

ORDINANCE NO. 2006-01
THE COMMISSIONERS OF THE TOWN OF
BELLEFONTE, DELAWARE

“AN ORDINANCE TO AMEND SECTION 14 OF THE
BUILDING ZONE ORDINANCE, ESTABLISH THE
COMPOSITION OF THE BOARD OF ADJUSTMENT,
AND TO ENUMERATE THE POWERS AND
AUTHORITY OF THE BOARD OF ADJUSTMENT OF
THE TOWN OF BELLEFONTE, DELAWARE”

Section 14 of the Building Zone Ordinance (as amended) is hereby repealed in its entirety and is reinstated as set forth below:

Section 14. BOARD OF ADJUSTMENT

Composition of Board: The Board of Adjustment shall consist of five (5) members, who shall be residents of the town who have knowledge of the problems of urban and rural development.

Term: Each member of the Board of Adjustment shall be appointed for a period of three (3) years, except that one (1) of the initial members shall be appointed for a one (1) year term, two (2) of the initial members shall be appointed for a two (2) year term, and two (2) of the initial members shall be appointed for a three (3) year term. All subsequent appointments to the Board of Adjustment shall be for a period of three (3) years. 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.

Appointment: The President of the Commissioners of the Town of Bellefonte (acting as the chief executive officer for the town) shall appoint all members of the Board of Adjustment. No member of (or appointees to) the Board of Adjustment shall be candidates or members of the Commission or employees of the Town of Bellefonte. All appointments to the Board of Adjustment must be confirmed by a majority vote of the Commissioners of the Town of Bellefonte.

Removal: Any member of the Board of Adjustment may be removed from office by the Commissioners for cause after a hearing by a majority vote of all the elected Commissioners.

Election Of Chairperson And Secretary: The Board of Adjustment, once confirmed by a majority vote of the Commissioners of the Town of Bellefonte, shall elect from among their own number a Chairperson and a Secretary. Each year after appointment or reappointment of a member, the Board of Adjustment shall elect a Chairperson and Secretary.

Powers Of The Board Of Adjustment: The Board of Adjustment shall adopt rules as to the manner of filing appeals and applications for special exceptions, for a variance from the terms of the Building Zone Ordinance (as amended), for the conducting of hearings and for the giving of such notice or notices as may be required or deemed advisable by the Board. All of the rules and regulations shall conform to the requirements of State law and all ordinances governing the Town of Bellefonte. Rules of conduct may be adopted or amended by majority vote of the Board of Adjustment.

Procedure For Filing An Appeal: Any person aggrieved or affected by any decision of the Building Inspector may appeal from such decision to the Board of Adjustment as provided by law. Notice of appeal, specifying the grounds thereof, shall be given in writing to the Building Inspector and to the Board of Adjustment within thirty (30) days from the date of the decision of the Building Inspector. Thereupon, the Board of Adjustment shall fix a reasonable time for the hearing of the appeal and shall publish notice of said hearing in a newspaper generally circulated in the Town of Bellefonte, at least once before said hearing. At such hearing, any resident or property owner of the Town of Bellefonte may appear in person or by agent, or by counsel. The Board of Adjustment shall consider all testimony offered by any witnesses in rendering its decision. The decision of the Board of Adjustment shall be in writing and a copy thereof shall be sent to the parties in interest. The written decision of the Town of Bellefonte shall be final upon the filing of the decision in the office of the Board of Adjustment.

Costs Of Appeal: In filing an appeal from the decision of the Building Inspector, or in seeking a variance, the appellant or applicant shall pay the sum of \$500.00 to the Board of Adjustment to cover the cost of said appeal or application, including advertisement costs, stenographic costs and any other costs. No appeal shall be considered filed until full payment is made by the applicant.

Powers: The Board of Adjustment may, in particular cases where unnecessary hardship or exceptional practical difficulty would otherwise result, authorize variance from the terms of the Building Zone Ordinance (as amended) in harmony with its general purpose and intent, and with the public interest; and for these purposes and within these limitations, in accordance with powers or standards enumerated or granted it by law, shall have the following authority:

- (a) To hear and decide appeals from any decision or act of any administrative officer or Building Inspector in connection with any matter under the Building Zone Ordinance (as amended);
- (b) To authorize, after public notice and hearing, the extension of a non-conforming use or building, in cases where such extension is for a use which is a necessary incident to the existing use, and does not exceed in value fifty percent (50%) of the replacement valuation of existing buildings;
- (c) To authorize the change of a non-conforming use to another non-conforming use which is not more detrimental to the neighborhood; or the alteration of a non-

conforming building; but not the extension of a non-conforming building in connection with a change of use, unless the extension itself be conforming in its use and construction;

- (d) To determine the correct location of district boundaries in any disputed case;
- (e) To permit the extension, reconstruction or alteration of any building or premises for any use conditionally permitted in any district, or to permit such use only under specific further limitations or conditions to be by it prescribed, if such proposed use is deemed by it likely to be otherwise detrimental to the health, safety, or welfare of the neighborhood;
- (f) To authorize, in specific cases, such variance from the Building Zone Ordinance (as amended) that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of any zoning ordinance, code, or regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of a property, provided that the spirit of the Building Zone Ordinance (as amended) shall be observed and substantial justice done;
- (g) To hear any appeal of any decision of the Building Inspector as permitted by law or ordinance; and
- (h) To hear and decide any appeal, matter, or application proscribed by State law or Town Ordinance that permits an appeal to or decision by the Board of Adjustment.

Authority To Act: In exercising its powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify, any order, requirement, decision, or determination appealed from, and to that end shall have all the powers of the officer from whom the appeal is taken.

Appeal To A Court Of Law Or Equity: Any party aggrieved by any decision of the Board of Adjustment shall have the remedies prescribed by State law. Any applicant appealing a decision of the Board of Adjustment shall be required to pay the full cost of preparing the record for appeal.

Rehearing On Reversal: Any applicant or appellant that has any decision reversed by a court of law shall have the right to reapply to the Board of Adjustment for a rehearing, even if the applicable time period for appeal to the Board has expired.

Severability: If any clause or provision of this ordinance shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect.

Effective Date: This Ordinance shall be effective immediately upon adoption.

FIRST READING: March 13, 2006

SECOND READING: March 28, 2006

PASSED BY THE COMMISSIONERS: March 28, 2006

 Dave Wishowsky
David Wishowsky, President

ATTEST:

 SL MacKenzie
Scott MacKenzie, Secretary

Signed copy on file at Bellefonte Town Hall. SLM