

ARTICLE XXIX
Zoning Hearing Board
[Amended 8-24-1989 by Ord. No. 89-09]

§ 150-296. Membership; appointment; terms of office.

- A. 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. The Board currently consists of three (3) members. The terms of office of a three-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 of a five-member Board shall expire each year, and of the initial appointments of the two (2) additional members, one (1) shall be appointed for a two-year term. If a three-member Board is changed to a five-member Board, the members of the existing three-member Board shall continue in office until their terms of office would 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 subsection. The Board shall promptly notify the Township Supervisors of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the township. **[Amended 11-14-1991 by Ord. No. 91-09]**
- B. A five-member Board shall not be changed to a three-member Board except upon an affirmative vote on the question by a majority of the electors of the township voting thereon at a referendum held at the municipal or general election prior to a year in which the terms of two (2) of the members of the Board expire.
- C. The governing body may appoint by resolution at least one (1) but no more than three (3) residents of the municipality 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 provisions of § 150-297, 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 Article 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 unless designated as a voting alternate member pursuant to § 150-297 of this Article.

§ 150-297. Organization.

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 §150-300. 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. The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the township and laws of the commonwealth. The Board shall keep full public 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 upon request.

§ 150-298. Powers and duties.

The Zoning Hearing Board shall have the exclusive jurisdiction to hear and render decisions in the following matters:

- A. Substantive challenges to the validity of the Zoning Ordinance, except those brought before the governing body pursuant to § 150-377 of this chapter.
 - (1) If a challenge heard 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:
 - (a) The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.
 - (b) 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.

- (c) The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, floodplains, aquifers, natural resources and other natural features.
 - (d) The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, 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 impact.
 - (e) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
- (2) The Zoning Hearing Board shall render its decision within forty-five (45) days after the conclusion of the last hearing. If the Zoning Board fails to act on the land-owner's request within this time limit, a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.
 - (3) The Zoning Hearing Board shall commence its hearings within sixty (60) days after the request is filed unless the landowner requests or consents to an extension of time.
 - (4) Public notice of the hearing shall be provided as specified in § 150-300A of this chapter.
- B. Challenges to the validity of the Zoning 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 the ordinance.
 - C. Special exceptions pursuant to the requirements listed in §150-302 of this chapter.
 - D. Variances, subject to the requirements listed in §150-301 of this chapter.
 - E. 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, or the issuance of any cease and desist order. **[Amended 6-28-2001 by Ord. No. 01-03]**
 - F. Appeals from a determination by a Municipal Engineer or the Zoning Officer with reference to the administration of any provisions contained within the Floodplain Management Ordinance.³⁵

- 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 chapter.
- H. Appeals from the Zoning Officer's determination under Section 916.2 (and any subsequent amendments) of the Act.³⁶
- I. Appeals from the determination of the Zoning Officer or Municipal Engineer in the administration of any land use ordinance with reference to sedimentation and erosion control and/or stormwater management for applications not involving a subdivision/land development or a planned residential development as regulated in Articles V and VII of the Act,³⁷ respectively.

§ 150-299. Scheduling of applications and appeals.

- A. 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, all application must be submitted no more than sixty (60) days before and no less than thirty (30) days prior to the required public hearing. However, for good reason, the Board may order the advance of the application or appeal. The Board must fix a reasonable time for hearings.

§ 150-300. Public hearings.

- A. The Board shall conduct hearings and make decisions in accordance with the following requirements:
 - (1) Public notice shall be given, and written notice shall be given to the applicant, the Zoning Officer, such other persons as the Township Board of Supervisors shall designate by ordinance and to any person who has made a 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 one (1) week prior to the hearing.
 - (2) The Board of Supervisors 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

³⁶ Editors Note: See 53 P.S. § 10916.2.

³⁷ Editors Note: See 53 P.S. § 10501 et seq. and 53 P.S. § 10701 et seq., respectively.

Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs.

- (3) 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.
- B. 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 municipality, may, prior to the decision of the hearing, waive decision or findings by the Board and accept the decision or findings of the hearing officer as final.
 - C. The parties to the hearing shall be the township, 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.
 - D. 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.
 - E. 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.
 - F. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.
 - G. The 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 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.
 - H. 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 representative unless all parties are given an opportunity to be present.

- I. 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 the Act ¹⁸ 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 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 applicants request for 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 hereinabove 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. 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.
- J. 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.
- K. 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.

¹⁸ Editor's Note: See 53 P.S. § 10101 et seq.

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

§ 150-301. Variances.

A. Filing of variance.

- (1) An application may be made to the Zoning Hearing Board for a variance where it is alleged that the provisions of this chapter 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 Township 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 on the variance, whether such information is called for by the official form or not. Unless the form and information requested are complete at the time of submission, the application will be returned to the applicant.
- (2) 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 authorization of the variance.

B. Standards for variances. Where there is unnecessary hardship, the Board may grant a variance in the application of the provisions of this chapter, provided that 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 this chapter in the neighborhood or zone in which the property is located;
- (2) That because of such physical circumstances or conditions, there is not the possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefore necessary to enable 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 zone or neighborhood 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 regulations in issue; and
 - (6) That variances within the regulatory floodplain shall require compliance with those regulations contained in Chapter 75, Flood Damage Prevention, Article VI.
- C. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this chapter and be subject to the penalties described in Article XXXI.

§ 150-302. Special exceptions.

A. Filing of special exception.

- (1) 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:
 - (a) Ground floor plans and elevations of proposed structures.
 - (b) The names and addresses of adjoining property owners, including properties directly across a public right-of-way.
 - (c) A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this chapter.
 - (d) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this chapter.
- (2) Unless the form and information requested are complete at the time of submission, the application will be returned to the applicant.
- (3) Unless otherwise specified or extended by the Zoning Hearing Board, a special exception 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. Reserved³⁸

³⁸ Editor's Note: Former § 150-302.B. Temporary special exception, was repealed 6-28-2001 by Ord. No. 01-03.

- C. Conditions. The Zoning Hearing Board, in approving 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. These conditions shall be enforceable by the Zoning Officer, and failure to comply with such conditions shall constitute a violation of this chapter and be subject to the penalties described in Article XXXI.
- D. General standards.
- (1) A special exception may be granted when the Zoning Hearing Board finds from a preponderance of the evidence produced at the hearing that:
 - (a) The proposed use, including its nature, intensity and location, is in harmony with the orderly and appropriate development of the zone.
 - (b) Adequate water supply, sewage disposal, storm drainage and fire and police protection are or can be provided for the use.
 - (c) 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 or buildings, walls and fences.
 - (d) The use will have proper location with respect to existing or future streets and will not create traffic congestion or cause nonresidential traffic on local residential streets.
 - (2) 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.
- E. Specific standards. In addition to the general standards for all special exceptions as contained in Subsection D, the specific standards for particular uses as listed in Article XXX must be met prior to the granting of a special exception.
- F. Site plan approval. Any site plan presented in support of the special exception pursuant to Subsection A(3) shall become an official part of the record for said special exception. Approval of any special exception will also bind the use in accordance with the submitted site plan; therefore, should a change in the site plan be required as part of the approval of the use, the applicant shall revise the site plan prior to the issuance of a building permit or certificate of use and occupancy. Any subsequent change to the use on the subject property not reflected on the originally approved site plan shall require the obtainment of another special exception approval.

§ 150-303. Parties appellant before the Board.

Appeals under §150-298E, F, G, H and I and proceedings to challenge this chapter under § 150-298A and B 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 under § 150-298D and for special exception under §150-298C may be filed with the Board by any landowner or any tenant with the permission of such landowner. Any appeal shall state:

- A. The name and address of the appellant and applicant.
- B. The name and address of the landowner of the real estate to be affected.
- C. A brief description and location of the real estate to be affected by such proposed change, together with a plot plan drawn to scale with sufficient clarity to show the nature and character of the request.
- D. A statement of the present zoning classification of the real estate in question, the improvements thereon and the present use thereof.
- E. A statement of the section of this chapter under which the request may be allowed, and reasons why it should or should not be granted.

§ 150-304. Time limitations.

- A. 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 the Zoning Officer or the Board of Supervisors 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 or 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.
- B. The failure of anyone other than the landowner to appeal from an adverse decision by the Zoning Officer on a challenge to the validity of this chapter or the Official Zoning Map³⁹ pursuant to Section 916.2 of the Act, as amended,⁴⁰ shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative preliminary approval.

³⁹ Editor's Note: The Zoning Map is on file and available for inspection in the office of the Township Secretary.

⁴⁰ Editor's Note: See 53 P.S. § 10916.2.

§ 150-305. Stay of proceeding.

- A. Upon filing of any proceeding referred to in this section and during its pendency before the 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 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. 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. 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.
- B. 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.

§ 150-306. Appeals.

Any person or taxpayer of the township aggrieved by any decision of the Board may, within thirty (30) days after such decision of the 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 Act, as amended.⁴¹

⁴¹ Editor's Note: See 53 P.S. § 11001-A et seq.