

ARTICLE XIX
ZONING HEARING BOARD

The Zoning Hearing Board of the Township of Center, hereinafter in this Article known as the "Board," shall exercise the following powers as prescribed by the Pennsylvania Municipalities Planning Code.

§ 20-1901. OPERATION OF THE BOARD

A. Membership

1. The membership of the Board shall consist of three (3) persons, all residents of the Township of Center, who shall be appointed by the Board of Township Supervisors and may succeed themselves.
2. Members of the Board shall hold no other office in the Township.
3. The Board of Township Supervisors may appoint, by resolution, a maximum of three (3) residents of the Township to serve as alternate members on the Board. The term of office as an alternate member shall be three (3) years. When seated pursuant to the provisions of Section 20-1901 D 6, 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 a Board member, 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 Chapter, and as otherwise provided by law. Alternates shall hold no other office in the Township, including membership on the Planning Commission or as the Zoning/Code Enforcement 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, unless designated as a voting alternate member.

B. Terms of Office

1. Members of the Board shall be appointed for three (3) year, staggered terms, with one (1) appointment each year to refill a completed term.
2. Appointments to fill vacancies shall be made by the Board of Township Supervisors for the unexpired portion of a term only.

C. Removal of Members

1. 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 Township Supervisors, taken after the Board member has received at least fifteen (15) days notice such vote will be taken.
2. The Board member thus accused, may request, by written communication to the Chairperson of the Board of Township Supervisors no later than seven (7) days prior to the meeting of the Board of Township Supervisors, at which the vote for removal is to be taken, for a hearing before the Board of Township Supervisors, after which the Board of Township Supervisors, at its discretion, may take a vote for removal of the Board member.

D. Organization of the Board

1. The Board shall annually elect officers from among its membership, to include a Chairman, Vice-Chairman and Secretary.
2. The Board shall hold meetings as necessary in order to conduct business.
3. The Board shall reorganize at its first meeting in each calendar year. Board members may succeed themselves in their positions.
4. The Chairman shall call and chair all meetings of the Board. The Vice-Chairman shall act in the absence of the Chairman.
5. The Secretary may keep the minutes of the proceedings, recording the vote of each member; may transcribe and distribute all testimony given at hearings under procedures described below, may draw up the agenda for each meeting, may be responsible for placing of notices for public hearings, and may handle all correspondence.
6. A quorum for the conduct of any hearing, or the taking of any action shall be not less than two (2) members. If, by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Board shall designate as many alternate members of the Board to set 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.

7. The Board may appoint one of its members as a Hearing Officer to conduct a hearing on behalf of the Board, and parties to such hearing may waive further action by the Board if satisfied with the Hearing Officer's ruling.
8. The Board may make, alter or rescind rules and forms for its procedure consistent with this and other regulations of the Township of Center and the laws of the Commonwealth.
9. The Board shall keep full public records of its business and shall submit an annual report of its activities to the Board of Township Supervisors as requested.

§ 20-1902. JURISDICTION

- A. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudication in the following matters:
 1. Substantive challenges to the validity of any land use chapter, except those brought before the Board of Township Supervisors pursuant to Section 20-2003 and Section 20-2004.
 2. Challenges to the validity of a land use chapter 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 this Chapter.
 3. Appeals from the determination of the Zoning/Code Enforcement Officer, including but not limited to, the granting or denial of any permits; the 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/Code Enforcement Officer with reference to the administration of the Township's Floodplain regulations.
 5. Applications for variance from the terms of the Zoning Chapter or Floodplain regulations.
 6. Applications for special exceptions under the Zoning Chapter or Floodplain regulations.
 7. Appeals from the Zoning/Code Enforcement Officer's determination under Article XVIII.
 8. Appeals from the determination of the Zoning/Code Enforcement Officer or municipal engineer in the administration of any land use chapter or provision thereof with reference to sedimentation and erosion control and stormwater

management insofar as the same relate to development not involving the Subdivision and Land Development or Planned Residential Development (PRD) applications.

