

## ARTICLE 18

### ZONING BOARD OF APPEALS

#### **Section 18.01 Authority.**

The Zoning Board of Appeals (ZBA) is hereby established and shall perform its duties as provided for in this Ordinance and the City and Village Zoning Act (P.A. 207 of 1921, 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.

#### **Section 18.02 Membership.**

The Zoning Board of Appeals shall consist of five (5) members and up to two (2) alternates appointed by the City Council for three (3) year terms.

1. One (1) member shall be a member of the Planning Commission, and one (1) member may be a member of the City Council.
2. All members shall have been a resident of the City for at least one (1) year prior to the date of appointment, and shall be a qualified and registered elector of the City on such day and throughout his or her tenure of office.
3. An employee or contractor of the City may not serve as a member of the Zoning Board of Appeals.
4. Members of the Zoning Board of Appeals may be removed from office for 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. Vacancies shall be filled by resolution of the City Council.
5. In the event a Zoning Board of Appeals member is elected to City Council and such election increases the number of City Council members serving on the ZBA to more than one (1), then such member's seat on the ZBA shall be deemed vacant. Such vacancy shall be filled for the remainder of the un-expired term by appointment in the same manner as for regular appointments for full terms.

#### **Section 18.03 Alternates.**

Alternate members may be called on a rotating basis to sit as members of the Zoning Board of Appeals in the absence of regular members. An alternate member may also be called on to serve in the place of a ZBA member, with the same voting rights, for the purpose of reaching a decision on a case in which the member has abstained because of a conflict of interest.

### **Section 18.04 Hearings and Decisions.**

The Zoning Board of Appeals shall make no determination on a specific case until after a public hearing conducted in accordance with Section 12.03 (Public Hearing Procedures). Each decision shall include a written record of the specific findings and determinations made by the ZBA in the case.

### **Section 18.05 Rules of Procedure.**

The Zoning Board of Appeals shall conduct business, organize meetings, and perform its duties as provided for in this Ordinance, the City and Village Zoning Act (P.A. 207 of 1921, as amended), and any adopted Zoning Board of Appeals bylaws and rules of procedure.

1. The ZBA shall annually elect a Chair, Vice-Chair, and Secretary.
2. Meetings shall be held at the call of the Chair, and at such other times as the ZBA may determine.
3. The ZBA shall select a reasonable time and place for hearings and shall give due notice thereof to the parties. All hearings conducted by the ZBA shall be open to the public. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney. The ZBA shall render all decisions without unreasonable delay.
4. An appeal to the ZBA shall stay all proceedings in furtherance of the appealed action, unless the Zoning Administrator certifies to the ZBA, after the notice of appeal shall have been filed, that by reason of the facts stated in the appeal, a stay would cause imminent peril to life or property; in which case proceedings shall not be stayed other than by a restraining order granted by the Circuit Court.
5. The ZBA shall keep minutes of its proceedings showing the vote, absence or failure to vote of each member, and shall also keep a public record of hearings and other official actions in the office of the City Clerk.
6. The ZBA shall not conduct business unless a majority of the members are present.
7. The concurring vote of a minimum of three (3) members of the ZBA shall be necessary to reverse an order, requirement, decision or determination of an administrative official or body; to decide in favor of an applicant on any matter upon which the ZBA is required to act; or to grant a variance from any non-use or dimensional standard of this Zoning Ordinance.
8. The concurring vote of a minimum of four (4) members of the ZBA shall be necessary to grant a variance from the use provisions of Article 3 (Land Use Table).
9. The ZBA shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files, and other evidence pertinent to the matters before it.

## **Section 18.06 Applications.**

Applications to the Zoning Board of Appeals shall be filed with the City, with payment of the appropriate review fee established by City Council. At a minimum, applications shall include the following:

1. The applicant's name, address, and contact information; and the address and location of the property involved in the request.
2. Zoning classification of the subject parcel(s) and all abutting parcels.
3. A plot plan of the site, drawn to scale with a north-arrow, showing all lot lines, street rights-of-way, easements, structures, setback dimensions, parking areas, driveways, sidewalks, and other site improvements.
4. A letter from the applicant stating the reasons for the request and addressing the applicable review criteria specified in this Article for the type of request.
5. Any additional information deemed necessary by the Zoning Board of Appeals to make a determination on the issue in question.

