

SECTION 740
Appeals and Variances

740.1	Appeals to the Board of Zoning Appeals.	740.5	Review of appeal.
740.2	Initiation of appeal.	740.6	Decision of the Board.
740.3	Public hearing and notice by the Board.	740.7	Variance as a type of appeal.
740.4	Stay of proceedings.	740.8	Appeals to the Court of Common Pleas.

740.1 APPEALS TO THE BOARD OF ZONING APPEALS.

Appeals to the Board of Zoning Appeals may be made by any person, firm or corporation, or by any officer, board or department of the Township, deeming himself or herself to be adversely affected by any decision or action of the Zoning Administrator or by any administrative officer deciding matters relating to this Zoning Resolution.

740.2 INITIATION OF APPEAL.

Application forms for appeals shall be made available at the office of the Zoning Administrator. Notice of appeal shall be filed with the Zoning Administrator within 20 days after the date of any adverse order, requirement, decision, or determination. Such written notice of appeal shall specify therein the grounds and reasons for the appeal. The Zoning Administrator shall transmit to the Board of Zoning Appeals all data pertaining to the subject matter upon which the action so appealed was taken.

740.3 PUBLIC HEARING AND NOTICE BY THE BOARD.

Upon receipt of the material related to the proposed action, the Board of Zoning Appeals shall set a date for a public hearing to consider the appeal.

A. At least 10 days prior to the date of the public hearing, notice of such hearing stating the time, place, and object of the hearing shall be sent by first class mail, to owners of all properties within and contiguous to and directly across the street from the property to which such appeal or application relates, including property that is located in an adjoining community. Failure of delivery of such notice shall not invalidate action taken on such application.

B. Further notice shall be given in one or more newspapers of general circulation in the Township at least 10 days before the date of such hearing.

- C. The Board may recess such hearings, and, if the time and place of the continued hearing is publicly announced at the time of adjournment, no further notice shall be required.
- D. Any person may appear before the Board at the public hearing on the application and state their reasons for or against the proposal.

740.4 STAY OF PROCEEDINGS.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Zoning Appeals after the notice of the appeal has been filed, that by reason of facts stated in the application, a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed by other than a restraining order granted by a court having lawful jurisdiction.

740.5 REVIEW AND DISTRIBUTION OF APPEAL.

To aid in their review, the Board of Zoning Appeals may transmit the application to the following for their review and comment. All reports, comments or expert opinions shall be returned to the Board of Zoning Appeals.

- A. The application may be transmitted to appropriate Township departments and professional consultants for review and comment. The cost of the review by a consultant shall be at the expense of the applicant.
- B. The application and any reports, comments, or expert opinions shall be compiled by the Zoning Administrator and transmitted to the Board.

740.6 DECISION OF THE BOARD.

The Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and to that end the Board of Zoning Appeals may direct or revoke the issuance of a certificate.

- A. The Board shall render a decision on the appeal without unreasonable delay.
- B. Within 5 days of the Board's decision, the secretary of the Board shall send written notification of the decision to the appellant and the Zoning Administrator.
- C. Minutes shall be kept of all proceedings upon appeal, showing the vote of each member thereon.

- D. Once the appellant has received the Board's decision, he/she may submit an application for a zoning certificate that complies with the Board of Zoning Appeal's decision. A copy of the Board of Zoning Appeal's decision shall be attached to the application.

740.7 VARIANCES AS A TYPE OF APPEAL.

The Board of Zoning Appeals may authorize upon appeal in specific cases such variance from the terms of this Resolution as will not be contrary to the public interest according to the following procedures:

- A. Application Requirements. An application for a variance and payment of the required fee shall be filed with the Zoning Administrator for review by the Board of Zoning Appeals. The application shall include the following items necessary to convey the reason(s) for the requested variance:
1. The completed application form, including the name, address and phone number of applicant(s);
 2. Proof of ownership, legal interest or written authority;
 3. Description of the property or portion thereof;
 4. Site plans, floor plans, elevations and other drawings at a reasonable scale to convey the need for a variance;
 5. Description or nature of each variance requested, citing the specific section number and provision of this Zoning Resolution for which the variance is requested, and narrative statements establishing and substantiating the justification for the variance pursuant to Section 740.7B;
 6. Any other documents deemed necessary by the Zoning Administrator.
- B. Within 10 days of receiving a written request for a variance, the Zoning Administrator shall make a preliminary review of the request to determine whether such application provides the information necessary for review and evaluation. If it is determined that such application does not provide the information necessary for such review and evaluation, the Zoning Administrator shall so advise the applicant of the necessary changes. When the application is deemed complete and the application fee has been paid, the Zoning Administrator shall officially accept the application for consideration of the variance requested on the date such determination is made.
- C. Review by the Board of Zoning Appeals. According to the procedures established for appeals in Section 740.3, the Board shall hold a public hearing and give notice of the same. The Board shall review each application for a variance to determine if it complies with the purpose and intent of this Resolution and evidence demonstrates that the literal enforcement of this Resolution will result in practical difficulty for an area variance or unnecessary hardship for a

use variance. The applicant must demonstrate that s(he) is entitled to such variance by a preponderance of substantial reliable and probative evidence on the whole record.

1. Area Variance. The following factors shall be considered and weighed by the Board to determine practical difficulty:
 - a) Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;
 - b) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
 - c) Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
 - d) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
 - e) Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup;
 - f) Whether special conditions or circumstances exist as a result of actions of the owner;
 - g) Whether the property owner's predicament can feasibly be obviated through some method other than a variance;
 - h) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance; and
 - i) Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

2. Use Variance. In order to grant a use variance, the Board of Zoning Appeals shall determine that strict compliance with the terms of this Resolution will result in unnecessary hardship to the applicant. The applicant must demonstrate that s(he) is entitled to such variance by a preponderance of substantial reliable and probative evidence on the whole record.
 - a) The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;

- b) 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;
- c) The hardship condition is not created by actions of the applicant;
- d) The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
- e) The granting of the variance will not adversely affect the public health, safety or general welfare;
- f) The variance will be consistent with the general spirit and intent of this Resolution; and
- g) The variance sought is the minimum that will afford relief to the applicant.

D. Requests for Additional Information. The Board of Zoning Appeals may request that the applicant supply additional information that the Board deems necessary to adequately review and evaluate the request for a variance.

E. Additional Conditions and Safeguards. The Board may further prescribe any conditions and safeguards that it deems necessary to ensure that the objectives of the regulations or provisions to which the variance applies will be met.

F. Action by the Board. The Board shall either approve, approve with supplementary conditions as specified in Section 740.7E, or deny the request for variance according to the procedures established for appeals in Section 740.6. The Board shall further find that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building or structure.

G. Reapplication. If the Board has denied a variance, the Board need not reconsider the same request for a variance, unless the underlying conditions have substantially changed.

H. Term and Extension of Variance. Variances shall expire one year from the date of their enactment, unless prior thereto, use or construction has begun in accordance with the granted variance. Construction is deemed to have begun when all necessary excavation and piers or footers of the structure included in the application have been completed. There shall be no modification of variances except by further consideration of the Board of Zoning Appeals. Requests for renewal of expired variances shall be considered the same as an application for a variance and shall meet all requirements for application and review pursuant to this Section.

740.8 APPEALS TO THE COURT OF COMMON PLEAS.

Decisions by the Board of Zoning Appeals granting or denying variances shall be final within the Township. Appeals shall be subject to judicial review by the Court of Common Pleas of Summit County, Ohio, in accordance with the laws of the State of Ohio.

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