

## ***Article 12: Administration and Enforcement***

### **Section 1201: Statement of Intent**

- (A) The purpose and objective of the provisions established under Article 12 of this Zoning Ordinance is to establish specific regulations and guidelines for the administration and enforcement of this Zoning Ordinance.
- (B) Where a conflict or discrepancy should arise concerning the procedural requirements specified by this Zoning Ordinance and the Pennsylvania Municipalities Planning Code, the West Nantmeal Township Solicitor shall review the conflict or discrepancy and advise the Board of Supervisors, Planning Commission, Zoning Officer, Engineer and/or Zoning Hearing Board of the procedural requirements that should be followed.
- (C) The provisions established for administration and enforcement, as established under Article 12 of this Zoning Ordinance shall be subject to the interpretation of the West Nantmeal Township Zoning Officer. Should a dispute arise concerning the interpretation of these regulations, the person aggrieved by the interpretation may file an appeal with the Zoning Hearing Board.

### **Section 1202: Zoning Permits, Certificates of Use and Occupancy, and Other Permits**

- (A) The following general requirements shall apply to zoning permits, certificates of occupancy, as reviewed and issued by West Nantmeal Township:
  - (1) Persons desiring to undertake any new construction, structural or site alteration, or changes in the use of a building or lot shall apply for a permit by filling out the appropriate application form and by submitting the required fee.
  - (2) West Nantmeal Township shall either issue the appropriate permit or shall refuse the permit, indicating in writing the reason for refusal. Certain construction activities, alterations or land use activities may require approval of the Board of Supervisors and/or Zoning Hearing Board.
  - (3) If the permit is refused by West Nantmeal Township, the applicant may appeal the decision to the designated board that has the authority to consider the appeal.
  - (4) After the permit has been received by the applicant, he may undertake the action that is specifically referenced on the approved permit application and other approvals that may be required to satisfy the conditions and requirements of West Nantmeal Township.
  - (5) Upon completion of such action, the applicant may apply to West Nantmeal Township for an occupancy permit (where such a permit is required).
  - (6) If West Nantmeal Township finds that the action of the applicant is in accordance with the zoning permit and any other required permit approvals, West Nantmeal Township shall issue an occupancy permit allowing the premises to be occupied.
- (B) The following specific provisions shall apply to an application for a zoning permit within West Nantmeal Township:
  - (1) No person shall erect, alter, convert, move or add to any building, structure or sign, or alter the use of any land or structure, until West Nantmeal Township issues a zoning permit to the person or applicant for said change or construction.
  - (2) A zoning permit is generally not required for normal maintenance and repairs.

- (3) All applications for a zoning permit shall be made in writing to West Nantmeal Township and shall be accompanied by two (2) complete sets of plans accurately drawn to scale indicating or illustrating the following information if applicable:
    - (a) The actual dimensions and shape of the lot to be built upon.
    - (b) The exact size and location on the lot of buildings, structures or signs existing and/or proposed extensions thereto.
    - (c) The number of lots or dwelling units.
    - (d) Off-street parking spaces provided and/or loading facilities.
    - (e) Statement indicating the existing or proposed use.
    - (f) A detailed plan drawn to scale showing the structure, building, sign or other improvement, including the precise dimensions.
    - (g) A written agreement that the applicant is the owner of the premises on which the improvement will be conducted or that the applicant has obtained the consent of the owner or lessee of such premises to improve the property in accordance with the permit application.
    - (h) All other information necessary for West Nantmeal Township to determine conformance with and provide for enforcement of this Zoning Ordinance.
  - (4) Upon approval or denial of the zoning permit, West Nantmeal Township shall return one (1) copy of the permit application and plans to the applicant. West Nantmeal Township shall indicate that the permit has been approved or denied by signing the application. Where appropriate, conditions of approval should be specified on the zoning permit application. One (1) copy of such plans shall be retained by the Zoning Officer for his permanent records and one (1) copy shall be retained by West Nantmeal Township.
  - (5) Approval or denial of the requested zoning permit application shall be made within thirty (30) days from the date of application was considered complete by West Nantmeal Township or as specifically referenced under other prevailing codes or ordinances adopted by West Nantmeal Township.
  - (6) In denying a zoning permit application, West Nantmeal Township shall inform the applicant of the reasons for denial and specify the provision(s) of the Zoning Ordinance and/or other prevailing codes or ordinances that have not been satisfied. Applicants shall be informed of their rights of appeal and provided with all necessary information to pursue such appeals.
  - (7) A zoning permit shall expire within one (1) year from date of issuance, if the work described on the permit has not begun. If the work described on any zoning permit has begun, said permit shall expire after one (1) year, exclusive of any time required for administration and permitting, from date of issuance thereof, within which time said work shall be completed. West Nantmeal Township may grant a one (1) year time extension onto the zoning permit if the circumstances are valid and the project can be completed.
  - (8) A building permit can not be issued without first obtaining a zoning permit.
- (C) The following specific provisions shall apply to an application for a certificate of occupancy within West Nantmeal Township:
- (1) A certificate of occupancy shall be required upon the completion of the work and improvements authorized as part of the zoning permit and/or building permit. It shall be unlawful to use and/or occupy any structure, building and/or portions thereof in any manner until a certificate of occupancy has been issued by West Nantmeal Township.

