

## ARTICLE 14

### ZONING HEARING BOARD

#### 1400 Purpose

The purpose of this Article is to list and describe the powers, procedures, composition and standards for the Zoning Hearing Board, as required by the Planning Code.

#### 1401 Administration and Procedure

##### 1. Creation of the Zoning Hearing Board

A Zoning Hearing Board for the Borough of Sharon Hill shall be appointed by the Borough Council and shall be authorized to administer all procedures charged to such Boards in accordance with the provisions of Article IX of the Pennsylvania Municipalities Planning Code, as amended. Hereinafter, as used in this Article, the term "Board" shall refer to the Zoning Hearing Board, and the term "Planning Code" shall refer to the Pennsylvania Municipalities Planning Code, Act 247, as amended by Act 170.

##### 2. Membership of the Board

The Board shall consist of five (5) residents of the Borough. 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 the Borough of any vacancies. Appointment 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.

##### 3. Removal of Members

Any member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority rule of 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 requests it in writing.

##### 4. 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. For the conduct of any hearing and the taking of any action, a quorum shall be not less than the majority of all members of the Board, but where a majority of members are disqualified to act in a particular matter, the remaining members may act for the Board. As provided for in the Planning Code, 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 Section 908 of the Planning Code.

- b. The Board shall adopt rules and forms for its procedure in accordance with the provisions of this Ordinance. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman or, in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public.
- c. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicate such fact, and shall keep records of its examination and other official actions, all of which shall be immediately filed in the Office of the Borough Manager and shall be a public record.
- d. The Board shall submit a report of its activities to Borough Council as requested.

5. Expenditures for Services

Within the limits of funds appropriated by the Borough Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties, as may be fixed by the Borough Council, but in no case shall it exceed the rate of compensation authorized to be paid to members of Borough Council.

1402      Powers of the Zoning Hearing Board

## 1.      Appeals from the Zoning Officer

The Board shall hear and decide appeals where it is alleged that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of this Ordinance or the Zoning Map, or any valid rule or regulation governing the action of the Zoning Officer.

## 2.      Applications

Applications for variances or special exceptions shall include as a minimum the following information:

- a.      A sketch plan, at scale, showing the layout of the property, the proposed improvements and alterations thereto and the relationship of the tract to adjacent properties.
- b.      A reference to the section(s) of the Ordinance under which the variance or special exception is requested.

## 3.      Variances

The Board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship on the applicant. In granting a variance the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Planning Code and this Ordinance.

## 4.      Special Exceptions

The Board shall hear and decide requests for special exceptions authorized by this Ordinance in accordance with the standards and criteria set forth in Section 1406 below. The Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Planning Code and this Ordinance.

## 5.      Challenge to the Validity of Ordinance or Map

The Board shall conduct hearings and make decisions and findings in connection with challenges to the validity of any provision of this Ordinance as authorized by Section 909.1 of the Planning Code.

1403 Hearings and Decisions

The Board shall conduct hearings and make decisions in accordance with the provisions of Section 908 of the Planning Code.

1404 Notice of Requirements

## 1. Notice of Hearing

In any case where the Board shall hold a public hearing, the Board shall, at the minimum, give notice of such hearing as follows, which notice shall state the time and the place of the hearing and the particular nature of the matter to be considered at the hearing:

- a. By publishing a notice thereof once each week for two (2) successive weeks in a newspaper of general circulation in the Borough, provided that the first publication shall be not more than thirty (30) days and the second publication shall be not less than seven (7) days from the date of the hearing.
- b. By mailing or delivering due notice thereof to the applicant and other parties in interest, who shall be at least those persons whose properties adjoin the property in question or are within a two hundred (200) foot radius of the property in question.
- c. By mailing or delivering notice thereof to the Borough Council and the Zoning Officer.
- d. By conspicuously posting notice of said hearing on the affected tract of land at least one (1) week prior to the hearing.

1405 Elements of Decisions of the Board

Decision of the Board shall include the following elements:

1. Findings of fact, including a brief summary of relevant testimony and information entered during the proceedings of the Board.

2. Citation by quotation or by reference to the specific sections of the local ordinances and/or the Planning Code which are relevant to the case in question.
3. Conclusions of the Board, enumerating the reasons why such conclusions are deemed appropriate in light of the facts found.
4. Ruling of the Board, indicating in writing any stipulations or conditions attached to the ruling.

1406

Standards for Zoning Hearing Board Action

In any instance where the Zoning Hearing Board is required to consider a variance or special exception, the Board shall, among other things, consider the following standards:

1. Planning Code Criteria for Variances
  - a. The Board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship on the applicant.
  - b. A variance from the terms of this Ordinance shall not be granted by the Board unless and until a written application for a variance is submitted by the applicant who shall have the burden of establishing the presence of all of the following conditions 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 topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not to the circumstances or conditions generally created by the provisions of the Zoning Ordinance in the neighborhood or 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 authoriza-

tion of the 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 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) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- c. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Planning Code and this Ordinance.
2. Standards for Review of Special Exceptions
- a. In any instance where the Board is required to consider a request for a special exception, the Board shall consider the following factors where appropriate:
    - (1) That the proposed use is appropriate for the site in question in terms of size, topography, natural features, drainage, sewage disposal, water supply, accessibility and availability of public services and that adequate provisions will be made to protect sensitive environmental features such as streams, lakes, wetlands, slopes and mature trees.
    - (2) That the proposed use is compatible with the character of the surrounding neighborhood and will not interfere with or detract from legitimate uses and adjacent properties, and that adequate measures will be provided through building design, site layout,

landscaping, planting and operational controls to minimize any adverse impacts caused by noise, lights, glare, odors, smoke, fumes, traffic, parking, loading and signage.

- (3) That the proposed special exception will serve the best interest of the Borough, convenience of the community and the public health, safety and welfare.
  - (4) That the proposed use is consistent with the Sharon Hill Borough Comprehensive Plan which is part of the Southeast Delaware County Comprehensive Plan of 1971.
  - (5) That the proposed use promotes orderly development, proper population density and the provision of adequate community facilities and services, including police and fire protection.
  - (6) That the proposed use is suitable in terms of its effect on highway safety and traffic circulation, and that access, on-site circulation and parking are adequate in view of anticipated traffic.
  - (7) That the proposed use will provide for adequate off-street parking, as required in Article 8.
- b. In cases where uses permitted by special exception are not accompanied by specific standards for such uses, the regulations in Section 1101 shall apply.
  - c. Financial hardship shall not be construed as a basis for granting special exceptions.
  - d. In granting any special exception, the Board may attach reasonable conditions and safeguards in addition to those expressed in this Ordinance as it may deem necessary to implement the purposes of the Planning Code and the Ordinance, which conditions and safeguards may relate to, but not be limited to, screening, lighting, noise, safety, aesthetics and the minimization of noxious, offensive or hazardous elements. Such special exception shall be clearly

authorized by a provision in this Ordinance and shall, where applicable, comply with the more specific standards relating to such special exception contained in appropriate sections of Article 11.

1407

Standards of Proof

1. For Variances

An applicant for a variance shall have the burden of establishing both:

- a. That a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship, as that term is defined by law, including court decisions; and
- b. That the allowance of the variance will not be contrary to the public interest.

2. For Special Exceptions

An applicant for a special exception shall have the burden of establishing both:

- a. That his application falls within the provisions of this Ordinance which affords to the applicant the right to seek a special exception; and
- b. That the allowance of a special exception will not be contrary to the public interest.

3. Evaluation of the Impact of an Application on the Public Interest

In determining whether the allowance of a special exception or variance is contrary to the public interest, the Board shall consider whether the application, if granted, will:

- a. Adversely affect the public health, safety and welfare due to changes in traffic conditions, drainage, air quality, noise levels, neighborhood property values, natural features and neighborhood aesthetic characteristics.

- c. Provide required parking in accordance with Article 8 of this Ordinance.
- d. Adversely affect the logical, efficient and economical extension or provision of public services and facilities such as public water, sewers, refuse collection, police, fire protection and public schools.
- e. Otherwise adversely affect the public health, safety or welfare.

1408

Expiration of Special Exceptions and Variances

Unless otherwise specified by the Board, a special exception or variance shall expire if the applicant fails to obtain a building permit within six (6) months from the date of authorization thereof.

1409

Time Limitations and Stay of Proceedings

See Sections 914.1 and 915.1 of the Planning Code.

1410

Appeals to Court

See Article X-A of the Planning Code.