

RESOLUTION NO. 23 - 2004

**RESOLUTION INITIATING PROPOSED TEXT AMENDMENTS TO THE
WEST CHESTER TOWNSHIP ZONING RESOLUTION**

WHEREAS, based on community concerns and current development trends needing to be addressed with updated zone text language, the West Chester Township Board of Trustees directed the Department of Planning and Zoning to propose revisions to the West Chester Township Zoning Resolution, specifically concerning authority of the Board of Zoning Appeals, including the standards applied governing variances; and,

WHEREAS, said revisions are being proposed to accomplish the community's desired development standards; and,

WHEREAS, in Duncan v. Middlefield (1986), 23 Ohio St.3d 83, 491 N.E.2d 692 the Ohio Supreme Court stated the accepted test for area variances to be applied in the State of Ohio; and,

WHEREAS, Ohio Revised Code Title 5 Chapter 4 authorizes home rule townships to exercise all powers of local self-government within the unincorporated area of the township, other than powers that are in conflict with general laws.

NOW, THEREFORE BE IT RESOLVED, that the West Chester Board of Trustees does hereby move to initiate the following amendments as collected and presented by the Department of Planning and Zoning and certify said amendments to the West Chester Township Zoning Commission for action as provided by Ohio Revised Code, Section 519.12

Key: ~~language~~—double strike out indicates removed language
language—bold/italics indicates new language
~~language~~—bold/italics with double strike out indicates language moved from another section with modification
[language]—italics within brackets indicate drafter's notes or instructions not part of the new legislation text

**ARTICLE 8
BOARD OF ZONING APPEALS**

8.01 **APPOINTMENT.** A Board of Zoning Appeals is hereby created. Such Board shall consist of five (5) members **and one (1) alternate**, who shall be residents of the unincorporated area of the Township ~~included in the area zoned~~. The terms of all **regular** members shall be of such length and so arranged that the term of one (1) member will expire each year. Each member shall serve until his/her successor is appointed and qualified. Members of the Board shall be removable **as provided in the Ohio Revised Code** ~~for non-performance of duty, misconduct in office or other causes, by the Township Trustees upon written charges having been filed with the Trustees and after a public hearing has been held regarding such charges, a copy of the charges having been served upon the member so charged at least ten (10) days prior to the hearing, either personally or by registered mail,~~

or by having the same at his/her usual place of residence. The member shall be given an opportunity to be heard and answer such charges. Vacancies shall be appointed by the Board of Township Trustees, and shall be for the unexpired term.

8.02 POWERS OF THE BOARD OF ZONING APPEALS.

~~8.021~~ ~~General.~~ In exercising its power, the Board may in conformity with the provisions of statute and of this Resolution, reverse or affirm wholly or partly, or may 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 all powers of the officer from whom the appeal is taken [this section moved to new section 8.021 below]

~~8.022~~ ~~Administrative Review.~~ **Appeal.** The Board shall have the power to hear and decide appeals, filed as hereinbefore provided, where it is alleged by the appellant that there is error in any order, requirements, decision, grant, or refusal made by the Director of Planning and Zoning or a designated subordinate in the interpretation of the provisions of this Resolution. [from former 8.021] ***In exercising its power, the Board may in conformity with the provisions of statute and of this Resolution, reverse or affirm wholly or partly, or may 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 all powers of the officer from whom the appeal is taken.***

~~8.023~~ **Variances.** The Board shall have the power to authorize upon ~~appeal~~ **application** in specific cases, ~~filed as hereinbefore provided,~~ such **area** variances from the terms of the Zoning Resolution as will not be contrary to the public interest, **and that are consistent with the criteria provided herein.** ~~but only in such cases, where, owing to special conditions pertaining to a specific piece of property, the literal enforcement of the provisions or requirements of this Resolution would cause undue and unnecessary hardship.~~ **Use variances are prohibited under this Resolution, and the Board is not authorized to grant use variances.**

~~8.024~~ **Conditional Uses/Special Exceptions.** The Board shall have the power to authorize upon application, conditional use **or special exception** zoning certificates, for those uses which are specified as such by this Resolution, ~~and for those uses which are determined by the Board to be of the same character as a principal or conditional use as specified by this Resolution.~~

~~8.025~~ **Non-Conforming Uses.** The Board shall have the power to grant the substitution of a non-conforming use, existing at the time of enactment of this Resolution, by another non-conforming use, provided, however, that the substituted use appears and is first permitted in the same Article of this Resolution as the current non-conforming use, and the Board determines the proposed substituted use is not of greater intensity or density than the existing non-conforming use.

~~8.025~~ ~~1~~ The Board shall have the power to grant the extension of a non-conforming use upon the lot occupied by such use, or on an adjoining lot; provided that such extension is necessary and incidental to such existing non-conforming use.

- 8.0265 Temporary Structures and Uses. The Board shall have the power to grant the temporary use of a structure or premises in any District for a purpose or use that does not conform to the provisions of Article 10, Subsection 10.11 or other provisions of the District in which the use or structure is located, provided that such use be of a temporary nature and does not involve the erection of a substantial structure. Special Exception Zoning Certificates granted for such uses shall be in the form of a temporary and revocable permit, for not more than a twelve (12) month period, subject to such conditions as will safeguard the public health, safety, convenience and general welfare.
- 8.03 PROCEDURE. The Board shall organize and adopt rules for its own government in accordance with this Resolution. Meetings of the Board shall be held at the call of the Secretary or Chairman, and at such other times as the Board may determine. The Chairman, or in his/her absence, the acting Chairman, may administer oaths and the Board may compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings 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 immediately filed in the ~~office of the Township Trustees~~ **Department of Planning and Zoning** and shall be public record.
- 8.031 Three (3) members of the Board shall constitute a quorum. The Board shall act by Resolution, and the concurring vote of three (3) members of the Board shall be necessary to reverse any order or determination of the Code Enforcement Officer; or to decide in favor on an applicant in any matter of which the Board has ~~original~~ jurisdiction under this Resolution; or to grant any variance from the requirements stipulated in this Resolution.
- 8.032 The Board may call upon Township and County departments for assistance in the performance of its duties, and it shall be the duty of such departments to render such assistance as may reasonably be required.
- 8.04 APPLICATIONS, APPEALS, HEARINGS AND STAY OF PROCEEDINGS.
- 8.041 Applications - When and By Whom Taken. An application, ~~in cases in which the Board has original jurisdiction under the provisions of this Resolution,~~ may be filed by any property owner, ~~including a tenant,~~ or agent thereof. Such application shall be filed with the Director of Planning and Zoning who shall transmit same to the Board. *[from Section 8.043 with modifications noted]* **Each application for or appeal shall be accompanied by a check or money order, payable to the West Chester Township Board of Zoning Appeals, in the amount to be determined by the Board of Trustees to cover the cost of publishing and/or posting and mailing the notice of the hearing or hearings and other expenses in conjunction therewith.**
- 8.042 Appeals - When and By Whom Taken. An appeal to the Board may be taken by any person aggrieved, or by any officer of the Township affected by any decision of an enforcement officer of the Department of Planning and Zoning. Such appeal must be made within twenty (20) days after the decision by filing with ~~the Department of Planning and Zoning and with~~ the Board, the proper application specifying the grounds thereof for the appeal. The Director of Planning and Zoning shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

