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Borough of Pottstown

APPENDIX A9 ZONING HEARING BOARD

SECTION A900. Zoning Hearing Board and Other Administrative Proceedings.

1. The Pottstown Zoning Hearing Board hereby is created. The Board shall consist of three Borough residents appointed by resolution of Council. Their terms of office shall be three years each and shall be so fixed that the term of office of one member shall expire each year. The Board shall notify promptly Council of any vacancies that occur. Appointments to fill vacancies shall be for only the unexpired portion of the term. Members of the Board shall hold no other office in the Borough. At no time shall there be two members of the Board from the same profession or business. The Zoning Officer shall serve as secretary of the Board.

2. Borough Council may appoint, by resolution, at least one but no more than three Borough residents 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 this Article, 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 by the Pennsylvania Municipalities Planning Code, as amended (53 P.S. 910101 et seq.), and as may otherwise be provided by law. Alternate members shall hold no other office in the Borough. 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 this Part unless designated as a voting alternate member.

SECTION A900.1. Jurisdiction.

1. The Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
 - A. Substantive challenges to the validity of any land use ordinance, except requests for Curative Amendments, said requests being taken to Council pursuant to Section A908 1 B.

 - B. Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance.

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- C. Appeals from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, or the issuance of any cease and desist order.
 - D. Appeals from a determination by the Zoning Officer.
 - E. Application for variances from the terms of this Article or such provisions within any other land use ordinance, pursuant to A906, or to the Floodplain and Airport zoning district regulations of this Chapter.
 - F. Application for special exceptions under this Chapter or such provisions within any other land use ordinance or to the Floodplain and Airport zoning district regulations of this Article.
2. Borough Council shall have exclusive jurisdiction to hear and render final adjudications in applications for curative amendments, or applications governed by the Pottstown Subdivision and Land Development Ordinance, including those regarding sedimentation and erosion control and storm management controls.

SECTION A901. Organization.

The 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 meeting and the taking of any action, a quorum shall not be less than a majority of all the members of the Board, but, where any members are disqualified to act in a particular matter, the remaining members may act for the Board. The Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Board as provided in Section A905. The Board may make, alter, and rescind rules and forms for its procedures consistent with Borough ordinances and Commonwealth laws. The Board shall keep full public records of its business and shall submit a report of its activities to Council at least once a year.

SECTION A901.1. Removal of Members.

Any Board member may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of Council taken after the member has received 15 days advance notice of the intent to take such vote. A public hearing shall be held in connection with the vote if the member shall request it in writing.

SECTION A901.2. Expenditures for Services.

Within the limits of money, appropriated by Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other clerical services. Members of

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the Board may receive compensation for the performance of their duties, as may be fixed by Council, but in no case shall it exceed the rate of compensation authorized to be paid to members of Council.

SECTION A902. Applications.

Every application for a special exception, or variance, or for an interpretation of a ruling of the Zoning Officer, shall be made on a form prepared by the Board providing space showing the ownership of the property involved, the dimensions of the property, all supporting documentation required by this Article, and the reasons for the application. Such application shall be filed with the Zoning Officer who shall forward the application and all relevant information to the Board. Such application shall be subject to a fee fixed by resolution of Council.

SECTION A903. Time Limitation.

1. No person shall be allowed to file any proceeding with the Board later than 30 days after an 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 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 by the Zoning Officer on a challenge to the validity of an ordinance or map shall preclude an appeal from a final approval except in the case where the final submission deviates substantially from the approved tentative approval.
2. All appeals from determinations adverse to the landowners shall be filed by the landowner within 30 days after notice of the determination is issued.
3. If, after a permit has been authorized by the Board, such permit is not applied for within 12 months or if the application fails to comply with the conditions of such authorized permit within 12 months from the date of authorization thereof (unless contrary time limits are specified herein), then such authorization will be null and void.

SECTION A904. Hearings – Notification.

1. The Board shall conduct public hearings and make decisions in accordance with the following requirements:
 - A. By advertising a legal notice published once each week for two successive weeks in a newspaper of general circulation. Such notice shall state the location of the building or lot, the general nature of the question involved

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and the time and place of the hearing. The first publication shall not be more than thirty days, and the second publication shall not be less than seven days from the date of the hearing.

- B. By mailing at least one week in advance of the hearing, notice to the owner and, at the discretion of the Zoning Officer, to the occupant of every property within 300 feet of the lot in question; provided, that failure to give such notice to these, other than the owner, shall not invalidate any action taken by the Board.
- C. By giving notice to the appellant, the Zoning Officer, Council, Planning Commission, and to the governing body of any municipality located within 500 feet of the property in question. Such notice shall be given in writing at least one week in advance of the hearing.
- D. By mailing at least one week in advance of the hearing, notice to every interested resident, or association of residents, of the Borough who has registered or this purpose with the Board.
- E. By posting notice conspicuously on the affected tract of land at least one week in advance of the hearing.

SECTION A904.1. Hearings — Notification.

- 1. Council may prescribe, by resolution, fees as regard hearings before the Board. Fees for said hearings may include compensation for the secretary and members of the Board, notice and advertising costs, and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Board, expenses for engineering, architectural, or other technical consultants or expert witness costs.
- 2. The hearings 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.

SECTION A905. Hearings — Procedures.

- 1. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Board. If, by reason of absence or disqualification of a member, a quorum is not attained, the Chairman of the Board shall designate as many duly appointed 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

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this subsection shall be made on a case by case basis in rotation according to declining seniority among all alternates. The decision or, where no decision is called for, the findings, shall be made by the Board, but the applicant or appellant, as the case may be, as well as the Borough, may waive the decision or findings by the Board and accept the decision or findings of the hearing officer, if one is appointed pursuant to A901 of this Article, as final.

2. A decision or findings by the Board shall be by majority of the members. A tie vote shall be deemed a denial of appeal.
3. The parties to the hearings 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 the power to require that all persons who wish be considered parties enter appearances in writing on forms provided by the Board for that purpose.
4. The chairman or acting chairman of the Board or the hearing officer presiding shall have the power to administer oaths and issue subpoenas and to compel the attendance of witnesses and the production of relevant documents and papers including witnesses and documents requested by the parties.
5. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond, to present evidence and argument, and to cross-examine adverse witnesses on all relevant issues.
6. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
7. 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 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.
8. The Board or the hearing officer, as the case may be, 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 communications, reports, staff memoranda, or other materials unless the parties are afforded an opportunity to contest the material so noticed; and, shall not inspect the site or its surroundings with any party or his representatives unless all parties are given an opportunity to be present.
9. 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

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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 this or any ordinance, rule, or regulation shall contain a reference to the provisions 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 after the last hearing 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 report 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 within 10 days from the last day it could have met to render a decision in the same manner as provided in subsection (1) 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.

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 not later than the day following its date. To all other persons who have filed their names and addresses with the Board not later than the last day of the hearing, the Board shall provide, by mail or otherwise, a brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

SECTION A906. Zoning Hearing Board's Functions; Variances.

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

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- 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 created 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 this Article and that the authorization of a variance is necessary, therefore, to enable the reasonable use of the property.
 - C. That such hardship has not been created by the appellant or his predecessor in interest.
 - D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor impair substantially or permanently the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
 - E. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
2. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of the Pennsylvania Municipalities Planning Code and this Article.

SECTION A906.1. Zoning Hearing Board's Functions; Special. Exceptions

The Board shall hear and decide requests for special exceptions in accordance with the standards and criteria set forth in this Chapter. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter as it may deem necessary to implement the purposes of the Pennsylvania Municipalities Planning Code and this Article.

SECTION A907. Procedure to Obtain Preliminary Opinion.

In order not to delay unreasonably the time when a landowner may secure assurance that the ordinance or map under which he proposes to build is free from challenge, and recognizing that the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the landowner may advance the date from which time any challenge to the ordinance or map is made by the following procedure:

- A. The landowner may submit plans and other materials describing his proposed use or development to the Zoning Officer for a preliminary opinion

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as to their compliance with the applicable ordinances and maps. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative, or final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed use or development and a sufficient basis for a preliminary opinion as to its compliance.

- B. If the Zoning Officer's preliminary opinion is that the use or development complies with the ordinance or map, notice thereof shall be published once each week for two successive weeks in a newspaper of general circulation in the Borough. Such notice shall include a general description of the proposed use or development and its location, by some readily identifiable directive, and the place and times where the plans and other materials may be examined by the public. The favorable preliminary approval and the time specified therein for commencing a proceeding with the Board shall run from the time when the second notice thereof has been published.

