

**ARTICLE XVI**  
**ZONING HEARING BOARD**

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**1601 Creation, Appointment, and Organization**

- A. The Zoning Hearing Board, referred to as the “Board” within this Article, shall consist of three (3) residents of Hereford Township appointed by the Board of Supervisors pursuant to Article IX of the Pennsylvania Municipalities Planning Code, as amended. The Board shall perform all the duties and have all the powers prescribed by the said Code and as herein provided. The Board of Supervisors shall make provision in its budget for the appropriate funds for the operation of the Board.
- B. The term of office of each Board member shall be three (3) years, and shall be fixed so that the term of office of one (1) member shall expire each year. Members of the Board shall hold no other office in the Township, whether elected or appointed.
- C. Any Board member may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of the Board of Supervisors taken after the Zoning Hearing Board member has received fifteen (15) days advance notice of the intent to take such a vote. A hearing shall be held pursuant to such removal if the Board member being voted upon requests such in writing.
- D. Vacancies within the Board shall be filled by appointment by the Board of Supervisors for the unexpired portion of the vacated term.
- E. Compensation and Expenditures for Services
  - 1. The members of the Board shall receive such compensation as shall be fixed by resolution of the Board of Supervisors, but in no case shall such rate exceed the rate of compensation authorized to be paid to the Township Supervisors.
  - 2. Alternate members of the Board may receive compensation, as may be fixed by the Board of Supervisors, for the performance of their duties when designated as an alternate member pursuant to the provisions of this Article, but in no case shall such compensation exceed the rate of compensation authorized to be paid to members of the Board of Supervisors.
  - 3. Within the limits set by the Board of Supervisors, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. The Township Solicitor shall not serve as Solicitor for the Board.

F. Organization

1. The Board may make, alter, and rescind rules and forms for its procedure including, but not limited to, the manner of filing appeals and applications for special exceptions and variances.
2. The Board shall elect from its own membership a Chairman and any other officers it may deem necessary. Officers shall serve annual terms and may succeed themselves.
3. Alternate members.
  - a. The Board of Supervisors may appoint by resolution at least one (1) but no more than three (3) residents of the Township to serve as alternate members of the Board.
  - b. The term of office of an alternate member shall be three years.
  - c. When seated pursuant to the provisions of Section 1601.F.4 of this Ordinance, an alternate shall be entitled to participate in all proceedings and discussions of the Board to the same and full extent as provided by law for Board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth by the Pennsylvania Municipalities Planning Code, as amended, and as may otherwise be provided for by law.
  - d. Alternate members shall hold no other Township office.
  - e. Any alternate may participate in any proceeding or discussion of the Board, but shall not be entitled to vote as a member of the Board nor be compensated pursuant to Section 1601.E.2 unless designated as a voting alternate member pursuant to Section 1601.F.4.
4. For the conduct of any hearing and the taking of any action, a quorum shall be not less two (2). If, by reason of absence or disqualification of a member, a quorum is not attained, the Chairman of the Board shall designate as many duly appointed 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.

- 5. The Board may appoint a Hearing Officer from its own membership to conduct any hearing on its behalf.
- 6. Meetings and hearings of the Board shall be held at the call of the Chairman and at such other times as the Board, by majority vote, may determine.

**G. Minutes and Records.**

The Board shall keep full and public records 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 also keep full public records of its business and other official action, copies of which shall be immediately filed with the Secretary of the Governing Body. The Board shall submit an annual report of its activities each year to the Governing Body.

**1602 Jurisdiction and Functions**

The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters.

- A. Substantive challenges to the validity of any land use ordinance (including this Zoning Ordinance and the Zoning Map) or Official Map as may be in effect in Hereford Township or any portion thereof, except for landowner curative amendments, which are the jurisdiction of the Board of Supervisors. Substantive challenges shall be administered in accordance with Section 1605 of this Ordinance.
- B. Challenges to the validity of any land use ordinance in effect in Hereford Township where such challenge involves procedural questions or alleged defects in the process of enactment or adoption. Such challenges must be raised by an appeal within thirty (30) days of the effective date of said ordinance.
- C. Appeals from the determination of the Zoning Officer, including:
  - 1. The granting or denial of any permit, or failure to act on the application for any permit.
  - 2. The issuance of any cease-and-desist order.
- D. Appeals from the determination of the Township Engineer or the Zoning Officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.
- E. Appeals from the determination of the Township Engineer or the Zoning Officer in the administration of any land use ordinance or provision thereof in effect in Hereford Township with reference to sedimentation and erosion control and stormwater

management, except for application involving the Hereford Township Subdivision and Land Development Ordinance.

