

ARTICLE XXI

ZONING BOARD OF APPEALS

SECTION 2100. CREATION AND MEMBERSHIP:

There is hereby established a Zoning Board of Appeals, hereinafter called the "Board", which shall perform its duties and exercise its powers as provided in Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety and welfare secured and substantial justice done.

The Board shall consist of five (5) members appointed by the City Council. Appointments shall be for a period of one (1), two (2), and three (3) years, respectively, so as nearly as may be to provide for appointment of an equal number each year, thereafter each member to hold office for the full three (3) year term. The Board shall annually elect its own Chairman, Vice Chairman, and Secretary. The compensation of the appointed members of the Board shall be fixed by the City Council. All members of the Board shall be residents of the City of Auburn Hills. The members selected shall be representative of the population distribution and of the various interests present in the City.

The City Council may appoint to the Board not more than two (2) alternate members for the same term as regular members. An alternate member may be called to serve as a member of the Board in the absence of a regular member. 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 Board has the same voting rights as a regular member.

SECTION 2101. MEETINGS:

All meetings of the Board 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 Board 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. The Board shall have the power to subpoena and require attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it.

SECTION 2102. RULES OF PROCEDURE:

The Board may adopt its own rules of procedure as may be necessary to conduct its meetings and carry out its function.

SECTION 2103. APPEAL:

An appeal may be taken to the Board by any person, firm or corporation, or 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, by general rule, by filing with the Building Inspector and with the Board a notice of appeal, specifying the ground thereof. The Building Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. No appeal of a City Council decision related to a Special Land Use Permit, Site Plan, Planned Unit Development, Rezoning, or Text Amendment shall be allowed by the Board.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Building Inspector certifies to the Board after the 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 the Board or by a Court of record application, on notice to the Building Inspector and on due course shown.

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 at the hearing, either in person or by duly authorized agent or attorney.

A fee shall be paid at the time the notice of appeal is filed to the Community Development Department to the credit of the general revenue fund of the City. The fees to be charged for appeals shall be set by resolution of the City Council.

SECTION 2104. JURISDICTION:

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

1. To hear and decide on all matters referred to it upon which it is required to pass under this ordinance. The Board shall be prohibited from considering or granting a use variance request.
2. To hear and decide appeals where it is alleged there is an error of law in any order, requirements, decision or determination made by the Building Inspector in the enforcement of this Ordinance.
3. To hear and interpret the provisions of the Zoning Ordinance.
4. To hear and decide on non-use (area or dimensional) variance request. Non-use variances may be allowed by the Board only in cases where the applicant has shown there is reasonable evidence of practical difficulty in the official record of the hearing and that all of the following conditions are met:
 - A. Compliance with the strict letter of the ordinance would unreasonably prevent the applicant from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome.
 - B. That granting the variance requested would do substantial justice to the applicant as well as to other property owners in the district or that a lesser relaxation than that relief applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
 - C. That the applicant's plight is due to the unique circumstances of the property.
 - D. That the problem is not self-created.

Where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would involve practical difficulties within the meaning of this Ordinance, the Board shall have power upon appeal in specific cases to authorize such variation or modification of the area regulations of this Ordinance with such conditions and safeguards as it may determine, as may be in harmony with the spirit of this Ordinance and so that public safety and welfare be secured and substantial justice done. Further, the Board shall have power upon appeal in specific cases to authorize such variation or modification when determined that such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.

In consideration of all appeals and all proposed variations to this Ordinance, the Board shall, before making any variation 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. The concurring vote of a majority of the total membership 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.

SECTION 2105. PUBLIC NOTIFICATION:

All applications before the Board shall require a public hearing. Notice for said hearing shall comply with the Michigan Zoning Enabling Act, PA 110 of 2006, as amended, and the other provisions of this Section with regard to public notification.

1. Notice shall be published in the Oakland Press not less than 15 days before the date the application will be considered for approval.

2. Notice shall be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 1,000 feet of the property and to the occupants of all structures within 1,000 feet of the property regardless of whether the property or occupant is located in the City of Auburn Hills. The notice shall be given not less than 15 days before the date the application will be considered for approval. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection. The notice shall state all of the following:
- A. Describe the nature of the request.
 - B. Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
 - C. State when and where the request will be considered.
 - D. Indicate when and where written comments will be received concerning the request.

SECTION 2106. APPEALS:

An appeal from a decision of the Board shall be filed with the Circuit Court within 21 days after the Board approves the minutes of its decision. The Circuit Court may affirm, reverse, or modify the decision of the Board. The Circuit Court may make other orders as justice requires.

*(Amended: 7-24-06 per Ordinance No. 781)
(Amended: 8-17-09 per Ordinance No. 821)*