

UPPER MILFORD TOWNSHIP: ZONING HEARING BOARD A GUIDE FOR USE BY RESIDENTS

PROCEDURES

Residents are required to complete an Application Form for a Building/Use Permit which are available at the Township Building when planning building construction on their property or when proposing to change the use they make of their property. Applications must be clearly legible and must be accompanied by any applicable plans, property surveys, and /or drawings which will assist the Township Zoning Officer in reviewing your proposals.

If your Application is denied by the Zoning Officer, you will receive a written explanation. This written notice will:

- provide an explanation/reason for the denial
- list the sections of the Township's Zoning Ordinances which apply
- explain the Notice of Appeal form (if you wish to appeal the Zoning Officer's decision to the Zoning Hearing Board) & the fees which apply
- provide the deadlines for filing your Notice of Appeal form and upcoming meeting dates for Appeals to the Zoning Hearing Board

After your Notice of Appeal form has been properly filed with the Zoning Hearing Board, a hearing is conducted to render a decision on your Appeal request. Your Notice of Appeal form must be clearly legible and accompanied by any applicable plans, fees, property surveys, and/or drawings with measurements (ideally to scale) which will assist the Zoning Hearing Board in understanding your Appeal.

Approximately one week prior to the hearing by the Zoning Hearing Board, all owners of property located within 200 feet of the Appellant's property shall receive written notice of such Appeal.

COMING BEFORE THE ZONING HEARING BOARD (ZHB)

In order to file an Appeal with the Zoning Hearing Board, an Appellant must be an **Owner** or an **equitable owner** of the property in question. **Equitable Ownership** must be demonstrated to the Zoning Hearing Board in any one of the following ways:

1. You are a **Lessee** and have written approval of your proposal by your landlord.
2. You have a written **Agreement of Sale** for real property or an **Agreement to Lease**.

PARTIES TO THE PROCEEDINGS

Anyone desiring to be a party to the hearing by the Zoning Hearing Board must enter an appearance by filling out the form provided at the hearing. You must include your name, address, and the persons or organization you are representing and if you wish to receive a copy of the written decision.

In order to appeal a decision of the Zoning Hearing Board to the County Court of Common Pleas, you must have been a party to the hearing conducted by the Zoning Hearing Board (ZHB).

An appellant or any other aggrieved party may file an appeal to the County Court of Common Pleas within **30 days after the date of the official written decision** by the Zoning Hearing Board.¹

A party may appeal to the Commonwealth Court of Pennsylvania **within 30 days after the official decision of the Court of Common Pleas**. Note: you must have been a party to the appeal to the ZHB and to the Court of Common Pleas if you wish to appeal to the Commonwealth Court of Pennsylvania.

CONDUCT OF THE HEARING BY THE ZONING HEARING BOARD

- Any party at the Hearing has the right to be represented by legal counsel.
- Formal rules of evidence do not apply as in a court of law. Anyone desiring a stenographic record of the proceedings may obtain a copy at his or her own expense.
- The Appeal is read by the Chair of the Zoning Hearing Board. The Appellant is then given the opportunity to present his/her proposal to the ZHB. The ZHB will take testimony, ask questions, and discuss findings of the facts, case law, & the testimony presented. Parties wishing to speak for and against the appeal shall state their names for the record and will address the ZHB. All parties will be given an opportunity to speak; however, rude, inconsiderate, or obnoxious behavior will not be tolerated. All parties wishing to speak will be sworn "to tell the truth, the whole truth, and nothing but the truth" by the official court reporter.
- The Zoning Hearing Board may render its decision after all testimony and evidence is presented. If specific requests are granted, the Appellant shall be aware that a written decision will be forwarded **within 45 days from the date of the hearing** and that an appeal could be filed by an aggrieved party against that decision to the County Court of Common Pleas **within 30 days after the date of the written decision**.

¹ In certain instances, an objector may have certain rights of appeal.

AN EXPLANATION OF VARIANCES

An Application for a Variance is seeking permission to do something which does not conform to or which violates the existing Zoning Ordinances.

