

ARTICLE XV

ZONING BOARD OF APPEALS

Section 76-611. CREATION AND MEMBERSHIP.

There is hereby established a Zoning Board of Appeals, which shall perform its duties and exercise its powers as provided by Act 110, Public Acts of 2006, as amended, in such a manner that the objectives of this Chapter shall be observed, public safety, morals and general welfare assured, and substantial justice done. The Zoning Board of Appeals shall consist of seven (7) members as follows:

- (1) The first member shall be a member of the Township Planning Commission.
- (2) The second member shall be a member of the Township Board, appointed by the Township Board.
- (3) The remaining members shall be selected and appointed by the Township Board from the electors of the Township residing outside of incorporated cities and villages, which members shall be representative of the population distribution and of the various interests present in the Township. An elected officer of the Township shall not serve as Chairman of the Zoning Board of Appeals. Further, an employee or contractor of the Township Board may not serve as a member or an employee of the Zoning Board of Appeals.
- (4) The terms of each member shall be for three (3) years, except that of the members first appointed, two (2) shall serve for one (1) year; the next appointed two (2) shall serve for two (2) years; and the remaining members for three (3) years. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term.
- (5) The Township Board may appoint up to two alternate members for the same term as regular members of the Zoning Board of Appeals. An alternate member may be called to sit as a regular member of the Zoning Board of Appeals in the absence of a regular member if a regular member is absent from or unable to attend one or more consecutive meetings of the Zoning Board of Appeals. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.
- (6) Members of the Zoning Board of Appeals shall be removable by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself from a vote in which he has a conflict of interest. Failure of a member to disqualify himself from a vote in which he has a conflict of interest shall constitute malfeasance in office.

- (7) A Township Board of Appeals shall not conduct business unless a majority of the members of the Board are present.
- (8) The members of the Board of Appeals shall be selected by the Township Board at a regular scheduled meeting. The Board of Appeals may elect one of its members as Chairman, Vice Chairman and Secretary.

Section 76-612. JURISDICTION.

The Board of Appeals shall have the following powers and it shall be its duty:

- (1) To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the Building Administrator or Planning Commission in the administration or enforcement of this Chapter.
- (2) To grant variances from the provisions of this Chapter as may be in harmony with its general purpose and intent so that the function of this Chapter be observed, public safety and welfare secured, and substantial justice done, including the following:
 - a. Interpret the provisions of the Chapter in such a way as to carry out the intent and purpose of the plan, as shown upon the Zoning Map fixing the use districts, accompanying and made part of this Chapter, where street layout actually on the ground varies from the street layout as shown on said map.
 - b. Permit the erection and use of a building or land for public utility purposes and make exceptions, therefore, to the height and bulk district requirements herein established which said Board considers necessary for the public convenience or welfare.
 - c. Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.
 - d. Permit such modification of the height and area regulations as may be necessary to secure and appropriate improvement of a lot which is of such shape, or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification.
 - e. Permit modification to setback, location, site or building requirements when sponsored by the Planning Commission for a specific proposal that benefits the Township by providing better design or efficient use of the site or results in a more creative development. (All fees are to be paid by the applicant.)
 - f. Permit phasing of site plan improvements where the required improvement costs are relatively high in relation to the total cost of the development or addition. Planning Commission recommendations shall be required, together with a bond in the amount of the deferred improvements.
 - g. Permit temporary buildings and uses in conformance with Section 76-616.

- h. Permit a carnival, outdoor circus or migratory amusement enterprise in an area in the "C-2" and "C-3" or "M-1" District, provided that attached to the application for a permit shall be a letter of consent from the owner of the property to be used for such purpose; also an affidavit that such location is a minimum distance of five hundred (500) feet from any existing concentration of residential buildings and a distance of fifty (50) feet from any street or road right-of-way. The use shall be for a period not to exceed three (3) weeks.

Section 76-613. MEETINGS.

Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine or specify in its rules of procedure. All hearings conducted by said Board shall be open to the public. The Zoning Board of Appeals shall adopt its own rules of procedure and keep a record of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating said fact; and shall file a record of its proceedings in the Office of the Township Clerk, and shall be a public record. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Building Administrator or Planning Commission, or to decide in favor of an applicant any matter upon which they are required to pass under this Chapter or to effect any variation in this Chapter.

Section 76-614. APPEALS PROCEDURES.

These procedures are instituted to hear and decide appeals from and review an order, requirement, decision or determination made by an administrative official or commission charged with the administration or enforcement of the Township Zoning Ordinance. Procedures for the issuance of a variance are cited in Section 76-615 of this Chapter.

- (1) An appeal shall be filed with the officer or commission from whom the appeal is taken and with the Zoning Board of Appeals specifying the ground for the appeal. The applicant shall file with the Zoning Board of Appeals, in writing or on forms furnished by the Planning Administrator or Planning Commission, giving notice of appeal and specifying the grounds thereof.
- (2) The officer or commission from whom the appeal is taken shall forthwith transmit to the Zoning Board of Appeals all papers constituting the record upon which the appeal is taken.
- (3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer or commission from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with him, that by reasons 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 restraining order which may be granted by the Board, or by the circuit court, on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
- (4) Such appeal may be taken by any person aggrieved by any officer, department, commission, board or agency of the Township charged with the administration or enforcement of this Chapter.

- (5) The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as, in its opinion, ought to be made in the premises, and, to that end, shall have all the power of the officer from whom the appeal was taken and may issue or direct issuance of a permit. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such Ordinance, the Board shall have the power in passing upon appeals to vary or modify any of its rules, regulations or provisions so that the spirit of the Chapter shall be observed, public safety secured and substantial justice done. The decision of such Zoning Board of Appeals shall be final. However, a person having an interest affected by the Zoning Ordinance may appeal to the circuit court in a manner consistent with the provisions of Act 110, Public Acts of 2006, as amended.
- (6) The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or Commission.
- (7) All actions of the Board shall be stated in the minutes or otherwise in writing.

Section 76-615. VARIANCE REVIEW PROCEDURES.

- (a) *Purpose of variance.* These variance review procedures are instituted to provide an opportunity for the relaxation of the terms of the Zoning Ordinance through a variance, where such variance will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of the actions of the applicant or his predecessors in title, a literal enforcement of the Chapter would result in practical difficulties or unnecessary hardship. As used in this Chapter, a variance is authorized only for height, area and size of structure, or size of yards, open spaces and those listed in Section 76-612. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in adjoining zoning districts. Variances shall also NOT be granted for any Special Land Use or PUD once it has been approved by the Planning Commission.
- (b) *Application for variance approval.* An application for the approval of a variance shall be made by an owner of an interest in the site to the Township Planning Administrator, accompanied by the necessary fees and documents, as provided in this Chapter.
- (c) *Site plan.* The application shall be accompanied by any information to clearly demonstrate the necessity for the variance. The ZBA may table or deny the application due the absence of such information. The ZBA may require any reasonable information, documentation or plans which are necessary to make a determination on the requested variance.
- (d) *Required documentation.* The application shall be accompanied by documentation from the applicant explaining:

- (1) How the strict enforcement of the provisions of the Township Zoning Ordinance would cause practical difficulty and/or unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district.
 - (2) The conditions and circumstances unique to the property which are not similarly applicable to other properties in the same zoning district.
 - (3) The conditions and circumstances unique to the property were not created by the owner, or his predecessor in title, within the time following the effective date of the provisions alleged to adversely affect such property.
 - (4) Why the requested variance will not confer special privileges that are denied other properties similarly situated in the same zoning district.
 - (5) Why the requested variance will not be contrary to the spirit and intent of this Zoning Ordinance.
 - (6) Subsections (2)e., f. or h. of Section 76-612 are being invoked.
- (e) *Notification.* The Township Planning Administrator shall notify the owners of the property that is subject to the request and all owners of an interest in lots and all occupants of structures, within three hundred (300) feet of the subject lot upon which a variance is requested, of the time and place of the Zoning Board of Appeals meeting at which such application will be considered, provided, however, such notice shall be given not less than fifteen (15) days before such meeting.
- (f) *Approval; disapproval.* The Zoning Board of Appeals shall approve, with or without conditions, or disapprove the application and shall communicate its action to the applicant, the Township Board, the Building Administrator, and the Township Planning Commission. The Zoning Board of Appeals shall not approve an application for a variance unless it has been found positively that:
- (1) The strict enforcement of the Zoning Ordinance would cause a practical difficulty and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district
 - (2) The conditions and circumstances are unique to the subject property and are not similarly applicable to other properties in the same zoning district.
 - (3) The conditions and circumstances unique to the property were not created by the owner, or his predecessor in title, within the time following the effective date of the provisions alleged to adversely affect such property.
 - (4) The requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district.
 - (5) The requested variance will not be contrary to the spirit and intent of the Township Zoning Ordinance.
 - (6) Subsections (2)e., f. or h. of section 76-612 have been properly requested.
- (h) *Issuance.* The Building Administrator shall, upon receipt of the notice of approval and upon application by the applicant, collect all required fees and issue a building permit or such other approval permitting the variance, subject to all conditions imposed by such approval.

Section 76-616. APPROVAL OF TEMPORARY STRUCTURES OR USES.

- (a) *Temporary Structures.* The Zoning Board of Appeals may permit, upon proper application, temporary structures for periods not to exceed six (6) months. The granting of six (6) month extensions shall be permissible, but in no event shall any temporary structure or sign be allowed to exist in excess of eighteen (18) months. The Zoning Board of Appeals, in granting permits for temporary structures, shall do so under the following conditions:
- (1) The proposed temporary structure shall conform to all regulations and Township Ordinances relative to structures permitted in the particular zoning district wherein the proposed temporary structure would be located.
 - (2) The granting of a temporary structure permit shall be granted in writing, stipulating all conditions as to time for construction and removal and nature of the proposed structure.
 - (3) No temporary structure permit shall be granted without the applicant having filed with the Township Building Department a bond, in an amount to be determined by the Zoning Board of Appeals, which amount shall be set forth in the written grant of the temporary structure permit, which amount shall be sufficient to secure removal of said structure upon the expiration of the permit.
 - (4) Any temporary structure permit granted by the Zoning Board of Appeals shall not be valid unless and until a building permit for the proposed structure is obtained by the applicant. Any erection or construction of the temporary building shall be started and proceed to completion in accordance with the terms of the building permit. All setback, land coverage, lighting, off-street parking and other requirements shall be established and made at the discretion of the Zoning Board of Appeals.
 - (5) The Zoning Board of Appeals may, at its discretion, refer the application to the Township Planning Commission for review and recommendation.
 - (6) The erection, construction, completion, use and maintenance of any temporary structure shall, at all times, be in full compliance with all State statutes, public health regulations and Township ordinances.
- (b) *Temporary Uses.* The Zoning Board of Appeals may also permit, upon proper application, temporary uses not otherwise permitted in any zoning district which do not require the erection of any capital improvement of a structural nature. Such grant of temporary use shall not exceed twelve (12) months. The granting of twelve (12) month extensions shall be permitted. In granting such permits for temporary use, the Zoning Board of Appeals shall do so only under the following conditions:
- (1) The granting of the temporary use shall be in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit, with a bond to restore the land to its previous condition.

- (2) The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the zoning district nor on the property wherein the temporary use is permitted.
 - (3) The use shall be in harmony with the general character of the zoning district.
 - (4) All setback, land coverage, lighting, off-street parking and other requirements are to be considered in order to protect the public health, safety, peace and general welfare of the inhabitants of the Township. All such requirements shall be established and made at the discretion of the Zoning Board of Appeals.
 - (5) No temporary use permit shall be granted without first giving notice to owners of the adjacent property of the time and place of a public hearing to be held on the application for a temporary use permit. All notices shall be in writing and shall be made by personal service, mailing by certified or registered mail, return receipt requested, or by publication in a general newspaper at least seven (7) days prior to the hearing date.
 - (6) Prior to the Zoning Board of Appeals taking any action on an application for temporary use permit, the Board of Appeals may, at its discretion, refer the application to the Township Planning Commission for review and recommendation.
- (c) *Revocation.* The Zoning Board of Appeals may revoke a permit or approval for any temporary structure, or temporary use for any violation of the terms of the permit or grant of such temporary structure or temporary use.

Section 76-617. ZONING BOARD OF APPEALS APPROVAL.

- (a) *Building Erection or Alteration.* No order of the Zoning Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than six (6) months, unless a building permit for such erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.
- (b) *Building or Land Use.* No order of the Zoning Board of Appeals permitting a use of a building or land shall be valid for a period longer than six (6) months, unless such use is established within such period; provided, however, that where such order shall continue in force and effect if a building permit for said erection or alteration is started and proceeds to completion in accordance with such permit.

Section 76-618. SPECIAL LAND USE AND PLANNED UNIT DEVELOPMENT APPEALS.

Any person aggrieved by a decision of the Township Planning Commission or Township Board concerning the disapproval or partial disapproval of a special land use or planned unit development may appeal the decision of said body to the Zoning Board of Appeals. The Zoning Board of Appeals shall review such decision **de novo** with reference to the standards for special land uses and/or planned unit developments established in this Chapter. It is the intent of the Township Board to grant the Zoning Board of Appeals the power of appellate review consistent with Act 110, Public Acts of 2006, as amended.