

ARTICLE XVI

ZONING HEARING BOARD

Section 16.1 Creation of Board

The Borough Council shall and hereby does create a Zoning Hearing Board. Unless the context clearly indicates otherwise, the term "Board" shall refer to such Zoning Hearing Board.

Section 16.2 Jurisdiction

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

- 16.2.1 Substantive challenges to the validity of any land use ordinance, except those brought before the Board of Supervisors pursuant to section 609.1 and 916.1(a)(2) of the Pennsylvania Municipalities Planning Code, as amended.
- 16.2.2 Challenges to the validity of any land use ordinance raising procedural questions or alleged defect in the process of enactment or adoption which challenges shall be raised by an appeal taken within thirty (30) days after the effective date of said ordinance.
- 16.2.3 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, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.
- 16.2.4 Appeals from a determination by the Borough Engineer or the Zoning Officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.
- 16.2.5 Applications for variances from the terms of the Zoning Ordinance and Flood Hazard Ordinance or such provisions within a land use ordinance, pursuant to section 910.2 of the Pennsylvania Municipalities Planning Code, as amended.
- 16.2.6 Applications for special exceptions under the Zoning Ordinance or Flood Plain or Flood Hazard Ordinance or such provisions within a land use ordinance, pursuant to section 912.1 of the Pennsylvania Municipalities Planning Code, as amended.
- 16.2.7 Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the Zoning Ordinance.
- 16.2.8 Appeals from the Zoning Officer's determination under section 916.2 of the Pennsylvania Municipalities Planning Code, as amended.
- 16.2.9 Appeals from the determination of any officer or agency charged with the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and stormwater management insofar as the

same relate to development other than subdivision or Planned Residential Development applications.

Section 16.3 Membership of Board

The membership of the Board shall consist of three (3) residents of the Borough appointed by the Borough Council. Their terms of office shall be three (3) years and shall be so fixed that the term of office of one (1) member shall expire each year. The Board shall promptly notify the Borough Council 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 Borough.

Section 16.4 Alternates to the Board

The Borough Council may appoint by resolution at least one (1) but no more than three (3) residents of the Borough to serve as alternate members of the Zoning Hearing Board. The term of office of an alternate member shall be three (3) years. When seated pursuant to the provisions of this Article, 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 Borough, 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 this Section.

Section 16.5 Removal of Members

Any Board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Borough Council 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 16.6 Organization of Board

- 16.6.1 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 this Article.
- 16.6.2 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 Article shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.

- 16.6.3 The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Borough and laws of the Commonwealth. The Board shall keep full public records of its business, which records shall be the property of the Borough, and shall submit a report of its activities to the Borough Council as required by Council.

Section 16.7 Expenditures for Services

Within the limits of funds appropriated by Borough Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties, as may be fixed by the Borough Council, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the Borough Council. Alternate members of the Board may receive compensation, as may be fixed by Borough Council, for performance of their duties when designated as alternate members pursuant to Sections 16.4 and 16.6 of this Zoning Ordinance, but in no case shall such compensation exceed the rate of compensation authorized to be paid to members of the Borough Council.

Section 16.8 Hearings

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

- 16.8.1 Public notice shall be given and written notice shall be given to the applicant, the zoning officer, such other persons as Borough Council 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 (1) week prior to the hearing. The Borough Council has established reasonable fees, based on cost, to be paid by the applicant and by persons requesting any notice not required by ordinance.
- 16.8.2 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. 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 Borough, 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.
- 16.8.3 The parties to the hearing shall be the Borough, 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.

- 16.8.4 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.
- 16.8.5 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.
- 16.8.6 Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- 16.8.7 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.
- 16.8.8 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 unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings with any party or his representative unless all parties are given an opportunity to be present.
- 16.8.9 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 therefore. Conclusions based on any provisions of the Pennsylvania Municipalities Planning Code as the same may be amended from time to time 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 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 forty-five (45) days after a decision of the hearing officer. Where the Board fails to render the decision within the period required hereby, 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 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 Borough shall give public

notice of such decision within ten (10) days in the same manner as provided in Section 16.8.1 hereof. If the Board fails 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.

- 16.8.10 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 names and addresses 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 final decision or findings may be examined.

Section 16.9 Mediation

- 16.9.1 Parties to proceedings authorized in this Article may utilize mediation as an aid in completing such proceedings. In proceedings before the Zoning Hearing Board, in no case shall the Zoning Hearing Board initiate mediation or participate as a mediating party. Mediation shall supplement, not replace, those procedures in this Article once they have been formally initiated. Nothing in this Article shall be interpreted as expanding or limiting municipal police powers or as modifying any principle of substantive law.

- 16.9.2 Participation in mediation shall be wholly voluntary. The appropriateness of mediation shall be determined by the particulars of each case and the willingness of the parties to negotiate. Any municipality offering the mediation option shall assure that, in each case, the mediating parties, assisted by the mediator as appropriate, develop terms and conditions for:

- A. Funding mediation.
- B. Selecting a mediator who, at a minimum, shall have a working knowledge of municipal zoning and subdivision procedures and demonstrated skills in mediation.
- C. Completing mediation, including time limits for such completion.
- D. Suspending time limits otherwise authorized in this act, provided there is written consent by the mediating parties, and by an applicant or Borough Council if either is not a party to the mediation.
- E. Identifying all parties and affording them the opportunity to participate.
- F. Subject to legal restraints, determining whether some or all of the mediation sessions shall be open or closed to the public.
- G. Assuring that mediated solutions are in writing and signed by the parties, and become subject to review and approval by the appropriate decisionmaking body pursuant to the authorized procedures set forth in the other sections of this Article.

- 16.9.3 No offers or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceedings.



Section 16.10 Board's Functions

Appeals from the Building and Zoning Officer: The Board shall hear and decide appeals where it is alleged by the appellant that the Building and Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of a valid ordinance or map or any valid rule or regulation governing the action of the Building and Zoning Officer.

Section 16.11 Board's Functions

Challenge to the Validity of any Ordinance or Map: The Board shall hear challenges to the validity of a zoning ordinance or amendment as provided by the provisions of the Pennsylvania Municipalities Planning Code. In all such challenges, the Board shall take evidence and make a record thereon as provided by the applicable provisions of the Pennsylvania Municipalities Planning Code as it may be amended from time to time. At the conclusion of the hearing, the Board shall decide all contested questions and shall make findings on all relevant issues of fact which shall become part of the record on appeal to the court. If a challenge heard by the Board is found to have merit, the decision of the Board shall include recommended amendments to the ordinance which will cure the defects found. In reaching its decision, the Board shall consider the following:

- 16.11.1 The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;
- 16.11.2 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;
- 16.11.3 The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources and other natural features;
- 16.11.4 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 impacts; and
- 16.11.5 The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

Section 16.12 Board's Functions - Variances

The Board shall hear requests for variances where it is alleged that the provisions of this ordinance inflict unnecessary hardship upon the applicant. The Board may by rule prescribe the form of application and may require a preliminary application to the Building and Zoning Officer. The Board may grant a variance provided all of the following findings are made where relevant in a given case:

- 16.12.1 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 ordinance in the neighborhood or district in which the property is located;

- 16.12.2 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 this ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
- 16.12.3 That such unnecessary hardship has not been created by the appellant;
- 16.12.4 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, not be detrimental to the public welfare; and
- 16.12.5 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.

In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Pennsylvania Municipalities Planning Code, as it may be amended from time to time, and of this ordinance.

Section 16.13 Unified Appeals

Where the Board has jurisdiction over a zoning matter pursuant to Section 16.2 of this Article, the Board shall also hear all appeals which an applicant may elect to bring before it with respect to any Borough ordinance or requirements pertaining to the same development plan or development. In any such case, the Board shall have no power to pass upon the nonzoning issues, but shall take evidence and make a record thereon as provided in Section 16.9 hereof. At the conclusion of the hearing, the Board shall make findings on all relevant issues of fact which shall become part of the record on appeal to the court.

Section 16.14 Parties Appellant Before Board

Appeals under Section 16.10 hereof and proceedings to challenge an ordinance under Section 16.11 hereof may be filed with the Board in writing by the landowner affected, any officer or agency of the Borough, or any person aggrieved. Requests for a variance under Section 16.12 hereof may be filed with the Board by any landowner or any tenant of a landowner with the permission of such landowner.

Section 16.15 Time Limitations

The time limitations for initiating certain proceedings with the Board shall be as follows:

- 16.15.1 No person shall be allowed to file any proceeding with the Board later than thirty (30) days after any application for development, preliminary or final, has been approved by an appropriate Borough officer, agency or body, 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, 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.

16.15.2 The failure of anyone other than the landowner to appeal from an adverse decision on a tentative or preliminary plan pursuant to Section 709 of the Pennsylvania Municipalities Planning Code or from an adverse decision by the Building and Zoning Officer on a challenge to the validity of an ordinance or map pursuant to Section 916.1 of the Pennsylvania Municipalities Planning Code, shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative or preliminary approval.

Section 16.16 Stay of Proceedings

Upon filing of any proceeding referred to in Section 16.14 hereof, and during its pendency before the Board, all land development pursuant to any challenged ordinance, order or approval of the Building and Zoning Officer or of any agency or body, and all official action thereunder shall be stayed unless the Building and 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 Building and Zoning Officer or any 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 proceeding before the Board. 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.