

Part 24

Zoning Hearing Board

§27-2401. Zoning Hearing Board – General Provisions.

There has previously been created, and its continuation and existence shall be and hereby is ratified, the Zoning Hearing Board of London Grove Township, except as the context clearly otherwise requires, the term “Board” within this Part shall refer to the Zoning Hearing Board.

§27-2402. Membership of the Board.

The membership of the Board shall consist of three residents of London Grove Township, appointed by resolution of the Board of Supervisors of London Grove Township. The terms of office of the members of the Board shall be three years and shall be so fixed that the term of office of one member shall expire each year. The Board shall promptly notify the Board of Supervisors of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the municipality. Alternative members to the Board may be appointed per the provisions of the MPC.

§27-2403. 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 the Board of Supervisors 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.

§27-2404. Organization of the Board.

1. 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 members of the Board.

2. The Board may make, alter and rescind rules and forms for its procedure consistent with this Chapter of London Grove Township and the laws of the

Commonwealth of Pennsylvania. The Board shall keep full public records of its business, which records shall be the property of London Grove Township and they shall submit a report of the Board's activities to the Board of Supervisors once a year and as may be requested by the Supervisors from time to time.

§27-2405. Fees and Expenditures for Services.

1. Within the limits of funds appropriated by the Board of Supervisors, the Board may employ or contract for and fix the compensation of legal counsel as the need arises. The legal counsel shall be an attorney other than the London Grove Township Solicitor. The Board may also employ or contract for and fix the compensation of experts and other staff and make contract for services as it shall deem necessary. The compensation of legal counsel, experts and staff and the sums expended for services shall not exceed the amount appropriated by the Board of Supervisors for this use. For the same purposes, the Board of Supervisors may accept grants of money and services from private sources and from the county, state and federal governments.

2. Members of the Board shall receive compensation for the performance of their duties as may be fixed by the Board of Supervisors, but in no case shall it exceed the rate of compensation authorized to be paid to members of the Board of Supervisors.

3. The Board of Supervisors of London Grove Township may prescribe reasonable fees with respect to the administration of this Chapter and with respect to hearings before the Zoning Hearing Board. Fees for these hearings may include compensation for the secretary and members of the Zoning Hearing Board, notice advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural or otherwise technical consultants or expert witness costs. The fees and the method of payment thereof shall be prescribed by resolution of the Board of Supervisors.

4. An applicant, prior to appearing before the Hearing Board, shall deposit with the Treasurer of the Township such a sum of money as set forth in the fee schedule adopted by the Board of Supervisors to pay the cost of the hearing, provided that funds deposited in excess of the actual cost of the requested hearing shall be returned to the applicant upon completion of the proceedings and in the event that the costs of the hearing exceed the funds deposited, the applicant shall pay to the Treasurer of the Township funds equal to such excess cost. Failure to

pay such fees when billed shall be cause for the application to be deemed incomplete.

§27-2406. Jurisdiction of the Zoning Hearing Board

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

A. Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to §609.1 and §609.9.1(b)(4) of the MPC.

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 and appeal taken within 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 a determination by the Township 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.

E. Applications for special exceptions under this Chapter or floodplain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to other applicable sections of this Part, or to §910.2 of the MPC.

F. Applications for special exceptions under this Chapter or floodplain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to other applicable sections of this Part, or to §910.2 of the MPC.

G. Appeals from the determination of any officer or agency charged with the administration of this chapter.

H. Appeals from the Zoning Officer's determination under this Part or to §916.2 of the MPC.

I. Appeals from the determination of the Zoning Officer or Township Engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and stormwater management insofar as the same relate to development not involving applications under Article 5 of the MPC.

J. 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.

K. Appeals which an applicant may elect to bring before it with respect to any municipal ordinance or requirement pertaining to the same development plan or development. In any such case, the Board shall have no power to pass upon the non-zoning issues, but shall take evidence and make a record thereon. At the conclusion of the hearing, the Board shall make findings on all relevant issues of fact which shall become part of the record on appeal to the court.

Appeals under this Section and proceedings to challenge any ordinance under this Section may be filed with the Zoning Hearing Board in writing by the officer or agency of the Township, or any person aggrieved. Request for variance under applicable sections of this Part may be filed with the Zoning Hearing Board by any landowner or any tenant with the permission of such landowner.

2. Except as to clauses subsections 1.C, 1.D, and 1.E which go to the Zoning Hearing Board, the London Grove Township Board of Supervisors shall have exclusive jurisdiction to hear and render final adjudications in the following matters.

A. All applications for approval of subdivisions or land developments under the applicable ordinances of London Grove Township.

B. Applications for conditional use under the express provisions of this Chapter.

C. All petitions for amendments to land use ordinances, pursuant to the procedures set forth herein.

§27-2407. Zoning Hearing Board's Functions – Variances.

1. 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 that all of the following findings are made where relevant in a given case:

A. 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.

B. 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.

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 at issue.

F. That in the case where the property in part or totally is located within the regulatory floodway the granting of a variance will not increase the base flood elevation.

2. Where the issuing of a variance will permit the construction of a structure or portion thereof below the base flood elevation in the Floodplain District the applicant shall be notified in writing over the signature of the Township Zoning Officer that the construction of a structure with a location below the base flood elevation will increase the risk to life and property and that flood insurance premium rates for the affected structure will increase. A record of all variance actions including the reasons and justification for the issuance of the variance shall be maintained.

3. 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.

§27-2408. Zoning Hearing Board's Functions – Special Exception

Where the Board of Supervisors, 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.

A. In hearing requests for special exceptions, the Board shall:

(1) Give consideration to the size, scope, extent, and character of the exception desired and assure itself that such request is consistent with the plan for future land use in the Township, and with the spirit, purpose and intent of this Chapter.

(2) Consider the suitability of the property for the use desired, and find that the new or expanded use, if approved, will be susceptible of regulation or restriction by appropriate conditions and safeguard.

(3) Assure that the specific performance standards set forth in Part 18 of this Chapter shall be made applicable to regulate the nature, intensity, density, design, layout and operation of the proposed land use permitted as a special exception. The Zoning Hearing Board may waive the requirements for certain specific performance standards if the generic type of use poses no

potential for significant impact upon such standards. The burden of proof shall be placed on the applicant.

(4) Consider, where pertinent, that the facility provides safe and convenient pedestrian access and internal circulation within the grounds of the facility and particularly for points of access from the facility to the parking space.

(5) Consider, where pertinent, that adequate screening is provided between the lands in question and surrounding residential uses and residentially zoned districts to screen the facility from view, preclude any glare from lighting or noise from being ascertained beyond the boundaries of the property.

(6) Consider, where pertinent, the adequacy of security and supervision including, but not limited to, information of an adequate supervisor to student or patient ratio and such other evidence as may be required to establish this condition to the satisfaction of the Board.

(7) Consider, where pertinent, the effects of the proposal with respect to congestion on the roads or highways, the most appropriate use of the land, conserving the value of buildings, safety from fire, panic and other dangers, adequacy of light and air, the prevention of overcrowding of land, congestion of population and adequacy of public and community services and determine that approval of the application will not have a substantially adverse effect thereon.

(8) Make certain that the proposed change is reasonable in terms of the logical, efficient, and economical extension of public services and facilities, including but not limited to public water, sewers, police and fire protection, transportation and public schools.

(9) Be assured that the natural features and processes characterizing the proposed site and its surroundings shall not suffer unmitigated degradation, that the management of stormwater, the provision of water and/or sewer service, and any other facility or service proposed are consistent with Township goals, practices, and plans in these regards, and that demand for water and energy by the proposed use shall be minimized to the optimal extent.

(10) Take into consideration the character and type or development in the area surrounding the location for which the request is made and determine that the proposed change or modification, if permitted, will constitute an appropriate use in the area and will not substantially injure or detract from the use of surrounding property or from the character of the neighborhood.

(11) Guide the development of highway frontage insofar as possible so as to limit the total number of access points, reduce the need for on-street parking, and encourage the frontage of buildings on parallel marginal access roads or on roads perpendicular to the highway.

(12) Consider the probable effects of proposed development on highway congestion and insure that adequate access arrangements are provided in order to protect major highways from undue congestion and hazard.

(13) Impose such conditions, in addition to those required as are necessary to assure that the intent of this Chapter is complied with, and which are reasonably necessary to safeguard the health, safety, morals and general welfare of the Township at large and the residents and owners of the property adjacent to the area in which the proposed use is to be conducted. Conditions may include, but are not limited to, harmonious design of buildings, aesthetics, hours of operation, lighting, numbers of persons involved, noise, sanitation, safety, smoke and fume control and minimizing noxious, offensive or hazardous elements.

(14) Consider the impact the exception will have upon on-site and adjacent historic resources of the Township.

