

PART 12
ZONING HEARING BOARD

§27-1200. Establishment of Board.

A Zoning Hearing Board is established in order that the objectives of this Chapter may be more fully and equitably achieved and a means for competent interpretation of this Chapter is provided.

§27-1201. Membership, Terms of Office.

1. The Zoning Hearing Board shall consist of three (3) members, appointed by resolution by the Borough Council for overlapping three (3) year terms. Members of the Board shall be residents of the Borough and shall hold no other Borough office.
2. The Borough Council may appoint, by resolution, at least one (1), but no more than three (3) residents of the Borough to serve as alternate members of the Board. An alternate member shall, when seated on the Board as provided herein to complete the quorum, participate in all discussions and proceedings of the Board to the same and full extent 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 in the Pennsylvania Municipalities Planning Code (Act 247), as amended and as otherwise provided in this Chapter and as otherwise provided by law. At any time, an 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 seated as a voting alternate member as needed to complete the quorum. The term of office of an alternate member shall be three (3) years. Alternates shall hold no other office in the Borough, including membership on the Planning Commission and zoning officer.
3. Vacancies shall be filled for the unexpired term in the same manner as in the case of original appointments.
4. 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 alternates.

§27-1202. Removal of Members.

Any board member may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of Borough Council taken after the member has received fifteen 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.

§27-1203. Procedures.

1. **Officers.** The Board shall elect a chairman from its membership, shall appoint a secretary, and shall prescribe rules in accordance with the provisions of the Pennsylvania Municipalities Planning Code (Act 247), as amended and this Chapter for the conduct of its affairs. The Chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.
2. **Meetings.** Meetings shall be open to the public and shall be at the call of the chairman and at such other times as the Board shall specify in its rules of procedure. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Board. 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.
3. **Records and Decisions.** The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. Decisions of the Board shall be made only after public notice and hearing in accordance with this Chapter and the Pennsylvania Municipalities Planning Code (Act 247).
4. **Compensation.** The Borough Council may fix per-meeting compensation for the members of the Board, according to a schedule adopted by resolution of the Borough Council upon the enactment of this Chapter or as such schedule may be amended from time to time.

§27-1204. Powers and Duties; Interpretation.

Any person aggrieved by any decision of the Zoning Officer shall have the right to appeal to the Zoning Hearing Board within thirty (30) days of such decision by filing with the Zoning Officer, specifying the grounds thereof. Such appeal may involve the interpretation of any provisions of this Chapter, and shall include the following information:

- A. The name and address of the applicant or appellant.

- B. The name and address of the owner of the lot to be affected by such proposed change or appeal.
- C. A brief description and location of the lot to be affected by such proposed change or appeal.
- D. A statement of the present zoning classification of the lot in question, the improvements thereon and the present use thereof.
- E. A statement of the section of this Chapter under which the appeal is made and reasons why it should be granted or a statement of the section of this Chapter governing the situation in which the alleged erroneous ruling is being appealed and the reasons for this appeal.
- F. A reasonably accurate description of the present improvements and the addition or changes intended to be made under this application, indicating the size, material and general construction thereof. In addition, there shall be attached a plot plan of the real property to be affected, indicating the location and size of the lot and size of improvements existing thereon and proposed to be erected thereon.

§27-1205. Powers and Duties; Variances.

The Board shall hear requests for variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The Board shall prescribe the form of application and require preliminary application to the Zoning Officer. The Board shall have the power to vary or adapt the strict application of any requirements of this Chapter and grant a variance, provided that 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 the zoning 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 the zoning 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, 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.

In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Chapter.

§27-1206. Powers and Duties; Special Exceptions.