- F. Applications for a variance from the terms of this Zoning Ordinance, as further described in Section 1603.
- G. Applications for Uses by Special Exception.
  - 1. The Board shall hear and decide upon requests for such uses by special exception in accordance with such standards and criteria stipulated by this Ordinance for the particular use in question.
  - 2. 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 stated purposes of this Ordinance and the district wherein the property in question is located.
  - 3. Unless otherwise specified by the Zoning Hearing Board, a special exception which has been authorized by the Zoning Hearing Board shall expire if the applicant fails to obtain a zoning permit within six (6) months from the date of authorization thereof or fails to commence a substantial amount of work within six (6) months from the date of issuance of the permit for such work.
- H. Appeals from the determination of any officer of agency charged with the administration of any of the performance provisions of this Zoning Ordinance.
- I. Appeals from the determination of the Zoning Officer concerning the preliminary opinion of whether a proposed building, land development, or other use of land addressed by this Ordinance is in compliance with the terms of said Ordinance.

**1603 Variances**

- A. The Board shall hear requests for variance where it is alleged that the provisions of this Zoning Ordinance inflict unnecessary hardship upon the applicant.
- B. Applications for a hearing to grant a variance shall be in accordance with Section 1604 of this Ordinance. The hearing shall be conducted in accordance with Section 1604 of this Ordinance.
- C. No variance shall be granted unless and until the applicant can demonstrate to the satisfaction of the Board that:
  - 1. There are unique physical circumstances or conditions (such as irregularity, narrowness, or shallowness of lot size or shape) or exceptional topographical or other physical conditions peculiar to the particular property. Such hardship shall be due to such physical conditions and not the circumstances and

conditions generally created by the provisions of this Zoning Ordinance in the district where 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 Zoning Ordinance and that the authorization of a variance is therefore necessary to enable reasonable use of the property.
  3. Such hardship shall not have been created by the applicant.
  4. The variance, if authorized, shall not result in alteration of 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. The variance, if authorized, shall represent the minimum variation from the standards of this Ordinance which will afford relief and will represent the least modification possible thereof.
- D. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the stated purposes of this Zoning Ordinance.
- E. Unless otherwise specified by the Zoning Hearing Board, a variance which has been authorized by the Zoning Hearing Board shall expire if the applicant fails to obtain a zoning permit within six (6) months from the date of authorization thereof or fails to commence a substantial amount of work within six (6) months from the date of issuance of the permit for such work.

**1604. Hearings**

- A. All appeals, challenges, and any other applications for hearing to the Board shall be in writing on forms prescribed by the Board and shall be submitted to the Secretary of the Board. Every such application for hearing shall refer to the specific provision of this Ordinance involved and shall exactly set forth the interpretation that is claimed, the grounds for any challenges to the validity of this Ordinance, the use for which a special exception is sought, or the detail of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
- B. Time limitations for filing proceedings related to specific subdivision or land development proposals.
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 the 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.

2. The failure of anyone other than the landowner to appeal from an adverse decision or a tentative plan or from an adverse decision by a zoning officer on a challenge to the validity of an ordinance or map pursuant to Section 1502 shall preclude an appeal from a final approval except in the case where the Final submission substantially deviates from the approved Tentative approval.
  3. 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.
  4. In the case of an appeal from a preliminary opinion by the Zoning Officer, where such appeal is requested by a person other than the landowner, such appeal must be filed within thirty (30) days of the second public notice of the preliminary opinion.
- C. Public notice, as defined in this Ordinance, shall be given for all hearings, and written notice, as defined by Section 1604.E below, shall be given to the applicant, the Zoning Officer, such other persons as the Board of Supervisors shall designate by Ordinance or resolution, and to any person who has made timely request for the same.
- D. 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 such purpose.
- E. Written notice as required by Section 1604.C shall be in the form of a letter delivered by certified mail or by hand by the Zoning Officer or his representative such that the recipient(s) shall be in possession of said letter no less than ten (10) calendar days prior to the date of the hearing.
- F. Where the hearing affects a particular tract or tracts of land, written notice of said hearing shall be conspicuously posted on the affected tract or tracts at least one (1) week prior to the hearing by the Zoning Officer or person(s) authorized by the Zoning Officer.
- G. The hearing shall be held within sixty (60) days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.

