

# **ARTICLE 14 Zoning Hearing Board Proceedings**

## **14.1 Organization and Procedure**

14.1.1 Establishment – Pursuant to the provisions of the Pennsylvania Municipalities Planning Code, Act of 1968, P.L. 805, No. 247, as reenacted and amended, a Zoning Hearing Board is hereby established for Nippenose Township.

14.1.2 Appointment and Membership – The Zoning Hearing Board shall consist of three (3) members who are residents of Nippenose Township who are appointed by Resolution of the Township Board of Supervisors. The terms of the initial appointees shall be for one, two and three years from the date of the appointment. Their successors shall be appointed for the term of three (3) years after the expiration of the terms of their predecessors in office. Members of the Zoning Hearing Board shall hold no other office in the municipality. A Zoning Hearing Board member may be removed by the majority vote of the appointing authority for just cause only after the member has received 15 days advanced notice of the Township's intent to take such a vote. The Township Board of Supervisors may appoint two (2) alternate members to the Zoning Hearing Board to serve in the event of absence or conflict of interest of a regular member. The term of office of an alternate shall be three (3) years. The Chairman of the Zoning Hearing Board shall designate as many alternates as may be necessary to provide a quorum. Designation shall be made on a case-by-case basis, in rotation, according to declining seniority.

14.1.3 Appointment to Fill Vacancies – Appointments to fill vacancies shall be for the unexpired term of the member or members whose term becomes vacant. Appointments to fill such vacancies shall be made in the same manner as the original appointment.

## **14.2 Powers and Duties**

The Zoning Hearing Board shall perform all the duties and have all the powers prescribed by the Municipalities Planning Code Act of 1968, P.L. 805, No. 247, as reenacted and amended, including the following:

14.2.1 To Hear and Decide Requests for Special Exceptions – The Zoning Hearing Board shall hear and decide requests for special exceptions in accordance with standards and criteria of the Ordinance. In granting a Special Exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards, in addition to those expressed in this ordinance.

14.2.2 To Hear and Decide Appeals –

14.2.2.1 – The Zoning Hearing Board shall hear and decide appeals from any order, requirement, decision or determination made by the Zoning Officer administering this Ordinance, including but not limited to the granting or denial of any permit, or failure to act on the application therefore, the issuance of any cease-and-desist order, or the registration or refusal to register any nonconforming use, structure, or lot.

14.2.2.2 – The Zoning Hearing Board shall hear and decide appeals from a 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 the provisions regulating Subdivision and Land Development governed under Article V of the Pennsylvania Municipalities Planning Code.

14.2.2.3 – The Zoning Hearing Board shall hear and decide appeals from a determination by the Municipal Engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance.

14.2.2.4 – The Zoning Hearing Board shall hear and decide upon appeals from a determination of the Zoning Officer regarding any question involving the interpretation of this Ordinance, including determination of the exact location of any district boundary.

#### 14.2.3 To Hear and Decide Challenges to the Validity of any Land Use Ordinance –

14.2.3.1 – The Zoning Hearing Board shall hear and decide substantive challenges to the validity of any land use ordinance, except those for Landowner Curative Amendments, which shall be brought before the Governing Body pursuant to Sections 609.1 and 916.1(a)(2) of the Pennsylvania Municipalities Planning Code, as amended.

14.2.3.2 – The Zoning Hearing Board shall hear and decide challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption. Such challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance.

14.2.4 To Hear and Decide Requests for Variances – The Zoning Hearing Board shall hear requests for variances and may vary or adapt the strict application of any of the requirements of this Ordinance in the case of exceptionally irregular, narrow or shallow lots or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. The sole purpose of any variance shall be to prevent discrimination, and no variance shall be granted, which would have the effect of granting a special privilege not shared by other property owners in the same vicinity and district and under the same conditions. The Board's decision to approve a variance request shall be made only after public notice and a public hearing (see Section 17.2). The Zoning Hearing Board may grant a variance, if all the following findings are made where relevant in a given case:

14.2.4.1 – 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 the Zoning Ordinance in the neighborhood or district in which the property is located;

14.2.4.2 – 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 authorization of a variance is therefore necessary to enable the reasonable use of the property;

14.2.4.3 – that such unnecessary hardship has not been created by the applicant;

14.2.4.4 – 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;

14.2.4.5 – 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. In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as may seem necessary to implement the purposes of this Ordinance.

### **14.3 Hearing Procedures**

14.3.1 Parties Appellant Before the Board – Appeals from a decision of the Zoning Officer and proceedings to challenge the validity of the Ordinance may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Township, or by any person aggrieved. Requests for variance must be filed with the Zoning Hearing Board by a landowner or an authorized agent of such landowner.

14.3.2 Time Limitations – No person shall be allowed to file any proceeding with the Zoning Hearing Board later than 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.

14.3.3 Application Required – All requests and appeals made to the Zoning Hearing Board shall be in writing and in such form as may be prescribed by the Zoning Officer. Every appeal or request shall refer to a specific provision of this Ordinance and shall exactly set forth the interpretation that is claimed or shall include the plans or the details of the variance that is applied for, in addition to the following information:

14.3.3.1 – the name and address of the applicant or appellant;

14.3.3.2 – the name and address of the owner of the parcel to be affected by such proposed change or appeal;

14.3.3.3 – a brief description and location of the parcel to be affected by such proposed change or appeal;

14.3.3.4 – a statement of the present zoning classification of the parcel in question, the improvements thereon and the present use thereof, and

14.3.3.5 – a reasonably accurate description of the additions or changes intended to be made under this application, indicating the size of such proposed improvement, material and general construction thereof. In addition, there shall be attached a plot plan of the property to be affected, indicating the location and size of the lot and size of improvements thereon and proposed to be erected thereon.

14.3.4 Procedure for Zoning Officer –

14.3.4.1 – The notice of appeal in any case where a permit has been granted or denied by the Zoning Officer shall be prescribed by the Zoning Hearing Board under general rule after notice of such action granting or denying the permit has been mailed to the applicant. The Zoning Officer shall then immediately transmit to the Zoning Hearing Board all papers constituting the record from which the appealed action was taken or in lieu thereof, certified copies of said papers.

14.3.4.2 – The Zoning Officer may recommend to the Zoning Hearing Board a modification or reversal of recommended action in cases where substantial justice requires the same but where he does not have sufficient authority to depart from the regulations.

14.3.5 Hearing Required and Notice of Hearings – The Zoning Hearing Board, before rendering a decision, shall hold hearings on any appeal, interpretation, variance, challenge or other matter requiring the Zoning Hearing Board's decision or other official action. Upon filing an appeal or application request with the Zoning Hearing Board, the Board shall, within 60 days of receipt of the application, fix a reasonable time and place for and hold a public hearing thereon, giving notice as follows:

14.3.5.1 – Public notice in accordance with the definition of Public Notice in Section 17.2 of this Ordinance.

14.3.5.2 – Post in a conspicuous place on the property involved a written notice of the pending hearing and action, such notice shall take place at least seven (7) days prior to the public hearing;

14.3.5.3 – Give written notice to the applicant, the Zoning Officer, the Township Secretary, Secretary of the Township Planning Agency, and to any person who has made timely request for the same, at least seven (7) days prior to the hearing. (Where the Zoning Hearing Board is requesting comments on an application from the Planning Agency, the Township Planning Agency shall be given notice at least 30 days prior to the hearing); and

14.3.5.4 – In case of an appeal or a request for a variance, all adjacent property owners within 500 feet of the nearest line of the property for which the variance is sought shall be given written notice within seven (7) days of the hearing.

