

# Article 11: Zoning Board of Appeals

## 11.1 AUTHORITY

There is hereby established a Zoning Board of Appeals (referred to as the “ZBA”), which shall perform its duties and exercise its power as provided for in this Ordinance and the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, in such a way that the objectives of this Ordinance shall be served, public health, safety, and welfare protected, and substantial justice done.

## 11.2 MEMBERSHIP

The Zoning Board of Appeals may consist of five (5) members and two (2) alternates appointed by the City Council for three (3) year terms as follows:

- A. Members shall be selected from the electors of the City and reside within the City.
- B. The members selected shall be representative of the population distribution and of the various interests present in the City.
- C. Members of the ZBA may be removed from office for inefficiency, neglect of duty, or malfeasance in office, including failure of a member with a conflict of interest to abstain from deliberations or voting on the matter, after written charges have been filed with the City Clerk and a public hearing has been held by City Council.
- D. Vacancies shall be filled for the remainder of the unexpired term by resolution of the City Council.
- E. Members shall be appointed not more than one (1) month after the term of the preceding member has expired.

### 1.1.1 Alternates

The legislative body may appoint to the zoning board of appeals not more than two alternate members for the same term as regular members. An alternate member may be called as specified in the zoning ordinance to serve as a member of the zoning board of appeals in the absence of a regular member if the regular member is 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 the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. An alternate member serving on the zoning board of appeals has the same voting rights as a regular member.

## 11.3 ORGANIZATION

The ZBA shall adopt rules of procedure as may be deemed necessary to properly conduct business and organize meetings, in addition to the following:

- 42 A. The ZBA shall elect a Chair and a Vice-Chair. The Zoning Administrator shall act as the Secretary of  
43 the ZBA.
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- 45 B. All meetings of the ZBA shall be held at the call of the Chair at such times as the ZBA may determine.  
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- 47 C. The ZBA shall render decisions upon all matters within a reasonable time.  
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- 49 D. The ZBA may distribute the application materials to the Zoning Administrator or other designated City  
50 consultants to review the application and provide a report to the ZBA that addresses applicable  
51 Ordinance issues, whether the issue in question can be resolved by other means defined in this  
52 Ordinance, and how the request may affect the Master Plan and any other City planning documents.  
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- 54 E. The ZBA may request that any or all the following information be provided to the ZBA by the Zoning  
55 Administrator where available and applicable to the issue in question:  
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  - 57 1. The history of development on the site in question.
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  - 59 2. A summary of past City approvals, orders, and decisions related to the site or issue in  
60 question.
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  - 62 3. Whether all outstanding infractions related to this Ordinance or other City ordinances have  
63 been resolved, other than the issue to be addressed by the ZBA.  
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- 65 F. A concurring vote of a majority of the total ZBA membership shall be necessary to render a decision.  
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- 67 G. The ZBA shall not conduct business unless a majority of its members are present.  
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- 69 H. The Secretary shall keep minutes of the proceedings, record the vote of each member upon each  
70 question, indicate absences and abstentions, and keep records of hearings and other official  
71 actions. Such minutes shall also be filed with the City Clerk.  
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- 73 I. The ZBA shall have the power to require the attendance of witnesses, compel testimony, and  
74 produce documents, files, and other information pertinent to the matters before it.  
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76 11.4 APPLICATIONS

77 Applications to the ZBA shall be filed with the City, and a fee established by the City Council shall be paid at  
78 the time the application is filed. Applications shall be accompanied by the following information, where  
79 applicable:

- 80
- 81 A. Applicant’s name, postal address, telephone number, and email address.
- 82
- 83 B. The address, location, and tax identification number for each lot involved in the request.
- 84
- 85 C. Zoning classification of the subject lot(s) and all abutting lots.
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- 87 D. A site plan conforming to the requirement outlined in Article 8: Site Plan Review, Section 8.4.  
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89 E. A letter from the applicant summarizing the request and stating the reasons for the request.

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91 F. Any additional information deemed necessary by the ZBA to make a determination on the issue in  
92 question.

