

**ARTICLE VIII
ZONING HEARING BOARD**

Section 801. Creation of Board.

The Township Board of Supervisors hereby creates a Zoning Hearing Board, herein referred to as the "Board," consisting of three members, appointed by the Board of Supervisors pursuant to Article IX of the Pennsylvania Municipalities Planning Code, as amended, who shall perform all the duties and have all the powers prescribed by state statutes and as herein provided.

Section 802. Membership.

A. The membership of the Board shall consist of three residents of the municipality appointed by resolution by the governing body. The terms of office of a three member board shall be three years and shall be so fixed that the term of office of one member shall expire each year.

B. The governing body may appoint by resolution at least one but no more than three residents of the municipality to serve as alternate members of the Board. The term of office of an alternate member shall be three years. When seated pursuant to the provisions of section 804, an alternate shall be entitled to participate in all proceedings and discussions of the Board to the same and full extent as provided by law for Board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this Ordinance and as otherwise provided by law. Any alternate may participate in any proceeding or discussion of the Board but shall not be entitled to vote as a member of the Board nor be compensated pursuant to Section 803 unless designated as a voting alternate member pursuant to Section 804.

C. Members of the Board shall hold no other office in the Township. Alternates shall hold no other office in the municipality, including membership on the planning commission and Zoning Officer.

D. Removal. Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the governing body, taken after the member has received 15 days' advance notice of the intent to take such a vote. A hearing shall be held if the Board member

requests one in writing within 10 days after receipt of the notice of intent to take a vote.

E. Vacancies. The Board shall promptly notify the governing body of any vacancies which occur. Vacancies shall be filled by appointment by the Board of Supervisors for the unexpired term of any member whose term becomes vacant.

Section 803. Expenditures for Services.

Within the limits of funds appropriated by the governing body, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties, as may be fixed by the governing body, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the governing body. Alternate members of the Board may receive compensation, as may be fixed by the governing body, for the performance of their duties when designated as alternate members pursuant to Section 804, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members of the governing body.

Section 804. Organization of Board.

A. The Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the Board, but the Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Board as provided in Section 810.

B. If, by reason of absence or disqualification of a member, a quorum is not reached, the chairman of the Board shall designate as many alternate members of the Board to sit on the Board as may be needed to provide a quorum. Any alternate member of the Board shall continue to serve on the Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Board has made a final determination of the matter or case. Designation of an alternate pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.

C. The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the municipality and laws of the Commonwealth.

Section 805. Meetings.

Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public.

Section 806. Minutes and Records.

The Board shall keep full public records of its proceedings showing the vote of each member upon each question or if absent or failing to vote indicating such fact. The Board shall also keep full public records of its business and other official action, which records shall be the property of the municipality. The Board shall submit a report of its activities to the Supervisors as requested by the Supervisors.

Section 807. Powers and Duties.

The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

A. Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to Sections 609.1 and 916.1(a)(2) of the MPC.

B. Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption, which challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance.

C. Appeals from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.

D. Appeals from a determination by a municipal engineer or the Zoning Officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.

E. Applications for variances from the terms of this Zoning Ordinance and any flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 910.2. of the MPC and the following:

1. The Board shall hear requests for variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The Board may by rule prescribe the form of application and may require preliminary application to the Zoning Officer. The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

a. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

b. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

c. That such unnecessary hardship has not been created by the applicant.

d. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

e. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

2. No nonconforming use of neighboring lands, structures or buildings in the same district and no permitted or nonconforming use of land, structures or buildings in other

zoning districts shall be considered grounds for the granting of a variance.

3. In no case shall a variance be granted solely for reasons of additional financial gain on the part of the applicant.

4. The jurisdiction of the Board of Supervisors shall not be infringed upon by action of the Board in any matter which should appropriately be the subject of an amendment to the Zoning Ordinance or Zoning Map. (No variance shall be granted under this section to allow a structure or use in a zone restricted against such structure or use.)

5. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code, as amended.

F. Applications for special exceptions under this Zoning Ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 515 of this Ordinance and Section 912.1. of the MPC.

G. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the zoning ordinance.

