
Article 1310
Zoning Hearing Board

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1310.01 CREATION

There is hereby created a Zoning Hearing Board consisting of three (3) residents of the City, with up to three (3) alternates, who are each a resident of the City, all appointed by the City Council pursuant to the Pennsylvania Municipalities Planning Code. The Board shall perform all the duties, and exercise all powers prescribed by said Code and as further set forth in this Ordinance. Through this Ordinance, the existing Board members and alternate are hereby reappointed as the Board as required by this Ordinance and consistent with their current terms of office.

1310.02 APPOINTMENT

The terms of office of the Board shall be three (3) years and shall be so fixed that the term of office of at least one (1) member shall expire each year. The chairman of the Board shall promptly notify the City Council of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the City, nor be a member of the Planning Commission. The appointment, rights and duties of each alternate shall be in accordance with Article IX of the Pennsylvania Municipalities Planning Code.

1310.03 REMOVAL OF MEMBERS

Any Board member may be removed for misfeasance or nonfeasance in office, or for other just cause, by a majority vote of City Council, 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.

1310.04 ORGANIZATION OF BOARD

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 or the taking of any action, a quorum shall be not less than the majority of all the members of the Board, but where two (2) or more members are disqualified to act in a particular matter, the alternate member(s) shall be seated. 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 908 of the Pennsylvania Municipalities Planning Code, as amended. The Board may make, alter and rescind rules and forms for its procedure, consistent with City ordinances and laws of the Commonwealth. The Board shall keep full public records of its business and shall submit a report of its activities to the City Council by March 1st of each year or as requested by Council.

1310.05 EXPENDITURES FOR SERVICES

Within the limits of funds appropriated by City Council, the 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 fixed from time to time by City Council, but in no case shall it exceed the rate of compensation authorized to be paid to the members of City Council.

1310.06 LEGAL COUNSEL

Where legal counsel is desired, an attorney, other than the City Solicitor, shall be used as appointed by City Council.

1310.07 HEARINGS

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

- (a) Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer, the City Council, the City Manager, the City Solicitor, the Board Solicitor, and to any person who has made timely request for the same. Written notices shall be given at least ten (10) days prior to the hearing. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.
- (b) The City Council may prescribe reasonable fees with respect to 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 required by the Board.

- (c) The first hearing before the Board or hearing officer shall be commenced within sixty (60) days from the date of receipt 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 his case-in-chief within one hundred (100) days of the first hearing. Upon the request of the applicant, the Board or hearing officer shall assure that the applicant receives at least seven (7) hours of hearings within the 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.
- (d) The hearing 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 City, 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.
- (e) The parties to the hearing shall be the City, 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.
- (f) 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.
- (g) 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.
- (h) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.

- (i) The Board or the hearing officer, as the case may be, shall keep a record the proceedings either in recorded form or stenographic form. 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.

- (j) The Board or the hearing officer, as the case may be;
 - (1) 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, and except that advice from the Board's solicitor is exempt from this restriction;

 - (2) shall not take notice of any communication, reports, staff memoranda, or other materials unless the parties are afforded an opportunity to contest the material so noticed; and

 - (3) 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.

- (k) 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 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 the Pennsylvania Municipalities Planning Code, or any rule or regulation, shall contain a reference to the provision relied upon 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 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 1310.13 of this Ordinance and Section 916.1 of the Municipalities Planning Code, where the Board fails to render the decision within the period required by this Ordinance or the Pennsylvania Municipalities Planning Code, or fails to commence, conduct or complete the required hearings as provided in Section 1310.07(c) of this Ordinance, 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 ten (10) days from the last day it could have met to render a decision in the same manner as provided in Section 1310.07(a) of this Ordinance. 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 to appeal the decision to a court of competent jurisdiction.
- (l) 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 no 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.

