

Article V - Zoning Hearing Board

Section 500 **POWERS AND DUTIES - GENERAL** (also see Article IX of the Pennsylvania Municipalities Planning Code)

§500.1 Membership of Board: The membership of the Board shall consist of five (5) residents of the Municipality appointed by the resolution of the governing body. 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 member of a five member Board shall expire each year. The Board shall promptly notify the governing body 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 no other office in the Municipality.

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 years. When seated pursuant to the provisions of section 906, of Act 170 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 Act 170 and as otherwise provided by law. Alternatives 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.

§500.2 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 where three (3) or four (4) members are disqualified to act in a particular matter, the remaining member(s) may act for the Board. 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 501. 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 and shall submit a report of its activities to the governing body once a year.

§500.3 Powers: The Zoning Hearing Board has the following powers:

- a) Interpretation: To interpret any provision of this Ordinance including zone boundaries.

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- b) Special Exceptions: To hear and decide special exceptions upon which the Board is required to pass under this Ordinance as per Section 503 following.
- c) Appeals: To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Officer in the enforcement or interpretation of this Ordinance.
- d) Variances: To authorize or grant a particular modification to a regulation or provision of this ordinance as per Section 502 and may attach such reasonable conditions and safeguards to an approval as allowed by the Pennsylvania Municipalities Planning Code.
- e) Rehearings: To grant the rehearing of a case if it appears there has been a substantial change in the facts as evidence of the case as presented at the initial hearing.
- f) Challenge to the Validity of the Ordinance or Map: The Board shall hear challenges to the validity of the Zoning Ordinance or Map except as indicated in the Pennsylvania Municipalities Planning Code Sections 1003 and 1004 (1)(b). In all such challenges the Board shall take evidence and make a record thereon as provided in Section 501. At the conclusion of the hearing, the Board shall decide all contested questions and shall make findings on all relevant issues of fact that shall become part of the record on appeal to the court.
- g) Unified Appeals: Where the Board has jurisdiction over a zoning matter, the Board shall also hear all appeals which an applicant may elect to bring before it with respect to any Township Ordinance or requirement pertaining to the same development plan or development. In any such case the Board shall have no power to pass upon the non-zoning issues, but shall take evidence and make a record thereon as provided in Section 501. At the conclusion of the hearing, the Board shall make findings on all relevant issues of fact that shall become part of the record on appeal to the court.

In exercising the powers above, the Board, in conformity with the provisions of this Ordinance, may reverse, affirm, or modify the order, requirement, decision, or determination appealed requirement, decision, or determination appealed from or requested, and may make any order, requirement, decision or determination as ought to be made.

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§500.4 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 reason, the Board may order the advance of the application or appeal. The Board must fix a reasonable time for hearings.

Section 501 **PUBLIC HEARINGS** (as provided in Section 908 of the Pennsylvania Municipalities Planning Code, Act 170 as amended)

§501.1 Notice; Conduct of Meeting: Public notice shall be given and written notice shall be given to the applicant, the zoning officer, such other persons as the Board of Commissioners 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 one week prior to the hearing.

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 cost, however, shall not include legal expenses of the zoning hearing board, expenses for engineering, architectural or other technical consultants or expert witness costs.

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

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 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.

The board or hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issues 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 the

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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.

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

§501.2 Representation; Statements: 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.

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.

§501.3 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 paper, including witnesses and documents requested by the parties.

§501.4 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 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 therefore. Conclusions based on any provisions of Act 170 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 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 days after the receipt 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 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

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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 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.

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 no 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.

§501.5 Records: 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 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 502 **VARIANCES** (as provided in Section 910.2 of the Pennsylvania Municipalities Planning Code, Act 170 as amended)

§502.1 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 Zoning Hearing Board and copies given to the Zoning Officer and Township Planning Commission for a report.

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 Zoning Officer or not.

Unless otherwise specified or extended by the Board a variance when authorized will remain in effect for a period of six (6) months. If no building permit or use certificate is issued for the variance within the six (6) month period the variance will expire.

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§502.2 Additional Conditions:

For any use permitted by variance, a variance must be obtained from the Zoning Hearing Board. In addition to the information required on the building permit application, the variance application must include:

- 1) Ground floor plans and elevations of proposed structures;
- 2) Names and addresses of adjoining owners.
- 3) For existing structures, a dated photograph(s) showing all sides of the structure.

§502.3 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:

- 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 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.

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f) All the above standards must be met.

§502.4 Conditions: In granting any variance, the Board may attach such reasonable conditions and safeguards, as it considers necessary to implement the purposes of this Zoning Ordinance.

Section 503 **SPECIAL EXCEPTIONS** (as provided in Section 912.1 of the Pennsylvania Municipalities Planning Code, Act 170 as amended)

Special exceptions are deemed uses that may be allowed in their respective districts subject to the satisfaction of the requirements and standards set forth in this Article, in addition to all other requirements of this Zoning Ordinance. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case. Before any special exception shall be granted, the Zoning Hearing Board shall review the proposed special exception in accordance with the following requirements and criteria and satisfy itself that they have been met in addition to any other requirements necessary to fulfill the objectives of this Zoning Ordinance.

All applications for a special exception may be referred to the Planning Commission by the Zoning Hearing Board with the direction that the Planning Commission and/or Township Engineer shall make a study thereof and recommendation thereon to the Board within thirty (30) days from the date of the receipt of said application by the Planning Commission and/or Township Engineer. The burden of proof for all specific criteria rests with the applicant.

§503.1 Procedures:

The application for the Special Exception shall first be submitted to the Zoning Officer. The Zoning Officer shall review the submittal to determine if it is generally in a form that complies with the terms of this Zoning Ordinance. If within five (5) days from the submittal date the Zoning Officer determines that the submittal is incomplete, it shall be returned to the applicant, not having been properly filed. If the submittal is found to be in accordance with this Ordinance, the Zoning Officer shall forward the same to the Zoning Hearing Board. Such submittals shall be on forms provided by the Township. Submittals shall include the appropriate fee, to be set by resolution of the Board of Commissioners. Failure of applicant to pay the required filing fee shall cause any application to be deemed incomplete and not being properly or duly filed.

§503.2 Plan Required:

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- a) A scaled minimum (1"=50') drawing (site plan) certified by a licensed engineer, surveyor or landscape architect, or accompanied by a sworn affidavit of the applicant that the drawing is true and correct, for the proposed development shall be submitted with the application for a permitted special exception.
- b) Such plan shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping and other pertinent information that may be necessary to determine if the proposed special exception meets the requirements of this Ordinance.

§503.3 General Standards for Special Exceptions:

- a) The Zoning Hearing Board, before granting a special exception for any use, must find that the use and the proposed operations and development in connection with the use, or the modification of the terms of this Ordinance, shall have been specifically authorized as a special exception in the District within which such particular site is located. The Board shall make the following findings, in writing, when relevant in a given case, either from the evidence presented at the hearing, or from a study and report prepared by the Planning Commission, the Township Engineer, or other competent technical consultants:
 - 1) That the location of the use, including with respect to the existing or future streets, giving access to it, is in harmony with the orderly and appropriate development of the zone in which the use is to be located;
 - 2) That the nature and intensity of the operations involved are in harmony with the orderly and appropriate development of the zone in which the use is to be located; and
 - 3) That the grant of the special exception shall not materially increase traffic congestion in the roads and highways, nor cause nor encourage commercial or industrial traffic to use residential streets.
 - 4) The applicant must meet all General and Specific Requirements as defined in this Article.
- b) General Criteria. Each applicant must demonstrate compliance with the following general criteria:
 - 1) The proposed use shall be consistent with the purpose and intent of

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the Zoning Ordinance and shall not be detrimental to the health, safety or welfare of the neighborhood.

- 2) The proposed use shall not injure or detract from the use or enjoyment or character of adjoining or nearby properties or cause land deterioration or potential decrease of value of surrounding properties.
 - 3) The proposed use shall not substantially change the character of the subject property's neighborhood and shall meet the requirements of the district in which it lies.
 - 4) Adequate public facilities are available and existing to serve the proposed use (e.g. schools, fire, police and ambulance protection, sewer, water and other utilities, parks, vehicular access, recreation, and etc.).
 - 5) The proposed use will not impair the integrity of the Township's Comprehensive Plan.
 - 6) The proposed use is not incompatible with the existing traffic conditions and adjacent uses.
 - 7) The use of the site complies with the requirements of any other public agency having jurisdiction over the proposed use.
 - 8) Operations in connection with a use shall not be more objectionable to nearby properties by reason of noise, odor, fumes, vibration, glare, smoke, or other potential nuisance or safety hazard than would be the operations of the permitted use.
- c) Specific Criteria. Each applicant must demonstrate compliance with the following specific criteria:
- 1) The parking, traffic and pedestrian access shall be in conformance with those specified in Article III and elsewhere in this Ordinance.
 - 2) Screening and landscaping and slope of the proposed use from adjacent uses is sufficient to prevent deleterious impact of the proposed use upon another and to comply with Section 307 of this Ordinance.
- d) Conditions. The Zoning Hearing Board in approving special exception

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applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions and safeguards which are more restrictive but not less than those established for other uses in the same district. These conditions shall be enforceable by the Zoning Officer, failure to comply with such conditions shall constitute a violation of this Ordinance and be subject to the penalties described in Section 709.

- e) Site Plan Approval. Any site plan presented in support of the special exception pursuant to Section 503.2 shall become an official part of the record for said special exception. Approval of any special exception shall 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 zoning permit. 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.

§503.4 Additional Conditions

- a) In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, considered necessary to implement the purposes of this Ordinance, including conditions that are more restrictive than those established for other uses in the same zone and may require, among others and where appropriate:
 - 1) Planting, fencing or screening;
 - 2) Architectural or landscaping treatment;
 - 3) Hours of operation;
 - 4) Proper vehicular access and parking facilities;
 - 5) Sidewalks, storm sewer and/or other public improvements;
 - 6) Proper restrictions as to the use of outdoor lighting, public address systems, and advertising displays;
 - 7) And such other improvements and/or restrictions and/or conditions as the Board may deem appropriate.

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- b) 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 include:
 - 1) Ground floor plans and elevations of proposed structures;
 - 2) Names and addresses of adjoining owners.
 - 3) For existing structures, a dated photograph(s) showing all sides of the structure.

- c). 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 within 1 year of the date of the authorization of the special exception.

§503.5 Special Standards: In addition to the general standards for all special exceptions as contained in Section 503.3 the specific standards for particular uses as listed in ARTICLE VI must be met prior to the granting of a special exception.