

# APPROVED BY BZA JUNE 16 2008

## RULES OF SYLVANIA TOWNSHIP BOARD OF ZONING APPEALS

### I. AUTHORITY

Pursuant to R.C. 519.15 and Article 24 Section 2400 of the Sylvania Township Zoning Resolutions, the Sylvania Township Board of Zoning Appeals, (hereinafter referred to as the "Board"), hereby adopts the following rules (hereinafter referred to as the "Rules").

### II. PURPOSE

These Rules are adopted in order to insure the orderly and efficient adjudication of all appeals and applications made to the Board and to assist the Board in discharging its duties as conferred upon it pursuant to R.C. §519.14 and the applicable provisions of the Zoning Resolution of Sylvania Township. In interpreting and applying these Rules, the employees of Sylvania Township's Zoning Department at all times shall be courteous and helpful to all applicants. The Zoning Department Staff shall not give applicants legal advice but shall assist applicants in complying with the Township's Zoning Resolution to help eliminate the necessity for the issuance of variances and/or exceptions.

### III. COMPLETENESS OF APPLICATION

All requests for relief shall be made to the Board in writing upon a form prescribed and approved by the Board. Applications may be served upon the Board in person, by mail, facsimile or electronically. If the application is filed by facsimile or electronically, the applicant must make appropriate arrangements for the payment of all necessary fees prior to the time the application is received by the Zoning Department or the application shall be deemed incomplete and will therefore result in denial of the application by the Board. If an application is withdrawn, all fees not used shall be refunded to the applicant. The application must also include all requested information or

shall be deemed incomplete and will result in denial of the application by the Board. If the Board deems an application to be incomplete at its meeting, the applicant may defer the request for consideration until the next regular meeting of the Board in order to complete the applicant properly.

An application shall be deemed to be incomplete if the applicant fails to pay the necessary fees or if the application fails to provide the necessary information under any one of the following circumstances:

- A. If the application seeks an appeal of the decision of the Zoning Manager and the application fails to cite and discuss the specific provision of the Township's Zoning Resolution to support the applicant's position that a proper interpretation of the Zoning Resolution would permit the applicant to use the land in the manner he/she/it is proposing and/or if the application fails to provide the specific and correct factual basis for the claimed error.
- B. If the application seeks a variance but fails to state all of the following: (1) the specific nature of the variance requested; (2) the exact nature of the hardship to the applicant if the Zoning Resolution is applied; (3) the special conditions unique to the property which necessitates the granting of a variance; (4) the facts demonstrating that the hardship identified was not created by the applicant; (5) the compatibility of the variance and the spirit of the Zoning Resolution; and (6) the applicant's lack of knowledge of the necessity of a variance at the time the applicant purchased the property.

- C. If the application seeks a conditional use and/or exception but fails to set forth specific facts justifying the conditional use and/or exception, or if the Township Zoning Resolution sets forth specific requirements for the granting of the conditional use and the application fails to identify those requirements and demonstrate compliance therewith.

#### **IV. INSUFFICIENT BASIS FOR A VARIANCE**

Variations will not be granted solely upon a showing that the applicant will suffer an economic loss. The applicant must also demonstrate that the land in question will be practically valueless because it will have no reasonably productive use unless the variance is granted. The Board will not consider the existence of other non-conforming uses within the zoning district as a basis to grant or deny the requested variance.

#### **V. REVIEW BY STAFF OF ZONING DEPARTMENT**

The Board shall not consider an application for a variance, conditional use and/or exception unless the applicant has applied for a Zoning Permit and the Zoning Manager has denied the Permit. If a Zoning Permit is denied, the applicant may apply for both a review of the denial based on a claim of error and, in the alternative, for a variance or an exception. If a Zoning Permit is denied, the Zoning Manger shall provide the applicant with the basis for the denial in writing which must accompany any application to the Board requesting review of the denial. If the applicant seeks a variance, conditional use and/or exception, the Zoning Department shall provide the Board and the applicant a written analysis of the request at least 10 business days prior to the hearing. The analysis shall be made a part of the record of proceedings of the Board.

## **VI. ORGANIZATION AND MEETINGS OF THE BOARD**

The Board shall meet annually in January to organize and, by a majority vote, to elect a Chairman, Vice Chairman and Secretary. The Chairman shall preside at all hearings and in his/her absence, the Vice Chairman shall preside. The Chairman may appoint a committee of not more than 2 members to propose any changes to these rules or to the procedures governing the Board. The Secretary is not required to be a member of the Board. After the annual meeting, the Board shall meet monthly during that year unless there is no business for the Board to consider. At the annual meeting, the Board shall also schedule and announce the dates, times and locations of its monthly meetings. All meetings of the Board shall be held in public and notice of such meeting shall be given in accordance with Law. The Board may deliberate and vote privately in executive session. The attorney for the Board and/or an employee of the Township's Zoning Department may attend the executive session of the Board if the Board deems said attendance necessary and appropriate during the public session. The Secretary shall serve written notice by certified mail receipt of said notice, of the date, time and place of the hearing on any applicants whose requests for relief will be heard at said hearing and on all interested parties as defined in the Zoning Resolution. The Secretary shall also maintain the records of the Board including the proof of service for any notices required by these Rules.

