

## **CHAPTER 16 ZONING BOARD OF APPEALS**

### **SECTION 16.10      CREATION AND MEMBERSHIP**

- A.     There is hereby created a Zoning Board of Appeals which shall perform its duties and exercise its powers and jurisdiction as provided in the Zoning Act and by certain provisions of this Ordinance to the end that the objectives of this Ordinance are observed, public safety, morals and general welfare secured and substantial justice done.
- B.     Membership
1.     The Zoning Board of Appeals shall consist of five (5) members and not more than seven (7) members, with the number set by the Township Board from time to time. The term of each member shall be three (3) years and until a successor has been appointed and qualified. The successor must be appointed not more than one (1) month after the expiration of the preceding term. One (1) member of the Board shall be a member of the Planning Commission. One (1) member of the Township Board may be a member of the Zoning Board of Appeals.
  2.     Members on the Zoning Board of Appeals from the Township Board and from the Planning Commission shall have terms limited to their respective other official terms or to such less period determined by resolution of the Township Board at the time of appointment.
  3.     No employee or contractor of or for the Township shall be a member of the Zoning Board of Appeals.
  4.     Vacancies of the Board for unexpired terms shall be filled for the remainder of the term.
  5.     Members of the Board may be removed by the Township Board for nonperformance of duty or misconduct in office upon written charges and after public hearing. A member must disqualify himself/herself from a vote if s/he has a conflict of interest. Failure to disclose a conflict of interest may constitute misconduct and/or malfeasance in office.
- C.     Alternate Members
1.     The Township Board may appoint not more than two (2) alternate members to the Zoning Board of Appeals for the same term as regular members. If two (2) alternate members have been appointed, they may be called on a rotating basis, as

they are available.

2. The alternates may sit as regular members when regular members are unable to attend two (2) or more consecutive meetings for a period of more than thirty (30) consecutive days.
  3. An alternate member may also be called to serve in the place of a regular member when such 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.
  4. When serving on a case, the alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals. An alternate member shall only serve to discuss or vote upon a case in the absence of or upon the declaration of a conflict of interest of a regular member.
- D. The Zoning Board of Appeals shall fix rules and regulations to govern its procedures.
- E. The Zoning Board of Appeals shall not conduct business unless a majority of the membership of the Zoning Board of Appeals is present, including alternates when sitting as a regular member. No non-use/dimensional variance shall be granted except by the vote of approval of a majority of the entire membership of the Zoning Board of Appeals. No use variance shall be approved unless by a vote of approval of two-thirds (2/3) of the entire members of the Zoning Board of Appeals.

## **SECTION 16.20 JURISDICTION**

- A. The Zoning Board of Appeals shall have the power to hear and decide, in accordance with the provisions of this Ordinance, applications for interpretations of this Ordinance and may make decisions on any other questions on which the Board is authorized by this Ordinance or the Zoning Act to pass. In exercising all of its powers, the Zoning Board of Appeals shall apply the standard of Section 16.40.
- B. When there is any question as to the location of any boundary line between Districts, upon a request for an interpretation of the zoning maps, the Zoning Board of Appeals shall establish the boundary based upon said maps and all available information relating thereto and shall establish such boundaries in such ways as to carry out the intent and purposes of this Ordinance and the Master Plan.
- C. Except as otherwise provided in this Ordinance, the Zoning Board of Appeals shall hear and decide appeals from and review any order, requirements, decision or determination made by any administrative official or body charged with the enforcement of any provisions of this Ordinance.

- D. Except as otherwise provided in this Ordinance, the Zoning Board of Appeals shall act upon all questions as may arise in the administration of this Ordinance, including the interpretation of language of this Ordinance.
- E. The Zoning Board of Appeals shall not be permitted to hear appeals from site plan decisions, Special Land Use decisions, Planned Unit Development decisions, or Open Space Preservation Development decisions.

**SECTION 16.30 PROCEDURE ON APPEAL**

- A. For an appeal from any order, requirements, decisions or determinations of any administrative official or body, the appeal shall be submitted in writing within thirty (30) days by the filing with the Township Clerk of a notice of appeal specifying the grounds thereof. The administrative official from whom the appeal is taken shall forthwith transmit to the Zoning Board of Appeals all the papers consisting of the record upon which the action being appealed was taken.
- B. An appeal automatically stays all proceedings or construction in furtherance of the action appealed from unless the officer or body from the appeal is taken certifies to the Zoning Board of Appeals, after the notice of appeal which is filed, that by reason of facts stated which in the certificate, a stay would, in the opinion of the officer or body, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order.
- C. After receiving the appeal, the Zoning Board of Appeals shall hold a public hearing on the matter not earlier than fifteen (15) days after the date of such filing and shall cause notice of the time and place of the hearing to be given to the applicant and similar notice, stating the purpose of the hearing. The Chairperson may permit up to one (1) adjournment of a hearing.
- D. The Zoning Board of Appeals shall give written notice of the hearing to all persons to whom real property is assessed within three hundred feet (300') of the property to be affected by said appeal at least five (5) days prior to said hearing. Additionally, the hearing notice shall also be published once in the newspaper at least seven (7) days prior to the hearing. The Zoning Board of Appeals shall maintain satisfactory evidence that said notices have been mailed and published.

