

ARTICLE 24 BOARD OF ZONING APPEALS

2400 APPOINTMENT, SERVICE

The Board of Zoning Appeals (BZA) shall consider a Variance, Exception, Conditional Use, or an Appeal request. The BZA shall consist of five (5) electors and one (1) alternate appointed by the Board of Trustees. The five (5) electors shall serve a five (5) year term, beginning January 1st, with one (1) term expiring annually, and serve until his/her qualified successor is appointed. Vacancies shall be filled for the respective un-expired term by the Board of Trustees. The BZA shall organize annually and elect a Chairman, Vice Chairman and Secretary. They shall adopt such rules and regulations as they deem necessary to effectively carry out the provisions of this Resolution. Members of the BZA may receive such compensation as the Board of Trustees provide.

A. Minutes, Records

The Board 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 immediately filed within the Zoning Department and shall be of public record. Copies of said hearings may be issued upon request for a nominal fee per page.

B. Witnesses, Oaths

The Board shall have the power to subpoena witnesses, administer oaths, and punish for contempt, and may require the production of documents, under such regulations as it may establish.

C. Department Assistance

The Board may call upon various officials and employees of the Township for assistance in the performance of its duties. It shall be the duty of such to render such assistance to the Board as may reasonably be required.

D. Fees

The Township Trustees may establish fees for applications to amend the Zoning Resolution to defray the costs of advertisements, mailings, or other required or necessary expense.

E. Removal

Members of the Board of Zoning Appeals may be removed for non-performance of duty, misconduct in office, or other cause, by a majority vote of the Trustees. In order for the matter to be placed before the Trustees for a vote, a written charge and/or charges must be filed by the Trustees with the Fiscal Officer of the Township and a copy of the charge(s) must be served upon the member being charged, by registered mail or delivered by overnight carrier. Removal may occur only after a public hearing has been held before the Trustees regarding such charges, with said hearings to take place no less than ten (10) days after service of the charge(s) has been perfected upon the charged member. At the hearing,

the charged member shall be given the opportunity to be heard and answer the charge, and present any evidence in his/her defense. The charged member may be represented by counsel, whose fees shall be the sole responsibility of the charged member. Notice of hearing shall be published on the web site of the Township, posted at the Township Hall and published in a newspaper of general circulation at least ten (10) days prior to the date of the hearing.

2401 HEARINGS

The hearings of the BZA shall be public whereas the property owner or duly authorized agent shall attend said hearing.

- A.** The Board shall set a reasonable time for the hearing of a Variance, Exception, Conditional Use, or an Appeal, give at least ten (10) days public notice thereof in a newspaper of general circulation in the Township and to parties within two hundred (200) feet of said request.
- B.** The Board may adjourn a hearing in order to obtain additional information or to cause such further notice, as it deems proper, to serve upon other property owners as it decides may have substantial interest in said application or appeal. In the case of a continued hearing, persons previously notified and persons already heard need not be notified of the time of resumption of said hearing unless the Board so decides.

2402 DECISION OF THE BOARD

- A.** A decision of the Board of Zoning Appeals shall not become final until five (5) days from the date that such decision is made unless the Board finds it necessary to be effective immediately for the preservation of property or personal rights and shall certify on the record. The Board shall decide all Variance and Exception applications within thirty (30) days after the final hearing.
- B.** The Board may approve, deny, or approve said request with appropriate conditions set forth and shall have all powers of the Zoning Manager. Any party adversely affected by a decision of the Board may appeal to the Lucas County Court of Common Pleas on the grounds that the decision was unreasonable or unlawful.
- C.** A certified copy of the BZA decision shall be transmitted to all parties of interest. Such decision shall be binding upon and observed by the Zoning Manager who shall incorporate the terms and conditions of the same in the Certificate to the applicant or appellant, whenever a Certificate is authorized by the Board.

2403 PERFORMANCE REQUIREMENTS

- A.** The Board of Zoning Appeals shall have the power to authorize the issuance of a Zoning Certificate for uses that are subject to performance requirements set forth in this Resolution.
- B.** The application for a Zoning Certificate for a use subject to performance requirements shall be accompanied by a plan of the proposed construction or development. A description of the proposed machinery, processes and products, and specifications for the mechanisms and techniques to be used in meeting the performance requirements shall accompany the application.

- C. The Board may refer the application to one or more expert consultants qualified to advise as to whether a proposed use would conform to the performance requirements. The costs of such services shall be borne by the applicant, and a copy of any reports shall be furnished the applicant.
- D. The Board has the authority to grant an extension or permit completion of a building devoted to a non-conforming use upon a lot occupied by such building, or on a lot adjoining, provided that such lot was under the same ownership as the lot in question on the date such building became non-conforming, and where such extension is necessary and incidental to the existing use of such building; provided, however, that the floor areas of such extension shall not exceed one hundred (100%) percent of the floor area of the existing building(s) devoted to a non-conforming use.

2404 APPEAL

- A. An appeal of the Zoning Manager's decision to the Board of Zoning Appeals may be taken by any person affected and shall be submitted within twenty (20) days after said decision. The Zoning Department will then transmit to the BZA all documents on record that specify the grounds of the appeal, constituting the action appealed upon.
- B. An appeal shall stay all proceedings in furtherance of the action appealed unless the Zoning Manager advises the BZA (after the appeal has been filed) that facts stated would cause imminent peril. If there is reason to believe that a stay would cause imminent peril, proceedings shall not be stayed unless by a restraining order. This may be granted by the Board or by a court of jurisdiction after notice to whom the appeal is taken and on due cause shown.
- C. The Board may, in conformity with the provisions of this Resolution, reverse or affirm wholly or partly, modify the order, requirement, decision, or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises; and to that end, shall have all powers of the Zoning Manager from whom the appeal is taken.

2405 EXCEPTION

In hearing and deciding appeals, the Board has the authority to grant an exception in the following instances:

- A. **Interpretation** of the provisions of this Resolution in such a way as to carry out the intent and purpose of the plan, as shown upon the map indicating the Zoning Districts, accompanying and made a part of this Resolution where the street layout actually on the ground varies from the street layout as indicated on the Zoning Map.
- B. **Reconstruction of a non-conforming building** when it has been damaged by explosion, fire, or act of God to the extent of more than 60% of its fair market value where the Board finds some compelling necessity requiring a continuance of the non-conforming use.

- C. Parking lot/ parking space modification** or loading space requirements may be permitted where, in the particular instance, such modification would not be inconsistent with the purpose and intent of such requirements or to allow the following:
1. The dual use of parking facilities (i.e. by stores during the day and theaters or other uses during the evening) and provided there is no overlapping of uses and spaces of the different peak parking demands and operating hours.
 2. The waiver of the requirement that automobile spaces be provided on the same lot with a dwelling, if other suitable and convenient parking space is available.
- D.** Public parking in *A* or *Residential Districts*, or storage garages adjacent to any existing or proposed use in a multiple dwelling, commercial, or industrial district.
- E.** Determine whether an industry should be permitted within an *M* Industrial District because of the methods by which it would be operated and because of its effect upon uses within surrounding Zoning Districts.
- F.** The substitution of a non-conforming use existing at the time of enactment of this Resolution to another nonconforming use, if no structural alterations (except those required by law); no change shall be authorized to any use which is not a permitted or conditional use in any District.
- G. Temporary Structure and Use** The Board may permit the temporary use of a structure or premise in any district for a purpose or use that does not conform to the regulations prescribed elsewhere in this Resolution for the district in which it is located, provided that such use be of a temporary nature and does not involve the erection of a substantial structure. A Zoning Certificate for such use shall be granted in the form of a temporary and revocable Certificate for not more than a twelve (12) month period.

2406 VARIANCE

The Board of Zoning Appeals shall consider the following:

- A.** That due to exceptional narrowness, shallowness, or shape, or exceptional topographic conditions or other extraordinary situation or condition of a lot, the strict application of the terms of this Resolution would result in peculiar and exceptional practical difficulties.
- B.** That special circumstances or conditions apply to the building or land in question are peculiar to such lot or property and do not apply generally to other land or building in the vicinity.
- C.** That a variance from the strict application is necessary to relieve such difficulties or hardship and that such relief may be granted without substantial detriment to the public good and without substantially altering the intent of this Resolution.
- D.** The granting of the application is necessary for the preservation and enjoyment of a substantial property right and not merely to serve as a convenience to the applicant.

- E. The condition from which relief or a variance sought did not result from action by the applicant.
- F. No variance may be applied for or granted which would allow a use that is not allowed in a Zoning District. The authorization of a variance will not impair an adequate supply of light and air adjacent to property or unreasonably increase the congestion in public streets, or increase the danger of fire or imperil the public safety or unreasonably diminish or impair health, safety, convenience, or general welfare.

2407 After considering the factors as set forth in Section 2406, the Board of Zoning Appeals shall have the power to issue and permit upon appeal in specific cases, filed as provided for herein, such variances from the provisions or requirements of the Sylvania Township Zoning Resolution which are permitted by Chapter 519 of the Ohio Revised Code as will not be contrary to the public interest, but only in such cases where, owing to specific conditions pertaining to a piece of land, the literal enforcement of the provisions of the Sylvania Township Zoning Resolution would cause unnecessary hardship. In making its decision, the Board of Zoning Appeals shall observe the spirit of the Resolution and shall insure that substantial justice is done.

2408 VALIDITY

No order of the Board of Zoning Appeals granting a variance shall be valid for a period longer than two (2) years from the date of such order unless the building permit or zoning approval is obtained within such period, and the erection or alteration of a building is started or the use is commenced within such period. Applicants may submit to the Board of Zoning Appeals a request for an extension every two (2) years, commencing two (2) years after the date the initial variance was granted.

