

Article XVIII – Zoning Hearing Board

§ 21-1801	Establishment; Existing Board; Pending Matters	21-137
§ 21-1802	Membership; Term	21-137
	(a) Regular Members	21-137
	(b) Alternate Members	21-138
§ 21-1803	Removal of Members	21-138
§ 21-1804	Organization	21-138
§ 21-1805	Compensation and Expenditures	21-139
§ 21-1806	Hearings	21-139
	(a) Notice	21-139
	(b) Time	21-139
	(c) Hearing Officer	21-140
	(d) Parties	21-140
	(e) Oaths; Subpoenas	21-140
	(f) Rights of Parties	21-140
	(g) Rules of Evidence	21-140
	(h) Stenographic Record	21-140
	(i) Ex Parte Communications	21-140
	(j) Decision or Findings	21-140
	(k) Deemed Approval	21-141
	(l) Notice of Decision	21-141
§ 21-1807	Exclusive Jurisdiction	21-141
§ 21-1808	Challenges to the Validity of the Chapter	21-142
§ 21-1809	Variances	21-143
	(a) In General	21-143
	(b) Fair Housing Act Compliance	21-143
	(1) In General	21-143
	(2) Handicapped Person	21-143
	(3) Construction	21-143
	(c) Conditions	21-144
§ 21-1810	Special Exceptions	21-144
§ 21-1811	Parties Appellant Before the Zoning Hearing Board	21-144
§ 21-1812	Time Limitations	21-144
§ 21-1813	Stay of Proceedings	21-145
§ 21-1814	Mediation Option	21-145

Article XVIII — Zoning Hearing Board

§ 21-1801 Establishment; Existing Board; Pending Matters.

The Borough Council shall create a Zoning Hearing Board, which shall supersede the existing Board of Adjustment. The three (3) members of the existing Board of Adjustment shall become the members of the Zoning Hearing Board and shall serve until their terms expire. Matters pending before any Board of Adjustment or Board of Appeals as of April 4, 1975 shall continue and be completed under the former law in effect at the time such Board took jurisdiction of them.

§ 21-1802 Membership; Term.

(a) **Regular Members.** The membership of the Zoning Hearing Board shall consist of three (3) residents of the Borough, appointed by Council. The terms of office shall be three (3) years and shall be so fixed that the term of office of one (1) member shall expire each year. The Zoning Hearing Board shall promptly notify Council of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Zoning Hearing Board shall hold no other office in the Borough.

(b) **Alternate Members.** Council may appoint at least one (1) but no more than three (3) residents of the Borough to serve as alternate members of the Zoning Hearing Board. The term of office of an alternate member shall be three (3) years. When seated pursuant to the provisions of § 21-1804, an alternate shall be entitled to participate in all proceedings and discussions of the Zoning Hearing Board to the same and full extent as provided by this Chapter for members of the Zoning Hearing Board, 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 Chapter and as otherwise provided by law. Alternates shall hold no other office in the Borough, including membership on the Planning Commission and Zoning Officer. Any alternate may participate in any proceeding or discussion of the Zoning Hearing Board but shall not be entitled to vote as a member of the Zoning Hearing Board nor be compensated pursuant to § 21-1805 unless designated as a voting alternate member pursuant to § 21-1804.

§ 21-1803 Removal of Members.

Any Board member may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of 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 shall request it in writing.

§ 21-1804 Organization.

(a) The Zoning Hearing 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 a majority of all the members of the Zoning Hearing Board, but the Zoning Hearing 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 Zoning Hearing Board as provided in § 21-1806.

(b) If, by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Zoning Hearing Board shall designate as many alternate members of the Zoning Hearing Board to sit on the Zoning Hearing Board as may be needed to provide a quorum. Any alternate member of the Zoning Hearing Board shall continue to serve on the Zoning Hearing Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Zoning Hearing Board has made a final determination of the matter or case. Designation of an alternate pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.

(c) The Zoning Hearing Board may make, alter, and rescind rules and forms for its procedure, consistent with ordinances of the Borough and laws of the Commonwealth of Pennsylvania. The Zoning Hearing Board 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 Council as requested by Council.

§ 21-1805 Compensation and Expenditures.

(a) Council may appropriate funds to finance the preparation of zoning ordinances and amendments and shall appropriate funds for administration, for enforcement and for actions to support or oppose, upon appeal to the courts, decisions of the Zoning Hearing Board.

(b) Council shall make provision in its budget and appropriate funds for the operation of the Zoning Hearing Board.

(c) Within the limits of funds appropriated by Council, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. The legal counsel shall be an attorney other than the Solicitor for the Borough.

(d) Members of the Zoning Hearing Board may receive compensation for the performance of their duties, as may be fixed by resolution of Council, but in no case shall it exceed the rate of compensation authorized to be paid to the members of Council. Alternate members of the Zoning Hearing Board may receive compensation, as may be fixed by resolution of Council, for the performance of their duties when designated as alternate members, but in no case shall such compensation exceed the rate of compensation authorized to be paid to members of Council.

(e) The appearance fee for a stenographer shall be shared equally by the applicant and the Zoning Hearing Board. The cost of the original transcript shall be paid by the Zoning Hearing Board if a transcript is ordered by the Zoning Hearing Board or Hearing Officer, or shall be paid by the person appealing from the decision of the Zoning Hearing Board if such appeal is made, and in either event, the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases, the party requesting the original transcript shall bear the cost thereof.

§ 21-1806 Hearings.

The Zoning Hearing Board shall conduct hearings and make decisions in accordance with the following requirements:

(a) **Notice.** Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer, all persons owning property adjoining the premises in question, and to any person who has made a timely request for the same. Written notices shall be given at least fifteen (15) days before the date of hearing. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.

(b) **Time.** The first hearing shall be commenced within sixty (60) days from the date of the receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed by the applicant in writing or on the record. An applicant shall complete the presentation of his case-in-chief within one hundred (100) days of the first hearing. Upon the request of the applicant, the Zoning Hearing Board or the Hearing Officer shall assure that the applicant receives at least seven (7) hours of hearings within the one hundred (100) days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within one hundred (100) days of the first hearing held after

the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief, *provided* the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon written consent or consent on the record by the applicant and the Borough, be granted additional hearings to complete their opposition to the application, *provided* the applicant is granted an equal number of additional hearings for rebuttal.

(c) **Hearing Officer.** The hearings shall be conducted by the Zoning Hearing Board or the Zoning Hearing Board may appoint any member as a Hearing Officer. The decision, or, where no decision is called for, the findings shall be made by the Zoning Hearing Board; however, the appellant or the applicant, as the case may be, in addition to the Borough, may, prior to the decision of the hearing, waive decision or findings by the Zoning Hearing Board and accept the decision or findings of the Hearing Officer as final.

(d) **Parties.** The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Zoning Hearing Board, and any other person, including civic or community organizations, permitted to appear by the Zoning Hearing Board. The Zoning Hearing Board shall have power to require that all persons who wish to be considered parties enter their appearances in writing on forms provided by the Zoning Hearing Board for that purpose.

(e) **Oaths; Subpoenas.** The Chairman or Acting Chairman of the Zoning Hearing Board or the Hearing Officer presiding shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.

(f) **Rights of Parties.** The parties shall have the right to be represented by counsel, and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.

(g) **Rules of Evidence.** Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(h) **Stenographic Record.** The Zoning Hearing Board or the Hearing Officer, as the case may be, shall keep a stenographic record of the proceedings. The cost of the stenographer's appearance fee and the cost of the original transcript and copies shall be paid as set forth in § 21-1805(e).

(i) **Ex Parte Communications.** The Zoning Hearing Board or the Hearing Officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, and shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed, and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representatives unless all parties are given an opportunity to be present.

(j) **Decision or Findings.** The Zoning Hearing Board or the Hearing Officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the Zoning Hearing Board or Hearing Officer. Where the application is contested or denied, each decision shall be

accompanied by findings of fact and conclusions based thereon, together with the reasons therefor. Conclusions based on any provisions of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10101 *et seq.*, this Chapter, or of any other ordinance, rule, or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a Hearing Officer, and there has been no stipulation that his decision or findings are final, the Zoning Hearing Board shall make his report and recommendations available to the parties within forty-five (45) days after the last hearing, and the parties shall be entitled to make written representations thereon to the Zoning Hearing Board prior to final decision or entry of findings, and the Zoning Hearing Board's decision shall be entered no later than thirty (30) days after the report of the Hearing Officer.

(k) Deemed Approval. Except for challenges filed under section 916.1 of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10916.1 (relating to landowner curative amendments), where the Zoning Hearing Board fails to render the decision within the period required by subsection (j), or fails to commence, conduct, or complete the required hearing as provided in subsection (b), the decision shall be deemed to have been rendered in favor of the applicant, unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of a failure of the Zoning Hearing Board to meet or render a decision as hereinabove provided, the Zoning Hearing Board shall give public notice of said decision within ten (10) days from the last day it could have met to render a decision in the same manner as provided in subsection (a) of this section. If the Zoning Hearing Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

(l) Notice of Decision. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the day following its date. To all other persons who have filed their name and address with the Zoning Hearing Board not later than the last day of the hearing, the Zoning Hearing Board shall provide, by mail or otherwise, either a copy of the decision or findings, or a brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

§ 21-1807 Exclusive Jurisdiction.

The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications on the following matters:

(a) Substantive challenges to the validity of any land use ordinance of the Borough, except those brought before Council as landowner curative amendments pursuant to Sections 609.1 and 916.1(a)(2) of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. §§ 10609.1 and 10916.1(a)(2).

(b) Challenges to the validity of a land use ordinance raising procedural questions or alleged defects 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.

(c) 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.

(d) Appeals from the determination by a municipal engineer or the Zoning Officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.

(e) Applications for variances from the terms of this Chapter and any flood hazard ordinance or such provisions within a land use ordinance, pursuant to § 21-1809.

(f) Applications for special exceptions under this Chapter or any flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to § 21-1810.

(g) 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 applications under Articles V or VII of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10501 *et seq.* and § 10701 *et seq.*

§ 21-1808 Challenges to the Validity of the Chapter.

(a) A landowner who, on substantive grounds, desires to challenge the validity of this Chapter or the Official Zoning Map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either:

(1) to the Zoning Hearing Board under § 21-1807; or

(2) to Council, together with a request for a curative amendment under Section 609.1 of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10609.1.

(b) Persons aggrieved by a use or development permitted on the land of another by this Chapter or the Official Zoning Map, or any provision thereof, who desires to challenge its validity on substantive grounds, shall first submit their challenge to the Zoning Hearing Board for a decision thereon under § 21-1807(a).

(c) The submissions referred to in subsections (a) and (b) shall be governed by the standards set forth in Section 916.1(c) of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10916.1(c).

(d) The Zoning Hearing Board or Council, as the case may be, shall commence its hearings within sixty (60) days after the request is filed, unless the landowner requests or consents to an extension of time.

(e) Public notice of the hearing shall include notice that the validity of this Chapter or the Official Zoning Map is in question, and shall give the place where and the times when a copy of the request, including any plans, explanatory material, or proposed amendments, may be examined by the public.

§ 21-1809 Variances.

(a) **In General.** 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 and may require preliminary application to the Zoning Officer. The Board may grant a variance, *provided* the following findings are made 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 the circumstances or conditions generally created by the provisions of this Chapter 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 Chapter, 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 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.

(b) **Fair Housing Act Compliance.** In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter.

(1) **In General.** The Board shall also hear requests for variances and grant variances providing reasonable accommodations to the provisions of this Chapter when such accommodations may be necessary —

(A) to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas; or

(B) to permit reasonable modifications of existing premises occupied or to be occupied by such a handicapped person if such modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling.

