

ARTICLE 1325

ZONING HEARING BOARD

1325.01 Establishment of Board

The City Council shall create a Zoning Hearing Board which shall supersede the existing Board of Adjustment. The three members and one alternate of the existing Board of Adjustment shall become the members and alternate of the Zoning Hearing Board and shall serve until their terms expire.

1325.02 Membership, Terms of Office, Compensation

The Zoning Hearing Board shall consist of three (3) members and two (2) alternates appointed by the Mayor with the advice and consent of the City Council for three-year terms. The terms of office shall be so fixed that the terms of office of one member shall expire each year. Members of the Board shall hold no other office in the City. Vacancies shall be filled for the unexpired term of any member whose place becomes vacant, and the Mayor may remove any member for cause after public hearing. The compensation of each member of said Zoning Hearing Board shall be twenty-five (\$25.00) dollars per day for attendance at officially convened public meetings of the Board. Compensation shall be paid monthly by the City Treasurer, upon receipt of certificates from the Secretary of said Hearing Board setting forth the date or dates the Board was in session, including the names of those members of the Board actually present at the times indicated in said certificates.

1325.03 Procedures

- (a) **Officers.** The Board shall elect a chairman from its membership and shall prescribe rules in accordance with State Statutes and this Ordinance for the conduct of its officers.
- (b) **Public Hearings.** Hearings shall be open to the public and shall be held at the call of the chairman and at such other times as the Board shall specify in its rules of procedure. A hearing shall be held within 45 days after receipt by the Zoning Officer of an application for a variance or a special exception. Each decision of the Board shall be made within 45 days after the hearing or, if said hearing is continued beyond this period by reason of the applicant's request for a continuance, within 45 days after said continued hearing. If the Board does not hold a hearing within 45 days after receiving an application, or if the Board does not send a copy of the decision to the applicant within 45 days after the hearing or continued hearing, it shall be deemed that the Board has decided in favor of the applicant. The Chairman, or in his absence, the Acting Chairman, shall have power to administer oaths and compel the attendance of witnesses.

- (c) Records and Decisions. The Board shall keep a record of all proceedings which shall contain evidence and data relevant to every case considered together with the votes of the members and the final decision of each case. Each decision of the Board shall bear the signature of the Zoning Officer on the original thereof. These proceedings shall become public records and the Board shall submit a report of its activities to City Council once a year.

1325.04 Notice of Hearings

- (a) Upon filing with the Board an application for a special exception variance or interpretation of this Ordinance, the Board shall determine a place and a reasonable time, not to exceed sixty (60) days from the date of application for a public hearing thereon and give notice as follows:
 - (1) At least seven (7) days prior to the date fixed for public hearing, publish a public notice describing the location of the building or lot and the general nature of the question involved in a newspaper of general circulation in the City.
 - (2) Give written notice to parties in interest at least seven (7) days in advance of such hearing. Such parties shall be at least those persons whose properties adjoin and face on the same street as the property in question, and the City Planning Commission.

1325.05 Powers and Duties - Interpretation

Upon appeal from a decision by the Zoning Officer the Zoning Hearing Board shall decide any question involving the interpretation of any provision of this Ordinance, including determination of the exact location of any district boundary line if uncertainty exists with respect thereto; where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Officer in the enforcement of this Ordinance.

1325.06 Powers and Duties - Variances

- (a) Upon appeal from a decision by the Zoning Officer, the Zoning Hearing Board shall have the power to vary or adapt the strict application of any of the requirements of this Ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions whereby such strict applications would result in practical difficulty and unnecessary hardship depriving the owner of the reasonable use of land or building involved, but in no other case.
- (b) In general, the power to authorize a variance from the terms of this Ordinance shall be sparingly exercised and only under peculiar and exceptional circumstances.

- (c) No variance in the strict application of the provisions of this Ordinance shall be granted by the Board unless the Board finds that all the below requirements and standards are satisfied.

The applicant must prove that the variance will not be contrary to the public interest and that practical difficulty and unnecessary hardship will result if it is not granted. In particular, the applicant shall establish and substantiate his appeal to prove that the appeal for the variance is in conformance with the requirements and standards listed below:

- (1) That the granting of the variance shall be in harmony with the general purpose and intent of this Ordinance, and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (2) That the granting of the variance will not permit the establishment within a District of any use which is not permitted in that District.
- (3) There must be proof of unique circumstances: There are special circumstances or conditions, fully described in the findings, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building.
- (4) There must be proof of unnecessary hardship: If the hardship is general, that is, shared by neighboring property, relief can be properly obtained only by legislative action or by court review of an attack on the validity of the Ordinance.
- (5) That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose. It is not sufficient proof of hardship to show that greater profit would result if the variance were awarded. Furthermore, hardship complained of cannot be self-created; it cannot be claimed by one who purchases with or without knowledge of restrictions, it must result from the application of the Ordinance; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered.

The Board may prescribe any safeguard that it deems to be necessary to secure substantially the objectives of the regulation or provisions to which the variance applies.

Powers and Duties - Special Exceptions

- (a) The Zoning Hearing Board shall have the power to approve special exceptions for any of the uses for which this Ordinance requires the obtaining of such exceptions and for no other use or purpose.
- (b) General Requirements and Standards Applicable to all Special Exceptions: The Board shall grant a special exception only if it finds adequate evidence that any proposed use submitted for a special exception will meet all of the following general requirements, as well as any specific requirements and standards listed for the proposed use. The Board shall, among other things, require that any proposed use and location be:
 - (1) In accordance with the City of Bethlehem Comprehensive Plan and consistent with the spirit, purposes, and intent of this Ordinance.
 - (2) In the best interest of Bethlehem, the convenience of the community, the public welfare, and be a substantial improvement to property in the immediate vicinity.
 - (3) Suitable for the property in question, and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity.
 - (4) In conformance with all applicable requirements of this Ordinance.
 - (5) Suitable in terms of permitting the logical, efficient and economical extension of public services and facilities such as public water, sewers, police and fire protection and public schools.
 - (6) Suitable in terms of effects on street, traffic and safety with adequate sidewalks and vehicular access arrangements to protect major streets from undue congestion and hazard.

The Zoning Hearing Board may impose such conditions, in addition to those required in the Ordinance, as are necessary to insure that the general purpose and intent of this Ordinance is complied with and that the use of the property adjacent to the area included in the proposed change or modification is adequately safeguarded, which conditions may relate to, but are not limited to, harmonious design of buildings, aesthetics, planting and its maintenance as a sight or sound screen, hours of operation, lighting, allied activities, ventilation, noise, sanitation, safety, smoke and

fume control, and the minimizing of noxious, offensive or hazardous elements.

1325.08

Special Conditions and Safeguards for Special Exception Uses

In addition to the general requirements and standards specified in Section 1325.07, the following additional conditions and safeguards for certain uses shall apply:

- (a) Cemetery -- The following minimum requirements shall be met:
 - (1) The cemetery shall have an area of not less than five (5) acres.
 - (2) A plan shall be submitted which, in general, shall conform to all the requirements of a subdivision plat, except that individual lots need not be shown. No plan shall be acceptable which does not provide for the continuation of existing streets or of streets already projected or shown on a part of a comprehensive plan for all or a portion of the City, unless a study by the City Planning Commission shows that certain streets may be modified or eliminated. Land for required streets shall be dedicated by such plan.
 - (3) No structures, including fences, shall be built within any yard and, for this purpose, yard requirements shall conform to the regulations for the respective residential district in which the cemetery may be located.
 - (4) Additional setbacks and planting to screen the cemetery from adjacent areas may be required by the Zoning Hearing Board.
- (b) Conversion of any dwelling to a two (2) or multi-family dwelling -- The following requirements shall be met:
 - (1) Each dwelling unit shall contain at least the minimum gross floor area as defined in the Bethlehem Housing Code.
 - (2) For each person over eight (8) persons living in the building, the lot area must be increased by twenty (20) percent over the lot area requirement for a single family dwelling located in the same district.
 - (3) The yard, building area, and other applicable requirements for the district shall not be reduced.
 - (4) No exterior structural alteration of the building shall be made, except as may be necessary for purposes of sanitation or safety.

- (5) Such conversion shall be authorized only for a large building which has relatively little economic value or usefulness as a single-family dwelling or other conforming use.

- (6) Plans showing the proposed rearrangement of the interior of the building and provisions for off-street parking space, including the proposed entrance and exit to such parking spaces shall be provided to the Zoning Hearing Board.
- (c) Community or Public Garage (One Acre or Less in Area) -- The following requirements shall be met:
 - (1) A community garage shall be the main building on a lot unless located as a part of a multiple family dwelling planned as a complete unit.
 - (2) Such garage shall preferably be arranged as a unit in which no doors, except in the rear of a court, would face directly upon a front street. Planting may be required to permit the building to become an attractive element of the neighborhood.
- (d) Commercial Greenhouse and Nursery -- The following minimum requirements shall be met:
 - (1) All products for sale shall be kept enclosed within a building except those plants which are planted in the earth and are still alive.
 - (2) This use shall necessitate a minimum lot size of two (2) acres.
 - (3) All front, side, and rear yard minimum setbacks shall be double those of the district for single family detached dwellings.
- (e) Parking Lot in Residential District -- Land may be utilized for off-street parking facilities in certain residential districts providing the requirements in Articles 1319 and 1321 and the following are met:
 - (1) The applicant for such special use permit must be the owner of both the property which is to be served by the parking lot and the property in the residential district to be used as the parking lot.
 - (2) No repair, service, display, or storage of vehicles shall be permitted on said parking lot.
 - (3) Parking lot shall be used exclusively for customer and employee parking.
- (f) Medical Office Building -- (One [1] Acre or Less in Area). The following requirements shall be met:

- (1) The use of the building and/or site, whether for new construction, or by conversion of an existing building, shall be exclusively for professional purposes. No dwelling units whatsoever shall be permitted.
 - (2) The floor area ratio shall not exceed 0.5.
 - (3) No parking shall be permitted to extend into any front or side yard. On the line of any yard, a suitable wall, fence or hedge shall be erected and/or planted, if deemed necessary, to protect adjacent residential property. Other planting may be required as deemed necessary to preserve the basic residential character of the area.
 - (4) Access ways shall be so placed as to provide safe ingress and egress with the least increase in traffic hazards. Where the development is on a corner lot, the access ways preferably should be located on the street carrying the least traffic, unless the paved roadway of such street is less than thirty-four (34) feet in width. Any proposed development which would require that cars back out from the parking area into the street shall be disapproved.
- (g) Undertaking Establishment and Funeral Parlor -- The following requirements shall be met:
- (1) Signs shall be limited to one (1) identification sign for each street frontage, provided that the area on either side of such sign shall not exceed six (6) square feet.
 - (2) A parking lot shall be permitted only in the rear of the main building and shall not occupy front or side yard area.
- (h) Home Professional Office -- The following requirements shall be met:
- (1) Such office shall be in the main building on the lot and shall not occupy more than twenty-five (25) percent of the floor area of said building. Should the spouse of a practitioner also use the residence for a home professional office, the total allowable floor area for both practitioners shall not exceed forty (40) percent of the floor area of the building.
 - (2) Accessory buildings shall not to be used in conjunction with the home professional office use.
 - (3) The residential character of the building and lot shall be preserved.

- (4) No more than one (1) person who is not a member of the resident family may be employed on the premises.
- (5) Signage on the property shall be regulated in accordance with Sections 1320.08(a)(9) and (12).
- (6) A minimum of two (2) off-street parking spaces shall be provided on the lot in addition to the basic parking requirements described in Section 1319.01(a)(1).

- (7) The nature of the services rendered shall be of that type which are primarily and customarily provided to clients on an individual basis and by appointment only.
 - (8) No retail sales shall be allowed on the property.
 - (9) Only minimum storage of supplies shall be allowed. No outside storage of supplies shall be allowed on the property.
 - (10) A home professional office shall not include a biological or other medical testing laboratory.
- (i) Bed and Breakfast Home -- The following requirements shall be met:
- (1) No more than three (3) rooms may be offered for rent.
 - (2) The bed and breakfast must be in an existing structure and not a new structure or outbuilding.
 - (3) The only meal to be served is breakfast and to lodgers of the bed and breakfast exclusively.
 - (4) Signs shall conform to Section 1320.08(a)(2).
 - (5) No exterior structural alteration of the building shall be made except as may be necessary for purposes of sanitation or safety.
 - (6) The bed and breakfast must meet all City requirements for health, fire, and building safety.
 - (7) The bed and breakfast must be in operation a minimum of nine (9) months per year.
 - (8) The maximum uninterrupted length of stay shall be fourteen (14) days.
- (j) Residential treatment facilities, temporary shelters, and overnight shelters shall meet the following general requirements:
- (1) The site shall be convenient to those support facilities that are essential to the functioning of the specific facility. These may include mass transportation, medical, educational, recreational, job training, social service, and/or other facilities being necessary for the particular use.
 - (2) Each site shall be:

