

## **ARTICLE 15: ZONING HEARING BOARD**

The Zoning Hearing Board shall carry out the functions and procedures established for the operation of a Zoning Hearing Board, hereafter called the "Board", as described in this section and in accordance with Zoning Ordinance Section 12.240 and Article 9 of the Municipalities Planning Code.

### **15.100 Operation**

#### 15.110 Membership

15.111 The membership of the Board shall consist of five (5) persons and up to three (3) alternate members, all residents of the Township of Hampton who shall be appointed by the Township Council and who may succeed themselves.

15.112 Members of the Board shall hold no other office in the Township.

#### 15.120 Term of Office

15.121 Members of the Board shall be appointed hereafter for five (5) year staggered terms, with one appointment each year to refill a completed term. The present members of the Zoning Hearing Board shall serve until the expiration of their appointments. Appointments shall be made annually for a five (5) year term so that the term of one (1) member of the Board shall expire each year.

15.122 Appointments to fill vacancies shall be made by the Township Council for only the unexpired portion of a term.

#### 15.130 Removal of Members

15.131 Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by a majority vote of the Township Council taken after the Board has received at least fifteen (15) days notice such vote will be taken.

15.132 The Board member thus accused may request by written communication to the Township Manager no later than seven (7) days prior to the meeting of the Township Council, at which the vote for removal is to be taken, for a hearing before the Township Council after which the Township Council, at its discretion, may take a vote for removal of the Board member.

15.140 Organization of the Board

- 15.141 The Board shall elect officers from among its membership to include a Chairman, Vice Chairman and Secretary.
- 15.142 The Board shall establish a regular monthly meeting date to conduct business.
- 15.143 The Board shall reorganize at its first meeting in each calendar year. Board members may succeed themselves in their positions.
- 15.144 The Chairman shall call and chair all meetings of the Board. The Vice Chairman shall act in the absence of the Chairman. The Secretary shall act in the absence of both the Chairman and Vice Chairman.
- 15.145 The Secretary shall assume the following responsibilities with the assistance of the Township staff: shall keep a record of the proceedings, recording the vote of each member, shall arrange for a stenographer to transcribe the hearings and distribute all testimony given at hearings, shall be responsible for preparing the agenda for each meeting, shall be responsible for the placing of notices for public hearings and shall handle all correspondence.
15. 146 A quorum shall be not less than three (3) members. If, by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Board shall designate as many alternate members of the Board to sit on the Board as may be needed to provide a quorum. Any alternate member of the Board shall continue to serve on the Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Board has made a final determination of the matter or case. Designation of an alternate pursuant to this section shall be made on a case by case basis in rotation according to declining seniority among all alternatives.
- 15.147 The Board may appoint one of its members as a Hearing Officer to conduct a hearing on behalf of the Board and parties to such a hearing may waive further action by the Board if satisfied with the Hearing Officer's ruling.
- 15.148 The Board may make, alter or rescind rules and forms for its procedure consistent with this and other Ordinances of Hampton Township and the laws of the Commonwealth.

15.149 The Board, with the assistance of the Township staff shall keep full public records of its business and shall submit a report of its activities to the Township Council as requested.

**15.200 Hearings**

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

15.210 The Board shall call and hold a public hearing within sixty (60) days of receiving an application of appeal, requesting a hearing, accompanied by the required filing fee. Each subsequent hearing may be held within forty-five (45) days of the prior hearing, and all hearings shall be completed within one hundred (100) days after the applicant completes its case in chief unless extended by application to the Court of Common Pleas.

Two (2) notices shall be placed in the classified section of a newspaper of general local circulation once in each of two (2) consecutive weeks, the first publication appearing not more than thirty (30) days and the second publication not less than seven (7) days prior to the hearing. In addition, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing. Notices shall indicate the date, time, and place of the hearing and the particular nature of the matter to be considered, as well as the street address of the specific property involved. All property owners within three hundred (300) feet of the property involved shall be notified by letter at least seven (7) days before the hearing.

15.220 The parties to the hearing shall be the applicant, the municipality, 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 require all persons who wish to be considered parties to enter an appearance and all those parties giving testimony or presenting evidence shall be sworn in.