- (2) The application for certificate of occupancy shall be submitted on such form as West Nantmeal Township may prescribe.
  - (3) West Nantmeal Township shall inspect any structure, building, sign, improvements and/or land or portions thereof to determine compliance with the Zoning Ordinance and permit requirements. If satisfied that the completed work is in conformity with the Zoning Ordinance and permit requirements, a certificate of occupancy shall be issued.
  - (4) Upon inspection, West Nantmeal Township shall either grant or deny the certificate of occupancy in writing, within five (5) days from the date of application or last inspection.
  - (5) In situations in which performance standards are imposed, no certificate of occupancy shall become permanent until after the use or facility is fully operating and only after, upon inspection by West Nantmeal Township, it is determined that the facility is in compliance with the performance standards. After said inspection, West Nantmeal Township shall notify the applicant that the facility is in full compliance with all performance standards and that the certificate of occupancy is permanent or that the facility does not comply and that the certificate of occupancy is still temporary. Unless otherwise specified, a temporary certificate of occupancy shall not be granted for more than ninety (90) days.
  - (6) The certificate of occupancy shall be kept on the premises and shall be publicly displayed in a manner required by West Nantmeal Township.
- (D) The following specific provisions shall apply to an application for a special use permit, seasonal permits and/or temporary permit within West Nantmeal Township:
- (1) Where a special use, seasonal use or a temporary use are permitted by this Zoning Ordinance, West Nantmeal Township may issue a special use permit or a temporary use permit to the applicant.
  - (2) A special use permit may be issued by West Nantmeal Township for a use having a periodic, intermittent or short duration of time not exceeding thirty (30) consecutive or cumulative days within a calendar year. Such special uses shall include the following: carnivals; circuses; bazaars; fairs; municipal and civic events; the sale of food, product and similar merchandise; the sale of Christmas trees, seasonal flowers or other seasonal items excluding fireworks; and other similar activities conducted by a nonprofit or charitable organization, provided that activities are conducted on the same premises as the use and location of the principal activity of the sponsor.
  - (3) A seasonal or temporary use permit may be issued for a use having a short time period, which shall not exceed ninety (90) consecutive or cumulative days within a calendar year. The seasonal or temporary use must be a permitted use specified by West Nantmeal Township.
- (E) The owner of the premises occupied by a lawful nonconforming use or structure may secure a Certificate of Nonconforming Use or Structure from West Nantmeal Township. Such certificate shall be authorized by West Nantmeal Township and shall certify to the owner his right to continue such nonconforming use or structure.
- (F) Pursuant to the provisions established by West Nantmeal Township, additional permits may be required by local, regional, county, state and federal agencies, which shall be issued prior to the commencement of any improvement or site activities.

### **Section 1203: Zoning Officer**

- (A) The provisions of this Zoning Ordinance shall be enforced by an agent, to be appointed by the Board of Supervisors, who shall be known as the "Zoning Officer." The Zoning Officer shall not hold any elective office and shall continue to serve West Nantmeal Township until such time as the Board of Supervisors declares otherwise.
- (B) The Zoning Officer is responsible to enforce the provisions of this Zoning Ordinance and shall have such duties and powers as are referenced by this Zoning Ordinance. The Zoning Officer's duties shall include:
  - (1) Receive, examine and process permit applications for zoning, land use, buildings and signs.

- (2) To issue permits for the construction, alteration, repair, extension, replacement, occupancy, and uses of land, which are in accordance with the regulations of this Zoning Ordinance.
  - (3) To record and file all applications for permits and accompanying plans and documents and keep them for public record.
  - (4) Upon the request of the Board of Supervisors, Planning Commission or the Zoning Hearing Board, present to such bodies facts, records and any similar information on specific requests to assist such bodies in reaching their decisions.
  - (5) To keep an official record of all business and activities, including complaints of a violation of any of the provisions of this Zoning Ordinance and of the action taken consequent to each such complaint.
  - (6) Perform all other duties, as may be required for the administration of this Zoning Ordinance.
- (C) Should a dispute arise concerning the interpretation of this Zoning Ordinance by the Zoning Officer, the person aggrieved by the interpretation may file an appeal with the Zoning Hearing Board.

**Section 1204: Zoning Hearing Board**

- (A) The West Nantmeal Township Board of Supervisors shall appoint three (3) residents and up to three (3) alternates to serve as members of the Zoning Hearing Board in accordance with the provisions of West Nantmeal Township and Pennsylvania Municipalities Planning Code.
- (B) The following provisions shall apply to the establishment of the West Nantmeal Township Zoning Hearing Board:
- (1) The members of the Zoning Hearing Board shall serve three (3) year terms and shall be so fixed that the term of office of one member shall expire each year.
  - (2) The Zoning Hearing Board shall promptly notify the Board of Supervisors of any vacancies, which may occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.
  - (3) The members of the Zoning Hearing Board shall not be an employee of West Nantmeal Township and shall not hold any other office within West Nantmeal Township.
  - (4) Any member of the Zoning Hearing Board may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Board of Supervisors taken after the member has received fifteen (15) days of advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.
- (C) The following provisions shall apply to the organization of the West Nantmeal Township Zoning Hearing Board:
- (1) The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves.
  - (2) For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Board, but where two members are disqualified to act in a particular matter, the remaining member may act for the Zoning Hearing Board.
  - (3) The Zoning Hearing Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf, and the parties may waive further action by the Zoning Hearing Board, as provided by West Nantmeal Township.
  - (4) The Zoning Hearing Board may appoint a solicitor or attorney to oversee the procedures of the hearing in accordance with the provisions established by of West Nantmeal Township and the Pennsylvania Municipalities Planning Code.

