

ARTICLE 11

ZONING BOARD OF APPEALS

Section 11.10 Creation and Membership

There is hereby created a Zoning Board of Appeals, herein referred to as the "Board of Appeals," the membership, powers and duties of which are prescribed in this Ordinance.

Section 11.20 Composition and Alternate Members

- a) **Membership** – The Board of Appeals shall consist of five (5) members appointed by the City Council, and shall include one (1) member from the City Council and one (1) member of the Planning Commission.
- 1) One (1) of the first members shall be appointed for a term of one (1) year, two (2) for a term of two (2) years, and two (2) for a term of three (3) years. Thereafter, each member shall be appointed for a full term of three (3) years, provided, however, the term of a member who is also an elected official of the City shall cease upon termination of the elected position.
 - 2) A member of the City Council shall not serve as Chairperson of the Zoning Board of Appeals.

[Ordinance 248, 12/1/08]

- b) **Alternate Members** - Two (2) alternate members to the Board of Appeals may also be appointed by the City Council. Alternate members shall be appointed for a term of three (3) years. The alternate members of the Board of Appeals may be called as specified herein, to sit as regular members of the Board of Appeals, if a regular member is absent from or unable to attend two or more consecutive meetings of the Board of Appeals, or for a period of more than thirty consecutive days. An alternate member may also be called to serve in the place of a regular member for reasons of conflict of interest. The alternate member having been called to serve on a case shall serve on the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Board of Appeals. The decision of whether an alternate member shall sit in the absence of a regular member shall be determined by the Chairperson of the Board of Appeals, and if there is no Chairperson, by a majority of the Board of Appeals' members then in attendance at a duly called meeting of the same, and the records maintained by the Board of Appeals shall reflect the attendance and participation of any alternate member.
- c) **Compensation** - All members of the Board of Appeals, including alternate members, shall serve without compensation as members thereof.

Section 11.30 Rules of Procedure

Rules of procedure prescribing the Board of Appeals process for the performance of its authorized powers shall be adopted by the Board of Appeals.

Section 11.40 Jurisdiction and Limitations

- a) **Jurisdiction.** The Board of Appeals shall have all jurisdiction and powers granted by the Zoning Act, all jurisdiction and powers prescribed in other sections of this Ordinance, and the following specific jurisdiction and powers:
- 1) **Appeals** - To hear and decide appeals from and review any order, requirement, permit, decision or determination made by the Zoning Administrator, Planning Commission, and City Council enforcing the provisions of this Ordinance, except as otherwise provided for. The Board of Appeals may reverse or affirm, wholly or in part, or may modify the order, requirement, permit, decision or determination as in the Board's opinion ought to be made in the premises, and to that end shall have all the powers of the official from whom the appeal is taken.
 - 2) **Matters Referred** - To hear and decide matters referred to the Board of Appeals or upon which the Board of Appeals is required to pass under this Ordinance.
 - 3) **Non-Use Variances** - If there are practical difficulties in the way of carrying out the strict letter of the dimensional requirements of this Ordinance applicable to a property, the Board of Appeals shall have power in granting a variance to relax or modify any of the rules or provisions of this Ordinance relating to the construction, structural changes in, equipment, or alteration of buildings or structures, so that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done.
- b) **Limitations.** The Zoning Board of Appeals shall not have the power to hear and decide upon the following:
- 1) Variances in the use of land.
 - 2) Appeals of the decision of the City Council regarding special land uses.
 - 3) Appeals of the decision of the City Council regarding Planned Unit Developments.

Section 11.50 Granting of Variances

Standards for Granting of Variance - No variance in the provisions or requirements of this Ordinance shall be authorized by the Board of Appeals unless it is found from the evidence that all of the following conditions exist:

- a) That there are practical difficulties resulting from exceptional, extraordinary, or unique circumstances or conditions applying to the property in question which are different than other properties in the same zoning district or result from conditions which do not exist throughout the City of Ferrysburg.

- b) That the variance is necessary for the preservation and enjoyment of a substantial property right. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.
- c) That the granting of the variance will not be of substantial detriment to adjacent property or materially impair the intent and purposes of this Ordinance or the public interest.
- d) That the applicant shall not have created the problem for which the variance is being sought.
- e) That the granting of the variance will not be contrary to the public interest and that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done for both the applicant and other property owners in the district.

In approving a variance, the Zoning Board of Appeals shall only approve the minimum variance necessary to relieve the practical difficulty or unnecessary hardship.

[Ordinance No. 265, 10/4/2010]

Section 11.60 Application

Application Requirements - All applications for consideration by the Zoning Board of Appeals shall be made by submitting the following materials to the Zoning Administrator at least twenty one (21) days prior to the meeting at which the application (request) is to be considered:

- a) **Application** - A completed application form signed by the applicant or his/her agent. Applicants other than the owner of the property must submit written evidence that the owner of the property is aware and approves of the application.
- b) **Fee** - Payment of a fee which shall be established by the City Council, and which shall be non-refundable.
- c) **Legal Description** - A legal description of the property involved in the request.
- d) **Narrative and Site Plan** - A narrative and, where applicable, a site plan drawn to scale, sufficient to show the nature and extent of the requested variance. *For purposes of a variance, the narrative must fully describe how the request complies with the Standards for Granting of Variance, Section 11.50.*
- e) Other information as determined by the Board of Appeals to be necessary in order make a determination of findings.

Section 11.70 Information From Prior Zoning Actions

In addition to the complete application, the Zoning Administrator shall transmit to the Board of Appeals other information and evidence relevant to the requested appeal. This shall include, but is not limited to, prior actions taken by the Zoning Administrator, Planning Commission, or City Council on the matter under consideration for appeal or variance.