SECTION A908. 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 that 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 A900.1.A.
 - B. To Borough Council under Section A900.1.2, together with a curative amendment under Section A1201.
2. Persons aggrieved by a use or development permitted on the land of another by an ordinance or map, or any provisions thereof, who desires to challenge its validity on substantive grounds shall first submit their challenge to the Board for a decision thereon under Section A906.
3. The submission referred to in subsections (1) and (2) above shall be governed by the following:
 - A. In challenges before the 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 A1201, his application to Borough Council shall contain, in addition to the requirements of the written request hereof, the plans and explanatory materials 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

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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 contained herein shall preclude the landowner from seeking first a final approval before submitting his challenge.

- B. If the submission is made by the landowner to Borough Council under subsection 1.B. above, the request shall be accompanied also 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 Borough Council, the Borough Solicitor shall represent and advise it at the hearing or hearings referred to in A900.1.2.
- D. Borough Council may retain an independent attorney to present the defense of the challenged ordinance or map on its behalf and to present witnesses on its behalf.
- E. Based upon the testimony presented at the hearing or hearings, Borough Council or the 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 Borough Council is found to have merit, Borough Council shall proceed as provided in Section A1202. If a challenge heard by the Board is found to have merit, the decision of the Board shall include recommended amendments to the challenged ordinance that will cure the defects found. In reaching its decision, the Board shall consider the amendments, plans, and explanatory material submitted by the landowner and shall consider also:
 - 1. The impact of the proposal upon roads, sewer facilities, water supplies, schools, and other public facilities.
 - 2. 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 classes of persons unlawfully excluded otherwise by the challenged provisions of the ordinance or map.
 - 3. The suitability of the site for the intensity of use proposed as regards to the site's soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources, and other natural features.
 - 4. The impact of the proposed use – on the sites 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 development, and any adverse environmental impacts

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5. The impact of the proposal on the preservation of agriculture and other land uses that are essential to public health and welfare.
 - F. Borough Council or the Board, as the case may be, shall render its decision within 45 days after the conclusion of the last hearing.
 - G. If Borough Council or the Board, as the case may be, fails to act upon the landowner's request within the time limits referred to in (F) immediately above, a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.
4. The Board or Borough Council, as the case may be, shall commence its hearings within 60 days after the request is filed unless the landowner requests or consents to an extension of time.
 5. 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.
 6. The challenge shall be deemed denied when:
 - A. The Board or Borough Council, as the case may be, fails to commence the hearing within the time limits set forth in (4) immediately above.
 - B. Borough Council notifies the landowner that it will not adopt the curative amendment.
 - C. Borough Council adopts another curative amendment that is unacceptable to the landowner.
 - D. The Board or Borough Council, as the case may be, fails to act on the request 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 said Board or Borough Council.
 7. Where a curative amendment proposal is approved by the grant of a curative amendment application by Borough Council pursuant to Section A900.1.2. or a validity challenge is sustained by the Board pursuant to Section A900.1 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 years from the date of such approval to file an application for preliminary or tentative approval pursuant to the Pottstown Subdivision and Land Development Ordinance.

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Within the two year period, no subsequent change or amendments, in the zoning, subdivision, or other governing ordinance or plan shall be applied in any manner that affects adversely the rights of the applicant as granted in the curative amendment or the sustained validity challenge. Upon the filing of the preliminary or tentative plan, the provisions of the Pottstown Subdivision and Land Development Ordinance pertaining to approval of plats shall apply.

Where the proposal appended to the curative amendment application or the validity challenges is approved but does not require further application under any subdivision or land development ordinances, the developer shall have one 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 that affects adversely the rights of the applicant as granted in the curative amendment or the sustained validity challenges. During these protected periods, the court shall retain or assume jurisdiction for the purpose of awarding such supplemental relief as may be necessary.

SECTION A909. Applicability of Judicial Remedies.

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

SECTION A910. Parties Appellant Before the Board.

Appeals to the Board, as permitted above, may be filed with the Board in writing by the landowner affected, any officer or agency of the Borough, or any person aggrieved, except in the cases of appeals for variances or special exceptions, in which cases appeals may be filed by only the landowner or any tenant with the permission of such landowner.