- B. The Board of Township Supervisors shall have exclusive jurisdiction to hear and render final adjudication in the following matters:
 - 1. All applications pursuant to Section 20-1303, for approval of land development plans.
 - 2. Applications for conditional use under the express standards and criteria of this Chapter pursuant to Article XIV.
 - 3. Applications for curative amendment to this Chapter pursuant to Sections 20-2003 and Section 20-2004)
 - 4. All petitions for amendments to land use ordinances, pursuant to the procedures set forth in Section 20-2002.
 - 5. Appeals from the determination of the Zoning/Code Enforcement Officer or the municipal engineer in the administration of any land use chapter, or provisions thereof, with reference to erosion and sedimentation controls and stormwater management, insofar as the same relate to an application for land development under Section 20-1303. Where such determination relates only to development not involving a land development application, the appeal from such determination shall be to the Zoning Hearing Board pursuant to Section 20-1902 A.
- C. 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).

§ 20-1903. HEARINGS

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

- A. The Board shall call and hold a public hearing within sixty (60) days of receiving an application of appeal, requesting a hearing, accompanied by the required filing fee.
- B. Notice of the hearing shall be placed in the classified section of a newspaper of general local circulation once in each of two (2) consecutive weeks, the first notice appearing not more than thirty (30) days and the second, not less than seven (7) days prior to the hearing. Notices shall indicate the date, time and place of the hearing, and the particular nature of the matter to be considered, as well as the street address of the specific property involved. In

addition, written notice of said hearing shall be conspicuously posted on the tract of land at least one (1) week prior to the hearing.

- C. Written notice shall be given to the applicant, the Zoning/Code Enforcement Officer, the Secretaries of the Board of Township Supervisors and the Planning Commission, to the owners of property within three hundred feet (300') of the boundary of the property to which the hearing applies, and to other parties who have filed a timely request to receive notice.
- D. The parties to the hearing shall be the Township, the party filing the application, any party affected by the application which has a request to appear with the Board Secretary prior to the hearing, and any other person, civic or community organization which the Board permits to appear after filing a request to appear.
- E. Hearings shall be conducted by the Board, or the 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 Board, but the parties may waive a decision or findings by the Board and accept the decision or findings of the Hearing Officer as final.
- F. The chairman or acting chairman of the Board, or the Hearing Officer presiding, shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and the 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 arguments and to cross-examine adverse witnesses on all relevant issues. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.
- H. The Board or the Hearing Officer (if he is conducting the hearing), 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 the 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.
- I. The Board, or the Hearing Officer, shall not communicate, directly or indirectly, with any party and/or representative of any party in connection with any issue relevant to the hearing, except upon

notice and opportunity for all parties to participate; shall not take legal notice of any communication reports or other material so noticed; shall not inspect the site or its surroundings with any party and/or representative of any party after the start of hearings, unless all parties are given an opportunity to be present.

- J. The Board or Hearing Officer shall render a written decision, or when no decision is required, make written findings on the application within forty-five (45) days after the conclusion of the hearing before the Board or Hearing Officer. Decisions shall be accompanied by findings of fact and conclusions based on them, together with the reasons therefore. Conclusions based on any provisions of this Chapter or any other chapter or regulation of the Township or the Municipalities Planning Code shall contain a reference to the provision relied on and the reason why a conclusion is deemed appropriate in the light of facts found.
- K. 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 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, and the Board's decision shall be entered no later than thirty (30) days after the report of the Hearing Officer.
- L. Where the Board fails to render the decision within the forty-five (45) day period required above, 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 record, to an extension of time.
- M. 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 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 Section 20-1903 J, above. If the Board fails to provide such notice, the applicant may do so. Nothing in this section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.
- N. A copy of the final decision, or the findings if no decision is required, shall be mailed to the applicant not later than the day after the date of the decision. All others requesting notice of the decision not later than the last day of the hearing, shall receive, by mail, a summary of the findings or decision and a statement of the place at which the full decision or findings may be examined.

§ 20-1904. MEDIATION OPTION

- A. Parties to proceedings authorized in this Article may utilize mediation as an aid in completing such proceedings. In proceedings before the Zoning Hearing Board, in no case shall the Zoning Hearing Board initiate mediation or participate as a mediating party. Mediation shall supplement, not replace, those procedures in this Article once they have been formally initiated. Nothing in this Section shall be interpreted as expanding or limiting the Township's police powers or as modifying any principles of substantive law.
- B. 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. The Township assures that, in each case, the mediating parties, assisted by the mediator as appropriate, will develop terms and conditions for:
1. Funding mediation.
 2. Selecting a mediator who, at a minimum, shall have a working knowledge of municipal zoning and subdivision procedures and demonstrated skills in mediation.
 3. Completing mediation, including time limits for such completion.
 4. Suspending time limits otherwise authorized in this Chapter, provided there is written consent by the mediating parties, and by an applicant or municipal decision-making body if either is not a party to the mediation.
 5. Identifying all parties and affording them the opportunity to participate.
 6. Subject to legal restraints, determining whether some, or all, of the mediation sessions shall be open or closed to the public.
 7. Assuring that mediated solutions are in writing and signed by the parties, and become subject to review and approval by the appropriate decision-making body pursuant to the authorized procedures set forth in this Chapter.
- C. 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 proceedings.

§ 20-1905. FUNCTIONS OF THE BOARD

- A. Variances:

1. The Board shall hear requests for variances where it is alleged that the provisions of the zoning regulations inflict unnecessary hardship upon the applicant. An appeal for a variance may be filed with the Board by any landowner, or any tenant, with the landowner's permission.
2. The Board may grant a variance provided that all of the following findings are made where relevant in the given case:
 - a. That there is a unique physical circumstances or conditions, including, but not limited to, 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 this Chapter in the neighborhood or district in which the property is located;
 - b. 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 this Chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
 - c. That such unnecessary hardship has not been created by the appellant;
 - d. That the variance, if authorized, will not alter the essential character of the neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and
 - e. 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.
3. If the Board finds in favor of the appellant, it may prescribe appropriate conditions and safeguards deemed necessary to implement the purposes and intent of this Chapter and the Comprehensive Plan.
4. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the zoning district containing the property for which the

variance is sought, or any use expressly, or by implication, prohibited by the terms of this Chapter in the zoning district.

§ 20-1906. ZONING APPEALS

- A. No person shall be permitted to file an appeal with the Board later than thirty (30) days after an application for development, whether preliminary or final, has been approved by the appropriate municipal office or body, if such appeal is intended to reverse or limit the approval in any manner. Only if the appellant is able to prove that he/she had no notice or knowledge of the approval can the Board extend the time limit. Successor owners shall be bound by the knowledge of their predecessors in interest.
- B. 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.
- C. Upon the filing of an appeal, and while an appeal is pending before the Board, any development pursuant to any challenged chapter, order or approval of the Zoning/Code Enforcement Officer or of any agency or body, and all official action thereunder, shall be stayed unless the Zoning/Code Enforcement Officer 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 the Court having jurisdiction of zoning appeals, on petition, after notice to the Zoning/Code Enforcement Officer or other appropriate agency or body.
- D. Zoning Appeals to the Court:
 - 1. Shall include any appeals from the decisions of the Board;
 - 2. Shall be to the Court having jurisdiction, that is the Butler County Court of Common Pleas;
 - 3. May be taken to Court by any party before the Board, or any officer or agency of the Township of Center;
 - 4. Shall be filed not later than thirty (30) days after the issuance of notice of the decision or report of the Board;
 - 5. A developer having received approval from the Township for his/her development and faced with an appeal brought by others before the Board, may petition the Court to order those bringing the appeal to post a bond in an amount established by the Court as a condition of the appeal's continuation before the Board.

- E. Rehearing - If any application for a variance, special exception or appeal from the Zoning/Code Enforcement Officer is denied by the Board, another application for the same request shall not be filed within a period of one (1) year from the date of denial.