

RULES OF PROCEDURE WHITEMARSH TOWNSHIP ZONING HEARING BOARD

The following rules of procedure are established by the Whitemarsh Township Zoning Hearing Board to govern its organization and conduct of business and to provide a guide for those parties appearing before the Board. These Rules of Procedure are subject to the provisions of the Pennsylvania Municipalities Planning Code, the Whitemarsh Township Code and applicable decisions of the Pennsylvania courts. Any area not covered by these Rules and ambiguity or conflict between these Rules and such codes or decisions shall be controlled by the latter.

1.0 Board Members, Secretary and Solicitor

- 1.1 Members of the Board shall be those individuals appointed by the Whitemarsh Township Board of Supervisors.
- 1.2 Each Board member shall serve as Chair and Vice Chair of the Board for a period of one year beginning with the first public meeting following January 1st each year. The order of rotation shall be in accordance with the length of service of the members.
- 1.3 Notwithstanding the provisions of Paragraph 1.2, the Board may, by unanimous consent of all other members, elect any member as Chair or Vice Chair even if out of the normal order of rotation and even if such person would serve consecutive terms as a result.
- 1.4 Unless otherwise determined by the Board, the Township Zoning Officer shall serve as Secretary to the Board.
- 1.5 At its first public hearing following January 1st of each year, the Board shall appoint as its Solicitor an attorney currently admitted to the practice of law in Pennsylvania who shall not then be serving as Solicitor to the Board of Supervisors.

2.0 Application Requirements

- 2.1 An applicant shall submit the following items to the Secretary of the Board as a prerequisite to the Board holding a hearing:
 - 2.1.1 Completed Application Form by DEADLINE by 4 P.M
 - 2.1.2 Residential properties - Six (6) site plans, with a graphic scale, two (2) shall be full scale and the remaining four (4) shall be reduced versions on 11" by 17" sheet size; Non-Residential properties - six (6) site plans, with a graphic scale, two (2) shall be full scale and the remaining four (4) shall be reduced versions on 11" by 17" sheet size, showing all information required on the Plan Requirement sheet provided by the Secretary. One (1) of the site plans shall be suitably rendered for public display purposes. When plans are prepared with an AutoCAD program, a copy shall be submitted in Acrobat PDF format (latest version).
 - 2.1.3 All applicants seeking a variance or special exception that include the construction or erection of a building or structure, including additions, shall submit: Residential properties – six (6) site plans, with a graphic scale, two (2) shall be full scale and the remaining four (4) shall be reduced versions on 11" by 17" sheet size; Non-Residential properties – six (6) site plans, with a graphic scale, two (2) shall be full scale and the remaining four (4) shall be reduced versions on 11' by 17" sheet size showing the building or structure elevations, and floor layout. The plans shall be of such detail and clarity to accurately reflect what will be built or erected.

- 2.1.4 A copy of the tax map showing the subject property, the abutting properties and surrounding roadways. *(Contact the Township Zoning Department for a copy of the tax map).*
- 2.1.5 A copy of the zoning map showing the subject property, the abutting properties and surrounding roadways *(Contact the Township Zoning Department for a copy of the zoning map).*
- 2.1.6 Copies of all prior zoning decisions regarding the subject property *(Contact the Township Zoning Department for copies of all prior zoning decisions).*
- 2.1.7 If the application or appeal involves issues identified by the Township Engineer, a copy of the Township Engineer's review letter.
- 2.1.8 If the appeal is from the Zoning Officer's determination, a copy of the Zoning Officer's letter.
- 2.1.9 Planning Commission and other advisory board reviews, if any, shall be submitted at the hearing.
- 2.1.10 Filing fee payable to "Whitemarsh Township" as set by the Board of Supervisors.
- 2.1.11 The following items, although not required, will assist the Zoning Hearing Board in its decision:
 - Renderings of all planned improvements and/or modifications to the subject property and/or structures on the subject property;
 - Photographs of the subject property, abutting properties, and similar properties in the Township;
 - Letters of support from neighboring or abutting property owners;
 - Manufacturers and/or building specifications for planned improvements.
- 2.2 Within fourteen (14) days of the submission by Applicant of all items set out in Paragraph 2.1, the Secretary of the Board shall notify Applicant by mail that:
 - 2.2.1 Some or all of the items submitted were incomplete, indicating any deficiency, or
 - 2.2.2 The submission is complete, providing the scheduled hearing date and time.
- 2.3 Applicant shall be considered to have requested a hearing by the Board when a complete application including the fees has been received.
- 2.4 The Secretary of the Board shall:
 - (i) upon consultation with the Chair of the Board, prepare an agenda for each Zoning Hearing Board meeting and, upon consultation with the Solicitor of the Board, prepare a non-recommendatory summary of the requested relief for each application;
 - (ii) confirm attendance of the Board Members for each scheduled meeting;
 - (iii) distribute the agenda, summary and a copy of each application, including the legal advertisements, the tax map, the zoning map, copies of all prior zoning decisions regarding the subject property, and all other documents submitted by the applicant pursuant to Section 2.1 above (a) to the Board Solicitor for review of the proposed legal advertisements as set forth below, and (b) to the members of the Zoning Hearing Board at least seven (7) days prior to the hearing;
 - (iv) assist the applicants with obtaining copies of the documents from the township files required under section 2.1.4 through 2.1.6 above;

(v) compile a listing (matrix) of all pending applications and cases on appeal showing the status of each application, the date on which each application is listed for a hearing, continuance dates, and the status of all cases on appeal, and distribute the matrix to the Zoning Hearing Board members and Board Solicitor at least seven (7) days prior to each first regular monthly meeting; and

(vi) provide copies of the Zoning Hearing Board's decisions to the following individuals as required by Section 116-226 of the Zoning Ordinance: Chair of the Board of Supervisors, Chair of the Planning Commission, the Township Manager, the Township Secretary and the Township Zoning Officer.

- 2.5 The Secretary shall prepare the necessary legal advertisements. Said advertisements shall be published once each week for two successive weeks in one newspaper of general circulation in the Township. The first publication shall be not more than thirty (30) days and the second not less than seven (7) days from the date of the hearing.
- 2.6 The Secretary shall conspicuously post notice of the hearing on the affected tract of land not less than seven (7) days prior to the date of the hearing.
- 2.7 The Secretary shall give notice of the hearing to the owner or owners, if their residence is known, or to the occupier or occupiers of every lot within five hundred (500) feet of the said lot or building provided that failure to give a notice required by this Sub-Section shall not invalidate any action taken by the Board.

3.0 Hearings

- 3.1 Meetings of the Board where any testimony is taken or other evidence is presented or at which the Board decides any application or matter properly before it shall be duly advertised and held in public.
- 3.2 The parties to a hearing shall be the Township, 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.
- 3.3 The person presiding at a hearing shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.
- 3.4 The public hearing for any application shall be held within sixty (60) days of the date of applicant's request as determined by Paragraph 2.3 unless the hearing is continued or postponed in accordance with Paragraphs 3.10, 3.14 or 3.15.
- 3.5 The Chair, or a majority of the Board present, shall determine the sequence of each public hearing. The sequence shall be generally as follows:
 - 3.5.1 Presentation of applicant's witnesses and evidence.
 - 3.5.2 Examination of evidence and questions of applicant's witnesses by opposing parties, followed by other persons present at the hearing.
 - 3.5.3 Additional testimony or evidence by applicant in response to issues raised by such questions.
 - 3.5.4 Testimony and evidence presented by parties in opposition to the application.

- 3.5.5 Examination of evidence and questions of such witnesses by applicant, followed by other persons present at the hearing.
- 3.5.6 Additional testimony and evidence presented by parties in opposition to the application in response to such questions.
- 3.5.7 General comments by persons present at the hearing for and against the application.
- 3.5.8 Presentation by the Secretary of the recommendation of the Township Planning Commission, if any, and noting for the record any correspondence received by the Board with respect to the application.

Any member of the Board can ask a question or make a comment at any time in the above sequence.

- 3.6 All persons presenting testimony at the hearing shall swear or affirm that the testimony is true. The person presiding at the hearing shall determine when a person is presenting testimony rather than a comment or opinion.
- 3.7 Public hearings of the Board shall be held at the call of the Chair and at other times as the Board may determine.
- 3.8 For the conduct of any public hearing and the making of decisions requiring a public hearing, a quorum consisting of a majority of all the members of the Board must be present, subject to 3.10 below.
- 3.9 Where a quorum is present at a public hearing, any decision made shall require a majority vote of those members voting. Where a majority of these members voting are unable to agree on a decision, the application then before the Board shall be deemed denied, any action of the Zoning Officer then being appealed shall be deemed sustained, and any other subject matter with which the Board is then dealing shall remain in status quo.
- 3.10 In the absence of a quorum at a public hearing the Chair, Vice Chair or senior member of the Board present, in order, is hereby appointed and shall act as a hearing officer with the power to conduct such hearing. Where the parties to the hearing so stipulate, the decision of the hearing officer shall be final. Where the parties will not so stipulate, the hearing officer shall have complete discretion to continue the hearing to another fixed date when it can be heard by the Board.
- 3.11 Where a quorum is present at a public hearing, the Chair, Vice Chair or senior member of the Board present, in that order, shall preside.
- 3.12 The member presiding and conducting any public hearing shall have complete discretion with respect to the order in which applications pending for that hearing shall be heard regardless of when the applications were submitted or in what order they were advertised.
- 3.13 Subject to and consistent with Section 908(1.2) of the Pennsylvania Municipalities Planning Code, the Board shall have complete discretion to limit the time available to each party with respect to presentation of evidence and cross-examination on any particular issue before the Board.
- 3.14 Once the Board has begun a hearing on an application on the date fixed therefore, subject to and consistent with Section 908(1.2) of the Pennsylvania Municipalities

Planning Code, it may continue the entire hearing or the hearing on any particular application to another fixed date, time and/or place for any good cause, including without limitation:

- 3.14.1 Presentation of evidence and cross-examination by all parties could not be concluded at a reasonable period of time at the hearing, which is continued.
 - 3.14.2 Any party or member of the public present fails to abide by these rules and regulations or the directions of the presiding Board member with respect to conducting an efficient and orderly hearing.
 - 3.14.3 Parties, witnesses or evidence necessary for a rational decision by the Board are not/cannot be present.
 - 3.14.4 Necessary evidence or testimony being presented by any party is so deficient or defective as to be useless or misleading to the Board.
 - 3.14.5 The place at which the hearing is being conducted is too small to accommodate reasonably the public and parties involved.
- 3.15 The Board shall have sole discretion to postpone to another fixed date any application already advertised if a written request for such postponement is received from the applicant, by 5:00 P.M. on the day of the hearing and acknowledged as received by the Secretary.
 - 3.16 If the original hearing date has been advertised, the date, time and place of any postponed or continued hearing shall be announced on the record by the presiding member at the originally scheduled hearing. Said announcement shall constitute sufficient notice for the continued or postponed hearing and no further advertisement or posting shall be required.
 - 3.17 An applicant can withdraw all or any part of an application prior to the decision of the Board on the application, if the applicant requests the withdrawal on the record at the public hearing or submits a written request for withdrawal received by the Secretary of the Board.
 - 3.18 The Board shall have sole discretion to accept such evidence as it deems appropriate, including but not limited to communications, reports, staff memoranda, or other materials from agencies, organizations, township residents or other persons provided any party affected by the evidence is afforded the opportunity to question or contest it.
 - 3.19 No party, or the party's representative, shall contact any member of the Zoning Hearing Board regarding any matter pending before the Board.

4.0 Decisions

- 4.1 The Board's Solicitor shall prepare a written decision or, where no decision is called for, findings, and deliver same to the applicant by deposit in the regular mail no later than the day following the date of the decision or findings. Where applicant is represented by counsel, such delivery shall be made to counsel and the applicant.
- 4.2 Any appeal from the decision of the Zoning Hearing Board shall be taken to the Court of Common Pleas of Montgomery County and filed within thirty (30) days after the date on which the decision was mailed to applicant or applicant's counsel.

- 4.3 Written Findings of Fact and Conclusions of Law as may be required to support a decision on any application shall be adopted by the Board via signature by a majority of those members participating in the decision.
- 4.4 Notes of testimony shall be transcribed for all proceedings before the Board, which shall constitute the minutes of the Board. The transcripts shall be available for review by the public at the Township Building. The Township website shall invite and direct the public to review the transcripts constituting the minutes of the Board. Electronic versions of the transcripts shall be made available to any Zoning Hearing Board member or the Board Solicitor upon request. Any applicant or any other person requesting a copy of the transcript shall pay the cost of obtaining same, consistent with the Pennsylvania Right to Know Law.
- 4.5 Section 116-223 of the Whitemarsh Township Zoning Ordinance governs the expiration of granted approvals and requests for extensions as follows:

Unless otherwise specified by the Board, all approvals granted by the Zoning Hearing Board shall automatically expire 365 days after the date of the decision unless: (1) the applicant has acted upon the approval by obtaining the required permit(s) and paying the prescribed fees for same, or (2) the Zoning Hearing Board decision is on appeal to the courts, at which point, the approval, if upheld on appeal, shall expire 365 days after final determination on appeal.

The Zoning Hearing Board may extend the expiration date of approvals for a 180 day period upon request by the applicant, provided that the applicant is, in the opinion of the Zoning Hearing Board, diligently pursuing governmental and/or regulatory approvals as required. Requests for extensions shall be in writing and submitted to the Zoning Hearing Board at least 30 days before any applicable expiration date. Only one (1) extension may be provided for any application.

5.0 Repealer

All rules of procedures of the Zoning Hearing Board existing prior to the below effective date are hereby repealed.

6.0 Amendments

The rules set forth above may, from time to time, be amended by the Zoning Hearing Board.

THE FOREGOING RULES OF PROCEDURE WERE AMENDED AND ADOPTED BY THE WHITEMARSH TOWNSHIP ZONING HEARING BOARD AT ITS PUBLIC MEETING ON FEBRUARY 4, 2015, AND BECAME EFFECTIVE FEBRUARY 4, 2015.