

pursuant to this Section.

- 604.4 District Justices shall have initial jurisdiction over proceedings brought under this Section.

ARTICLE 7

APPEAL PROVISIONS

701 ZONING HEARING BOARD.

701.1 There is hereby created for the Township a Zoning Hearing Board in accordance with the provisions of Article IX of the Pennsylvania Municipalities Planning Code, 53 P.S. Subsection 10901 et. seq.

701.2 The membership of the Board shall consist of five (5) residents of the Township appointed by resolution by the Township Supervisors. The terms of office shall be five (5) years and shall be fixed that the term of office of one (1) member shall expire each year. The Board shall promptly notify the Township Supervisors of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion. Members of the Board shall hold no other office in the Township.

The Governing Body may appoint by resolution at least one but no more than three residents of the Township to serve as alternate members of the Board. The term of office of an alternate member shall be three years. When seated pursuant to the provisions of this Sub-section, 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 proceeding, 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 Township 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 Subsection 6 unless designated as a voting alternate member pursuant to this Section. 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.

- 701.3 Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Township Supervisors which appointed the member, 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 shall request it in writing.
- 701.4 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 a majority of all 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 this Ordinance.
- 701.5 The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinance 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 Township supervisors as requested by the Township Supervisors.
- 701.6 Within the limits of funds appropriated by the Township 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 Township Supervisors, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the Township Supervisors.
- 701.7 The Board shall refer all applications to the Township Planning Commission to enable Commission to comment to Board prior the decision. Comment to Board from the Township Planning Commission will relate to appropriate land use.

702 HEARINGS.

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

- 702.1 Public notices shall be given and written notice shall be given to the applicant, the Zoning Officer and to any person who has made timely request for the same. Written notice shall be given at such time and in such manner as shall be prescribed by rules of the 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 (1) week prior to the hearing.
- 702.2 The hearing 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.

- 702.3 The hearing shall be conducted by the Board or the Board may appoint any member as a Hearing Officer. The decision, or, where no decision is called for, the findings shall be made by the Board, however, the appellant or the applicant, as the case may be, in addition to the Township 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.
- 702.4 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, 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.
- 702.5 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.
- 702.6 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.
- 702.7 Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- 702.8 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 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.
- 702.9 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 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.
- 702.10 The Board or 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 provision of this Ordinance or of any law 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 had 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. Where the Board fails to render the decision within the period required by this Subsection, or fails to hold the required hearing within sixty (60) days from the date of the applicant's request for a hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on 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 herein above provided, the Board shall give public notice of the 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 Subsection (1) of this Section. 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.

702.11 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.

702.12 The Township Supervisors shall establish, by resolution, fees with respect to hearings before the Zoning Hearing Board.

703 JURISDICTION.

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

- (a) Substantive challenges to the validity of any land use ordinance, except those brought before the Township Supervisors pursuant to Subsection 609.1 and 916.1 (a) (2) of the Pennsylvania Municipalities Planning Code, 53 P.S. Sub-section 1609.1, 10916.1.

- (b) 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. Where the Ordinance appealed from is the initial zoning ordinance of the Township and a Zoning Hearing Board had not been previously established, the appeal raising procedural questions shall be taken directly to court.
- (c) Appeals for 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.
- (d) Appeals from a determination by the Township engineer or the Zoning Officer with reference to the administration of any flood plan or flood hazard ordinance or such provisions within a land use ordinance.
- (e) Applications for variances from the terms of this Ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to Subsection 910.2 of the MPC, 53 P.S. Subsection 10910.2.
- (f) Application for special exceptions under this Ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to Subsection 912.1 or the MPC, 53 P.S. Subsection 10912.1.
- (g) Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Ordinance.
- (h) Appeals from the Zoning Officer's determination under Subsection 916.2 of the MPC. 53 P.S. Subsection 10916.2.
- (i) Appeals from the determination of the Zoning Officer or Township 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 Article V or VII of the MPC, 53 P.S. Subsections 10501 et seq., 10701 et seq.

703.2 The Township Supervisors shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

- (a) All applications for approvals of planned residential developments under Article

VII of the MPC pursuant to the provision of Subsection 702 of the MPC, 53 P.S. Subsection 10702.

- (b) All applications pursuant to Subsection 508 of the MPC, 53 P.S. Subsection 10508, for approval of subdivisions or land developments under Article V of the MPC, 53 P.S. Subsection 10501 et seq.
- (c) Applications for conditional use under the Express provision of this Ordinance.
- (d) Applications for curative amendment to this Ordinance or pursuant to Subsections 609.1 and 916.1 (a) of the MPC, 53 P.S. Subsections 10609.1, 10916.1 (a).
- (e) All petitions for amendments to land use ordinances, pursuant to the procedures set forth in Subsection 609 of the MPC, 53 P.S. Subsection 10609.
- (f) Appeals from the determination of the Zoning Officer or the Township engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to applications for land development under Articles V and VII of the MPC, 53 P.S. Subsections 10501 et seq., 10701 et seq. Where such determination relates only to development not involving an Article V and VII application, the appeal from such determination of the Zoning Officer or the Township engineer shall be to the Zoning Hearing Board pursuant to this Section. Where the applicable land use ordinance vests jurisdiction for final administration of subdivision and land development applications in the Planning Commission, all appeals from determinations under this subsection shall be to the Planning Commission and all appeals from the decision of the Planning Commission shall be to court.

704 VARIANCES.

704.1 The Zoning Hearing 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 and may require preliminary application to the Zoning Officer. 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 circumstance or conditions generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located.

- (b) That because of such physical circumstance 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 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 or development or 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.

704.2 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 and the Pennsylvania Municipalities Planning Code, 53 P.S. Subsection 10101 et seq.

705 SPECIAL EXCEPTIONS.

705.1 Where the Township Supervisors, in this Ordinance, have stated special exceptions to be granted or denied by the Zoning Hearing Board pursuant to express standards and criteria, as set forth below, the Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. . In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Ordinance, as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code, 53 P.S. Subsection 10101 et seq.

705.2 Special Uses, also known as Special Exceptions shall be permitted only upon authorization by the Zoning Hearing Board subsequent to review by the Planning Commission, provided that such uses shall be found by the Zoning Hearing Board to comply with the following requirements and other applicable requirements as set forth in this Ordinance.

- (a) That the use is a permitted special exception as set forth in Schedule on the District in which the use is located.
- (b) That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected.

- (c) That the use will be compatible with adjoining development and the proposed character of the zone district where it is to be located.
- (d) That adequate landscaping and screening is provided as required herein.
- (e) That adequate off-street parking and loading is provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.
- (f) That the use conforms with all applicable regulations governing the district where located.
- (g) That the use will have a minimal effect on township facilities.

706 CONDITIONAL USES.

706.1 Where the Township Supervisors, in this ordinance, has stated conditional uses to be granted or denied by the Township Supervisors pursuant to express standards and criteria, the Township Supervisors shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria. In granting a conditional use, the Township Supervisors may attach such reasonable conditions and safeguards, in addition to those expressed in this ordinance, as it may deem necessary to implement the purposes of this ordinance and the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101 et seq. [53 P.S. § 10910.2].

706.2 The Township Supervisors shall have the power to approve conditional uses when this ordinance specifically requires the obtaining of such approval.

1. In granting a condition use, the Township Supervisors shall make findings of fact consistent with the provisions of this ordinance but shall not approve a conditional use except in conformity with the conditions and standards outlined in this ordinance.
2. The Township Supervisors shall grant a conditional use only if it finds adequate evidence that any application for development submitted will meet all of the following general requirements, as well as any specific requirements and standards listed herein for the proposed use. The Township Supervisors shall, among other things, require that any proposed use and location be:
 - (a) In accordance with the Morris Township comprehensive plan.
 - (b) In the best interests of the Township of Morris, the convenience of the community, and the public welfare.

- (c) Suitable for the property in question, and designed, constructed, operated, and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity.
 - (d) In conformity with all applicable requirements of this ordinance and all other municipal ordinances.
 - (e) Suitable in terms of effect on highway traffic and safety, with adequate access arrangements to protect streets from undue congestion and hazard.
 - (f) In accordance with sound standards of subdivision and land development practices, where applicable.
 - (g) In accordance with the specific standards and criteria of this ordinance established as Supplementary Regulations.
3. Review by the Morris Township Planning Commission. The Township Supervisors shall request an advisory opinion from the Morris Township Planning Commission on any application for a conditional use. The Morris Township Planning Commission shall submit a report of such an advisory opinion prior to the date of the public hearing held by the Township Supervisors on the relevant application. The Morris Township Planning Commission may also request a report from the Morris Township engineer.
4. Application Requirements for Conditional Uses. Conditional use applications shall be governed by the following:
- (a) The landowner shall make a written request to the Township Supervisors that it hold a hearing on his/her application. The request shall contain a statement reasonably informing the Township Supervisors of the matters that are at issue.
 - (b) The application shall be accompanied by plans and other materials.
 - (c) The Township Supervisors shall hold a hearing upon the request, commencing not later than forty-five (45) days after the request is filed, unless the applicant requests or consents, in writing, to an extension of time.
5. Review Procedures for Conditional Uses. The Township Supervisors shall conduct hearings and make decisions in accordance with the procedures set forth in this ordinance and in the Pennsylvania Municipalities Planning Code.

707 PARTIES APPELLANT BEFORE THE BOARD.

Appeals raising the substantive validity of any land use ordinance (except those to be brought before the Township Supervisors pursuant to the Pennsylvania Municipalities Planning Code), procedural questions or alleged defects in the process of enactment or adoption of a land use ordinance; or 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 to the registration or refusal to register any nonconforming use, structure or lot; from a determination by the Township engineer or the Zoning Officer with reference to the administration of any flood plain or flood hazard ordinance or such provision within a land use ordinance; from the determination of any officer or agency charged with the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and storm water management insofar as the same related to development not involving subdivision and land development or planned residential development may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Township or any person aggrieved. Requests for the variance and for special exception may be filed with the Board by any landowner or any tenant with the permission of such landowner.

708 TIME LIMITATIONS.

708.1 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 the Township 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 the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision of a tentative plan or from an adverse decision by the Zoning Officer on a challenge to the validity of this Ordinance or an amendment hereto or map or an amendment thereto shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

708.2 All appeals from determinations adverse to the landowner shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

709 STAY OF PROCEDURES.

709.1 Upon filing of any appeal proceeding before the Zoning Hearing Board and during its pendency before the boards, 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

there under, 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.

- 709.2 After the petition is presented, the court shall hold a hearing to determine if the filing of an 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.
- 709.3 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.
- 709.4 If an 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.

ARTICLE 8

ADMINISTRATIVE PROVISIONS

801 DUTIES OF THE ZONING OFFICER.

The procedures of this Ordinance shall be administered by the Zoning Officer, who shall be appointed by the Township Supervisors. It shall be the duty of the Zoning Officer, and he/she shall have the power to: