

ARTICLE VII
BOARD OF ZONING APPEALS

7.00.00 CREATION

There is hereby created a Board of Zoning Appeals which shall perform its duties and exercise its powers as provided by Act 184 of the Public Acts of 1943, as amended, and by the provisions of this Ordinance, to the end that the objectives of this Ordinance are observed, public safety, health, morals and general welfare secured and substantial justice done.

7.01.00 MEMBERSHIP

7.01.01 Three Members

The Board of Appeals shall consist of three (3) members:

- A. The Chairman of the Township Planning Commission;
- B. A member of the Township Board; and
- C. One person appointed by the Township Board from among the electors residing in the township.

7.01.02 Exclusion of Township Officers and Employees

No elected officer of the township, nor any employee or contractor thereof, shall serve as a member or as an employee of the Board of Appeals, with the exception of the Township Board member.

7.01.03 Qualifications

The members shall be representative of the population distribution and the various interests present in the Township.

7.01.04 Officers

The member of the Board of Appeals who has been appointed by the Township Board from the electors at large shall serve as chairperson. The Board of Appeals shall elect from its membership a secretary or such other officers or committees deemed necessary. However, the Township Board Member may not serve as chairperson of the Board of Appeals.

7.01.05 Removal

Members of the Board of Appeals shall be removable by the Township Board for nonperformance of duty or misconduct in office upon written charges and after a public hearing. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest shall constitute misconduct in office.

7.01.06 Alternate members

- A) The township board may appoint not more than 2 alternate members to the zoning board of appeals to serve for the same term as regular members.
- B) An alternate member may be called to serve in the place of a regular member of the zoning board of appeals in the absence of a regular member when:
 - 1) A regular member is absent from or will be unable to attend 2 or more consecutive meetings of the zoning board of appeals or is absent from or will be unable to attend meetings for a period of more than 30 consecutive days.
 - 2) An alternate member may also be called to serve as 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.
- C) The alternate member has the same voting rights as a regular member of the zoning board of appeals and shall serve in the case until a final decision is made. .

7.02.00 TERMS OF MEMBERS AND OFFICERS

7.02.01 Three Year Terms

The members shall be appointed for a term of three (3) years, except for members serving because of their membership on the Planning Commission or Township Board, whose terms shall be limited to the time they are members of the Planning Commission or Township Board, respectively, and the period stated in the resolution appointing them.

7.02.02 Staggered Terms

When members are first appointed, the appointments may be for less than three (3) years to provide for staggered terms.

7.02.03 Succession

A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. All vacancies for un-expired terms shall be filled for the remainder of the term.

7.02.04 Compensation

The total amount allowed the Board of Zoning Appeals in any one (1) year as per diem or as expenses actually incurred in the discharge of their duties shall not exceed a reasonable sum which shall be appropriated annually in advance by the township board.

7.03.00 JURISDICTION

7.03.01 The Board of Appeals shall not alter or amend the Zoning District Map and Classifications or the provisions of this ordinance. The Board of Appeals:

- A. Shall maintain a separate taped or stenographic record and issue written opinions on all actions taken,
- B. Shall hear and decide appeals where it is alleged by the appellant that:
 1. There is error in any requirement relative to issuance or refusal to issue a land use compliance permit by the Building Inspector or Zoning Administrator, or
 2. The Planning Commission erred in allowing or disallowing a special land use request.
- C. May permit modification of off-street parking and off-street loading requirements only insofar as area and number of spaces are concerned and where it can be clearly demonstrated that no useful purpose would be served or that land requirement cannot be obtained.
- D. May permit variances to the area, height, and setback requirements where practical difficulties exist because of topography or where there are exceptional circumstances that would deprive the owner of substantial rights enjoyed by other property owners in the same zone and vicinity provided such rights are of conforming nature.
- E. May vary or modify any of its rules or provisions relating to the construction or structural changes in, equipment or alteration of buildings or structures or the use of land only where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the ordinance.
- F. Shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the presentation of records and other evidence pertaining to matters being considered.

