

## **Article 12 -ZONING BOARD of APPEALS (ZBA)**

### **12.1 Purpose**

The purpose of this Article is to establish a Zoning Board of Appeals (ZBA) pursuant to Public Act 110 of 2006, including its responsibilities, procedures, and standards of review, to ensure that the objectives of this Ordinance are fully and equitably achieved.

### **12.2 Creation and Membership**

**12.2.1 Establishment and Appointment of Members:** The ZBA previously created shall continue to function, and each member shall remain in office until such time that the member is not reappointed or otherwise no longer eligible to serve. The ZBA is retained in accordance with Public Act 110 of 2006. The ZBA shall consist of five (5) members, appointed by the Township Board by majority vote. One (1) of the members shall be a member of the Planning Commission. One (1) regular or alternate member of a ZBA may be a member of the Township Board but shall not serve as the chairperson. The remaining regular members, and any alternate members, shall be selected from the electors of the Township residing within. The members selected shall be representative of the population distribution and of the various interests present in the Township. An employee or contractor of the Township Board may not serve as a member of the ZBA.

**12.2.2 Alternate Members:** The Township Board may appoint not more than two (2) alternate members to the ZBA, each appointed for a term of three (3) years. The alternate members shall be called on a rotating basis to sit as regular members of the ZBA in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings of the ZBA. 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.

**12.2.3 Terms of Appointment:** Members shall be appointed for three (3) year terms except in the case of a Planning Commission and/or Township Board member serving on the ZBA, whose terms on the ZBA 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 in the same manner as the original appointment. Members may be reappointed.*

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

### **12.3 Organization**

**12.3.1 Rules of Procedure and Officers:** The ZBA shall 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.

**12.3.2 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 regular membership of the ZBA shall comprise a quorum. The ZBA shall not conduct official business unless a quorum is present. All meetings shall be open to the public and conducted pursuant to the requirements of the Open Meetings Act.

**12.3.3 Oaths and Witnesses:** The chairperson may administer oaths and compel the attendance of witnesses.

**12.3.4 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, and shall be available to the public according to the Open Meetings Act (P.A. 267 of 1976, as amended).

**12.3.5 Legal Counsel:** the Township Attorney shall act as legal counsel for the ZBA and shall be present at a ZBA meeting at the request of the ZBA.

## **12.4 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 Public Act 110 of 2006. 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 shall have the power to act on

those matters so specified in this Ordinance including Ordinance interpretations, variances, and the review of an order, requirement, decision, or determination made by an administrative official or body charged with the enforcement of this Ordinance.

## **12.5 Appeals for Administrative Reviews**

**12.5.1 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, or decision 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.

**12.5.2 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:

- a. was arbitrary or capricious, or
- b. was based upon an erroneous finding of a material fact, or
- c. constituted an abuse of discretion, or
- d. was based upon erroneous interpretation of the Zoning Ordinance or zoning law, or
- e. did not follow required procedures.

### **12.5.3 Procedures:**

- a. Application Requirements: A written application for an appeal for administrative review shall be completed and filed with the Township Clerk 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. A minimum of seven (7) copies of the application shall be submitted along with any required application fees.

- b. Stay: An appeal for an administrative review filed under this Section stays all proceedings in furtherance of the action appealed unless the officer or body from whom the appeal is taken certifies to the ZBA, 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 would cause imminent peril to life or property. If such a certification is filed, the proceedings shall only be stayed by a restraining order. A restraining order may be granted by the ZBA or by the circuit court, on application, on notice to the officer or body from whom the appeal is taken and on due cause shown.
- c. Record of Facts / Transmission of Record: Upon receipt of an application for an administrative review, 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 Section, the ZBA's review shall be based upon the record of the administrative decision being appealed. The ZBA shall not consider new information which had not been presented to the administrative official or body from whom the appeal is taken without first remanding the matter back to the body from whom the appeal is being taken, in which case the body from whom the appeal is being taken shall consider such new information and forward a recommendation to the ZBA regarding the appropriateness of the body's original decision.
- d. 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 11.8. Upon the hearing, any party may appear in person or by agent or attorney. See subsection (5) regarding participation at the hearing by a member of the ZBA who is also a member of the Planning Commission or the Township Board.
- e. 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, and basis for such determination. The concurring vote of a majority of the members of the ZBA shall be necessary to reverse or otherwise modify the action subject to the appeal. A member of the ZBA who is also a member of the Planning Commission or the Township Board shall not participate in a public hearing, deliberation, or vote, on the same matter that the member voted on as a member of the Planning Commission or the Township Board. However, the member may consider and vote on other unrelated matters involving the same property.

## **Section 12.6 Interpretations**

**12.6.1 Authority:** The ZBA shall hear and decide upon requests to 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, including the determination of the precise location of the boundary lines between zoning districts, application of off-street parking and loading requirements for a specific use, and whether a particular use is authorized in a particular district.

### **12.6.2 Procedures:**

- a. Application Requirements: A written application for an interpretation shall be completed and filed with the Township Clerk 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. A minimum of ten (10) copies of the completed application shall be submitted along with any required application fees.

- 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 11.8. 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, and basis for such determination. The concurring vote of a majority of the members of the ZBA shall be necessary to make an interpretation. In deciding on an interpretation, 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.

  - 1.* Prior to deciding a request for an interpretation, the ZBA may confer with Township staff and consultants to gain insight into the provision subject to interpretation and any consequences which may result from differing decisions.
  - 2.* A decision providing an interpretation may be accompanied by a recommendation to the Planning Commission for consideration of an amendment of the Ordinance.

## 12.7 Variances

**12.7.1 Authority:** The ZBA shall have the power to authorize specific variances from specific site development standards contained in this Ordinance, such as lot area and width requirements, building height and setback requirements, yard width and depth requirements, lot depth to width ratio requirements, off-street parking and loading space requirements, and sign requirements. The ZBA shall not have the power to authorize variances from requirements of this Ordinance pertaining to permitted uses of land in a District.

**12.7.2 Standards:** The ZBA shall have the power to authorize 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.

- a.* 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 in relation to such conditions, 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.
- b.* That the practical difficulty or special condition or circumstance is not a result of the actions of the applicant.
- c.* That the variance will relate only to property described in the variance application.
- d.* That the variance will be in harmony with the purpose of this Ordinance and the intent of the District, including the protection of public health, safety and welfare in general and vehicular and pedestrian circulation specifically.
- e.* That the variance will not cause a substantial adverse effect upon surrounding property including property values and the development, use and enjoyment of property in the neighborhood or District.
- f.* That strict compliance with the site development requirement in question would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.

- g. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulty.

### **12.7.3 Procedures**

- a. 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 chose to submit to demonstrate conformance with the standards of subsection (B) above. A minimum of seven (7) copies of the completed application shall be submitted along with any required application fees.
- 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 11.8. 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, and basis for such determination. The concurring vote of a majority of the members of the ZBA shall be necessary to grant a variance.
  - 1. In granting a variance, the ZBA may prescribe appropriate conditions and safeguards in accordance with the purpose of this Ordinance. In the case where the ZBA prescribes such conditions, the ZBA may require that a performance bond be furnished to ensure compliance with such conditions. 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.
  - 2. A variance shall become null and void unless the construction authorized by such variance has been commenced within one (1) year after the granting of the variance, and the occupancy of the land, premises or buildings authorized by the variance has occurred within two (2) years after the granting of the variance.
  - 3. 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.

## **12.8 Review by Circuit Court**

**12.8.1 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 in the Circuit Court provided that application is made to the Court within thirty (30) days after the ZBA issues its decision in writing signed by the chairperson, or within twenty-one (21) days after the ZBA approves the minutes of its decision. The Circuit Court shall review the record and decision of the ZBA to insure that the decision:

- a.* Complies with the constitution and laws of the State.
- b.* Is based upon proper procedure.
- c.* Is supported by competent, material, and substantial evidence on the record.
- d.* Represents the reasonable exercise of discretion granted by law to the ZBA.