

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF ESSEXVILLE TO COMPLY WITH ACT 110 OF THE MICHIGAN PUBLIC ACTS OF 2006, AS AMENDED, TO UPDATE ADMINISTRATIVE REFERENCES WITHIN THE ORDINANCE AND TO MAKE OTHER AMENDMENTS

Ordinance No. 2009-1: The City of Essexville ordains

In accordance with Act 110, Michigan Public Acts of 2006 the Zoning Ordinance of the City of Essexville is amended as stated hereafter:

1. All references to "City Commission" found anywhere in the Zoning Ordinance shall be replaced with "City Council".
2. All references to "City Administrator" found anywhere in the Zoning Ordinance shall be replaced with "City Manager".
3. All references to "Act 207 of the Michigan Public Acts of 1921, amended" shall be replaced with "Act 110, of the Michigan Public Acts of 2006, as amended".
4. The definition of "Structure" found in Section 2.4 shall be amended to include "wind energy systems".
5. The definition of "Street – Private" found in Section 2.3 (entitled "Definitions Pertaining to Access") is replaced with the following:

"Street - Private: A privately owned and maintained, permanent, unobstructed easement which provides direct access to more than one legally described parcel and which has been approved by the City of Essexville. Legally documented easements that existed before the adoption of this ordinance do not require prior approval from the City of Essexville as set forth in Section 5.12 of this Ordinance."

6. Section 2.6 (entitled "Definitions Pertaining to Land Use") is repealed and the following enacted in its place:

"Section 2.6 Definitions Pertaining to Land Use

Agriculture: The art or science of cultivating the ground; the production of crops or livestock on a farm, excluding commercial greenhouses; the sale of nursery stock; riding stables; mink, fox and similar so-called fur farms; hog or poultry farms using garbage as a feed and processing of milk other than milk produced on the farm on which the processing is located.

Ambient: means the sound pressure level exceeded 90% of the time or less.

ANSI: means the American National Standards Institute.

Farm: A tract of land in single ownership or single operation, on which agriculture is a principal use.

Sound Pressure: An average rate at which sound energy is transmitted through a unit of area in specified direction. The pressure of the sound measured at a receiver.

Sound Pressure Level: The sound pressure mapped to a logarithmic scale and reported in decibels (dB).

Special Land Uses: Uses which are reasonably compatible with permitted uses and structures within a zoning district but which require special consideration in relation to the health, safety, convenience, and general welfare of the city's inhabitants.

Site Plan: A plan showing all salient features of a proposed development, so that it may be evaluated in order to determine whether it meets the provision of this ordinance. A site plan contains more comprehensive and detailed information about improvements proposed on the site than does a plot plan because of the more complex nature of land uses required to receive site plan approval, such as business, industrial and multiple family developments.

Use, Accessory: A subordinate use which is customarily incidental to the principal use on the same lot. In case a question arises the Board of Zoning Appeals shall rule.

Use, Principal: The primary and chief purpose for which a lot is used."

7. The definitions of "Lot Line, Side" and Lot Line, Rear" found in Section 2.7 (entitled "Definitions pertaining to Measurement of Land Use Areas and Required Open Space") are replaced with the following:

Lot Line, Side: A side lot line is any lot line that is not a front lot line or a rear lot line. A side lot line separating a lot from a street is an exterior side lot line. A side lot line separating a lot from another lot or lot is an interior side lot line.

Lot Line, Rear: A rear lot line is the lot line opposite and most distant from the front lot line. In case of an irregularly shaped lot, it shall be an imaginary line parallel to and farthest from the front lot line, not less than ten (10) feet long and wholly within the lot."

8. The following definitions shall be added to Section 2.8 (entitled "Definitions Pertaining to building use"):

Club: A group or organization created for recreational, artistic, athletic, academic, political, charitable, or other social purpose, and whose activities are not conducted for profit or material gain and do not involve merchandising, vending, or other commercial activities, except as required incidentally for the membership and purpose of the social club.

Construction Services: Any of the activities commonly referred to as construction and shall include without limiting thereby, plumbing, heating, roofing, interior remodeling, excavating."