The Board may grant a variance only if the following findings, where relevant, are made:

THE 5 CRITERIA REQUIRED TO DEMONSTRATE “UNNECESSARY HARDSHIP:”

1. That there are unique physical circumstances or condition, including irregularity, narrowness, or shallowness of the 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; (in other words: without the granting of the variance, reasonable use of the land would be impossible)
3. That such unnecessary hardship has not been created by the appellant; (examples: 1. operating an illegal business in a residential zone and then requesting a variance because it would be too costly to relocate; 2. buying a tract of land too small as a hardship; or 3. requesting smaller lot sizes because you would like to get 3 lots out of a subdivision instead of 2 lots.)
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 of development of adjacent property, nor be detrimental to the public welfare and, (examples: 1. allowing a large industrial use in the heart of a residential district or 2. allowing a structure to be built closer to a roadway which reduces sight distances and creates a public hazard.)
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.

The Zoning Hearing Board may attach any reasonable conditions or safeguards it deems necessary to any variance granted.

AN EXPLANATION OF SPECIAL EXCEPTIONS

Special Exceptions are neither “special” nor “exceptions” nor “variances” Special Exceptions are, in fact, **permitted uses in a particular district**. These uses, where permitted by the Zoning Ordinances, must meet certain standards and criteria. This is an opportunity for the Township Supervisors to ensure that certain uses are regulated to protect the public good and safety.

The Zoning Hearing Board is empowered to determine whether an application for a “special exception” meets the prescribed standards and will not be detrimental to the public health, safety and welfare.

A special exception must be granted if all the criteria in the ordinance are met and no objectors can prove that this use will be detrimental to the public health, safety, and welfare. The ZHB can also attach reasonable conditions to the use.

A request for a “Special Exception” may be appealed to higher courts as with “Variance” appeals.

SPECIAL EXCEPTION USES

- A. Purpose. Before a zoning permit is granted for any use listed as a special exception use in this Ordinance, a Site Plan shall be reviewed by the Planning Commission and approved by the Zoning Hearing Board. This procedure is provided because of the considerable impact that these uses tend to have on a community.
- B. Procedure.
1. The Zoning Officer shall deny a zoning permit for the proposed development until written approval of the Zoning Hearing Board is obtained.
 2. All applicants for a special exception use shall submit three (3) sets of Site Plans for the proposed use to the Zoning Hearing Board as part of the application for a zoning permit.
 3. All Site Plans shall contain the information required in Section 409 C.
 4. The Zoning Hearing Board shall forward one (1) copy of the Site Plan to the Zoning Officer and one (1) copy to the Planning Commission within five (5) days of receiving the submission.

5. The Zoning Officer shall, prior to the next regularly scheduled Zoning Hearing Board meeting, review the Plan to determine compliance with this Ordinance and submit a written report to the Zoning Hearing Board.
6. The Planning Commission shall, prior to the next regularly scheduled Zoning Hearing Board meeting, review the Plan to determine compliance with this Ordinance and submit a written recommendation to the Zoning Hearing Board.
7. The Board shall not decide the case without reviewing the reports received from the Zoning Officer and Planning Commission. Failure of either the Zoning Officer and Planning Commission. Failure of either the Zoning Officer or the Planning Commission to submit a written report prior to the next regularly scheduled meeting shall not prevent the Board from hearing and deciding the request.
8. The Board shall hear and decide such request for a special exception use under the procedures of Article 8, Section 805 I.
9. The decision of the Board shall be in writing and shall be communicated to the applicant in accordance with Article 8, Section 805 J.

C. Approval of Special Exception Uses.

1. The Zoning Hearing Board shall approve any proposed special exception use if they find adequate evidence that any proposed use will meet:
 - a. All of the general standards listed in Section 312 D., and
 - b. All of the specific standards for the proposed use listed in Section 312 E.
2. In granting a special exception, the Board may require 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.

D. General Standards. Each special exception use shall comply with all of the following general standards:

1. In conformance with the spirit, purposes, intent, and all applicable requirements of this Ordinance.
2. In conformance with all applicable provisions of all other Township Ordinances.
3. In accordance with the Comprehensive Plan.
4. In conformance with all applicable State and Federal laws, regulations, and requirements.

5. Suitable for the particular location in question.
6. Not detrimental to the public health, safety or welfare.

There are additional standards depending on specific special exception use. Please see the ordinance.

FOR MORE INFORMATION ON ZONING RELATED ISSUES:

Please contact the Zoning Officer, Township of Upper Milford, Lehigh County, PA at 610-966-3223.

Township Offices are open Monday through Friday from 8:00 a.m. to 4:00 p.m.

This guide was designed as an aid for residents and should not be regarded as all encompassing or as a legal document. Residents should consult the Zoning Ordinance of Upper Milford Township and the Pennsylvania Municipalities Planning Code.

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