

AMENDMENTS TO SECTION 38-5. DEFINITIONS

The following definitions are added to Section 38-5:

Assembly hall means a building or a part of a building devoted to live dramatic, musical or dance performances, motion pictures, and public meetings, and operated for commercial and for-profit purposes.

Building means any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

Church means a building or part of a building wherein persons regularly assemble for religious worship, and that is tax exempt under the laws of this state, and in which religious services are held and with which a clergyman is associated.

Governmental facility/offices means a building, area or premises owned and/or used by a department, commission, agency or instrumentality of the United States, the State of Michigan, Mackinac County, City of St. Ignace or an authority, district or instrumentality thereof.

Municipal building: SEE GOVERNMENTAL FACILITY/OFFICES

Structure means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

Theater: SEE ASSEMBLY HALL

Variance means a modification of the literal provisions of this chapter which is authorized by the board of zoning appeals when strict enforcement of this chapter would cause practical difficulties or unnecessary hardship for the property owner.

Zoning Administrator means the official designated by the city council to administer and enforce this chapter. The Zoning Administrator may be the building official, building inspector or other person charged with the responsibility of administering and enforcing this chapter by the city council.

AMENDED SECTION 38-53. RULES OF PROCEDURE

The board of zoning appeals ~~shall~~ **may** adopt rules and regulations. ~~Copies of such regulations shall be made available to the public at the office of the city clerk and the building inspector.~~ Meetings of the board of zoning appeals may be held once each month, and at such additional times as the board may determine. ~~The time of regular meetings of the board of zoning appeals shall be specified in the rules and regulations.~~ There shall be a fixed place of meeting for the board of zoning appeals and all hearings shall be open to the public. ~~The presence of four~~ **A** ~~majority of the~~ members of the board of zoning appeals shall constitute a quorum. ~~The board of zoning appeals shall act by resolution.~~ The concurring vote of ~~five members~~ **a majority of the**

members of the board of zoning appeals shall be necessary to reverse any order, requirement, decision, or determination of the officer or body from whom the appeal is taken ~~building inspector~~, or to decide in favor of the applicant on any matter upon which it is required to pass by this chapter, ~~or to grant variations from the requirements of this chapter~~. The board of zoning appeals shall keep minutes of the proceedings, showing the action of the board and the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examination, and other official actions, all of which shall be filed promptly in the office of the board of zoning appeals and shall be a matter of public record. Board of zoning appeals members may abstain from voting only if conflict of interest is determined. The board of zoning appeals may call on any other city departments for assistance in the performance of its duties and it shall be the duty of such other departments to render such assistance to the board of zoning appeals as may reasonably be required. The regular attendance of board of zoning appeals members being necessary for the effective operation of the board of zoning appeals, any member of said board who is absent from either three consecutive meetings or one-fourth of all meetings in any 12-month period, unless the board shall excuse such absences and record such in the minutes of the board, shall be deemed to have resigned. The secretary of the board of zoning appeals shall notify the mayor of any such resulting vacancy, and the mayor shall fill such vacancy as soon as possible after such notification.

AMENDED SECTION 38-54. JURISDICTION

~~The board of zoning appeals in conformity with the provisions of this chapter and of Public Act No. 207 of 1921 (MCL 125.581 et seq.), may reverse and affirm, wholly or in part, or may modify the order, requirements, decision, or determination appealed from, and shall make such order, requirements, decision or determination as in its opinion ought to be made on the premises, and to that end shall have all the powers to hear and decide all matters referred to it or upon which is required to pass under this chapter.~~

The board of zoning appeals shall hear and decide questions that arise in the administration of this chapter, including the interpretation of the zoning maps. It shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator in the administration or enforcement of this chapter. Within this capacity, the board of zoning appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from.

(1) *Interpretation.* The board of zoning appeals shall hear and decide upon the following requests:

- (a) Interpretation of the provisions of this chapter and zoning maps: Interpret the provisions of this chapter when it is alleged that certain provisions are not clear or that they could have more than one meaning. In deciding upon such request, the board of zoning appeals shall ensure that its interpretation is consistent with the intent and purpose of this chapter, the Article and Division in which the language is contained, and all relevant provisions of this chapter.

(b) Determine the precise location of the boundary line between zoning districts where there is dissatisfaction with the decision made by the Zoning Administrator.

(2) *Administrative Review.* To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision, or determination made by the Zoning Administrator in the administration or enforcement of this chapter.

AMENDED SECTION 38-55. VARIANCES

Subject to the provisions of section 38-596, the board of zoning appeals, after public hearing, shall have the power to decide applications, filed as hereafter provided, for variances:

~~(1) Where it is alleged by the appellant that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by the building inspector or other administrative office in the carrying out of enforcement of the provisions of this chapter.~~

(2) Where, by reason of the exceptional narrowness, shallowness, or shape of a specific piece of property on the effective date of the ordinance from which, this chapter is derived, or by reason of exceptional topographic conditions, or other extraordinary situation or condition of land, building or structure, or of the use or development of property immediately adjoining the property in question, the literal enforcement of the requirements of this chapter would involve practical difficulties or would cause undue hardship; provided that the board of zoning appeals shall not grant a variance on a lot of less area than the requirements of the ~~zone~~ zoning district even though such lot existed at the time of passage of the ordinance from which this chapter is derived if the owner owned adjacent land which could without undue hardship be included as part of the lot.

(3) Where there are practical difficulties if strict compliance with the terms of this chapter is required relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of this chapter or to any other nonuse related standard in this chapter, the board of zoning appeals may grant a nonuse variance, ~~or unnecessary hardship in any way of carrying out the strict letter of this chapter~~ so that the spirit of this chapter is observed, public safety secured, and substantial justice done. In determining nonuse variances, the board of zoning appeals shall consider whether the practical difficulties are created by the applicant, whether there are reasonable alternatives to the variance, and whether the spirit and intent of this chapter will be essentially preserved. ~~relating to the construction, structural changes in equipment, or alterations of buildings or structures, or the use of land, buildings or structures so that the spirit of this chapter shall be observed, public safety secured, and substantial justice done.~~

(3) Where this is an unnecessary hardship in the way of carrying out the strict letter of this chapter for use variances, the board of zoning appeals may grant a variance from uses of land prescribed under this chapter as provided in section 38-56, so that the spirit of this chapter is observed, public safety secured, and substantial justice done.

(4) The concurring vote of five (5) member of the board of zoning appeals is required to approve a use variance.

AMENDED SECTION 38-56. GENERAL CONDITIONS FOR VARIANCE

No variance in the provisions or requirements of this chapter shall be authorized by the board of zoning appeals unless the board finds from ~~reasonable~~ competent, material and substantial evidence that all the following facts and conditions exist:

(1) ~~That there are exceptional or extraordinary circumstances or conditions applying to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district.~~ That the variance:

- a. will be in harmony with the general purpose and intent of this chapter.
- b. will not cause adverse impacts on surrounding property, property values, or the use and enjoyment of property in the neighborhood or district.
- c. will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser variance than applied for would give substantial relief to the applicant and be more consistent with justice to other property owners.

(2) ~~That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not itself be deemed sufficient to warrant a variance.~~ That the need for the variance is due to unique circumstances or physical conditions, such as narrowness, shallowness, shape, or topography of the property involved such that strict compliance with area, setbacks, frontage, height, bulk, density or other dimensional requirement would unreasonably prevent the property owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.

(3) ~~That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purposes of this chapter or the public interest.~~ That unnecessary hardships or practical difficulties exist which prevent carrying out the strict letter of this chapter. These unnecessary hardships or practical difficulties shall not be deemed economic, but shall be evaluated in terms of the characteristics of a particular parcel of land.

