

OFFICIAL USE ONLY

Name _____
Location _____
Zoning District _____

Hearing No. _____
Date Filed _____
Hearing Date _____

Nature of Application _____

(See Zoning Officer's Report for Additional Information.)

**APPEAL TO ZONING HEARING BOARD
SOUDERTON BOROUGH
31 W. SUMMIT STREET
SOUDERTON, PA 18964
(215) 723-4371**

1. Applicant:

(a) Name: _____

(b) Mailing Address: _____

(c) Telephone Number: _____

(d) State whether owner of legal title, owner of equitable title, or tenant with permission of owner of legal title:

2. Owner (If different):

(a) Name: _____

(b) Mailing Address: _____

3. Classification of Appeal (Check one or more if applicable):

___ A. Request for Variance (Zoning Ordinance §1605D)

___ B. Request for Special Exception (Zoning Ordinance §1605E)

Classification of Appeal - (Continued)

- ___ C. Interpretation of Law
- ___ D. Appeal from action of the Zoning Officer (Attach all related correspondence) (Zoning Ordinance §1605A)
- ___ E. Other (Please specify)

4. Applicant's Attorney, if any:

- (a) Name: _____
- (b) Mailing Address: _____

- (c) Telephone Number: _____
- (d) Fax Number: _____

5. Property:

- (a) Present Zoning Use Classification:

- (b) Tax Parcel Number: _____
- (c) Location (With reference to nearby intersections or prominent features):

6. **Present Use and Proposed Use, if different:**

Present Use: _____

Proposed Use: _____

7. State all legal grounds for appeal and cite specific sections of Zoning Ordinance, Subdivision and Land Development Ordinance, or other statutes, ordinances, regulations or case law.

8. Has any previous appeal been filed concerning this property?

Yes _____ No _____

If Yes, please specify and provide prior appeal number:

I (We) hereby certify that the above information is true and correct to the best of my (our) knowledge, information or belief.

Date: _____ Name: _____

Date: _____ Name: _____

INSTRUCTIONS TO APPLICANTS

- (1) Conduct of the Zoning Hearing is governed by §1615 of the Zoning Ordinance and "Zoning Hearing Board Rules and Procedures," both of which are available for inspection at the Borough Office or may be purchased.
- (2) For 3(A), (B) or (C), one copy of one or more plans (if size 8 ½" x 11" or five copies (if larger than size 8 ½" x 11") must be attached to the appeal. For commercial properties plan or plans must be prepared by a professional engineer or surveyor, but for residential applications the Board will accept any plans which are complete and accurate, provided that if not prepared by a professional engineer or surveyor, the person who prepared the plan must be prepared to state under oath at the formal hearing that the plan is complete and accurate. The plan or plans must contain all information relevant to the appeal, including but not limited to, the following: the property related to a street, the dimensions and area of the lot, the dimensions and location of existing buildings or improvements, the dimensions and locations of proposed uses, buildings or improvements.
- (3) The required filing fee must accompany this Appeal and is not returnable once the Appeal is accepted. Please contact the Borough Office for the present filing fee schedule and the required fee. No application will be accepted without the required fee.
- (4) Submit copy of deed with application.

**BOROUGH OF SOUDERTON
MONTGOMERY COUNTY
PENNSYLVANIA**

**ZONING HEARING BOARD
RULES AND PROCEDURES**

ARTICLE 1. GENERAL PROVISIONS

1.1 The Zoning Hearing Board of the Borough of Souderton shall be governed by the provisions of the Pennsylvania Municipalities Planning Code (hereinafter referred to as "MPC"), as amended from time to time, the Souderton Borough Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance"), and by these Rules. These Rules are not meant to conflict with either the MPC or the Zoning Ordinance. To the extent that an inconsistency shall exist, the MPC shall take precedence over both these Rules and the Zoning Ordinance. If an inconsistency between the Zoning Ordinance and these Rules exists, the Zoning Ordinance shall take precedence.

