

Article 6 ZONING BOARD of APPEALS (ZBA)

Section 6.01 Purpose

The purpose of this Article is to establish a Zoning Board of Appeals (ZBA) and its responsibilities to ensure that the objectives of this Ordinance are fully and equitably achieved, that a means be provided for competent interpretation of this Ordinance, that flexibility be provided for in the strict application of this Ordinance, that the spirit of the Ordinance be observed, public safety secured, and substantial justice done.

Section 6.02 Creation and Membership

A. Establishment and Appointment of Members: The ZBA existing at the time of adoption of this Ordinance is hereby retained in accordance with Act 110 of the Public Acts of 2006 as amended, and shall consist of three members: a member of the Planning Commission; and the remaining members shall be appointed by the Township Board from the electors residing in the Township outside of incorporated cities and villages. A member of the Township Board may serve on the ZBA but not serve as the chairperson. The Zoning Administrator or any other employee or contractor of the Township Board may not serve on the ZBA.

1. **Alternate Members:** The Township Board may appoint not more than two (2) alternate members for the same term as regular members of the ZBA. No alternate member may be either a member of the Township Board or the Planning Commission. An alternate member may be called 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 one (1) or more meetings. 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. An alternate member shall serve on a case until a final decision is made. The alternate member shall have the same voting rights as a regular member of the ZBA and shall serve in the case until a final decision is made.

B. Terms of Office: Members shall be appointed for three (3) year terms except in the case of the Planning Commission and/or Township Board members serving on the ZBA, whose terms shall be limited to the time they are members of the Planning Commission or Township Board. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term. Members may be reappointed.

C. Removal from Office / Conflict of Interest: A member of the ZBA may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from deliberations and a vote in which the member has a conflict of interest. Failure to do so shall constitute malfeasance in office.

(Ord. #4 of 2006, 11-14-06)

Section 6.03 Organization

A. Rules of Procedure and Officers: The ZBA may adopt rules of procedure for the conduct of its meetings and the implementation of its duties. The ZBA shall annually elect from its members a chairperson, vice-chairperson, and secretary.

B. Meetings and Quorum: Meetings of the ZBA shall be held at the call of the chairperson and at such other times as the ZBA in its rules of procedure may specify. A majority of the total membership of the ZBA shall comprise a quorum. The ZBA shall not conduct official business unless it has a quorum. All meetings shall be open to the public and conducted pursuant to the requirements of the Open Meetings Act.

C. Oaths and Witnesses: The chairperson or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of any witness in order to ensure a fair and proper hearing.

D. Records: The ZBA shall maintain a record of its proceedings which shall be filed in the office of the Township Clerk, and shall be a public record according to the Freedom of Information Act. All minutes shall state the grounds for each determination, including findings of fact and conclusions.

Section 6.04 Jurisdiction

The ZBA shall act upon questions as they arise in the administration of this Ordinance and take other actions as specified in this Ordinance. The ZBA shall perform its duties and exercise its powers as provided in Act 110 of the Public Acts of 2006, as amended. The ZBA shall not have the power to alter or change the zoning district classification of any property, nor make any change in the terms or intent of this Ordinance, but does have the power to act on those matters so specified in this Ordinance including Ordinance interpretations, variances, and appeals regarding an administrative decision.

(Ord. #4 of 2006, 11-14-06)

Section 6.05 Appeals for Administrative Reviews

A. Authority: The ZBA shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Administrator or by any other body or official in administering or enforcing the provisions of this Ordinance. Within this capacity the ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of such body or official. The ZBA shall have all the powers of the body or official from whom the appeal is taken.

B. Standards: The ZBA shall reverse or otherwise modify the decision of such body or official from whom the appeal is taken only if it finds that the action or decision appealed:

1. was arbitrary or capricious, or
2. was based upon an erroneous finding of a material fact, or
3. constituted an abuse of discretion, or
4. was based upon erroneous interpretation of the Zoning Ordinance or zoning law, or
5. did not follow required procedures.

C. Application Requirements: A written application for an appeal for administrative review shall be completed and filed with the Zoning Administrator on forms established for that purpose, within twenty-one (21) days after the date of the meeting during which the meeting minutes addressing the decision being appealed was approved. Application for an administrative review shall specify, at a minimum, the name, address, and phone number of the applicant; the decision being appealed; and the basis for the appeal. See Section 3.08 regarding application fees.

1. **Record of Facts / Transmission of Record:** Upon receipt of an application, the officer or body from whom the appeal is taken shall transmit to the ZBA all papers constituting the record upon which the action appealed from was taken. In hearing and deciding appeals under this subsection, the ZBA's review shall be based upon the record of the administrative decision being appealed, and the ZBA shall not consider new information which had not been presented to the administrative official or body from whom the appeal is taken.
2. **Stay:** An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the ZBA after notice of appeal has been filed, that by reason of facts stated in the certificate a stay would, in the Administrator's opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the ZBA, or, on application, by court of record.

Section 6.06 Interpretations

A. Authority: The ZBA shall hear and decide upon requests to:

1. Interpret the provisions of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one meaning. In deciding upon such request the ZBA shall ensure that its interpretation is consistent with the intent and purpose of the Ordinance, the Article in which the language in question is contained, and all other relevant provisions in the Ordinance.
2. Determine the precise location of the boundary lines between zoning districts (*see Article 10*).

3. Classify a use which is not specifically mentioned as a part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district. Where there is no comparable permitted or prohibited use, the ZBA shall so declare, the effect being that use is not permitted in the Township until or unless the text of the Ordinance is amended to permit it.
4. Determine the parking space requirements of any use not specifically mentioned either by classifying it with one of the groups listed in Article 23, Off Street Parking and Loading, by an analysis of the specific needs. If no comparable use is found, the ZBA shall so inform the petitioner and indicate that the parking space requirements will have to be established by amendment of the Ordinance.

B. Consultation: Prior to deciding a request for an interpretation, the ZBA may confer with Township staff and consultants to determine the basic purpose of the provision subject to interpretation and any consequences which may result from differing decisions.

C. Application Requirements: A written application for an interpretation shall be completed and filed with the Zoning Administrator on forms established for that purpose. Application for an interpretation shall specify, at a minimum, the name, address, and phone number of the applicant; the standard, regulation or provision requiring an interpretation; and a plot plan, site plan, or similar drawing illustrating the application or relevance of such interpretation. See Section 3.08 regarding application fees.

Section 6.07 Variances

A. Authority: The ZBA shall have the power to authorize specific variances from site development requirements such as lot area and width, building height, setbacks, off-street parking and loading spaces, and signage. The ZBA is not authorized to grant a variance that permits the establishment of any use that is not a permitted use by right in the subject zoning district.

B. Standards: The ZBA shall have the power to authorize specific variances from specific site development requirements provided that all of the standards listed below are met and the record of proceedings of the ZBA contains evidence supporting each conclusion.

1. That there are practical difficulties that prevent carrying out the strict letter of this Ordinance due to unique circumstances, such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same district, and shall not be recurrent in nature. These difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.
2. That the practical difficulty or special condition or circumstance does not result from actions of the applicant.
3. That the variance will relate only to property described in the variance application.
4. That the variance will be in harmony with the general purpose and intent of this Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, and the use and enjoyment of property in the neighborhood or district.
5. That strict compliance with site development standards such as lot area, setbacks, frontage, height, and parking spaces would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.
6. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulties.

C. Application Requirements: Application for a variance shall specify, at a minimum, the name, address, and phone number of the applicant; the legal description for the lot subject to the variance; a specification of the Ordinance's standards for which a variance is sought and the specific variance being requested; and a plot plan, site plan, or similar drawing that adequately illustrates the proposed improvements to the lot for which the variance is requested. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or evidence from which the ZBA may make the required findings, including any information the applicant may choose to submit to demonstrate conformance with the standards of subsection (B) above .

Section 6.08 Procedures

A. Application: Written application to the ZBA shall be completed and filed with the Zoning

Administrator on forms established for that purpose.

1. **Stay:** An application for an administrative appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the ZBA after notice of appeal has been filed, that by reason of facts stated in the certificate a stay would, in the Administrator's opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the ZBA, or, on application, by court of record.
2. **Record of Facts / Transmission of Record:** Upon receipt of an application for an administrative appeal, the officer or body from whom the appeal is taken shall transmit to the ZBA all papers constituting the record upon which the action appealed from was taken.

B. Hearing: Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Section 3.11. Upon the hearing, any party may appear in person or by agent or attorney.

C. Decision: The ZBA shall render a decision in the form of a motion or resolution containing a full record of the findings and determination of the ZBA. The concurring vote of a majority of the members of the ZBA shall be necessary to grant a variance, to make an interpretation of the Ordinance; to reverse, affirm or modify an order, requirement, decision, or determination of an administrative official or body; or to decide in favor of the applicant on any matter upon which they are required to pass under or to effect any variation in this Ordinance. The ZBA shall state the grounds for each decision and such grounds shall be placed in the record.

1. **Interpretations:** A decision providing an interpretation may be accompanied by a recommendation to the Planning Commission for consideration of an amendment of the Ordinance.
2. **Administrative Appeals:** In hearing and deciding administrative appeals, the ZBA's review shall be based upon the record of the administrative decision being appealed, and the ZBA shall not consider new information which had not been presented to the administrative official or body from whom the appeal is taken.
3. **Variances:**
 - a. In granting any variance, the ZBA may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance. See Article 23 regarding conditional approvals.
 - b. A variance shall become null and void unless the construction authorized by such variance has been commenced within six (6) months after the granting of the variance; and the occupancy or use of the land, structure, and/or building for which the variance was granted has taken place within one (1) year after the granting of the variance. The ZBA may extend this time limit upon its finding that no substantial changes have occurred to ordinance regulations, abutting properties, or other conditions that undermine the basis for the original issuance of the variance.
 - c. No application for a variance which has been acted upon shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly-discovered evidence or proof of changed conditions having bearing on the basis for the original action, in the discretion of the ZBA.

(Ord. #4 of 2006, 11-14-06)

Section 6.09 Review By Circuit Court

A. Circuit Court Review: The decision of the ZBA shall be final. However, any party aggrieved by an order, determination or decision of the ZBA may obtain a review thereof both on the facts and the law, in the circuit court. Such an appeal shall be filed within 30 days after the ZBA certifies its decision in writing or approves the minutes of its decision. The circuit court shall review the record and decision of the ZBA to ensure that the decision:

1. Complies with the constitution and laws of the State.
2. Is based upon proper procedure.

3. Is supported by competent, material, and substantial evidence on the record.
4. Represents the reasonable exercise of discretion granted by the ZBA.

(Ord. #4 of 2006, 11-14-06)

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