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ARTICLE 3 ZONING BOARD OF APPEALS

SECTION 3.01 BOARD OF APPEALS ESTABLISHED

THERE IS HEREBY ESTABLISHED A BOARD OF APPEALS, WHICH SHALL PERFORM ITS DUTIES AND EXERCISE ITS POWERS AS PROVIDED BY SECTION 18, ACT 184 OF THE PUBLIC ACTS OF 1943. AS AMENDED, IN SUCH A WAY THAT THE OBJECTIVES OF THIS ORDINANCE SHALL BE ENFORCED, THE PUBLIC HEALTH AND SAFETY SECURED AND SUBSTANTIAL JUSTICE DONE.

SECTION 3.02 MEMBERSHIP, TERMS OF OFFICE

THE BOARD OF APPEALS SHALL CONSIST OF THREE MEMBERS, THE FIRST MEMBER OF SUCH BOARD OF APPEALS SHALL BE THE CHAIRMAN OF THE TOWNSHIP PLANNING COMMISSION, FOR THE TERMS OF HIS OFFICE; THE SECOND MEMBER SHALL BE A MEMBER OF THE TOWNSHIP BOARD, APPOINTED BY THE TOWNSHIP BOARD FOR THE TERM OF HIS OFFICE; AND THE THIRD MEMBER SHALL BE SELECTED AND APPOINTED BY THE FIRST TWO MEMBERS FROM AMONG THE ELECTORS RESIDING IN THE UNINCORPORATED AREA OF THE TOWNSHIP FOR A TERM OF THREE (3) YEARS PROVIDED THAT NO ELECTED OFFICER OF THE TOWNSHIP, NOR ANY EMPLOYEE OF THE TOWNSHIP BOARD, MAY SERVE SIMULTANEOUSLY AS THE THIRD MEMBER OF OR AS AN EMPLOYEE OF THE TOWNSHIP BOARD OF APPEALS. THE CHAIRMAN OF THE TOWNSHIP PLANNING COMMISSION SHALL ACT AS CHAIRMAN OF THE TOWNSHIP BOARD OF APPEALS.

SECTION 3.03 RULES OF PROCEDURE, MAJORITY VOTE

THE BOARD SHALL ADOPT ITS OWN RULES OF PROCEDURE AS MAY BE NECESSARY TO PROPERLY CONDUCT ITS MEETINGS. THE CONCURRING VOTE OF A MAJORITY OF THE MEMBERS OF THE BOARD OF APPEALS SHALL BE NECESSARY TO REVERSE ANY ORDER, REQUIREMENT, DECISION OR DETERMINATION OF THE ADMINISTRATIVE OFFICIAL OR TO DECIDE IN FAVOR OF THE APPLICANT ANY MATTER UPON WHICH THEY ARE REQUIRED TO PASS UNDER THIS ORDINANCE OR TO EFFECT ANY VARIATION IN THIS ORDINANCE.

SECTION 3.04 MEETINGS

MEETINGS OF THE BOARD OF APPEALS SHALL BE HELD AT THE CALL OF THE CHAIRMAN AND AT SUCH OTHER TIMES AS THE BOARD IN ITS RULES OR PROCEDURE MAY SPECIFY.

SECTION 3.05 PUBLIC MEETINGS AND MINUTES

ALL MEETINGS OF THE BOARD OF APPEALS SHALL BE OPEN TO THE PUBLIC, MINUTES SHALL BE RECORDED OF ALL PROCEEDINGS WHICH SHALL CONTAIN EVIDENCE AND DATA RELEVANT TO ANY CASE CONSIDERED TOGETHER WITH VOTE AND SIGNATURE OF EACH MEMBER AND THE FINAL DISPOSITION OF EACH CASE. THE GROUNDS OF EVERY DETERMINATION SHALL BE STATED IN WRITING WITH REFERENCE TO SUCH DETERMINATION FOR WHICH THE APPEAL IS TAKEN. SUCH MINUTES SHALL ACCOMPANY AND BE ATTACHED TO THE STANDARD FORMS REQUIRED OF PERSONS APPEALING AS PART OF THE ZONING BOARD OF APPEALS PERMANENT RECORDS. SUCH MINUTES SHALL BE FILED IN THE OFFICE OF THE TOWNSHIP CLERK AND SHALL BE SENT PROMPTLY TO THE APPELLANT OR APPELLANT AND TO THE ZONING ADMINISTRATOR. THE TOWNSHIP CLERK MAY ACT AS SECRETARY TO THE ZONING BOARD OF APPEALS. THE TOWNSHIP ATTORNEY SHALL ACT AS LEGAL COUNSEL FOR THE BOARD AND SHALL BE PRESENT AT ALL MEETINGS UPON THE REQUEST OF THE BOARD. OTHER KNOWLEDGEABLE PERSONS MAY ALSO BE UTILIZED IN AN ADVISORY CAPACITY.

SECTION 3.06 POWERS AND DUTIES

THE BOARD OF APPEALS SHALL HAVE POWERS TO INTERPRET THE PROVISIONS OF THIS ORDINANCE, TO GRANT VARIANCES FROM THE STRICT APPLICATION OF ANY PROVISIONS OF THIS ORDINANCE.

SECTION 3.07 VARIANCE

A VARIANCE FROM THE TERMS OF THIS ORDINANCE SHALL NOT BE GRANTED BY THE BOARD OF APPEALS UNLESS AND UNTIL:

- A. A WRITTEN APPLICATION FOR A VARIANCE IS SUBMITTED, DEMONSTRATING:
1. THAT SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST WHICH ARE PECULIAR TO LAND, STRUCTURE OR BUILDING INVOLVED AND WHICH ARE NOT APPLICABLE TO OTHER LANDS, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT.
 2. THAT LITERAL INTERPRETATION OF THE PROVISIONS OF THIS ORDINANCE WOULD DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES IN THE SAME DISTRICT UNDER THE TERMS OF THIS ORDINANCE.
 3. THAT GRANTING THE VARIANCE REQUESTED WILL NOT CONFER ON THE APPLICANT ANY SPECIAL PRIVILEGE THAT IS DENIED BY THIS ORDINANCE TO OTHER LANDS, STRUCTURES, OR BUILDINGS IN THE SAME DISTRICT.
 4. THAT NO NON-CONFORMING USE OF NEIGHBORING LANDS, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT, AND NO PERMITTED USE OF LANDS, STRUCTURES OR BUILDINGS IN OTHER DISTRICTS SHALL BE CONSIDERED GROUNDS FOR THE ISSUANCE OF A VARIANCE.
- B. THE BOARD OF APPEALS SHALL MAKE FINDINGS THAT REQUIREMENTS OF THE ORDINANCE HAVE BEEN MET BY THE APPLICANT FOR A VARIANCE.

THE BOARD OF APPEALS SHALL FURTHER MAKE A FINDING THAT THE GRANTING OF THE VARIANCE WILL BE IN HARMONY WITH GENERAL PURPOSE AND INTENT OF THIS ORDINANCE, AND WILL NOT BE INJURIOUS TO THE NEIGHBORHOOD, OR OTHERWISE DETRIMENTAL TO THE WELFARE.

THE BOARD OF APPEALS SHALL FURTHER MAKE A FINDING THAT THE REASONS SET FORTH IN THE APPLICATION JUSTIFY THE GRANTING OF THE VARIANCE AND THE VARIANCE IS THE MINIMUM VARIANCE THAT WILL MAKE THE REASONABLE USE OF THE LAND, BUILDING OR STRUCTURE.

IN GRANTING ANY VARIANCE, THE BOARD OF APPEALS MAY PRESCRIBE APPROPRIATE CONDITIONS AND SAFEGUARDS IN CONFORMITY WITH THIS ORDINANCE. VIOLATIONS OF SUCH CONDITIONS AND SAFEGUARDS, WHEN MADE A PART OF THE TERMS UNDER WHICH THE VARIANCE IS GRANTED, SHALL BE DEEMED A VIOLATION OF THIS ORDINANCE AND PUNISHABLE UNDER SECTION 2.06 OF THIS ORDINANCE.

UNDER NO CIRCUMSTANCES SHALL THE BOARD OF APPEALS GRANT A VARIANCE TO SHOW A USE NOT PERMISSIBLE UNDER THE TERMS OF THIS ORDINANCE IN SAID DISTRICT.

SECTION 3.08 VOIDING OF AND REAPPLICATION FOR VARIANCE

THE FOLLOWING PROVISIONS SHALL APPLY:

- A. EACH VARIANCE GRANTED UNDER THE PROVISIONS OF THIS ORDINANCE SHALL BECOME NULL AND VOID UNLESS:
THE CONSTRUCTION AUTHORIZED BY SUCH VARIANCE OR PERMIT HAS BEEN COMMENCED WITHIN ONE HUNDRED EIGHTY (180) DAYS AFTER THE GRANTING OF SUCH VARIANCE AND PURSUED DILIGENTLY TO COMPLETION. NO APPLICATION FOR A VARIANCE WHICH HAS BEEN DENIED WHOLLY OR IN PART BY THE BOARD OF APPEALS SHALL BE RESUBMITTED FOR A PERIOD OF THREE HUNDRED AND SIXTY-FIVE (365) DAYS FROM SUCH DENIAL, EXCEPT ON GROUNDS OF NEW EVIDENCE OR PROOF OF CHANGED, CONDITIONS FOUND BY THE BOARD OF APPEALS TO BE VALID.

SECTION 3.09 PROCEDURE FOR APPEALING TO THE BOARD OF APPEALS

THE FOLLOWING PROVISIONS SHALL APPLY:

- A. ***APPEALS, HOW TAKEN:*** APPEALS FROM THE RULING OF THE TOWNSHIP BUILDING INSPECTOR MAY BE MADE TO THE BOARD OF APPEALS IN THE FOLLOWING MANNER:
1. THE PERSON, FIRM OR AGENT THEREOF MAKING THE APPEAL, SHALL FILE IN WRITING TO THE BUILDING INSPECTOR, A LETTER STATING WHAT THE SPECIFIC APPEAL IS AND THE REASONS FOR SAID APPEAL.
 2. THE BUILDING INSPECTOR SUBMITS THE WRITTEN APPEAL, ALONG WITH ALL PAPERS CONSTITUTING THE RECORD FROM WHICH THE ACTION APPEALED WAS TAKEN, TO THE ZONING BOARD OF APPEALS.
- B. ***HOW MAY APPEAL:*** APPEALS TO THE BOARD OF APPEALS MAY BE TAKEN BY ANY PERSON AGGRIEVED FOR BY AN OFFICER, DEPARTMENT, BOARD, AGENCY OR BUREAU OF THE TOWNSHIP, COUNTY OR STATE.
- C. ***FEE FOR APPEAL:*** FEE PRESCRIBED BY THE TOWNSHIP BOARD SHALL BE SUBMITTED TO THE BUILDING INSPECTOR AT THE TIME OF FILING THE LETTER OF APPEALS. THE APPEALS FEE SHALL IMMEDIATELY BE PLACED IN THE TOWNSHIP GENERAL FUND.
- D. ***EFFECT OF APPEAL: RESTRAINING ORDER:*** AN APPEAL STAYS ALL PROCEEDINGS IN FURTHERANCE OF THE ACTION APPEALED FROM UNLESS THE OFFICER FROM WHOM THE APPEAL IS TAKEN CERTIFIES TO THE TOWNSHIP BOARD OF APPEALS, AFTER THE NOTICE OF APPEALS SHALL HAVE BEEN FILED WITH HIM, THAT BY REASON OF FACTS STATED IN THE CERTIFICATE, A STAY WOULD IN HIS OPINION CAUSE 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 OF APPEALS OR BY THE CIRCUIT COURT, ON APPLICATION, ON NOTICE TO THE OFFICER FROM WHOM THE APPEAL IS TAKEN AND ON DUE CAUSE SHOWN.

SECTION 3.09 PROCEDURE FOR APPEALING TO THE BOARD OF APPEALS (continued)

- E. HEARING BY THE BOARD OF APPEALS:** WHEN A REQUEST FOR APPEALS HAS BEEN FILED IN PROPER FORM WITH THE BOARD OF APPEALS, THE SECRETARY, OR TOWNSHIP CLERK SHALL IMMEDIATELY PLACE THE SAID REQUEST FOR APPEAL UPON THE CALENDAR FOR HEARING, AND CAUSE NOTICE STARTING THE TIME, PLACE AND OBJECT OF THE HEARING TO BE SERVED PERSONALLY OR BY REGISTERED RETURN RECEIPT MAIL AT LEAST TEN (10) DAYS PRIOR TO THE DATE OF SUCH HEARING, UPON THE PARTIES MAKING THE REQUEST FOR APPEAL .DUE NOTICE OF THE SCHEDULED MEETING SHALL BE GIVEN TO ALL PERSONS WHO RESIDE IN OR OWN PROPERTY WITHIN THREE HUNDRED (300) FEET OR ADJOINING PROPERTY OWNERS IF NONE ARE WITHIN THREE HUNDRED (300) FEET OF THE PREMISES IN QUESTION; SUCH NOTICE SHALL BE DELIVERED PERSONALLY OR BY MAIL TO THE RESPECTIVE OWNERS AND/OR OCCUPANTS AT THE ADDRESS IN THE LAST ASSESSMENT ROLE.
- F. REPRESENTATION AT HEARING:** UPON THE HEARING, ANY PARTY OR PARTIES MAY APPEAR IN PERSON OR AGENT OR BY ATTORNEY.
- G. DECISION OF THE BOARD OF APPEALS AND APPEALS TO THE CIRCUIT COURT :**THE BOARD OF APPEALS SHALL DECIDE UPON ALL APPEALS WITHIN A REASONABLE TIME AND REVERSE OR AFFIRM WHOLLY OR PARTLY, OR MAY MODIFY THE ORDER, REQUIREMENT, DECISION OR DETERMINATION AS IN ITS OPINION OUGHT TO BE MADE IN THE PREMISES AND TO THAT END SHALL HAVE ALL THE POWERS OF THE BUILDING INSPECTOR FROM WHOM THE APPEAL IS TAKEN. THE BOARD OF APPEALS DECISION OF SUCH APPEALS SHALL BE IN THE FORM OF A RESOLUTION CONTAINING A FULL RECORD OF THE FINDINGS AND DETERMINATION OF THE BOARD OF APPEALS IN EACH PARTICULAR CASE AND THE SIGNATURES OF EACH MEMBER OF THE BOARD OF APPEALS AFFIXED THEREON. ANY PERSONS HAVING AN INTEREST AFFECTED BY SUCH RESOLUTION SHALL HAVE THE RIGHT TO APPEAL TO THE CIRCUIT COURT ON QUESTIONS OF LAW AND FACT.

ARTICLE 3, CONCLUDED