1.2 The Board shall become familiar with all other ordinances under which it may be expected to act as well as with applicable state statutes such as the MPC and the Sunshine Law.

1.3 The Board shall become familiar with the statement of community development objectives as contained within the Zoning Ordinance or stated by reference to the community comprehensive plan, and shall grant the minimum relief which will insure that the goals and objectives of the community are preserved and that substantial justice is done.

1.4 Nothing herein shall be construed to give or grant to the Board the power or authority to alter or change the Zoning Ordinance, including the Zoning Map, which authority is reserved to Souderton Borough Council.

1.5 Within the limits of funds appropriated by the governing body, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services.

1.6 The legal counsel to the Board shall be consulted in cases where the powers of the Board are not clearly defined.

ARTICLE 2. OFFICERS AND DUTIES

2.1 **ELECTION.** The Board shall, at its annual organizational meeting, elect from its own membership, officers which shall consist of a chairman, a vice-chairman and a secretary. These officers shall serve annual terms and may succeed themselves.

2.2 **CHAIRMAN.** The Chairman shall perform all duties required by law, ordinance and these rules; shall preside at all meetings of the Board; shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board; shall appoint any committees found necessary to carry out the business of the Board; and shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers. The Chairman's signature shall be the official signature of the Board and shall appear on all decisions as directed by the Board.

2.3 **VICE CHAIRMAN.** The Vice Chairman, in the absence, disability or disqualification of the Chairman, shall perform all the duties and exercise all the powers of the Chairman.

2.4 SECRETARY. The Secretary, or his or her designee, shall record and maintain permanent minutes of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact; shall keep records of the Board's examinations and other official actions; shall cause to be made a stenographic record of all hearings, including the names and addresses of all persons appearing before the Board; shall, subject to the Board and the Chairman, conduct the correspondence of the Board; shall cause to be published, in a local newspaper, public notices of meetings or hearings as required by law and by these rules of procedures; shall cause to be conspicuously posted a written notice on the affected tract at least one week prior to the hearing; shall file Board minutes and records in the municipal office, which minutes and records shall be a public record; and shall submit a report of the Board's activities to the governing body once a year or as required by the governing body.

2.5 VACANCIES. The Board shall promptly notify the governing body of any vacancies which occur. Should a vacancy occur among the officers of the Board, such office shall be filled by election, for the unexpired term, at the next meeting of the full Board.

2.6 ALTERNATE MEMBERS. When alternates have been appointed by resolution of the governing body, the Chairman of the Board shall designate as many alternates as necessary to reach a quorum. Once seated the alternate shall continue to serve on the Board in all proceedings involving the matter or case for which the alternate was appointed until the Board had made a decision on the case. When an alternate has not been designated to sit by the Chairman, the alternate may participate in any proceeding or discussion before the Board but shall not vote or be compensated. Alternates shall hold no other office in the municipality, including membership on the Planning Commission and Zoning Officer.

ARTICLE 3. MEETINGS

3.1 REGULAR MEETINGS. The regular meeting of the Board shall be held, when necessary, on the second Tuesday of each month at 7:00 p.m. in the Council Chambers of the Souderton Municipal Building, 31 W. Summit Street, Souderton, Pennsylvania.

3.2 ANNUAL MEETING. The annual organizational meeting of the Board shall be the first regular meeting of the year.

3.3 SPECIAL MEETINGS. Special meetings may be called by the Chairman at his discretion or upon the request of two other Board members provided that public notice shall be given as required.

3.4 PUBLIC NOTICE. The Board shall hold all meetings at specified times and places of which public notice shall be given. Public notice of all regular and special meetings shall be provided pursuant to requirements of the MPC and Zoning Ordinance.

3.5 QUORUM. A quorum shall be not less than a majority of all members of the Board and is required for any decision, or official action by the Board, except as modified herein.

