

ARTICLE XVII

ZONING BOARD OF APPEALS

1701 PUROSE

The purpose of the Zoning Board of Appeals shall be to decide any issue involving the interpretation of the provisions contained in this resolution in instances of unnecessary hardships and to authorize conditional uses as herein provided.

1702 ORGANIZATION AND PROCEDURE

Failure to obtain a zoning permit shall be a violation of this resolution and punishable under Section 1801 of this Resolution.

1702.01 APPOINTMENT

The Board shall be composed of five (5) members, all of whom are residents of the Township. Members shall be appointed by the Trustees for a period of five (5) years. The terms shall be so arranged so that the term of one (1) member shall expire each year. Should any vacancy on the Board occur for any reason, the Trustees, shall appoint a successor to serve the unexpired term. The Trustees have the right to remove any members of the Board with due cause.

1702.02 ORGANIZATON AND RULES

A. The Zoning Board of Appeals shall organize annually and elect a chairman, vice-chairman and secretary from its membership. The Zoning Board of Appeals shall adopt rules as may be necessary to carry into effect the provisions of this resolution and to exercise the powers and jurisdiction conferred upon it by the resolutions.

B. The chairman shall preside at all meetings of the Zoning Board of Appeals. He/She shall decide on all points of order and procedure unless otherwise directed by a majority of the Zoning Board of Appeals. The chairman may appoint committees deemed necessary to carry out the business of the Zoning Board of Appeals. The Chairman's signature shall be the official signature of the Board and shall appear on all decisions as directed by the Zoning Board of Appeals.

C. The vice-chairman shall serve in the absence of the chairman. He/She shall have all the powers of the chairman during his/her absence, disability or disqualification.

D. The secretary shall keep minutes of all meetings and shall be responsible for all official correspondence of the Zoning Board of Appeals.

1702.03 MEETINGS

Meetings of the Zoning board of Appeals shall be held at the call of the chairman and at such times as the Board may determine. All meetings shall be open to the public.

1702.04 VOTING

A. All actions of the Zoning Board of Appeals shall be taken by resolution, vote of each member being recorded. The majority of the Board shall constitute a quorum to do business and the concurring vote of three (3) members shall be necessary to reverse any order, requirement, decision or determination of the Zoning Inspector.

B. No member of the Zoning Board of appeals shall vote on any matter in which he/she is personally or financially interested.

1702.05 MINUTES AND RECORDS

The secretary of the Zoning Board of Appeals 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 action, all of which shall be certified correct and filed in the Township Office and shall be a public record.

1702.06 WITNESS AND OATHS

The Zoning Board of Appeals shall have the power to subpoena and require the attendance of witnesses, administer oaths, and compel testimony and the production of books, papers and other evidence pertinent to any issue before the Board.

1702.07 DEPARTMENT ASSISTANCE

The Zoning Board of Appeals may call on any applicable County and State agency for assistance in the performance of its duties, and it shall be the duty of such departments to render assistance to the Board as may be required. In addition, the Zoning Board may make an analysis and present a report on any matter before the Zoning Board of Appeals. Such report shall be considered by the Zoning Board of Appeals at the time of hearing on the matters.

1703 GOVERNING GUIDELINES

- A. The Zoning Board of Appeals shall be governed by the provisions of all applicable statutes, local laws, regulation and rules set forth herein.
- B. The Zoning Board of Appeals shall become familiar with all enacted resolutions and laws of Carlisle Township under which it may be expected to act as well as with applicable state enabling legislation.
- C. The Zoning Board of Appeals, shall uphold the Zoning Resolution and Official Zoning Map of Carlisle Township as adopted and shall serve primarily as a judicial review in the performance of its duties.
- D. The Zoning Board of Appeals shall become familiar with the community goals, desires and policies. Through the performance of its duties, the board may not act as a legislative body, or through interpretation, the granting of variances or the settling of conditions, alter the basic intent of the Zoning Resolution to be generally and equally applicable to all persons covered by a zoning district.

1704 JURISDICTION AND POWERS

The Zoning Board of Appeals shall operate so as to carry into effect the powers and jurisdiction conferred upon it as follows:

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Inspector in the enforcement of this Resolution.
- B. To hear and decide on such conditional uses as the Board is specifically authorized to pass on by the terms of this Resolution.
- C, To hear and decide upon application for variances under the terms provided in this Resolution.