## **VII. DEMONSTRATIVE EVIDENCE**

In support of his/her/its application, the applicant may present evidence, including testimony, at the hearing. In order to be admissible at the hearing, all tangible evidence proposed to be presented by the applicant, including but not limited to, any maps, photographs, drawings, writings or any other exhibits or documents must be filed with the Board and the Department of Zoning at least 20 business days prior to the hearing at which such evidence is to be

considered unless the applicant can demonstrate exceptional circumstances for not filing said evidence as required herein by clear and convincing evidence.

### **VIII. WITNESSES OATHS AND PROCEDURES AT HEARING**

Before giving testimony before the Board, all persons shall be sworn under oath. The individual members of the Board, the Board's attorney, the applicant and/or the applicant's attorney shall be given an opportunity to examine each person who testifies before the Board. Examinations shall be conducted in a civil manner and the presiding officer of the Board shall maintain decorum and order. The Ohio Rules of Evidence shall not apply to the hearing. The presiding officer may exclude any testimony and/or may deny the admission of any evidence that the presiding officer deems to lack relevant or probative value. Any such ruling to exclude testimony and/or to deny the admission of any evidence may be appealed to the Board. The presiding officer may limit the testimony of any individual who fails to be courteous, fails to act with decorum and respect, or whose testimony is inflammatory.

Upon the application being called for hearing, an employee of the Zoning Department shall present a summary and analysis of the requested relief. Thereafter, the applicant may call any witnesses, may present any demonstrative or other relevant evidence, and/or make any statement regarding the application and request for relief so long as any of the foregoing that are submitted before the Board are relevant and contain probative value. Thereafter any individual may give testimony and/or may present any demonstrative or other evidence in support or in opposition to the requested relief so long as the testimony and/or evidence are relevant and contain probative value. The failure of an applicant to appear at hearing shall be a basis for the denial of the application.

## **IX. DECISION OF BOARD**

No variance, conditional use, exception, or appeal shall be granted unless 3 members of the Board, who heard the application at public hearing, shall so vote in the affirmative. A quorum of the Board shall be 3 members. The Board shall render a written decision on all matters that come before it within 30 calendar days of the final hearing on said matters. Decisions of the Board shall not become final until 5 days after the decision is rendered, unless the Board shall provide otherwise. The decisions of the Board are to be prepared by the Secretary with the assistance of the Board's attorney and the employees of the Township's Zoning Department and shall contain findings of facts, the decision to deny or grant the requested relief, and a brief explanation of the basis for such decision. After the decisions of the Board are prepared, they must be sent to each Board member for a final review prior to being served on the respective applicant as required herein. After the Board members have approved a final draft of a decision, it shall be served upon the respective applicant by certified mail or other delivery method evidencing receipt thereof. In addition, if the applicant has provided an appropriate email address, the decision may also be sent electronically. All decisions of the Board shall be posted on the website of the Township.

## **X. MINUTES OF THE BOARD**

The proceedings of the Board shall be recorded electronically. Upon the filing of a written request by the applicant or a party who spoke in opposition to the requested relief accompanied by payment for the cost thereof, the electronic recording may be transcribed. In addition, the Secretary of the Board shall prepare a written summary of the proceedings, which shall be designated as the minutes of the proceedings. The minutes of the proceedings shall identify each matter considered by the Board with a title and an assigned number.

The minutes shall also identify the applicant and the owner of the land, which is the subject of the application, if the owner is different than the applicant. The Secretary shall summarize the nature of the relief requested by the applicant and shall identify any individual who testifies, presents any evidence or makes a presentation or statement before the Board in the minutes. The Secretary shall also summarize any and all evidence presented, including the testimony, presentation and/or statement of each individual who appears before the Board and all exhibits presented to the Board in the minutes, and shall identify all exhibits considered by the Board as well. In addition, the Secretary shall summarize all statements made by Board members in the minutes. The minutes shall be reviewed and corrected, if necessary, at the next regular meeting of the Board and, thereafter, shall be approved by the Board at that meeting. After the meeting, the minutes shall be filed with the Fiscal Officer of the Township and posted on the Township's website.

## **XI. COMMUNICATIONS WITH BOARD MEMBERS OUTSIDE OF HEARING**

In order to maintain transparency and to insure due process, individual members of the Board shall not discuss any matter which is pending before the Board unless said matter is discussed at a public hearing. The only exception to the foregoing is that Board members, on an individual basis, shall be permitted to consult with the counsel or the staff of the Zoning Department regarding any matter pending before the Board. At all times, the Board shall endeavor to comply with Ohio's open meeting law, R.C. § 121.22, and therefore no more than 2 (two) Board members may consult with the staff of the Zoning Department at the same time.

## **XII. AMENDMENTS TO THESE RULES**

By majority vote, the Board may amend these rules. Before adopting any amendments hereto, the Board shall provide for and shall permit public comment.