

Article XXIII: Zoning Hearing Board

SECTION 240-2300. PURPOSE AND JURISDICTION

The purpose of this Article is to provide standards for the functions and procedures of the Zoning Hearing Board, based on Act 247 Section 909.1. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final decisions in the following matters:

- A. Variances. Applications for variances under this Chapter, pursuant to Act 247 Section 910.2.
- B. Special Exceptions. Applications for special exceptions under this Chapter, pursuant to Act 247 Section 912.1.
- C. Appeals from Zoning Officer decisions. Appeals from 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 registration or refusal to register any nonconforming use, structure, or lot.
- D. Appeals from floodplain provisions. Appeals from a determination of the Township Engineer or Zoning Officer in the administration of any floodplain or flood hazard ordinances referenced in this Chapter.
- E. Appeals from transfers of development rights or performance density. Appeals from the determination of the Zoning Officer in the administration of transfers of development rights or performance density provisions of this Chapter.
- F. Appeals from preliminary opinion of Zoning Officer. Appeals from Zoning Officer determinations under Act 247 Section 916.2.
- G. Appeals from stormwater management and erosion control provisions. Appeals from the determination of the Township Engineer or Zoning Officer in the administration of sedimentation and erosion control and stormwater management of this Chapter insofar as the same relate to development not involving applications under Act 247 Article V (Subdivision and Land Development) or Act 247 Article VII (Planned Residential Development), in which case appeals are before the Board of Supervisors.
- H. Substantive challenges. Substantive challenges to the validity of this Chapter or the Zoning Map, except landowner curative amendments brought before the Board of Supervisors pursuant to Act 247 Sections 609.1 and 916.1(a)(2).
- I. Validity or procedural challenges. Challenges to the validity of this Chapter or the Zoning Map 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 items in question.

SECTION 240-2301. MEMBERSHIP, ORGANIZATION, AND EXPENDITURES

A. Membership.

1. Members. Membership of the Zoning Hearing Board shall consist of five (5) Township residents, appointed by resolution of the Board of Supervisors and per Act 247, Article IX. Each term of office shall be five (5) years and shall be so fixed that the term of office of one (1) member shall expire each year. Any existing members at the effective date of this Chapter having a three (3) year term shall continue in office until their term of their office expires, and if reappointed shall then meet the term limits of this Section.
2. Vacancies. The Zoning Hearing Board shall promptly notify the Board of Supervisors of any vacancy that occurs. Appointments to fill vacancies shall be for the duration of the unexpired portion of the term.
3. Alternate members. The Board of Supervisors may appoint, by resolution, up to three (3) Township residents to serve as an alternate member of the Zoning Hearing Board. The term of the alternate member shall be three (3) years. An alternate member may participate in any proceeding or discussion of the Zoning Hearing Board, but shall not be entitled to vote as a member of the Zoning Hearing Board nor be compensated as a member, unless seated as a member as provided in this Section.
4. Limitation of responsibilities. Members and alternate members of the Zoning Hearing Board shall hold no other elected or appointed office in the Township, including service as a member of the Planning Commission or as a Zoning Officer, nor shall any member be an employee of the Township.
5. Removal of members. Any Zoning Hearing Board member may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote by the Board of Supervisors. No vote shall occur until the member has received a fifteen (15) day 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.

B. Organization.

1. Conduct and Officers. The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the Zoning Hearing Board. The Zoning Hearing 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 Zoning Hearing Board as provided in Act 247 Section 908 and § 240-2302.
2. Procedure. The Zoning Hearing Board may make, alter, and rescind rules and forms for its procedure, consistent with Act 247, this Chapter, other applicable Township ordinances, and the laws of the Commonwealth. The Zoning Hearing Board shall maintain full public records of its business, which records shall be the property of the Township, and shall submit a report of its activities to the Board of Supervisors annually or as requested by the Board of Supervisors.
3. Designation of alternate members. The Chair of the Zoning Hearing Board may designate alternate members of the Zoning Hearing Board to replace any absent or disqualified members and if, by reason of absence or disqualification of a member, a quorum is not

reached, the Chair shall designate as many alternate members of the Zoning Hearing Board to sit on the Zoning Hearing Board as may be needed to reach a quorum. Alternate member(s) shall continue to serve on the Zoning Hearing Board in all proceedings involving the matter or case for which the alternate member(s) was initially appointed until the Zoning Hearing Board has made a final decision on the matter or case. Designation of an alternate member pursuant to this Subsection shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.

