

Hamiltonban Township Zoning Ordinance

ARTICLE XXII

ENFORCEMENT AND ADMINISTRATION

SECTION 2200: STATEMENT OF LEGISLATIVE INTENT

The following standards shall establish the means and processes by which the Hamiltonban Township Zoning Ordinance is administered. These provisions include, but are not limited to, the establishment, organization, function, and responsibilities of the Hamiltonban Township Zoning Hearing Board, the appointment and responsibilities of the Hamiltonban Township Zoning Officer, and the process for application and issuance of Hamiltonban Township Zoning Permits.

SECTION 2201: APPOINTMENT OF A ZONING HEARING BOARD

The Hamiltonban Township Board of Supervisors shall, by resolution and in accordance with Section 903 of Municipalities Planning Code, appoint a Hamiltonban Township Zoning Hearing Board consisting of three (3) members, and in accordance with Section 903(b) of the Municipalities Planning Code, one (1) or more alternate members. Said Zoning Hearing Board shall have such duties, powers, jurisdiction, and authority as set forth in Article IX of the Municipalities Planning Code.

SECTION 2202: MEMBERSHIP OF THE ZONING HEARING BOARD

Members and alternative members of the Zoning Hearing Board shall be residents of Hamiltonban Township and shall hold no other elected or appointed office in Hamiltonban Township.

SECTION 2203: ORGANIZATION OF THE ZONING HEARING BOARD

A. The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the board, but the board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the board as provided in Section 908 of the Municipalities Planning Code.

B. If, by reason of absence or disqualification of a member, a quorum is not reached, the chairman of the Zoning Hearing Board shall designate as many alternate members of the Zoning Hearing Board to sit on the board as may be needed to provide a quorum. Any alternate member of the Zoning Hearing 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.

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C. The Zoning Hearing Board may make, alter, and rescind rules and forms for its procedure, consistent with ordinances of the Township 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 municipality, and shall submit a report of its activities to the Board of Supervisors as requested by the Board of Supervisors.

SECTION 2204: ZONING HEARING BOARD EXPENDITURES FOR SERVICES

Within the limits of funds appropriated by the Board of Supervisors, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Zoning Hearing Board may receive compensation for the performance of their duties, as may be fixed by the Board of Supervisors, but in no case shall it exceed the rate of compensation authorized to be paid to the Board of Supervisors. Alternate members of the Zoning Hearing 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 2203.B, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the Board of Supervisors.

SECTION 2205: HEARINGS

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

A. Public notice shall be given and written notice shall be given to the owner(s) of the subject land parcel(s), the applicant(s), the Zoning Officer, and all adjacent property owners to the subject land parcel(s), and any person who has made a written request for the same within fifteen (15) days of the scheduled hearing. Written notices shall be given at such time and in such manner as prescribed by the rules of the Zoning Hearing Board. In addition to the written notice provided for herein, a sign shall be conspicuously posted on the affected property at least one (1) week prior to a scheduled hearing date. Such sign(s) shall bear on its face, at a minimum, the name of the hearing body, the time and place of the hearing, and a phone number to contact the Zoning Officer to obtain additional information.

B. The Board of Supervisors may prescribe reasonable fees with respect to hearings before the Zoning Hearing Board. Fees for said hearings may include compensation for the secretary and members of the Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs.

C. The first hearing before the Zoning Hearing Board or hearing officer shall be commenced within sixty (60) days from the date of 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 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 or her case-in-chief within one hundred (100) days of the first

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hearing. Upon the request of the applicant, the Zoning Hearing Board or hearing officer shall ensure that the applicant receives at least seven (7) hours of hearings within the one hundred (100) days, including the first hearing. Persons opposed to the application shall complete the presentation of 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 or her 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 Hamiltonban Township, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.

D. 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 Hamiltonban Township, 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.

E. The parties to the hearing shall be the Board of Supervisors, any person affected by the application who has made timely appearance of record before the Zoning Hearing Board, and any other person including civic or community organizations permitted to appear by the Zoning Hearing Board. The Zoning Hearing Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Zoning Hearing Board for that purpose.

F. The chairperson or acting chairperson of the Zoning Hearing Board, or the hearing officer presiding, shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.

G. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.

H. Formal rules of evidence shall not apply, by irrelevant, immaterial, or unduly repetitious evidence may be excluded.

I. The Zoning Hearing Board, or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and Hamiltonban Township. The cost of the original transcript shall be paid by the Zoning Hearing Board if the 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.

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J. The Zoning Hearing Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.

K. The Zoning Hearing Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the Zoning Hearing Board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefore. Conclusions based on any provisions of the Municipalities Planning Code or of any 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.

L. If the hearing is conducted by a hearing officer, and there has been no stipulation that his or her 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 Zoning Hearing Board's decision shall be entered no later than thirty (30) days after the report of the hearing officer.

M. Except for challenges filed under Section 916.1 of the Municipalities Planning Code where the Zoning Hearing Board fail to render the decision with the period required by this subsection, or fail to commence, conduct or complete the required hearing as provided in subsection C of this Section, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Zoning Hearing Board to meet or render a decision as hereinabove provided, the Zoning Hearing Board shall give public notice of said decision within ten (10) days from the last day, the Zoning Hearing Board could have met to render a decision in the same manner as provided in Subsection A of this Section. If the Zoning Hearing Board shall fail to provide such notice, the applicant may do so. Nothing in this Subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

N. 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 or her not later than the day following its date. To all other persons who have filed their name and address with the Zoning Hearing Board not later than the last day of the hearing, the Zoning Hearing 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.

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SECTION 2206: JURISDICTION OF THE ZONING HEARING BOARD

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

- A. Substantive challenges to the validity of any land use ordinance, except those brought before the Board of Supervisors pursuant to Sections 609.1 and 916.1(a)(2) of the Municipalities Planning Code.
- B. 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.
- C. Appeals from a determination by a municipal engineer or the zoning officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within any Hamiltonban Township land use ordinance.
- D. Applications for variances from the terms of the zoning ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 910.2 of the Municipalities Planning Code and Section 2207 of this Ordinance.
- E. Applications for special exceptions under the zoning ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 912.1 of the Municipalities Planning Code and Section 2208 of this Ordinance.
- F. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the zoning ordinance.
- G. Appeals from the zoning officer's determination under Section 916.2 of the Municipalities Planning Code.
- H. 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 specified in Article V or VII of the Municipalities Planning Code.

SECTION 2207: 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 Zoning Hearing Board may by rule prescribe the form of application and may require preliminary application to the zoning officer. Application for any variance shall be made to the Zoning Hearing Board through the Zoning Officer. The application requirements shall be: the submittal of an Application for a Hearing before the Zoning Hearing Board, plus a plan drawing including

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the same elements as those required in Section 2212.C of this Ordinance. The Application shall provide information sufficient to evaluate conformance with the criteria for such variance as set forth in this Section. The Zoning Hearing 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 other 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.
- 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 the zoning ordinance 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 applicant.
- D. 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 of 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 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 Municipalities Planning Code and the Hamiltonban Township Zoning Ordinance.

SECTION 2208: SPECIAL EXCEPTIONS

- A. Where the Board of Supervisors, in the Zoning Ordinance, has stated special exceptions to be granted or denied by the Zoning Hearing Board, pursuant to express standards and criteria, the Zoning Hearing Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria.
- B. Applications for any special exception shall be made to the Zoning Hearing Board through the Zoning Officer. The Zoning Officer shall concurrently refer the matter to the Planning Commission for a report thereon as specified in this Section.
- C. All applications shall include the following.
 - 1. The submittal of an Application for a Hearing before the Zoning Hearing Board.
 - 2. A plan drawing including the same elements as those required in Section 2212.C of this Ordinance.

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3. Information of sufficient to evaluate conformance with the standards specified in the pertinent Section of this Ordinance.

D. In granting a special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards in additions to those expressed in the Zoning Ordinance as it may deem necessary to implement the purposes of the Municipalities Planning Code, the Zoning Ordinance and to anticipate and ameliorate any negative impacts on the health, safety, and welfare of citizens residing nearby as well as the general public.

E. In considering special exceptions, the Zoning Hearing Board shall utilize the following procedures.

1. The Zoning Hearing Board's decisions to approve or deny a permit for a special exception use shall be made only after public notices and hearing as set forth in Section 2205 of this Ordinance. Such permit shall apply only after public notice and hearing.

2. No permit shall be granted by the Zoning Hearing Board for any special exception use until said board has just received and considered advisory reports thereon received from the Planning Commission with respect to the location of such use in relation to growth patterns within the Township, and wherever appropriate, with reference to the adequacy of the site plan design and the arrangement of buildings, driveways, access points, parking areas, off-street loading spaces, signage, lighting and any other pertinent features of a site plan.

3. The Planning Commission shall have thirty (30) days from the receipt of an Application for Hearing within which to file a report thereon. In the event that the Planning Commission shall fail to file its report within thirty (30) days, such Application shall have deemed to have received a neutral review from said agency. The Planning Commission may have representation at the public hearing held by the Zoning Hearing Board.

SECTION 2209: PARTIES APPELLANT BEFORE THE ZONING HEARING BOARD

Appeals under Sections 909.1(a)(1), (2), (3), (4), (7), (8) and (9) of the Municipalities Planning Code may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agencies of the Township, or any person aggrieved. Requests for a variance under Section 910.2 of the Municipalities Planning Code and requests for a special exception under Section 912.1 of the Municipalities Planning Code may be filed with the Zoning Hearing Board by any landowner or any tenant with the permission of such landowner.

SECTION 2210: TIME LIMITATIONS

A. 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

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secure reversal or to limit the approval in any manner unless such person alleges and proves that he or she had no notice, knowledge, or reason to believe that such approval had been given. If such person has succeeded to his or her interest after such approval, he or she 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 on a tentative plan pursuant to Section 709 of the Municipalities Planning Code by a zoning officer on a challenge to the validity of an ordinance or map pursuant to Section 916.2 of the Municipalities Planning Code shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative 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.

C. Unless otherwise specified or extended by the Zoning Hearing Board, a variance or special exception authorized by the Zoning Hearing Board shall become null and void if the applicant fails to obtain and maintain a zoning permit, as set forth in Section 2212 of this Ordinance, within twelve (12) months from the date of authorization of the variance or special exception.

SECTION 2211: ZONING OFFICER

For the administration of this Zoning Ordinance, a Zoning Officer, who shall not hold any elective office of the Township, shall be appointed. The Zoning Officer shall administer the Zoning Ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any change of use which does not conform to the Zoning Ordinance. The Zoning Officer shall examine all applications for permits, issue zoning permits for construction and uses which are in accordance with the requirements of this Ordinance, record and file all applications for zoning permits with accompanying plans and documents, and make such reports as the Board of Supervisors may require. Zoning Permits for construction and for uses which are a special exception or variance to the requirements of this ordinance shall be issued only upon written order of the Zoning Hearing Board. The Zoning Officer may be authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of employment.

SECTION 2212: PERMITS

A. Requirements of Permits: A zoning permit shall be required prior to the erection, addition, or alteration of any building or structure or portion thereof, prior to the use or change in the use of a building, structure, or land, and prior to the change or extension of a non-conforming use. It shall be unlawful for any person to commence work for the erection or alteration of any building or structure, or for a change in land use, until a zoning permit has been duly issued. No Zoning Permit shall be required in cases of normal maintenance and repairs which do not structurally change a building or structure.