

Town of Milton

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ORDINANCE NO. 2019-005

AN ORDINANCE TO AMEND CHAPTER 220 OF THE TOWN CODE, ENTITLED "ZONING," REGARDING THE BOARD OF ADJUSTMENT.

WHEREAS, the Charter of the Town of Milton vests power in the Mayor and Town Council to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

WHEREAS, the Mayor and Town Council has the power to zone or district the Town and make particular provisions for particular zones or districts with regard to structures, building, and building material, and generally to exercise all powers and authorities vested in the legislative body of cities and incorporated towns under and by virtue of Chapter 3, Title 22 of the Delaware Code; and

WHEREAS, Subchapter II of Chapter 3, Title 22 of the Delaware Code calls for the legislative bodies of municipalities in Delaware to create boards of adjustment that may, pursuant to Section 321, "in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained"; and

WHEREAS, the Town Council of the Town of Milton has previously created a Board of Adjustment and codified such as Article XI of Chapter 220 of the Town Code; and

WHEREAS, pursuant to Chapter 220, the Town Council of the Town of Milton may, from time to time, on its own motion or on petition or upon recommendation by the Planning and Zoning Commission, amend, supplement or change the zoning regulations after public notice and hearing; and

WHEREAS, the Town of Milton Planning and Zoning Commission held a duly noticed hearing on _____ and voted _____ in the Advisory Report received by Town Council; and

WHEREAS, The Town Council held a public hearing on _____, 2019, as scheduled by prior resolution, with proper notice by publication as required by Town Code Section 220-101A; and

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Milton, a majority thereof concurring, that the following revisions hereby by incorporated into Chapter 220 of the Town Code, entitled "Zoning," in Article XI, with deletions shown by strike-through and additions shown by underline:

Chapter 220. Zoning

Article XI. Board of Adjustment; Conditional Uses

§ 220-82. Establishment and duties.

A. Pursuant to the Laws of the State of Delaware, ~~as amended,~~ the Town of Milton ~~shall establish~~ has established a Board of Adjustment. The Board of Adjustment shall consist of five members who shall be residents of the Town and who shall have knowledge of the problems of urban ~~and or suburban or~~ rural development and who, at the time of appointment and throughout the term of office, shall not be ~~candidates nor~~ members of the legislative body Mayor and Town Council nor employees of the Town. ~~A minimum of two members shall reside in the area of the Town of Milton designated as the Historic District. The appointment of an architect, draftsman, builder, engineering or other person experienced in the design and construction of buildings to the Board is encouraged.~~ The Mayor of the Town shall appoint such members of the Board of Adjustment, and all such appointments shall be confirmed by a majority vote of the elected members of the Town Council.

B. ~~A.~~ All appointments shall be for a period of three years, provided that the terms of the original members shall be established in such a manner that the term of at least one member shall expire each year, and the successor shall be appointed for a term of three years. The Board of Adjustment so selected shall elect from among its own number a Chairperson and a secretary.

C. ~~B.~~ Any member of the Board of Adjustment may be removed from office by the Mayor and Town Council for cause after a hearing by a majority vote of all the elected members of the Council of the Town. A vacancy occurring otherwise than by the expiration of term shall be filled for the remainder of the unexpired term in the same manner as an original appointment.

§ 220-83. Powers and duties.

The Board of Adjustment shall have all the powers and duties prescribed by this chapter, which are more particularly specified as follows:

A. Interpretation. Appeals. It shall be the responsibility of the Board of Adjustment to hear and decide appeals ~~where it is alleged there is an error in from, and review,~~ any order, requirement, decision, determination, or interpretation made by the Code Enforcement Officer or other Town administrative official in the enforcement of this chapter. The Board of Adjustment may, in conformity with this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or interpretation appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

B. Area variances. Variances.

~~(1) The Board of Adjustment, on appeal from the decision or determination of the Code Enforcement Officer, shall have the power to grant area variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of this chapter.~~

~~(2) In making its determination, the Board of Adjustment shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board of Adjustment shall also consider:~~

