

CHAPTER 14 ZONING BOARD OF APPEALS

SECTION 14.01 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 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. The Zoning Board of Appeals shall consist of five (5) members as provided in the Zoning Act. The term of each member shall be three (3) years and until a successor has been appointed and qualified. Members of the Zoning Board of Appeals who are also members of the Township Board and from the Planning Commission shall have terms limited to their respective terms on the Township Board or the Planning Commission, as the case may be, or limited to such lesser period of time as may be determined by resolution of the Township Board at the time of appointment of such members. (10-19-93)
- 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 to sit as regular members of the Zoning Board of Appeals in the absence of a regular member.
 2. 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.
 3. An alternate member shall only serve to discuss or vote upon a case in the absence of a regular member or upon the conflict of interest of a regular member. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.
- D. The Zoning Board of Appeals shall fix rules and regulations to govern its procedures.
- E. A member shall be disqualified from a vote in which there is a conflict of interest.

SECTION 14.02 JURISDICTION (2-16-99)

- 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 special questions on which the Board is authorized to pass and in exercising all of its powers the Zoning Board of Appeals shall apply the standards of Section 14.04.
- 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. The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official or body charged with the enforcement of any provisions of this Ordinance.
- D. The Zoning Board of Appeals shall act upon all questions as may arise in the administration of this Ordinance, including the interpretation of the language of this Ordinance.

SECTION 14.03 PROCEDURE ON APPEAL (8-15-06)

- A. An appeal from any order, requirements, decision, or determination of any administrative official or body shall be taken 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 appealed was taken.
- B. Upon such appeal, or upon receipt of a request for an interpretation of the Zoning Ordinance, or request for a variance, the Zoning Board of Appeals shall hold a public hearing. Notice of the public hearing shall be given as provided in Section 15.09 of this Ordinance.

SECTION 14.04 STANDARDS OF REVIEW (12-3-03)

- A. Non-Use Variance: A non-use variance is a variance concerned with area, height, setback, lot coverage, or similar characteristics of a structure or use. Non-use variances also include the enlargement of non-conforming uses or alteration of non-conforming structures. A non-use variance may be granted only when all of the following conditions are found to be met:
 - 1. That strict compliance with the Ordinance would either (1) prevent improvement of the property in a manner which is reasonable customary and consistent with other properties in the area, or (2) cause practical difficulty in strict compliance with the Ordinance, resulting in significant or unjustified expense, destruction or demolition of attractive features of the property, or similar reasons.
 - 2. That relief would not be a substantial detriment to adjacent property or change the essential character of the area, and would not materially impair the purposes of this Ordinance or the public interest.
 - 3. That the practical difficulty complained of was not created as a result of any action taken by the applicant or predecessors in interest to the property which was unlawful, or which could have been reasonably foreseen to create difficulty in complying with the Ordinance for future improvements.
 - 4. That the variance is requested to address exceptional and extraordinary circumstances or conditions applying to the property itself, such as:
 - a. exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter;

- b. exceptional topographic conditions;
 - c. any other physical situation on the land, building or structure deemed by the Zoning Board of Appeals to be extraordinary; or
 - d. by reason of the use or development of the property immediately adjoining the property in question.
5. That the variance requested is the minimum necessary to address the practical difficulty complained of. If the Zoning Board of Appeals finds that a variance is justified, but that the extent of the variance requested is greater than necessary to address practical difficulty, the Zoning Board of Appeals may approve a lesser variance than applied for.
- B. Use Variance: A use variance is a request for permission for a use of land which the Zoning Ordinance would otherwise prohibit for the property in question. A use variance may be granted only in cases where there is reasonable evidence of unnecessary hardship in the official record of the hearing and that all of the following conditions 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 zone 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. any other physical situation on the land, building or structure deemed by the Board of Appeals to be extraordinary; or
 - d. by reason of the use or development of the property immediately adjoining the property in question.
 - 3. That the proposed use will not alter the essential character of the neighborhood.
 - 4. That the undue hardship complained of was not created by the applicant or any predecessor in interest to the property in question.
 - 5. That the variance requested is the minimum variance necessary to address the undue hardship complained of. If the Zoning Board of Appeals finds that the variance is justified, but that the extent of the variance requested is greater than necessary to address practical difficulty, the Zoning Board of Appeals may approve a lesser variance than applied for.

- 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 such request and that the Commission forward a report to the Zoning Board of Appeals as to whether or not the property may be reasonably used for a use permitted 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 14.05 DECISIONS OF THE ZONING BOARD OF APPEALS

- A. The Zoning Board of Appeals shall render its decision upon any appeal or application submitted to it. The following is necessary for approval: (8-15-06)
 - 1. The concurring vote of a majority of the full authorized membership of the Zoning Board of Appeals shall be necessary to reverse an order, requirement, decision or determination of an of an administrative official or body, or to decide in favor of the applicant on any matter upon which it is required to pass under, or to grant any non-use variance.
 - 2. The affirmative vote of two-thirds of the full authorized membership of the Zoning Board of Appeals shall be necessary to approve a use variance.
- B. Any decision of the Zoning Board of Appeals shall not become final until 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 shall find the immediate effect of such order is necessary for the preservation of the public health, safety, or welfare and shall so certify on the record. (2-16-99)
- C. For each decision of the Zoning Board of Appeals, a record shall be prepared. Such record shall include, at a minimum, the following items:
 - 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; and,
 - 4. Any conditions attached to an affirmative decision.
- D. A decision of the Zoning Board of Appeals shall be final. However, a person aggrieved by a decision of the Zoning Board of Appeals may appeal to the Circuit Court as provided in the Zoning Act and by law.
- E. 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 by which the decision is reached.

- F. Period of Validity: No variance granted by the Zoning Board of Appeals shall be valid for a period longer than one (1) year from the date of its issuance if not used. However the applicant may, prior to expiration of the period of validity, request, at no cost, successive one (1) year extensions of said variance from the Zoning Board of Appeals. The Zoning Board of Appeals may grant such extensions provided that the original circumstances authorizing the variance have not changed. (12-3-03)

SECTION 14.06 RESUBMISSION

- A. No variance 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 of the following conditions exist:
1. That the conditions involving all of the reasons for the original denial have been significantly altered.
 2. That new conditions or circumstances exist which change the nature of the original request.

SECTION 14.07 STAY OF PROCEEDINGS

- A. An appeal stays all proceedings in furtherance of the action appealed from unless the officer or body from whom the appeal is taken certifies to the Zoning Board of Appeals, after the notice of appeal is filed, that by reason of facts stated 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.
- B. This restraining order may be granted by the Zoning Board of Appeals or Circuit Court on application or notice to the officer or body from whom the appeal is taken and due cause shown.