

ARTICLE 9--BOARD OF APPEALS

9.01 Appointment

There shall be a Board of Appeals which shall consist of five (5) members. The first member shall be a member of the Township Planning Commission, a second member shall be a member of the Township Board but this member may not serve as chairperson of the Board of Appeals, and the remaining members shall be selected by the Township Board from the electors of the Township. An employee or contractor of the Township Board may not serve as a member of the Board of Appeals. Terms of office shall be for three (3) years, except for members serving because of their membership on the Township Board or Planning Commission, whose term shall be limited to the time they are members of those bodies.

9.02 Proceedings of the Board of Appeals

The Board of Appeals shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman or, in his absence, the Acting Chairman may administer oaths and the Board may compel the attendance of witnesses. All meetings shall be open to the public.

The Board of Appeals shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be a public record and be available in the office of the Township Clerk. Three (3) members of the Board shall constitute a quorum and the concurring vote of three (3) members of the Board shall be necessary to reverse any order or determination of the Zoning Administrator or to decide in favor of the applicant in any matter over which the Board has original jurisdiction under this Ordinance or to grant any variance from the requirements stipulated in this Ordinance.

9.03 Appeals, Hearings, and Notice

9.03-1

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator. The appeal may be taken by any person aggrieved or by any officer or board of the Township. Such appeals shall be taken within twenty (20) days after the decision by filing with the Zoning Administrator and the Board of Appeals a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Appeals all papers constituting the record upon which the action appealed from was taken.

9.03-2

The Board of Appeals shall fix a reasonable time for the hearing of an appeal, give notice thereof as required by applicable statute and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney. The Board of Appeals shall state the grounds for any determination made by it.

9.04 Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator from whom the appeal is taken certifies to the Board after notice of appeal is filed with him, that by reasons of fact stated in the certificate, a stay would, in his opinion, cause imminent peril to life and/or property. In such case, proceedings shall not be stayed other than by restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Zoning Administrator.

9.05 Board of Appeals: Powers and Duties

9.05-1 Interpretation of Zoning Map

Where the boundaries of zoning districts as shown on the Official zoning Map are in question as to exact location or otherwise as referred to in Section 3.02-6 the Board of Appeals shall interpret such map in a manner which will carry out the intent and purpose of this Ordinance and the area in question.

9.05-2 Variance—Conditions Governing Application: Procedures

Where there are practical difficulties in the way of carrying out the strict letter of the Zoning Ordinance, the Board of Appeals shall have authority to grant a nonuse variance so that the spirit of the Ordinance is observed, public safety secured and substantial justice done. A variance from the terms of this Ordinance shall not be granted by the Board of Appeals unless and until:

- A. A written application for a variance is submitted demonstrating:
 - 1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
 - 2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance.

3. That the special conditions and circumstances do not result from the actions of the applicant;
 4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same zoning district;
 5. No non-conforming use of neighboring lands, structures or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the issuance of a variance.
- B. Notice of the public hearing shall be given in accordance with applicable statutory requirements.
- C. The public hearing shall be held. Any party may appear in person or by agent or by attorney.
- D. The Board of Appeals shall determine that the requirements of 9.05-2:A have been met by the applicant for the variance.
- E. The Board of Appeals shall further make findings that the reasons set forth in the application justify the granting of the variance; that the variance is the minimum variance that will make possible the reasonable use of land, structure or building; and that it will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

Reasonable conditions may be required with the approval of a variance. The conditions of a variance may include conditions necessary to insure that public services and facilities affected by a proposed variance will be capable of accommodating increased service and facility loads caused by the variance, 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:

1. 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 or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity and the community as a whole.
2. Be related to the valid exercise of the police power and purpose which are affected by the proposed use or activity.

3. Be necessary to meet the intent and purpose of the Zoning Ordinance, be related to the standards established in the Ordinance for the use or activity under consideration, and be necessary to insure compliance with those standards. The conditions imposed with respect to the approval of a variance shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual consent of the Board of Appeals and the applicant. Under no circumstances shall the Board of appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the zoning district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district. The Board of Appeals cannot grant use variances at all or use its variance authority to accomplish what would, in effect, be rezoning.

9.05-3 Hear and Make Determinations: Public Utility Buildings

The Board of Appeals shall have the power to hear and make determinations regarding applications for the erection and use of a building, or an addition to an existing building, of a public service corporation or for public utility purposes, as described in Section 4.05 in any zoning district to a greater height or of larger area than the district requirements herein established, and permit the location in any use district of a public utility building or structure reasonably necessary for the public convenience and service.

9.05-4 Finality of Decision of Zoning Board of Appeals

The decision of the Zoning Board of Appeals is final. A party aggrieved by a decision of the Board of Appeals may appeal to the Circuit Court.