

article XVIII

Zoning Hearing Board

SECTION 1800 ESTABLISHMENT

There shall be a Zoning Hearing Board, appointed by the Borough Council in accordance with Article IX of the Pennsylvania Municipalities Planning Code (53 P.S. 10901 et seq.), as amended, hereinafter called "Code". Membership of the Zoning Hearing Board shall be appointed as prescribed in Section 1801, below.

SECTION 1801 MEMBERSHIP; APPOINTMENT; TERMS; REMOVAL

- A. There shall be a Zoning Hearing Board, hereinafter called "Board" which shall consist of three (3) members appointed by resolution of the Borough Council.
- B. The membership of the Board shall consist of residents of the Borough of Spring City.
- C. The term of office shall be three (3) years and shall be so fixed that the term of office of one (1) member shall expire each year.
- D. The Board shall promptly notify the Borough Council of any vacancies which occur. In such a case, the Borough Council shall make appointments to fill all vacancies for only the unexpired portion of the term.
- E. The members of the Board shall hold no other office in the Borough of Spring City.
- F. Any member of the Board 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 in writing.
- G. The Borough Council shall 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 Section 1802.C, below, 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 the 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 this Ordinance, by the Code, and as otherwise provided by law. Alternates shall hold no other office in the Borough, including membership on the Planning Commission and the Code Enforcement Officer. Any alternate may participate in any proceeding or discussion of the Board but shall not be entitled to vote as a member of said Board nor compensated pursuant to Section 1803.B, below, unless designated as a voting alternate member pursuant to Section 1802.C, below.

SECTION 1802 ORGANIZATION OF THE BOARD

- A. The Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves.
- B. For the conduct of any hearing and the taking of any action, a quorum shall be required, consisting of not less than a simple majority of all members of the Board.
- C. 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 said Board as may be needed to provide a quorum. Any alternate members of the Board shall continue to serve on that 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.
- D. The Board may make, alter, rescind rules and forms for its procedure including, but not limited to, the manner of filing appeals and applications for special exceptions and variances.

SECTION 1803 EXPENDITURES FOR SERVICES -- FEES

- A. Within the limits of the funds appropriated by the Borough Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services as limited by the Code. The Board may employ legal counsel, but the attorney cannot be the Borough Solicitor. Stenographers' fees shall be borne in accordance with Section 1804.I.
- B. Members of the Board may receive compensation for the performance of their duties, as may be fixed by the Borough Council. In no case shall the rate of such compensation exceed the rate of compensation authorized to be paid to the members of the Borough Council. Alternate members of the Board may receive compensation, as may be fixed by the Borough Council, for the performance of their duties when designated as alternate members pursuant to Section 1802.C, above, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members of the Borough Council.

SECTION 1804 HEARINGS

Hearings of the Board shall be held at the call of the Chairman, and at such other times as the Board may determine. The Board shall conduct hearings and make decisions in accordance with the following requirements:

- A. The Board shall fix a time and place for public hearings and shall give notice thereof in accordance with the notice of hearing provisions in Section 1805, below.

- B. The governing body may prescribe reasonable fees with respect to hearings before the Board. Fees for said hearings may include compensation for the secretary and members of the Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Board, expenses for engineering, architectural or other technical consultants or expert witness costs.
- C. The hearing shall be held within sixty (60) days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.
- D. The hearings shall be conducted by the Board. The decision, or, where no decision is called for, the findings shall be made by the Board.
- E. 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 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.
- F. The Chairman or Acting Chairman of the Board presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses on all relevant issues.
- G. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and cross-examine adverse witnesses on all relevant issues.
- H. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- I. The Board shall keep a stenographic record of the proceedings. The appearance fee for the 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 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.
- J. The Board 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 representative unless all parties are given an opportunity to be present.

- K. The Board shall render a written decision or, when no decision is called for, make written findings on the application within thirty (30) days after the last hearing before the Board. 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 Ordinance, Article of the Code, rule, or regulation shall contain a reference to the provisions relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. Where the Board has power to render a decision and the Board fails to render the same within the period required by this clause, 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.
- L. All applicant's appeals and challenges that are brought forth to the Board, and the Board is unable to achieve a majority decision due to a tie among the Board members, and no further alternate members are available to sit on the Board to prevent such a tie will result in a decision in favor for the applicant. In situations of hearing special exceptions and variances, and a tie vote occurs in similar fashion as the aforementioned, the decision will favor against the applicant.
- M. 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 provided, in Section 1804.K above, the Borough Secretary 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 Section 1805, below. If the Board shall fail to provide such notice, the applicant may do so. Nothing in either this subsection or the previous subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.
- N. 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 its date. To all other persons who have filed their names and addresses with the Board not later than the last day of the hearing, the Board shall provide by mail, or otherwise, brief notice of decision or findings and a statement of the place at which a full decision or findings may be examined.

SECTION 1805 NOTICE OF HEARING

The notice of public hearing shall state the location of the building or lot and the general nature of the question involved and shall be given as follows:

- A. By publishing a notice in a local newspaper of general circulation in the Borough of Spring City, indicating the time, place, and nature of the public hearing. Such notice shall be published once a week for two (2) successive weeks.

- B. By mailing a notice thereof to the applicant, the Borough Council, the Planning Commission, the Borough Office of Code Enforcement, Borough Secretary, such other persons as the Borough Council shall designate by ordinance, and any person who has made timely request for same.
- C. By mailing a notice thereof to every resident or association of residents of the Borough who shall have registered their names and addresses for this purpose with the Board.
- D. By mailing notice thereof to the owner, if his address is known, and to the occupant of every abutting lot and lots across the street from the lot in question provided that failure to mail the notice required by this section shall not invalidate any action taken by the Board. All hearings shall be conducted in accordance with Section 1804, above, of this Ordinance and Section 908 of the Code (53 P.S. 10908) as amended.
- E. By posting notice thereof conspicuously on the affected tract of land at least one week prior to the hearing.

SECTION 1806 JURISDICTION

The Board shall have exclusive jurisdiction to hear and render final adjudications functioning in strict accordance with and pursuant to the Code and shall have powers set forth therein, in the following matters:

- A. Substantive challenges to the validity of the Zoning Ordinance or Map, except those brought before the Borough Council pursuant to Sections 609.1 and 916.1.a(2) of the Code.
- B. Challenges to the validity of the Zoning Ordinance or Map raising procedural questions or alleged defects in the process of enactment or adoption shall be raised by an appeal taken within thirty (30) days after the effective date of said ordinance.
- C. Appeals from the determination of the Code Enforcement Officer or the Borough Office of Code Enforcement, including, but not limited to, the granting or denial of any permit; or failure to act on the application therefor; or the issuance of any cease and desist order; or misinterpretation or misapplication of any provision of a valid ordinance, or map, or any valid rule or regulation of the Borough governing the action of the Code Enforcement Officer or the Borough Office of Code Enforcement.
- D. Appeals from the determination of the Code Enforcement Officer, or by the municipal engineer, pursuant to the requirements of Article XI (Flood Hazard District) of this Ordinance.
- E. Applications for variances from the terms of this ordinance, pursuant to the requirements of Section 1807, below.

- F. Applications for special exceptions under this ordinance pursuant to the requirements of Section 1808, below.
- G. Issuance of restraining orders pursuant to Section 1812, Stay of Proceedings.

SECTION 1807 GRANTING OF VARIANCES

- A. The Board shall hear all requests for variances where it is alleged that the provisions of the Zoning Ordinance inflict unnecessary hardship upon the applicant. The Board may by rule prescribe the form of application and may require preliminary application to the Code Enforcement Officer. The Board may grant a variance, provided that the following findings are made where relevant in a given case:
 - 1. That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographic 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 district, in which the property is located;
 - 2. 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;
 - 3. That such unnecessary hardship has not been created by the applicant;
 - 4. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification of the regulation in issue;
 - 5. 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; and
 - 6. In addition, to approve a variance, the Board shall also find where relevant in a given case those provisions in Section 1808.A.2.a through Section 1808.A.2.i, below .
- B. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of this Zoning Ordinance.

