

ARTICLE 28

ZONING BOARD OF APPEALS

28.1 CREATION. There is hereby created a Zoning Board of Appeals, which shall perform its duties and exercise its powers and jurisdiction as provided by applicable laws and this ordinance.

28.2 MEMBERS. The Zoning Board of Appeals shall be appointed by the Township Board as prescribed by statute. The Zoning Board of Appeals shall consist of five regular members. One of the regular members shall be a member of the Planning Commission. The remaining regular members, and any alternate members, shall be selected from the electors of the Township residing outside of any Village. The membership of the Zoning Board of Appeals shall be representative of the population distribution and of the various interests present in the Township. A member of the Township Board may be a regular member of the Zoning Board of Appeals. An employee or contractor of the Township Board shall not serve as a member of the Zoning Board of Appeals.

The Township Board may appoint to the Zoning Board of Appeals not more than two alternate members for the same term as regular members. An alternate member may be called to sit as a regular member in the absence of a regular member if the regular member will be unable to attend one or more meetings. One alternate member shall also be a member of the Planning Commission, and shall be called to sit as a regular member only in the absence of the regular member of the Zoning Board of Appeals who is also a member of the Planning Commission. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. An alternate member serving on the Zoning Board of Appeals has the same voting rights as a regular member.

28.3 TERM. The term of each member shall be three years and until a successor has been appointed and qualified; such successor shall be appointed not more than one month after the expiration of the preceding term. Staggered terms shall be effected by one or more of the first appointed members serving for less than three years. Members from the Township Board and from the Planning Commission shall have terms limited to their respective other official terms or to such lesser period determined by resolution of the Township Board.

28.4 JURISDICTION AND POWERS. The Zoning Board of Appeals shall have all the powers and jurisdiction prescribed by applicable law, and by the provisions of this Ordinance, including the following:

1. Hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order,

requirement, decision or determination as in its opinion ought to be done, and to that end it shall have all the powers of the Zoning Administrator and may issue or direct the issuance of a permit.

2. Act upon all questions as they may arise in the administration and enforcement of this Ordinance, including interpretation of the zoning map.
 3. Hear and decide, subject to Section 28.9, requests for a nonuse variance from dimensional requirements of the Zoning Ordinance, or from any other nonuse-related requirement in the Ordinance, if there are practical difficulties in the way of carrying out the strict letter of the requirement, so that the spirit of the Zoning Ordinance is observed, public safety secured, and substantial justice done.
 4. Hear and decide requests to expand, extend, enlarge, or otherwise alter a lawful nonconforming use or nonconforming building/structure, as provided by Section 27.3.
 5. Hear and decide requests to change a nonconforming use to another nonconforming use, as provided by Section 27.5.
- 28.5 **OFFICERS.** The Zoning Board of Appeals shall designate one regular member as its Chairperson; provided a regular member who is also a member of the Township Board is not eligible to serve as Chairperson of the Zoning Board of Appeals. The Zoning Board of Appeals may designate such other officers as it deems expedient to the proper performance of its duties.
- 28.6 **MEETINGS/RULES OF PROCEDURE.** Meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at such other times as the Zoning Board of Appeals may determine for the efficient conduct of its business. The Zoning Board of Appeals shall not conduct business unless a majority of its regular members are present. All meetings shall be open to the public. The Zoning Board of Appeals may adopt rules of procedure consistent with applicable statutes and this ordinance.
- 28.7 **APPEALS.** Appeals to the Zoning Board of Appeals may be taken by any party aggrieved or affected by a decision or order of the Zoning Administrator or by an officer or agency of the Township. A notice of appeal specifying the grounds thereof shall be filed with the Zoning Board of Appeals within 30 days after the date of the action appealed. A copy of the notice shall promptly be served upon the officer or agency from whose decision or order the appeal is taken, who shall forthwith transmit to the Zoning Board of Appeals all records pertaining to the action appealed from. An appeal shall stay all proceedings, decisions or orders unless said officer certifies to the Zoning Board of Appeals that a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except upon a restraining order issued by the Zoning Board of Appeals or by the circuit court.

28.8 APPLICATIONS. All appeals and applications for any matter within the jurisdiction of the Zoning Board of Appeals shall be submitted and processed under the following procedures:

1. The appeal or application shall be filed in triplicate with the Township Clerk, and shall include all of the following:
 - A. A completed appeal or application form, using the applicable form prescribed by the Township.
 - B. All materials on which the applicant intends to rely in support of the appeal or other application.
 - C. For any appeal or other application involving specific property, such as an application for variance relief, a site plan or diagram of the subject property showing, at a minimum, all of the following:
 - (1) The location of the subject property with respect to all abutting streets.
 - (2) The dimensions of the subject property.
 - (3) The location of all existing buildings and structures on the subject property, and on all adjoining properties.
 - (4) The location of all proposed buildings/structures on the subject property.
 - (5) The existing and proposed uses of the existing and proposed buildings/structures on the subject property.
 - (6) The existing and proposed setback of each building/structure which is the subject of the appeal or other application, measured in each instance to the street line and all pertinent lot lines.
 - D. Payment of the applicable fee as set by the Township Board.
2. The Township Clerk shall promptly refer one copy of the application submittal to the Township Attorney, and one copy to the Zoning Administrator. The Zoning Administrator shall promptly review the submittal to determine whether it is administratively complete, and shall notify the applicant of any deficiencies in the content of the application submittal. An application shall not be processed for public hearing or other consideration by the Zoning Board of Appeals unless and until it is administratively complete as determined by the Zoning Administrator. The Zoning Administrator shall

promptly refer an administratively complete appeal/application to the Zoning Board of Appeals.

28.9 VARIANCE STANDARDS AND CONDITIONS.

1. Standards: No variance in the provisions or requirements of this ordinance shall be authorized by the ZBA unless the ZBA finds from reasonable evidence that:
 - By reason of the exceptional narrowness, shallowness, or shape of the property in question, or by reason of exceptional topographic conditions or other extraordinary conditions of the property in question, there are practical difficulties preventing compliance with the strict letter of the Ordinance.
 - The exceptional or extraordinary conditions applying to the specific property do not apply generally to other properties that are subject to the requirement at issue.
 - The variance will not be of substantial detriment to adjoining property.
 - The variance will not materially impair the intent and purpose of this ordinance, or the public health, safety and welfare.
 - The variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties that are subject to the requirement at issue.

In determining whether the standards for variance relief have been shown to be satisfied the ZBA shall be governed by the following additional legal principles:

- The circumstances or conditions submitted by the applicant to justify the variance relief must pertain to the property at issue, and not the personal circumstances of the applicant and/or other occupants or users of the property.
- The circumstances or conditions submitted by the applicant to justify the variance relief must not have been self-created by the applicant or some other person under the control of the applicant or for whose conduct the applicant is responsible.
- Increased costs associated with complying with the strict letter of the ordinance are not a basis for variance relief.
- Increased financial return if variance relief is granted is not a basis for variance relief.

- The ZBA may find the standards for relief from the strict letter of the ordinance have been shown to be satisfied, but not to the extent of the variance requested by the applicant, and in such circumstances the ZBA shall grant only such lesser variance relief as is necessary.
2. Conditions. The Zoning Board of Appeals may attach conditions or limitations upon a variance, where such are necessary to insure that public services and facilities affected by a requested variance and the associated land use or activity will be capable of accommodating increased service and facility loads caused by the variance and associated land use or activity, and to protect the natural environment and conserve natural resources and energy, and to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner.

Prior to attaching a condition or limitation to a variance, the Zoning Board of Appeals shall also specifically determine the following:

- A. That the condition or limitation is designed to protect natural resources, the health, safety and welfare and the social and economic well-being of those who will use the land use or activity associated with the variance under consideration, residents and land owners immediately adjacent to the land use or activity, and the community as a whole; and,
- B. That the condition or limitation is related to the valid exercise of the police power, and purposes which are effected by the proposed variance; and,
- C. That the condition or limitation is necessary to meet the intent and purpose of the zoning ordinance, is related to the standards established in the ordinance for the variance under consideration and associated land use or activity, and is necessary to insure compliance with those standards.

Any such conditions and limitations may impose greater or more restrictions and requirements than are included in this Ordinance generally, and may include the provision of reasonable financial security to guarantee performance. Violation of any such conditions or limitations shall be deemed a violation of this Ordinance.

- 28.10 LAND USE VARIANCE. The Zoning Board of Appeals shall not act on a request for a land use variance (for a use not allowed in a zone).
- 28.11 PUBLIC HEARINGS. Upon the filing of an administratively complete appeal or application on a matter over which the Zoning Board of Appeals has jurisdiction, the Zoning Board of Appeals shall hold a public hearing on such matter if required by law, preceded by notice as required by law.

28.12 DECISIONS. The Zoning Board of Appeals shall render its decision upon such application within 60 days after the hearing thereon and notify the applicant of its decision.

28.13 TIME LIMITS.

1. If a variance is granted or other action is authorized by the Zoning Board of Appeals the authorized action shall be deemed abandoned and withdrawn if it is not initiated within three months and completed within 12 months after the Zoning Board of Appeals decision. However, upon request of the applicant, filed no later than the applicable deadline, the Zoning Board of Appeals may renew the authorized action where the applicant shows good cause for the delay, and the Zoning Board of Appeals finds there have been no changed conditions that would potentially affect the prior findings of the Zoning Board of Appeals on which the authorized action was dependent.
2. No application for a variance or other relief which was denied in whole or in part shall be reheard by the Zoning Board of Appeals for a period of one year from the date of the denial, unless the Zoning Board of Appeals finds that grounds for such a rehearing exist on the basis of either newly discovered evidence or proof of changed conditions that were not known to the applicant or the Zoning Board of Appeals at the time of the previous hearing.

28.14 VOTE NECESSARY FOR DECISION. The concurring vote of a majority of the members of the Zoning Board of Appeals is necessary to grant a variance or otherwise decide in favor of the applicant, or to reverse an order, requirement, decision, or determination of the Zoning Administrator.

28.15 MINUTES AND RECORDS. The secretary/recording secretary or other designee of the Zoning Board of Appeals shall keep minutes of its proceedings, which shall be filed with the Township Clerk and be a public record.

28.16 LIMITATION OF BOARD ACTION. Except as expressly authorized in this Article, the Zoning Board of Appeals shall not, through any decision, alter, vary or otherwise negate any provisions of this ordinance. If the Zoning Board of Appeals considers any specific provision of the Zoning Ordinance inappropriate it shall submit to the Planning Commission a request for review of the provision.