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94 11.5 APPEALS OF ADMINISTRATIVE DECISIONS

95 The ZBA shall hear and decide appeals where it is alleged there is an error of law in any order, requirement,  
96 decision, or determination made by the person or body charged with administration or enforcement of the  
97 Zoning Ordinance. Such appeals may be taken to the ZBA by the person, firm, or corporation aggrieved or by  
98 an officer, department, board, or bureau of the City affected by the order, requirement, decision, or  
99 determination, provided that a notice of appeal application is filed with the City within a reasonable time of  
100 the order, requirement, decision, or determination, not to exceed thirty (30) days. An appeal shall stay all  
101 administrative or enforcement proceedings associated with the appeal unless the Zoning Administrator  
102 certifies to the ZBA that, by reason of facts stated in the certificate, a stay in the opinion of the Zoning  
103 Administrator would cause imminent peril to life or property.

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105 The ZBA shall reverse an administrative decision only after finding that the order, requirement, decision, or  
106 determination was arbitrary or capricious, based upon an erroneous finding of a material fact, constituted  
107 an abuse of discretion, or based upon an erroneous interpretation of the Zoning Ordinance.

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109 11.6 INTERPRETATIONS OF ZONING DISTRICT BOUNDARIES

110 Where the actual lines of streets, alleys, or property boundaries vary from the portions indicated on the  
111 Zoning Map, or some ambiguity exists as to zoning district boundaries, the ZBA shall have the power to  
112 interpret the Zoning Map in such a way as to carry out the intents and purposes of the City of Petoskey Zoning  
113 Ordinance and Master Plan. Where uncertainty exists as to the boundaries of districts as shown on the  
114 Official Zoning Map, the following rules shall apply:

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116 A. Boundaries indicated as approximately following the center lines of streets, highways,  
117 watercourses, or alleys shall be construed to follow such center lines.

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119 B. Boundaries indicated as approximately following platted lot lines shall be construed as following  
120 such lot lines.

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122 C. Boundaries indicated as approximately following municipal boundaries shall be construed as  
123 following such municipal boundaries.

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125 D. Boundaries indicated as following railroad lines shall be construed to be midway between the main  
126 tracks.

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128 E. Boundaries indicated as parallel to or extensions of features indicated in subsections "A" through  
129 "D" above shall be so construed. Distances not specifically indicated on the Official Zoning Map  
130 shall be determined by the scale of the map.

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132 F. Where physical or cultural features existing on the ground are at variance with those shown on the  
133 Official Zoning Map, the ZBA shall interpret the district boundaries.

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135 G. Where a district boundary line divides a lot that was in single ownership at the time of passage of this  
 136 Ordinance, the ZBA may permit, as a special exception, the extension of the regulations for either  
 137 portion of the lot not to exceed fifty (50) feet beyond the district line into the remaining portion of the  
 138 lot.

140 11.7 INTERPRETATION OF ZONING ORDINANCE PROVISIONS

141 11.7.1 Interpretations

142 The ZBA shall have the power to hear and decide requests for interpretations of Zoning Ordinance  
 143 provisions in such a way as to preserve and promote the character of the zoning district in question  
 144 and carry out the intent and purpose of this Ordinance, the Master Plan, or any other planning  
 145 documents. This shall not include use determinations as provided for in this Ordinance, except upon  
 146 appeal of a determination that has been made.

148 11.7.2 Determinations of Similar Uses

149 The ZBA shall have the power to hear and decide appeals of the determination of similar use  
 150 decisions rendered by the Planning Commission. The ZBA shall make its determination based on the  
 151 standards in Article 3, Regulated Uses and Dimensions.

153 11.8 VARIANCES

154 The ZBA shall have authority in specific cases to authorize one or more variances, including dimensional or  
 155 "non-use" variances and use variances, from the strict letter and terms of this Ordinance by varying or  
 156 modifying any of its rules or provisions so that the spirit of this Ordinance is observed, public safety secured,  
 157 and substantial justice done. A dimensional or non-use variance allows a deviation from the dimensional  
 158 (i.e., height, bulk, setback) requirements of the Ordinance. A use variance authorizes the establishment of  
 159 a use of land that is otherwise prohibited in a zoning district. The ZBA is authorized to grant use variances by  
 160 this Ordinance. Such authority to make dimensional and use variances shall be exercised in accordance  
 161 with the following standards:

163 11.8.1 Dimensional Variances

164 The ZBA may grant a requested "non-use" variance only upon a finding that practical difficulties exist.  
 165 A finding of practical difficulties is when the applicant has demonstrated all the following:

- 167 A. Strict compliance with restrictions governing area, setback, frontage, height, bulk, density,  
 168 or other non-use matters will unreasonably prevent the owner from using the property for a  
 169 permitted purpose or will render Ordinance conformity unnecessarily burdensome.
- 171 B. The variance will do substantial justice to the applicant, as well as to other property owners.
- 173 C. The variance requested is the minimum variance needed to provide substantial relief to the  
 174 applicant and/or be consistent with justice to other property owners.