SECTION 1808 GRANTING OF SPECIAL EXCEPTIONS

- A. Where special exceptions are provided for in this Ordinance, the Board shall hear and decide requests for such special exceptions in accordance with the following standards and criteria:

1. The applicant shall have the burden of proof in establishing his right to a special exception.
2. The Board shall grant a special exception only if it finds adequate evidence that the proposed use submitted for a special exception will meet all of the following general requirements, as well as any specific requirements and standards listed within this Ordinance for the proposed use:
 - a. The size, scope, extent and character, including but not limited to yard, open space, and height limitations for the district, of the special exception or variance requested is consistent with the Comprehensive Plan of the Borough and promotes the harmonious and orderly development of the zoning district involved.
 - b. The proposed change or modification constitutes an appropriate use consistent with the character and type of development in the area surrounding the location for which the request is made and will not substantially impair, alter, or detract from the use of surrounding property of the character of neighborhood in light of the zoning classification of the area affected; the effect on other properties in the area; the number, extent and scope of nonconforming uses in the area; and the presence or the absence in the neighborhood of conditions or uses which are the same or similar in character to the condition or use for which the applicant seeks approval.
 - c. Pedestrian access to the site is consistent with provisions and intent of the Comprehensive Plan.
 - d. The proposed use is suitable with respect to traffic and highways in the area in order to protect streets and highways from undue congestion and provides for adequate access and off-street parking arrangements in order to protect major streets and highways from undue congestion and hazard.
 - e. Major street and highway frontage will be developed so as to limit the total number of access points and encourage the frontage of building on parallel marginal roads or on roads parallel perpendicular to the major street or highway.
 - f. The proposed change is reasonable in terms of the logical, efficient and economical extension of public services and facilities, such as public water, sewers, police, fire protection, and public schools, and assures adequate arrangements for sanitation in specific instances.
 - g. All commercial or industrial parking, loading, access or service areas will be adequately illuminated at night while in use and arranged so as to comply with the requirements of Section 1808.A.2.e relating to access and highway frontage.
 - h. Conditions are being imposed on the grant of the request necessary to insure that the general purpose and intent of this Zoning Ordinance is complied with and that the use of the

property adjacent to the area included in the proposed change or modification is adequately safeguarded with respect to harmonious design of buildings, aesthetics, planting, and its maintenance as a sight or sound screen, and/or additional yard or open space, landscaping, hours of operation, lighting, number of persons involved, accessory activities, ventilation, noise, sanitation, safety, smoke and fume control and the minimizing of noxious, offensive or hazardous elements.

- i. The proposed change protects and promotes the safety, health, morals and general welfare of the Borough.
- B. In granting a special exception, 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 and the Code.

SECTION 1809 EXPIRATION OF SPECIAL EXCEPTIONS AND VARIANCES

Unless otherwise specified by the Board, a special exception or variance which has been authorized by the Board shall expire if the applicant fails to obtain a Building Permit within nine (9) months from the date of authorization of the special exception or variance or fails to commence work within nine (9) months from the date to issuance of the permit for such work.

SECTION 1810 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 office, 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.
- B. All appeals from determinations adverse to the landowners shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

SECTION 1811 PARTIES APPELLANT BEFORE THE BOARD

Appeals under Section 1806.A through Section 1806.D 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 or special exception may be filed with the Board by any landowner, or any tenant with the permission of such landowner.

SECTION 1812 STAY OF PROCEEDINGS

- A. Upon filing of any proceeding referred to in Section 1811, above, and during its pendency before the Board, all land development pursuant to any challenged Zoning Ordinance, order or approval of the Code Enforcement Officer or any agency or body, and all official action thereunder shall be stayed unless the Code Enforcement 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 such a case, the development or official action shall not be stayed otherwise than by a restraining order. After notice to the Code Enforcement Officer or other appropriate agency or body, a restraining order may be granted by the Board or by the court having jurisdiction of zoning appeals.

- 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 on zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the Board. Whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court.

SECTION 1813 APPEALS TO COURT

Any person aggrieved by any decision of the Board, or any taxpayer, or any officer of the Borough may, within thirty (30) days after entry of the decision of the Board as provided in 42 Pa.C.S. Section 5572, 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 set forth in Section 1804.K of this Ordinance appeal to the Court of Common Pleas of Chester County by petition, duly verified, setting forth that such decision is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, specifying the grounds upon which he relies.