

## RULES OF PROCEDURE LOWER MORELAND ZONING HEARING BOARD

The following rules of procedure are established by the Lower Moreland Township Zoning Hearing Board ("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 ("MPC"), as amended, the Lower Moreland Township Code, as amended, and applicable decisions of the Pennsylvania courts. Any area not covered by these Rules and any ambiguity or conflict between these Rules and such codes or decisions shall be controlled by first referring to the MPC, then to the Lower Moreland Township Code and if still not resolved, then to the applicable decisions of the Pennsylvania Courts.

### 1.0 Application Requirements

- 1.1 **Filing.** An application shall be filed in accordance with these rules when the Applicant is seeking a variance, special exception, appealing a determination of the Zoning Officer or other request for relief from the requirements of the Lower Moreland Township Code.
- 1.2 **Complete Application.** An applicant shall submit the following items to the Zoning Officer of the Township as a prerequisite to the Board holding a hearing:
  - 1.2.1 A completed application form by a deadline established by the Zoning Officer.  
  
Also, ten (10) full scale, site plans showing all information required on the Plan Requirement sheet provided by the Zoning Officer.
  - 1.2.2 A statement of the section of the Zoning Ordinance under which the variance, exception, appeal or challenge may be allowed and the reasons why it should be granted. The Board may decline to consider any ground or reason for the relief sought which is not stated in the notice of appeal or application.
  - 1.2.3 A copy of the tax map showing the subject property, the abutting properties and surrounding roadways or a copy of the zoning map showing the subject property, the abutting properties and surrounding roadways.
  - 1.2.4 Copies of all prior zoning decisions regarding the subject property in the possession of the applicant.
  - 1.2.5 If the application or appeal involves issues identified by the Township Engineer, a copy of the Township Engineer's review letter.

- 1.2.6 If the appeal is from the Zoning Officer's determination, a copy of the Zoning Officer's letter.
- 1.2.7 Planning Commission and other advisory board reviews, if any, shall be submitted at the hearing.
- 1.2.8 The filing fee payable to "Lower Moreland Township" as set by the Township Board of Commissioners.
- 1.2.9 The following items, are required to be provided to assist the Zoning Hearing Board in its decision:
  - a. site, elevation and floor plans of all requested improvements and/or modifications to the subject property and/or structures on the subject property as well as the of the entire property dimensioned to a readable, acceptable scale on at least 11' x 17 paper';
  - b. photographs of the subject property, abutting properties, and similar properties in the Township, including the front, rear and sides of the subject property and the area where the improvement and/or modification is proposed; and
  - c. in the case of an application involving relief for a swimming pool, provide a Preliminary Storm Water Management Plan for review by the Township Engineer. The Board will deny a request for zoning relief for a swimming pool in the absence of a recommendation from the Township Engineer following review of such a Preliminary Storm Water Management Plan.
  - d. The following items, although not required, will assist the Board in its decision:  
 Letters of support from neighboring or abutting property owners; and  
 Manufacturers and/or building specifications for planned improvements.
- 1.3 **Notice to Applicant.** Within fourteen (14) days of the submission by Applicant of all items set forth in Rule 1.2, the Zoning Officer shall notify Applicant by mail:
  - 1.3.1 that some or all of the items submitted were incomplete, indicating any deficiency, or
  - 1.3.2 the scheduled hearing date and time and inform Applicant of any other provisions of the Lower Moreland Code with which the Application does not comply and inform Applicant of the right to amend to include additional requests for relief.
- 1.4 **Request for Hearing.** Applicant shall be considered to have requested a hearing by the Board when a complete application, including the fees, has been received.
- 1.5 **Preparation for Hearing.** The Zoning Officer shall:
  - a. prepare an agenda for each Zoning Hearing Board meeting and, upon consultation with the Solicitor of the Board, if necessary, prepare a non-recommendatory summary of the requested relief for each application;
  - b. confirm attendance of the Board members for each scheduled meeting;