1310.08 JURISDICTION

- (a) The Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
- (1) Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to Sections 609.1 and 916.1(a)(2) of the Municipalities Planning Code

- (2) 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.
 - (3) Appeals from a determination by the City 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.
 - (4) 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 Municipalities Planning Code and Section 1310.09 of this Ordinance.
 - (5) Applications for special exceptions under this Ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 912.1 of the Municipalities Planning Code and Section 1304 of this Ordinance. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, as it may deem necessary to implement the purposes of the Ordinance.
 - (6) Appeals 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.
 - (7) Appeals from the Zoning Officer's determination under Section 916.2 of the Municipalities Planning Code and Section 1310.13 (i) of this Ordinance.
 - (8) Appeals from the determination of the Zoning Officer or City 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 Articles V or VII applications of the Municipalities Planning Code.
 - (9) Applications for reasonable accommodation under the Fair Housing Amendments Act or the Americans With Disabilities Act, pursuant to Section 1310.14 of this Ordinance.
- (b) The City Council or, except as to clauses (3), (4) and (5), the Planning Commission, if designated, shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
- (1) All applications for approvals of planned residential developments under Section 1312 of this Ordinance and Article VII of the Municipalities Planning Code pursuant to the provisions of Section 702.

- (2) All applications pursuant to the Franklin Subdivision and Land Development Ordinance and Section 508 of the Municipalities Planning Code for approval of subdivisions or land developments under Article V. Any provision in a subdivision and land development ordinance requiring that final action concerning subdivision and land development applications be taken by a planning agency rather than the governing body shall vest exclusive jurisdiction in the Planning Commission in lieu of the City Council for purposes of the provisions of this paragraph.
- (3) Applications for conditional use under the express provisions of Section 1306 of this Ordinance pursuant to Section 603(c)(2) of the Municipalities Planning Code.
- (4) Applications for curative amendment to this Ordinance pursuant to Sections 1311.04 and 1310.13(a)(2) of this Ordinance and Section 609.1 and 916.1(a)(2) of the Municipalities Planning Code.
- (5) All petitions for amendments to land use ordinances, pursuant to the procedures set forth in Section 1311.02 of this Ordinance and Section 609 of the Municipalities Planning Code. 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.
- (6) Appeals from the determination of the Zoning Officer or the City 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 the Franklin Subdivision and Land Development Ordinance and Section 1312 of this Ordinance (relative to planned residential development), and Articles V and VII of the Municipalities Planning Code. 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 City Engineer shall be to the Board pursuant to Section 1310.08(a)(9). Where this Codified Ordinances of the City of Franklin vest jurisdiction for final administration of subdivision and land development applications in the Planning Commission, all appeals from determinations under this paragraph shall be to the Planning Commission and all appeals from the decision of the Planning Commission shall be to court.

1310.09 VARIANCES

The 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; and
- (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.

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.

Use variances are not allowed within the City of Franklin. Any change in the use of a property must be made in the form of a conditional use permit when the proposed use varies from those uses allowed otherwise in this Ordinance.

1310.10 PARTIES APPELLANT BEFORE BOARD

Appeals under Sections 1310.08(a)(1), (2), (3), (6), (7), and (8) of this Ordinance may be filed with the Board in writing by the landowner affected, the Zoning Officer, or any person aggrieved. Requests for a variance or special exception under Sections 1306.08(a)(5) and (6) may be filed with the Board or Zoning Officer by any landowner or any tenant with the permission of such landowner.

1310.11 TIME LIMITATIONS; PERSONS AGGRIEVED

In accordance with Section 914.1 of the Municipalities Planning Code:

- (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 an appropriate 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 on a tentative ordinance or map pursuant to Section 1310.13(i) of this Ordinance and Section 916.2 of the Municipalities Planning Code 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 determinations adverse to the landowner shall be filed by the landowner within thirty (30) days after notice of determination is issued.

1310.12 STAY OF PROCEEDINGS

In accordance with Section 915.1 of the Municipalities Planning Code:

- (a) Upon filing of any proceeding referred to in Sections 1310.08 and 1310.10, 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, and 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 appellant's 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 in 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 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 reasonable costs, expenses and attorney fees incurred by the petitioner.

