

**BY – LAWS
OF
THE ZONING BOARD OF APPEALS
CITY OF BATTLE CREEK**

ARTICLE I
Powers and Duties

The powers and duties of the Zoning Board of Appeals of the City of Battle Creek, Michigan are those set forth in Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended, together with those powers and duties delegated to it by Chapter 1234 of Part 12 of the Codified Ordinances of the City of Battle Creek as approved, adopted and amended.

ARTICLE II
Members

Section 1

The Zoning Board of Appeals shall consist of seven (7) regular members appointed by majority vote of the City Commission, each to be appointed for a term of three (3) years or until that member's successor takes office. However, the terms of Board of Appeal members who are serving because of their membership on the Planning Commission or City Commission shall be limited to the time they are members of those bodies. One (1) member may be a member of the City Planning Commission. One regular or alternate member of the Board of Appeals may be a member of the City Commission; however, such member shall not serve as chairperson. The remaining regular members of the Board of Appeals, and any alternate members under Section 3, shall be selected from the electors of the City of Battle Creek residing within the City. The members selected shall be representative of the population distribution and of the various interests present in the City. An employee or contractor of the City Commission may not serve as a member of the Board of Appeals. [MCL 125.3601 (1), (4), (5), (6), and (10).]

Section 2

Vacancies occurring on the Board of Appeals shall be filled by the City Commission in the same manner as the original appointment. A successor member of the Zoning Board of Appeals must be appointed not more than one month after the term of the preceding member has expired. [MCL 125.3601(11).]

Section 3

The City Commission may appoint not more than two (2) alternate members for the same term as regular members of the Zoning Board of Appeals. The alternate members may be called to sit as regular members of the Board in the absence of a regular member if a regular member is absent from or unable to attend one (1) or more meetings [MCL 125.3601(7)]. An alternate member may also be called in to serve in the place of a regular member as abstained for reasons of conflict of interest. The alternate member shall serve in the case until a final decision has been made and shall have the same voting rights as a regular member of the Zoning Board of Appeals.

Section 4

Members of the Board of Appeals may, after written charges and after a public hearing, be removed by the City Commission for cause, including but not limited to, inefficiency, neglect of duty, misfeasance, malfeasance, or nonfeasance in office, or chronic absenteeism. A member of the Board of Appeals may be removed for chronic absenteeism if he or she misses three (3) successive meetings or six (6) meetings during a calendar year. [MCL 125.3601(9).]

Section 5

Zoning Board of Appeals members may receive compensation as approved by the City Commission.

ARTICLE III

Officers

Section 1

The officers of the Zoning Board of Appeals shall be a Chairperson, Vice-Chairperson, and such other officers as may be deemed desirable by the Board.

Section 2

The Chairperson shall be elected from among the regular members of the Zoning Board of Appeals; however, a City Commissioner also serving on the Board of Appeals shall not be elected or serve as Chairperson. He or she shall preside at all meetings or hearings of the Board and shall have and perform the duties usually incident to the office of chairperson. He or she shall decide, subject to these By-Laws, all questions of order and procedure and shall have the privilege of discussion all matters before said Board and of voting thereon. [MCL 125.3601(6).] The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses. [MCL 125.3602 (1).]

Section 3

The Vice-Chairperson shall be elected from among the regular members of the Zoning Board of Appeals and shall act for the Chairperson in his or her absence.

Section 4

If both the Chairperson and Vice-Chairperson are absent, the remaining members, including the alternate members, may, by a majority vote, elect one (1) of their members to preside at any meeting where both the Chairperson and Vice-Chairperson are absent.

ARTICLE IV

Nomination And Election Of Officers

Section 1

The officers of the Zoning Board of Appeals shall be nominated and elected annually by and from the regular members of the Board, which election shall be held on the second Tuesday of January in each year.

Section 2

The offices of Chairperson, and Vice-Chairperson shall be filled by regular members of the Board of Appeals.

Section 3

Alternate members are ineligible to participate in the nomination and election of officers and may not hold office on the Board.

Section 4

A candidate receiving a majority vote of the regular membership of said Zoning Board of Appeals shall be declared elected, and shall hold office for one year or until his or her successor shall take office, with eligibility for re-election and/or reappointment.

Section 5

Vacancies in office shall be filled for the unexpired term by regular election procedure at the next regular meeting following such vacancy, or at a special meeting called for that purpose.

ARTICLE V
Meetings

Section 1

All meetings of the Zoning Board of Appeals shall conform to the Open Meetings Act, Public Act 267 of 1967, as amended.

Section 2

The Zoning Board of Appeals shall hold at least one regular meeting each month. However, in the event that there are no appeals or other matters to be heard, the Chairperson of the Board may cancel said meeting and shall notify all Board members of said cancellation.

Section 3

A regular meeting of the Board shall be held on the second Tuesday of each month at 4:00 P.M., located at 10 N. Division, Room 301, Commission Chambers, City Hall.

Section 4

The presence of four (4) members of the Board shall be necessary to constitute a quorum; provided, however, that to effect a variance from uses of land permitted in the Battle Creek Zoning Code, a concurring vote of two-thirds (2/3) (five (5) members) is necessary. [MCL 125.3605(10).] The Board of Appeals shall not conduct business unless a majority of the regular members of the Board are present. [MCL 125.3601(12).]

Section 5

Special meetings of the Zoning Board of Appeals may be called by the Chairperson. However, any two (2) regular members of the Board may override the Chairperson's decision to hold the special meeting. The Chairperson shall have the responsibility of polling members for purposes of this provision.

Section 6

Written notice of the time, place and purpose of a special meeting shall be given to each member by the Planning and Community Development Department, not less than five (5) days in advance of such meeting.

Section 7

The City Planning Department shall provide clerical and staff assistance sufficient to carry out the intent of these By-Laws, the Michigan Zoning Enabling Act (P.A. 110 of 2006) as amended, the City Planning and Zoning Code and the Open Meetings Act. It shall keep a record of all resolutions, transactions, findings and determinations of said Board, which record shall be a public record; shall prepare all meeting agendas; shall provide notice of all meetings of said Board; and shall have and perform such other duties as are determined by the Board. The Board shall maintain a record of its proceedings which shall be filed in the office of the City Clerk. [MCL 125.3602(2).]

Section 8

The business considered or transacted at any special meeting shall be restricted to that stated in public notice of said meeting.

Section 9

A concurring vote of four (4) members of the Board shall be necessary to reverse an order, requirement, decision, or determination of the Zoning Administrator, to decide in favor of the applicant a matter upon which the Board is required to pass under the Battle Creek Planning and Zoning Code, or to grant a variance in the Battle Creek Planning and Zoning Code. [MCL 125.3603(2).]

Section 10

A Board member who is pecuniarily or personally interested in a matter presented for action by the Board shall not discuss nor vote on that matter in his or her capacity as a Board member. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office. [MCL 125.3601 (9).]

Section 11

A Board member who is also a member of the Planning Commission or the City Commission shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission or City Commission. However, the member may consider and vote on other unrelated matters involving the same property. [MCL 125.3601 (13).]

Section 11

Insofar as Robert's Rules of Order are not inconsistent with the Michigan Zoning Enabling Act (P.A. 110 of 2006) as amended, or these By-Laws, said Rules shall govern the proceedings of the Zoning Board of Appeals when applicable.

ARTICLE VI **Order of Business**

The order of business at meetings of the Board of Appeals shall be as follows except when otherwise determined by the Chairperson:

- 1.** Call to Order
- 2.** Attendance
- 3.** Additions or Deletions to the Agenda
- 4.** Unfinished Business
- 5.** New Business
- 6.** Approval of Minutes
- 7.** Comments by the Public
- 8.** Comments by the Members
- 9.** Adjournment

ARTICLE VII **Zoning Board Jurisdiction and Powers**

Section 1

The Zoning Board of Appeals shall have the power to:

- (a)** Hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of zoning maps, and hear and decide appeals from and review any administrative order, requirements, decision, or a determination made by the Zoning Administrator in the enforcement of the Battle Creek Planning and Zoning Code. [MCL 125.3603(1).]
- (b)** Hear and decide matters referred to the Board; [MCL 125.3603(1).]

- (c) Permit the extension of a district where the boundary line of a district divided a lot held in single ownership at the time of the passage of the Battle Creek Planning and Zoning Code (July 11, 1972);
- (d) Interpret the provision of the Battle Creek Planning and Zoning Code in such a way as to carry out the intent and purpose of the Zoning District Map, or the street layout existing on the ground varies from that shown on such Map.
- (e) Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God or the public enemy to the extent of more than fifty (50%) percent of its insurable value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use, and the primary purpose of continuing the nonconforming use is not to continue a monopoly.
- (f) Grant Nonuse Variances if there are practical difficulties for nonuse variances relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance in the way of carrying out the strict letter of the zoning ordinance, then the Board may grant a variance so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice is done. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125.3101 et seq.; and
- (g) Grant Use Variances if there is an unnecessary hardship in the way of carrying out the strict letter of the zoning ordinance, then the Board may grant a use variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125.3101 et seq.

Section 2

In consideration of all the matters before the Board, the Board shall, before making any decision, first determine that it will not impair an adequate supply of light and air to the adjacent property, or unreasonably increase congestion in public streets, or the danger of fire, or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in other respects impair the health, safety, comfort, morals or welfare of the inhabitants of the City.

Section 3

In exercising their powers, the Board may reverse, affirm, wholly or partly or modify the order, requirement, decision or determination appealed 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 Superintendent of the Inspection Division where his or her decision is being appealed.

Section 4

No order of the Board permitting the erection or alteration of a building shall be valid for 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 proceeds to completion in accordance with the terms of the permit. No order of the Board permitting a use of a building or premises shall be valid

for longer than one (1) year, unless such use is established within such period. However, 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 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.

Section 5

A decision of the Board of Appeals shall be final. However, a person having an interest affected by the Battle Creek Planning and Zoning Code may appeal to the Calhoun County Circuit Court within thirty (30) days from the date the Zoning Board of Appeals certifies its decision in writing or approves the minutes of its decision. As a result of the Court review required by this section, the Circuit Court may affirm, reverse or modify the decision of the Board of Appeals.

