



# LOWER NAZARETH TOWNSHIP

## PLANNING & ZONING OFFICE

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## ZONING HEARING BOARD

### APPEAL PROCEDURES AND POLICY

<https://lowernazareth.com/resources?Forms>

1. All zoning appeal applications to the Zoning Hearing Board shall be made on the Zoning Appeal Application form provided by the Township and shall be in accordance with the Lower Nazareth Township Zoning Ordinance (herein called Zoning Ordinance) and the Pennsylvania Municipalities Planning Code (herein called the MPC).

**Eight (8) complete copies of the application, required fee, and (8) copies of the required site plans and supplementary information, shall be submitted to the Zoning Administrator by the required deadline.**

2. Under the provisions of the MPC only a landowner or a tenant with written permission of the landowner shall file a Zoning Appeal Application with respect to a request for a variance and/or special exception. Other appeals may be filed with the Zoning Hearing Board under the MPC by the landowner affected, any officer or agency of the municipality or any person aggrieved.
3. The Zoning Hearing Board meets on demand, pursuant to the current **Meeting Schedule** adopted by the Township. Meetings are held in the public Meeting Room of the Lower Nazareth Township Municipal Building.
4. Submission Deadline For All Zoning Appeals - All zoning applications must be filed **twenty-eight (28) days prior to the zoning hearing meeting**. Please see the current Meeting Schedule for deadline requirements. <https://lowernazareth.com/resources?Forms> There are no exceptions to this filing date. If the zoning appeal application is not filed within the aforementioned time frame, the zoning appeal application will be heard the following month.
5. Fees are in accordance with the most current fee schedule adopted by the Township.
6. A complete appeal application requires that all appeal fees are paid, site plans comply with all regulations with all appropriate submission procedures, and relevant sections of the zoning appeal application are fully completed. All materials must be received on or before the submission deadline. If an application is not fully completed, the application will not be accepted and the case will not be heard at the next regularly scheduled meeting of the Zoning Hearing Board.
7. Site Plan Requirements: All zoning appeal applications to the Zoning Administrator shall include the following information on a site plan, unless the Zoning Administrator determines that a site plan or such information is unnecessary to determine compliance with the Zoning Ordinance. The following information and procedures shall be followed for all site plans required to be submitted to the Zoning Hearing Board:
  - a. **Eight (8) complete copies of a site plan** shall be submitted to the Zoning Administrator. The Zoning Administrator may refuse to accept an application if it does not contain

sufficient information to determine compliance with the Zoning Ordinance. A minimum of 1 copy shall be retained in Lower Nazareth Township files. The Zoning Administrator may seek a review by the Township Engineer if engineering matters are involved.

- b. The Zoning Administrator shall review the site plan and determine its compliance or noncompliance with all the Zoning Ordinances. **The following items must be included and shown on the site plan:**
- c. A statement or paragraph describing the proposed use for the property and/or structure.
- d. A site layout drawn to a suitable scale (preferably 1"= 20') showing the location, dimensions and area of each lot; the location, dimensions and height of proposed and any existing structures; the required setback areas; all easements; the proposed density of residential uses; the location and width of proposed or abutting streets; and the proposed areas to be used for different purposes within the development if applicable, including outdoor storage or display areas. If the plan involves one phase of what eventually may be a larger development, then the inter-relationships of those phases shall be shown.
- e. The width of any buffer yard and the heights, spacing and general species of plants to be used for screening. General numbers, locations and types of landscaping to be provided in off-street parking lots, along streets and in other areas.
- f. The locations and numbers of parking spaces; the location and widths of aisles; the location and sizes of off-street loading areas. The method of calculating the off-street parking requirement, based upon all sections within Article 17 of the Zoning Ordinance. Driveways or areas of egress and ingress for emergency must also be shown on the plan.
- g. The height, location and approximate intensity of exterior lighting. The sign area, height, location and general method of lighting of signs.
- h. The location of any proposed sidewalks (with width) and curbing.
- i. A note stating general proposed method of providing wastewater treatment and water supply (such as "On-Lot Well and On-Lot Septic Services"). All other utilities including their easements must be shown on the plan.
- j. A description of any proposed industrial or commercial operations or storage in sufficient detail to indicate potential nuisances and hazards regarding noise, large trucks, glare, air pollution, odors, dust, fire or toxic or explosive hazards or other hazards to the public health and safety; together with a description of proposed methods to control such hazards and nuisances.
- k. Proposed and existing contours with limits of earth disturbance shown if earth disturbance is proposed. Identification of any slopes between 15% and 25% and greater than 25% proposed to be impacted. The type of soils present on the site. Proposed method of managing stormwater runoff and erosion and sedimentation control. Delineation of any floodplain from the Official Federal Emergency Management Agency Floodplain Maps or an approved elevation study as per the Lower Nazareth Township Floodplain Ordinance. Delineations of all wetlands, if hydric soils are present on the plan along with their respective setback requirements. All associated federal and state environmental, highway, agricultural permits etc. or applications for permits associated with this site must be included with the submission. See Article 16 - Environmental - to assure the applicant has met all of the provisions of the Zoning Ordinance.
- l. Approximate lot lines of abutting lots within 50 feet of the project, with identification of abutting land uses.

- m. Zoning district, tax parcel number, and major applicable requirements.
  - n. Name and address of the person who prepared the Site Plan, the applicant and the owner of record of the land.
  - o. Such other data or information as the Zoning Administrator deems is reasonably necessary to determine compliance with Township ordinances and/or that is listed on the official Township application form.
8. Notice of hearing shall be given in accordance with Section 112 of the Zoning Ordinance or the PA Municipalities Planning Code (MPC). Such notice shall be given to the applicant by written notice mailed by certified mail. *Notice to all property owners within 200 feet from the exterior limits of the subject property will be provided by the township.* All notices sent by the township to these residents shall be by regular first-class mail.
  9. Notice of such hearing shall be conspicuously posted on the affected tract of land by the Zoning Officer a minimum of seven (7) days before the hearing. The applicant is responsible for the maintenance of the notice. If the notice is removed or destroyed, the property owner must immediately obtain another notice and conspicuously post it.
  10. The Zoning Board consists of three Board members and two alternates. In the event that the number of Board Members available is only (2) members, the applicant will be given the option of having their appeal heard with the two (2) member board or request a continuance of the appeal to a date at which a full board can be convened. If the applicant(s) requests a continuance, the request will be granted provided the applicant(s) agrees in writing to waive the provision under the MPC requiring that a hearing be held within 60 days of the date of the applicant's request for a hearing. If the applicant(s) elects to proceed with a two-member board and the Board's vote is split (i.e. one member voting for and one member against), the appeal is deemed to be denied.
  11. If any appeal is not concluded by the adjournment time, the Zoning Hearing Board may either complete the appeal or continue the appeal to a date that is publicly announced prior to adjournment. If the Zoning Hearing Board is unable to select a date for any continued hearing at the time of the public meeting, the date for the rescheduled continued hearing shall be advertised pursuant to the provisions of the Zoning Ordinance.
  12. The Zoning Hearing Board is permitted forty-five (45) days to render a written decision following the last hearing at which testimony was given or oral arguments were made or legal memos or briefs filed, whichever is last to occur. A signed copy of the written decision will be sent by certified mail to the applicant no later than the day following its date.
  13. Applicant(s) shall have a right of appeal to the Court of Common Pleas of Northampton County within thirty (30) days after the entry of the decision as provided in 42 Pa. C.S. 5572, or, in case of a deemed decision, within 30 days after the date upon which notice of said deemed decision is given as set forth in Section 908(9) of the MPC.
  14. An approval for a zoning permit granted by the zoning hearing board for uses permitted by special exception and/or by variance shall expire within nine (9) months after the date of the board approval (the date of the written decision of the board) unless the work authorized by the permit has been substantially begun within said one 9 month period. If the work authorized by the permit has not been completed within three (3) years from the date of the issuance of the permit, the permit shall automatically expire at the end of said three (3) year period. Written notice of such cancellation shall be forwarded by certified mail with return receipt requested within five (5) days to the person affected.

# VARIANCES

## **Variance Procedure:**

Typically, a request for a variance arises when an application for a zoning or building permit is rejected or "turned down" by a Zoning Administrator because the proposed activity does not meet all the requirements of the zoning ordinance. The applicant then makes application to the Zoning Hearing Board for a variance as a result of this denial. The Zoning Hearing Board has the authority to vary the terms of the ordinance in proper instances. A decision of the Zoning Hearing Board may be appealed to the Court of Common Pleas.

## **What is a Variance?**

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 may 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. Variances act as a relief valve for the rigid ordinance.

## **Requirements for a Variance:**

The Zoning Hearing Board hears requests for variances 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 Administrator.

The Board may grant a variance provided 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 unnecessary 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; and
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; and
3. That such unnecessary hardship has not been created by the applicant; and
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 the zoning ordinance.

# SPECIAL EXCEPTIONS

## What is a Special Exception?

A Special Exception is a type of 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 Exception 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 Exception" is a misnomer. It is neither special nor is it an exception. It is not a deviation from the zoning ordinance. An applicant for a Special Exception is following the zoning ordinance. The application is one envisioned by the ordinance, and, if the standards established by the ordinance are met, the use is one permitted by the ordinance.