- (I) Approved for all applicable Federal, State, County and City licenses and permits.
 - (II) Operated so that all medical counseling or other services shall be provided for the sole benefit of those persons residing in the facility.
 - (III) Subject to providing a minimum one (1) off-street parking space per employee for the maximum number of employees on any one (1) shift, plus additional parking as required by the zoning Hearing Board.
- (3) For Residential Treatment Facilities the occupant load shall be determined by the applicable BOCA Property Maintenance Code.
- (k) Additional special requirements shall be met for all Residential Treatment Facilities, Temporary Shelters, and Overnight Shelters as follows:
- (1) Each residential treatment facility shall meet the following requirement:
 - (I) No residential treatment facility shall be located within 800 feet of another residential treatment facility. The minimum distance between all such facilities shall be a minimum of 800 feet.
 - (2) Each Temporary Shelter, Overnight Shelter, or Residential Treatment Facility shall meet the following requirements:
 - (I) Proof of adequate supervision by people qualified by training and experience in the field for which the facility is intended shall be provided.
 - (II) The facility must comply with all applicable Fire, Housing, Building, Property Maintenance, and Health Codes, and all regulations pertaining to transient occupancy with respect to emergency lighting, smoke detectors, exit lights, and other safety devices.
 - (III) Any food preparation, service, or distribution shall be licensed by the City and inspected by the Bureau of Health.
 - (IV) All services provided on site shall be contained within the structure and operated by a non-profit, charitable, or for-profit organization.

- (V) The applicant for these facilities shall submit with its application to the Zoning Hearing Board a plan outlining in detail the management of the facility. This shall include information on personnel, supervision, hours of operation, services provided, rules and regulations, and any other information pertinent to the operation of the facility.

1325.09 Actions of the Board on Exercising Powers

In exercising the above-mentioned powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and, to that end, shall have all the powers of the officer from whom the appeal is taken.

No decision of the Board permitting the use of a building or land shall be valid for more than one (1) year unless such use is established within this period. Where such use is dependent upon the erection or alteration of a building, the Board's decision shall continue in force and effect if a building permit for such work is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with the terms of the decision.

1325.10 Who May Appeal

Appeals to the Zoning Hearing Board may be taken by any person aggrieved or by an officer, department, board or bureau of the City aggrieved or affected by any provision of this Ordinance or by any decision issued by the Zoning Officer in enforcing the provisions of this Ordinance. The rules for filing such appeals are set forth in the next section.

1325.11 Rules and Procedures for Filing Interpretation and Variance Appeals and Special Exception Applications

- (a) General rules and procedures for appeals and applications:
- (1) All appeals and applications made to the Zoning Hearing Board shall be in writing on standard forms prescribed by the Board.
 - (2) Any appeal shall be made by filing the same with the Zoning Officer within thirty (30) days after the date of the Zoning Officer's decision.
 - (3) All appeals and applications shall refer to the specific provisions of this Ordinance involved.
 - (4) All appeals and applications shall set forth names and addresses of all adjoining owners including those across public roads from the subject property.
 - (5) An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Officer certified to the Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise

than by a restraining order which may be granted by the Zoning Hearing Board or by a Court of Record on application, on notice to the Zoning Officer and on due cause shown.

- (6) Once an appeal is filed, the Zoning Hearing Board shall set a date for a hearing and shall issue a decision within sixty (60) days.
- (b) Interpretation Appeals. Appeals concerning the interpretation of any provisions of this Ordinance shall exactly set forth the interpretation that is claimed.
- (c) Variance Appeals.
 - (1) Appeals for variance from the strict application of this Ordinance shall include the Zoning Permit Application denied by the Zoning Officer, together with a statement with any supporting evidence regarding the requirements listed in Section 1325.06.
- (d) Special Exception Applications.
 - (1) Applications for special exceptions shall include a Zoning Permit Application with all information required therein and a statement with any supporting evidence regarding the merits of the proposed use at the proposed location and how the proposal complies with the general and specific requirements of this Ordinance.

1325.12

Court Appeals

Any person or persons, jointly or severally, aggrieved by any decision of the Board, or any taxpayer or any officer, Department, Board or Bureau of the City may present to the Court of Common Pleas of Lehigh County or Northampton County a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the Court within thirty (30) days after the decision of the Board.