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176 D. The need for the variance is due to unique circumstances peculiar to the property and not  
177 generally applicable in the area or to other properties in the same zoning district and cannot  
178 be solely economic in nature.

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180 E. The problem and the resulting need for the variance have been created by strict compliance  
181 with the Zoning Ordinance, not by the applicant or the applicant’s predecessors.  
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183 11.8.2 Use Variances

184 The ZBA may grant a requested “use” variance only upon finding that an unnecessary hardship  
185 exists. An unnecessary hardship is when the restrictions of the Zoning Ordinance on the property,  
186 when its environment is considered, are so unreasonable as to constitute arbitrary and capricious  
187 interference with basic private property rights. A finding of unnecessary hardship shall require  
188 demonstration by the applicant of all the following:

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190 A. The property cannot be reasonably used for any purpose permitted in the zoning district  
191 without a variance.

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193 B. The need for the variance is due to unique circumstances peculiar to the property and not  
194 generally applicable in the area or to other properties in the same zoning district.

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196 C. The variance will not alter the essential character of the area. In determining the effect the  
197 variance will have on the character of the area, the established type and pattern of land uses  
198 in the area and the natural characteristics of the site and surrounding area will be  
199 considered.

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201 D. The problem and the resulting need for the variance have not been self-created by the  
202 applicant.

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204 E. A use variance requires a 2/3 vote of the ZBA pursuant to MCL 125.3604, Section 604 (10).  
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206 11.9 EXCEPTIONS

207 To hear and decide requests for exceptions and other matters upon which this Ordinance specifically  
208 authorizes the ZBA to act. Any exception shall be subject to such conditions as the ZBA may require to  
209 reserve and promote the purpose of this Ordinance, as well as the character of the zoning district in  
210 question.

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212 11.10 HEARINGS AND DECISIONS

213 The ZBA shall make no determination on a specific case until after a public hearing is conducted in  
214 accordance with the requirements in Article 12. Each decision of the ZBA shall include a written record of  
215 the ZBA’s findings and determinations in the case.

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217 11.11 FEES

218 Fees and performance guarantees associated with the review and determination of a request before the ZBA  
219 shall be consistent with the requirements in Article 12.

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11.12 LIMITATIONS OF AUTHORITY

- A. No order of the ZBA permitting the erection or alteration of a structure shall be valid for a period longer than one (1) year unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and completed in accordance with the terms of such permit.
- B. No order of the ZBA pertaining to the use of a structure or land shall be valid for a period longer than one (1) year unless such use is established within such period, except where such use is dependent upon the erection or alteration of a structure, in which case the one (1) year period shall begin after the certificate of occupancy is issued for the structure.
- C. The ZBA shall not consider appeals of any decisions by the Planning Commission or City Council regarding requests for approval of amendments, special land uses, or planned unit developments, as defined in this Ordinance.
- D. ZBA jurisdiction to consider appeals of site plan determinations shall be limited to cases referred by the Planning Commission, where the Planning Commission has approved a site plan contingent upon approval of one or more variances by the ZBA. In such cases, the Planning Commission Secretary shall provide copies of the site plan, application materials, and Planning Commission meeting minutes to the ZBA, and consideration shall be limited to the specific variances identified as conditions of site plan approval by the Planning Commission.
- E. The ZBA shall not have the authority to alter this Zoning Ordinance or Zoning Map.
- F. Sign Variances. The zoning board of appeals shall only have the authority to grant sign variances for sign dimensions, height, and the relocation of existing non-conforming signs. The zoning board of appeals shall consider the intent of the sign ordinance, the practical difficulty presented by the proposed sign and sign location, and public safety. Where the strict application of the regulations enacted would result in peculiar or practical difficulties to 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.
- G. International Property Maintenance Code. The zoning board of appeals shall have the power to hear appeals under the International Property Maintenance Code as established in § 13-34.