

# Commonwealth Court Finds Objectors May Have Standing to Intervene in Appeals of Zoning Enforcement Notices

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In accordance with Section 909.1 of the Pennsylvania Municipalities Planning Code (MPC), a municipal zoning hearing board (ZHB) possesses exclusive jurisdiction to hear and render final adjudications over a number of land use matters. Not only does a ZHB adjudicate applications for variances from, and special exceptions under, a zoning ordinance, it frequently operates in an appellate capacity as well. Among other matters, Section 909.1(3) vests a ZHB with exclusive jurisdiction over appeals “from the determination of the zoning officer” including “the issuance of any cease and desist order,” 53 P.S. §10909.1(3). In addition, the municipal zoning officer has the authority under Section 616.1 of the MPC, 53 P.S. §10616.1, to initiate enforcement proceedings against a person perceived to be in violation of the local zoning ordinance through issuance of an “enforcement notice.” Section 616.1(c)(5) requires that the “enforcement notice” include a statement of the right to appeal to the ZHB, and Section 616.1(d) articulates that in “any appeal of an enforcement notice to the zoning hearing board” the municipality shall have the responsibility of presenting its evidence first.

It is clear from a reading of both Sections 909.1 and 616.1 of the MPC that the ZHB has appellate jurisdiction over both an “enforcement notice” specifically, or any other “determination” of the zoning officer. However, the procedures and practice involved in the ZHB’s appellate review in these matters can be nuanced, and issues of interpretation of the relevant provisions of the MPC remain unsettled. A frequent issue is one of objector standing; i.e. who, beyond the appellant or applicant, is permitted to participate in a given case before a ZHB. In *Heinzee, LLC v. Zoning Hearing Board of the Township of Pocono*, 858 C.D. 2023, 2025 WL 2312938 (Pa. Cmwlth. Aug. 12, 2025)<sup>[1]</sup>, the Commonwealth Court recently considered whether parties other than the appellant are permitted to intervene in opposition to an appeal from a zoning enforcement notice before a ZHB.

*Heinzee* involved the alleged unpermitted expansion of a pre-existing non-conforming use. The landowner (Landowner) operated a shooting range that had been in operation prior to adoption of the Pocono Township (Township) Zoning Ordinance. It was alleged that the Landowner had expanded operations of the range without receipt of the necessary permits. The Township issued an enforcement notice under Section 616.1 of the MPC and the Landowner timely appealed to the Township Zoning Hearing Board (Board). At the beginning of the Board’s hearing on the appeal, a resident of the Township who resided within approximately 2,900 feet of the property (Neighbor) requested party status. The Board determined the Neighbor could hear gunshots from the property and that he may be affected by the Landowner’s appeal. The Board granted the Neighbor’s request for party status over objection of the Landowner. The Township utilized the Neighbor as its first witness in its case to uphold the enforcement notice. Ultimately, the Board voted to deny the appeal of the enforcement notice, and Landowner appealed to the Monroe County Court of Common Pleas (Lower Court). The Lower Court affirmed the Board’s determination that the Landowner had expanded and altered the non-conforming use. The Landowner appealed the Lower Court’s decision affirming the Board’s determination to the Commonwealth Court.

On appeal, the Landowner asserted that the Board erred in permitting the neighbor to intervene as a party to the appeal. The Commonwealth Court summarized the Landowner’s position on this issue to be that “because [the matter was] an enforcement action which the Township brought under its police powers, [the] dispute should only be between Landowner and the Township” and that “third parties should not be permitted to intervene in enforcement actions.” The Court rejected this argument, reasoning as follows:

“Section 908(3) of the MPC, however, which applies to *all* hearings before zoning hearing boards provides:

The Parties to [hearings before a zoning hearing board] shall be the municipality, **any person affected by the application who has made timely appearance of record before the board, and any other person** including civic or community organizations **permitted to appear by the board...**"

(emphasis and bracketed additions in original). The Court, relying in part on the Pennsylvania Supreme Court's reasoning in its 2023 decision in *Bethlehem Associates, L.P. v. Zoning Hearing Board of Bethlehem Township*, 294 A.3d 441 (Pa. 2023), interpreted the "any other person" language in Section 908(3) to be "quite broad" and concluded that the Board did not err in granting the Neighbor party status in the appeal.

The Commonwealth Court's discussion on this matter is sparse and does not address certain aspects of the MPC suggesting that the matter of objector-intervention in appellate matters before a ZHB may not be so simple. For example, the Court has previously looked to the differences between the use of "cease and desist order" in Section 909.1 versus "enforcement notice" in Section 616.1 of the MPC and found that they were not always synonymous. See *Township of Robinson v. Esposito*, 2010 A.3d 1146, 1150 n.7 (Pa. Cmwlth. 2019) ("a cease-and-desist letter **may function** as a Section 616.1 enforcement notice") (emphasis added). Further, the Court did not address the use of the term "application" in Section 908(3), as opposed to the term "appeal" which is used in different contexts elsewhere in the MPC. See e.g. 53 P.S. §10908(3); (5). As of the date of writing, the landowner has not sought further appeal to the Pennsylvania Supreme Court, and these issues of statutory interpretation remain outstanding. It is advisable for any party seeking to intervene, or object to intervention in an appellate matter before a Pennsylvania ZHB, review the MPC and relevant jurisprudence closely as the issue remains a moving target.

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[1] Reported opinion, official citation pending.

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