

ZONING ORDINANCE

2. All applications pursuant to §508 of the MPC, 53 P. S. §10508, for approval of subdivisions or land developments under Article V of the MPC, 53 P. S. §10501 et seq.
3. Applications for conditional use under the express provisions of this Chapter.
4. Applications for curative amendment to this Chapter or pursuant to §609.1 and 916.1(a) of the MPC, 53 P. S. §10609.1, 10916.1(a).
5. All petitions for amendments to land use ordinances, pursuant to the procedures set forth in §609 of the MPC, 53 P. S. §10609.
6. Appeals from the determination of the Zoning Officer or the Borough engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to applications for land development under Articles V and VII of the MPC, 53 P. S. §§10501 et seq., 10701 et seq.
 - I. Where such determination relates only to development not involving an MPC Article V or VII application, the appeal from such determination of the Zoning Officer or the Borough engineer shall be to the Zoning Hearing Board pursuant to this §27-1201.
 - J. Where the applicable land use ordinance vests jurisdiction for final administration of subdivision and land development applications in the Planning Commission, all appeals from determinations under this subsection shall be to the Planning Commission and all appeals from the decision of the Planning Commission shall be to court.
 - L. Conditional Uses. Where the Borough Council, in this Zoning Ordinance, has stated conditional uses to be granted or denied by the Borough Council pursuant to express standards and criteria, the Borough Council shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria. In granting a conditional use, the Borough Council may attach such reasonable conditions and safeguards, in addition to those expressed in this Zoning Ordinance, as it may deem necessary to implement the purposes of this Zoning Ordinance and the Pennsylvania Municipalities Planning Code, 53 P. S. §10101 et seq.

§2009-1402. Zoning Hearing Board.

- A. The Borough shall establish and maintain a Zoning Hearing Board (Board) consisting of members appointed by the Borough Council.
- B. A Zoning Hearing Board shall receive recommendations on special exceptions from the Planning Commission and shall act thereon.
- C. There is hereby created a Zoning Hearing Board in accordance with the provisions of Article IX of the Pennsylvania Municipalities Planning Code, 53 P. S. §10901 et seq.
 1. The membership of the Board shall consist of members of the Borough appointed by resolution by the Borough Council. The terms of office shall be for three (3) years and shall be so fixed that the term of office of one member shall expire each year. The Board shall promptly notify the Borough Council of any

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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.

2. Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Borough Council which appointed the member, 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.
 3. 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 Zoning Ordinance.
 4. 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 lot of the Borough and shall submit a report of its activities to the Borough Council as requested by the Borough Council.
 5. Within the limits of funds appropriated by the 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.
- D. Hearings. The Zoning Hearing Board will conduct hearings and make decisions in accordance with the Municipalities Planning Code. A copy of the Municipalities Planning Code is available for review in the Borough Building. The Borough Council shall establish, by resolution, fees with respect to hearings before the Zoning Hearing Board.
- E. Jurisdiction.
1. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters within the physical boundaries of the Borough.
 - a) Substantive challenges to the validity of any land use Ordinance, except those brought before the Borough Council pursuant to §609.1 and 916.1(a)(2) of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P. S. §10609.1, 10916.1.
 - b) Challenges to the validity of a land use Ordinance raising procedural questions or alleged defects 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.

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- c) 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 therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.
 - d) Appeals from a determination by the Borough Engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard Ordinance or such provisions within a land use Ordinance.
 - e) Applications for variances from the terms of this Zoning Ordinance and flood hazard Ordinance or such provisions within a land use Ordinance, pursuant to §910.2 of the MPC, 53 P. S. §10910.2.
 - f) Applications for special exception under this Zoning Ordinance or floodplain or flood hazard Ordinance or such provisions within a land use Ordinance, pursuant to §912.1 of the MPC, 53 P. S. §10912.1.
 - g) Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Zoning Ordinance.
 - h) Appeals from the Zoning Officer's determination under §916.2 of the MPC, 53 P. S. §10916.2.
 - i) Appeals from the determination of the Zoning Officer or Borough Engineer in the administration of any land use Ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving applications under Article V or VII of the MPC, 53 P. S. §10501 et seq., 10701 et seq.
2. The Borough Council shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
- a) All applications for approvals of planned residential developments under Article VII of the MPC pursuant to the provisions of §702 of the MPC, 53 P. S. §10702.
 - b) All applications pursuant to §508 of the MPC, 53 P. S. §10508, for approval of subdivisions or land developments under Article V of the MPC, 53 P. S. §10501 et seq.
 - c) Applications for conditional use under the express provisions of this Zoning Ordinance.
 - d) Applications for curative amendment to this Zoning Ordinance or pursuant to §609.1 and 916.1(a) of the MPC, 53 P. S. §10609.1, 10916.1(a).
 - e) All petitions for amendments to land use Ordinances, pursuant to the procedures set forth in §609 of the MPC, 53 P. S. §10609.

