

## A Citizen's Guide to Zoning Hearings

1. **What role does the Zoning Hearing Board (ZHB) play?** The ZHB acts as a quasi-judicial body that is independent of the Board of Supervisors, that hears applications for variances, special exceptions, appeals to determinations of a ruling by the Zoning Officer, and substantive validity challenges to a land use ordinance (listed in the order of most frequently heard type to the rarely heard type).

Think of the ZHB as the judges of a case. The ZHB hears testimony and receives evidence. Based on that information, the ZHB renders a decision, known as a zoning order. The ZHB can impose reasonable conditions if it grants a request.

2. **What is a variance?** A variance is a request to use a property in a manner that does not conform to the Zoning Ordinance. This can range from an actual use (use variance), such as creating a convenience store in the Agriculture zoning district, to asking to encroach on a setback (dimensional variance). Under state law, the ZHB can only grant a variance when certain conditions exist on the lot. These conditions would create a hardship, which the property owner must prove to the satisfaction of the ZHB. All the following must apply\*:
  - a. There are unique physical circumstances or conditions of the property which result in the hardship,
  - b. Because of such conditions, the applicant cannot conform with the Zoning Ordinance,
  - c. The hardship has not been created by the applicant,
  - d. The variance will not alter the essential character of the neighborhood or district in which the property is located or be detrimental to the public welfare, and
  - e. The variance is the minimum variance affording relief.

\*under Section 910.2 of the Pennsylvania Municipalities Planning Code (PA-MPC). See the example below.

Example: if an applicant's property is a corner lot, and they wish to place an accessory structure on the property, the hardship is that the property technically has two front yards and two side yards, and no back yard in which to place such a structure. The roads created the hardship, not the applicant.

The following statements are never hardships under the law: "I want to," "I can't afford it," or "my neighbor has no problem with it."

3. **What is a special exception?** A special exception is a misnomer. It's neither special nor an exception. A special exception is an *allowed* use of a property in the zoning district in which the property is located at the time of application, as outlined in the Zoning Ordinance, provided that advance authorization is granted by the ZHB. The ZHB may not grant *any* use as a special exception. Rather, it may only consider as a special exception a use that is specifically permitted by the zoning ordinance as a special exception.

The applicant for a special exception must first show that the proposed use is a use allowed under the zoning ordinance as a special exception. The applicant must next show that the specific standards and criteria contained in the zoning ordinance for that use are met by the proposed development. For example, if the performance standard says that a particular use must provide

two off-street parking spaces, the property owner has to demonstrate they can provide the two spaces.

A property owner has the right to receive a special exception once they prove they can meet the performance standards of the ordinance. An applicant for special exception is *not* required to carry the burden of proof of general (or non-specific) criteria, such as provisions that the use not be more detrimental to the neighborhood or that the use be in harmony with the spirit and purposes of the district. Once the applicant proves they can meet the Zoning Ordinance's performance standard(s), the ZHB is obligated to grant the special exception.

An *opponent* to the special exception bears the burden of proving non-specific requirements, that is, sufficient evidence that the use would be detrimental to public health, safety, or general welfare. The mere possibility of an adverse impact or speculation or belief of harm is not enough; the objector must show that there is a high probability that the proposed use will generate a harm greater than normally generated by *that type of use*. An opponent must prove harm by offer of credible and particularized – often expert – evidence.

**4. What is an appeal to a determination by the Zoning Officer?**

Appeals from the determination of the zoning officer, include, but are not limited to, the following:

- a. the granting or denial of any permit
- b. the failure to act on an application for any permit
- c. the issuance of any cease-and-desist order (such as a Notice of Violation, or NoV)
- d. the registration or refusal to register any nonconforming use, structure, or lot

The most common appeal is to an NoV.

**5. What is a substantive validity challenge to a land use ordinance?**

These are filed by landowners who, on substantive grounds, desire to challenge the validity of an ordinance, map, or any provision thereof which prohibits or restricts the use or development of their land. This is either heard before the ZHB on its own or in conjunction with a curative amendment to the Zoning Ordinance before the Board of Supervisors.

A substantive validity challenge does *not* require the landowner to file plans and explanatory materials describing the proposed use or development. In reaching its decision, the ZHB must consider the testimony of record, the submitted plans and explanatory materials (if a landowner challenge), and the following five planning criteria:

- a. impact on roads and other public service facilities;
- b. if the proposed use is residential, the impact on regional housing needs and effectiveness of the proposal in providing affordable housing;
- c. suitability of the site for the intensity of the use proposed by the site's natural features, such as soils, slopes, etc.;
- d. impact of the proposed use on the site's natural features, the degree to which these are protected or destroyed, the tolerance of these features to development, and any adverse environmental impacts; and
5. impact on preservation of agriculture and other land use which are essential to public health and welfare.

More details on this procedure may be found in Section 916.1 of the MPC.

6. **What happens when someone submits an application for a Zoning Hearing?** After someone submits an application for a public hearing, the application becomes a public document subject to the Right-to-Know Law. The Planning Commission (PC) will typically review a hearing application at a public meeting (even though it is not required). The PC will recommend its position to the Board of Supervisors (BoS). The BoS will then typically review the application at its next regular public meeting. It will vote to support / not support / take no position on the application, and this stance will be part of the record for the ZHB. The ZHB will conduct its hearing after those two meetings. Regardless of what position the PC and BoS take, the ZHB's zoning order is the one that counts.
7. **How does a Zoning Hearing work?** The ZHB must hold a hearing within 60 days of an application. The hearing is advertised in the newspaper and neighbors within a certain radius will receive a letter informing them of the hearing. Honey Brook Township's ZHB generally hears cases on the third Monday of the month, or on another mutually agreed-upon Monday by the ZHB and the applicant. At the hearing, the applicant presents their case to the ZHB in the form of evidence and testimony. The Township is always and automatically a party to the application. Other people may request to become a party to the application. A party is someone who has an interest in how things turn out. Being a party means one can offer testimony, cross-examine the applicant, and appeal the ZHB's decision to the County Court of Appeals if the outcome is not to their liking. Those wishing to become a party to the hearing would do so at the beginning of the hearing, and the ZHB solicitor would agree to who may or may not be a party to the hearing.