

**CHAPTER 640
Appeals and Variances**

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SECTION 640.01 APPEALS TO THE BOARD OF ZONING APPEALS.

Appeals to the Board of Zoning Appeals may be taken by any person, firm or corporation, or by any officer, board or department of the Township, deeming himself or itself to be adversely affected by any decision or action of the Zoning Inspector or by any administrative officer deciding matters relating to this Zoning Resolution.

SECTION 640.02 INITIATION OF APPEAL.

Notice of appeal shall be filed with the officer from whom the appeal is taken and with the secretary of the Board of Zoning Appeals within 20 days after the date of any adverse order, requirement, decision, or determination. Such written notice of appeal shall specify therein the grounds and reasons for the appeal. The officer from whom the appeal is taken shall transmit to the secretary of the Board of Zoning Appeals all data pertaining to the subject matter upon which the action so appealed was taken.

SECTION 640.03 PUBLIC HEARING BY THE BOARD. (Revised 3/23/21)

Upon receipt of the material related to the proposed action, the Board of Zoning Appeals shall set a date for a public hearing to consider the appeal. Notice of such hearing stating the time, place, and object of the hearing shall be sent by first class mail, addressed to the parties making the request for appeal, at least 10 days prior to the date of the scheduled hearing. Not less than 10 days prior to the date set for such hearing or appeal, written notice of such hearing shall be sent by first class mail to any person, firm, or corporation owning premises located within 500 feet of the property line to which such appeal or application relates and to adjacent property owners other than the applicant regardless of the distance when the applicant owns separate parcel(s) within the 500 feet radius. A “certificate of mailing” shall be obtained from the post office for each mailing. Further notice shall be given in one or more newspapers of general circulation in the Township at least 10 days before the date of said public hearing. Failure of delivery of such notice shall not invalidate action taken on such application. The Board may recess such hearings from time to time, and, if the time and place of the continued hearing is publicly announced at the time of

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adjournment, no further notice shall be required. Any person may appear before the Board at the public hearing on the application and state their reasons for or against the proposal.

SECTION 640.04 STAY OF PROCEEDINGS.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Inspector certifies to the Board of Zoning Appeals after the notice of the appeal has been filed, that by reason of facts stated in the application, a stay would, in his/her opinion, cause imminent peril to life or property. In such a case, proceedings shall not be stayed by other than a restraining order granted by either the Board of Zoning Appeals or a court having lawful jurisdiction.

SECTION 640.05 REVIEW OF APPEAL.

The Board of Zoning Appeals shall review the appeal. To aid in their review, the Board of Zoning Appeals may transmit the application to appropriate township departments and professional consultants for review and comment. Any reports, comments, or expert opinions shall be compiled by the Zoning Inspector and transmitted to the Board of Zoning Appeals prior to the time of the Board's review. The cost of the review by a consultant shall be the expense of the applicant.

SECTION 640.06 DECISION OF THE BOARD.

Within its powers, the Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and to that end the Board of Zoning Appeals shall have all of the powers of the officers from whom the appeal is taken, and it may direct the issuance of a certificate.

- A. The Board shall render a decision on the appeal without unreasonable delay.
- B. If the Board fails to act within 60 days from the date the appeal was received by the Board, or an extended period as may be agreed upon, the appellant may assume the appeal has been denied.
- C. Within 5 days of the Board's decision, the secretary of the Board shall send written notification of the decision to the appellant and the Zoning Inspector.
- D. Once the appellant has received the Board's decision, he/she may submit an application for a zoning certificate or conditional zoning certificate that complies

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with the Board of Zoning Appeal's decision. A copy of the Board of Zoning Appeal's decision shall be attached to the application.

SECTION 640.07 VARIANCES AS A TYPE OF APPEAL.

