
Article 2400
Appeals and Variances

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2401 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.

2402 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 zoning inspector from whom the appeal is taken shall transmit to the Board of Zoning Appeals all papers constituting the record upon which the action so appealed was taken.

2403 PUBLIC HEARING BY THE BOARD.

The Board of Zoning Appeals shall hold a public hearing within 30 days of receiving the material related to the appeal. Notice of such public hearing shall be given by first class mail to all owners of property, as they appear on the County Auditor's current tax list, within and contiguous to and directly across the street from such property that is the subject of the hearing, and 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. All notices shall set forth the time and place of the public hearing and the nature of the appeal. 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 were publicly announced at the time of adjournment, no further notice shall be required. Any person in interest may appear at the public hearing in person or by attorney.

Any person may appear before the Board at the public hearing on the application and state their reasons for or against the proposal.

The Chairman of the Board of Zoning Appeals shall ensure all notices specified in this section are completed.

2404 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 case, proceedings shall not be stayed other than by a restraining order granted by either the Board of Zoning Appeals or a court having lawful jurisdiction.

2405 DECISION OF THE BOARD.

Within its powers, the Board of Zoning Appeals may reverse or affirm, wholly or in part, or modify to be done, and to that end shall have all the powers of the officers from whom the appeal is taken, and it may direct the issuance of a certificate.

- a. The Board shall act within 30 days from the date the appeal, the conditional use, or the variance was received by the Board, or an extended period of time as may be agreed upon.
- b. The Board shall render in writing a decision on the appeal application without unreasonable delay.
- c. The Board shall keep minutes of all proceedings, showing the vote of each member thereon, and shall keep records of its official actions.

A copy of the Board's decision including all terms and conditions shall be transmitted to the Zoning Inspector and shall be binding upon and observed by him/her. The Zoning Inspector shall fully incorporate these same terms and conditions into the permit to the applicant whenever a permit is authorized by the Board.

2406 VARIANCE 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. An application for a variance shall be filed with the Zoning Inspector for review by the Board of Zoning Appeals upon the forms provided, and shall be accompanied by the following requirements necessary to convey the reason(s) for the requested variance:
1. Name, address and phone number of applicant(s);
 2. Proof of ownership, legal interest or written authority;
 3. Legal description of property or portion thereof;
 4. Description or nature of variance requested;
 5. Narrative statements establishing and substantiating the justification for the variance pursuant to subsection (b) below;
 6. Site plans, floor plans, elevations and other drawings at a reasonable scale to convey the need for the variance;
 7. Payment of the application fee as established by the Trustees;
 8. Any other documents deemed necessary by the Zoning Inspector.

Upon receipt of a written request for variance, the Zoning Inspector 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 Zoning Inspector shall so advise the applicant of the deficiencies and shall not further process the application until the deficiency is corrected.

- b. Review by the Board of Zoning Appeals. According to the procedures established for appeals in Section 2403, 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 is a “Use Variance” or an “Area Variance” and complies with the purpose and intent of this Resolution and evidence demonstrates that the literal enforcement of this Resolution will result in unnecessary hardship for a “Use Variance” or practical difficulty for an “Area Variance. The following factors shall be considered and weighed by the Board in determining the variance.

- c. “Use” Variance – Unnecessary Hardship Standard. A variance from the provisions or requirements of this Resolution shall not be authorized by the Board of Zoning Appeals unless it finds **all nine (9) of the following facts and conditions exist:**
1. That unnecessary hardship would result from the literal enforcement of the provisions of this Resolution. Alleged hardships, such as theoretical loss or limited possibilities of economic advantage, shall not be considered a sufficient hardship for the granting of a use variance. It must be demonstrated that peculiar and special hardships exist which apply only to the property in question and are separate and distinct from the general conditions pertaining through the district;
 2. That there are unique physical circumstances or conditions, applying to the property in question such as irregularity, or shallowness of lot size or shape, exceptional topographical or other physical conditions;
 3. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Resolution and that authorization of a use variance is, therefore, necessary to enable the reasonable use of the property;
 4. That said use variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity and that the granting of such use variance will not be injurious to persons working or residing in the neighborhood;
 5. That the granting of such use variance will not be contrary to the public interest (health, safety) of the intent and purpose of this Resolution and other adopted plans;
 6. That said use variance will not permit the establishment within a district, of any use other than those permitted by right within that district, or any use for which a conditional permit is required;
 7. That said use variance may not be constructed to mean a change of use but shall mean only a variation or modification from the strict provisions of this Resolution;
 8. That said use variance, if granted, is the minimum modification that will make possible the reasonable use of the land, building, or structure; and

9. That in no instance shall a use variance be considered for the following reasons:
 - Presence of nonconformities in the zoning district;
 - Previous variances granted in the zoning district;
 - Uses in adjoining districts;
 - The applicant's belief that the intended use would be permitted upon his/her purchase of land;
 - The character standing of the applicant; or
 - Hardship being demonstrated beyond the context of zoning; e.g. economic.
- d. "Area" Variance – Practical Difficulties Test. The factors to be considered and weighed in determining whether a property owner seeking an area variance has encountered practical difficulties in the use of his/her property include, but are not limited to the following seven (7) items. The outcome is not decided by the majority of factors going one way or another. Some factors will not apply or very minimally, while a particular factor or two will be crucial to the controversy.
 1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the area variance.
 2. Whether the area variance is substantial.
 3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the area variance.
 4. Whether the area variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup.
 5. Whether the property owner purchased the property with the knowledge of the zoning restriction.
 6. Whether the property owner's predicament feasibly can be obviated through some method other than an area variance.
 7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the area variance.
- e. 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.

- f. 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.
- g. Action by the Board. The Board shall either approve, approve with supplementary conditions as specified in subsection (d), or disapprove the request for variance according to the procedures established for appeals in Section 2405. The Board shall further make a finding in writing that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building or structure.

A variance from the provisions or requirements of this Resolution shall not be authorized by the Board unless it finds that all the following facts and conditions exist:

- 1. The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity and that the granting of such variance will not be injurious to persons working or residing in the neighborhood.
- 2. That the granting of the variance will not be contrary to the public interest or the intent and purpose of this Resolution and other adopted plans.

If a variance has been denied by the Board, the Board need not reconsider the same request for a variance if resubmitted within six months after date of decisions, unless the underlying conditions have substantially changed.

- h. 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.
- i. Term and Extension of Variance. Variances shall be non-assignable and shall expire one year from the date of their enactment, unless prior thereto, the applicant commences actual construction in accordance with the granted variance. There shall be no modification of variances except by further consideration of the Board of Zoning Appeals. Requests for renewal of expired variances shall be considered to be the same as an application for a variance and shall meet all requirements for application and review pursuant to this Section.

2407 APPEALS TO THE COURT OF COMMON PLEAS.

Decisions by the Board of Zoning Appeals granting or denying variances shall be final within the Township. Appeals shall be subject to judicial review by the Court of Common Pleas of Lorain County, Ohio, in accordance with the laws of the State of Ohio.

REVISION HISTORY

<u>Date</u>	<u>Section #</u>	<u>Description of Change</u>	<u>Req. By</u>
7/10/01	ALL	Original Update	Twp. Trustees
10/12/06	2406	In Section 2406.e, changed from subsection “c” to subsection “d”. Clerical correction.	Twp. Trustees
8/12/10	2406	Removed Section 2406.e.3 as directed by Prosecutors office, per opinion given to the Zoning Inspector dated 8/9/2010.	Zoning Inspector
11/20/24	2403 2406	Corrected “Chapter” to “Article” in headers (admin). In Section 2403, changed “20 days” to “30 days”. In Subsection 2406.b, added verbiage to clarify difference between “Use” and “Area” variances and deleted list of 10 factors to be considered. Added Subsection 2406.c, “Use” Variance – Unnecessary Hardship Standard, as provided by the Lorain County Prosecutor. Added Subsection 2406.d, “Area” Variance – Practical Difficulties Test, as provided by the Lorain County Prosecutor. Ref. Motion 10/8/24. Effective Date 11/20/24.	Twp. Trustees