H. Appeals from the Zoning Officer's determination under Section 916.2. (Procedure to Obtain Preliminary Opinion) of the MPC .

I. Appeals from the determination of the Zoning Officer or municipal engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving Subdivision and Land Development or Planned Residential Development applications.

Section 808. Procedures for Application to the Zoning Hearing Board.

A. The Zoning Hearing Board shall act in strict accordance with the procedure specified by law and by this Ordinance. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. Every appeal or

application shall refer to the specific provision of this Ordinance involved and shall exactly set forth the interpretation that is claimed, the use for which a special permit is sought 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.

B. In the event the procedures set forth in this Ordinance shall be in conflict with or contrary to the procedures set forth in the Pennsylvania Municipalities Planning Code, as amended, then and in such event the procedures set forth in the latter shall prevail.

C. Applications and appeals together with the required filing fee, as established by the governing body, shall be submitted to the Zoning Officer.

1. Parties Appellant Before the Board. Appeals under Sections 807 A., B., C., D., G., H. and I. may be filed with the Board in writing by the landowner affected, any officer or agency of the municipality, or any person aggrieved. Requests for a variance under Section 807 E. and for special exception under Section 807 F. may be filed with the Board by any landowner or any tenant with the permission of such landowner.

2. Time limitations. No person shall be allowed to file any proceeding with the Board later than 30 days after an application for development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest.

3. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan pursuant to Section 610 or from an adverse decision by a zoning officer on a challenge to the validity of an ordinance or map pursuant to Section 916.2 of the MPC shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

4. All appeals from determinations adverse to the landowners shall be filed by the landowner within 30 days after notice of the determination is issued.

Section 809. Stay of Proceedings.

Upon filing of any proceeding referred to in Section 808 C.1. and during its pendency before the Board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or of any agency or body and all official action thereunder shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the Board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the court having jurisdiction of zoning appeals, on petition, after notice to the Zoning Officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the Board. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court and shall proceed in accordance with the requirements set forth in the Pennsylvania Municipalities Planning Code, as amended.

Section 810. Hearings.

A. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Board. The Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive decisions or findings by the Board and accept the decision or findings of the hearing officer as final as provided in Section 908 of the Pennsylvania Municipalities Planning Code, as amended.

B. The Board shall conduct hearings and make decisions in accordance with the following requirements:

1. Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provision, by rules of the Board. In addition to the written

notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.

2. The first hearing before the Board or hearing officer shall be commenced within 60 days from the date of receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the Board or hearing officer shall be held within 45 days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of his case-in-chief within 100 days of the first hearing. Upon the request of the applicant, the Board or hearing officer shall assure that the applicant receives at least seven hours of hearings within the 100 days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within 100 days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and municipality, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.

3. The hearings shall be conducted by the Board or the Board may appoint any member as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Board; however, the appellant or the applicant, as the case may be, in addition to the municipality, may, prior to the decision of the hearing, waive decision or findings by the Board and accept the decision or findings of the hearing officer as final.

4. The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of record before the Board and any other person including civic or community organizations permitted to appear by the Board. The Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Board for that purpose.

5. The Chairman or Acting Chairman of the Board or the hearing officer presiding shall have power to administer

oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.

6. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.

7. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.

8. The Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Board. The cost of the original transcript shall be paid by the Board if the transcript is ordered by the Board or hearing officer or shall be paid by the person appealing from the decision of the Board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.

9. The Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.

10. The Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the Board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this act or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the

light of the facts found. If the hearing is conducted by a hearing officer and there has been no stipulation that his decision or findings are final, the Board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings, and the Board's decision shall be entered no later than 30 days after the report of The hearing officer. Except for challenges filed under Section 916.1 of the MPC, where the Board fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in subsection 810.B.2., the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Board to meet or render a decision as hereinabove provided, the Board shall give public notice of said decision within ten days from the last day it could have met to render a decision in the same manner as provided in subsection 810.B.1. of this section. If the Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

11. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the day following its date. To all other persons who have filed their name and address with the Board not later than the last day of the hearing, the Board shall provide, by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

12. The governing body may prescribe reasonable fees with respect to hearings before the Zoning Hearing Board. Fees for said hearings may include compensation for the secretary and members of the Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs.