

## ARTICLE 13

### ZONING BOARD OF APPEALS

#### SECTION 13.01 BOARD ESTABLISHED

A Zoning Board of Appeals, hereinafter referred to as the Board of Appeals, is hereby established, in accordance with Act 184 of the Public Acts of 1943, as amended.

#### SECTION 13.02 MEMBERSHIP AND TERMS

##### A. Membership

The Board of Appeals shall consist of seven (7) members appointed by the Township Board. One (1) member shall be a member of the Township Planning Commission, and one member may be a member of the Township Board. The remaining members shall be selected from the electors of the Township residing in the unincorporated area of the Township. The members selected shall be representative of the population distribution and of the various interests present in the Township. An employee or contractor of the Township Board shall not serve as a member of the Board of Appeals.

##### B. Terms

The term of office of each member 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 or motion appointing them. 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.

##### C. Conflict of Interest

A member shall abstain from voting on any question in which he or she has a conflict of interest. Failure of a member to abstain in such cases shall constitute misconduct of office.

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### D. Removal From Office

A member may be removed from office by the Township Board for due cause, following a hearing. Minutes of the meeting at which the hearing is held shall record the reasons for the hearing, the motion or resolution, if any, regarding removal from office, and the roll call vote of the Township Board.

## SECTION 13.03 GENERAL REGULATIONS FOR THE BOARD OF APPEALS

### A. Rules and Officers

The Board of Appeals shall adopt rules and regulations to govern its procedures. The Board of Appeals shall elect annually a Chair, Vice-Chair, and Secretary from its membership. An elected officer of the Township shall not serve as Chair of the Board of Appeals.

### B. Votes and Quorum

A concurring vote of a majority of the members of the Board of Appeals shall be necessary for any decision. The Board of Appeals shall not conduct business unless a majority of its members is present.

### C. Representation

Any person may appear on his or her own behalf at a hearing or may be represented by an agent or an attorney authorized to appear on his or her behalf.

### D. Time Limit

The Board of Appeals shall decide upon all matters within one hundred eighty (180) days from the petition filing date. The decision of the Board of Appeals shall be in the form of a resolution containing a full record of its findings and determinations in each case. The time limit may be extended by written agreement between the applicant or appellant and the Board of Appeals.

### E. Meetings

1. Meetings of the Board of Appeals shall be held at the call of the Chair and at such other times as the Board of Appeals in its rules and regulations might specify.

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2. Minutes shall be kept of each meeting and the Board shall record into the minutes all findings, conditions of approval, facts, and other relevant factors, and all its official actions.
3. The vote of each member upon a question, or absence or abstention, shall be recorded into the minutes of the meeting.
4. All meetings and records shall be open to the public. All minutes shall be filed in the offices of the Township Clerk.

### **F. Oaths**

The Chair of the Board of Appeals or, in the Chair's absence the acting Chair, may administer oaths and compel the attendance of witnesses.

## **SECTION 13.04 POWERS AND DUTIES OF BOARD OF APPEALS**

- A. The Board of Appeals shall perform its duties and exercise its powers as provided in Act 184 of the Public Acts of 1943, as amended, so that the objectives of this Ordinance shall be attained, the public health, safety, and welfare secured, and substantial justice done.
- B. The Board of Appeals shall hear and decide, as provided herein, appeals of an administrative decision of any official or body charged with enforcement and/or interpretation of this Ordinance on any requirement of this Ordinance, and substitution of nonconforming uses.
- C. The Board of Appeals shall not change the zoning district classification of any property, or make any change in the terms of this Ordinance, and shall not take any action which would have as a result the making of legislative changes in this Ordinance.
- D. The Board of Appeals shall not grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district, nor shall the Board of Appeals hear matters relating or pertaining to Conditional Uses, use variances, Special District developments, or comprehensive development variances.

## **SECTION 13.05 FEES**

A schedule of fees of the Zoning Board of Appeals shall be established by resolution of the Superior Township Board.

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### SECTION 13.06 HEARINGS

#### A. Procedure

1. The Board of Appeals shall hold a public hearing on each question submitted to it for decision. The Chair shall fix a reasonable time and date for the hearing within ninety (90) days from the filing date.
2. The petitioner may make a written request to extend the ninety (90) day time limit for the meeting date, and the request may be granted at the Board of Appeals' discretion.

#### B. Notification Requirements

##### 1. Notice

- a. A notice of the public hearing shall be published once in a newspaper which circulates in the Township.
- b. A notice shall also be sent by mail or personal delivery to:
  - 1) the owners of property for which approval is being considered;
  - 2) to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question; and
  - 3) to the occupants of all structures within three hundred (300) feet.

The notice shall be given not less than five (5) nor more than twenty (20) days before the date of the public hearing. 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 than 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 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.

