

ARTICLE: 14.0 - ZONING BOARD OF APPEALS

**ARTICLE 14.0
ZONING BOARD OF APPEALS****SECTION 14.01 - 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 14.02 - MEMBERSHIP AND TERMS**A. Membership**

The Board of Appeals shall consist of five (5) 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. Alternate Members

The Township Board may appoint not more than 2 alternate members for the same term as regular members to the zoning board of appeals. An alternate member may be called as specified in the zoning ordinance to serve as a regular member for 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 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 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.

C. 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. Members may be reappointed. 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.

D. 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.

E. 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.

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SECTION 14.03 - GENERAL PROCEDURES OF THE BOARD OF APPEALS

- A. **Rules** - 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** - A concurring vote of a majority of members of the Board of Appeals shall be necessary to reverse any order, requirements, decision or interpretation of the Zoning Administrator, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance.
- C. **Representation** - Any person(s) may appear on his own behalf at a hearing or may be represented by an agent or attorney authorized to appear on his or her behalf.
- D. **Time Limit** - The Board of Appeals shall decide upon all matters within a reasonable time, not to exceed ninety (90) days from the 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** - Meetings of the Board of Appeals shall be held at the call of the Chair and at such times as the Board in its rules of procedure may specify. Minutes shall be kept of each meeting and the Board shall record into the minutes all findings, conditions, facts, and other relevant factors, including the vote of each member upon question, if absent or failing to vote, indicating such fact, and all of its official actions. All meetings and records shall be open to the public. All minutes shall be filed in the office 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 14.04 - 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 and rule on the following as provided herein: any administrative decision of any official or Board charged with enforcement and/or interpretation of this Ordinance on any requirement of the Ordinance, and , substitution of nonconforming uses.
- C. The Board of Appeals shall not alter or 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 a result in 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, Planned Unit Developments, or comprehensive development variances.

SECTION 14.05 - FEES

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

SECTION 14.06 - 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.

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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.

- 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 Freedom 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 Freedom 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.

SECTION 14.07 - ADMINISTRATIVE REVIEW

The Board of Appeals shall hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator in the interpretation and enforcement of this Ordinance. The Board of Appeals shall interpret zoning district boundaries according to the provisions of Section 2.02F, herein.

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ARTICLE: 14.0 - ZONING BOARD OF APPEALS**SECTION 14.08 - DUTIES ON MATTERS OF APPEAL**

All questions concerning interpretation and application of the provisions of this ordinance shall first be presented to the Zoning Administrator. Such questions shall be presented to the Board of Appeals only on appeal from the decisions from the Zoning Administrator. Recourse from decisions of the Board of Appeals shall be to the courts as provided by law. Duties of the Township Board in connection with this Ordinance shall not include hearing and deciding questions on appeals that might arise. The procedure for deciding such questions shall be as provided in this Article.

SECTION 14.09 - PROCEDURES

- A. Appeals concerning administrative review may be made within such time as prescribed by the Board of Appeals by general rule, by filing with the Zoning Administrator and the Board of Appeals a notice of appeal specifying the ground thereof. The Zoning Administrator shall transmit to the Board of Appeals copies of all papers constituting the record upon which the action appealed from was taken, within seven (7) days of the filing date. The appellant shall submit a clear description of the order, requirement, or determination for which appeal is made and may be required by the Board of Appeals to submit additional information to clarify the appeal.
- B. Appeals may be taken by any person aggrieved or by any officer, department, board, agency, or bureau of the Township, county, State or Federal government.
- C. A fee shall be paid to the Township Clerk at the time of filing the notice of appeal and shall be deposited in the Township's General Fund.
- D. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator from whom the appeal is taken certifies to the Board of Appeals after the notice is filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Zoning Administrator from whom the appeal is taken, and on due cause shown.
- E. 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, or may impose such conditions, 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 14.10 - VARIANCE

- A. **Intent** - The Board of Appeals shall have the power and duty to authorize in specific cases a relaxation of the provisions of this Ordinance through a variance as 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. **Filing** - An application for a variance shall be filed by the owner of the lot in question with the Township Clerk. The application shall consist of a completed application form, fee, and the information required of this Section. The Clerk shall transmit the application and information to each member of the Board of Appeals within three (3) days of the filing date.
- C. **Information Required** - Each application for a variance shall contain the following information:
 - 1. Legal description, address, and tax parcel number, and zoning classification of the subject property.
 - 2. Boundary survey, showing all property lines, dimensions, and bearings or angles, correlated with the legal description; all existing and proposed structures and uses on the premises, and dimensions of such structures and their dimensioned locations; lot area and all calculations necessary to show compliance with regulations of the zoning ordinance.

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3. Name and address of applicant, property owner(s), interest of applicant in the property.
 4. A statement of the specific reasons for the request for a variance.
- D. Required Conditions - A variance shall not be granted by the Board of Appeals unless and until all of the following conditions are met:**
1. A written application for a variance is submitted, demonstrating:
 - a. that special conditions and circumstances exist which are unique to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district;
 - b. that literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
 - c. that the special conditions and circumstances do not result from the actions of the applicant; or
 - d. that granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
 2. Any nonconforming use of neighboring lands, structures or buildings in the same district, any permitted nonconforming uses of lands, structures or buildings in other districts, any nonconforming structures shall not be considered grounds for the issuance of a variance.
 3. The Board of Appeals shall find that the requirements in Section 14.12 D-1, herein, have been satisfactorily met by the applicant.
 4. The Board of Appeals shall further find that the reasons set forth in application justify the granting of the variance, and that it is the minimum variance that will make possible the reasonable use of the land, building or structure.
 5. The Board of Appeals shall further find that the granting of the variance will be in harmony with the intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public interest.
 6. In granting any variance, the Board of Appeals may establish appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance, and punishable under Section 13.10, herein.
 7. Under no circumstances shall the Board of Appeals grant a variance to allow a use not permitted 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.
 8. 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 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.

SECTION 14.11 - VOIDING OF VARIANCE

Each variance granted under the provisions of this Ordinance shall become null and void unless the construction authorized by such variance has been commenced within one year after the granting of such variance and pursued diligently to completion, or the occupancy of land or buildings authorized by such variance has taken place within one year after the granting of such variance.

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ARTICLE: 14.0 - ZONING BOARD OF APPEALS**SECTION 14.12 - REAPPLICATION FOR VARIANCE**

No application for a variance which has been denied wholly or in part by the Board of Appeals shall be resubmitted for a period of three hundred sixty-five (365) days from the date of such denial, except on grounds of new evidence or proof of changed conditions found by the Board of Appeals to be valid.

SECTION 14.13 - SITE PLAN REQUIREMENTS

If an application or appeal to the Board of Appeals 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 5, herein. The Planning Commission shall review said plan and shall determine the layout and other features required to obtain approval of said plan. The Planning Commission shall then transmit the plan and the Commission's findings therein to the Board of Appeals. The Board of Appeals shall, upon deciding on the application or appeal, return the plan and its decision therein to the Planning Commission for Commission action on the preliminary site plan.

SECTION 14.14 - APPEALS TO COURT

Any decision of the Board of Appeals may be appealed by any person having an interest affected by the decision. He shall have the right to appeal to the Circuit Court on questions of law and fact.