

**ARTICLE 3: RESPONSIBILITIES OF THE BOARD OF ZONING APPEALS**

**Section 301: Board of Zoning Appeals**

The Township Trustees shall establish a Board of Zoning Appeals, in accordance with ORC 519.13, consisting of five (5) residents of the Township. Two (2) additional citizens may be appointed to the Board of Zoning Appeals as alternates. None of the members shall concurrently serve as a member of the Township Trustees, Zoning Commission, or Architectural Review Board.

301.01 The terms of all members shall be so arranged that the term of one member shall expire every year. Each member shall serve until their successor is appointed and qualified.

301.02 Members of the Board of Zoning Appeals may be removable for nonperformance of duty, misconduct in office, or other cause by the Township Trustees, upon written charges being filed with the Township Trustees, after a public hearing has been held regarding the charges, and after a copy of the charges has been served upon the member so charged at least ten (10) days before the hearing, either personally, or by registered mail, or by leaving the copy at the member’s usual place of residence. The hearing shall occur within sixty (60) days after the charges are filed. The member shall be given an opportunity to be heard and answer the charges. Upon the approval of a majority of the Township Trustees, the member may be suspended from participating as a member of the Board of Zoning Appeals during the period of up to sixty (60) days before the pending hearing on the removal. The decision of the Township Trustees regarding the suspension or removal may be appealed under Chapter 2506. Vacancies shall be filled by resolution of the Township Trustees and shall be for the unexpired term. A suspension authorized by Section 519.04 of the Ohio Revised Code is not a vacancy for the purposes of this section.

301.03 The Board of Zoning Appeals shall adopt rules necessary to the conduct of its affairs in keeping with the provisions of this Resolution. Meetings shall be held at the call of the Chair and at such other times as the Board of Zoning Appeals may determine. The Chair, or in their absence the Acting Chair, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Board of Zoning Appeals shall keep minutes of its proceedings, showing the vote of each member upon 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 a public record and be immediately filed in the office of the Board of Zoning Appeals.

301.04 In exercising its duties, the Board of Zoning Appeals may, as long as such action is in conformity with the terms of this Resolution, reverse or affirm, wholly or partly, or 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 shall have the power of the Zoning Inspector from whom the appeal is taken. A majority vote of a quorum of Board of Zoning Appeals members shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under this Resolution.

- 301.05 Pursuant to ORC 519.14, the Board of Zoning Appeals has the following specific responsibilities:
- A) To hear and decide appeals in accordance with Section 306 where it is alleged there is an error in any order, requirement, decision, or determination made by the Zoning Inspector;
  - B) Where the applicant has provided sufficient evidence to warrant the granting of a Variance, to authorize such Variances from the terms of this Resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of this Resolution will result in unnecessary hardship, and so that the spirit of this Resolution shall be observed, and substantial justice done. The consideration of such Variances shall be in accordance with Section 307;
  - C) To grant Conditional Use Permits as specified in Section 302 and such additional safeguards as will uphold the intent of the Resolution; and

**GENOA TOWNSHIP ZONING RESOLUTION**

**ARTICLE 3: RESPONSIBILITIES OF THE BOARD OF ZONING APPEALS**

D) To determine the exact location of any District boundary in accordance with Section 503 if there is uncertainty as to the exact location.

301.06 The Zoning Commission and Township Trustees shall not have authority over the responsibilities delegated to the Board of Zoning Appeals nor shall they have the authority to assume said responsibilities or override any decision of the Board of Zoning Appeals.

301.07 Decisions made by the Township Trustees or the Zoning Commission shall not be eligible for appeal to the Board of Zoning Appeals. Similarly, decisions made by the Board of Zoning Appeals shall not be eligible for appeal to the Township Trustees or the Zoning Commission.

**Section 302: Conditional Use Permits**

An application for a Conditional Use Permit by at least one (1) owner of the property is required prior to any authorization by the Board of Zoning Appeals. At a minimum, the application shall contain the following information:

302.01 Name, address, and telephone number or e-mail address of the applicant;

302.02 Applicant's signature

302.03 Date of application;

302.04 Name and address of property owner;

302.05 Should the applicant not be the property owner of record, or if the applicant of property of record does not co-sign the application, proof of the property owner's authorization for the application to be made shall be submitted in the form of a signed letter, e-mail, or a copy of a legal agreement or contract between the applicant and the property owner which establishes that the applicant has an equitable interest in said property;

302.06 Address or parcel identification number (PIN) of the subject property;

302.07 The name of the subdivision the Lot is located within, Lot number, a legal description of the Lot, or any other such information necessary to identify the location of the Lot;