D. To interpret the provisions of the Zoning Resolution or Map where there is doubt as to meaning or application. The Zoning Board of Appeals shall have the specific power to interpret the precise location of the boundary lines between zoning districts, and to interpret the classification of a use which is not specifically mentioned as a part of the use regulation of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the intent and purpose of each district.

E. To exercise such other powers as may be granted to the Zoning Board of Appeals by this Resolution, amendment thereto or by the general laws as set forth in the Ohio Revised Code as amended.

F. The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, not to make any change in the terms or intent of this Resolution, but does have power to act on those matters where the Resolution provides for judicial review, interpretation, variance, or conditional use as defined in this Article.

1705 PROCEDURE AND REQUIREMENTS FOR APPEALS AND VARIANCES

1705.01 APPEALS

Appeals to the Zoning Board of Appeals concerning interpretation or administration of this Resolution may be taken by any person aggrieved or by any officer or bureau of the legislative authority of the Township affected by any decision of the Zoning Inspector. Such appeal shall be taken twenty (20) days after the decision by filing with the Zoning Inspector and with the Zoning board of Appeals all the papers constituting the record upon which the action appealed from was taken.

1705.02 FEES – SEE SECTION 1608

1705.03 STAY OF PROCEEDINGS

An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Inspector from whom the appeal is taken certifies to the Zoning Board of Appeals after the notice of appeal is filed with him, that by reason of facts stated in the application, a stay would in his/her opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, with a notice to the Zoning Inspector from whom the appeal is taken.

1705.04 VARIANCES

The Zoning Board of Appeals may authorize upon appeal in specific cases such variances from the terms of this Resolution as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions of this Resolution would result in unnecessary hardships. No conforming use of lands, structures, or buildings in other districts shall be considered ground for issuance of a variance.

1705.05 APPLICATION AND STANDARDS FOR VARIANCES

The variance from the terms of this Resolution shall not be granted by the Zoning Board of Appeals unless and until a written application for a variance is submitted to the Zoning Inspector and the Zoning Board of Appeals containing:

- A. Name, address, and phone number of applicant(s)
- B. Legal description of property
- C. Description of nature of variance requested
- D. A narrative statement demonstrating that the requested variance conforms to the following standards:

That special conditions and circumstances exist which are peculiar to the land, structures, or buildings in the same district.

That a literal interpretation of the provisions of this Resolution would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance

That special conditions and circumstances do not result from the actions of the applicant

That granting the variance requested will not confer on the applicant any privilege that is denied by this Resolution to other lands, structures, or buildings in the same district

1705.06A CONDITIONS FOR GRANTING USE VARIANCES

Variances may be granted by the Zoning Board of Appeals where the strict application of any provision of this Zoning Resolution would result in peculiar and exceptional difficulties or undue hardship to the property owner. A request for variance may be made to the Zoning Board of Appeals through the Zoning

Inspector by an aggrieved property owner. A variance from the provisions or requirements of this Resolution shall not be authorized by the Zoning Board of Appeals unless it finds that all the following facts and conditions exist:

Use Variance

1. That unnecessary hardships would result from the literal enforcement of the provisions of this Zoning Resolution. Alleged hardships, such as theoretical loss or limited possibilities of economic advantage, shall not be considered a sufficient hardship for the granting of a variance. It must be demonstrated that peculiar and special hardships exist which apply only to the property in question and are separate and distinct from the general conditions pertaining throughout the district.
2. That there are unique physical circumstances or conditions applying to the property in question such as irregularity, narrowness or shallowness of lot size or shape, exceptional topographical or other physical conditions.
3. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Zoning Resolution and that authorization of a variance is, therefore, necessary to enable the reasonable use of the property.
4. The said variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity and that the granting of such variance will not be injurious to persons working or residing in the neighborhood.
5. That granting of such variance will not be contrary to the public interest (health, safety) or the intent and purpose of this Resolution and other adopted plans.
6. That said variance will not permit the establishment within a district, or any use other than those permitted by right within that district, or any use for which a conditional permit is required.
7. That said variance may not be construed to mean a change of use but shall mean only a variation or modification from the strict provisions of this Resolution.
8. That said variance, if granted, is the minimum modification that will make possible the reasonable use of the land, building, or structure.
9. That in no instance shall a variance be considered for the following reasons:

- Presence of non conformities in the zoning district
- Previous variance granted in the zoning district
- Uses in adjoining zoning districts

