

**ARTICLE 7 – ZONING HEARING BOARD
AND OTHER ADMINISTRATIVE PROCEEDINGS**

701 General:

In accordance with Article 1X of the Pennsylvania Planning Code, a Zoning Hearing Board shall be appointed and organized, which Board shall adopt rules to govern its procedure. The Board shall hold meetings, keep minutes, and pursuant to notice, conduct hearings, compel the attendance of witnesses, take testimony under oath and render decisions in writing within 45 (forty-five) days after hearing or continued hearing, all as required by law. For the filing of an appeal or proceeding with the Board, a fee shall be charged in accordance with a schedule annually fixed by the governing body.

702 Membership of Board:

The Board shall be appointed by the governing body and shall consist of 3 (three) members, 1 (one) of whom shall be designated to serve until the first day of January following the adoption of this Ordinance, 1 (one) until the second January thereafter, and 1 (one) until the first day of the third January thereafter. Their successors shall be appointed on the expiration of their respective terms to serve 3 (three) years. Vacancies shall be filled for the unexpired term of any members whose term becomes vacant. Members of the Board shall hold no other office in the municipality.

- (a) The Governing body may appoint by resolution at least 1 (one) but no more than 3 (three) residents of the municipality to serve as alternate members of the Board. The term of office of an alternate member shall be 3 (three) years. When seated pursuant to the provisions of Section 704, 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 duties and powers set forth in this act and as otherwise provided by law. Alternates shall hold no other office in the municipality, 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 nor be compensated pursuant to Section 607.3 unless designated as a voting alternate member pursuant to Section 704.

703 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 (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.

704 Organization of Board:

704.1 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 706.

704.2 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.

704.3 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.

705 **Appeals:**

Any person or municipal official aggrieved or affected by any decision of the Zoning Administration Officer may appeal to the Zoning Hearing Board within thirty days by filing a notice of Appeal specifying the grounds thereof. The Board shall have the power to hear and decide appeals from any order, requirement, decision, grant or refusal made by the Zoning Administration Officer in the administration of this Ordinance. All appeals and applications made to the Board shall be in writing on forms prescribed by the Board.

706 **Hearings:**

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

706.1 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 1 (one) week prior to the hearing.

706.2 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.

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

706.4 The board shall conduct the hearings 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 municipality, may, prior to the decision of the hearing, waive decisions or findings by the board and accept the decision or findings of the hearing officer as final.

- 706.5** 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.
- 706.6** 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 documents requested by the parties.
- 706.7** 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.
- 706.8** Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- 706.9** The board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The applicant and the board shall share the appearance fee for a stenographer equally. The cost of the original transcript shall be paid by 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.
- 706.10** 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 representatives unless all parties are given an opportunity to be present.
- 706.11** 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 (forty-five) 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 to the Pa. 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 or findings are final, the board shall make his report and recommendations available to the parties within 45 (forty-five) 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 (thirty) 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 60 (sixty) 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 with 10 (ten) days from the last day it could have met to render a decision in the same manner as provided in subsection (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.

706.12 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.

707 **Jurisdiction:**

The Zoning Hearing Board or the Governing Body shall have exclusive jurisdiction to hear and render final adjudication in matters as delineated in Section 909.1 of the Pa. Municipalities Planning Code.

707.1 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.

708 **Zoning Hearing Board Functions:**

708.1 **Variances:**

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 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.
- (f) In granting any variances, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the proposes of the Pa. Municipalities Planning Code and the Zoning Ordinance.

708.2 Special exception:

The Zoning Hearing Board shall have the power to decide applications for special exceptions as specified in this Ordinance in harmony with its general purpose and intent and in accordance with the standards set forth. The Board shall approve a special exception only if it meets the following standards and criteria:

- (a) The exception is compatible with adjacent uses and structures.
- (b) The exception is suited to the topography and other characteristics of the site.
- (c) The exception complies with all off-street parking and other provisions of this Ordinance.
- (d) In granting a special exception, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Pa. Municipalities Planning Code and the Zoning Ordinance.
- (e) In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements to the health, safety and general welfare of the municipality.

708.3 Performance Standards:

In cases involving performance standards:

- (a) The Board may require a plan of the proposed construction or development, a description of machinery proposed and the specifications for the mechanisms and techniques to be used;
- (b) The Board may obtain qualified expert consultants to testify as to whether a proposed use will conform to the performance requirements.

708.4 Non-Conforming Uses:

The Board shall have the powers to authorize changes of lawful non-conforming uses as follows:

- (a) A non-conforming use which occupies a portion of a structure or premises may be extended within such structure or premises as they existed when the prohibitory provision took effect, but not in violation of the area and yard requirements of the district in which such structures or premises are located.
- (b) The Board may impose such conditions, as it deems necessary for the protection of adjacent property and the public interest. No change of a non-conforming use shall entail structural alterations beyond those required by law for the purpose of safety and health.
- (c) If any non-conforming use of land ceases for any continuous period exceeding 1 (one) year, any subsequent use of the land shall be in conformity to the regulations of this Ordinance.

708.5 Challenges and Appeals:

The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudication 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 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 30 (thirty) 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 non-conforming 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 hazard ordinance or such provisions within a land use ordinance.

709 Governing Body Functions

709.1 Conditional Uses:

The Board of Supervisors shall hold hearings on and decide requests for conditional uses in accordance with the standards and criteria outlined under Section 702.2 (special exception). The governing body may attach such reasonable conditions, as it may deem necessary.

709.2 Amendments:

- (a) The Board of Supervisors shall hear and decide applications for curative amendment to the Zoning Ordinance pursuant to sections 609.1 and 916.1 of the Pennsylvania Municipalities Planning Code.
- (b) The Board of Supervisors shall hear and decide all petitions for amendment of the Zoning Ordinance, pursuant to the procedures set forth in section 609 of the Pa. 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.

710 Validity of Ordinance:

A landowner who, on substantive grounds, desires to challenge the validity of an 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 as outlined in Section 916.1 of the Pennsylvania Municipalities Planning Code.

711 Appeal from Decision:

Any person(s) aggrieved by any decision (or any taxpayer or any officer of the municipality) may, within 30 (thirty) days after a decision is rendered by the board appeal to the Court of Common Pleas of Erie County, Pennsylvania, in accordance with Article X of the Pennsylvania Municipalities Planning Code.