ARTICLE 4. ORDER OF BUSINESS

4.1 PROCEEDINGS. All meetings of the Board shall proceed as follows:

- (A) Meeting called to order;
- (B) Roll call and declaration of quorum;
- (C) Reading and approval of minutes;
- (D) Voting and announcement of outstanding decisions;
- (E) Continued hearings;
- (F) Hearing of cases;

- (G) Unfinished business;
- (H) New business; and
- (I) Adjournment

ARTICLE 5. BOARD'S FUNCTIONS

5.1 The Board shall have exclusive jurisdiction to hear and render final adjudications in matters authorized by MPC Section 909.1(a) Jurisdiction. As specified in the MPC, the Board has nine functions:

- (A) Substantive challenges to the validity of any land use ordinance, except a curative amendment;
- (B) Procedural challenges on land use ordinances;
- (C) Appeals from the determination of the Zoning Officer, including but not limited to,
 - (I) the granting or denial of any permit, or failure to act on the application,
 - (ii) the issuance of any cease and desist order, or
 - (iii) the registration or refusal to register any non-conforming use, structure or lot;
- (D) Appeals from determinations by the municipal engineer or Zoning Officer with respect to floodplain ordinances or provisions;
- (E) Variances;
- (F) Special exceptions;
- (G) Appeals from determinations in the administration of transfers of development rights or performance density provisions;
- (H) Appeals from the Zoning Officer's determination of a preliminary opinion under MPC Section 916.2;
- (I) Appeals from determinations by the Zoning Officer or engineer regarding sedimentation and erosion control or storm water management not involving Article V or Article VII applications.

ARTICLE 6. HEARINGS

6.1 INITIATING ACTION BEFORE THE BOARD. All action before the Board shall be initiated by a written application for hearing which shall be filed with the Zoning Officer by the fifteenth day of the month preceding the meeting at which the matter is to be heard. All applications shall be made on forms specified by the Board. No application shall be accepted unless the same shall be fully and legibly completed and unless all exhibits and supplemental material required by the application shall be attached and until all fees required shall have been paid.

6.2 HEARING SCHEDULE. The Board may conduct hearings and make decisions at any regular or special meeting. In no instance will a hearing be scheduled later than sixty(60) days from the date of the accepted applicant's request for a hearing, unless the applicant has agreed in writing to an extension of time.

6.3 NOTIFICATION OF HEARING.

(A) Whenever a hearing has been scheduled, public notice shall be given to the general public by means of publication once each week for two successive weeks in a newspaper of general circulation within the community. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered. The first publication shall not be more than thirty(30) days and the second publication shall not be less than seven(7) days prior to the date of the hearing.

(B) Written notice shall be given to the applicant, the Borough Planning Commission, the Zoning Officer and to any person who has made timely request for such notice. Written notice shall also be sent to adjoining property owners as required by the Zoning Ordinance.

(C) In addition to the notice provided herein, the Zoning Officer shall conspicuously post notice of said hearing on the affected tract of land no less than seven(7) days prior to the date of the hearing.

6.4 CONDUCT OF HEARING. The hearing shall be conducted by the Zoning Hearing 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, but the appellant or the applicant, as the case may be, in addition to the municipality, may waive the decision or findings by the Board and accept the decision or findings of the hearing officer as final.

6.5 ORDER OF HEARING.

- (A) Hearing called to order;
- (B) Chairman's statement of reason for hearing;
- (C) Chairman's statement of parties to hearing;
- (D) Identification of other parties wishing to be heard;
- (E) Outline of procedures to be followed during hearing;
- (F) Applicant's presentation of their case,
 - (1) Objectors cross-examine applicant's witnesses,
 - (2) Board cross-examines applicant's witnesses;
- (G) Statement of the Zoning Officer,
 - (1) Applicant's cross-examination,
 - (2) Objector's cross-examination,
 - (3) Board's cross-examination;
- (H) Objector's presentation of their case,
 - (1) Applicant cross-examines objector's witnesses,
 - (2) Board cross-examines objector's witnesses;
- (I) Other testimony and evidence; comments;
- (J) Rebuttal by applicant;
- (K) Rebuttal by objectors;
- (L) Concluding remarks and notice of when decision is expected
To be made;
- (M) Adjournment of hearing

6.6 RECORD. The Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. A transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.

