

Section 16.5 Appeals

A. Authority.

1. Alleged Errors: The ZBA shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, or decision by the Zoning Administrator or by any other body or official in administering or enforcing the provisions of this Ordinance. Within this capacity, the ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of such body or official. The ZBA shall have all the powers of the body or official that made the decision subject to the appeal. This authority shall not extend to decisions on Special Land Use applications, PUD's rezonings, site plans and ordinance amendments.
2. Interpretations: The ZBA shall hear and decide appeals to interpret the provisions of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one meaning, including the determination of the precise location of the boundary lines between zoning districts, application of off-street parking requirements for a specific use, and whether a particular use is authorized in a particular District.

B. Standards.

1. Alleged Errors: The ZBA shall reverse or otherwise modify the decision of such body or official from whom the appeal is taken only if it finds that the action or decision appealed meets any of the following conditions:
 - a. Was arbitrary or capricious.
 - b. Was based upon an erroneous finding of a material fact.
 - c. Constituted an abuse of discretion.
 - d. Was based upon an erroneous interpretation of the Zoning Ordinance or zoning law.
 - e. The required procedures were not followed.
2. Interpretations: In deciding on an interpretation, the ZBA shall be guided by the following:
 - a. An interpretation shall be consistent with the intent and purpose of the Ordinance and the specific Article in which the language in question is contained.
 - b. A text interpretation shall apply to the specific provision for which the interpretation is requested, and shall not extend to matters beyond such specific provision.
 - c. A zoning district boundary interpretation shall be guided by Section 3.4.
 - d. All interpretations shall take into account any relevant interpretations previously issued by the ZBA and any relevant past ordinance administration practices.
 - e. Prior to deciding a request for an interpretation, the ZBA may confer with Township staff and consultants to gain insight into the provision subject to interpretation and any consequences which may result from differing decisions.

C. Procedures:

1. Application Requirements:

- a. **Alleged Errors:** A written application for an appeal of an alleged error shall be completed and filed with the Zoning Administrator on forms established for that purpose within twenty-one (21) days after the matter being appealed was decided or approved. An application for appeal shall specify, at a minimum, the name, address, and phone number of the applicant; the decision being appealed; and the basis for the appeal. A minimum of seven (7) copies of the application shall be submitted along with any required application fees.
 - b. **Interpretations:** A written application for an appeal for an interpretation shall be completed and filed with the Zoning Administrator on forms established for that purpose. Application for an interpretation shall specify, at a minimum, the name, address, and phone number of the applicant; the standard, regulation or provision requiring an interpretation; and a plot plan, site plan, or similar drawing illustrating the application or relevance of such interpretation. A minimum of seven (7) copies of the completed application shall be submitted along with any application fees.
2. **Stay for Appeal of Alleged Error:** An appeal of an alleged error shall stay all proceedings in furtherance of the action appealed unless the officer or body from whom the appeal is taken certifies to the ZBA, after the notice of appeal is filed, that by reason of facts stated in the certification, a stay would in the opinion of the officer or body would cause imminent peril to life or property. If such a certification is filed, the proceedings shall only be stayed by a restraining order. A restraining order may be granted by the ZBA or by the circuit court, on application, on satisfactory demonstration of due cause.
3. **Record of Facts / Transmission of Record for Appeal of Alleged Error:** Upon receipt of an appeal of an alleged error, the officer or body that made the decision being appealed shall transmit to the ZBA all papers constituting the record associated with the decision being appealed. In hearing and deciding appeals, the ZBA's review shall be based upon the record of the decision being appealed.
 - a. The ZBA shall not consider new information which had not been presented to the official or body that made the decision subject to the appeal except where the ZBA first remands the matter back to the body that made the original decision with an order to consider the new information and affirm or modify its original decision.
4. **Hearing:** Upon receipt of an appeal application for an alleged error or interpretation, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Section 2.11. Upon the hearing, any party may appear in person or by agent or attorney. See subsection (5) regarding participation at the hearing by a member of the ZBA who is also a member of the Planning Commission or the Township Board.
5. **Decision:** The ZBA shall render a decision in the form of a motion or resolution containing a full record of the findings and determination of the ZBA and basis for such determination, and shall be made part of the meeting minutes. The concurring vote of a majority of the members of the ZBA shall be necessary to reverse or otherwise modify a decision alleged to be in error or to make an interpretation.
 - a. In the case of an appeal of an alleged error, a member of the ZBA who is also a member of the Planning Commission or the Township Board shall not participate in a public hearing, deliberation, or vote, on the same matter that the member voted on as a member of the Planning Commission or the Township Board. However, the member may consider and vote on other unrelated matters involving the same property.
 - b. In the case of an appeal for an interpretation, a decision may be accompanied by a ZBA recommendation to the Planning Commission for consideration of an amendment of the Ordinance to address what the ZBA may find is a problematic aspect of the Ordinance