

ARTICLE XXVIII - BOARD OF ZONING APPEALS

Section 28.01 - BOARD OF ZONING APPEALS: A Township Board of Zoning Appeals is hereby created. Said Board of Zoning Appeals shall be composed of five (5) members who shall be appointed by the Board of Township Trustees and who shall be residents of the unincorporated territory of the Township included in the area zoned by this Zoning Resolution. The terms of all members shall be five (5) years and so arranged that the term of one member will expire each year. Each member of the Board of Zoning Appeals shall serve until his/her successor is appointed and qualified. Members of the Board of Zoning Appeals shall be removable for the reasons specified and in compliance with the procedure established in Chapter 519 of the Ohio Revised Code. Vacancies shall be filled by the Board of Township Trustees and shall be for the unexpired term.

Section 28.02 - ORGANIZATION: The Board of Zoning Appeals shall organize, elect a chairperson and vice-chairperson, and adopt rules in accordance with the provisions of this Zoning Resolution. Meetings of the Board of Zoning Appeals shall be held at the call of the Chairperson and at such other times as the Board of Zoning Appeals may determine. The Chairperson or, in his/her absence, the acting Chairperson may administer oaths, and the Board of Zoning Appeals may compel attendance of witnesses. All meetings of the Board of Zoning Appeals shall be open to the public. The Board of Zoning 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 actions, all of which shall be immediately filed in the office of the Board of Township Trustees at the Township Hall. Attendance of three members shall constitute a quorum. The Board of Township Trustees, the township Clerk and the Zoning inspector shall be notified in advance of all meetings conducted by the Board.

Section 28.03 - COMPENSATION AND EXPENSES: The members of the Board of Zoning Appeals may be allowed their expenses or such compensation, or both, as the Board of Township Trustees may approve and provide. The Board of Zoning Appeals may, within the limits of moneys appropriated by the Board of Township Trustees for the purpose, employ such executives, professionals, technical assistants and/or other assistants as it deems necessary.

Section 28.04 - POWERS OF THE BOARD: The Township Board of Zoning Appeals may:

- a) 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 Section 519.02 to 519.25 of the Ohio Revised Code or of any resolution adopted pursuant thereto.
- b) Authorize, upon appeal, in specific cases, such variance 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, and so that the spirit of the Resolution shall be observed and substantial justice done.
- c) Grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates are provided for in the Zoning Resolution.
- d) Revoke an authorized conditional use permit for the extraction of minerals if any condition of the certificate is violated.

The Board of Zoning Appeals shall notify the holder of the permit by certified mail of its intent to revoke the permit under division (d) of this section and of his/her right to a hearing before the Board within thirty (30) days of the mailing of the notice, if he/she so requests. If the holder requests a hearing, the Board shall set a time, date and place for the hearing and notify the holder.

At the hearing, the holder may appear in person and/or be represented by his/her attorney or other representative, or he/she may present his position in writing. He/she may present evidence and examine witnesses appearing for or against him/her. If no hearing is requested, the Board may revoke the permit without a hearing. The authority to revoke a permit is in addition to any other means of zoning enforcement provided by law.

In exercising the above mentioned powers, such Board may, in conformity with such sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end has all powers of the officer from whom the appeal is taken.

Section 28.05 - PROCEDURE ON HEARING APPEALS: Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer 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 from whom the appeal is taken and with the Board of Zoning Appeals a notice of appeal specifying the grounds thereof. The Zoning Inspector from whom the appeal is taken shall forthwith transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken. The Board of Zoning Appeals shall fix a reasonable time for the hearing of the appeal, give ten (10) days written notice by first class mail to the parties in interest, give notice of such public hearing by one publication in a newspaper of general circulation within the township at least ten (10) days prior to the date of such hearing, and decide the same within a reasonable time after it is submitted. At the hearing, any party may appear in person or by attorney.

Section 28.06 - PROCEDURE ON APPLICATION FOR VARIANCE: The Township Board of Zoning Appeals, appointed by the Township Board of Trustees, may, upon application, grant such variances from the provisions or requirements of this Resolution as will not be contrary to the public interest.

Where, by reason of the exceptional narrowness, shallowness or unusual shape of a specific lot, or by reason of exceptional topographic conditions or other extraordinary situations or conditions of such lot, or other good cause shown, and not as a result of the actions of the applicant or of the use or development of a lot immediately adjoining the lot in question, the literal enforcement of the requirements of this Resolution would cause unnecessary hardship, the Board shall have power to authorize a variance from the terms of this Resolution.

- a) **Public Notice** - Written application for a variance shall be made to the Township Zoning Inspector who shall transmit said application to the Board of Zoning Appeals. The Board of Zoning Appeals shall give written notice by first class mail to all owners of land within two hundred (200) feet of the exterior boundaries of the land for which a variance is requested. An application for a variance shall be advertised at least once, ten (10) days in advance of the time set for the public hearing, in newspapers of general circulation within the township.
- b) **Hearing & Decision** - A variance from the terms of this Resolution shall not be granted by the Board of Zoning Appeals unless the applicant has provided sufficient evidence to warrant the granting of a variance. The burden of proof for granting a variance shall rest with the applicant. In granting any variance, the Board of Zoning Appeals may impose such conditions, safeguards and restrictions as may be necessary in order to reduce or minimize potentially injurious effects of such variance upon other property in the neighborhood and to carry out the general purpose and intent of this Resolution. Violation of such conditions, safeguards and restrictions, when made part of the terms under which the variance is granted, shall be deemed a violation of this Resolution and may be pursued as such. The Board of Zoning appeals shall not grant a variance unless it shall, in each specific case, determine that the variance will not be contrary to the public interest and is justified due to special conditions, that the literal enforcement of this Resolution

will result in unnecessary hardship and that the spirit of this Resolution will be observed and substantial justice done.