The applicant's belief that the intended use would be permitted upon his/her purchase of the land
The character standing of the applicant
Hardship being demonstrated beyond the contest of zoning (e.g. economics)

1705.06B CONDITIONS FOR GRANTING AREA VARIANCES

AREA VARIANCE "PRACTICAL DIFFICULTIES" TEST:

The factors to be considered and weighed in determining whether a property owner seeking an area variance has encountered practical difficulties in the use of his property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without a variance.
2. Whether the variance is substantial
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance
4. Whether the variance would adversely affect the delivery of governmental services (e.g. water, sewer, garbage)
5. Whether the property owner purchased the property with the knowledge of the zoning restriction
6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance

1705.07 VARIATIONS TO NONCONFORMING USES AND BUILDINGS

The Zoning Board of Appeals shall have no powers to authorize, as a variance, the establishment of a nonconforming use where none previously existed. The substitution of a nonconforming use shall be allowed provided no structural alterations are made except those required by law or resolution. The Zoning Board of Appeals shall adhere to all regulations contained in Section 308 of this Resolution in acting upon all nonconforming uses and modification thereto.

1705.08 CONDITIONS IMPOSED BY THE ZONING BOARD OF APPEALS

The Zoning Board of Appeals shall have the power to impose additional conditions and safeguards other than those stated in the Zoning Resolution when granting variances and conditional uses. Such additional conditions shall be reasonable and necessary to promote and preserve the public safety, general welfare and economic viability of the neighborhood and community and shall be imposed solely for the purpose of minimizing the effect of the variance or conditional use on surrounding property and the community as a whole. Violations of such conditions and safeguards, when made a part of the terms under which the variance or conditional use is granted, shall be deemed a violation of this Resolution and punishable under Article XVII of this Resolution.

1705.09 LAPSES OF VARIANCES

A variance, once granted, shall not be withdrawn or changed unless there is a change of circumstances, or if, after the expiration of six (6) months, no construction has taken place in accordance with the terms and conditions for which said variance was granted, the Zoning Inspector shall give a notice in writing, and thirty (30) days thereafter the variance shall be deemed null and void and all regulations governing said premises in question shall revert to those in effect before the variance was granted.

1705.10 PUBLIC HEARING BY THE ZONING BOARD OF APPEALS

The Board of Zoning Appeals shall hold a public hearing within twenty (20) days after receipt of an application for an appeal or variance from the Zoning Inspector or an applicant.

1705.11 NOTICE OF PUBLIC HEARING IN NEWSPAPER

Before holding the public hearing, notice of such hearing shall be given in one (1) or more newspapers of general circulation of the Township at least ten (10) days before the date of said hearing. The notice shall set forth the time and place of the public hearing, and the nature of the proposed appeal or variance.

1705.12 NOTICE TO PARTIES IN INTEREST

Before holding the public hearing, notice of such hearing shall be mailed by the Chairman of the Zoning Board of Appeals, by first class mail at least ten (10) days before the day of the hearing to all parties in interest. The notice shall

contain the same information as required of notices published in newspapers as specified in this Article.

1706 PROCEDURE AND REQUIREMENTS FOR APPROVAL OF CONDITIONAL USES

1706.01 CONTENTS OF APPLICATION FOR CONDITIONAL USE PERMIT

An application for conditional use permit shall be filed with the Chairman of the Zoning Board of Appeals and the Chairman of the Zoning Commission by at least one (1) owner of property for which such conditional use is proposed. At a minimum, the application shall contain the following information:

- A. Name, address and phone number of applicant
- B. Legal description of property
- C. Description of existing use
- D. Present zoning district
- E. Description of proposed conditional use
- F. A plan of proposed site for the conditional use showing the location of all buildings, parking and loading area, traffic areas and traffic circulation, open spaces, landscaping, refuse and service areas, utilities, signs, yards, and such other information as the Zoning Board of Appeals may require to determine if the proposed conditional use meets the intent and requirement of this Resolution
- G. A narrative statement evaluating the economic effects on adjoining property; the effect of such elements as noise, glare, odor fumes and vibration on adjoining property; a discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the comprehensive zoning plan
- H. Such other information as may be required

1706.02 GENERAL STANDARDS APPLICABLE TO ALL CONDITIONAL USES

In addition to the specific requirements for conditionally permitted uses, the Board shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- A. Will be harmonious with and in accordance with the general objectives, or with any specific objective of the Township's Zoning Plan
- B. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area
- C. Will not be hazardous or disturbing to existing or future neighboring uses
- D. Will be served adequately by essential public facilities and service such as highways, streets, police and fire protection, drainage structures, refuse disposal, water sewers, and schools; or that the person or agencies responsible for the establishment of the proposed shall be able to provide adequately any such service
- E. Will not create excessive additional requirements at public cost of facilities and services and will not be detrimental to the economic welfare of the community
- F. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors
- G. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets or roads.
- H. Will not result in the destruction, loss, or damage of a natural, scenic, historic feature of major importance

1706.03 SUPPLEMENTARY CONDITIONS AND SAFEGUARDS

In granting any conditional use, the Zoning Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Resolution. Violations of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this Resolution and punishable.

1706.05 PUBLIC HEARING BY THE ZONING BOARD OF APPEALS

The Zoning Board of Appeals shall hold a public hearing within forty (40) days from the receipt of the application for a conditional use..

1706.06 NOTICE OF PUBLIC HEARING IN NEWSPAPER

Before holding the public hearing, notice of such hearing shall be given in one (1) or more newspapers of general circulation in the Township at least ten (10) days before the date of said hearing. The notice shall set forth the time and place of the public hearing, and the nature of the proposed conditional use.

1706.07 NOTICE TO PARTIES IN INTEREST

Before holding the public hearing, notice of such hearing shall be mailed by the Chairman of the Zoning Board of Appeals, by first class mail at least ten (10) days before the day of the hearing to all parties in interest. The notice shall contain the same information as required of notices published in newspapers as specified in this Article.

1706.08 EXPIRATION OF CONDITIONAL USE PERMIT

A conditional use permit shall be valid for a period not to exceed one (1) year from date of issuance. Inspection and payment of a fee as set forth in the fee schedule be required prior to renewal of said permit. A conditional use permit shall be deemed to authorize only one (1) particular conditional use; and said permit shall automatically expire if, for any reason, the conditional use shall cease for more than six (6) months.

1707 DECISIONS OF THE ZONING BOARD OF APPEALS

The Zoning Board of Appeals shall decide all applications for variances, conditional uses and appeals within thirty (30) days after the final hearing thereon. The applicant shall be notified in writing of the Board's decision and the findings of fact which were the basis for the Board's determination. The Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination of the Zoning Inspector as in its opinion ought to be made on the premises. The decision shall state any conditions and safeguards necessary to protect the public interest. In reading a decision, the Board shall be guided by standards specified in this Resolution. A certified copy of the Board's decision including all terms and conditions shall be transmitted to the Zoning Inspector and shall be binding upon and observed by him. The Zoning Inspector shall fully incorporate these same terms and conditions in the permit to the applicant whenever a permit is authorized by the Board.

All findings and decisions shall be clearly set forth in the minutes of the Board. In rendering a decision, the Board should show that;

- A. It has considered and evaluated all available information and evidence
- B. It has heard all parties in question
- C. Any personal knowledge the Board may have of the subject under question has been taken into account
- D. The Board has received a report on the case based upon an inspection of the parcel in question

1708 DUTIES OF ZONING INSPECTOR, ZONING BOARD OF APPEALS, TOWNSHIP TRUSTEES AND COURTS ON MATTERS OF APPEAL

It is the intent of this Resolution that all questions of interpretation and enforcement shall first be presented to the Zoning Inspector, and that such questions shall be presented to the Zoning Board of Appeals only an appeal from the decision of the Zoning Inspector, and that recourse from the decision of the Zoning Board of Appeals shall be to the courts as provided by Section 1709 of this Resolution and Chapter 713 of the Ohio Revised Code. It is further the intent of this Resolution that the duties of the Township Trustees in connection with this Article shall not include hearing and deciding questions of the interpretation and enforcement that may arise; these being the powers of the Zoning Board of Appeals. Under this Article, the Township Trustees shall have only the duties of considering, adopting, or rejecting proposed amendments or the repeal of all or part of this Resolution, as provided by law and of establishing a schedule of fees and charges. If, in the course of carrying out the intent of this Article and after review of all appeal cases brought before it, the Zoning Board of Appeals finds a series of similar irregularities or inequities, it shall be incumbent upon the Board to inform the Township Trustees and Zoning Commission of these inadequacies in order that the Zoning Resolution or Map may be appropriately amended.

1709 APPEAL TO COURTS

A person aggrieved by a decision of the Zoning Board of Appeals may appeal to the Court of Common Pleas of Lorain County, Ohio.