

Article 7

Zoning Hearing Board

Section 700 Establishment and Membership of the Zoning Hearing Board

When used hereafter in this Article, the word “Board” shall mean the Zoning Hearing Board.

There shall be a Zoning Hearing Board which shall consist of three (3) members who shall be appointed by resolution of the Board of Supervisors. The membership of the Board shall consist of residents of the Township. Their terms of office shall be three (3) years and shall be so fixed that the term of office of one member shall expire each year. The Board shall promptly notify the Board of Supervisors of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the Township. Any member of the Board 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 member has received fifteen (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 of the Board shall request, in writing, such hearing.

The Board of Supervisors may appoint by resolution at least one (1), but no more than three (3) residents of the municipality to serve as alternate members of the Board. The term of office of an alternate member shall be three (3) years. When seated pursuant to the provisions of Section 701, 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 municipality, 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 nor be compensated pursuant to

Section 702, unless designated as a voting alternate member pursuant to Section 701 of this Ordinance.

Section 701 Organization of the Zoning Hearing Board

The 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 two (2) 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 703. 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. The Board may make, alter, and rescind rules and forms for its procedure, consistent with Ordinances of the Township and laws of the Commonwealth. The Board shall keep full public records of its business, which records shall be the property of the Township, and shall submit a report of its activities to the Board of Supervisors upon request.

Section 702 Expenditures for Services

Within the limits of funds appropriated by the Board of Supervisors, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties, as may be fixed by 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 701, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members by the Board of Supervisors.

Section 703 Hearings

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

1. Public notice shall be provided once each week for two (2) successive weeks in a newspaper of general circulation in the Township. The first publication shall be not more than thirty (30) days and the second publication shall be not less than seven (7) days from the date of the hearing. In addition, the Zoning Hearing Board shall provide written notice to the Zoning Officer, Township Secretary, each member of the Board of Supervisors, Secretary of the Township Planning Commission, the applicant, and every other person or organization who shall have registered with the Zoning Hearing Board for the purpose of receiving such notices. Such written notices shall state the location of the site and the nature of the request. It shall also state the time, date, and location of the proposed hearing. 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 (1) week prior to the hearing;
2. 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; and,
3. The first hearing before the Zoning Hearing Board or its Hearing Officer shall be commenced within sixty (60) days from the date of the receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the Zoning Hearing Board or its hearing officer shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of his case-in-chief within one hundred (100) days of the first hearing. Upon request of the applicant, the Board or Hearing Officer shall assure that the applicant received at least seven (7) hours of hearings within the one hundred (100) days, including the first hearing. Persons opposed to the application shall complete their opposition to the application within one-hundred (100) days of the first hearing held after the completion of the applicant's case-

in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and municipality, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.

- 703.2. The hearings shall be conducted by the Board or the 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 Board however, the appellant or the applicant, as the case may be, in addition to the municipality, 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;
- 703.3. 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 that purpose.
- 703.4. The Chairman or acting chairman of the 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.
- 703.5. 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.
- 703.6. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded;
- 703.7. 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;

or shall be paid by the person appealing the decision of the Board if such appeal is made, and in the 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;

703.8. The 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.

703.9. The 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 forty-five (45) days after the last hearing before the Board or Hearing Officer. When the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefore. Conclusions based on any provisions of the Municipalities Planning Code or of this 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 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. Except for substantive challenges to the validity of the Zoning Ordinance filed under Section 916.1 of the Municipalities Planning Code where the Board fails to render the decision within the period required by this subsection, or fails to commence, conduct, or complete the required hearing as provided in Section 703.1.3 of this Ordinance, 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 Board to meet or render a 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 703.1 of this Ordinance. If the 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; and,

703.10. 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 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.

Section 704 Functions of the Zoning Hearing Board

The Zoning Hearing Board shall have the exclusive jurisdiction to hear and render decisions in the following matters:

704.1. Substantive challenges to the validity of the Zoning Ordinance, except those brought before the Board of Supervisors pursuant to Section 803.6 of this Ordinance.

