**CHAPTER 27**

**ZONING**

**Part 10**

**Responsibilities of the Zoning Hearing Board**

**§1001. Organization and Procedure.**

(1) Establishment. Pursuant to the provisions of the Pennsylvania Municipalities Planning Code, a Zoning Hearing Board is hereby established in White Deer Township.

(2) Appointment and Membership. The Zoning Hearing Board shall consist of three (3) residents of White Deer Township to be appointed by Resolution of the Township Board of Supervisors. The terms of the initial appointees shall be for one, two and three years from the date of appointment. Their successors shall be appointed for the term of three (3) years after the expiration of the terms of their predecessors in office. Members of the Zoning Hearing Board shall hold no other office in the municipality.

The Township Supervisors may also appoint, by Resolution, two (2) alternate members to the Zoning Hearing Board to serve in the event of absence or conflict of interest of a regular member. The term of office of an alternate shall be three (3) years. For each case, the Chairman of the Zoning Hearing Board shall designate as many alternates as may be necessary to provide a quorum. Designation shall be made on a case-by-case basis, in rotation, according to declining seniority. Alternates shall hold no other office in the municipality.

A Zoning Hearing Board member may be removed by majority vote of the appointing authority for just cause only after the member has received 15 days’ advance notice of the Township’s intent to take such a vote. A Hearing shall be held in connection with the vote if requested in writing by the member.

(3) Appointment to Fill Vacancies. Appointments to fill vacancies shall be for the unexpired terms of the member or members whose terms or terms become vacant. Appointments to fill such vacancies shall be made in the same manner as the original appointment.

(4) General Grant of Power. The Zoning Hearing Board shall have the full authority, power and duty to perform all functions authorized by the Pennsylvania Municipalities Planning Code as amended from time to time.

(Ordinance No. 02-10, adopted December 17, 2002)

**§1002. Powers and Duties.** The Zoning Hearing Board shall hear and decide appeals pursuant to the provisions of the PA Municipalities Planning Code, as amended, and shall have the following powers.

(1) To Hear and Decide Appeals.

(a) The Zoning Hearing Board shall hear and decide appeals from any order, requirement, decision or determination made by the Zoning Officer administering this Chapter, 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.

(b) The Zoning Hearing Board shall hear and decide appeals from a 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 stormwater management insofar as the same relate to development not involving the provisions regulating subdivision or Planned Residential Development contained in the PA Municipalities Planning Code.

(c) The Zoning Hearing Board shall hear and decide appeals from a determination by the Zoning Officer or municipal engineer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance.

(d) The Zoning Hearing Board shall hear and decide upon appeal from a determination of the Zoning Officer, any questions involving the interpretation of any provision of this Chapter, including determination of the exact location of any district boundary where there is uncertainty with respect thereto.

(e) The Zoning Hearing Board shall hear and decide appeals for all other matters, now or hereafter, authorized by the provisions of the Pennsylvania Municipalities Planning Code as amended from time to time.

(Ordinance No. 02-10, adopted December 17, 2002)

(2) To Hear and Decide Challenges to the Validity of any Land Use Ordinance.

(a) The Zoning Hearing Board shall hear and decide substantive challenges to the validity of any land use ordinance, except those for Landowner Curative Amendments, which shall be brought before the governing body pursuant to the PA Municipalities Planning Code, as amended.

(b) The Zoning Hearing Board shall hear and decide challenges to the validity of any land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption. Such challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance.

(c) The Zoning Hearing Board shall hear and decide challenges to the validation of any land use ordinance as authorized, now or hereafter, by the provisions of the Pennsylvania Municipalities Planning Code as amended from time to time.

(Ordinance No. 02-10, adopted December 17, 2002)

(3) To Hear and Decide Requests for Variances. The Zoning Hearing Board shall hear requests for variances and may vary or adapt the strict application of any of the requirements of this Chapter in the case of exceptionally irregular, narrow or shallow lots or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. The sole purpose of any variance shall be to prevent discrimination and no variance shall be granted which would have the effect of granting a special privilege not shared by other property owners in the same vicinity and district and under the same conditions.

The Board’s decision to approve a variance request shall be made only after public notice and hearing.

No variance in the strict application of any provisions of this Chapter shall be granted by the Zoning Hearing Board unless it finds:

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size of 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 Chapter 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 this Chapter 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 appellant;

(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 of adjacent property, nor be detrimental to the public welfare; and,

(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 this Chapter.

(4) To Hear and Decide Request for Special Exceptions. The Zoning Hearing Board may grant Special Exceptions only for such uses as are provided for in the District Regulations, and pursuant to express standards and criteria outlined in this Chapter. The Board’s decision to approve a Special Exception shall be made only after public notice and public hearing. Such approval shall apply specifically to the application and plans submitted and presented at said public hearing. Any subsequent changes or additions shall be subject to further review and public hearing by the Zoning Hearing Board as a separate Special Exception request.

In reviewing applications for Special Exceptions, the Zoning Hearing Board shall take into account the comments received from the Township Planning Commission and the following requirements, in addition to those found in this Chapter.

(a) That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected;

(b) That the use will not cause substantial injury to the value of other property in the neighborhood where the use is to be located;

(c) That the use will be compatible with adjoining development and the proposed character of the zoning 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 designed to cause minimum interference with traffic on abutting streets; and,

(f) That the use conforms with all applicable regulations governing the district where it is to be located, except as may otherwise be determined for large-scale developments.

In approving a Special Exception, the Zoning Hearing Board may attach whatever reasonable conditions and safeguards it deems necessary in order to insure that the proposed development is consistent with the purposes of this Chapter.

**§1003. Hearing Procedures.**

(1) Parties Appellant Before Zoning Hearing Board. Appeals and applications to the Zoning shall be made by those persons authorized in the Pennsylvania Municipalities Planning Code and other applicable state statutes.

(2) Time Limitations. All appeals and applications before the Zoning Hearing Board shall be filed within the times specified in the Pennsylvania Municipalities Planning Code and other applicable state statutes.

(3) Applications Required. All requests and appeals made to the Zoning Hearing Board shall be in writing and in such form as may be prescribed by the Zoning Officer. Every appeal or request shall refer to a specific provision of this Chapter and shall exactly set forth the interpretation that is claimed or shall include the plans or the details of the variance or special exception that is applied for, in addition to the following information:

(a) The name and address of the applicant or appellant;

(b) The name and address of the owner of the parcel to be affected by such proposed change or appeal;

(c) A brief description and location of the parcel to be affected by such proposed change or appeal;

(d) A statement of the present zoning classification of the parcel in question, the improvements thereon and the present use thereof; and

(e) A reasonably accurate description of any existing buildings, structures or improvements located on the site and the additions or changes intended to be made under this application, indicating the size of such proposed improvements. In addition, the applicant shall provide the Zoning Hearing Board with an accurate plot plan of the property to be affected, indicating the location and size of the lot and the size and location of all existing buildings, structures, trees, or other physical features thereon and those additional improvements proposed to be erected.

(4) Procedure for Zoning Officer.

(a) The notice of appeal in any case where a Permit has been granted or denied by the Zoning Officer shall be prescribed by the Zoning Hearing Board under general rule after notice of such action granting or denying the Permit has been mailed to the applicant. The Zoning Officer shall then immediately transmit to the Zoning Hearing Board all papers constituting the record from which the appealed action was taken or in lieu thereof, certified copies of said papers.

(b) It shall be acceptable for the Zoning Officer to recommend to the Zoning Hearing Board a modification or reversal of his action in cases where he believes substantial justice requires the same but where he does not have sufficient authority to grant the relief sought.

(5) Hearings Required and Notice of Hearings. Before rendering a decision or taking any action the Zoning Hearing Board shall conduct such hearings and provide such notices as is required by the Pennsylvania Municipalities Planning Code or other applicable state statutes.

(a) Publish Public Notice in accordance with the provisions of this Ordinance;

(b) Post in a conspicuous place on the property involving a written notice of the pending hearing and action; such notice shall take place at least seven (7) days prior to the public hearing;

(c) Give written notice to the applicant, the Zoning Officer, the Township Secretary, Secretary of the Township Planning Commission, and to any person who has made a timely request for the same, at least seven (7) days prior to the hearing; and,

(d) In the case of an appeal, or a request for a variance or special exception, all property owners co-joining the affected tract shall be given written notice at least seven (7) days prior to the hearing.

(6) Rules of Conduct. The Zoning Hearing Board shall adopt rules in accordance with the provisions of this Chapter and the PA Municipalities Planning Code, as amended. Meetings of the Zoning Hearing Board shall be held at the call of the chairman and at such other times as the Zoning Hearing Board may determine. Such chairman or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. Irrelevant, immaterial or unduly repetitious evidence may be ruled out of order and excluded from the hearing record.

All hearings and meetings of the Zoning Hearing Board shall be open to the public. The Zoning Hearing Board shall keep a stenographic record of the hearing proceedings. Minutes shall be kept of all other meetings and shall show the vote of each member upon each question or if absent or failing to vote, indicate such fact. Such records shall be public and shall be kept on file with the Township Secretary. A report of the Zoning Hearing Board’s activities shall be submitted to the Township Supervisors once each year.

A quorum of two (2) Board Members shall be required for the Zoning Hearing Board to take action.

(7) Decisions. The Zoning Hearing Board shall render its decisions in such manner and within such time limits as are required by the Pennsylvania Municipalities Planning Code and other state statutes.

(8) Expiration of Appeal Decision. Unless otherwise specified by the Zoning Hearing Board, a decision on any appeal or request shall expire if the applicant fails to obtain any necessary Zoning Permit or comply with the conditions of said authorized permit within two (2) years from the date of authorization thereof.

(9) PA Municipalities Planning Code. Notwithstanding anything herein to the contrary all hearings shall be scheduled, noticed and conducted and all decision and finding pursuant thereto shall be made in accordance with the provisions of the Pennsylvania Municipalities Planning Code as amended from time to time. Any conflict between the provision of the White Deer Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code, as amended from time to time, shall be resolved in favor of the Pennsylvania Municipalities Planning Code.

(Ordinance No. 02-10, adopted December 17, 2002; Ordinance No. 11, adopted June 27, 2006))

(Ordinance No. 99-1, adopted July 20, 1999)