(4) ~~That the condition or situation of the specific piece of property, or the intended use of said property for which the variance is sought, is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation.~~ That the need for the variance is not the result of actions of the property owner (self-created) or previous property owners.

(5) That the variance will relate only to property under control of the applicant.

(6) That the variance shall not permit the establishment within a district of any use which is not permitted by right within that zoning district, or any use for which a special land use permit or temporary use permit is required except where failing to do so would result in a constitutional taking for which compensation would otherwise have to be paid because the application of existing regulations do not permit a reasonable use of land under existing common law or statutory standards.

AMENDED SECTION 38-59. PROCEDURES

The following procedure shall be required:

(1) ~~An appeal for variance from any ruling of the building inspector or other administrative officer administering any portion of this chapter may be taken by any person or any governmental department affected or aggrieved.~~ An appeal to the board of zoning appeals shall be taken by a person aggrieved by an order, requirement, decision, or determination of the Zoning Administrator within fourteen (14) days after issuance, in writing, of the order, requirement, decision or determination being appealed.

(2) ~~An application for special exceptions authorized by this chapter may be taken by any person or governmental department affected.~~ Requests for chapter interpretation, variances and special exceptions may be made by any aggrieved persons or by any officer, department, board or administrative official of the city.

(3) The board of zoning appeals shall not consider any requests application or of appeals without the payment by the applicant or appellant to the city treasurer of a fee as determined from time to time by resolution of the city council. Such Requests for interpretation, variances, or application special exceptions shall be taken by filing them in writing with the board of zoning appeals. or An appeal shall be taken by filing with the Zoning Administrator, a written notice of appeal, specifying the grounds for the appeal. The Zoning Administrator filed with the building inspector, who shall transmit to the board of zoning appeals the same together with all plans, specifications and other papers constituting the record upon which the action appealed from was taken. pertaining to the application or appeal, to the board of appeals. Appeals fees will be set by city council resolution.

(4) When a written request for interpretation, variance or special exceptions is received, or an application or appeal has been filed in proper form and with the required data, the secretary of the board of zoning appeals shall immediately place the request application

or appeal upon the calendar for a public hearing and provide notice of the public hearing as follows:

a. The notice shall be published once, at least fifteen (15) days prior to the date of the public hearing, in a newspaper of general circulation in the city.

b. Except as provided in subsection d below, notice of public hearing shall be mailed or personally delivered to the following persons, at least fifteen (15) days prior to the date of the public hearing:

(i) The applicant;

(ii) The owner or owners of the subject property;

(iii) All persons to whom real property is assessed within three hundred (300) feet of the property that is the subject of the appeal or request, even if the three hundred (300) feet extends outside of the city's boundaries; and

(iv) The occupants of all structures within three hundred (300) feet of the property that is the subject of the appeal or request, even if the three hundred (300) feet extends outside of the city's boundaries. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection.

c. The notice of the public hearing shall include the following information:

(i) A description of the appeal or request.

(ii) An identification of the property that is the subject of the appeal or request, if applicable. Except as provided in subsection d below, 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 within the property and another means of identification of the property shall be used.

(iii) State when and where the appeal or request will be considered.

(iv) Identify when and where written comments will be received concerning the appeal or request.

d. When an appeal or request for interpretation of the provisions of this chapter does not involve a specific parcel, the mailing or delivery requirements of subsection b(ii), b(iii), and b(iv) above are not required, and the listing of individual property addresses under subsection c(ii) above is not required.

~~cause notices to be served stating the time, place, and object of the hearing. Such notices shall be served personally or by mail at least seven days prior to the date of such hearing, upon the application or appellant, and the building inspector and owners of record property within 300 feet of the premises in question, which notices, if by mail, shall be addressed to the respective owners of record at the address given in the last assessment roll. Any party may appear at such hearings in person, or by agent or attorney.~~

- (5) Upon the day for hearing any application or appeal, the board of zoning appeals may adjourn the hearing in order to permit the obtaining of additional information, or to cause such further notice as it deems proper to be served upon such other property owners as it decides may be interested in said application or appeal. In the case of an adjourned hearing, persons already heard from need not be notified of the time of resumption of hearing unless the board of zoning appeals so decides. The decision of the board of zoning appeals expires within one year of the date of decision unless the project is under construction and complies with the building permit.

AMENDED SECTION 38-60. DECISIONS

The board of zoning appeals shall decide all applications and appeals within 30 days after the final hearing thereon. A copy of the board of zoning appeals' decision shall be transmitted to the applicant or appellant and to the Zoning Administrator ~~building inspector~~. Such decision shall be binding upon the Zoning Administrator ~~building inspector~~ and observed by him and he shall incorporate the terms and conditions of the same in the permit to the applicant or appellant whenever a permit is authorized by the board of zoning appeals. A decision of the board of zoning appeals shall not become final until the expiration of five days from the date such decision is made unless the board of zoning appeals shall find the immediate effect of such decision is necessary for the preservation of property or personal rights and shall so certify on the record. A party aggrieved by the decision may appeal to the Circuit Court of Mackinac County as provided in MCL 125.3606.

AMENDED SECTION 38-61. STAY OF PROCEEDINGS

An appeal shall stay all proceedings in furtherance of the action appealed from unless the ~~building inspector~~ Zoning Administrator certifies to the board of zoning appeals after notice of appeal shall have been filed with him, that by reason of fact stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other~~wise~~ than by a restraining order which may, on due cause shown, be granted by the board of zoning appeals ~~or~~ by the circuit court on application, after notice to the Zoning Administrator ~~building inspector~~.

AMENDED SECTION 38-231. DESCRIPTION OF DISTRICT

The central business district (CBD) is designed to provide for a variety of establishments, including retail, personal, professional and other services commonly associated with commercial, office, and business centers to serve the overall shopping needs of the population including both convenience and comparison goods and services and to provide facilities that are compatible with and of service to for-profit business and commercial uses. ~~for office buildings, retail stores, and personal service establishments, which normally occupy the prime retail frontage to service the comparison, convenience, and personal service shopping needs of the community.~~ The central business district regulations are designed to promote convenient ~~pedestrian~~ shopping and stable retail development by encouraging a continuous retail frontage and by prohibiting outdoor automotive-related ~~and outdoor business~~ activities as well as any uses that negatively impact

existing and future for-profit business and commercial uses in the district and have a detrimental effect on tax revenue generation and maximization unless permitted in accordance with the provisions of this chapter. It is further the purpose of this district to promote development of retail and commercial businesses and activities, preserve the business and commercial character of the area, protect and increase property values in the district, and maximize tax revenues.

AMENDED SECTION 38-232. PERMITTED USES

~~(7) Municipal buildings and governmental offices.~~

NEW SECTION 38-234. SPECIAL LAND USES

In the central business district (CBD), a building, structure or part thereof may be erected, altered, or moved upon a structure or parcel of land in said district, and a parcel of land may be used, for the following purposes when approved by the city council after review by the city planning commission in accordance with the requirements of article V of this chapter:

- (1) Municipal buildings and governmental offices.
- (2) Any use that is tax exempt under any state and/or federal law.

AMENDED SECTION 38-251. DESCRIPTION OF DISTRICT

The general business district (GBD) is designed to provide for more diversified for-profit business and commercial activities than the central business district (CBD) that are compatible with and of service to such business and commercial uses in the general business district. ~~the general retail stores and service establishments of the community.~~ The general business district regulations are designed to promote convenient shopping for motorists as well as pedestrians; ~~with off-street parking being provided by each business.~~ The general business district regulations shall promote development of for-profit businesses and activities, preserve the business and commercial character of the area, protect and increase property values, and maximize tax revenues. In furtherance of this purpose, no use that negatively impacts existing and future for-profit business and commercial uses in the district and has a detrimental effect on tax revenue generation and maximization shall be permitted in the general business district unless allowed in accordance with the provisions of this chapter.

NEW SECTION 38-254. SPECIAL LAND USES

In the general business district (GBD), a building, structure or part thereof may be erected, altered, or moved upon a structure or parcel of land in said district, and a parcel of land may be used, for the following purposes when approved by the city council after review by the city planning commission in accordance with the requirements of article V of this chapter:

- (1) All special land uses permitted in the central business district (CBD).

AMENDED SECTION 38-271. DESCRIPTION OF DISTRICT

The tourist business district (TBD) is designed to provide for the retail and service needs of tourists and the traveling public. The tourist business district regulations are designed to promote stable development of for-profit tourist businesses and activities, with adequate parking and open space being required of each business. No use that negatively impacts existing and future for-profit business and commercial uses in the district and has a detrimental effect on tax revenue generation and maximization shall be permitted in the tourist business district unless allowed in accordance with the provisions of this chapter.

AMENDED SECTION 38-272. PERMITTED USES

(4) Any theater or assembly hall ~~public assembly building~~ located completely within an enclosed building.

(7) ~~Any publicly owned building or facility.~~

NEW SECTION 38-274. SPECIAL LAND USES

In the tourist business district (TBD), a building, structure or part thereof may be erected, altered, or moved upon a structure or parcel of land in said district, and a parcel of land may be used, for the following purposes when approved by the city council after review by the city planning commission in accordance with the requirements of article V of this chapter:

- (1) All special land uses permitted in the central business district (CBD) and general business district (GBD).

AMENDED SECTION 38-391. GENERAL DESCRIPTION

The city may provide special land use permits in any zoning district only after review by the city planning commission and approval by the city council. Consideration for the issuance of a permit shall be contingent upon full compliance with all provisions of this chapter and with Public Act No. 110 207 of 2006 1921 (MCL 125.3101 581 et seq.), Michigan zoning enabling act ~~city of village zoning~~.

AMENDED SECTION 38-393. GENERAL STANDARDS FOR SPECIAL LAND USE

Each application for ~~parcel of property proposed for development as~~ a special land use shall meet all of the following standards ~~site eligibility requirements~~:

- (1) The use ~~characteristics of the site~~ shall be compatible ~~suitable for the proposed~~ ~~special use including~~ with the topography, soil drainage characteristics, vegetation, site and location, historic buildings, scenic views or other unique features of the land affected by the use.
- (2) ~~The special land use is warranted by the better design and amenities. incorporated~~

~~in the proposed that would not be feasible under any other standard zoning classification.~~ The use shall be designed, constructed, operated and maintained so as to be harmonious and compatible in appearance with the intended character of vicinity.

- (3) The ~~special land~~ use shall be ~~is~~ consistent with the intent and purpose of the zoning district in which it is proposed ~~this chapter~~.
- (4) The ~~special land~~ use shall ~~must~~ be compatible with the adjacent land uses and the natural environment.
- (5) The ~~special land~~ use shall ~~must~~ be served adequately by existing or proposed public infrastructure and services, including but not limited to, streets and highways, police and fire protection, refuse disposal; water, wastewater, and storm sewer facilities; electrical service and schools ~~compatible with the capacity of the public services and facilities affected by the land use~~.
- (6) The ~~special land~~ use shall not involve any activities, processes, materials, equipment or conditions of operation that would be detrimental to any person or property or to the general welfare ~~must be designed to protect the public health, safety and welfare~~.
- (7) The use shall not be detrimental or disruptive to existing or planned uses in the vicinity.
- (8) The use shall not create excessive additional requirements for infrastructure, facilities, and services provided at public expense.

AMENDED SECTION 38-394. PERFORMANCE REQUIREMENT

- (15) *Tax exempt uses.* For a use that is tax exempt under any state and/or federal law, no objection shall be filed or made with any local, state, or federal agency, by the owner of record of the special land use site, against any existing or future land use that is lawful and permitted in the zoning district in which the tax exempt use is proposed to be located.