

**ARTICLE 8
ZONING HEARING BOARD**

801 CREATION

There is hereby created a Zoning Hearing Board, herein referred to as the "Board", consisting of three (3) regular members and three (3) alternate members. All such members shall be residents of the Township, who shall be appointed by resolution of the Township Board of Supervisors pursuant to the Pennsylvania Municipalities Planning Code, as amended. Said Board shall perform all the duties, and exercise all powers prescribed by said Code and as herein further provided.

802 APPOINTMENT

The terms of office of the Board shall be three (3) years and shall be so fixed that the term of office of one regular member and one alternate member shall expire each year. The Board shall promptly notify the Board of Supervisors of any vacancies which occur. The Board of Supervisors may appoint an individual to fill such vacancies, for the unexpired portion of the term, or the Board may direct that any of the alternate members perform the duties of the vacant member's position. Members of the Board shall hold no other office in the Township.

803 REMOVAL OF MEMBERS

Any Board member may be removed for 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.

804 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 or the taking of any action, a quorum shall be not less than the majority of all the regular members of the Board, but where two (2) members are disqualified to act in a particular matter, the remaining member 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 806. The Board may make, alter and rescind rules and forms for its procedure, consistent with Township ordinances 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 Board of Supervisors once a year.

805 EXPENDITURES FOR SERVICES

Within the limits of funds appropriated by 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 may receive compensation for the performance of their duties, as may be fixed from time to time by Board of Supervisors, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the Board of Supervisors.

806 HEARINGS

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

- A. Notice shall be given to the public by notice published once each week for two (2) successive weeks in a newspaper of general circulation in the Township. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall be not more than thirty (30) days or less than seven (7) days from the date of the hearing. Written notice shall be given to the applicant, the Zoning Officer, and to any person who has made timely request for the same. Personal notices shall be given at such time and in such manner as shall be provided herein, notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.
- B. The hearing 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, but the parties may 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 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.
- 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 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 therefore. Conclusions based on any provisions of this Ordinance, or any 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 thirty (30) days after the decision 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 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 Township shall give public notice of said decision within ten (10) days in the same manner as provided in subsection (1) of this section.

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, a brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

807 BOARD'S FUNCTION

- A. Appeals from the Zoning Officer: The Board shall hear and decide appeals where it is alleged by the appellant that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of this ordinance or map or any valid rule or regulation governing the action of the Zoning Officer. Nothing contained herein shall be construed to deny to the appellant the right to proceed directly in court, where appropriate, pursuant to rules of civil procedure relating to mandamus.

- B. Challenge to the Validity of Ordinance or Map: The Board shall hear challenges to the validity of this Ordinance or map except as provided by law. In all such challenges, the Board shall take evidence and make a record thereon as provided in Section 806. 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.
- C. Variances: The Board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship on the applicant. The Board may by rule prescribe the form of application and may require preliminary application to the Zoning Officer. The Board may grant a variance provided 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 generally created by the provisions of this 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 this ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 3. That such necessary 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 purpose of this Ordinance.

- D. Special Exceptions: Special Exceptions are to be granted or denied by the Board pursuant to the express standards and criteria listed in Article 4. The Board shall hear and decide requests for special exceptions in accordance with such standards and criteria. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Ordinance, as it may deem necessary to implement the purposes of this Ordinance.

808 UNIFIED APPEALS

Where the Board has jurisdiction over a zoning matter pursuant to Section 807, 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 806. 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.

809 PARTIES APPELLANT BEFORE BOARD

Appeals under Section 807 (A) and proceedings to challenge the Ordinance under Section 807 (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 Section 807 (C) and for special exception under Section 807 (D) may be filed with the Board by any landowner or any tenant with the permission of such landowner.

810 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 an appropriate Township 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.

- B. All appeals from determinations adverse to the landowners shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

811 STAY OF PROCEEDINGS

Upon filing of any proceeding referred to in Section 807 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.

812 USE VARIANCES

It is the intent of the Summit Township Board of Supervisors, with the advice of the Planning Commission, to make decisions relative to the change of land use within the Township. Therefore, the Zoning Hearing Board shall not have the power to grant variance of use.