

ARTICLE XVI

BOARD OF ZONING APPEALS

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Section 1. POWERS AND DUTIES

The Board of Zoning Appeals shall have the following powers and it shall be its duty to hear and decide:

1. Appeals.

Appeals shall be heard where it is alleged there is error of law in any order, requirement, decision or determination made by the Zoning Inspector in the enforcement of this Resolution or any amendments thereto. The Board of Zoning Appeals is authorized to interpret the Zoning Map and to pass upon disputed questions of lot lines or district boundary lines and similar questions in such a way as to carry out the intent and purpose of the plan. The Board of Zoning Appeals is authorized to determine on appeal whether an industry should be prohibited within the "M-1" or "M-2" Industrial Districts because of the methods by which it would be operated and/or because of its effect upon uses within surrounding zoning districts.

- A. Appeals may be taken to and before the Board of Zoning Appeals by any person aggrieved, or by an officer of the Township. Such appeal shall be taken within twenty (20) days by filing with the officer from whom the appeal is taken, and with the Board, a notice of appeal and specifying the grounds thereof. The office or department from which the appeal is taken shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.
- B. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Inspector shall certify to the Board of Zoning Appeals after the notice of appeal shall have been filed with it that by reason of facts stated in the certificate, a stay would, in his opinion, cause an imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by a court of equity after notice to the officer from whom the appeal is taken and on due cause shown.
- C. The Board of Zoning Appeals shall fix a reasonable time for the hearing of the appeal or other matters referred to it and give at least ten (10) days notice thereof to the parties in interest and decide the same within a reasonable time. Upon the hearing, any party may appeal in person or agent or by attorney. The Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and shall make such order, requirement decision or determination as in its opinion ought to be made in the premises; and that end, shall have all powers of the Zoning Inspector from whom the appeals is taken. Any party adversely affected by a decision of the Board may appeal to the Court of Common Pleas of the County, on the ground that the decision was unreasonable or unlawful.

2. Variance Appeals

The Board of Zoning Appeals shall have the authority to grant the following variations upon appeal upon finding the following considerations have been satisfied:

- A. A variation in the area, yard, and height requirements of any district may be permitted where there are unusual and practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions, provided such variations will not seriously affect any adjoining property or the general welfare.
- B. A variation to the strict application of the terms of this Resolution relating to the permitted use of land where there are unusual and practical difficulties or particular hardship and where such variations of the strict application of the terms of this Resolution are in harmony with the general purpose and intent of this Resolution; but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the zoning plan as established by this Resolution, and at the same time, the surrounding property will be properly protected.
- C. A variation in the extension or completion of a building devoted to a nonconforming use upon a lot occupied by such building, or on a lot adjoining, provided that such lot was under the same ownership as the lot in question on the date such building became nonconforming, and where such extension is necessary and incidental to the existing use of such building; provided, however, that:
 1. The floor areas of such extension shall not exceed in all one hundred (100) percent of the floor area of the existing building or buildings devoted to a nonconforming use; and
 2. Such extension or extensions shall be undertaken within five (5) years of the date when the use of such building became nonconforming.
- D. A variation to 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 on the map aforesaid.
- E. A variation in 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.
- F. A variation in the reconstruction of a nonconforming 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 continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly.
- G. Waiver or reduction of the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship on the use of the lot, as contrasted with merely granting an advantage or a convenience.
- H. A variation to permit land within three hundred (300) feet of a multiple dwelling to be improved for the parking spaces required in connection with a multiple dwellings, but only when there is positive assurance that such land will be used for such purpose during the existence of the multiple dwelling.

3. Conditional Use Review

The Board shall have the power to hear and decide applications for conditional uses in accordance with the provisions of this Resolution.

- A. In considering an application for a conditional use, the Board shall determine that the use will not:
 1. Impair an adequate supply of light and air to adjacent property;
 2. Unreasonably increase the congestion in public streets;
 3. Increase the danger of fire or endanger the public safety;
 4. Unreasonably diminish or impair established property values within the surrounding area, giving due regard to the nature and condition of all adjacent uses and structures; and
 5. In any other respect impair the public health, safety, convenience, comfort, prosperity, or general welfare of the inhabitants of the portion of the Township to which this Resolution applies.
- B. In authorizing a conditional use, the Board may impose such requirements and conditions with respect to location, construction, maintenance and operation--in addition to those expressly stipulated in this Resolution for the particular conditional use--as the Board may deem necessary for the protection of adjacent properties and the public interest.

Section 2. FEES

Each applicant for an appeal, variance or conditional use shall pay upon filing application with the Zoning Inspector. Said fee shall be established from time to time by Resolution adopted by the Middleton Township Board of Trustees. The Zoning Inspector shall forthwith pay over to the Township Clerk to the credit of the General Fund of the Township. Said fees are to defray the costs of investigation, legal notices and maintenance of records of the Township. Such fees are non-refundable and each action requested of the Board of Appeals shall require separate application and payment of fees.

Section 3. ORGANIZATION AND PROCEDURES

1. Membership.

There is hereby created a Township Board of Zoning Appeals. The Township Trustees shall appoint five (5) members, who shall be residents of the unincorporated area of the Township included in the area zoned.

A. Terms.

The terms of each member shall be five (5) years, beginning January 1st, except that the terms of the original members shall be of such length and so arranged that the term of one (1) member will expire each year. Each member shall serve until his successor is appointed and qualified.

B. Alternates.

The Board of Township Trustees may appoint two alternate members to the Board of Zoning Appeals, for terms to be determined by the Township Trustees. An alternate member shall take the place of an absent regular member at any meeting of the Board. An alternate member shall meet the same membership 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. Each alternate member shall serve until the member's successor is appointed and qualified.

C. Vacancies and Removal.

Vacancies shall be filled by the Board of Township Trustees and shall be for the respective unexpired term. 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 member's usual place of residence. The member shall be given an opportunity to be heard and answer such charges.

2. Officers.
 - A. The Board of Zoning Appeals shall organize annually and elect a Chairperson and Vice-Chairperson from its membership. The Township Board of Trustees may appoint a Secretary to serve the Township Board of Zoning Appeals.
 - B. The Chairperson shall preside at all meetings of the Board of Zoning Appeals, decide on all points of order and procedure, unless otherwise directed by a majority of the Board. The Chairperson may appoint committees deemed necessary to carry out the business of the Board. The Chairperson may administer oaths.
 - C. The Vice-Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during an absence, disability or disqualification.
 - D. The Secretary shall keep minutes of all meetings and shall be responsible for all official correspondence of the Board. The Secretary's signature shall be the official signature of the Board and shall appear on all decisions as directed by the Board.
3. Proceedings of the Board of Zoning Appeals
 - A. The Board shall act by resolution in which three (3) members must concur.
 - B. 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. Meetings shall be held at the call of the Chairperson and at such other times as the Board may determine. All meetings shall be open to the public.
 - C. 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 actions all of which shall be a public record and filed in the office of the Board of Trustees.

Section 4. PUBLIC HEARING PROCEDURE

Hearings shall follow adjudicatory hearing procedures as outlined in the Ohio Revised Code.

1. Hearings Shall be Open to the Public
 - A. The hearings of the Board of Zoning Appeals shall be public. However, the Board may go into executive session for discussion, but not for vote, on any case before it.
 - B. Parties in Interest.
The Board shall hear the intervention of any owner of property adjacent to, in the rear of, or across the street from a lot as to which the granting of any building permit is pending and shall also hear any other parties in interest. Third parties without legal interest in the subject matter who could not assert a claim, make a defense, control proceedings, examine witnesses, or appeal from the judgment are not required to be heard.
2. Format for the Hearing.
In order to insure a fair and objective public hearing, the following procedure shall be followed by the Board of Zoning Appeals:
 - A. Open the Hearing.
The chairperson shall open the hearing and advise the participants that *Robert's Rules of Order* shall cover parliamentary issues. The chairperson shall summarize the hearing procedure, announce the subject, and summarize the application. If legal council is not present, the Chairman shall announce that if the Board of Zoning Appeals is in doubt as to how to proceed on a legal issue, it shall recess for an opinion by its own council. At this time, recognition of the required public notice publication should be made for the record.

B. Call for Abstentions and Ex Parte Contacts

1. The chairperson shall call for and recognize abstentions by any member of the Board of Zoning Appeals in the event that there is a personal conflict of interest and the Member shall be responsible for explaining the validity of the nature of the conflict of interest.
2. The chairman shall call for acknowledgment of any prior ex parte (off-the-record) communications by members of the Board of Zoning Appeals.
 - a) The official receiving the ex parte communication should summarize the nature of an oral communication on the record of the hearing so that its substance may be contested in public by other parties.
 - b) Ex parte written materials received by members of the Board shall be included in the agenda of the hearing or announced by the chairman at the hearing so that all parties can review them.
 - c) Ex parte communications do not need to be acknowledged at the hearing when they have been made public by sending a copy or a summary of the nature of an oral communication to the Secretary of the Board and that the communication was timely placed in the applicant's case file for public inspection and to parties required to receive notice by mail.

