

ARTICLE 12. THE ZONING HEARING BOARD

Section 1. Organization

The Zoning Hearing Board is hereby created. The Board shall consist of five (5) members. The members shall be appointed from among residents of the Borough by the Council, and they shall be removable for cause upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Of the members first appointed, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years. Thereafter, members shall be appointed for terms of three years each. When additional members are appointed by the Council to increase the size of the Zoning Hearing Board from three (3) members to five (5) members, of the new members first appointed, one (1) shall be appointed for a term of two years and one (1) shall be appointed for a term of one year. Thereafter, members for these new positions shall be appointed for terms of three (3) years each.

The Board may adopt forms and rules for the conduct of its business. One member may conduct hearing. However, an affirmative vote of two members of the Board shall be required to overrule any decision, ruling, or determination of the official charged with enforcement of this Ordinance, or to approve any special exception or variance.

Section 2. Procedure

Applications for special exceptions, interpretations, and variances may be made by any property owner, tenant, government official, department board, or bureau. Such application shall be made to the Administrator, in accordance with rules adopted by the Board. The application and accompanying maps, plans, or other information shall be transmitted properly to the Secretary of the Board, who shall place the matter on the docket, advertise a public hearing thereon, and give written notice of such hearing to the parties in interest. The Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.

Application for special exceptions, for variance from the terms of this Ordinance, or appeals from the decision of the Administrator shall require the payment in advance of the average cost of hearings held during the past calendar year but in no case less than \$100.00. Charges shall include stenographic costs, administrative time and other costs incidental to the hearing. Unless rules are complied with and deposit of estimated costs made, the Zoning Hearing Board shall not act upon the application. If the Board determines that the Administrator was in error on denying the application for a building permit and that there is no need to conduct a public hearing, all charges will be refunded.

An appeal to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the Borough affected by any decision of the Administrator. Such appeal shall be taken within 30 days after the decision appealed from, by filing with the Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrator certifies to the Board that, by reason of facts stated in the certificate, a stay

would, in his opinion, cause imminent peril to life or property, in which case proceeding shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Administrator and on due cause shown.

Upon filing with the Zoning Hearing Board an appeal as aforesaid, the Board shall fix a time and place for a public hearing thereon and shall give notice stating the location of the building lot or area involved and the general nature of question involved, as follows:

1. By publishing a notice thereof once a week for two successive weeks in a newspaper of general circulation in the Borough of Somerset which notice shall first appear at least fifteen days prior to said hearing, and
2. By serving a notice thereof upon the Borough Secretary and upon the Mayor, and
3. Owners of property within 100 feet of the property in question and other parties in interest as Board may in any particular case direct, shall be notified of appeal.

All meetings of the Zoning Hearing Board shall be open to the public. The Board shall keep minutes of its proceedings and other official actions, 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 filed in the office of the Board and shall be a public record. The Chairman of the Board, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses.

Section 3. Powers

The Zoning Hearing Board shall have the following powers:

1. To 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 administration or enforcement of this Ordinance.
2. To hear and decide on applications for special exceptions upon which the Board is specifically authorized to pass under this Ordinance.
3. To authorize, upon appeal in specific cases, such variance from the terms of this Ordinance, as will not be contrary to the public interest, where, owing to special conditions, the enforcement of the provisions of this Ordinance will result in unwarranted hardship and injustice, but which will most nearly accomplish the purpose and intent of this Ordinance.
4. To hear and decide applications for interpretation of the Zoning District Map where there is any uncertainty as to the location of a district boundary.

Section 4. Special Exceptions

In order to provide for adjustments in the relative location of uses and buildings of the same or different classifications, to promote the usefulness of these regulations as instruments for fact-finding, interpretation, application, and adjustment, and to supply the necessary elasticity to their efficient operation, special use exceptions and, limited as to locations and especially in locations described in this article, special yard and height exceptions are permitted by the terms of these regulations. The following buildings and uses are permitted as special exceptions if the Board finds that, in its opinion, as a matter

of fact, such exceptions will not substantially affect adversely the uses of adjacent and neighboring property.

4.1 Special use Exceptions

1. Temporary and conditional permits for a period of two years or less for the following uses:

- (a) Archery ranges
- (b) Asphalt batching plants or concrete batching plants
- (c) Commercial dog kennels
- (d) Miniature golf courses or driving ranges
- (e) Non accessory tents for special purposes
- (f) Outdoor display or promotional activities, at shopping centers or elsewhere
- (g) Pony rings
- (h) Raising birds, rabbits, etc. for sale
- (i) Riding academies, public or private stables
- (j) Rifle or pistol ranges, trap or skeet shooting
- (k) Sawmill for cutting timber grown on the premises

(l) Temporary buildings for use as a sales or rental office for an approved real estate development or subdivision

2. Exceptions to parking and loading requirements as follows:

(a) Location of Off-Street parking areas on property adjacent to or at a reasonable distance from the premises on which parking areas are required by the parking regulations of Article 7, where practical difficulties, including the acquisition of property, or undue hardships, are encountered in locating such parking areas on the premises, and where the purpose of these regulations to relieve congestion in the streets would best be served by permitting such parking off the premises.

(b) Waiver or reduction of the parking and loading requirements, in any district, whenever the character or use of the building is such as to make unnecessary the full provisions of parking or loading facilities.

(c) Waiver or reduction of loading space requirements, where adequate community loading facilities are provided.

(d) Waiver or reduction of loading space requirements for uses which contain less than 10,000 square feet of floor area, where construction of existing buildings, problems or access, or size of lot make impractical the provision of required loading space.

3. Other special use exceptions as follows:

(a) Private garages for more than four automobiles or with floor area of more than 900 square feet in a residential district.

(b) Cemeteries for pets

(c) Commercial greenhouses, wholesale or retail

(d) Convalescent homes, nursing homes, or homes for the aged

(e) Day nurseries or child care centers

(f) Frog or fish farms

(g) Nurseries for growing of plants, trees, and shrubs, including a building for sale of products produced on the premises

(h) Public telephone booths

(i) Radio or television broadcasting stations or towers more than 125 feet in height, provided construction and safety features are approved by the Administrator in accord with applicable regulations and provided no hazard is created in an Airport Approach Zone.

(j) Trailers or mobile homes for living quarters accessory to a farm

(k) A determination, in causes of uncertainty, of the district classification of any use not specifically named in these regulations, provided, however, that such use shall be in keeping with uses specifically permitted in the districts in which such use is to be classified.

4.2 Special Yard Exceptions

1. An exception in the yard regulations on a lot where, on the adjacent lot, there is a front, side, or rear yard that does not conform with such yard regulations in a way similar to the exception applied for, croachment upon an existing or proposed right-of-way.

2. An exception in the depth of a rear yard on a lot, in a block where there are non-conforming rear yards.

3. An exception where there are irregularities in depths of existing front yards on a street frontage on the side of a street between two intersecting streets, so that any one of the existing depths shall, for a building hereafter constructed or extended, be the required minimum front yard depth.

4.3 Special Height Exceptions

1. An exception to the height regulations in the M-1 Light Industrial and M-2 Heavy Industrial Districts.

Section 5. Variances

Subject to the provisions of Section 3 of this article, the Board shall have the power to grant the following variances:

1. A variation in the yard requirements in any district so as to relieve practical difficulties or particular hardships in cases, when and where, by reason of exceptional narrowness, shallowness, or other unusual characteristic of size or shape of a specific piece of property, at the time of the enactment of such regulations or restriction or by reason of exceptional topographical conditions or extraordinary situation or condition of such piece of property, or by reason of the use or development of property immediately adjacent thereto, the strict application of each regulation or restriction would result in peculiar and exceptional practical difficulties to, or exceptional hardship upon, the owner of such property. Such grant of variance shall comply, as nearly as possible, in every respect with the spirit, intent, and purpose of this Ordinance, it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional hardship, as distinguished from variations sought by applicants for purposes or reasons of convenience, profit or caprice.

No such variance shall be authorized by the Board unless it finds:

1. That the strict application of the Ordinance would produce unwarranted hardship.
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance.

Section 6. Conditions Attached to Approvals

Where, in these regulations, special exceptions are permitted, provided they are approved by the Board, and where the Board is authorized to decide appeals or approve certain uses, and where the Board is authorized to approve variances, such approval decision, or authorization shall be limited by such conditions as the case may require, including the imposition of any of the following specifications:

1. No outside signs or advertising structures except professional or directional signs
2. Limitation of signs as to size, type color, location, or illumination
3. Amount, direction, and location of outdoor lighting
4. Amount and location of off-street parking and loading space
5. Cleaning or painting of building or structures

6. Gable roof or other roof type
7. Building construction and materials
8. Building connected or disconnected with other buildings
9. Exits or entrances, doors, and windows
10. Paving, shrubbery, landscaping, or ornamental or screening fences, wall, or hedges
11. Time of day or night for operating
12. Prohibition against store fronts
13. Prohibition against structural changes
14. Control or elimination of smoke, dust, gas, noise, or vibration caused by operations
15. Requirements for termination of a use, based on lapse of time or such other conditions as the Board may specify
16. Such other conditions as are necessary

Section 7. Lapse of Special Exception or Variance

After the Zoning Hearing Board has approved a special exception or granted a variance, the special exception or variance so approved or granted shall lapse after the expiration of one year if no substantial construction or change of use has taken place in accordance with the plans for which such special exception or variance was granted, or if the Board does not specify some longer period than one year for good cause shown, and the provisions of these regulation shall thereafter govern.

Section 8. Amendment of Special Exception or Variance

The procedure for amendment of a special exception or variance already proved, or a request for a change of conditions attached to an approval, shall be the same as for a new application except that, where the Administrator determines the change to be minor relative to the original approval, he may transmit the same to the Board with the original record without requiring that a new application be filed.

Section 9. Appeals to Court

Appeals to courts from a decision of the Board may be filed in the manner prescribed by law.

