

**CHAPTER XXIII
BOARD OF APPEALS**

SECTION 23.01 MEMBERS, PER DIEM EXPENSES AND REMOVAL.

There is hereby continued and/or created a Zoning Board of Appeals of five (5) members. The first member of such Board of Appeals shall be a member of the Township Planning Commission and appointed by the Township Board. The remaining members shall be appointed by the Township Board; and shall be selected from among the electors residing in the unincorporated area of the Township and shall represent the population distribution of the various interests present in the Township; provided that no employee or contractor of the Township Board may serve as a member of or as an employee of the Township Board of Appeals, and that no elected officer of the Township shall serve as chairman of the Board of Appeals.

The Township Board shall appoint two alternate members who shall serve in the case of the absence or temporary incapacity of the regular members of the Zoning Board of Appeals. The total amount allowed such Board of Appeals in any one year as per diem or as expenses actually incurred in the discharge of their duties shall be a reasonable sum which shall be provided annually in advance by the Township Board. Members of the 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. (Ord. No. 15-82; 7/19/82).

SECTION 23.02 OFFICERS.

The Board shall elect from its membership a chairman, vice chairman, and such other officers as deemed necessary.

SECTION 23.03 RULES OF PROCEDURE.

The Board shall adopt procedural rules and regulations. Copies of such regulations shall be made available to the public at the office of the Township Clerk.

- (a) Meetings of the Board shall be held at such times as the Board may determine. There shall be a fixed place of meeting and all hearings shall be open to the public.
- (b) The presence of a majority of total members shall constitute a quorum. The Board shall act by resolution. The concurring vote of a majority of members present of said Board shall be necessary to reverse any order, requirement, decision, or determination of the Building Inspector or to decide in favor of the applicant on any matter upon which it is required to

pass by this Ordinance, or to grant variances from the requirements of this Ordinance.

- (c) The Board shall keep minutes of its proceedings, showing the action of the Board, the reasons on which it bases its action, and the vote of each member upon each question, or, if absent, or failing to vote, indicating such fact, and shall keep records of its proceedings and other official action, all of which shall be filed promptly in the office of the Board and shall be a public record.
- (d) A copy of each resolution passed upon by the said Board of Appeals shall be filed with the Clerk of the Township and to the secretary of the Zoning Board.

SECTION 23.04 JURISDICTION.

The Board of Appeals, in conformity with the provisions of this ordinance, may reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination appealed from, and shall make such order, requirements, decision or determination as in its opinion ought to be made on the premises, and to that end shall have all the powers to hear and decide all matters referred to it or upon which it is required to pass under this ordinance; also where it is alleged by the appellant that there is error or misinterpretation in any order, requirements, decision, grant or refusal made by the Building Inspector or other administrative officer in the carrying out or enforcement of the provisions of this ordinance.

SECTION 23.05 VARIANCES.

Subject to the provisions of Section 23.06, the Board, after public hearing, shall have the power to decide the applications, filed as hereafter provided, for variances:

- (a) Where, by reason of exceptional narrowness in width, breadth, length, or shape of a specific piece of property on the effective date of this ordinance, or by reason of exceptional topographic conditions, or other extraordinary situation or condition of the land, building, or structure, or of the use of or development of property immediately adjoining the property in question, the literal enforcement of the requirements of this ordinance would involve practical difficulties or would cause undue hardship; provided that the Board shall not grant a variance on a lot of less area than the requirements of its zone district, even though such lot existed at the time of passage of this ordinance, if the owners or members of his immediate family own adjacent land which can, without undue hardship, be included as part of the lot.

- (b) Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance relating to the construction, structural changes in equipment, or alterations of buildings or structures, or the use of land, buildings or structures, so that the spirit of this ordinance shall be observed, public safety secured, and substantial justice done.

SECTION 23.06 GENERAL.

No variance in the provisions or requirements of this ordinance shall be authorized by the Board unless the Board finds, from reasonable evidence that all the following facts and conditions exist:

- (a) That there are exceptional or extraordinary circumstances or conditions applying to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district.
- (b) That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.
- (c) That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purposes of this ordinance or the public interest.
- (d) That the condition or situation of the specific piece of property, or the intended use of said property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

SECTION 23.07 CONDITIONS OF APPROVAL.

