

ARTICLE 10

RESPONSIBILITIES OF THE ZONING HEARING BOARD

1000 ORGANIZATION AND PROCEDURE

A. Establishment

Pursuant to the provisions of the PA Municipalities Planning Code, a Zoning Hearing Board is hereby established in Milton Borough.

B. Appointment

The Zoning Hearing Board shall consist of three (3) residents of Milton Borough to be appointed by Resolution of Borough Council. The term of the initial appointees shall be for one, two and three years from the date of appointment. Their successors shall be appointed for the term of three (3) years after the expiration of the terms of their predecessors in office. Members of the Zoning Hearing Board shall hold no other office in the municipality.

The Borough Council may also appoint, by Resolution, two (2) alternate members of the Zoning Hearing Board to serve in the event of absence or conflict of interest of a regular member. The term of office of an alternate shall be three (3) years. For each case, the Chairman of the Zoning Hearing Board shall designate as many alternates as necessary to provide a quorum. Designation shall be made on a case-by-case basis, in rotation, according to declining seniority. Alternates shall hold no other office in the municipality.

A Zoning Hearing Board member may be removed by majority vote of the Borough Council for just cause only after the member has received 15 days' advanced notice of the Borough's intent to take such a vote. A Hearing shall be held in connection with the vote if requested in writing by the member.

C. Appointment to Fill Vacancies

Appointments to fill vacancies shall be for the unexpired term of the member or members whose term or terms become vacant. Appointments to fill such vacancies shall be made in the same manner as the original appointment.

D. General Grant of Power

The Zoning Hearing Board shall perform the duties and have the powers pre-scribed by the Planning Code, as amended, and as herein described.

1001 POWERS AND DUTIES

The Zoning Hearing Board shall hear and decide appeals pursuant to the provisions of the PA Municipalities Planning Code, as amended, and shall have the following powers.

A. To Hear and Decide Appeals

1. The Zoning Hearing Board shall hear and decide appeals from any order, requirement, decision or determination made by the Zoning Officer administering this Ordinance, 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.
2. The Zoning Hearing Board shall hear and decide appeals from a determination of the Zoning Officer or municipal engineer in 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 not involving the provisions regulating subdivision or Planned Residential Development contained in the PA Municipalities Planning Code.
3. The Zoning Hearing Board shall hear and decide appeals from a determination by the Zoning Officer or municipal engineer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance.
4. The Zoning Hearing Board shall hear and decide upon appeal from a determination of the Zoning Officer, any questions involving the interpretation of any provision of this Ordinance, including determination of the exact location of any district boundary where there is uncertainty with respect thereto.

B. To Hear and Decide Challenges to the Validity of any Land Use Ordinance

1. The Zoning Hearing Board shall hear and decide substantive challenges to the validity of any land use ordinance, except those for Landowner Curative Amendments, which shall be brought before the governing body pursuant to the PA Municipalities Planning Code, as amended.
2. The Zoning Hearing Board shall hear and decide challenges to the validity of any land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption. Such challenges shall be raised by an appeal taken within 30 days of the effective date of said ordinance.

C. To Hear and Decide Requests for Variances

The Zoning Hearing Board shall hear requests for variances and may vary or adapt the strict application of any of the requirements of this Ordinance in the case of exceptionally irregular, narrow or shallow lots or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. The sole purpose of any variance shall be to prevent discrimination and no

variance shall be granted which would have the effect of granting a special privilege not shared by other property owners in the same vicinity and district and under the same conditions.

The Board's decision to approve a variance request shall be made only after public notice and hearing. (See Section 1002.) (See also Section 609 for additional information regarding variances in Floodplain Districts and Appendix C for a chart illustrating the variance procedure.)

No variance in the strict application of any provisions of this Ordinance shall be granted by the Zoning Hearing Board unless it finds:

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 the Zoning 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 the Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
3. that such unnecessary hardship has not been created by the appellant;
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; and,
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 Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance.

D. To Hear and Decide Requests for Special Exceptions

The Zoning Hearing Board may grant Special Exceptions only for such uses as are provided for in Article 3, the District Regulations, and pursuant to express standards and criteria outlined in Article 4. The Board's decision to approve a Special Exception shall be made only after public notice and public hearing. (See Section 1002.) Such approval shall apply specifically to the application and plans submitted and presented at said public hearing. Any subsequent changes or additions shall be subject to further

review and public hearing by the Zoning Hearing Board as a separate Special Exception request. (See Section 610 for additional information regarding Special Exceptions in Floodplain Districts and Appendix D for a chart illustrating the Special Exception procedure.)

No application for a Special Exception shall be granted by the Zoning Hearing Board until said Board has first received and considered an advisory report thereon from the Borough Planning Commission. Said report shall review the proposal with respect to the location of such use in relation to the needs and growth patterns of the area and, where appropriate, the adequacy of the site area and arrangement of buildings, driveways, parking areas, off-street loading spaces and other pertinent features. The Planning Commission shall have 30 days from the date of its receipt of the application from the Zoning Hearing Board within which to file its report. In the event that the Commission shall fail to file its report within 30 days, the application shall be deemed to have been approved by the Commission. The Commission may have representation at the hearing held by the Zoning Hearing Board on such application.

In reviewing applications for Special Exceptions, the Zoning Hearing Board shall take into account the comments received from the Borough Planning Commission and the following requirements, in addition to those found in Article 4, and in other applicable sections of this Ordinance.

1. that the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected;
2. that the use will not cause substantial injury to the value of other property in the neighborhood where the use is to be located;
3. that the use will be compatible with adjoining development and the proposed character of the zoning district where it is to be located;
4. that adequate landscaping and screening is provided as required herein;
5. that adequate off-street parking and loading is provided and ingress and egress is designed to cause minimum interference with traffic on abutting streets; and,
6. that the use conforms with all applicable regulations governing the district where it is to be located, except as may otherwise be determined for large-scale developments.

In approving a Special Exception, the Zoning Hearing Board may attach whatever reasonable conditions and safeguards it deems necessary in order to insure that the proposed development is consistent with the purposes of this Ordinance.

1002 HEARING PROCEDURES

A. Parties Appellant Before Zoning Hearing Board

Appeals from a decision of the Zoning Officer and proceedings to challenge the validity of the Ordinance may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Borough, or by any person aggrieved. Requests for a variance or special exception must be filed with the Zoning Hearing Board by the landowner or an authorized agent of such landowner.

B. Time Limitations

No person shall be allowed to file any proceeding with the Zoning Hearing Board later than 30 days after an application for development, whether preliminary or final, has been approved by an appropriate municipal 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.

C. Applications Required

All requests and appeals made to the Zoning Hearing Board shall be in writing and in such form as may be prescribed by the Zoning Officer. Every appeal or request shall refer to a specific provision of this Ordinance and shall exactly set forth the interpretation that is claimed or shall include the plans or the details of the variance or special exception that is applied for, in addition to the following information:

1. the name and address of the applicant or appellant;
2. the name and address of the owner of the parcel to be affected by such proposed change or appeal;
3. a brief description and location of the parcel to be affected by such proposed change or appeal;
4. a statement of the present zoning classification of the parcel in question, the improvements thereon and the present use thereof; and,
5. a reasonably accurate description of any existing buildings, structures or improvements located on the site and the additions or changes intended to be made under this application, indicating the size of such proposed improvements. In addition, the applicant shall provide the Zoning Hearing Board with an accurate plot plan, drawn to scale, of the property to be affected, indicating the location and size of the lot and the size and location of all existing buildings, structures, trees, or other physical features thereon and those additional improvements proposed to be erected.

D. Procedure for Zoning Officer

1. The notice of appeal in any case where a Permit has been granted or denied by the Zoning Officer shall be prescribed by the Zoning Hearing Board under general rule after notice of such action granting or denying the Permit has been mailed to the applicant. The Zoning Officer shall then immediately transmit to the Zoning Hearing Board all papers constituting the record from which the appealed action was taken or in lieu thereof, certified copies of said papers.
2. It shall be acceptable for the Zoning Officer to recommend to the Zoning Hearing Board a modification or reversal of his action in cases where he believes substantial justice requires the same but where he does not have sufficient authority to grant the relief sought.

E. Hearings Required and Notice of Hearings

The Zoning Hearing Board, before rendering a decision, shall hold hearings on any appeal, interpretation, variance, special exception, challenge or other matter requiring the Board's decision or other official action. Within 60 days of the date of receipt of an applicant's application for such hearing, the Board shall fix a reasonable time and place for and commence the first hearing thereon, giving notice as follows:

1. Publish Public Notice in accordance with the definition of "Public Notice" in Article 13 of this Ordinance;
2. Post in a conspicuous place on the property involved a written notice of the pending hearing and action; such notice shall take place at least seven (7) days prior to the public hearing;
3. Give written notice to the applicant, the Zoning Officer, the Borough Secretary, Secretary of the Borough Planning Commission, and to any person who has made a timely request for the same, at least seven (7) days prior to the hearing. (Where the Zoning Hearing Board is requesting comments on an application from the Borough Planning Commission, the Planning Commission shall be given notice at least 30 days prior to the hearing); and,
4. In the case of an appeal, or a request for a variance or special exception, all adjacent property owners shall be given written notice at least seven (7) days prior to the hearing.

