

ARTICLE 12
ZONING BOARD OF APPEALS

There is hereby established, a Zoning Board of Appeals, separate and distinct from the Chelsea City Council. The Zoning Board of Appeals shall perform the duties and exercise the powers provided by the Michigan Zoning Enabling Act 110 of 2006, as amended, in such a way that the objectives of this ordinance shall be observed, public health and safety secured, and substantial justice done. The Zoning Board of Appeals is established as follows.

SECTION 12.01 BOARD ESTABLISHED

The City Council of Chelsea shall establish and appoint a Zoning Board of Appeals under the provisions of the Michigan Zoning Enabling Act 110 of 2006, as amended; separate and distinct from the City Council.

SECTION 12.02 MEMBERSHIP

There shall be not less than five members of the Zoning Board of Appeals, one of which may be a member of the City Planning Commission. All persons serving on this Board shall be residents of the City. The City Council may increase or decrease the Membership of the Zoning Board of Appeals, but not below five members.

SECTION 12.03 APPOINTMENTS OF MEMBERS

The City Council shall appoint the members of the Zoning Board of Appeals. Each member shall be appointed for a term of three years. The appointments of the first members shall be for terms of one, two and three years respectively, so as near as possible to provided for the appointment of an equal number of members each year. After the initial appointments, each member shall hold office for the full three-year term. The term of the Planning Commission member shall not be longer than the member's term on the Planning Commission.

SECTION 12.04 ALTERNATE MEMBER

The City Council may appoint not more than 2 alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called as specified 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

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ALTERNATE MEMBER

for the purpose of reaching a decision on a case in which a member has abstained for reasons of conflict of interest. The alternate member shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the Zoning Board of Appeals.

SECTION 12.05 GENERAL REGULATIONS

- A. Rules and Procedures** - The Zoning Board of Appeals shall adopt rules of procedure for the conduct of its meetings and implementation of its duties under the Michigan Zoning Enabling Act 110 of 2006, as amended. The Zoning Board of Appeals may adopt, amend, modify and revoke its rules from time to time. The rules of procedure shall at a minimum include those items required by the Michigan Zoning Enabling Act 110 of 2006, as amended. In the absence of adopted rules of procedure, the rules of procedure established by the Chelsea City Council in its resolution establishing the Zoning Board of Appeals, pursuant to this ordinance, shall govern, until the Zoning Board of Appeals adopts its own rules of procedure.
- B. Open Meetings Act** - All provisions of the Michigan Open Meetings Act shall apply to the proceedings of the Chelsea City Zoning Board of Appeals.
- C. Who May Take An Appeal** - An appeal may be taken by a person aggrieved by any decision of any officer, bureau, board or commission of the City of Chelsea which arises in the administration of the Chelsea City Zoning Ordinance, or by any officer, department, board or bureau of the City with respect to any decision made under the Chelsea City Zoning Ordinance subject to the limitations of section 12.11 following. Provided, however, that in accordance with the Michigan Zoning Enabling Act, 110 of 2006 as amended there shall be no appeal of a decision approving or denying a PUD site plan and special use permit applications.
- D. Time for Appeal, Filing, Grounds** - An appeal shall be taken to the Zoning Board of Appeals within 21 days from the date of the order, requirement, decision or determination which is the subject of the appeal, by filing with the Planning and Zoning Administrator, officer or the body from whom the appeal is taken and with the Zoning Board of Appeals of a Notice of

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GENERAL REGULATIONS

Appeals specifying the grounds for the appeal. The Planning and Zoning Administrator, officer or body from whom the appeal is taken shall immediately transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed was taken.

- E. Stay of Proceedings** - An appeal to the Zoning Board of Appeals stays all proceedings in the furtherance of the action appealed. However, the stay may be vacated if the body or officer from whom the appeal is taken certifies to the Zoning Board of Appeals that a stay would cause imminent peril to life or property. The certification shall be made after the notice of appeal is filed and shall state all reasons for vacating the stay. In such cases proceedings may be stayed by a restraining order issued by the Zoning Board of Appeals or the Circuit Court.
- F. Public Hearing Notice** - The Zoning Board of Appeals shall hold a public hearing on each action requested of the Zoning Board of Appeals. The Board shall set a reasonable time for each hearing per Section 2 of Appendix A.
- G. Disposition of Appeal** - The Zoning Board of Appeals shall decide the appeal within a reasonable time, but not more than 60 days after the date the appeal was filed, unless an extension of time is requested by a majority of the members of the Board. The Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and shall make an order, requirement, 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 officer or body from whom the appeal is taken. If there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the Ordinance, the Zoning Board of Appeals may, in passing upon appeals, vary or modify any of its rules or provisions relating to the construction, or structural changes in equipment, or alteration of buildings or structures, so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done.