7.04.00 MEETINGS AND HEARINGS

7.04.01 Meetings

- A. All meetings shall be posted in compliance with the Open Meetings Act (1976 PA 267).
- B. The chairperson of the Board of Appeals, or any two (2) board members may call a meeting for election of officers, to act on questions in administration or interpretation of the zoning ordinance and to act on such other matters as outlined by this Ordinance or 1943 PA 184, as amended. (MSA 5.2963(20)).
- C. The Board of Appeals shall not conduct business unless at least two (2) members of the Board are present.
- D. Public notice of a hearing on any appeal or other hearing held shall be published at least once in a newspaper in general circulation within the Township not less than five (5) nor more than thirty (30) days before the hearing.
- E. Written notice by personal delivery or by first class mail at least fifteen (15) days in advance to all property owners reflected by the current tax roles as owning property located within three hundred (300) feet of any point of the property on which the appeal is based.
- F. The notice shall contain a brief description of the location of the property, the basis of the appeal and the time and place where the hearing will be conducted.
- G. The premises under consideration shall be posted at least fifteen (15) days before the hearing.

7.05.00 HEARINGS BY BOARD OF ZONING APPEALS

The Board of Appeals shall hold public hearings at the call of the Chairperson and as often as required to hear appeals made from decisions of the Zoning Administrator and Planning Commission or requests for variances as set forth in this ordinance in Article 8.

7.06.00 APPEALS

- 7.06.01 An appeal may be taken to the Board of Appeals by:
 - A. Any person seeking clarification or interpretation of this Ordinance, or
 - B. Any person seeking or opposing a special land use as provided for by this Ordinance, or
 - C. Any person affected by a decision of the Building Inspector or Zoning Administrator pursuant to or in conjunction with a compliance, building permit, or land removal and filling permit, or
 - D. Any person seeking a variance.
- 7.06.02 All appeals shall be submitted in writing to the Township Clerk and accompanied by a non-refundable filing fee set by Township Board Annual Fee Resolution.
- 7.06.03 Upon receipt of a proper application, the Board of Appeals shall set a reasonable time and place for a hearing on the appeal and give proper notice thereof to the public and all affected parties, and render a decision without unreasonable delay.
- 7.06.04 Appeals made from a determination of the Building Inspector or Zoning Administrator shall be made within thirty (30) days following such determination. Appeals from any other determination shall be made within sixty (60) days of such determination.

7.06.05 The Board of Appeals may grant a "variance" from the strict interpretation of this ordinance when such variance is deemed necessary for the preservation of a substantial property right belonging to other property in the same district, when it finds unique circumstances or hardship controlling and when the granting of such a variance will not be materially detrimental to the public welfare not injurious to the property or improvements in the vicinity or district in which the property of the applicant is located. The Board of Appeals shall follow the preliminary procedures outlined in Article 8.

7.07.00 EXERCISING AUTHORITY

7.07.01 In exercising the authority granted to it by this Ordinance, the Board of Appeals may reverse or affirm wholly or partly or modify requirements appealed from and may make such determination and attach such conditions as needed to be made.

7.07.02 The Board of Appeals shall reduce its findings of fact to writing which determination shall:

- A. Comply with the constitution and laws of this state,
- B. Recite the procedure followed,
- C. Recite sufficient competent material and substantial evidence in its support, and
- D. Represent the reasonable exercise of discretion.

7.07.03 An approval determination made by the Board of Appeals shall become null and void one (1) year after being filed with the Township Clerk if a building permit has not been issued and construction is not being actively pursued or if other applicable action has not been taken by the applicant. Determinations once voided shall become the subject of a new appeal, and an application subject to all the requirements of the original application, including a new filing fee, must be resubmitted.

7.07.04 No appeal rejected by the Board of Appeals may be resubmitted unless it can be demonstrated that new evidence bearing on the matter can be presented within a period of six (6) months following such rejection.

7.08.00 GUIDELINES AND FACTORS

As with hearings for Special Land Use permits requiring the approval of the Planning Commission, the Board of Appeals shall be guided by the same considerations as for other appeals and by Article VIII and the Sections thereof, and considerations such as outlined by Section 10.03.00 of this Ordinance.

7.09.00 DELIBERATION

After hearing all persons concerned with a particular appeal, the Board of Appeals may immediately grant or deny the request or it may table the appeal for a further hearing or investigation. Whenever the Board of Appeals does not give an immediate decision or postpones the hearing until a later date, the decision of the Board of Appeals shall be communicated to all interested persons who request the same in writing.

7.10.00 DECISION FINAL

The decision of the Board of Appeals shall be final. (MSA 5.2963(23a)). A record of the proceedings shall be kept on all appeals to establish the Board's compliance with:

- A) Constitution and laws of this State,
- B) Appropriate procedure,
- C) Requirement of competent material and substantial evidence,
- D) Requirement of reasonable exercise of discretion.