

ARTICLE 13 ZONING BOARD OF APPEALS

SECTION 13.01 Creation of Zoning Board of Appeals

A. There is hereby established a Zoning Board of Appeals, which shall perform its duties and exercise its powers as provided in this section of the ordinance, inclusive of Act 110 of the Public Acts of 2006, as amended, in such a way that the objectives of this Ordinance shall be observed, public safety secured, and substantial justice done. The Zoning Board of Appeals shall consist of seven (7) regular members, and may include two (2) alternate members all of whom shall be appointed by the Township Board following recommendations by the Township Supervisor.

(Amended: Ord. No. 668, 7-24-06)

B. The first member shall be a member of the Township Planning Commission.

C. The remaining regular and any alternate members of the Zoning Board of Appeals shall be selected from the electors of the Township residing outside of incorporated cities and villages. The members selected shall be representative of the population distribution and of the various interests present in the Township. One member may be a member of the Township Board. An elected officer of the Township shall not serve as chairman of the Zoning Board of Appeals. An employee or contract employee of the Township Board may not serve as a member of the Township Zoning Board of Appeals. The total amount allowed the Zoning Board of 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. Members of the Zoning Board of Appeals shall be removable by the Township Board for non-performance of duty or misconduct 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 misconduct in office.

D. The terms of each regular member shall be for three (3) years, however the terms of office shall be staggered so that not more than two (2) or less than one (1) appointment shall expire in any given year. A successor shall be appointed no later 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 terms. The term of the Township Planning Commission representative and Township Board representative (if there is one) shall be defined in the resolution appointing them, but shall not extend beyond their term on the Planning Commission or Township Board respectively.

E. The Township Board may appoint not more than two (2) alternate members of the Board of Appeals to serve for a three (3) year term. An alternate member of the Zoning Board of Appeals shall serve as a regular member of the Zoning Board of Appeals in the absence of

a regular member if the regular member is absent from or will be unable to attend two or more consecutive meetings, or is absent from or will be unable to attend meetings for a period of more than thirty (30) days. 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 a conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals. An alternate member shall be called to serve by the chairman of the Zoning Board of Appeals or the Acting Chairperson in the absence of the Chairperson, when the absence, unavailability or conflict of interest of a regular member becomes known to the Chairperson or Acting Chairperson.

- F. The Zoning Board of Appeals shall not conduct business unless a majority of the regular or alternate members of the Zoning Board of Appeals are present.

SECTION 13.02 Meetings

Meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson, and at such times as the Zoning Board of Appeals may determine. All meetings of the Zoning Board of Appeals shall be open to the public. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its findings, proceedings at hearings, and other official actions, all of which shall be immediately filed in the office of the Township Clerk and shall be a public record. The Zoning Board of Appeals shall adopt rules of procedure for the operation of the Board and the conducting of hearings.

SECTION 13.03 Powers of the Zoning Board of Appeals

The Zoning Board of Appeals shall have the authority to:

- A. Grant variances from the requirements of this Ordinance.
- B. Interpret the zoning ordinance and the zoning map.
- C. Hear appeals of administrative decisions including approval or denial of site plan or special use permits.
- D. Permit a legal non-conforming use of land or structures to be changed to another non-conforming use under the procedures contained in Sections 5.04 and 5.05 of this Ordinance.

SECTION 13.04 Variances

The Zoning Board of Appeals shall have the power to authorize reductions in ordinance requirements including building setbacks, lot size and width, building height and parking requirements. The Zoning Board of Appeals may not authorize a use variance. In

consideration of all variances, the Zoning Board of Appeals shall review each case individually as to its compliance with each of the following standards:

- A. The standard for which the variance is being granted would unreasonably prevent the owner from using property for a permitted purpose or would render conformity unnecessarily burdensome.
- B. The variance is the minimum necessary to provide adequate relief to the applicant and is not so large that it is unfair to similarly situated property owners who managed to comply with the requirements or make do with a smaller variance.
- C. The problem is due to circumstances unique to the property and not to general conditions in the area.
- D. The problem that resulted in the need for the variance was not a self-created hardship. In this instance "self-created" includes actions by the current owner or past owners of the property.
- E. Issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done.