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- H. Conditions on Affirmative Decision** - The Zoning Board of Appeals may impose conditions upon an affirmative decision on an appeal. The conditions may include conditions necessary to insure that public services and facilities affected by the proposed use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall do all of the following:
1. 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 or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and community as a whole.
 2. Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
 3. Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards in the Chelsea City Zoning Ordinance for the land use or the activity under consideration; and be necessary to insure compliance with those standards.
- I. Decision of Board** - The concurring vote of a majority of the members of the Board shall be necessary to reverse an order, requirement, decision or determination of the Planning and Zoning Administrator, and administrative official or an administrative body, or to decide in favor of the applicant on a matter upon which the Zoning Board of Appeals is required to pass under the Chelsea City Zoning Ordinance, or to effect a variation in the Ordinance.
- J. Meetings** - A majority of the members of the Zoning Board of Appeals shall comprise a quorum for the purpose of conducting a meeting of the Board.

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Meetings shall be held once a month on a regular schedule.

- K. Form of Decision, Effect and Time** - The Zoning Board of Appeals' decision on such appeals shall be in the form of a resolution containing a full statement of the findings of fact, conclusions and the determination of the Board in each particular case. The resolution, in written form, shall be approved by the Board and filed with the minutes of the Board. The date of filing of the approved written resolution shall be the effective date of the decision. Further appeal from the decision of the Board to the Washtenaw County Circuit Court shall be in accordance with the Michigan Zoning Enabling Act 110 of 2006, as amended and Article 12 of the Chelsea City Zoning Ordinance.
- L. Fees on Appeals** - Appeal fees shall be established from time to time by the Chelsea City Council sufficient to cover all costs incurred by the City in the processing of any appeal.
- M. Records** - Minutes of all meetings shall be recorded and shall contain the grounds of every determination made by the Zoning Board of Appeals including all evidence and data considered, and all findings of fact and conclusions drawn by the Board for every case, together with the votes of the members and final disposition of each case. Such minutes shall be filed with the City Clerk and shall be available to the public.

The Record of Proceedings shall contain the following information when applicable:

1. The application for an appeal, variance or interpretation.
2. Any reports, plans, surveys, or photos.
3. Letter from the Planning and Zoning Administrator, officer or body granting or denying the application or referring it to the Zoning Board of Appeals and all other relevant records related to the case.
4. Notice of Public Hearing to affected parties in the newspaper.

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5. Affidavit of publication of Notice of Hearing.
6. A copy of the notice to property owners within 300 feet of the subject parcel as well as a list of all property owners who were notified.
7. Record of testimony heard and evidence presented in transcribed or electronically taped form.
8. A copy of zoning ordinance article(s) and section(s) in question.
9. Briefs, correspondence or other communication made to the Zoning Board of Appeals.
10. Statement of facts found by the Board, of its own knowledge, regarding the request including any information gained from personal inspection.
11. Findings based on standards set forth in this Article.
12. Decision of the Board.
13. A copy of any other correspondence to the appellant or other parties regarding the request.

N. Counsel to the Zoning Board of Appeals - Legal counsel may be retained by the Zoning Board of Appeals for the purpose deemed necessary by the Board provided that such appointment or retainer shall be approved in advance by the City Council.

SECTION 12.06 AUTHORITY OF ZONING BOARD OF APPEALS

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Planning and Zoning Administrator, any administrative official or administrative body charged with enforcement of the Chelsea City Zoning Ordinance. Appeals include all requests for variances or interpretation of the ordinances.

SECTION 12.07 ADMINISTRATIVE REVIEW

A. The Zoning Board of Appeals shall also hear and decide appeals where it is alleged by the applicant there is

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ADMINISTRATIVE REVIEW

an error in any order, requirement, permit, decision, or refusal made by the Planning and Zoning Administrator or any other administrative official in carrying out or enforcing any provisions of this Ordinance including interpretation of the Zoning Map.

- B. All questions concerning administrative decisions under this ordinance shall be presented to the Zoning Board of Appeals only on appeal from the decisions of the applicable City official or agency.
- C. The appellant shall submit a clear description of the order, requirement, decision, or determination for which the appeal is made and the grounds of the appeal. The appellant may be required by the Zoning Board of Appeals to submit additional information to clarify the appeal.
- D. The Planning and Zoning Administrator shall transmit to the Zoning Board of Appeals, copies of all papers constituting the record upon which the action appeal was taken.
- E. The Zoning Board of Appeals may, so long as such action is in conformity with this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed.

