

**CHAPTER 17**  
**ZONING BOARD OF APPEALS**

**Section 17.1 Creation of Zoning Board of Appeals.** The Zoning Board of Appeals (the “Board of Appeals”) is hereby created. The Board of Appeals shall have the authority and responsibilities conferred by law and this Ordinance.

**Section 17.2 Membership.** The Board of Appeals shall consist of five members. The members shall be appointed by affirmative majority vote of the total number of members of the Township Board.

- (a) One member of the Board of Appeals shall be a member of the Township Planning Commission.
- (b) One member of the Board of Appeals may be a member of the Township Board.
- (c) The members of the Board of Appeals other than those stated in (a) and (b) shall be electors of the Township residing within its zoning jurisdiction.
- (d) There may be not more than two alternate members of the Board of Appeals, appointed in the same manner as regular members of the Board of Appeals. They shall be electors of the Township residing within its zoning jurisdiction. They shall have the authority and duties stated in Section 17.12.
- (e) An employee or contractor of the Township shall not serve as a member of the Board of Appeals.

**Section 17.3 Terms of Office.** A member of the Board of Appeals shall have a term of office of three years and until the member’s successor is appointed and qualifies; provided, however, that the terms of the members first appointed shall be for varying numbers of years, none of them exceeding three, so as to provide for differing expiration dates of members’ terms.

- (a) The terms of the Board of Appeals members who are a Township Board member and a Planning Commission member shall coincide with their respective terms as members of those bodies.
- (b) A member of the Board of Appeals may be reappointed.
- (c) A vacancy in the office of a member of the Board of Appeals shall be filled for the remainder of the unexpired term in the same manner as an original appointment is made.

**Section 17.4 Jurisdiction.**

- (a) The Board of Appeals shall act upon all questions arising in the administration of the Zoning Ordinance, including interpretation of the Zoning Map and the text of the Zoning Ordinance.

- (b) The Board of Appeals shall hear and decide all appeals from any order, decision or determination made by the Zoning Administrator or other person authorized to enforce the provisions of this Ordinance.
- (c) The Board of Appeals shall hear and decide all matters assigned to it for decision under the terms of this Ordinance.
- (d) The Board of Appeals shall have no jurisdiction or authority over or with regard to the following:
  - (1) Any aspect or part of an application for approval of a special land use or planned unit development.
  - (2) An appeal from any aspect or part of a determination or decision made with regard to a special land use or planned unit development.
  - (3) The consideration, approval or granting of a land use variance.
- (e) An appeal to the Board of Appeals stays all proceedings in furtherance of the action appealed from; provided, however, that if the body or officer from whom the appeal is taken certifies to the Board of Appeals, after the notice of appeal is filed, that by reason of facts stated in such certification, a stay would in the opinion of the body or officer cause imminent peril to life or property, then such proceedings may be stayed only by a restraining order issued by the Board of Appeals or the circuit court.

**Section 17.5 Types of Available Relief.** The Board of Appeals shall have authority to hear and decide appeals and other applications for relief as follows:

- (a) Cases in which it is alleged that there is error or misinterpretation in any order, decision or determination made by the Zoning Administrator or any other person authorized to enforce the provisions of this Ordinance.
- (b) Cases in which it is alleged that there are practical difficulties or unnecessary hardship in carrying out the literal requirements of this Ordinance by reason of (i) the exceptional narrowness, shallowness or shape of a lot or parcel of land; (ii) exceptional topographic conditions or (iii) extraordinary dimensional conditions of land, buildings or structures.

**Section 17.6 Dimensional Variances.** If an applicant seeks a dimensional variance from the provisions or requirements of this Ordinance because of dimensional characteristics of a lot or parcel of land, or because of exceptional topographic or similar conditions of the land, buildings or structures, the applicant shall demonstrate through competent, material and substantial evidence on the record that all of the following exist:

- (a) That the enforcement of the literal requirements of this Ordinance would involve practical difficulties.

- (b) That special conditions or circumstances exist which are peculiar to the land, structures or buildings involved and which are not applicable to other lands, structures or buildings in the same zoning district.
- (c) That literal interpretation of the provisions of this Ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zoning district.
- (d) That the authorizing of such variance will not be of substantial detriment to other lands and uses and will not be contrary to the spirit and purpose of this Ordinance.

No nonconforming use of nearby lands, structures or buildings shall in itself be considered grounds for the issuance of a dimensional variance.

