

**ALGONAC ZONING ORDINANCE**  
**Article XIX – BOARD OF APPEALS**  
**ZONING ORDINANCE AMENDMENT 2015-03**  
**AS APPROVED AT CITY COUNCIL MEETING 4/21/15**

**Section 1900. Created; Membership**

There shall be established and appointed by the City Council, in accordance with Act 110 of the Public Acts of 2006, as amended, a Zoning Board of Appeals. Such Board shall consist of seven (7) members, one (1) of whom shall be a member of the City Council, one (1) a citizen member of the Planning Commission with appointment by the Council coinciding with his Planning Commission term, and five (5) members who shall be appointed by the Council. In the latter instance, one (1) of such members shall be appointed for a one-year term; two (2) of such members shall be appointed for a two-year term, and two (2) of such members shall be appointed for a three-year term. Thereafter, each member shall be appointed to hold office for a full three-year term. No elected officer, other than the council member, or employee of the City shall be a member of the Board. Any vacancy in the Board shall be filled by the council for the remainder of the unexpired term. Compensation of the members of the Board of Appeals shall be fixed by the City Council.

1. Any member who has a conflict of interest on any matter before the Board of Appeals may disqualify himself/herself from voting thereon, and failure to do so may constitute misconduct in office.
2. The ZBA shall elect its own chairperson; however, a ZBA member who is also on the City Council shall not be chairperson of the ZBA.

**Section 1901. Rules of Procedure**

The Board shall annually elect its own chairman and at such other times as the Board may determine by rule. The Board shall adopt its own rules of procedure and shall maintain a record of its proceedings which shall be filed in the office of the City Clerk and shall be a public record. The fees to be charged for appeals shall be set by resolution of the City Council. In those instances wherein lot area and yard requirements in lots existing of record cannot be complied with and must therefore be reviewed by the Board, the required fees for appeal, in whole or part, may be refunded to the petitioner at the discretion of the Board of Appeals.

**Section 1902. Procedures**

1. Meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at such other times as the ZBA, in its rules of procedure, may specify. There shall be a fixed place of meeting and all meetings shall be open to the public.
2. A majority of the total membership of the Zoning Board of Appeals shall vote on every matter (no abstentions) unless a member has a conflict of interest. A member of the ZBA shall request to be disqualified from a vote in which the member has a conflict of interest. The member shall state the nature of the conflict of interest and the ZBA shall vote whether to excuse the member from participation because of a conflict of interest. Failure to raise an issue of conflict of interest prior to discussion and vote on a matter before the ZBA shall constitute misconduct in office for which the member may be removed, following a hearing.

3. Conflict of interest may include, but is not limited to: considering property a ZBA member owns or has a legal or financial interest in or adjacent property; considering a request by a party a ZBA member has close ties with, such as a relative, friend, boss, co-worker or neighbor. A fundamental issue is whether the member of ZBA believes he or she can objectively consider the request before the ZBA.
4. The ZBA 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, to the extent allowed by law.
5. All findings of the Zoning Board of Appeals shall be in writing, with a record of its proceedings showing the action of the ZBA and the vote of each member of each question considered.
6. Determinations and findings of the ZBA shall be made in a reasonable time period.
7. The ZBA shall file a record of its proceedings in the office of the City Clerk. The record of proceedings shall be a public record.
8. The Zoning Board of Appeals may not conduct any business unless a majority of its membership is present.
9. A majority vote of the total membership is necessary to reverse any administrative decision or grant a dimensional (non-use) variance or make a decision in favor of an applicant.

### **Section 1903. Powers and Duties**

The Zoning Board of Appeals shall have the following powers and duties under this Ordinance:

1. Those duties described in Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended;
2. To review, hear, consider and approve, approve with conditions or disapprove variances;
3. To hear, review, consider, and affirm, modify or reverse any order, decision, determination or interpretation of the Building Inspector or any other administrative official made under the terms of this Ordinance;
4. To hear and decide, in accordance with the provisions of this Ordinance, requests for exceptions, for interpretations of the zoning map and for decisions on special approval situations on which this Ordinance specifically authorizes the Board to pass. Any exception or special approval permit shall be subject to such conditions as the Board may require to preserve and promote the character of the zoning district in question and otherwise promote the purposes of this Ordinance;
5. To permit the erection and use of a building or use of premises for public utility purposes and make exceptions therefore to the height and bulk requirements herein established which the Board considers necessary for the public safety and welfare.

### **Section 1904. Temporary Permits**

1. The Zoning Board of Appeals may grant a permit for temporary buildings or permitted uses for periods not to exceed two (2) years.
2. The granting of temporary permits shall be done under the following conditions:
  - a. The granting of a temporary permit shall in no way constitute a change in the basic zoning district and principal uses permitted therein.

- b. The temporary permit shall be granted in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of the temporary permit.
- c. All setbacks, land coverage, offstreet parking, lighting and other necessary requirements to be considered in protecting the public health, safety and general welfare of the people of the City shall be made at the discretion of the Zoning Board of Appeals or as otherwise provided in this Ordinance.

### **Section 1905. Jurisdiction**

1. The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this Ordinance, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, exception or special approval permit and to authorize a variance as defined in this section and laws of the State of Michigan.
2. The Zoning Board of Appeals, in conformity with the provisions of the this Ordinance and the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended, may reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination appealed from and shall make such an order, requirements, decision, or determination as, in its opinion, ought to be made and to that end, shall have all the powers to hear and decide all matters referred to it or upon which it is required to pass under this Ordinance.

### **Section 1906. Appeals, Interpretations, and Variances**

Subject to the provisions of Section 1907, the Board, after a public hearing, shall have the power to decide applications for appeals, interpretations, and variances filed as hereafter provided:

1. Where it is alleged by the appellant that there is an error or misinterpretation in any order, requirement, decision, grant, or refusal made by the Building Inspector or other administrative office in the carrying out or enforcement of the provisions of this Ordinance, then an appeal or request for Ordinance interpretation shall be filed with the Zoning Board of Appeals on forms established for that purpose. In deciding a request for Ordinance interpretation, the ZBA shall ensure that its interpretation is consistent with the intent and purpose of the Ordinance, the Article in which the language in question is contained, and all other relevant provisions of the Ordinance.
2. Where, by reason of the exceptional narrowness, shallowness or shape of a specific piece of property which existed on the effective date of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary situation or condition of the 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 Ordinance would involve practical difficulties, provided that the Board shall not grant a variance on a lot of less area than the requirements of its zoning district, even though such lot existed at the time of the adoption of this Ordinance if the owner or members of his immediate family owned adjacent land which could, without practical difficulty, be included as part of the lot.
3. Where there are practical difficulties in the way of carrying out the strict letter of this Ordinance 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 Ordinance shall be observed, public safety secured, and substantial justice done.

### **Section 1907. Dimensional or Non-Use Variances**

No variance in the provisions of this Ordinance shall be authorized unless the Zoning Board of Appeals finds, from reasonable evidence, that all of the following standards have been met:

1. Such variance will not be detrimental to adjacent property and the surrounding neighborhood;
2. Such variance will not impair the intent and purpose of this Ordinance;
3. Exceptional or extraordinary circumstances or conditions apply to the property in question or to the intended use of the property that do not apply generally to other properties in the same zoning district. Such circumstances shall create a practical difficulty because of unique circumstances or physical conditions such as narrowness, shallowness, shape or topography of the property involved, or to the intended use of the property. See Section 1906(2);
4. 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 of itself be deemed sufficient to warrant a variance;
5. The condition or situation of the specific piece of property or of 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 conditions or situation;
6. The condition or situation of the specific piece of property or of the intended use of said property, for which the variance is sought, shall not be the result of actions of the property owner. In other words, the problem shall not be self-created;
7. That strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome;
8. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship;
9. That the variance will relate only to property under the control of the applicant.

### **Section 1908. Use Variances Prohibited**

1. The Zoning Board of Appeals is hereby prohibited from granting a use variance for a use not permitted within a particular Zoning District. A use variance would allow a landowner to use the land for a purpose which is otherwise not permitted or is prohibited by the applicable zoning district regulations.
2. The Zoning Board of Appeals shall only be authorized to issue dimensional or non-use variances in strict accordance with Section 1907 above.

## **Section 1909. Public Hearing and Notification Requirement**

Upon receipt of an application for an appeal, interpretation, or variance, the Zoning Board of Appeals shall hold at least one (1) public hearing, in accordance with the public hearing and public notice requirements set forth in the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended:

1. **Responsibility:** When the provisions of this Ordinance or the Michigan Zoning Enabling Act require that notice be published, the Building Inspector shall be responsible for preparing the content of the notice, having it published in a newspaper of general circulation in the City of Algonac and mailed or delivered as provided in this Section.
2. **Content:** All mail, personal and newspaper notices for public hearings shall:
  - a. *Describe the nature of the request:* Identify whether the request is for a rezoning, text amendment, special approval use, planned unit development, variance, appeal, Ordinance interpretation or other purpose.
  - b. *Location:* Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the subject property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used, such as a tax parcel identification number, identifying the nearest cross street, or including a map showing the location of the property. No street addresses must be listed when eleven (11) or more adjacent properties are proposed for rezoning, or when the request is for an Ordinance interpretation not involving a specific property.
  - c. *When and where the request will be considered:* Indicate the date, time and place of the public hearing(s).
  - d. *Written comments:* Include a statement describing when and where written comments will be received concerning the request. Include a statement that the public may appear at the public hearing in person or by counsel.
  - e. *Handicap access:* Information concerning how handicap access will be accommodated if the meeting facility is not handicap accessible.
3. **Personal and Mailed Notice:** When the provisions of this Ordinance or state law require that personal or mailed notice be provided, notice shall be provided to:
  - a. The owners of property for which approval is being considered, and the applicant, if different than the owner(s) of the property;
  - b. Except for rezoning requests involving eleven (11) or more adjacent properties or an Ordinance interpretation request that does not involve a specific property, to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property subject to the request, regardless of whether the property or occupant is located within the boundaries of the City of Algonac. If the name of the occupant is not known, the term “occupant” may be used in making notification. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses, or organizations, one (1) occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships,

businesses or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure;

- c. All neighborhood organizations, public utility companies, railroads and other persons which have requested to receive notice pursuant to Section 1909(6).
4. Notice by mail/affidavit: Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid. The Building Inspector shall prepare a list of property owners and registrants to whom notice was mailed, as well as of anyone to whom personal notice was delivered.
5. Timing of Notice: Unless otherwise provided in the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended, or this Ordinance where applicable, notice of a public hearing shall be provided as follows:
  - a. *For a public hearing on a variance, appeal, or Ordinance interpretation:* Not less than fifteen (15) days before the date the application will be considered for approval.
6. Registration to Receive Notice by Mail: Any neighborhood organization, public utility company, railroad or any other person may register with the Building Inspector to receive written notice of all applications for development approval pursuant to Section 3C above, or written notice of all applications for development approval within the zoning district in which they are located. The Building Inspector shall be responsible for providing this notification. Fees may be assessed for the provision of this notice, as established by the City Council.
  - a. *Requirements:* The requesting party must provide the Building Inspector information on an official form to ensure notification can be made. All registered persons must re-register bi-annually to continue to receive notification pursuant to this Section.

### **Section 1910. Standards for Evaluation**

Each case before the Zoning Board of Appeals shall be considered as an individual case and shall conform to the detailed application of the following standards in a manner appropriate to the particular circumstances of such case. All uses as listed in any district requiring Board approval for a permit shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is situated and will not be detrimental to the orderly development of adjacent districts. The Board shall give consideration to the following:

1. The location and size of the use.
2. The nature and intensity of the operations involved in or conducted in connection with it.
3. Its size, layout and its relation to pedestrian and vehicular traffic to and from the use.
4. The assembly of persons in connection with it will not be hazardous to the neighborhood or be incongruous therewith or conflict with normal traffic of the neighborhood.
5. Taking into account, among other things, convenient routes of pedestrian traffic, particularly of children.
6. Vehicular turning movements in relation to routes of traffic flow, relation to street intersections, site distance and the general character and intensity of development of the neighborhood.

7. The location and height of buildings, the locations, nature and height of walls, fences and the nature and extent of landscaping of the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.
8. The nature, location, size, and site layout of the use shall be such that it will be a harmonious part of the district in which it is situated, taking into account, among other things, prevailing shopping habits, convenience of access by prospective patrons, the physical and economic relationship of one (1) type of use to another and related characteristics.
9. The location, size, intensity and site layout of the use shall be such that its operations will not be objectionable to nearby dwellings by reason of noise, fumes or flash of lights to a greater degree than is normal with respect to the proximity of commercial to residential uses, nor interfere with an adequate supply of light and air, nor increase the danger of fire or otherwise endanger the public safety.

#### **Section 1911. Conditions of Approval**

1. In authorizing a variance, the Zoning Board of Appeals may impose specific conditions regarding the location, character, fencing, buffering or landscaping, or such other design changes as are reasonably necessary for the furtherance of the intent and spirit of this Ordinance and to ensure the protection of the public interest and abutting properties. To ensure compliance with such conditions, the ZBA may require a cash deposit, certified check, irrevocable bank letter of credit, or surety bond per the requirements of Section 2505 "Performance Bonds."

#### **Section 1912. Lapse of Approval**

1. No order of the ZBA permitting the erection of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.
2. No order of the ZBA permitting a use of a building or premises shall be valid for a period longer than one (1) year unless such permitted use is established within such period provided, however, that where such 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.

The foregoing is a true and complete copy of the City of Algonac Zoning Ordinance Amendment Number 2015-03 regarding Article XIX Zoning Board of Appeals. This was formally adopted at the April 21, 2015 meeting of the Algonac City Council.

**This ordinance will be effective on May 6, 2015.**

Cynthia Greenia, Clerk  
City of Algonac