

## **ARTICLE 24**

### **BOARD OF ZONING APPEALS**

#### **Section 24.01 Authority.**

The Board of Zoning Appeals (BZA) is hereby established, which shall perform its duties as provided for in this Ordinance and the Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) in such a way that the objectives of this Ordinance shall be served, public health, safety and welfare protected, and substantial justice done.

#### **Section 24.02 Membership.**

The Board of Zoning Appeals shall consist of five (5) members and up to two (2) alternates appointed by the City Council for three (3) year terms.

1. One (1) member may be a member of the Planning Commission, and one (1) member may be a member of the City Council.
2. Members of the Board of Zoning Appeals may be removed from office for neglect of duty or malfeasance in office, including failure of a member with a conflict of interest to abstain from deliberations or voting on the matter, after written charges have been filed with the City Clerk and a public hearing has been held by City Council. Vacancies shall be filled by resolution of the City Council.
3. In the event a Board of Zoning Appeals member is elected to City Council and such election increases the number of City Council members serving on the BZA to more than one (1), then such member's seat on the BZA shall be deemed vacant. Such vacancy shall be filled for the remainder of the un-expired term by appointment in the same manner as for regular appointments for full terms.

#### **Section 24.03 Alternates.**

Alternate members may be called on a rotating basis to sit as members of the Board of Zoning Appeals in the absence of regular members. An alternate member may also be called on to serve in the place of a BZA member, with the same voting rights, for the purpose of reaching a decision on a case in which the member has abstained because of a conflict of interest.

#### **Section 24.04 Rules of Procedure.**

The Board of Zoning Appeals shall conduct business, organize meetings, and perform its duties as provided for in this Ordinance, the Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended), and the adopted City of Richmond Board of Zoning Appeals By-Laws and Rules of Procedure.

## **Section 24.05 Applications.**

Applications to the Board of Zoning Appeals shall be filed with the City, with payment of the appropriate review fee established by City Council. At a minimum, applications shall include the following:

1. The applicant's name, address, and contact information; and the address and location of the property involved in the request.
2. Zoning classification of the subject parcel(s) and all abutting parcels.
3. A plot plan of the site, drawn to scale with a north-arrow, showing all lot lines, street rights-of-way, easements, structures, setback dimensions, parking areas, driveways, sidewalks and other site improvements.
4. A letter from the applicant stating the reasons for the request, and addressing the applicable review criteria specified in this Article for the type of request.
5. Any additional information deemed necessary by the Board of Zoning Appeals to make a determination on the issue in question.

## **Section 24.06 Administrative Appeals.**

The Board of Zoning Appeals shall hear and decide appeals where it is alleged there is error of principle in any order, requirement, decision or determination made by the person or body charged with administration or enforcement of the Zoning Ordinance. Consideration of administrative appeals shall be subject to the following:

### **A. Standing to Appeal.**

Such appeals may be taken to the BZA by the person, firm or corporation aggrieved, or by an official, department, board or commission of the City affected by the order, requirement, decision or determination. Applications for administrative appeals shall be filed with the City within 21 calendar days of the order, requirement, decision or determination.

### **B. Stay of Proceedings.**

An appeal shall stay all administrative or enforcement proceedings associated with the appeal, unless the Building Official or City Planner certifies to the BZA that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property.

### **C. Review Criteria for Administrative Appeals.**

The BZA shall reverse an administrative decision only upon determining that the order, requirement, decision or determination:

1. Constituted an abuse of discretion;
2. Was arbitrary or capricious;
3. Was based upon an erroneous finding of a material fact; or

4. Was based upon an erroneous interpretation of the Zoning Ordinance.

After making such a determination, the BZA may reverse or modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as, in its determination, ought to be made under the provisions of this Ordinance. In doing so, the BZA shall exercise all authority granted by this Ordinance to the person or body from whom the appeal is taken.

### **Section 24.07 Interpretation of Zoning District Boundaries.**

Where an ambiguity exists as to zoning district boundaries, the BZA shall have the power to interpret the Zoning Map in such a way as to carry out the intents and purposes of the City of Richmond Zoning Ordinance and Master Plan. The following rules shall apply to such interpretations:

1. Boundaries indicated as approximately following the centerlines of streets, highways, alleys, watercourses, lot lines, or municipal boundaries shall be construed to follow such lines.
2. Boundaries indicated as following railroad lines or utility easements shall be construed to be midway between the main tracks, or along the centerline of such easements.
3. Boundaries that parallel or are extensions of features indicated in this Section shall be so construed.
4. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the Map.
5. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, the BZA shall interpret the district boundaries.

### **Section 24.08 Interpretation of Zoning Ordinance Provisions.**

#### **A. Interpretations.**

The BZA shall have the power to hear and decide requests for interpretations of Zoning Ordinance provisions in such a way as to preserve and promote the character of the zoning district in question, and carry out the intent and purpose of this Ordinance and Master Plan.

