

CHAPTER XX

ZONING BOARD OF APPEALS

(Amendment Effective June 1, 2018) (REVISED 1-9-19)

SECTION 20.01 – MEMBERS, APPOINTMENT, TENURE, PER DIEM EXPENSES AND REMOVAL (Amendment effective January 30, 2013).

There is hereby created a Township Zoning Board of Appeals, hereinto referred to as ZBA, of five (5) members. The first member of the ZBA shall be a member of the Township Planning Commission; the second member may be a member of the Township Board; and the remaining member and up to two (2) alternates (*amendment effective January 30, 2013*), who may function in place of a member or members who are absent, shall be selected by the Township Board from among the electors residing in the unincorporated areas of the Township; provided, that no elected officer, contractor or any employee of the Township Board may serve simultaneously as a member of, or as an alternate to the ZBA. Members and alternates shall serve for a period of three (3) years. At the end of the member or alternate's term, the individual ceases to be a member or alternate unless the individual is reappointed. The total amount allowed such ZBA in any one (1) 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 by the Township Board.

SECTION 20.02 - OFFICERS. The ZBA shall elect from its membership a Chairman, Vice-Chairman and Secretary.

SECTION 20.03 - RULES OF PROCEDURE. The ZBA shall adopt rules of procedure. These rules shall be available for public inspection at the Office of the Township Clerk.

- A. The ZBA shall annually establish the date at a given time and place, of at least one annual meeting. (*Amendment effective May 22, 2010*). The Chairman shall receive notice of appeal from appellant at least seven (7) days prior to the scheduled meetings. All such meetings and hearings shall be open to the public.
- B. The presence of three (3) members shall constitute a quorum. The ZBA shall act by resolution. The concurring vote of three (3) members of the ZBA shall be necessary to reverse any order, requirement, decision or determination of the Planning Commission or Zoning Administrator not specifically exempt from ZBA review by other provisions of this ordinance, or to decide in favor of the applicant on any matter upon which it is required to pass by this Ordinance, or to grant variations from the requirements of this Ordinance.

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- C. The ZBA shall keep minutes of its proceedings, showing the action of the ZBA, the reasons on which it bases its action, and the vote of each member upon each question, or if absent or conflict of interest, indicating such fact, and shall keep records of its examination and other official action, all of which shall be filed promptly in the Township Office of the Board and shall be public record.
- D. A copy of each resolution passed upon by said ZBA shall be submitted to the Clerk of the Township and to the Secretary of the Planning Commission.

SECTION 20.04 - JURISDICTION. The ZBA in conformity with the provisions of this Ordinance shall act upon all questions as they may arise in the administration of the Zoning Ordinance, including the interpretation of zoning maps. It shall hear and decide all appeals from and review any order requirement, decision or determination made by the Zoning Administrator or other administrative officers charged with the enforcement of the provisions of this Ordinance. In order for an appellant to schedule an appeal of a decision or determination made by the Zoning Administrator or other administrative officer(s) charged with the enforcement of the provisions of this Ordinance before the ZBA, s/he must file a completed written, formal appeal on a Township Appeal Form. The completed form must be submitted to either the Zoning Administrator or the Township Supervisor within thirty (30) calendar days after the decision that is being appealed. The ZBA shall also hear and decide all matters referred to it or upon which it is required to act under this Ordinance. *(Amendment effective June 1, 2018)*

SECTION 20.05 - POWERS OF THE ZBA. The ZBA shall have the power to hear applications:

- A. Where it is alleged that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by the Planning Commission or any other Administrative Board or official charged with the enforcement of the provisions of this Ordinance. The ZBA does not have the power or authority to address Planning Commission decisions related to special use applications or Planned Unit Development applications.
- B. Where by reason of the exceptional narrowness, shallowness 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 conditions of land, buildings or structures, or of the development of property immediately adjacent to the property in question, the literal enforcement of the requirements of this Ordinance would involve practical difficulties.

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SECTION 20.06 – DIMENSIONAL VARIANCES (*Amendment effective January 30, 2013*).