1310.13 VALIDITY OF ORDINANCE; SUBSTANTIVE QUESTIONS; PRELIMINARY OPINIONS

In accordance with Sections 916.1 and 916.2 of the Municipalities Planning Code:

- (a) A landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either:
 - (1) to the Board under Section 1310.08(a)(1) of this Ordinance and Section 909.1(a) of the Municipalities Planning Code; or
 - (2) to City Council under Section 1310.08(b)(4) of this Ordinance and Section 909.1(b)(4) of the Municipalities Planning Code, together with a request for a curative amendment under Section 1311.04 of this Ordinance and Section 609.1 of the Municipalities Planning Code.
- (b) Persons aggrieved by a use or development permitted on the land of another by an ordinance or map, or any provision thereof, who desires to challenge its validity on substantive grounds shall first submit their challenge to the Board for a decision thereon under Section 1310.08(a)(1) of this Ordinance and Section 909.1(a)(1) of the Municipalities Planning Code.
- (c) The submissions referred to in subsections (a) and (b) shall be governed by the following:

- (1) 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 1311.04 of this Ordinance and Section 609.1 of the Municipalities Planning Code, his application to the City Council shall contain, in addition to the requirements of the written request hereof, the plans and explanatory materials describing 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 or for 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 herein contained shall preclude the landowner from first seeking a final approval before submitting his challenge.
- (2) If the submission is made by the landowner to the City Council under Section 1310.13(a)(2), the request also shall be accompanied by an amendment or amendments to the ordinance proposed by the landowner to cure the alleged defects therein.
- (3) If the submission is made to the City Council, the municipal solicitor shall represent and advise it at the hearing or hearings referred to in Section 1310.08(b)(4) of this Ordinance and Section 909.1(b)(4) of the Municipalities Planning Code.
- (4) The City Council may retain an independent attorney to present the defense of the challenged ordinance or map on its behalf and to present their witnesses on its behalf.
- (5) Based upon the testimony presented at the hearing or hearings, the City 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 City Council is found to have merit, City Council shall proceed as provided in Section 1311.04 of this Ordinance and Section 609.1 of the Municipalities Planning Code. 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 which 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 also consider:
 - (i) the impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;

- (ii) 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 otherwise unlawfully excluded by the challenged provisions of the ordinance or map;
 - (iii) the suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features;
 - (iv) the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, 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; and
 - (v) the impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
- (6) The City Council or the Board, as the case may be, shall render its decision within forty-five (45) days after the conclusion of the last hearing.
- (7) If the City Council or the Board, as the case may be, fails to act on the landowner's request within the time limits referred to in Section 1310.13(c)(6), a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.
- (d) The Board or City Council, as the case may be, shall commence its hearings within sixty (60) days after the request is filed unless the landowner requests or consents to an extension of time.
- (e) 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.
- (f) The challenge shall be deemed denied when:
 - (1) the Board or City Council, as the case may be, fails to commence the hearing within the time limits set forth in Section 1310.13(d);
 - (2) the City Council notifies the landowner that it will not adopt the curative amendment;
 - (3) the City Council adopts another curative amendment which is unacceptable to the landowner; or

- (4) the Board or City Council, as the case may be, fails to act on the request forty-five (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 City.
- (g) Where, after the effective date of this Ordinance, a curative amendment proposal is approved by the grant of a curative amendment application by the City Council pursuant to Section 1310.08(b)(4) of this Ordinance, and Section 909.1(b)(4) of the Municipalities Planning Code, or a validity challenge is sustained by the Board pursuant to Section 1310.08(a)(1) of this Ordinance, and Section 909.1(a)(1) of the Municipalities Planning Code, 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 (2) years from the date of such approval to file an application for preliminary or tentative approval pursuant to Franklin Subdivision and Land Development Ordinance or Section 1312 of this Ordinance (relative to planned unit development), and Article V or VII of the Municipalities Planning Code. Within the two-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects 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 Section 508(4) of the Municipalities Planning Code shall apply. Where the proposal appended to the curative amendment application or the validity challenge is approved but does not require further application under any subdivision or land development ordinance, the developer shall have one (1) 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 which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. During these protected periods, the court shall retain or assume jurisdiction for the purpose of awarding such supplemental relief as may be necessary.
- (h) A landowner who has challenged on substantive grounds the validity of a zoning ordinance or map either by submission of a curative amendment to the City Council under Section 1310.13 (a)(2) or to the Board under Section 1310.08(a)(1) shall not submit any additional substantive challenges involving the same parcel, group of parcels or part thereof until such time as the status of the landowner's original challenge has been finally determined or withdrawn; provided, however, that if after the date of the landowner's original challenge the City Council adopts a substantially new or different zoning ordinance or zoning map, the landowner may file a second substantive challenge to the new or different zoning ordinance or zoning map under Section 1310.13(a).
- (i) Preliminary Opinions: In order not to unreasonably delay the time when a landowner may secure assurance that the ordinance or map under which he proposed 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 for any challenge to the ordinance or map will run under Section 1310.11 of this Ordinance by the following procedure:

- (1) The landowner may submit plans and other materials describing his proposed use or development to the Zoning Officer for a preliminary opinion 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.
- (2) 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 (2) successive weeks in a newspaper of general circulation in the City. 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 under Section 1310.11 and the time therein specified for commencing a proceeding with the Board shall run from the time when the second notice thereof has been published.
- (3) The landowner shall pay all advertising costs for a preliminary opinion.

1310.14 PROCEDURE FOR OBTAINING REASONABLE ACCOMMODATION UNDER THE FHA OR ADA

- (a) Persons with a claim for a reasonable accommodation under the Fair Housing Amendments Act (FHA) or the Americans With Disabilities Act (ADA) shall submit their request in writing to the Zoning Officer on an application form which shall require the following information, and such other information as may be reasonably needed to process the request:
 - (1) Specific citation of the Zoning Ordinance provision from which reasonable accommodation is requested;
 - (2) The name and address of the applicant(s);
 - (3) A specific description of the reasonable accommodation sought and the particulars, including exact dimensions of any proposed structural or locational accommodation;
 - (4) The condition of the applicant(s) for which reasonable accommodation is sought;

- (5) A description of the hardship, if any, that the applicant(s) will incur absent provision of the reasonable accommodation requested;
 - (6) A description of any alternative methods of relieving the claimed hardship that have been considered and the reason, if any, why applicant(s) have rejected such alternatives;
 - (7) A statement describing why the requested accommodation is necessary to afford the applicant(s) an opportunity equal to a non-handicapped or non-disabled person to use and enjoy the dwelling in question;
 - (8) A description of the manner in which the accommodation, if granted, will be terminated or recovered if no longer required to afford equal housing opportunity to handicapped or disabled persons; and
 - (9) A statement of any facts indicating whether non-handicapped or non-disabled persons would be permitted to utilize the property in question in a manner similar to that sought by applicant(s).
- (b) In determining whether to grant reasonable accommodation, the Zoning Officer shall consider, *inter alia*, the following factors:
- (1) Whether the applicant(s) is/are handicapped or disabled within the meaning of the FHA or ADA;
 - (2) The degree to which the accommodation sought is related to the handicap or disability of the applicant(s);
 - (3) The extent to which the proposed accommodation may impact other property owners in the immediate vicinity;
 - (4) The extent to which the requested accommodation may be consistent with or contrary to the zoning purposes promoted by the Zoning Ordinance, the Comprehensive Plan, and the community development objectives set forth in the Zoning Ordinance;
 - (5) The extent to which the requested accommodation would impose financial and administrative burdens upon the City;
 - (6) The extent to which the requested accommodation would impose an undue hardship upon the City;
 - (7) The extent to which the requested accommodation would require a fundamental alteration in the nature of the City's regulatory policies, objectives and regulations;

- (8) The extent to which the requested accommodation would result in subsidy, privilege or benefit not available to non-handicapped or non-disabled persons;
- (9) The permanency of the requested accommodation and the conditions under which such accommodation would be removed, terminated or discontinued when no longer needed to provide handicapped or disabled persons with equal opportunity to use and enjoy the dwelling in question; and
- (10) The extent to which the requested accommodation will increase the value of the property during and after its occupancy by the applicant(s).