**SECTION 16.40 STANDARDS OF REVIEW - VARIANCES**

- A. A nonuse variance may be allowed by the Zoning Board of Appeals only in cases where the applicant demonstrates that there is reasonable evidence of practical difficulty in the official record of the hearing and where all of the following conditions are met:

1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same District. Exceptional or extraordinary circumstances may include narrowness, shallowness or shape of a specific property on the effective date of this Ordinance or by reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure or by reason of the use or development of the property immediately adjoining the property in question, the literal enforcement of the requirements of this Ordinance would involve practical difficulties.
2. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations.
3. That the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by the other properties in the same District and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.
4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.
5. The variance will not impair the intent and purpose of this Ordinance.
6. That the immediate practical difficulty causing the need for the variance request was not created by any action of the applicant or predecessor.

7. That the variance requested is the minimum variance necessary to meet the purpose and intent of the Ordinance and to meet the other standards of review in this Section.
- B. A use variance may be allowed by the Zoning Board of Appeals only in cases where the applicant proves that there is reasonable evidence of undue hardship and where all of the following conditions are met:
1. In addition to undue hardship, all of the standards specified in Section A are also met.
  2. If the Zoning Board of Appeals is considering granting a use variance request, no final action by the Zoning Board of Appeals shall be taken on the variance request until the Zoning Board of Appeals has referred the matter to the Planning Commission for review and comment, and the Zoning Board of Appeals has received that report back from the Planning Commission and considered the same.

#### **SECTION 16.50 DECISIONS OF THE ZONING BOARD OF APPEALS**

- A. An application to the Zoning Board of Appeals for variances shall be submitted in accordance with the following procedures:
1. Applications shall be submitted to the Zoning Administrator who will review the application for validity, then transmit to the Zoning Board of Appeals. Applications not meeting the requirements shall be returned to the applicant for completion.
  2. A valid application for a variance to the Zoning Board of Appeals shall consist of the following:
    - a. Ten (10) copies of site plan drawn to scale which is sufficient to describe the nature of the request, if applicable.
    - b. A completed application form as provided by the Township.
    - c. Payment of a fee, in accordance with a fee schedule, as determined by the Township Board from time to time.
    - d. A legal description and/or parcel number of the entire property which is the subject of the request.
    - e. A statement with regard to compliance with the Standards of Review of Section 16.40.
    - f. Other materials as may be required by the Zoning Board of Appeals.

- B. The Zoning Board of Appeals shall render its decision upon any appeal or application submitted to it within ninety (90) days after the hearing thereon. Upon failure to do so, such appeal or application shall thereupon be deemed to be decided adversely to the appellant or applicant in the same manner as though the Zoning Board of Appeals had rendered its decision to that effect.
- C. All decisions of the Zoning Board of Appeals shall become final five (5) days after the date of entry of an order, unless the Zoning Board of Appeals shall find and so certify on the record, that it is necessary to cause such order to have immediate effect, in order to preserve property or personal rights.
- D. For each decision of the Zoning Board of Appeals, a record shall be prepared. Such record shall include, at a minimum, the following items, a copy of which shall be sent to the applicant, the Zoning Administrator and Building Inspector:
  - 1. Description of the applicant's request.
  - 2. The Zoning Board of Appeal's motion and vote.
  - 3. A summary or transcription of all competent material and evidence presented at hearing.
  - 4. Any conditions attached to an affirmative decision.
- E. The decision of the Zoning Board of Appeals shall be final. However, a person having an interest affected by the decision of the Zoning Board of Appeals may appeal to the Circuit Court within twenty-one (21) days of the decision. Upon appeal, the Circuit Court shall review the record in accordance with the requirements of the Zoning Act.
- F. The Zoning Board of Appeals may impose reasonable conditions in conjunction with approval of an appeal, variance or any other decision which they are required to make. Conditions shall be imposed in a manner in accordance with the Zoning Act and be related to the Standards of Review by which the decision is reached.
- G. No variance granted by the Zoning Board of Appeals shall be valid for a period longer than nine (9) months from the date of its issuance if not used. If substantial construction has not commenced or if the use has not occurred within said nine (9) months, the variance shall be expired and shall be null and void. However, the applicant may request in writing, prior to the expiration of the variance, up to a nine (9) month extension of the variance from the Zoning Board of Appeals. The Zoning Board of Appeals may grant the extension, provided that the original circumstances authorizing the variance have not changed and that the circumstances creating the need for the extension were beyond the control of the applicant.

**SECTION 16.60      RESUBMISSION**

No request or substantially similar request, which has been decided by the Zoning Board of Appeals shall be submitted for reconsideration within a one (1) year period from the date of the original application unless the Zoning Board of Appeals finds that at least one (1) of the following conditions exist:

- A.      That the conditions involving all of the reasons for the original denial have been significantly altered and such circumstances are beyond the control of the applicant.
- B.      That new conditions or circumstances exist which change the nature of the original request and such circumstances are beyond the control of the applicant.