

FRANKLIN TOWNSHIP ZONING ORDINANCE

Article 6 ADMINISTRATION AND ENFORCEMENT

600. Powers and Duties of the Zoning Officer

A. Appointment and Powers of the Zoning Officer.

1. For the administration of this Ordinance, a Zoning Officer, who shall not hold an elective office in the Township of Franklin, shall be appointed.
2. The Zoning Officer shall meet the qualifications established by the Township and shall be able to demonstrate to the satisfaction of the Township a working knowledge of municipal zoning.
3. The Zoning Officer shall administer this Ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any use change of use which does not conform to this Ordinance.
4. The Zoning Officer is hereby authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of employment.

B. Duties of the Zoning Officer.

It shall be the duty of the Zoning Officer to enforce the provisions of this Ordinance and such power and authority as is necessary for enforcement is hereby conferred upon the Zoning Officer. The Zoning Officer shall examine all applications for permits, issue permits for construction and uses which are in accordance with the requirements of this Ordinance, record and file all applications for permits with accompanying plans and documents and make such reports as the governing body may require. Permits for construction and uses which are a special exception or a variance to requirements of this Ordinance shall be issued only upon written order of the Zoning Hearing Board. Permits for construction and uses which are a conditional use shall be issued only upon written order of the Board of Supervisors.

C. Land Use Permits.

1. A building permit shall be required in accordance with the Pennsylvania Unified Construction code in accordance with the rules and regulations of Franklin Township.
2. A land use permit shall be required in conjunction with any required building permit, special exception or variance or for any new use or change of use prior the erection, construction or alteration of any building, structure or any portion thereof, prior to the moving of a building into the Township, from one place in the Township to another, prior to the change or extension of a nonconforming use (if permitted elsewhere in this Ordinance) and prior to any initial use or change of use and shall be issued prior to or simultaneously with any other required permit.
 - a. A Land Use Permit shall be a statement issued by the Zoning Officer setting forth either that a building, structure, parcel or use of land complies with the provisions of this Ordinance.
 - b. No vacant land shall be used, and no structure or part of a structure hereafter erected, substantially altered or changed in use shall be used until a Land Use Permit shall have been issued by the Zoning Officer.
 - c. A Land Use Permit for the use or occupancy of vacant land or for a change in the use of land, or for a change in the use of an existing building, either for a whole or part of a new building or for the alteration of an existing building, shall be applied for coincident with the application for a zoning permit, and shall be issued or denied within fifteen (15) days after a final inspection by the Zoning Officer.
 - d. A Land Use Permit for changing or extending a nonconforming use, existing at the effective date of this Ordinance or of an amendment thereto, shall be applied for and issued before any such nonconforming use shall be changed or extended. Such Permit shall be issued within fifteen (15) days after final inspection and approval by the Zoning Officer.
 - e. A record of all Land Use Permits shall be kept on file in the office of the Zoning Officer and a copy shall be furnished on request to any person having proprietary or tenancy interest in the building or land affected.

FRANKLIN TOWNSHIP ZONING ORDINANCE

D. Fees.

1. The Board of Supervisors shall establish by resolution a schedule of fees, payable at the time of application, for permits, certificates of occupancy, appeals, variances, conditional uses, special exceptions, amendments, bonds and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the office of the Zoning Officer.
2. Such fees shall be payable to the Township and until all applicable fees, charges and expenses have been paid in full, the applications shall be considered incomplete and no action shall be taken on any application or appeal.

E. Record.

1. It shall be the duty of the Zoning Officer to keep a record of all applications for permits, a record of all permits issued and a record of all certificates of occupancy, which he/she countersigns, together with a notation of all special conditions involved. The Zoning Officer shall file and safely keep copies of all plans submitted and the same shall be available for the use of the Board of Supervisors.
2. The Zoning Officer shall prepare a monthly report for the Township Supervisors summarizing for the period since his/her last previous report all zoning permits issued and certificates countersigned and all complaints of violations and the action taken by the Zoning Officer. A copy of each such report shall be filed with the office of the Chief Assessor of York County at the same time it is filed with the Board of Supervisors.

F. Appeals and Applications.

An appeal or application for an amendment, variance, special exception, or conditional use from the terms of this Ordinance shall be filed with the Zoning Officer and shall contain the following information.

1. The name and address of the applicant.
2. The name and address of the owner of the real estate to be affected by such proposal.
3. A brief description and location of the real estate to be affected by such proposal.
4. A statement of the present zoning classification of the real estate in question, the improvements thereon and the present use.
5. A statement of the section of this Ordinance under which the appeal or application is filed and reasons why it should be granted or a statement of the section of this Ordinance governing the situation in which the alleged erroneous ruling is being appealed and reasons for the appeal.
6. An accurate description of the present improvements and the additions intended to be made under this application, indicating the size and use of such proposed improvements and general construction thereof. In addition, there shall be attached a plot plan of the real estate to be affected, as required to accompany applications for permits, indicating the location and size of the lot and locations of improvements now erected and proposed to be erected thereon.

601. Conflicting Regulations

- A. In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals or general welfare. Whenever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, or whenever the requirements of this Ordinance are internally at variance, the most restrictive, or that imposing the higher standard shall govern.

FRANKLIN TOWNSHIP ZONING ORDINANCE

602. Zoning Hearing Board

A. There is hereby created for the Township a zoning hearing board in accordance with the provisions of Article IX of the Pennsylvania Municipalities Planning Code, Act of 1968, P.L. 805, No. 247 as reenacted and amended.

1. The membership of the board shall consist of five (5) residents of the Township appointed by resolution by the Board of Supervisors. The terms of office shall be for five (5) years and shall be so fixed that the term of office of one member shall expire each year. The board shall promptly notify the Board of Supervisors 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 elected or appointed office in the municipality, nor shall any member be an employee of the municipality.
2. The Board of Supervisors may appoint by resolution at least one but no more than three residents of the municipalities to serve as an alternate member of the board. The term of office of the alternate shall be three (3) years. If, by reason or absence or disqualification of a member, a quorum is not reached, the chairman of the board shall designate the alternate of the board to sit on the board to provide the quorum. The alternate 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. When seated pursuant to these provisions, an alternate shall be entitled to participate in all proceedings and discussion 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 herein and otherwise provided by law. Alternates shall hold no other office in the municipality, including membership on the planning commission and zoning officer, nor shall any alternate be an employee of the municipality. The 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 as described herein.
3. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Board of Supervisors which appointed the member, taken after the member has received fifteen (15) days advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.
4. 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 hearing and the taking of any action a quorum shall be not less than a majority of all the members of the board, but the board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the board as provided in this Ordinance.
5. The board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Township and laws of the Commonwealth. The board shall keep full public records of its business, which records shall be the property of the Township and shall submit a report of its activities to the Board of Supervisors as requested by the Board of Supervisors.
6. Within limits of funds appropriate by the Board of Supervisors, the board may employ or contact 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 fixed by the Board of Supervisors, but in no case shall it exceed the rate of compensation authorized or be paid to the members of the Board of Supervisors.

B. Hearings.

The board shall conduct hearings and make decisions in accordance with the following requirements:

1. Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer 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 rules of the board. In addition to the written notice provided herein, written notice of said hearings shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearings.

FRANKLIN TOWNSHIP ZONING ORDINANCE

2. The first hearing before the board of hearing officer shall be commenced within sixty (60) days from the date of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the board or hearing officer shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of their case-in-chief within one hundred (100) days of the first hearing. Upon request of the applicant, the board or hearing officer shall assure that the applicant receives at least seven hours of hearings within one hundred (100) days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within one hundred (100) days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and municipality, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.
3. The hearings shall be conducted by the board or the board may appoint any member or an independent attorney 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 Township, 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.
4. The parties to the hearing shall be the Township, 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.
5. 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 papers, including witnesses and documents requested by the parties.
6. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.
7. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
8. The board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the board. The cost of the original transcript shall be paid by the board if the transcript is ordered by the board or hearing officer or shall be paid by the person appealing from the decision of the board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.
9. The board of 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 material, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.
10. 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 forty-five (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 Ordinance or any law, 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 the hearing officer's decision of findings are final, the board shall make the hearing officer's report and

FRANKLIN TOWNSHIP ZONING ORDINANCE

recommendations available to the parties within forty-five (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 thirty (30) days after the report of the hearing officer. Except for challenges filed under Section 916.1 of the Pennsylvania Municipalities Planning Code, as reenacted and amended, where the Board fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in subsection 2 of this Section, 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 the said decision within ten (10) days from the last day it could have met to render a decision in the same manner as provided in subsection (2) of this Section. If the board shall fail to provide such notice, the applicant may do so. Nothing in this sub Section shall prejudice, the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

11. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not 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 examine.
12. The Board of Supervisors shall establish, by resolution, fees with respect to hearings before the zoning hearing board.

C. Jurisdiction.

1. The zoning hearing board shall have exclusive jurisdiction to hear and render final adjudication in the following matters:
 - a. Substantive challenges to the validity of any land use ordinance, except those brought before the Board of Supervisors, pursuant to Section 609.1 and Section 916.1(a)(2) of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), Act of 1968, P.L. 805, No. 247 as reenacted and amended.
 - 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 thirty (30) days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the municipality and a zoning hearing board has not been previously established, the appeal raising procedural questions shall be taken directly to court.
 - 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 therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.
 - d. Appeals from a determination by the Township engineer or the Zoning Officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.
 - e. Applications for variances from the terms of this Ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 910.2 of the Pennsylvania MPC, Act of 1968, P.L. 805, No 247 as reenacted and amended.
 - f. Applications for special exceptions under the zoning ordinance or floodplain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 912.1 of the Pennsylvania Municipalities Planning Code, as reenacted and amended.
 - g. Appeals from the determination of any officer or agency charge with the administration of any performance density provisions of this Ordinance.
 - h. Appeals from the Zoning Officer's determination under Section 916.2 of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended.

FRANKLIN TOWNSHIP ZONING ORDINANCE

- i. Appeals from the determination of the Zoning Officer or Township engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving applications under Article V or VII of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended.
2. The Board of Supervisors shall have exclusive jurisdiction to hear and render final adjudication in the following matters:
 - a. All applications pursuant to Section 508 of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended for approval of subdivision or land developments under Article V of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended.
 - b. Applications for conditional use under the express provisions of this Ordinance.
 - c. Applications for curative amendment to this Ordinance or pursuant to Sections 609.1 and 916.1(a) (2) of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended.
 - d. All petitions for amendments to land use ordinances, pursuant to the procedures set forth in Section 609 of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended. Any action on such petitions shall be deemed legislative acts, provided that nothing contained in this clause shall be deemed to enlarge or diminish existing law with reference to appeals to court.
 - e. Appeals from the determination of the Zoning Officer or the Township engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to application for land development under Article V and VII of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended. Where such determination relates only to development not involving an Article V or VII application, the appeal from such determination of the zoning officer or the Township engineer shall be to the zoning hearing board pursuant to this Section.

D. Variances.

1. The zoning hearing board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The board may by rule prescribe the form of application and may require preliminary application to the Zoning Officer. The board may grant a variance, provided that all of the following findings are made where relevant in a given case:
 - a. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located.
 - b. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - c. That such unnecessary hardship has not been created by the applicant.
 - d. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
 - 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.

FRANKLIN TOWNSHIP ZONING ORDINANCE

2. In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended.

E. Special Exceptions.

Where the Board of Supervisors, in this 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 below:

1. The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance.
2. The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties.
3. The proposed use will not substantially change the character of the subject property's neighborhood.
4. Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.).
5. The proposed use shall comply with those criteria specifically listed in this Ordinance. In addition, the proposed use must comply with all other applicable regulations contained in this Ordinance.
6. The proposed use must be generally consistent with the integrity of the Northern York Regional Comprehensive Plan.

603. Conditional Uses.

A. Criteria.

Where the Board of Supervisors, in this Ordinance, has stated conditional uses to be granted or denied by the Board of Supervisors pursuant to express standards and criteria, the Board of Supervisors shall hear and decide requests for such conditional uses in accordance with such standards and criteria below:

1. The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance.
2. The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties.
3. The proposed use will not substantially change the character of the subject property's neighborhood.
4. Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.).
5. The proposed use shall comply with those criteria specifically listed in this Ordinance. In addition, the proposed use must comply with all other applicable regulations contained in this Ordinance.
6. The proposed use will not substantially impair the integrity of the Northern York Regional Comprehensive Plan.

