

APPLICATION FOR HEARING BEFORE THE WILKES-BARRE CITY

ZONING HEARING BOARD

DATE FILED: _____/_____/_____
BY: _____
APPLICATION NUMBER: _____
DATE OF HEARING: _____/_____/_____

I HEREBY MAKE APPLICATION TO THE ZONING HEARING BOARD AND REQUEST A HEARING BE SCHEDULED ON THE MATTER(S) PRESENTED HEREIN. THIS APPLICATION IS SUBMITTED IN ACCORDANCE WITH ARTICLE 7, SECTION 708 OF THE WILKES-BARRE CITY ZONING ORDINANCE AND THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE, ACT 247, AS AMENDED.

ADDRESS OF PREMISES: _____

APPLICANT'S NAME: _____
PHONE NUMBER: _____
APPLICANT'S MAILING ADDRESS:

OWNER'S NAME: _____
PHONE NUMBER: _____
OWNER'S MAILING ADDRESS:

STANDING OF APPLICANT

- _____ OWNER
- _____ EQUITABLE OWNER (provide copy of purchase agreement)
- _____ LESSEE (property owner must sign this application)

DOES THIS MATTER REQUIRE ANY PRELIMINARY ACTION(S) BY THE WILKES-BARRE CITY PLANNING COMMISSION? (If yes, please explain)

PLEASE INDICATE BELOW THE ACTION(S) YOU REQUEST FROM THE ZONING HEARING BOARD (for example: variance, special approval, validity challenge, appeal from a determination of the zoning officer, or other action as provided for under Section 708 of the Zoning Ordinance) AND ATTACH ZONING OFFICER'S WRITTEN DECISION/OPINION:

(attach additional sheets as necessary)

STATE SPECIFICALLY THE GROUNDS (AS APPLIED TO ZONING LAW) OR ANY REASONS WHICH CAN SUPPORT THE REQUESTS CONTAINED IN THIS APPLICATION (Refer to Section 709 for Variances, Section 710 for Special Approvals, Section 711 for Temporary Approvals, and/or any other applicable provisions contained within the City of Wilkes - Barre Zoning Ordinance and Pennsylvania Municipalities Planning Code, Act 247, as amended).

(attach additional sheets as necessary)

Owner/Applicant Signature(s):

Section 709. Variances:

The Zoning Hearing Board shall hear requests for variances if it is alleged that the provisions of this 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. The Board may grant a variance, provided that all of the following findings are made where relevant in a given case.

- a. 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.
- b. 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.
- c. That such unnecessary hardship has not been created by the appellant.
- d. 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 determined to the public welfare.
- e. 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 Ordinance and the Pennsylvania Municipalities Planning Code, Act 247, as amended.

Section 710. Special Exceptions:

The Zoning Hearing Board shall hear and decide requests for uses and/or development which are permitted as special exception uses. Special exception uses which address new construction or changes to nonconforming uses shall be referred to the Planning Commission for their review, comments and recommendations prior to final action by the Board. The Board shall grant approval only upon the determination that the proposed use and/or development conforms with all applicable standards and provisions within this Ordinance and the following expressed standards and criteria:

- a. Public services and facilities such as streets, sewers, water, police, and fire protection shall be adequate for the proposed use and/or development.
- b. Existing and future streets and access to the site shall be adequate for emergency services, for avoiding undue congestion, and for providing for the safety and convenience of pedestrian and vehicular traffic.
- c. The relationship of the proposed use and/or development to other uses and activities existing or planned in the vicinity shall be harmonious in terms of the location and site relative to the proposed operation, and the nature and intensity of the operation involved.
- d. The relationship of the proposed use and/or development to other activities existing or planned in the vicinity shall be harmonious in terms of the character and height of buildings, walls, and fences so that the use, development, and value of adjacent property is not impaired.
- e. The proposed use and/or development shall not be more objectionable in its operations in terms of noise, fumes, odors, vibration, or lights than would be the operations of any permitted use in the district.

In granting approval the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code, Act 247, as amended.

Section 714. Approvals on a Temporary Basis:

The Zoning Hearing Board may authorize the approval of a special exception and/or variance on a temporary basis. The proposed use of a building, structure or land on a temporary basis shall be in accordance with the following:

- a. Shall not exceed a twelve (12) month period for any reason.
- b. Shall not involve the structural attention of any existing structure and/or building.
- c. Shall not involve the construction of any new structure and/or building.
- d. Shall not generate excessive traffic.
- e. Shall not create excessive smoke, noise, odor, dust, vibration, electrical disturbance or other similar hazards and/or nuisances.
- f. Shall not impair the use and/or development of adjoining properties.

In granting approval to a temporary use, the Zoning Hearing Board shall have the discretion to include any additional conditions which it deems necessary to safeguard the health, safety and general welfare of the public. The Zoning Hearing Board may revoke their approval prior to the expiration of the twelve (12) month period if any standards, conditions, or terms under which approval was granted, are violated. The Zoning Hearing Board's approval shall become null and void at the termination of the twelve (12) month time period, with renewal of any additional term on a temporary basis prohibited. The applicant shall, however, have the right to seek a variance and/or special exception approval, whichever is appropriate, on a permanent basis on or before the termination of the twelve (12) month time period. Failure to cease all operations and activities at the termination of the twelve (12) month time period or be granted approval on a permanent basis shall constitute a violation of this Ordinance.

Section 909.1. Jurisdiction.

(a) The zoning hearing board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

- (1) Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to sections 609.1 and 916.1(a)(2).
- (2) Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the municipality and a zoning hearing board has not been previously established, the appeal raising procedural questions shall be taken directly to court.
- (3) Appeals from the determination of the zoning officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.
- (4) Appeals from a determination by a municipal engineer or the zoning officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.
- (5) Applications for variances from the terms of the zoning ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 910.2.
- (6) Applications for special exceptions under the zoning ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 912.1.
- (7) 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.
- (8) Appeals from the zoning officer's determination under section 916.2.
- (9) Appeals from the determination of the zoning officer or municipal engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving Article V or VII applications.

(b) The governing body or, except as to clauses (3), (4) and (5), the planning agency, if designated, shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

- (1) All applications for approvals of planned residential developments under Article VII pursuant to the provisions of section 702.
- (2) All applications pursuant to section 508 for approval of subdivisions or land developments under Article V. Any provision in a subdivision and land development ordinance requiring that final action concerning subdivision and land development applications be taken by a planning agency rather than the governing body shall vest exclusive jurisdiction in the planning agency in lieu of the governing body for purposes of the provisions of this paragraph.
- (3) Applications for conditional use under the express provisions of the zoning ordinance pursuant to section 603(c)(2).
- (4) Applications for curative amendment to a zoning ordinance pursuant to sections 609.1 and 916.1(a)(2).
- (5) All petitions for amendments to land use ordinances, pursuant to the procedures set forth in section 609. Any action on such petitions shall be deemed legislative acts, provided that nothing contained in this clause shall be deemed to enlarge or diminish existing law with reference to appeals to court.
- (6) Appeals from the determination of the zoning officer or the municipal engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to application for land development under Articles V and VII. Where such determination relates only to development not involving an Article V or VII application, the appeal from such determination of the zoning officer or the municipal engineer shall be to the zoning hearing board pursuant to subsection (a)(9). Where the applicable land use ordinance vests jurisdiction for final administration of subdivision and land development applications in the planning agency, all appeals from determinations under this paragraph shall be to the planning agency and all appeals from the decision of the planning agency shall be to court.
- (7) Applications for a special encroachment permit pursuant to section 405 and applications for a permit pursuant to section 406.

GENERAL INFORMATION AND GUIDELINES FOR APPLICANTS

1. PLEASE MAKE AN APPOINTMENT IN ADVANCE FOR SITE PLAN AND ZONING PERMIT REVIEW. THIS WILL ELIMINATE ANY POSSIBLE FRUSTRATION YOU MAY EXPERIENCE IF THE APPROPRIATE OFFICIALS ARE NOT AVAILABLE AND/OR ARE BUSY ASSISTING OTHERS WHO HAVE APPOINTMENTS WHEN YOU VISIT THE OFFICE UNANNOUNCED.
2. PLEASE HAVE ACCURATE INFORMATION AND FULLY COMPLETE THE FORMS YOU ARE GIVEN. MOST OF THE TIME, ZONING PERMITS REQUIRE MORE INFORMATION THAN YOU MIGHT THINK. THIS INFORMATION IS NOT REQUIRED TO MAKE IT DIFFICULT, IT IS REQUIRED TO DETERMINE COMPLIANCE WITH A WIDE VARIETY OF REGULATIONS. RESISTANCE IN PROVIDING INFORMATION USUALLY RESULTS IN A DELAY AND WON'T SPEED UP THE PROCESS. Please remember, the regulations are not the opinion of the application examiner. They are ordinances enacted by the City of Wilkes-Barre.
3. PROVIDE ACCURATE SITE PLAN DRAWINGS WHEN REQUESTED. UNLESS DIRECTED OTHERWISE, A SITE PLAN MUST INCLUDE: a) Shape and ACTUAL dimensions of the lot (OFF DEED). B) Size and shape of all buildings and structures and their exact location on the property. Indicate all distances to the structures and/or buildings from the property lines of your lot, i.e., front, sides and rear. C) Size and shape of any new additions/structures/buildings and the distances to the property lines, i.e., front, sides and rear. PLEASE REMEMBER, IT IS YOUR RESPONSIBILITY TO PREPARE AND PROVIDE THIS DOCUMENT TO PROVIDE INFORMATION THAT IS NEEDED TO DETERMINE COMPLIANCE.
4. Please remember, the sooner you complete your applications and provide accurate and complete site plans, the sooner you will get an answer on your application.
5. Please make sure that your applications are completed and signed in INK. Property owners must sign all applications submitted to this office. Please do not ask if someone else can sign. We cannot grant power of attorney.
6. Incomplete and/or inaccurate applications and drawings will be rejected.
7. All permits and approvals are done on paper. ANY DISCUSSION, INCLUDING PHONE CALLS, IS NOT A PERMIT OR APPROVAL.

ADVISORY NOTICE TO ALL APPLICANTS

All applicants must read and sign this advisory:

- 1. The applicant(s) and property owner(s) are advised to attend any necessary meetings or hearings pertaining to their particular application. Legal standing is required and this generally consists of owning the property, leasing the property, or having an executed agreement of sale. It is the sole responsibility of the applicant, lessee, and/or property owner to establish and have standing to represent to the Planning Commission and/or Zoning Hearing Board.**
- 2. Other persons may be allowed to represent subject to the acceptance of the Commission or Board. However, the applicant and property is advised to attend together with other accepted individuals, professionals, or representatives.**
- 3. Staff will process applications as presented. It is the applicant(s) sole responsibility to provide adequate and detailed information and plans sufficient to meet the needs of the Planning Commission and Zoning Hearing Board. The Planning Commission and Zoning Hearing Board could require additional information and may require additional plans or diagrams as deemed necessary for the review of your application.**
- 4. Please direct any inquiries regarding legal standing to your attorney or legal advisor.**
- 5. Although we will guide you through the appropriate process, it is not the responsibility of the City of Wilkes-Barre, City Employees, Board or Commission, to prepare you, advise you, or to represent, provide, or produce documentation you may need to provide for your application.**

