

ARTICLE 23 ZONING BOARD OF APPEALS

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Section 23.05 Purpose.

In order that the objectives of this Ordinance may be fully and equitably achieved, that a means shall be provided for the competent interpretation of the Ordinance, that adequate but controlled flexibility be provided in the application of this Ordinance, that the health, safety, and welfare of the public is secured, and that justice be done, there is hereby established a Zoning Board of Appeals.

Section 23.10 Creation; Membership; Terms of Office.

There is hereby established in and for the Village of Mattawan, a Zoning Board of Appeals, which shall perform its duties and exercise its powers as provided in Section 5 of Act 207 of the Public Acts of 1921, as amended (MCLA 125.585), in such a way that the objectives of this Ordinance shall be observed, public safety secured and substantial justice done.

The Village Council shall serve as the Zoning Board of Appeals and shall consist of these individuals then serving on the Village Council and the terms of the members of the Board of Zoning Appeals shall coincide with their terms as Council members. The Village President shall serve as the Chairperson, the Village President Pro-Tem shall serve as the Vice-Chairperson, and the Village Clerk shall serve as the Secretary of the Zoning Board of Appeals.

Section 23.15 Legal Counsel.

The Village Attorney or his or her representative shall act as legal counsel for the Board and, subject to prior approval of the Village Council, shall be present at meetings of the Board upon request.

Section 23.20 Rules of Procedure.

- A. Hearings shall be public and minutes, including action taken by the members, shall be kept for public record by its designated Secretary, and submitted to the Village Clerk for filing.
- B. A quorum will consist of a majority of members present.
- C. A two-thirds (2/3) majority of the members present affirmative vote shall be required to reverse any order, requirement, decision, or determination of any administrative official in the use of this Ordinance and to grant any variances from uses of land which may be permitted by this Ordinance.
- D. Records and minutes shall be recorded of all proceedings which shall contain evidence and data relevant to every case considered together with the votes of the members and the final disposition of such case. The grounds of every determination shall be stated. Such minutes shall accompany and be attached to the standard forms required to persons appealing as part of the Zoning Board of Appeals= permanent records.

Section 23.25 Appeals.

- A. An appeal may be taken to the Zoning Board of Appeals by any person, officer, department, board or bureau affected by a decision of the Village concerning this Ordinance. Such appeal shall be taken within thirty (30) days from the decision by filing with the Zoning Official and with the Board a notice of appeal specifying the grounds thereof. The Zoning Official shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.

- B. The Board shall select a reasonable time and place for the hearing of the appeal, shall give due notice thereof to the parties, and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney.
- C. The Board, in conducting any public hearing, shall fix a reasonable time for the hearing of the appeal and shall give due notice to the parties concerned, including all owners of record of property and occupants of single and two-family dwellings thereof, if not the owner of record, within three hundred (300) feet of the premises in question. For structures containing more than four (4) dwelling units owned or leased by different individuals, partnerships, businesses, or organizations, notice shall be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.

Such notice shall be delivered at least five (5) days before the date set for the hearing. The board shall decide the appeal within a reasonable period of time.

Section 23.30 General Powers and Duties.

The Board shall have the specific powers and duties as set forth in this Article, all jurisdiction and powers prescribed in other chapters of this Ordinance or the Code of Ordinances, and all jurisdiction and powers granted by Act 207 of the Public Acts of 1921, as amended (MCLA 125.581 et seq.) The power or authority to alter or change this Ordinance or the Zoning Map remains reserved to the Village Council in the manner provided by law.

Section 23.35 Administrative Review.

The Zoning Board of Appeals may hear and decide appeals when it is alleged by the appellant that there is an error of law in any order, requirement, permit, decision, determination, or refusal made by any administrative official in carrying out or enforcing this Ordinance.

Section 23.40 Interpretation of District Boundaries.

The Zoning Board of Appeals shall interpret the official Zoning Map of the Village of Mattawan, including the interpretation of the specific locations of zoning district boundaries when in doubt.

Section 23.45 Variances.

- A. The Zoning Board of Appeals may authorize, upon an appeal, a variance from the strict application of any provision of this Ordinance, where, by reason of exceptional irregularity, narrowness, shallowness, shape, or area of a specific piece of property at the effective date of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of this Ordinance would result in peculiar or exceptional practical difficulties to or unnecessary undue hardship upon the owner of such property.
- B. In hearing and deciding appeals for variances, the Board shall adhere to the following criteria in determining whether or not practical difficulties and/or unnecessary hardships exist:
1. That if the property owner complies with this Ordinance, he or she can secure no reasonable return from or make no reasonable use of his or her property;
 2. That the hardship results from the application of this Ordinance to his or her property, rather than from some other factor;
 3. That the hardship of which he or she complains is suffered merely by his or her property directly and not by others;
 4. That the hardship is not the result of his or her own actions; and
 5. That the hardship is peculiar to the property of the applicant.

The Board shall grant no variance, if it finds an applicant does not meet all of the above listed criteria for determining whether or not a practical difficulty and/or unnecessary hardship exists.

Section 23.50 Standards for Judging Appeals and Variances.

In consideration of all appeals and proposed variations of this Ordinance, the Zoning Board of Appeals shall, before making any variation from this Ordinance, in a specific case, first determine that the proposed variation affirmatively meets all of the following general standards:

- A. A practical difficulty and/or unnecessary hardship exists according to the standards of this Article.
- B. The proposed variation involves exceptional circumstances not found in other areas of the same zoning district.
- C. The proposed variation will be in harmony with the general purposes and intent of this Ordinance.
- D. The proposed variation will not in any respect impair the public health, safety, comfort, or welfare of the inhabitants of the Village.
- E. The proposed use will be of such location, size, and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood.
- F. The proposed use will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the distance involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing child-vehicle contact.

- G. The location, size, intensity, site layout and periods of operation of such proposed use will be designed to eliminate any possible nuisances emanating therefrom, which nuisance might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke, or lights.
- H. The location and height of buildings or structures and the location, nature, and height of walls and fences will be such that the proposed use will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.

Section 23.55 Conditions of Appeals and Variances.

- A. The Zoning Board of Appeals, in acting favorably on any appeal in connection with a request for a variance may attach any conditions to its approval which it finds necessary to accomplish the reasonable application of the standards set forth in this Article. In addition, the Board may require some form of guarantee that the conditions will be adhered to.
- B. In exercising the powers described in this chapter, the Board may reverse or affirm, wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made.

Section 23.60 Effective Period of Orders.

No order of the Zoning Board of Appeals permitting the erection or alteration of a building, an open air land use, or a parking lot shall be valid for longer than twelve (12) months, unless such use is established within such period or a permit for such erection or alteration is obtained within such period and such erection or alteration is commenced and proceeds to a completion in accordance with the terms of the permit.

Section 23.65 Appeals to Circuit Court.

The decision of the Zoning Board of Appeals shall be final. However, a person having an interest affected by this Ordinance may appeal such decision to the Circuit Court.

Section 23.70 Stay of Proceedings.

An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Official certifies to the Zoning Board of Appeals after the notice of the appeal shall have been filed with him that, for reasons of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceeding shall not be stayed otherwise than by a restraining order, which may be granted by the Zoning Board of Appeals or by Circuit Court, upon application.

Section 23.75 Fees.

The Village Council, may from time to time, prescribe and amend, a reasonable schedule of fees to be charged to the applicants for appeals to the Zoning Board of Appeals. At the time the notice of appeal is filed, said fee shall be paid to the Village.