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- c. If the notice is delivered by mail, an affidavit of mailing shall be filed with the Board of Appeals prior to the public hearing.
- d. Where the hearing, as determined by the Board of Appeals, concerns matters of general applicability in Superior Township and does not concern only individual lots or parcels, the notice of the hearing need only be given in a newspaper of general circulation within Superior Township.

### **2. Contents of Notification**

The notice of public hearing shall:

- a. describe the nature of the application or appeal;
- b. describe the property which is the subject of the application or appeal;
- c. state when and where the public hearing will be held; and
- d. indicate when and where written comments will be received concerning the request.

### **3. Signage:**

- a.
  - 1) For any appeal brought to the Board of Appeals, other than an appeal brought by the owner of a single-family dwelling and involving a variance request regarding standards within the “Density and Height Regulations” section of the applicable zoning district for one such dwelling, the petitioner(s) or owner(s) of the property that is the subject of the appeal shall place a four (4) by eight (8) foot sign on each side of the property which abuts a street. Each sign shall have lettering easily readable from the abutting street. The sign shall not be erected in the road right-of-way or in a manner to obstruct vision of motorists or pedestrians.
  - 2) If the property that is the subject of the appeal does not abut a street, the sign shall be placed on each side of any contiguous land owned by the petitioner(s) or owner(s) of such parcel which does abut a street.
  - 3) If no such contiguous property abutting a street is owned by the petitioner(s) or owner(s) of the property that is the subject of the appeal, the sign(s) shall be placed in such

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location(s) on the property that the Zoning Inspector deems will best inform the public of the appeal petition. If the Zoning Inspector deems that there is no location where a sign could be placed that will be visible to the public, the Zoning Inspector may waive the requirement of posting.

- b. Each sign shall be erected at least twenty-one (21) days, but not more than thirty (30) days, before the Board of Appeals' public hearing on the appeal petition.
- c. Each sign shall be removed from the property no later than three (3) business days following the public hearing or adjourned or continued date thereof, whichever is later.
- d. Each sign shall have lettering easily readable from the abutting street. Each sign shall state "ZBA APPEAL SOUGHT", give the street address or tax code parcel number(s), acreage and diagram of the property that is the subject of the appeal, state the current zoning classification; state the nature of the appeal being sought; and state the date, time, and place of the initial public hearing on the petition for appeal.
- e. The petitioner shall post a bond in an amount not to exceed one hundred dollars (\$100) per sign to ensure the removal of the sign as heretofore provided.
- f. The Zoning Inspector shall inspect the property that is the subject of the appeal to see that it complies with this section and shall submit an affidavit of such determination to the Board of Appeals not less than seven (7) days prior to the public hearing on the petition.
- g. Signs erected under this section are exempt from other provisions of this Ordinance regulating signs.
- h. In the event an appeal is initiated by the Township Board or Planning Commission, the Township shall be exempt from the requirements for posting of signs. The Township shall meet other applicable notice requirements.
- i. Failure to comply with any provision of this Section 13.06B(3) shall not constitute grounds for invalidating or setting aside the granting of a petition or appeal, but shall constitute grounds for adjourning and rescheduling the public hearing. Further, the additional number of days required for holding the rescheduled

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public hearing shall be added to the one hundred eighty (180) day period within which action by the Board of Appeals must otherwise be taken under Section 13.06A of this Article.

### **SECTION 13.07 APPEALS**

- A. Appeals shall be filed within sixty (60) days of the decision in question.
- B. The appeal shall be filed with the official from whom the appeal is taken or such other person as the Board of Appeals may from time to time designate.
- C. The appellant shall submit a clear description of the order, requirement, decision, or determination from which the appeal is made and the grounds of the appeal. The appellant may be required by the Board of Appeals to submit additional information to clarify the appeal.
- D. The Township Clerk or such other person as the Board of Appeals may from time to time designate shall transmit to the Board of Appeals copies of all relevant papers constituting the record upon which the action appealed from was taken.
- E. Appeals may be taken by the person aggrieved or by an officer, department, board, agency, or bureau of the Township, county, state, or federal governments.
- F. The fee shall be paid to the Township Clerk or Treasurer at the time of filing the appeal and shall be deposited in the Township's general fund. No part of any fee shall be refundable.
- G. An appeal stays all proceedings in the furtherance of the action appealed from, unless the Zoning Inspector certifies to the Board of Appeals after the notice is filed that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Appeals or by a court of record upon application, upon notice to the Zoning Inspector from whom the appeal is taken, and upon due cause shown.
- H. The Board of Appeals may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm wholly or in part, 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. To that end, the Board of Appeals shall have all of the powers of the public official(s) from whom the appeal is taken and may issue or direct the issuance of a permit.