## Special Exception Approval Procedure

The Zoning Hearing Board shall approve a proposed Special Exception use if the Board finds adequate evidence that any proposed use will comply with all of the following:

- Any specific standards for the proposed use listed in Zoning Ordinance, Article 15, Sections 1502 or 1503.
- Other applicable sections of the Zoning Ordinance.
- Comply with all of the following standards:
  - **Other laws.** Will not clearly be in conflict with other Township Ordinances or State or Federal laws or regulations known to the Township.
  - **Traffic.** The applicant shall show that the use will not result in or substantially add to a significant traffic hazard or significant traffic congestion.
  - **Safety.** The applicant shall show that the use will not create a significant public safety hazard, including fire, toxic or explosive hazards.
  - **Storm Water Management.** Will follow adequate, professionally accepted engineering methods to manage storm water. Storm water shall not be a criterion of a decision under this Ordinance if the application clearly would be subject to a separate engineering review and an approval of storm water management by the Board of Supervisors under the Subdivision and Land Development Ordinance and a Township Storm Water Management Ordinance.
  - **Neighborhood.** Will not significantly negatively affect the desirable character of an existing residential neighborhood, such as causing substantial amounts of heavy truck traffic to travel through a residential neighborhood, or a significant odor or noise nuisance or very late night/early morning hours of operation. This standard shall not apply to "normal farming operations" as defined by the State law and regulations.
  - **Site Planning.** Will involve adequate site design methods, including plant screening, berms, site layout and setbacks as needed to avoid significant negative impacts on adjacent uses. The use shall meet the landscaping and buffer requirements of the Subdivision and Land Development Ordinance.
  - **Performance Standards.** The applicant shall show that the use will not have a serious threat of inability to comply with the performance standards of this Zoning Ordinance.

- **Preservation.** The applicant shall prove that demolition of or other negative impacts upon any historic buildings on the site have been reasonably minimized.
- **Conditions** In granting a Special Exception, the Board may require such reasonable conditions and safeguards (in addition to those expressed in this Ordinance) as it determines is necessary to implement the purposes of this Zoning Ordinance. Conditions imposed by the Zoning Hearing Board shall automatically become conditions of the building permit issued pursuant thereto, and any failure to comply with said conditions shall be a violation of this ordinance.

## **INTERPRETATION OF THE ZONING ADMINISTRATOR'S DETERMINATION**

The Zoning Administrator must administer the zoning ordinance by its literal terms: The Zoning Administrator does not have any discretionary power and authority to neither waive, tighten nor create any requirement for any Lower Nazareth Township Ordinance. Occasionally, the Zoning Administrator in his or her capacity cannot make a literal determination of the particular zoning ordinance in which the applicant requires a decision. The Zoning Administrator is then required by the MPC to refer this determination to the Zoning Hearing Board for decision.

## **ENFORCEMENT NOTICE APPEAL**

An Enforcement Notice is sent if it appears to the municipality that a violation of the zoning ordinance has occurred. A violation of the Zoning Ordinance may include a violation of a Zoning Hearing Board decision and/or any conditions set forth therein. The recipient of the Enforcement Notice has the right to appeal to the Zoning Hearing Board within the prescribed time stated in the Enforcement Notice. It is important to note that if the recipient of the Enforcement Notice fails to appeal, the municipality may proceed to file a summary citation before a District Justice at which time the person against whom the Enforcement Notice was sent will not be permitted to offer a defense concerning the alleged violation(s).

The Zoning Hearing Board has no enforcement powers. A Zoning Hearing Board, according to the Commonwealth Court, exists solely as an adjudicative body empowered to review matters brought to it under the MPC. The Zoning Hearing Board does not have any jurisdiction to act as an enforcement officer even in respect to its own previously issued approvals or conditions. The function of the Zoning Hearing is to only determine if the violations of the zoning ordinance or zoning approval conditions did in fact occur on the Applicant's property. The Applicant should also be aware that if all violations are dismissed by the Zoning Hearing Board or any court in a subsequent appeal, the Applicant may be entitled to a refund of all or part of the zoning appeal fee. **If there has been no appeal of the Enforcement Notice or on appeal the Zoning Hearing Board finds that violations do exist, Lower Nazareth Township will seek the maximum penalties allowed by law for each day the violation continues to exist following the decision of the District Justice including all legal and engineering expenses incurred by Lower Nazareth Township. A penalty of \$1000.00 per day per violation may be imposed plus legal and engineering costs to correct the violation(s) property, including all legal and engineering expenses incurred by Lower Nazareth Township.**

## **OTHER ACTIONS THAT MAY REQUIRE FILING A ZONING APPEAL ARE:**

- Substantive challenges to the validity of any land use ordinance;
- Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption;
- The granting or denial of any permit, or failure to act on the application for any permit; the issuance of cease and desist order(s); the registration or refusal to register any nonconforming use, structure or lot;
- The appeals from a determination by the municipal engineer or the Zoning Administrator with reference to the administration of any floodplain ordinance or such provisions contained within a land use ordinance;
- Applications for variances as described above and from the terms of the flood hazard ordinance or such provisions within a land use ordinance;
- Applications for special exceptions as described above and from the terms of the flood hazard ordinance or such provisions within a land use ordinance;
- Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the Zoning Ordinance;
- Appeals from the Zoning Administrator's determination under Section 916.2 of the MPC;
- Appeals from the determination of the Zoning Administrator or Municipal Engineer in the administration of any land use ordinance or provision thereof with the reference to erosion and sedimentation control and storm water management insofar as the same relate to development not involving Article V or VII applications under the MPC