

SECTION 11.0 - BOARD OF APPEALS, ADMINISTRATION, AND ENFORCEMENT

11.1 BOARD OF APPEALS - CREATION AND MEMBERSHIP

A Board of Zoning Appeals, hereinafter referred to by the term "Zoning Board," is hereby authorized to be established. Such Zoning Board shall consist of five (5) members appointed by the Chairman and confirmed by the members of the County Board. The five (5) members of the first Zoning Board appointed shall serve terms of one, two, three, four, and five years respectively. Thereafter, as terms expire, each appointment shall be for five (5) years. Vacancies shall be filled by the Chairman of the County Board for the unexpired terms only, subject to confirmation by the County Board. The County Board shall have the power to remove any member of the Zoning Board for cause, after a public hearing upon giving ten days notice thereof. At the time of appointment to the Zoning Board, not more than one (1) of the members shall be resident within the limits of any one (1) township. The Chairman of the County Board shall name one of the members of the Zoning Board as Chairman upon his appointment and, in case of vacancy, shall name the Chairman.

11.2 MEETINGS

11.21 Regular meetings of the Zoning Board shall be held at such time and place within the County as the Zoning Board may determine. Special meetings may be held at the call of the Chairperson, or as determined by the Board. Such Chairperson or, in his absence, the acting Chairperson, may administer oaths and compel attendance of witnesses. All meetings of the Zoning Board shall be open to the public.

11.22 The Zoning Board shall keep minutes of its proceedings showing the vote of each member upon every question or, if absent or failing to vote, indicating such facts, and shall also keep records of its examinations and other official actions. Every rule, regulation, every amendment or appeal thereof, and every order, requirement, decision or determination of the Zoning Board shall immediately be filed in the office of the Board and shall be a public record. Three (3) members of the Zoning Board shall constitute a quorum, and the concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Enforcing Officer in any matter upon which it is required to pass under this ordinance, or to effect any variation or modification in such ordinance to the County Board. In the performance of its duties, the Zoning Board may incur such expenditures as shall be authorized by the County Board. The Zoning Board shall adopt its own rules of procedure not in conflict with the statute or this ordinance.

11.3 JURISDICTION

- 11.31 The Board of Zoning Appeals shall hear and decide appeals from any order, requirement, decision or determination made by the County Zoning Officer. It shall also hear and decide all matters referred to it or upon which it is required to pass under this ordinance.
- 11.32 The Zoning Board may reverse or affirm wholly or partly, or may modify or amend the order, requirement, decision, or determination appealed from to the extent and in the manner that the Zoning Board may decide to be fitting and proper in the premises and, to that end, the Zoning Board shall also have all the powers of the officer from whom the appeal is taken.
- 11.33 When a property owner shows that a strict application of the terms of this ordinance relating to the use, construction or alteration of buildings or structures, or to the use of land, imposes upon him practical difficulties or particular hardship, then the Zoning Board may in the following instances only make such variations of the strict application of the terms of this ordinance, as are in harmony with its general purpose and intent when the Zoning Board is satisfied, under the evidence heard before it, that a granting of such variation will not merely serve as a convenience to the applicant, but is necessary to alleviate some demonstrable hardship so great as to warrant a variation. (See Section 11.5, Standards for Variations.)
- 11.34 To permit the reconstruction of a nonconforming building (but excluding residences and farm buildings) which has been destroyed or damaged to an extent of more than sixty (60) percent of its value, by fire or act of God, or the public enemy, where the Zoning Board shall find some compelling public necessity requiring a continuance of the nonconforming use, but in no case shall such a permit be issued if its primary function is for financial gain.
- 11.35 To permit the remodeling or expansion of a nonconforming use where the Board finds public necessity and convenience in the continuance or expansion of the nonconforming use, and that such remodeling or expansion does not materially affect the other uses in the neighborhood.
- 11.36 Nothing herein contained shall be construed to give or grant to the Zoning Board the power or authority to alter or change the Zoning Ordinance, such power and authority being reserved to the County Board.
- 11.37 The Zoning Board may impose such conditions and restrictions upon the use of the premises benefited by variance, as it may be deemed necessary.

11.4 APPEALS: HOW TAKEN

11.41 Any person aggrieved or any officer, department, board, or bureau of the County may appeal to the Zoning Board to review any order, requirement, decision or determination made by the Enforcing Officer.

11.42 Such appeal shall be made within thirty (30) days after the date of written notice of the decision or order of the Officer and the Zoning Board, a notice of appeal specifying the grounds thereof. The County Zoning Officer shall forthwith transmit to the Zoning Board all papers constituting the record upon which the action appealed from was taken, and a public hearing scheduled.

11.43 An appeal stays all proceedings in furtherance of the action appealed from, unless the Enforcing Officer certifies to the Zoning Board, after the notice of appeal has been filed with him, that by reason of facts stated in the permit, a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board, or by a court of record on application, on notice to the County Zoning Officer, and on due cause shown.

11.44 The Zoning Board shall fix a reasonable time for hearing of the appeal and give due notice thereof to the parties and decide the same within a reasonable time. Upon hearing, any party may appear in person, by agent, or by attorney.

11.5 STANDARDS FOR VARIATIONS

11.51 Purpose

The Board of Zoning Appeals shall determine and vary the regulations of this ordinance in harmony with their general purpose and intent, only in the specific instances hereinafter set forth, where the Zoning Board makes a finding of fact based upon the standards hereinafter prescribed, that there are practical difficulties or particular hardships in the way of carrying out the strict letter of the regulations of this ordinance.

11.52 A variation shall be permitted only if the evidence in the judgment of the Zoning Board sustains each of the following:

- a. That the property in question cannot yield a reasonable return, if permitted to be used only under the conditions allowed by the regulations in that zoning district; and
- b. That the plight of the owner was not created by the owner and is due to unique circumstances; and
- c. That the variation, if granted, will not alter the essential character of the locality.

11.53 For the purpose of implementing the standards for variations, the Zoning Board in making its decision, whenever there are practical difficulties or particular hardship, shall also take into consideration the extent to which the following facts favorable to the applicant have been established by the evidence that:

- a. The particular physical surrounds, shape, or topographical conditions of the specific property involved would bring a particular hardship upon the owner, as distinguished from a mere inconvenience, if the regulations were strictly enforced.
- b. The conditions upon which the petition for variation is based would not be applicable generally to other property within the same zoning classification.
- c. The alleged difficulty or hardship has not been created by any person presently having an interest in the property, or any person through whom the applicant claims title.
- d. The granting of the variations will not be substantially detrimental to the public welfare, or injurious to other property or improvements in the neighborhood in which the property is located.
- e. The proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the danger of fire, or otherwise endanger the public safety, or substantially diminish or impair property values with the neighborhood.

11.54 The Zoning Board may require such conditions and restrictions upon the premises benefitted by a variation as may be necessary to comply with the standards set forth in this section to reduce or minimize the injurious effect of such variation upon other property in the neighborhood, and to implement the general purpose and intent of this ordinance.

11.6 NOTICE OF HEARING

No variation of the terms of this ordinance shall be granted by the Zoning Board unless an application for a permit has been made to the Enforcing Officer and a duly advertised public hearing has been held by the Zoning Board, as prescribed by statute. The notice of hearing shall contain the address or location of the property and contain a brief description of the nature of the appeal for which the variation or other ruling by the Zoning Board is sought. Notice shall be given by certified mail at least fifteen (15) days prior to hearing to all property owners within two hundred (200) feet in areas zoning residential, three hundred (300) feet in areas zoning business or manufacturing, and one-quarter (1/4) mile in areas zoned agricultural. These distances shall be from the area to be rezoned except where the said district extends into another district; then that standard will

apply. At the hearing, the appellant or applicant may appear in person, by agent or by attorney.

11.7 APPEALS TO COURT

All final administrative decisions of the Zoning Board rendered under the terms of this ordinance shall be subject to judicial review pursuant to the provisions of the Administrative Review Act: approved May 8, 1954, and all amendments and modifications thereof, and the rules adopted pursuant thereto.

11.8 ENFORCEMENT

11.81 This ordinance shall be administered and enforced by the County Zoning Officer appointed by the County Board, who is hereby designated and herein referred to as the County Zoning Officer.

11.82 Proper authorities of the County or any person affected may institute any appropriate action or proceeding against a violator, as provided by statute.