

ARTICLE V

ZONING HEARING BOARD

Section 501 Powers and Duties - General

- a) Membership of Board: The membership of the Board shall, upon the determination of the Borough Council, consist of either three (3) or five (5) residents of the Borough appointed by resolution of the Borough Council. The terms of office of a three (3) member board shall be three years (3) and shall be so fixed that the term of office of one (1) member shall expire each year. The terms of office of a five (5) member board shall be five (5) years and shall be so fixed that the term of office of one (1) member shall expire each year. If a three (3) member board is changed to a five (5) member board, the members of the existing three (3) member board shall continue in office until their term of office would expire under prior law. The borough Council shall appoint two (2) additional members to the Board with terms scheduled to expire in accordance with the provisions of this subsection. The Board shall promptly notify the Borough Council of any vacancies that occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold not other office in the Borough.

The Borough Council may appoint by resolution at least one (1) but no more than three (3) residents of the Borough to serve as alternate members of the Board. The term of office of an alternate member shall be three (3) years. When seated pursuant to the provision of Subsection b), 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 Section and as otherwise provided by law. Alternates shall hold no other office in the Borough. 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 907 of the Pennsylvania Municipalities Planning Code, Act 247, as reenacted and amended, unless designated as a voting alternate member pursuant to Subsection b).

Removal of Members. Any member of the Zoning Hearing Board may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of Borough Council taken after the member has received fifteen 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.

- b) Organization of Board: 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 502.

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 Subsection shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.

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 become the property of the Borough and shall submit a report of its activities to the Borough Council as requested by the Borough Council.

- c) Powers: The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final decisions in the following matters:
- 1) Substantive challenges to the validity of any land use ordinance except those brought before the Borough Council pursuant to Sections 609.1 and 916.1 (a) (2) of the Pennsylvania Municipalities Planning Code, Act 247, as reenacted and amended.
 - 2) 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. Where the ordinance appealed from is the initial Zoning Ordinance of the Borough and a zoning hearing board has not been previously established, the appeal raising procedural questions shall be taken directly to court.
 - 3) 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.
 - 4) Appeals from a determination by the Borough 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.
 - 5) Applications for variances from the terms of the Zoning Ordinance and flood hazard ordinance or such provisions with a land use ordinance, pursuant to Section 503.
 - 6) Applications for special exceptions under the Zoning Ordinance or flood plain or flood hazard ordinance or such provision within a land use ordinance, pursuant to Section 504.
 - 7) Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provision of the Zoning Ordinance.
 - 8) Appeals from the Zoning Officer's determination under Section 916.2, Procedure to Obtain Preliminary Opinion, of the Pennsylvania Municipalities Planning Code, Act 247, as reenacted and amended.
 - 9) Appeals from the determination of the Zoning Officer or Borough 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 related to development not involving Subdivision and Land Development or Planned Residential Development applications.

- d) Board Calendar: Each application or appeal filed in the proper form with the required data must be numbered serially and be placed upon the calendar of the Board by the Secretary. Applications and appeals must be assigned for hearing in the order in which they appear on the calendar. However, for good reasons, the Board may order the advance of the application or appeal. A hearing must be held within sixty (60) days from the date of the applicant's request, unless the applicant has agreed, in writing, to an extension of time.

Section 502 Public Hearings

- a) Notice; Conduct of Meeting: Public notes shall be given and written notice shall be given to the applicant, the Zoning Officer, to each property owner within two hundred (200) feet of the property involved and to any person who, at least two (2) weeks prior to the scheduled public hearing, has made 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 provisions, by rules of the Board. In addition to the written notice provided herein, written notice of the hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.

The Borough Council may prescribe reasonable fees with respect to hearings before the Zoning Hearing Board. Fees for said hearings may include compensation of 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.

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

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 Borough may, prior to the decision of the hearing, waive decision or findings by the Board and accept the decision of the hearing officer as final.

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

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 materials so noticed and shall not inspect the site or its surroundings with and party or his representative unless all parties are given an opportunity to be present.

- b) Representation: Statements: Parties to the hearings shall be the Borough, 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 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.

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.

Statements are to be made in the following order or as the Chairman may direct:

- 1) Applicant or appellant.
- 2) Zoning Officer and other officials.
- 3) Any private citizen.

The applicant or appellant must be given an opportunity for rebuttal.

- c) Witnesses: 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.
- d) Decision Procedure: 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 forty-five (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 Pennsylvania Municipalities Planning Code 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 of findings is final, the Board shall make his report and recommendations available to the parties within forty-five (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 thirty (30) days after the report of the hearing officer*. Where the Board fails to render the decision within the period required by this Subsection, or fails to hold the required hearing within sixty (60) days from the date 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 Board to meet or render a decision as herein-above provided, the Board shall give public notice of said decision within ten (10) days from the last day it could have met to render a decision in the same manner as provided in Subsection (a) of this Section. Nothing in this Subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

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.

