

**City Code**  
**CHAPTER 40- ZONING**  
**ARTICLE 31. BOARD OF APPEALS\***

**(Proposed Amendments: 9-11-2017)**

\*State law references: Zoning board of appeals, MCL 125.3601 - 125.3607-et seq. (MI Zoning Enabling Act, PA 110 of 2006)

**Sec. 31.01. Authority.**

There is hereby established a board of appeals, the membership, powers and duties of which are described in Public Act No. 110 of 2006 (MCL 125.3101 et seq.), as amended. The board of appeals shall perform its duties and exercise its powers as provided in the above act in such a way that the objectives of this ordinance shall be observed, the public health, safety and welfare assured and justice served.

**Sec. 31.02. Board membership.**

The City of Ithaca Zoning Board of Appeals shall consist of ~~the following five~~ three regular and two alternate members:

- a. The first member of the board of appeals shall be a member of the planning commission as appointed by majority vote of the members of the City Council then serving.
- b. The second member of the board of appeals shall be a member of the City Council as appointed by majority vote of the members of the City Council then serving~~selected by the City Council.~~
- c. The remaining ~~three-regular~~ members of the board of appeals shall be ~~selected and~~ appointed by majority vote of the members of the City Council then serving ~~the City Council~~ from among the electors residing in the incorporated areas of the City.
- d. The City Council may appoint not more than two alternate members to the board. The alternate~~ve~~ members shall have the same term as regular members of the board and be subject to the same qualifications and other provisions contained in this article applicable to regular members of the board.
- ~~d.e.~~ When regular and alternate members are first appointed, appointments may be for less than three years to provide for staggered terms. A successor shall be appointed not more than one month after the term of the preceding member has expired.
- ~~e.f.~~ The chair~~person~~, or the vice-chair~~person~~ of the board, in the absence of the chair~~person~~, may call upon either ~~or both~~ of the alternate members as needed to sit as a regular members of the board in the absence of ~~one or two~~ regular members if a regular member is absent from or unable to attend two or more consecutive meetings of the board or for a period of more than 30 consecutive days; or where the regular member has abstained for reasons of conflict of interest.
- g. Once appointed to hear a case, an alternate member shall serve in the case until a final decision has been made and shall have the same voting rights as a regular member of the board.
- ~~f.h.~~ A member of the zoning board of appeals who is also a member of the planning commission or the City Council shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the planning commission or the

City Council. However, the member may consider and vote on other unrelated matters involving the same property.

**Sec. 31.03. Expenses.**

The total amount allowed the board of appeals in one year as per diem or as expenses actually incurred in the discharge of its duties shall not exceed a reasonable sum, which sum shall be appropriated annually in advance by the City Council.

**Sec. 31.04. Terms of office.**

Terms shall be for three years, except for members serving because of their membership on the planning commission, or City Council, whose terms shall be limited to the time they are members of the planning commission or City Council, respectively, and the period stated in the resolution appointing them. A successor shall be appointed not more than one month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term. Members of the board of appeals may be removed by the City Council for nonperformance of duty or misconduct in office, upon written charges and after a public hearing. A member shall disqualify himself from any vote in which he has a conflict of interest. Failure to do so shall constitute misconduct in office. A member of the zoning board of appeals may be removed by the City Council for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

**Sec. 31.05. Employees.**

The board may employ such clerical or other assistance as may be necessary, provided that it shall not at any time incur any expense beyond the amount of the appropriation made and then available for that purpose.

**Sec. 31.06. Required hearing.**

The board of appeals shall hear and decide all matters properly referred to the board, or upon which the board is required to act, under any ordinance adopted pursuant to Public Act No. 110 of 2006 (MCL 125.3101 et seq.), as amended. ~~The board of appeals shall not conduct business unless a majority of the members of the board are present.~~

**Sec. 31.07. Majority vote.**

The concurring vote of a majority of the members of the board of appeals shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the appellant on any matter upon which they are required to pass under this ordinance, or to effect any variation in this ordinance. If a member of the board is absent, the appellant shall be given the option of postponing the hearing until a full board is present.

**Sec. 31.08. Board meeting.**

The board of appeals shall not conduct business unless a majority of regular members are present. A meeting of the board of appeals shall be held at the call of the chairperson, and at other such times and places as the board of appeals may determine. All meetings shall be open to the public. The board of appeals shall keep minutes of all its proceedings and shall keep

records of its findings, proceedings at hearings and other official actions, all of which shall be immediately filed in the office of the city clerk, and shall be a public record. The board of appeals shall adopt its own rules of procedure for meetings.

**Sec. 31.09. Appeal.**

The board of appeals shall, when called upon, act upon all questions as they arise in the administration of this ordinance including interpretation of the City of Ithaca Zoning Map. Such an appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the county or state. It shall hear and decide appeals from and review any order, requirements, decisions or determination made by the administrative official and/or planning commission charged with enforcement of any ordinance adopted pursuant to the provisions of Public Act No. 110 of 2006 (MCL 125.3101 et seq.), as amended.

31.09:1. *Grounds for appeal.* The grounds for any such determination shall be stated in the records of the board's proceedings.

31.09:2. *Time of appeals.* An 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 with the board of appeals a notice of appeals specifying the grounds thereof. The zoning administrator from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

31.09:3. *Stays.* 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 shall have been filed with the zoning administrator, that by reasons of facts stated in the certificate, a stay would cause imminent peril of 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 the circuit court on application, on notice to the zoning administrator and on due cause shown.

31.09:4. *Time, notices, appearance.* Upon the filing of any appeal or other matter for which the board has jurisdiction, the board shall hold a public hearing on such matters as required by section 604 of Public Act No. 110 of 2006 (MCL 125.3604).

**Sec. 31.10. Powers of the board.**

In deciding upon matters referred to it, or upon which it is required to act under this ordinance, the board of appeals, after public notice (which shall be posted at the city administration building and with the city clerk) and hearing, shall take into consideration the public health, safety and general welfare, and apply appropriate conditions and safeguards in conformity with the general purpose and intent of this ordinance. The board of appeals may revise or affirm, wholly or in part, or may modify the order, requirement, decision or determination as in its opinion ought to be made in a particular case, and to that end shall have all the powers of the zoning administrator from whom the appeal is taken and may issue, or direct the issuance of, a permit.

**Sec. 31.11. Granting of variances.**

31.11:1. Where there are practical difficulties or unnecessary hardships deterring the carrying out of strict interpretation of this ordinance, the board of appeals shall have the powers, in passing on appeals, to vary or modify any of the rules, regulations or provisions of this ordinance, by granting variances, provided that any variation granted from this ordinance:

- a. Will not be contrary to public interest.

- b. Will not permit the establishment within a district of any use which is not permitted by right within that district.
- c. Will not cause a substantially adverse effect upon property values.
- d. Will relate only to the property under the control of the appellant.
- e. Will not jeopardize the preservation of a substantial right, so that the spirit of this ordinance shall be observed, public safety secured and substantial justice done.
- f. Will not adversely affect the intent of this ordinance.
- g. Will not impair the adequate supply of air and light to any adjacent property.
- h. Will not increase the hazards from fire, flood or other natural or manmade dangers.
- i. Will not increase traffic congestion.
- j. Will not produce nuisance conditions to occupants of nearby premises, whether by reason of dust, noise, fumes, odors, vibration, smoke or excessive light.
- k. Will not otherwise impair the public health, safety and general welfare of the residents of the City of Ithaca.
- l. Will not set a precedent that would be contrary to this ordinance.

31.11:2. The board of appeals, in hearing and deciding appeals, shall have the authority to grant nonuse variances relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirement of the zoning ordinance or to any other nonuse-related standard in the ordinance. The board may:

- a. Permit the erection and use of a building or an addition to an existing building, or a public service corporation or for public utility purposes, in any zoning district to a greater height or of a larger area than the district requirements herein established.
- b. Permit the modification of the off-street motor vehicle parking space and loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements, after recommendation from the planning commission.
- c. Permit such modification of the height, lot area, yard setback, floor area and lot width regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape and size, or so located with relation to surrounding development or other physical characteristics, that it cannot otherwise be appropriately improved without modification, provided that the modification of lot area regulations shall be permitted only in instances where the nature of the soils and drainage is such that there is sufficient area for safe water supply and sanitary disposal of waste.
- d. Permit the modification of site plan review standards, as may be established in this ordinance, where physical hardship and unusual circumstances peculiar to the property in question exist.

31.11:3 The board of appeals shall not have the authority to grant variances from the uses of land.

**Sec. 31.12. Approval periods.**

No order of the board of appeals permitting the erection of a building shall be valid for a period longer than one year, unless a building permit for such erection or alteration is obtained within the one-year period, and the erection or alteration is started and proceeds to completion in accordance with the terms of the permit. No order of the board of appeals permitting a requested

use of a building or premises shall be valid for a period longer than one year unless the use is established within the one-year period; provided, however, that the order of the board of appeals shall continue in force and effect, and a permit for the erection or alteration has been obtained (if erection or alteration is necessary), and the work is started and proceeds to completion in accordance with the permit.

**Sec. 31.13. ~~Final action on appeals.~~Decision as final; appeal to circuit court**

The decision of the zoning board of appeals shall be final. However, a party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:

- a. Complies with the constitution and laws of the state.
- b. Is based upon proper procedure.
- c. Is supported by competent, material, and substantial evidence on the record.
- d. Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

~~The decision of the board of appeals shall not be final, and any person aggrieved by any such decision shall have the right to petition to the circuit court in questions of law and fact.~~

**Sec. 31.14. Fees.**

The City Council may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the zoning board of appeals. At the time the notice for appeal is filed, said fee shall be paid to the city clerk to be credited to the general revenue fund.