Section 6

In consideration of all appeals and proposed exceptions to or variations from this Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the applicant has met all of the following conditions as set out for the specific type of variance requested:

Nonuse (dimensional) Variances:

A. When it can be shown that a practical difficulty would, in fact, exist if the strict non-use requirements of this zoning ordinance (e.g., lot area, width, setbacks, building height, etc.) were applied to a specific building project, the Board may grant a variance from these requirements. The practical difficulty from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain a higher financial return.

B. The practical difficulty must be exceptional and peculiar to the subject parcel of land which do not generally exist throughout the City and may not be self-imposed or the result of an earlier action by the applicant. If the parcel of land could be reasonably built upon in conformance with the requirements of this zoning ordinance by simply relocating or redesigning the structure(s), then a variance shall not be granted.

C. A variance shall not be granted when it will alter or conflict with the intent of this Ordinance considering the public benefits intended to be secured by this Zoning Code and the rights of others whose property would be affected by the allowance of the variance.

D. Any variance granted shall be the minimum necessary to provide relief for the practical difficulty of the applicant.

Use Variances:

A. The building, structure or land cannot be reasonably used in a manner consistent with the uses allowed in the zoning district in which the property is located.

B. The condition or situation of the specific piece of property or the intended use of the property is unique to that property and not commonly present in the general vicinity or zoning district. Unique conditions or situations may include exceptional narrowness, shallowness, or shape of the property that existed when the applicable zoning ordinance provision took effect: exceptional topographic conditions or other extraordinary situation on the land, building, or structure: or the use or development of the property immediately adjoining the property in question; or any other physical situation on the land, building or structure deemed by the Board to be extraordinary.

C. The proposed use, if granted, will not alter the essential character of the neighborhood or the intent of the master plan.

D. The immediate hardship cited as the cause for the variance was not created by any affirmative action by the applicant.

Sign variance standards shall be governed by Section [1296.31](#).

ARTICLE VIII **Appeals**

Section 1

Appeals to the Zoning Board of Appeals from any order, requirement, decision or determination made by the Zoning Administrator may be taken by a person aggrieved from such order, requirement, decision or determination, or by an officer, department, board, or bureau of the City.

Section 2

Any appeal from said ruling of the Zoning Administrator shall be made to the Board within fifteen (15) days after the date of the mailing of the decision, which is the basis of the appeal. The person making the appeal shall file with the Planning and Zoning Division a Notice of Appeal specifying the grounds for appeal. The Planning and Community Development Department shall transmit to the Board members all papers constituting the record upon which the action appealed from was taken. [MCL 125.3604 (2).]

Section 3

The Board of Appeals may return a decision upon each case within one hundred and twenty (120) days after a request of appeal has been filed with the Board unless a further time is agreed upon with the parties concerned. If the appellant or his other representative fails to appear within the one hundred and twenty (120) day period or a time agreed upon by the parties, the Board may deny the appeal.

Section 4

An appeal stays all proceedings and furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals, after notice of appeal was 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, in which case proceedings shall not be stayed otherwise than by a

restraining order which may be granted by the Board of Appeals or by the Calhoun County Circuit Court when due cause can be shown.

Section 5

Any party may appear in person or by agent or by attorney at a hearing considering his or her request for appeal.

Section 6

Applications for appeal shall be submitted through the Planning and Community Development Department to the Board of Appeals on a special form for this purpose. Each application shall be accompanied by the payment of a fee to cover costs incurred by the Planning Division in the administrative process. Such fee shall be approved from time to time by the City Commission.

Section 7

A decision of the Zoning Board of Appeals is final except for as otherwise outlined herein. No application for a variance that the Board has denied, in whole or in part, may be resubmitted or reheard by the Board for a period of one (1) year following the effective date of the last denial as outlined in Article 7, Section 5, except when established to the satisfaction of the Zoning Administrator, at his/her sole discretion, on the grounds of (i) newly discovered evidence that, with reasonable due diligence, could not have been discovered in time to present to the Board before rendering a final decision on the last application or (ii) a material change of conditions since the last denial. An application may only be submitted once following the effective date of the last denial. The Zoning Administrator shall use the following definition to determine if the information submitted meets the definition of newly discovered evidence: 1. The "new evidence" submitted is not merely cumulative or just "more of the same", 2. The new evidence is so material that it may reasonably produce a different result, 3. The new evidence must be discovered after the hearing because if it were found beforehand, it would not qualify as "new", and 4. The evidence must be such that the appellant could not by due diligence have discovered it before the hearing in which the variance was initially denied.

ARTICLE IX **Amendments to By-Laws**

These By-laws may be amended from time to time by a majority vote of the regular members of the Zoning Board of Appeals insofar as such amendments are consistent with the Michigan Zoning Enabling Act (P.A. 110 of 2006) as amended. The proposed amendments must be presented for review at least one (1) meeting prior to the meeting at which the vote is taken thereon.