

ARTICLE 24

ZONING HEARING BOARD

Section 2401. MEMBERSHIP OF THE ZONING HEARING BOARD

- A. The Board of Supervisors shall appoint a Zoning Hearing Board which shall be composed of three (3) Township residents as members, organized, empowered and conducted in accordance with Article IX of The Pennsylvania Municipalities Planning Code (53 P.S. Subsection 10901) existing or hereafter as amended and supplemented (the "Code"). Members of the Zoning Hearing Board shall have terms of 5 years and shall be so fixed that the term of office of no more than one (1) member shall expire each year. The Zoning Hearing Board shall promptly notify the Board of Supervisors of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Zoning Hearing Board shall hold no other office in the Township.

- B. The Board of Supervisors may appoint by resolution at least one (1) but no more than three (3) residents of the Township to serve as alternate members of the Board. Alternates shall serve on the Zoning Hearing Board only pursuant to the requirements set forth in Article IX, Section 903. (b), of the Municipalities Planning Code, Act 247, as amended.

Section 2402. REMOVAL OF MEMBERS OF THE ZONING HEARING BOARD

Any Zoning Hearing Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Board of Supervisors which appointed the member, taken after the member has received 15 days advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

Section 2403. ORGANIZATION OF THE ZONING HEARING BOARD

- A. The Zoning Hearing Board shall elect from its own members its officers, who shall serve annual terms as such and may succeed themselves. For the conduct on 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 Zoning Hearing 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 2405.

- B. If by reason of absence or disqualification of a member a quorum is no reached, the chairman of the Zoning Hearing Board shall designate as many alternate

members of the board to sit on the Zoning Hearing Board as may be necessary to provide a quorum. Any alternate member of the Zoning Hearing 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 the Section 2401.B and the MPC, Act 247, as amended, 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. The board shall keep full public records of its business, which records shall be the property of the municipality, and shall submit a report of its activities to the governing body as requested by the governing body.

Section 2404. EXPENDITURE OF SERVICES

Within limits of funds appropriated by the governing body, the Zoning Hearing 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 Zoning Hearing Board designated pursuant to the Section 2401.B and the MPC, Act 247, as amended, may receive compensation, as may be fixed by the governing body, for the performance of their duties, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members of the governing body.

Section 2405. JURISDICTION OF ZONING HEARING BOARD

The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters, as set forth in the Municipalities Planning Code, Act 247, as amended.

- 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 Municipalities Planning Code, Act 247, as amended.
- 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

therefore, 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 the Township 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 the zoning ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 910.2, of the Municipalities Planning Code, Act 247, as amended.
- F. Applications for special exceptions under the zoning ordinance or flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 912.1, of the Code.
- G. Appeals from the determination of any officer or agency charged with the administration of any transfer 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 Decision, of the Code.
- I. Appeals from the determination of the Zoning Officer or Township 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 applications under Article V or VII of the Municipalities Planning Code, Act 247, as amended.

Section 2406. APPLICABILITY OF JUDICIAL REMEDIES

Nothing contained in this Article shall be construed to deny the appellant the right to proceed directly to court where appropriate, pursuant to the Pennsylvania Rules of Civil Procedure No. 1091 (relating to action in mandamus).

Section 2407. DUTIES OF THE ZONING HEARING BOARD

The duly established Zoning Hearing Board shall have the following functions:

- A. Variances

The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The Zoning Hearing Board shall prescribe the form of application and

require application to the Zoning Officer. The Zoning Hearing Board may grant a variance, provided the following findings are made where relevant in a given case:

1. 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 ordinance in the neighborhood or district in which the property is located;
2. 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 therefor necessary to enable the reasonable use of the property;
3. That such unnecessary hardship has not been created by the appellant;
4. 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; and,
5. That the variance, if authorized, will represent the minimum variance that will afford relief and represent the least modification possible of the regulation in issue. In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance.

B. Special Exceptions

Special exceptions may be granted or denied by the Zoning Hearing Board pursuant to expressed standards and criteria contained in this Ordinance. The Zoning Hearing Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria and prescribe the application form to be used. In granting a special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Ordinance, as it may deem necessary to implement the purposes of this Ordinance. The Zoning Hearing Board shall pursue the following procedure:

1. The Zoning Hearing Board's decision to grant a permit for use by special exception shall be made only after application, public notice and a public

hearing. Such permit shall apply specifically to the application and plans submitted and presented at this public hearing. Any subsequent amendments or additions shall be subject to review and public hearing by the Zoning Hearing Board as a special exception.

2. The Zoning Hearing Board shall hear the application in the same manner and under the same procedure as it is empowered by law and ordinance to hear cases and make exceptions to the provisions of this Ordinance. The Zoning Hearing Board may thereafter direct the Zoning Officer to issue a permit if, in its judgement, the request will not be detrimental to the health, safety and general welfare of the Township.
3. A special exception use for which a permit is granted by the Zoning Hearing Board pursuant to the provisions of this section shall be construed to be a conforming use.

C. Parties Appellant Before the Zoning Hearing Board

1. Appeals raising the substantive validity of any land use ordinance (except those to be brought before the Township Supervisors) pursuant to the Pennsylvania Municipalities Code, procedural questions or alleged defects in the process of enactment or adoption of a land use ordinance; or 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, structures or lot; from a determination by the Township 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; from the determination of the Zoning Officer or Township Engineer in the reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving subdivision and development or planned residential development may be filed with the Board in writing by the landowner affected, any officer or agency of the Township, or any person aggrieved. Requests for a variance and for special exception may be filed with the Board by any landowner or any tenant with the permission of such landowner.
2. Any appeal from the term outlined in Section 2405.C.1 of this ordinance shall be filed with the Zoning Officer and shall state the following:
 - a. The name and address of the appellant and/or applicant;
 - b. The name and address of the landowner of the real estate affected;

- c. A brief description and location of the real estate to be affected by such proposal or change together with a plot plan drawn to scale with sufficient clarity to show the nature and character of the appeal request;
- d. A statement of the present zoning classification of the real estate in question, the improvements thereon, and the present use thereof; and
- e. A statement of the section of this Ordinance under which the request may be allowed, and reasons it should, or should not be granted.

D. Conduct of Hearings

- 1. The Zoning Hearing Board shall conduct hearings and make decisions in accordance with Section 908 of the Municipalities Planning Code, Act 247, as amended.

- 2. Public Notice

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 a time and in such a manner as shall be prescribed by ordinance or, in the absence of ordinance provisions, 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.

- 3. Zoning Hearing Fees

The Township Supervisors may establish 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 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.

- 4. Timing of Hearings

The hearing shall be held within 60 days from the date of the applicants request, unless the applicant has agreed in writing to an extension of time.

5. Hearing Decisions

The hearing 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 of findings of the hearing officer as final.

6. Parties Before the Zoning Hearing Board

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 Zoning Hearing Board shall have the 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.

7. Issuance of Subpoenas

The chairman or acting chairman of the Zoning Hearing 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.

8. Representation by Counsel

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.

9. Rules of Evidence

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

10. Stenographic Record of Hearings

The Zoning Hearing 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 Zoning Hearing Board. The cost of the original transcript shall be paid by the Zoning Hearing Board if the transcript is ordered by the Zoning Hearing 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.

11. Communication with Parties

The Zoning Hearing Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representative 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 hearing with any party or his representative unless all parties are given an opportunity to be present.

12. Hearing Decisions

The Zoning Hearing 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 the Municipalities Planning Code, Act 247, as amended, 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 the hearing officer, and there has been no stipulation that his decision or findings are final, the Zoning Hearing Board shall make his report and recommendation available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the Zoning Hearing Board prior to final decision or entry of findings, and the Zoning Hearing Board's decision shall be entered no later than 30 days after the report of the hearing officer.

Where the Zoning Hearing Board fails to render a decision within the period required by this subsection, or fails to hold the required hearing within 60 days of the applicant's request for a hearing, 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 Zoning Hearing Board to meet or render a decision as herein above provided, the Zoning Hearing Board shall give public notice of said decision within 10 days from the last day it could have met to render a decision in the same manner as prescribed in Section 2407.D.1. If the Zoning Hearing Board shall fail to provide such notice, the applicant may do so. Nothing in this section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

13. Decision Notification

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 no later than the day following its date. To all other persons who have filed their name and address with the Zoning Hearing Board not later than the last day of the hearing, the Zoning Hearing 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.

Section 2408. TIME LIMITATIONS

- A. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for development, preliminary or final, has been approved by the Township if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he failed to receive adequate notice of such approval. If such person has succeeded to his interest after such approval, adequate notice to his predecessor in interest shall be deemed adequate notice to him.
- B. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan or from an adverse decision by the Zoning Officer on a challenge to the validity of this Ordinance or an amendment hereto or map or an amendment thereto shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

- C. No issue of alleged defect in the process of enactment of any ordinance or map or any amendment thereto shall be raised in any proceeding filed with the Board later than thirty (30) days from the time such ordinance, map or amendment takes effect, unless the person raising such issues alleges and proves that he failed to receive adequate notice of the enactment or amendment. If such person has succeeded to his interest after the enactment of the ordinances, adequate notice to his predecessor in interest shall be deemed adequate notice to him.
- D. All appeals from determinations adverse to the landowner shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

Section 2409. STAY OF PROCEEDINGS

- A. Upon filing of any appeal proceeding before the Zoning Hearing Board and during its pendency before the Zoning Hearing 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 Zoning Hearing 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 Zoning Hearing 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.
- B. 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. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.
- C. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellate court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses, and attorney fees incurred by the petitioner.

Section 2410. PROCEDURE TO OBTAIN PRELIMINARY OPINION

- A. In order not to unreasonably delay the time when a landowner may secure assurance that the ordinance or zoning map under which he proposes to build is free from challenge, and recognizing the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the land owner man advance the date from which time for any challenge to the ordinance or map run under Section 2405.F.1 by the following procedure:
1. The land owner may submit plans and other materials describing the proposed development or use to the Zoning Officer for a preliminary opinion as to their compliance with the Zoning Ordinance and Zoning Map. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative of final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed development or use and a sufficient basis for a preliminary opinion as to its compliance with the Ordinance.
 2. If the Zoning Officer's preliminary opinion is that the development or use complies with the Ordinance and/or Zoning Map, notice thereof shall be published once each weed for two successive weeks in a newspaper of general circulation in the Township. Such notice shall include a general description of the proposed use or development and its location, by some readily identifiable directive, and the place and times where the plans and other materials may be examined by the public. The favorable preliminary approval under Section 2405.F.1 and in the time therein specified for commencing a proceeding with the board shall run from the time when the second notice thereof has been published.

Section 2411. APPLICATION OF ZONING APPEALS

- A. Any appeal from the terms of this ordinance shall be filed with the Zoning Officer on forms provided by the Township and shall contain the following information:
1. The name and address of the appellant and/or applicant;
 2. The name and address of the landowner of the real estate affected by such appeal;
 3. A brief description and location of the real estate to be affected by such appeal;
 4. A statement of the present zoning classification of the real estate in question, the improvements thereon, and the present use thereof;

5. A statement of the section of this Ordinance under which the appeal is being filed;
6. A narrative shall be submitted with the application as an attachment to the application stating the reasons why the appeal should be granted; or a narrative describing the situation in which the alleged erroneous decision is being appealed;
7. An accurate description of the present improvements and the additions intended to be made under the application, indicating the size and use of such proposed improvements and general construction thereof. In addition, a site plan of the real estate to be affected shall be submitted as an attachment to the application, as required to accompany applications for permits, indicating the location, size of the lot and locations of improvements now erected and proposed to be erected thereon.
8. The signature of the applicant and the owner; and the date the application was signed.

B. Zoning Appeal Fee

A filing fee, established by the Board of Supervisors by resolution, shall accompany the application. The application shall not be processed until the filing fee has been paid in full.

Section 2412. APPEALS TO COURT

Nothing contained in this Article shall be construed to deny the appellant the right to appeal a zoning hearing decision to higher court authority. Any person, taxpayer, or Township aggrieved by any decision of the Zoning Hearing Board may within 30 days after such decision of the Zoning Hearing Board seek review by the Court of Common Pleas of such decision in the manner provided by the law of the Commonwealth of Pennsylvania and Article X-A of the Municipalities Planning Code, Act 247, as amended.