APPLICATION NUMBER: _____

SIGNATURE: _____

DATE: _____

**INFORMATION FOR FILING AN APPEAL BEFORE THE
CITY OF WILKES-BARRE ZONING HEARING BOARD
(570) 208-4163**

1. **HEARINGS HELD ON THE THIRD WEDNESDAY.** The City of Wilkes-Barre Zoning Hearing Board conducts hearings on the *third Wednesday of every month at 4:30 p.m.* in City Council Chambers, Fourth Floor, City Hall, 40 East Market Street, Wilkes-Barre, PA 18711. These hearings are conducted pursuant to public notice that requires publishing legal ads in the newspaper. A listing of the regularly scheduled dates is provided.
2. **AGENDA/PUBLIC NOTICE REQUIREMENTS.** An agenda is prepared in advance of each hearing that describes the specific nature of the individual applications and appeals filed before the Board. Written notice of the hearing will also be mailed to the applicant and owner and also to some neighboring property owners of whom we will research. **The subject property will be photographed and will be conspicuously posted prior to the hearing.**
3. **JURISDICTION OF THE BOARD.** The jurisdiction of the Zoning Hearing Board is subject to Section 909.1 of Act 247, as amended. This information is attached. The City of Wilkes-Barre Zoning Ordinance, as amended, requires that a zoning permit application be submitted. Logically, this should be completed first where applicable. (Variance and Special Approval requests). *Sections 709, 710, and 714 are attached.*
4. **APPLICATION FEES.** It is the responsibility of the applicant to accurately describe the nature and purpose of their appeal and fully complete the application for appeal to the Board. A non-refundable application fee of **\$100.00 for residential** and **\$225.00 for non-residential** appeals must accompany the completed application. If the purpose of your appeal is residential the \$100.00 residential fee will apply. Everything else will be subject to the \$225.00 non-residential fee. The fee is imposed because of the costs associated with your hearing. If one appeal involves both residential and non-residential purposes, please provide the non-residential fee with your application.
5. **TIMEFRAMES/CLOSEOUT- 30 Days.** Your hearing date may not be the upcoming hearing. Once an agenda is prepared, closed and forwarded to the newspaper for publication as required by law, there will be no further opportunity for placement on that agenda. This process usually occurs approximately every 28 days prior to the next hearing date. You may view this as an approximate filing deadline since exact filing deadlines will no longer be published. **To be safe, you should have your appeal filed about a month before the next hearing.** The Zoning Hearing Board has sixty (60) days to schedule your hearing once your application is accepted. Once accepted, we will research and complete the requirements for publication, written notice, public notice, and posting the property under appeal.
6. **PERSONAL RESPONSIBILITIES.** Most first time applicants are not familiar with planning and zoning requirements. Quite often, we go above and beyond the call of duty in our explanations. However, please remember that it is your own personal responsibility to develop an understanding of what you are doing and what you are asking for. This includes prioritizing and presenting your paperwork in an acceptable manner. As such, you will need to be prepared to represent yourself and your application to the respective Board and/or Commission. We will process the information you provide to us and schedule a hearing date in accordance with the appropriate procedures. **Missing, incomplete, inaccurate, or insufficient information is your responsibility.** Although we will guide you through the application process, this office cannot provide or offer you legal or professional advice. Thank you for your patience.

CITY OF WILKES-BARRE

Pennsylvania

Thomas M. Leighton, Mayor

Hayden White, Chairperson
William Breslin, Vice Chairperson
Richard Chukonis
John Yench
William Harvey



Leon S. Schuster
Director of Zoning

Telephone: (570) 208-4163
Fax: (570) 208-4187
Email: lschuster@Wilkes-Barre.pa.us

ZONING HEARING BOARD

MEMORANDUM

TO: James Ryan, City Clerk
FROM: Leon S. Schuster, Director of Zoning
DATE: December 21, 2006
RE: Scheduled Hearings for the Zoning Hearing Board in 2007

The following is a list of regularly scheduled dates of hearings before the City of Wilkes-Barre Zoning Hearing Board. These hearings are held on the third Wednesday of each month at 4:30 p.m. in City Council Chambers, Fourth Floor, City Hall, 40 East Market Street, Wilkes-Barre, Pennsylvania. Please note that the agendas of the Zoning Hearing Board are prepared monthly and published pursuant to public legal notice requirements.

January 17, 2007
February 21, 2007
March 21, 2007
April 18, 2007
May 16, 2007
June 20, 2007
July 18, 2007
August 15, 2007
September 19, 2007
October 17, 2007
November 21, 2007
December 19, 2007

Leon S. Schuster

Cc: Zoning Hearing Board
Sargent's Court Reporting
Charles D. McCormick, ESQ, Solicitor