## **Section 18.07 Administrative Appeals.**

The Zoning Board of Appeals shall hear and decide appeals where it is alleged there is error of principle in any order, requirement, decision or determination made by the person or body charged with administration or enforcement of the Zoning Ordinance. Consideration of administrative appeals shall be subject to the following:

### **A. Standing to Appeal.**

Such appeals may be taken to the ZBA by the person, firm or corporation aggrieved, or by an official, department, board or commission of the City affected by the order, requirement, decision or determination. Applications for administrative appeals shall be filed with the City within 21 calendar days of the order, requirement, decision or determination.

### **B. Review Criteria for Administrative Appeals.**

The ZBA shall reverse an administrative decision only upon determining that the order, requirement, decision or determination:

1. Constituted an abuse of discretion;
2. Was arbitrary or capricious;
3. Was based upon an erroneous finding of a material fact; or
4. Was based upon an erroneous interpretation of the Zoning Ordinance.

After making such a determination, the ZBA may reverse or modify the order, requirement, decision or determination appealed from, and may make such order,

requirement, decision or determination as, in its determination, ought to be made under the provisions of this Ordinance. In doing so, the ZBA shall exercise all authority granted by this Ordinance to the person or body from whom the appeal is taken.

### **Section 18.08 Interpretation of Zoning District Boundaries.**

Where an ambiguity exists as to zoning district boundaries, the ZBA shall have the power to interpret the Zoning Map in such a way as to carry out the intents and purposes of the City of Sandusky Zoning Ordinance and Master Plan. The following rules shall apply to such interpretations:

1. Boundaries indicated as approximately following the centerlines of streets, highways, alleys, watercourses, lot lines, or municipal boundaries shall be construed to follow such lines.
2. Boundaries indicated as following railroad lines or utility easements shall be construed to be midway between the main tracks, or along the centerline of such easements.
3. Boundaries that parallel or are extensions of features indicated in this Section shall be so construed.
4. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the Map.
5. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, the ZBA shall interpret the district boundaries.

### **Section 18.09 Interpretation of Zoning Ordinance Provisions.**

#### **A. Interpretations.**

The ZBA shall have the power to hear and decide requests for interpretations of Zoning Ordinance provisions in such a way as to preserve and promote the character of the zoning district in question and carry out the intent and purpose of this Ordinance and Master Plan.

#### **B. Determinations of Similar Uses.**

In recognition that every potential use cannot be addressed in this Ordinance, the ZBA shall have the authority to determine whether a proposed use not listed in this Ordinance is similar to a principal or special use permitted by this Ordinance, subject to the following:

1. Prior to making such a determination, the ZBA shall find that the principal or special use closely resembles the proposed use in terms of characteristics, intensity, nature, and other applicable common elements of such uses.

2. The ZBA may determine that the use is (or is not) similar to a use listed in this Ordinance, or may recommend to the City Council that the proposed use be addressed through an amendment to this Ordinance.
3. If it is determined that there is no similar use listed in this Ordinance, the use shall be prohibited.
4. If it is determined that the proposed use is similar to a use listed in this Ordinance, the proposed use shall comply with any conditions or special use standards that apply to the listed use.
5. The ZBA may impose additional conditions or limitations upon the proposed use necessary to satisfy the intent and purposes of this Ordinance, to protect the health, safety or welfare or to preserve the social and economic well being of adjacent residents and landowners or the City, as a whole.

### **Section 18.10 Variances.**

The Zoning Board of Appeals shall have the authority to grant variances from specific requirements of this Ordinance in accordance with the City and Village Zoning Act (Public Act 207 of 1921, as amended) and the provisions of this Article.

The ZBA shall state the grounds upon which it justifies the granting or denying of a variance and may consider lesser variances than that requested by an applicant. In granting a variance, the ZBA may impose conditions or limitations as it may deem reasonable in furtherance of the intent and purposes of this Ordinance.

#### **A. Dimensional Variances.**

The granting of a variance from particular area, setback, frontage, height, bulk, density or other dimensional (non-use) standards of this Ordinance shall require a finding of practical difficulties. To grant a variance, the ZBA shall determine that request meets one (1) or more of the following criteria:

1. **Practical difficulties.** Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant or unreasonably prevent the owner from using the property for a permitted purpose.
2. **Substantial justice.** The variance will do substantial justice to the applicant, as well as to other property owners, and a lesser variance than requested will not give substantial relief to the applicant or be consistent with justice to other property owners.
3. **Unique circumstances.** The need for the variance is due to unique circumstances peculiar to the land or structures involved, that are not applicable to other land or structures in the same district.

4. **Preservation of property rights.** The variance is necessary for the preservation and enjoyment of a substantial property right also possessed by other property owners in the same zoning district.
5. **Public safety and welfare.** The requested variance or appeal can be granted in such fashion that the spirit of this Ordinance will be observed and public safety and welfare secured.
6. **Not self-created.** The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.
7. **More than mere inconvenience.** The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience, or an inability to attain a higher financial return.
8. **Additional considerations.** The ZBA shall consider all of the following when reviewing a variance to ensure that the proposed variance is the minimum necessary to meet the requirements of the applicant under the Ordinance and may impose condition upon any variance granted based upon its findings under this subsection:
  - a. The granting of a lesser variance will not provide reasonable relief and substantial justice to the applicant.
  - b. The granting of a variance will not increase the hazard of fire or otherwise endanger public safety.
  - c. The granting of a variance will not unreasonably diminish or impair the value of surrounding properties.
  - d. The granting of a variance will not alter the essential character of the neighborhood or surrounding properties.
  - e. The granting of a variance will not impair the adequate supply of light and air to any adjacent property.

**B. Use Variances.**

The granting of a variance from the use provisions of Article 3 (Land Use Table) shall require a finding of unnecessary hardship, based upon the following criteria:

1. **The current zoning ordinance prohibits the property owner from securing any reasonable economic return or making any reasonable use of the property.** Under this standard, the ZBA shall find that the property (land, structures and other improvements) is not suitable for uses permitted in the zoning district.
2. **The landowner's plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.** Circumstances common to the larger neighborhood may reflect the unreasonableness of the

zoning itself, which should be addressed through a rezoning or other legislative action.

3. **The use variance, if granted, would not alter the essential character of the neighborhood.** This standard requires consideration of whether the intent and purpose of the Ordinance and zoning district will be preserved and the essential character of the area will be maintained.
4. **The hardship is not the result of the applicant's actions.** Under this standard, the ZBA shall determine that the hardship that led to the use variance request was not self-created by the applicant. Purchase of a property with a pre-existing hardship does not constitute a self-created hardship. Financial hardships that would prevent reasonable use of the property shall be considered, but shall not be the only determining factor in granting a use variance.

### **Section 18.11 Temporary Uses.**

The Zoning Board of Appeals shall have the power to grant permits authorizing the following temporary uses:

#### **A. Application and Submittal Requirements.**

The application for a temporary use permit shall be accompanied by plans and specifications including a plot plan, in triplicate, drawn to scale, showing the following:

1. The shape, location, and dimensions of the lot, including the shape, size, and location of all buildings or other structures already on the lot, off-street parking layout, and the location of any designated fire lanes.
2. The materials to be utilized in and the shape, size, and location of all buildings and structures to be erected or moved onto the lot, including all -tents, tables, stands, or display racks.
3. The anticipated automobile traffic flow to and from the lot and any adjacent thoroughfares, loss of off-street parking spaces, if any, as well as the anticipated flow of pedestrian traffic upon lot sidewalks.

#### **B. Temporary or Seasonal Sales.**

Approval of temporary sales events (tent sales, sidewalk sales, and similar events) or seasonal sales of produce, trees or similar seasonal items shall be subject to the following:

1. **Zoning districts where permitted.** Temporary or seasonal sales events and similar temporary uses shall be restricted to nonresidential zoning districts; except that such temporary uses shall be permitted on parcels of three (3) acres or more in any residential district.

2. **Time limitations.** The following time limits shall apply to permits for temporary sales events and seasonal sales of produce, trees or similar seasonal items:
  - a. **Temporary sales events.** A temporary use permit for a temporary sales event (tent sale, sidewalk sale or similar) shall be effective for no longer than five (5) calendar days.
    - (1) No more than three (3) such temporary use permits shall be issued for a given location within one (1) calendar year.
    - (2) Temporary use permits shall not be issued for any given location for consecutive time periods.
  - b. **Seasonal sales of produce, trees or similar seasonal items.** A temporary use permit for the seasonal sale of produce, trees or similar seasonal items shall be effective for no longer than 90 days. No more than one (1) such temporary use permit shall be issued for any given location within one (1) calendar year.
3. **Standards for approval.** A temporary use permit for a temporary sales event or seasonal sale of produce, trees or similar seasonal items shall only be granted if the ZBA determines that the proposed use, including the erection of any temporary structure, will:
  - a. Provide adequate light and ventilation between buildings and structures.
  - b. Provide adequate automobile and pedestrian traffic flow and provide adequate off-street parking.
  - c. Provide adequate lot access for fire protection purposes.
  - d. Not adversely affect the stability and integrity of the zoning plan prescribed by this Ordinance or otherwise interferes with the protection of public health, safety, and general welfare.
  - e. Not be incompatible with or otherwise adversely affect the physical character of the community and, in particular, the surrounding area within a radius of 1,000 feet.
  - f. When the proposed temporary use is to be conducted on an otherwise vacant or unused lot, the use shall comply with all applicable zoning regulations for the district in which the temporary special use is to be located, including all requirements pertaining to lot size, height, setback, maximum lot coverage, and off-street parking.

**C. Temporary Building and Uses in Undeveloped Areas of the City.**

The ZBA may permit the location of temporary building and uses for periods not-to-exceed two (2) calendar years in undeveloped sections of the City, and may grant one (1) extension for up to one (1) additional calendar year. The granting or extension of a temporary use permit under this subsection shall be subject to the following conditions:



1. The use shall be in harmony with the general character of the area.
2. The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.
3. The granting of the temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted, and arrangements for removing the use at the termination of said temporary permit.
4. All setbacks, land coverage, off-street parking, lighting, and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience, and general welfare of the inhabitants of the City shall be made at the discretion of the ZBA.
5. The ZBA may seek the review and recommendation of the Planning Commission prior to the taking of any action.
6. In no instance shall a permit be extended when the property surrounding the temporary use has developed during the life of the temporary permit.

**D. Temporary Uses That Do Not Require Any Capital Improvement.**

The ZBA may permit uses that do not require the erection of any capital improvement of a structural nature and are not otherwise permitted in any district (such as art fairs, carnivals, and civic festival events). Such permits may be granted for a period of up to 365 calendar days, subject to the following conditions:

1. In classifying uses as not requiring capital improvement, the ZBA shall determine that they are either demountable structures related to the permitted use of land; recreational uses (such as, but not limited to golf driving range and outdoor archery courts); or structures that do not require foundations, heating systems or sanitary connections.
2. The use shall be in harmony with the general character of the area.
3. The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.
4. The granting of the temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted, and arrangements for removing the use at the termination of said temporary permit.
5. All setbacks, lot coverage, off-street parking, lighting and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience, and general welfare of the inhabitants of the City shall be made at the discretion of the ZBA.
6. The ZBA may seek the review and recommendation of the Planning Commission prior to the taking of any action.

### **Section 18.12 Exceptions.**

To hear and decide requests for exceptions and other matters upon which this Ordinance specifically authorizes the Zoning Board of Appeals to act. Any exception shall be subject to such conditions as the ZBA may require to preserve and promote the purpose of this Ordinance, and the character of the zoning district in question.

### **Section 18.13 Limitations of Authority.**

The following specific limitations shall apply to the authority and jurisdiction of the Zoning Board of Appeals under this Ordinance:

1. **Expiration of approval.** No order of the ZBA permitting the construction or alteration of a permanent structure or establishment of a use shall be valid for a period longer than 365 calendar days, unless appropriate permits for such construction or alteration have been obtained or the use has been lawfully established within such period. Where the use is dependent upon the construction or alteration of a building, such order shall continue in force, provided that appropriate permits are obtained, and such construction or alteration proceeds to completion in accordance with such permits.
2. **Limitations on review.** The ZBA shall not have the authority to consider appeals of any decisions by the Planning Commission or City Council regarding amendments to this Ordinance, special uses, appeal of special uses, preferred class nonconforming designations, or planned unit developments.
3. **Ordinance changes prohibited.** The Zoning Board of Appeals shall not have the authority to alter this Zoning Ordinance or Map.