

ARTICLE VIII
ZONING HEARING BOARD

SECTION 8.1 **CREATION AND APPOINTMENT OF BOARD**

The membership of the Board shall, upon the determination of the governing body, consist of either three (3) or five (5) residents of the Borough appointed by the resolution of the governing body. The term of office of a three (3) member board shall be three (3) years and shall be so fixed that the term of office of one (1) member shall expire each year. The terms of office of a five (5) member board shall be five (5) years and shall be so fixed that the term of office of one member of a five member board shall expire each year. If a three (3) member board is changed to a five (5) member board, the members of the existing three (3) member board shall continue in office until their term of office would expire under prior law. The governing body shall appoint two (2) additional members to the Board with terms scheduled to expire in accordance with the provisions of this section. The Board shall promptly notify the governing body of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the Borough.

The governing body may appoint by resolution at least one (1) but no more than three (3) residents of the Borough 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 Section 906, of Act 170, 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 proceedings, and shall have all the powers and duties set forth in Act 170 and as otherwise provided by law. Alternates shall hold no other office in the Borough, 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 unless designated as a voting alternate member.

SECTION 8.2 **ORGANIZATION OF ZONING HEARING BOARD**

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 Zoning Hearing Board. The Zoning Hearing 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 Zoning Hearing Board as provided in Section 8.3.

If by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Zoning Hearing Board shall designate as many alternate members of said Board to sit on this Board as may be needed to provide a quorum. Any alternate member of the Zoning Hearing Board shall continue to serve this Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Zoning Hearing 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.

The Zoning Hearing Board may, make, alter, and rescind rules and forms for its procedure, consistent with Ordinances of the Township and Laws of the Commonwealth of Pennsylvania. The Zoning Hearing Board shall keep full public records of its business and shall submit a report of its activities to the Borough Council once a year.

SECTION 8.3 **PUBLIC HEARINGS**

- A. Notice: Conduct of meeting: Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer, such other persons as the Borough Council shall designate by Ordinance and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by Ordinance or, in the absence of Ordinance provision, 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 week prior to the hearing.

The governing body 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 cost, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs.

The hearing shall be held within 60 days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time. The hearings 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 Borough, 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.

The Board or hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issues 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 the 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.

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

- B. Representation: Statements: The parties to the hearing shall be the Borough, 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 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.

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.

- C. Witnesses: 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 paper, including witnesses and documents requested by the parties.

- D. Decision Procedure: The 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 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 therefore. Conclusions based on any provisions of Act 170 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 decision or findings are final, the Board shall make his report and recommendations available to the parties within 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 30 days after the receipt 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 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 in the same manner as provided in subsection (A) 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.

A copy of the final decision, or where no decision is called for, or the findings shall be delivered to the applicant personally or mailed to him no 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.

- E. Records: 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 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.

SECTION 8.4 **ZONING HEARING BOARD'S FUNCTIONS**

A. Appeals From The Zoning Officer:

The Zoning Hearing Board shall hear and decide 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 thereof, the issuance of any cease and desist order, or the registration or refusal to register any nonconforming use, structure, or lot.

B. Challenge To The Validity Of This Ordinance Or Map:

The Zoning Hearing Board shall hear challenges to the validity of This Ordinance or Map, pursuant to the provisions of the Pennsylvania Municipalities Planning Code (Act 247, 1968) as amended. In all such challenges, the Zoning Hearing Board shall take evidence and make a record thereon as provided in Section 8.3. At the conclusion of the hearing, the Board shall decide all contested questions of interpretation and shall make findings on all relevant issues of fact which shall become part of the record on appeal to the court.

C. Variances:

The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of the Zoning Ordinance inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may grant a variance provided that the following findings are made where relevant in a given case:

1. 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.
2. That because of such physical circumstances or conditions, the property cannot be reasonably 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.

3. That such unnecessary hardship has not been created by the appellant.
4. 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.
5. 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.
6. 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.

D. **Special Exceptions:**

Where the Borough in This Zoning Ordinance, has stated special exceptions to be granted or denied by the Zoning Hearing Board Pursuant to express standards and criteria, the Zoning Hearing Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, as it may deem necessary to implement the purpose of This Zoning Ordinance.

The Zoning Hearing Board may authorize by special permit those uses which are permitted by This Ordinance as a special exception as set forth in certain sections prescribing district use regulations, where such uses are deemed desirable or essential to the public convenience or welfare, and they are in harmony with elements and objectives of the basic plan prepared for the Borough of Mont Alto to form a foundation for This Ordinance. Such permits may be granted only by Zoning Hearing Board after public notice and hearing on any application for a special permit.

E. **Parties Appellant Before Zoning Hearing Board:**

Appeals under Section 8.4.A. and proceedings to challenge This Ordinance under Section 8.4.B. may be filed with the Zoning Hearing Board, in writing, by the landowner affected or any officer of agency of the Borough, or any person aggrieved. Requests for a variance under Section 8.4.C. and for special exceptions under Section 8.4.D. may be filed with the Zoning Hearing Board by any landowner or any tenant with the permission of such landowner.

SECTION 8.5 **TIME LIMITATIONS**

The time limitations for raising certain issues and filing certain proceedings with the Zoning Hearing Board shall be the following:

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 Borough 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 they 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 preliminary plan, or from an adverse decision by a Zoning Officer on a challenge to the validity of This Ordinance or Map shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative or preliminary approval.

SECTION 8.6 **STAY OF PROCEEDINGS**

Upon filing of any proceeding referred to in Section 8.4.E. 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 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. 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.

SECTION 8.7 **FEES**

- A. All filing fees shall be paid at the time of application and be in accordance with the Mont Alto Borough Fee schedule as duly adopted by resolution.
- B. The Zoning Hearing Board may employ legal counsel and pay an amount not to exceed funds budgeted for legal services rendered. The Board's legal counsel shall be an attorney other than the Municipal Solicitor. The Zoning Hearing Board may also employ or contract for and fix the compensation of experts and other staff and may contract for compensation for services as it shall deem necessary.

- C. Reasonable fees may be set with respect to public hearings before the Zoning Hearing Board including: compensation for the secretary and members of the Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. These costs, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs.

- D. The stenographic fee is shared equally by the Applicant and the Board. Transcripts are paid for by the party requesting the copy. In appeals the party appealing the decision pays for the transcript.