SECTION 13.05 Interpretation

- A. The Zoning Board of Appeals shall have the power to interpret the provisions of the Ordinance in such a way as to carry out the intent and purpose of this Ordinance. In case of any question as to location of any boundary line between zoning districts, the Zoning Board of Appeals shall interpret the Zoning Map, after recommendation from the Township Planning Commission. In interpreting the location of zoning district boundaries, the Zoning Board of Appeals shall use the rules of interpretation identified in Section 3.02 of this Ordinance. The Zoning Board of Appeals shall also have the authority of interpreting whether or not a specific use is permitted within a specific zoning district. In carrying out this interpretation, the Zoning Board of Appeals may not interpret a specific use as being included in a broader class of uses if that specific use is listed separately in other zoning districts.
- B. The authority to alter or change the Zoning Ordinance or Zoning Map is reserved to the Township Board, as is provided by law.

SECTION 13.06 Appeals and special approvals

An appeal may be taken to the Zoning Board of Appeals by any person, legal entity, or by any officer, department, board or bureau affected by a decision of the Zoning Administrator or a decision by Planning Commission regarding a site plan or special use permit. Such appeals shall be taken within twenty one (21) days of the posting of the minutes of the meeting at which the action to be appealed was taken, or in the case of a zoning administrator's decision, within

twenty one (21) days of receipt of the written decision. Such appeals shall be made by filing with the Zoning Administrator and with the Zoning Board of Appeals, a notice of appeal, specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Zoning Board of Appeals all papers constituting the record upon which action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Zoning Board of Appeals after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his 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 Zoning Board of Appeals or by the Circuit Court, on application, on notice to the Zoning Administrator and on due cause shown.

SECTION 13.07 Procedures

A. Applications

Application for variance, appeal, interpretation or changes in non-conforming uses shall be submitted to the Township Zoning Administrator at least thirty (30) days prior to the Zoning Board of Appeals meeting at which it will be heard. The application shall consist of a completed application form and other information determined necessary by the Zoning Board of Appeals.

B. Notice

Notice of the hearing of an appeal, variance, or other matter before the Zoning Board of Appeals shall comply with Section 9.05B of this Ordinance except for the provisions of that section dealing with notice to residents and property owners within three hundred (300) feet. Those requirements shall only be applied to notices on Zoning Board of Appeals matters when the matter involves a specific parcel.

C. Zoning Board of Appeals decision

1. Following the hearing on an issue brought before them the Zoning Board of Appeals may only reverse an administration decision or grant an applicants request by a majority vote of the members of the Zoning Board of Appeals, that is, by at least four (4) votes.
2. In making a decision on an appeal of an administrative decision, the Zoning Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as necessary to meet the intent of this Ordinance and shall have all the powers of the officer or board from whose decision the appeal was taken.
3. In making a decision on a request, the Zoning Board of Appeals shall state the basis for their decision.

D. Record of review

A record of the decision shall be filed with the Township Zoning Administrator, including:

1. A copy of the submitted application.
2. A copy of any meeting minutes related to the application.
3. A copy of any other relevant records related to the application.

E. Appeal of special use permit decision

Any person aggrieved by the decision of the Zoning Board of Appeals in granting or denying a request may appeal the decision to Circuit Court.

SECTION 13.08 Time limits

A. Deadline to commence construction/use

A building permit for a project with a Zoning Board of Appeals approved variance shall be filed with the Township Building Inspector within one (1) year from the date of Zoning Board of Appeals approval of a variance. If a building permit is not filed within one (1) year, Zoning Board of Appeals approval of the variance shall expire. In cases where construction is not required, the approved use of land or buildings must have commenced within one (1) year.

B. Deadline for completion

A project with a Zoning Board of Appeals variance approved shall be completed within the time frame of the building permit issued.

SECTION 13.09 Conditions

A. The Zoning Board of Appeals may place conditions on an affirmative decision when such conditions:

1. Would ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.
2. Would protect the natural environment and conserve natural resources and energy.
3. Would ensure compatibility with adjacent uses of land.
4. Would promote the use of land in a socially and economically desirable manner.

B. In determining appropriate conditions, the Zoning Board of Appeals shall ensure that:

1. There is a rough proportionality between the cost to the developer to provide an improvement in relationship to the impact to be mitigated.
2. There is a reasonable connection between the condition imposed and the impact it is mitigating.

SECTION 13.10 Performance guarantees

In the interest of insuring compliance with the Zoning Ordinance provisions, protecting the natural resources and the health, safety and welfare of the residents of the Township and future users or inhabitants of an area for which a site plan for a proposed use has been submitted, the Zoning Board of Appeals may require the applicant to deposit a performance guarantee as set forth herein. Performance guarantees shall be required in instances where an occupancy permit is requested prior to completion of all improvements on an approved site plan. The purpose of the performance guarantee is to ensure completion of improvements connected with the proposed use as required by this Ordinance, including but not limited to roadways, lighting, utilities, sidewalks, drainage, fences, screens, walls, landscaping, and widening strips.

- A. Performance guarantee as used herein shall mean a cash deposit, certified check, irrevocable bank letter of credit, corporate surety or performance bond in the amount of the estimated cost of the improvements to be made as determined by the applicant and verified by the Zoning Administrator.
- B. Where the Zoning Board of Appeals requires a performance guarantee, said performance guarantee shall be deposited with the Township Treasurer prior to the issuance of a zoning permit. The Township shall deposit the performance guarantee, if in the form of a cash deposit, certified check or performance bond in an interest-bearing account.
- C. An approved site plan shall also prescribe the period of time within which the improvements for which the performance guarantee has been required are to be completed. The period will begin from the date of the issuance of the building permit.
- D. In the event the performance guarantee deposited is a cash deposit or certified check, the Township shall rebate to the applicant fifty (50) percent of the deposited funds when sixty (60) percent of the required improvements are completed as confirmed by the Zoning Administrator, and the remaining fifty (50) percent of the deposit funds when one hundred (100) percent of the required improvements are completed as confirmed by the Zoning Administrator. If a request is made by the applicant for a temporary certificate of occupancy without completion of required exterior improvements, the performance guarantee may be applied by said applicant to assure compliance with Zoning Ordinance standards and the specifications of the approved site plan.
- E. Upon the satisfactory completion of the improvements for which the performance guarantee was required, as determined by the Zoning Administrator, the Treasurer shall return to the applicant the performance guarantee deposited and any interest earned thereon.
- F. In the event the applicant defaults in making the improvements for which the performance guarantee was required within the time period established by the Township, the Township shall have the right to use the performance guarantee deposited and any interest earned thereon to complete the improvements through contract or otherwise, including specifically

the right to enter upon the subject property to make the improvements, and the right to charge administrative costs related to the performance guarantee. If the performance guarantee is not sufficient to allow the Township to complete the improvements for which it was posted, the applicant shall be required to pay the Township the amount by which the costs of completing the improvements exceeds the amount of the performance guarantee. Should the Township use the performance guarantee or a portion thereof, to complete the required improvements, any amount remaining after said completion shall be applied first to the Township's administrative costs in completing the improvement with any balance remaining being refunded to the applicant. If the applicant has been required to post a performance guarantee or bond with another governmental agency other than the Township to ensure completion of an improvement associated with the proposed project prior to the Township's special approval, the applicant shall not be required to deposit with the Township a performance guarantee for that specific improvement. At the time the performance guarantee is deposited with the Township and prior to the issuance of a building permit, the applicant shall enter an agreement incorporating the provisions hereof with the Township regarding the performance guarantee.

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