9. The definition of "Adult Entertainment Facility" found in Section 2.8 (entitled "Definitions Pertaining to building use") is repealed and the following enacted in its place:

" Adult Entertainment Facilities:

- A. Adult Bookstore: means an establishment that has, as a substantial or significant portion of its stock in trade, sexual paraphernalia, books, periodicals, magazines, newspapers, pamphlets, pictures, photographs, motion picture films, DVDs, and/or videotapes which are distinguished or characterized by their emphasis on matter depicting, describing or relating to nudity sadomasochistic abuse or sexual conduct.

- B. Adult Motion Picture Theater: means a establishment, whether in a completely enclosed building or not, that offer, for an admission fee, membership fee, or other valuable consideration, the viewing during more than 25 percent of its operating hours of motion picture films, pictures or photographs which are distinguished or characterized by their emphasis on nudity sadomasochistic abuse or sexual conduct.
- C. Adult Theater: means an enclosed building or any portion of a building which is used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity sadomasochistic abuse by any means of display, including, without limitation, by motion picture, mechanical amusement devices, television, including videotape or closed circuit, or live performance for observation by patrons therein.
- D. Adult Personal Service Business: A business, whose activities include a person, while partially nude providing personal service for another person on a individual basis in a closed room. It includes, but is not limited to, the following activities and services: modeling studios, photographic studios, wrestling studios, individual theatrical performances, body paint studios and massage studios.
- E. Adult Cabaret: An establishment which features topless dancers, and/or bottomless dancers, partially nude or seminude dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or topless and/or bottomless and/or partially nude or seminude waitpersons or employees or any other form or nude or partially nude or seminude service or entertainment.
- F. Nudity: means uncovered or less than opaquely covered postpubertal human male or female genitals, pubic areas or buttocks.
- G. Sadomasochistic abuse: means flagellation or torture by or upon a human.
- H. Sexual Conduct: means any of the following actual or simulated acts of:
 1. Human sexual intercourse, homosexual or heterosexual;
 2. Human or animal masturbation;
 3. Bestiality;
 4. Fellatio;
 5. Cunnilingus;
 6. Human excretory functions;
 7. Sodomy; or
 8. Fondling or erotic touching of human genitals, pubic region, buttocks or breasts."

10. Paragraph F (entitled "Repair of Non-Conforming Buildings") of Section 6.2 (entitled "Non-conforming Uses") shall be amended to include the following:

"All reconstruction and restoration of properties so damaged shall be completed so as to conform to the standards of all building, plumbing, electrical, fire, and other codes and general requirements of the city ordinances existing at the time the reconstruction and restoration of the properties occur."

11. The definition “Clubs or lodges or meeting places for other organizations for commercial gain” found in Sections 8.4 and 9.4 (both entitled “Uses Permitted by Special Land Use Permit”) are replaced with the following:

"Clubs or lodges"

12. The first paragraph of Sections 7.4, 8.4, 9.4, 11.4, 12.4, 13.4, 14.4 and 14A.4 all (entitled "Uses Permitted by Special Land Use Permit") shall be amended to include the following text which shall be inserted immediately following "The following uses of land and structures may be permitted"

"after a public hearing in accord with Section 17.2C"

13. Paragraph D, Section 11.4 (entitled "Uses Permitted by Special Land Use Permit") is repealed and the following enacted in its place:

"D. Adult entertainment facilities and live entertainment of nude or semi-nude persons or sexual orientation provided the following standards are met:"

14. A new paragraph G shall be added to Section 11.4 (entitled "Uses Permitted by Special Land Use Permit") which shall read:

"Special land uses permitted and as controlled in the R-O District except planned unit developments and rooming and boarding houses."

15. Section 11-A.4 (entitled "Uses Permitted by Special Land Use Permit") is repealed and the following enacted in its place:

"Section 11-A.4 Uses Permitted by Special Land Use Permit

The following uses of land and structures may be permitted after a public hearing in accord with Section 17.2 C by issuance of a Special Land Use permit following the procedures outlined in Article 17, providing all of the applicable conditions for required setback dimensions, area, height, bulk and placement regulations an off-street parking are met and subject further to all requirements of this district:

A. Construction Services.

The following conditions shall apply:

1. All fabrication and assembly facilities shall be conducted within the confines of buildings.
2. Materials stored outside for a period longer than one-day shall be located within an enclosed area located at the rear or side of the building. The enclosed area shall not be located on any side of a building, which adjoins a public right-of-way. The enclosed area used for the outdoor storage of materials shall be constructed of a solid 8-foot high screen wall and the stored materials shall not exceed the height of the enclosure.
3. Any outside storage of materials other than licensed motor vehicles shall not exceed the height of the screening wall as provided under 2 above.
4. Required front yards of the facility shall not be fenced and shall be appropriately landscaped."

16. Paragraph A, Section 13.5 (entitled "General Use Requirements") is repealed and the following enacted in its place:

"A. Enclosed Buildings: Activities in this district shall be carried on in completely enclosed buildings with the exception of poles and towers for utility facilities. Storage may be permitted out-of-doors PROVIDED that within three hundred (300) feet of any other district said storage shall be in completely enclosed buildings.

All outdoor storage shall be effectively screened by a solid uniformly finished wall or fence with a solid entrance and exit gate, which fence or wall shall be at least four (4) feet in height, but in no case shall the fence be lower than the enclosed storage, up to a maximum height of eight (8) feet. Such storage shall be deemed to include the parking of licensed motor vehicles over one and one-half (1½) tons rated capacity."

17. The first paragraph of paragraph E, Section 14.4 (entitled "Uses Permitted by Special Land Use Permit") is repealed and the following enacted in its place:

"E. Light Industrial establishments involved in the manufacturing, processing, testing, assembling, storage and distribution of materials, goods, foodstuffs and other semi-finished or finished materials, providing the following standards are met:"

18. The titled of Article 14A (entitled "Mixed Use District") is changed to "MU Mixed Use District".

19. A new paragraph (i) shall be added to paragraph A 3 (entitled "Trees Not Permitted"), Section 14A.6 (entitled "Landscaping" which shall read "(i) Ash".

20. The title of Article 17 is changed to "SPECIAL LAND USE PERMIT REQUIREMENTS AND STANDARDS".

21. Special Land Use Categories identified in Section 17.1 (entitled "Intent and Purpose" are repealed and the following are enacted in their place:

"A. Institutional uses (17.4)

B. Clubs, lodges and meeting places for other Organizations (17.5)

C. Planned unit developments (17.6)

D. Funeral homes and mortuaries (17.7)

E. Gasoline filling stations (17.8)

F. Public parks, playgrounds, and playfields (17.9)

G. Public utility service buildings or regulator station (17.10)

H. Personal services and small retail businesses primarily serving the permitted uses. (17.13)

I. Rooming or boarding houses (17.14)

J. Temporary uses such as displays (17.17)

K. Other principal uses having the same general character as permitted principal uses (17.18)

L. Adult entertainment facilities (17.19)

M. Arcades and other places of amusements (17.20)

N. Apartment for residences within a business building (17.21)

- O. Restaurants and taverns (17.22)
 - P. Junk yards (17.23)
 - Q. Hazardous material disposal (17.24)
 - R. Marine Terminal (17.25)
 - S. Mobile home park (17.26)
 - T. Townhouses, apartments and condominiums (17.27)
 - U. Wholesale and warehouse distribution facilities (17.28)
 - W. Light industrial establishments (17.29)
 - X. Construction services (17.30)"
22. The first paragraph of paragraph C, Section 17.2 (entitled "Permit Procedures") is repealed and the following enacted in its place:
- "C. The City of Essexville Planning Commission: The application, together with all required data shall be transmitted to the Planning Commission for review. After review and study of any application and related material, the Planning Commission shall hold a public hearing after at least one (1) publication in a newspaper of general circulation in the community, not less than fifteen (15) days prior to said hearing. All property owners and residents within three hundred (300) feet of the boundary of the property in question shall receive notice by mail or personal delivery, not less than fifteen (15) days before the public hearing. If the name of the occupant is not known, the term, "occupant" may be used for the intended recipient of the notice. The notice shall:"
23. The title of Section 17.6 is changed to "Planned Unit Residential Development" .
24. Section 17.9 (entitled "Miscellaneous Special Uses") is repealed and the following sections are enacted in its place:
- " Section 17.9 Public parks, playgroups and playfields.
- A. Facilities Shall be subject to site pan review to assure compatibility with residential areas.
 - B. Any use requiring a structure shall have such structure located on the site as not to be closer than fifty (50) feet to the lot line of any adjacent residential lot.
- Section 17.10 Public utility service building or regulator stations.
- A. Such facilities shall not provide outdoor storage yards.
 - B. It shall be shown that operating requirements necessitate locating said facilities within the district in order to serve the immediate vicinity
 - C. Adequate screening of facilities shall be provided when such facilities abut residential property.