302.08 Description of existing Zoning District;

302.09 Description of the proposed Conditional Use;

302.10 A site plan of the proposed site for the Conditional Use showing the scale, north arrow, location of all Buildings, parking and loading areas, traffic access and traffic circulation, sidewalks, curbs, Open Spaces, Landscaping and grading plan, refuse and service areas, fire hydrants, utilities, Rights-of-Way, Signs, yards, drainage plan, and such other information as the Board of Zoning Appeals may require to determine if the proposed Conditional Use meets the intent and requirements of this Resolution;

302.11 A plan for screening when applicable;

302.12 A narrative statement discussing the merits of the proposal;

302.13 Such other information as may be required by the Board of Zoning Appeals; and

302.14 A fee as established by the Township Trustees.

**Section 303: Conditional Use Standards**

Conditional Uses may be permitted provided that such Uses shall be found to comply with the following requirements and all other applicable requirements as set forth in this Resolution:

303.01 The Use is so designed, located, and proposed to be operated so that the public health, safety, general welfare, and public convenience will be protected.

303.02 The Use will not result in the destruction, loss, or damage of natural, scenic, or historic features of major importance.

**GENOA TOWNSHIP ZONING RESOLUTION**  
**ARTICLE 3: RESPONSIBILITIES OF THE BOARD OF ZONING APPEALS**

- 303.03 The Use will be designed, constructed, operated, and maintained so that it shall not cause substantial injury to the value of the property in the area or neighborhood where it is to be located.
- 303.04 The Use shall be compatible with adjoining development and the proposed character of the Zoning District where it is to be located.
- 303.05 The 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, or that the persons or agencies responsible for the establishment of the proposed Use shall be able to provide any such services adequately.
- 303.06 The Use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community. Public facilities and services include but are not limited to fire and police protection or other emergency services, roadways, intersections, traffic lights, and sanitary and storm sewers.
- 303.07 Adequate Landscaping and screening are provided, as required under Article 20.
- 303.08 Adequate off-street parking is provided, and ingress and egress is so designed as to cause minimal interference with traffic on abutting streets.
- 303.09 The Use conforms to all applicable regulations governing the District in which it is located.
- 303.10 The Use is compatible with the standards, objectives, and policies of Genoa Township Comprehensive Plan as amended and any revisions thereof.
- 303.11 The Use will not involve uses, activities, processes, materials, equipment and 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, odors, or vibrations.

**Section 304: Processing of Conditional Uses**

The Board of Zoning Appeals shall hold a public hearing within a reasonable time after the receipt of the application.

- 304.01 Before holding the public hearing, notice of such hearing shall be given in one (1) or more newspapers of general circulation within the Township at least ten (10) days before the date of said hearing. The notice shall set forth the time and place of the public hearing, and the nature of the proposed Conditional Use.
- 304.02 Before holding the public hearing, written notice of such hearing shall be mailed by the Chair of the Board of Zoning Appeals or designee, by first class mail, at least ten (10) days before the day of the hearing to the parties in interest including the owners of property Contiguous to and directly across the street from the applicant's property. The applicant shall provide a list of such property owners and one set of pre-addressed, legal size envelopes, provided with sufficient postage, which shall be used by the Board of Zoning Appeals' Secretary to notify property owners. The notice shall contain the same information as required of notices published in newspapers.
- 304.03 Within a reasonable time after the hearing, the Board of Zoning Appeals shall either approve, approve with supplementary conditions, or disapprove the application as presented. If the Board of Zoning Appeals disapproves the application the applicant may seek relief through the Court of Common Pleas.

**Section 305: Expiration of Conditional Use Permit**

A Conditional Use Permit shall be deemed to authorize only one, particular Conditional Use. The Conditional Use Permit shall automatically expire if, for any reason, the Conditional Use shall cease for more than six (6) months, or construction is not begun within twelve (12) months.

**GENOA TOWNSHIP ZONING RESOLUTION**  
**ARTICLE 3: RESPONSIBILITIES OF THE BOARD OF ZONING APPEALS**

**Section 306: Administrative Appeals**

In accordance with ORC 519.15, appeals to the Board of Zoning Appeals concerning interpretation or administration of this Resolution may be taken by any person aggrieved or by any officer or bureau of the legislative authority of the Township affected by any decision of the Zoning Inspector or an authorized administrative officer enforcing this Resolution.