- H. The hearing shall be conducted by the Board or the Hearing Officer, as may be appointed by the Board. The decision, or, where no decision is called for, the findings shall be made by the Board. However, the appellant or the applicant, as the case may be, in addition to the Township, 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 final.
- I. The Board of Supervisors may prescribe reasonable fees with respect to hearings before the Zoning Hearing Board. Fees for said hearings may include compensation for the secretary and members of the Board, notice and advertising costs, and necessary administrative overhead connected with the hearing. Such costs shall not include legal expenses of the Board; expenses for engineering, architectural, or other technical consultants; or other expert witness costs.
- J. The Board Chairman, acting Board Chairman, or Hearing Officer shall preside over the hearing. Such presiding individual 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.
- K. The parties shall have the right to be represented by legal counsel and shall be afforded the opportunity to respond, to present evidence and argument, and to cross-examine adverse witnesses on all relevant issues.
- L. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded at the discretion of the individual presiding over the hearing.
- M. 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; where the hearing is an appeal from a decision of the Board, the cost shall be paid by the person appealing from such decision. 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.
- N. Neither the Board nor the Hearing Officer shall communicate, directly or indirectly, with any party or representative thereof in connection with any issue involved except upon notice to all parties giving such parties opportunity to participate.
- O. Neither the Board nor the Hearing Officer shall take notice of any communication, reports, staff memoranda, or other materials (except advice from their solicitor) unless all parties are afforded an opportunity to contest the material so noticed.

- P. Neither the Board nor the Hearing Officer shall inspect the site involved or its surroundings after the commencement of hearing with any party or representative thereof unless all parties are given an opportunity to be present.
  
- Q. Decisions and Findings.
  - 1. The Board or the Hearing Officer, as the case may be, shall render a written decision or, when no decision is called for, shall 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 therefor.
  
  - 2. Conclusions based upon any provision of the Pennsylvania Municipalities Planning Code or upon any ordinance, rule, or regulation of the Township shall contain a reference to the provision relied upon and the reason(s) why the conclusion is deemed appropriate in the light of the facts found.
  
  - 3. If the hearing is conducted by the 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 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. The Board’s decision shall be entered no later than thirty (30) days after the report of the Hearing Officer.
  
  - 4. 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 working day next following the date of the decision or findings. 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 where the full decision or findings may be examined.
  
  - 5. Where the Board fails to render a decision within the period required by this Section or fails to hold the required hearing within sixty (60) days from the date of the applicant’s request for a hearing, then 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.
  
  - 6. 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 hereabove provided, the Board shall give public notice of said decision within ten (10) days from the last day it could have met to render a decision in the manner described in Section 1604.C of this Ordinance. If the Board shall fail to provide such notice, the applicant may do so.

- R. Nothing in this Section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

**1605 Hearings on Substantive Questions**

- A. A landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either to the Zoning Hearing Board in accordance with the provisions of Section 1604 of this Ordinance or to the Board of Supervisors along with a request for a Curative Amendment.
- B. Persons aggrieved by a use or development permitted on the land of another by an ordinance or map in effect in Hereford Township or by any provision thereof, who desire to challenge the validity of such ordinance or map, shall first submit their challenge to the Board for a hearing thereon.
- C. Such submissions as permitted by this Section 1605, and only such submissions, shall be governed by the following:
  - 1. The challenging party shall make a written request to the Board that it hold a hearing on its challenge. The request shall contain the reasons for the challenge.
  - 2. The Board shall commence its hearing(s) within sixty (60) days after the request is filed, unless the landowner requests or consents to an extension of time.
  - 3. Public notice of the hearing, as required by Section 1604.B and Section 1604.E of this Ordinance, 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 may be examined by the public. Such copy of the request shall include any plans, explanatory material, or proposed amendments as provided to the Township by the challenging landowner.
  - 4. Based upon the testimony presented at the hearing(s), the Board shall determine whether the challenged ordinance or map is defective, as alleged by the landowner.
  - 5. If the challenge is found by the Board to have merit, the decision of the Board 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:

- a. The impact of the proposal upon roads, sewer facilities, water supplies, schools, and other public service facilities.
  - b. 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.
  - c. The suitability of the site for the intensity of use proposed in consideration of the soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources, and other natural features found on the site.
  - d. 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.
  - e. The impact of the proposal on the preservation of agricultural and other land uses which are essential to public health and welfare.
6. The Board shall render its decision within forty-five (45) days after the conclusion of the last hearing.
7. If the Board fails to act upon the landowner’s request within forty-five (45) days, a denial of the request is deemed to have occurred on the forty-sixth (46<sup>th</sup>) day after the close of the last hearing.
8. If the Board fails to commence the hearing(s) on a request within sixty (60) days after submission, or within such period of extension as agreed to by both the Township and the landowner, a denial of the request is deemed to have occurred on the day following the last day of such period.
- D. Where a validity challenge is sustained by the Board or the court acts finally on appeal from denial of a validity challenge, and the proposal or 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 Plan approval in accordance with the regulations of the Hereford Township Subdivision and Land Development Ordinance. Within this two (2) year period, no subsequent change or amendment in the Zoning, Subdivision and Land Development, or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the sustained validity challenge.
- E. Where a proposal appended to an approved validity challenge does not require further application under the Hereford Township Subdivision and Land Development

Ordinance, the developer shall have one (1) year from the date of such approval within which to file for a building permit. Within this one (1) year period, no subsequent change or amendment in the Zoning, Subdivision and Land Development, or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the sustained validity challenge.

- F. Nothing in this Section shall be interpreted to preclude a landowner from first seeking a Final Plan approval prior to submission of a challenge.

**1606 Mediation Option**

- A. Parties to proceedings authorized in this Article, including appeals to court, may utilize mediation as an aid in completing such proceedings. Mediation shall supplement, not replace, those procedures provided for in this Article and the Pennsylvania Municipalities Planning Code once they have been formally initiated.
- B. In no case shall the Zoning Hearing Board initiate mediation or participate as a mediating party.
- C. Participation in mediation shall be wholly voluntary. The appropriateness of mediation shall be determined by the particulars of each case and the willingness of the parties to negotiate.
- D. Prior to commencement of the mediation process, the mediating parties, assisted by the mediator as appropriate, shall develop terms and conditions defining:
  - 1. Funding for the mediation process.
  - 2. Selection of a mediator who, at a minimum, shall have a working knowledge of municipal zoning and subdivision procedures in the Commonwealth of Pennsylvania and demonstrated skills in mediation.
  - 3. Completion of the mediation process, including time limits for such completion.
  - 4. Suspension of time limits otherwise authorized by this Ordinance and the Pennsylvania Municipalities Planning Code, provided that there is written consent by the mediating parties, and by an applicant or the Zoning Hearing Board if either is not a party to the mediation.
  - 5. Identification of all parties and affording them the opportunity to participate in the mediation process.
  - 6. Whether some or all of the mediation sessions shall be open or closed to the public. Such determination shall be subject to applicable legal restraints.

- 7. That mediated solutions shall be in writing and signed by the mediating parties, and shall be subject to the review and approval of the appropriate decision-making body of the Township, pursuant to the procedures set forth by this Ordinance and the Pennsylvania Municipalities Planning Code.
- E. No offers or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceeding.
- F. Nothing in this section shall be interpreted as expanding or limiting municipal police powers or as modifying any principles of substantive law.

**1607 Stay of Proceedings**

- A. Upon filing of any proceeding described in this Article 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 over zoning appeals. Such restraining order shall be granted only upon petition and after notice of such petition has been given to the Zoning Officer or other appropriate agency or body.
- B. When Preliminary Plan approval or Final Plan approval for a subdivision or land development has been granted, and proceedings designed to reverse or limit such 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 of continuing the proceedings before the Board.
- C. 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.
- D. 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.
- E. The question of 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.

- F. 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, then 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.