- B. The Board of Supervisors shall render a written decision or, when no decision is called for, make written findings on the conditional use application within forty five (45) days after the last hearing before the governing body. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefore. Conclusions based on any provisions of this act 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.

- C. Where the Board of Supervisors fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in section 602.B.2, 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 governing body to meet or render a decision as hereinabove provided, the governing body shall give public notice of the decision within ten days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this act. If the governing body shall fail to provide such notice, the applicant may do so.

FRANKLIN TOWNSHIP ZONING ORDINANCE

- D. 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, of the findings shall be delivered to the applicant personally or mailed to him no later than the day following its date.
- E. **Additional Conditions and Safeguards.**
In granting a conditional use, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Ordinance, as it may deem necessary to implement the purpose of this Ordinance and the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended.

604. Referrals to the Franklin Township Supervisors, Committees and Engineer.

- A. The zoning hearing board in the case of special exceptions and variances and the Board of Supervisors in the case of conditional uses may refer applications to the Planning Commission, the Township Engineer, or any other committee, commission or advisor for their advice, but is not required to do so.
- B. Within thirty (30) days of receiving an application for a special exception or conditional use or an application for a variance from the decision-making body, the referral body or advisor must give a written report on it to the decision-making body.

605. Parties Appellant Before the Board.

- A. Appeals raising the substantive validity of any land use ordinance except those to be brought before the Board of Supervisors pursuant to the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended, procedural questions or alleged defects in the process of enactment or adoption of a land use ordinance; or 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 therefore the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot; from a determination by the Township engineer or the Zoning Officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance; from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Ordinance; from the determination of the Zoning Officer or Township engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving subdivision and land development or planned residential development may be filed with the board in writing by the landowner affected, any officer or agency of the Township, or any person aggrieved. Requests for a variance and for special exception may be filed with the board by any landowner or any tenant with the permission of such landowner.

606. Time Limitations.

- A. No person shall be allowed to file any proceeding with the board later than thirty (30) days after an application for development, preliminary or final, has been approved by the Township if such proceeding is designed to secure reversal or 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 their interest after such approval, they shall be bound by the knowledge of their predecessor in interest. The failure of anyone other than the land owner to appeal from an adverse decision on a tentative plan or from an adverse decision by the Zoning Officer on a challenge to the validity of this Ordinance or an amendment hereto or map or an amendment thereto shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.
- B. All appeals from determination adverse to the landowner shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

FRANKLIN TOWNSHIP ZONING ORDINANCE

607. Stay of Proceedings.

- A. Upon filing of any appeal proceeding before the zoning hearing board and during its pendency before the board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or of any agency or body, an all official action thereunder, shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the 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 board or by the court having jurisdiction of zoning appeals, on petition, after notice to the Zoning Officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the 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 board.
- B. After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all evidence presented if the court determines that the appeal is frivolous, it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court.
- C. 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. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.
- D. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellate court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by the petitioner.

608. Enactment of Zoning Ordinance Amendments.

- A. The Board of Supervisors may from time to time amend, supplement, or repeal any of the regulations and provisions of this Ordinance. The procedures for the preparation of a proposed zoning ordinance as set forth in Section 607 of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended, is hereby declared optional.
- B. Before voting on the enactment of an amendment, the Board of Supervisors shall hold a public hearing thereon, pursuant to public notice. In addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by the Township at points deemed sufficient by the Township along the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one (1) week prior to the date of the hearing. In addition to the requirement that notice be posted, where proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the municipality at least thirty (3) days prior to the date of the hearing by first class mail to the addresses to which real estate tax bills are sent for all real property located within the area being rezoned, as evidenced by the tax records within the possession of the municipality. The notice shall include the location, date and time for the public hearing. A good faith effort and substantial compliance shall satisfy the requirements of this sub Section. This clause shall not apply with the rezoning constitutes a comprehensive rezoning.
- C. In the case of an amendment other than that prepared by the Planning Commission the Board of Supervisors shall submit each such amendment to the Planning Commission at least thirty (30) days

FRANKLIN TOWNSHIP ZONING ORDINANCE

prior to the hearing on such proposed amendment to provide the Planning Commission an opportunity to submit recommendations.