- 8.043 Hearings. The Board shall *meet once per month.* ~~fix a reasonable time for the hearing of the application or appeal, giving~~ *At the beginning of each year, the Planning and Zoning Department shall publish a schedule of the regular monthly meeting times and filing deadlines for the year. All complete applications and appeals filed by the deadline shall be heard at the following month's meeting.* ~~†Ten (10) days written notice in writing to shall be given to the parties in interest and giving notice shall be published in of such public hearing by one publication in one or more newspapers in general circulation in the township at least ten (10) days before the date of such hearing, and decide the same within a reasonable time after it is submitted.~~ *Notice failure shall not be grounds to invalidate a decision. Parties in interest means the applicant/appellant, the subject property owner (if applicable), property owners within two-hundred (200) feet of the subject property (if applicable), and the Board of Trustees. For surrounding properties, notice shall be sent to the person or entity identified as the tax mailing recipient in the Butler County Auditor's records.* ~~[moved to Section 8.041 with modification] Each application for appeal shall be accompanied by a check or money order, payable to the West Chester Township Board of Zoning Appeals, in the amount to be determined by the Board of Trustees to cover the cost of publishing and/or posting and mailing the notice of the hearing or hearings and other expenses in conjunction therewith. At the hearing, any party may appear in person or by attorney. Any person adversely affected by the decision of the Board may appeal to the Court of Common Pleas of Butler County, on the ground that the decision was unreasonable or unlawful. A notice of appeal shall be made to the Director of Planning and Zoning.~~
- 8.044 Decision of the Board and Appeal. The Board shall decide all applications and appeals ~~within thirty (30) days~~ *by the next month's meeting date after the final conclusion of the hearing thereon.* ~~[from Section 8.043 with modification] Any party in interest or person adversely affected by the decision of the Board may appeal to the Court of Common Pleas of Butler County, on the ground that the decision was unreasonable or unlawful as provided in the Ohio Revised Code. A notice of appeal shall be made to the Director of Planning and Zoning.~~
- 8.045 A certified copy of the Board's decision shall be transmitted to the applicant or appellant, and to the Director of Planning and Zoning. Such decision shall be binding upon the Director of Planning and Zoning and on appointed inspectors, and observed by them, and they shall incorporate the terms and conditions of the same in the permit to the applicant or appellant, whenever a permit is authorized by the Board.
- 8.046 The decision of the Board shall not become final until the expiration of thirty (30) days from the date such decision is ~~made~~ *journalized*, unless the Board ~~shall~~ finds the ~~immediate taking effect of such decision~~ *should take effect immediately to preserve* ~~is necessary for the preservation of such property or personal rights and shall so certify on the record.~~ *Absent a finding that the decision should take immediate effect, during the thirty (30) day period after journalization but before the decision becomes final, a successful applicant may apply for a zoning certificate and upon issuance proceed at its own risk.*
- 8.047 Stay of Proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Director of Planning and Zoning certifies to the Board, after notice of appeals shall have been filed with him/her, that by reasons of facts or conditions existing, a stay would, in his/her

opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by an order which may, on due cause shown, be granted by the Board or judicial proceedings on application after notice to the Director of Planning and Zoning.

8.05 STANDARDS FOR THE GRANTING OF APPLICATIONS AND APPEALS.

8.051 Standards for Administrative Review and Interpretations. Where it has been alleged by an appellant that there is error in any order, requirement, decision, grant, or refusal made by the Department of Planning and Zoning, the Board shall request from the Director of Planning and Zoning, a report stating the position of the department and the rationale for the decision made, or order served. Said report shall be made part of the record at the hearing regarding the appeal, and staff shall present all testimony in support of its decision. The appellant shall then present information and reasons why he/she feels the decision of staff is in error. Upon hearing from both the staff and the appellant and all others who wish to be heard, the Board shall reverse or affirm wholly, or partly, or modify the decision appealed from. In rendering its decision, the Board shall give due regard to the evidence presented and ensure that the spirit and purpose of this Resolution is observed and maintained.

8.051+2 Standards for Use Interpretations. *The prohibition clauses of the non-PUD zoning districts within this Resolution permit the Board of Zoning Appeals to authorize uses of the same general character as the permitted uses within the district. [update references in other articles from 8.051 to 8.052 and as otherwise needed from this amendment]* In hearing ~~appeals~~ **applications** regarding **such** use interpretations, the Board shall not authorize any use which is not specifically permitted by this Resolution unless it finds that the following facts and conditions exist:

- a) That the use requested in the ~~appeal~~ **application** is similar in character, scale, intensity, and traffic trip generation to the other permitted uses in the same zone district.
- b) That the authorizing of such use will not be detrimental to adjacent properties and will not materially impair the purpose of this Resolution or the public interest.
- c) That the proposed site on which the use is to be located is adequate to facilitate the needs and requirements of said use.

