

ARTICLE 17**ZONING BOARD OF APPEALS**

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SECTION 17.01 BOARD ESTABLISHED

A Zoning Board of Appeals, hereinafter referred to as the Board of Appeals, is hereby established, in accordance with Act 110 of the Public Acts of 2006, as amended, and in such a way that the objectives of this Zoning Ordinance shall be observed, public health, safety and welfare secured, and substantial justice done. The Zoning Board of Appeals is established to ensure that the objectives of this Ordinance may be more fully and equitably achieved, that a means be provided for competent interpretation of this Ordinance, and that reasonable flexibility be provided in the application of this Ordinance.

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SECTION 17.02 MEMBERSHIP AND TERMS

- A. The Board of Appeals shall consist of seven (7) permanent members appointed by the Township Board. The first member shall be a member of the Township Planning Commission. The remaining members shall be selected from the electors of the Township. One (1) regular member may be, but need not be, a member of the Township Board other than the Supervisor. The members selected shall be representatives of the population distribution and of the various interests present in the Township. An elected officer of the Township shall not serve as chairman of the Board of Appeals.
- B. An employee or contractor of the Township Board may not be a member or employee of the Board of Appeals.
- C. The Township Board may appoint no more than two (2) alternate members of the Zoning Board of Appeals who shall serve as a member of the Zoning Board of Appeals upon the call of the Chairperson when a regular member is absent from or unable to attend one (1) or more meetings. An alternate member may also be called to serve in place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for the reason of a conflict of interest. The alternate member having been appointed shall serve on the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals in those cases in which the alternate member serves. Appointments of alternate members for the first year shall be for a period of one (1) and two (2) years respectively; thereafter, each alternate member shall hold office for a full three (3) year term.
- D. Members of the Board of Appeals shall be removable by the Township Board for non-performance of duty or misconduct in office upon written charges and after public hearing. A member shall disclose when there is or may be a conflict of interest. Failure

of a member to disclose that there is or may be a conflict of interest to allow the Board to disqualify that member from a vote shall constitute misconduct in office.

5 E. The term of each member shall be three (3) years, except for members serving because of their membership on the Planning Commission or Township Board, whose terms shall be limited to the time they are members of the Planning Commission or Township Board respectively, and the period stated in the resolution appointing them. A successor shall be appointed within one (1) month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term.

10 F. The Board of Appeals shall not conduct business unless a majority of the members of the Board are present.

15 **SECTION 17.03 RULES AND PROCEDURES FOR THE BOARD OF APPEALS**

A. **Rules.** The Board of Appeals shall adopt bylaws to govern its procedures. The Board of Appeals shall elect a Chairman, Vice-Chairman, and Secretary from its membership at its first meeting following January 1, of each year. The officers shall serve until successors are elected.

B. **Votes.** A concurring vote of a majority of the members of the Board of Appeals shall be necessary for any decision.

25 C. **Representation.** Any person(s) may appear on his/her behalf at a hearing or may be represented by an agent or attorney.

D. **Time Limit.** The Board of Appeals shall decide upon all matters within a reasonable time. The decision of the Board of Appeals shall be in the form of a resolution containing a full record of its findings and determinations in each case. The time limit may be extended by written agreement between the applicant and appellant and the Board of Appeals.

35 E. **Meetings.** Meetings of the Board of Appeals shall be held at the call of the Chairman and at such times as the Board in its rules and regulations might specify. Minutes shall be kept of each meeting and the Board shall record into the minutes all findings, conditions of approval, facts, or other relevant factors, and all its official actions. The vote of each member upon a question, or a member's absence or abstention, shall be recorded into the minutes of the meeting. All meetings and records shall be open to the public. All records of meetings shall be filed in the office of the Township Clerk.

45 F. **Public Hearings and Notification.** The Board of Appeals shall hold a public hearing on each question submitted to it for decision. As a general rule, notice shall be given to all owners of record of property and to occupants of all single-family and two-family dwellings within three hundred (300) feet of the property in question. The Board of

5 Appeals may also determine other interested parties who should be provided notice for a specific case. Notices shall be delivered personally or by mail addressed to the respective owners at the address given in the last assessment roll. If the tenant's name is not known, the term occupant may be used. The notice shall also be published in a paper of general circulation in Highland Township at least fifteen (15) days prior to the hearing, in accordance with Act 110 of the Public Acts of 2006, as may be amended.

10 **SECTION 17.04 POWERS AND DUTIES OF BOARD OF APPEALS**

10 A. **General.** The Board of Appeals has the power to act on matters as provided in this Ordinance and Act 110, of the Public Acts of 2006, as amended. The specific powers of the Board are enumerated in the following Sections of this Article.

15 B. **Delegated Duties.** The Board of Appeals shall hear and decide on all matters upon which it is required to pass under this Ordinance.

20 C. **Administrative Review.** The Board of Appeals shall hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by an administrative official or body in the enforcement of this Ordinance. In exercising the powers set forth in this Article, the Board of Appeals may 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 shall have all the powers of the Zoning Administrator from whom the appeal is taken.

25 D. **Interpretation.**

30 1. The Board of Appeals shall hear and decide requests for interpretation of this Ordinance or the Zoning Map, taking into consideration the intent and purpose of the Ordinance and the Master Plan.

35 2. In an interpretation of the Zoning Map, the Board of Appeals shall be governed by the Rules of Interpretation set forth in Section 4.03, Interpretation of District Boundaries.

40 3. A record shall be kept by the Board of Appeals of all decision for interpretation of this Ordinance or Zoning Map and land uses which are approved under the terms of this Section. The Board of Appeals shall request the Planning Commission to review any Ordinance amendment it deems necessary.

45 E. **Variances.** Where, owing to special conditions, a literal enforcement of the provisions of this ordinance would involve practical difficultie within the meaning of this Article, the Board of Appeals shall have power upon appeal in specific cases to authorize such variation or modification of the provisions of this Ordinance with such conditions and

safeguards as it may determine as may be in harmony with the spirit of this Article and so that public safety and welfare be secured and substantial justice done.

5 Use variances are classified as any variance which permits a use not specifically permitted by this Ordinance for the district in which it is located. Use variances shall not be approved in Highland Township.

10 All other variances are classified as dimensional variances. Dimensional variance shall not be granted by the Board of Appeals it can be determined that all of the following facts and conditions exist:

- 15 1. Exceptional characteristics of property for which the variance is sought make compliance with dimensional requirements substantially more difficult than would be the case for the great majority of properties in the same zoning district. Characteristics of property which shall be considered shall include exceptional narrowness, shallowness, smallness, irregular shape, topography, vegetation and other similar characteristics.
- 20 2. The characteristics which make compliance with dimensional requirements difficult must be related to the premises for which the variance is sought, not some other location.
- 25 3. The characteristics which make compliance with the dimensional requirements difficult shall not be of a personal nature.
- 30 4. The characteristics which make compliance with dimensional requirements difficult must not have been self created by the current owner.
- 35 5. The proposed variance will not be harmful or alter the essential character of the area in which the property is located, will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property value within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Township.
- 40 6. The Board of Appeals shall not find that any of the above criteria have been met without substantial evidence provided by the applicant to that effect.
7. The proposed variance will be the minimum necessary, and no variance shall be granted where a different solution not requiring a variance would be possible.

45 **F. Dimensional Variance in Special Land Uses, Planned Residential Developments, and Planned Unit Developments.** The Board of Appeals may grant dimensional or other site

plan related variances (e.g. lot dimensions, setbacks, building height, lot coverage, parking, etc.) for special land uses. The Board of Appeals shall not have the power to reverse or modify the Planning Commission’s decision to approve or deny a special land use permit, nor grant variances to any conditions placed on special land use approval.

5 The Board of Appeals shall not have the authority to grant variances to any regulations or any requirement placed upon a project approved under Article 7, Creative Development Alternatives. However, the Board of Appeals shall have the authority to decide appeal requests by individual lot owners for variances from other sections of the Zoning Ordinance following final approval of a project under Article 7, Creative Development Alternatives, provided such variances do not affect the terms or conditions of the original approval, or constitute a variance to the regulations under Article 7.

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15 G. **Limitation of Authority.** The Board of Appeals shall not have the power to alter or change zoning district boundaries, except where uncertainty exists as to the location of a boundary, land use classifications of any property, or Zoning Ordinance text. The Board of Appeals shall not have the power to hear and decide appeals pertaining to special land uses except for dimensional variances for projects approved under Article 7, Creative Development Alternatives.

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SECTION 17.05 ADMINISTRATIVE APPEALS

25 A. The Board of Appeals shall hear and decide appeals where it is alleged that there is an error in fact, judgment, process or interpretation in any order, requirement, permit or decision made by Township Staff or a Township Official in enforcing the provisions of this Ordinance.

30 B. Appeals shall be filed within thirty (30) days of the decision in question with the Planning Department. The appellant must have property interest and sufficient standing to be recognized under the law to challenge the decision. The appellant shall submit a clear description of the order, requirement, decision, or determination for which the appeal is made and the grounds of the appeal. The appellant may be required by the Board of Appeals to submit additional information to clarify the appeal.

35 C. Appeals may be taken by the person aggrieved or by any officer, department, board, agency, or bureau of Township, County, State or Federal governments.

40 D. An appeal stays all proceedings in the furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Appeals that a stay would cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Zoning Administrator from whom the appeal is taken, and on due cause shown.

E. An administrative decision may be reversed, in whole or in part, or may be modified, only if the Board of Appeals finds the action or decision appealed meets one (1) or more of the following requirements:

- 5 1. Was arbitrary or capricious;
2. Was based on an erroneous finding of material fact;
- 10 3. Constituted an abuse of discretion; and
4. Was based on erroneous interpretation of the Zoning Ordinance or zoning law.

SECTION 17.06 SPECIFIC PROCEDURES FOR VARIANCES

- 15 A. An application for a variance shall be filed by the record owner of the lot in question, or by an agent authorized in writing to act on the record owner's behalf, with the Zoning Administrator. The applicant shall provide such information as is required by the Board of Appeals by way of completed application form, fee and additional information.
- 20 B. After a public hearing and upon findings of fact as required under Section 17.04.E, Variances the Board of Appeals may approve the variance(s) as requested, approve variance(s) that better complies with the Ordinance than that requested, or deny the request.
- 25 C. The Board of Appeals may impose conditions with an affirmative decision. The conditions may include those necessary to promote the health, safety and welfare of the public and protect and preserve natural features. Any conditions imposed by the Board of Appeals must be related to a valid exercise of the police power, and purposes which are
- 30 affected by the proposed use or activity.
- 35 D. Any variance approved by the Board of Appeals permitting the erection or alteration of a building shall be valid for a period of one (1) year, provided a building permit for the work has been obtained within that time period and work has commenced on the site. Additionally, the permittee must demonstrate continued progress towards completion of the project. The Board of Appeals may grant extensions, not to exceed six (6) months for each extension, upon a showing of good cause and good faith effort being made to achieve completion.
- 40 E. If a variance approved by the Board of Appeals is not utilized within one (1) year, the variance shall be considered null and void and an application must be re-filed if it is desired at a future date.

F. A variance which is legally utilized and maintained runs with the property and any subsequent owners may legally continue the variance under its original or amended terms.

- 5 G. An application for a variance which has been denied wholly or in part by the Board of Appeals shall not be resubmitted for a period of one (1) year from the date of denial, except on grounds of new evidence or changed conditions found by the Board of Appeals to be valid.

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SECTION 17.07 SITE PLAN REQUIREMENTS

15 If an application or appeal to the Board of Appeals requires site plan approval by the Planning Commission, the applicant or appellant shall first apply for site plan approval as set forth in Article 5.0, Site Plan Review. The Planning Commission shall review said plan and shall determine the layout and other features required to obtain approval of said plan. The Planning Commission shall then transmit the plan and the Commission's findings thereon to the Board of Appeals. The Board of Appeals shall, upon deciding on the application or appeal,
20 return the plan and its decision thereon to the Planning Commission for Commission action on the site plan.