In approving a dimensional variance, the Board of Appeals may include such terms and conditions that the Board deems reasonably necessary to carry out the intent and purposes of this Ordinance and for the protection and advancement of the public interest. Among other terms and conditions, the Board may require that the applicant prepare and submit a site plan depicting the land, buildings or other structures, the current condition of the land and the condition thereof if the requested variance were approved.

The Board of Appeals may approve nonuse variances relating to the construction of, structural changes in or alteration of buildings or structures if such nonuse variances relate or pertain to the dimensional requirements of this Ordinance.

#### **Section 17.7 Time Limitations on Variances.**

- (a) Within 90 days after the granting of a variance, the applicant shall obtain all required permits and commence the construction or other work authorized by the variance, and shall proceed diligently toward the completion thereof; except that in granting the variance, the Board of Appeals may authorize a greater period of time in which the applicant shall obtain all required permits and commence construction.
- (b) The construction or other work authorized by a variance shall be completed not later than one year after the granting of the variance; provided, however, that the Board of Appeals may grant an extension of up to one additional year, upon request by the applicant and if the Board finds that extenuating circumstances have prevented the completion of the authorized work or if the Board determines that an extension is otherwise justified. Any request for such an extension shall be considered at a public meeting of the Board of Appeals, but a public hearing shall not be required.

#### **Section 17.8 Appeals and Other Applications for Relief.**

- (a) An appeal from an order, decision or determination by the Zoning Administrator or other person authorized to enforce or administer this Ordinance may be taken by any person aggrieved by such order, decision or determination.

- (b) An application for an appeal, a variance or other authorized relief shall be accompanied by payment of the required application fee.
- (c) An application or appeal shall be filed not later than 30 days after the order, decision or determination as to which the application or appeal is taken.
- (d) An applicant seeking relief within the jurisdiction of the Board of Appeals shall apply for such relief by means of an application form provided by the Township and shall pay the required application fee and deposit any required sum into a Township escrow account for the purpose of any required reimbursement of Township expenses incurred in the consideration of the application.
- (e) The application shall include an accurate drawing, drawn to scale or otherwise showing all relevant dimensions, depicting the proposed construction or other undertaking as to which relief or other action by the Board of Appeals is requested. Prior to the matter being scheduled for hearing by the Board of Appeals, the application and the drawing shall be submitted to the zoning administrator, for the administrator's review of the drawing, the dimensions and other factual matters indicated in the application and the drawing. If the administrator determines any inaccuracies, the application and/or the drawing shall be returned to the applicant for correction. When the application and drawing are deemed complete and accurate, the matter shall be scheduled for public hearing by the Board of Appeals.
- (f) After an application for an appeal, a variance or other authorized relief is complete, has been filed in proper form, and the application fee has been paid, the zoning administrator shall forward to the Board of Appeals the application or notice of appeal and other materials comprising the record of the matter from which the application or appeal is taken. The application or appeal shall be scheduled for a public hearing by the Board of Appeals, within a reasonable time. The required notices of hearing shall be given in accordance with Section 17.11.

**Section 17.9 Decisions of the Board of Appeals.**

- (a) The Board of Appeals shall decide all applications and appeals within a reasonable time.
- (b) The Board of Appeals may reverse or affirm, in whole or in part, or may modify, the order, decision, or determination that is being appealed. For such purpose, the Board shall be deemed to have all the powers of the Township officer or body from whom the appeal was taken. In its decision, the Board of Appeals may direct the issuance of all relevant Township permits.
- (c) In cases of alleged practical difficulties or unnecessary hardship, the Board shall, if relief is warranted, grant only such relief as is necessary to relieve the practical difficulties or unnecessary hardship. Such decision shall be binding upon the Zoning Administrator, or other Township officials having authority in the circumstances. The Township building official shall incorporate the terms and conditions of the

Board of Appeals' decision in any permit issued to the applicant pursuant to the decision.

- (d) A decision of the Board of Appeals on an appeal from a Township officer or body shall be final; provided, however, that a party aggrieved by the Board of Appeals' decision may appeal to the circuit court, within the time, to the extent and in the manner permitted by law.
- (e) The members of the Board of Appeals who are members of the Township Board and of the Planning Commission, respectively, shall not participate in or vote on matters that the members previously voted on in their respective capacities as Township Board member or Planning Commission member.