- c) Form of Application - All applications for variances under this section shall be submitted on such forms as designated and approved by the Township Trustees. No application will be considered unless the same is fully completed and accompanied by all required information listed on said application.

Section 28.07 - PROCEDURE ON APPLICATION FOR CONDITIONAL USE PERMIT: The owner of any land or building within a zoning district within the township may apply to the Board of Zoning Appeals for authority to carry out any use designated as a Conditional Use within that district.

- a) Application - An application for a Conditional Use permit shall be submitted on such forms as designated and/or approved by the Township Trustees. No application shall be considered unless the same is fully completed and accompanied by all required information on said application together with plot plans or drawing as necessary.
- b) Hearing - The application shall be transmitted to the Board of Zoning Appeals who shall cause a public hearing to be held.
- c) Notice - Notice of the application for a Conditional Use permit and the hearing thereon shall be given to all property owners within two hundred (200) feet of the premises on which the use is planned. Notice shall be given by first class mail. In addition thereto, one notice of said meeting shall be published in a newspaper of general circulation within the township not less than ten (10) days prior to the scheduled hearing.
- d) Decision - The Board of Zoning Appeals shall make a decision within a reasonable period of time after the hearing. In approving a Conditional Use Permit, the Board of Zoning Appeals may impose such conditions, safeguards and restrictions as may be necessary to comply with the standards set out in Section 28.12 of this Article in order to reduce or minimize potentially injurious effects upon other property in the neighborhood, and to carry out the general purpose and intent of this Resolution. Violation of such conditions, safeguards and restrictions, when made part of the terms under which the Conditional Use Permit is granted, shall be deemed a violation of this Resolution and may be pursued as such.

Section 28.08 - DECISION OF BOARD: The concurring vote of three (3) members of the Board of Zoning Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under this Resolution, or to effect any variance in the application of this Resolution. Every action shall be accompanied by a finding of fact, based on testimony and evidence and specifying the reason for a granting or denying of the request. A copy of the Board's decision shall be mailed to the applicant by first class mail.

Section 28.09 - PUBLIC INFORMATION: The record of the Board's proceeding in any matter shall be kept on file in the township office of the Township Hall, subject to the order of the Delaware County Common Pleas Court, and available for inspection by the public.

Section 28.10 - RECORD: For any hearing at which the applicant desires a record to be made, the applicant shall give notice not less than ten (10) days prior to the date scheduled for said hearing to the Zoning Secretary requesting that a court reporter be retained to make such record, and the applicant shall deposit with his/her request cash in the amount established by the Trustees to be used to defray the expenses of making a record. In all hearings wherein no request has been made for a record, the

notes of the Zoning secretary of the Board of Zoning Appeals shall serve as the sole transcript of such hearing, unless the Board orders otherwise.

Section 28.11 - FEES TO ACCOMPANY NOTICE OF APPEAL OR APPLICATION:

FOR VARIANCE OR CONDITIONAL USE: For all actions of the Board of Zoning Appeals, the Board of Township Trustees shall, from time to time, establish fees to be deposited with each application. Such fees shall be required generally for each application to defray the costs of advertising, mailing and other expenses.

Section 28.12 - STANDARDS GOVERNING APPROVAL OF CONDITIONAL USE PERMITS:

The Board of Zoning Appeals shall not grant any conditional use permit under this Zoning Resolution unless it finds and determines that all of the following requirements are satisfied:

- a) The proposed use is in harmony with the purpose and intent of this Zoning Resolution and with the comprehensive plan of Concord Township.
- b) The proposed use is consistent with the orderly and efficient development of Concord Township, and when considered in conjunction with existing development and future development permitted under this Zoning Resolution of properties in the general area in which the proposed use is to be located, the proposed use can be adequately served with public services and facilities including public schools, police and fire protection, public and private water resources and other utilities, and other public improvements.
- c) The proposed use will not adversely affect, be injurious to, or be detrimental to the use or properties in the general area in which the proposed use is to be located.
- d) The proposed use will not adversely affect or depreciate the market value of properties in the general area in which the proposed use is to be located.
- e) The proposed use will not cause objectionable noise, vibrations, fumes, odors, dust, or glare or cause or have an adverse environmental impact on the general area in which the proposed use is to be located.
- f) The proposed use will comply with all appropriate zoning, building, and health regulations for the district in which the proposed use is to be located and with any and all additional regulations imposed by the Board of Zoning Appeals that it deems necessary for the protection of the residents of or property in the general area in which the proposed use is to be located.
- g) The proposed use is a conditional use within the District in which it is proposed and complies with all applicable regulations.