

CITY OF IONIA
Ordinance No. 554

AN ORDINANCE TO AMEND CHAPTER 1244 – BOARD OF ZONING APPEALS OF TITLE SIX – ZONING OF PART TWELVE – PLANNING AND ZONING CODE OF SAID CODIFIED ORDINANCES OF THE CITY OF IONIA

THE CITY OF IONIA HEREBY ORDAINS:

That the following Chapter 1244, entitled Board of Zoning Appeals of Title Six – Zoning of Part Twelve – Planning and Zoning Code shall be amended and shall read as follows:

PART TWELVE – PLANNING AND ZONING CODE
Title Six – Zoning

Chapter 1244 – Board of Zoning Appeals

1244.01 CREATION; COMPOSITION AND MEMBERSHIP; TERMS OF OFFICE; OFFICERS; REMOVAL; COMPENSATION; VACANCIES; QUORUM.

(a) Creation. There is hereby established a Board of Zoning Appeals, which shall perform its duties and exercise its powers as provided in Section 601 Act 110 of the Public Acts of 2006, the Michigan Zoning Enabling Act, and in such a way that the objection of this chapter shall be observed, public safety secured, and substantial justice done.

(b) Composition and Membership. The Board shall consist of five members and two alternate members appointed by the Mayor and confirmed by the City Council. One member shall be a member of the Planning Commission and one member shall be a member of the City Council. The remaining three members and two alternates shall be selected from the electors of the City. The members selected shall be representative of the population distribution of the various interests present in the City. An alternate member may be called as specified in the zoning ordinance to serve as a member of the zoning board of appeals in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. An alternate member serving on the zoning board of appeals has the same voting rights as a regular member.

(c) Terms of Office. The terms of office for members and alternate members shall be for three years, except for the members serving because of their membership on the Planning Commission or the City Council, whose terms shall be limited to the time they are members of those bodies.

(d) Officers. At its first meeting of each calendar year, the Board shall elect its own Chairperson, Vice Chairperson and Secretary. The Board member who is also a member of the City Council and alternate board members shall not be permitted to serve as Chairperson.

(e) Removal. A member of the Board may be removed by the City Council for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. 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.

(f) Compensation. Members of the Board shall serve without compensation but shall be entitled to reimbursement for reasonable expenses actually incurred in the discharge of duties if funds are appropriated for such purpose.

(g) Vacancies. A successor shall be appointed not more than one month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.

(h) Quorum. The Board shall not conduct business unless a majority of the members of the Board are present. Three members shall constitute a quorum for the conduct of its business.

(i) Planning Commission/City Council Representative - Voting. A member of the Zoning Board of Appeals who is also a member of the Planning Commission or the City Council shall not participate in the public hearing or vote on any matter that the member may have previously voted on as a member of the Planning Commission or the City Council. The member may consider and vote on other unrelated matters involving the same property.

1244.02 MEETINGS.

All meetings of the Board of Zoning Appeals shall be held at the call of the Chairperson and at such times as such Board may determine. All hearings conducted by the said Board shall be open to the public. The City Clerk, or his or her representatives, shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall also keep records of its hearings and other official action. The Board shall have the power to subpoena and require the attendance of witnesses, administer oaths and compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it.

1244.03 APPEALS.

An appeal may be taken to the Board of Zoning Appeals by any person, firm or corporation, or by any officer, department, board or bureau affected by a decision of the Community Development Director. Such appeal shall be taken within such time as shall be prescribed by the Board of Zoning Appeals by general rule, by filing with the Director and with the Board a notice of appeal, specifying the grounds thereof. The Director shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Director certifies to the Board, after notice of appeal has been filed with him or her, that by reason of acts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed, otherwise than by a restraining order, which may be granted by a court of record.

The Board shall select a reasonable time and place for the hearing of the appeal and 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.

