

ARTICLE XV

Zoning Hearing Board

Section 1500 Jurisdiction

a. Zoning Hearing Board's Jurisdiction:

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 Borough Council. (Landowner Curative Amendments)
- 2) Challenges to the validity of any 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.
- 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 therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.
- 4) Appeals from the Zoning Officer's determination of Preliminary Opinion.
- 5) Appeals from the determination of the Zoning Officer or Borough 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 applications.
- 6) Appeals from the determination of the Zoning Officer or Borough Engineer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.
- 7) Applications for variances from the terms of this Ordinance or any flood plain or flood hazard ordinance or such provisions within a land use ordinance.

b. Applicability of Judicial Remedies:

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

Section 1501 Zoning Hearing Board Creation and Appointment

Pursuant to Article IX of the Pennsylvania Municipalities Planning Code, as amended, the Felton Borough Council hereby creates a Zoning Hearing Board consisting of three members who shall be residents of the Borough. Members of the Zoning Hearing Board shall hold no other office in the Borough.

a. Terms of Office:

- 1) 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.
- 2) The Zoning Hearing Board shall promptly notify the Borough Council of any vacancies that occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.

b. Alternate Members:

The Borough Council may appoint by resolution at least one but no more than three residents of the Borough to serve as alternate members of the Zoning Hearing Board. The term of office of an alternate member shall be three years. 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 Zoning Hearing 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 otherwise provided by law. Alternates shall hold no other office in the Borough, including membership on the Planning Commission and 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 unless designated as a voting alternate member.

c. Removal of Members:

Any member of the Zoning Hearing Board may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Borough Council taken after the member has received fifteen 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.

Section 1502 Organization of the Zoning Hearing Board

- a. The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms and as such 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 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 of the Board.
- b. 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 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 Borough of Felton and laws of the Commonwealth of Pennsylvania. The Zoning Hearing Board shall keep full public records of its business, which records shall be the property of the Borough, and shall submit a report of its activities to the Borough Council as requested by the Borough Council.

Section 1503 Expenditures for Services

Within the limits of funds appropriated by the Borough Council, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services.

Section 1504 Hearings of the Zoning Hearing Board

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

- a. Public Notice:

Public notice shall be given and written notice shall be given to (1) the applicant, (2) the Borough Zoning Officer and (3) to any person who has made timely request for same. Written notices shall be given at such time and in such manner as shall be prescribed 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. Fees:

The Borough Council may prescribe reasonable fees with respect to hearings before the Zoning Hearing Board. Fees for said hearings may include compensation for the secretary 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. Conduct of Hearing:

The hearing shall be held within sixty days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing shall be within 45 days of the prior hearing unless otherwise agreed to by the applicant. Any party aggrieved by the schedule progress of the hearings may apply to the court of common pleas for judicial relief. The hearing shall be completed no later than 100 days after the completion of the applicant's case in chief, unless extended by good cause upon application to the court of common pleas. The hearings shall be conducted by the Zoning Hearing Board or the Zoning Hearing 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 Zoning Hearing Board; however, the appellant or the applicant, as the case may be, in addition to the Borough, may, prior to the decision of the hearing, waive decision or findings by the Zoning Hearing Board and accept the decision or findings of the hearing officer as final.

d. The parties to the hearing shall be the Borough of Felton, 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 before the Board. The Zoning Hearing Board shall have the 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.

e. 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.

- f. 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.
- g. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- h. 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 Board. 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.
- i. The Zoning Hearing Board or 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.
- j. Decisions:

The Zoning Hearing Board, the hearing officer, or independent attorney, as the case may be, shall render a written decision or, when no decision is called for; make written findings on the application within forty-five (45) days after the last hearing before the Zoning Hearing Board, hearing officer, or independent attorney. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with reasons therefore. Conclusions based on any provisions of this Ordinance or any Borough ordinance, rule or regulation, or the Pennsylvania Municipalities Planning Code, Act 247, as amended, 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 forty-five (45) days and the parties shall be entitled to make written representations thereon to the Zoning Hearing 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 or independent attorney. Where the Zoning Hearing Board fails to render the decision within the period required by this subsection, or fails to hold the required 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. Nothing in this Section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

k. To all other persons who have filed their name and address with the Zoning Hearing Board no 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.

l. Effect of Board's Decision:

1) If the variance is granted or the issuance of a permit is finally approved, or other action by the appellant or applicant is authorized, the necessary permit shall be secured and the authorized action begun within six (6) months after the date when the variance is finally granted, or the issuance of a permit is finally approved or the other action by the appellant or applicant is authorized and provided further that the building or alteration, as the case may be, shall be completed within twelve (12) months of authorization by the Zoning Hearing Board. For good cause, the Board, upon application by the applicant in writing stating the reasons therefore, may grant an extension or extensions of time for the commencement of the authorized action in six (6) month increments, or may grant an extension or extensions of time for the completion of the authorized action in six (6) month increments. Where time allowed for the commencement of the authorized action has been granted an extension, the time allowed for the completion of the authorized action shall be automatically extended by an equal amount of time.

