

CHAPTER XX

BOARD OF APPEALS

SECTION 20.01 CREATION. There is hereby created under the Zoning Act a Township Board of Appeals, referred to in this Ordinance as the "Board of Appeals". The Board of Appeals shall be constituted and appointed as provided in the Zoning Act.

SECTION 20.02 JURISDICTION AND POWERS. The Board of Appeals shall have all powers and jurisdiction granted by the Zoning Act, all powers and jurisdiction prescribed in other chapters of the Ordinance and the following specific powers and jurisdiction:

- (a) The jurisdiction and power to hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Inspector. The Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be done, and to that end it (1) shall have all the powers of the Zoning Inspector; and (2) may issue or direct the issuance of a permit.
- (b) The jurisdiction and power to act upon all questions as they may arise in the administration and enforcement of this Ordinance, including interpretation of the zoning map and text of the Zoning Ordinance.
- (c) The jurisdiction and power to authorize, upon appeal, a variance or modification of this Ordinance where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Ordinance so that the spirit of this Ordinance shall be observed, public safety secured and substantial justice done.

SECTION 20.03 ADOPTION OF RULES OF PROCEDURE. The Board of Appeals shall fix rules and regulations governing its procedures sitting as the Board of Appeals. Said rules and regulations shall be made available to the public and shall be in conformance with the terms of this Ordinance and the Zoning Act.

SECTION 20.04 CONDITIONS. In granting a variance, the Board of Appeals may impose and attach such conditions, restrictions and requirements as it shall determine are necessary and/ or appropriate. Such conditions, restrictions and requirements may impose greater or more restrictive conditions, restrictions and requirements than are included in this Ordinance. Violation of such conditions, restrictions and requirements shall be deemed a violation of this Ordinance. Such conditions, restrictions and requirements may include the provision of financial security to guarantee performance.

SECTION 20.05 ALTERNATE MEMBERS. The Township Board shall appoint not more than two (2) alternate members to serve the same term as regular members of the Board of Appeals. The alternate members shall be appointed by resolution of the Township Board. The chairperson of the Board of Appeals, or the acting chairperson, shall call an alternate member to serve as a regular member of the Board of Appeals in the following situations.

- (a) An alternate member shall be called to serve as a regular member of the Board of Appeals in the absence of a regular member if that regular member is absent from or will be unable to attend one (1) or more meetings of the Board of Appeals. (Amendment Ordinance No. 145, 2-14-07)
- (b) An alternate member shall be called to serve as a regular member of the Board of Appeals for the purpose of reaching a decision on a case in which the regular member has abstained from participating for reasons of a conflict of interest.

An alternate member called to serve as a regular member shall have the same voting rights as a regular member of the Board of Appeals. An alternate member called to serve on a Board of Appeals case shall serve in that case until a final decision is made by the Board of Appeals. (Amendment Ordinance No.105 5-12-99)

SECTION 20.06 STANDARDS FOR VARIANCES. (Amendment Ordinance No. 145, 2-14-07) The Board of Appeals may grant a dimension variance or a use variance from the provisions or requirements of this Ordinance, only if the Board of Appeals finds from reasonable evidence that all of the applicable facts and conditions exist.

(a) For a dimension variance, the Board of Appeals must find that all of the following facts and conditions exist.

(1) There are exceptional or extraordinary circumstances or conditions applying to the property in question, as to its intended use, that do not apply generally to other properties or classes of uses in the same zone.

(2) The variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties or classes of uses in the same zone. The possibility of increased financial return shall not of itself be deemed sufficient to warrant the granting of a variance.

(3) The variance, if granted, will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this Ordinance or the public interest.

(4) The condition or situation of the property or its intended use is not of so general or recurrent a nature as to make reasonably practicable a general regulation for the condition or situation.

(5) Any exceptional or extraordinary circumstances applying to the property in question are not self-created.

(b) For a use variance, two-thirds of the members of the Board of Appeals must find that all of the following facts and conditions exist.

(1) There are exceptional or extraordinary circumstances or conditions applying to the property in question, as to its intended use, that do not apply generally to other properties or classes of uses in the same zone.

- (2) The variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties or classes of uses in the same zone. The possibility of increased financial return shall not of itself be deemed sufficient to warrant the granting of a variance.
- (3) The variance, if granted, will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this Ordinance or the public interest.
- (4) The condition or situation of the property or its intended use is not of so general or recurrent a nature as to make reasonably practicable a general regulation for the condition or situation.
- (5) Any exceptional or extraordinary circumstances applying to the property in question are not self-created.
- (6) The property in question cannot be reasonably used as zoned and therefore a use variance is necessary.

SECTION 20.07 APPLICATION PROCEDURES. (Amendment Ordinance No. 145, 2-14-07) An application to the Board of Appeals shall be submitted and acted upon in accordance with the following procedures.

- (a) Application - Applications to the Board of Appeals shall be submitted thirty (30) days prior to the next scheduled Board of Appeals meeting through the Zoning Inspector who will review the application for completeness, then transmit it to the Board of Appeals. Each application shall be accompanied by the payment of a fee in accordance with the schedule of fees adopted by the Township Board to cover the costs of processing the application.

- (b) Required Information - An application to the Board of Appeals shall be accompanied by the following documents and information:
- (1) A Board of Appeals application form supplied by the Zoning Inspector which has been completed in full by the applicant.
 - (2) A site plan, as specified in Chapter XV.
 - (3) A statement concerning compliance with the standards for a variance, either a dimension variance or a use variance as the case may be, as set forth in Section 20.06 above.
- (c) Public Hearing - Upon receipt of an application to the Board of Appeals, the Board of Appeals shall call a public hearing for the purpose of receiving comments relative to the application. The public hearing shall be noticed in the manner required by law.
- (d) Review and Approval - The Board of Appeals shall review the application, comments received at the public hearing, the site plan and other materials submitted in relation to the application, and make a determination pursuant to the applicable factors in Section 20.06.