
ARTICLE 22. BOARD OF APPEALS

5.231. Creation of Membership. There is hereby established a Zoning Board of Appeals which shall perform its duties and exercise its powers as provided in 2006 PA 110 and in such a way that the objectives of this Chapter shall be observed, public safety secured, and substantial justice done. The Board shall consist of six (6) members and one (1) ex-officio member, all appointed by the Mayor, by and with the consent of the City Council. Appointments shall be as follows: Two (2) members appointed for a period of one (1) year; two (2) members appointed for a period of two (2) years; and two (2) members appointed for a period of three (3) years respectively; thereafter, each member to hold office for a full three (3) year term. The ex-officio member shall be appointed from the membership of the City Planning Commission by the Mayor to serve a period of one (1) year prior to the date of his appointment, and shall be a qualified and registered elector of the City on such day and throughout his tenure of office. Appointed members may be removed for cause by the City Council only after consideration of written charges and a public hearing. Any appointive vacancies in the Board of Appeals shall be filled by the City Council for the remainder of the unexpired term. The Board of Appeals shall annually elect its own Chairman, Vice Chairman, and Secretary. The compensation of the Board of Appeals shall be fixed by the City Council.

(Ordinance No. 1990-2, 01-09-1990; Ordinance No. 2011-02, 07-12-2011)

5.232. Meetings. All meetings of the Board of Appeals shall be held at the call of the Chairman and at such times as such Board may determine. All hearings conducted by said Board shall be open to the public. The Board 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. Four (4) members of the Board shall constitute a quorum for the conduct of its business. The Board shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it.

5.233. Appeals. An appeal may be taken to the Board of Appeals by any person, firm or corporation, or by any officer, department, board or bureau affected by a decision of the Zoning Administrator. Such appeal shall be taken within such time as shall be prescribed by the Board of Appeals by general rule, by filing with the Zoning Administrator and the Board of Appeals a notice of appeal, specifying the grounds thereof. The Zoning Administrator 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 Zoning Administrator certifies to the Board of Appeals after the notice of appeal has been filed with him/her that by reason of facts stated in the certificate a stay would, in his/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 the Board of Appeals or by a court of record on application, on notice to the Zoning Administrator and on due course shown.

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.

(Ordinance No. 2000-03, 07-05-2000)

5.234. Jurisdiction. The Board of Appeals shall have the following powers and it shall be its duty:

- (1) To hear and decide on all matters referred to it upon which it is required to pass under this Chapter.
- (2) To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this Chapter.
- (3) In hearing and deciding appeals the Board of Appeals shall have the authority to grant such variance therefrom as may be in harmony with their general purpose and intent so that the function of this Chapter be observed, public safety and welfare secured, and substantial justice done, including the following:
 - (a) Interpret the provisions of the Chapter 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 Chapter, where street layout actually on the ground varies from the street layout as shown on the map aforesaid.
 - (b) Permit the erection and use of a building or use of premises in any use district for public utility purposes.
 - (c) 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.
 - (d) 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.
 - (e) Permit temporary buildings and uses for periods not exceed two (2) years in undeveloped sections of the City and for periods not to exceed six (6) months in developed sections.
- (4) Where, owing to special conditions, a literal enforcement of the provisions of this chapter would involve practical difficulties or cause unnecessary hardships, within the meaning of this Chapter, the Board of Appeals shall have power upon appeal in specific cases to authorize such variation or modification of the provisions of this Chapter with such conditions and safeguards as it may determine, as may be in harmony with the spirit of this chapter and so that public safety and welfare be secured and substantial justice done. No such variance or modification of the provisions of this Chapter shall be granted unless it appears beyond a reasonable doubt that all the following facts and conditions exist:
 - (a) That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties or class of uses in the same district or zone.
 - (b) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity.
 - (c) That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.
 - (d) That the granting of such variance will not adversely affect the purposes or objectives of the Master Plan of the City of Frankenmuth.

(5) In consideration of all appeals and all proposed variations to this Chapter, the Board of Appeals shall, before making any variations from the Chapter 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 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 City. The concurring vote of four (4) members of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant any matter upon which it is authorized by this Chapter to render a decision.

Nothing herein contained shall be construed to give or grant to the Board of Appeals the power or authority to alter or change the Zoning Chapter or the Zoning Map, such power and authority being reserved to the City Council of the City of Frankenmuth in the manner hereinafter provided by law.

(Ordinance No. 2000-03, 07-05-2000)

5.235. Exercising Powers. In exercising the above powers, the 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 Administrator from whom the appeal is taken.

(Ordinance No. 2000-03, 07-05-2000)

5.236. Notice. The Board of Appeals shall make no recommendation except in a specific case and after a hearing conducted by said Board. A written notice of the time and place of such public hearing shall be mailed to the owners of all lots or parcels of land lying within three hundred (300) feet of the property in question. Such notice shall be served by the applicant or appellant by regular mail with an affidavit of mailing or by registered mail, return receipt requested.

5.237. Fees. The City Council shall from time to time, determine by resolution the fee to be paid, at the time that notice of appeal is filed, to the City Treasurer to the credit of the General Fund of the City.

(Ordinance No. 2000-03, 07-05-2000)

5.238. Miscellaneous. No order of the Board of Appeals permitting the erection or alteration 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 such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

No order of the 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 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.