

## ARTICLE XIII: ZONING BOARD OF APPEALS

### Section 1301 Creation and Membership

- A. The **Zoning Board of Appeals** is established in accordance with Act 207 of 1921, as amended. The Board shall consist of five regular members, each appointed by the City Commission: two members shall be members of the **Planning Commission**, one member may be a member of the City Commission, and the remaining members shall be residents of the City of Munising. The term for **Planning Commission** and City Commission members shall be limited to the time serving as a member of the respective board.
- B. The term of office of the first members appointed shall be 1, 2, and 3 years respectively, so as nearly as possible to provide for the appointment of an equal number of members each year. After the initial appointments, each member shall hold office for a 3- year term.
- C. The City Commission may appoint not more than two alternate members to the **Zoning Board of Appeals** for the same term as regular members of the **Zoning Board of Appeals**. The alternate may be called to serve in the absence of a regular member if a regular member is absent from or will be unable to attend. An alternate member will also be called to serve as a regular member for the purpose of reaching a decision on a case in which a regular member has abstained for reasons of conflict of interest; the alternate member shall serve in the case until a final decision is made. When called to serve on the **Zoning Board of Appeals**, the alternate member has the same voting rights as a regular member of the **Zoning Board of Appeals**.

### Section 1302 Procedures

- A. The **Zoning Board of Appeals** shall adopt rules and regulations to govern its procedures. The **Zoning Board of Appeals** shall appoint one of its members as Chairperson.
- B. The concurring vote of 2/3 of the members of the **Zoning Board of Appeals** shall be necessary to revise any order, requirements, decision or determination of the **Zoning Administrator** or to decide in favor of an applicant on any matter upon which they are required to pass under this Ordinance or to effect any variation in this Ordinance.
- C. The concurring vote of 2/3 of the members of the **Zoning Board of Appeals** shall be necessary to grant a **variance** from **uses** of land permitted in the Ordinance.
- D. Meetings of the **Zoning Board of Appeals** shall be held at the call of the Chairperson and at such times its rules of procedure may specify. Minutes shall be kept of each meeting and the Board shall record into the minutes all findings, conditions, facts and other relevant factors, including the vote of each member upon any question or if absent or failing to vote indicating such fact, and all of its official actions. All meetings and

records shall be open to the public. All minutes shall be filed in the office of the City Clerk.

- E. The **Zoning Board of Appeals** shall fix a reasonable time and date for a hearing. The Board shall give due notice of the hearing by regular mail to the parties of interest and to owners of adjacent property in accordance with the provisions of Section 1103. The **Zoning Board of Appeals** shall decide the appeal within a reasonable time.

#### Section 1303 Duties and Powers

- A. The **Zoning Board of Appeals** shall perform its duties and exercise its powers as provided in Act 207 of 1921, as amended, so that the objectives of this Ordinance shall be attained, the public health, safety, and welfare secured, and substantial justice done.
- B. The **Zoning Board of Appeals** shall hear and decide only those matters which it is specifically authorized to hear and decide as provided, including administrative review; interpretation of the Zoning Ordinance, including the zoning map; consideration of requests for **variances**, and appeals of the granting or denial of **Conditional Use Permits**.
- C. The **Zoning Board of Appeals** shall have the power to:
  - 1. Interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance;
  - 2. Determine the precise location of the boundary lines between zoning **districts** when there is dissatisfaction with a decision made by the **Zoning Administrator**;
  - 3. Determine the **parking space** requirements of any **use** not specifically mentioned either by classifying it with one of the groups listed in Section 416 or by an analysis of the specific needs;
  - 4. Determine if a **use** is similar to an expressly permitted (either by right or conditionally) **use** within a specific **district**.
- 1. Grant **variances** in accordance with the provisions of Section 1304.
- 2. Hear and decide appeals from and review any orders, requirements, decision or determination of the **Zoning Administrator**.
- 3. Vary or modify any of the rules or provisions of this Ordinance, with the exception of **Planned Unit Development** and Open Space Preservation.

#### Section 1304 Variances

- A. The **Zoning Board of Appeals** is authorized, upon appeal in specific cases, to grant **variances** from the terms of this Ordinance that will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions of this Ordinance would, with non-use dimensional **variance**, result in practical difficulties to the applicant and, with respect to a **use variance**, would result in unnecessary hardship to the applicant.
- B. A non use variance shall not be granted unless the **Zoning Board of Appeals** finds:
1. That the **use** to be authorized by the **variance** will not alter the essential character of the neighborhood,
  2. The dimensional zoning requirements cannot be physically met by an existing **lot** due to its shape or natural characteristics,
  3. The physical hardship is unique and is not shared by neighboring properties in the same **district**, and,
  4. That the special conditions and circumstances do not result from actions of the applicant.
- C. A **use variance** shall not be granted unless the **Zoning Board of Appeals** finds:
1. That unique conditions and circumstances exist which are peculiar to the land, **structure**, or **building** involved, and which are not applicable to other lands, structures, or **buildings** in the same **district**,
  2. That the land cannot reasonably be put to a conforming **use**,
  3. That the unique conditions and circumstances do not result from actions of the applicant, and,
  4. That the **use** to be authorized by the **variance** will not alter the essential character of the neighborhood.
- D. The public hearing shall be held allowing any party the opportunity to appear in person, or by a duly authorized agent or attorney. At the public hearing the Board of Appeals shall make a finding that the reasons set forth in the application justify the granting of the **variance** and shall make a finding that the granting of the **variance** will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- E. In granting any **variance**, the Board of Appeals shall be guided by the Administrative Standards in Section 1102. The Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and

safeguards, when made a part of the terms under which the **variance** is granted, shall be deemed a violation of this Ordinance and punishable under Section 1404.

#### Section 1305 Appeals

1. Appeals concerning interpretation of the administration of this Ordinance or for the granting or denial of a **Conditional Use Permit** shall be made by filing a notice of appeal specifying the grounds thereof with the **Zoning Administrator** within a period of 30 days from the occurrence of the contested action. The **Zoning Administrator** shall transmit to the **Zoning Board of Appeals** copies of all papers constituting the record upon which the action appealed was based upon.
2. A deposit fee shall be paid to the City at the time of filing the notice of appeal. The deposit and the appeal fee shall be established by the City Commission.
3. Any party or parties may appear at the hearing in person or by agent or attorney.
4. The **Zoning Board of Appeals** may reverse, affirm or modify an order, requirement, decision or determination based on an appeal made by a the **Zoning Administrator** and the **Planning Commission**. All actions taken by the **Zoning Board of Appeals** must be in conformance with this Ordinance.
5. The **Zoning Board of Appeals** shall decide upon all matters within a reasonable time. The decision of the Board shall be in the form of a resolution containing a full record of its findings and determinations in each case.
6. An appeal shall stay all proceedings in furtherance of the action appealed, unless the **Zoning Administrator** certifies to the Board, that a stay would in his/her opinion, cause an imminent peril to life or property, in which case the proceedings should not be stayed, other than by a restraining order granted by the courts.

#### Section 1306 Procedure on Matters of Appeal

- A. All questions concerning application of the provisions of this Ordinance shall first be presented to the **Zoning Administrator**. Such questions shall be presented to the **Zoning Board of Appeals** only on appeal from the decisions of the **Zoning Administrator**. Recourse from decisions of the **Zoning Board of Appeals** shall be to the Circuit Court of Alger County, as provided by law.