No dimensional variance from the provisions or requirements of this Zoning Ordinance shall be authorized by the ZBA unless the ZBA makes findings of fact approved by the ZBA, establishing all of the following, based upon competent material and substantial evidence on the whole record:

- A. That special conditions or circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to most other lands, structures or buildings in the same zoning district; and
- B. That literal interpretation of the provisions of this Zoning Ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zoning district; and
- C. That the special conditions or circumstances do not result from the actions of the applicant; and
- D. That the authorizing of the variance will not be of substantial detriment to the neighboring property and will not be contrary to the spirit and purpose of this Zoning Ordinance.

A non-conforming condition or conditions on neighboring lands may be considered but will not in and of itself or themselves be grounds for the issuance of a variance.

SECTION 20.07 - CONDITIONS OF APPROVAL. In authorizing a variance, the ZBA may, in addition to the specific conditions of approval called for in this Ordinance, attach thereto such other conditions regarding location, character, landscaping or treatment reasonably necessary to the furtherance of the intent and spirit of this Ordinance and the protection of the public interest.

SECTION 20.08 - TIME LIMITATIONS ON VARIANCES. Any variance granted by the ZBA shall automatically become null and void after a period of twelve (12) months from the date granted unless the owner or his agent shall have taken substantial steps toward affecting the variance as granted.

SECTION 20.09 - PROCEDURE. The following procedure shall be required:

- A. An appeal or review of any ruling of the Zoning Administrator or other administrative office administering any portion of this Ordinance may be taken by any person, any aggrieved person or any governmental department affected or aggrieved.
- B. An application for variance interpretation or review authorized by this Ordinance may be taken by any person or governmental department

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affected.

- C. Two different review bodies handle requests having to do with land use and zoning. The Planning Commission (details given in Chapter XXI) deals with the establishment of or the change of the zoning law. The ZBA deals with the interpretation of the zoning ordinance and decisions of the Zoning Administrator and also handles requests for "variances" with a variety of related matters brought to it for review.
- D. For a hearing before the ZBA, the appellant shall furnish:
 - 1. An accurately completed Notice of Appeal.
 - 2. A scale map or sketch giving general location.
 - 3. A site plan drawn to scale, showing lot, setback, and building lines, significant angles and dimensions, and other details relevant to the matter (waterfront, well and septic locations, roads, topographic features, front, side and bird's eye views of proposed structures, easements, etc. when applicable).
- E. Fees for appeals, variances, and interpretations shall be as specified in the Township Fee Schedule.
- F. When an application for an ordinance interpretation, variance or appeal has been filed in proper form and with the required data, the Secretary of the ZBA shall immediately place the said application or appeal upon the calendar for hearing. For a variance, general appeal or an interpretation, a notice shall be published in a newspaper of general circulation within the Township and a notice shall be served personally or by mail to the applicant and the zoning administrator no less than 15 days prior to the hearing. If the request is for a variance, an appeal or interpretation question involving a specific parcel or parcels of property, the notice must also be personally delivered or mailed, no less than 15 days prior to the hearing, to all persons owning property within 300 feet of the specific parcel and all occupants living within 300 feet. The notices shall describe the nature of the request, when and where the request will be considered, when and where written comments will be received relative to the request and shall identify the property or properties for which an appeal or variance is being requested by a legal description, property tax identification number or other means and shall also include an existing street address(s) if addresses exist. Ownership shall be determined based upon the last tax assessment roll. Any party may appear at such hearings in person or by agent or by attorney.

SECTION 20.10 - DECISIONS OF THE ZBA. The ZBA shall decide all applications and appeals within thirty (30) calendar days after the final hearing thereon. A copy of the decision shall be transmitted to the applicant or appellant and to the Zoning Administrator within 120 hours or 5 calendar days of such decision. Such decision shall be binding upon the Zoning Administrator and observed by him or her, and

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he or she 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 5 calendar days from the date such decision is made unless the Board shall find the immediate effect of such decision is necessary for the preservation of property and personal rights and shall so certify on the record.

SECTION 20.11 - STAY OF PROCEEDINGS.

An appeal shall stay all enforcement proceedings unless the Zoning Administrator or other public safety official shall document to the township board that imminent threat exists to the public health and/or safety.

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