Where this Chapter has provided for stated special exceptions to be granted or denied by the Board pursuant to expressed standards and criteria, the Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of this chapter. The Board shall pursue the following procedure:

- A. The Board's decision to grant a special exception use shall be made only after public notice and hearing. Such permit shall apply specifically to the application and plans submitted and presented at said public hearing. Any subsequent amendments or additions shall be subject to review and public hearing by the Zoning Hearing Board as a special exception use.
- B. The Zoning Hearing Board shall hear the application in the same manner and under the same procedure as it is empowered by law and ordinance to hear cases and make exceptions to the provisions of this Chapter. The Zoning Hearing Board may grant a Special Exception if, in its judgment, the use meets all specific provisions and criteria contained in this Chapter and the following general provisions:
 - (1) That the proposed use is in accordance with the spirit, purpose and intent of the Four Boroughs Regional Comprehensive Plan and in conformance with all applicable requirements of this Chapter. Where there is a conflict between the Four Boroughs Regional Comprehensive Plan and this Chapter, the provisions of this Chapter shall apply.
 - (2) That it is in the best interests of the Borough, the convenience of the community, and the public welfare.

- (3) That there are adequate sanitation and public safety provisions, where applicable, and that a certificate of adequacy of sewage and water facilities from a governmental agency has been obtained.
- (4) That all public, commercial or industrial parking, loading, access or service areas shall be adequately illuminated at night while in use and that such lighting, including sign lighting, shall be arranged so as to protect the highway and the neighboring properties from direct glare or hazardous interference of any kind.
- (5) That off-street parking is provided in accordance with the provisions of this Chapter.
- (6) That such use conforms to the minimum area and yard requirements of the district and to the buffer requirements contained in this Chapter.

The Zoning Hearing Board may impose whatever conditions regarding layout, circulation and performance it deems necessary to insure that any proposed development will secure substantially the objectives of this Chapter.

4. In considering applications for Special Exceptions for certain uses located in the floodplain as specified in §27-703.1.H.(2) the Zoning Hearing Board shall consider all relevant factors specified in other sections of the Chapter and:
 - A. The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - B. The danger to life from materials that may be swept onto other lands or downstream.
 - C. The ability of proposed water supply and sanitation systems to prevent disease, contamination, and unsanitary conditions.
 - D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 - E. The safety of access to the property in terms of flood, especially by emergency vehicles.
 - F. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - G. Such other factors which are relevant to the purposes of this Chapter.

H. Floodproofing measures. Floodproofing measures shall be designed consistent with the flood elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors. The Zoning Hearing Board shall require that the applicant submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the flood elevation and associated flood factors for the particular area. The Zoning Hearing Board may require one or more of the following floodproofing measures in addition to those required in §27-703 which are found appropriate for the particular conditions and areas:

- (1) Installation of pumps to lower water levels in structures.
- (2) Installation of pumping facilities or comparable practices for subsurface drainage systems for buildings to relieve external foundation wall and basement floor pressures.
- (3) Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent back-up of sewage and storm waters into the buildings or structures. Gravity draining of basements may be eliminated by mechanical devices.
- (4) Location of any structural storage facilities for chemicals, explosives, buoyant materials, flammable liquids, or other toxic materials which could be hazardous to public health, safety, and welfare, above the flood elevation or provision of adequate floodproofing to prevent flotation of or damage to storage containers which could result in the escape of toxic materials into flood waters.

I. The Zoning Hearing Board shall determine the extent which the proposed use would (1) diminish the capacity of the flood hazard area to store and absorb flood waters, to moderate flood velocities, and to accommodate sediment; (2) be subject to flood damage; and (3) cause erosion and impair the amenity of the flood hazard area.

§27-1207. Powers and Duties; Challenge to the Validity of Chapter or Map.

The Zoning Hearing Board shall hear challenges to the validity of this Chapter, except those brought before the Borough Council as specifically provided by Article IX of the Pennsylvania Municipalities Planning Code (Act 247), as amended, and challenges to the validity of this Chapter raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance.

In all such challenges, the Board shall take evidence and make a record thereon. At the conclusion of the hearing, the Board shall decide all contested questions and make findings on all relevant issues of fact, which shall become part of the record on any subsequent appeal to Court.

§27-1208. Actions of the Board in Exercising Powers.

In exercising the above-mentioned powers, the Zoning Hearing Board may in conformity with law and the provisions of this Chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as in its opinion ought to be made. Notice of such decision shall forthwith be given to all parties in interest.

§27-1209. Rules.