- D. If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised, to include land previously not affected by it; the Board of Supervisors shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment.
- E. At least thirty (30) days prior to the public hearing on the amendment by the Board of Supervisors, the Township shall submit the proposed amendment to the county planning agency for recommendations.
- F. Within thirty (30) days after enactment, a copy of the amendment to this Ordinance shall be forwarded to the county planning agency.

609. Procedure for Landowner Curative Amendments.

- A. A landowner who desires to challenge on substantive grounds the validity of this Ordinance or the Zoning Map or any provisions thereof, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the Board of Supervisors with a written request that his challenge and proposed amendment be heard and decide as provided in Section 916.1 of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended. The Board of Supervisors shall commence a hearing thereon within 60 days of the request as provided in section 916.1 of the Pennsylvania Municipalities Planning Code, as reenacted and amended. The curative amendment and challenge shall be referred to the Planning Commission and the county planning agency as provided herein and notice of the hearing thereon shall be given as provided herein and 916.1 of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended.
- B. The hearing shall be conducted in accordance with Section 908 of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended and all references therein to the Zoning Hearing Board shall, for purposes of this Section be references to the Board of Supervisors, however that the deemed approval provision of Section 908 of the Pennsylvania MPC (Act of 1968, P.L. 805, No. 247 as reenacted and amended) shall not apply and the provision of Section 916.1 the Pennsylvania MPC shall control. If the Township does not accept a landowner's curative amendment brought in accordance with this sub Section and a court subsequently rules that the challenge has merit, the court's decision shall not result in a declaration of invalidity for this entire Ordinance and Zoning Map, but only for those provisions which specifically relate to the landowner's curative amendment and challenge.
- C. The Board of Supervisors, if it determines that a validity challenge has merit, may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment which will cure the challenged defects. The Board of Supervisors shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:
 - 1. The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.
 - 2. If the proposal is for a residential use, the impact off 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 otherwise unlawfully excluded by the challenged provisions of this Ordinance or Zoning Map.
 - 3. The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, flood plains, aquifers, natural resources and other natural features.
 - 4. The impact of the proposed use on the site's soils, slopes, woodlands, flood plains, 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.

FRANKLIN TOWNSHIP ZONING ORDINANCE

5. The impact of the proposal on the preservation of agricultural and other land uses which are essential to public health and welfare.

610. Procedure for Township Curative Amendments.

- A. If the Township determines that this Ordinance or any portion hereof, is substantially invalid, it shall take the following actions:
 1. The Township shall declare by formal action, this Ordinance or portions hereof substantially invalid and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days following such declaration and proposal the Board of Supervisors shall by resolution make specific findings setting forth the declared invalidity of this Ordinance which may include:
 - a. References to specific uses which are either not permitted or not permitted in sufficient quantity,
 - b. Reference to a class of use or uses which requires revision, or
 - c. Reference to this entire Ordinance which requires revisions.
 - d. Begin to prepare and consider a curative amendment to this Ordinance to correct the declared invalidity.
 2. Within one hundred eighty (180) days from the date of the declaration and proposal, the Township shall enact a curative amendment to validate, or reaffirm the validity of, this Ordinance pursuant to the provisions of Section 609 of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended in order to cure the declared invalidity of this Ordinance.
 3. Upon the initiation of the procedures as set forth in sub Section A the Board of Supervisors shall not be required to entertain or consider any landowner's curative amendment filed under Section 609.1 of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended, nor shall the zoning hearing board be required to give a report requested under Section 909.1 or 916.1 of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended, subsequent to the declaration and proposal based upon the grounds identical or substantially similar to those specified by the resolution required by sub Section A.1. Upon completion of the procedures set forth in sub Section A and B, no rights to a cure pursuant to the provisions of Section 609.1 and 916.1 of the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247 as reenacted and amended, shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of this Ordinance for which there has been a curative amendment pursuant to this section.
 4. The Township having utilized the procedures set forth in this section may not again utilize said procedure for a period of thirty six (36) months following the date of enactment of a curative amendment, or reaffirmation of the validity of this Ordinance; Provided, however, if after the date of declaration and proposal there is a substantially new duty imposed upon the Township by virtue of a change in statute or by virtue of a Pennsylvania Appellate Court decision, the Township may utilize the provisions of this Section to propose a curative amendment to this ordinance to fulfill said duty or obligation.