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- f) Appeals from the determination of the Zoning Officer or the Borough Engineer in the administration of any land use Ordinance or provisions thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to applications for land development under Articles V and VII of the MPC, 53 P. S. §§10501 et seq., 10701 et seq.
 - g) Where such determination relates only to development not involving a MPC Article V or VII application, the appeal from such determination of the Zoning Officer or the Borough Engineer shall be to the Zoning Hearing Board pursuant to this Chapter.
 - h) Where the applicable land use Ordinance vests jurisdiction for final administration of subdivision and land development applications in the Planning Commission, all appeals from determinations under this subsection shall be to the Planning Commission and all appeals from the decision of the Planning Commission shall be to court.
3. Variances.
- a) The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this Zoning Ordinance inflict unnecessary hardship upon 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 that all of 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 lot and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Zoning Ordinance in the neighborhood or district in which the lot is located.
 - 2) That because of such physical circumstances or conditions, there is no possibility that the lot can be developed in strict conformity with the provisions of this Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the lot.
 - 3) That such 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 lot is located, nor substantially or permanently impair the appropriate use or development of adjacent lot, 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.

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- b) In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Zoning Ordinance and the Pennsylvania Municipalities Planning Code, 53 P. S. §10101 seq.
- F. Special exception. Where the Borough Council, in this Zoning Ordinance, has stated special exception to be granted or denied by the Zoning Hearing Board pursuant to express standards and criteria, the Board shall hear and decide requests for such special exception 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 Zoning Ordinance, as it may deem necessary to implement the purposes of this Zoning Ordinance and the Pennsylvania Municipalities Planning Code, 53 P. S. §10101 et seq.
- G. Parties Appellant before the Board. Appeals raising the substantive validity of any land use Ordinance (except those to be brought before the Borough Council pursuant to the Pennsylvania Municipalities Code), procedural questions or alleged defects in the process of enactment or adoption of a land use Ordinance; or 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 therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot; from a determination by the Borough Engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard Ordinance or such provisions within a land use Ordinance; from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Zoning Ordinance; from the determination of the Zoning Officer or Borough Engineer in the administration of any land use Ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving subdivision and land development or planned residential development may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Borough, or any person aggrieved. Requests for a variance and for special exception may be filed with the Board by any landowner or any tenant with the permission of such landowner.
- H. Time Limitations.
- 1. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for development, preliminary or final, has been approved by the Borough if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he has 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. The failure of anyone other than the landowner to appeal an adverse decision on a tentative plan or from an adverse decision by the Zoning Officer on a challenge to the validity of this Zoning Ordinance or an amendment hereto or map or an amendment thereto shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.
 - 2. All appeals from determinations adverse to the landowner shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

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I. Stay of Proceedings.

1. Upon filing of any appeal proceeding before the Zoning Hearing Board 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 there under, 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 lot, 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. 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 proceedings before the Board.
2. After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court.
3. 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. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.
4. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellate court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by the petitioner.

J. Accommodations under the Fair Housing Amendments Act and/or the Americans with Disabilities Act.

1. The Board shall hear and determine appeals from decisions of the Zoning Officer with respect to requests for reasonable accommodation under the Fair Housing Amendments Act or the Americans with Disabilities Act. In hearing such an appeal, the Board shall apply the criteria set for in this Ordinance. In granting a request for reasonable accommodation, the Board may attach such reasonable safeguards and/or limitations as it may deem necessary to properly implement this Ordinance and protect the public health, safety and welfare in a manner consistent with the requirements of the Fair Housing Amendments Act or the

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Americans with Disabilities Act. In handling a request for reasonable accommodation, the Board shall be governed by the criteria set forth in this Ordinance to the fullest extent as may be consistent with the Fair Housing Amendments Act and the Americans with Disabilities Act.

§2009-1403. Zoning Officer.

A. Zoning Enforcement:

A Zoning Officer shall be appointed by the Borough Council to administer and enforce this Zoning Ordinance. The Zoning Officer shall not hold any elective office in the municipality.

B. Duties and Powers of Zoning Officer:

It shall be the duty of the Zoning Officer to enforce literally the provisions of this Ordinance, as amended, and he or she shall have such duties and powers as are conferred on him or her by this Ordinance and as are reasonably implied for that purpose. The Zoning Officer's duties shall include but are not limited to the following:

1. Receive application for and issue zoning permits and sign permits.
2. Keep an official record of all business and activities, including complaints of a violation of any of the provisions of this Ordinance and of the action taken consequent on each such complaint. All such records shall be open to public inspection. File copies of all applications received, permits issued, reports and inspections made in connection with any structure, building, sign and/or land, shall be retained as long as they remain in existence.
3. Make inspections as required to fulfill his duties. He shall have the right to enter any building or structure or enter upon any land at any reasonable hour in the course of his duties.
4. Issue permits for special exception uses and for variances only after such uses and/or buildings have been approved by the Zoning Hearing Board in accordance with the regulations of this Ordinance.
5. Be responsible for keeping this Ordinance and the Zoning Map up to date so as to include all amendments thereto.
6. Institute civil enforcement proceedings as a means of enforcement.
7. Notification about nonconforming uses.

C. Notice of Violations:

The Zoning Officer shall serve a notice of violation on any person, firm, corporation, or partnership responsible for violating any of the provisions of this Ordinance, or in violation of a detailed statement or a plan approved there under. Notice of violation shall be in writing, indicating the nature of the violation and action necessary to correct same. If