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 according to the following procedures:

- A. Application Requirements. Eight copies of an application for a variance and payment of the required fee shall be filed with the Zoning Inspector for review by the Board of Zoning Appeals. The application shall include the following items necessary to convey the reason(s) for the requested variance:
 - 1. The completed application form, notarized, including the name, address and phone number of applicant(s);
 - 2. Proof of ownership, legal interest or written authority;
 - 3. A site plan of the lot drawn to scale showing the exact dimensions and area of the lot to be built upon or utilized. Plans shall show dimensions, location of existing and proposed buildings, and any significant natural or topographic features;
 - 4. Architectural plan including floor plans, elevations and other architectural drawings at a reasonable scale to convey the need for the variance;
 - 5. Description or nature of variance requested and narrative statements establishing and substantiating the justification for the variance pursuant to subsection B below;
 - 6. Any other documents deemed necessary by the Zoning Inspector.

Upon receipt of a written request for variance, the Chair or designated representative of the Board of Zoning Appeals shall within a reasonable amount of time make a preliminary review of the request to determine whether such application provides the information necessary for review and evaluation. If it is determined that such application does not provide the information necessary for such review and evaluation, the Chair or designated representative of the Board of

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Zoning Appeals shall so advise the applicant of the deficiencies and shall not further process the application until the deficiency is corrected. *(Amended 9/8/15)*

- B. Review by the Board of Zoning Appeals. According to the procedures established for appeals in Section 640.03, the Board shall hold a public hearing and give notice of the same. The Board shall review each application for a variance to determine if it complies with the purpose and intent of this Resolution and evidence demonstrates that the literal enforcement of this Resolution will result in unnecessary hardship or practical difficulty.
 - 1. Area Variance. The following factors shall be considered and weighed by the Board in determining practical difficulty for an area variance:
 - a) Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;
 - b) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
 - c) Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
 - d) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
 - e) Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup;
 - f) Whether special conditions or circumstances exist as a result of actions of the owner;
 - g) Whether the property owner's predicament can feasibly be obviated through some method other than a variance;
 - h) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance; and

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- i) Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.
- 2. Use Variance. In order to grant a use variance, the Board of Zoning Appeals shall determine that a literal enforcement of this Zoning Resolution will result in unnecessary hardship to the applicant and such hardship is demonstrated by clear and convincing evidence as to all of the following criteria:
 - a) The property cannot be put to any economically viable use under any of the permitted or conditional uses in the zoning district.
 - b) The variance requested stems from a condition that is unique to the property at issue and not ordinarily found in the same zoning district;
 - c) The hardship condition is not created by actions of the applicant;
 - d) The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
 - e) The granting of the variance will not adversely affect the public health, safety or general welfare; and
 - f) The variance will be consistent with the general spirit and intent of the Zoning Resolution.
- C. Requests for Additional Information. The Board of Zoning Appeals may request that the applicant supply additional information that the Board deems necessary to adequately review and evaluate the request for a variance.
- D. Additional Conditions and Safeguards. The Board may further prescribe any conditions and safeguards that it deems necessary to ensure that the objectives of the regulations or provisions to which the variance applies will be met.
- E. Limitations on the Granting of Variances. Any variance approved shall be the minimum necessary.
- F. Action by the Board. The Board shall either approve, approve with supplementary conditions as specified in subsection D above, or disapprove the request for variance according to the procedures established for appeals in Section 640.06. The Board shall further find that the reasons set forth in the application justify the

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granting of the variance that will make possible a reasonable use of the land, building or structure.

- G. Reapplication. If a variance has been denied by the Board, the Board need not reconsider the same request for a variance if resubmitted within one year after the date of the Board's decision, unless the underlying conditions have substantially changed.

- H. Term and Extension of Variance. *(Amended 9/10/19)* There shall be no modification of variances except by further consideration of the Board of Zoning Appeals. Area variances shall not once they have been granted by the Board of Zoning Appeals. Use variances shall expire one year from the date of their enactment, unless prior thereto, construction has begun in accordance with the granted variance. Construction is deemed to have begun when all necessary excavation and piers or footers of the structure included in the application have been completed. Requests for renewal of expired variances shall be considered the same as an application for a variance and shall meet all requirements for application and review pursuant to this Section.