

ARTICLE 15 ZONING HEARING BOARD

Section 1500 General Provision.

A Zoning Hearing Board is hereby created in accordance with the provisions of Article 9 of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, No. 247, (53 P.S. §10101) as reenacted and amended. Hereinafter, as used in this chapter, the term "Board" shall refer to the Zoning Hearing Board and the "Municipalities Planning Code" shall refer to the Pennsylvania Municipalities Planning Code, cited above.

Section 1501 Membership.

The membership of the Board shall consist of three (3) residents of the Township who shall be appointed by the Supervisors and serve three (3) year terms as provided by law and not more than three (3) residents of the Township to serve as alternate members of the Board, for three (3) year terms. Alternate members shall be entitled to participate in all proceedings and discussions of the Board as provided by law and in Section 1502. Members and alternate members of the Board shall hold no other office in the township. The provisions of the laws of the Commonwealth shall govern removal of Board members.

Section 1502 Organization.

- A. The Zoning Hearing Board shall elect from its own membership its officers (Chairman, Vice-Chairman and Secretary), 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 not be less than a majority of all 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 appellant or the applicant, as the case may be, in addition to the municipality, 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 provided in Section 908(2) of the Municipalities Planning Code.
- B. If, by reason of absence or disqualification of a Board 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 Section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.
- C. Within the limits of funds appropriated by the Supervisors, the Zoning Hearing 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 Supervisors, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the Supervisors. Alternate members of the Zoning Hearing Board may receive compensation, as may be fixed by the Supervisors, for the performance of their duties when designated as alternate members pursuant to subsection B, above, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members by the Supervisors.
- D. The Board may make, alter and rescind rules and forms for its procedure, consistent with the Township's ordinances and the laws of the Commonwealth of Pennsylvania. The Board shall keep full public records of its business, which records shall be property of the Township, and shall submit a report of its activities to the Supervisors as requested.

Section 1503 Powers.

The Zoning Hearing Board shall hear and decide applications in accordance with and pursuant to the Municipalities Planning Code and shall have all powers set forth therein, including but not limited to the following:

- A. Substantive challenges to the validity of any land use ordinance except those brought before the Supervisors pursuant to Section 609.1 and 916(a)(2) of the Municipalities Planning Code.
- 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.
- 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 enforcement notice or the registration or refusal to register any nonconforming use, structure or lot.
- D. Appeals from determinations by the Township Engineer or the Zoning Officer with reference to the administration of any Floodplain or Flood Hazard Regulations of this Ordinance.
- E. Applications for variances from the terms of this Ordinance, pursuant to Section 910.2 of the Municipalities Planning Code.
- F. Applications for special exceptions under this Ordinance pursuant to Section 912.1 of the Municipalities Planning Code.
- G. Appeals from the Zoning Officer's determinations under Section 916.2 of the Municipalities Planning Code.
- H. Appeals from the determination of the Zoning Officer or the Township Engineer in the administration of this or any land use ordinance or provision thereof with reference to sedimentation and erosion control and stormwater management, insofar as the same relates to development not involving subdivision and/or land development applications under the Township Subdivision and Land Development Ordinance.
- I. Any other application authorized by law to be taken to the Zoning Hearing Board.
- J. In granting any relief hereunder, the Board may impose conditions, safeguards, restrictions and limitations upon the property that the Board deems necessary to implement the purposes of this Ordinance, the grant of relief and the Municipalities Planning Code.

Section 1504 Parties and Representation before the Board.

- A. Appeals to the Zoning Hearing Board under Section 1503, other than applications for special exceptions and variances, may be filed in writing with the Board by the landowner affected, any officer or agency of the Township or any person aggrieved. Requests for variances and for special exceptions under Section 1503 may be filed with the Board by the landowner or any tenant with the permission of such landowner.
- B. Applicants may appear on their own behalf or may be represented by an attorney at law, admitted to practice before the Courts of the Commonwealth of Pennsylvania. No persons not admitted to practice before the Courts of the Commonwealth of Pennsylvania as an attorney at law shall

represent any person before the Board; provided, however, that representation of a corporate applicant by its responsible officers or a partnership by its partners shall be permitted. The Board shall have the power in its discretion to waive this rule upon cause shown.

Section 1505 Applications for Relief.

A. Time Limitations.

1. 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. The failure of anyone other than the landowner to appeal from an adverse decision by the Zoning Officer on a challenge to the validity of this ordinance or the Zoning Map pursuant to Section 916.2 of the Municipalities Planning Code, shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved preliminary 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.