14.3.6 Rules of Conduct – The Zoning Hearing Board shall adopt rules in accordance with the provisions of this Ordinance and Article IX of the Pennsylvania Municipalities Planning Code, as amended. Meetings of the Zoning Hearing Board shall be held at the call of the Chairman and at such other times as the Zoning Hearing Board may determine. Such Chairman or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. Irrelevant, immaterial or unduly repetitious evidence may be ruled out of order and excluded from the hearing record. All hearings and meetings of the Zoning Hearing Board shall be open to the public. The Zoning Hearing Board shall keep a stenographic record of the hearing proceedings. Minutes shall be kept of all other meetings and shall include the vote, failure to vote, or absence from the vote of each member upon each question. Such records shall be public and shall be kept on file with the Township Secretary. A report of the Zoning Hearing Board's activities shall be submitted to the Township Supervisors once each year.

A quorum of two (2) Board Members shall be required for the Board to act.

14.3.7 Decisions – The Zoning Hearing Board shall render a written decision or, when no decision is called for, make written findings on any application brought before them within 45 days after the date of the last hearing on said application. Every decision of the Zoning Hearing Board shall be based on stated findings of fact and every finding of fact shall be supported in the record of the hearing. The enumerated conditions required to exist for the authorization of a variance shall be construed as limitation of the power of the Zoning Hearing Board to act. A mere finding of recitation of the enumerated conditions, unaccompanied by findings of specific fact, shall not be deemed findings of fact and shall not be deemed compliance with this Ordinance.

In exercising the above-mentioned powers, the Zoning Hearing Board may, in conformity with the provisions of this Section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as it feels appropriate.

A copy of the final decision or findings must be delivered to the applicant personally or must be mailed to him not later than the day after the date of the report. All other persons interested in the results or who filed an appearance or testified during the Hearing must be provided with a brief notice of the decision or findings and a statement indicating where the full decision may be examined.

14.3.8 Expiration of Appeal Decision – Unless otherwise specified by the Zoning Hearing Board, a decision on any appeal or request shall expire if the applicant fails to obtain a Zoning Permit or comply with the conditions of said authorized permit within six (6) months from the date of authorization thereof.

14.3.9 Required Interval for Hearings on Applications and Appeals after Denial – Whenever the Zoning Hearing Board, after hearing all the evidence presented upon an application or appeal under the provisions of the Ordinance, denies the same, the Zoning Hearing Board shall refuse to hold further hearings on the same or substantially similar application or appeal by the same applicant, his successor or assign for a period of one (1) year, except and unless the Zoning Hearing Board shall find and determine from the information supplied by the request for a rehearing, that changed conditions have occurred related to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified. Such rehearing would be allowable only upon a motion initiated by a member of the Zoning Hearing Board and adopted by the unanimous vote of the members present, which must be a majority of the total members.

14.3.10 Failure to Hold Required Hearing or Render Decision – If the Zoning Hearing Board fails to hold the required Hearing or fails to render a decision with the prescribed time periods, a decision shall be automatically rendered in favor of the applicant. However, the applicant may agree in writing to an extension of the 60-day (see Section 14.3.5) and/or 45-day (see Section 14.3.7) time requirements. When a decision is rendered in favor of the applicant due to a violation of the established time requirements, the Zoning Hearing Board must give public notice of this decision within ten (10) days from the last day it could have met to render a timely decision.

14.3.11 Stay of Proceedings – An appeal to the Zoning Hearing Board shall automatically stop all affected land development. However, if the Zoning Officer or other appropriate agency certifies to the Zoning Hearing Board that such a halt could cause an imminent danger to life or property, then development may only be stopped by a restraining order granted by the Zoning Hearing Board or by the court having jurisdiction, on petition, after notice to the Zoning Officer and any appropriate agency.

#### 14.3.12 Appeals

Any person aggrieved by any decision of the Zoning Hearing Board may appeal there from within 30 days to the Court of Common Pleas of Lycoming County pursuant to the procedures established in Article X-A of the Pennsylvania Municipalities Planning Code, as amended.