8.0523 Standards for Variances. ~~The Board may grant variances where by reason of the exceptional narrowness, shallowness or unusual shape of a specific piece of property on the effective date of this Resolution, or by reason of exceptional topographic conditions, or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjoining the piece of property in question, the literal enforcement of the requirements of this Resolution would involve practical difficulty or would cause unnecessary hardship unnecessary to carry out the spirit and purpose of this Resolution.~~ *The Practical Difficulties test as set forth in Duncan v. Middlefield (1986), 23 Ohio St.3d 83, 491 N.E.2d 692, or as this standard may be amended by the Ohio Supreme Court or the state legislature, will apply to determine if an area variance shall be granted. The factors to be considered and weighed in determining whether a property owner seeking an area variance has encountered practical difficulties in the use of the property include, but are 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 a 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) *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.*

~~8.0521~~ ~~No such variances in the provisions or requirements of this Resolution shall be authorized by the Board unless the Board determines that all of the following facts and conditions exist:~~

- ~~a) The subject property is exceptional as compared to other parcels subject to the same provision by reason of unique physical condition, irregular or substandard shape or size; exceptional topographical features; or the extraordinary physical conditions peculiar to and inherent in the subject property that amount to more than a mere inconvenience to the owner and that relate to or arise out of the parcel rather than the personal situation of the current owner of the parcel.~~
- ~~b) The carrying out of the strict literal enforcement of the provision from which the variance is sought would deprive the owner of substantial rights commonly enjoyed by owners of other parcels subject to the same provision.~~
- ~~e) That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purposes of this Resolution or the public interest.~~
- ~~d) That the alleged hardship or difficulty has not been self-created or is not merely the inability of the owner or occupant to enjoy some special privilege or additional right not available to owners or occupants of the other lots subject to the same provision, nor merely an inability to make more money from the subject property.~~

8.05~~22~~31 No grant of a variance shall be authorized by the Board for requests that are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

8.05~~23~~32 In authorizing a variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed structure or use *of the proposed structure* as it may deem necessary in the interest of the furtherance of the purposes of the Resolution and in the public

interest. In authorizing a variance with attached conditions, the Board shall require such evidence and guarantee or bond as it may deem to be necessary, that the conditions attached are being complied with.

~~8.0534~~ Standards for Conditional Uses and Special Exceptions. In hearing applications for conditional uses or special exceptions, the Board shall give due regard to the nature and condition of all adjacent uses. In authorizing a conditional use or special exception, the Board should impose requirements and conditions with respect to location, construction, maintenance, and operation that are deemed necessary to mitigate the special characteristics of the use in order to make it compatible with adjacent properties, and for the protection of adjacent properties and the public interest.

~~8.05341~~ In reviewing an application for a conditional use *or special exception*, the Board shall use the following standards in rendering a determination:

- a) The proposed conditional use or special exception is compatible in size, character, scale and intensity with adjacent existing uses, or is in keeping with the general vicinity in which it is located.
- b) Special conditions or requirements imposed, can mitigate the special characteristics which are inherent to the use and enable compatibility with the existing neighborhood, and maintain the spirit of this Resolution.
- c) The authorizing of such conditional use or special exception will not be of substantial detriment to the adjacent property or surrounding neighborhood.

Adopted this 27th day of April, 2004.

<u>Catherine Stoker</u> Catherine Stoker, President	<u>yes</u> Yes / No
<u>Jose Alvarez</u> Jose Alvarez, Vice President	<u>Yes</u> Yes / No
<u>George Lang</u> George Lang, Trustee	<u>YES</u> Yes / No

ATTEST:

Patricia Williams
Patricia Williams, Township Clerk

APPROVED AS TO FORM:

D L Crain
Donald L. Crain, Law Director

CERTIFICATE OF PUBLICATION

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