SECTION 12.08 VARIANCES

- A. **Authority** - The Board of Appeals may authorize, upon an appeal, a variance from the strict applications of the provisions of this ordinance where by reason of exceptional narrowness, shallowness, shape, or contour of a specific tract of land at the time of enactment of this Ordinance or by reason of 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. A variance shall not be granted to permit a use that is not permitted in a zoning district by the Zoning Ordinance.
- B. **Information Required** - An application for a variance shall provide the following information:

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1. Legal description, address, and tax ID parcel number of the property.
2. An accurate, scaled drawing of the property, showing all property lines, dimensions, and bearings or angles, correlated with the legal description; all existing and proposed structures and uses on the property; and dimensions of structures and their dimensioned locations; lot area and all calculations necessary to show compliance and/or non-compliance with the regulations of this ordinance; location of all adjacent buildings, driveways, parking areas and structure.
3. Name and address of the applicant, property owner(s), and the interest of the applicant in the property.
4. A list and description of each section of the zoning ordinance for which the variance is requested.

C. Standards - A variance from the terms of this Ordinance shall not be granted by the Zoning Board of Appeals unless and until:

1. A written application for a variance is submitted, demonstrating the following:
 - a. That special 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.
 - b. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
 - c. That the special conditions and circumstances do not result from the actions of the applicant.

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- d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
 - e. That no nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- 2. The Zoning Board of Appeals shall determine that the requirements of the Ordinance have been met by the applicant for a variance.
 - 3. The Zoning Board of Appeals shall determine that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible a reasonable use of the land, building or structure.
 - 4. The Zoning Board of Appeals shall determine 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.
- D. Conditions** - In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations 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.
- E. Voiding of Variance** - Each variance granted under the provisions of this ordinance shall become null and void unless:
- 1. The construction authorized by such variance or permit has been commenced within 180 days after the granting of such variance and pursued diligently to completion; or,

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VARIANCES

2. The occupancy of land or buildings authorized by such variance has taken place within 180 days after the granting of such variance.

F. Re-application - No application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall be resubmitted for a period of 365 days from such denial, except on grounds of new evidence or proof of changed conditions found by the Zoning Board of Appeals to be valid.

SECTION 12.09 EXPANSION AND SUBSTITUTION OF NONCONFORMITIES

The Zoning Board of Appeals shall determine whether a nonconforming building or structure may be expanded, except as otherwise provided in Article 10, and whether a nonconforming use may be substituted for another nonconforming use.

SECTION 12.10 SITE PLAN REVIEW

If an appeal to the Zoning Board of Appeals involves a lot, structure or a use for which site plan approval is required by this ordinance, the applicant or appellant shall first apply for preliminary site plan approval as set forth in Article 9 herein. The Planning Commission shall review the site plan and shall determine the layout and other features required to obtain approval of the site plan. The Planning Commission shall then transmit a copy of the site plan and the Commission's findings thereon to the Zoning Board of Appeals. The Board shall, upon deciding on the appeal return the plan and its decision to the Planning Commission for Commission action on the preliminary site plan.

SECTION 12.11 SPECIAL USES AND PUD'S

The Zoning Board of Appeals shall not have authority to reverse or modify a Planning Commission decision to approve or deny a special use permit or the City Council's decision to approve or deny a planned unit development, nor waive or modify any conditions of approval. The Zoning Board of Appeals shall not have authority to grant variances to special uses or planned unit development regulations or standards, or to any site plan approved as part of a special use permit or a PUD.

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SECTION 12.12 AUTOMATIC STAY OF BOARD OF APPEALS DECISION; TIME FOR APPEAL TO COURT; PROVISION FOR SECURITY

No zoning permit, building permit or certificate of occupancy shall be issued for 21 days after the date of filing proof of an appeal. Within said 21 days any interested party may file an appeal or complaint with the Washtenaw County Circuit Court, or any other Court of competent jurisdiction. Unless stayed by Order of a Court, an applicant shall be entitled to receive permits and certificates. During said 21 day appeal period, the applicant may receive a zoning permit, building permit and or certificate of occupancy pursuant to the applicant's request notwithstanding the provisions of this section, if the applicant submits to the Zoning Board of Appeals, the applicant's written agreement and undertaking to indemnify the Board, the City of Chelsea, its officers, officials and employees from any and all liability for claims, damages costs including attorney fees and costs of litigation with respect to any litigation threatened or asserted concerning the decision of the Zoning Board of Appeals, together with sureties, individual or corporate and amount of security to be determined by the Board and in a form approved by the City Attorney. If the applicant requests a waiver of the 21 day stay as part of the applicants appeal to the Board of Appeals, the Board, in its resolution, shall establish the amount of security to be given. Upon the filing of the security established by the Board, the requested zoning permit, building permit or certificate of occupancy, as the case may be, shall be issued. In no case shall the amount of security be less than \$5000.00 in the form of cash, irrevocable letter of credit from a commercial bank, or corporate bond. If litigation is instituted during the 21-day period, the form of security shall provide that the security shall continue until the litigation is determined by final judgment. If litigation is instituted after an amount of security has been determined, the Board shall have the right to predetermine and increase the amount of security from time to time, as it believe necessary to protect the interest of the City of Chelsea.