

giving notice, and other necessary administrative overhead connected with the hearing. The cost shall not include legal expenses in regard to the hearing, or expenses for engineering, architectural, or other technical consultants or expert witness costs.

- C. The hearing shall be scheduled within sixty (60) days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.
- D. *The parties to the hearing shall be the applicant, Zoning Officer, any person affected by the application who has made timely appearance of record before the Board of Supervisors, and any other person, including civic or community organizations permitted to appear by the Board of Supervisors. The Board of Supervisors shall have the power to require that all persons who wish to be considered parties enter appearances in writing.*
- E. The chairpersons or acting chairperson of the Board of Supervisors 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.
- F. *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 to cross examine adverse witnesses on all relevant issues.*
- G. *Formal rule of evidence shall not apply. However, irrelevant, immaterial, or unduly repetitious evidence may be excluded.*
- H. *The Board of Supervisors shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared by the applicant and the Board of Supervisors. The cost of the original transcript shall be paid by the Board of Supervisors if the transcript is ordered by them, or shall be paid by the person appealing from the decision of the Board of Supervisors if such an appeal is made. In either event, the cost of additional copies shall be paid by the person or persons requesting such copy or copies. In other cases, the party requesting the original transcript shall bear the cost thereof.*
- I. *The Board of Supervisors shall render a written decision or, when no decision is called for, make written findings on the conditional use application within forty-five (45) days after the last hearing before the governing body. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefore.*

Conclusions based on any provisions of the Pennsylvania 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. When the Board of Supervisors fails to render a decision within the period required by this section 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 of Supervisors to meet or render a decision as hereinabove provided, the Board of Supervisors shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of the Pennsylvania Municipalities Planning Code. If the Board of Supervisors shall fail to provide such notice, the applicant may do so.

- J. 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 Board of Supervisors 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.
- K. Nothing in this section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

#### SECTION 1308. APPEALS AND APPLICATIONS

- A. An appeal, or application for amendment, special exception, conditional use, or variance from the terms of this Ordinance shall be filed with the Zoning Officer, and shall contain the following information:
  - 1. The name and address of the applicant.
  - 2. The name and address of the owner of the real estate to be affected by such proposal.
  - 3. A brief description and location of the real estate to be affected by such proposal.

4. A statement of the present zoning classification of the real estate in question, the improvements thereon, and the present use thereof.
5. A statement of the Section of this Ordinance under which the appeal or application requested may be allowed, and reasons why it should be granted; or a statement of the Section of this Ordinance governing the situation in which the alleged erroneous ruling is being appealed and reasons for the appeal.
6. An accurate description of the present improvements and the additions intended to be made under this application, indicating the size and use of such proposed improvements and general construction thereof. In addition, there shall be attached a plot plan of the real estate to be affected, as required to accompany applications for permits, indicating the location and size of the lot and location of improvements now erected, and proposed to be erected thereon.
7. Any other pertinent data required by the Zoning Hearing Board, Board of Supervisors, and/or Zoning Officer, as appropriate to their individual authorities set forth in this Article.

#### SECTION 1309. VIOLATIONS

Failure to comply with any provision of this Ordinance, or failure to secure permit or Zoning Hearing Board certification, when required, shall be violations of this Ordinance.

##### A. Enforcement Notice

1. If it appears to the Township that a violation of any zoning ordinance provisions has occurred, the Zoning Officer shall initiate enforcement proceedings by sending an enforcement notice, as provided by Section 616.1 of the Pennsylvania Municipalities Code, Act 170 of 1988.
2. The enforcement notice shall be sent to the owner of the record of the tract on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding said tract, and to any other person requested in writing by the owner of record.
3. An enforcement notice shall state at least the following:
  - a. The name of the owner of record and any other person against whom the Township intends to take action.

- b. The location of the property in violation.
- c. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the Ordinance.
- d. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
- e. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within thirty (30) days of the date of the determination.
- f. The failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.

#### B. Causes of Action

- 1. In case any building, structure, or land is, or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of this Ordinance, the Board of Supervisors or, with the approval of the Board of Supervisors, an officer of the Township, or any aggrieved owner or tenant or real property who shows that his or her property or person will substantially be affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct, or abate such building, structure, landscaping of land, or to prevent, in or about such premises, any act, conduct, business, or use constitute a violation. Such action is instituted by a landowner or Township at least thirty (30) days prior to the time the action is begun by serving a copy of the complaint of the Board of Supervisors.

#### C. Enforcement Remedies

- 1. Any person, partnership, or corporation, who or which has violated or permitted the violation of the provisions of this Ordinance, shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than five hundred (\$500.00) dollars plus all court costs, including reasonable attorney fees incurred by the Township and a result thereof. No judgment shall commence or be imposed, levied, or payable until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce pursuant to the applicable rules of civil

procedure. Each day that a violation continues shall constitute a separate violation, unless the District Justice determining that there has been a violation further determines that there was a good faith basis for person, partnership, or corporation violating the Ordinance to be believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the District Justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs, and reasonable attorney fees collected for the violation shall be paid over to the Township of Huntington.

2. The court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.
3. Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the Township the right to commence any action for enforcement pursuant to this Section.

#### SECTION 1310. APPOINTMENT OF A ZONING HEARING BOARD

The Huntington Township Board of Supervisors shall, by resolution and in accordance with Section 903 of Act 170 of 1988 (the Pennsylvania Municipalities Planning Code) appoint a Zoning Hearing Board consisting of three (3) members, and in accordance with Section 906 of Act 170 of 1988, one (1) alternate member. Said Zoning Hearing Board shall have such duties, powers, jurisdiction, and authority as set forth in Article IX of Act 170 of 1988. Members and alternative members of the Zoning Hearing Board shall be residents of Huntington Township and shall hold no other elected or appointed office in Huntington Township.

#### SECTION 1311. 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 Act 170 of 1988.
- B. If, by reason of absence or disqualification of a member, a quorum is not reached, the chairperson of the board shall designate as many alternate members of 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. 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.

- C. The Board may make, alter, and rescind rules and forms for its procedure, consistent with ordinances of the municipality and laws for the Commonwealth. The 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 1312. HEARINGS

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

- A. The Zoning Hearing Board shall conduct hearings and make decisions in accordance with the Pennsylvania Municipalities Planning Code, Act 170 of 1988. Notice shall be given to the public, the applicant, the land owner, the Zoning Officer, such other persons as the Zoning Hearing Board shall designate, and any person who has made timely request from the same. Notices shall be given at such time and in such manner prescribed by adopted Rules of the Zoning Hearing Board. In addition to the written notice provided herein, written notice of said shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.
- B. The Township Supervisors may establish reasonable fees for the holding of such hearings. Fees 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 shall not include legal expenses of the Zoning Hearing Board, expenses for engineering architectural or other technical consultants, or expert witness costs.
- C. 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 of time.
- D. 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 municipality, may prior to the decision of the hearing officer, waive decision or findings by the Board and accept the decision or findings of the hearing officer as final

- E. The parties to the hearing shall be the Township, any person affected by the application who has made timely appearance of record before the Board, and any other person including civic or community organizations permitted to appear by the Board. The Board shall have 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.
- F. The chairperson or acting chairperson of the 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 paper, 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 to cross-examine adverse witnesses on all relevant issues.
- H. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- I. Unless otherwise required by this Ordinance or Act 170 of 1988, as amended (the Pennsylvania Municipalities Planning Code), the Township shall have the responsibility of presenting its evidence first.
- J. The Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee of 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.
- K. The Board or the hearing officer, as the case may be, shall render a written finding 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 this act 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.

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 Board shall make the hearing

officer's 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 decisions 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 section, 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 hereinabove provided, 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 Section 1013.A. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

- L. 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 Board not later than the last day of the hearing, the Board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

#### SECTION 1313. JURISDICTION

The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudication in the following matters, set forth in the Pennsylvania Municipalities Planning Code, Act 170 of 1988.

- A. Substantive challenges to the validity of a zoning ordinance, except those brought before the governing body pursuant to Sections 609.1(a)(2) of the Pennsylvania Municipalities Planning Code, Act 170 of 1988.
- B. Challenges to the validity of a zoning ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within thirty (30) days after effective date of said ordinance.
- C. Appeals from the determination of the Zoning Officer, including but not limited to, the granting or denial of any permit, or failure to act of the application

therefore, the issuance of any cease and desist order or the registration or refusal to register any non-conforming use, structure, or lot.

- D. Applications for variances from the terms of the Zoning Ordinance pursuant to Section 910.1 of the Pennsylvania Municipalities Planning Code, Act 170 of 1988.
- E. Applications for special exceptions under the Zoning Ordinance pursuant to Section 912.1 of the Pennsylvania Municipalities Planning Code, Act 170 of 1988.
- F. Appeals from the determination of any officer or agency charged with the administration of any performance density provisions of the Zoning Ordinance.
- G. Appeals from the Zoning Officer's determination pursuant to Section 916.2 of the Pennsylvania Municipalities Planning Code, Act 170 of 1988.
- H. 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 stormwater management insofar as the same relate to development not involving applications under Article V and VII of the Pennsylvania Municipalities Planning Code, Act of 170 of 1988.

#### SECTION 1314. VARIANCES

The Zoning Hearing Board shall hear requests for variances where it is alleged that the provision of the Zoning 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 exceptionally 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 provision 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 provision 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 or development of adjacent property, nor be detrimental to the public welfare.
- E. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Pennsylvania Municipalities Planning Code, Act 170 of 1988, and the Zoning Ordinance of the Township of Huntington.

#### SECTION 1315. PARTIES APPELLANT BEFORE THE ZONING HEARING BOARD

Appeals under Section 909.1(a)1), (2), (3), (4), (7), and (9) of Act 170 of 1988 may be filed with the 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 Act 170 of 1988 and for special exception under Section 912.1 of Act 170 of 1988 may be filed with the Board by any landowner or any tenants with the permission of such landowner.

#### SECTION 1316. TIME LIMITATIONS

No person shall be allowed to file any proceeding with the Board later than thirty (30) days after an application for development, preliminary or final, has been approved by the Township if such proceeding is designed to secure reversal or limit the approval in any matter unless such person alleges and proves that he or she failed to receive adequate notice of such approval. If such person has succeeded to his or her interest after such approval, adequate notice to his or her predecessor in interest shall be deemed adequate notice to him or her. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan or from an adverse decision by the Zoning Officer on a challenge to the validity of this Ordinance or an amendment thereto shall preclude an appeal from a final approval except in the case where the final subdivision substantially deviates from the approved tentative approval. 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.

#### SECTION 1317. STAY OF PROCEEDINGS

Upon filing of any appeal proceeding before the Zoning Hearing Board and during its pendency before the Zoning Hearing Board, all land development pursuant to any