Whenever the Board imposes a condition or conditions with respect to the granting of an application or appeal, this condition must be stated in the order of the Board and in the permit issued pursuant to the order by the Zoning Officer.

This permit remains valid only as long as the conditions or conditions upon which it was granted or the conditions imposed by this Ordinance are adhered to.

- e) Records: The Board of 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.

Section 503 Variances

- a) Filing of Variance: An application may be made to the Zoning Hearing Board for a variance where it is alleged that the provisions of the Zoning Ordinance inflict unnecessary hardship upon the applicant. The application must be on a form provided for that purpose by the Zoning Officer. It must be filed with the Board and copies given to the Zoning Officer and Borough Planning Commission. The applicant must provide all the information requested on the form, together with any other information and data that may be required to advise the Board of the variance, whether such information is called for by the official form or not.

Unless otherwise specified or extended by the Board, a variance authorized by it expires if the applicant fails to obtain a building permit or use certificate within six (6) months from the date of the authorization of the variance.

- b) Referral to Planning Commission: All applications for a variance shall be referred to the Planning Commission for a recommendation.
- c) Standards for Variance: Where there is unnecessary hardship, the Board may grant a variance in the application of the provisions of this Ordinance provided that the following findings are made where relevant in a given case:
 - 1) There are unique physical circumstances or conditions, including (a) irregularity, narrowness, or shallowness of lot size or shape, or (b) 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 zone in which the property is located.

- 2) 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.
 - 3) The unnecessary hardship has not been created by the appellant.
 - 4) The variance, if authorized, will not alter the essential character of the neighborhood or zone 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.
 - 5) 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.
- d) Conditions: In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Zoning Ordinance.

Section 504 Special Exceptions

- a) Filing of Special Exceptions: For any use permitted by special exception, a special exception must be obtained from the Zoning Hearing Board. In addition to the information required on the building permit application, the special exception application must show --
- 1) Ground floor plans and elevations of proposed structures.
 - 2) Names and addresses of adjoining owners.
- Unless otherwise specified or extended by the Zoning Hearing Board a special exemption authorized by the Board expires if the applicant fails to obtain, where required to do so, a building permit or use certificate within six (6) months of the date of the authorization of the special exception.
- b) Temporary Special Exceptions: A temporary special exception must be obtained from the Zoning Hearing Board for any nonconformity which is or will be seasonal or is or will be in the public interest. The Zoning Hearing Board may grant a temporary special exception for a nonconforming use or structure, existing or new, which:
- 1) Is beneficial to the public health or general welfare, or
 - 2) Is necessary to promote the proper development of the community, or
 - 3) Is seasonal in nature.

The temporary special exception may be issued for a period not exceeding one (1) year, and may be renewed for an aggregate period not exceeding three (3) years. The nonconforming structure or use must be completely removed upon the expiration of the special exception without cost to the Borough.

- c) Referral to Planning Commission: All applications for a special exception shall be referred to the Borough Planning Commission for a recommendation.
- d) Conditions: The Zoning Hearing Board in passing upon special exception applications, may attach conditions considered necessary to protect the public welfare and the Comprehensive Plan, including conditions which are more restrictive than those established for other uses in the same zone.
- e) Application of Extent-of-Use Regulations: The extent-of-use regulations as set forth in this Ordinance must be followed by the Zoning Hearing Board. Where no extent-of-use regulations are set forth for the particular use, the Board must impose extent-of-use requirements as necessary to protect the public welfare and the Comprehensive Plan.
- f) General Standards: A special exception may be granted when the Zoning Hearing Board finds from a preponderance of the evidence produced at the hearing that:
 - 1) The proposed use, including its nature, intensity and location, is in harmony with the orderly and appropriate development of the zone; and
 - 2) That adequate water supply, sewage disposal, storm drainage and fire and police protection are or can be provided for the use; and
 - 3) That the use of adjacent land and buildings will not be discouraged and the value of adjacent land and buildings will not be impaired by the location, nature and height of buildings, walls and fences; and
 - 4) That the use will have proper location with respect to existing or future streets giving access to it, and will not create traffic congestion or cause industrial or commercial traffic to use residential streets; and
 - 5) That the specific standards set forth for each particular use for which a special exception may be granted have been met.

The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact, which are to be determined by the Zoning Hearing Board.
- g) Special Standards: In addition to the general standards for all special exceptions as contained in Section 504.f the specific standards for particular uses as listed in ARTICLE VI must be met prior to the granting of a special exception.

Section 505 Expenditures For Services

Within the limits of funds appropriated by Borough Council, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Zoning Hearing Board may receive compensation for the performance of their duties, as may be fixed by Borough Council, but in no case shall it exceed the rate of compensation authorized to be paid to the members of Borough Council. Alternate members of the Board may receive compensation, as may be fixed by Borough Council, for the performance of their duties when designated as alternate members pursuant to Section 501, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members of Borough Council.