6.7 PARTIES. The parties to the hearing shall be the municipality, 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. All persons who wish to be considered parties shall enter appearances in writing on forms provided by the Board for that purpose. Persons aggrieved shall not be denied standing because they do not reside nor have a property interest within the municipal boundaries.

6.8 REPRESENTATION. All 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.

6.9 WITNESSES. All witnesses shall testify under oath.

6.10 EVIDENCE. The Board shall not be bound by strict rules of evidence, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The Chairman, or hearing officer, as the case may be shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board.

6.11 COMMUNICATION. The Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials except advice from the ZHB 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.

6.12 DECISIONS

(A) 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 within forty-five(45) days after the last hearing before the Board or hearing officer.

(B) If the hearing is conducted by a hearing officer, and there has been no stipulation by the appellant or the applicant and the municipality that the hearing officer's decision or findings are final, the Board shall make its 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. The Board's decision shall be entered no later than 30 days after the report of the hearing officer.

(C) The Board shall vote on all matters in public session at the meeting in which evidence is concluded. If additional time for deliberation is necessary, the Board shall reschedule the deliberations to a date within the allotted forty-five(45) day time limit.

(D) No member of the Board shall sit in hearing or vote on any matter in which he or she is personally or financially interested. Said member shall not be counted by the Board in establishing the quorum for such matters, i.e. for a three(3) member Board, if one member removes himself, two members are still required for a quorum.

(E) No member of the Board shall vote on the adjudication of any matter unless he has attended the public hearing thereon.

(F) A tie vote shall be considered a rejection of the application under consideration. However, if a person aggrieved has appealed the grant of a permit or approval, a tie vote upholds the prior approval.

(G) A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the day following its date. The Board shall provide by mail or otherwise, to all other persons who have filed their name and address with the Board, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

6.13 CONTINUANCES. On its own motion, or on approval of requests by applicant, appellants or their authorized agents, the Board may provide for later continuances of cases on which hearings have begun. Such continuances shall be permitted only for good cause, stated in the motion, and, unless time and place is stated, shall require new public notice, with fees paid by applicants or appellants if continuances are at their request or result from their actions. A notice of the place, date and time of the continued hearing shall also be posted prominently at the municipal office where the hearing will be continued.

6.14 FAILURE TO HOLD HEARING OR RENDER DECISION. Where the Board fails to render a decision within the period required, or fails to hold a hearing within the period required, the decision shall be deemed to have been rendered in favor of the applicant unless otherwise specified in the MPC. However, failure to act on a validity challenge results in a deemed denial. When a decision has been rendered in favor of the applicant because of the failure of the Board to meet or render a decision, the Board shall give public notice of deemed approval within ten(10) days from the last day it could have met to render a decision in the same manner as in Section 6.4(A).

6.15 RECONSIDERATION. Once an application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board, except that the applicant may reapply based upon new evidence that substantially alters conditions of the petition.

ARTICLE 7. APPEALS


7.1 The procedure set forth in Article X-A of the Pennsylvania Municipalities Planning Code and in the Judiciary Act Repealer Act shall constitute the exclusive mode of appeal from any decision of the Zoning Hearing Board.

ARTICLE 8. ADOPTION AND AMENDMENT OF RULES

8.1 These rules shall be adopted and may be amended by an affirmative majority vote of all members of the Board.

8.2 Any proposed amendment must be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

The foregoing rules or procedure and bylaws are hereby adopted, by the Zoning Hearing Board of the Borough of Souderton, 31 W. Summit Street, Souderton, Pennsylvania on February 8, 2000.



Jack M. Marden, Chairman



Randall Hendricks, Secretary