- 306.01 An appeal shall be taken within twenty (20) days after the decision by filing, with the Zoning Inspector and with the Board of Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is being taken. The Zoning Inspector shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed was taken.
- 306.02 An appeal stays all proceedings in furtherance of the action appealed unless the Zoning Inspector certifies to the Board of Zoning Appeals that in their opinion, by reason of facts stated in the application, a stay would cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order that may be granted by the Board of Zoning Appeals or by a court of record on application, on notice to the Zoning Inspector from whom the appeal was taken.
- 306.03 The Board of Zoning Appeals shall select a time and place for the hearing of an appeal and give at least ten (10) days written notice to the parties in interest including the owners of property contiguous to and directly across the street from the applicant's property.
- In addition, public notice of such hearings including place, date, and subject of the hearing, shall be published in a newspaper of general circulation at least ten (10) days prior to the date of the hearing. Any party in interest may appear and be heard at the hearing in person, by agent, or by attorney.
- 306.04 The Board of Zoning Appeals shall have all the powers of the Zoning Inspector with respect to such decision. The concurring vote of a majority of a quorum of Board of Zoning Appeals members shall be necessary to reverse or modify any decision of the Zoning Inspector under this Resolution. The Board of Zoning Appeals shall render a written decision on the application without unreasonable delay after the close of a hearing. A copy of the decision and findings of fact shall be sent to the Township Trustees and Zoning Commission, and by certified mail to the applicant.
- 306.05 A fee, the amount of which is established by the Township Trustees, shall accompany a notice of appeal.

**Section 307: Variances**

If the Zoning Inspector rejects an application for a Zoning Permit or Certificate of Zoning Compliance or if the Zoning Resolution prohibits the erection of a Building, Structure, Sign or Use, the applicant may appeal for a Variance to the Board of Zoning Appeals.

- 307.01 The Board of Zoning Appeals may authorize, in specific cases, a Variance from the terms of this Resolution as will not be contrary to the public interest or the intent of this Resolution, but only where strict interpretation would result in practical difficulty as defined in Ohio Revised Code, Section 519.14. No Nonconforming Use of neighboring lands, Structures, or Buildings in the same District and no permitted or Nonconforming Use of lands, Structures, or Buildings in other Districts shall be considered grounds for issuance of a Variance.
- 307.02 A Variance from the terms of this Resolution shall not be granted by the Board of Zoning Appeals unless the applicant has provided sufficient evidence to warrant the granting of a Variance, and a written application for a Variance is submitted to the Zoning Inspector and to the Board of Zoning Appeals.
- 307.03 An application for a Variance shall contain, at a minimum, the following information:
- A) Name, address and telephone number or e-mail address of the applicant;
  - B) Applicant's signature;

**GENOA TOWNSHIP ZONING RESOLUTION**  
**ARTICLE 3: RESPONSIBILITIES OF THE BOARD OF ZONING APPEALS**

- C) Date of the application;
  - D) Name and address of the property owner;
  - E) Should the applicant not be the property owner of record, or if said owner does not co-sign the application, proof of the property owner's authorization for the application to be made shall be submitted in the form of a signed letter, e-mail, or a copy of a legal agreement or contract between the applicant and the property owner which establishes that the applicant has an equitable interest in said property;
  - F) Address or parcel identification number (PIN) of the subject property;
  - G) The name of the subdivision the Lot is located within and the Lot number, a legal description of the Lot, and/or any other such information necessary to identify the location of the Lot.
  - H) The specific Section of the Zoning Resolution that the Variance is being sought and a description of what is being proposed;
  - I) A narrative statement justifying the request that cites the factors to be considered and standards established herein. The burden of proof for granting a Variance shall rest with the applicant.
  - J) A fee as established by the Township Trustees.
- 307.04 Approval of a Variance. Except as otherwise provide for Area Variances in Section 307.06 below, the Board of Zoning Appeals shall only approve a Variance, or modification thereof, if the following findings are made:
- A) That such Variance or modification will not be contrary to the public interest; and
  - B) That owing to special conditions, a literal enforcement of this Zoning Resolution will result in unnecessary hardship; and
  - C) That the approval of such Variance or modification thereof is consistent with the spirit of this Zoning Resolution, and substantial justice shall be done thereby.
- 307.05 Factors to be Considered in Making Findings. In making such findings, the Board of Zoning Appeals shall consider all relevant factors including, but not limited to, the following:
- A) That special conditions and circumstances exist which are peculiar to the land, Structure, or Building involved and which are not applicable to other lands, Structures, or Buildings in the same District; and
  - B) That a literal interpretation of the provisions of this Resolution would deprive the applicant of rights commonly enjoyed by other properties in the same District under the terms of this Resolution; and
  - C) That the special conditions and circumstances do not result from the actions of the applicant; and
  - D) That granting the Variance requested will not confer on the applicant the same effect as Rezoning to another Zoning District classification; and
  - E) That granting the requested Variance will conform to the Genoa Township Comprehensive Plan and the spirit and intent of the Genoa Township Zoning Resolution; and
  - F) That the requested Variance is the minimum Variance necessary to accomplish the purpose of the request; and