Section 17.11 Personal services and small retail business primarily serving permitted uses.

- A. Establishment or place of business shall be primarily engaged in the provision of frequent or reoccurring needed services of a personal nature. Typical uses may include, but are not limited to, beauty and nail salons, barber shops, shoe repair shops, tailor shops, Laundromats, and dry cleaners.
- B. Locations for facilities shall be such that they do not impact abutting principal uses permitted in the district.

Section 17.12 Rooming and boarding houses.

- A. Off street parking on the site for not less than two (2) cars for the permanent residents of the dwelling plus not less than one (1) on site space for each person rooming or boarding at the dwelling.
- B. All codes and ordinance of the City and State shall be complied with.

Section 17.13 Temporary uses such as displays.

- A. See Section 11.4B.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.14 Other principal uses having the same general character as the permitted principal uses.

- A. See Section 11.4C.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.15 Adult Entertainment facilities.

- A. See Section 11.4D.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.16 Arcade and other places of amusement.

- A. See Section 11.4E.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.17 Apartment for residence within a business building.

- A. See Section 11.4F.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.18 Restaurants and Taverns.

- A. See Section 12.4A.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.19 Junk Yards.

- A. See Section 12.4B.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.20 Hazardous Material disposed.

- A. See Section 13.4A.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.21 Marine Terminal.

- A. See Section 13.4B.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.22 Mobile Home Parks.

- A. See Section 14.4B.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.23 Townhouse, apartments and condominiums.

- A. See Section 14.4C.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.24 Wholesale and warehouse distributions facilities.

- A. See Section 14.4D.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.25 Light Industrial Establishment.

- A. See Section 14.4E.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.26 Construction and fabrication facilities for contractors.

- A. See Section 11-A.4.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply."

25. Section 18.3 (entitled "Amendment") is repealed and the following is enacted in its place:

"Section 18.3 Amendment

- A. City Council may amend the regulations and provisions stated in the text of this Ordinance and the boundaries of zoning districts shown on the current Zoning Map in accordance with the below stated amendment procedures. If the stated amendment procedure becomes in conflict with or is in conflict with the applicable zoning enabling legislation of the State of Michigan, then the procedure required by the State of Michigan shall be controlling.

B. Initiation of Amendments: Proposals for amendments, supplements, or changes may be initiated by the City Council of its own action by written notice to the Planning Commission, by the Planning Commission itself, or by petition of one (1) or more owners, or their agents, of property to be affected by the proposed amendment.

C. Amendment Procedures:

1. Filing of Applications. All petitions for amendments to this Ordinance shall be in writing, signed and filed in triplicate with the City Clerk for presentation to the City Council. A fee, as established by the City Council, shall be paid at the time of application to cover costs of necessary advertising, for public hearings, for use of a standard amendments sign and investigation of the amendment request. The City Council shall transmit the application to the Planning Commission for recommended action.
2. Referral of Petition to Planning Commission. The Planning Commission shall consider each petition for amendment in terms of its own judgment on particular factors related to the individual petition and in terms of the likely effect of such proposal upon the Development Plan for the Community.

Following the required public hearing, the Planning Commission shall transmit a summary of comments received at the hearing, including zoning maps and recommendations, to the City Council.

D. Notice of Public Hearing for zoning text or map changes

1. If an individual property or ten (10) or fewer adjacent properties are proposed for rezoning on the zoning map, a notice of the proposed public hearing shall be given as follows:
 - (a) Notice of public hearings shall be published in a newspaper of general circulation in Essexville.
 - (b) Notice shall also be sent by mail or personal delivery to the applicants/owners of property for which approval is being considered.
 - (c) Notice shall also be sent to all persons to whom real property is assessed within three hundred (300) feet of the property and to the occupants of all structures within three hundred (300) feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction.
 - (1) 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 individual, partnerships, businesses or organization, one (1) occupant of each unit or spatial area shall receive notice. Structures with more than four (4) dwelling units need to have only one (1) notice sent to such structure.
 - (2) If the name of the occupant is not known, the term "occupant" may be used in making notification.
 - (3) A notice must be deposited during normal business hours for delivery by the US postal service or to other public or private delivery service.

- (4) The notice shall be given not less than fifteen (15) days before the date the application will be considered for approval.
- (5) The notice shall state the following:
 - (i) Describe the nature of the request
 - (ii) If individual properties are the subject of the request, the notice shall indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist with the property. If there are no street addresses, other means of identification may be used.
 - (iii) State when and where the request will be considered
 - (iv) Indicate when and where written comment will be received concerning the request.
2. For zoning text amendments only, the notice of the proposed public hearings shall be given in the manner required under 3,a,(1); (4); and (5) (a), (c), and (d) above.
3. If eleven (11) or more adjacent properties are proposed for rezoning on the zoning map, the notice of the proposed public hearings, whether by the Planning Commission or the City Council, shall be given in the manner required under 3,a, (notice of public hearings) except for the requirement of Section 3, a, (3) and except that no individual addresses of properties are required to be listed under Section 3, a, (5), (b).
4. Notice of the time and place of the public hearings by the Planning Commission shall also be given by mail to each electric gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the Clerk for the purpose of receiving notice of public hearing.
5. All notices of hearing required by Section 3 given by the Planning Commission shall include the places and times at which the text and any maps of the proposed zoning ordinance amendment may be examined.

E. Zoning amendment review and adoption by City Council

1. When Public Hearing Required
 - (a) After receiving a proposed Zoning Ordinance amendment or a recommendation on a proposed amendment from the Planning Commission, City Council may hold a public hearing if it considers it necessary or as may otherwise be required.
 - (b) The City Council shall grant a hearing on a proposed ordinance provision to a property owner who requests a hearing by certified mail, addressed to the City Clerk.

2. Public Notice of Hearing. Notice of a public hearing to be held by the City Council shall be given as required under Section 3 (Notice of Public Hearing for Zoning Request or Map Changes) for any zoning text or map amendments.
 3. Two Readings Required. There shall be two readings of the proposed amendment as required by the City Charter but only the first reading of the proposed amendment to the ordinance or zoning maps shall require a public hearing after public and private notice as set forth herein.
 4. Decisions. After a public hearing when held as allowed under this section, the City Council shall consider and vote upon the adoption of an amendment to the zoning ordinance, with or without modification. A zoning amendment and any modifications shall be approved by a majority vote of the members of the City Council.
 5. Resubmittal. No application for a rezoning, which has been denied by the City Council, shall be resubmitted for a period of one (1) year from the date of the last denial, except on grounds of newly discovered evidence or proof of changed conditions found upon inspection by the City Council to be valid.
- F. Effect of Protest to Proposed Amendment. Upon presentation of a protest petition meeting the requirements of this subsection, an amendment to a zoning ordinance which is the object of the petition shall be passed only by a $\frac{2}{3}$ vote of the City Council, unless a larger vote, but not to exceed a $\frac{3}{4}$ vote, is required by ordinance or charter. The protest petition shall be presented to the City Council before final legislative action on the amendment, and shall be signed by one of the following:
1. The owners of at least 20% of the area of land included in the proposed change.
 2. The owners of at least 20% of the area of land included within an area extending outward 100 feet from any point of the boundary of the land included in the proposed change.
 3. For purposes of calculation of this subsection, publicly owned land shall be excluded in calculating 20% land area requirement.
- G. Notice of Adoption. Within fifteen (15) days following adoption of an ordinance or an amendment by the City Council, a Notice of Adoption, containing the information specified in this new section, must be published in a newspaper of general circulation in the City. Said Notice shall include the following information:
1. For newly adopted Ordinances, the following statement: "A Zoning Ordinance regulating the development and use of land has been adopted by the City Council of the City of Essexville."
 2. For amendment to existing Ordinance, a summary of the regulatory effect of the amendment or the text of the amendment.
 3. The effective date of the Ordinance.
 4. The place and time where a copy of the Ordinance may be purchased or inspected."

