
Sec. 36-137. Jurisdiction.

- (a) The zoning board of appeals, as herein created, is a body of limited power. The zoning board of appeals shall have the following powers and it shall be its duty:
 - (1) To hear and decide on all matters referred to it upon which it is required to pass under this chapter.
 - (2) To interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the same.
 - (3) To make a determination as to the appropriate zoning district for a use not specifically listed in this chapter. In making such a determination, the zoning board of appeals shall consider, among other things, the specific characteristics of the use in question and compare such characteristics with the characteristics of uses expressly permitted in the district. Such characteristics shall include, but not be limited to, daily traffic congestion and traffic patterns, types of merchandise or service provided, types of goods produced, expected hours of operation, and other characteristics which relate in any fashion to the proposed use in comparison to permitted uses. The zoning board of appeals shall determine whether such use shall be permitted by right, special land use, or permitted as an accessory use. The zoning board of appeals shall have the authority to establish general standards and conditions under which a use may be included in a district when making a determination as to an unlisted use.
 - (4) To hear and decide appeals where it is alleged there is an error of law in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this zoning ordinance.
 - (5) Interpret the zoning map.
- (b) In hearing and deciding appeals, the zoning board of appeals shall have the authority to grant such variance from the provisions of this zoning ordinance as may be in harmony with the general purpose and intent so that the function of this zoning ordinance shall be observed, public health, safety and welfare secured, and substantial justice done, including the following:
 - (1) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the same;
 - (2) Permit the erection and use of a building or use of premises in any district for public utility purposes necessary to public convenience and service, so located, designed, erected, and landscaped to conform harmoniously with the architecture and plan of the Township;
 - (3) Determine the precise location of the boundary lines between zoning districts where there is dissatisfaction with a decision between said subject made by the zoning administrator;
 - (4) Determine the off-street parking and loading space requirements of any use which is not mentioned in article IX of this chapter either by classifying it with one of the groups listed in that section or by an analysis of the specific need;
 - (5) Permit such modification of the height, setback, and area regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape or so located with relation to surrounding development or physical characteristics that it cannot otherwise be appropriately or reasonably improved without such modification;
 - (6) Approve building and permits for legal nonconforming uses to terminate on a date specified in the approval documents, which date shall not exceed two years from the date of the permit, providing such uses are deemed helpful to the development of certain areas and which will not be detrimental to the neighboring areas;

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- (7) Permit a change of use from one nonconforming use to another nonconforming use of the same or a more restricted classification, provided that the proposed use is suitable or more appropriate to the district than the existing nonconforming use;
- (8) Permit a change in a nonconforming structure, provided that the change results in a reduction in the nonconformity and the change in the structure is suitable or more appropriate to the district than the existing nonconforming structure.
- (c) Where, owing to special conditions, a literal enforcement of the provisions of this zoning ordinance would involve practical difficulties, the zoning board of appeals shall have power upon appeal in specific cases to authorize such variation or modification of the provisions of this zoning ordinance with such conditions and safeguards as it may determine, as may be in harmony with the spirit of this zoning ordinance and so that public safety and welfare be secured and substantial justice done. No such variance or modification of the provisions of this zoning ordinance shall be granted unless it appears that, at a minimum, the applicant has proven a practical difficulty and that all the following facts and conditions exist:
- ~~(1) That there are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone.~~
- ~~(2) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. The possibility of increased financial return shall not be deemed sufficient to warrant a variance.~~
- ~~(3) That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.~~
- ~~(4) That the granting of such variance will not adversely affect the purpose or objectives of the master plan of the Township.~~
- ~~(5) That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature.~~
- ~~(6) Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district.~~
- ~~(7) The requested variance is the minimum necessary to permit reasonable use of the land.~~
- (1) Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.
- (2) The variance will do substantial justice to the applicant, as well as other property owners.
- (3) A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
- (4) The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
- (5) The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessors.

For the purpose of the above, a practical difficulty exists on the subject land when the strict compliance with this chapter's standards would render conformity unnecessarily burdensome (such as exceptional narrowness,

shallowness, shape of area, presence of floodplain or wetlands, exceptional topographic conditions), and the applicant has proven all of the standards set forth in subsections (c)(1) through (7) of this section. Demonstration of practical difficulty shall focus on the subject property or use of the subject property, and not on the applicant personally.

- (d) In consideration of all appeals and all proposed variations to this zoning ordinance, the zoning board of appeals shall, before making any variations from this zoning ordinance in a specific case, determine that the standards set forth above have been met, and 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, or welfare of the inhabitants of the Township.
- (e) The zoning board of appeals shall not have jurisdiction over the following matters:
 - (1) The zoning board of appeals shall not have the power or authority to alter or change this chapter or the zoning map.
 - (2) The zoning board of appeals shall not have the power or authority to alter or change the zoning district classification of any property.
 - (3) The zoning board of appeals shall not have the power or authority to grant a use variance or otherwise approve of a use not permitted under the zoning district classification.
 - (4) The zoning board of appeals shall not have the power or authority to grant a dimensional variance for any residential property which has the effect of rezoning that residential property to a different residential zoning classification provided in this chapter. For purposes of this section, the term "effect of rezoning" shall mean a request to vary or reduce the required lot area regulations in any residential zoning classification by an amount of 15 percent or greater. However, this prohibition shall not apply in the case of a property owner seeking such a dimensional variance to develop one residential structure on a single parcel of residential land.
 - (5) The zoning board of appeals shall not have the power or authority to hear an appeal relative to any decision rendered on a planned unit development.
 - (6) The zoning board of appeals shall not have the power or authority to hear an appeal relative to any decision rendered on a special land use.
 - (7) The zoning board of appeals shall not have the power or authority to hear an appeal from a decision rendered by the planning commission or Township Board related to a matter under which the planning commission and/or Township Board are the decision-makers under this chapter.

(Zoning Ord. 2020, § 6.5, 1-5-2021)