**GENOA TOWNSHIP ZONING RESOLUTION**

**ARTICLE 3: RESPONSIBILITIES OF THE BOARD OF ZONING APPEALS**

- G) That granting the Variance will not adversely affect the health or safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to persons or property in such vicinity, or injurious to private property or public improvements in the vicinity.
- 307.06 Area Variances. The Board of Zoning Appeals shall not grant an area Variance unless the property owner has encountered practical difficulties in the use of such owner's property. The Board of Zoning Appeals shall consider all relevant factors in determining whether the applicant has encountered practical difficulties in the use of such property including, but not limited to:
- 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, emergency response, maintenance of public infrastructure).
  - E) Whether the property owner purchased the property with knowledge of the zoning restriction.
  - F) Whether the property owner's predicament feasibly can be obviated through some method other than a Variance.
  - G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the Variance.
- 307.07 Use Variances. The Board of Zoning Appeals shall not grant a Variance to permit a non-permitted or prohibited Use unless an unnecessary hardship exists. An unnecessary hardship shall exist only if the property owner is able to sufficiently prove, with facts, that it is not economically feasible to put their property to any Use permitted within its current zoning classification due to characteristics unique to the property. An unnecessary hardship shall be considered to not exist if the property is suitable for any Use permitted within its current zoning classification.
- 307.08 The Board of Zoning Appeals shall hold a public hearing within a reasonable time after the receipt of an application for a Variance. Before holding the required public hearing, notice of such hearing shall be given in one (1) or more newspapers of general circulation within the Township at least ten (10) days before the date of said hearing. The notice shall set forth the time and place of the public hearing, and the nature of the proposed Variance. Written notice of the public hearing shall be mailed by the Chair of the Board of Zoning Appeals or designee, by first class mail, at least ten (10) days before the day of the hearing to the parties in interest including the owners of property Contiguous to and directly across the street from the applicant's property. The applicant shall provide a list of such property owners and one set of pre-addressed, legal size envelopes provided with sufficient postage which shall be used by the Zoning Secretary to notify property owners. The notice shall contain the same information as required of notices published in newspapers.
- 307.09 Conditions. In granting any Variance request, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Resolution. Violation of such conditions and safeguards, when made a part of the terms under which the request for a Variance is granted, shall be deemed a violation of this Resolution and thus subject to enforcement pursuant to Section 116. Unless otherwise permitted by Section 307.07, under no circumstances shall the Board of Zoning Appeals grant any Variance or impose any conditions which allow a Use not permissible under the terms of this Resolution in the Zoning District involved or any Use expressly or by implication prohibited by the terms of this Resolution in said District.

**GENOA TOWNSHIP ZONING RESOLUTION**  
**ARTICLE 3: RESPONSIBILITIES OF THE BOARD OF ZONING APPEALS**

- 307.10 The Board of Zoning Appeals shall have all the powers of the Zoning Inspector with respect to such decision. The concurring vote of a majority of a quorum of Board of Zoning Appeals members shall be necessary to reverse or modify any decision of the Zoning Inspector under this Resolution. The Board of Zoning Appeals shall render a written decision on the application without unreasonable delay after the close of a hearing. A copy of the decision and findings of fact shall be sent to the applicant.
- 307.11 Expiration of Approval. Unless otherwise stipulated by the Board of Zoning Appeals, the applicant for a Variance shall obtain a Zoning Permit for the proposed Building, Structure, or Use within one (1) year of the Board of Zoning Appeals' approval of the Variance; otherwise, said approval shall lapse, expire, and be null and void ab initio.
- A) Extensions of time may be requested by the applicant in writing by filing such a request with the Zoning Inspector at least thirty (30) days prior to the expiration of the one (1) year period. If an applicant fails to make an extension request within the prescribed deadline, the approved Variance shall become void and a new Variance would have to be sought.
  - B) The Board of Zoning Appeals, for good cause shown, may enlarge the one (1) year period prescribed within this Section.
  - C) Alternatively, when approving a Variance, the Board of Zoning Appeals has discretion to grant the Zoning Inspector the authority to extend said Variance. Requests would be subject to the deadline established in Section 307.11.A.

**GENOA TOWNSHIP ZONING RESOLUTION**  
**ARTICLE 3: RESPONSIBILITIES OF THE BOARD OF ZONING APPEALS**

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