

Borough of Downingtown, PA
Wednesday, November 30, 2011

Chapter 4. APPEALS, BOARD OF ADMINISTRATIVE

[HISTORY: Adopted by the Borough Council of the Borough of Downingtown 12-30-1986 by Ord. No. 86-20. Amendments noted where applicable.]

GENERAL REFERENCES

Salaries and compensation — See Ch. 76.
Automatic protection alarms — See Ch. 94.
Licensing of contractors — See Ch. 121.
Housing standards — See Ch. 164.

§ 4-1. Creation.

There shall be and hereby is created a Board of Administrative Appeals.

§ 4-2. Jurisdiction.

The Board of Administrative Appeals shall have jurisdiction in all disputes of any nature or description whatsoever arising from the grant or denial of any permit or the action of any Borough administrative official under any ordinance specifically providing for appeals to this Board of Administrative Appeals. No such appeal shall lie under any ordinance not specifically providing for appeals to this Board or providing for appeals to other boards or directly to court. Specifically excluded from this chapter are appeals arising under Chapter 287, Zoning, and Chapter 256, Subdivision of Land, or any other ordinance enacted under the Municipalities Planning Code. *Editor's Note: See 53 P.S. § 10101 et seq.*

§ 4-3. Definitions.

[Amended 10-10-1990 by Ord. No. 90-16]As used in this chapter, the following terms shall have the meanings indicated:

ADMINISTRATIVE OFFICE

Includes and is construed to mean the administrative official charged with the enforcement of the particular ordinance or code which is made a subject of appeal to this Board.

§ 4-4. Persons aggrieved entitled to appeal.

[Amended 10-10-1990 by Ord. No. 90-16; 11-7-2001 by Ord. No. 2001-4]The Borough; any of its agencies; any other governmental office, agency or department of the county, state or federal government having jurisdiction over the land in question; the landowner; the occupant of the land; and any purchaser under an agreement of sale or under an option agreement having a direct, pecuniary or proprietary interest in lands immediately adversely affected by any action of the administrative office in the administration of applicable ordinances (all hereinafter referred to as "persons aggrieved") may appeal such action of the administrative office to the Board of Administrative Appeals, which shall hear and determine the same under the Local Agency Law of the Commonwealth of Pennsylvania. *Editor's Note: See 2 Pa.C.S.A. § 105. Please refer to Chapter 164, Article IV, §§ 164-14 and 164-15.*

§ 4-4.1. Administrative fee.

[Added 11-7-2001 by Ord. No. 2001-4] Any person appealing from the decision of the Code Enforcement Officer shall pay a fee of \$500 which shall be paid to the Borough of Downingtown. The records of the Board of Administrative Appeals shall be the property of the Borough of Downingtown and shall at all times be kept in the custody of the Borough Secretary at the municipal building.

§ 4-5. Membership; qualifications; officers; exemptions.

- A. Membership of Board. The Board of Administrative Appeals shall consist of three members appointed by the Borough Council, one such member to be appointed for three years, one for two years and one for one year. Thereafter, each new member shall serve for three years or until his successor has been appointed and qualified.
- B. Qualifications of Board members. Each member shall have a general working knowledge and understanding of construction techniques, materials and design, and his qualifications to serve shall be left to the sole, absolute and unfettered discretion of the Borough Council.
- C. Absence of members. During the absence of a member, by reason of disability or disqualification, the Borough Council shall designate a qualified substitute.
- D. Chairman of Board. The Board shall select one of its members to serve as Chairman and one of its members to serve as Secretary to the Board. The Secretary of the Board shall keep a detailed record of all proceedings on file in the administrative office.
- E. Exemption of members. A member of the Board shall not pass on any question in which he is engaged as contractor or material dealer or in the preparation of plans or specifications or in which he has any personal interest.

§ 4-6. Compensation of Board members.

The members of the Board of Administrative Appeals shall receive such compensation as may from time to time be determined by the Borough Council. In addition, the Board of Administrative Appeals and members thereof shall be reimbursed for all out-of-pocket expenses incurred in the performance of their duties.

§ 4-7. Notice of meeting.

The Board shall meet upon notice of the Chairman, which shall be given to all members of the Board, all adjacent property owners, the applicant, the landowner, the Borough Council, the Borough Solicitor, the administrative office and to all persons holding or occupying property immediately adjacent to the premises which is the subject of the appeal. The giving of notice to an occupant shall be deemed notice to the owner, and the giving of notice to an owner shall be deemed notice to the occupant of any property. In addition, notice shall be advertised once in a newspaper of general circulation within the Borough not less than seven nor more than 21 days prior to the date of the hearing. Where notices have been sent to any person entitled to receive notices under the terms hereof, the failure to receive such notice shall not be a basis for the invalidation of the hearing nor deprive the Board of jurisdiction nor compel readvertising.

§ 4-8. Public hearing.

All hearings shall be open to the public and shall be conducted under and pursuant to the procedure designated in the Local Agency Law of the Commonwealth of Pennsylvania. *Editor's Note: See 2 Pa.C.S.A. § 105.* The majority of the Board shall constitute a quorum, and the majority of the members present and voting may render a decision on any matter before the Board. At the hearing, the appellant shall be entitled to be represented by counsel, and those persons enumerated in § 4-7, as well as any other persons authorized by the Board in its discretion, shall be permitted to intervene as parties.

§ 4-9. Adjournment to future date certain.

When the necessary number to constitute a quorum of the Board is not present, if the testimony has not been concluded or for any other reason in the discretion of the Board, the Board may continue the hearing to a future date certain.

§ 4-10. Vote.

The Board shall affirm, modify or reverse the decision of the administrative office by a majority vote of the members of the Board hearing the appeal. The failure to obtain a majority vote shall constitute affirmance of the action of the administrative office.

§ 4-11. Limitations of jurisdiction.

The Board shall be empowered to render decisions concerning the propriety of the administrative office's actions under ordinances to which jurisdiction is granted to this Board. Therefore, an alleged refusal to issue a building permit based upon an alleged noncompliance with any other ordinance, code, statute, rule or regulation shall be limited to whether or not the certificate of compliance was attached to the application, and the Board of Administrative Appeals shall not have jurisdiction or power to inquire into the propriety of the grant or refusal of such certification, it being the intent that this section shall not impair exclusive jurisdiction of the Borough Council, the Zoning Hearing Board, the Department of Environmental Resources or any other reviewing agency within the jurisdiction set forth in their respective enabling legislation.

§ 4-12. Rendering of opinion.

The Board shall render a written opinion within 45 days of the close of the hearings and shall make findings of fact relevant to said application and apply the applicable law to said findings of fact in the rendering of its decision. Copies of the opinion and decision shall be mailed, by first class mail, to each party before the Board and to the Borough Council; provided, however, that failure to render a decision within the forty-five-day period herein stated shall not constitute an affirmance or denial, but any party shall have the right to seek an order in mandamus from the Court of Common Pleas directing the filing to render such an opinion within 45 days.

§ 4-13. Action by administrative office.

The administrative office shall take immediate action in accordance with the decision of the Board.

§ 4-14. Court review.

The municipality, whether or not a party before the Board of Administrative Appeals, and any party other than a discretionary party before the Board who is aggrieved by the decision of the Board of Administration Appeals may appeal to the Court of Common Pleas of Chester County within 30 days from the date of the rendering of the decision of the Board, and the Court of Common Pleas shall review the record on certiorari to determine whether or not the Board of Administrative Appeals abused its discretion or committed an error at law.

Borough of Downingtown, PA
Wednesday, November 30, 2011

Chapter 86. WATER AUTHORITY

[HISTORY: Adopted by the Borough Council of the Borough of Downingtown 6-10-1987 by Ord. No. 87-11. Amendments noted were applicable.]

§ 86-1. Intention.

The Borough Council for the Borough of Downingtown intends to create a Water Authority for the Borough of Downingtown.

§ 86-2. Name of authority established.

The Authority shall be referred to and designated as the Downingtown Municipal Water Authority.

§ 86-3. Statutory authority.

The Authority shall be formed and established pursuant to the provisions of the Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, 53 P.S. § 301 et seq. *Editor's Note: See now 53 Pa.C.S.A. § 5601 et seq.*

§ 86-4. Creation and incorporation; office.

Said Authority shall be the creation of and incorporated by the Borough of Downingtown, with Borough offices located at 4 West Lancaster Avenue, Downingtown, Pennsylvania 19335.

§ 86-5. Membership.

Said Authority shall be comprised of five members. The names, addresses and terms of office of the five members of said Authority shall be as follows. *Editor's Note: The names and addresses of the original members and their terms of office have been deleted as being obsolete. This information is on file in the Borough offices.*

§ 86-6. Rights; powers and authority.

Said Authority shall have the full rights, powers, authorities and responsibilities as set forth in the Pennsylvania Municipalities Authorities Act of 1945, including but not limited to those purposes and powers set forth in 53 P.S. §§ 306, 307, 307.1, 309 and 311 of said Act. *Editor's Note: See now 53 Pa.C.S.A. § 5601 et seq.*

§ 86-7. Provisions, agreements and conditions.

[Amended 3-11-1992 by Ord. No. 92-3]Said Authority shall be considered a full and operating authority, except for such provisions, agreements and conditions as agreed to by the Borough of Downingtown, by and through the Borough Council, and the Downingtown Municipal Water Authority, as set forth in the agreement dated August 30, 1989, as amended December 11, 1991, and as may be amended from time to time.

*Borough of Downingtown, PA
Wednesday, November 30, 2011*

§ 24-13. Fire protection advisory board; repealer; when effective.

- A. The Borough shall establish a Fire Protection Advisory Board (FPAB) comprised of the Chief of the Fire Department, a Borough Council member, a citizen of the Borough, a supervisor of East Caln Township and a citizen of East Caln Township. The composition of the Fire Protection Advisory Board may be increased to include representatives from neighboring municipalities that have contributed resources to the Fire Department, provided that an appropriate modification to the agreement between East Caln Township and the Borough is adopted. The Fire Protection Advisory Board shall recommended budgets, financial plans and a Capital Equipment Replacement Schedule in cooperation with the Chief of the Fire Department and review contracts and services provided to the municipalities served.
- B. All prior ordinances which constituted or were incorporated within Chapter 24 of the Code of the Borough of Downingtown prior to the effective date of this chapter are hereby repealed.
- C. This chapter shall be effective upon enactment as provided by law.

§ 86-8. (Reserved)

Editor's Note: Former § 86-8, Availability of funds for purchase of insurance, was repealed 3-11-1992 by Ord. No. 92-3.

Borough of Downingtown, PA
Wednesday, November 30, 2011

Chapter 39. HISTORICAL AND PARKS COMMISSION

[**HISTORY:** Adopted by the Borough Council of the Borough of Downingtown 12-4-1996 by **Ord. No. 96-17**. *Editor's Note: This ordinance also repeals former Ch. 39, Historical Commission, adopted 5-8-1974 by Ord. No. 74-10. Amendments noted where applicable.*]

GENERAL REFERENCES

Funds — See Ch. 32.

Parks and playgrounds — See Ch. 203.

§ 39-1. Establishment.

There is hereby established a Commission to be named the "Downingtown Historical and Parks Commission."

- A. The purpose of this Commission shall be to assist in the development and maintenance of Downingtown Park System and the historical properties in the Borough, particularly those properties owned by the Borough.
- B. It is the desire of the Borough Council of Downingtown to establish a combined Historical and Parks Commission to address these certain needs of the Borough of Downingtown and to repeal both the Historical Commission, enacted by Ordinance No. 74-10 on May 8, 1974, as amended, and the Recreation Board and Joint Recreation Board, Article I, enacted by Ordinance No. 643 on December 12, 1966, as amended, and, Article II, by Ordinance No. 88-9 on August 10, 1988, as amended, (Chapter 69, §§ 69-1 through 69-9 of Code) respectively.

§ 39-2. Duties.

The Historical and Parks Commission shall:

- A. Record the history of the Borough.
- B. Maintain an archive of Borough and Borough-related historical documents, photographs, pictures, memorabilia, artifacts, etc.
- C. Take inventory of the historic sites and structures within the Borough and, on occasion, recommend that the Borough Council establish, by ordinance, historic districts and/or sites pursuant to Act No. 167 of June 13, 1961. *Editor's Note: See 53 P.S. § 8001 et seq.*
- D. Recommend appropriate plans and actions concerning historic properties owned by the Borough in order to preserve the historical integrity of the community and review and approve any proposed changes or improvements to Borough-owned historic structures in order to maintain the historic integrity of the structure.
- E. Conduct an annual review of the entire park system to determine the condition of the system and its appurtenances.

- (1) The annual review shall include Kerr Park, Kardon Park, Johnstown Park, Sunnybrook Park, Log House Property, Roger Hunt Mill Property, trails and any other Borough-owned park facility.
 - (2) The annual review will address, at a minimum, the following issues: general overview of repair and maintenance needs of the existing facilities and appurtenances, upgrades to existing facilities and appurtenances, addition of new park facilities and appurtenances, sign issues and safety concerns.
 - (3) The review of park facilities may be held more than once a year, as required; however, a complete review of the facilities named herein shall be performed by July 1 of each year. A report of the park review findings shall be submitted to the Director of Administration and Finance and the Public Works Director not later than August 1 of each year for inclusion with budget preparation.
- F. Provide input to the Public Works Superintendent in developing the annual operating budget for the Borough parks system.
- G. Develop an annual operating budget for the historic needs, including identified improvements to the Log House and other historic structures owned by the Borough.
- H. Recommend historic and park-related projects for consideration in the development of the five-year capital improvements program and annually recommend projects to be added on to the subsequent funding year of the capital improvement program. Such recommendations should accompany the annual park review report submitted to the Director not later than August 15 of each year.
- I. Provide events from time to time as deemed appropriate to meet the needs of the citizens of the Borough. Any funds generated by the Commission as a result of special events shall be earmarked for a specific purpose, budget item or capital project. This earmarking will be done prior to the fund-raising event, if at all possible; however, if not earmarked, the moneys will accrue in a fund for future historic/parks capital projects. Periodic activities notwithstanding, all issues relating to the use and/or scheduling of park/athletic facilities shall be handled exclusively by the Borough Administration.
- J. Use the 1994 Downingtown Borough Comprehensive Plan and the 1993 Open Space, Recreation and Environmental Resources Plan as tools to guide the Borough's role in historical and parks efforts and make recommendations to the Borough Council to revise and update these documents from time to time.

§ 39-3. Composition; terms; vacancies.

- A. The Commission shall have 11 members, four of which need not reside in the Borough. All members shall be appointed by the Borough Council.
- B. Each Commission member shall serve for a term of three years. Initially, the first three members shall serve one year, four members shall serve two years, and the final four members shall serve for three years.
- C. The Borough Council can fill a vacancy for the duration of an unexpired term.

§ 39-4. Officers; rules of order.

The Commission shall elect a Chairperson who will direct the activities of the Commission, a Vice Chairperson and a Secretary. All officers shall serve yearly. The Commission shall yearly establish its own rules of order.

§ 39-5. Role of Borough staff.

The Assistant Director will attend regular Commission meetings as necessary in an effort to facilitate communication between the Commission, the Borough Council and the Administration. The Assistant Director will work with the Commission on researching and applying for available grant moneys. The Public Works Director will be responsible for considering the Commissions' annual parks operation and maintenance budget recommendations and make himself/herself available for consultations with the Commission.

§ 39-6. Meetings; reports.

