

CHAPTER 1264  
Zoning Board of Appeals

1264.01	City Council as Zoning Board of Appeals.	1264.05	Powers; concurring vote of majority of members.
1264.02	Quorum.	1264.06	Procedures.
1264.03	Conflicts of interest.	1264.07	Procedures for the review and standards for approval of nonuse variances.
1264.04	Elections; meetings; rules; record of proceedings; fees.		

CROSS REFERENCES

Zoning Board of Appeals - see CHTR. Sec. 6.8; M.C.L.A. Sec. 125.585  
 Meetings of the Board; freedom of information - see M.C.L.A. Sec. 125.585a  
 Review by Circuit Courts; appeals to Supreme Court; procedure - see M.C.L.A. Sec. 125.590  
 Actions for review; proper and necessary parties; notice; failure to appear - see M.C.L.A. Sec. 125.591

**1264.01 CITY COUNCIL AS ZONING BOARD OF APPEALS.**

Pursuant to Section 6.8 of the Litchfield City Charter, the Litchfield City Council shall serve as the Zoning Board of Appeals.  
 (Ord. 2008-09. Passed 9-9-08.)

**1264.02 QUORUM.**

The Zoning Board of Appeals shall not conduct business unless a majority of the regular members of the Zoning Board of Appeals are present.  
 (Ord. 2008-09. Passed 9-9-08.)

**1264.03 CONFLICTS OF INTEREST.**

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. A member of the Zoning Board of Appeals who is also a member of the Planning Commission shall not participate in a public hearing on or vote on the same matter that the same member voted on as a member of the Planning Commission. However, the member may consider and vote on other unrelated matters involving the same property.  
 (Ord. 2008-09. Passed 9-9-08.)

**1264.04 ELECTIONS; MEETINGS; RULES; RECORD OF PROCEEDINGS; FEES.**

The Zoning Board of Appeals shall annually elect its own Chairperson, Vice-Chairperson and Secretary. Meetings of the Zoning Board of Appeals shall be heard at the call of the Chairperson and at such other times as the Board may determine by rule. Such Chairperson, or, in his or her absence,

the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Zoning Board of Appeals shall be open to the public. The Board shall adopt its own rules or procedures and shall maintain an accurate record of its proceedings and findings, 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 sent 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 Zoning Board of Appeals, the required fees for appeal, in whole or in part, may be refunded to the petitioner at the discretion of the Zoning Board of Appeals.

(Ord. 2008-09. Passed 9-9-08.)

#### **1264.05 POWERS; CONCURRING VOTE OF MAJORITY OF MEMBERS.**

(a) The Zoning Board of Appeals shall hear and decide questions that arise in the administration of this Zoning Code, including the interpretation of the zoning map, and may adopt rules to govern its procedures sitting as a Zoning Board of Appeals. The Zoning Board of Appeals shall also herein decide matters referred to the Zoning Board of Appeals or upon which the Zoning Board of Appeals is required to pass under this chapter. It shall hear and decide appeals and review any administrative order, requirement, decision or determination made by an administrative official or body charged with enforcement of this chapter. The Zoning Board of Appeals shall also have the power to authorize a variance as defined in this chapter.

(b) It shall not have the power to hear appeals from decisions of the Planning Commission in accordance with Chapters 1275 and 1276 of this Zoning Code.

(c) The concurring vote of a majority of the members of the Zoning Board of Appeals is necessary to reverse an order, a requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the Zoning Board of Appeals is required to pass under this chapter, or to grant a variance.

(Ord. 2008-09. Passed 9-9-08.)

#### **1264.06 PROCEDURES.**

(a) An appeal to the Zoning Board of Appeals may be taken by any person, firm or corporation aggrieved or by an officer, department, board or bureau of the State or the City. The Zoning Board of Appeals shall state the grounds of any determination made by it.

(b) An appeal under this section shall be taken within such time as shall be prescribed by the Zoning Board of Appeals by general rule, by the filing with the officer for whom the appeal is taken and with the Zoning Board of Appeals of a notice of appeal specifying the grounds for the appeals. The body or officer from whom the appeal is taken shall immediately transmit it to the Zoning Board of Appeals all of the papers constituting the record upon which the action appealed from was taken.

(c) An appeal to the Zoning Board of Appeals stays all proceedings in furtherance from the action appealed from unless the body or officer from whom the appeal is taken certifies to the Zoning Board of Appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, in which case proceedings may be stayed by a restraining order issued by the Zoning Board of Appeals or a circuit court.

(d) Following receipt of a written report concerning a request for a variance, the Zoning Board of Appeals shall fix a reasonable time for the hearing for the request and give notice as provided in Section 1260.08.

(e) Upon receipt of a written request seeking an interpretation of the Zoning Code or an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the Township and shall be sent to the person requesting that interpretation not less than fifteen days before the public hearing. In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, written notice stating the notice of the interpretation request and the time, date and place of the public hearing on the interpretation request shall be sent by first class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.

(f) At the hearing, a party may appear in person or by agent or attorney. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination and may issue or direct the issuance of a permit.

(g) The Zoning Board of Appeals has the authority to grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of this Zoning Code or to any other nonuse-related standard in the Zoning Code. The Zoning Board of Appeals may grant a nonuse variance in accordance with this section, so that the spirit of the Zoning Code is observed, public safety secured and substantial justice done. The procedures for the review and standards for the approval of nonuse variances shall be as hereinafter set forth.

(h) The Zoning Board of Appeals shall not have authority to grant use variances.

(i) Decisions of the Board of Appeals and Appeals to Circuit Court.

(1) The Board of Appeals shall decide upon all matters within a reasonable time and may reverse or affirm wholly or partly, or may modify the order, requirements, decision or determination appealed from, and shall make such order, requirement, decision, or determination as in its opinion ought be made in the premises, and to that end, shall have all the powers of the zoning administrator or body from whom the appeal is taken. The Board of Appeals decision shall be in the form of a resolution containing a full record of the findings and determination of the Board of Appeals in each particular case. Any person having an interest affected by such resolution shall have the right to appeal to the Hillsdale County Circuit Court.

(2) The decision of the Board of Appeals shall be final, and any party aggrieved by any such decision may appeal to the Circuit Court for Hillsdale County. Such appeal shall be filed within thirty days after the Zoning Board of Appeals issues its decision in writing signed by the Chairperson, or within twenty-one days after the Zoning Board of Appeals approves the minutes of its decision. The records of the Board of Appeals shall be made available for the court's review.

(Ord. 2008-09. Passed 9-9-08.)

### 1264.07 PROCEDURES FOR THE REVIEW AND STANDARDS FOR APPROVAL OF NONUSE VARIANCES.

The Board of Appeals must make a determination within ninety days from receipt of an appeal, whether or not to authorize a variance from the strict application of the provisions of this Zoning Code whereby reason of exceptional narrowness, shallowness, shape, or contour of a specific tract of land at the time of enactment of this chapter or by reason of exceptional conditions of such property, the strict application of regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property. Examples of other variance considerations would include parking space regulations, sign size and height regulations. No variance shall be granted to permit the establishment within a district of any use which is excluded or for which a conditional use permit is required.

A variance from the terms of this Zoning Code shall not be granted by the Board of Appeals unless and until:

- (a) A written application for a variance is submitted, demonstrating the following:
  - (1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.
  - (2) That literal interpretation of the provisions of this Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Zoning Code.
  - (3) That the special conditions and circumstances do not result from the actions of the applicant.
  - (4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Zoning Code to other lands, structures, or buildings in the same district.
  - (5) That no nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- (b) The Board of Appeals shall determine that the requirements of the Zoning Code have been met by the applicant for a variance.
- (c) The Board of Appeals shall determine that the reasons set forth in the application justify the granting of the variance, and the variance is the maximum variance that will make possible the reasonable use of the land, building, or structure.
- (d) The Board of Appeals shall determine that the granting of the variance will be in harmony with the general purpose and intent of this Zoning Code, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- (e) In granting any variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Zoning Code. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Zoning Code.
- (f) Each variance granted under the provisions of this chapter shall become null and void unless:
  - (1) The construction authorized by such variance or permit has been commenced within 180 days after the granting of such variance and pursued diligently to completion;or

- (2) The occupancy of land or buildings authorized by such variance has taken place within 365 days after the granting of such variance.
- (g) No application for a variance which has been denied wholly or in part by the Board of Appeals shall be resubmitted for a period of 365 days from such denial, except on grounds of new evidence or proof of changed conditions found by the Board of Appeals to be valid.
- (Ord. 2008-09. Passed 9-9-08.)