

# CITY OF JEANNETTE

## ZONING HEARING BOARD APPEALS

The Zoning Hearing Board hears cases where anyone feels aggrieved by the terms of the Ordinance or the decision and enforcement of the Zoning Officer. It is a Quasi-legal fact finding body. Its function is to hold hearings on request for variances, special exemptions and appeals on decisions enforced by the Zoning Officer.

Applications for an appeal are filed by the property owner at the CITY OF JEANNETTE TAX and Zoning Office along with the required fees before the 21<sup>st</sup> day of the month... A public hearing will be scheduled within 60 days. A legal notice of advertisement in a local newspaper will appear during a 2 week period and the affected properties will be posted to notify any affected persons of their right to appear and speak at the open hearing. All applicants are required to fill the application form entirely!!! Applicants can bring any witnesses, pictures, drawings to help their appeal to the hearing.

The Board has up to 45 DAYS to issue a decision.

Any party who appears at the public hearing and is aggrieved by the decision made may file an appeal with the Westmoreland County Court of Common Pleas within 30 DAYS of the Board's decision. It is wise to wait 30 days after the Board's decision to see if any parties file an appeal. On average, you should allow 2 months to complete the process.

## Variations

A variance is a means of solving the problems created by attempting to apply the general terms of the ordinance to fit the land which is regulated. It is necessary because a zoning requirement could possibly prevent any use of a property if strictly applied. A variance procedure prevents problems in applying general legislation to specific situations. All zoning ordinances contain many detailed pre-set regulations designed to be self-executing. Various setbacks and height limitations are examples of these provisions which omit administrative discretion. Variations act as a relief valve for the rigid ordinance.

## Requirements for a Variance

The Zoning Hearing Board hears requests for variations where it is alleged that the provisions of the zoning ordinance 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. Pursuant to MPC Section 910.2, the Board may grant a variance provided that all of the following findings are made where relevant in a given case:

1. 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 necessary 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; and
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.

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 ordinance.

## Variances Compared with Special Exemptions and Conditional Uses

An application for a variance seeks permission to do something which is not in conformance with or violates the zoning ordinance. A variance is an overriding of the legislative judgement, justified by the existence of “unnecessary hardship.” In contrast, an applicant for a special exemption does not seek to “vary” the ordinance. The permission the applicant seeks is one envisioned by the ordinance. Accordingly, while an applicant for a variance must show both (a) unnecessary hardship and (b) consistency with the public interest, a special exemption or conditional use case generally involves the latter.

### Special Exemptions

All zoning ordinances contain provisions for uses which are permitted by right. These are the basic uses which are permitted in the various zoning districts. For example, if a zoning ordinance contains both commercial and industrial zones, a person desiring to locate a shoe store in the commercial district is permitted to do so by right, also, a fabricating plant is free to located in an industrial zone by right. In both cases, since the zone for these specific uses is established in the zoning ordinance, they are uses permitted by right.

A special exemption is a permission or approval granted an applicant to use land in a district for a purpose other than that generally permitted outright in that district. The permission or special exemption is granted by the Zoning Hearing Board in accordance with the standards contained in the zoning ordinance, provided generally that the specific application of the use would not prove injurious to the public interest.

It is important to realize that the term “special exemption” is a misnomer. It is neither special nor is it an exemption. It is not a deviation from the zoning ordinance. An applicant for a special exemption is a use envisioned by the ordinance, and, if the express standards and criteria established by the ordinance are met, the use is one permitted by the ordinance.

### Special Exemptions Compared with Uses Permitted by Right

The difference between a use permitted without qualification and a use permitted by special exemption – and it is a significant difference from the point of view of an applicant – is that an applicant for a special exemption is subject to the jurisdiction of the Zoning Hearing Board. The function of the board is to determine whether the application is consistent with the public interest as defined in specific standards and criteria established in the ordinance. This generally involves factual determinations, and the Board is vested with discretion in evaluating the evidence presented to it.

## Special Exemptions Compared with Uses Permitted by Right (Continued)

All special exemptions for each zoning district are specifically listed under the provisions for each district. If the use an applicant desires is not permitted in the zone by right, and is not specifically listed as a special exemption, the application cannot be granted.

### Why Include Special Exemptions?

Special exemptions exist because choosing uses permitted and prohibited for each zone is too narrow for sound planning. Many matters fall in between what is consistent and that which is inconsistent with a zoning classification. Also, there are usually certain uses or activities that might logically be located in certain districts, but that should for one reason or another be very carefully located and controlled. For example, a community may have a low-density residential district with a specific use such

as a day care center or a bed and breakfast use permitted only as a special exemption. An individual wishing to utilize land in this district for such a purpose would have to apply for a special exemption. The Zoning Hearing Board would then have the opportunity to thoroughly examine the proposed land use to assure that the public interest is not violated and to attach any reasonable conditions or safeguards necessary to implement the purpose of the ordinance. If the use were permitted by right, the zoning officer would not have the opportunity to require any reasonable conditions and safeguards.

It is also customary for non-conforming uses and structures, home occupations and conversion of large single-family homes to be regulated under the special exemption device. Note that non-conformances violate the ordinance, but are protected by constitutional considerations.