Public meetings shall be held to conduct the business of the Commission. Meetings shall be held at least quarterly or more frequent as deemed reasonable by the Commission. A report of the preceding year's activities shall be presented to the Borough Council prior to March 1 of each year.

Borough of Downingtown, PA
Wednesday, November 30, 2011

Chapter 61. PLANNING COMMISSION

[HISTORY: Adopted by the Borough Council of the Borough of Downingtown 2-3-1936.
Amendments noted where applicable.]

GENERAL REFERENCES

Shade Tree Commission — See Ch. 80.
Subdivision of land — See Ch. 256.
Zoning — See Ch. 287.

§ 61-1. Reestablishment; terms; rules; compensation.

[Amended 3-9-1970 by Ord. No. 712]

- A. Pursuant to the Pennsylvania Municipalities Planning Code, Act 247 of January 1969, *Editor's Note: See 53 P.S. § 10101 et seq.* there is hereby reestablished a Planning Commission in the Borough of Downingtown, consisting of seven persons.
- B. The term of office shall be four years, with two members being appointed by the Council every year, with the exception of one member being appointed every fourth year. An appointment to fill a vacancy shall be only for the unexpired portion of the term. All members of said Commission shall reside within the zone of jurisdiction of said Commission as hereinafter defined.
- C. They may make and alter rules and regulations for their own organization and procedure, consistent with the ordinances of the Borough and the laws of the commonwealth.
- D. They shall serve without compensation and annually make a report to the Council of their transactions.
- E. They may employ engineers and other persons whose salaries and wages and other necessary expenses of the Commission shall be provided for through proper appropriation by the Council.

§ 61-2. Power to disapprove ordinances.

The Secretary of the Council shall, upon introduction, furnish to the Borough Planning Commission for its consideration a copy of all ordinances and bills, and all amendments thereto, relating to the location of any public building of the Borough, and to the location, extension, widening, narrowing, enlargement, ornamentation and parking of any street, boulevard, parkway, park, playground or other public ground; and to the relocation, vacation, curtailment, change of use or any other alteration of the Borough plan with relation to any of the same; and to the location of any bridge, tunnel, subway or any surface, underground or elevated railway. Said Commission shall have the power to disapprove any of said ordinances, bills or amendments, which disapproval, however, must be communicated to the Council, in writing, within 10 days from the introduction of said ordinance, but such disapproval shall not operate as a veto.

§ 61-3. Maps.

The Borough Planning Commission may make or cause to be made and lay before the Council and, at its discretion, cause to be published maps of the Borough or any portion thereof, including territory extending three miles beyond the Borough limits, showing the streets, highways and other natural and artificial features and also locations proposed by it for any new public building, civic center, street, parkway, park, playground or any other public ground or public improvement or any widening, extension or relocation of the same or any change in the Borough plan by it deemed advisable; and it may make recommendations to the Council from time to time concerning any such matters and things aforesaid, for action by the Council thereon, and, in so doing, have regard for the present conditions and future needs and growth of the Borough and the distribution and relative location of all the principal and other streets, railways, waterways and all other means of public travel and business communications, as well as the distribution and relative locations of all public buildings, public grounds and open spaces devoted to public use.

§ 61-4. Recommendations.

The Borough Planning Commission may make recommendations to any public authorities or any corporation or individuals in said Borough with reference to the location of any buildings, structures or works to be erected or constructed by them.

§ 61-5. Submission and approval of plans.

All plans, plots or replots of land laid out in building lots, and the streets, alleys or other portions of the same, intended to be dedicated to public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto and located within the Borough limits shall be submitted to the Borough Planning Commission and approved by it before they shall be recorded. It shall be unlawful to receive or record such plan in any public office unless the same shall bear thereon, by endorsement or otherwise, the approval of the Borough Planning Commission. The disapproval of any such plan by the Borough Planning Commission shall be deemed a refusal of the proposed dedication shown thereon. The approval of the Commission shall be deemed an acceptance of the proposed dedication but shall not impose any duty upon the Borough concerning the maintenance or improvement of any such dedicated parts until the proper authorities of the Borough shall have made actual appropriations of the same by entry, use or improvement. No sewer, water or gas main or pipes or other improvement shall be voted or made within the area under the jurisdiction of said Commission for the use of any such purchasers or owners, nor shall any permit for connection with or other use of any such improvement, existing or for any other reason made, be given to any such purchasers or owners until such plan is so approved.

§ 61-6. Access to Borough records; maps and plans; changes and additions.

The Borough Planning Commission shall have access to the maps, files and other papers of the Borough. Within the limitations prescribed and appropriations provided for the purpose, the Council may, on motion, authorize maps and plans to be made under the supervision of the Planning Commission and likewise authorize changes and additions to be made to the maps and plans. The Commission may recommend such changes and additions as it may deem proper, but such recommendations shall not restrict the right of the Council to initiate proceedings for the laying out and changing of highways and public places in the Borough.

*Borough of Downingtown, PA
Wednesday, November 30, 2011*

Chapter 80. SHADE TREE COMMISSION

[HISTORY: Adopted by the Borough Council of the Borough of Downingtown 7-7-1999 by Ord. No. 99-7. Amendments noted where applicable.]

GENERAL REFERENCES

Planning Commission — See Ch. 61.
Streets and sidewalks — See Ch. 249.
Trees — See Ch. 270.

§ 80-1. Establishment.

There is hereby established a Commission to be named the "Downingtown Shade Tree Commission." The purpose of this Commission is to make recommendations to Borough Council pertaining to the planting, maintenance, fertilization, pruning, bracing, removal and ordering of trees.

§ 80-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

LARGE TREES

Those trees which attain a height of 45 feet or more.

MEDIUM TREES

Those trees which attain a height of 30 feet to 45 feet.

PERMIT

A permit, in writing, as issued by the Director of Administration and Finance or such other person as the Director of Administration and Finance shall designate.

PUBLIC AREA RIGHT-OF-WAY

That area, including cartway and sidewalk, within public right-of-way lines for streets, highways, alleys and public ways; and also all property owned by the Borough.

SHADE TREE

Any tree, shrub, ornamental growth or woody plant grown in or upon any public street, highway, avenue, park sidewalk or other public area or that part of any tree, shrub, ornamental growth or woody plant which extends within the lines of any public street, highway, avenue, park, parkway, sidewalk or other public area in the Borough of Downingtown.

SMALL TREES

Those trees attaining a height of between 20 feet and 30 feet.

§ 80-3. Duties.

The Shade Tree Commission shall:

- A. Make recommendations to Borough Council pertaining to the planting, maintenance, fertilization, spraying, pruning, bracing, removal and ordering of trees for recommendation to Borough Council.
- B. Conduct, within two years of the enactment of this chapter, a census of shade trees in the Borough which shall mean the compilation of the location, type, species and evaluation of all said trees, bushes and shrubs in public areas. The Commission shall update this census on a regular basis.
- C. Develop an annual operating budget for the Shade Tree Commission.
- D. Review applications received from any person who shall desire to plant, prune, remove or cut above ground any public tree and recommend to Borough Council the granting of a permit.

§ 80-4. Permit review.

- A. Right of review. The applications will be submitted to the Director of Administration and Finance who, in turn, will submit said application promptly to the Commission for recommendation of approval or disapproval. The Shade Tree Commission will recommend to Borough Council the granting of a permit.

§ 80-5. Composition; terms; vacancies.

- A. The Commission shall be comprised of three Borough residents who shall be appointed by Council and shall serve without compensation.
- B. Initially, the new members will be appointed for the following terms: One member for an initial term of three years, one for an initial term of four years, and one for an initial term of five years.
- C. On the expiration of the term of any member, a successor shall be appointed by Council to serve for a term of five years. Vacancies shall be filled by Council for the unexpired term.

§ 80-6. Meetings; reports.

