

CHAPTER 117

BOARD OF ZONING APPEALS

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117.01 MEMBERS APPOINTMENT OR REMOVAL.

Board of Zoning Appeals regular members and two (2) alternates shall be appointed or removed and vacancies filled as provided in Ohio R.C. 519.13.

117.02 OFFICERS.

The Board of Zoning Appeals shall annually elect a Chair and a Vice Chair from its members, and appoint a Secretary who may be a member. The annual election of officers shall take place at the first regular meeting of a calendar year.

117.03 RULES.

The Board of Zoning Appeals shall adopt rules, not in conflict with State law and this Zoning Resolution, for the conduct of its regular and special meetings, public hearings, the transaction of its business, and the exercise of its powers. The Board of Zoning Appeals may, within the limits of the moneys appropriated by the Board of Trustees for the purpose, employ such executive, professional, technical, and other assistants as it considers necessary.

117.04 MEETINGS.

Meetings of the Board of Zoning Appeals shall be held at the call of the Chair and at such other times as the Board determines. All Board meetings to transact official business shall be open to the public. The Chair shall preside over a meeting or public hearing. In the absence of the Chair, the Vice Chair shall preside. At no time shall an alternate preside over a meeting or hearing of the Board of Zoning Appeals.

117.05 QUORUM.

A majority of members of the Board of Zoning Appeals shall constitute a quorum for the transaction of business at any meeting. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under this Zoning Resolution or to authorize any variance or conditional use as provided in this Zoning Resolution. If the Board of Trustees appoints alternate members to the Board of Zoning Appeals in accordance with R.C. 519.13, the two (2) alternates shall be identified as first and second alternate indicating the order in which they shall fill vacancies on the Board of Zoning Appeals. When filling a vacancy created by an absent regular member, the alternate member shall be subject to all responsibilities of a regular member under any adopted rules of the Board of Zoning Appeals. Alternates are expected to attend all meetings and hearings of the Board of Zoning Appeals even when that are not filling a vacancy. At such times, their status as an active or inactive alternate member shall be made clear to all in attendance at a meeting or hearing. If a regular member fails to appear or appears following the start of a meeting or hearing, then the alternate member shall fill the vacancy of the regular member immediately, but not before, the start of the meeting or hearing and all continued meetings and hearings.

117.06 POWERS.

The Board of Zoning Appeals shall have such powers and duties as are conferred by general law and by this Zoning Resolution. For the purpose of this Zoning Resolution, the Board shall have the following specific powers and duties as delineated in O.R.C. 519.14:

- (a) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, or determination made by the Zoning Inspector.
- (b) To authorize upon appeal such variance from the terms of this Zoning Resolution as not be contrary to the public interest, where, owing to the special conditions, a literal enforcement of this Zoning Resolution will result in unnecessary hardship, and so that the spirit of this Zoning Resolution shall be observed and substantial justice done.
- (c) To grant conditional zoning certificates for the use of land, buildings, or other structures as are authorized in this Zoning Resolution under the conditions specified in this Zoning Resolution, and under such additional conditions and safeguards as

are imposed by the Board to uphold the purpose and spirit of this Zoning Resolution.

117.07 RECORDS.

The Board of Zoning Appeals shall keep minutes of its meetings, hearings, and proceedings. Such minutes shall include a record of all actions, findings and determinations of the Board and shall show the vote of each member upon each question, or if absent or failing to vote, indicating such fact. The minutes and records of the Board of Zoning Appeals shall be filed in the Zoning Department and shall be public records open for public inspection.

117.08 ATTENDANCE OF WITNESSES.

- (a) The Board of Zoning Appeals shall have the power to issue subpoenas to require the attendance and testimony of witnesses and the production of books, papers, records, and other documentary evidence deemed pertinent to any hearing or proceeding. It may cross-examine, or permit examination or cross-examination, of any witness in relation to any matter it may lawfully determine. A subpoena shall be issued and signed by the Board Chair or Vice Chair, upon its own initiative or upon filing of a written request therefor by any party to a proceeding, any person entitled to notice of such proceeding or an attorney or representative of such party or person. Witness fees and travel allowance shall be paid by the Township Fiscal Officer on warrants issued by the Board Secretary, the same as are allowed by State Law in courts of record. Such fees and travel allowance shall be taxed as costs of the appeal or proceeding. The Board may require a deposit for the subpoena of any witness at the time of filing of the request, but no deposit shall be required of a witness subpoenaed on behalf of the Board or any Township officer. The Township Police Department shall be responsible for the serving of subpoenas within township boundaries.
- (b) No person shall willfully fail to obey a subpoena issued by the Board, avoid being served a subpoena, refuse to produce documentary evidence under his possession or control, refuse to be sworn or to affirm, or refuse to testify except as to the right against self-incrimination.

117.09 APPEAL PROCEDURE.

- (a) It is the intent of this Zoning Resolution that all questions of interpretation and enforcement shall first be presented to the Zoning Inspector, then to the Board only on appeal from the decision of the Zoning Inspector, and that recourse from written decisions of the Board shall be filed within thirty (30) days to the court of common pleas as provided by law. The duties of the Board of Township Trustees in connection with this Zoning Resolution shall not include hearing and deciding questions of interpretation and enforcement that may arise or filing an appeal to the court of common pleas regarding any decision by the Board of Zoning Appeals. The Board of Township Trustees shall only have the powers and duties provided by general law to include considering and adopting or rejecting proposed amendments or the repeal of this Zoning Resolution as provided by law, settlement of any court action by a consent decree or court approved settlement agreement and establishing forms and a schedule of fees.
- (b) Appeals to the Board of Zoning Appeals concerning interpretation or administration of this Zoning Resolution may be taken by any person aggrieved or by any Township officer affected by any decision of the Zoning Inspector. Such appeal shall be taken within twenty (20) days after the decision by filing, with the Zoning Inspector and with the Board, a notice of appeal alleging error on a form provided by the Zoning Inspector, completing the required information, and specifying the grounds upon which the appeal is being taken. The appeal notice shall be signed and dated by the appellant who by subscribing thereto assumes the legal responsibility for the truth, correctness and accuracy of all information supplied on the notice of appeal. The Zoning Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- (c) In determining an appeal alleging error, the Board may, as long as such action is in conformity with the terms of this Zoning Resolution, reverse or affirm, wholly or partly, or 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 the powers of the Zoning Inspector from whom the appeal is taken.

117.10 VARIANCE APPLICATION AND PROCEDURE.

- (a) Appeals to the Board of Zoning Appeals requesting a variance may be taken by any person aggrieved by any decision of the Zoning Inspector. Such appeal shall be taken within twenty (20) days after the decision by filing, with the Zoning Inspector and the Board, a notice of appeal requesting variance on a form provided by the Secretary of the Board of Zoning Appeals, the Zoning Inspector, or from the Township website by completing the required information and specifying the exact nature of the variance along with reference to the specific provision of this Zoning Resolution from which variance is requested. Written justification for a variance shall be made by the appellant on the application form and the Board of Zoning Appeals shall determine if the proposed variance involves an "area" variance or a "use" variance.

The appeal notice for a variance shall be signed and dated by the appellant who by subscribing thereto assumes the legal responsibility for the truth, correctness and accuracy of all information supplied in such notice of appeal. The Zoning Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(1) Standards for an "area" variance: The practical difficulties standard shall apply to an area variance and the factors to be considered and weighed based upon the evidence presented include, but are not limited to, the following. Not all of the following factors must be met by the appellant and no single factor controls in a determination of practical difficulties. A property owner encounters practical difficulties whenever an area zoning requirement (e.g., frontage, setback, building height) unreasonably deprives him/her of a permitted use of his/her property. When an area variance is sought, the property owner is required to show that the application of an area zoning requirement to his/her property is inequitable.

- a. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.
- b. Whether the variance is substantial.
- c. 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 variance. Essential character means that the existing uses of immediately surrounding properties are inconsistent with the intended use and, as a result, the adjoining properties would be detrimentally affected by the proximity of the proposed use.

- d. Whether the variance would adversely affect the delivery of governmental services (e.g. water, sewer).
- e. Whether the property owner purchased the property with the knowledge of the zoning restriction.
- f. Whether the property owner's predicament feasibly can be obviated through some method other than a variance.
- g. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

(2) Standards for a "use" variance: The unnecessary hardship standard shall apply to a use variance and the factors to be considered include, but are not limited to, the following. All of the following factors must be met by the appellant.

- a. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district.
 - b. The hardship condition is not created by actions of the appellant.
 - c. The granting of the variance will not adversely affect the rights of adjacent owners.
 - d. The granting of the variance will not adversely affect the public health, safety, or general welfare.
 - e. The variance will be consistent with the general spirit and intent of the zoning resolution.
 - f. The variance sought is the minimum which will afford relief to the appellant.
 - g. There is no other economically viable use which is permitted in the zoning district.
- (b) In determining an appeal requesting a variance, the Board, based upon the evidence presented at the public hearing, shall consider and weigh the following in its findings:
- (1) "Unnecessary hardship" and/or "practical difficulty" does not include hardship or practical difficulty that is self-imposed, solely financial or for convenience.
 - (2) "Contrary to the public interest" means deviation from the purposes of the Zoning Resolution as provided in Section 101.02, the current version of the

adopted Bainbridge Township Land Use Plan, and the district involved as provided in Section 131.04.

- (3) "Special conditions" may include but may not be limited to: existing extraordinary circumstances that will not frequently recur, physical constraints that are peculiar to the affected property (e.g., floodplains, wetlands, ponds, lakes, rivers, streams, waterways, severe topography), the location of an existing water well and/or on-site wastewater treatment system and replacement area, and easements of record that do not result from the actions of the applicant.
- (4) The variance if granted shall be the least possible to achieve just relief and the desired result.
- (5) Denial of the variance would not deprive the applicant of the beneficial use of the affected property.
- (6) No variance shall adversely affect the use or value of the neighborhood nor alter its essential character. "Substantial justice" requires that the interests of the community, neighborhood, and adjoining property owners be given due consideration.

117.11 NOTICE AND CONDUCT OF PUBLIC HEARING.

- (a) The Board of Zoning Appeals shall conduct a public hearing within thirty (30) days or a reasonable time after receiving notice of an appeal alleging error or requesting a variance. Prior to holding the public hearing, the Board shall give ten (10) days written notice to the parties in interest by personal service or ordinary mail and publish notice of such public hearing once in a newspaper of general circulation in Geauga County. The notice shall set forth the time and place of the public hearing and the general nature of the appeal alleging error or requesting variance.
- (b) In addition to notice as provided in subsection (a) hereof, the Board shall give notice of a request for variance on appeal or a request for a conditional use certificate by personal service or ordinary mail to all property owners, as shown on the latest tax duplicate of Geauga County, in the following manner:
 - (1) Residential area variances: All property owners immediately abutting subject property.
 - (2) Residential use variances: All property owners within 100 feet of subject property.

(3) Commercial area (including LIR, MUP and PO Zoning Districts) and use variances: All property owners within 300 feet of subject property.

(4) Conditional use certificates: All property owners within 300 feet of subject property.

(5) All others: All property owners within 300 feet of subject property.

If all parcels within such radius are owned by the applicant, the owners of all properties abutting the applicant's land shall be notified. Failure of delivery of such notice shall not invalidate the Board's proceedings.

- (c) The public hearing shall be conducted by the Board as in the trial of a civil action and may be continued for good cause. The appellant or applicant shall have the burden of proof and any contiguous or neighboring property owner especially affected may become a party in interest. All testimony and evidence shall be given under oath or affirmation administered by the Board Chair or Vice Chair. Any party may call any other party as if on cross-examination. The appellant or applicant and any other party shall be afforded an opportunity to be heard in person or by attorney, to offer witnesses and evidence in support of their respective positions, to examine and cross-examine witnesses, to offer evidence to rebut or refute testimony opposed to their respective positions, and to present either oral or written argument on the merits of their respective contentions. The Zoning Inspector may be a party to Board proceedings by presenting relevant evidence to any matter being considered by the Board.

117.12 CONDITIONAL USE APPLICATION AND PROCEDURE.

- (a) An application for Conditional Zoning Certificate may be obtained from the Secretary to the Board of Zoning Appeals, the Zoning Inspector, or the Township website.
- (b) The Board of Zoning Appeals may grant conditional zoning certificate approval for those uses specifically designated conditional uses in this Zoning Resolution. A conditional use once authorized achieves a conforming use status in the district but only during full compliance with the limiting requirements or restrictions as provided in this Zoning Resolution or as imposed by the Board in the initial grant. Conditional uses shall be considered by the Board individually on direct application by an owner or lessee of the property involved and may be transferrable to another owner or lessee upon application to the Board of Zoning Appeals and approval by the Board.
- (c) Within thirty (30) days after receipt of an application for a conditional use, the Board shall give notice and conduct a public hearing as provided in Section 117.11.

117.13 GENERAL STANDARDS AND SPECIFIC CRITERIA FOR CONDITIONAL USES.

(a) General Standards

The Board of Zoning Appeals shall review the particular facts and circumstances of each proposed conditional use in terms of the following general standards and shall find adequate evidence showing that such use at the proposed location:

- (1) Is in fact a conditional use as specified in this Zoning Resolution for the zoning district involved;
- (2) Will be harmonious with and in accordance with the purposes of the Zoning Resolution as provided in Section 101.02, the current adopted version of the Bainbridge Township Land Use Plan, and the district involved as provided in Section 131.04;
- (3) Will be designed, constructed, operated, and maintained so as to be harmonious with the existing or intended character of the adjoining area and that such use will not change the essential character of the same area;
- (4) Will not be hazardous or disturbing to existing or future neighboring uses;
- (5) Will be served adequately by essential public facilities and services such as streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools or that the applicant shall be able to adequately provide such services. Proof of compliance with applicable codes and regulations pertaining to the protection of public health and safety related to fire, sewage disposal, water supply, erosion and sediment control and storm water runoff may be required;
- (6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the Township;
- (7) Will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;

(8) Will have adequate approaches to the property so designed as not to interfere with traffic on neighboring public streets; and that proposed streets and other means of ingress and egress are of adequate width and condition to accommodate expected vehicular traffic to be generated by the proposed use and are reasonably constructed to permit access by firefighting, law enforcement, ambulance, and other safety vehicles. A traffic impact study by a qualified traffic engineer may be required; and

(9) Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance, or the natural rural quality of the landscape.

(b) Specific Criteria

The following specific criteria and requirements for conditional uses are mandatory, if applicable to the proposed use and location, except as may otherwise be provided in this resolution.

(1) All buildings shall be located at least one hundred (100) feet from all property lines and have primary access to a street;

(2) Loud speakers shall not be permitted;

(3) All points of entrance or exit drives shall be located not closer than two hundred (200) feet from the intersection of two streets;

(4) No more than one (1) sign oriented to each abutting street identifying the use or activity shall be permitted.

(5) No lighting shall constitute a nuisance, not impair safe movement of traffic on any street, nor shine directly on adjacent properties;

(6) Access roads shall be constructed, graded, treated, and maintained to be dust free and usable by Township safety or emergency vehicles;

(7) Non-residential uses shall not be located adjacent to residential uses unless buffered or conducted so as not to interfere with residential property enjoyment;

(8) Site locations shall be preferred that offer natural or man-made barriers to lessen the effect of intrusion into a residential area;

(9) The use shall be adequately landscaped to act as a buffer or be harmonious with surrounding uses;

- (10) Permitted outside installations or storage shall be kept in a sanitary and orderly condition so as not to become a nuisance;
- (11) Truck traffic shall be conducted and scheduled so as not to annoy neighboring properties by noise, dust or vibration;
- (12) No work shall be conducted that causes pollution, sedimentation, and erosion or has a probable effect on the existing water table;
- (13) All outside work conducted in connection with such use shall be done between the hours of 7:30 a.m. and 5:00 p.m.;
- (14) All equipment and machinery shall be operated and maintained in such a manner as to minimize dust, noise, and vibration; and
- (15) An interior traffic pattern design indicating all directional signage, pavement markings for vehicular flow and pedestrian crosswalks and control thereof shall be submitted for review.

117.14 SUPPLEMENTARY CONDITIONS.

The Board of Zoning Appeals, in granting any conditional zoning certificate, may prescribe such supplementary conditions which are reasonably related to the requested conditional use and which are not in conflict with, and are specifically authorized by, this Zoning Resolution and which the Board deems necessary to protect the public health, safety, morals, and general welfare and the character of adjoining properties in relationship to existing uses. The Board of Zoning Appeals, in deciding any appeal alleging error by the Zoning Inspector or requesting a variance may prescribe such supplementary conditions which are reasonably related to the requested variance and which are not in conflict with, and are specifically authorized by, this Zoning Resolution and which the Board deems necessary to protect the public health, safety, morals, and general welfare and the character of adjoining properties in relationship to existing uses. Such supplementary conditions shall be made a part of the Board of Zoning Appeals' record of proceedings and shall be incorporated in the final Board decision or grant. Violation of such supplementary conditions which are made a part of the written decision or grant by the Board shall be deemed a violation of this Zoning Resolution.

117.15 BOARD FINAL DECISION.

- (a) The Board of Zoning Appeals shall render a final written decision within thirty (30) days after conclusion of the public hearing for an appeal alleging error, an appeal requesting a variance, or an application for a conditional zoning certificate. To support its decision or grant and resolution of the questions and issues raised in the proceedings, the Board shall adopt findings of fact and may include mixed questions of law and fact. The Board decision or grant and related findings shall be made at a public meeting of the Board, dated, and signed by concurring members and attested by the Board Secretary.

Copies of the written decisions or grant and related findings of fact shall be furnished to the Board of Township Trustees, Zoning Commission, Fiscal Officer and Zoning Inspector and copies shall be mailed to the appellant and all parties in interest.

- (b) All Board records of the proceedings including the decision and findings shall be considered public records and filed with the Zoning Department subject to retention for court appeal. The date Board members sign the written decision shall be the date of entry as provided in Ohio R. C. 2505.07 for appeal to common pleas court pursuant to Ohio R. C. 2506. Within forty (40) days after receipt of notice of appeal, the Board Secretary shall prepare and file in common pleas court a complete transcript of all the proceedings which are the subject of the appeal, as required by Ohio R.C. 2506.02.
- (c) A variance granted by the Board of Zoning Appeals shall run with the subject property and shall not be extinguished upon a change in the ownership of record.
- (d) The zoning certificate for a conditional use approved by the Board of Zoning Appeals shall not run with the land and shall be extinguished upon a change in the ownership of record. Further, the Board may set a maximum time limit on the approval of the zoning certificate for a conditional use and the owner shall apply for a renewal thereof prior to its expiration or it shall be considered expired.