B. Application Fees.

1. Upon submission of any application to the Zoning Hearing Board, the applicant shall deposit as part of the application with the Zoning Officer the filing fee designated by resolution of the Supervisors then in effect. No application shall be accepted as complete and no hearing shall be scheduled without payment of the fee. The fee shall be expended to pay for the administrative costs specified in the Supervisors' Resolution.
2. If at any time the charges then made against the applicant's deposit shall render the balance insufficient to ensure the payment of all costs, expenses, charges and fees that may accrue in the disposition of the pending application, the Zoning Hearing Board may require additional deposits to be made from time to time to assure adequate funds to pay such charges, costs, expenses and fees as they may accrue. The failure of the Board to demand additional deposits shall not relieve the applicant of liability for costs, charges, fees and expenses in excess of deposits.

C. Application Requirements. Appeals, applications or challenges shall be initiated before the Board by filing with the Zoning Officer a completed and executed application in the form adopted by the Board and provided for that purpose, which shall state, at a minimum:

1. The name, address and standing of the applicant.
2. The name and address of the owner of the real estate to be affected by the proposed relief.
3. A brief description and location of the real estate to be affected by such proposed relief, including its tax parcel number.
4. A statement of the present zoning classification of the real estate in question, the date of acquisition thereof and the present use thereof.
5. A statement of the section of this Ordinance under which an exception is requested or variance or other relief is sought or to which challenge as to the validity is made, and a statement of the specific relief sought and the zoning ordinance provisions applicable thereto.

6. A discussion of applicable provisions of this Ordinance and the evidence that will be offered at the hearing in support of the Applicant's right to the relief requested.
 7. A reasonably accurate description of the present improvements and the additions intended to be made under the application, indicating the size of such proposed improvements, materials and general construction thereof and sufficient information to display compliance with the area, bulk and setback requirements and design standards of this ordinance. Unless specifically excused by general order or special rule of the Board, there shall be attached a plot plan of the real estate to be affected, prepared by a Pennsylvania registered engineer or registered land surveyor, indicating the location and size of the lot and size of the improvements now erected and proposed to be erected showing all dimensions, computations, areas, percentages and measurements necessary to demonstrate compliance with all the terms and requirements of this Ordinance. Also attached to the application shall be a true and correct copy of the application for building permit, showing the Zoning Officer's action with respect thereto.
- D. No application hereunder shall be considered filed until such time as the Zoning Officer shall have reviewed the application, determined that the application is complete based upon the requirements herein and under the rules of the Board, and notified the applicant of the acceptance of the application.

Section 1506 Stay of Proceedings.

Upon filing an appeal under this Section 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 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 a 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.

Section 1507 Notice of Public Hearing.

The Board shall give notice of its hearings as follows:

- A. By public notice as defined in Section 107 of the Municipalities Planning Code, which shall state the location of the lot or building in question and the general nature of the relief sought.
- B. By requiring the applicant to conspicuously post the Board's written notice of the hearing on the affected tract or lot of land so that it is visible to passers-by at least one (1) week prior to the hearing.
- C. By mailing the Board's notice of the hearing by First Class United States Mail to the applicant, the Zoning Officer, the Township Secretary, the Planning Commission and the Board of Supervisors, and any person who has made timely request for such notice.
- D. By mailing notice to any Township residents or associations of residents who shall have registered their names and addresses for the purpose of receiving zoning board hearing notices.
- E. When the Board shall so order, by mailing or delivering written notice thereof to the title owner of every lot on the same street within five-hundred (500) feet, measured along the street frontage, of the

lot or building in question and of every lot not on the same street but within a five-hundred (500) foot radius of said lot or building, provided that failure to give notice as required by this subsection shall not invalidate any action taken by the Board.

Section 1508 Procedure.

- A. The hearing shall be conducted by the Board, or the Board may appoint any member or an independent attorney 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.
- B. The parties to the hearing shall be the applicant, Easttown Township, any person affected by the application that has made timely appearance of record before the Board, and any other person or civic or community organization permitted by the Board to appear. The Board may require all persons wishing to become parties to enter their appearances in writing on forms provided by the Board for that purpose.
- C. 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 for the production of relevant documents and papers, including witnesses and documents requested by the parties. 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 to cross examine adverse witnesses on all relevant issues.
- D. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded by the Board.
- E. The burden of proof shall always be on the applicant before the Zoning Hearing Board to sustain the appeal before the Board. The applicant's burden of proof shall include the duty of presenting credible evidence sufficient to persuade the Board that the applicant has satisfied the criteria set forth in the applicable sections of this Ordinance.
- F. A stenographic record of the proceedings shall be made by a court reporter. The applicant and the Board shall share the appearance fee for the court reporter 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.
- G. Neither the Board nor the hearing officer shall communicate directly or indirectly with any party or his representatives in connection with any issue involved except upon notice and an opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda or other materials, except advice from the Board's 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 the hearings with any party or his representative unless all parties are given an opportunity to be present.
- H. The initial hearing and any subsequent hearing shall be scheduled in accordance with the requirements of Section 908(1.2) of the Municipalities Planning Code.
- I. The Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is required, make written findings on the application within forty-five (45) days of the close of the last hearing, unless extended by the applicant. 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 shall contain a reference to the provision relied upon and the reasons

why the conclusion is deemed appropriate under the facts as 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 the report and recommendations available to the parties within forty-five (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 thirty (30) days after the report of the hearing officer.

- J. In the event the Board fails to hold a public hearing or render a decision within the times required by this Section, 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 favor of the applicant because of the failure of the Board to meet or render a decision as required by this Section, the Board shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this Section. If the Board shall fail to provide such notice, the applicant may do so.
- K. 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 by First Class United States Mail to the applicant 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, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined. A copy of the decision shall also be mailed at such time to all other parties of record.

Section 1509 Standards for Applications for Special Exceptions, Special Relief and Variances.

- A. In addition to the requirements specified in the provision of this Ordinance permitting the requested Special Exception or Special Relief, the Board shall consider, where relevant, the following standards and criteria in passing upon any application for approval of a Special Exception or Special Relief under this Ordinance, and the applicant shall have the burden to prove compliance with each such standard and criteria.
 - 1. That the use of the property adjacent to the area included in the special exception is adequately safeguarded. This provision shall require noise abatement, landscaping, buffering, additional setbacks, if necessary, and similar restrictions in order to protect adjacent property.
 - 2. That vehicular trip generation resulting from the proposed use will not result in such increased traffic or turning movements as will significantly affect existing congestion on streets and roads within the immediate vicinity of the proposed development, or adversely impact the reserve capacity of the public roads and road intersections providing access to and in the area of the proposed use.
 - 3. Improvements to the streets contiguous to the applicant's property, such as road widening, acceleration and deceleration lanes, traffic control devices and similar features shall be sufficient to obviate any adverse traffic impacts caused by the use and to protect the traveling public; and the location and design of the proposed facilities for ingress or egress shall be so located as to provide safe access to adjoining streets and roads and to avoid unnecessary traffic through existing neighborhoods.
 - 4. The proposed use shall make adequate provision for access for fire fighting and other emergency service equipment. Such access must include, but is not necessarily limited to, turning radii sufficient to accommodate fire equipment, adequacy of roadway and right-of-way widths to accommodate the free flow of such equipment, paved emergency access roads/ways, provision for adequate access in front of, between and behind buildings and structures, including paved or

compacted surfaces sufficient to support the weight of fire equipment, and permanently and publicly marked as such.

5. Require submission of a certificate of adequacy of sewage and water facilities from the Chester County Health Department, the Pennsylvania Department of Environmental Resources, the Easttown Municipal Authority or other regulatory agency having jurisdiction, or evidence of compliance with such requirements determined sufficient by the Board.
 6. Except where otherwise required by this Ordinance or the Subdivision and Land Development Ordinance, or the safety of the public otherwise dictates, the total number of access points on major streets and highways shall be limited. The Board shall have the power to require the frontage of buildings on parallel marginal roads or on roads perpendicular to existing public streets and highways.
 7. The proposed use shall specifically comply with all area and bulk regulations, design standards or other general regulations applicable to the proposed use.
 8. The proposed use shall not be contrary or harmful to the health, safety, morals and general welfare.
 9. Any recommendations of the Planning Commission shall be provided by the applicant and the applicant shall produce evidence to ameliorate any negative concerns raised by the Planning Commission. The Board shall not be bound by such recommendations.
 10. Be assured that the natural features and processes characterizing the proposed site and its surroundings shall not suffer unmitigated degradation, that the management of storm waste, the provision of water or sewer service, and any other alterations to the site's pre-development condition shall be consistent with the Township goals, practices, and plans in these regards, and that demand for water and energy by the proposed use shall be minimized to the optimal extent
 11. Impose such conditions, in addition to those required as are necessary to assure that the intent of the Zoning Ordinance is complied with, and which are reasonably necessary to safeguard the health, safety, morals and general welfare of the residents of the Township at large and the residents and owners of the property adjacent to the area in which the proposed use is to be conducted. Conditions may include, but are not limited to, harmonious design of buildings, aesthetics, hours of operation, lighting, numbers of persons involved, noise, sanitation, safety, smoke and fume control and the minimizing of noxious, offensive or hazardous elements.
- B.** In addition to giving consideration to the criteria identified in subsection A, above, the Board may grant a Variance, provided that the applicant has met its burden to prove that all of the following criteria, where relevant in a given case:
1. 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 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.
 2. 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 the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 3. Such unnecessary hardship has not been created by the applicant.

