

Chapter 89

ZONING HEARING BOARD

§ 89-1. Administration and procedure.

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§ 89-5. Time limitations for variances and special exceptions.

[HISTORY: Adopted by the Borough Council of the Borough of East Washington 9-11-1972 by Ord. No. 350. Amendments noted where applicable.]

GENERAL REFERENCES

Planning Commission — See Ch. 53.

Zoning — See Ch. 340.

§ 89-1. Administration and procedure.

- A. Creation. The Board of Adjustment of East Washington Borough became a Zoning Hearing Board in accordance with the provision of Act No. 247, on January 1, 1969.¹ All matters brought before the Board after said date shall be heard and completed under the provisions of this chapter, which may be amended from time to time.
- B. Membership.
- (1) The membership of the Board shall consist of three residents of the Borough appointed by the Borough Council. Their terms of office shall be three years and shall be so fixed that the term of office of one member shall expire each year.
 - (2) The Board shall promptly notify the Borough Council of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.
 - (3) Members of the Board shall hold no other office within the Borough, except that not more than one member of the Board may also be a member of the Borough Planning Commission.
 - (4) Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Borough Council which appointed the member, taken after the member has received 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.
- C. Organization. The 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

1. Editor's Note: See 53 P.S. 10901 et seq.

members of the Board, but the 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 Board as provided in § 89-2. The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Borough and laws of the commonwealth. The Board shall keep full public records of its business and shall submit a report of its activities to the Borough Council once a year.

- D. Expenditures. Within the limits of funds appropriated by the Borough Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties as may be fixed by the Borough Council, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members of the Borough Council.

§ 89-2. Notice, hearing.

- A. Notice. The Board shall conduct hearings and make decisions in accordance with § 89-2B and C. Notice shall be given to the public, the applicant, the Washington County Planning Commission, the Borough Secretary, and such other persons as the Borough Council shall designate by ordinance, and to any person who has made a timely request for the same. Notices shall be given at least 15 days before such hearing and in such manner as shall be prescribed by the rules of the Board. The Borough Council may establish reasonable fees, based on cost, to be paid by the applicant and by persons requesting any notice not required by ordinance.
- B. Conduct.
- (1) Required hearings shall be conducted by the Board, or the 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 Board, but the parties may waive decision or findings by the Board and accept the decision or findings of the Hearing Officer as final.
 - (2) The parties to the hearing shall be any person who is entitled to notice under § 89-2A without special request therefor who has made timely appearance of record before the Board and any other person permitted to appear by the Board.
 - (3) The Chairman or Acting Chairman of the Board or the Hearing Officer presiding shall have 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.
 - (4) 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.
 - (5) Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.

- (6) The Board or the Hearing Officer, as the case may be, shall keep a record of the proceedings, either stenographically or by sound recording, and a transcript of the proceedings and copies of graphic or written material received in evidence, shall be made available to any party at cost.
- (7) The 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; shall not take notice of any communication, reports, staff memoranda, or other materials unless the parties are afforded an opportunity to contest the material so noticed; and shall not inspect the site or its surroundings with any party or his representative unless all parties are given an opportunity to be present.

C. Decisions.

- (1) The 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 45 days. Each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of any 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 Board shall make his report and recommendations available to the parties and the parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings. Where the Board has power to render a decision, and the Board or the Hearing Officer, as the case may be, fails to render the same within the period required by this chapter, the decision shall be deemed to have been rendered in favor of the applicant.
- (2) 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/her not later than the day following its date. To all other persons who have filed their name and address with the Board not later than the last day of the hearing, the Board shall provide by mail, or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

§ 89-3. Powers and duties.

- A. Appeals from the Zoning Officer. The Board shall hear and decide appeals where it is alleged by the appellant that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of a valid ordinance or map or any valid rule or regulation governing the action of the Zoning Officer. Nothing contained herein shall be construed to deny to the appellant the right to proceed directly in court, where appropriate, pursuant to Pa. R.C.P. Sections 1091 to 1098, relating to mandamus.
- B. Variances.

- (1) The Board shall hear requests for variances where it is alleged that the provisions of the zoning chapter² 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:
 - (a) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographic 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 chapter in the neighborhood or district in which the property is located;
 - (b) 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 chapter and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property;
 - (c) That such unnecessary hardship has not been created by the appellant;
 - (d) 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;
 - (e) 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;
 - (f) That no use different from that permitted in the zoning district shall be permitted; and
 - (g) That any such action in an individual case shall not be construed or used as a precedent in the adjudication of any other appeal.
- (2) In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning chapter. Financial hardship shall not be construed as the basis for granting variances.