C. Expenditures and Fees.

1. Expenditures. Within the limits of funds appropriated by the Board of Supervisors, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel (which shall be an attorney other than the Township Solicitor), consultants, and other technical and clerical services. Members of the Zoning Hearing Board, including alternate member(s) when designated in accordance with this Section, may receive compensation for the performance of their duties, as may be established by resolution of the Board of Supervisors, but in no case shall it exceed the rate of compensation authorized to be paid to the Board of Supervisors.
2. Fees. An applicant before the Zoning Hearing Board shall deposit with the Township the appropriate filing fee. Fees shall be established by resolution of the Board of Supervisors.
3. Hearing fees. The Board of Supervisors may prescribe reasonable fees with respect to hearings before the Zoning Hearing Board. Fees for said hearings may include compensation for the Township Secretary and members of the Zoning Hearing Board, notice and advertising costs, and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural, or other technical consultants, or expert witness costs.

SECTION 240-2302. HEARINGS

The Zoning Hearing Board shall conduct hearings in accordance with the following provisions, based on Act 247 Section 908.

A. Applications. Requests for hearings before the Zoning Hearing Board shall be as follows: (Act 247, Section 913.3)

1. Appeals under § 240-2300 may be filed with the Zoning Hearing Board, in writing, by the landowner affected, any officer or agency of the Township, or any person aggrieved.
2. Requests for a variance (Act 247, Section 910.2) or special exception (Act 247, Section 912.1) may be filed with the Zoning Hearing Board by any landowner or any tenant with evidence of consent from the landowner.
3. Applications shall be made in writing on forms furnished by the Township and shall include information necessary to enable the Zoning Officer to ascertain compliance with this Chapter and other applicable ordinances. Applications shall be accompanied by such plans, documents, and information as required on the applicable forms furnished by the Township and by the applicable fee per Article XXV. In the event that any required

information is not furnished, the application shall be considered incomplete, and notice of application refusal such be given to the applicant.

B. Notice. Upon receiving the filing of a request for a hearing, the Zoning Hearing Board shall fix a reasonable time and place for a public hearing and shall give public notice thereof as follows:

1. Public notice shall be given per § 240-201.
2. Written notice of the public hearing shall be given to the applicant and persons who have made a timely written request to receive notice.
3. Written notice of the public hearing shall be given to the Zoning Officer, Township Secretary, each member of the Board of Supervisors, each member of the Planning Commission, Chester County Planning Commission, as well as to every person or organization who shall have registered with the Zoning Hearing Board for the purpose of receiving such notices, accompanied by the appropriate mailing fee.
4. Posted notice of the public hearing shall be provided in a conspicuous location on the affected tract of land at least one (1) week prior to the hearing.
5. Written notice of the public hearing shall be given to the owner and the occupier of every lot abutting the said lot or building and every lot facing directly across the street.
6. The notice shall state the location of the lot, structure, or building in question, the general nature of the question involved, as well as the date, time, and place of the public hearing.

C. Timing.

1. The first hearing before the Zoning Hearing 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 Zoning Hearing 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/her case-in-chief within one-hundred (100) days of the first hearing. Upon the request of the applicant, the Zoning Hearing 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.
2. 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, and the applicant may, upon request, be granted additional hearings to complete his/her 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 Township, be granted additional hearings to complete their opposition to the application, provided the applicant is granted an equal number of additional hearings for rebuttal.
3. The Zoning Hearing Board shall conduct the hearings or the Zoning Hearing 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 Zoning Hearing Board; however, the appellant or the applicant, as the case may be, in addition to the Township, may, prior to the decision of the hearing, waive decision or findings by the Zoning Hearing Board and accept the decision or findings of the hearing officer as final.