15.230 The Chairman of the Board, or the Hearing Officer, shall conduct the hearing and shall have the power to administer oaths and issue subpoenas to compel attendance of witnesses and/or the production of documents and papers, including witnesses and documents requested by the parties. The parties in a hearing shall have the right to be represented by counsel and shall be afforded the opportunity to respond, present evidence and cross examine adverse witnesses on all relevant issues. Formal rules of evidence shall not apply, but irrelevant or redundant evidence may be excluded.

- 15.240 The Board, or the Hearing Officer (if he is conducting the hearings), 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 the Hearing Officer, or shall be paid by the person appealing from the decision of the Board if such an 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. The Board, or the Hearing Officer, shall not communicate, directly or indirectly, with any party, and/or representatives of any party in connection with any issue relevant to the hearing, except upon notice and opportunity for all parties to participate; shall not take notice of any communications, reports or other materials, except advice from the Board legal counsel, unless all parties are afforded an opportunity to contest the material so noticed; and shall not inspect any site or its surroundings with any party and/or representative of any party after the start of hearings unless all parties are given an opportunity to be present.
- 15.250 The Board, or Hearing Officer, shall render a written decision, or, when no decision is required, a written finding on the application within forty-five (45) days after the conclusions of the hearing before the Board or Hearing Officer. Decisions shall be based on findings of fact and conclusions based on them together with the reasons therefor. Conclusions based on any provisions of this Ordinance or any other Ordinance or regulation of the municipality shall contain a reference to the provisions relied on and the reasons why the conclusion is deemed appropriate in the light of the facts. All hearings shall be conducted in accordance with Section 908 of the Municipalities Planning Code.
- 15.260 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. Where the Board fails to render the decision within the period required by this subsection, or fails to hold the required hearing within sixty (60) days from the date of the applicant's request for a hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or, on the record, to an extension of time.

When a decision has been rendered in favor of the applicant because of the failure of the Board to meet or render a decision as herein above provided, the Board shall give public notice of said decision within ten (10) days from the last day it could have to render a decision in the same as provided in subsection 15.250 of this section. If the Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

15.270 A developer whose project has been approved, at either the preliminary or final level, but who is forced to suspend the project as the result of an appeal brought by a third party, may petition the Court to require the appealing party to post a bond as a condition of continuing the appeal, the amount to be determined by the Court. The Court shall hear the petition, determine whether the appeal is frivolous, and if so, may require the posting of the bond. Any appeals to the decision of the Zoning Hearing Board shall be conducted in accordance with the appeals procedure set out in the Municipalities Planning Code.

15.280 A copy of the final decision, or the findings if no decision is required, shall be mailed to the applicant not later than the day after the date of the decision. All others requesting notice of the decision not later than the last day of the hearing shall receive by mail a summary of the findings or decision and a statement of the place at which the full decision or findings may be examined.

### **15.300 Mediation Option**

15.310 a. Parties to proceedings authorized in this article may utilize mediation as an aid in completing such proceedings. In proceedings before the Zoning Hearing Board, in no case shall the Zoning Hearing Board initiate mediation or participate as a mediating party. Mediation shall supplement, not replace, those procedures in this article once they have been formally initiated. Nothing in this section shall be interpreted as expanding or limiting municipal police powers or as modifying any principles of substantive law.

b. Participation in mediation shall be wholly voluntary. The appropriateness of mediation shall be determined by the particulars of each case and the willingness of the parties to negotiate. The Township of Hampton assures that in each case, the mediating parties, assisted by the mediator as appropriate, will develop terms and conditions for:

- (1) Funding mediation.
  - (2) Selecting a mediator who, at a minimum, shall have a working knowledge of municipal zoning and subdivision procedures and demonstrated skills in mediation.
  - (3) Completing mediation, including time limits for such completion.
  - (4) Suspending time limits otherwise authorized, provided there is written consent by the mediating parties, and by an applicant or municipal decision making body, if either is not a party to the mediation.
  - (5) Identifying all parties and affording them the opportunity to participate.
  - (6) Subject to legal restraints, determining whether some or all of the mediation sessions shall be open or closed to the public.
  - (7) Assuring that mediated solutions are in writing and signed by the parties, and become subject to review, and approval by the appropriate decision making body pursuant to the authorized procedures set forth in the Municipalities Planning Code.
- c. No offers or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceedings.

#### **15.400 Jurisdiction**

15.410 The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudication in the following matters:

15.411 Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to sections 15.424 and 19.400 of this Ordinance and Sections 609.1 and 909.1 (a) (1) of the Municipalities Planning Code.

