



***Board of Supervisors of Willistown Township***  
***Chester County***

688 Sugartown Road  
(610) 647-5300

Malvern, PA 19355  
Fax (610) 647-8156

## **Special Exceptions Under the Willistown Township Zoning Ordinance**

### **What is the Zoning Hearing Board?**

The Zoning Hearing Board (“ZHB”) is an independent branch of local government that consists of residents of the Township, one of whom serves as its Chair. The Board is represented by an attorney who is called the Solicitor. Although the ZHB is not required to follow formal rules of evidence at its hearings, it does conduct a formal hearing which is similar to a court proceeding. A court stenographer is present to make a record of the hearing. Members of the ZHB are not permitted to communicate with the applicant, his or her representatives, or any other person interested in the application, except at the time of the hearing. The ZHB, as a quasi-judicial body, may only hear and receive evidence that is given under oath and that is subject to cross-examination.

### **What is a Special Exception?**

The Township Zoning Ordinance permits various uses within the six residential districts. Some are uses by-right (meaning the use strictly conforms to the zoning ordinance and needs no discretionary approval). These uses can be proposed via the development of a single lot or by the submission of a subdivision/land development plan that is presented and reviewed/approved by the Township Planning Commission and Board of Supervisors.

Additional uses are permitted by special exception that are submitted to the Township and reviewed/approved by the ZHB.

§139-6 of the Township Code, specifically the Zoning Ordinance, defines a special exception as follows:

*“Permission or approval granted by the Zoning Hearing Board, in accordance with Article XX hereof, in situations where provision therefor is made by the terms of this chapter.”*

### **Application Review Process**

- After an application for a special exception is submitted, the ZHB has 60 days to open a hearing and 45 days to render a decision upon completion of the hearing(s). Hearings may be continued to a later date or dates as needed.
- As noted, the ZHB hears and decides requests for special exceptions. The ZHB may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Zoning Ordinance.
- Applications include a reasonably exact, dimensional sketch showing the placement and use of the proposed buildings and details of parking, loading, lighting, utility systems, sidewalks, and other pedestrian areas. A description of the uses proposed must be included in sufficient detail so that any potentially adverse impacts can be determined.

(over)

- The ZHB reviews the application materials and the hearing testimony to determine whether the proposed special exception will impose adverse impacts upon the public interest which are greater than those that might be expected in normal circumstances from such a use or activity on the site in question.

### **What must the applicant do during the hearing(s)?**

The applicant has the burden of demonstrating that the proposed special exception will not impose adverse impacts upon the public interest which are greater than those that might be expected in normal circumstances from such a use or activity on the site in question. The tract of land must be suitable for the use proposed, and the special exception should constitute an appropriate use in the area. Economic impact and impact on circulation are also to be considered. (This is further explained in the Willistown Township Code, §139-126.)

### **Obtaining “Party Status”**

During the hearing, the ZHB Solicitor will open the floor to requests for party status. Any person who made a timely appearance of record before the ZHB and believes they are affected by the application may request party status. The ZHB grants party status only to those who are determined to have “standing.” A person “affected” by the application has standing; however, the ZHB determines who is “affected.” A claim based purely on taxpayer status is not sufficient to establish standing. A person whose property, residence, or business abuts the subject property is affected and has standing, even if they are in another municipality. Standing can be objected to by the Applicant, and is ultimately determined by the ZHB. The Parties shall have the right to be represented by counsel and shall be allowed to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.

### **Public Comment**

Only after the ZHB, Applicant, and Parties have entered exhibits, called witnesses, presented evidence, etc., will the ZHB receive general comment from other members of the public.

### **If an Application for a Special Exception is Approved By the ZHB, What Happens Next?**

The applicant must submit a subdivision/land development plan application following any special exception approval. This plan will be reviewed by the Zoning Officer, Township Consultants, and Planning Commission. All Planning Commission meetings are open to the public, and residents may come and speak during the public comment period. The Township has 90 days to render a decision unless an extension has been granted. The review/approval process requires more detail than the special exception application such as: surveyed plan, engineered design of buildings, parking, stormwater management, and sight distance for access. The Planning Commission can recommend or deny approval, before referring the application on to the Board of Supervisors.

### **If this Application is Granted a Special Exception and I Disagree What Can I Do?**

The applicant, or an individual granted party status during the hearing may appeal the decision of the ZHB to the Court of Common Pleas, Chester County, Pennsylvania, within thirty (30) days of the date of this decision.

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*The above summary is intended to give a general overview of the process involved and should not be considered legal advice to be relied upon by the applicant, other participants in the process, or the general public.*