Public meetings shall be held to conduct the business of the Commission. Meetings shall be held at least quarterly, or more frequently as deemed reasonable by the Commission. A report of the preceding year's activities shall be presented to Borough Council prior to March 1 of each year.

Borough of Downingtown, PA
Wednesday, November 30, 2011

Article XXII. Zoning Hearing Board

§ 287-138. Membership.

- A. Appointment. The membership of the Zoning Hearing Board shall consist of three residents of the Borough appointed by resolution of the Borough Council. Each term of office shall be three years and shall be so fixed that the term of office of one member shall expire each year. The Zoning Officer shall not be eligible to serve as a member.
- B. Vacancies. Appointments to fill vacancies on the Board shall be for the duration of the unexpired portion of the term only.
- C. Removal of members. Any member of the Board may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Borough Council. No vote shall take place until such time as the member has received a fifteen-day 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.

§ 287-139. Organization.

- A. Conduct of the 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 Board. The Board may appoint a hearing officer from its own membership to conduct the hearing on its behalf, and the parties may waive further action by the Board and accept the decision or findings of the hearing officer as final, as provided in Section 908 of the Municipalities Planning Code. *Editor's Note: See 53 P.S. § 10908.*
- B. Establishment of procedure. The Zoning Hearing Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Borough and the laws of the commonwealth. The Board shall maintain full public records of its business.

§ 287-140. Expenditures; fees.

- A. Expenditures. Within the limits of funds appropriated by the Borough Council, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties, as may be established by the Borough Council.
- B. Fees. An applicant before the Zoning Hearing Board shall deposit with the Zoning Officer the appropriate filing fee. Fees shall be established by resolution of the Borough Council, for purposes as prescribed in Section 908(1.1) of the Municipalities Planning Code. *Editor's Note: See 53 P.S. § 10908(1.1).*

§ 287-141. Powers and functions.

The Zoning Hearing Board shall function in strict accordance with and pursuant to the Municipalities Planning Code and shall have the following powers:

- A. Appeals from the Zoning Officer. The Board shall hear and decide appeals where it is alleged that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of a valid ordinance or map of the Borough or any valid rule or regulation covering the duties of the Zoning Officer.
- B. Special exceptions. The Board shall hear and decide requests for special exceptions authorized by this chapter in accordance with the standards and criteria set forth below. The Board may attach such reasonable conditions and safeguards as it may deem necessary, as prescribed in § 287-145, to implement the purposes of this chapter.
- C. Variances. The Board shall hear requests for variances where it is alleged that the provisions of this chapter create unnecessary hardship on an applicant when applied to a tract of land. In granting a variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary, including those prescribed in § 287-144, to implement the purposes of this chapter.
- D. Validity of the Zoning Ordinance. The Board shall hear and make findings on challenges to the validity of any provision of this chapter with respect to substantive questions.

§ 287-142. Public hearing procedures.

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

- A. Filing appeals and requests to the Zoning Hearing Board. Requests for hearings before the Zoning Hearing Board shall be made as follows:
 - (1) An appeal to the Zoning Hearing Board may be filed by the landowner affected, any officer or agency of the Borough or any person aggrieved. Such appeal shall be taken within the time as stipulated by the Municipalities Planning Code and the rules of the Board, by filing with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.
 - (2) A request for a variance or special exception may be filed by any landowner or any tenant with evidence of consent from the landowner.
 - (3) The appropriate fee, established by the Borough, shall be paid in advance for each appeal or application for a special exception or variance.
- B. Notice.
 - (1) Upon filing a request for a hearing, the Board shall fix a reasonable time and place for a public hearing and shall give notice thereof as follows:
 - (a) By giving public notice thereof, as defined in § 287-7 of this chapter.
 - (b) By providing, by certified mail, a written notice thereof to the applicant at least 14 days before the date fixed for the hearing.
 - (c) By mailing a written notice thereof to the Zoning Officer, the Borough Secretary, each member of the Borough Council, each member of the Planning Commission, the Director of the Chester County Planning Commission and to every person or organization who shall have registered with the Board for the purpose of receiving such notices, accompanied by the appropriate mailing fee. The Borough Council may fix an annual fee for provision of notices to such registered persons or organizations.
 - (d) By posting the written notice of said hearing in a conspicuous location on the affected tract of land, at least one week prior to the hearing.

- (e) By sending a written notice thereof, by certified mail, return receipt requested, to the owner of every lot which abuts the property subject to the application, and by regular mail to the owner of every lot within a one-hundred-fifty-foot radius of the subject property which does not abut the subject property. "Owner" shall be defined as the person(s) listed as the owner on the tax rolls and notice shall be sent to the address contained in the tax rolls. The notice required hereunder shall be sent at least 10 days before the scheduled hearing.

[Amended 6-7-2006 by Ord. No. 2006-02]

- (2) The notice herein required shall state the location of the lot or building and the general nature of the question involved.
- C. Timing. A hearing shall be held within 60 days from the official application date requesting a hearing.
- D. Parties to the hearing. The parties to the hearing may be any person or entity entitled to notice under Subsection B above, and any other person permitted to appear by the Board.
- E. Powers of the Chairman. The Chairman or Acting Chairman of the Board, presiding, 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. Rights of the parties. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond, to present evidence and to argue and cross-examine adverse witnesses on all relevant issues.
- G. Exclusion of evidence. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded by the Board.
- H. Record of the proceedings. A stenographic record of the proceedings shall be made by a court reporter. The appearance fee for the court reporter shall be shared equally by the applicant and the Board. Any party requesting the original transcript or a copy of the transcript shall bear the cost of the same. Copies of graphic or written material received in evidence shall be made available to any party at cost.
- I. Communications. Once a formal application has been duly filed, the Board shall not communicate, directly or indirectly, with any party or his representative in connection with any issue involved except upon notice and opportunity for all parties to participate. Further, the Board shall not take notice of any communication unless the parties are afforded an opportunity to contest the material and shall not inspect the site or its surroundings with any party or his representative unless all parties are given an opportunity to be present.

§ 287-143. Decisions.

- A. The Board 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. Where the application is contested or denied, each decision shall be accompanied by findings and conclusions, together with the reasons for such conclusions. Conclusions based on any provisions of this chapter or of any act, 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. All decisions shall be made at a public hearing.
- B. Notice of the final decision 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, a brief notice of the decision or findings and a statement of the place where the full decision may be examined to all other persons who have filed their names and addresses with the Board no later than the last day of the hearing.

§ 287-144. Standards for review of variance requests.

- A. Required findings. The Zoning Hearing Board may grant a variance to the provisions of this chapter, provided that the findings prescribed in Section 910.2 of the Municipalities Planning Code *Editor's Note: See 53 P.S. § 10910.2.* are made where relevant in a given case.
- B. Conditions. In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter.
- C. Design standards. The applicable standards of Article XVI of this chapter shall be complied with.

§ 287-145. Standards for review of special exception requests.

The Zoning Hearing Board shall hear and decide all requests for special exceptions, as identified within this chapter, in accordance with the following standards:

- A. Relationship to the Comprehensive Plan. Consideration of the size, scope, extent and character of the proposed special exception and assurance that such proposal is consistent with the purposes and objectives of the Downingtown Borough Comprehensive Plan.
- B. Suitability of the tract. Consideration of the suitability of the proposed tract, including, as applicable, environmental conditions, highway access and availability of sewer and water service.
- C. Impact on existing neighborhood character. Consideration of the extent to which the proposed special exception will alter unduly the character of the existing neighborhood and adjacent tracts and the effectiveness of proposed or potential mitigation measures.
- D. Impact on circulation. Consideration of the effects the proposed special exception may have on traffic patterns and volumes, access and parking.
- E. Economic impact. Consideration of the character and type of development proposed in terms of generating revenue for the Borough and imposing demands on municipal services.