The Zoning Hearing Board shall adopt rules in accordance with the provisions of this Chapter. Such rules shall include, but shall not be limited to, the manner of filing appeals, the manner of filing applications for special exceptions and variances from the terms of this Chapter, and the manner of giving notice of public hearings where required under the terms of this Chapter.

§27-1210. Persons Entitled to Initiate Action before the Board and Jurisdiction.

Appeals under this section may be filed with the Board in writing by the landowner affected, any officer or agency of the Borough, or any person aggrieved. Requests for a variance and for a special exception may be filed with the Board by any landowner or any tenant with the permission of such landowner. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

- A. Substantive challenges to the validity of any land use ordinance, except those brought before the Borough Council pursuant to this Chapter;
- B. Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance.
- 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 a municipal engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance.

- E. Applications for variances from the terms of this Chapter.
- F. Applications for special exceptions under this Chapter.
- G. Appeals from the Zoning Officer's determination under §916.2 of the Pennsylvania Municipalities Planning Code (Act 247), as amended.
- H. Appeals from the determination of the Zoning Officer or Borough 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 relates to developments not involving applications for subdivisions or land developments, as defined by the Pennsylvania Municipalities Planning Code (Act 247), as amended.

§27-1211. Hearings.

Upon the filing with the Zoning Hearing Board of an appeal or an application for which a public hearing is required, the following procedures shall be followed:

1. Public notice shall be given and written notice shall be given to the applicant, the zoning officer, persons whose properties adjoin the property in question, to all owners of properties within 300 feet of any property line, and to any other person who has made timely request for notice. Written notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing. The applicant shall provide the list of persons to be notified and certify that the list is accurate. The applicant shall send notice to the list of persons by certified and regular mail no more than thirty (30) but not less than twenty (20) days prior to the hearing and shall produce proof of such mailing and copies of the return receipt at the time of the hearing.
2. The hearing shall be held within 60 days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.
3. The Board shall render a written decision or written findings on the application within 45 days after the last hearing or, if such hearing is continued, within 45 days after said continued hearing. If the Board does not make a decision within 45 days after the hearing or continued hearing, it shall be deemed that such Board has decided in favor of the person or Borough official aggrieved or affected who is seeking relief, unless the applicant has agreed in writing to an extension of time.
4. 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 the Pennsylvania Municipalities Planning Code (Act 247) as amended, this Chapter, or other rule or regulation shall contain a reference to the provisions relied on and the reasons

why the conclusions are deemed appropriate in the light of the facts found. 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 hereinafter provided, the Board shall give public notice of said decision within ten days from the last day it could have met to render a decision. If the Board shall fail to provide such notice, the appellant may do so. Nothing in this section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

5. A copy of the final decision, or where no decision is called for, the findings shall be delivered to the applicant personally or mailed to him not later than the day following the date of the decision. 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 examined.

§27-1212. Records.

1. The Board shall keep a stenographic record of the proceedings and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.
2. The Board 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. Each decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons therefore.

§27-1213. Court Appeals.

Any persons aggrieved by any decision of the Zoning Hearing Board, or any taxpayer or the Borough Council may, within 30 days after such decision of the Board, appeal to the Court of Common Pleas of Bucks County, by petition duly verified, setting forth that such decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and specify the grounds upon which he relies. Such appeal shall be made in accordance with Article X of the Pennsylvania Municipalities Planning Code (Act 247), as amended.

§27-1214. Fees and Escrow Deposits.

The applicant for any hearing before the Zoning Hearing Board shall at the time of making application, pay to the Zoning Officer, for the use of the Borough, a fee and an escrow deposit in accordance with the then-current fee schedule adopted by resolution of the Borough Council, as may be amended from time to time. The amount of the fee shall be predicated upon the average cost to the Borough of the application or appeal, as nearly as it can reasonably be determined, including advertising, mailing, reproduction, stenographic, legal and similar expenses.

§27-1215. Stay of Proceedings.

Upon filing of any proceeding and during its pendency before the Board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or any agency or body, and all official action thereunder, shall be stayed in accordance with Section 915.1 of the Pennsylvania Municipalities Planning Code (Act 247), as amended.