Each subsequent hearing on the application shall be held within 45 days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record of the previous hearing.

F. Rules of Conduct

The Zoning Hearing Board shall adopt rules consistent with the provisions of this Ordinance, and shall commence, conduct, and complete all hearings in accordance with

the requirements of the PA Municipalities Planning Code, as amended. Meetings of the Zoning Hearing Board shall be held at the call of the chairman and at such other times as the Zoning Hearing Board may determine. The chairman or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. Irrelevant, immaterial or unduly repetitious evidence may be ruled out of order and excluded from the record.

All hearings and meetings of the Zoning Hearing Board shall be open to the public. The Zoning Hearing Board shall keep a stenographic record of the hearing proceedings. Minutes shall be kept of all other meetings and shall show the vote of each member upon each question or if absent or failing to vote, indicate such fact. Such records shall be public and shall be kept on file with the Borough Secretary. A report of the Zoning Hearing Board's activities shall be submitted to the Borough Council once each year.

A quorum of two (2) Board Members shall be required for the Zoning Hearing Board to take action.

G. Decisions

The Zoning Hearing Board shall render a written decision or, when no decision is called for, make written findings on any application brought before them within 45 days after the date of the last hearing on said application. Every decision of the Zoning Hearing Board shall be based on stated findings of fact and every finding of fact shall be supported in the record of the hearing. The enumerated conditions required to exist for the authorization of a variance shall be construed as limitations of the power of the Zoning Hearing Board to act. A mere finding or recitation of the enumerated conditions, unaccompanied by findings of specific fact, shall not be deemed findings of fact and shall not be deemed compliance with this Ordinance.

In exercising the above-mentioned powers, the Zoning Hearing Board may, in conformity with the provisions of this Article, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as it feels appropriate.

A copy of the final decision or findings must be delivered to the applicant personally or must be mailed to him not later than the day following its date. All other persons interested in the result, who filed their name and address with the Board not later than the last day of the hearing, shall be provided with a brief notice of the decision or findings and a statement indicating where the full decision may be examined.

H. Expiration of Appeal Decision

Unless otherwise specified by the Zoning Hearing Board, a decision on any appeal or request shall expire if the applicant fails to obtain any necessary Zoning Permit or comply with the conditions of said authorized permit within one (1) year from the date of authorization thereof.

I. Required Interval for Hearings on Applications and Appeals after Denial

Whenever the Zoning Hearing Board, after hearing all the evidence presented upon an application or appeal under the provisions of this Ordinance, denies the same, the Zoning Hearing Board shall refuse to hold further hearings on the same or substantially similar application or appeal by the same applicant, his successor or assign for a period of one (1) year, except and unless the Zoning Hearing Board shall find and determine from the information supplied by the request for a rehearing, that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified. Such rehearing would be allowable only upon a motion initiated by a member of the Zoning Hearing Board and adopted by the unanimous vote of the members present, but not less than a majority of all members.

J. Failure to Hold Required Hearing or Render Decision

Where the Board fails to commence, conduct, or complete the required hearing or fails to render a decision within the prescribed time periods (except for challenges filed under Section 916.1 of the PA Municipalities Planning Code), 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 is rendered in favor of the applicant due to a violation of the established time requirements, the Zoning Hearing Board must give public notice of this decision within ten (10) days from the last day it could have met to render a timely decision. If the Board shall fail to provide such notice, the applicant may do so.

K. Stay of Proceedings

An appeal to the Zoning Hearing Board shall automatically stop all affected land development. However, if the Zoning Officer or other appropriate agency certifies to the Board that such a halt could cause an imminent danger to life or property, then development may only be stopped by a restraining order granted by the Zoning Hearing Board or by the court having jurisdiction, on petition, after notice to the Zoning Officer and any other appropriate agency.

L. Appeals

Any person aggrieved by any decision of the Zoning Hearing Board may appeal therefrom within 30 days to the Court of Common Pleas of Northumberland County pursuant to the procedures established in the PA Municipalities Planning Code.