- D. Parties to the hearing. Parties to the hearing shall be the Township, any person affected by the application who has made timely appearance of record before the Zoning Hearing Board, and any other person entitled to notice under this Subsection including civic or community organizations permitted to appear by the Zoning Hearing Board. The Zoning Hearing Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Zoning Hearing Board for that purpose.
- E. Powers of the Chair. The Chair or Acting Chair of the Zoning Hearing Board or the hearing officer presiding shall have the 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.
- F. Rights of the parties. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond, to present evidence, and to argue and cross-examine adverse witnesses on all relevant issues.
- G. Exclusion of evidence. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- H. Record of the proceedings. The Zoning Hearing Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Zoning Hearing Board. The cost of the original transcript shall be paid by the Zoning Hearing 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 Zoning Hearing 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.
- I. Communications. The Zoning Hearing Board or hearing officer shall not communicate, directly or indirectly, with any party or his/her representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff, memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material, and shall not inspect the site or its surroundings after the commencement of the hearings with any party or his representative unless all parties are given an opportunity to be present.

SECTION 240-2303. HEARING DECISIONS

The Zoning Hearing Board shall make decisions in accordance with the following provisions, based on Act 247, Section 908.

- A. The Zoning Hearing 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 Zoning Hearing Board or hearing officer.

1. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons therefor. Conclusions based on any provisions of this Chapter, Act 247, or of any ordinance, rule, or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.
 2. If the hearing is conducted by a hearing officer and there has been no stipulation that his/her decision or findings are final, the Zoning Hearing Board shall make his/her 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 Zoning Hearing Board prior to final decision or entry of findings, and the Zoning Hearing Board's decision shall be entered no later than thirty (30) days after the report of the hearing officer.
 3. Except for challenges filed under Act 247 Section 916.1 where the Zoning Hearing Board fails to render the decision within the period required by this section or fails to commence, conduct, or complete the required hearing as provided in § 240-2302.C.1 and 2, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Zoning Hearing Board to meet or render a decision as hereinabove provided, the Zoning Hearing 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 § 240-2302.B. If the Zoning Hearing 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.
- B. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or sent by mail not later than the day following the date of the decision of the Zoning Hearing Board.
- C. The Zoning Hearing Board shall provide by mail or otherwise a brief notice of the decision or findings and a statement of the place where the full decision may be examined to all other persons who have filed their names and addresses with the Zoning Hearing Board not later than the last day of the hearing.

SECTION 240-2304. VARIANCES

The Zoning Hearing Board shall hear and decide on requests for variances in accord with this Article, where it is alleged that a provision(s) of this Chapter inflict unnecessary hardship on the applicant.

- A. An applicant shall file an application for a variance per § 240-2302.
- B. In granting a variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Chapter.
- C. Financial gain shall not be a basis for granting a variance and the proposed use shall comply with all other applicable requirements of this Chapter.

- D. The Zoning Hearing Board may grant a variance to a provision(s) of this Chapter, provided that all of the following standards are satisfied where relevant in a given case:
 - 1. Unique physical conditions. Unique physical circumstances or conditions exist, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographic or other physical conditions peculiar to the particular property, and the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by provisions of this Chapter in the district in which the property is located.
 - 2. Strict conformity cannot occur. Because of the physical circumstances or conditions described in Subsection 1, there is no possibility that the property can be developed in strict conformity with the applicable provisions of this Chapter and the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - 3. Liability of the applicant. Where such unnecessary hardship has not been created by the applicant.
 - 4. Effect of variance on district. Where the variance, if authorized, will not alter the essential character of the zoning 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. Minimum variance. Where the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.
- F. If the Zoning Hearing Board grants the variance request, such approval shall accompany any application for subdivision of land or land development or permit(s) sought.

