

Zoning Hearing Board Guidelines and Considerations

Each member must be a resident of the municipality. Legal residence is best determined by where a person lives; it not only includes a person's intention to live somewhere, but also a physical presence. Under Section 903(a) of the MPC, a member of the zoning hearing board may not hold an elective office or be appointed to the planning commission.

The zoning hearing board is governed by the provisions of the Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, *as reenacted and amended*, 53 P.S. § 10101, *et seq.*, the zoning ordinance and by those rules of procedure and bylaws.

The zoning hearing board must become familiar with all other applicable state statutes such as the Sunshine Act, Act 94 of 1986, *as amended*, 67 Pa. C.S. § 701, *et seq.* and the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1101 *et seq.* (Ethics Act).

The zoning hearing board must become familiar with the statement of community development objectives as contained within the zoning ordinance or stated by reference to the community comprehensive plan, and shall grant the minimum relief which will insure that the goals and objectives of the community are preserved and that substantial justice is done.

Communications

A zoning hearing board functions in a quasi-judicial capacity. In such capacity, the zoning hearing board must maintain its impartiality in matters that may come before it for adjudication and decision. In making such decision, the zoning hearing board is limited to the record made before it during required hearing(s).

Evidence

Formal rules of evidence do not apply in hearings conducted by the zoning hearing board. Section 908(6) of the MPC authorizes the zoning hearing board to exclude any such irrelevant, immaterial, or unduly repetitious evidence that may be heard during the course of the hearing. Hearsay evidence – such as testimony about something the witness stated was reported by another who heard or saw it – if not objected to, is given evidentiary weight as the zoning hearing board deems appropriate with respect to the issues to be decided and in the consideration of the evidence as the whole.

The zoning hearing board is charged with the duty to make such findings of fact from the record made before it as are necessary to make its decision on an appeal or application. In performing this duty, the zoning hearing board assigns the weight as proof to be given to the evidence of record. The zoning hearing board also is cloaked with the authority to make determinations as to the credibility of a witness, testimony, or exhibit. As fact finder, the zoning hearing board has

the power to reject even un-contradicted testimony if the board finds that testimony to be lacking in credibility.

Burden of Proof

The burden of proof differs depending on the application or appeal before the zoning hearing board.

An applicant for variance is required at the time of the hearing to demonstrate that it meets the criteria set forth in Section 910.2 of the MPC for the grant of a variance. An applicant for use variance also must demonstrate either that (a) the physical conditions of the property are such that it cannot be used for a permitted purpose; (b) the property can be conformed for a permitted use only at a prohibitive expense; or (c) the property is valueless for any purpose permitted by the zoning ordinance. *Allegheny West Civic Council, Inc. v Zoning Bd. of Adjustment*, 689 A.2d 225 (1997).

Alternate Members

Section 903(b) of the MPC authorizes the appointment and participation of alternate members when the zoning hearing board is unable to obtain a quorum due to absence or disqualification of a member. The MPC authorizes the governing body to appoint by resolution a pool of one to three residents to serve as alternate members. The term of an alternate is three years.

Once alternates have been appointed, and if a quorum cannot be achieved, the chairman of the zoning hearing board is authorized to designate as many alternative members as necessary to reach a quorum. For instance, if a three-member board has only one regular member available, the chairman must designate one alternate to reach a quorum of two.

Designation of alternates must be made on a case-by-case basis in rotation according to declining seniority among all alternates. Once seated, the alternate shall continue to serve on the board in all proceedings involving the case until the zoning hearing board makes a decision.

Even if an alternate has not been designated by the chairman as a voting alternate in a given case, the alternate may participate in any discussion or proceeding of the zoning hearing board. However, the alternate may not vote or be compensated unless designated and seated as a voting alternate. This experience as a non-voting alternate can provide valuable training for a new alternate.