1244.04 FEES.

The City Council may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the Board of Zoning Appeals. At the time the notice for appeal is filed, said fee shall be paid to the City of Ionia, a municipal corporation, and submitted to the City Treasurer or said City Treasurer's office to the credit of the General Revenue Fund of the City of Ionia.

1244.05 JURISDICTION.

The Board of Zoning Appeals shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The Board of Zoning Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this Zoning Code, but does have power to act on those matters where this chapter provides for an administrative review, interpretation, exception or special approval permit, and to authorize a variance, as defined in this section and the laws of the State of Michigan. Said powers include:

(a) Administrative Review. To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Community Development Director or any other administrative official in carrying out or enforcing any provisions of this Zoning Code.

(b) Variances. To authorize, upon an appeal, a variance from the strict application of the provisions of this Zoning Code where, by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this Zoning Code, or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon, the owner of such property, provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Zoning Code. In granting a variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this Zoning Code. In granting a variance, the Board shall state the grounds upon which it justifies the granting of the variance.

(c) Exceptions and Special Approvals. To hear and decide in accordance with the provisions of this Zoning Code, requests for exceptions, for interpretations of the Zoning Map, and for decisions on special approval situations on which this Zoning Code specifically authorizes the Board to pass. Any exception or special approval shall be subject to such conditions as the Board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this Zoning Code, including the following:

(1) Interpret the provisions of this Zoning Code in such a way as to carry out the intent and purpose of the plan, as shown upon the Zoning Map fixing the use districts, accompanying and made part of this Zoning Code, where street layout actually on the ground varies from the street layout as shown on the Map aforesaid.

(2) Permit the erection and use of a building or use of premises for public utility purposes, upon recommendation of the Planning Commission.

(3) Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.

(4) Permit such modification of the height and area regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape, or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification.

(5) Permit temporary buildings and uses for periods not to exceed one year in undeveloped sections of the City, and for periods not to exceed six months in developed sections.

(6) Permit, upon proper application, the following character of temporary use, not otherwise permitted in any district, not to exceed twelve months, with the granting of a twelve-month extension being permissible: uses which do not require the erection of a structure or any capital improvement of a structural nature.

The Board of Zoning Appeals, in granting permits for the above temporary uses, shall do so under the following conditions:

A. 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.

B. The granting of the temporary use shall be 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.

C. All setbacks, land coverage, off-street parking, lighting and other requirements to be considered in protecting public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the City of Ionia, shall be made at the discretion of the Board of Zoning Appeals.

D. In classifying uses as not requiring capital improvement, the Board of Zoning Appeals shall determine that they are either demountable structures related to the permitted use of the land; recreation developments, such as, but not limited to, golf-driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.

E. The use shall be in harmony with the general character of the district.

F. No temporary use permit shall be granted without first giving notice to owners of adjacent property of the time and place of a public hearing to be held as further provided for in this Zoning Code. Further, the Board of Zoning Appeals shall seek the review and recommendation of the Planning Commission prior to the taking of any action.

(7) Permit modification of wall requirements only when such modification will not adversely affect or be detrimental to surrounding or adjacent development.

(8) In consideration of all appeals and all proposed variations to this Zoning Code, the Board shall, before making any variations from this Zoning Code in a specific case, first determine that the proposed variation will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase danger of fire or endanger public safety, unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Ionia. The concurring vote of a majority of the members of the zoning board of appeals is necessary to reverse an order, requirement, decision, or determination of the Community Development Director, to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance or to grant a non-use variance in the zoning ordinance. The concurring vote of four members of the Board shall be necessary to decide in favor of the applicant any use variance. Nothing herein contained shall be construed to give or grant to the Board the power of authority to alter or change this Zoning Code or the Zoning Map, such power and authority being reserved to the Mayor and the City Council of the City of Ionia, in the manner provided by law.

1244.06 ORDERS.

In exercising the above powers, the Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination appealed from 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 Community Development Director from whom the appeal is taken.

