

## **ZONING BOARD OF APPEALS BY-LAWS**

### **Section 1: Creation and Membership**

1. There is hereby created and established a Zoning Board of Appeals, the members of which shall be the current sitting Village Council as prescribed by statutes, with all the powers and authority prescribed by law or delegated to it under specific provisions of the Port Austin Zoning Ordinance #106-04, which shall be exercised so that the objectives of said Ordinance are observed, public safety and welfare are secured, and substantial justice is done.
2. The term of each of the Zoning Board of Appeals shall coincide with their term on the Village Council
3. A member of the Zoning Board of Appeals shall disqualify himself from voting where he has a conflict of interest.
4. Each member of the Zoning Board of Appeals shall be paid a per diem which shall be established in advance each year by the Village Council.

### **Section 2: Meetings**

Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as may be determined or specified in its rules of procedure. All hearings shall comply with the Michigan Open Meetings Acts. The Zoning Board of Appeals shall adopt its own rules of procedure and keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating said fact; and shall file a copy of the minutes of its proceedings with the Village Clerk, which shall be a public record. A majority of the total membership of the Zoning Board of Appeals shall have the power to subpoena and require the attendance of witnesses, administrator oath, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it.

### **Section 3: Powers**

The Zoning Board of 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 the Village of Port Austin Zoning Ordinance, but shall have the power to act on an administrative review, interpretation, or to authorize a variance as defined in this section and laws of the State of Michigan, as follows:

1. 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 Zoning Inspector or any other administrative official in carrying out or enforcing any provisions of the Village of Port Austin Zoning Ordinance.
2. To hear and decide requests for interpretations of the Ordinance and the Zoning Map.
3. To authorize a variance from the use provisions of the Ordinance with such conditions and safeguards it may determine appropriate to ensure that the spirit of the Ordinance is achieved, public safety and welfare secured and substantial justice done. In granting a

variance, the Zoning Board of Appeals shall state the grounds upon which it justified the granting of same. No such variance of the use provision of the Ordinance shall be granted unless it appears that all the following facts and conditions exist:

- a. An application for the variance has not been made by any person for the same lot within the prior twelve (12) months.
  - b. There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which have not been caused by the applicant and which do not apply generally to other properties or class of uses in the same district.
  - c. Such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same district and vicinity.
  - d. The granting of such variance will not be materially detrimental to the public welfare or materially injurious to the value of property or improvements in the district in which the property is located.
  - e. No more than forty (40) percent of owners and occupants of property within three hundred (300) feet of the applicant's property line object to the variance in writing or in person.
  - f. Denial would cause unnecessary hardship on the applicant.
  - g. The granting of such variance will not adversely affect the purposes of objectives of the Village Master plan.
4. To authorize a variance from the area, density, bulk, height, yard or general provisions of the Ordinance, provided that the Zoning Board of Appeals determines that practical difficulty or unnecessary hardship exists with respect to the particular property. Any such variance shall be subject to such conditions as the Zoning Board of Appeals may require to preserve and promote the character of the district in question and otherwise promote the purpose of the Ordinance, and in that connection the Zoning Council of Appeals may, in its discretion:
- a. Interpret the provisions of the Ordinance in such a way as to carry out its intent as shown upon the Zoning Map fixing the use districts where street layout actually on the ground varies from the street layout as shown on the map.
  - b. Permit the modification of the automobile parking spaces or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.
  - c. Permit such modification of other 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 modifications.

#### **Section 4: Appeal**

1. An appeal may be taken to the Zoning Board of Appeals within such time as shall be prescribed by general rule. Such appeal may be taken by any aggrieved person, firm or corporation, or by any officer, department, board or bureau of the Village. The applicant shall file with the Chairman of the Zoning Board of Appeals and the Village body or official from which or whom the appeal is taken on forms to be furnished by said body or official, a notice of appeal specifying the grounds thereof.
2. The Village body or official from which or whom the appeal is taken shall forthwith transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The final decision of such appeal shall be in the form of a resolution either reversing, modifying or affirming, wholly or partly, the decision or determination appealed from.

#### **Section 5: Stay**

An Appeal shall stay all proceedings in furtherance of the action appealed from unless the Village body or official from which or whom the appeal is taken certifies to the Zoning Board of Appeals, after notice of appeal shall have been filed, that by reason of facts stated in the certificate, a stay would 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 the Zoning Board of Appeals or by the Circuit Court, on application, on notice to said body or official, and on due course shown.

#### **Section 6: Hearings**

1. The Zoning Board of Appeals shall make no decision except in a specific case and only after a public hearing at a reasonable time and place as determined by the Zoning Board of Appeals.
2. Notice of a hearing shall be given to the applicant, the owner of the lot involved, and the owners and occupants of all property within three hundred (300) feet of said lot as shown on the latest assessment roll. If the name of an occupant is not known, the term "occupant" may be used in the notice. The notice shall be mailed or personally delivered between five (5) and fifteen (15) days prior to the hearing. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses or organizations, one (1) occupant of each unit or spatial area shall receive notice. The notice shall describe the nature of the appeal, indicate the property which is the subject on the appeal, state when and where the appeal will be considered, and indicate when and where written comments will be received concerning the appeal.
3. Other notice of a hearing shall be given at such time as is provided by the statute in such case made and provided.
4. Any person may appear and testify at a hearing either in person or by an agent or attorney.

## **Section 7: Decision**

1. In consideration of all appeals and all proposed variances to the Ordinance, the Zoning Board of Appeals shall first determine that the proposed variance will not impair an adequate supply of light and/or air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or 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 Village. The concurring vote of the majority of the members of the Zoning Board of Appeals shall be necessary to reverse any other, requirement, decision or determination of the Zoning Inspector, or to decide in favor of the applicant on any matter upon which it is authorized by this Ordinance to render a decision.
2. In exercising the above powers, the Zoning Board of 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 Zoning Inspector.
3. No order of the Zoning Board of Appeals permitting the erection of a building shall be valid for a period longer than one (1) year, unless a Building Permit for such erection or alteration is obtained within such period and unless such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.
4. No order of the Zoning Board of Appeals permitting a use of a building or premises shall be valid for a period longer than one (1) year unless such use is established within such period; provided, however, that where such use 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 stated and proceeds to completion in accordance with the terms of such permit.
5. A decision and order of the Zoning Board of Appeals shall take immediate effect unless otherwise provided in the decision or order and shall be final, but may be appealed to a court of competent jurisdiction as provided by statute.