Section 11.80 Submission of Application to the Zoning Board of Appeals

The Zoning Administrator shall take the actions necessary to place the appeal on the agenda of the Zoning Board of Appeals.

Section 11.90 Applicant Representation

Appellants for variances or other actions by the Board of Appeals shall be required to appear before the Board or be represented by a party who can speak for and make commitment on behalf of the applicant.

Section 11.100 Voting Requirements

Votes Needed to Authorize a Variance, Appeal, or Other Affirmative Action - The concurring vote of three (3) members of the Board of Appeals shall be necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which the Board of Appeals is required to pass under a provision of this Ordinance, or to effect a variation from the requirements of this Ordinance, except that a concurring vote of four (4) members of the Board of Appeals shall be necessary to grant a variance from uses of land permitted in any zoning district.

Section 11.110 Time of Hearing and Notice of Hearing

The Board of Appeals shall fix a reasonable time for the hearing of an appeal and shall give due notice thereof to the persons to whom real property within three hundred (300) feet of the premises in question shall be assessed, and to the occupants of dwellings within three hundred (300) feet. Notice shall be delivered personally or by mail addressed to the respective owners and tenants at the address given in the last assessment roll. If the tenants name is not known, the term occupant may be used. The notice shall include:

- a) Nature of the appeal.
- b) Property location, including address and legal description.
- c) Location (address) of the public hearing.
- d) Public hearing date and time.
- e) Address and timing for receipt of written comments.
- f) Other information as determined relevant to the matter.

Section 11.120 Conditions on Variance and Other Approvals

Conditions - The Board of Appeals may impose conditions upon an affirmative decision. Conditions shall:

- a) Be designed to protect natural resources; the health, safety, and welfare, as well as the social and economic well-being of those who will use the land use or activity under consideration; the residents and landowners immediately adjacent to the proposed land use or activity; and, the City as a whole.
- b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
- c) Be necessary to meet the intent and purpose of the zoning regulations; be related to standards established in the Ordinance for the land use or activity under consideration; and, be necessary to insure compliance with those standards.

Section 11.130 Official Record and Findings of Fact

The Board of Appeals shall prepare an official record for all appeals and shall base its decisions on this record. The official record shall include the following:

- a) The relevant administrative records and orders issued relating to the appeal.
- b) The notice of the appeal.
- c) Any documents, exhibits, photographs or written reports as may be submitted to the Board of Appeals for its decision.
- d) Factual information received at the public hearing.
- e) Determination of compliance with the provisions of Section 11.50.
- f) The official vote of the Board of Appeals stating the conclusions of the Board relative to the appeal, the basis for the decision, and any conditions imposed.

Section 11.140 Decisions of the Board of Appeals

- a) **Official Record**
 - 1) The decision and orders of the Board of Appeals in disposing of the appeal shall be entered in the official record after they have been signed by the Chair of the Zoning Board of Appeals, or, in the absence of the Chair, the Vice Chair. Written notice of the disposition shall be served, whether in person or by mail, upon the parties to the appeal, the Zoning Administrator, and the City Clerk.
 - 2) The decision and orders of the Board shall be signed by the Chair at the next meeting of the Zoning Board of Appeals, unless the applicant requests, at the meeting when the decision is rendered, that the decision be provided at an earlier date, in which case the decision shall be signed and presented to the applicant

within ten (10) business days after the meeting at which the decision is rendered, or by a date requested by the applicant, whichever occurs later.

- b) **Effective Date** - The decision and orders of the Board of Appeals shall become effective upon the recording and signing by the Chair (or, in the absence of the Chair, the Vice Chair) of the official record of the appeal, unless the Board shall find immediate effect is necessary to preserve property or personal rights and shall so certify on the record.
[Ordinance 248, 1/12/08]
- c) **Copy of Official Record** - A copy of the official record of the appeal shall be made available to the parties to any appeal upon request and after payment of a reasonable fee, as set by the City Council, sufficient to recover the costs of duplicating this material.
- d) **Construction Timeframe** - If the Board of Appeals grants a variance to the appellant, the variance shall be exercised (construction commenced and actively continued) within one year from the date of the approval action, unless more time is specifically granted by the Board of Appeals. Failure to exercise the variance within the time frame as specified above shall cause the variance approval to be terminated.
- e) **Reapplication** – Following denial of any variance, no request for the same variance on the same property may be requested for a period of one (1) year, unless the Zoning Board of Appeals finds that new evidence can be provided or changes have occurred that could lead to a different result. [Ordinance No. 265, 10/4/2010]

Section 11.150 Stay of Proceedings

An appeal to the Board of Appeals shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Appeals after notice of appeal shall have been filed that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In such a case, proceedings shall not be stayed otherwise than by a restraining order which may, on due cause shown, be granted by the Board of Appeals or by the Circuit Court on application, after notice to the Zoning Administrator.

Section 11.160 Rehearing and Appeal of Decision to Circuit Court

The decision of the Board of Appeals shall be final, provided that the Board may, on its own motion or at the request of any interested party, at any time subsequent to a decision on an appeal, grant a rehearing, subject to Section 11.140 e), above. In such a case, notice of the rehearing shall be made according to the process for an original hearing and the provisions of this Ordinance and shall be treated as a new hearing. Any person having an interest affected by a final decision on the appeal shall have the right of appeal to the Circuit Court as provided by the Zoning Act. [Ordinance No. 265, 10/4/2010]