

**ARTICLE XXVIII - BOARD OF ZONING APPEALS**

**SECTION 28.01 - BOARD OF ZONING APPEALS:** A township Board of Zoning Appeals is hereby created. Said Board of Zoning Appeals shall be composed of five (5) members who shall be appointed by the Orange Township Board of Trustees and who shall be residents of the unincorporated territory of the township included in the area zoned by this Zoning Resolution. The Orange Township Board of Trustees may appoint two (2) alternate members to the township Board of Zoning Appeals, for terms to be determined by the Orange Township Board of Trustees. An alternate member shall take the place of an absent regular member at any meeting of the Board of Zoning Appeals, according to procedures prescribed by resolution by the Orange Township Board of Trustees. An alternate member shall meet the same appointment criteria as a regular member. When attending a meeting on behalf of an absent member, the alternate member may vote on any matter on which the absent member is authorized to vote. The terms of all regular members shall be five (5) years and so arranged that the term of one member will expire each year. Each regular or alternate member of the Board of Zoning Appeals shall serve until his successor is appointed and qualified. No person shall be appointed to serve more than two consecutive full terms as a regular member. Members of the Board of Zoning Appeals shall be removable for the reason specified and in compliance with the procedure established in Chapter 519 of the Revised Code of Ohio. Vacancies shall be filled by the Orange Township Board of Trustees and shall be for the unexpired term.

**SECTION 28.02 - ORGANIZATION:** The Board of Zoning Appeals shall organize, electing a chairman and vice- chairman, and adopt rules in accordance with the provisions of this Zoning Resolution. Meetings of the Board of Zoning Appeals shall be held at the call of the chairman, and at such other times as the Board of Zoning Appeals may determine. The chairman, or in his absence, the acting chairman, may administer oaths and the Board of Zoning Appeals may compel attendance of witnesses. All meetings of the Board of Zoning Appeals shall be open to the public. The Board of Zoning Appeals shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Orange Township Board of Trustees at the Orange Township Hall, 1680 E. Orange Road, Orange Township, Delaware County, Ohio, and shall be a public record. Attendance of three (3) members shall constitute a quorum. The township trustees, the township fiscal officer and the zoning inspector shall be notified in advance of all meetings conducted by the board.

**SECTION 28.03 - COMPENSATION AND EXPENSES:** The members of the Board of Zoning Appeals may be allowed their expenses or such compensation, or both, as the Orange Township Board of Trustees may approve and provide. The Board of Zoning Appeals may, within the limits of monies appropriated by the township trustees for the purpose, employ such executives, professionals, technical assistants and other assistants as it deems necessary.

**SECTION 28.04 - POWERS OF THE BOARD:** The Board of Zoning Appeals may:

- a) Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of Sections 519.02 to 519.25 of the Revised Code, or of any Resolution adopted pursuant thereto;
- b) Authorize, upon appeal, in specific cases, such variance from the terms of the Zoning Resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the Resolution will result in unnecessary hardship in the case of use variances, or practical difficulties in the case of area variances, and so that the spirit of the Resolution shall be observed and substantial justice done;
- c) Grant conditional use permits for the use of land, buildings, or other structures as provided for in the Zoning Resolution.
- d) Revoke an authorized variance or conditional use permit granted for the extraction of minerals, if any condition of the variance or permit is violated.

The board shall notify the holder of the variance or conditional use permit by certified mail of its intent to revoke the variance or permit under division (d) of this Section and of his right to a hearing before the board, within thirty (30) days of the mailing of the notice, if he so requests. If the holder requests a hearing, the board shall set a time and place for the hearing and notify the holder. At the hearing, the holder may appear in person by his attorney or other representative, or he may present his position in writing. He may present evidence and examine witnesses appearing for or against him. If no hearing is requested, the board may revoke the variance or permit without a hearing. The authority to revoke a variance or conditional use permit is in addition to any other means of zoning enforcement provided by law.

In exercising the above mentioned powers, such board may, in conformity with such sections, 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 has all powers of the officer from whom the appeal is taken.

**SECTION 28.05 - PROCEDURE ON HEARING APPEALS:** Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer of the township 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 from whom the appeal is taken and with the Board of Zoning Appeals a notice of appeal specifying the grounds thereof. Fifteen (15) copies of such appeal shall be filed in total. The zoning inspector from whom the appeal is taken shall forthwith transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken. The Board of Zoning Appeals shall fix a reasonable time for the hearing of the appeal, give ten (10) days written notice by ordinary mail to the

parties in interest, give notice of such public hearing by one publication in a newspaper of general circulation within the township at least ten (10) days prior to the date of such hearing, and decide the same within a reasonable time after it is submitted. At the hearing, any party may appear in person or by attorney.

**SECTION 28.06 - PROCEDURE ON APPLICATION FOR VARIANCE:** The Board of Zoning Appeals, appointed by the Orange Township Board of Trustees, may upon application, grant such variances from the provisions or requirements of this Resolution as will not be contrary to the public interest.

Such variances may be granted by reason of the exceptional narrowness, shallowness or unusual shape of a specific piece of property on the effective date of this Resolution, or by reason of exceptional topographic conditions, or other extraordinary situations or conditions of such parcel of property, or of the use or development of property immediately adjoining the property in question.

In the event that the variance requested relates solely to area requirements established or imposed by this Resolution, the board shall have power to authorize a variance from the terms of this Resolution upon a finding that literal enforcement of the Resolution will result in practical difficulties and that the spirit of this Resolution will be observed and substantial justice done.

If the variance requested relates to use restrictions or requirements established or imposed by this Resolution, the board shall have power to authorize a variance from the terms of this Resolution upon a finding that the literal enforcement of the Resolution will result in unnecessary hardship and that the spirit of this Resolution will be observed and substantial justice done.

- a) **Public Notice** – Fifteen (15) copies of a written application for a variance shall be filed with the zoning inspector who shall transmit said application to the Board of Zoning Appeals. The Board of Zoning Appeals shall give written notice by ordinary mail to all owners of land within two hundred (200) feet of the exterior boundaries of the land for which a variance is requested. An application for a variance shall be advertised at least once, ten (10) days in advance of the time set for the public hearing, in a newspaper of general circulation within the township.
- b) **Hearing and Decision** - At such hearing the applicant shall present a statement and adequate evidence, in such form as the Board of Zoning Appeals may require.
- c) **Determination - Area Variance** - In granting an area variance the board shall determine:
  - 1) That said variance will not be contrary to the public interest;
  - 2) That said variance is justified due to special conditions;
  - 3) That the spirit of this Resolution will be observed and substantial justice done; and

- 4) That the literal enforcement of the Resolution will result in practical difficulties. The factors to be considered and weighed in determining whether practical difficulties have been encountered shall include, but not be limited to the following:
  - (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;
  - (d) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
  - (e) Whether the property owner purchased the property with knowledge of the zoning restriction; and
  - (f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance.
- d) **Determination - Use Variance** - In granting a use variance the board shall determine:
  - 1) That said variance will not be contrary to the public interest;
  - 2) That said variance is justified due to special conditions;
  - 3) That the literal enforcement of the Resolution will result in unnecessary hardship; and
  - 4) That the spirit of this Resolution will be observed and substantial justice done.
- e) **Determination - Conditions** - In granting any variance under the provisions of this Section, the Board of Zoning Appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of the regulations or provisions in the application of which the variance is granted.

- f) **Form of Application** - All applications for variances under this section shall be submitted on such forms as designated and approved by the Orange Township Board of Trustees. No application will be considered unless the same is fully completed and accompanied by all required information listed on said application.

**SECTION 28.07 - PROCEDURE ON APPLICATION FOR CONDITIONAL USE**

**PERMIT:** The owner or lessee of any land or building within a zoning district within the township may apply to the Board of Zoning Appeals for authority to carry out any use designated as a Conditional Use within that district.

- a) **Application** – Fifteen (15) copies of an application for Conditional Use Permit shall be submitted on such forms as designated and/or approved by the Orange Township Board of Trustees. No application shall be considered unless the same is fully completed and accompanied by all required information on said application together with plot plans or drawing as necessary.
- b) **Hearing** - The application shall be transmitted to the Board of Zoning Appeals who shall cause a public hearing to be held.
- c) **Notice** - Notice of the application for Conditional Use Permit and the hearing thereon shall be given to all property owners within two hundred (200) feet of the premises on which the use is planned. Notice shall be given by ordinary mail. In addition thereto one notice of said meeting shall be published in a newspaper of general circulation within the township not less than ten (10) days prior to the scheduled hearing.
- d) **Decision** - The board shall make its decision within a reasonable time after the hearing. In the event the board, in its discretion, approves the Conditional Use Permit, it may impose such reasonable conditions, safeguards and restrictions as it deems necessary to insure that the use will be conducted in the best interest of the zoning district. In addition to the specific requirements for conditional uses specified in the district regulations, or elsewhere in this zoning resolution, the Board of Zoning Appeals shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall only approve such conditional use if it determines that such use at the proposed location is in compliance with such specific requirements and that:
  - 1) The proposed use is in fact a conditional use as established under the district regulations or elsewhere in this zoning resolution.

- 2) The proposed use is of such a nature, and designed to be constructed, operated and maintained in such a manner, so as to be harmonious and appropriate with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.
- 3) The proposed use will not be hazardous or disturbing to existing or future neighboring uses.
- 4) The proposed use will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools.
- 5) The proposed use will not involve uses, activities, processes, materials, equipment, or 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.
- 6) The proposed use will have vehicular approaches to the property which are so designed as not to create an interference with traffic on surrounding public thoroughfares.
- 7) The proposed use will be consistent with the objectives of this zoning resolution and the Orange Township comprehensive plan.
- 8) The proposed use will be in the interest of the public health, safety, and morals.

Failure to comply with the terms of a conditional use permit shall result in a zoning violation and/or possible revocation of the conditional use permit, as provided below.

- e) **Revocation** - The Board of Zoning Appeals may revoke a Conditional Use Permit for failure to comply with the conditions of that permit. The board shall notify the holder of the permit by certified mail of its intent to revoke the permit and the holders' right to a hearing before the board, within thirty (30) days of the receipt of said notice, if he so requests. In lieu of said certified mail service, service may be made personally by the zoning inspector in which case the hearing shall be requested within thirty (30) days after such service. If the holder requests a hearing, the board shall set a time and place for the hearing and notify the holder. At the hearing, the holder may appear in person, by his attorney or other representative, or he may present his position in writing. He may present evidence and may examine witnesses appearing for or against him. If no hearing is requested the board may revoke the permit without a hearing. The authority to revoke a permit is in addition to any other means of zoning enforcement provided by law.

**SECTION 28.08 - DECISION OF BOARD:** The Board of Zoning Appeals shall act by Resolution, in which three (3) members concur and every action shall be accompanied by a written finding of fact, based on testimony and evidence and specifying the reason by a granting or denying the request. A copy of the board's Resolution accompanied by the board's finding of fact shall be mailed to the applicant by ordinary mail.

**SECTION 28.09 - PUBLIC INFORMATION:** All communications to members of the Board of Zoning Appeals, written or oral which shall be reduced to writing, pertaining to any matter before the board shall be made a part of the record. The record of the board's proceeding in any matter shall be kept on file in the township office at the Orange Township Hall, 1680 E. Orange Road, Orange Township, Delaware County, Ohio, subject to the order of the Delaware County Common Pleas Court, and available for inspection by the public.

**SECTION 28.10 - RECORD:** For any hearing at which the applicant desires a record to be made, the applicant shall give notice not less than ten (10) days prior to the date scheduled for said hearing to the zoning secretary requesting that a court reporter be retained to make such record and the applicant shall deposit with his request cash in the amount established by the trustees to be used to defray the expenses of making a record. In all hearings wherein no request has been made for a record, the notes of the zoning secretary of the Board of Zoning Appeals shall serve as the sole transcript of such hearing.

**SECTION 28.11 - FEES TO ACCOMPANY NOTICE OF APPEAL OR APPLICATION FOR VARIANCE OR CONDITIONAL USE:** For all actions of the Board of Zoning Appeals the Orange Township Board of Trustees shall establish fees to be deposited with each application. Such fees shall be set annually and shall be required generally for each application to defray the costs of advertising, mailing and other expenses.