C. Oath of Witnesses.

The Board shall have the power to subpoena witnesses, administer oaths, and punish for contempt, and may require the production of documents, under such regulations as it may establish. All testimony shall be taken under oath. The chairperson shall direct all Township staff and persons wishing to present testimony to stand and be sworn at one time. Then, as each person is later recognized to present testimony, the chairperson shall only need ask witnesses to identify themselves, their residence or business address, and the fact they have been sworn in.

D. Staff Report and Summary.

The chairperson shall direct the Zoning Inspector or other Township staff to present a report on the subject land use. Visual aids, such as flip charts, maps, or projected images should be employed to make or clarify critical points.

E. Proponents Recognized.

The chairperson shall seek testimony from the applicant and those favoring the proposal. Presentation time shall be generally limited to three (3) to five (5) minutes for each individual.

F. Examination of Proponents Through the Chair.

The chairperson shall recognize members of the Board of Zoning Appeals with questions regarding the presentation of the proponent. All questions and responses shall be directed through the chairperson.

1. Direct testimony shall be taken in the form of reliable, probative, and substantial evidence from experts and non-experts.
2. Members of the Board should probe views of witnesses to separate fact from opinion and lay opinion from expert opinion.
3. Hearsay evidence may not be considered or presented in an arbitrary manner. Factors bearing on arbitrariness include whether any party objected to the hearsay; whether both sides take advantage of liberalized evidentiary rules regarding hearsay; whether the hearsay carried an indicia of reliability; and whether the Board blindly accepted the accuracy of the hearsay evidence.

G. Opponents Recognized.

The chairperson shall seek testimony from those opposed to the proposal. Individuals who were entitled to receive notice of the hearing or groups represented by spokespersons shall be recognized first. The same amount of time allowed each proponent should be afforded each opponent.

- H. Examination of Opponents through the Chair.
The chairperson shall recognize members of the Board with questions regarding the opponents' presentation. All questions and responses shall be directed through the chairperson.
 - I. Rebuttal and Cross-examination of Witnesses.
The chairperson shall recognize both opponents and proponents who desire to submit rebuttal testimony or to cross-examine witnesses. All testimony shall be subject to cross-examination. All rebuttal comments or questions to and from members of the hearing body shall be directed through the chairperson. The proponents shall have the final opportunity for rebuttal.
 - J. Continuation of the Hearing.
If pertinent data needs to be obtained, the chairperson shall announce a continuation of the hearing to another specified date, time, and place.
 - K. Closing of the Hearing.
Upon completion of all testimony and upon a motion of a member of the Board, the chairperson should close the public hearing.
 - L. Deliberation and Decision.
At the conclusion of the hearing, the Board of Zoning Appeals shall deliberate upon the application and reach a decision. If time does not permit adequate deliberation, the matter should be continued for a decision at a meeting open to the public at a specified date, time, and place.
3. Record.
A record of the proceedings of a public hearing, approved by the Board of Zoning Appeals and signed by the Secretary of the Board, shall be maintained in case the decision is appealed. A typical hearing record shall include:
- A. The applicant's request on a properly completed form;
 - B. The records of any actions on this request by an administration official or body, including all past records regarding the property such as an earlier request for variance, conditional use approval, or a record of a nonconforming use status;
 - C. Records that verify proper notice has been given to the appropriate parties and to neighboring property owners, including any newspaper notice and the affidavit of publishing thereof;
 - D. Any relevant maps, exhibits, drawings, or photographs presented and marked as evidence or as a part of the application, and copies of any correspondence received or sent out with regard to the request;
 - E. A complete record of all public input made at the hearing submitted by sworn witnesses. The hearing may be tape-recorded for later transcription into minutes or a court stenographer shall be present to prepare a complete record;
 - F. A record of what the hearing body saw on any visits it made to the property in question, and a summary of any conversations between the hearing body and parties with an interest in the application;
 - G. Copy of a reference to the relevant ordinance requirements;
 - H. The findings of fact, the conclusions reached, and the recommendation or decision made on the request by the Board of Zoning Appeals; and
 - I. A copy of any other correspondence to or from the petitioner regarding the decision.