

ARTICLE VIII. APPEALS

SECTION 801. CREATION OF ZONING HEARING BOARD

There is hereby created a Zoning Hearing Board which shall, for the purpose of this Ordinance, be referred to as the “Board” or the “Zoning Hearing Board”. The membership of the Board shall consist of three (3) residents of the Township appointed by the Board of Supervisors. The Board of Supervisors may also appoint, pursuant to Section 903(b) of the Pennsylvania Municipalities Planning Code, at least one, but no more than three, residents of the Township to serve as alternative members of the Zoning Hearing Board. The members of the Board shall be appointed in compliance with Section 903 of the Pennsylvania Municipalities Planning Code, as amended. Matters pending before the Board at the time this Ordinance becomes effective shall continue and be completed under previous ordinances or this ordinance, as the case may be, by the membership of the present Board who shall continue to hold their offices for the remaining terms thereof. *[Amended by Ord. 060903, §12, 6/9/03.]*

SECTION 802. ORGANIZATION OF ZONING HEARING BOARD

The Board shall adopt such rules and regulations to govern its procedures as it may deem necessary. All current rules and regulations of the Zoning Hearing Board shall continue in full force and effect after the adoption of this Ordinance until changed. The Board shall elect from its own memberships its officers, who shall serve annual terms as such and succeed themselves. Meetings of the Board shall be at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence, the acting chairman or any other person delegated the duty by the Board, may administer oaths and compel the attendance of witnesses. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Board. Where two 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 a further hearing by the Board. 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 absent, or failing to vote, indicating such fact. The Board shall keep full public records of its business and shall submit a report of its activities and decisions to the Township Supervisors promptly after each decision. Any Board member may be removed for malfeasance or nonfeasance in office or for other just cause by a majority vote of the Board of Supervisors, taken after the member has been mailed fifteen (15) days advance notice in writing of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall so request it in writing Seventy-two (72) hours in advance of the date of the vote by the Board of Supervisors proceedings before the Zoning Hearing Board shall be subject to the appropriate fee, set by resolution of the Board of Supervisors, first being paid to the Township.

SECTION 803. FUNCTIONS OF ZONING HEARING BOARD

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 an ordinance or map or any rule or regulation governing the action of the Zoning Officer.

B. Variances. The Board shall hear requests for variances where it is alleged that the provisions of the Zoning Ordinance inflict unnecessary hardship upon the applicant. The Board may be rule prescribe the form of application and may require preliminary application to the Zoning Officer. The Board may grant a variance provided that findings are made, where relevant in a given case, pursuant to Section 910.2 of the Pennsylvania Municipalities Planning Code, as amended. In granting any variance, the Board may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of this Zoning Ordinance and the Pennsylvania Municipalities Planning Code. Applicants shall follow the same procedures and submit the same documentation as referred in Section 602 of this Ordinance. [Amended by Ord. 02-061190, 6/11/90 §16.]

C. Special Exception. Where the Zoning Ordinance has authorized special exceptions to be granted or denied by the Zoning Hearing Board pursuant to standards and criteria, the Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria.

D. Other Proceedings. Other proceedings pursuant to the Pennsylvania Municipalities Planning Code shall be in strict compliance with the Pennsylvania Municipalities Planning Code shall conform to any other applicable provisions of this Ordinance.

E. Effect of Board's Decision

1. If the variance or Special Exception is granted or the issuance of a Permit is finally approved, or other action by the appellant is authorized, the necessary permit shall be secured and the authorized action begun within twelve (12) months and throughout the same after the date when the variance is finally granted or issuance of a Permit is finally approved or the other action by the appellant is authorized; and the structure or alteration, as the case may be, shall be completed within twelve (12) months of said date. For good cause, the Board may; upon application in writing stating the reasons therefor, extend either the six (6) month or twelve (12) month period for no more than twice the length of time.

2. Should the appellant or applicant fail to obtain the necessary permits within said six (6) month period, or having obtained the Permit should he fail to commence work thereunder within such six (6) month period, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn or abandoned his appeal or his application, and all provisions, variances and permits to him granted shall be deemed automatically rescinded by the said Board.

3. Should the appellant or applicant commence constructions or alteration within said six (6) month period, but should he fail to complete such construction or alteration within said twelve (12) month period, the Board may, upon ten (10) days' notice in writing to applicant and all parties to the prior hearing and after a new hearing, rescind or revoke the granted variance, or the issuance of the Permit, or permits, or the other action authorized to the appellant or applicant, if the Board finds that no good cause appears for the failure to complete within such period, and if the Board further finds that conditions have so altered, or changed in the interval since the granting of the variance, permit or action, that revocation or rescission of the action is justified.

[Amended by Ord. 02-061190, 6/11/90, §17.]

F. Appeal to the Court. Zoning appeals may be taken to court by any party before the Board of any officer or agency of the Township who has been aggrieved by any decision of the Board within thirty (30) days after issuance of notice of the decision or report. The appeal shall be to the Court of Common Pleas of Lancaster County by filing of a Zoning Appeal Notice which concisely sets forth the grounds on which the appellant relies, verified to the extent that it contains averments of fact. The Zoning Appeal Notice shall be accompanied by a true copy thereof, and shall be served upon the Chairman of the Zoning Hearing Board, the Solicitor for the Zoning Hearing Board, the Zoning Officer, the Secretary of the Board of Supervisors, and the Solicitor for the Board of Supervisors.

SECTION 804. NOTICE

Notice of hearing shall be given to the public, the applicant, the Lancaster County Planning Commission, the Clay Township Planning Commission, the Zoning Officer, the Township Secretary, the Township Solicitor, the Board Solicitor, any property owner whose property is within one hundred (100) feet of the affected property, and to any person who has made timely request for the same. Notice shall also be conspicuously posted on the affected tract of land for at least seven (7) days prior to the hearing. The Township Supervisors may establish by resolution reasonable fees, based on cost, to be paid by the applicant and by persons requesting any notice not required by the Ordinance. Failure to give notice to any of the parties to whom notice is directed by this Ordinance shall not void any hearing already held. Notice shall be presumed to have been given under this ordinance when certified to by the Secretary of the Zoning Hearing Board or by the Solicitor of the Board of by any person responsible for giving such notice. Any objections to such certificate shall be presented as a first time of business at any hearing for which notice was given. If not presented at that time, notice shall be conclusively presumed to have been given to the parties entitled to the same hereunder. It is expressly understood that the intent of this Ordinance is to direct notice as a convenience to those named, but not to establish any prerequisite to a valid hearing, such prerequisites being limited to those mandated by the Pennsylvania Municipalities Planning Code or decision of a Court of Record. [Added by Ord. 26, 3/5/73, §1.; Amended by Ord. 02-061190, 6/11/90, §18.]

SECTION 805. HEARING PROCEDURE

The Board shall conduct hearings and make decisions in accordance with Section 908 of the Pennsylvania Municipalities Planning Code, as amended.

SECTION 806. BURDEN OF PROOF

The burden of proof before the Zoning Hearing Board shall always be on the applicant to sustain his appeal or application. In any application for special exception, the burden shall be on the applicant to prove that approval of the application shall not be detrimental to the health, safety, and general welfare of the community. Further, the application for special exception shall set forth in full, or testimony shall be presented by the applicant in full, to cover each and every condition, requirement or consideration relating to the particular special exception.

SECTION 807. RECORDING OF DECISIONS

Within sixty (60) days following a final unappealed decision of the Zoning Hearing Board, or a Court of record (in case of an appeal from the Zoning Hearing Board) which decision relates directly to or imposes specific conditions on one or more lots, the Zoning Officer shall cause a copy of that final decision to be recorded in the Office of the Recorder of Deeds in and for Lancaster County indexed against the then current property owners, as grantors. It shall be a prerequisite to the issuance of a Certificate of Use and Occupancy or any other permit that the then current property owners of such lot or lots shall sign such documents, as the solicitor of the Township shall reasonably direct, to allow the recordation and indexing as aforesaid. Additionally, the applicant shall pay, in advance, to the Zoning Officer, all costs of recordation, such as recording fees and notary charges.