



**ARTICLE 22 BOARD OF ZONING APPEALS**

**22.01 CREATION, MEMBERSHIP, APPOINTMENT**

The board of township trustees shall appoint a township board of zoning appeals of five member who shall be residents of the unincorporated territory in the township. The terms of all members shall be of such length and so arranged that the term of one member will expire each year. Each member shall serve until his successor is appointed and qualified. Members shall be removable for the same causes and in the same manner as provided by Section 21.01. Vacancies shall be filled by the Board of Township Trustees and shall be for the unexpired term.

**22.02 ORGANIZATION**

**22.02.1** The Board of Zoning Appeals shall elect its own officers annually and shall adopt the rules necessary to the conduct of its affairs. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. A majority of the members of the Board of Zoning Appeals shall constitute a quorum for the conducting of business.

**22.02.2** The Chairman, or in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses and production of documents. All meetings and records shall be open to the public.

**22.03 OFFICIAL ACTION**

The Board of Zoning Appeals shall act by resolution or motion on which three (3) members must concur and shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent, or failing to vote indicating such facts, and a statement of the facts of each appeal considered by the Board, and the section of this Resolution where applicable which the Board has considered in approving or disapproving any petition or other matter brought before the Board. All persons appearing before the Board shall be sworn before giving testimony.

**22.04 RIGHT OF PETITION OR APPEAL**

**22.04.1** Any person, property owner, tenant or any governmental officer, department, board or bureau may apply for a conditional use permit or a variance from the strict application of the terms of this Resolution or appeal a decision of the Enforcing Officer to the Board of Zoning Appeals.

**22.04.2** An appeal of a ruling of the Enforcing Officer shall stay all proceedings unless the Enforcing Officer certifies that, by reason of facts pertaining to the matter in question, a stay in his opinion would cause imminent peril to life and property. When such certification is made, proceedings shall not be stayed except by a restraining order granted by the Board of Appeals or by the Court of Common Pleas.

**22.05 FEES**

1. Each application for a variance or conditional use permit shall be accompanied by a fee as established by the Board of Township Trustees..
2. Application fees shall not be refunded in any case;
3. When any applications to the Township for some permit, certificate or approval involves submission of technical information by the applicant, it is recognized that the Township may need to incur expenses for the services of engineers and other experts to evaluate such technical data. As a condition of the Township agreeing to consider any such application, the applicant must agree to reimburse the Township at once for any such expenses. That reimbursement must be received by the Township before any such permit, certificate or approval is issued.
4. A condition of the Township agreeing to consider any application for a permit, certificate or approval shall be that the applicant must pay the cost of publishing any newspaper notice of any public hearings on the application, and of any ordinance that grants the application in whole or in part. Similarly, the applicant must agree to reimburse the Township for any postage expense of mailing notices of the proceeding.

**22.06 HEARING**

The Board of Zoning Appeals shall fix a reasonable time for the hearing of any application, petition or appeal. It shall give at least ten (10) days notice of the time and place of such hearing, to the Enforcing Officer, and to the owners of record of property within five hundred (500) feet of the premises in question, such notice to be delivered personally or by mail addressed to the respective owners at the address given on the last assessment roll and by one publication in one or more newspapers of general circulation in the Township. Any party may appear at such hearing in person, by agent or by attorney. The Board shall decide the application or appeal within a reasonable time.

**22.07 POWERS AND DUTIES**

The Board of Zoning Appeals shall have all the appropriate power and duties prescribed by law and by this Resolution. The Board shall have the following duties and powers:

1. Administrative Review: To hear and decide appeals only in such cases where it is alleged there is error in any order, requirement, decision or determination made by the Enforcing Officer in the enforcement of this Resolution and such appeal must be made within twenty (20) days. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Enforcing Officer, or to decide in favor of the applicant on any matter upon which they are required to pass under the terms of this Resolution.
2. Determination of Similar Uses: To determine if uses not specifically mentioned in this Resolution are similar to uses permitted within a district.
3. Determination of District Boundary Location: To determine the exact location of any district boundary if there is uncertainty as to exact location thereof. In making such determination the Board shall be guided by the provision of Section 4.03.
4. Granting of Exceptions: To hear and decide appeals for the granting of exception to this Resolution in the following instances:
  - (a) Permit the extension of a district where the boundary line of a district divides a lot or tract held in a single ownership at the time of the passage of this Resolution.
  - (b) Interpret provisions of this Resolution, in such a way as to carry out the intent and purpose, as shown upon the map fixing the several districts, accompanying and made a part of this Resolution where the street layout actually on the ground varies from the street layout as shown on the map aforesaid.
  - (c) Permit the reconstruction of a non-conforming building which has been damaged by explosion, fire, act of God, or the public enemy, to the extent of more than sixty (60) percent of its fair market value where the Board finds some compelling necessity requiring a continuancy of the non-conforming use and the primary purpose of continuing the non-conforming use will not adversely affect the health, safety or morals of the surrounding area.

## Beavercreek Township Zoning Resolution

- (d) Reduce the parking and loading requirements in any of the districts whenever the character of use of the building is such to make unnecessary the full provision of parking or loading facilities or where such regulations would impose unnecessary hardship on the use of the lot, as contrasted with merely granting an advantage or a convenience.
  - (e) The Board shall have the authority to grant an exception of a building devoted to a non-conforming use upon a lot occupied by such building where such extension is necessary and incidental to the existing use of such building; provided, however, that the floor areas of such extension not exceed in all one hundred per cent (100%) of the floor area of the existing building or buildings devoted to a non-conforming use and provided further that such extension or extensions shall be undertaken within five (5) years of the date when the use of such building became non-conforming.
  - (f) Provide exceptions to height limitations in accordance with Section 18.12 and 18.17.
5. Conditional Use Permits: To hear and decide only such conditional uses as the Board of Zoning Appeals is specifically authorized to pass on under the terms of this Resolution, or to deny conditional use permits when not in harmony with the intent and purpose of this Resolution. The following requirements shall be complied with prior to any approval of a conditional use permit by the Board of Zoning Appeals:
- (a) A written application for a conditional use is submitted indicating the section of this Resolution under which it is requested.
  - (b) A public hearing shall be held as specified in Section 24.07 of this Resolution.
  - (c) The Board of Zoning Appeals shall determine:
    - (i) Authority: If it has the authority to grant the request.
    - (ii) Adverse Affect: That the granting of the conditional use will not adversely affect the neighborhood in which the conditional use is to be located.
  - (d) The applicant shall submit a plan showing the location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, its site layout, and its relation to street giving access to it shall be such that vehicular traffic to and from the use will not be more hazardous than the normal traffic of the district, both at the time and as the same may be expected to increase

## Beavercreek Township Zoning Resolution

with increasing development of the community, taking into account vehicular turning movements in relation to routes of traffic flow, relation to street intersections, sight distances, and relations to pedestrian traffic.

- (e) Conditions: In granting any conditional use permit, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity to the provisions of this Resolution and the recommendation of the Zoning Commission. The Board of Zoning Appeals shall require a bond to assure conformance to such conditions and safeguards as may be necessary. Violation of such conditions and safeguards shall cause the performance bond mentioned above to be forfeited and shall be deemed a violation of this Resolution and punishable under Section 19.07. A conditional use permit shall expire in one (1) year after it is issued unless actual construction has taken place or is underway except as provided elsewhere in this Resolution. If a conditional use is approved, the plan must be followed. Any deviation requires reapplying for another conditional use permit.
6. Variances: To vary the strict application of any of the requirements of this Zoning Resolution whereby such strict application would result in practical difficulty or unnecessary hardship not economic in nature, that would deprive the owner of the reasonable use of the land or building involved but in no other case. Increased profitability is not a valid basis for legally granting a variance. Under no circumstances shall the Board grant a variance which will permit a use which is not permitted in the district involved. No non-conforming use of neighboring lands, structures or buildings in the same district and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
- a. Granting of Variances: No variance of the strict application of this Zoning Resolution shall be granted by the Board of Zoning Appeals until and unless the Board finds the following:
    - (i) There exists conditions and/or circumstances relating to the property that would create practical difficulties for the property owner if strict conformance to the requirements of this Zoning Resolution were required.
    - (ii) The variance to be granted is the minimum variance possible and other alternatives for resolving the conflict between the applicant's plan and the requirements of the Zoning Resolution are impractical or infeasible.

## Beavercreek Township Zoning Resolution

- (iii) The granting of the variance will be in harmony with the general spirit, intent and purpose of this Zoning Resolution.
  - (iv) The granting of the variance will not be injurious to surrounding properties and the general neighborhood or be otherwise detrimental to the public welfare.
  - (v) The granting of the variance will not result in a deleterious change in the character of the community.
  - (vi) The granting of the variance will not infringe upon the rights and quiet enjoyment of adjacent property owners and will not diminish property values, endanger the public safety, or public nuisance.
  - (vii) The granting of the variance is for a compelling reason and not simply because the applicant's plans conflict with Zoning Resolution requirements when reasonable alternatives are available.
  - (viii) The granting of the variance is not solely for economic benefit to the applicant.
- (b) Procedure for Consideration of Petitions for Variances:
- (i) The Board of Zoning Appeals shall make a finding that the reasons set forth in the application are valid and justify the granting of the variance, and that the items in (a) of this Subsection 6, above, have been fully satisfied.
  - (ii) Conditions: The Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Zoning Resolution. The Board may require a bond or irrevocable letter of credit to assure conformance to such conditions and safeguards as the Board may require.
  - (iii) Violation or noncompliance of such conditions and safeguards when such are made a part of the terms under which a variance is granted shall cause the bond or letter of credit mentioned in (ii), above, to be forfeited or called upon and shall further be deemed a violation of this Zoning Resolution and punishable under Section 19.07 of this Zoning Resolution.
  - (iv) Public Hearings: Prior to taking action on a request for a variance, the Board of Zoning Appeals shall hold a public hearing and give notice to property owners as required in Section 24.07 of this Zoning Resolution.

## Beavercreek Township Zoning Resolution

- (v) Period of Validity: No variance granted by the Board of Zoning Appeals shall be valid for a period longer than one (1) year from the date on which the Board grants the variance unless within such period: 1.) a zoning certificate is obtained and the construction, moving or remodeling of structure is started, or 2.) an occupancy permit is obtained and a use commenced. The Board may grant a maximum of two (2) extensions not exceeding six (6) months each, upon written application, without notice of Hearing.

### **22.08**

#### **EFFECTIVE DATE**

The Board of zoning Appeals shall make specific findings of fact upon which it based its order or decision. The Board's order or decision shall become final upon the signing of it by the Chairman of the Board and upon receipt by the applicant or appellant and appellee involved in the matter, of a copy of the Board's order or decision. Delivery of the Board's order or decision may be made by certified mail, personal or residence service by the Zoning Inspector or the Beavercreek Police Department, or other persons designated by the Board.