- c. 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 Rule 1.2 above (a) to the Board Solicitor, and (b) to the members of the Board;
  - d. assist the applicants with obtaining copies of the documents from the Township files required under Rules 1.2.3 through 1.2.9 above;
- 1.6 **Notices.** The Zoning Officer shall prepare the necessary legal notices. Said notices shall be published on the Lower Moreland Township Municipal website as well as 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.
- 1.7 **Posting.** The Zoning Officer shall conspicuously post notice of the hearing on the affected tract of land with one notice facing each street frontage for not less than seven (7) days prior to the date of the hearing. It shall be the obligation of the Applicant to replace a notice that becomes ripped, torn or unreadable during this posting period. The Zoning Officer will provide the Applicant with new notices for posting upon request. Applicant shall present a photograph at the hearing depicting the posted notice as part of its case.
- 1.8 **Additional Notices.** The Zoning Officer 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 on the same street within five hundred (500) feet of the lot or building in question and of every lot not on the same street within one hundred fifty (150) feet of the said lot or building provided that failure to give a notice required by this Rule shall not invalidate any action taken by the Board.

## 2.0 Hearings

- 2.1 **Scheduling.** Public hearings of the Board shall be held at the call of the Chairman ("Chair") and at other times as the Board may determine. The public hearing for any application shall be held within sixty (60) days of the date of applicant's request unless the hearing is continued or postponed by the Board.
- 2.2 **Evidence.** The Chair, or in the absence of the Chair a majority of the Board present, shall determine the sequence of each public hearing. The sequence shall be generally as follows:
- 2.2.1 Presentation of applicant's witnesses and evidence.
  - 2.2.2 Examination of evidence and questions of applicant's witnesses by parties present at the hearing.
  - 2.2.3 Additional testimony or evidence by applicant in response to issues raised by such questions.
  - 2.2.4 Testimony and evidence presented by parties in opposition to the application.
  - 2.2.5 Examination of evidence and questions of such witnesses by applicant or other parties present at the hearing.

- 2.2.6 Additional testimony and evidence presented by parties in opposition to the application in response to such questions.
- 2.2.7 General comments by persons present at the hearing for and against the application.
- 2.2.8 Presentation for the record of any correspondence received by the Board with respect to the application.
- 2.3 **Board Questions.** Any member of the Board can ask a question or make a comment at any time in the above sequence. 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.
- 2.4 **Legal Representation.**
  - 2.4.1 **Applicant(s).** A corporation, including a limited liability company or a professional corporation, must be represented by a licensed attorney who is in good standing with the Supreme Court of Pennsylvania. Individuals or entities other than a corporation, if not represented by a licensed attorney, shall not be permitted to cross examine witnesses nor make legal argument nor shall their witnesses be able to offer legal argument. Nothing in these rules shall require an individual applicant to be represented by an attorney to present his or her case before the Board. An individual acting *pro se* may present evidence on their own behalf but, at the discretion of the Board, shall not ask questions nor cross examine any witness.
  - 2.4.2 **Swimming Pool(s).** In a matter involving swimming pool(s), a design professional (architect or engineer) shall be present at the hearing in order for the Board to hear testimony and, possibly ask questions, about the pool design and stormwater controls.
  - 2.4.3 **Expert Reports.** Hearings in cases involving expert evidence are impeded if opposing parties receive expert reports for the first time during the hearing at which the evidence is offered. Any party wishing to present expert evidence at a hearing shall file a copy of any report prepared by the expert with the Solicitor of the Board at least forty-eight (48) hours prior to the hearing. In addition, if the identity of counsel of any other party is known, a copy of the report shall be sent to such counsel so that it is received at least twenty-four (24) hours prior to the hearing. All such reports shall be available for inspection at the Township building. The Board may exclude any evidence offered without compliance with this rule.
- 2.5 **Oath.** 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.

- 2.6 **Quorum.** 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 a public hearing held by a hearing officer as permitted by the MPC and Rule 2.8 below.
- 2.7 **Majority Vote.** 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.
- 2.8 **Hearing Officer.** In the absence of a quorum at a public hearing the Chair, Vice Chair/Secretary 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.
- 2.9 **Presiding Officer.** Where a quorum is present at a public hearing, the Chair, Vice Chair/Secretary or senior member of the Board present, in that order, shall preside.
- 2.10 **Order of Hearings.** 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.
- 2.11 **Parties.** The parties to a proceeding before the Board shall be limited to:
- a. the applicant or appellant;
  - b. the Township; and
  - c. any person, including civic or community organizations, affected by the application, appeal or challenge who/which shall both
    - i. attend the hearing and personally participate or participate through legal counsel; and
    - ii. enter an appearance on a form provided by the Board. Persons who attend the hearing but do not file the appearance form shall not be deemed to be parties to the proceeding.
- 2.12 **Time.** 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.
- 2.13 **Continued Hearings.** Once the Board has begun a hearing on an application on the date fixed therefore, 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:

- 2.13.1 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.
- 2.13.2 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.
- 2.13.3 Parties, witnesses or evidence necessary for a rational decision by the Board are not/cannot be present.
- 2.13.4 Necessary evidence or testimony being presented by any party is so deficient or defective as to be useless or misleading to the Board.
- 2.13.5 The place at which the hearing is being conducted is too small to accommodate reasonably the public and parties involved.
- 2.14 **Continued Hearings – Written Waivers.** 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, along with any necessary written waiver of time restrictions under the MPC, by 7:00 P.M. on the day of the hearing and acknowledged as received by the Zoning Officer or the Solicitor.
- 2.15 **Continued Hearings – Announcement.** If the original hearing date has been published, the date, time and place of any postponed or continued hearing shall be announced on the record by the Board during the originally-scheduled hearing. Said announcement shall constitute sufficient notice of the continued or postponed hearing and no further publication or posting shall be required.
- 2.16 **Continued Hearings – Alternate Notice.** Where notice of a continued hearing is not given under Rule 2.14, written notice of any continued hearing should be given to counsel of record and to persons who have entered their appearances in the matter, or who have requested in writing that they receive notices of the hearing involved. Notice of continued hearings should be posted at the office of the Board or on the Township website and any notice required by 65 Pa. C.S. Section 709(c) should be given to persons who have provided stamped, addressed envelopes for that purpose. Notice of executive sessions will be announced at an open hearing. The Board may waive any requirement under this Rule and Rule 2.14 if the notice actually given meets any applicable and mandatory requirements of law and is sufficient to give reasonable notice of the hearing or meeting.
- 2.17 **Withdrawal.** 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 Zoning Officer within the time restrictions of the MPC.

- 2.18 **Communications.** No party, or the party's representative, shall contact any member of the Zoning Hearing Board regarding any matter pending before the Board.
- 2.19 **Permits.** The Board, may, hear appeals from a determination of the Zoning Officer denying a permit and authorize or direct the zoning officer to issue or deny a permit if in the Board's opinion the issuance or denial of such permit is authorized or required by the Township Code.
- 2.20 **Decisions.** All decisions of the Board shall be filed with the Vice Chair/Secretary of the Board and be matters of public record. Notice of such decisions will be given to parties who, either personally or through counsel, make a written request that such notice be given them.
- 2.21 **Amendment of Decisions.** The Board may, on its own motion or upon timely request of any party in interest, amend any of its decisions in whole or in part.
- 2.22 **Disqualification.** Any member of the Board or the Board's Solicitor will disqualify himself from participating in the hearing or disposition of any application or appeal if such Member or the Solicitor considers that he/she is financially interested in the outcome of the application or appeal.
- 2.23 **Exercise of Power.** Any power granted to the Chair by law or under these Rules may be exercised by the Vice Chair/Secretary or Senior Board member if the Chair is unavailable or disqualified from participating in the particular matter.
- 2.24 **Recording of Board Hearings.**
- a. Video, image and sound recording devices may be operated at hearings of the Board, subject to the following conditions:
    - 1. all such devices must be operated behind the last row of the meeting room in which attendees are seated or in the open area to the west side of the Board's seating area;
    - 2. all such devices must not hinder the public's viewing of the meeting or movement around the meeting room, must not disrupt the meeting or interfere with the public's hearing of the meeting and must not compromise the safety of persons in attendance;
    - 3. no lighting or flash equipment may be used;
    - 4. operators of such devices may not move around the meeting room while recording, and devices may not be plugged into any electrical outlet in the meeting room or elsewhere in the building; and
    - 5. operators may not request a pause in the proceedings due to a video, image or sound recording.
- 2.25 **Scope of Rules.** These Rules shall be broadly construed in order to give the Board the maximum discretion which it is authorized to exercise.

### **3.0 Transcripts**

- 3.1 **Public Nature.** Notes of testimony shall be transcribed when necessary to aid the Board in making its decision or preparing findings of fact, which shall constitute the minutes of the Board when transcribed, and 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 (if transcribed) 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.

### **4.0 Extension of Time Period for Zoning Relief**

- 4.1 **Extension of Expiration of Zoning Relief.** Section 208-156 of the Lower Moreland Township Zoning Ordinance, as amended, governs the expiration of granted special exceptions and variances and requests for extensions as follows:

Unless otherwise specified by the Board, a special exception or variance shall expire if the applicant fails to obtain a permit within six (6) months of the date of authorization thereof.

The Board may extend the expiration date of special exceptions and variances upon written request by the applicant for an additional period of time, provided that the applicant is, in the opinion of the Board, diligently pursuing governmental and/or regulatory approvals as required. Requests for extensions shall be in writing and submitted to the Board at least 30 days before any applicable expiration date.

### **5.0 Meetings**

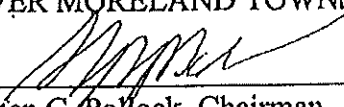
- a. The meetings of the Board shall be held at the call of the Chair and at other times as the Board may determine. Normally the Board will meet in the Township Building, 640 Red Lion Road, Huntingdon Valley, Pennsylvania 19006 unless a different location is stated in the hearing notice in accordance with the Rules.
- b. The ultimate authority to schedule cases rests with the full Board. Subject to that authority:
1. Unless otherwise directed by the Chair or the Board, the Vice Chair/Secretary shall schedule initial hearings in all cases.
  2. The Chair may grant a request from an applicant or appellant who is the landowner of the property involved to postpone an initial hearing if
    - i. the request is received no later than two (2) days before the hearing; and
    - ii. the applicant or appellant waives any right to insist that the hearings commence within the times specified by the

Municipalities Planning Code and the Chair may refer any such request to the regular members of the Board.

3. The Chair shall have the power to postpone or continue any hearing at the request of an applicant or appellant or where, in his judgment, other conditions warrant that action.
- 6.0 **Repealer.** All rules of procedures of the Zoning Hearing Board existing prior to the effective date below are hereby repealed.
- 7.0 **Amendments.** The Rules set forth above may, from time to time, be amended by the Zoning Hearing Board.
- 8.0 **Headings.** The headings set forth in these Rules shall not be used in construing the meanings or interpretation of any paragraphs, sentences, clauses or terms herein.

THE FOREGOING RULES OF PROCEDURE WERE ADOPTED BY THE LOWER MORELAND TOWNSHIP ZONING HEARING BOARD AT ITS PUBLIC MEETING ON NOVEMBER 30, 2011 AND BECAME EFFECTIVE JANUARY 1, 2012.

LOWER MORELAND TOWNSHIP ZONING HEARING BOARD

  
\_\_\_\_\_  
Stephen G. Pollock, Chairman

  
\_\_\_\_\_  
Timothy R. Weir, Secretary

  
\_\_\_\_\_  
Jack Bernstein, Member

