

ORDINANCE NO. 92

AN ORDINANCE CREATING A UNIFIED SYSTEM OF APPEALS FROM
ADMINISTRATIVE DETERMINATIONS

BE IT AND IT HEREBY IS, by the Board of Supervisors of Honey
Brook Township, ENACTED AND ORDAINED:

Section 1. There shall be and hereby is created a Board of
Administrative Appeals.

Section 2. Jurisdiction of the Board. The Board of Administrative
Appeals shall have jurisdiction in all disputes of any nature or description
whatsoever arising from the grant or denial of any permit or the action of any
Township administrative official under any ordinance. No such appeal shall lie
under any ordinance not specifically providing for appeals to this Board or
providing for appeals to other boards or directly to court. Specifically excluded
from this Ordinance are appeals arising under the Zoning Ordinance and
Subdivision Ordinance or any other ordinance enacted under the Municipalities
Planning Code.

Section 3. Definitions. As used herein, the term "Administrative
Officer" shall include and be construed to mean the administrative official
charged with enforcement of the particular ordinance or code which is made a
subject of appeal to this Board and shall include, but not be limited to, the
building inspector or mobile home park inspector.

Section 4. Application for Appeal. The Township, any of its agencies,
any other governmental office, agency or department of the county, state or

federal government having jurisdiction over the land in question, the landowner, the occupant of the land, any purchaser or optionee under an agreement of sale or option for having a direct, pecuniary or proprietary interest in lands immediately adversely affected by any action of the Administrative Officer in the administration of applicable ordinances (all hereinafter referred to as "persons aggrieved") may appeal such action of the Administrative Officer to the Board of Administrative Appeals, who shall hear and determine the same under the Local Agency Law of the Commonwealth of Pennsylvania.

Section 5. Construction of Board of Administrative Appeals.

(a) Membership of Board: The Board of Administrative Appeals shall consist of three (3) members appointed by the Board of Supervisors of Honey Brook Township, one (1) such member to be appointed for three (3) years, one (1) for two (2) years and one (1) for one (1) year, and thereafter each new member to serve for three (3) years or until his successor has been appointed and qualified.

(b) Qualifications of Board Members: Each member shall have a general working knowledge and understanding of construction, techniques, materials and design, and his qualifications to serve shall be left to the sole, absolute and unfettered discretion of the Board of Supervisors of Honey Brook Township.

(c) Absence of Members: During the absence of a member, by reason of disability or disqualification, the Board of Supervisors shall designate a qualified substitute.

(d) Chairman of Board: The Board shall select one (1) of its members to serve as Chairman and one (1) of its members to serve as Secretary to the Board. The Secretary of the Board shall keep a detailed record of all proceedings on file in the ~~Department of Building Inspection~~. *appropriate Twp. files + office of building Inspector*

(e) Exemption of Members: A member of the Board shall not pass on any question in which he is engaged as contractor or material dealer or in the preparation of plans or specifications, or in which he has any personal interest.

Section 6. Compensation of Board of Administrative Appeals. The members of the Board of Administrative Appeals shall receive such compensation as may from time to time be determined by the Board of Supervisors. In addition, the Board of Administrative Appeals and members thereof shall be reimbursed for all out-of-pocket expenses incurred in the performance of their duties.

Section 7. Appeals Procedure.

(a) Notice of Meeting: The Board shall meet upon notice of the Chairman which shall be given to all members of the Board, all adjacent property owners, the applicant, the landowner, the Board of Supervisors, the Township solicitor, the Administrative Officer and to all persons holding or occupying property immediately adjacent to the premises, the subject of the appeal. The giving of notice to an occupant shall be deemed notice to the owner and the giving of notice to an owner shall be deemed notice of the occupancy of any property. In addition, notice shall be advertised once in a newspaper of general circulation within the Township and not less than seven (7) nor more than thirty

(30) days prior to the date of the hearing. Where notices have been sent to any person entitled to receive notices under the terms hereof, the failure to receive such notice shall not be a basis for the invalidation of the hearing nor deprive the Board of jurisdiction nor compel readvertising.

(b) Public Hearing: All hearings shall be open to the public and shall be conducted under and pursuant to the procedure designated in the Local Agency Law of the Commonwealth of Pennsylvania. The majority of the Board shall constitute a quorum, and the majority of the members present and voting may render a decision on any matter before the Board. At the hearing, the appellant shall be entitled to be represented by counsel and those persons enumerated in subparagraph (a) as well as any other persons authorized by the Board in its discretion shall be permitted to intervene as parties.

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

Section 8. Decision of Board of Administrative Appeals.

(a) Action of the Board: The Board shall affirm, modify or reverse the decision of the Administrative Officer by a majority vote of the members of the Board hearing the appeal. The failure to obtain a majority vote shall constitute affirmance of the action of the Administrative Officer.

(b) Limitations of Jurisdiction: The Board shall be empowered to render decisions concerning the propriety of the Administrative Officer's actions

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

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

(d) Enforcement of Decision: The Administrative Officer shall take immediate action in accordance with the decision of the Board.

Section 9. Court Review. The municipality, whether or not a party before the Board of Administrative Appeals, and any party other than a discretionary party before the Board who is aggrieved by the decision of the Board of Administrative Appeals may appeal to the Court of Common Pleas of Chester County within thirty (30) days from the date of the rendering of the decision of the Board, and the Court of Common Pleas shall review the record on certiorari to determine whether or not the Board of Administrative Appeals abused its discretion or committed an error at law.

Section 10. Severability. If any provision of this Ordinance shall be determined to be invalid, unlawful or unconstitutional, the intent of the Board of Supervisors that the balance of the Ordinance would have been enacted without such provision and this entire Ordinance shall be deemed severable.

Section 11. This Ordinance shall take effect immediately upon enactment.

ENACTED AND ORDAINED this 9th day of August, 2000.

ATTEST:

Ruby M. Kitzman
Secretary

**HONEY BROOK TOWNSHIP
BOARD OF SUPERVISORS**

[Signature]
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Michael A. Jany