- (5) The Zoning Hearing Board may make, alter and rescind rules and forms for its procedure, consistent with the provisions of West Nantmeal Township and laws of the Commonwealth of Pennsylvania.
  - (6) If requested by the Board of Supervisors, the Zoning Hearing Board shall submit an annual report of its activities to the Board of Supervisors.
- (D) The following provisions shall apply to expenditures and fees for the West Nantmeal Township Zoning Hearing Board:
- (1) The members of the Zoning Hearing Board may receive compensation for the performance of their duties and services, which shall be established by the Board of Supervisors.
  - (2) Within the limits of funds appropriated by the Board of Supervisors, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical services.
  - (3) The applicant before the Zoning Hearing Board shall deposit with the designated secretary or treasurer of West Nantmeal Township an application fee deemed sufficient by West Nantmeal Township, as established by resolution, to pay the cost of the expenses for the hearing. These costs may include compensation in accordance with the provisions of the Pennsylvania Municipalities Planning Code.
  - (4) Funds deposited in excess of the actual cost of the requested hearing shall be returned to the applicant upon completion of the proceedings, and, in the event that the cost of the hearing exceeded the funds deposited, the applicant shall pay to the designated secretary or treasurer of West Nantmeal Township the appropriate funds equal to such excess cost.
- (E) The following provisions shall apply to the general functions of the West Nantmeal Township Zoning Hearing Board:
- (1) The Zoning Hearing Board shall act in strict accordance with the procedures specified within West Nantmeal Township and the Pennsylvania Municipalities Planning Code.
  - (2) The Zoning Hearing Board shall consider applications for variances, special exceptions, appeals concerning the interpretation of this Zoning Ordinance by the Zoning Officer, and other duties that are specified by West Nantmeal Township.
  - (3) All appeals and applications made to the Zoning Hearing Board shall be in writing, on forms prescribed by the Board of Supervisors or Zoning Hearing Board.
  - (4) Every appeal or application shall refer to the specific provision of this Zoning Ordinance involved and shall exactly set forth the interpretation that is claimed, the grounds for any challenges to validity of this Zoning Ordinance, the use for which a special exception is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted.
- (F) In all cases before the Zoning Hearing Board, the Board of Supervisors, Planning Commission and Zoning Officer may review and comment on the application prior to rendering a decision.

**Section 1205: Public Hearings and Procedures**

- (A) The first hearing shall be commenced within sixty (60) days from the date of the applicant's request, unless the applicant has agreed, in writing, to an extension of time. Each subsequent hearing before the Zoning Hearing Board shall be held within forty-five (45) days of the prior hearing unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of his case in chief (the part of the hearing in which the applicant presents evidence to support his or her claim or defense) within one hundred (100) days of the first hearing. Upon the request of the applicant, the Zoning Hearing Board shall assure that the applicant receives at least seven (7) hours of hearings within the one hundred (100) days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within one hundred (100) days of the first hearing, held after the completion of the applicant's case in chief. An applicant may, upon request, be granted additional hearings to complete his case in chief, provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent, on the

record by the applicant and West Nantmeal Township, be granted additional hearings to complete their opposition to the application, provided the applicant is granted an equal number of hearings for rebuttal.

- (B) The West Nantmeal Township Zoning Hearing Board shall give notice of the public hearing as follows:
- (1) By publishing a notice once each week for two successive weeks in a newspaper of general circulation within West Nantmeal Township. Such notice shall state the time and place of the public hearing and the particular nature of the matter to be considered at the hearing. The first publication shall be not more than 30 days and the second publication shall be not less than seven (7) days from the date of the hearing.
  - (2) By mailing a notice thereof to the parties of interest at least fourteen (14) days prior to the public hearing.
  - (3) By mailing or issuing a notice to the West Nantmeal Township Zoning Officer, Secretary, Board of Supervisors, Planning Commission, Chester County Planning Commission (if requested) and to every person or organization who or which shall have registered with the Zoning Hearing Board for the purpose of receiving such notices.
  - (4) West Nantmeal Township shall mail notice of the hearing to the owner of every lot within five hundred (500) feet of the lot or building in question, provided that failure to give notice, either in part or in full, as stated by this subsection shall not invalidate any action by the Zoning Hearing Board.
  - (5) The required notices by this section shall state the location of the lot or building that is the subject of the application, as well as the general nature of the request(s) being made by the applicant(s).
  - (6) The Board of Supervisors may establish reasonable fees to be paid by the applicant in accordance with the provisions of West Nantmeal Township.
- (C) The Zoning Hearing Board shall conduct the hearings, or the Zoning Hearing Board may appoint any member or an independent attorney as a hearing officer. The decision or, where no decision is called for, the findings shall be made by the Board, but the parties may waive decision of findings by the Board and accept the decision or findings of the hearing officer as final.
- (D) Parties to the hearing may include any person affected by the application who has made timely appearance or record before the Zoning Hearing Board and any other person, including civic or community organizations permitted to appear by the Zoning Hearing Board. The Zoning Hearing Board may have power to require that all persons who wish to be considered parties enter appearances, in writing, on forms provided by the Board for that purpose.
- (E) The Chairman or acting Chairman of the Zoning Hearing Board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and documents requested by the parties.
- (F) The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.
- (G) Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.
- (H) The Zoning Hearing Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings, and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.
- (I) The Zoning Hearing Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda or other material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.
- (J) The Zoning Hearing Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the Zoning Hearing Board or hearing officer. Each decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons therefore. Conclusions based on any provisions of this Zoning Ordinance or

of any act, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer and there has been no stipulation that his decision or findings are final, the Zoning Hearing Board shall make his report and recommendations available to the parties, and the parties shall be entitled to make written representations thereon to the Zoning Hearing Board prior to final decision or entry of findings, and the Zoning Hearing Board's decision shall be entered no later than 45 days after the decision of the hearing officer. Where the Zoning Hearing Board has power to render a decision and the Zoning Hearing Board or the hearing officer, as the case may be, fails to commence, conduct or complete the required hearing as required by this Zoning Ordinance, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. Nothing in this subsection shall prejudice the right of any party opposing the application to urge that such decision is erroneous.

- (K) A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him by certified mail not later than the day following its date. To all other persons who have filed their names and addresses with the Board no later than the last day of the hearing, the Zoning Hearing Board shall provide by mail or otherwise brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

### **Section 1206: Zoning Variances**

- (A) The Zoning Hearing Board shall hear requests for zoning variance applications, whereas it is alleged that the provisions of this Zoning Ordinance inflict unnecessary hardship upon the applicant. The zoning variance application shall be considered by the Zoning Hearing Board in accordance with the provisions specified by this Zoning Ordinance.
- (B) In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Zoning Ordinance and the Pennsylvania Municipalities Planning Code. The Zoning Hearing Board may, by rule, prescribe the form of application and may require a preliminary application to be issued and reviewed by the Zoning Officer.
- (C) In all cases before the Zoning Hearing Board, the Board of Supervisors, Planning Commission and Zoning Officer may review and comment on the zoning variance application prior to the Zoning Hearing Board rendering a decision.
- (D) The Zoning Hearing Board may grant a variance provided that all 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 condition, and not circumstances or conditions generally created by the provisions of this Zoning Ordinance in the neighborhood or district in which the property is located.
  - (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 this Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
  - (3) That such unnecessary hardship has not been created by the appellant.
  - (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.
  - (5) That the variance as granted by the Zoning Hearing Board is the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- (E) If a subdivision or land development plan is required to implement a variance granted by the Zoning Hearing Board, the variance shall remain valid provided that the following time frames, terms and conditions have been achieved:

- (a) A complete preliminary plan shall be submitted to West Nantmeal Township within one (1) year from the date the zoning variance was granted by the Zoning Hearing Board.
  - (b) The preliminary plan shall be approved by West Nantmeal Township within two (2) years from the date the zoning variance was granted by the Zoning Hearing Board.
  - (c) The final plan shall be approved by West Nantmeal Township and recorded by the landowner or applicant within five (5) years from the date the preliminary plan was approved. If required, a municipal improvements agreement shall be executed to ensure that the municipal improvements have been completed in accordance with the approved final plan.
  - (d) All site improvements required to implement the conditions of the zoning variance and the approved final plan shall be completed within five (5) years from the date the preliminary plan was approved by West Nantmeal Township.
- (F) If a subdivision or land development plan is not required to implement a variance granted by the Zoning Hearing Board, the variance shall remain valid provided that the following time frames, terms and conditions have been achieved:
- (1) If required, the landowner or applicant shall apply for the necessary permits for the site work and building improvements within two (2) years from the date the zoning variance was granted by the Zoning Hearing Board.
  - (2) All site and building improvements required to implement the conditions of the zoning variance shall be completed within five (5) years from the date the zoning variance was granted by the Zoning Hearing Board.
- (G) If the applicant should fail to comply with the terms and conditions specified under Sections 1206.E or 1206.F of this Zoning Ordinance, the decision and order issued by the Zoning Hearing Board shall expire and any relief granted by the zoning variance application shall become voided.
- (H) Unless otherwise stipulated as part of the variance decision issued by the Zoning Hearing Board, the Board of Supervisors may consider granting a time extension in order for the landowner or applicant to comply with the provisions specified under Sections 1206.E or 1206.F of this Zoning Ordinance.

**Section 1207: Special Exceptions**

- (A) The Zoning Hearing Board shall hear requests for special exception applications, as permitted under the provisions of this Zoning Ordinance. By so providing, the Zoning Hearing Board recognizes that certain uses may or may not be appropriate at every location within any specific district and, where it appears that a use permitted by special exception fails to comply with all of the definitional aspects thereof or would be contrary to the public health, safety, morals and/or welfare of the community at specific locations within a zoning district, that the use would not be permitted there.
- (B) In granting any special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Zoning Ordinance and the Pennsylvania Municipalities Planning Code, as amended. The Zoning Hearing Board may, by rule, prescribe the form of application and may require a preliminary application to be issued and reviewed by the Zoning Officer.
- (C) The Zoning Hearing Board shall consider the comments issued by the West Nantmeal Township Board of Supervisors, Planning Commission, Engineer, Zoning Officer and/or other agencies that could assist the Zoning Hearing Board with the special exception application. All such comments shall be made either in writing and presented as evidence during the hearing or as part of sworn testimony at the public hearing.
- (D) The Zoning Hearing Board shall consider the following issues prior to rendering its decision on a special exception application:

- (1) That such use is consistent with the West Nantmeal Township Comprehensive Plan.
  - (2) That such use shall be one, which is specifically authorized as a special exception use within the zoning district wherein the applicant seeks a special exception.
  - (3) That the property is suitable for the use desired and that the proposed request is consistent with the goals, objectives and policies established by this Zoning Ordinance.
  - (4) That such special exception shall only be granted subject to any applicable condition and safeguards as required by this Zoning Ordinance.
  - (5) That such use shall not adversely affect the general character of the neighborhood and/or property values of the adjacent uses.
  - (6) That such use shall not adversely affect the health, safety and/or welfare of residents or property owners within the general neighborhood.
  - (7) That there will be no adverse effect of the proposed special exception upon the logical, efficient and economical extension of public facilities and services, including, public water, sanitary sewers, streets, police and fire protection, public schools, and all other similar facilities and services that are considered appropriate by the Zoning Hearing Board.
  - (8) That the proposed location of any residential or non-residential use is suitable with respect to probable effects upon highway traffic and assures adequate access arrangements in order to protect major streets and highways from undue congestion and hazard.
  - (9) The adequacy of sanitation and public safety provisions.
  - (10) The Zoning Hearing Board may impose such conditions, in addition to those required, as are necessary to assure that the intent of the Zoning Ordinance is complied with, which conditions may include, but are not limited to: harmonious design of buildings; planting and its maintenance as a sight or sound screen; the minimizing of noxious, offensive or hazardous elements; adequate standards for parking and sanitation; and other reasonable conditions.
- (E) If a subdivision or land development plan is required to implement a special exception granted by the Zoning Hearing Board, the special exception shall remain valid provided that the time frame, terms and conditions have been achieved:
- (1) A complete preliminary plan shall be submitted to West Nantmeal Township within one (1) year from the date the special exception was granted by the Zoning Hearing Board.
  - (2) The preliminary plan shall be approved by West Nantmeal Township within two (2) years from the date the special exception was granted by the Zoning Hearing Board.
  - (3) The final plan shall be approved by West Nantmeal Township and recorded by the landowner or applicant within five (5) years from the date the preliminary plan was approved. If required, a municipal improvements agreement shall be executed to ensure that the municipal improvements have been completed in accordance with the approved final plan.
  - (4) All site improvements required to implement the conditions of approval for the special exception and the approved final plan shall be completed within five (5) years from the date the preliminary plan was approved by West Nantmeal Township.
- (F) If a subdivision or land development plan is not required to implement a special exception granted by the Zoning Hearing Board, the special exception shall remain valid provided that the following time frames, terms and conditions have been achieved:

- (1) If required, the landowner or applicant shall apply for the necessary permits for the site work and building improvements within two (2) years from the date the special exception was granted by the Zoning Hearing Board.
  - (2) All site and building improvements required to implement the conditions of approval for the special exception shall be completed within five (5) years from the special exception application was approved by the Zoning Hearing Board.
- (G) If the applicant should fail to comply with the terms and conditions specified under Section 1207.E or 1207.F of this Zoning Ordinance, the decision and order issued by the Zoning Hearing Board shall expire and that the approval of the special exception application shall become voided.
- (H) Unless otherwise stipulated as part of the special exception decision issued by the by the Zoning Hearing Board, the Board of Supervisors may consider granting a time extension in order for the landowner or applicant to comply with the provisions specified under Sections 1207.E or 1207.F of this Zoning Ordinance.

**Section 1208: Conditional Uses**

- (A) The Board of Supervisors shall hear requests for conditional use applications, as permitted under the provisions of this Zoning Ordinance. By so providing, the Board of Supervisors recognize that certain uses may or may not be appropriate at every location within any specific district and, where it appears that a conditional use fails to comply with all of the definitional aspects thereof or would be contrary to the public health, safety, morals and/or welfare of the community at specific locations within a district, that the use would not be permitted there.
- (B) In granting any conditional use, the Board of Supervisors may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Zoning Ordinance.
- (C) Unless otherwise required by West Nantmeal Township, a preliminary subdivision plan or preliminary land development plan shall be prepared and submitted with the conditional use application for review and consideration in accordance with the procedures and requirements specified by West Nantmeal Township.
- (D) Prior to the commencement of the conditional use hearing or during the proceedings of the conditional use hearing, the Board of Supervisors shall consider the comments of the West Nantmeal Township Planning Commission, Zoning Officer, Engineer, the appointed professional consultants and/or other agencies that could assist the Board of Supervisors with the merits of the conditional use application. All such comments shall be made either in writing and presented as evidence during the hearing or as part of sworn testimony at the conditional use hearing.
- (E) All of the standards for conditional uses hereinafter set forth shall, where relevant, apply to all conditional uses within West Nantmeal Township and are deemed definitional in character so that the failure to comply with any standards shall be deemed a failure to bring the applicant within that definitional aspect for which a conditional use may be granted; or, in the discretion of the Board of Supervisors, such failure to comply with the standards may be deemed a basis for the impositions of appropriate conditions to such grant. It is further the intention of the Board of Supervisors that the standards hereinafter described shall be deemed additional standards and shall in no way impair any other applicable standard described elsewhere in this Zoning Ordinance. Where there is a conflict between the standards set forth in this article and other standards elsewhere established by this Zoning Ordinance or other applicable ordinances, it is intended that the more stringent thereof shall apply, and it is not the intent of this article to abrogate or impair any other such standards or requirements.
- (F) The Board of Supervisors shall consider the following general issues and site requirements prior to rendering its decision on a conditional use application:
- (1) That such use is consistent with the West Nantmeal Township Comprehensive Plan.
  - (2) That the property is suitable for the use desired and that the proposed request is consistent with the goals, objectives and policies established by this Zoning Ordinance.

- (3) The minimum and maximum dimensional requirements for the proposed use within the appropriate zoning district shall be held in compliance by the applicant.
  - (4) The applicant shall establish by a fair preponderance of credible evidence that the use intended at the location intended shall not be contrary to the public health, safety, morals and/or public welfare.
  - (5) The applicant shall provide evidence with supporting documentation that the capacity of the road system providing access to the property or lot in question has sufficient capacity to accommodate the use.
  - (6) The applicant shall provide evidence with supporting documentation that the interior traffic circulation for the proposed use at the proposed location, including but not limited to acceleration and deceleration lanes where required at the proposed entrances to the location, shall be adequate to provide safe and convenient circulation for users of the facility, visitors to the facility, employees of the facility and all emergency vehicles that may require entrance thereon.
  - (7) The applicant shall provide evidence with supporting documentation the facility or use provides safe and convenient pedestrian access and internal circulation within the grounds of the facility and particularly for points of access from the facility to the parking areas.
  - (8) The applicant shall provide evidence with supporting documentation that adequate screening and buffering is provided between the lands in question and surrounding residential uses and residentially zoned districts to screen the facility from view and preclude any glare from lighting or noise from being ascertainable beyond the boundaries of the property.
  - (9) The applicant shall provide evidence with supporting documentation that the local fire departments have the abilities to provide adequate fire protection and emergency management services for the use.
  - (10) The applicant shall provide evidence with supporting documentation that adequate water supply and storage is available within the region for fire-fighting purposes without adversely impairing the uses of the water supply for ordinary purposes on the premises and shall be in compliance with all applicable governmental regulations.
  - (11) The applicant shall provide evidence with supporting documentation that the existing or proposed municipal water supply facilities have sufficient capacity for the proposed use.
  - (12) The applicant shall provide evidence with supporting documentation that the existing or proposed sanitary sewage disposal facilities have sufficient capacity for the proposed use.
  - (13) Where in the opinion of the Board of Supervisors, the use or facility may require supervision and protection, the applicant shall provide evidence with supporting documentation that additional security measures will be accounted for by the owner or site manager so the facility or use does not create a continuous burden on the emergency management services and providers.
- (G) The following provisions shall apply for the public hearing procedures and administrative requirements for all conditional use applications within West Nantmeal Township:
- (1) The Board of Supervisors shall schedule and hold a public hearing on the application pursuant to public notice within sixty (60) days from the date of receipt of the applicant's application. The request for a hearing shall be accompanied by a completed application on required form. The date for the scheduling of the first hearing may be extended by the applicant on the record or in writing addressed to the Board of Supervisors, in which event the date agreed upon by the applicant shall be considered timely for purposes of this subsection.
  - (2) As part of the conditional use hearing, the Board of Supervisors shall consider those comments issued by the West Nantmeal Township Planning Commission, Zoning Officer, Engineer, the appointed professional consultants and all other agencies providing comments, as may be authorized by West Nantmeal Township and the Pennsylvania Municipalities Planning Code.