SECTION 240-2305. SPECIAL EXCEPTIONS

This Section provides for consideration of certain uses and modifications to be permitted within the Township as special exceptions. Such have the potential for greater impact and may not be appropriate at every location within a zoning district, and accordingly as permitted by Act 247, this Section establishes criteria by which to evaluate applications for special exceptions.

- A. An applicant shall file an application for a special exception per § 240-2302. The Zoning Hearing Board shall hear and decide all such requests for special exceptions uses identified in this Chapter, in accordance with this Article and the following standards.
 - 1. Relationship to the Comprehensive Plan. Consideration of the size, scope, extent, and character of the proposed special exception and assurance that such is consistent with community goals and objectives of the Comprehensive Plan.
 - 2. Relationship to the Zoning Ordinance. Consideration of the proposed special exception with respect to promoting harmonious development within the spirit, purpose, requirements, and intent of this Chapter, and that the proposed special exception will not adversely affect the public health, safety, and welfare of Township residents.
 - 3. Suitability of the tract. Consideration of the suitability of the tract, including environmental conditions, roadway access, and availability of sewer and water service.

4. Natural, scenic and historic resources. Consideration of the potential impact on the natural, scenic, and historic resources on the tract and its surroundings.
 5. Impact on existing neighborhood character. Consideration of the extent which the proposed special exception will alter the character of the existing neighborhood and adjacent tracts.
 6. Impact on circulation. Consideration of the effects the proposed special exception will have with respect to traffic patterns and volumes, access parking, and undue congestion.
 7. Economic impact. Consideration of the character and type of development proposed as it relates to generating revenue for the Township and demands on municipal services.
 8. Other ordinance requirements. The proposed use shall comply with all other applicable requirements of this chapter.
- B. It shall be the responsibility of the applicant requesting approval of the special exception to present such evidence as is necessary to demonstrate that the proposed use or modification complies with standards set forth in this Section.
- C. If the Zoning Hearing Board grants the special exception request, such approval shall accompany any application for subdivision of land or land development or permit(s) sought.

SECTION 240-2306. TIME LIMITATION FOR APPEALS

- A. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for development, preliminary or final, has been approved by an appropriate Township officer, agency, or body if such proceeding is designed to secure reversal or limit approval in any manner unless such person alleges and proves that he/she had no notice, knowledge, or reason to believe that such approval had been given. If such person has gained his/her interest after such approval, he/she shall be bound by the knowledge of his/her predecessor in interest.
- B. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan pursuant to Act 247 Section 709 or from an adverse decision by the Zoning Officer on a challenge to the validity of an ordinance or map pursuant to Act 247 Section 916.2 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 landowner shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

SECTION 240-2307. EXPIRATION OF SPECIAL EXCEPTIONS AND VARIANCES

A special exception or variance approval shall expire one (1) year from the date of approval if the applicant does not begin work, or apply for the appropriate permit(s), or submit a preliminary or final subdivision or land development plan application. In addition, the special exception or variance approval shall expire one (1) year from the date of approval if the application for the appropriate permit or preliminary or final subdivision or land development plan is withdrawn. The applicant may

request an extension of time to the Zoning Hearing Board in writing for a period not to exceed one (1) additional consecutive year. Such applications for extension must occur prior to the expiration of the initial approval.

SECTION 240-2308. STAY OF PROCEEDINGS

Upon filing of any proceeding and during its pendency before the Zoning Hearing 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 Zoning Hearing Board facts indicating that such stay would cause imminent peril to life or property. In such case, the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Zoning Hearing Board or by the court having jurisdiction of zoning appeals, on petition, after notice to the Zoning Officer or other appropriate agency or body. Procedures shall be in accordance with Act 247 Section 915.1.

SECTION 240-2309. APPEALS TO COURT

Appeals from decisions of the Zoning Hearing Board may be taken by any party aggrieved to a court of competent jurisdiction in accordance with Act 247 Article X-A.