

# RUSH TOWNSHIP ZONING HEARING BOARD

## WHAT EVERY APPLICANT SHOULD KNOW

General Overview on the Application and Hearing Process

### General Information

The Zoning Hearing Board (ZHB) has found that many applicants are not familiar with the process for applications before the Board. This information has been prepared to provide residents/applicants with a description of the ZHB's jurisdiction and its public hearing process. This provides you with a general overview and is not intended to provide legal advice.

The Pennsylvania Municipalities Planning Code requires that any community enacting a zoning ordinance establish a ZHB to hear and decide zoning hearing applications and appeals.

The ZHB has no legislative power. It can neither make nor modify zoning policy. It is quasi-judicial. The Board consists of three members appointed by the Board of Supervisors. Most matters coming before the Board fall into 3 major categories:

- **Variations** - An applicant may request a Variance from the provisions of the ordinance when it is felt that a literal enforcement of the ordinance would create an unnecessary hardship as defined by law, including court decisions, on the applicant's use of the property
- **Special Exceptions** - The Board hears and decides requests for Special Exceptions in accordance with the standards and criteria expressed within the ordinance. When the ordinance permits a use "by special exception", this represents that the use generally should be allowed unless it is injurious to the public interest in the particular instance
- **Appeals from Action of the Zoning Officer** - Appeals originate when it is claimed that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of the Zoning Ordinance or map or any rule or regulation governing the action of the Zoning Officer.

### Application Procedure

To get on a Zoning Hearing Board agenda, a zoning hearing application must be submitted to the Zoning Officer. All applications, supporting documents and the required fee must be received no less than twenty-one (21) days prior to the regularly scheduled hearing dates, **typically** the last Tuesday of every month. Applicant(s) are encouraged to verify hearing dates in advance of application submission by contacting the Zoning Officer.

### The application must include the required fee and the following:

- The application form (with all pertinent questions answered).
- If the applicant is not the landowner of record, information must be presented (i.e., agreement of sale or lease), to demonstrate that the applicant has the legal right to make the application.
- If applicable, the application must include a site plan which identifies all of the required elements described on the application.

For the application, it is important that **every** applicable question be answered.

### After Your Application has been Submitted

After your application is submitted, the Rush Township Zoning Officer will review the application for administrative completeness then have a Public Notice prepared and distribute it as follows:

- The applicant will be mailed a ZHB package with the time, date, and location of the hearing along with all supplement information such as the application. The mailing typically occurs 14 days prior to the scheduled hearing.

- The notice will advertise in the local newspaper and will state the time and place of the hearing along with the nature of the matter to be discussed.
- **The property will be posted. It is the responsibility of the applicant to make sure that the notice remains until the hearing!**
- The notice will be forwarded to the municipality, all Zoning Hearing Board members, and to the owner of each lot abutting or immediately across the street from the subject lot.

### **What to Expect at the Hearing**

**The Hearing is a formal, "court-like" process.** Its purpose is to establish facts relative to the application. Therefore, a factual presentation outlining the reasons why a particular application does or does not meet the requirements of the ordinance, why the ordinance creates a hardship in the particular case, and how the proposal will or will not be harmful to public generally should be provided.

**Applicants should have an organized presentation.** An organized, factual presentation will provide the ZHB with a better understanding of the facts and the concerns of the community. Generally, applicants should expect the following:

### **Applicant's Presentation**

- The Applicant is called forward by the Chairman to present their case.
- The Applicant or any witness will be sworn in before presenting evidence. A court stenographer will swear in the applicant and any witnesses and will also record all testimony. ZHB members can and will ask questions both during and after examination of the applicant and any witnesses.
- Documents not included with the application (i.e., picture of the property) may be presented at the hearing as long as they do not change or add to the relief requested.
- You will be expected to respond to the criteria for the appropriate ZHB Hearing process as listed below. Please prepare yourself. (Please verify this information in the Zoning Ordinance.

### **Appeals and Challenges**

1. Substantive challenges to the validity of any land use ordinance, except those brought before the Municipal Governing Body pursuant to Section 609.1 and 916.1.A.2 of the Pennsylvania Municipalities Planning Code, as amended.
2. Challenges to the validity of a land use ordinance procedural question or alleged defect in the process of enactment or adoption, which challenges shall be raised by an appeal taken within thirty (30) days after the effective date of said ordinance.
3. 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 thereof, the issuance of any cease-and-desist order.
4. Appeals from a determination by the Municipal Engineer or the Zoning Officer with reference to the administration of any flood plain or flood hazard ordinances or such provisions within a land use ordinance.
5. Appeals from the Zoning Officer's determination under Section 1707 of this Ordinance.
6. Appeals from the determination of the Zoning Officer or Municipal Engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving subdivision and land development.
7. Application for variance from the terms of this Zoning Ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to subsection 2002.B, below of this Ordinance.
8. Application for special exception under this Zoning Ordinance or flood plain or flood hazard ordinances or such provisions within a land use ordinance, pursuant to Section 1802.C of this Ordinance.

Variances. The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this Zoning Ordinance inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may by rule prescribe the form of the application and may require preliminary application to the Zoning Officer. The Zoning Hearing Board may grant a variance, provided that all of the following are made were relevant in a given case:

1. That where 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 condition, and not circumstances or conditions generally created by the provisions of this 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 this 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 appellant.
4. That the variance if authorized will represent the minimum variance that will afford relief and will represent that least modification possible 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.
6. In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of the Pennsylvania Municipalities Planning Code, as amended, and this Zoning Ordinance.

Special Exceptions. To issue, upon application, only such special exceptions which the Board by the provisions of this Ordinance is specifically authorized to issue. The granting of a special exception when specifically authorized by the terms of this Ordinance shall be subject to the following standards and criteria:

1. Such use shall be one which is specifically authorized as a Special Exception Use in the zoning district wherein the applicant seeks a special exception.
  2. Such Special Exception shall only be granted subject to any applicable condition and safeguards as required by this Ordinance.
  3. Such use shall not adversely affect the character of the zoning district, nor the conservation of property values, nor the health and safety or residents or workers an adjacent property and in the general neighborhood.
  4. Such use shall be of such size and so located and laid out in relation to its access streets that vehicular and pedestrian traffic to and from such use will not create undue congestion or hazards prejudicial to the general neighborhood.
  5. Such use shall not conflict with the direction of building development in accordance with and Comprehensive Plan or portion thereof which has been adopted by the Municipal Governing Body.
  6. Services and utilities are available to adequately service the proposed use.
    - a. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Ordinance, as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code, as amended.
- Parties in opposition to an application also have certain legal rights to participate. The Chairman will allow any interested parties to ask questions of the witness currently on the stand. Questions should relate to the evidence presented. Statements, comments or evidence by the audience are not permitted at this time.

- Additional witnesses can be presented by the applicant for further testimony; otherwise, he/she will close his/her case with a summary statement.
- The Chairman will allow anyone in the audience having standing to come forward to make a statement or comment.
- Usually, the record is closed at the end of the hearing and no further information will be considered by the ZHB.

### **The ZHB Decision**

While **the ZHB is required to render a decision within 45 days after the date of the last hearing**, in some simple cases, the ZHB may announce a decision the night of the hearing. However, the decision may not be announced until the beginning of the following month's hearing. Written decisions and are then mailed to all applicants, the attorney representing an applicant, and the municipality in which the property is located. In the cases where the ZHB has denied an application, the applicant may afford themselves of the provisions for appeals to a court of common pleas within 30 days from the decisional hearing as stated in the Pennsylvania Municipalities Planning Code, as amended.