

## ARTICLE 14

### ZONING BOARD OF APPEALS

#### SECTION 1401 JURISDICTION

- A. The Township of Fulton Zoning Board of Appeals (“ZBA”) shall hear and decide questions that arise in the administration of this Ordinance. These questions generally fall into the following categories:
1. Interpretation of zoning district boundaries and provisions of this Ordinance.
  2. Hear and decide appeals from and review an order, requirement, decision, or determination made by an administrative official or body charged with the enforcement of this Ordinance.
  3. Authorize specific variances from the provisions of this Ordinance.
  4. For purposes of consideration under this Ordinance, review a petitioned or described use that is not specifically listed as a permitted use or as a use permitted by special land use approval in one or more zoning districts.
  5. Hear and decide matters upon which it is required to pass under other provisions of this Ordinance.
- B. The ZBA shall have five (5) members of which a majority of the maximum number of members must be present to conduct business. A majority of the maximum number of members is also required to take action to approve, approve with conditions, deny or to postpone for future consideration.
- C. Before a requested interpretation, appeal or variance from an individual or entity (other than Planning Commission or Zoning Administrator) is processed, fees shall be paid as established by the Township Board. Fees shall be in the amount sufficient to cover reasonable costs incurred pursuant to the processing of any appeal, including but not limited to the costs of advertisements, investigations, professional review and any per diem amount established for members of the ZBA.

#### SECTION 1402 INTERPRETATION

- A. The ZBA shall have the authority to interpret the precise location of zoning district boundaries and any provision of this Ordinance upon request by the Planning Commission, Township Board or person having vested interest in property affected by such district boundary or provision of this Ordinance.

1. Interpretation of the precise location of zoning district boundaries shall be in accordance with the provisions and direction outlined in Section 403, herein.
  2. Interpret this Ordinance when it is alleged that certain provisions are not clear or could have more than one meaning.
    - a. In deciding upon such request the ZBA shall ensure that its interpretation is consistent with the intent and purpose of the Ordinance, the Article in which the provision in question is contained, and all other relevant provisions of this Ordinance.
    - b. The Board of Appeals shall also review the requested interpretation and decisions made by other public bodies and officials in the administration of this Ordinance where the subject provision would have had effect.
- B. A request for interpretation shall be noticed pursuant to Section 206, herein. Interpretations specifically related to a particular property require public notice of owners and occupants of adjacent property pursuant to Section 206.C.

## **SECTION 1403 APPEALS**

- A. The ZBA shall hear and decide appeals from and review an order, requirement, decision, or determination made by an administrative official or body charged with the enforcement of this Ordinance unless otherwise noted herein.
1. A notice of appeal shall be filed within thirty (30) days of occurrence of the action being appealed with the Zoning Administrator. Such petition shall state the reasons for the appeal and the order or ruling appealed from and, where applicable, the legal description of the property involved. The Zoning Administrator shall forward all records to the ZBA for their consideration of facts.
  2. Before such an appeal shall be processed, fees shall be paid as established by the Township Board. Fees shall be in the amount sufficient to cover reasonable costs incurred pursuant to the processing of any appeal, including but not limited to the costs of advertisements, investigations, professional review and any per diem amount established for members of the ZBA.
  3. An appeal stays all proceedings in furtherance of the action appealed from unless the officer or decision-making body from whom the appeal is taken certifies to the ZBA that by reason of fact, a stay would cause imminent peril to life and property.
  4. After an appeal has been scheduled for hearing, the Township Clerk shall cause notice of said hearing to be served personally or by first class mail

addressed to the applicant at the address on the application at least fifteen (15) days prior to the date of the hearing. Such notices shall state the time, place, and object of the hearing. The Zoning Administrator shall submit with the appeal all related information held in their record concerning the appeal.

5. The ZBA shall review and make final determination on properly filed appeals. The ZBA has the power to sustain, reverse or remand for further consideration the decision of any administrative official or body when it is found that the decision is inconsistent with the provisions of this Ordinance or that there was an error of fact involved in the decision. In making this determination, the ZBA shall examine any application, statement of fact, testimony and all accompanying data as well as the records of the administrative official or body.
  6. The ZBA shall not have jurisdiction to review the action of the Planning Commission and Township Board in the approval or denial of special land uses or planned unit developments.
- C. An appeal pursuant to this section shall be noticed pursuant to Section 206, herein. Please note that appeals specifically related to a particular property will require public notice of owners and occupants of property pursuant to Section 206.B.

#### **SECTION 1404 VARIANCES**

- A. The ZBA may authorize specific variances from requirements of the Ordinance, with the exception of a use variance, provided that the basic conditions listed herein are substantially and satisfactorily satisfied or determined not to be applicable.
1. Practical difficulties prevent carrying out the strict letter of this Ordinance. These practical difficulties shall not be deemed economic as related to the particular individual petitioning for such variance, but shall be evaluated in terms of the use of a particular parcel of land because of unique circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved.
  2. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner or those having interest from using the property for a permitted purpose, or would present a practical difficulty.
  3. The variance requested is the minimum amount necessary to relieve the practical difficulty in or with respect to the property.
  4. The circumstances causing the need for variance do not result from previous actions by the applicant.

5. The variance is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.
  6. The request for variance is consistent with the general purpose and intent of this Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, use and enjoyment of property in the neighborhood or district.
  7. The request for variance relates only to property owned by the applicant or where the applicant has legitimate and legal interest.
- B. A variance pursuant to this section shall be noticed pursuant to Section 206, herein.
- C. The approval of a variance shall not constitute a use variance that permits the establishment of any use which is not permitted by right within the zoning district where located, or any use for which special land use approval is required.
- D. In granting any variance, the ZBA may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards shall be deemed a violation of this Ordinance and shall automatically invalidate the permit.
- E. Each variance granted under the provisions of this Ordinance shall become null and void unless:
1. The construction authorized by such variance must be commenced within six (6) months of granting of the variance.
  2. Approval of variances requesting or requiring land division or combination must take place within six (6) months of granting of the variance.
- F. No application for a variance which has been denied, wholly or in part, by the ZBA shall be resubmitted for a period of one (1) year from the date of the last denial, except on proof of changed conditions or identification of a falsehood previously relied upon in the decision-making process.

**SECTION 1405      OTHER RESPONSIBILITIES OF THE BOARD OF APPEALS**

- A. The ZBA shall hear and decide matters upon which it is required to pass under other provisions of this Ordinance.