

TOWAMENCIN TOWNSHIP

GUIDELINES FOR APPLICANTS APPEARING BEFORE THE TOWAMENCIN TOWNSHIP ZONING HEARING BOARD

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The following information is presented to assist applicants in presenting their applications to the zoning hearing board. It is neither legal advice, nor an all-inclusive list of what steps you must follow in order to obtain the appropriate relief from the zoning hearing board. It is a guide for preparing for the public hearing. Applicants should consider retaining an attorney to represent them before the zoning hearing board, since applications do involve specific legal issues. Applicants may represent themselves, but only licensed attorneys may represent applicants at a hearing.

I. PURPOSE OF THE ZONING HEARING BOARD

The zoning hearing board has three principal functions:

1. To grant variances from the provisions of the zoning ordinance where the zoning ordinance creates an unnecessary hardship on the use of land;
2. To grant special exceptions specifically permitted by the zoning ordinance in those situations where the applicant qualifies; and
3. To hear appeals from the determinations of the zoning officer when the applicant believes the zoning officer has committed an error or has misinterpreted the law.

II. PREPARATION FOR HEARING

When a complete application is received, the zoning hearing board will schedule a public hearing and place a legal notice in the local newspaper. The zoning hearing board is required to advertise twice in the newspaper the date, time, and place of the hearing. The zoning hearing board will also post an official notice on the applicant's property.

In preparing for a zoning hearing, it is strongly recommended that the applicant provide a plan drawn to scale by a by a PA licensed surveyor or civil engineer which shows the property as well as all buildings and other structures on the property. In informing the zoning hearing board of the conditions which exist on the property, the better the plans, the better the zoning hearing board can understand and consider the application.

Photographs of the property and surrounding properties are encouraged.

It is important to have accurate information concerning dimensions. For example, if you are seeking a variance to build an addition to your house, show the zoning hearing board how far away from the property line your house is located. You should tell the zoning hearing board the dimensions of the proposed addition.

The zoning hearing board will not have any information unless you supply it. Many applications are denied because the zoning hearing board is not given sufficient and reliable information upon which it can base its decision. A hand-drawn or even a computer generated sketch is not necessarily accurate or reliable. You should know what the zoning requirements are for the zoning district in which the property is located. Photographs can be very helpful in showing the zoning hearing board an unusual condition or topographical features. Remember, however, that any documents or photographs that are given to the zoning hearing board remain a part of the public file.

Make sure that you bring at least 8 copies of plans, photographs, and other presentation materials.

You should notify any witnesses who will testify in support of your application of the time, date, and place of the hearing. The zoning hearing board does have the power to issue *subpoenas*.

III. CONDUCT OF THE HEARING

The proceedings before the zoning hearing board are similar to those which take place in court, except that the atmosphere is less formal. Witnesses must be sworn under oath or affirmed, and the proceedings are transcribed by a court reporter. For this reason, you will be asked to direct all of your testimony so that the zoning hearing board and any interested members of the public can hear the testimony. Present at the hearing will be three zoning hearing board members (or a quorum of the zoning hearing board members) and possibly one alternate member, the zoning hearing board solicitor (attorney), and the township zoning officer. The township itself has the right to participate in support or in opposition, and, therefore, the township may have a representative present at the hearing.

It is not required that you be represented by an attorney. However, zoning hearing board applications and the zoning ordinance involve legal issues, and, therefore, it is advisable to retain an attorney. Many applications involve legal issues which are based upon statutory law or court decisions. In such cases, you should follow the advice of your attorney who will prepare for the hearing and make the presentation on your behalf.

If you are making the presentation on your own, remember that it is your duty and obligation to justify to the zoning hearing board the necessity for obtaining relief. In other words, you have the burden to show the zoning hearing board that you are entitled to a variance, or that you meet the requirements for a special exception, or why the zoning officer's determination was incorrect. Do not expect the zoning hearing board to either ask you all the necessary questions or to provide legal advice. The zoning hearing board must depend on the applicant to produce all relevant information.

A typical presentation to the zoning hearing board follows three basic steps.

1. An explanation and description of the existing conditions of the property. This would include a presentation of any photographs or plans.
2. A description and an explanation of the proposed changes. This should be as detailed as necessary to properly explain to the zoning hearing board what you intend to do with your property. Additional plans can be presented, or one plan can be used to show both the existing and the proposed use of the property.
3. A list of reasons or explanations why relief is necessary. In the case of variances, the zoning hearing board looks to 5 statutory standards that it must follow before granting variances.

A variance requires proof of an “unnecessary hardship.” In general, circumstances which are personal to the applicant, as opposed to conditions of the property, cannot prove unnecessary hardship. The variance standards are as follows:

- a. The property must have unique physical circumstances or conditions.

In other words, how does your property differ from other properties in your neighborhood? Is it smaller? Is it larger? Does it have a steep hill? Are the boundaries irregular? The application of the zoning ordinance to your individual property must be different than it is to other properties in your neighborhood, although other properties may also share the unique physical condition.

- b. Circumstances or conditions must prevent the use of the property in strict conformity with the zoning ordinance

The circumstances mentioned above must prevent a reasonable use of the property. For instance, if you are expanding your existing building, can the expansion be located at another part of the building where a variance is not required? Is a two-car garage necessary, when a one car garage can be constructed without the need for a variance? These are considerations for your presentation to the board.

- c. The circumstances are conditions which have not been created by the property owner.

You or prior owners cannot have created the peculiar circumstances or conditions which exist. You must show that the conditions complained of exist beyond your control, such as the existence of a steep hill, floodplain, or other unusual and restricting natural conditions.

- d. The change that you wish to make will not adversely affect neighboring properties or the character of the neighborhood.

An important factor is the effect of your proposal upon neighboring properties and their owners in the neighborhood in which you are located. You should consider whether or not your proposal will have any adverse effect. Sometimes your neighbors will agree with your suggested change and will demonstrate their agreement to the zoning hearing board, either in writing or by appearing in person. Support of neighbors is always an important consideration, although it is not determinative of the outcome.

You must remember, however, that while this is helpful to the zoning hearing board, it does not mean that the zoning hearing board will automatically grant the relief. The zoning hearing board must consider the effect upon the properties in your neighborhood. Would this be detrimental to your neighborhood? Would this detract from the property values of your neighborhood? Needless to say, the smaller the effect of your proposed construction upon your neighbor's property, the better it is.

- e. The request must seek relief which represents the least modification possible.

Is the variance which you seek the least modification possible of the zoning regulation in issue to allow a reasonable use of the property?

With rare exceptions, the zoning hearing board cannot grant a variance unless the applicant proves unnecessary hardship. The applicant has a substantial burden in proving unnecessary hardship, and a variance is appropriate only where the property, not the person, is subject to the unnecessary hardship. Personal reasons or circumstances do not constitute legal hardship in a variance case.

Each of these items listed above should be treated separately. During your presentation, the zoning hearing board may have questions for you. Some of these questions may ask you to agree to certain conditions. The zoning hearing board is permitted to condition its decision in such a way as to minimize the impact on the neighborhood based on the testimony and other evidence presented at the hearing.

When the zoning hearing board has finished its questions, your neighbors may want to ask questions or speak for or against your application. They have a right to do so, since the hearing is part of a public process. Persons or organizations who opposed an application may be represented by an attorney, who will have the right to ask questions and present evidence.

After the hearing is closed, the zoning hearing board will recess to confer with its solicitor. The zoning hearing board will vote on the application, either the same night of the hearing or at a subsequent public meeting of the zoning hearing board. The decision is

announced by the zoning hearing board at a public meeting and then it is mailed to the applicant and other parties to the hearing.

The zoning hearing board has 45 days from the last hearing to send a written decision. Appeals to court must be filed within 30 days of the entry of the decision (which is the date of mailing). An experienced attorney should be consulted to explain the legal implications, timing, and procedures for appeals.

Your appearance before the zoning hearing board will be easier if you prepare for the hearing. No approvals are automatic. The zoning hearing board is an independent quasi-judicial board. ***By law, communication with the zoning hearing board members while an application is pending is not permitted.***

Prepare your exhibits and be sure that they are clear and legible. Copies should be made for each of the three zoning hearing board members and possible 1 alternate member, the lawyer for the zoning hearing board, the court reporter, and the zoning officer, plus copies for interested neighbors. Remember that the more accurate the information you give the zoning hearing board concerning your application, the more attention can be given to the details of your application. Always remember that it is up to you to convince the zoning hearing board that it should grant the relief you request under the legal guidelines found in both the Township zoning ordinance and under state law.