

ARTICLE VIII

ZONING HEARING BOARD

s. 800 **GENERAL PROVISIONS**

s. 800.1 **Establishment of the Zoning Hearing Board:** A Zoning Hearing Board (ZHB) is established in order that the objectives of this Ordinance may be fully and equitably achieved and a means for competent interpretation of this Ordinance is provided.

s. 800.2 **Membership of the Zoning Hearing Board:**

- a. The Fawn Grove Borough ZHB shall consist of three (3) members, appointed by the Council in accordance with section 900,1 of this Ordinance or as allowed under Article IX of the Pennsylvania Municipalities Planning Code.
- b. Alternate members may be approved in accordance with Article IX of the Pennsylvania Municipalities Planning Code.

s. 800.3 **Organization of the Zoning Hearing Board:**

- a. The ZHB shall elect a chairman, vice-chairman and secretary from its membership who shall serve three year terms and shall be so fixed that the term of office of one member shall expire each year. Members may succeed themselves. The ZHB shall promptly notify the Council of any vacancies which 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.
- b. The Council may appoint by resolution at least one but no more than three residents of the municipality to serve as alternate members of the board. The term of office of an alternate member shall be three years. When seated pursuant to the provisions of section 906, 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 powers and duties set forth in this act and as otherwise provided by law.
- c. The ZHB 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 ZHB as provided in section 802.4. The ZHB may make, alter, and rescind rules and forms for its procedure, consistent with ordinances of the Borough and laws of the Commonwealth.

s. 800.4 **Removal of Members:** Any ZHB member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Council, taken after the member has received fifteen (15) days advance notice of the intent to take such a vote. A public hearing shall be held in connection with the vote if the member shall request it in writing.

s. 801 **POWERS AND DUTIES**

The powers and duties of the ZHB are governed by Article IX of the Pennsylvania Municipalities

Planning Code. The provisions of Section 801.1 through 804.3 below shall serve as a supplement thereto. In cases of any conflict, the provisions of the Pennsylvania Municipalities Planning Code shall prevail.

- s. 801.1 **Interpretation Appeals:** Any person aggrieved by a decision of the Zoning Officer shall have the right to appeal to the ZHB within thirty (30) days of such decision by applying to the Zoning Officer Proper forms to file an appeal specify the grounds thereof and including the following:
- a. The name and address of the applicant or appellant;
 - b. The name and address of the owner of the property to be affected by such proposed change or appeal;
 - c. A brief description and location of the property to be affected by such proposed change or appeal;
 - d. A statement of the present zoning classification of the property in question, the improvements thereon and the present use thereof;
 - e. A statement of the section of this Ordinance under which the appeal is made and reasons why it should be granted or a statement of the section of this Ordinance governing the situation in which the alleged erroneous ruling is being appealed and the reasons for this appeal; and
 - f. A reasonably accurate description of the present improvements and the additions 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.
 - g. After filling out forms, submit to the Zoning Officer with proper fees. The Zoning Officer will contact the Zoning Hearing Board for proper scheduling.

s. 802 **RULES AND PROCEDURES**

s. 802.1 **Application Procedures:** An applicant, once denied a use certificate, building permit, or enforcement notice by the Zoning Officer, may apply to have the case heard before the Zoning Hearing Board. Applications can be obtained from the Zoning Officer. Completed applications should then be filed and fees paid to the Zoning Officer. The case shall be reviewed by the Borough Planning Commission prior to being heard at the meeting of the Zoning Hearing Board. Once the application has been completed and all the fees have been paid, the Zoning Hearing Board shall have sixty (60) days to hold a public hearing unless the applicant has agreed in writing to an extension of time.

s.802.2 **Parties Appellant Before Board:** Appeals from a decision of the Zoning Officer and proceedings to challenge the validity of the Ordinance may be filed with the Zoning Officer in writing, by any officer or agency of the Borough or any person aggrieved. Requests for a variance, special exception or an appeal from an enforcement notice, however, must be filed with the Zoning Officer by an affected landowner, tenant with the permission of the land owner or any authorized agent of such landowner.

s. 802.3 **Hearings Required and Notice of Hearings:**

- a. The ZHB shall conduct hearings on any interpretation, variance, special exception, an appeal from an enforcement notice, challenge or other matter requiring the ZHB's decision or other official action.
- b. Upon the filing with the Borough of an appeal or application, the Borough shall within sixty (60) days give notice as follows:
 - (1) Publish public notice. Such notice shall state the time and place of the hearing as well as the particular nature of the matter to be considered at the hearing.
 - (2) Post, in a conspicuous place on the property involved, a notice of pending action; such posting is to take place at least seven (1) days prior to the public hearing.
 - (3) Give written notice to parties in interest who shall be at least those persons whose Properties adjoin or are across public streets from the property in question.

