

ARTICLE 41
Zoning Board of Appeals

§ 170-41.1. Intent.

The intent of this article is to outline procedures and standards for the Zoning Board of Appeals (ZBA) when considering requests for variances and appeals.

§ 170-41.2. Public Notice and Approvals.

- A. The ZBA shall conduct a public hearing in accordance with section 170-40.7. Any person may testify at the hearing, either in person, by duly authorized agent or by submitting written comments.
- B. A use variance requires approval from 2/3 of the entire ZBA membership (five votes).
- C. All other actions by the ZBA require approval by majority vote of the entire ZBA membership (four votes).
- D. The number of votes is based on the entire ZBA membership, regardless of the number of members present at a meeting.

§ 170-41.3 Appeals.

Any person or entity aggrieved by a decision of the Township staff or Planning Commission may appeal the decision to the ZBA.

- A. An appeal shall be made within 30 days of a decision by the Township.
- B. The grounds of the appeal shall be specified in writing by the appellant.
- C. All documentation upon which the action was taken shall be provided to the ZBA.
- D. An appeal shall stay all proceedings in furtherance of the action appealed. Except, if the person from whom the appeal is taken certifies to the ZBA, after the appeal has been filed, that a stay would cause imminent peril to life or property. In which case, the proceedings may be stayed only by a restraining order issued by the ZBA or circuit court.

- E. The ZBA shall reverse, modify or refer back with findings a decision of the Township staff or the Planning Commission only if it finds that the action or decision appealed meets at least one of the following conditions.
- (1) Was arbitrary or capricious.
 - (2) Was based on an erroneous finding of fact.
 - (3) Constituted an abuse of discretion.
 - (4) Was based on erroneous interpretation of this chapter.

§ 170-41.4 Variances.

Types of variances and review criteria are identified below. The ZBA shall have the authority to grant a lesser variance than requested. In addition, the ZBA may require conditions related to the site, operation and/or use to mitigate the impact of any variance.

A. Non-use variances.

The ZBA may authorize a variance from the zoning ordinance when the applicant demonstrates all of the following conditions exist.

- (1) Practical difficulty. A practical difficulty exists on the subject site such as exceptional narrowness, shallowness, shape or area, presence of floodplain or topographic conditions and strict compliance with the requirements of this chapter would render conformity unnecessarily burdensome. The practical difficulty shall have bearing on the subject site, or use of the subject site, and not to the applicant personally. Economic hardship or profit potential is not consideration for practical difficulty.
- (2) Unique situation. The demonstrated practical difficulty results from exceptional or extraordinary circumstances or conditions applying to the subject site at the time the ordinance was adopted, or amended, which are different than typical properties in the same zoning district or the vicinity.
- (3) Not self-created. The conditions resulting in a variance request can not be self-created and would have existed regardless of ownership of the property.
- (4) Substantial justice. The variance would provide substantial justice by granting property rights similar to those enjoyed by the majority of other properties in the same zoning district or the vicinity. The decision shall not bestow upon the

property special development rights not enjoyed by other properties in the same zoning district, or which might result in substantial adverse impacts on properties in the vicinity. Adverse impacts may include, but are not limited to, the supply of light and air, significant increases in traffic, increased odors, noise, use, an increase in the danger of fire, or other activities which may endanger the public health, safety or welfare.

- (5) Minimum variance necessary. The variance shall be the minimum necessary to grant relief created by the practical difficulty.
- (6) Compliance with other laws. The variance shall be the minimum necessary to comply with state or federal laws such as farming activities protected by the Right to Farm Act or accessibility to meet the needs of individuals with disabilities protected under the Americans with Disabilities Act.

B. Variance from Article 28, Private Roads.

The ZBA may grant a variance from the standards of Article 28, Private Roads, when the applicant demonstrates all of the following conditions exist.

- (1) A practical difficulty exists on the subject site such as exceptional narrowness, shape, area or topographic features, presence of quality trees, limited sight distance, wetlands, floodplain or other physical conditions related to the property that make compliance with the ordinance requirements unnecessarily burdensome or would result in unnecessary loss of important natural features.
- (2) Granting the variance will not compromise traffic operations, public safety or accessibility by emergency vehicles.

C. Variance from Article 29, Wireless Communications.

The ZBA may grant a variance from the standards of Article 29, Wireless Communications, when the applicant demonstrates that one or more of the following conditions exist.

- (1) The location requirements of the ordinance do not reasonably address the applicant's coverage or capacity needs.
- (2) Collocation is not feasible because existing structures cannot support the facility, collocation would result in unreasonable interference or reasonable financial terms are not available.

- (3) The tower is self-collapsing and the setback area provided will accommodate the structure and provide a reasonable buffer should it fall or break.
- (4) An increased tower height is required as a result of signal interference due to topography, tall buildings, trees or other obstructions or would reduce the number of towers to the benefit of the Township.
- (5) Negative impacts are mitigated through provision for future collocation.
- (6) The wireless communications and accessory facilities are designed to be compatible with the existing character of the proposed site, neighborhood and general area such as a steeple, bell tower or similar form.

D. Use variance.

A use variance may be requested when a proposed use is not listed as a permitted or a special land use in the district in which the property is located. Approval of a use variance requires 2/3 of the entire ZBA membership (five votes). Use variances shall only be granted when the applicant demonstrates that all of the following conditions exist.

- (1) The proposed use is compatible with existing or planned uses on surrounding properties.
- (2) The site can not reasonably be used for any of the uses allowed under current zoning.
- (3) Public utilities and streets are sufficient to accommodate the proposed use.
- (4) An unnecessary hardship exists on the subject property due to very unique circumstances such as:
 - (a) Exceptional narrowness, shallowness or shape of the property;
 - (b) Exceptional topographic conditions or other extraordinary situation pertaining to the land, building or structure;
 - (c) The use or development of the property immediately adjoining the subject property; or
 - (d) Any other physical situation pertaining to the land, building or structure as determined by the ZBA.

- (e) The requested use variance is the minimum necessary to permit a reasonable use of the land.
- (f) The conditions causing the use variance request were not created by any affirmative action of the applicant and would have existed regardless of ownership of the property.

E. Fence Variance.

The ZBA may grant a variance from the standards of Article 31, Fences, when the applicant demonstrates all of the following conditions exist

- (1) A practical difficulty is present on the property and results in conditions which do not generally exist throughout the township.
- (2) The practical difficulty which will result from a failure to grant the variance includes substantially more than mere inconvenience or an inability to attain a higher financial return.
- (3) Granting the variance will result in substantial justice, considering the hardships that will be suffered by a failure of the ZBA to grant a variance, the rights of others whose property would be affected by the variance and the public and general purpose of the fence standards.

F. Text interpretations.

The ZBA shall be responsible for interpreting the provisions or meaning of standards contained in this chapter in such a way as to carry out the stated intent of the zoning districts, ordinance and the goals of the master plan. In making an interpretation, the ZBA shall adhere to the following.

- (1) The ZBA shall avoid broad interpretations.
- (2) Text interpretations shall be confined to the question raised, shall be based on a thorough reading and understanding of the entire chapter and not have the effect of amending the chapter.
- (3) If the ordinance is silent on a particular use, and the use is not deemed similar to others already listed in the chapter, the ZBA does not have the authority to make such an interpretation; instead, the applicant must seek a use variance from the ZBA or an amendment from the board of trustees following an evaluation, public hearing and recommendation by the Planning Commission.

G. Map interpretations.

The ZBA shall be responsible for interpreting the boundaries of the zoning map where the actual alignment of streets or natural features used to separate zoning districts varies from the alignment shown on the zoning map or where the zoning district boundary does not follow property lines but was intended to do so.

- (1) Map interpretations should be made based on relevant historical information including prior editions of the zoning map, and current and prior editions of the master plan map.

H. Text amendments.

The ZBA may suggest text amendments to the Planning Commission and Board of Trustees based upon the frequent application for, or granting of, specific variances or problems with interpretation. Suggestions shall be submitted in writing to the Planning Commission.

§ 170-41.5. Conditions.

Any approval granted by the ZBA may be made subject to conditions provided the conditions ensure the applicable review standards are satisfied. For site plan or design related conditions, the ZBA may require the plans be reviewed and approved by staff or the Planning Commission. Any conditions must be made part of the record of the approval. The ZBA may require that a bond or performance guarantee be furnished to insure compliance with certain conditions.

§ 170-41.6. Limits on authority.

The ZBA shall not have the power to alter or change the zoning district classification of any property, approve a variance within special development options except as permitted by Article 20, overturn a Planning Commission decision to deny a special land use or to make ordinance text amendments.

§ 170-41.7. Expiration of approvals.

Variances shall be valid for one year, except for the following conditions.

- (1) If the Planning Commission grants an extension of an approved site plan, the variance approval shall expire when, or if, the site plan approval expires.

- (2) If a building permit is obtained and meaningful construction is continually proceeding toward completion in accordance with the terms of the building permit.