

ARTICLE IX
ZONING HEARING BOARD

§ 345-33. Organization.

- A. **General grant of power.** The Zoning Hearing Board (hereinafter referred to as "Board") created and existing under pre-existing zoning ordinances of the Borough shall continue under and in accordance with the provisions of this section. Matters pending before the Board at the time of enactment of this chapter shall continue and be completed under this chapter in effect at the time the board-acquired jurisdiction of said matter. Members of the Board appointed prior to the adoption of this chapter shall, after enactment, complete the remainder of the term for which they were appointed.
- B. **Appointment.**
- (1) The membership of the Board shall consist of three (3) residents of the Borough appointed by the Borough Council for a normal term of office of three (3) years, starting at the date of appointment. The first appointments shall be one (1) for one (1) year, one (1) for two (2) years, and one (1) for three (3) years so that the term of office of one (1) member shall expire each year. The Board shall promptly notify the Borough Council 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 Borough.
 - (2) Borough Council may appoint by resolution at least one (1) but no more than three (3) 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 (3) years. When seated pursuant to the provisions of Subsection C(1), an alternate shall be entitled to participate in all proceedings and discussions of the Zoning Hearing Board to the same and full extent as provided by this chapter for members of the Zoning Hearing Board, 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 Borough, including membership on the Planning Commission and Zoning Officer. Any alternate may participate in any proceeding or discussion of the Zoning Hearing Board but shall not be entitled to vote as a member of the Zoning Hearing Board nor be compensated pursuant to § 345-33E(4) of this chapter unless designated as a voting alternate member pursuant to § 345-33C(1) of this chapter.
- C. **Organization.** The Board shall elect its Chairman and Vice Chairman from its membership, who shall serve annual terms as such and may succeed themselves. The Board may make, alter and rescind rules and forms for its procedure, consistent with the provisions of the Pennsylvania Municipalities Planning Code and this chapter.
- (1) 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 § 345-34B. 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 Zoning Hearing Board to sit on the Zoning Hearing Board as may be needed to provide a quorum. Any alternate member of the Zoning Hearing Board shall continue to serve on the Zoning Hearing Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Zoning Hearing 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.

- (2) The Board shall keep full public records of its business, which records shall be the property of the Borough of Macungie, and shall submit a report of activities to the Borough Council once a year. The Board is authorized to employ a secretary or clerk, who is not a member of the Board, at a salary to be fixed by the Borough Council.
- D. Removal of members. Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Borough Council. Such a vote may be taken only after the member has received at least 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 requests it in writing.
- E. Compensation and expenditures.
- (1) Borough Council may appropriate funds to finance the preparation of zoning ordinances and amendments and shall appropriate funds for administration, for enforcement and for actions to support or oppose, upon appeal to the courts, decisions of the Zoning Hearing Board.
 - (2) Borough Council shall make provision in its budget and appropriate funds for the operation of the Zoning Hearing Board.
 - (3) Within the limits of funds appropriated by Borough Council, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. The legal counsel shall be an attorney other than the solicitor for the Borough.
 - (4) Members of the Zoning Hearing Board may receive compensation for the performance of their duties, as may be fixed by resolution of Borough Council, but in no case shall it exceed the rate of compensation authorized to be paid to the members of Borough Council. Alternate members of the Zoning Hearing Board may receive compensation, as may be fixed by resolution of Borough Council, for

the performance of their duties when designated as alternate members, but in no case shall such compensation exceed the rate of compensation authorized to be paid to members of Borough Council.

- (5) 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 a transcript is ordered by the Zoning Hearing Board or 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.
- F. Meetings. Meetings of the Board shall be held at the call of the Chairman, and at such other times as the Board may determine. Meetings shall be at sufficiently frequent intervals, at the discretion of the Board, for the efficient conduct of its business. All meetings shall be open to the public.

§ 345-34. Procedure.