- (3) The Board of Supervisors shall conduct the hearing or the Board of Supervisors may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Board of Supervisors. However, the appellant or the applicant, as the case may be, in addition to West Nantmeal Township, may waive decision or findings by the Board of Supervisors and accept the decision or findings of the hearing officer as final. All hearings must be completed no later than one hundred (100) days after the completion of the applicant's case-in-chief, unless extended for good cause upon application to the Court of Common Pleas.
  - (4) Any substantial revisions to the application or plan made by the applicant subsequent to filing of the application or plan or its review by the Planning Commission shall be subject to review and recommendation by the Planning Commission as specified by this Zoning Ordinance. In such event, the Zoning Officer shall secure from the applicant a written extension of the date within which the Board of Supervisors must hold a public hearing pursuant to the provisions of this Zoning Ordinance. If the applicant fails to execute the extension, the Board of Supervisors shall decide the conditional use application on the basis of the plan and application as originally filed.
  - (5) A stenographic record of the hearing shall be made by a certified court reporter, whose appearance fee shall be reimbursed through the application fee paid to West Nantmeal Township as part of the initial application. The cost of the original transcript shall be paid by West Nantmeal Township or by any party requesting an original transcript. In either case, the cost of additional copies shall be paid by the party or person requesting such copies.
  - (6) The Board of Supervisors shall render a written decision or, when no decision is called for, make written findings on the conditional use application within forty-five (45) days after the last hearing before the Board of Supervisors. Where the application is contested or denied, each decision shall be accompanied by findings of fact, reasons or conclusions based thereon. Any conclusions based upon this Zoning Ordinance, the Pennsylvania Municipalities Planning Code, or any rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. A copy of the decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him no later than the day following its date.
  - (7) If, after the conclusion of the public hearing(s), the application is amended or revised, the Board of Supervisors shall hold one or more public hearings thereon as may be necessary and shall issue a new decision thereon in conformance with the procedure established in this section. In the event that the Board of Supervisors fail to commence the public hearing within 60 days from the date of the applicant's request for a hearing or fail to complete the hearing no later than 100 days after the completion of the applicant's case-in-chief, unless extended for good cause upon application to the Court of Common Pleas, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because the Board of Supervisors failed to commence the hearings, complete the hearings, or render a decision as required by this section, the Board of Supervisors shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this section. If the Board of Supervisors shall fail to provide such notice, the applicant may do so. Nothing in this section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.
- (H) Nothing in this section shall be construed to relieve the applicant for a conditional use approval from obtaining all other required approvals mandated by West Nantmeal Township as well as other pertinent laws, ordinances and regulations that have been adopted by local, state and federal agencies. This may include the submission of a subdivision plan and/or land development plan to be prepared by the applicant and submitted to West Nantmeal Township for review and consideration.
- (I) If a subdivision or land development plan is required to implement the approval of a conditional use application by the Board of Supervisors, the conditional use shall remain valid provided that the following time frames, terms and conditions have been achieved::

- (1) A complete preliminary plan shall be submitted to West Nantmeal Township within one (1) year from the date the conditional use application was approved by the Board of Supervisors.
  - (2) The preliminary plan shall be approved by West Nantmeal Township within two (2) years from the date the conditional use application was approved by the Board of Supervisors.
  - (3) The final plan shall be approved by West Nantmeal Township and recorded by the landowner or applicant within five (5) years from the date the preliminary plan was approved. If required, a municipal improvements agreement shall be executed to ensure that the municipal improvements have been completed in accordance with the approved final plan.
  - (4) All site improvements required to implement the conditions of approval for conditional use and the approved final plan shall be completed within five (5) years from the date the preliminary plan was approved by West Nantmeal Township.
- (J) If a subdivision or land development plan is not required to implement the conditional use decision, the conditional use shall remain valid provided that the following time frames, terms and conditions have been achieved:
- (1) If required, the landowner or applicant shall apply for the necessary permits for the site work and building improvements within two (2) years from the date the conditional use application was approved by the Board of Supervisors.
  - (2) All site improvements required to implement the conditions of the conditional use zoning variance shall be completed within five (5) years from the date the conditional use application was approved by the Board of Supervisors.
- (K) If the applicant should fail to comply with the terms and conditions specified under Section 1208.I or 1208.J of this Zoning Ordinance, the decision and order issued by the Board of Supervisors shall expire and that the approval of the conditional use application shall become voided.
- (L) Unless otherwise stipulated as part of the conditional use decision, the Board of Supervisors may consider granting a time extension in order for the landowner or applicant to comply with the provisions specified under Sections 1208.I or 1208.J of this Zoning Ordinance

**Section 1209: Amendments**

- (A) The Board of Supervisors may from time to time amend, supplement, change, modify or repeal the contents of this Zoning Ordinance including the Zoning Map. Any amendment, supplement, reclassification or change may be initiated by the Board of Supervisors, Planning Commission, or by a petition to the Board of Supervisors from a property owner within West Nantmeal Township. The Board of Supervisors, by resolution adopted at a stated or special meeting, shall fix the time and place of a public hearing on the proposed change, amendment or repeal and cause notice thereof to be given as follows:
- (1) By publishing a notice once each week for two (2) successive weeks in a newspaper of general circulation in the Township. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall be not more than thirty (30) days or less than seven (7) days from the date of the hearing.
  - (2) The notice shall also set forth the principal provisions of the proposed change, amendment or repeal in reasonable detail and a reference to a place in West Nantmeal Township where copies of the proposed change, amendment or repeal may be examined or purchased at a charge not exceeding the cost thereof. Full opportunity to be heard will be given to any citizen and all parties in interest attending such hearing.
  - (3) If the proposed amendment involves a Zoning Map change, notice of said public hearing shall be conspicuously posted by the authorized representatives of West Nantmeal Township at points deemed sufficient along the tract to notify potentially interested citizens. The affected tract or area shall be posted

at least one (1) week prior to the date of the hearing. In addition to the requirement that notice be posted along the property, if the proposed amendment involves a Zoning Map change, notice of the public hearing shall be mailed by West Nantmeal Township at least 30 days prior to the date of the hearing by first class mail to the addresses to which real estate tax bills are sent for all real property located within the area being rezoned as evidenced by tax records within the possession of West Nantmeal Township. The notice shall include the location, date and time of the public hearing.

- (B) The Board of Supervisors shall refer each petition or proposal for change or amendment, whether under this article or under another article, to the Planning Commission, who shall consider whether or not such proposed change or amendment would be, in the view of the Planning Commission, consistent with and desirable in furtherance of the Comprehensive Plan upon which this Zoning Ordinance is based, as the same may be modified from time to time. The Planning Commission shall transmit its recommendations and conclusions to the Board of Supervisors within thirty (30) days. The Board of Supervisors shall take such recommendations and conclusions into consideration in reaching its decision, but shall not be bound thereby.
- (C) The Board of Supervisors shall submit the proposed zoning amendment to the Chester County Planning Commission at least thirty (30) days prior to the hearing for its review and comments. The Board of Supervisors shall take such comments into consideration in reaching its decision, but shall not be bound thereby.
- (D) The public hearing shall be conducted in accordance with the appropriate provisions that are established by West Nantmeal Township and the Pennsylvania Municipalities Planning Code.
- (E) If the zoning amendment is changed substantially or revised to include land previously not affected by it, the Board of Supervisors shall hold another public hearing, pursuant to public notice, before proceeding to vote on the zoning amendment.

#### **Section 1210: Curative Amendments**

- (A) A landowner who desires to challenge on substantive grounds the validity of this Zoning Ordinance, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the Board of Supervisors with a written request that his challenge and proposed amendment be heard. All such landowner curative amendments shall be decided as provided in accordance with the appropriate provisions that are established by West Nantmeal Township and the Pennsylvania Municipalities Planning Code.
- (B) West Nantmeal Township by formal action, may declare this Zoning Ordinance or portions thereof substantively invalid and propose the preparation of a municipal curative amendment to overcome such invalidity. All such municipal curative amendments shall be decided as provided in accordance with the appropriate provisions that are established by West Nantmeal Township and the Pennsylvania Municipalities Planning Code.
- (C) All landowner curative amendments and/or municipal curative amendments shall be referred to the West Nantmeal Township Planning Commission and the Chester County Planning Commission at least thirty (30) days prior to the initial hearing date to provide both agencies with an opportunity to submit recommendations.
- (D) The advertisement, posting and scheduling of the public hearing shall be conducted in accordance with the appropriate provisions that are established by West Nantmeal Township and the Pennsylvania Municipalities Planning Code.
- (E) If the landowner curative amendment and/or the municipal curative amendment is enacted by the Board of Supervisors, an endorsed copy of the amendment shall be forwarded to the Chester County Planning Commission within thirty (30) day of enactment.

#### **Section 1212: Appeals**

- (A) All appeals concerning the review, application, interpretation and decisions authorized by this Zoning Ordinance shall be in accordance with the appropriate provisions that are established by West Nantmeal Township and the Pennsylvania Municipalities Planning Code.

- (B) All appeals concerning an alleged error in the processing or enactment of any components of this Zoning Ordinance shall be raised by appeal taken directly from the action of the Board of Supervisors to the Court of Common Pleas, which shall not be filed later than thirty (30) days from the effective date of this Zoning Ordinance.

**Section 1213: Filing Fees and Costs**

- (A) The Board of Supervisors shall establish by resolution a schedule of fees, charges and expenses as well as the collection procedures for zoning permits, certificates of occupancy, special exceptions, variances and appeals and other matters pertaining to this Zoning Ordinance. The resolution or schedule of the fees shall be available for inspection in the office of the West Nantmeal Township Zoning Officer.
- (B) The Board of Supervisors may alter or change the schedule of the fees by resolution in accordance with the appropriate provisions established by West Nantmeal Township and the Pennsylvania Municipalities Planning Code.

**Section 1214: Violations, Penalties and Remedies**

- (A) Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Zoning Ordinance shall, upon being found liable in a civil enforcement proceeding commenced by West Nantmeal Township, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by West Nantmeal Township as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, West Nantmeal Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determines otherwise as prescribed by the Pennsylvania Municipalities Planning Code.
- (B) The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.
- (C) Nothing contained in this Zoning Ordinance shall be construed or interpreted to grant to any person or entity other than West Nantmeal Township the right to commence any action for enforcement pursuant to this Zoning Ordinance.
- (D) In the event any building, structure or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained or used in violation of this Zoning Ordinance, or in case any land, building or structure for which a use and occupancy permit is required is conveyed or possession otherwise transferred to a bona fide purchaser or lessee without obtaining such certificate of occupancy and delivering the same to such bona fide purchaser or lessee at or prior to conveyance or transfer of possession, whichever first occurs, the Board of Supervisors, in addition to other remedies, may institute in the name of West Nantmeal Township any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure or land or the conveyance thereof, or to prevent in or about such premises any act, conduct, business or use constituting a violation.