

ARTICLE XXII

ZONING HEARING BOARD

Section 2200. ESTABLISHMENT AND MEMBERSHIP

1. There shall be a Zoning Hearing Board consisting of three (3) residents of the Township, appointed by the Board of Supervisors in accordance with Article IX of the Pennsylvania Municipalities Planning Code (53 P.S. 10901 et. seq.), as amended. Their terms of office shall be three years and shall be so fixed that the term of office of one member shall expire each year. The Board shall promptly notify the Board of Supervisors of any vacancy that occurs. Appointments to fill vacancies shall be only for the un-expired portion of the term. Members of the Board shall hold no other office in the Township.
2. The Board of Supervisors may appoint a resident of the Township to serve as an alternate member of the Board. The term of the alternate member shall be three years. The alternate member shall hold no other office in the Township. An 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 be compensated as a member as provided herein, unless seated as a member in accordance with the provisions as set forth herein.
3. Any member of the Board may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of the Board of Supervisors, taken after the member has received fifteen (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.

Section 2201. ORGANIZATION OF THE BOARD

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 not be 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 herein.
2. If, by reason of absence or disqualification of a member, a quorum is not reached, the chairman of the Board shall designate the alternate member to sit on the Board. The alternate member 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.
3. The Board shall keep full public records of its business and shall submit a report of its activities to the Board of Supervisors once a year.

Section 2202. JURISDICTION

The Board shall function in strict accordance with and pursuant to Section 909.1 of the Pennsylvania Municipalities Planning Code, and shall have all powers set forth therein, including but not limited to the following:

1. To hear and decide appeals where it is alleged that the Township Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of a valid rule or regulation governing the action of the Zoning Officer.
2. To hear and decide requests for special exceptions authorized by this Zoning Ordinance in accordance with the standards for criteria set forth below. The Zoning Hearing Board may attach such reasonable conditions and safeguards, as it may deem necessary to implement the purpose of the Code and this Zoning Ordinance.
3. To hear request for variances where it is alleged that the provisions of this Zoning Ordinance inflict unnecessary hardship upon the applicant. A variance may be granted only after the Zoning Hearing Board has made the findings as required in the Zoning Ordinance. In granting a variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards, as it may deem necessary as prescribed in Section 2209 of this Ordinance to implement the purposes of the Code and this Zoning Ordinance.
4. To conduct hearings and make such decisions and findings in connection with challenges to the validity of any provisions of the Zoning Ordinance as authorized by Section 909 of the Pennsylvania Municipalities Planning Code.
5. To exercise jurisdiction over all other proceedings over which the Zoning Hearing Board is given jurisdiction pursuant to the Municipalities Planning Code.

Section 2203. RULES OF PROCEDURE, EXPENDITURES AND FEES

1. The Board may adopt Rules of Procedure in accordance with the several provisions of this Ordinance as to the manner of filing appeals, applications for special exceptions or variances, and as to the conduct of the business of the Board. In all cases the Rules of Procedure shall be consistent with Article IX of the Municipalities Planning Code.
2. Within the limits of funds appropriated by the Board of Supervisors, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the Board, including the alternate member when designated in accordance with this article, may receive compensation for the performance of their duties, as may be fixed by the Board of Supervisors. In no case, however, shall the amount of compensation exceed the rate authorized for the members of the Board of Supervisors.
3. Any Applicant before the Board shall deposit with the Treasurer of the Township the appropriate filing fee established by resolution of the Board of Supervisors in accordance with the terms of Section 2304.

4. The Board of Supervisors may, by resolution, 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 experts witness costs.

Section 2204. MEETINGS

Meetings of the Board shall be held at the call of the Chairman, and at such other times as the Board may determine. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if a member is absent or fails to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed with the Township Secretary and shall be a public record.

Section 2205. APPEALS AND REQUESTS TO THE ZONING HEARING BOARD

Appeals to the Board may be filed by an affected landowner, an officer or agency of the Township or an aggrieved person. Such appeal shall be taken within the time required by the Pennsylvania Municipalities Planning Code by filing with the Township Secretary a notice of appeal specifying the grounds thereof. The Township Secretary shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. Requests for a variance or special exception may be filed by any landowner, or any tenant with permission of the landowner. The appropriate fee, established by the Township, shall be paid in advance for each appeal or application for a special exception or variance.

Section 2206. NOTICE OF HEARING

Notice shall be given of any public hearing as follows:

1. By publishing a notice thereof in a paper of general circulation within the Township consistent with the public notice requirements of the Pennsylvania Municipalities Planning Code.
2. By mailing a notice thereof to the Applicant, the Zoning Officer, Township Secretary and any person who has made timely request for same or who shall have registered their names and addresses for this purpose with the Board.
3. By posting notice thereof conspicuously on the affected tract of land at least one week prior to the hearing.
4. The failure of any person or entity to receive notice given pursuant to this section shall not constitute grounds for any court to invalidate the actions of the Township for which the notice was given.

Section 2207. HEARING PROCEDURES

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

1. The first hearing shall be commenced within sixty (60) days from the date of receipt the Applicant's application, unless the Applicant has agreed in writing to an extension of time.
2. Each subsequent hearing shall be held within forty five (45) days of the prior hearing unless otherwise agreed to by the Applicant, in writing or on the record.
3. The hearing shall be conducted by the Zoning Hearing 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 Township 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.
4. 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.
5. 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.
6. 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.
7. Formal rules of evidence shall not apply, but irrelevant immaterial, or unduly repetitious evidence may be excluded.
8. 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 copies or copies. In other cases the party requesting the original transcript shall bear the cost thereof.
9. 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.

Section 2208. STANDARDS FOR REVIEW OF A SPECIAL EXCEPTION

The Zoning Hearing Board shall hear and decide all requests for a Special Exception, and the Board must determine that the following standards and criteria are met before granting the request:

1. The size, scope, extent and character of the Special Exception request is consistent with the Comprehensive Plan of the Township and promotes the harmonious and orderly development of the zoning district involved.
2. The proposed Special Exception is an appropriate use consistent with the character and type of development in the area surrounding the location for which the request is made and will not substantially impair, alter or detract from the use of surrounding property or of the character of the neighborhood in light of the zoning classification of the area affected; the effect on other properties in the area; the number, extent and scope of nonconforming uses in the area; and the presence or the absence in the neighborhood of conditions or uses which are the same or similar in character to the condition or use for which Applicant seeks approval.
3. The proposed Special Exception is suitable with respect to traffic and highways in the area and provides for adequate access and off-street parking arrangements in order to protect major streets and highways from undue congestion and hazard.
4. Major street and highway frontage will be developed so as to limit the total number of access points and encourage the frontage of building on parallel marginal roads or on roads perpendicular to the major street or highway.
5. The proposed Special Exception is reasonable in terms of the logical, efficient and economical extension of public services and facilities, such as public water, sewers, police, fire protection, and public schools, and ensures adequate arrangements for the extension of such services and facilities in specific instances.
6. All commercial or industrial parking, loading, access or service areas will be adequately illuminated at night while in use and arranged so as to comply with the requirements of Sections 1705, 1706, 1707 and 1711, herein, and Article IV of the Subdivision and Land Development Ordinance relating to access and highway frontage.
7. Conditions are being imposed on the grant of the request necessary to ensure that the general purpose and intent of the property adjacent to the area included in the proposed Special Exception is adequately safeguarded with respect to harmonious design of buildings, aesthetics, planting and its maintenance as a sight or sound screen, landscaping, hours of operation, lighting, numbers of persons involved, allied activities, ventilation, noise, sanitation, safety, smoke and fume control and the minimizing of noxious, offensive or hazardous elements.

8. The proposed Special Exception protects and promotes the safety, health and general welfare of the Township.
9. The proposed Special Exception shall comply with the East Pikeland Township Subdivision and Land Development Ordinance and all other applicable governmental regulations.
10. The proposed Special Exception shall comply with any additional criteria of Section 2209, herein, to the extent deemed applicable by the Zoning Hearing Board.

Section 2209. STANDARDS FOR REVIEW OF A VARIANCE

The Board may grant a Variance provided that the specifically enumerated criteria set forth in Section 910.2 of the Pennsylvania Municipalities Planning Code, as follows, are met:

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 the 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.

In granting any variance the Board may attach such reasonable conditions and safeguards, as it may deem necessary to implement the purposes of the Zoning Ordinance.

Section 2210. BURDEN OF PROOF AND CONDITIONS

To the maximum extent permitted by law, all burdens of proof and persuasion shall be upon the landowner in connection with any Variance, Special Exception, or other application or appeal before the Zoning Hearing Board. In allowing a Variance or Special Exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, as it may deem necessary to implement the purposes of the Pennsylvania Municipalities Planning Code and this Zoning Ordinance.

Section 2211. DECISION ON APPEALS AND REQUESTS

1. The Board or 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 this act 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 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 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 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.
2. 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.

Section 2212. RECORDING OF TERMS OF APPROVAL

Where the Board grants approval of a Special Exception or Variance, it shall provide a memorandum to the Applicant, stipulating the terms and conditions of such approval. Such memorandum shall contain a sufficient legal description of the property in question. The Applicant shall execute and provide to the Township a recordable notarized copy of the memorandum, and shall consent to its recording by the Township in the Office of the Recorder of Deeds of Chester County within thirty (30) days following expiration of the appeal period.

Section 2213. APPEALS TO COURT

As provided for in the Pennsylvania Municipalities Planning Code, appeals of Board decisions may be taken by any party thereby aggrieved.

Section 2214. EXPIRATION OF SPECIAL EXCEPTIONS AND VARIANCES

1. Any approval of a Special Exception or Variance request shall be deemed null and void twelve (12) months from the date of such approval if, within that period, no application is made for a building permit, use and occupancy permit, sedimentation and erosion control permit, subdivision or land development approval, or any other approval or permit required by the Township to proceed with construction, occupancy, or use pursuant to the Special Exception or Variance, unless so extended by the Zoning Hearing Board pursuant to Section 2214.2.
2. The twelve (12) month expiration period may be extended by the Board of Zoning Appeals, provided, that such request for an extension shall be properly filed with the Zoning Officer at least seven (7) calendar days in advance of the expiration date. The request shall include the reason why the extension is required, a reasonable estimate of the time needed to obtain the necessary approvals, and a qualified statement that there has been no change in either the circumstances giving rise to the grant of relief or the neighborhood in which the property is located. Failure to diligently pursue necessary approvals shall not be grounds for an extension. The Board may grant up to one additional twelve (12) month extension provided a reasonable argument is presented. No more than one such extension shall be granted per Special Exception or Variance approval.