611. Causes of Action.

- A. In case any building, structure, landscaping or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of this Ordinance, the Board of Supervisors or, with the approval of the Board of Supervisors, an officer of the Township, or any aggrieved owner or tenant of real property who shown that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a land-owner or tenant, notice of that action shall be served upon the Township at least thirty (30) days prior to the time the action is begun by serving a copy of the

FRANKLIN TOWNSHIP ZONING ORDINANCE

complaint on the Board of Supervisors. No such action may be maintained until such notice has been given.

612. Enforcement Notice.

- A. If it appears to the Township that violation of this Ordinance has occurred, the Township shall initiate enforcement proceedings by sending an enforcement notice as provided in this Section.
- B. The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record.
- C. An enforcement notice shall state at least the following:
 - 1. The name of the owner of record and any other person against whom the Township intends to take action.
 - 2. The location of the property in violation.
 - 3. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of this Ordinance.
 - 4. The date before which the steps for compliance must be connected and the date before which the steps must be completed.
 - 5. That the recipient of the notice has the right to appeal to the zoning hearing board within a prescribed period of days.
 - 6. That failure to comply with the notice within the time specified, unless extended by appeal to the zoning hearing board, constitutes a violation, with possible sanctions clearly described.
- D. In any appeal of an enforcement notice to the zoning hearing board the municipality shall have the responsibility of presenting its evidence first.
- E. Any filing fees paid by a party to appeal an enforcement notice to the zoning hearing board shall be returned to the appealing party by the Township if the zoning hearing board, or any court in a subsequent appeal, rules in the appealing party's favor.
- F. Enforcement Remedies.
 - 1. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than five hundred (\$500.00) dollars plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the magisterial judge. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating this Ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one (1) such violation until the fifth (5) day following the date of the determination of a violation by the district magisterial judge and thereafter each day that a violation continues shall constitute a separate violation.
 - 2. The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.
 - 3. Nothing contained in this Section shall be construed or interpreted to grant to any person or entity other than the Township the right to commence any action for enforcement pursuant to this Section.
 - 4. District magisterial judges shall have initiation jurisdiction over proceedings brought under this Section.

FRANKLIN TOWNSHIP ZONING ORDINANCE

613. Interpretation.

A. Conflict with Other Laws.

The provisions of this ordinance shall be deemed to be minimum requirements to meet the purposes stated herein. Where the provisions of this ordinance impose greater restrictions than those of any federal state statute, rule, regulation or other ordinance the provisions of this ordinance shall prevail. Where the provisions of any federal or state statute, rule, regulation or other ordinance impose greater restrictions than those of this ordinance, the provisions of such federal or state statute, rule, regulation or ordinance shall prevail.

B. Severability.

The provisions of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause phrase or provision hereof is held or judged by any court of competent jurisdiction to be unconstitutional, illegal or otherwise invalid, any such holding or judgment shall not be construed as affecting or impairing any other section, subsection, sentence, clause, phrase, or provision of this ordinance, it being the expressed intent of the Board of Supervisors that this ordinance would have been enacted has such unconstitutional, illegal or otherwise invalid section, subsection, clause, phrase, or provision not been included.

C. Saving Clause.

Nothing in this ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquitted, or liability incurred, or any cause or causes of action acquired or existing under any act or ordinance hereby repealed, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

614. Validity.

- A. Should any provision, section, subsection, clause or phrase of this Ordinance, or its application, be declared or held, for any reason, to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

615. Adoption.

- A. This Ordinance No. 2006-1 is hereby enacted and adopted by the Board of Supervisors of Franklin Township, York County, Pennsylvania, this 16 day of November, 2006.