s. 802.4 **Conduct of Meetings:** The ZHB shall prescribe rules for the conduct of its meetings, such rules to be in conformance with the Pennsylvania Municipalities Planning Code and this Ordinance. Meetings shall be held at the call of the chairman and at such other times as the ZHB may specify in its rules of procedure. Meetings shall be open to the public.

s. 802.5 **Records and Decisions:**

- a. The ZHB shall keep a record of the proceedings. A transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at a shared cost, as directed by the Pennsylvania Municipalities Planning Code.
- b. The ZHB 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 the Council in January of each year, covering the previous year's activities.
- c. The ZHB shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days. Each decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons therefore. A copy of the decision will also be provided to the Council, Planning Commission, and Zoning Officer.

s. 802.6 **Appeal to Court:** Any person aggrieved by any decision of the ZHB may, within thirty (30) days after such written decision of the ZHB, appeal to the Court of Common pleas of York County, Pennsylvania. Such appeals shall be made in accordance with Article X-A of the Pennsylvania Municipalities Planning Code (Act 247)

s.803 **VARIANCES**

s. 803.1

Unnecessary Hardships: Where unnecessary hardship exists resulting from the strict interpretation of this Ordinance, the ZHB may grant a variance. In considering any appeal for a variance, the ZHB shall pursue the following procedure.

- a. Upon appeal from a decision by the Zoning Officer, the ZHB shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship on the applicant. The ZHB shall prescribe the form of application and require preliminary application to the Zoning Officer.
- b. No application for a permit shall be granted by the ZHB for any variance until said ZHB has first received and considered an advisory report thereon from the Planning Commission with respect to the location of such use in relation to the needs and growth pattern regarding the adequacy of the site area, the arrangement of buildings, driveways, parking area, off-street truck loading spaces and other pertinent features of the site plan.
- c. The Council may have representation at the public hearing held by the ZHB on such application.
- d. The ZHB's decision to grant a permit for a variance shall be made only after public notice and hearing. Such permit shall apply specifically to the appeal and plans submitted and presented at said public hearing. Any subsequent amendments or additions shall be subject to additional review and public hearing by the ZHB.
- e. The ZHB may thereafter grant a variance authorizing the Zoning Officer to issue a zoning permit, provided all of the following findings are made in a given case. That:
 - (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 Ordinance 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 Ordinance and the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - (3) Such unnecessary hardship had 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 which will afford relief and the least modification possible of the regulation in issue.
- f. In granting any variance, the ZHB may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance.

s. 804

SPECIAL EXCEPTION APPLICATIONS

s. 804.1

General Provisions: In this Ordinance, special exceptions may be granted or denied by the ZHB pursuant to specific standards and criteria contained elsewhere in this Ordinance and general provisions contained in this section. The ZHB shall pursue the following procedure.

- a. The ZHB's decision to grant a permit for special exception use shall be made only after public notice and hearing. Such permit shall apply specifically to the application and subsequent amendments or additions shall be subject to review and public hearing by the ZHB as a special exception use.
- b. No application for a permit shall be granted by the ZHB for any special exception use until said ZHB has first received and considered an advisory report thereon from the Planning Commission with respect to the location of such use in relation to the needs and growth pattern of adequacy of the site area and arrangement of buildings, driveways, parking area, off-street truck loading spaces and other pertinent features of the site plan.
- c. The Planning Commission may have representation at the public hearing held by the ZHB on such application. After receipt of the report, the ZHB shall hear the application in the same manner and under the same procedure as it is empowered by law and this Ordinance.
- d. In granting a special exception, the ZHB may attach whatever reasonable conditions and safeguards, in addition to those expressed in this Ordinance, it deems necessary to insure that any proposed development will secure substantially the purposes of this Ordinance.
- e. The ZHB may thereafter authorize the Zoning Officer to issue a zoning permit if, in its judgment, the use meets all specific standards and criteria contained in this Ordinance and the following general provisions.
 - (1) Purpose: The intended purpose of the proposed use must be consistent with the Borough's development objectives established in the Comprehensive Plan.
 - (2) Compatibility: The proposed use shall be in the best interest of properties in the general area as well as the community at large. The proposed use will be reviewed as to its relationship to and effect on surrounding land uses and existing environmental conditions regarding the pollution of air, land and water, noise, potential of hazards and congestion, illumination and glare, restrictions to natural light and circulation of air.
 - (3) Suitability: The proposed use shall be suitable for the property in question and shall be designed, constructed, operated and maintained suitably for the anticipated activity and population served, numbers of participating population, frequency of use, adequacy of space and traffic generation.
 - (4) Serviceability: Assurance shall be made as to the adequacy and availability of utility services and facilities such as sanitary and storm sewers, water, trash, and garbage collection and disposal and the ability of the Borough to supply such services.
 - (5) Accessibility: The proposed use shall provide adequate ingress and egress, interior circulation of both pedestrian and vehicles, off-street parking and accessibility to the existing or proposed Borough street system.

- (6) Conformity: The proposed use shall be in conformance with all applicable requirements of this Ordinance and, where applicable, in accordance with the Subdivision and Land Development Ordinance.
- (7) Water Supply: The applicant must establish that there is an adequate water supply for the proposed use without adversely affecting water supplies utilized by neighboring properties. If connection to an existing public water supply system is proposed, the applicant must submit an agreement committing the public water supply system to provide such water as will be utilized by the proposed special exception use for such periods of time and under such terms and conditions as the public water supply system provides water service elsewhere in its service area. If the water supply is obtained from the parcel proposed for the location of the special exception use or is obtained from a nearby parcel, the applicant must establish that the groundwater recharge on the tract where the water supply system is located, will, after development, and during drought conditions (periods when precipitation is forty (40) percent below normal) exceed projected water usage. The ZHB may require as a condition of approval that the applicant execute an agreement with the Borough committing the proposed special exception use not to utilize more water on a daily basis than the groundwater recharge computed during drought conditions and to establish procedures pursuant to which usage can be verified.
- (8) Drainage: The applicant must establish that the drainage requirements of section 309 of this Ordinance will be complied with.
- (9) Sewage: The applicant must establish that adequate provisions will be made to dispose of the sewerage created by the proposed use consistent with the requirements set forth in the regulations promulgated by the Pennsylvania Department of Environmental Protection.

f. Unless otherwise specified or extended by the ZHB, a special exception authorized by the ZHB expires if the applicant fails to obtain, where required to do so, a building permit or use certificate within six (6) months following the date of the grant of the special exception or fails to complete the work in the one (1) year next following the issuance of a building permit; excepting that in cases where the grant of a building permit or use certificate must be preceded by Borough approval of a subdivision or land development plan, the special exception granted by the ZHB expires if:

- (1) The applicant fails to file with the Borough a preliminary subdivision or land development plan meeting applicable subdivision and zoning requirements within six (6) months next following the date of the grant of the special exception; or
- (2) The applicant fails to file with the Borough a final subdivision or land development plan meeting applicable subdivision and zoning requirements within six (6) months next following the date of the approval by the Borough of the preliminary plan, unless the time is extended by the ZHB; or
- (3) The applicant fails to obtain a building permit or use certificate within six (6) months next following the date of the approval by the Borough of the final plan;

or

- (4) The applicant fails to complete the work within one (1) year of the issuance of the building permit.

s. 804.2

Temporary Special Exceptions:

- a. A temporary special exception must be obtained from the ZHB for any nonconformity which is or will be seasonal or is or will be in the public interest. The ZHB may grant a temporary special exception for a nonconforming use or structure, existing or new, which:
 - (1) Is beneficial to the public health or general welfare, or
 - (2) Is necessary to promote the proper development of the community, or
 - (3) Is seasonal in nature.
- b. The temporary special exception may be issued for a period not exceeding one (1) year, and may be renewed for an aggregate period not exceeding three (3) years. The nonconforming structure or use must be completely removed upon the expiration of the special exception without cost to the Borough.

s. 805

CHALLENGE TO VALIDITY OF ORDINANCE

Except for procedural questions regarding the process of enactment of any ordinance or its amendment or for appeal for a curative amendment as provided in Section 1000.2 (d), the ZHB shall hear all challenges to the validity of this Ordinance. In all such challenges, the ZHB shall take evidence and make a record thereon as provided in Section 802.5. At the conclusion of the hearing, the ZHB shall decide all contested questions and make findings on all relevant issues of fact which shall become part of the record on appeals to Court.

s. 806

FEES

At the time of making an appeal or application to the ZHB for any cause or to the Council for an amendment or for a curative amendment, each appellant or applicant shall submit a deposit to the Borough in accordance with a fee schedule adopted by resolution of the Council. The deposit is established to reimburse the Borough for all reasonable advertising, stenographic, engineering or planning services incurred by the Borough in connection with the subject appellant's or applicant's hearing before the ZHB or Council which hears the action. Upon completion of the hearing or if the hearing lasts more than one day, periodically during the course of the hearing, the appellant or applicant shall be billed for expenses in excess of the deposit and shall promptly pay such excess amount. The payment of fees and costs set forth above shall be a prerequisite to the validity of any permit, variance, ruling or decision issued in favor of an applicant pursuant to any proceeding initiated before the ZHB or the Council, or as may be consistent with the Pennsylvania Municipalities Planning Code.