#### **B. Determinations of Similar Uses.**

In recognition that every potential use cannot be addressed in this Ordinance, the BZA shall have the authority to determine whether a proposed use not listed in this Ordinance is similar to a principal or special condition use permitted by this Ordinance, subject to the following:

1. Prior to making such a determination, the BZA must find that the principal or special condition use closely resembles the proposed use in terms of characteristics, intensity, nature and other applicable common elements of such uses.

2. The BZA may determine that the use is (or is not) similar to a use listed in this Ordinance, or may recommend to the City Council that the proposed use be addressed through an amendment to this Ordinance.
3. If it is determined that there is no similar use listed in this Ordinance, the use shall be prohibited.
4. If it is determined that the proposed use is similar to a use listed in this Ordinance, the proposed use shall comply with any conditions or special condition use standards that apply to the listed use.
5. The BZA may impose additional conditions or limitations upon the proposed use necessary to satisfy the intent and purposes of this Ordinance, to protect the health, safety, or welfare, or to preserve the social and economic well being of adjacent residents and landowners, or the City as a whole.

## **Section 24.09 Variances.**

The Board of Zoning Appeals shall have the authority to grant variances from specific requirements of this Ordinance in accordance with the Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) and the provisions of this Article.

The BZA shall state the grounds upon which it justifies the granting or denying of a variance, and may consider lesser variances than that requested by an applicant. In granting a variance, the BZA may impose conditions or limitations as it may deem reasonable in furtherance of the intent and purposes of this Ordinance.

### **A. Dimensional Variances.**

The granting of a variance from particular area, setback, frontage, height, bulk, density or other dimensional (non-use) standards of this Ordinance shall require a finding of practical difficulties, based upon the following criteria:

1. Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose.
2. The variance will do substantial justice to the applicant, as well as to other property owners, and a lesser variance than requested will not give substantial relief to the applicant or be consistent with justice to other property owners.
3. The need for the variance is due to unique circumstances peculiar to the land or structures involved, that are not applicable to other land or structures in the same district.
4. The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.
5. The variance will not cause significant adverse impacts to adjacent properties, the neighborhood or the City, and will not create a public nuisance or materially impair public health, safety, comfort, morals or welfare.

6. The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience, or an inability to attain a higher financial return.

**B. Use Variances.**

The granting of a variance from the use provisions of this Ordinance shall require a finding of unnecessary hardship, based upon the following criteria:

1. **The current zoning ordinance prohibits the property owner from securing any reasonable economic return or making any reasonable use of the property.** Under this standard, the BZA must find that the property (land, structures and other improvements) is not suitable for uses permitted in the zoning district.
2. **The landowner's plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.** Circumstances common to the larger neighborhood may reflect the unreasonableness of the zoning itself, which should be addressed through a rezoning or other legislative action.
3. **The use variance, if granted, would not alter the essential character of the neighborhood.** This standard requires consideration of whether the intent and purpose of the Ordinance and zoning district will be preserved, and the essential character of the area will be maintained.
4. **The hardship is not the result of the applicant's actions.** Under this standard, the BZA must determine that the hardship that led to the use variance request was not self-created by the applicant. Purchase of a property with a pre-existing hardship does not constitute a self-created hardship. Financial hardships that would prevent reasonable use of the property shall be considered, but shall not be the only determining factor in granting a use variance.

**Section 24.10 Exceptions.**

To hear and decide requests for exceptions and other matters upon which this Ordinance specifically authorizes the Board of Zoning Appeals to act. Any exception shall be subject to such conditions as the BZA may require to preserve and promote the purpose of this Ordinance, and the character of the zoning district in question.

**Section 24.11 Hearings and Decisions.**

The Board of Zoning Appeals shall make no determination on a specific case until after a public hearing conducted in accordance with Section 1.12 (Public Hearing Procedures). Each decision shall include a written record of the specific findings and determinations made by the BZA in the case.

## **Section 24.12 Limitations of Authority.**

The following specific limitations shall apply to the authority of the Board of Zoning Appeals:

### **A. Expiration of Approval.**

No order of the BZA permitting the erection or alteration of a structure, or use of a structure or land, shall be valid for a period longer than 365 days, unless a building permit for such erection or alteration is obtained within such period, or the use is lawfully established within such period.

### **B. Limitations on Review.**

The BZA shall not have the authority to consider appeals of any decisions by the Planning Commission or City Council regarding amendments to this Ordinance, special condition uses, preferred class nonconforming designations, or planned unit developments. BZA jurisdiction to consider appeals of site plan determinations shall be limited to the following:

1. Appeals of administrative decisions of the Planning Commission or City Planner regarding approval or denial of site plans.
2. Cases referred by the Planning Commission, where the Planning Commission has approved a site plan contingent upon approval of one or more variances by the BZA. In such cases, the Planning Commission Secretary shall provide copies of the site plan, application materials and Planning Commission meeting minutes to the BZA, and consideration shall be limited to the specific variances identified as conditions of site plan approval by the Planning Commission.

### **C. Ordinance Changes Prohibited.**

The Board of Zoning Appeals shall not have the authority to alter this Zoning Ordinance or Map.