(15) In addition to conforming to the general conditions contained in this Part, all applications for special exception for an automobile service station and/or automobile repair facility must conform to all of the special conditions specified in this Section.

(a) All activities except those to be performed at the fuel pumps shall be performed within a completely enclosed building.

(b) Fuel pumps, oiling or greasing mechanisms, or other service appliances installed in connection with any gasoline service

station, or repair facility may be placed within the front yard, but in no case closer than 30 feet from any street line or property line.

(c) Automobiles taken to a service station or repair facility for outside storage because of an accident shall remain no longer than 15 days from the day the car arrives at the station unless otherwise extended by the Zoning Officer.

(d) All automobile parts and inoperable motor vehicles shall be stored within a building.

(e) No portion of the lot shall be used for private parking or the parking of other vehicles except for employees and customers.

(f) An automobile service station or automobile repair facility must have adequate fire extinguishers, ample non-smoking signs posted and any other appropriate safeguards deemed necessary for the public safety. A permit shall be obtained from the State Fire Marshal. The Hearing Board may specify screening to be provided in front of the gasoline pumps, the number and sizes of permitted signs, display of merchandise for sale, and exclusion of canopies from setback requirements.

§27-2409. Time Limitations.

1. No person shall be allowed to file any proceeding with the Board later than 30 days after an application for development, preliminary or final, has been approved by an appropriate officer, agency or body of London Grove Township 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 an adverse decision by the Zoning Officer on a challenge to the validity of an ordinance or map pursuant to standards and procedures found herein and MPC §916.2 shall preclude an appeal from a final or preliminary approval, based upon a challenge to this Chapter validity.

2. All appeals from determinations adverse to the landowners shall be filed by the landowner within 30 days after notice of the determination is issued.

§27-2410. Validity of Ordinance – Substantive Questions.

1. A landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof which prohibits or restricts the use of development of land in which he has an interest shall submit the challenge either:

A. To the Zoning Hearing Board.

B. To the Board of Supervisors, together with a request for a curative amendment under MPC §609.1.

2. Persons aggrieved by a use or development permitted on the land of another by an ordinance or 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.

3. The submission referred to in subsections 1 and 2 shall be governed by the following:

A. In challenges before the Zoning Hearing Board, the challenging party shall make a written request to the Zoning Hearing Board that it hold a hearing on its challenge. The request shall contain the reasons for the challenge. Where the landowner desires to challenge the validity of such ordinance and elects to proceed by curative amendment before the Board of Supervisors per the procedures prescribed herein, his application to London Grove Township shall contain, in addition to the requirements of the written request hereof, the plans and explanatory materials describing the use or development proposed by the landowner in lieu of the use or development permitted by the challenged ordinance or map. Such plans or other materials shall not be required to meet the standards prescribed for preliminary or final approval or for the issuance of a permit, so long as they provide reasonable notice of the proposed use or development and a sufficient basis for evaluating the challenged ordinance or map in light thereof. Nothing herein contained shall preclude the landowner from first seeking a final approval before submitting his challenge.

B. If the submission is made by the landowner to the Board of Supervisors under subsection 1.B, the request also shall be accompanied by an amendment or amendments to this Chapter proposed by the landowner to cure the alleged defects therein.

C. If the submission is made to the Board of Supervisors, the Township solicitor shall represent and advise it at the hearing or hearings.

D. The Board of Supervisors may retain an independent attorney to present the defense of the challenged ordinance or map on its behalf and to present their witnesses on its behalf.

E. Based upon the testimony presented at the hearings or hearings, the Board of Supervisors or the Zoning Hearing Board, as the case may be, shall determine whether the challenged ordinance or map is defective, as alleged by the landowner. If a challenge heard by the Board of Supervisors is found to have merit, the Board of Supervisors shall proceed as provided in §609.1 of the MPC. If a challenge heard by the Zoning Hearing Board is found to have merit, the decision of the ZHB shall include recommended amendments to the challenged ordinance which cure the defects found. In reaching its decision, the Zoning Hearing Board shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:

(1) The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.

(2) If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of this Chapter or map.

(3) The suitability of the site for the intensity of use proposed by the site's soils, slopes, Woodlands, wetlands, floodplains, aquifers, natural resources and other natural features.

(4) The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, historic resources, natural resources and natural features, the degree to which these are protected or

destroyed, the tolerance of the resources to development and any adverse environmental impacts.

(5) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

F. The Board of supervisors or the Zoning Hearing Board, as the case may be, shall render its decision within 45 days after the conclusion of the last hearing.

G. If the Board of Supervisors or the Zoning Hearing Board, as the case may be, fails to act on the landowner's request within the time limits referred to in subsection 3.F, a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.

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

5. Public notice of the hearing shall include notice that the validity of this Chapter or 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.

6. The challenge shall be deemed denied when:

A. The Board of Supervisors or the Zoning Hearing Board, as the case may be, fails to commence the hearing within the time limits set forth in subsection 4.

B. The Board of Supervisors notifies the landowner that it will not adopt the curative amendment.

C. The Board of Supervisors adopts another curative amendment which is unacceptable to the landowner.

D. The Board of Supervisors or the Zoning Hearing Board, as the case may be, fails to act on the request within 45 days after the close of the

last hearing on the request, unless the time is extended by mutual consent by the landowner and the Township.

7. Where, after the effective date of this Chapter, a curative amendment proposal is approved by the grant of a curative amendment application by the Board of Supervisors pursuant to §909.1(b)(4) of the MPC or a validity challenge is sustained by the Zoning Hearing Board or the court acts finally on appeal from denial of a validity challenge, and the challenge so approved requires a further application for subdivision or land development, the developer shall have two years from the date of such approval to file an application for preliminary approval. Within the two-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or sustained validity challenge. Upon the filing of the preliminary plan, the provisions of §508(4) of the MPC shall apply. Where the proposal appended to the curative amendment application or the validity challenge is approved but does not require further application under any subdivision or land development ordinance, the developer shall have one year within which to file for a building permit. Within the one-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. During these protected periods, the court shall retain or assume jurisdiction for the purpose of awarding such supplemental relief as may be necessary.

§27-2411. Procedure to Obtain Preliminary Opinion.

In order not to unreasonably delay the time when a landowner may secure assurance that this Chapter or map under which he proposed to build is free from challenge, and recognizing that the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the landowner may advance the date from which time for any challenge to this Chapter or map will run by the following procedure:

A. The landowner may submit plans and other materials describing his proposed use or development to the Zoning Officer for a preliminary opinion as to their compliance with the applicable ordinances and maps. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed

use or development and a sufficient basis for a preliminary opinion as to its compliance.

B. If the Zoning Officer's preliminary opinion is that the use or development complies with this Chapter or map, notice thereof shall be published once each week for two successive weeks in a newspaper of general circulation in the Township. Such notice shall include a general description of the proposed use or development and its location, by some readily identifiable directive, and the place and times where the plans and other materials may be examined by the public. The favorable preliminary approval under this Section and the time therein specified for commencing a proceeding with the Zoning Hearing Board shall run from the time when the second notice thereof has been published.

§27-2412. Hearings

The procedures herein described for the conduct of hearings shall be equally applicable to hearings before the Board of Supervisors in its adjudicative capacity and to the hearings before the Zoning Hearing Board. Where the term "Board" is used in this Section, it shall apply to whichever Board is holding the hearings and has jurisdiction to render its decision thereon.

A. Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer, such other persons as London Grove Township shall designate by ordinance and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provision, by rules of the Board. 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 week prior to the hearing. When the Hearing Board shall so order, by mailing or delivering a notice thereof to the owner, if his residence is known, or the occupier of every lot surrounding the affected tract, provided that failure to give notice as required by this paragraph shall not invalidate any action taken by the Hearing Board. The notice herein required shall state the location of the affected tract, the general nature of the question involved, and the date, time and location of the hearing.

B. The hearing shall be held within 60 days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.

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

D. The chairman or acting chairman of the Board 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 the documents requested by the parties.

E. The parties shall have the right to be represented by legal counsel and shall be afforded the opportunity to respond and present evidence and arguments and cross-examine adverse witnesses on all relevant issues.

F. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.

G. The Board shall keep a stenographic record of the proceedings. The appearance fee for a public stenographer shall be shared equally by the applicant and the Board. The cost of the original transcript shall be paid by the Board if the transcript is ordered by the Board or shall be paid by the person appealing from the decision of the 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.

H. The Board shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and giving 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 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 representative unless all parties are given an opportunity to be present.

I. The Board shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the Board. 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 this act or 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. Where the Board fails to render the decision within the period required by the subsection, or fails to hold the required hearing within 60 days from the date of the applicant's request for a hearing, 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 the failure of the Board to meet or render a decision as hereinabove provided, the Board shall give public notice of said decision within 10 days from the last day it could have met to render a decision in the same manner as provided in paragraph A of this Section. If the 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.

J. 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 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.