

## ARTICLE 16 - BOARD OF ZONING APPEALS

### 16.00 Duties of the Board of Zoning Appeals.

The Board of Zoning Appeals (BZA) has the following responsibilities:

- (A) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of zoning.
- (B) To consider variance requests. A variance or degree of change from the terms of the Zoning Resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship or practical difficulties, and so that the spirit of the resolution shall be observed and substantial justice done.
- (C) To grant conditional use approval. A conditional use of land, building, or other structures, is a specific use provided for in this Zoning Resolution .
- (D) To provide an interpretation of the Zoning Resolution as written.

### 16.01 Appointment

The Board of Trustees proceeding in accordance with the Ohio Revised Code shall create and establish a Township Board of Zoning Appeals. The Board of Zoning Appeals shall be composed of five (5) members who reside in the unincorporated territory of the Township and are appointed by the Trustees.

The Trustees shall appoint members 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.

The Board of Township Trustees may appoint two (2) alternate members to the Township Board of Zoning Appeals, for terms to be determined by the Board of Township Trustees. An alternate member shall take the place of an absent regular member at any meeting of the Township Board of Zoning Appeals. An alternate member shall meet the same appointment criteria as a regular member. When attending a meeting on behalf of an absent member, the alternate member may vote on any matter on which the absent member is authorized to vote. The Board of Trustees have the right to remove any alternate member of the Board with due cause.

### 16.02 Removal

Members of the Board of Zoning Appeals shall be removable for nonperformance of duty, misconduct in office or other cause by the Board, upon written charges being filed with the Board, after a public hearing has been held regarding such charges and after a copy of the charges has been served upon the member so charged at least ten (10) days prior to the hearing, either personally, by registered mail or by leaving such copy at the members usual place of residence. The member shall

be given an opportunity to be heard and answer such charges. Vacancies shall be filled by the Board of Trustees and shall be for the unexpired term.

#### **16.03 Organization and Rules**

- (A) The Board shall organize annually and elect a Chairman, Vice Chairman and Secretary from its membership, or a secretary, from outside the board may be appointed by the Trustees. The Board 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 Resolution.
- (B) The Chairman shall preside at all meetings of the Board. He or she shall decide on all points of order and procedure unless otherwise directed by a majority of the Board. The Chairman may appoint committees deemed necessary to carry out the business of the Board. The Chairman may administer oaths and compel the attendance of witnesses. The Chairman's signature shall be the official signature of the Board and shall appear on all decisions as directed by the Board.
- (C) The Vice Chairman shall serve in the absence of the Chairman. He or she shall have all the powers of the Chairman during the Chairman's absence, disability or disqualification.
- (D) The Secretary shall keep minutes of all meetings and shall be responsible for all official correspondence of the Board.

#### **16.04 Meetings**

An organizational meeting shall be held within the first ten (10) days of each year for the purpose of electing officers. Additional meetings of the Board 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.

#### **16.05 Voting**

- (A) All actions of the Board shall be taken by Resolution, the 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 Board shall vote on any matter in which he or she is personally or financially interested.

#### **16.06 Minutes and Records**

The Secretary of the Board 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.

#### **16.07 Witness and Oaths**

The Board shall have the power to subpoena and require the attendance of witnesses, administer oaths

and compel testimony and the production of books, tapes and other evidence pertinent to any issue before the Board.

#### **16.08 Department Assistance**

The Board may call on any applicable County or 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 Commission may make an analysis and present a report on any matter before the Board. Such report shall be considered by the Board at the time of hearing on the matter.

#### **16.09 Governing Guidelines**

- (A) The Board shall be governed by the provisions of all applicable State statutes, local laws, regulations and rules set forth herein.
- (B) The Board shall become familiar with all enacted Resolutions and laws of Eaton Township under which it may be expected to act as well as with applicable State enabling legislation.
- (C) The Board shall uphold the Zoning Resolution and Official Zoning Map of Eaton Township as adopted and shall serve primarily as a judicial review in the performance of its duties.
- (D) The Board 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 setting of conditions, alter the basic intent of the Zoning Resolution to be generally and equally applicable to all persons covered by a zoning District.

#### **16.10 Jurisdiction and Powers**

The Board 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 Board 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 regulations 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 Board by this Resolution, amendment thereto or by the general laws as set forth in the Ohio Revised Code as amended.
- (F) The Board 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 Resolution, but does have the power to act on those matters where the Resolution provides for judicial review, interpretation, variance or conditional use as defined in this Article.

#### **16.11 Public Hearings by the Board of Zoning Appeals**

The Board of Zoning Appeals shall hold a public hearing in a reasonable amount of time after receipt of an application for an appeal, variance, conditional use approval or interpretative matter coming before it.

#### **16.12 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 appeal or variance.

#### **16.13 Notice to Parties in Interest**

Before holding the public hearing, notice of such hearing shall be given in writing to the parties in interest 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 action and contain the same information as required of notices published in newspapers as specified in this Article.

#### **16.14 Appeals**

Appeals to the Board of Zoning 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 within twenty (20) days after the decision by filing with the Zoning Inspector and with the Board of Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is being taken. The Zoning Inspector shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

#### **16.15 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 Board of Zoning Appeals after the notice of appeal is filed with him or her, that by reason of facts stated in the application, a stay would, in his or 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 Board of Zoning Appeals or by a court of record on application, with a notice to the Zoning Inspector from whom the appeal is taken or due cause shown.

#### 16.16 Variances

The Board of Zoning Appeals may authorize upon appeal in specific cases such variance 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 hardship. No nonconforming use of neighboring lands, structures or buildings in the same District and no permitted or nonconforming use of land, structures or buildings in other Districts shall be considered grounds for issuance of a variance.

#### 16.17 Application and Standards for Variances

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

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

That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, 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 special privilege that is denied by this Resolution to other lands, structures or buildings in the same District.

A list of all property owners within, contiguous to and directly across the street from the property on which the Variance is being applied for. The list shall show the name and address of each property owner as listed on the County Auditor's current tax list.

#### 16.18 Conditions for Granting Variances

Variances may be granted by the Board 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 Board of Zoning Appeals through the Zoning Inspector by an aggrieved property owner. The factors to be considered and weighed in determining whether a property owner is seeking a variance has encountered practical difficulties in the use of his property include, but are not limited to:

##### **Use variances**

1. The Zoning Board of Appeals, on appeal from the decision or determination of the administrative

officer charged with the enforcement of such local law, shall have the power to grant use variances, as defined herein.

2. "Use variance" shall mean the authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

3. No such use variance shall be granted by a Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning resolutions for the particular district where the property is located,

- (a) the applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence;
- (b) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (c) that the requested use variance, if granted, will not alter the essential character of the neighborhood;
- (d) that the alleged hardship has not been self-created.

4. The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

### **Area Variances**

1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such local law, to grant area variances as defined herein.

2. "Area variance" shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

3. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:

- (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (c) whether the requested area variance is substantial;
- (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

4. The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

5. Imposition of conditions. The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the Zoning Resolutions, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

#### **16.19 Variations to Nonconforming Uses and Buildings**

The Board shall have no power to authorize, as a variance, the establishment of a nonconforming building or use, extensions of or changes in, nonconforming uses 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.

#### **16.20 Conditions Imposed By the Board**

The Board shall have the power to impose additional conditions and safeguards other than those stated in the Zoning Resolution when granting variance 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 16 of this Resolution.

#### **16.21 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. In either of these events, the Zoning Inspector shall give 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.

#### **16.22 Procedure and Requirements for Approval of Conditional Uses**

An Application for Conditional Use Permit shall be filed with the Zoning Inspector, by the owner of the property for which such conditional use is proposed. At a minimum, the application shall contain the following information:

- (A) Name, address and telephone 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 the 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 Board may require to determine if the proposed conditional use meets the intent and requirement of this Resolution.
- (G) 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 general standards applicable to all conditional uses.
- (H) Such other information as may be required.

#### 16.23 **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 services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- (E) Will not create excessive additional requirements at public cost for public 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 or historic feature of major importance.

#### 16.24 **Supplementary Conditions and Safeguards**

In granting any conditional use, the Board 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.



#### **16.25 Expiration of Conditional Use 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.

#### **16.26 Decisions of the Board of Zoning Appeals**

The Board 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. The decision shall state any conditions and safeguards necessary to protect the public interest. In rendering a decision, the Board shall be guided by standards specified in this Resolution. 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 information from the Zoning Inspector, on the case based upon an inspection of the parcel in question.
- (E) The Board should view the site or conditions when complicated conditions warrant.

#### **16.27 Appeal to Courts**

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