#### **Section 17.10 Officers.**

- (a) The Board of Appeals shall elect from its members a chairperson, vice chairperson and secretary.
- (b) The Board of Appeals member who is a Township Board member may not serve as chairperson of the Board of Appeals.
- (c) An officer of the Board of Appeals shall have a term of one year and until the officer's successor is elected and qualifies. An officer may be reelected.
- (d) An alternate member of the Board of Appeals shall not be eligible for election as an officer of the Board, but an alternate member who is called upon to serve as a member of the Board in the absence of a regular member who is an officer of the Board may, while serving, carry out the duties of the officer in whose absence the alternate member is serving.

#### **Section 17.11 Meetings and Procedures.**

- (a) The Board of Appeals shall adopt bylaws and rules of procedure for the conduct of its meetings and related purposes.
- (b) The Board of Appeals shall conduct business only when a majority of its members is present, including any alternate member serving in the absence of a regular member in accordance with Section 17.12. Three members shall constitute a quorum.
- (c) At the first meeting of each calendar year, the Board of Appeals shall adopt a schedule of regular meetings; provided, however, that a meeting need not be held if pending matters do not warrant a meeting.
- (d) The Board of Appeals may convene special meetings at such times as it shall determine.

- (e) The Board of Appeals shall conduct a public hearing on an appeal of an administrative order, decision or determination, or on an application for an interpretation of this Ordinance or the Zoning Map.
  - (1) Notice of the public hearing shall be given by one publication of a notice of hearing in a newspaper of general circulation in the Township, at least 15 days before the date of hearing.
  - (2) Notice of the public hearing shall also be given by personal delivery or by U.S. mail to the owner of property that is the subject of the application and to all persons to whom real property is assessed within 300 feet of the subject property; provided, however, that if the application does not involve a specific parcel of property, notice need be given only to the person making the application, in the manner stated above, and by publication in the manner stated in subparagraph (1).

**Section 17.12 Alternate Members.**

- (a) The Township Board may appoint not more than two alternate members of the Board of Appeals, in the same manner as regular members are appointed.
- (b) An alternate member may serve as a member of the Board of Appeals in the absence of a regular member if the regular member will be unable to attend one or more meetings.
- (c) An alternate member may also serve as a member of the Board for the purpose of reaching a decision in a case in which a regular member has abstained because of conflict of interest.
- (d) An alternate member who is called to serve in a case before the Board shall serve in the case until a final decision is made, whether at one or more meetings.
- (e) An alternate member of the Board of Appeals has the same voting rights as a regular member of the Board.

**Section 17.13 Removal of Members; Conflicts of Interest.**

- (a) A member of the Board of Appeals may be removed by the Township Board for misfeasance, malfeasance or nonfeasance in office, upon a written statement of the reasons or grounds for the proposed removal and after a public hearing by the Township Board. At the public hearing, the member who is proposed to be removed shall be given an opportunity to address the Township Board.
- (b) A member of the Board of Appeals shall disqualify himself or herself from voting on a matter in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from voting in a matter in which the member has a conflict of interest constitutes malfeasance in office.

**Section 17.14 Appeals from Decisions of the Board of Appeals.**

- (a) Any party aggrieved by a decision of the Board of Appeals may appeal to the circuit court. As provided by law, the circuit court shall review the record in the case and the decision of the Board of Appeals for the purpose of ensuring that the decision complies with all of the following requirements:
  - (1) That it complies with the Constitution and laws of the state.
  - (2) That it is based upon proper procedures.
  - (3) That it is supported by competent, material and substantial evidence on the record of the Board of Appeals.
  - (4) That it represents the reasonable exercise of discretion as granted by law to the Board of Appeals.
- (b) If, as provided by law, the circuit court finds the record inadequate to accomplish the required review, or if the court determines that additional material exists that with good reason was not presented, the circuit court is authorized by law to order further Township proceedings in the matter. In such further proceedings, the Board of Appeals may modify its findings and decision as a result of the additional proceedings, or the Board may affirm its original decision. The record and decision in such further proceedings shall be filed with the circuit court. As provided by law, the court may affirm, reverse or modify the decision of the Board of Appeals.
- (c) An appeal from a decision of the Board of Appeals shall be filed within 30 days after the Board of Appeals issues its decision in writing signed by the chairperson, if there is then a chairperson, or signed by another member of the Board of Appeals, if there is then no chairperson, or within 21 days after the Board of Appeals approves the minutes of the meeting at which its decision was taken.

The contract is made between the undersigned and the other party to the contract. The contract is made on the day of the month of the year.

The contract is made in the presence of the witnesses.

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