

## A CITIZEN'S GUIDE TO THE ZONING HEARING BOARD

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### ZONING

Zoning is a tool utilized by the Borough of Carlisle to coordinate and guide development within the Borough and to maintain the high quality-of-life standards desired by the community. Zoning is defined as the lawful regulation of the use of land. The zoning regulations adopted by the Carlisle Borough Council are found in *Chapter 255 of the Code of the Borough of Carlisle*. This chapter is commonly referred to as the *Carlisle Borough Zoning Ordinance*. Among other regulations, the Zoning Ordinance establishes *uses permitted by right* and *uses permitted by special exception* for each zoning district.

### PERMITTED USES AND SPECIAL EXCEPTIONS

*Uses permitted by right* are basic uses that are allowed in the various zoning districts. The Zoning Ordinance does not require the issuance of a permit to establish a *use permitted by right*. However, the use must meet all the criteria established in the ordinance to be considered legal. In addition, other Borough ordinances -- such as the Building Code and Subdivision and Land Development Ordinance -- may require that permits be issued or a plan be recorded prior to the occupancy of a lot or structure where a new use is created or an existing use is expanded.

*Special exception uses* are also uses allowed in the various zoning districts. However, a *special exception use* is subject to the approval of the Zoning Hearing Board. The Zoning Ordinance allows the Borough Planning Commission to review and provide an advisory recommendation on any *special exception* request before the Zoning Hearing Board. The Zoning Hearing Board may authorize a *special exception* when it is demonstrated that the use is consistent with the criteria established in the Zoning Ordinance. In approving a *special exception*, the Zoning Hearing Board may attach reasonable conditions and safeguards. It should be noted that the term "*special exception*" is misleading. A *special exception* use is not an exception to the requirements of the Zoning Ordinance. Rather, it is a use envisioned by the ordinance that is permitted when the express standards and criteria established in the ordinance are met. The difference between a *use permitted by right* and a *special exception* is that the Zoning Officer may approve a *use permitted by right*, while only the Zoning Hearing Board may approve a *special exception use*.

### VARIANCES

A *variance* is permission to do something that is not permitted by the Zoning Ordinance. The Pennsylvania Municipalities Planning Code, Act No. 247 of 1968, as reenacted and amended by the Commonwealth of Pennsylvania, establishes that *variances* may be granted by municipal Zoning Hearing Boards under special circumstances as a means of alleviating problems created by attempting to apply general land use regulations to specific situations. Because a *variance* is, in effect, an overriding of the officially established zoning law, *variances* are only authorized when *unnecessary hardship* and consistency with the public interest are shown.

## **REQUIREMENTS FOR A VARIANCE**

The Pennsylvania Municipalities Planning Code allows the *Zoning Hearing Board* to grant a variance when the following general findings are made:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, 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.
- (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.
- (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.

Each of the five criteria must be demonstrated before a *variance* can be authorized. If any one of the above criteria is not met, the Zoning Hearing Board may deny the request. In approving *variances*, the Zoning Hearing Board may attach reasonable conditions.

## **ZONING HEARING BOARD**

The Carlisle Borough Zoning Hearing Board is an independent consisting of five (5) citizens of the Borough of Carlisle who are appointed by Borough Council to serve a five (5) year term. As established by the Pennsylvania Municipalities Planning Code, the Board has exclusive jurisdiction over the following matters:

- (1) Substantive challenges to the validity of any land use ordinance;
- (2) Appeals from the determination of the zoning officer, including, but not limited to, the granting or denial of a permit, the issuance of a cease and desist order, or the registration or refusal to register any nonconforming use;
- (3) Applications for *variances* from the terms of the Zoning Ordinance; and
- (4) Applications for *special exceptions* under the Zoning Ordinance;

The Board conducts hearings at 6:30 p.m. on the first Thursday of each month. The deadline for submitting an application to the Board is three (3) weeks prior to the date of the meeting. The agenda for each meeting is advertised in the legal section of the local newspaper, *The Sentinel*.

## **CONDUCT OF HEARINGS**

Hearings conducted by the Zoning Hearing Board are formal. Each applicant is provided an opportunity to present testimony relating to the appeal. Each witness called by the applicant is sworn. The Board, the Borough representative, and the public may ask questions of the applicant and the applicant's witnesses. Other interested parties are provided an opportunity to present testimony and may be cross-examined. After all questioning is completed, the applicant and any other interested parties are provided an opportunity to make closing arguments. After all testimony has been officially entered on the record, the Board will close the meeting and will usually render a verbal decision on the same evening. However, this decision will not be officially recorded until a written decision has been prepared by the Zoning Hearing Board Solicitor and has been signed and dated by the members of the Zoning Hearing Board.

All interested parties are welcome to attend hearings conducted by the Zoning Hearing Board. Anyone interested in submitting testimony or an opinion about a case before the Board will be provided an opportunity. However, unduly repetitious or irrelevant testimony may be cut short by the Board. In addition, the Board will not accept written testimony or letters from individuals not in attendance at the meeting. Finally, the Municipalities Planning Code establishes that the Zoning Hearing Board "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, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless 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 representative unless all parties are given opportunity to be present."

Given the quasi-judicial nature of the Zoning Hearing Board, it may be of benefit to contact an attorney before filing an application to the Board. At the minimum, a meeting should be scheduled with the Borough Zoning Officer to discuss a potential application .

## **ADDITIONAL SOURCES OF INFORMATION**

Building Division  
Borough of Carlisle  
53 W. South Street  
Carlisle PA 17013  
(717) 249-4422

Cumberland County Planning Commission  
Cumberland County Courthouse  
One Courthouse Square  
Carlisle PA 17013  
(717) 240-6377

Bureau of Community Planning  
Department of Community Affairs  
551 Forum Building  
Harrisburg PA 17120  
(717) 787-7400

**NOTICE OF APPEAL**

(I) (We) \_\_\_\_\_ of \_\_\_\_\_  
(Name) (Address)

\_\_\_\_\_/ \_\_\_\_\_ request that a public hearing be held and a  
(Home Phone #) (Work Phone #)  
decision be issued by the Zoning Hearing Board on the follow matter:

- An appeal of a determination of the Zoning Officer issued on \_\_\_\_\_.
- A special exception
- A variance relating to:  Area  Frontage  Yard  Height  Use \_\_\_\_\_

Which pertains to the Carlisle Borough Zoning Ordinance:

Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_  
 Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_  
 Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

The description of the property involved in this appeal is as follows:

Location of Property: \_\_\_\_\_  
 Zoning District: \_\_\_\_\_  
 Present Use: \_\_\_\_\_  
 Proposed Use: \_\_\_\_\_  
 Owner of Property: \_\_\_\_\_  
 Relationship of applicant to property:  Owner of record  Party to a sales agreement  
 Party to a lease agreement

Attached the following additional information:

- Statement of why the Zoning Hearing Board should approve the request.
- Sketch plan, drawings, photographs, etc.

I attest that the information provided, including the list of property owners within 200' of the subject property, for this request is complete and accurate.

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Signature of Petitioner

**Do not write in this section. For Official Borough use only!**

Date of Hearing: \_\_\_\_\_

Appeal Number \_\_\_\_\_

Fee Paid: \_\_\_\_\_

Cost of Transcript \_\_\_\_\_

\$250 - Residential Zoning

\$375 - Commercial Zoning

\$500 - All Industrial Uses