- 15.412 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.
- 15.413 Appeals from the determination of the Zoning Officer, including but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any non-conforming use, structure or lot.
- 15.414 Appeals from a determination by a municipal engineer or the Zoning Officer with reference to the administration of the Township of Hampton's flood plain ordinance, # 475, as amended.
- 15.415 Applications for variance from the terms of the zoning ordinance and flood plain ordinance or such provisions within a land use ordinance, pursuant to section 15.510.
- 15.416 Applications for special exceptions under the zoning ordinance or flood plain ordinance.
- 15.417 Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the zoning ordinance.
- 15.418 Appeals from the Zoning Officer's determination under section 909.1 (a) (8) of the Municipalities Planning Code.
- 15.419 Appeals from the determination of the Zoning Officer or municipal 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 the Subdivision and PRD applications.
- 15.420 The Township Council shall have exclusive jurisdiction to hear and render final adjudication in the following matters:
- 15.421 All applications for approval of planned residential developments under Article 9 of this Ordinance and pursuant to the provision of Section 909.1(b) (1) through (7) of the State Municipalities Code.

- 15.422 All applications for subdivision and land development approval, as well as, Site plans are pursuant to Section 10.600 of this ordinance and the current Subdivision Land Development Ordinance.
- 15.423 Applications for conditional use under the express provisions of the zoning ordinance pursuant to Article 12.
- 15.424 Applications for curative amendment to the zoning ordinance pursuant to Sections 19.400.
- 15.425 All petitions for amendments to land use ordinances, pursuant to the procedures set forth in Section 19.200. 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.
- 15.426 Appeals from the determination of the Zoning Officer or the municipal 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 9 of the Zoning Ordinance as amended and the Subdivision Ordinance as amended. Where such determination relates only to development, not involving Article 9 of the Zoning Ordinance as amended and the Subdivision Ordinance as amended, application, the appeal from such determination of the Zoning Officer or the municipal engineer shall be to the Zoning Hearing Board pursuant to Subsection 15.419.
- 15.430 Applicability of Judicial Remedies - Nothing contained in this article shall be construed to deny the appellant the right to proceed directly to court where appropriate, pursuant to the procedures provided in the Municipalities Code or any appropriate statute of the Commonwealth of PA.

## **15.500 Functions of the Board**

### 15.510 Variances

- 15.511 The Board shall hear request for variances where it is alleged that the provisions of the Zoning Ordinance inflict unnecessary hardship upon the applicant.

15.512 Variance from Board unless a written application for a variance is submitted to the Secretary of the Board. 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 but not limited to, 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 appellant;
- 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 or 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.

15.513 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.

#### 15.520 **Special Exceptions**

15.521 The Board shall hear and decide requests for special exceptions, which are specified for the various zone districts, pursuant to express standards and criteria in the ordinance.

15.522 If a special exception is granted, 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 this Zoning Ordinance, predicated upon the developer's submission of a written application to the Secretary of the Board demonstrating that the development for which the special exception is sought:

- a. will not endanger the public health, safety and welfare, if located where proposed and that the use will not deteriorate the environment or generate nuisance conditions such as traffic congestion, noise, dust, smoke, glare or vibration;
- b. meets all other requirements of this Ordinance in the zoning district where the use is proposed;
- c. is in general conformity with the Comprehensive Plan for the Township of Hampton and in harmony with the area in which it is proposed; and
- d. is an appropriate use on the proposed site.

**15.530 Validity of Ordinance: Substantive Questions**

15.531 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:

- a. to the Zoning Hearing Board under Section 15.411 or:
- b. to the governing body under Section 15.420 together with a request for a curative amendment under Section 19.400.

15.532 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 Zoning Hearing Board for a decision thereon under Section 15.411.

15.533 The submission referred to in Subsections 15.531 'a' and 'b' shall be governed by the following:

- a. In challenges before the Zoning Hearing Board, the challenging party shall make a written request to the board that it hold a hearing on the 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 19.400, his application to the governing body shall contain, in addition to the requirements of the written request thereof, 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 seeking a final approval before submitting his challenge.
- b. If the submission is made by the landowner to the governing body under Subsection 15.531 the request also shall be accompanied by an amendment or amendments to the ordinance proposed by the landowner to cure the alleged defects therein.
- c. If the submission is made to the governing body, the municipal solicitor shall represent and advise it at the hearing or hearings referred to in section 19.400.
- d. The governing body 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.
- e. Based upon the testimony presented at the hearing or hearings, the governing body or the Zoning Hearing 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 a governing body is found to have merit, the governing body shall proceed as provided in Section 19.400. If a challenge heard by a Zoning Hearing Board is found to have merit, the decision of the Zoning Hearing Board shall include recommending amendments to the challenged ordinance, which will cure the defects found.

In reaching its decision, the Zoning Hearing Board shall consider the 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 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;
  3. the suitability of the site for the intensity of the use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features;
  4. 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
  5. the impact of the proposal on the preservation of agriculture and other land uses which are essential to public health, safety and welfare.
- f. The governing body or the Zoning Hearing Board, as the case may be, shall render its decision within forty-five (45) days after the conclusion of the last hearing.
- g. If the governing body or the Zoning Hearing Board, as the case may be, fails to act on the landowner's request within the time limits referred to in paragraph 'f', a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.
- 15.534 The Zoning Hearing Board or governing body, as the case may be, shall commence its hearing within sixty (60) days after the request is filed, unless the landowner requests or consents to an extension of time.
- 15.535 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.

15.536 The challenge shall be deemed denied when:

- a. the Zoning Hearing Board or governing body may, as the case may be, fails to commence the hearing within the time limits set forth in Subsection 15.534;
- b. the governing body notifies landowner that it will not adopt the curative amendment;
- c. the governing body adopts another curative amendment which is unacceptable to the landowner; or
- d. the Zoning Hearing Board or governing body, 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 municipality.

15.537 Where a curative amendment proposal is by the governing body pursuant to Section 15.424, or a validity challenge is sustained by the Zoning Hearing Board pursuant to Section 15.411 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 Article 9 or the Subdivision Ordinance. Within the two (2) 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 the Subdivision Ordinance and Article 9 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 (1) 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.

15.538 Procedure to Obtain Preliminary Opinion.

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 any challenge to the ordinance or map will run under Section 15.620 by the following procedure:

- a. The landowner may submit plans and other materials describing his proposed use or development, to the Zoning Officer for a preliminary opinion as to their compliance with the applicable ordinances and maps. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed use or development and a sufficient basis for a preliminary opinion as to its compliance.
- b. If the Zoning Officer's preliminary opinion is that the use or development complies with the ordinance or map, notice thereof shall be published once each week for two (2) successive weeks in a newspaper of general circulation in the municipality. 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 15.620 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.

**15.600 Parties Appellant Before the Board and Time Limitations**

15.610 Parties Appellant Before the Board - Appeals under Sections 15.411, 15.412, 15.413, 15.414, 15.417, 15.418, and 15.419 may be filed with the Board in writing by the landowner affected, any officer or agency of the municipality, or any person aggrieved. Requests for a variance under Section 15.510 and for special exception under Section 15.520 may be filed with the Board by any landowner or any tenant with the permission of such landowner.

#### 15.620 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 an appropriate municipal 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.
- b. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan pursuant to Section 9 or from an adverse decision by the Township Council on a challenge to the validity of an ordinance or map, pursuant to Section 15.531 'b' shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.
- c. All appeals from determinations adverse to the landowners shall be filed by the landowners within thirty (30) days after notice of the determination is issued.

#### **15.700 Stay of Proceedings, Zoning Appeals to Court and Rehearings**

15.710 Upon the filing of an appeal, and while an appeal is pending before the Board, any 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 the Court having jurisdiction of zoning appeals, on petition, after notice to the Zoning Officer or other appropriate agency or body.

#### 15.720 Zoning Appeals to Court

- 15.721 Zoning appeals shall include any appeals from the decisions of the Board.
- 15.722 The court having jurisdiction shall be the Allegheny County Court of Common Pleas.

- 15.723 Zoning appeals may be taken to Court by any party before the Board or any officer or agency of the Township of Hampton.
- 15.724 All zoning appeals shall be filed not later than thirty (30) days after issuance of notice of the decision or report of the Board.
- 15.725 All appeals shall follow the procedures without variance, set forth in Article 10-A of the Pennsylvania Municipalities Planning Code, Act 247, as amended.
- 15.730 Rehearing: If any application for a variance, special exception or appeal from, the Zoning Officer is denied by the Board, another application for the same request shall not be filed within a period of one (1) year from the date of denial.