - BOARD OF ZONING APPEALS (BZA)**

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**Sec. 24-421. - Authority.**

This chapter establishes a board of zoning Appeals (BZA), the membership, powers, and duties of which are prescribed in the Zoning Enabling Act, as amended.

(Ord. No. 1087, § 18.01, 3-8-10)

**Sec. 24-422. - Membership.**

- (a) The BZA shall consist of seven (7) members. All members shall be residents of the City of Ferndale for a period of not less than one year prior to their appointment. The members shall each be appointed by city council for a term of three years. City council may remove a member, after a public hearing, due to nonperformance of duty or misconduct in office. Any vacancy on the BZA shall be filled within 30 days; this member shall serve for the remainder of the unexpired term. If the remaining unexpired term is less than 90 days, the position may remain vacant until the term expires.
- (b) Alternates. The city council may also appoint two alternate members to the BZA. Appointments of alternate members shall be for a term of three years. The alternate members shall:
  - (1) Be called by the city clerk to serve in the place of a regular member for the purpose of reaching a decision in a case in which the regular member has abstained for reasons of conflict of interest or due to an absence of a regular member. The particular alternate member contacted and attending for a particular case shall serve in the appeal until a final decision has been made. The city clerk shall attempt to rotate contacting and scheduling between the alternate members when a regular member is unavailable or when a conflict arises in a particular case.
  - (2) Alternate members, participating in a particular case in place of a regular member, shall have the same voting rights as a regular member of the BZA.
- (c) Members of the BZA or alternates shall be removable by the city council for non-performance of duty or misconduct in office, upon filing of written charges and after public hearing.

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- (d) A member shall disqualify themselves from a vote in which the member has a conflict of interest. Failure of a member to disqualify themselves from a vote in which the member has a conflict of interest constitutes malfeasance in office. Any planning commissioner or city council member on the BZA shall abstain from any vote on an issue which they have previously voted upon as a member of the planning commission or city council.

(Ord. No. 1087, § 18.02, 3-8-10)

**Sec. 24-423. - Officers.**

- (a) The chair and vice chair of the BZA shall be elected annually by the members of the BZA.
- (b) The city clerk or their designee shall be the secretary of the BZA. The secretary of the BZA shall keep minutes of the proceedings showing members present and absent and the vote or abstention of each member upon each question and shall keep all minutes of hearings and other official actions.
- (c) The city attorney shall act as legal counsel for the BZA and shall be present at meetings upon request by the director.

(Ord. No. 1087, § 18.03, 3-8-10)

**Sec. 24-424. - Meetings.**

- (a) Regular meetings of the BZA shall be called by the chair or the director in response to appeals filed with the city clerk.
- (b) The BZA shall not conduct business unless a majority of the full membership is present.
- (c) The concurring vote of a majority of the full membership of the BZA is necessary to reverse an order, requirement, decision or determination of an administrative official or body or to decide in favor of the applicant a matter upon which the BZA is required to pass under an ordinance or to affect a variation in an ordinance. Each member of the BZA shall have one vote.

(Ord. No. 1087, § 18.04, 3-8-10)

**Sec. 24-425. - Powers and duties.**

The BZA is a body of limited powers. The BZA shall have the power to act on matters as provided in this chapter and Zoning Enabling Act, as amended. Nothing contained in this chapter shall be construed to give or grant the BZA the power or authority to amend the zoning ordinance or to disregard its provisions or to rezone parcels of land. The specific powers of the BZA are to:

- (1) Interpret this chapter and the zoning map whenever a question arises in the administration of this chapter as to its meaning or intent. Any interpretations shall carry out the intent and purpose of this chapter, the zoning map and the master plan and shall be made in accordance with commonly accepted rules of construction for ordinances and laws in general.
- (2) Hear and decide appeals and review any order, requirement, decision or determination made by an administrative official or body charged with the enforcement of this chapter, including the director, the building department and the planning commission, other than special land use or planned unit development applications. The BZA may reverse or affirm, in whole or in part, or may modify the decision and make a determination as, in the BZA's opinion, should have been made, and to that end, shall have all the powers of the officer or body from whom the appeal is taken.

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(3) Hear and decide matters referred to it, and as regulated in this chapter. The BZA shall decide the appeal within a reasonable time.

(4) Grant variances as provided by [section 24-427](#), Variances.

(Ord. No. 1087, § 18.05, 3-8-10)

**Sec. 24-426. - Standards for review.**

In deciding appeals, the BZA shall find all of the following:

(1) The action proposed will impair adequate supply of light and air to adjacent properties; increase the danger of fire; unreasonably diminish or impair established property values within the surrounding area; harm the environment; or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the city.

(2) The action proposed will be compatible with adjacent uses and whether its height, location, size and character will be in harmony with the appropriate and orderly development of the surrounding neighborhood.

(3) The action proposed will unreasonably increase congestion on public streets or make vehicular and pedestrian traffic more hazardous than is normal for the district involved taking into account sight distances, traffic flow, provisions for pedestrian traffic and minimization of potential traffic conflicts.

(4) The action proposed will create a nuisance.

(5) The plight of the applicant results from special or unique circumstances peculiar to the property and not from general neighborhood conditions.

(6) The alleged hardship has been created by the applicant or any person having a current interest in the property.

(Ord. No. 1087, § 18.06, 3-8-10)

**Sec. 24-427. - Variances.**

(a) If there are practical difficulties associated with carrying out this chapter, the BZA may, in deciding appeals, grant a variance in any of its rules or provisions relating to the construction of or structural changes to equipment, buildings or structures so that the spirit of this chapter shall be observed, public safety secured and substantial justice done.

(b) In granting a variance, the BZA shall state the grounds upon which it bases its decision as dictated by the considerations outlined below. Granting of a variance by the BZA shall not constitute an assurance that a building permit will be issued.

(c) Nonuse or dimensional variances. The applicant must present substantial evidence to show that if this chapter is applied strictly, practical difficulties to the applicant will result. To receive a nonuse or dimensional variance, the applicant must prove that all of the following conditions have been met:

(1) Compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density will unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

(2) The intent and purpose of this chapter will be observed and substantial justice will be done.

(3) A lesser variance than that requested would not give substantial relief to the owner of the property or be more consistent with justice to other property owners.

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(4) The standards set forth in [section 24-426](#), Standards for review are satisfied.

(Ord. No. 1087, § 18.07, 3-8-10)

**Sec. 24-428. - Procedure for appeal.**

- (a) An aggrieved person or entity may file an appeal with the city clerk on a form supplied by the city. The notice of appeal shall be accompanied by a fee in an amount determined by the city council. The officer or body from whom the appeal is taken shall immediately transmit to the BZA all the documentation constituting the record upon which the action appealed from was taken.
- (b) An appeal shall be filed within 30 days of the date of the order, determination or decision appealed from, or, if the appeal is from a decision of a public body, within 30 days of the date of the approval of the minutes of the public meeting at which the decision was made.
- (c) The BZA shall consider an appeal within a reasonable time. The city clerk shall fix a reasonable time for a hearing upon receipt of a notice of appeal and shall schedule a public hearing in accordance with [section 24-394](#), Public hearings.
- (d) An applicant may appear in person at the appeal or be represented by an agent or attorney. The BZA shall review all documentation submitted constituting the record upon which the action appeal was taken.
- (e) All decisions of the BZA shall be in the form of an approved motion or resolution reciting the facts and findings of the BZA. The applicant and the officer or body appealed from shall be advised of the BZA's decision through a written communication within 14 days of the appeal hearing.
- (f) Any variance granted by the BZA shall expire and be of no effect one (1) year following the date of approval unless construction has begun on the property. The approval shall remain valid only as long as the information provided to the BZA is found to be correct and the conditions upon which the decision was based are maintained.
- (g) An appeal shall stay all proceedings of the action appealed unless the officer or body from which the appeal is taken certifies to the BZA, in writing, after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would in the opinion of the officer or body cause imminent peril to life or property. If such a certification is filed, the proceedings shall only be stayed by a restraining order. A restraining order may be granted by the BZA or by the circuit court, on application, on notice to the officer or body from whom the appeal is taken and on due cause shown.
- (h) An applicant shall not resubmit a request for appeal that the BZA has denied wholly or in part for a period of one year following the effective date of the decision by the BZA, except where the BZA determines that there is a substantial change in circumstances. Applications for rehearing shall be subject to the same rules and requirements as an original appeal. In the event that the BZA grants a request for reconsideration, the time period to appeal the BZA's decision to circuit court shall commence thirty (30) days after the date of the BZA's written decision on reconsideration.
- (i) The decisions of the BZA shall be final. A person, officer, department, BZA or bureau of the city having an interest aggrieved by this chapter or by a decision of the BZA shall have the right to appeal to the circuit court. Such appeal must be taken within 30 days after the date of the BZA's written decision.

(Ord. No. 1087, § 18.08, 3-8-10)

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**Sec. 24-429. - Violations.**

Any violation of this article, including any improvement not in conformance with any variance granted, shall be deemed a violation of this chapter as provided in [section 24-396](#), Violations and penalties and shall be subject to all applicable penalties.

(Ord. No. 1087, § 18.09, 3-8-10)

**Secs. 24-430—24-450. - Reserved.**