

ORDINANCE NO. 1006

AN ORDINANCE TO AMEND SECTIONS 154.162 THROUGH 154.166, AND SECTION 154.171, OF THE MT. PLEASANT ZONING ORDINANCES TO DEFINE THE POWERS AND JURISDICTION OF THE ZONING BOARD OF APPEALS

It is Hereby Ordained by the People of the City of Mount Pleasant:

Section 1. Amendment. Sections 154.162, 154.163, 154.164, 154.165, 154.166, and 154.171 of the Mt. Pleasant Zoning Ordinances are amended to read as follows:

Sec. 154.162. Zoning Board of Appeals.

(A) *Powers*. The Zoning Board of Appeals shall have all powers granted by state law and this chapter.

(B) *Composition*. The Zoning Board of Appeals shall be composed as follows:

(1) *Regular Members*. The Zoning Board of Appeals shall consist of six regular members appointed by the City Commission. One of the regular members of the Zoning Board of Appeals shall be a member of the Planning Commission.

(2) *Alternate Members*. The City Commission may appoint an alternate member for the same term as regular members. The alternate member may be called to serve as a member of the Zoning Board of Appeals in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. An alternate member serving on the Zoning Board of Appeals has the same voting rights as a regular member.

(3) *Qualifications*. All members shall be qualified electors of the city and shall, insofar as is possible, be representative of the entire city.

(4) *Terms*. The terms of office for members appointed to the Zoning Board of Appeals shall be for three years, except for members serving because of their membership on the Planning Commission or legislative body, whose terms shall be limited to the time they are members of those bodies.

(5) *Vacancies*. A successor shall be appointed not more than one month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.

(C) *Meetings*. Meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at other times as the Zoning Board of Appeals in its rules of procedure may specify. The chairperson or, in the chairperson's absence, the acting chairperson may administer oaths and compel the attendance of witnesses. The Zoning Board of Appeals shall maintain a record of its proceedings which shall be filed in the office of the City Clerk.

(D) *Applications to the Zoning Board of Appeals*. All applications to the Zoning Board of Appeals (including applications for appeal, applications for variances, and applications for advisory decisions interpreting the zoning ordinance or map) shall be filed with the Secretary of the Board or the Secretary's designee, accompanied by the applicable filing fee. The City Commission may set the amount of the filing fee by resolution.

(E) *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.

(F) *Voting Requirements and Procedures*. The concurring vote of a majority of the members of the Zoning Board of Appeals is necessary to: (i) reverse an order, requirement, decision, or determination of an administrative official or body; (ii) decide in favor of the applicant on a matter upon which the Zoning Board of Appeals is required to pass under the zoning ordinance; or (iii) grant a variance. The Zoning Board of Appeals shall specifically state the grounds of any determination, which shall be included in the minutes.

(G) *Assistance from City Departments*. The Zoning Board of Appeals may call on City departments for assistance in the performance of its duties.

Sec. 154.163. Appeals.

(A) *Appellate Authority*. The Zoning Board of Appeals may decide appeals made by an applicant or any aggrieved party from any decision of the Planning Commission, Building Official, Zoning Administrator, or any other city official administering this chapter. No appeal may be made of a decision or other action of the City Commission.

(B) *Application to Appeal*. An application of appeal shall be submitted to the Secretary of the Board or designee within 30 days of the decision being appealed. Applications must specifically state the grounds for the appeal in a manner that explains why the decision being appealed was in error. Applications should not include new information that was not provided to the initial decisionmaker.

(C) *Standards for Deciding Appeal*. In deciding an appeal, the Zoning Board of Appeals shall affirm the decision being appealed unless such decision is not authorized by law, and is not supported by competent, material and substantial evidence. The Zoning Board of Appeals shall consider only the information provided to the initial decisionmaker. If the Zoning Board of Appeals finds the record

inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented, the Zoning Board of Appeals shall order further review by the initial decisionmaker on conditions that the Zoning Board of Appeals considers proper.

(D) *Stay of Enforcement.* An appeal stays all action of the decision appealed, unless the city official, board or commission whose decision is being appealed certifies to the Board that a stay would cause imminent peril to life or property. In such case, the stay may only be implemented by a restraining order granted by the Board or by the Circuit Court.

Sec. 154.164. Variances.

(A) *Variance Authority.* The Zoning Board of Appeals may grant variances upon finding based on reasonable evidence that the variance will not be detrimental to adjacent property or the surrounding neighborhood and will not impair the intent and purpose of this chapter. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

(B) *Non-Use (Dimensional) Variances.* To obtain a non-use or dimensional variance, the applicant must show practical difficulty by demonstrating that all of the following conditions exist:

(1) That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or classes or uses in the same zoning district; exceptional or extraordinary circumstances or conditions include:

(a) Exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter;

(b) Exceptional topographic conditions or other extraordinary situation on the land, building or structure; or

(c) Exceptional use or development of the property immediately adjoining the property in question.

(2) That such a variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity.

(3) That the variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practicable.

(4) That the authorizing of such variance will not be a substantial detriment to adjacent property.

(5) That authorizing of the variance will not materially impair the purposes of this chapter or the public interest.

(6) That the need for the variance is not created by any action of the applicant or previous owner.

(C) *Use Variances.* The Zoning Board of Appeals shall not consider any requests for use variances unless a request to rezone or conditionally rezone the property has been denied within the past calendar year. To obtain a use variance, the applicant must show that literal enforcement of the requirements of this chapter would cause undue hardships to the applicant because:

(1) The property cannot be used for purposes permitted in that zone;

(2) The problem arises because of the property's unique circumstances rather than general neighborhood conditions;

(3) The use variance will not change the essential character of the area;

(4) The problem is not self-created; and

(5) The use or development of property immediately adjoining the property in question is not adversely affected due to increase in traffic, noise, odor, vibration, etc.

(D) *Conditions.* The Board of Appeals may impose reasonable conditions on the granting of a variance.

(1) Conditions may be granted for purposes including to:

(a) Ensure that the affected public services and facilities will accommodate the change in the land use or activity;

(b) Protect the natural environment and conserve natural resources and energy;

(c) Ensure compatibility with adjacent uses of land; and

(d) Promote the use of land in a socially and economically desirable manner.

(2) Any condition imposed shall do all of the following:

(a) Be designed to protect natural resources, the health, safety and welfare or the social and economic well-being of those who will use the land, use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

(b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.

(c) Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established for the land use or activity under consideration; and be necessary to insure compliance with those standards. The conditions imposed with respect to the approval of land use or activity shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual consent of the approving authority and the landowner. The Board shall maintain a record of changes granted in conditions.

Sec. 154.165. Decisions Interpreting the Zoning Ordinance or Map.

(A) *Applications Requesting Advisory Decisions.* The Zoning Board of Appeals shall hear and decide applications requesting advisory decisions regarding the property interpretation of the zoning ordinance or zoning map, but only when such application is submitted by one of the following:

- (1) The City Commission;
- (2) Any City board or commission created by the Charter, any City ordinance, or any state statute;
- (3) Any City official whose position is created by the City Charter, any City ordinance, or any state statute; or
- (4) An interested property owner whose property is affected by the ordinance or map (or may be affected, depending on the proper interpretation) in a manner not common to other property owners in the City.

(B) *Standards for Interpreting the Zoning Map.* When rendering any decision involving the interpretation of the zoning map, the Zoning Board of Appeals shall use the following standards:

- (1) Zoning district boundary lines shall follow lot lines and the center lines of alleys, streets, rights-of-way or watercourses.
- (2) With respect to property that is not subdivided, or where a zoning district divides a recorded lot, the location of any boundary shall be determined by use of the map scale.
- (3) If after application of the foregoing rules, uncertainty still exists as to the exact location of a zoning district boundary, the Board shall determine and fix the location of line in a reasonable manner to best accomplish the purposes of this chapter.

Sec. 154.166. Hearing Procedure.

(A) Upon receiving an application, the Zoning Board of Appeals shall fix a reasonable time for a hearing. A notice shall be given in a newspaper of general circulation no less than 15 days prior to the hearing. The publication notice shall include the time and location of the hearing. Notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction.

(B) The notices shall be given not less than 15 days before the date the application will be considered for approval. If the name of the occupant is not known, the term "occupant" may be used in making notification under this section. The notice shall describe the request and indicate that the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. If there are no street addresses, other means of identification may be used. The notice shall also list when and where the request will be considered and indicate when and where written comments will be received concerning the request. An affidavit of mailing shall be maintained.

(C) The Board of Appeals may recess a hearing to gather additional information, to make site inspections, or to engage in any activities as may be necessary to make a proper decision on the matter before it. The Zoning Board of Appeals shall reconvene the hearing within 30 days of the original hearing date. The reconvened hearing date shall be announced at the original hearing. This announcement shall constitute proper notification.

Sec. 154.171. Special Use Permits.

A land use designated as a 'special use' in a particular zoning district is one that, because of its inherent nature, extent, or external effects, generally is not permitted in the district but could be if subject to standards and restrictions to ensure the use is located, designed, and operated in a manner harmonious with neighboring development and does not adversely affect the public health, safety, and general welfare. The Special Use Permit shall be granted if the Planning Commission finds that the proposed use conforms, or can be altered to conform, to all of the criteria for approval for Special Use Permits [see §§ 154.171(A) and (C)].

(A) *Criteria for special use permits.* The Zoning Ordinance imposes the following general requirements on the use requested by the applicant. Under each requirement, the applicant should explain, in writing with supporting evidence, how the proposed use satisfies the requirements. For those requirements where there is potential for negative or adverse effects, applicant will propose measures to mitigate such effects.

- (1) The special use shall be one listed as a permitted special use for the zoning district in which the property is located and the special use shall be consistent with the intent and purpose of this chapter and the objectives of the currently adopted Master Plan.

(2) The special use shall be designed, constructed and maintained in a manner which reflects or enhances the character of the surrounding neighborhood within 300 feet measured lot line to lot line. The special use shall be operated in a manner compatible with surrounding land uses within 300 feet. Compatibility includes, but is not limited to, hours of operation and environmental effects (e.g. noise, light, traffic, intensity of use, density).

(3) Applicant shall demonstrate how the exterior structure is compatible with the surrounding area (defined as adjacent and/or abutting properties including those properties separated by streets alleys or other rights-of-way) and how the use is compatible with surrounding land uses.

(4) The special use shall not interfere with the general enjoyment of the surrounding area (defined as adjacent and/or abutting properties including those properties separated by streets alleys or other rights-of-way).

(5) The applicant shall indicate how the special use will not have an adverse impact on the surrounding neighborhood within 300 feet in regards to traffic, noise, architectural compatibility, hours of operation, light, odors, etc.

(6) The special use shall not be hazardous to the adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety, or welfare of persons or property through the excessive production of traffic, noise, smoke, odor, fumes or glare.

(7) The special use shall be adequately served by the existing capacity of essential public facilities and services, or it shall be demonstrated that the person responsible for the proposed special use shall be able to continually provide adequately for the services and facilities deemed essential to the special use under consideration.

(B) *Conditions and fees for special use permits.*

(1) The Planning Commission may impose conditions to insure compliance with the standards of this chapter. Such conditions shall be considered an integral part of the special use permit and shall be enforced by the Secretary of the Planning Commission.

(2) The Planning Commission may require that a cash deposit, certified check, surety bond, or other financial guarantee be furnished to insure compliance with all requirements for the special use.

(3) A special use permit shall become effective at the time the application is approved by the Planning Commission, and shall be valid regardless of change of ownership, provided all terms and conditions of the permit are met by subsequent owners or users.

(4) In the event more than one year has elapsed and development has not begun, the Planning Commission shall review the permit in relation to the standards and requirements currently in effect. If the permit is still in conformance with the provisions of this chapter and there has been no change in the conditions affecting the appropriateness of the special use, the permit shall remain valid. If there have been changes in either this chapter or conditions affecting the appropriateness of the special use permit, the permit shall become void.

(5) A use for which a special use permit has been granted shall be considered a conforming use in the district in which the property is located, provided the permit was issued in conformity with the provisions of this chapter and all conditions required by the Commission have been complied with and maintained.

(6) A building permit shall not be issued until the special use permit has been authorized by the Planning Commission.

(7) Property subject to a special use permit may not be used or occupied until a certificate of occupancy has been issued.

(C) *Application procedures.*

(1)

(a) Any person owning or having an interest in the property may file with the Secretary of the Planning Commission (or the Secretary's designee) an application accompanied by a non-refundable fee in accordance with a fee schedule adopted by the City Commission to cover the cost of processing the application.

(b) *A development site plan.* Site plans for all special use permits that occupy one acre of land area or more must be sealed by a licensed surveyor, engineer, architect or community planner. The Planning Commission or Zoning Administrator may waive this requirement for due cause. The development site plan must show, at a minimum:

1. The lot;
2. All structures, both existing and proposed;
3. Site improvements;
4. Parking areas and spaces;
5. Screening requirements;
6. Trash container location and screening;
7. Type and location of exterior lighting;

8. Signage;
9. Landscaping features retained and added, including landscape features to be removed;
10. Ratio of green space to lot size; and
11. Vehicular and pedestrian circulation plans, including vehicular entry and exit points, loading areas, sidewalks and bike paths.

(c) The Secretary of the Planning Commission (or the Secretary's designee) shall prepare for the applicant (from the city's GIS) a map showing the following within 300 feet of the subject property:

1. Existing land uses;
2. Zoning designations;
3. Lot lines;
4. Buildings;
5. Municipal utilities;
6. Municipal trees; and
7. Streets and alley ways.

(d) A rendering or photograph of the exterior of the proposed development and that of the structures on the surrounding properties. The rendering or photographs will include a description of the exterior materials to be used. A photo of an existing building may be used.

