

CHAPTER 1244  
Board of Zoning Appeals

EDITOR'S NOTE: A schedule of fees for planning related activities is adopted from time to time by resolution of Council. Copies of the latest such schedule and of the latest relevant legislation may be obtained, at cost, from the Village Clerk.

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CROSS REFERENCES

- Regulation of land development and the uses of land and structures by local authorities - see M.C.L.A. 125.3201
- Authority to zone - see M.C.L.A. 125.3202
- Uses of land or structures not conforming to ordinances; powers of legislative bodies; acquisition of property - see M.C.L.A. 125.3208
- Board of Appeals - see M.C.L.A. 125.3601
- Meetings of the Board; freedom of information - see M.C.L.A. 125.3602
- Review by Circuit Courts; appeals to Supreme Court; procedure - see M.C.L.A. 125.3606

**1244.01 ESTABLISHMENT.**

There is hereby established a Board of Zoning Appeals which shall perform its duties and exercise its powers as provided in Article VI of Act 110 of the Public Acts of 2006, as amended, in such a way that the objectives of this Zoning Code shall be observed, public safety secured and substantial justice done.  
(Ord. 101. Passed 2-20-70; Ord. 2006-03. Passed 11-13-06.)

**1244.02 MEMBERSHIP; APPOINTMENT; REMOVAL; VACANCIES.**

The Board of Zoning Appeals, consisting of seven members, is hereby created to replace the Board heretofore created by the Village of Franklin in Ordinance No. 21, effective August 18, 1964. When the term of an individual member of the Board expires, the Village Council shall appoint a successor for a three-year term from the date of expiration of said original member's term, except for the seventh member added

by this section to the earlier six-man Board, which member shall be appointed for a three-year term at the time the next reappointment or appointment is made to the Board. All members shall be citizens of the United States and residents of the Village of Franklin and shall not be employees of the Village. One member of the Board shall be a member of the Village Planning Commission. One member of the Board may be a member of the Village Council, but shall not serve as chairperson of the Board. Members may be removed by the Village Council for misfeasance, malfeasance, or nonfeasance in office only after consideration of written charges and a public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest; failure to do so constitutes malfeasance in office. Any vacancy in the Board shall be filled by the Village Council for the remainder of the expired term.

Appointments to the Board shall be made annually on July 15. Vacancies of specific unexpired terms may be filled throughout the year. Each term shall begin on July 15 and end on July 14.

The Village Council may appoint not more than two alternate members for the same term as regular members to the Board. An alternate member may be called as specified to serve as a member of the Board in the absence of a regular member if the regular member will be unable to attend one or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which a regular member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the Board. (Ord. 101. Passed 2-20-70; Res. 98-116. Passed 6-8-98; Res. 98-117. Passed 6-8-98; Ord. 2006-03. Passed 11-13-06.)

#### **1244.03 ELECTION OF OFFICERS.**

The Chairperson, Vice Chairperson and Secretary of the Board of Zoning Appeals shall be elected annually by the members of the Board. (Ord. 101. Passed 2-20-70.)

#### **1244.04 MEETINGS.**

All meetings of the Board of Zoning Appeals shall be held at the call of the Chairperson or, in his or her absence, the Vice Chairperson, and at such times as the Board may determine. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member on each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its findings, proceedings at hearings and other official actions, all of which shall be immediately filed in the office of the Village Clerk and shall be a public record. A quorum shall consist of five members, and the Chairperson can vote on all matters. (Ord. 101. Passed 2-20-70; Res. 84-149. Passed 12-10-84.)

#### **1244.05 APPEALS AND REVIEW.**

An appeal may be taken to the Board of Zoning Appeals by any person, firm or corporation, or by any officer, department, board or bureau affected by a decision of the

Building Official. Such appeal shall be taken within such time as shall be prescribed by the Board of Zoning Appeals by general rule by filing with the Building Official and with the Board a notice of appeal specifying the grounds thereof. The Building Official 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 Official certifies to the Board, after the notice of appeal has been filed with him or her that by reason of facts stated in the certificate, a stay would, in his or her 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. Notice of the hearing shall be given in accordance with Section 1242.08. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney. (Ord. 101. Passed 2-20-70; Ord. 2006-03. Passed 11-13-06.)

#### **1244.06 FEE FOR APPEALS.**

A fee of one hundred dollars (\$100.00) shall be paid to the Village Treasurer at the time notice of an appeal is filed, unless payment of such fee is waived by the general rules adopted by the Board of Zoning Appeals.

#### **1244.07 POWERS AND DUTIES.**

The Board of Zoning Appeals, as herein established, is a body of limited powers. The Board shall have the following specific powers and duties:

- (a) **Purpose.** The purpose of the Board shall be to hear and decide appeals where it is alleged there is an error of law in any order, requirement, decision or determination made by the Building Official in the enforcement of this Zoning Code, and to hear and decide cases where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Zoning Code so that the spirit of this Zoning Code shall be observed, public safety secured and substantial justice done.
- (b) **Authorization.** In hearing and deciding appeals, the Board shall have the authority to grant such variances from this Zoning Code as may be in harmony with the general purpose and intent thereof so that the function of this Zoning Code is observed, public safety and welfare secured and substantial justice done, including the following:
  - (1) **Interpretation of zoning district boundaries.** Interpret the provisions of this Zoning Code 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 Zoning Code, where street layout actually on the ground varies from the street layout as shown on the

Map aforesaid. In cases of any question as to the location of any boundary line between zoning districts, the Board shall interpret the Zoning Map.

- (2) Height, yard space and area requirements. Permit such modification of the height, yard space and area requirements as may be necessary to secure 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 improved without such modification.
- (3) New construction. Permit modification of zoning requirements for new and existing buildings, provided that all requirements for the particular use in the zoning district where such use is permitted cannot be met without extreme physical hardship, owing to the shape of the lot, adjacent land uses or topography.
- (4) Off-street parking and loading requirements. Permit the modification of the off-street 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.
- (5) Off-street parking lot development requirements. Permit a variation, in the required regulations, specified in Section 1262.02 of this Planning and Zoning Code, if after investigation by the Board, it is found that such variation, modification or exception is necessary because of peculiar existing conditions and that such variation, modification or exception will not be inconsistent with the purpose and spirit of this Planning and Zoning Code.
- (6) Greenbelt and wall screening requirements. Permit the modification or waiver of greenbelt and/or wall screening requirements as specified in Section 1268.29(a) and (b) where such screening would serve no good purpose, where other methods of screening would be suitable or where it is necessary to provide entrances to and exits from required off-street parking and loading areas.
- (7) Temporary buildings, uses and signs. Permit temporary buildings, uses and signs for periods not to exceed six months.
- (8) Public utilities. Permit the erection and use of a building, or an addition to an existing building, or 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 that the Board of Zoning 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.

- (9) Exterior radio, television, electronic or other similar equipment. Permit greater height limits for exterior radio, television, electronic or other similar equipment. (See Section 1268.04.)
- (10) Performance bonds. Establish performance bonds to insure compliance with any requirement which may be deemed necessary for approving any variance. (See Section 1242.07.)
- (c) Action on Building Department Decisions. The concurring vote of two-thirds of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Department in favor of the applicant on any matter upon which the Board is authorized by this Zoning Code to render a decision.

The power or authority to alter or change this Zoning Code or the Zoning Map is reserved to the Village Council of the Village of Franklin in the manner provided by law.

- (d) Standards for Variances. In consideration of all appeals and all proposed variances from this Zoning Code, the Board shall, before making any variance from this Zoning Code in a specific case, first determine that the proposed variance involves exceptional circumstances not found in other areas of the same district, will not in any other respect impair the public health, safety, comfort or welfare of the inhabitants of the Village of Franklin and, in addition, meets the following general standards:
  - (1) The proposed variance will cause development of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood.
  - (2) The proposed variance will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing child-vehicle contacts in Residential Districts.
  - (3) The location, size, intensity, site layout and periods of operations of any such proposed development allowed by the variance will be designed to eliminate any possible nuisance emanating therefrom which might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights.
  - (4) The location and height of buildings or structures and the location, nature and height of walls and fences allowed by the variance will be such that the proposed use will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.

- (e) Conditions of Variances. The Board, in acting on any appeal in connection with a request for a variance, may attach any conditions to its approval which it finds necessary to accomplish the reasonable application of the foregoing standards.

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 Official from whom the appeal is taken.

(Ord. 101. Passed 2-20-70.)

#### **1244.08 NOTICE OF HEARING.**

The Board of Zoning Appeals, in conducting any public hearing, shall fix a reasonable time for hearing and appeal within thirty days of receipt of the notice of appeal, and shall give due notice to the parties concerned in accordance with Section 1242.08. The Board shall decide the appeal within a reasonable period of time, not to exceed thirty days. (Ord. 2006-03. Passed 11-13-06.)

#### **1244.09 APPROVAL PERIOD.**

No order of the Board of Zoning Appeals permitting the erection or alteration of a building shall be valid for a period longer than three 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 within twelve months after the order of the Board. The Board may, upon application, in writing, stating the reasons therefor, extend either the three-month or twelve-month period for an additional three-month period.

(Ord. 101. Passed 2-20-70.)