~~(a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; and/or~~

~~(b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; and/or~~

~~(c) Whether the requested area variance is substantial; and/or~~

- ~~(d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and/or~~
~~(e) Whether the alleged difficulty was self created, which consideration shall be relevant to the decision of the Board of Adjustment, but shall not necessarily preclude the granting of the area variance.~~
~~(f) Whether the proposed change could be made on another portion of the lot without recourse to a variance.~~

~~C. If the Board of Adjustment, in its discretion, shall grant an area variance, it shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.~~

~~D. Imposition of conditions. The Board of Adjustment shall, in the granting of area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community. All work which is authorized by variances granted shall be commenced and completed within one year of the granting of the variance by the Board of Adjustment.~~

(1) The Board of Adjustment may authorize, in specific cases, such variance from any provision of this chapter or zoning regulation that will not be contrary to the public interest where, owing to special conditions or exceptional situations, a literal interpretation of this chapter or any zoning regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of this chapter or zoning regulation shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter, zoning regulation, or map.

(2) Notwithstanding § 220-83B(1), the Project Coordinator of the Town may administratively grant a dimensional variance for existing conditions that do not exceed 1 foot of the required dimension restrictions without the application being considered by the Board of Adjustment, subject to the standards, procedures, and conditions set forth in this chapter.

§ 220-84. Procedure.

~~A. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter, the Board of Adjustment shall have the power to vary or modify the application of any of the regulations or provisions of this chapter relating to the use, construction, structural changes in, equipment or alteration of buildings or structures, or the use of land, so that the spirit of the chapter shall be observed, public safety and welfare secured and substantial justice done.~~

~~B. All appeals and applications made to the Board of Adjustment shall be in writing, on forms prescribed by said Board and accompanied by a fee as established in the currently effective Town of Milton Fee Schedule.~~

B. Every appeal or application shall refer to the specific provision of the chapter involved and shall exactly set forth the interpretation that is claimed, or the details of the variance that is applied for, and the grounds on which it is claimed that the variance should be granted, as the case may be.

C. The Board of Adjustment shall hold a public hearing on appeals within 60 days after receipt and give due notice of such public hearing by advertising in the official newspaper at least 10 days prior to the date scheduled for the public hearing.

D. The applicant shall mail notices of such public hearings to the owners or occupants of all lands within a radius of 200 feet from all boundary lines of the property for which the appeal is being requested. The Town will provide the applicant with the required information to be included in the notification letter. Such notices shall be mailed certified and postmarked at least 10 days prior to the

- date scheduled for the public hearing. A list of properties mailed to, copies of proof of mailings and return receipts shall be provided to the Code Enforcement Officer five days prior to the public hearing.
- E. Copies of the appeal or application document shall be delivered to the members of the Board of Adjustment. The Board of Adjustment shall meet within 60 days of the date of filing the appeal or application to conduct the required hearing and review the matter.
- F. The Board of Adjustment shall decide on appeals and on other matters referred to it within 60 days after final public hearing.
- G. Every decision of the Board of Adjustment shall be by resolution, each of which shall contain a full record of said Board in the particular case.
- H. The Board of Adjustment shall have no power to vary or modify the application of the provisions and requirements of the Delaware State Fire Prevention Regulations or Building Code adopted by Sussex County.
- I. Appeals from Board of Adjustment findings shall be in accordance with 22 Del. C. § 328.
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I, THEODORE J. KANAKOS, Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Town Council of the Town of Milton at its meeting held on the ____ day of _____, **2019**, following a duly noticed public hearing, at which a quorum was present and voting throughout and that the same is still in full force and effect.

MAYOR

SYNOPSIS

This ordinance amends the Town Code's zoning ordinance relating to the Board of Adjustment. Specifically, the ordinance revises the Town's zoning ordinance (codified as Chapter 220 of the Town Code) to track with Subchapter II, Chapter 3, Title 22 of the Delaware Code in terms of: qualifications for the Board; the Board's scope and authority in its appellate function; the standard applied to variances; and the ability of the Town's Project Coordinator to administratively approve certain very minor variances. The ordinance also adds "Conditional Uses" to the Article's heading, as the zoning provisions on conditional uses are also contained in Article XI or Chapter 220.