

## ARTICLE 28 ZONING BOARD OF APPEALS

### Sec. 28.01 CREATION.

There is hereby created a Zoning Board of Appeals which have the powers and jurisdiction as provided by Act 110 of the Public Acts of 2006, and by certain provisions of this ordinance. The Zoning Board of Appeals shall consist of seven (7) electors of the Township. The membership of the Board shall be as provided by said Act.

### Sec. 28.02 ADDITIONAL JURISDICTION.

In addition to the duties and powers prescribed in the previous sections of this ordinance, the Board of Appeals shall hear and decide all matters relating to the following:

- A. The Board of Appeals shall hear and decide appeals from and review any order, requirements, decisions, or determinations made by any administrative official charged with the enforcement of any provisions of this ordinance, except that the Board of Appeals shall not hear and decide appeals from any decision or order of the Planning Commission with respect to applications for Special Use permits or any conditions imposed by the Planning Commission in approving a Special Use permit.

In addition the Board of Appeals shall not hear and decide appeals from a

decision by the Township Board with regard to its approval or denial of a Planned Unit Development (PUD) or any conditions imposed by the Township Board in approving a Planned Unit Development except as follows:

The Board of Appeals may hear and decide appeals for variances regarding the area regulations established by the ordinance creating the PUD district or if no area regulations have been established then the area regulations which would otherwise be applicable to the uses allowed in the PUD which pertain to required yards, lot area and width, building height, parking, accessory buildings or other similar area regulations. In considering such variances the Board of Appeals shall follow the procedures and other requirements of this Article 28.

- B. The Board of Appeals shall act upon all questions as they may arise in the administration of this ordinance, including the interpretation of the zoning maps, and may fix rules and regulations to govern its procedures as such Board of Appeals.

### Sec. 28.03 PROCEDURE ON APPEAL.

- A. All appeals from any order, requirements, decision, or determination or any administrative official shall be taken within such time as shall be prescribed by the Board of Appeals by general rule, by filing with the officer

from whom the appeals are taken and with the Board of Appeals a notice of appeal specifying the grounds thereof. The administrative official from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed was taken. Each appeal or application to the Board of Appeals shall be accompanied by a filing fee as specified by resolution of the Charter Township Board.

- B.** The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirements, decision, or determination of any administrative official or to decide in favor of the appellant on any matter appealed.
- C.** The Board of Appeals shall fix a reasonable time for a public hearing on the appeal and give due notice thereof to the parties. The Board shall decide the appeal within a reasonable time after said hearing. At the hearing, any party may appear in person or by agent or attorney. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination as in its opinion ought to be done, and to that end shall have all the powers of the administrative official from whom the appeal was taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this ordinance, the Board of Appeals shall have the power in passing upon appeals to vary or modify any of the rules, regulations, or

provisions relating to the construction, erection, or alteration of buildings or structures so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done. The Board of Appeals shall state the grounds of each determination.

- D.** Upon receipt of an appeal, notice of a public hearing on the appeal shall be published in a local newspaper of general circulation and shall be sent by mail or personal delivery to the owners of property for which approval is being considered, to all persons to whom real property is assessed within 300 feet of the boundary of the property in question, and to the occupants of all structures within 300 feet of the boundary of the property in question. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses, or organizations, one (1) occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure. The notice shall be given not less than fifteen (15) days before the date of the public hearing. The

notice of public hearing must contain the following information: a description of the nature of the request, a description of the property in question (using the street address if available), the time and place of the hearing, and when and where written comments will be received concerning the request.

**Sec. 28.04 VARIANCES; POWERS AND STANDARDS.**

The Board of Appeals shall have the power to hear and decide in accordance with the provisions of this ordinance any request for interpretation of the Zoning Ordinance, requests for variances, and decide any special questions on which the Board is authorized to pass.

The Board shall have the power to authorize, upon appeal in specific cases, such variances from the provisions or requirements of this ordinance as will not be contrary to the public interest, but only in such cases where the Board finds beyond a reasonable doubt that owing to special conditions pertaining to a specific piece of property, the literal enforcement of the provisions or requirements of this ordinance would cause practical difficulty and where it finds that all of the following facts and conditions exist:

A. That compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

B. That the granting of the variance applied for would do substantial justice to the applicant, as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

C. That the plight of the landowner is due to the unique circumstances of the property.

D. That the problem is not self-created, nor created by the applicant's predecessor in interest.

E. That granting the variance will insure that the spirit of the ordinance is observed, public safety secured, and substantial justice done.

**Sec. 28.05 LAND USE VARIANCES.**

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.

**Sec. 28.06 RECONSIDERATION OF A DECISION OF THE BOARD.**

The Board of Appeals may reconsider its decision on any matter provided that a request for reconsideration is filed with the Township Zoning Administrator within

fifteen (15) days of the date of decision. The request for reconsideration shall include submission of substantial new evidence that was not available at the time of the hearing. In the event that the Board of Appeals decides to reconsider a decision, it shall schedule a new hearing and proper notice given to all affected property owners and occupants.

**Sec. 28.07 BOARD MEMBERS ACTIONS.**

Members of the Board of Appeals shall be removable by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest shall constitute misfeasance in office.

**Sec. 28.08 QUORUM, VOTE.**

The Board of Appeals shall not conduct business unless a majority of the members of the board are present. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse an order, requirement, decision, or determination of administrative official or body, or to decide in favor of the applicant any matter upon which they are required to pass under or to effect any variation from the provisions of this ordinance.

**Sec. 28.09 STAY OF PROCEEDINGS.**

An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the township Board of Appeals after the notice of appeal has been filed with him that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by the circuit court, on application, on notice to the officer from whom the appeal is taken and on due cause shown.

**Sec. 28.10 DECISION FINAL.**

Any decision of the Board of Appeals rendered pursuant to this Article shall be final. However, a party aggrieved by the decision may appeal to the circuit court.

**Updated 9-22-12**