

**ARTICLE 14
ZONING HEARING BOARD**

SECTION 14.0 ESTABLISHMENT AND DUTIES.

Pursuant to Pennsylvania Municipalities Planning Code, Article IX, the Township Supervisors shall create a Zoning Hearing Board. The membership of the Board shall, upon the determination of the Township, Supervisors, consist of either three (3) or five (5) residents of the Township appointed by resolution by the Township Supervisors. Members of the Zoning Hearing Board shall hold no other office in the Township.

14.0.1 TERM OF APPOINTMENT

The terms of office of a three (3) member Board shall be three (3) years and shall be so fixed that the term of office of one (1) member shall expire each year. The terms of office for a five (5) member Board shall be five (5) years and shall be so fixed that the term of office of one member shall expire each year. If a three (3) member Board is changed to a five (5) member Board, the members of the existing Board shall continue in office until their term of office will expire under prior law. The Township Supervisors shall appoint two (2) additional members to the Board with terms scheduled to expire in accordance with the provisions of this sub-section. The Board shall promptly notify the Township Supervisors of any vacancies which occur. Appointments to fill vacancies shall be for the unexpired portion of the term.

14.0.2 ALTERNATE MEMBERS

The Township Supervisors may also appoint one but no more than three residents of the Township to serve as alternate members of the Board. The term of office for an alternate member shall be three (3) years. When seated pursuant to the provisions of Section 906 of the Pennsylvania Municipalities Planning Code, an alternate shall be entitled to participate in all proceedings and discussions of the Board to the same extent as provided by law for Board members, including specifically the right to cast a vote as a voting member during proceedings, and shall have all the powers and duties set forth in said act and as otherwise provided by law. Alternates shall hold no other office in the Township, including membership on the Planning Commission and Zoning Officer. 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 or compensated pursuant to Section 907 of the Pennsylvania Municipalities Planning Code unless designated as a voting alternate member pursuant to Section 906.

14.0.3 REMOVAL OF MEMBERS

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 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.

14.0.4 ORGANIZATION AND RULES OF PROCEDURE OF THE BOARD:

- (a) The Board shall elect from its own membership its officers, who shall serve annual terms and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be no less than a majority of all of the members of the Board, but the Board may appoint a Hearing Officer from its membership to conduct any hearing on its behalf and the parties may waive further action by the Board as provided in sub-section 14.1.2.
- (b) The Zoning Hearing Board may make, alter and rescind rules and forms for its procedure, consistent with ordinance of the Township and laws of the Commonwealth. The Board shall keep full records of its business, which records shall be the property of the township, and shall submit a report of its activities to the Township Supervisors as requested.
- (c) Designation of Alternate Voting Members: 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 shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.

14.0.5 EXPENDITURES FOR SERVICES

Within the limits of the funds appropriated by the Township Supervisors, 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 duties, as may be fixed by the Township Supervisors, but in no case shall it exceed the rate of compensation authorized to be paid its members by the Township Supervisors. Alternate members of the Board may receive compensation, as may be fixed by the Township Supervisors, for the performance of their duties when designated as alternate members pursuant to this Section, but in no case shall it exceed the rate of compensation authorized to be paid its members by the Township Supervisors.

SECTION 14.1 FUNCTIONS.

14.1.1 VARIANCES

(a) 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:

(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 zoning 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 therefore necessary to enable the reasonable use of the property.

(3) That such unnecessary hardship has not been created by the applicant.

(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.

(5) 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.

(b) In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning ordinance.

14.1.2 HEARINGS

The Board shall conduct hearings and make decisions in accordance with Section 908 of the Pennsylvania Municipalities Planning Code, as amended.

14.1.3 JURISDICTION

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 (§16.8 of this Ordinance) and 916.1(a)(2) of the Pennsylvania Municipalities Planning Code.

(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. Where the ordinance appealed from is the initial zoning ordinance of the municipality and a zoning hearing board has not been previously established, the appeal raising procedural questions shall be taken directly to the court.

- (c) Appeals from any determination of the Zoning Officer, including but not limited to, the granting or denial of any permit, or failure to act on application therefor, the issuance of any cease and desist order or the registration or refusal to register any non-conforming use, structure or lot.
- (d) Appeals from a determination of the municipal engineer or Zoning Officer with reference to the administration of any flood plain or flood hazard , or such provisions within a land use ordinance or such provisions of 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 (§14.1.1 of this Ordinance).
- (f) Applications for special exceptions under the flood hazard ordinance pursuant to section 912.1 of the Municipalities Planning Code.
- (g) Appeals from the Zoning Officer's determination under Section 916.2 of the Pennsylvania Municipalities Planning Code.
- (h) 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 stormwater management insofar as the same relate to development involving Subdivision and Land Development applications, and applications subject to Articles 7 and 8 of this Ordinance.

14.1.4 MEDIATION OPTION.

- (a) Parties to proceedings authorized in this article and Article X-A of the Pennsylvania Municipalities Planning Code may utilize mediation as an aid in completing such proceedings. In proceedings before the zoning hearing board, in no case shall the zoning hearing board initiate mediation or participate as a mediating party. Mediation shall supplement, not replace, those procedures in this article and Article X-A once they have been formally initiated. Nothing in this section shall be interpreted as expanding or limiting municipal police powers or as modifying any principles of substantive law.
- (b) Participation in mediation shall be wholly voluntary. The appropriateness of mediation shall be determined by the particulars of each case and the willingness of the parties to negotiate. Any municipality offering the mediation option shall assure that, in each case, the mediating parties, assisted by the mediator as appropriate, develop terms and conditions for:
 - (1) Funding mediation.
 - (2) Selecting a mediator who, at a minimum, shall have a working knowledge of municipal zoning and subdivision procedures and demonstrated skills in mediation.
 - (3) Completing mediation, including time limits for such completion.
 - (4) Suspending time limits otherwise authorized in the Act, provided there is written consent by the mediating parties, and by an applicant or municipal decision making body if either is not a party to the mediation.
 - (5) Identifying all parties and affording them the opportunity to participate.
 - (6) Subject to legal restraints, determining whether some or all of the mediation sessions shall be open or closed to the public.
 - (7) Assuring that mediated solutions are in writing and signed by the parties, and become subject to review and approval by the appropriate decision making body pursuant to the authorized procedures set forth in the other sections of this act.
- (c) No offers or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceedings.

SECTION 14.2 PARTIES APPELLANT TO THE BOARD.

Appeals authorized by the Municipalities Planning Code and this Ordinance) 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 910.2 and special exception under section 912.1 of the Municipalities Planning Code (§14.1.3(e) and (f) of this Ordinance) may be filed with the Board by any landowner or any tenant with permission of the landowner.

SECTION 14.3 TIME LIMITATIONS.**14.3.1 FILING OF PROCEEDING**

No person shall be allowed to file any proceeding with the Board later than 30 days after the application for development, preliminary or final, has been approved by the appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or 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 a landowner to appeal from an adverse decision on a tentative plan pursuant to section 709 of the of the Municipalities Planning Code (Section 7.5.5 of this Ordinance) or from an adverse decision of the Zoning Officer on a challenge to the validity of the Ordinance or Map pursuant to section 916.2 of the Municipalities Planning Code shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

14.3.2 APPEALS

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 14.4 ADDITIONAL PROCEDURES.

All procedures not specifically included in this Ordinance shall be governed by the applicable procedures of the Municipalities Planning Code.