

ARTICLE 20
ZONING BOARD OF APPEALS

SECTION 20.00 CREATION AND MEMBERSHIP

There is hereby created a ZONING BOARD OF APPEALS which shall perform its duties and exercise its powers as provided in Public Act 110 of 2006, section 125.3601, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and substantial justice done. The Board also known as (ZBA) shall consist of the following five (5) members:

1. The first member of the ZBA shall be a member of the Township Planning Commission.
2. The remaining four (4) members shall be selected from electors of the Township, provided, however, that one of these may be a member of the Township Board, but he may serve as a regular or an alternated but not serve as Chairman of the ZBA. The members selected shall be representative of the population distribution and of the various interests present in the Township.
3. An employee or contractor of the Township may not serve as a member or an employee of the Township ZBA.

The total amount allowed the ZBA in any one (1) year as per diem, or as expenses actually incurred in the discharge of their duties, shall not exceed a reasonable sum of which sum shall be appropriated annually in advance by the Township Board.

The term of each member shall be for three (3) years, except that of the members first appointed: two (2) shall serve for two (2) years and the remaining members for three (3). A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. All vacancies for un-expired terms shall be filled for the remainder of the term.

The ZBA shall not conduct business unless a majority of the members are present.

The Township Board shall provide for the removal of a member of the ZBA for misfeasance, malfeasance or nonfeasance in office upon written charges and after public hearing. A member of the ZBA who is also a member of the Planning Commission or legislative body (Township Board), shall not participate in a public hearing or vote on a matter that was before them as a member of the other body. In such case, use an alternate member of the ZBA instead. However, the member may consider and vote on other unrelated matters involving the same property. A member shall disqualify himself or herself from a vote in which he or she has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which he has a conflict of interest shall constitute malfeasance in office.

- A. The Township Board shall also appoint two alternate members of the

ZBA. Appointments shall be as follows: one alternate member shall be appointed for a period of two years, and the second alternate shall be appointed for a period of three years; thereafter, each alternated member shall be appointed for a full three year term. Any vacancies in the alternative membership of the Board shall be filled by appointment by the Township Board of Trustees for the remainder of the un-expired term.

- B. The alternate members may be called to serve as a regular member of the ZBA in the following cases:
 - (1) In the absence of a regular member, if the regular member is absent from or will be unable to attend two or more consecutive meetings of the ZBA;
 - (2) In the absence of a regular member, if the regular member is absent from or will be unable to attend meetings for a period of more than 30 consecutive days; or
 - (3) In a case in which a regular member has abstained for reasons of conflict of interest.
- C. The alternate member appointed shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the ZBA. Alternate members shall receive equal compensation for the meetings attended as does a regular member.

SECTION 20.01 MEETINGS

All meetings of the ZBA shall be held at the call of the Chairman and at other times as the Board, in its rules of procedure, may specify. All hearings conducted by said Board shall be open to the public. The ZBA shall adopt its own rules of procedure and keep a record of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating said fact and shall file a record of its proceedings in the office of the Township Clerk and shall be public record. The concurring vote of a majority of the members of the ZBA shall be necessary to reverse any order, requirement, or determination of the Building Inspector, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance or to effect a variation in this Ordinance. The Board shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony, and the production of books, papers, files, and other evidence pertinent to the matters before it. The ZBA shall not make a final determination on a specific case until after a public hearing, conducted by the ZBA has been held. The ZBA shall affix a reasonable time for the hearing of the appeal and give due notice thereof by mail to the parties concerned including the fee holder owner of the property concerned.

SECTION 20.02 APPEAL

An appeal may be taken to the ZBA by any person, firm or corporation, or by any officer, department, board, or bureau affected by a decision of the Building Inspector or Administrative

Commission. Such appeal MUST be taken within, thirty (30) days of the APPROVED MINUTES by the filing with the Building Inspector or Administrative Commission from whom the appeal is taken and with the ZBA of a notice such time as shall be prescribed by the ZBA, a Notice of Appeal, specifying the grounds thereof and payment of such fee as may be established by resolution of the Clyde Township Board in those cases hereinafter described. The Building Inspector or Administrative Commission from whom the appeal is taken shall forthwith transmit to the ZBA all the papers constituting the records upon which the action appealed from was taken. The ZBA shall fix a reasonable time for the hearing of the ZBA and give due notice thereof to the parties, and decide the same within a reasonable time. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.

No appeals shall be taken to the ZBA from a decision of the Planning Commission and Township Board in connection with a special condition use (also known as a special land use).

No appeal shall be taken to the ZBA from a decision of the Planning Commission in connection with an approved site plan unless such appeal has first been reviewed by the Planning Commission.

SECTION 20.03 STAY OF PROCEEDINGS

An appeal shall stay all proceedings in furtherance of the action appealed from unless the body or officer from who the appeal is taken certifies to the ZBA, after notice of appeal has been filed, that, by reason of facts stated in the certificate, a stay would, in the opinion of the body or officer, cause imminent peril to life or property, in which case, the proceedings may be stayed by a restraining order issued by the ZBA or a circuit court.

SECTION 20.04 POWERS AND DUTIES

The ZBA shall act upon all questions as they may arise in the administration of the Zoning Ordinance, including the interpretation of the Zoning Maps, and may fix rules and regulations to govern its procedures sitting as such ZBA. It shall hear and decide appeals from and review any order, requirements, decision or determination made by an administrative official charged with enforcement of this Ordinance. It shall also hear and decide all matters referred to it, or upon which it is required to pass, under the provisions of this Ordinance. The concurring vote of the members of said ZBA shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or body to decide in favor of the applicant any matter upon which they are required to pass under this Ordinance or to effect any variance in this Ordinance. The decision of the ZBA shall set forth specifically the grounds upon which its decision is based. The ZBA shall have the power to permit the erection and use of a building, or an addition to an existing building, or a public service corporation or for public utility purposes, in any permitted district to a greater height or of larger area than the district requirements herein established, and permit the location in any use district of a public utility building, structure or use if the ZBA shall find use, height, area, building or structure reasonably necessary for the public convenience and service. The ZBA in deciding on any matter which they are requested to pass under this Ordinance may establish such reasonable requirements for the use of a site or structure on such site as will assure reasonable protection to abutting properties and adjacent districts.

The ZBA shall have the following specified powers and duties:

1. Administrative Review

To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Building Inspector or any other administrative commission in carrying out, or enforcing, any provisions of this Ordinance.

2. Interpretation

To hear and decide in accordance with the provision of this Ordinance:

a. Appeals for the interpretation of the provisions of the Ordinance.

b. Requests to determine the precise location of the boundary lines between the zoning districts as they are displayed on the Zoning Map, when there is dissatisfaction with the decision on such subject.

3. Variances

The ZBA shall have the power to authorize, upon appeal, non-use variances from such dimensional requirements as lot area and width regulations, building height and square foot regulations, yard width and depth regulations, such requirements as off-street parking and loading space, and sign regulations, and other similar requirements as specified in the Ordinance. The ZBA shall not have the authority to grant use variances. To obtain a non-use variance, the applicant must show "practical difficulty," by demonstrating:

a. That strict compliance with area, setbacks, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render the conformity unnecessarily burdensome;

b. That a variance would do substantial justice to the applicant, as well as the other property owners in the district, or whether a lesser relaxation would give substantial relief and be more consistent with justice to others;

c. That the plight of the owner is due to the unique circumstances of the property;
and

d. That the problem is not self-created.

SECTION 20.05 CONSIDERATION AND DECISION

In consideration of all appeals and all proposed variations to this Ordinance, the Board shall, before making any variations from the Ordinance in a specific case, first determine that the proposed variation 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 values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township of Clyde. A majority vote of the total membership of the Board shall be necessary to reverse any other requirements, decision, or determination of the

Building Inspector, or to decide in favor of the applicant any matter upon which it is authorized by this Ordinance to render a decision.

SECTION 20.06 JURISDICTION

The ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit. Where there are practical difficulties in the way of carrying out the strict letter of this Ordinance, the ZBA shall have the power in passing upon appeals to vary or modify any of its rules, regulations or provisions so that the spirit of this Ordinance shall be observed, public safety secured and substantial justice done. In granting a variance, the board may attach thereto such conditions regarding the location, character, and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this Ordinance. Nothing herein contained shall be construed to give or grant to the ZBA the authority to make changes in the Zoning Ordinance or the Zoning Map, such power authority being reserved to the Township Board in the manner herein provided by law.

SECTION 20.07 FEES

The Township Board may, from time to time, prescribe and amend by resolution, a reasonable schedule of fees to be charged to applicants for appeals to the ZBA. At the time the Notice for Appeals filed, said fee shall be paid to the Township Clerk, which the Clerk shall forthwith pay over to the Township Treasurer to the credit of the general revenue fund of the Township. The Township Board may by resolution establish a fee to be paid by the person appealing under this Article in all cases, except those cases where a particular use under this Ordinance may be permitted only after approval of the ZBA.

SECTION 20.08 NOTICE

The Board shall make no recommendations except in a specific case. Public Hearings shall be conducted when specifically required herein, or when the Board deems such hearing to be advisable. A notice of the time and place of such public hearing shall be published in a newspaper of general circulation in the Township of Clyde at least fifteen (15) days prior to the hearing. Such notice shall contain the address, if available, and location of the property from which the ruling by the ZBA is sought, as well as a brief description of the nature of the Appeal.

Public notice of the time, date, and place of the meeting shall also be given in the manner required by Act 267 of the Public Acts of 1976.

SECTION 20.09 APPROVAL OF TEMPORARY STRUCTURES OR USES

The ZBA may permit temporary structures, signs and uses for periods not-to-exceed two (2) years in undeveloped sections of the Township and for periods not-to-exceed six (6) months in developed sections. The ZBA may also permit, upon proper application, the following character of temporary use, not otherwise permitted in any district, not-to-exceed twelve (12) months with

the granting of twelve (12) month extensions being permissible; uses, which do not require the erection of any capital improvement of a structural nature. The ZBA, in granting permits for the above temporary uses, shall do so under the following conditions:

1. The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.
2. The granting of the temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.
3. All setbacks, land coverage, off-street parking, lighting and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of Clyde Township shall be made at the discretion of the ZBA.
4. The use shall be in harmony with the general character of the district.
5. No temporary use permit shall be granted without first giving notice to the owners of the adjacent property of the time and place of a public hearing to be held as further provided for in this Ordinance.

SECTION 20.10 MISCELLANEOUS

No order of the Zoning Board of Appeals permitting the erection of a building shall be valid for a period longer than One (1) year, unless a building permit for such erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

No order of the Zoning Board of Appeals permitting a use of a building or premises shall be valid for a period longer than one (1) year unless such a use is established within such period; however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall contain in force and effect if a building permit for said erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.