(e) A written statement explaining how the special use shall not substantially injure the financial value of surrounding properties, and shall not hinder or discourage the appropriate development or use of adjacent properties unless the use is a public necessity.

(f) A written statement addressing each of the requirements for a special use permit as set forth in divisions (A)(1) -(7) and (C)(1)(a).

(g) When requested by the City's planning department, or a majority of the Planning Commission, additional information shall be provided by the applicant such as:

1. Traffic impact analysis;
2. Detailed parking and site circulation analysis;
3. Photographs of the property and surrounding areas;
4. Environmental impact statement;
5. Landscape plan;
6. Any other items deemed necessary; and
7. An appraisal to indicated the effect of the proposed use on the financial value of properties within 300 feet of the subject property.

(2)

(a) Notice that a special use permit has been requested shall be published. A notice shall be given in a newspaper of general circulation no less than 15 days prior to the hearing. The publication notice shall include the time and location of the hearing. Notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction.

(b) The notices shall be given not less than 15 days before the date the application will be considered for approval. If the name of the occupant is not known, the term "occupant" may be used in making notification under this section. The notice shall describe the request and indicate that the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. If there are no street addresses, other means of identification may be used. The notice shall also list when and where the request will be considered and indicate when and where written comments will be received concerning the request. An affidavit of mailing shall be maintained.

(3) At the time and place set forth in the notice, the Planning Commission shall hold a public hearing before a decision on the special use permit request is made. The Planning Commission may deny, approve, or approve with conditions, requests for special use permit approval.

(4)

(a) The Planning Commission may impose conditions to ensure compliance with the standards of this chapter and to protect the public interest and welfare. Such conditions shall be considered an integral part of the special use permit. Such conditions may include, but need not be limited to:

1. More restrictive sign standards;

2. Additional open space, landscaping or screening requirements;
3. Additional yard requirements;
4. Special lighting requirements;
5. Time limitations on hours of operation;
6. Additional parking, off-street parking, and loading requirements;
7. Additional utility, drainage and public facility requirements;
8. Additional right-of-way and public access requirements;
9. Additional requirements to ensure compatibility with the Master Plan; and
10. Conditions for renewal, extension, expiration, and/or revocation of special use permit.

(b) The decision to attach additional conditions shall specify the basis for the decision. The decision on a special use permit shall be incorporated in a statement of finding and conclusions relative to the special use permit which specifies the basis for the decision and any conditions imposed.

(5) Upon approval by the Planning Commission, the Secretary shall issue a special land use permit to the applicant.

(6) Within 30 days following the decision on a special use application, an applicant or any aggrieved party, including any governmental body or agency, may appeal the decision of the Planning Commission to the Zoning Board of Appeals. Upon the filing of an appeal, the application and all relevant documents and testimony and the findings and decision of the Planning Commission shall be transmitted to the Zoning Board of Appeals.

(7) Conditions imposed with respect to the approval of a special use permit shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the Planning Commission and the landowner.

(D) *Revocation.* A special use permit may be revoked if conditions imposed by the Zoning Ordinance and the Planning Commission are not met, provided the following steps have been undertaken:

(1) Upon verification of non-compliance by the Building Official or Zoning Administrator, a notification shall be sent to the property owner informing them of the non-compliance. The owner shall be notified by certified mail and given 30 days from the mailing date to bring the property into compliance.

(2) If the property is not brought into compliance within 30 days of mailing date of non-compliance, the Zoning Administration shall send written communication to the Zoning Board of Appeals requesting a public hearing be held to revoke the special use permit.

(3) The hearing before the Zoning Board of Appeals to consider revocation of a special use permit shall follow the provisions of § 154.166 of the Zoning Ordinance.

Section 2. Publication and Effective Date. The City Clerk shall cause to be published a notice of adoption of this ordinance within 10 days of the date of its adoption. This ordinance shall take effect 30 days after its adoption.

James Holton, Mayor

Jeremy Howard, City Clerk

Introduced: October 12, 2015
 Adopted: November 9, 2015
 Published: November 16, 2015
 Effective: December 9, 2015

I, Jeremy Howard, City Clerk for the City of Mt. Pleasant, Michigan, do hereby certify that the foregoing is a true and complete copy of Ordinance No. 1006 as passed and ordained by the City Commission on the 9th day of November, 2015, and has been published one insertion in the Morning Sun on the 16th day of November, 2015, according to the certificate now on file in my office.

In Witness Whereof, I hereunto set my hand and the seal of the City of Mt. Pleasant, Michigan, this 4th day of December, 2015.

Jeremy Howard, City Clerk