2) Should the appellant or applicant fail to obtain the necessary permits within the required period, or having obtained the permit should he fail to commence work within such period, it shall be conclusively presumed that the applicant has withdrawn or abandoned his appeal or his application, and all provisions, variances, special exceptions and permits granted to him shall be deemed automatically rescinded by the said Board.

- 3) Should the appellant or applicant commence construction or alteration within the required period but fail to complete such construction or alteration within such period, the Board may, upon ten (10) days' notice in writing, rescind or revoke the granted variance, or the issuance of the permit or permits, or the other action authorized to the appellant or applicant, if the board finds that no good cause appears for the failure to complete such construction or alteration within such period, and if the Board further finds that conditions have so altered or changed in the interval since the granting of the variance, special exception, permit or action, that revocation of the action is justified.

Section 1505 Special Exceptions

a. Filing of Special Exceptions : For any use permitted by special exception, a special exception must be obtained from the Zoning Hearing Board. In addition to the information required on the building permit application, the special exception application must show:

- 1) Ground floor plans and elevations of proposed structures.
- 2) Names and addresses of adjoining owners.

Unless otherwise specified or extended by the Zoning Hearing Board a special exemption authorized by the Board expires if the applicant fails to obtain, where required to do so, a building permit or use certificate within six (6) months of the date of the authorization of the special exception.

b. Temporary Special Exceptions: A temporary special exception must be obtained from the Zoning Hearing Board for any nonconformity which is or will be seasonal or is or will be in the public interest. The Zoning Hearing Board may grant a temporary special exception for a nonconforming use or structure, existing or new, which:

- 1) Is beneficial to the public health or general welfare, or
- 2) Is necessary to promote the proper development of the community, or
- 3) Is seasonal in nature.

The temporary special exception may be issued for a period not exceeding one (1) year, and may be renewed for an aggregate period not exceeding three (3)

years. The nonconforming structure or use must be completely removed upon the expiration of the special exception without cost to the Borough.

- c. Referral to Planning Commission: All applications for a special exception shall be referred to the Borough Planning Commission for a recommendation, if applicable.
- d. Conditions: The Zoning Hearing Board in passing upon special exception applications may attach conditions considered necessary to protect the public welfare and the Township's "Directions" report along with the York County Comprehensive Plan, including conditions which are more restrictive than those established for other uses in the same zone.
- e. Application of Extent-of-Use Regulations: The extent-of-use regulations as set forth in this Ordinance must be followed by the Zoning Hearing Board. Where no extent-of-use regulations are set forth for the particular use, the Board must impose extent-of-use requirements as necessary to protect the public welfare and the Township's "Directions" report along with the York County Comprehensive Plan.
- f. General Standards: A special exception may be granted when the Zoning Hearing Board finds from a preponderance of the evidence produced at the hearing that:
 - 1) The proposed use, including its nature, intensity and location, is in harmony with the orderly and appropriate development of the zone; and
 - 2) That adequate water supply, sewage disposal, storm drainage and fire and police protection are or can be provided for the use; and
 - 3) That the use of adjacent land and buildings will not be discouraged and the value of adjacent land and buildings will not be impaired by the location, nature and height of buildings, walls and fences; and
 - 4) That the use will have proper location with respect to existing or future streets giving access to it, and will not create traffic congestion or cause industrial or commercial traffic to use residential streets; and
 - 5) That the specific standards set forth for each particular use for which a special exception may be granted have been met.

The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of

persuasion on all questions of fact, which are to be determined by the Zoning Hearing Board.

- g. Special Standards: In addition to the general standards for all special exceptions as contained in Section 1505.g the specific standards for particular uses as listed in Article XIII must be met prior to the granting of a special exception.

Section 1506 Zoning Hearing Board - Functions

- a. Variances: The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of the 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; 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 the Zoning Ordinance and the Municipalities Planning Code.

Section 1507 Parties Appellant before Zoning Hearing Board

Appeals filed with the Zoning Hearing Board shall be in writing by the landowner affected, any officer or agency of the Borough, or any person aggrieved. Requests for a variance may be filed with the Zoning Hearing Board by any landowner, equitable owner, or tenant with the permission of such landowner.

Section 1508 Time Limitations

- a. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after any application for development, preliminary or final, has been approved by an appropriate Borough officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner. 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 the Zoning Ordinance or Zoning Map shall preclude an appeal from the final approval except in the case where the final submission substantially deviates from the approved preliminary approval.
- b. 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.

Section 1509 Stay of Proceedings

Upon filing of any proceeding referred to in this Ordinance and during its pendency before the Zoning Hearing 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 Zoning Hearing 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 Zoning Hearing Board or by the 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 Zoning Hearing 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 Zoning Hearing Board.