26. Section 18.4 (entitled "Board of Zoning Appeals") is repealed and the following is enacted in its place:

"Section 18.4 Board of Zoning Appeals

A. Creation and Membership:

1. The Board of Zoning Appeals shall consist of five (5) members who shall be appointed by the City Council and have the duties, responsibilities and powers that are provided for them by Act 110 of the Public Acts of the State of Michigan for 2006, and as hereafter amended. One (1) appointed member of the Planning Commission shall be appointed by the City Council.

Two alternate members shall also be appointed who shall serve in the place of any member at any meeting or hearing wherein any member is unable to be present.

2. Each member shall be appointed for a term of three (3) years. After the effective date of this amendment, the City Council shall adjust the number of members by accepting the resignations of as many members as is necessary to reduce their number to five and by appointing as many resigned members or others as necessary to be alternates. Upon the expiration of the terms of the remaining members, reappointments or appointments of new members shall be made for a three year term. Appointment of terms for subsequent years shall be effective on January 1.

Any alternate still in office on the effective date of this amendment shall continue to serve the remainder of his or her term. Any additional alternates to raise its number to two shall be appointed for a period from the time of appointment until the next January 1 where upon appointments thereafter will be for terms of three years.

B. Organization and Procedures:

1. Rules of Procedure. The Board of Zoning Appeals shall adopt its own rules of procedure as may be necessary to conduct its meetings and carry out its function. The Board shall choose Chairperson, a Vice Chairperson to serve in his or her absence and a recording secretary.
2. Meetings. Meetings shall be held at the call of the chairman and at such times as the Board of Zoning Appeals may determine. All meetings by the Board of Zoning Appeals shall be open to the public and shall be subject to the requirements of the Michigan Open Meetings Act.
3. Records. Minutes shall be recorded of all proceedings which shall contain evidence and dates relevant to every case considered together with the votes of the members and the final disposition of each case. Such minutes shall be filed in the office of the City Clerk and shall be made available to the general public.
4. Counsel. The City Attorney shall act as legal counsel for the Board of Zoning Appeals and shall be present at all meetings upon request by the Board of Zoning Appeals or at the direction Or the City Council.

5. Hearings. When a notice of appeal has been filed in proper form with the Board of Zoning Appeals, through the City Clerk, the Board shall immediately place the said request for appeal on the calendar for hearing, and shall cause notices stating the time, place and object of the hearing to be served, personally or by mail, addressed to the parties making the request for appeal, at least fifteen (15) days prior to the date of the scheduled hearing. All notices shall be sent to the addressee stated on the application form.

Interested persons may appear and testify at the hearings. A party may appear in person, by an agent or by attorney. However, in order for an agent to be recognized, an agent may present a notarized statement signed by the petitioning party that the agent is appointed by them to speak and to make binding decisions on their behalf at the hearing. Attorneys, if unknown to the Board, may be requested to display their state bar card to indicate their authority to act on a petitioning party's behalf.

The Board of Zoning Appeals may recess such hearings from time to time, and, if the time and place of the continued hearing be publicly announced at the time of adjournment of the Board hearing, no further notice shall be required. The Board shall give due notice to all property owners within three hundred (300) feet of the property affected, said notice being given at least fifteen (15) days before the hearing date.

6. Decisions. The Board of Zoning Appeals shall return a decision upon each case within thirty (30) days after a request or appeal has been filed unless a further time is agreed upon with the parties concerned. Any decision of the Board of Zoning Appeals shall not become final until the expiration of five (5) days from the date of entry of such order, unless the Board of Zoning Appeals shall find the immediate effect of such order is necessary for the preservation of property or personal rights and shall so certify on the record.
7. Quorum and Majority Vote. The Zoning Board of Appeals shall not conduct business unless a majority of its regular members are present but need not have a total of five members or alternates present in order to do so. For a petition to be granted or other action to be taken by the Zoning board of Appeals, three affirmative votes shall be required of the members and alternates then present. However, the concurring vote of four of the members or alternates then present shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which they are required to pass under this Ordinance or to effect any variation in the Ordinance.

C. Appeals:

1. Filing of Appeals. Appeals to the Board of Zoning Appeals may be made by any person aggrieved, or by any officer, department, or board of the City government.

Any appeal from the ruling of the Zoning Administrator concerning the enforcement of the provisions of this Ordinance may be made to the Board of Zoning Appeals, through the City Clerk, within ten (10) days of the Zoning Administrator's decision if delivered by personal service and eleven (11) days of first class mailing. Such appeal shall be filed with the Zoning Administrator and shall specify the grounds for the appeal. The City Clerk shall immediately transmit to the Secretary of the Board of Appeals papers constituting the record upon which the action appealed from was taken. The City Clerk shall forward a copy of the notice of appeal to the Zoning Administrator.

2. Stay. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Zoning Appeals after notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would, in his 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 the Board of Zoning Appeals or, on application, by a court of record.
 3. Fees. A fee as established by the City Council shall be paid to the City Treasurer at the time of filing application with the Board of Zoning Appeals. The purpose of such fee is to cover, in part, the necessary advertisements, investigations, fees of the Board members, and other expenses incurred by the Board of Zoning Appeals in connection with an appeal. The City Council shall determine the fee to be paid for the Board of Appeals members.
- D. Duties and Powers: 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 or intent of this Ordinance, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, variance exception, temporary or conditional approval permit as defined in this Section.
1. Review. The Board of Zoning Appeals shall 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 Administrator or by any other official in administering or enforcing any provisions of this Ordinance.
 2. Interpretation. The Board of Zoning Appeals shall have the power to:
 - (a) Interpret, upon request, the provision of this Ordinance in such a way as to carry out the intent and purpose of the Ordinance.
 - (b) Determine the precise location of the boundary lines between zoning districts.
 - (c) Classify a use or an accessory use customarily incidental to the principal use, which is not specifically mentioned as part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district.
 - (d) Determine the off-street parking and loading space requirements of any use not specifically mentioned in Article 16.
 - (e) Determine if a change in a non-conforming use is more detrimental than the existing use, in accordance with Article 6.
 - (f) Hear appeals with regard to decisions on the issuance of Special Land Use Permits as governed by this Ordinance.
 - (g) Hear appeals with regard to area, height, bulk and placement regulations for planned unit developments as governed by this Ordinance.
 - (h) Determine those matters set forth above but specifically shall not have the power to permit, vary, alter or modify the uses or activities allowed in any zoning district as set forth in this ordinance or by law.

3. Variances. The Board of Zoning Appeals shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED all of the BASIC conditions listed herein and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

(a) Basic Conditions. That any variance granted from this Ordinance:

- (1) Will not be contrary to the public interest or to the intent and purpose of this ordinance.
- (2) Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit is required.
- (3) Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
- (4) Is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.
- (5) Will relate only to property that is under control of the applicant.

(b) Special Conditions. When ALL of the foregoing basic conditions can be satisfied, a variance may be granted when any ONE of the following special conditions can be clearly demonstrated.