(2) **Handicapped Person.** For purposes of this subsection (b), the term “handicap”, with respect to a person, shall mean a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment, all as further defined at 24 C.F.R. § 100.201.

(3) **Construction.** This subsection (b) shall be construed and applied so as to avoid unlawful discrimination under the Fair Housing Act, as amended, and its implementing regulations, especially 42 U.S.C. § 3604(f)(3)(A) and (B), and 24 C.F.R. §§ 100.203 and 100.204.

(c) **Conditions.** In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Chapter.

§ 21-1810 Special Exceptions.

Where Council in this Chapter has stated special exceptions to be granted or denied by the Board pursuant to express standards and criteria, the Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of this Chapter.

§ 21-1811 Parties Appellant Before the Zoning Hearing Board.

(a) Cases brought under subsection (a), (b), (c), (d), or (g) of § 21-1807 may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Borough, or any person aggrieved.

(b) Requests for a variance under §§ 21-1807(e) and 21-1809 and for a special exception under §§ 21-1807(f) and 21-1808 may be filed with the Zoning Hearing Board by any landowner or any tenant with the permission of such landowner.

§ 21-1812 Time Limitations.

(a) No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan for a planned residential development pursuant to Section 709 of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10709, or from an adverse decision by the Zoning Officer on a challenge to the validity of this Chapter, the Official Zoning Map, or other ordinance, pursuant to Section 916.2 of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10916.2, to the extent such decisions are permitted by this chapter, shall preclude an appeal from a final approval, except in the case where the final submission substantially deviates from the approved tentative approval.

(b) All appeals from determinations adverse to the landowners made pursuant to subsection (c), (d), or (g) of § 21-1807 and pursuant to any preliminary opinion of the Zoning Officer, to the extent permitted by this Chapter, which is adverse to the landowner, shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

§ 21-1813 Stay of Proceedings.

Upon the filing of any proceeding referred to in § 21-1811 and during its pendency before the Board, all land development pursuant to any challenged ordinance, order, or approval of the Zoning Officer or of any agency or body, and all official action thereunder, shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the Board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the court having jurisdiction of zoning appeals on petition after notice to the Zoning Officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the Board. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court.

§ 21-1814 Mediation Option.

(a) Parties to proceedings authorized in this Chapter and in Article X-A of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 11001-A *et seq.*, may utilize mediation as an aid in completing such proceedings. In proceedings before the Zoning Hearing Board, in no case shall the Zoning Hearing Board initiate mediation or participate as a mediating party. Mediation shall supplement, not replace, those procedures in this Chapter and in Article X-A of the Pennsylvania Municipalities Planning Code once they have been formally initiated. Nothing in this section shall be interpreted as expanding or limiting municipal police powers or as modifying any principles of substantive law.

(b) Participation in mediation shall be wholly voluntary. The appropriateness of mediation shall be determined by the particulars of each case and the willingness of the parties to negotiate. The Borough shall assure that, in each case, the mediating parties, assisted by the mediator as appropriate, develop terms and conditions for:

- (1) funding mediation.
- (2) selecting a mediator who, at a minimum, shall have a working knowledge of municipal zoning law and subdivision procedures and demonstrated skills in mediation.
- (3) completing mediation, including time limits for such completion.
- (4) suspending time limits otherwise authorized in this Chapter and the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10101 *et seq.*, *provided* there is a written consent by the mediating parties, and by an applicant or municipal decision-making body if either is not a party to the mediation.
- (5) identifying all parties and affording them the opportunity to participate.
- (6) subject to legal restraints, determining whether some or all of the mediation sessions shall be open or closed to the public.

(7) assuring that mediated solutions are in writing and signed by the parties, and become subject to review and approval by the appropriate decision-making body pursuant to the authorized procedures set forth in other sections of this Chapter and the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10101 *et seq.*

(c) No offers or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceedings.