

113.0 BOARD OF ADJUSTMENT

113.1 Appointment, Term, Removal, Vacancies

In order to avail itself of the powers provided in this Ordinance, the Town Council shall provide by resolution for the appointment of a Board of Adjustment. The Board of Adjustment shall consist of five members, each to be appointed by the Town Council for a term of five years provided that the terms of the members of the first Board so appointed shall be such that the term of one member shall expire each year. Any member may be removed for cause by the appointing authority upon written charges and after public hearing, if such public hearing is requested. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member, but not more than one, of the Planning Commission shall be a member of the Board of Adjustment.

113.2 Organization, Meetings, Duties of Members

The Board of Adjustment shall organize and elect a chairman and adopt rules in accordance with the provisions of any ordinance adopted pursuant to this Ordinance. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions; all of which shall be immediately filed in the office of the Board and shall be a public record.

113.3 Appeals

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the Board by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the

Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

113.4 Stay of Proceedings Pending Appeal

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts 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 otherwise than by restraining order which may be granted by the Board of Adjustment or by the district court on application and notice and on due cause shown.

113.5 Notice of Hearing on Appeal

The Board of Adjustments shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and shall decide the same

within a reasonable time. Upon the hearing any party may appear in person or by agency or by attorney.

113.6 Powers of Board on Appeal

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by the administrative officer in the enforcement of this Ordinance or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of this Ordinance upon which such Board is required to pass under such Ordinance.

3. To authorize upon appeal such variance from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided, that the spirit of this Ordinance shall be observed and substantial justice done. Before any variance may be authorized, however, it shall be shown that:

a. The variance will not substantially affect the comprehensive plan of zoning of Portage and that adherence to the strict letter of the Ordinance will cause difficulties and hardships, the imposition of which upon the

petitioner is unnecessary in order to carry out the general purpose of the plan.

b. Special circumstances are attached to the property owned by the applicant which do not generally apply to the other property in the same district.

c. That because of said special circumstance, property covered by the application is deprived of privileges possessed by other properties in the same district; and that the granting of the variance is essential to the enjoyment of a substantial property possessed by other property in the same district.

4. To interpret the Zoning Map.

5. To permit, in a residential zone, for a period not to exceed one year, a temporary building permit or use of a commercial or industrial nature which is incidental and necessary to the construction of the residential development.

113.7 Decision on Appeal

In exercising the above mentioned powers such Board may, in conformity with the provision of this Ordinance, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and

to that end shall have all the powers of the officer from whom the appeal is taken.

113.8 Vote Necessary for Reversal

The concurring vote of three members of the Board shall be necessary to reverse any order, requirement or determination of any such administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under such ordinance, or to effect any variation in such ordinance.

113.9 Judicial Review of Board's Decision

The city or any person aggrieved by any decision of the Board of Adjustment may have and maintain a plenary action for relief there from in any court of competent jurisdiction; provided, petition for such relief is presented to the court within 30 days after the filing of such decision in the office of the Board.

113.10 Time Limitations on Variance

Once the Board of Adjustment grants a variance, alterations in accordance with the variance first be begun within 6 months

after the date of the variance is granted or the variance shall expire. At the request of the applicant, the Board of Adjustment may grant one 6-month extension if the Board determines the extension to be in the public interest.

114.0 ZONES

114.1 Establishment of Zoning Districts