

## ARTICLE XXIII

### ZONING HEARING BOARD AND OTHER ADMINISTRATIVE PROCEEDINGS

#### 2300. Zoning Hearing Board Creation and Appointments

Pursuant to Article IX of the Pennsylvania Municipalities Planning Code, as amended, the South Middleton Township Board of Supervisors do hereby create a Zoning Hearing Board consisting of five members who shall be residents of the Township. Members of the Zoning Hearing Board shall hold no other office in the Township.

- (1.) Terms of Office. The terms of office shall be five years and shall be so fixed that the term of office of no more than one member shall expire each year.
- (2.) The members of the existing board shall continue in office until their term of office would expire under the prior Zoning Ordinance.
- (3.) The Zoning Hearing Board shall promptly notify the Township Supervisors of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.
- (4.) Alternate Members. The Board of Supervisors may appoint by resolution at least one but no more than three residents of the Township to serve as alternate members of the Zoning Hearing Board. The term of office of an alternate member shall be three years. When seated in accordance with Section 2301, 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 Zoning Hearing Board members, 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 on this Ordinance and 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 Section 2302 unless designated as a voting alternate member pursuant to Section 2301 of this Ordinance.
- (5.) Removal of Members. Any member of the Zoning Hearing Board may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Township Supervisors taken after the member has received fifteen 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.

### 2301. Organization of the Zoning Hearing Board

- (1.) The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms and as such may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall not be 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 of the board as provided in Section 2303 of this Ordinance.
- (2.) 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.
- (3.) The Zoning Hearing Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of South Middleton 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 Township, and shall submit a report of its activities to the Township Supervisors as requested by the Board of Supervisors.

### 2302. Expenditures for Services

Within the limits of funds appropriated by the Township 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 Township Supervisors, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the Township Supervisors. Alternate members of the 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 2301, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members of the Board of Supervisors.

### 2303. Hearings

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

- (1.) **Public Notice.** Written notice shall be given and shall be given to the applicant, the Township Zoning Officer, such other persons as the Board of Supervisors shall designate by ordinance and to any person who has made timely request for same. Written notices shall be given at such time and in such manner as shall be prescribed by rules of the Zoning Hearing 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 week prior to the hearing.
- (2.) **Fees.** 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.
- (3.) **Conduct of Hearing.** The hearings shall be conducted by the Zoning Hearing Board or the Zoning Hearing 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 Zoning Hearing 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 Zoning Hearing Board and accept the decision or findings of the hearing officer as final.
- (4.) The parties to the hearing shall be South Middleton Township, 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 before the Board. The Zoning Hearing 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.

- (5.) The chairman or acting chairman 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.
- (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.
- (7.) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- (8.) 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 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.
- (9.) The Zoning Hearing Board or 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.
- (10.) Decisions. 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 reasons therefor. Conclusions based

on any provisions of this Ordinance or any Township ordinance, rule or regulation, or the Pennsylvania Municipalities Planning Code, Act 247, as amended, 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 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 Board's decision shall be entered no later than thirty (30) days after the report of the hearing officer. Where the Zoning Hearing 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 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 it could have met to render a decision in the same manner as provided in Section 2303 (1.) of this Ordinance. 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 a court of competent jurisdiction.

- (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. To all other persons who have filed their name and address with the Zoning Hearing 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.

#### 2304. Zoning Hearing Board's Jurisdiction.

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

- (1.) Substantive challenges to the validity of this Ordinance, except those brought before the Board of Supervisors pursuant to Sections

2102 (1.) (Procedure for Landowner Curative Amendments) and 2311 (Validity of Ordinance: Substantive Questions).

- (2.) Challenges to the validity of this 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 this Ordinance.
- (3.) 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.
- (4.) Appeals from a determination by the Township Engineer or the Zoning Officer with reference to the administration of any flood plain or flood hazard provisions within this Ordinance.
- (5.) Applications for variances from the terms of this Ordinance and the flood hazard provisions herein, pursuant to Sections 2307 (2.) and (3.).
- (6.) Applications for special exceptions under this Ordinance or flood plain or flood hazard provisions within this Ordinance, pursuant to Section 2305 (3.).
- (7.) Appeals from the Zoning Officer's determination of Preliminary Opinion pursuant to the requirements of Section 2312.
- (8.) Appeals from the determination of the Zoning Officer or Township Engineer in the administration of any provision of this Ordinance with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving Subdivision/Land Development Ordinance or Planned Residential Development applications.

#### 2305. Board of Supervisors' Jurisdiction

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

- (1.) Applications for curative amendment to this Ordinance pursuant to Sections 2311 and 2102 (1.).

- (2.) All petitions for amendments to this Zoning Ordinance, pursuant to the procedures set forth in Section 2102.
- (3.) Appeals from a determination by the Township Engineer or the Zoning Officer with reference to the administration of any wellhead protection provisions within this Ordinance.
- (4.) Appeals from the determination of the Zoning Officer or Township Engineer in the administration of any provision of this Ordinance with reference to sedimentation and erosion control and storm water management insofar as the same relate to development involving Subdivision/Land Development Ordinance or Planned Residential Development applications.

#### 2306. Applicability of Judicial Remedies.

Nothing contained in this article shall be construed to deny the applicant the right to proceed directly to court where appropriate, pursuant to the Pennsylvania Rules of Civil Procedure No. 1091 (relating to action in mandamus).

#### 2307. Zoning Hearing Board's Function

- (1.) 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 Board may by rule prescribe the form of application and may require preliminary application to the Zoning Officer. 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 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 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.
  - (f.) 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 Zoning Ordinance and the Municipalities Planning Code.
- (2.) Variances - Floodplain Conservation District. Requests for variances shall be considered by the Zoning Hearing Board in accordance with the procedures contained in Section 2307 (1.) of this Ordinance, and the following:
- (a.) No variance shall be granted for any construction, development, use or activity within any floodway area that would cause any increase in the one hundred (100) year flood elevation.
  - (b.) Except for a possible modification of the freeboard requirements involved, no variance shall be granted for any of the other requirements pertaining specifically to development regulated by Special Exception or to Development Which May Endanger Human Life.
  - (c.) If granted, a variance shall involve only the least modification necessary to provide relief.
  - (d.) In granting any variance, the Zoning Hearing Board may attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this Ordinance.

- (e.) Whenever a variance is granted, the Zoning Hearing Board shall notify the applicant in writing that:
  - (i.) the granting of the variance may result in increased premium rates for flood insurance; and
  - (ii.) such variances may increase the risk to life and property.
- (f.) In reviewing any request for a variance, the Zoning Hearing Board shall consider, but not be limited to, the following:
  - (i.) that there is good and sufficient cause;
  - (ii.) that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (iii.) that the granting of the variance will not result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on, or victimization of the public, or conflict with any other applicable local Commonwealth or Federal law, code or regulation.
- (g.) A complete record of all variance requests and related actions shall be maintained by the Zoning Hearing Board. In addition, a report of all variances granted during the year shall be submitted to the South Middleton Township Board of Supervisors.
- (h.) The Board of Supervisors shall include the above-mentioned report in its annual report to the Federal Insurance Administration.
- (3.) Special Exceptions. The Zoning Hearing Board shall hear and decide requests for special exceptions in accordance with the standards and criteria set forth in this Ordinance. In granting a special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and of the PA Municipalities Planning Code.

When an application for a special exception has been filed with the Zoning Hearing board and the subject matter of such application would ultimately constitute either a "land development" or a

"subdivision", no change or amendment of the zoning, subdivision or other governing ordinance or plans shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed. Provided further, should such an application be approved by the Zoning Hearing Board, the applicant shall be entitled to proceed with the submission of either land development or subdivision plans within a period of six months, or longer as may be approved by the Zoning Hearing Board, following the date of such approval in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed before the Zoning Hearing Board. If either a land development or subdivision plan is so filed within said period, such plan shall be subject to the relevant provisions of Section 508(1) through 508(4) of Act 247, the Municipalities Planning Code, as amended.

- (a.) General Criteria – Each applicant must demonstrate compliance with the following:
  - (i.) The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance;
  - (ii.) The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties;
  - (iii.) The proposed use will not substantially change the character of the subject property's neighborhood;
  - (iv.) Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.);
  - (v.) For development within the Floodplain Zone, that the application complies with those requirements listed in Section 1401 of this Ordinance;
  - (vi.) The proposed use shall comply with those criteria specifically listed in Article XVI of this Ordinance. In addition, the proposed use must comply with all other applicable regulations contained in this Ordinance; and,

- (vii.) The proposed use will not substantially impair the integrity of the Township's Comprehensive Plan;
- (b.) Conditions – The Zoning Hearing Board in approving special exception applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this Ordinance and be subject to the penalties described in Article XXII and,
- (c.) Site Plan Approval – Any site plan presented in support of the special exception shall become an official part of the record for said special exception. Approval of any special exception will also bind the use in accordance with submitted site plan; therefore, should a change in the site plan be required as part of the approval of the use, the applicant shall revise the site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved site plan, shall require the obtainment of another special exception approval;

#### 2308. Parties Appellant Before Zoning Hearing Board

- (1.) Appeals before the Zoning Hearing Board may be filed only by persons who are affected adversely by the determination appealed from. The Board of Supervisors shall also have the right to appeal from any determination of the Zoning Officer.
- (2.) Requests for a variance or a special exception may be filed only by the landowner or property owner.
- (3.) The Board of Supervisors may be a party to any proceeding before the Zoning Hearing Board.
- (4.) The Board of Supervisors may appeal any determination by the Zoning Hearing Board to the Court of Common Pleas.

### 2309. Time Limitations

- (1.) The applicant to the Zoning Hearing Board, whether for a special exception, variance or appeal from the determination of the Zoning Officer, shall be entitled to proceed with the submission of either a subdivision or land development plan or building permit within a period of one (1) year following the date of such approval. The deadline for submission of a subdivision or land development plan or building permit may be extended at the discretion of Zoning Hearing Board, either prior to approval of the application before the Zoning Hearing Board or by written request to the Zoning Hearing Board prior to the deadline.
- (2.) No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after any application for development, preliminary or final, has been approved by an appropriate Township 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 on a tentative plan pursuant to Article XV, or from an adverse decision by the Zoning Officer on a challenge to the validity of the Zoning Ordinance or Zoning Map pursuant to Section 2102 shall preclude an appeal from the 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 shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

### 2310. Stay of Proceedings

Upon filing of any proceeding referred to in Section 2308 and during its pendency before the Zoning Hearing Board, 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 thereunder shall be stayed unless the Zoning officer or any other appropriate agency or body certifies to the Zoning Hearing 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 Zoning Hearing 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 Zoning Hearing 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 Zoning Hearing Board.

After the petition is presented, the court shall hold a hearing to determine if the filing of the 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.

The question whether or not such petition should be granted and the amount of 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.

If an appeal is taken by the respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal 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 over zoning appeals, shall be liable for all reasonable costs, expenses, and attorney fees incurred by the petitioner.

#### 2311. Validity of Ordinance: Substantive Questions

- (1.) A landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either:
  - (a.) To the Zoning Hearing Board under Section 2304(1.)(a.) and (1.)(b.). or
  - (b.) To the Board of Supervisors under Section 2405 (1.), together with a request for a curative amendment under Section 2102.

- (2.) Persons aggrieved by a use or development permitted on the land of another by an ordinance or map, or any provision thereof, who desire to challenge its validity on substantive grounds shall first submit their challenge to the Zoning Hearing Board for a decision thereon under Section 2304(1)(a.).
- (3.) The submissions referred to in subsections (1.) and (2.) shall be governed by the following:
  - (a.) In the challenges before the Zoning Hearing Board, the challenging party shall make a written request to the Board that it hold a hearing on its challenge. The request shall contain the reasons for the challenge. Where the landowner desires to challenge the validity of such ordinance and elects to proceed by curative amendment, under Section 2102, his application to the Board of Supervisors shall contain, in addition to the requirements of the written request hereof, the plans and explanatory materials describing the use or development proposed by the landowner in lieu of the use or development permitted by the challenged ordinance or map. Such plans or other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a permit, so long as they provide reasonable notice of the proposed use or development and a sufficient basis for evaluating the challenged ordinance or map in light thereof. Nothing herein contained shall preclude the landowner from first seeking a final approval before submitting his challenge.
  - (b.) If the submission is made by the landowner to the Board of Supervisors under Section 2311 (1.)(b.), the request also shall be accompanied by an amendment or amendments to the ordinance proposed by the landowner to cure the alleged defects therein.
  - (c.) If the submission is made to the Board of Supervisors, the Township Solicitor shall represent and advise it at the hearing or hearings referred to in Section 2102.
  - (d.) The Board of Supervisors may retain an independent attorney to present the defense of the challenged ordinance or map on its behalf and to present their witnesses on its behalf.

- (4.) Based on the testimony presented at the hearing or hearings, the Board or Supervisors or the Zoning Hearing Board, as the case may be, shall determine whether the challenged ordinance or map is defective, as alleged by the landowner. If a challenge heard by the Board of Supervisors is found to have merit, the Board of Supervisors shall proceed as provided in Section 2102. If a challenge heard by the Zoning Hearing Board is found to have merit, the decision of the Zoning Hearing Board shall include recommended amendments to the challenged ordinance which will cure the defects found. In reaching its decision, the Zoning Hearing Board shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:
- (a.) the impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;
  - (b.) 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 a classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or map.
  - (c.) the suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, floodplains, aquifers, natural resources and other natural features;
  - (d.) the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to the development and any adverse environmental impacts; and
  - (e.) the impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
- (5.) The Board of Supervisors or the Zoning Hearing Board, as the case may be, shall render its decision within forty-five (45) days after the conclusion of the last hearing.
- (6.) If the Board of Supervisors or the Zoning Hearing Board, as the case may be, fails to act on the landowner's request within the time limits referred to in Section 2311 (3.)(f.), a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.

- (7.) The Zoning Hearing Board or the Board of Supervisors, as the case may be, shall commence its hearings within sixty (60) days after the request is filed unless the landowner requests or consents to an extension of time.
- (8.) Public notice of the hearing shall include notice that the validity of the ordinance or map is in question and shall give the place where and the times when a copy of the request, including any plans, explanatory material or proposed amendments may be examined by the public.
- (9.) The challenge shall be deemed denied when:
  - (a.) the Zoning Hearing Board or the Board of Supervisors, as the case may be, fails to commence the hearing within the time limits set forth in Section 2311 (4.);
  - (b.) the Board of Supervisors notifies the landowner that it will not adopt the curative amendment;
  - (c.) the Board of Supervisors adopts another curative amendment which is unacceptable to the landowner; or
  - (d.) the Zoning Hearing Board or Board of Supervisors, as the case may be, 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 by the landowner and the Township.
- (10.) Where a curative amendment proposal is approved by the grant of a curative amendment application by the Board of Supervisors pursuant to Section 2102 or a validity challenge is sustained by the Zoning Hearing Board pursuant to Section 2304 or the court acts finally on appeal from denial of a curative amendment proposal or a validity challenge, and the proposal or challenge so approved requires a further application for subdivision or land development, the developer shall have two (2) years from the date of such approval to file an application for preliminary approval pursuant to the requirements for Subdivision/Land Ordinance. Within the two year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. Upon the filing of the preliminary plan, the provisions of Section 508(4) of the Pa. Municipalities Planning Code shall apply.

Where the proposal appended to the curative amendment application or the validity challenge is approved but does not require further application under any subdivision or land development ordinance, the developer shall have one (1) year within which to file for a building permit. Within the one-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. During these protected periods, the court shall retain or assume jurisdiction for the purpose of awarding such supplemental relief as may be deemed necessary.

### 2312. Mediation Option

- (1.) Parties to proceedings authorized in this Article and in Article XXIV (Appeals to Court) may utilize mediation as an aid in completing such proceedings. In proceedings before the Zoning Hearing Board, in no case shall the Board initiate mediation or participate as a mediating party. Mediation shall supplement, not replace, those procedures in this Article and in Article XXIV once they have been formally initiated. Nothing in this Section shall be interpreted as expanding or limiting municipal police powers or as modifying any principles of substantive law.
- (2.) Participation in mediation shall be wholly voluntary. The appropriateness of mediation shall be determined by the particulars of each case and the willingness of the parties to negotiate. The Township shall assure that in each case, the mediating parties, assisted by the mediator as appropriate, develop terms and conditions for:
  - (a.) Funding mediation.
  - (b.) Selecting a mediator who, at a minimum, shall have a working knowledge of municipal zoning and subdivision procedures and demonstrated skills in mediation.
  - (c.) Completing mediation, including time limits for such completion.
  - (d.) Suspending time limits otherwise authorized in this Ordinance and the Pa. Municipalities Planning Code, provided there is written consent by the mediating parties,

and by an applicant or municipal decision-making body if either is not a party to the mediation.

- (e.) Identifying all parties and affording them the opportunity to participate.
  - (f.) Subject to legal restraints, determining whether some or all of the mediation sessions shall be open or closed to the public.
  - (g.) Assuring that mediated solutions are in writing and signed by the parties, and become subject to review and approval by the appropriate decision-making body pursuant to the authorized procedures set forth in the Pa. Municipalities Planning Code.
- (3.) No offers or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceedings.