

CHAPTER 18 ZONING BOARD OF APPEALS

SECTION 18.01 AUTHORIZATION

In order that the objectives of the Ordinance may be more fully and equitably achieved, that there shall be provided a means of competent interpretation of this Ordinance, that adequate but controlled flexibility be provided in the application of this Ordinance, that the health, safety, and welfare of the public be secured, and that justice will be done, there is hereby established a Township Zoning Board of Appeals.

SECTION 18.02 MEMBERSHIP – TERMS OF OFFICE

A. Membership

1. The Zoning Board of Appeals shall consist of five (5) members.
2. The first member of the Zoning Board of Appeals shall be a member of the Township Planning Commission; the second member may be a member of the Township Board; the additional members shall be selected from the electors residing in the township. If a member of the Township Board serves on the Zoning Board of Appeals, he/she shall not be the chairperson.
3. All members shall be appointed by the Township Board. No member shall be an elected officer (clerk, supervisor, treasurer) of the Township or an employee or contractor of the Township.
4. The additional members shall be appointed for three (3) year terms; the Planning Commission and Township Board representatives, who shall not be the same member, shall only serve while holding membership on those respective bodies.
5. A member of the Zoning Board of Appeals who is also a member of the Planning Commission or the Township Board shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission or the legislative body. However, the member may consider and vote on other unrelated matters involving the same property.

B. Alternates

1. The Township Board may appoint up to two (2) alternate members for the same terms as the regular members.
2. An alternate member may be called to serve as a regular member in the absence of a regular member if the regular member is absent from or will be unable to attend one (1) or more meetings or a regular member has abstained for reasons of conflict of interest.
3. The alternate member shall serve in the case until a final decision is made. The alternate member shall have the same voting rights as a regular member.

- C. Removal: A member of the Zoning Board of Appeals may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. 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 known conflict of interest constitutes malfeasance in office. Whenever a member of the Zoning Board of Appeals has a conflict of interest with respect to a matter presented to the Zoning Board of Appeals, the member shall state on the record the nature of the conflict of interest, and the member shall not participate in the Zoning Board of Appeals' discussion, consideration, deliberation, or decision of the matter.

SECTION 18.03 DUTIES AND POWERS

The Township Zoning Board of Appeals shall have the following specified duties and powers:

- A. Appeals: The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator or other administrative officer or body of the Township in the administration of this Ordinance except as otherwise provided by this Ordinance.
- B. Interpretation: The Zoning Board of Appeals shall have the power to:
 - 1. Hear and decide upon request for the interpretation of the provisions of the text of this Ordinance;
 - 2. Determine the precise location of boundary lines between Districts upon appeal from a decision regarding the location by the Zoning Administrator.
- C. Variances. The Zoning Board of Appeals shall have the power to authorize specific variances from the requirements of this Ordinance.
- D. The Zoning Board of Appeals shall not have the authority to approve any sign type within any Zoning District which is not permitted by this Ordinance.

SECTION 18.04 MEETINGS

- A. Meetings shall be open to the public, and shall be held at the call of the Chairman and at other times as the Zoning Board of Appeals shall specify in its rules of procedure.
- B. Applications
 - 1. An application to the Zoning Board of Appeals shall consist of a completed application form, provided by the Township, a fee or fees as established by the Township Board, which shall be paid to the Township Clerk at the time of filing, and a scaled drawing with sufficient detail to indicate the nature and necessity of the request.
 - 2. The Zoning Board of Appeals may request additional detail on the drawing or other information which they deem necessary to make a decision on the application.

- C. Hearings:
1. Upon receipt of a complete application and any applicable fee(s), the Township shall schedule a public hearing and shall cause notice of the hearing to be made as required by the Zoning Act.
 2. The Zoning Board of Appeals may recess hearings from time to time, and, if the time and place of the continued hearing is publicly announced at the time of adjournment, no further notice shall be required.
- D. Rules of Procedure: The Zoning Board of Appeals may adopt rules and regulations for the conduct of its meetings. The Zoning Board of Appeals shall elect from its membership a Chairperson, Vice-Chairperson, Secretary and other officers as deemed necessary. The Zoning Board of Appeals shall not conduct business unless a majority of its members are present. The presence of three (3) members shall constitute a quorum.

The regular place and time of meeting of the Zoning Board of Appeals may be established by the Zoning Board of Appeals in its rules and regulations. Except as otherwise specified in the rules and regulations of the Zoning Board of Appeals, procedure in meetings of the Zoning Board of Appeals shall be governed by Robert's Rules of Order.

Minutes of proceedings shall be kept for the Zoning Board of Appeals meetings. These minutes shall list the members absent and present and shall show the action taken by the Zoning Board of Appeals, as well as the vote of each member upon each matter presented to the Zoning Board of Appeals.