### **SECTION 13.08 VARIANCES**

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### A. General Rules

The Board of Appeals may grant variances, provided the standards of this Article are met, which will not be contrary to the public interest where, owing to special conditions a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship or practical difficulty.

### B. Procedures

#### 1. **Application**

- a. Application for a variance shall be filed with the Township Clerk or such other person as the Board of Appeals may from time to time designate by the record owner of the property in question or by a person authorized to act on the record owner's behalf.
- b. The application shall consist of a completed application form, fee, and all required information.
- c. The Township Clerk or such other as the Board of Appeals may from time to time designated shall transmit the application and information to the Board of Appeals and to the Zoning Inspector.

#### 2. **Information Required**

An application for a variance shall consist of the official Township form and shall contain the following information:

- a. Legal description, address, tax parcel number, and zoning classification of the subject property, and zoning classifications of adjacent parcels.
- b. An accurate, scaled drawing of the property, showing all property lines, dimensions, and bearing or angles correlated with the legal description; all existing and proposed structures and uses on the property; and dimensions of structures and their dimensioned locations; and lot areas and all calculations necessary to show compliance with the regulations of this Ordinance. Such drawings shall include all septic systems, wells, and easements and all significant trees and natural features.
- c. A statement of the specific reasons for the request for a variance.

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- d. Name and address of the applicant and the property owner, and the interest of the applicant in the property.

### 3. Fees

The fee shall be paid to the Township Clerk or Treasurer at the time of filing the application for a variance. No part of any fee shall be refundable.

### 4. Standards for Review

A variance shall not be granted unless all of the following standards are met:

- a. Special conditions and circumstances exist that are unique to the land, structures, or buildings involved, and are not applicable to other lands, structures, or buildings in the same district.
- b. The special conditions and circumstances on which the variance request is based do not result from the actions of the applicant.
- c. Literal interpretation of this Ordinance would deprive the applicant of rights commonly enjoyed by other property owners in the same district under the terms of this Ordinance.
- d. Granting the variance requested would not confer upon the applicant any special privilege that is denied by the Ordinance to other lands, structures, or buildings in the same district.
- e. The existence of non-conforming uses of neighboring lands, structures, or buildings in the same district; permitted or non-conforming uses of land, structures, or buildings in other districts; and non-conforming structures, shall not be considered grounds for the issuance of a variance.
- f. A variance granted shall be the minimum that will make possible a reasonable use of the land, building, or structure.
- g. The variance granted shall be in harmony with the intent of this Ordinance and will not be injurious to the environment, neighborhood, or otherwise detrimental to the public interest.

### C. Expiration

Each variance approved shall become null and void unless the construction authorized by the variance has been commenced within one hundred eighty (180)

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days after the date of approval and has been pursued diligently to completion, or the occupancy of land or buildings authorized by the variance has commenced within one hundred eighty (180) days after the date of approval. The Board of Appeals may, upon new application by the petitioner to the Zoning Board of Appeals with a showing of good cause, extend this time period, but in no case shall extend the time period for longer than an additional ninety (90) days.

**D. Reapplication**

An application for a variance which has been denied wholly or in part by the Board of Appeals shall not be resubmitted for a period of three hundred sixty-five (365) days from the date of denial, except on grounds of new evidence of changed conditions found by the Board of Appeals to be valid.

**SECTION 13.09 EXPANSION AND SUBSTITUTION OF NONCONFORMITIES**

The Board of Appeals shall determine whether a nonconforming building or structure may be expanded, whether a nonconforming building or structure may replace another such building or structure, and whether a nonconforming use may be substituted for another nonconforming use. Determination shall be made in accordance with Article 12 ("Nonconformities").

**SECTION 13.10 SITE PLAN REQUIREMENTS**

- A. If an application or appeal to the Board of Appeals involves a land use or a development which requires site plan approval by the Planning Commission, the applicant or appellant shall first apply for preliminary site plan approval as set forth in Article 10 ("Site Plan Review").
- B. The Planning Commission shall review the site plan and shall determine the layout and other features required to obtain approval of the preliminary site plan.
- C. The Planning Commission shall then transmit a copy of the site plan and the Commission's findings thereon to the Board of Appeals. The Board of Appeals shall, upon deciding on the application or appeal, return the plan and its decision to the Planning Commission for Commission action on the preliminary site plan.

**SECTION 13.11 CONDITIONS OF APPROVAL**

- A. The Board of Appeals may attach conditions to any affirmative decision, provided such conditions are in accordance with the requirements of this ordinance and Act

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184 of the Public Acts of 1943, as amended. Such conditions shall be consistent with procedures, requirements, standards, and policies of the Township Board, Township Planning Commission, and other Township agencies, where applicable.

- B. Violation of any condition imposed shall be deemed a violation of this Ordinance and punishable under Article 11 ("Administration and Enforcement").