1. If a challenge heard by a Zoning Hearing Board is found to have merit, the decision of the Zoning Hearing Board shall include recommended amendments to the challenged Ordinance which will cure the defects found. In reaching its decision, the Zoning Hearing 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 Official Zoning Map.

- C. The suitability of the site for the intensity of use proposed, considering the site’s soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources and other natural features.
- D. The impact of the proposed use on the site’s soils, slopes, woodlands, wetlands, floodplains, 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 agriculture and other land uses which are essential to public health and welfare.

- 2. Public notice of the hearing shall be provided as specified in Section 803.2.1 of this Ordinance.
- 3. The Zoning Hearing Board shall commence its hearings within sixty (60) days after the request is filed, unless the landowner requests or consents to an extension of time;
- 4. The Zoning Hearing Board shall render its decision within forty-five (45) days after the conclusion of the last hearing. If the Board fails to act on the landowner’s request within this time limit, a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.

704.2. Challenges to the validity of the Zoning 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 the Ordinance;

704.3. Special exceptions, as provided for in this Ordinance and subject to all applicable requirements, including, but not limited to:

- 1. Filing Requirements - In addition to the required zoning permit information (see Section 801) each special exception application shall include the following:
 - A. Ground floor plans and elevations of proposed structures;

- B. Names and addresses of adjoining property owners, including properties directly across a public right-of-way;
 - C. A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Ordinance; and,
 - D. A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Ordinance.
2. General Criteria - Each applicant must demonstrate, by credible evidence, compliance with the following:
- A. The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance.
 - B. The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties.
 - C. The proposed use will not substantially change the character of the subject property's neighborhood.
 - D. Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, parks, solid waste disposal, vehicular access, etc).
 - E. The proposed use shall comply with those criteria specifically attached to it. In addition, the proposed use must comply with all other applicable regulations contained in this Ordinance.
 - F. The traffic generated by the proposed use shall be safely and adequately accommodated during peak and non-peak periods, or improvements made by the applicant shall be made in order to effect the same.
 - G. The proposed use shall be in and of itself properly designed with regard to internal circulation, parking, buffering, screening, and all other elements of proper design as required by this

Ordinance and any other Federal, State, or local ordinance, law, or regulation.

- H. The proposed use will not have deleterious impact on adjoining properties or the neighborhood due to impacts and/or by-products of the proposed use, such as noise, dust, odor, smoke, litter, glare, heat, radiation, electromagnetic interference, etc.
- I. The proposed use will not substantially impair the integrity of the Comprehensive Plan.
- J. For development within the Floodplain Zone, the application shall comply with those requirements listed in Section 207 of this Ordinance.

3. Conditions - The Zoning Hearing Board in approving special exception applications may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same Zone. These conditions shall be enforceable by the Zoning Officer, and failure to comply with such conditions shall constitute a violation of this Ordinance and be subject to the penalties described in Article 8.

4. Site Plan Approval - Any site plan presented in support of the special exception pursuant to Section 704.3.1 shall become an official part of the record for said special exception. Approval of any special exception will also bind the use in accordance with the submitted site plan; therefore, should a change in the site plan be required as part of the approval of the use, the applicant shall revise the site plan prior to the issuance of a zoning permit. Any subsequent change made after the issuance of a zoning permit to the proposed use of the subject property which is not reflected on the approved site plan, may require the obtainment of another special exception approval.

704.4. Variances - The Board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The Board may, by rule, prescribe the form of application to the Zoning Officer, which shall at least include the following:

1. Filing Requirements - In addition to the required zoning permit information (see Section 801), each variance shall include the following:
 - A. Names and addresses of adjoining property owners, including properties directly across a public right-of-way.
 - B. A scaled drawing (site plan) with sufficient detail and accuracy so as to present the nature of the request and the unique site conditions that create hardship to strict compliance with this Ordinance.
 - C. A written description of the requested variance, along with a description of the hardship that is being alleged and all reasons why the variance should be granted.
2. General Criteria - The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:
 - A. 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 this Ordinance in the neighborhood or zone 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 Ordinance, and that the authorization of a variance is therefore necessary to enable reasonable use of the property.
 - C. That such unnecessary hardship has not been created by the applicant.
 - D. That the variance, if authorized, will not alter the essential character of the zone or neighborhood 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.

- E. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue.
- F. That variances within the Floodplain Zone shall comply with Section 207.11 of this Ordinance.
- G. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance. These conditions shall be enforceable by the Zoning Officer, and failure to comply with such conditions shall constitute a violation of this Ordinance and be subject to the penalties described in Article 8.

- 704.5. 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.
- 704.6. Appeals from the determination of the Floodplain Administrator or variances of the provisions contained within the Drumore Township Floodplain Management Ordinance. **(Amended by Ordinance 2016-06 adopted April 7, 2016)**
- 704.7. Appeals from the Zoning Officer's determination under Section 916.2 (and any subsequent amendments) of the Municipalities Planning Code.
- 704.8. Appeals from the determination of the Zoning Officer or municipal engineer in the administration of any land use ordinance with reference to sedimentation and erosion control and/or storm water management for applications not involving a subdivision/land development, nor a planned residential development as regulated in Articles V and VII of the Municipalities Planning Code, respectively.

Section 705 Parties Appellant Before the Zoning Hearing Board

Appeals under Sections 704.5, 704.6, 704.7, and 704.8 and proceedings to challenge this Ordinance under Sections 704.1 and 704.2 may be filed with the Board in writing by the landowner affected, any officer or agency of the Township, or any person aggrieved. Requests for a variance under Section 704.4 and for special exception under Section 704.3 may be filed with the Board by any landowner or any tenant with the permission of such landowner. Any appeal shall state:

- 705.1. The name and address of the appellant and applicant.
- 705.2. The name and address of the landowner of the real estate to be affected. If the landowner is not the appellant or applicant, the landowner’s written permission shall be attached to the appeal.
- 705.3. A brief description and location of the real estate to be affected by such proposed change, together with a plot plan drawn to scale with sufficient clarity to show the nature and character of the request.
- 705.4. A statement of the present zoning classification of the real estate in question, the improvements thereon, and the present use thereof.
- 705.5. A statement of the section of this Ordinance under which the request may be allowed, and reasons why it should, or should not be granted.

Section 706 Time Limitations

If a variance or special exception is granted or the issuance of a permit is approved, or other action authorized, the necessary permit shall be secured and the authorized action begun within two (2) years after the date when the variance or special exception is finally granted, or the issuance of a permit is finally approved, or the other action authorized, and the building or alteration, as the case may be, shall be completed within three (3) years of said date. For good cause the Board may, upon application in writing, stating the reasons therefore, extend either the two (2) year or three (3) year period.

Should the applicant fail to obtain the necessary permits within said two (2) year period, or having obtained the permit should he fail to commence work thereunder within such two (2) year

period, it shall be conclusively presumed that the applicant has waived, withdrawn, or abandoned his appeal or his application, and all provisions, variances and permits granted to him shall be deemed automatically rescinded by the Board.

Should the applicant commence construction or alteration within said two (2) year period, but should he fail to complete such construction or alteration within said three (3) year period, the Board may, upon ten (10) days' notice in writing, rescind or revoke the granted variance or special exception, or the issuance of the permit, or permits, or the other action authorized.

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 Zoning Officer or the agency responsible for granting such approval 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 or 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.

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 this Ordinance or the Official Zoning Map pursuant to Section 916.2 of the Municipalities Planning Code, as amended, shall preclude an appeal from a final approval, except in the case where the final submission substantially deviates from the approved tentative preliminary approval.

Section 707

Stay of Proceeding

Upon filing of any proceeding referred to in Section 705 and during its pendency before the Board, all land development pursuant to any challenged Ordinance, order or approval of the Zoning Officer or 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 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 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 Board.

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. 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. The question 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.

If the 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, 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.

Section 708

Appeal

Any person, taxpayer or the Township aggrieved by any decision of the Board may within thirty (30) days after such decision of the Board seek review by the Court of Common Pleas of such decision in the manner provided by the laws of the Commonwealth of Pennsylvania and Article X-A of the Municipalities Planning Code, as amended.