SECTION 18.05 DECISIONS

- A. Voting
1. The concurring vote of a majority of the membership (three (3) votes) of the Zoning Board of Appeals shall be necessary to decide any appeal, interpretation, non-use variance, or other matter referred to the Zoning Board of Appeals.
 2. The concurring vote of three-quarters ($\frac{3}{4}$) of the membership (four (4) votes) of the Zoning Board of Appeals shall be necessary to decide any use variance.
 3. The Zoning Board of Appeals shall make its decision on each case within a reasonable time after the scheduled hearing has been held.
- B. Decisions
1. Any decision of the Zoning Board of Appeals shall not become final until the minutes of the meeting at which final action on the request was taken are officially approved and adopted by the Zoning Board of Appeals, unless the Zoning Board of Appeals certifies the decision at the time of the decision.
 2. The decision of the Zoning Board of Appeals shall be final; however, any person having an interest affected by any such decision shall have the right of appeal to the Circuit Court on questions of law and fact.

3. Each decision entered under the provisions of this Chapter shall become null and void unless the construction or other action authorized by the decision has been started within one (1) year after the decision was made and is being carried forward to completion or occupancy of land, premises, or buildings.
- C. No application which has been denied wholly or in part by the Zoning Board of Appeals shall be resubmitted for a period of one (1) year from the date of the last denial, except on grounds of changed conditions that would significantly change the nature of the request or affect the reasons for denial first ordered by the Zoning Board of Appeals.

SECTION 18.06 APPEALS

- A. Appeals to the Zoning Board of Appeals may be taken by any person aggrieved, or by any officer, department or board of the Township. Applications for appeals shall be filed in writing with the Township within twenty-one (21) days after the date of the decision which is the basis of the appeal. The appellant must file with the Zoning Administrator a written notice of appeal within such 21-day time period (and pay any applicable fee or fees) specifying the nature and grounds for the appeal. The Zoning Administrator shall transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
- B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Zoning Board of Appeals after the notice of the appeal shall have been filed with him that, for reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Zoning Board of Appeals or, on application, by the Circuit Court when due cause can be shown. Notwithstanding the preceding, the Township may pursue appropriate enforcement proceedings, and similar matters despite the stay provision.

SECTION 18.07 REVIEW STANDARDS FOR VARIANCES

- A. Non-Use Variance: A non-use or dimensional variance may be approved by the Zoning Board of Appeals only in cases where there is reasonable evidence of practical difficulty in the official record of the hearing and the Zoning Board of Appeals finds ALL of the following standards are met:
1. Granting the variance will not be contrary to the public interest and will ensure that the spirit of this Ordinance is observed.
 2. Granting the variance will not cause a substantial adverse effect to property or improvements in the vicinity or in the district in which the subject property is located.
 3. The variance request, if granted, will be the minimum variance (i.e., the least variation or change from the particular requirement of the Ordinance involved) that will make possible the reasonable use of the land, structure, or building involved.

4. 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.
 5. That there are practical difficulties in the way of carrying out the strict letter of these regulations which are caused by exceptional or extraordinary circumstances or conditions applying to the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the vicinity 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;
 - c. by reason of the use or development of the property immediately adjoining the property in question; or
 - d. any other physical situation on the land, building or structure deemed by the Zoning Board of Appeals to be exceptional or extraordinary.
 6. That granting the variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.
 7. That the variance is not necessitated as a result of any action or inaction of the applicant or the applicant's predecessors.
- B. Use Variance: A use variance may be approved by the Zoning Board of Appeals only in cases where there is reasonable evidence of unnecessary hardship in the official record of the hearing and the Zoning Board of Appeals finds that ALL of the following standards are met:
1. That the building, structure, or land cannot yield a reasonable return if required to be used for a use allowed in the District in which it is located;
 2. That there are unnecessary hardships in the way of carrying out the strict letter of these regulations which are caused by exceptional or extraordinary circumstances or conditions applying to the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the vicinity 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;
 - c. by reason of the use or development of the property immediately adjoining the property in question; or

- d. any other physical situation on the land, building or structure deemed by the Board of Appeals to be exceptional or extraordinary.
 3. That the variance request, if granted, will be the minimum variance (i.e., the least variation or change from the particular requirement of the Ordinance involved) that will make possible the reasonable use of the land, structure, or building involved.
 4. That the variance must be necessary for the preservation and enjoyment of a substantial property right which is similar to that possessed by other properties in the same zoning district and vicinity. (NOTE—a possible increased financial return shall not, of itself, be deemed sufficient to warrant a variance.)
 5. That the proposed use will not alter the essential character of the neighborhood.
 6. That the variance is not necessitated as a result of any action or inaction of the applicant or the applicant's predecessors.
 7. That the building, structure or use cannot be reasonably used under the current zoning regulations
- C. Prior to the Zoning Board of Appeals hearing on a request for a use variance, the Zoning Board of Appeals may request that the Planning Commission consider the request and forward a report to the Board of Appeals as to whether or not in its opinion the property may be reasonably used for a use allowed under the existing zoning classification, and, whether or not the request may alter the essential character of the neighborhood. For this report, the Planning Commission shall consider the Master Plan, the ability of the property owner to use the property for a use already permitted under the existing zoning classification, and the effect of the request on the essential character of the neighborhood.

SECTION 18.08 INTERPRETATIONS

- A. Text Interpretations: The Zoning Board of Appeals may hear and decide upon requests for the interpretation of the text provisions of this Ordinance after the Zoning Administrator has rendered his/her interpretation and after a public hearing.
1. Text interpretations shall be narrow and address only the situation being interpreted, be based on a thorough reading of this Ordinance and not have the effect of amending this Ordinance.
 2. Interpretations shall give weight to practical interpretations by the Zoning Administrator and other administrative officials if applied consistently over a long period of time.
 3. Records shall be kept of all interpretations.
 4. Where the intent of this Ordinance is unclear and the facts can be read to support equally more than one (1) interpretation, the benefit of doubt shall go to the property owner.

- B. Zoning Map Interpretations: The Zoning Board of Appeals may hear and decide upon requests for the interpretation of the boundaries of the zoning districts of the Official Zoning Map after the Zoning Administrator has rendered his/her interpretation and after a public hearing.
1. Where uncertainty exists as to the boundaries of Districts as shown on the zoning map, the rules of construction and interpretation of Section 4.02, A shall apply.
 2. Where the rules of construction and interpretation of Section 4.02, A does not resolve the location of the zoning boundary, the Zoning Board of Appeals shall set the location of the boundary, provided that the Zoning Board of Appeals shall not have the authority to change the zoning designation of any property.

SECTION 18.09 LACK OF ZONING BOARD OF APPEALS JURISDICTION

- A. The Zoning Board of Appeals is without jurisdiction to hear any appeals or matters involving any of the following:
1. A planned unit development (PUD).
 2. A special land use.
 3. Site plan decisions.

Notwithstanding the fact that the Zoning Board of Appeals generally has no jurisdiction with regard to the above-mentioned matters, the Zoning Board of Appeals shall have jurisdiction to entertain variance requests related to subsections (1), (2), and/or (3) above, if the Township body which makes the final decision regarding the matter (for example, the Township Board with regard to a PUD or the Planning Commission with regard to a special land use) expressly grants written permission to the landowner or applicant involved to apply to the Zoning Board of Appeals for a variance of one or more of the underlying requirements of the Zoning Ordinance. For example, but not by way of limitation, the Planning Commission could approve a particular special use request contingent upon the Zoning Board of Appeals granting a variance for an otherwise applicable requirement within the Ordinance which would normally prohibit the applicant or landowner from taking advantage of a special use approval absent a variance.

- B. No Advisory Opinions: The Zoning Board of Appeals shall not give advisory, informal, or hypothetical opinions or decisions.

SECTION 18.10 CONFLICT OF INTEREST

A member of the Zoning Board of Appeals shall not participate or vote with respect to a matter in which the member has a conflict of interest. Failure of a member to refrain from participating or voting in a matter in which the member has a known conflict of interest shall constitute misconduct in office. A conflict of interest exists whenever a member of the Zoning Board of Appeals owns land within the Township which is significantly affected by a matter presented to the Zoning Board of Appeals, or a member has a direct financial interest in the matter presented to the Zoning Board of Appeals. A conflict of interest may exist in other circumstances as well.

The Zoning Board of Appeals should strive to avoid even the appearance of impropriety. Whenever a member of the Zoning Board of Appeals has a conflict of interest or appears to have a conflict of interest with respect to a matter presented to the Zoning Board of Appeals, the member shall state on the record the nature of the conflict of interest, or the circumstances which exist which could be perceived to be a conflict of interest. If the member has a conflict of interest, the member shall not participate in the Zoning Board of Appeals' consideration of the matter. If circumstances exist which could be perceived to be a conflict of interest, the member, after disclosure of these circumstances, may continue to participate in the Zoning Board of Appeals' consideration of the matter if the member can be fair, objective and impartial, subject to the vote of the other members of the Zoning Board of Appeals.

Nondisclosure of a known conflict of interest shall be misconduct in office, and nondisclosure of circumstances which exist which could be perceived to be a conflict of interest may also constitute misconduct in office.

If a member of the Zoning Board of Appeals fails to disclose any circumstances which could be perceived to be a conflict of interest and the Zoning Board of Appeals later becomes aware of such circumstances, or if a member of the Zoning Board of Appeals participates in the consideration of a matter in which the member has a known conflict of interest, the Zoning Board of Appeals may, upon the vote of a majority of the regular members of the Zoning Board of Appeals (other than the member who has failed to make the disclosure or who participated in the consideration of a matter in which the member had a conflict of interest), the Zoning Board of Appeals may make a recommendation to the Township Board that the member be removed from the Zoning Board of Appeals for misconduct in office. If the Zoning Board of Appeals makes such a recommendation to the Township Board, the Township Board shall hold a public hearing to consider the recommendation.

SECTION 18.11 CONDITIONS

The Zoning Board of Appeals may impose conditions on the granting of a variance. Conditions may include (but are not limited to) those necessary to ensure the public services and facilities will be capable of accommodating increased service and facility loads caused by the proposed land use or activity; to protect the natural environment and conserve natural resources and energy; to ensure compatibility with adjacent uses of land in a socially and economically desirable manner.