4. 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 in the case where the property is located in part or totally within the regulatory floodway, the granting of a variance will not increase the base flood elevation, and
6. 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.

Section 1510 Conditions of Approval for Special Exceptions, Special Relief and Variances.

- A. In granting any special exception, special relief or variance, the Board shall consider and impose reasonable conditions, safeguards, restrictions and limitations upon the property that the Board deems necessary to implement the purposes of this Ordinance, the grant of relief and the Municipalities Planning Code.
- B. Where the Zoning Hearing Board grants approval of a special exception, special relief or variance, it shall provide a memorandum to the applicant, stipulating the terms and conditions of such approval. Such memorandum shall contain a metes and bounds description of the property in question. The applicant shall execute and provide to the Township a recordable, notarized copy of the memorandum and shall consent to recording by the Township in the office of the Recorder of Deeds of Chester County within thirty (30) days following expiration of the appeal period.

Section 1511 Expiration of Special Exceptions, Special Relief and Variances.

- A. Unless otherwise specified by the Board, a special exception, special relief or variance shall expire if the applicant fails to apply for a building permit or, if no building permit is required, a use and occupancy permit, within six (6) months from the date of the Board's decision.
- B. The applicant may apply to the Zoning Officer for a single extension not to exceed six (6) months from the date the special exception or variance would have otherwise expired, provided that the application is made within the six (6) month period after the grant by the Board of the original variance or special exception, and not thereafter. If the Zoning Officer determines that there has been no change in the applicable ordinances or the conditions existing at the time of the grant of the original special exception or variance, he may grant such extension to a date certain. Upon taking any such action, the Zoning Officer shall send written notice thereof to the applicant, the township engineer, the Township solicitor and any person who appeared in the original proceedings as a party of record.
- C. Any person to whom such notice is required to be sent may appeal to the Board from the zoning officer's action, provided that such appeal is duly filed with the Board within thirty (30) days of the Zoning Officer's determination.

Section 1512 Substantive Challenges.

- A. A landowner who, on substantive grounds, desires to challenge the validity of this Ordinance, the Zoning Map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest may submit the challenge to the Zoning Hearing Board in accordance with Section 1503.A.
- B. Persons aggrieved by a use or development permitted on the land of another by this Ordinance or the Zoning Map or any provision hereof who desire to challenge its validity on substantive grounds shall

first submit their challenge to the Zoning Hearing Board for a decision thereon pursuant to Section 1503.A.

- C. The challenging party shall make a written request to the Board that it hold a hearing on its challenge.
- D. The request shall specify the reasons for the challenge, and shall be in the form required by Section 1505. This section shall not be construed to preclude a landowner from first seeking a final approval before submitting his challenge. Based upon the testimony presented at the hearing, the Zoning Hearing Board shall determine whether the challenged Ordinance or map is defective, as alleged. If the Board finds the challenge to have merit, the Board's decision shall include recommended amendments to the challenged Ordinance, which will cure the defects found. In reaching its decision, the Board shall consider the amendments, plans, and explanatory material submitted by the landowner and shall also consider the following:
1. The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.
 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.
 3. The suitability of the site for the intensity of the use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features.
 4. The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, 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.
 5. The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
- E. The Board shall commence its hearings within sixty (60) days after the request is filed unless the landowner requests or consents in writing to an extension of time. Public notice of the hearing shall include notice that the validity of the Ordinance or map is in question and shall give the place where and the times when a copy of the request, including any plans or explanatory material may be examined by the public. If the Board fails to act on the landowners request by rendering its decision within forty-five (45) days after the conclusion of the last hearing, a denial of the request shall be deemed to have occurred on the forty-sixth (46th) day after the close of the last hearing.
- F. The challenge shall be deemed denied when:
1. The Zoning Hearing Board fails to commence the hearing within the time limits specified in subsection E, above; or
 2. The Board fails to act on the request forty-five (45) days after the close of the last hearing on the request, unless the time is extended by mutual consent of the landowner and the municipality.
- G. Where a validity challenge is sustained by the Board or a Court of competent jurisdiction acts finally on an appeal from the denial by the Board of a validity challenge and the challenge so approved requires a further application for subdivision or land development, the developer shall have two (2) years from the date of such approval to file an application for preliminary subdivision or land development approval. Within the two (2) year period, no subsequent change or amendment in the Zoning or the Subdivision and Land Development Ordinance shall be applied in any manner, which adversely affects the rights of the applicant as sustained in the validity challenge. If the validity challenge is sustained but does not require further application under the Township Subdivision or

Land Development Ordinance, the developer shall have one (1) year within which to file for a building permit. During that one (1) year period, no subsequent change or amendment in this ordinance or the Subdivision and Land Development Ordinance shall be applied to adversely affect the rights of the applicant as sustained in the validity challenge.