- A. Rules of procedure. The Board shall adopt such rules of procedure, consistent with the provisions of the Pennsylvania Municipalities Planning Code and this chapter, as it may deem necessary to the proper performance of its duties and the proper exercise of its powers.
- B. Hearings. The Board shall conduct a public hearing for all decisions it must make. It may appoint any member as a hearing officer to conduct such hearings. The decision or, where no decision is called for, the findings shall be made by the Board, but the parties to the hearing may waive the decision or findings being made by the Board and accept the decision or findings of the hearing officer as final.
- C. Time limitations.
- (1) The hearings shall be held within sixty (60) days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.
- (2) No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision by the Zoning Hearing Officer on a challenge to the validity of this chapter, the Official Zoning Map or other ordinance pursuant to § 916.2 of the

Pennsylvania Municipalities Code, to the extent such decisions are permitted by this Ordinance, shall preclude an appeal from a final approval, except in the case where the final submission substantially deviates from the approved tentative approval.

- (3) All appeals from determinations adverse to the landowners, including appeals from any preliminary opinion of the Zoning Officer, to the extent permitted by this Ordinance, which is adverse to the landowner, shall be filed by the landowner within thirty (30) days after notice of the determination is issued.
- D. **Notice of Hearings.** Public notice, as defined in § 345-43 of this chapter, shall be given and written notice shall be given to the applicant, the Zoning Officer, all persons owning property adjoining the premises in question, and to any person who has made a timely request for the same. Written notices shall be given at least fifteen (15) days before the date of 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. It shall be the duty of the applicant to supply the names and addresses of adjoining property owners with the application.
- E. **Parties to the hearings.** The parties to the hearing shall be the applicant, the Borough, 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 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.
- (1) In any matter which relates to a property which lies within five hundred (500) feet of the boundary of another municipality, the secretary or clerk shall transmit to the municipal clerk of such other municipality a copy of the official notice to the public hearing on such matter, not later than one (1) day after publication thereof. Such other municipality shall have the right to appear and to be heard at such public hearing.
- F. **Minutes and records.** The Board or hearing officer, as the case may be, shall keep a stenographic record of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The secretary or clerk shall keep records of the Board's examinations and official actions, all of which shall be filed in the office of the Board and shall be public record. Copies of graphic or written material received in evidence and kept by the Board shall be made available to any party at cost. The cost of the stenographer's appearance fee and the cost of the original transcript and copies shall be paid as set forth in § 345-33E(5) of this chapter.
- (1) A record of all variances and special exception uses granted pursuant to action of the Board under this chapter shall be maintained. This record shall be available for public inspection, pursuant to the Right to Know Statute, Act of June 21, 1957, P.L. 390 § 1, et seq., as amended.

- G. Witnesses and evidence. The Chairman or acting Chairman of the Zoning Hearing 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 documents requested by the parties. 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. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- H. Communications with the parties. 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, and 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.
- I. Decisions. The Board or the hearing officer 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. 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 the Pennsylvania Municipalities Planning Code, of this chapter or 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.
- (1) 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. The Board's final decision or findings shall be entered no later than thirty (30) days after the decision of the hearing officer.
 - (2) Where the Board fails to render the decision within the time periods required, 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 he 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 as required, 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 Subsections D and E(1) above. If the Board shall fail 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 the Court of Common Pleas of Lehigh County, Pennsylvania.

- (3) 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 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.

§ 345-35. Appeals on interpretation of this chapter or map.

The Zoning Hearing Board is hereby granted exclusive jurisdiction, upon an appeal by an affected landowner, any officer or agency of the Borough, or any person aggrieved, to hear and decide:

- A. 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.
- B. Appeals from the 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.
- C. 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 applications under Articles V or VII of the Pennsylvania Municipalities Planning Code.
- D. Any other matter relating to this chapter, where an appellant seeks a review of any decision order or ruling made by the Zoning Officer.
- E. Any matter which the Zoning Officer appeals on grounds of doubt as to the meaning or intent of any provision of this chapter or as to the location of a district boundary line on the zoning map.

§ 345-36. Special exception uses.

Where a use requires a special exception review by the Board as noted in Article V, the applicant shall request a hearing by the Board.

- A. The Board shall hear and decide on the request in accordance with the standards and criteria for each special exception use set forth in Article VII. In determining that a use

shall be permitted, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter.

- B. The Board may require the submission or presentation of such plans and other materials as it deems necessary to make a proper determination. Any subsequent amendment or addition to plans for which a permit is sought shall be subject to review and public hearing by the Board.

§ 345-37. Variances.

The Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship upon the applicant, such as appeal from a denial of a Building Permit by the Zoning Officer.

- A. The Board may grant a variance provided the following findings are made 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 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.
 - (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 this chapter 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 Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter. A use permitted as the result of the granting of a variance shall not be construed to be a non-conforming use.

§ 345-38. Challenge to the validity of this chapter or Zoning Map.

- A. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications on the following matters:
- (1) Substantive challenges to the validity of any land use ordinance of the Borough, except those brought before Borough Council as landowner curative amendments pursuant to §§ 609.1 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 thirty (30) days after the effective date of said ordinance.
- B. In the case of a substantive challenge brought under Subsection A(1), the landowner or persons aggrieved shall submit a written request to the Board that it hold a hearing on the challenge. The request shall contain a short statement reasonably informing the Board of the matters that are at issue and the grounds for the challenge. A request submitted by a landowner shall be accompanied by plans and other materials describing the use or development proposed in lieu of the use or development permitted by this chapter. Such plans and other materials shall not be required to meet the drawing requirements prescribed in the Macungie Subdivision and Land Development Ordinance [Chapter 305] so long as they provide reasonable notice of the proposed use or development and a sufficient basis for evaluating this chapter in the light thereof.
- C. Public notice, as defined in § 345-43 of this chapter, shall be given for the hearing. Notice of such hearing shall include notice that the validity of this chapter is in question. Where the challenge is that of a landowner, the notice shall also give the place where and the times when a copy of the landowner's request, including the plans and other materials submitted, may be examined by the public. The 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.
- D. Based upon the testimony presented at the hearing or hearings, the Board shall determine whether the challenged ordinance or map is defective, as alleged by the landowner. If a challenge heard by the Board is found to have merit, the decision of the Board shall include recommended amendments to the challenged chapter, which will cure the defects found. In reaching its decision, the Board shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:
- (1) The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.
 - (2) 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 chapter or map.

- (3) The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features.
 - (4) The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts.
 - (5) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
- E. The Board shall decide on all contested questions and shall make findings on all relevant issues of fact.
- F. The challenge shall be deemed denied when:
- (1) The Board fails to commence the hearing within the time limits set forth in § 345-38C of this chapter.
 - (2) The Board fails to act on the request forty-five (45) days after the close of the last hearing on the request, unless the time is extended by mutual consent of the landowner and the Borough of Macungie.

§ 345-39. Persons with disabilities.

After the Zoning Officer receives a complete written application, the Zoning Hearing Board shall grant a special exception allowing modifications to specific requirements of this chapter that the applicant proves to the satisfaction of the Zoning Hearing Board are required under applicable Federal law to provide a "reasonable accommodation" to serve persons who the applicant proves have "disabilities" as defined in and protected by such laws.

- A. Such reasonable accommodations shall be requested in accordance with the U.S. Fair Housing Act Amendments and/or the Americans with Disabilities Act, as amended.
- B. If the applicant is requesting a reasonable accommodation under the United States Fair Housing Amendments Act of 1988 or the Americans with Disabilities Act, the applicant shall identify the disability which is protected by such statutes, the extent of the modification of the provisions of this chapter necessary for a reasonable accommodation, and the manner by which the reasonable accommodation requested may be removed when such person(s) with a protected disability no longer will be present on the property.

- C. Any modification approved under this section may be limited to the time period during which the persons with disabilities occupy or utilize the premises.