

ARTICLE 2700. Zoning Hearing Board

§ 212-2701. Appointment and membership.

The membership of the Zoning Hearing Board shall consist of five (5) residents of the Borough appointed by resolution of the Borough Council. Their terms 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. The Board shall promptly notify Borough Council when vacancies 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 Borough.

§ 212-2702. Alternate members.

- A. Appointment of alternative members. 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. The term of office of an alternate member shall be three (3) years. When seated pursuant to the provisions of § 212-2702(B), an alternate shall be entitled to participate in all proceedings and discussions of the Board to the same and full extent as 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 power and duties set forth in this Chapter and as otherwise provided by law. Alternates shall hold no other office in the Borough, including membership on the Planning Commission and Zoning Officer. Any 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 pursuant to § 212-2708, unless designated as a voting alternate member pursuant to § 212-2702(B) of this Chapter.
- B. Participation by alternate 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 subsection shall be made on a case by case basis in rotation according to declining seniority among all alternates.

§ 212-2703. 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 the Borough 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.

§ 212-2704. Officers.

The Board shall elect, from its own membership, its officers, who shall serve annual terms and may succeed themselves.

§ 212-2705. Quorum.

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 Board, but 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 § 212-2712(C).

§ 212-2706. Rules of procedure.

The Board may make, alter and rescind rules and forms for its procedure, consistent with the ordinances of the Borough and the laws of the commonwealth.

§ 212-2707. Records to be kept; annual report.

The Board shall keep full public records of its business, which records shall be the property of the Borough, and shall submit a report of its activities to Borough Council once a year.

§ 212-2708. Compensation.

The per-meeting compensation for the members of the Board shall be twenty-seven dollars (\$27) per member per meeting and shall be in accordance with the provisions specified in Section 907 of the Pennsylvania Municipalities Planning Code, Act 247.

§ 212-2709. Jurisdiction of the Board.

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

- A. Substantive challenges to the validity of any land use ordinance, except landowner curative amendments brought before Borough Council, brought in accordance with the procedures specified in Section 916.1 of the Pennsylvania Municipalities Planning Code.
- 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 thirty (30) days after the effective date of the 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 therefor, 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 the Borough 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 and flood hazard ordinance or such provisions within a land use ordinance pursuant to § 212-2710.
- F. Appeals from the Zoning Officer's determination under Section 916.2 of the Pennsylvania Municipalities Planning Code (Act 247, as amended).
- G. 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 stormwater management insofar as the same relate to development not involving subdivision and land development or planned residential development applications.
- H. 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 Chapter.

§ 212-2710. Variances.

- A. The Board, upon appeal, shall have the power to authorize variances from the requirements of this Chapter where it is alleged that the provisions of this Chapter inflicts unnecessary hardship upon the appellant. A variance may be granted if all of the following findings are made where relevant in a given case:
 - (1) 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 Chapter in the neighborhood or district in which the property is located.
 - (2) 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 Chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - (3) Such unnecessary hardship has not been created by the appellant.
 - (4) 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.
 - (5) The variance, if authorized, will represent the minimum variance necessary to afford relief and will represent the least modification possible of the regulation in issue.
- B. 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 and protect the public health, safety and welfare.

§ 212-2711. Conduct of hearings.

- A. A public hearing shall be held on any appeal filed under § 212-2709 of this Chapter within sixty (60) days of filing a complete application, unless the applicant has agreed, in writing, to an extension of time.
- B. The public hearing shall be held pursuant to public notice, as defined by this Chapter. In addition to the public notice, the Board shall give written notice to the applicant, the Zoning Officer, the Borough Secretary, the Secretary of the Borough Planning Commission, the President of Borough Council and to any person who has made timely request for the same. Written notice of said public hearing shall also be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.
- C. The hearings shall be conducted by the Board or the Board may appoint any member 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 Borough, 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.
- D. The parties to the hearing shall be the Borough, 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 the 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.
- E. The Chairman or Acting Chairman of the 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. 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. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.
- G. The Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings.
- H. The Board or hearing officer 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, 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 so noticed and 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.

§ 212-2712. Rendering a decision.

- A. 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 of the last hearing before the Board or hearing officer.
- B. 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 provision of the Pennsylvania Municipalities Planning Code or any Borough ordinance shall contain a reference to the provision relied on and the reasons why the conclusions are deemed appropriate in light of the facts found.
- C. 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 its 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 the 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.
- D. 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 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.

§ 212-2713. Failure to render a decision.

- A. Where the Board fails to render a decision within the required forty-five (45) day period or fails to hold the required hearing within sixty (60) days 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.
- B. When a decision has been rendered in favor of the applicant because of failure of the Board to meet or render a decision, the Board shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision. If the Board shall fail to provide such notice, the applicant may do so. Nothing in this section shall prejudice the right of any party opposing the application to appeal the decision to the Court of Common Pleas.

§ 212-2714. Mediation option.

- A. Parties to proceedings authorized in this Chapter 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 Chapter once they have been formally initiated. Nothing in this subsection 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 Borough shall assure that in each case, the mediating parties, assisted by the mediator as appropriate, 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 in this Chapter or in the Pennsylvania Municipalities Planning Code (Act 247, as amended), provided that there is written consent by the mediating parties, and by an applicant or Borough 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 this Chapter.
- 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.

§ 212-2715. Fees and expenditures.

- A. Fees. Borough Council may prescribe reasonable fees with respect to hearings before the Zoning Hearing Board. Fees for said hearings may include compensation for the 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.
- B. Stenographer's appearance fee and transcripts. 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.
- C. Expenditures. Members of the Board may receive compensation for the performance of their duties as may be fixed by Borough Council, but in no case shall it exceed the rate of compensation authorized to be paid to the members of Borough Council. Within the limits of funds appropriated by Borough Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services.

§ 212-2716. Time limitations.

- A. No person shall file any proceeding before the Zoning Hearing Board later than thirty (30) days after a preliminary or final application for development has been approved by an appropriate Borough 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 an application for tentative approval of a planned residential development or from an adverse decision by a Zoning Officer on a challenge to the validity of an ordinance or map filed pursuant to Section 916.2 of the Pennsylvania 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.
- 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.

§ 212-2717. Appeals and stay of proceedings.

- A. 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 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.
- B. 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 the zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the Board. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court.
- C. All appeals from decisions rendered by the Zoning Hearing Board shall be taken to the Allegheny County Court of Common Pleas and shall be filed within thirty (30) days after the entry of the decision or, in the case of a deemed decision, within thirty (30) days after the date upon which notice of said deemed decision is given as required by Section 908(9) of the Pennsylvania Municipalities Planning Code (Act 247, as amended).