

## ARTICLE VI

### ZONING HEARING BOARD

#### Section 600 Creation and Appointment

- A. Pursuant to Article IX of the Pennsylvania Municipalities Planning Code, the Township Supervisors do hereby create a Zoning Hearing Board and appoint three (3) members who shall be adult residents of the Township. Their terms of office shall be three (3) years and shall be so fixed that the term of office of one member shall expire each year.

#### Section 601 Organization of Zoning Hearing 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.
- B. The Township Supervisors may, by resolution, appoint at least one, but not more than three residents of the Township to serve as alternate members of the Board. Alternates shall hold no other office in the Township.
- C. 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.
- D. The board may take, 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 Board of Supervisors as requested by the Board of Supervisors.

#### Section 602 Hearings

- A. The Zoning Hearing Board shall conduct hearings and make decisions in accordance with the following requirements:
1. Notice. Notice shall be given to the public, the applicant, the County Planning Commission, the Zoning Officer, and to any person who has made a timely request

for the same. Notices shall be given at such time and in such manner as shall be prescribed by the Zoning Hearing Board.

2. Conduct of Hearing. The hearings shall be conducted by the Zoning Hearing Board or the Zoning Hearing 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 Zoning Hearing Board, but the parties may waive decision or findings by the Zoning Hearing Board and accept the decision or findings of the Zoning Hearing Officer as final.
  - a. The parties to the hearing shall be the Township, any person affected by the application who has made timely appearance of record before the Zoning Hearing Board, and any other person including civic or community organizations permitted to appear by the Zoning Hearing 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 Zoning Hearing Board for that purpose.
  - b. The chairman or acting chairman of the Zoning Hearing Board or the Hearing Officer presiding shall have the 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.
  - c. 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.
  - d. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
  - e. The Zoning Hearing Board or the Hearing Officer, as the case may be, shall keep a record of the proceedings, either stenographically or by sound recording, and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.
  - f. The Zoning Hearing 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 material unless the parties are afforded an opportunity to contest the materials so noticed and shall not inspect the site or its surroundings with any party or his representative unless all parties are given an opportunity to be present.
3. Decision. 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 forty-five (45) days after the last hearing before the Zoning Hearing Board or Hearing Officer where the application is contested. Each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefore. Conclusions based on any provisions of This Ordinance or of any ordinance, rule, or regulations shall contain a reference to the provisions 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 Zoning Hearing Board shall make his report and recommendations available to the parties 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 Board's decision shall be entered no later than forty-five (45) days after the decision of the Hearing Officer. Where the Zoning Hearing Board has power to render a decision and the Zoning Hearing Board or the Hearing Officer, as the case may be, fails to render the same within the period required by this clause, the decision shall be deemed to have been rendered in favor of the applicant. Unless the applicant has agreed in writing to an extension of time, nothing in this clause shall prejudice the right of any party opposing the application to urge that such decision is erroneous.

- a. 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 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.
- b. The Mediation Option, pursuant to Section 908.1 of the Municipalities Planning Code, is available to the parties at a proceeding before the Zoning Hearing Board.

### Section 603 Zoning Hearing Board's Functions

#### A. Jurisdiction

1. The Zoning Hearing Board shall have the 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 Board of Supervisors.
  - 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 thirty (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 the municipal engineer or the Zoning Officer with reference to the administration of any flood plain or Flood Hazard District or such provisions within This Ordinance.
  - e. Applications for variances from the terms of This Zoning Ordinance or such provisions within This Ordinance.
  - f. Applications for Special Exceptions under This Zoning Ordinance.
  - 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 This Zoning Ordinance.
  - h. Appeals from the Zoning Officer's determination under any aspect of This Ordinance.
  - i. Appeals from the determination of the Zoning Officer or municipal engineer in the administration of This Ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development.
2. The Board of Supervisors, upon recommendation of the Planning Commission, shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
- a. All applications for approvals of Planned Residential Developments.
  - b. All applications for approval of subdivisions or land developments.
  - c. Applications for Conditional Uses under the express provisions of This Zoning Ordinance.
  - d. Applications for curative amendment to This Zoning Ordinance.
  - e. All petitions for amendments to this Ordinance, pursuant to the procedures set forth in Section 609 of the Municipalities Planning Code. Any action on such petitions shall be deemed legislative acts, provided that nothing contained in this clause shall be deemed to enlarge or diminish existing law with reference to appeals to court.

- f. Appeals from the determination of the Zoning Officer or the municipal engineer in the administration of This Ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to application for land development.
- g. All proposals for commercial or industrial development to determine whether any further approvals are required prior to issuance of a building permit.

#### B. 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).

#### C. Variances

1. The board shall hear requests for variances where it is alleged that the provisions of This 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 appellant.
  - 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. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of This Zoning Ordinance.

D. Special Exception

Where the Zoning Ordinance, has stated special exceptions to be granted or denied by the board pursuant to express standards and criteria, the board shall hear and decide requests for such Special Exceptions in accordance with such standards and criteria. In granting a Special Exception, the 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 Zoning Ordinance.

E. Conditional Uses

Where the Zoning Ordinance has stated Conditional Uses to be granted or denied by the Board of Supervisors pursuant to express standards and criteria, the Board of Supervisors shall hold hearing on and decide requests for such Conditional Uses in accordance with such standards and criteria. In granting a Conditional Use, the Board of Supervisors may attach such reasonable conditions and safeguards, in addition to those expressed in This Ordinance, as it may deem necessary to implement the purpose of This Zoning Ordinance.

