

## General Information

### Special Exception Use Requests and Variances

The Lehigh Township Zoning Hearing Board meets the 2<sup>nd</sup> Thursday of each month when necessary. Applications for Variances and Special Exception requests are due to the Township 28 days prior to a hearing to ensure that proper advertising requirements are met.

There is a **\$750.00 non-refundable** application fee for Residential Applications and a **\$1,500.00 non-refundable** application fee for Commercial Applications which is due when the application is submitted. All applications must be notarized. All hearings are open to the public and are advertised as per Lehigh Township Zoning Ordinance requirements.

**Rescheduling/Postponement Fees:** In the event an applicant chooses to reschedule or postpone the hearing after it has been advertised the applicant shall pay a rescheduling fee. Residential Applicants shall pay **\$400.00** and Commercial Applicants shall pay **\$600.00**.

**Special Exceptions** are uses that are permitted in various zoning districts provided the applicant can verify that they meet or will meet the specified requirements. If the applicant has met all the requirements, the Zoning Hearing Board must approve the request.

**Variances** are uses or dimensional non-conformities not normally permitted in a particular zoning district. An applicant must meet all 5 parts of the Variance Test in order to receive approval. The Zoning Hearing Board is not obligated to approve a variance and has the right to impose restrictions upon an applicant in order to approve a variance.

Once the Zoning Hearing Board has concluded a hearing and closed the testimony, they have **45 days** to issue a written opinion either approving or denying a Variance or Special Exception. Any application that has not been acted upon in writing within 45 days is deemed automatically approved. Approval by the Zoning Hearing Board does not relieve an applicant from their obligation to apply for other required permits and approvals.

Any person or group has the right to appeal an approval or denial of a Variance or Special Exception request. Once the written opinion has been issued, any interested party has 30 days to file an appeal with the Northampton County Court. If no appeal is filed, the Zoning Hearing Board decision stands.

## Chapter 180. Zoning

### Article VII. Zoning Hearing Board

#### § 180-119. Powers and duties.

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

- A. Substantive challenges to the validity of the Zoning Ordinance, except those brought before the Board of Supervisors pursuant to § 180-127C of this chapter.
- (1) If a challenge heard by the Zoning Hearing Board is found to have merit, the decision of the Zoning Hearing Board shall include recommended amendments to the challenged ordinance which will cure the defects found. In reaching a decision, the Zoning Hearing Board shall consider the amendments, plans, and explanatory material submitted by the landowner and shall also consider:
    - (a) The impact of the proposal upon roads, sewer facilities, water supplies, schools, and other public service facilities;
    - (b) If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or Zoning Map;
    - (c) The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources, and other natural features;
    - (d) The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources, and natural features, the degree to which each of these are protected or destroyed, the tolerance of the resources to development, and any adverse impacts; and
    - (e) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
  - (2) Public notice of the hearing shall be provided as specified in the definition of "public notice" in § 180-15 of this chapter.
  - (3) The Zoning Hearing Board shall commence its hearings within 60 days after the request is filed, unless the landowner requests or consents to an extension of time.
  - (4) The Zoning Hearing Board shall render its decision within 45 days after the conclusion of the last hearing. If the Board fails to act on the landowner's request within this time limit, an approval of the request is deemed to have occurred on the 46th day after the close of the last hearing.

- B. Challenges to the validity of the Zoning Ordinance, raising procedural questions or alleged defects in the process of enactment or adoption, which challenges shall be raised by an appeal taken within 30 days after the effective date of the ordinance.
- (1) Challenges to the validity of the Zoning Ordinance, raising procedural questions or alleged defects in the process of enactment or adoption, which challenges shall be raised by an appeal taken within 30 days after the effective date of the ordinance; and
  - (2) A landowner shall not submit any additional substantive challenges to the Zoning Hearing Board involving the same parcel, group of parcels or part thereof until such time as the status of the landowner's original challenge has been finally determined or withdrawn; provided, however, that if after the date of the landowner's original challenge the municipality adopts a substantially new or different zoning ordinance or zoning map, the landowner may file a second substantive challenge to the new or different zoning ordinance or zoning map.
- C. Special exceptions, as provided for in this chapter and subject to all applicable requirements, including but not limited to:
- (1) Advisory report. No application for a special exception shall be granted by the Zoning Hearing Board until the Zoning Hearing Board has first received and considered an advisory report thereon from the Township Planning Commission with respect to the location of such use in relation to the needs and growth pattern of the Township and, where appropriate, with reference to the adequacy of the site area and arrangement of buildings, driveways, parking areas, off-street truck loading spaces, and other pertinent features of the site plan. The Planning Commission shall have 30 days from the date of its receipt of the application within which to file its report thereon. The Planning Commission may have representation at the public hearing held by the Zoning Hearing Board on such application.
  - (2) Filing requirements. In addition to the required zoning permit information (see § **180-125B** and **C**) each special exception application shall include the following:
    - (a) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this chapter; and
    - (b) Such other materials as may be necessary, in the sole opinion of the Zoning Hearing Board, to demonstrate compliance with the specific criteria of Article **V** of this chapter.
  - (3) General criteria. Each applicant must demonstrate compliance with the following:
    - (a) The proposed use shall be consistent with the purpose and intent of this chapter;
    - (b) The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties;
    - (c) The proposed use will not substantially change the character of the subject property's neighborhood;
    - (d) Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water, and other utilities, vehicular access, etc.);
    - (e) For development within a floodplain, the application complies with the requirements of Chapter **83**, Floodplain Management;
    - (f) The proposed use shall comply with those criteria specifically listed in Article **V** of this chapter; in addition, the proposed use must comply with all other applicable regulations contained in this chapter; and
    - (g) The proposed use will not substantially impair the integrity of the Township's Comprehensive Plan.

- (4) Conditions. The Zoning Hearing Board, in approving special exception applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer, and failure to comply with such conditions shall constitute a violation of this chapter and shall be subject to the penalties described in Article **VIII**.
- (5) Site plan approval. Any site plan presented in support of the special exception pursuant to Subsection **C(1)** shall become an official part of the record for said special exception. Approval of any special exception will also bind the use in accordance with the submitted site plan; therefore, should a change in the site plan be required as part of the approval of the use, the applicant shall revise the site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved site plan shall require another special exception approval to be obtained.
- D. Variances. The Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship upon the applicant. The Board may, by rule, prescribe the form of application to the Zoning Officer.
- (1) The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:
- (a) 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 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 zone in which the property is located.
  - (b) 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 the authorization of a variance is, therefore, necessary to enable reasonable use of the property.
  - (c) Such unnecessary hardship has not been created by the appellant.
  - (d) The variance, if authorized, will not alter the essential character of the zone or neighborhood 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.
  - (e) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue.
  - (f) Variances within the floodplain shall comply with Chapter **83**, Floodplain Management.
- (2) Filing requirements. In addition to the required zoning permit information (see § **180-125B** and **C** of this chapter), each variance application shall include the following:
- (a) Floor plans and elevations of existing and/or proposed structures;
  - (b) Names and addresses of adjoining property owners, including properties directly across a public right-of-way;
  - (c) A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this chapter; and
  - (d) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this chapter.

- (3) Conditions. The Zoning Hearing Board, in approving variance applications, may attach conditions considered necessary to protect the public welfare, the purposes of this chapter, and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer, and failure to comply with such conditions shall constitute a violation of this chapter and be subject to the penalties described in Article **VIII**.
  - (4) Site plan approval. Any site plan presented in support of a variance shall become an official part of the record for said variance. Approval of any variance will also bind the use in accordance with the submitted site plan.
- E. 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.
  - F. Appeals from a determination by the Township Engineer or the Zoning Officer with reference to the administration of any provision contained within Chapter **83**, Floodplain Management.
  - G. Appeals from the Zoning Officer's determination under § 916.2 (and any subsequent amendment) of the Act.
  - H. Appeals from the determination of the Zoning Officer or Township Engineer in the administration of any land use ordinance with reference to sedimentation and erosion control and/or stormwater management for applications not involving a subdivision/land development as regulated in Article **V** of the Act.