

Chapter 10 ■ Zoning Board of Appeals

SECTION 10.1 ESTABLISHMENT

The Township Board, exercising the authority of Act 110 of the Public Acts of 2006, as amended, hereby provides that a Township Zoning Board of Appeals be established. Upon adoption of this Ordinance, the Zoning Board of Appeals established under the terms of the previous Zoning Ordinance shall remain in office, including all members.

SECTION 10.2 MEMBERSHIP

The Lee Township Zoning Board of Appeals shall consist of five (5) members appointed by the Township Board. One member of the Zoning Board of Appeals shall be a member of the Lee Township Planning Commission, one member shall be a member of the Township Board, and the remaining members shall be selected and appointed by the Township Board from among the electors residing in the unincorporated area of the Township. An elected officer of the Township may not serve as chairperson of the Zoning Board of Appeals. An employee or contractor of the Township Board may not serve as a member or employee of the Zoning Board of Appeals. Members of the Zoning Board of Appeals shall be removable by the Township Board for misfeasance, nonfeasance or malfeasance of duty or misconduct in office upon written charges and after public hearing. The Zoning Board of Appeals shall annually elect its own Chair, Vice-Chair, and Secretary at its January meeting or as soon thereafter as practicable.

The Township Board shall 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 from 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. The alternate member appointed shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the Zoning Board of Appeals.

SECTION 10.3 TERMS OF OFFICE

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. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. If a member vacates his or her position, such vacancy shall be filled for the remainder of the term. The Zoning Board of Appeals shall not conduct business unless a majority of the regular members of the Zoning Board of Appeals is present.

SECTION 10.4 ZONING BOARD OF APPEALS PROCEDURES

- a. **MEETINGS.** Meetings shall be held at the call of the chairperson and at such times as the Zoning Board of Appeals may determine. A simple majority of the membership of the Zoning Board of Appeals shall constitute a quorum and may conduct any items of business brought before the Zoning Board of Appeals. All meetings of the Zoning Board of Appeals shall be open to the public. The Zoning Board of Appeals may declare any meeting, or part of any meeting, a study meeting to pursue matters of business without comment or interruption from the public in attendance.
- b. **RECORDS.** Minutes shall be recorded of all proceedings which shall contain evidence and data relevant to every case considered together with the votes of the member and the final disposition of each case. Such minutes shall be filed in the office of the Township Clerk and shall be public records.
- c. **RULES OF PROCEDURE.** The Zoning Board of Appeals shall adopt its own rules of procedure as may be necessary to conduct its meetings and carry out its function.
- d. **MAJORITY VOTE.** The concurring vote of a majority of the membership of the Zoning Board of Appeals shall be necessary to decide upon any issue brought before the Zoning Board of Appeals. For example, if three members are present, out of a total of five members, all three must concur to pass a motion.
- e. **CONFLICT OF INTEREST.** A member of the Zoning Board of Appeals shall disqualify himself or herself from discussion and voting 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. A conflict of interest may exist for Zoning Board of Appeals members with a financial interest in the issue, those who are related to the applicant or are in a supervisory or subservient role with the applicant. Other situations may also constitute a conflict of interest.

SECTION 10.5 DUTIES

The Lee Township Zoning Board of Appeals shall have the power to act on those matters where this Ordinance provides for an administrative review, interpretation, or variance as defined in this Section.

- a. **REVIEW.** The Zoning Board of Appeals shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination, made by the Zoning Administrator (or designee), or public body in administering this Zoning Ordinance.
- b. **INTERPRETATION.** The Zoning Board of Appeals, upon proper appeal, shall have the power to hear and decide upon appeals for the interpretation of the provisions of this Ordinance as follows:
 - 1) So as to carry out the intent and purposes of this Ordinance.
 - 2) To determine the precise location of the boundary lines between zoning districts; or,

- 3) To classify a use which is not specifically mentioned as part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district.
- c. VARIANCES. The Zoning Board of Appeals may have the power to authorize, upon proper application, specific variances from such dimensional requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations as specified in this Ordinance PROVIDED all the conditions listed are satisfied. .
- 1) Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.
 - 2) The variance will do substantial justice to the applicant, as well as to other property owners.
 - 3) The variance requested is the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners.
 - 4) The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
 - 5) The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance, not by the applicant or the applicant's predecessors.
- d. RULES FOR GRANTING VARIANCES:
- 1) In granting a variance, the Zoning Board of Appeals may specify, in writing, to the applicant such conditions in connection with the granting, that will, in its judgment, secure substantially the objectives of the regulations or provisions to which such variances applies. The breach of any such conditions shall automatically invalidate the permit granted.
 - 2) Each variance granted shall become null and void unless the provisions of the variance have been utilized by an applicant within six months after the granting of the variance.
 - 3) No application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall be resubmitted for a period of one year, from the date of the last denial, except on grounds and newly discovered evidence or proof of changed conditions found upon inspection by the Zoning Board of Appeals to be valid.
 - 4) In authorizing any variance, the Zoning Board of Appeals may require that a bond be furnished to insure compliance with the requirements, specifications and conditions imposed with the grant of variance.
 - 5) Under no circumstances shall the Zoning Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the zoning district in which the variance is to be located.

SECTION 10.6 APPEALS, METHOD FOR TAKING

- a. Any appeal pursuant to this Chapter shall be made to the Zoning Board of Appeals within 10 days after the date of the decision which is the basis of the appeal. Any appeal shall be in writing on a form developed by the Township Board or the Zoning Board of Appeals. The Zoning Administrator or public body from which the appeal arises shall transmit to the Zoning Board of Appeals all documents, or direct copies thereof, constituting the record upon which the action appealed from was taken. Any appeal to the Zoning Board of Appeals shall be accompanied by a fee established by resolution of the Township Board to cover costs of processing such appeal.
- b. Appeals to the Zoning Board of Appeals may be taken by any person aggrieved, or by any officer, department, or board of the Township. Any party may appear in person or by agent or by attorney at a hearing considering his request or appeal.
- c. An appeal stays all proceedings, and thereupon all changes in the status quo of the property concerned shall constitute a violation of this Ordinance; except that the Zoning Administrator or designee may certify to the Zoning Board of Appeals after the notice of the appeal shall have been filed with him that for 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 restraining order, which may be granted by the Zoning Board of Appeals, or, on application to the Circuit Court when due cause can be shown.

SECTION 10.7 DECISIONS

The Zoning Board of Appeals shall return a decision upon each case within thirty (30) days of the filing of a request or appeal unless a further time is agreed upon by the parties concerned. Any decision of the Zoning Board of Appeals shall not take effect until the expiration of five (5) days after the date of said decision, unless the Zoning Board of Appeals certifies on the record that the decision must be given immediate effect for the preservation of property or personal rights. No Zoning Permit authorized by such a decision shall be issued until the decision has taken effect.

SECTION 10.8 LIMITATIONS

The Zoning Board of Appeals, notwithstanding any provisions to the contrary, shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms or intent of this ordinance, or to prohibit a use which is permitted in this Ordinance, change permitted uses in a district, nor may it determine the validity of this Ordinance.