1244.07 PUBLIC NOTICE REQUIREMENTS.

The Board of Zoning Appeals shall make no recommendation except in a specific case and after a public hearing conducted by the Board. The public hearing shall comply with the Michigan Zoning Enabling Act, PA 110 of 2006 as amended and the other provisions of this section with regard to public notification.

(a) Responsibility for Public Notice. The City Clerk, or his or her designee, shall be responsible for preparing the content of the public notice, having it published and mailed or delivered as provided in this section.

(b) Notice Requirements. Notice of a public hearing for an administrative review, variance, exceptions and special approvals shall be given not less than fifteen days before the date of the public hearing. The notice shall be given as follows:

(1) Newspaper notice. The notice shall be published in a newspaper that circulates in the City.

(2) Mail and personal notice. The notice shall be sent by first class mail or personal delivery to:

A. The owner of property for which approval is being considered, and the applicant, if different than the owner of the property.

B. Except for rezoning requests that are proposed for eleven (11) or more adjacent parcels, the notice shall be sent to all persons to whom property is assessed within three hundred (300) feet of the boundary of the property subject to the request, regardless of

whether the property or occupant is located within the municipal boundaries of the City. If the name of the occupant is not known, the term "occupant" may be used in making notification. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses or organizations, notice may 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. In structures containing four (4) or fewer dwelling units, only one (1) occupant of each unit must be given notice of the public hearing.

C. All neighborhood organizations, public utility companies, airports, railroads, and other persons, which have requested to receive notice pursuant to this section.

(c) Record of Mailing. The City Clerk, or his or her designee, shall prepare an affidavit of mailing which shall include those to whom the notice was mailed and the date of mailing.

(d) Content of Notice. The public notice shall:

(1) Describe the nature of the request.

(2) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the subject property. Street addresses do not need to be created and listed if no such addresses currently exist for the property. If there are no street addresses, other means of identified may be used, such as a tax parcel identification number, identifying the nearest cross streets, or including a map showing the location of the property.

(3) Indicate the date, time and place of the public hearing.

(4) Include a statement describing when and where written comments will be received concerning the request and a statement that the public may appear at the public hearing in person or by counsel.

(e) Registration to Receive Notice by Mail. Any neighborhood organization, public utility company, railroad or any other person may register with the City Clerk to receive written notice of any public hearing held pursuant to Part Twelve, Planning and Zoning, of the City Code.

(f) For a request seeking an interpretation of Title Six - Zoning of the Codified Ordinances of Ionia or an appeal of an administrative decision, a notice of a public hearing shall be published in a newspaper of general circulation within the City and shall be sent to the person seeking the interpretation or making the appeal not less than fifteen (15) days before the public hearing.

In addition to the newspaper notice required above, if the request for an interpretation or appeal of an administrative decision involves a specific parcel of property, written notice stating the nature of the interpretation request and notice of the public hearing on the interpretation request shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question and to the occupants of all structures within three hundred (300) feet of the boundary of the property in question.

1244.08 EFFECTIVE PERIOD OF BOARD ORDERS.

No order of the Board of Zoning Appeals permitting the erection of a building shall be valid for a period longer than one 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 terms of such permit.

No order of the Board permitting a use of a building or premises shall be valid for a period longer than one year unless such use is established within such period, provided, however, that 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 said 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.

1244.09 APPEAL OF BOARD OF ZONING APPEALS DECISION.

Any party aggrieved by a decision of the Board may appeal the decision to the Circuit Court for Ionia County. The Circuit Court shall review the record and decision to ensure that the decision meets the requirements of Section 606 of the Michigan Zoning Enabling Act, PA 110 of 2006. An appeal of the decision of the Board must be filed in Circuit Court within thirty (30) days after the Board issues its decision in writing signed by the Chairperson or within twenty-one (21) days after the Board approves the minutes of the decision. The records of the Board shall be made available for the Circuit Court's review.