- (1) Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.
- (2) Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.
- (3) Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

4. Rules. The following rules shall be applied in the granting of variances.

- (a) The Board of Zoning Appeals may specify, in writing, such conditions regarding the character, location; and other features that will in its Judgment, secure the objectives and purposes of this Ordinance. The breach of any such condition shall automatically invalidate the permit granted.
- (b) 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 six (6) months after the granting of the variance.
 - (2) The occupancy of land, premises, or buildings authorized by the variance has taken place within one (1) year after the granting of the variance.
 - (3) No application for a variance which has been denied wholly or in part by the Board of Zoning Appeals shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.
 - (4) An appeal from a decision of the Board of Zoning Appeals must be filed within thirty (30) days after the Board of Zoning Appeals issues its decision in writing (signed by the Chairperson or member of the Board of Zoning Appeals), or within twenty (20) days after the Board of Zoning Appeals approves its minutes.
5. Special Exceptions: When, in its judgment, the public welfare will be served and the use of neighboring property will not be injured thereby, the Board of Zoning Appeals may, in a specific case, after due notice and public hearing and subject to appropriate conditions and safeguards, determine and vary the application of the regulations of this Ordinance in harmony with the general character of the district and the intent and purpose of this Ordinance. The granting of a special exception shall in no way constitute a change in the basic uses permitted in the district affected nor on the property wherein the exception is permitted. The Board of Zoning Appeals may issue a conditional permit as special exception for the following land and structure uses.
6. Temporary Permits. Uses other than residential may obtain a temporary permit for the erection or placement of a temporary building or structure to be used for the operation of the principal use during construction of the principal building, subject to the following conditions:
- (a) A permit must have been issued for the principal building and use.
 - (b) Application for the temporary permit and use shall be requested from the Zoning Administrator who shall determine the feasibility of the use.
 - (c) The application must state that the proposed temporary building and its use will be vacated and removed upon expiration of a specific time limit not to exceed twelve (12) months.
 - (d) The Zoning Administrator may impose any reasonable conditions in addition to the district requirements in which the use is proposed, including setbacks, land coverage, off-street parking, landscaping and other requirements deemed necessary to protect adjoining properties and the public welfare. The violation of any such condition shall automatically invalidate the permit.

7. Conditional Permits: When conditions exist that are unique to a particular situation, a conditional permit may be issued with specific limitations imposed by the Board of Zoning Appeals. The land or structure uses may be permitted to be established and to continue in use as long as the unique conditions to the use exist.

The permit may be canceled when the conditions upon which the permit was issued cease to exist. The permit issued shall contain all the specified conditions under which continued use may be allowed. Conditional permits may be issued for the following uses:

- (a) The Board of Zoning Appeals may authorize a reduction, modification, or waiver of any of the off-street parking or off-street loading regulations in Article 16, when it can be demonstrated that circumstances of extreme practical difficulty exist that would unquestionably result in hardship to the applicant when a literal interpretation of the regulations is required. Hardship shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land. A hardship that is a result of any action of the applicant shall not be considered by the Board of Zoning Appeals. Under all these circumstances, in no case shall the off-street parking or off-street loading standards be reduced by more than twenty-five (25%) percent.
- (b) Joint use of off-street parking areas may be authorized when the capacities outlined in Article 16, Section 16.1, are complied with and when a copy of an agreement between joint users shall be filed with the application for a building permit, and is recorded with the Register of Deeds of Bay County, guaranteeing continued use of the parking facilities for each party.
- (c) Other "Conditional Uses" based upon a finding of fact by the Board of Zoning Appeals that indicate conditions exist that are unique to a particular situation, however, not contrary or in contradiction to the intent of the District within which the proposed use is located. Conditions imposed shall do 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 use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
 - (2) Be related to the valid exercise of the police power and purposes that 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 established in the Ordinance for the land use or activity under consideration; and be necessary to insure compliance with those standards. Conditional uses shall be based upon a finding of fact by the Board of Zoning Appeals that indicates conditions exist that are unique to a particular situation, however, not contrary or in contradiction to the intent of the district within which the proposed use is located.

8. Bond for Compliance: In authorizing any variance, or in granting any conditional, or special approval permits, the Board of Zoning Appeals may require that a bond of ample sum, but not to exceed the cost of the project, be furnished to ensure compliance with requirements, specifications and conditions imposed with the grant of variance. A certified check or surety bond shall be deposited with the City Clerk and returned upon certification of completion by the Zoning Administrator."