

**ARTICLE 16.**  
**ZONING HEARING BOARD, HEARINGS AND JURISDICTION**

**16.01 Creation of Zoning Hearing Board and Appointments**

Pursuant to Article IX of the Pennsylvania Municipalities Planning Code, Act 247 of 1968 as amended, the Southampton Township Board of Supervisors hereby creates a Zoning Hearing Board, consisting of three members who shall be residents of the township. Members of the Zoning Hearing Board shall hold no other office in the Township, either elected or appointed. The terms of office shall be three years and shall be so fixed that the term of office of no more than one member shall expire each year. The Zoning Hearing Board shall promptly notify the Township Supervisors of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.

**16.02 Alternate Members**

The Board of Supervisors may appoint by resolution at least one but no more than three residents of the municipality to serve as alternate members of the Zoning Hearing Board. The term of office of an alternate member shall be three years. When seated pursuant to the provisions of Section 16.04, 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 in this ordinance and as otherwise provided by law.

Alternates shall hold no other office in the Township, including membership on the Planning Commission or Zoning Officer. 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 16.05 unless designated as a voting alternate member pursuant to Section 16.04.

**16.03 Removal of Members**

Any Zoning Hearing 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 which appointed the member, taken after the member has received 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.

**16.04 Organization of Board**

- A. The Zoning Hearing 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 Section 16.06.

- B. If, by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Zoning Hearing 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. The Zoning Hearing Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the municipality and laws of the Commonwealth. The Board shall keep full public records of its business, which records shall be the property of Southampton Township, and shall submit a report of its activities to the Board of Supervisors as requested by the Board of Supervisors.

#### **16.05 Expenditures for Services**

Within the limits of funds appropriated by the governing body, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Zoning Hearing Board may receive compensation for the performance of their duties, as may be fixed by the Board of Supervisors but in no case shall it exceed the rate of compensation authorized to be paid to the members of the Board of Supervisors. 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 alternate members pursuant to section 16.04, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members of the Board of Supervisors.

#### **16.06 Hearings**

The Zoning Hearing Board shall conduct hearings and make decisions in accordance with the following requirements:

- A. Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer, such other persons as the Board of Supervisors shall designate by ordinance and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provision, by rules of the Zoning Hearing Board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.
- B. 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 Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs.

- C. The hearing shall be held within 60 days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.
- D. The hearings shall be conducted by the Zoning Hearing Board, or the Zoning Hearing Board may appoint any member as a hearing officer. The decision or, where no decision is called for, the findings, shall be made by the full Zoning Hearing 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 full Zoning Hearing Board and accept the decision or findings of the hearing officer as final.
- E. The parties to the hearing shall be Southampton Township, any person affected by the application who has made timely appearance of record before the Zoning Hearing Board, and any other person including civic or community organizations permitted to appear by the Board. The Zoning Hearing 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 that purpose.
- F. The chairman or acting chairman of the Zoning Hearing Board or the hearing officer presiding 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.
- G. 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 cross-examine adverse witnesses on all relevant issues.
- H. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
  
- I. The Zoning Hearing 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 Zoning Hearing Board. The cost of the original transcript shall be paid by the Zoning Hearing Board if the transcript is ordered by it or by the hearing officer, or shall be paid by the person appealing from the decision of the Zoning Hearing 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.

- J.** The Zoning Hearing Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their 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 hearings with any party or his representative unless all parties are given an opportunity to be present.
- K.** The Zoning Hearing Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the Zoning Hearing 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. Conclusions based on any provisions of this ordinance or of any other ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the Zoning Hearing Board shall make his report and recommendations available to the parties within 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 30 days after the report of the hearing officer.

Where the Zoning Hearing Board fails to render its decision within the

period required by this Subsection, or fails to hold the required hearing within sixty (60) days from the date of the applicant's request for a hearing, 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 Zoning Hearing Board to meet or render a decision as hereinabove 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 same manner as provided in Subsection A. of this Section. If the Zoning Hearing Board shall fail to provide such notice, the applicant may do so. Nothing in this Subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

- L. 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 day following its date. To all other persons who have filed their name and address with the Zoning Hearing 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.

### 16.07 Jurisdiction

- A. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
  - 1. Substantive challenges to the validity of any land use ordinance, except those brought before the Board of Supervisors pursuant to section 690.1 and 916.1(a) (2) of the Pennsylvania Municipalities Planning Code.
  - 2. 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 30 days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the municipality and a Zoning Hearing Board has not been previously established, the appeal raising procedural questions shall be taken directly to court.
  - 3. 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 therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.

4. Appeals from a determination by a municipal 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.
  5. Applications for variances from the terms of the zoning ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 16.09.
  6. Applications for special exceptions under the zoning ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 16.10.
  7. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the zoning ordinance.
  8. Appeals from the Zoning Officer's determination under section 916.2 of the Pennsylvania Municipalities Planning Code.
  9. Appeals from the 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 storm water management insofar as the same relate to development not involving Subdivision/Land Development Ordinance or Planned Residential Development applications.
- B.** The Board of Supervisors shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
1. Applications for curative amendment to the Zoning Ordinance pursuant to Sections 609.1 and 916.1(a) (2) of the Pennsylvania Municipalities Planning Code.
  2. All petitions for amendments to land use ordinances, pursuant to the procedures set forth in Article XI of the Pennsylvania Municipalities

Planning Code. Any action on such petitions shall be deemed legislative acts, provided that nothing contained in this clause shall be deemed to enlarge or diminish existing law with reference to appeals to court.

3. Appeals from the determination of the Zoning Officer or the municipal engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and stormwater management insofar as the same relate to application for land development under the Township Subdivision and Land Development Ordinance.

### 16.08 Applicability of Judicial Remedies

Nothing contained in this article shall be construed to deny the appellant the right to proceed directly to court where appropriate, pursuant to the Pennsylvania Rules of Civil Procedure No. 1091 (relating to action in mandamus).

### 16.09 Zoning Hearing Board's Functions; 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 Zoning Hearing 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 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.

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.
- B. 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 The Pennsylvania Municipalities Planning Code and this Zoning Ordinance.

#### **16.10 Zoning Hearing Board's Functions; Special Exceptions**

Where the Board of Supervisors, in the Zoning Ordinance, has stated special exceptions 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 exceptions in accordance with such standards and criteria. In granting a special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of The Pennsylvania Municipalities Planning Code and the Zoning Ordinance.

#### **16.11 Parties Appellant Before the Board**

Appeals under Section 16.07 A. 1, 2, 3, 4, 7, 8, and 9 may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Township, or any person aggrieved. Requests for a variance under section 16.09 and for special exception under section 16.10 may be filed with the Zoning Hearing Board by any landowner or any tenant with the permission of such landowner.