C. Special exception.

- (1) In any instance where the Board is required to consider a special exception in accordance with the provisions of this chapter, the Board shall, among other things, consider the following standards:
 - (a) Determine that the proposed special exception will not substantially injure or detract from the use of neighboring property or from the character of the

2. Editor's Note: See Ch. 340, Zoning.

neighborhood and that the use of property adjacent to the area included in the proposed change or plan is adequately safeguarded.

- (b) Determine that the proposed special exception will serve the best interests of the Borough of East Washington, the convenience of the community, and the health, safety, morals and public welfare of the residents of the area.
 - (c) Consider the effect of the proposed special exception upon the logical, efficient and economical extension of public services and facilities, such as public water, sewers, police and fire protection, and public schools.
 - (d) Impose such conditions, in addition to those required, as are necessary to assure that the intent of the zoning chapter is complied with, which conditions may include, but are not limited to, harmonious design of buildings, planting and its maintenance as a sight or sound screen, the minimizing of noxious, offensive or hazardous elements, adequate standards of parking, sanitation, traffic conditions in the area and utility availability.
 - (e) Determine that the unique circumstances for which the special exception is sought were neither created by the owner of the property, nor were due to or the result of general conditions in the zoning district in which the property is located.
 - (f) Financial hardship shall not be construed as the basis for granting special exceptions.
- (2) In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of the zoning chapter.³
- D. Interpretation, building location, use. Whenever an issue before the Board involves the question of location of a building or use in relations to the Borough's Long-Range Comprehensive Plan, the Board may request and may consider a report thereon from the Borough Planning Commission; when requested, the Board shall interpret the provisions of this chapter⁴ where the actual street layout varies from the street layout shown on the Zoning District Map in such a way as to carry out the intent and purpose of the Map.
- E. Challenges to the validity of any ordinance or map. Except as provided in § 89-3B relating to variances, the Board shall have no power to pass upon the validity of any provision of an ordinance or map adopted by the Borough Council. Recognizing that challenges to the validity of an ordinance or map may present issues of fact and of interpretation which may lie within the special competence of the Board, and to facilitate speedy disposition of such challenges by a court, the Board may hear all challenges wherein the validity of the ordinance or map presents any issue of fact or of interpretation not hitherto properly determined at a hearing before another competent agency or body and shall take evidence and make a record thereon. At the conclusions of the hearing, the Board shall decide all contested questions of interpretation and shall

3. Editor's Note: See Ch. 340, Zoning.

4. Editor's Note: See Ch. 340, Zoning.

make findings on all relevant issues of fact which shall become part of the record on appeal to the court.

§ 89-4. Appeals before the Zoning Hearing Board.

- A. Parties appellant before Board. Appeals under § 89-3A and proceedings to challenge an ordinance under § 89-3E may be filed with the Board, in writing, by any officer or agency of the municipality or any person aggrieved. Requests for a variance under § 89-3B and for special exception under § 89-3C may be filed with the Board by any landowner as defined by Pennsylvania Act No. 247.⁵
- B. Time limitation. The time limitations for raising certain issues and filing certain proceedings with the Board shall be the following:
 - (1) No issue of alleged defect in the process of enactment of any ordinance or map or any amendment thereto shall be raised in any proceeding filed with the Board not later than 30 days from the time such ordinance, map or amendment takes effect, unless the person raising such issue alleges and proves that he/she failed to receive adequate notice of the enactment or amendment. If such person has succeeded to his interest after the enactment of the ordinances, adequate notice to his predecessor in interest shall be deemed adequate notice to him/her.
 - (2) No person shall be allowed to file any proceeding with the Board later than 30 days after any 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/she failed to receive adequate notice of such approval. If such person has succeeded to his interest after such approval, adequate notice to his predecessor in interest shall be deemed adequate notice to him/her.

§ 89-5. Time limitations for variances and special exceptions.

- A. Whenever the Zoning Hearing Board shall grant either a special exception or variance, in accordance with all terms and conditions of this chapter and in accordance with any other special conditions or requirements which might be stipulated for said variance or special exception, the applicant shall be duly notified at the time of notification of approval that said variance or special exception shall be valid for a period of six months from the date of approval, and said variance or special exception shall expire at the end of said six-month period if:
 - (1) Reasonable efforts have not been made to expedite construction or occupancy sought under the variance or special exception;
 - (2) No effort has been made to secure building permits or occupancy permits as required; or

5. Editor's Note: See 53 P.S. 10901 et seq.

- (3) Visible and measurable progress has not been completed on the project or projects which required the issuance of the variance or special exception.
- B. In the case of such expiration, the original applicant or recipient of said variance or special exception shall be required to submit evidence to the Zoning Hearing Board in any request for an extension of said variance or special exception. The decision in this matter shall be the responsibility of the Zoning Hearing Board, and if denied, the original variance or special exception shall be null and void and the original procedures shall be followed for reissuance of any said waivers from the terms of this chapter.⁶

6. Editor's Note: See Ch. 340, Zoning.