

**ARTICLE 31.00
ZONING BOARD OF APPEALS**

Section 31.01 BOARD ESTABLISHED

There is hereby established a Board of Appeals, which shall perform its duties and exercise its powers as provided by Act 184 of Public Acts of 1943, as amended, in such way that the objectives of this Ordinance shall be observed, public safety, morals, and general welfare assured, and substantial justice done.

Section 31.02 BOARD MEMBERSHIP

Section 31.02.1 The Board of Appeals shall consist of the following five members.

Section 31.02.1(a) The first member shall be a member of the Township Planning Commission.

Section 31.02.1(b) The second member shall be a member of the Township Board appointed by the Township Board and shall not serve as Chairman of the Board of Appeals.

Section 31.02.1(c) The remaining members of the Board of Zoning Appeals shall be selected and appointed by the Township Board from among the electors of the Township residing outside of incorporated cities and villages. The members selected shall be representative of the population distribution of the various interest present in the Township. An elected official of the Township shall not serve as Chairman of the Board of Zoning Appeals.

Section 31.02.2 Members of the Board of Zoning Appeals shall be removable by the Township Board for nonperformance of duty or misconduct 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 misconduct in office.

Section 31.02.3 Terms shall be for three (3) years, except for members serving because of their membership on the Planning Commission or Township Board, whose terms shall be limited to the time they are members of the Planning Commission or Township Board, respectively, and the period stated in the resolution appointing them. When members are first appointed, the appointments may be for less than three (3) years to

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provide for staggered terms. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term. The Board of Zoning Appeals shall not conduct business unless a majority of the members of the Board are present.

Section 31.02.4

The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called to serve as a regular member of the Zoning Board of Appeals in the absence of a regular member if the regular member is absent from or will be unable to attend two (2) or more consecutive meetings of the Zoning Board of Appeals or is absent or will be unable to attend meetings for a period of more than thirty (30) consecutive days. An alternate member may also be called to serve as a regular member for the purpose of reaching a decision on a case in which the regular member has abstained, for reasons of conflict of interest. If appointed, an alternate member shall serve in the case until a final decision is made. Alternate members shall have the same voting rights as regular members of the Zoning Board of Appeals when called during their term of appointment. If there are two (2) alternate members appointed by the Township Board then they may be called by the chairman as needed based on availability. Alternate members shall possess the qualifications required for board membership.

Section 31.03

BOARD MEETINGS

All special meetings of the Board of Appeals shall be held at the call of the Chairman and regular meetings at such times as the Township Board may determine. All meetings of the Board of Appeals shall be open to the public. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its findings, proceedings at hearings, and other official action, all of which shall be immediately filed in the office of the Township Clerk and shall be a public record.

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Section 31.04 JURISDICTION AND APPEALS

Section 31.04.1 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 to govern its procedures sitting as a Board of Appeals. It shall hear and decide appeals from and review any order, requirements, decision, or determination made by an administrative official or body charged with enforcement of this Ordinance. The Board of Appeals shall hear and decide all matters referred to it or upon which it is required to pass under this Ordinance, except that Special Condition Uses, Residential Unit Developments, and Planned Unit Developments are not able to appeal to the Zoning Board of Appeals in any event.

Section 31.04.2 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 the administrative official or body, or to decide in favor of the applicant any matter upon which they are required to pass under this Ordinance or to effect any variation in this Ordinance. Such appeal may be taken by any person aggrieved or by any office, department, board, or bureau of the Township, County, or State. The Zoning Board of Appeals shall state the grounds of each determination.

Section 31.04.3 The Board of Appeals may pose reasonable conditions on an affirmative decision as deemed necessary, but also satisfying all the following requirements.

Section 31.04.3(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 or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

Section 31.04.3(b) Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.

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Section 31.04.3(c) Be necessary to meet the intent and purposes of the Zoning Ordinance, be related to the standards established in the Ordinance for the land use or activity under construction, and be necessary to insure compliance with those standards.

Section 31.05 HEARING OPEN TO PUBLIC

The Board of Appeals shall make no recommendation in any specific case until after a public hearing has been conducted by the Board. The Board of Appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by duly authorized agent or by attorney.

Section 31.06 POWERS OF THE BOARD OF APPEALS

The Board of Appeals as herein created, is a body of limited powers.

Section 31.06.1 PURPOSE

The purpose of the Board of Appeals is to hear and decide appeals where it is alleged there is an error of law in any order, requirement, decision or determination made by Township officials in the enforcement of this Ordinance, and to hear and decide appeals where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Ordinance so that the spirit of the Ordinance shall be observed, public health and safety secured, and substantial justice done. Special approval uses and planned residential development uses are not able to appeal to the Board of Appeals in any event.

Section 31.06.2 MAJORITY VOTE

The Board of Appeals, by majority vote, may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

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Section 31.06.3 VARIANCE

In hearing and deciding appeals, the Board of Appeals shall have the authority to grant such variances as may be in harmony with the general purpose and intent of this Ordinance, so that public health, safety and welfare are secured, and substantial justice is done, including the following:

- Section 31.06.3(a) Interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown on the Zoning Map fixing the use districts, accompanying this Ordinance, where street layout actually on the ground varies from the street layout as shown on the aforesaid Map. In case of any question as to location of any boundary line between zoning districts, the Board of Appeals shall interpret the Zoning Map after recommendation from the Planning Commission.

- Section 31.06.3(b) Permit the erection and use of a building, or an addition to an existing building, of a public service corporation or for public utility purposes, in any zoning district to a greater height or of a larger area than the district requirements herein established, and permit the location in any district of a public utility building or structure if the Board of Appeals shall find such use, height, area, building or structure reasonably necessary for the public convenience and service.

- Section 31.06.3(c) Permit the modification of the off-street motor vehicle parking space or loading space requirements where, in the particular instance, such modifications will not be inconsistent with the purpose and intent of such requirements, after recommendation from the Planning Commission.

- Section 31.06.3(d) Permit variance from permitted sound level provisions under ARTICLE 29.00 PERFORMANCE STANDARDS.

- Section 31.06.3(e) Permit such modification of the height, lot area, yard setbacks, floor area and lot width regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape or size, or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification, provided that modification of lot area regulations shall be permitted only in instances where the nature of the soil and drainage is such that there is

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sufficient area for safe water supply and sanitary disposal of waste (unless public water distribution and/or sanitary sewage facilities are provided). Whenever the Board of Appeals determines that the same are necessary in order to render a decision, it may require the appellant to submit a topographical survey or the results of percolation tests certified by a Professional Engineer or Registered Land Surveyor.

Section 31.06.4 **REQUIREMENTS**

In order that a variance may be granted on the ground of practical difficulties or unnecessary hardship the Applicant must prove all of the following:

- Section 31.06.4(a) Without a variance from the provisions of this Ordinance, the property cannot yield a reasonable return due to circumstances specific and particular to the property.
- Section 31.06.4(b) The plight of the owner is due to unique property circumstances and not to the general conditions of the neighborhood.
- Section 31.06.4(c) The modification to be authorized by the variance will not alter the essential character of the neighborhood or be otherwise detrimental to the public welfare.

These tests shall apply whenever a variance is sought. Variances are not to be granted where such action will result in the circumvention of the general intent of the Ordinance or to meet a situation that may be resolved by a request for rezoning (eg expanding a permitted use into a district not permitting such use, erecting a building for use permitted in another district, increasing the density of a lot, parcel or group thereof, etc.). The decision of such Board shall be final in so far as it involves discretion or the finding of facts.

Amended June 24, 2003 by Zoning Ordinance No. 200-53.

Section 31.06.5 **STANDARDS**

Upon meeting the requirements of 31.06.4, the Board of Appeals shall review each case individually to ensure that each of the following standards are met as to the proposed variance or new land use. The Applicant bears the burden of proof. Failure to meet any one of the following standards shall result in the denial of the request:

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- Section 31.06.5(a) That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district.
- Section 31.06.5(b) The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken after the adoption of this Ordinance. Any action taken according to lawfully adopted regulations preceding this Ordinance will not be considered self-created.
- Section 31.06.5(c) That such variance is the minimum variance that will make possible the reasonable use of the land, building or structure and is necessary for the preservation of a substantial property right. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.
- Section 31.06.5(d) That the granting of the variance will not impair or be injurious to the neighborhood or adjacent properties or otherwise detrimental to the public health, safety or welfare with regard to light or traffic or other public interests.
- Section 31.06.5(e) That the condition of or situation as to the specific piece of property or the intended use of the property for which the variance is sought is not of so general or recurrent nature as to make it more reasonable and practical to amend the Ordinance.

Amended June 24, 2003 by Zoning Ordinance No. 200-53.

Section 31.07 APPROVAL PERIODS

No order of the Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit. No order of the Board of Appeals permitting a use of a building or premises shall be valid for a period longer than one (1) year unless such use is established within such period; provided, however, that such order shall continue in force and effect if a building permit for said erection or alteration is started and proceeds to completion in accordance with such permit.