Reasonable conditions may be required with the approval of a variance by the Zoning Board of Appeals. The conditions may include, but are not limited to, conditions necessary to insure 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, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

- (a) Be 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 under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

- (b) Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
- (c) Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

The conditions imposed with respect to the approval of a special land use shall be recorded in the record of the approval action, and shall remain unchanged except upon the mutual consent of the Zoning Board of Appeals and landowner. The approving Zoning Board of Appeals shall maintain a record of conditions which are changed. (Ord. No. 13-79; 10/16/79)

SECTION 23.08 PROCEDURE.

The following procedure shall be required:

- (a) An appeal for variance from any ruling of the Building Inspector or other administrative officer administering any portion of this ordinance may be taken by any person, partnership, corporation, or any governmental department affected or aggrieved. All matters coming before the Board of Appeals by the Zoning Board for consideration as required by the Zoning Ordinance. When a matter is so referred by the Zoning Board, no fee shall be charged.
- (b) Fees. The required fees for a hearing before the Board of Appeals are a part of the cost of any building permit and are in addition to other building permit fees.

If a petition is filed for a hearing before the Board of Appeals, a fee of seventy-five (\$75.00) dollars shall accompany said petition.

Said fee shall be paid to the Township Clerk before any action shall be taken on said petition. Said amount so received shall be used as provided by law. Fees may be changed by the Township Board at any regular meeting, which change shall be effective thirty (30) days from the date of publication of such change.

- (c) When an application for hearing or appeal has been filed in proper form and the fee paid with the required data, the Secretary of the Board shall immediately place the said application or appeal upon the calendar for

hearing and cause notices stating the time, place, and object of the hearing to be served. Such notices shall be served personally or by mail at least seventy-two (72) hours prior to the day of such hearing, or other administrative body from which such appeal is taken. A like notice shall be sent at least seventy-two (72) hours prior to the hearing to all owners of property as shown by the Township Treasurer's Office within three hundred (300) feet of the premises involved by regular United States Mail, postage prepaid, addressed to the last known address of such property owners as shown by said records. Any interested party may appear and be heard at such hearings, in person or by agent or attorney.

- (d) Upon the day for hearing any application or appeal, the Board may adjourn the hearing in order to permit the obtaining of additional information, or to cause such further notice as it deems proper to be served or for further consideration of the matter involved. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of said hearing unless the Board so decides, provided, however, any adjournment shall be stated at the hearing giving the date, time, and place to which adjournment is made.

SECTION 23.09 DECISIONS OF THE BOARD.

- (a) The Board shall decide all applications and appeals within thirty (30) days after the final hearing thereon. A copy of the Board's decision shall be transmitted to the applicant or appellant and to the Building Inspector. Such decision shall be binding upon the Building Inspector and observed by him and he shall incorporate the terms and conditions of the same in the permit to the applicant or appellant whenever a permit is authorized by the Board. A decision of the Board shall not become final until the expiration of five (5) days from the date such decision is made, unless the Board shall find that immediate effect of such decision is necessary for the preservation of property or personal rights and shall so certify on the record. (Ord. No. 226; 6/6/78)
- (b) In the event the Board of Appeals grants a variance, the individual or his successor in interest shall not use the property in question such that it would exceed those rights given by the zoning ordinance or the variance or fail to follow any conditions placed thereon by the Board of Appeals. In the event the use of the property exceeds those rights given by the zoning ordinance or the variance, or fails to follow the conditions placed upon the variance, the variance shall immediately terminate. (Ord. No. 226; 6/6/78) (Ord. No. 13-79; 10/16/79)

SECTION 23.10 STAY OF PROCEEDINGS.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Building Inspector certifies to the Board of Appeals after notice of appeal shall have been filed with him, that by reason of fact stated in the certificate, a stay, would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may, on due cause shown by granted by the Board of Appeals or by the Circuit Court on application, after notice to the Building Inspector.

SECTION 23.11 TIME LIMIT FOR APPROVED VARIANCES.

(Ord. No. 94-4; 12/29/94)

- (a) Each variance granted under the provisions of this Ordinance shall become void unless the construction, occupancy or other actions authorized by such variance have commenced within one (1) year of the granting of such variance.
- (b) Upon written application filed with the Township Clerk prior to the termination of the one year time period, the Board of Appeals may authorize a single extension of the time limit for an additional period of not more than one year upon the finding of the Board of Appeals that the original circumstances creating the need for the extension were largely beyond the control of the applicant.