F. Appeals

Appeals 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 and for Special Exception may be filed with the board by any landowner or any tenant with the permission of such landowner.

G. Time Limitations

1. No person shall be allowed to file any proceeding with the board later than thirty (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. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan or from an adverse decision by a Zoning Officer on a challenge to the validity of an ordinance or map, shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.
2. All appeals from determination adverse to the landowners shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

## H. Stay of Proceedings

1. Upon filing of any proceeding and during its pendency before the board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or 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.
2. After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for a bond the right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court.
3. The question whether or not such a 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.
4. 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 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.

## I. Validity of Ordinances; Substantive Questions

1. A landowner who, on substantive grounds, desires to challenge the validity of this Ordinance or map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either:
  - a. to the Zoning Hearing Board, or

- b. to the governing body, together with a request for a curative amendment.
2. Persons aggrieved by a use or development permitted on the land of another by This Ordinance or map, or any provision thereof, who desires to challenge its validity on substantive grounds shall first submit their challenge to the Zoning Hearing Board for a decision thereon.
3. The submissions referred to above shall be governed by the following:
  - a. In challenges before the Zoning Hearing Board, the challenging party shall make a written request to the board that it hold a hearing on its challenge. The request shall contain the reasons for the challenge. Where the landowner decides to challenge the validity of such ordinance and elects to proceed by curative amendment, his application to the governing body shall contain, in addition to the requirements of the written request hereof, the plans and explanatory materials describing the use or development proposed by the landowner in lieu of the use or development permitted by the challenged ordinance or map. Such plans or other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a permit, so long as they provide reasonable notice of the proposed use or development and a sufficient basis for evaluating the challenged ordinance or map in light thereof. Nothing herein contained shall preclude the landowner from first seeking a final approval before submitting his challenge.
  - b. If the submission is by curative amendment, the request also shall be accompanied by an amendment or amendments to the ordinance proposed by the landowner to cure the alleged defects therein.
  - c. If the submission is made to the Board of Supervisors, the municipal solicitor shall represent and advise it at the hearing or hearings.
  - d. The Board of Supervisors may retain an independent attorney to present the defense of the challenged ordinance or map on its behalf and to present their witnesses on its behalf.
  - e. Based upon the testimony presented at the hearing or hearings, the Board of Supervisors or the Zoning Hearing Board, as the case may be, shall determine whether the challenged ordinance or map is defective, as alleged by the landowner. If a challenge heard by the Board of Supervisors is found to have merit, the Board of Supervisors shall proceed as provided in the Municipalities Planning Code. If a challenge by a Zoning Hearing Board is found to have merit, the decision of the Zoning Hearing Board shall include recommended amendments to the challenged ordinance which will cure the defects found. In reaching its decision, the Zoning Hearing Board shall consider the amendments,

plans and explanatory material submitted by the landowner and shall also consider:

- (i) the impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.
  - (ii) if the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or map;
  - (iii) the suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features;
  - (iv) the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and
  - (v) the impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
- f. The governing body or the Zoning Hearing Board, as the case may be, shall render its decision within forty-five (45) days after the conclusion of the last hearing.
- g. If the governing body or the Zoning Hearing Board, as the case may be, fails to act on the landowner's request within the time limits referred to in paragraph (6), a denial of the request is deemed to have occurred on the forty-sixth (46th) day after the close of the last hearing.
4. The Zoning Hearing Board or governing body, as the case may be, shall commence its hearings within sixty (60) days after the request is filed unless the landowner requests or consents to an extension of time.
5. Public notice of the hearing shall include notice that the validity of the ordinance or map is in question and shall give the place where and the times when a copy of the request, including the plans, explanatory material or proposed amendments may be examined by the public.
6. The challenge shall be deemed denied when:

- a. The Zoning Hearing Board or Board of Supervisors, as the case may be, fails to commence the hearing within the time limits set forth in the Municipalities Planning Code;
- b. The Board of Supervisors notifies the landowner that it will not adopt the curative amendment;
- c. The Board of Supervisors adopts another curative amendment which is unacceptable to the landowner; or
- d. The Zoning Hearing Board or Board of Supervisors, as the case may be, fails to act upon the request 45 days after the close of the last hearing on the request, unless the time is extended by mutual consent by the landowner and municipality.

7. Procedure to Obtain Preliminary Opinion

In order not to unreasonably delay the time when a landowner may secure assurance that the ordinance or map under which he proposed to build is free from challenge, and recognizing that the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the landowner may advance the date from which time for any challenge to the ordinance or map will run by the following procedure:

- a. The landowner may submit plans and other materials describing his proposed use or development to the Zoning Officer for a preliminary opinion as to their compliance with the applicable ordinances and maps. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative, or final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed use or development and a sufficient basis for a preliminary opinion as to its compliance.
- b. If the Zoning Officer's preliminary opinion is that the use or development complies with the ordinance or map, notice thereof shall be published once a week for two successive weeks in a newspaper of general circulation in the municipality. 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 and time therein specified for commencing a proceeding with the board shall run from the time when the second notice thereof has been published.