

**RULES OF THE ZONING HEARING BOARD
OF LOWER MERION TOWNSHIP**

Promulgated at the Board's Meeting held April 22, 1986, in accordance with the provisions of Section 906 of the Pennsylvania Municipalities Planning Code, amended by the Board on August 20, 1987, March 3, 1994, February 18, 1999, November 11, 2004 and September 16, 2010.

1. **NAME.** The Board adopts "Zoning Hearing Board of Lower Merion Township" as its title.
2. **LOCATION.** The offices of the Board shall be in the Township Building, 75 East Lancaster Avenue, Ardmore, Pennsylvania.
3. **SECRETARY.** The Board shall appoint a Secretary who will maintain the office of the Board in the Township Building, 75 East Lancaster Avenue, Ardmore, PA. The Secretary shall have custody of the records and papers of the Board. The Secretary of the Board shall not permit any original records or papers to be taken from his custody except at the direction of the Board or its Solicitor.
4. **AGENTS.** The Board shall use such agents, including a Solicitor, as are authorized by the Township Commissioners.
5. **MEETINGS.**
 - (a) The meetings of the Board shall be held at the call of the Chairman and at other times as the Board may determine. Normally the Board will meet in the Township Building, 75 East Lancaster Avenue, Ardmore, Pennsylvania.
 - (b) The ultimate authority to schedule cases rests with the full Board. Subject to that authority:
 1. Unless otherwise directed by the Chairman or the Board, the Secretary shall schedule initial hearings in all cases.
 2. The Secretary 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 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. The Secretary may refer any such request to the Chairman.
 3. The Chairman shall have the power to postpone or continue any hearing at the request of an applicant or appellant or where, in his judgement, whether or other conditions warrant that action.
6. **APPEALS TO THE BOARD FROM AN ADMINISTRATIVE DECISION.** Appeals to the Board shall be taken within (30) days after the action which is the subject to the appeal. Such an appeal shall be taken by filing with the Board a notice of appeal specifying the grounds thereof.

7. **FORM OF APPEAL OR APPLICATION.** All appeals, applications for special exceptions and variances, or challenges filed with the Board shall be submitted to the Secretary of the Board, and each appeal, application or challenge shall state:
- (a) The name, address, contact phone number(s) and e-mail address of the applicant.
 - (b) The name, address, contact phone number(s) and e-mail address of the owner of the real estate to be affected by the appeal or the proposed special exception or the variance.
 - (c) A brief description and location of the real estate affected by the application or appeal.
 - (d) A statement of the present zoning classification of the real estate in question, the improvements thereon and the present use thereof.
 - (e) A statement of the grounds for an appeal, application or challenge and the section of the Lower Merion Code from or under which a variance, or special exception is requested, and reasons why relief should be granted. The Board may decline to consider any ground or reason for relief which is not stated in the notice of appeal or application.
 - (f) A reasonably accurate description of the present improvements and the additions intended to be made under the appeal or application, indicating the size and nature of any proposed improvements.
 - (g) The number of witnesses who will give testimony and an indication of the time necessary to present the applicant's case.

In addition, there shall be attached (5) copies of a plot plan of the property, prepared (except where otherwise authorized by the zoning officer) by a registered engineer or land surveyor, indicating the location and size of the lot and the size of improvements now erected and proposed to be erected thereon. If the applicant's plans are larger than 11" x 17", the applicant must submit one set of plans reduced to no larger than 11" x 17". The applicant should arrange to have additional plans available prior to or at the meeting for potential protestants.

8. **AUTHENTICATION OF INTEREST IN PROPERTY.** Before an application can be filed, the applicant must establish to the satisfaction of the zoning officer that the applicant has such an interest in the property as would enable the applicant, except for the provisions of the Zoning Ordinance, to make the use of the property requested by the applicant. The zoning officer may require the production of the appropriate leases, deeds and other legal documents in order to make this initial determination. Any person filing an appeal from the issuance of a permit or permission shall include with the appeal a statement showing that the appellant is aggrieved by the action from which the appeal is taken.

9. **REQUIREMENT FOR PRE-HEARING MEMORANDA OR BRIEFS.**

- (a) In all cases involving a challenge to the validity of any provision of any ordinance, the person asserting the challenge shall file with the Secretary of the Board and the Township Manager at least (5) days prior to the hearing a memorandum listing:

- (1) The witnesses who will be called, describing the substance of their testimony; and
 - (2) The legal authorities which support the challenge.
 - (b) In other cases, briefs shall be furnished to the Board where their filing has been requested by the Chairman of the Board.
 - (c) Where memoranda or briefs are required or permitted, (5) copies shall be filed with the Board and a copy shall be served upon opposing parties or their representative, if their identity is known to the person filing the memorandum or brief.
 - (d) Memoranda and briefs shall be available for inspection by interested parties at the office of the Secretary of the Board. The Board may refuse to accept any evidence offered without compliance with this rule.
10. **EXHIBITS.** All Exhibits shall be in a form that can be folded to dimensions of eight by ten and one-half. Nothing in this Rule shall prevent a party from mounting a copy of an exhibit to facilitate its use at the hearing. Where a model or similar exhibit is used at the hearing, a photograph shall be used as the exhibit for record purposes.
11. **EXPERT REPORTS.** Hearings in cases involving expert evidence are impeded if opposing parties first receive expert reports 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 Secretary 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 offices of the Board. The board may exclude any evidence offered without compliance with this rule.
12. **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 shall both (i) attend the hearing personally or through 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.
13. **NOTICE OF MEETINGS.** The notice requirements for an initial zoning hearing are specified in the applicable statutes and the Lower Merion Code. In the case of hearings other than the initial hearing, notice should be given as follows:
- (a) The Board generally will announce the time and place of a second or later hearing at which evidence or oral argument is presented (a "continued hearing") at a hearing in the same matter.

- (b) Where notice of a continued hearing is not given under paragraph (a), written notice of any continued hearing should be given to counsel of record and to persons shown by the file to 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 and any notice required by 65 P. S. Section 279(c) should be given to persons who have provided stamped, addressed envelopes for that purpose.
- (c) Notice of executive sessions will be announced at an open hearing or will be given as provided in subparagraph (d).
- (d) Continued Hearings and executive sessions generally will be the subject of a single newspaper advertisement where time permits.

The board may waive any requirement under this Rule 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.

14. **BOARD DIRECTION TO ZONING OFFICER REGARDING PERMITS.** The Board, may, upon request, authorize or direct the zoning officer to issue or deny a permit if in its opinion the issuance or denial of such permit is authorized or required by the Ordinance. In such cases no public hearing will be held unless an appeal from the issuance or denial of a permit is taken as provided in these Rules.

15. **DECISIONS.** All decisions of the Board shall be filed with the 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.

16. **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.

17. **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 is personally interested in the outcome of the application or appeal.

18. Any power granted to the Chairman by law or under these Rules may be exercised by the Vice Chairman or Senior Board member if the Chairman is unavailable or disqualified from participating in the particular matter.

18.1 **RECORDING OF BOARD MEETINGS AND HEARINGS.**

(a) Video, image and sound recording devices may be operated at meetings of the Board held pursuant to Lower Merion Code §155-111, 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; and

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.

(b) Video, image and sound recording devices may not be operated during the course of hearings conducted by the Board pursuant to Sections 908 and 909.1 of the Municipalities Planning Code (53 P.S. §§10908 and 10909.1) and Lower Merion Code §155-113; provided however, that the Board's stenographer taking the notes of testimony may use a sound recording device.

19. **SCOPE OF RULES.** These Rules shall be broadly construed in order to give the Board the maximum discretion which it is authorized to exercise.

20. **AMENDMENT.** These Rules may be amended or rescinded at any time by a majority of the Board.

Zoning Hearing Board

FEES

Single Family Dwelling	\$ 600.00
Each postponement or continued hearing requested by appellant or applicant	\$ 200.00
Institutional	\$ 1200.00
Each postponement or continued hearing requested by appellant or applicant	\$ 400.00
Commercial/Apartment/Industrial	\$1,400.00
Each postponement or continued hearing requested by appellant or applicant	\$ 700.00
Challenges to the validity of the Zoning Ordinance or Zoning Maps	\$1,750.00
Postponement	\$ 300.00
*Plus initial Consultants' Review Fee Escrow deposit	\$1,200.00
Petition to Board of Commissioners: Requesting change or amendment to Zoning Maps or Zoning Ordinance	\$1,500.00
For each 2,000 square feet of lot area	\$ 50.00
Minimum charge	\$1,300.00
Maximum charge	\$3,000.00
*Plus initial Consultants' Review Fee Escrow deposit	\$1,200.00

*Should the balance of the escrow account fall below 25% of the original amount deposited additional deposit(s) may be required to restore the escrow account balance to the amount originally deposited or to pay the anticipated balance of the actual costs, whichever is less, in order for the review process to continue. Any amounts remaining in the escrow account after all professional consultant review fees are paid from the account will be returned to the applicant.

LOWER MERION TOWNSHIP ZONING HEARING BOARD

The Zoning Hearing Board (ZHB) has found that many Township residents are not familiar with the approval process for applications before the Board. This information has been prepared to provide residents with a description of the ZHB's jurisdiction and its public hearing procedures. This memo provides you with a description of the type of cases typically before the Board. It is not intended to provide a complete description of the Board's jurisdiction.

The Pennsylvania Municipal Planning Code requires that any community enacting a zoning ordinance establish a Zoning Hearing Board to hear and decide zoning applications and appeals.

The ZHB has no legislative power. It can neither make nor modify zoning policy. It is a quasi-judicial body; that is, its powers are essentially judicial in nature. The Board consists of three members appointed by the Board of Commissioners. All must be residents of the Township.

FUNCTIONS OF THE ZHB

The ZHB schedules hearings on applications and appeals that come before it, takes evidence and issues written decisions on findings of fact.

Most matters coming before the Board fall into three major areas: (1) Appeals from action of the Zoning Officer; (2) Variances; and (3) Special Exceptions.

- 1) *Appeals from Action of the Zoning Officer.* Appeals originate when it is claimed that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of a valid zoning ordinance or map or any rule or regulation governing the action of the Zoning Officer. Matters involving nonconforming uses or buildings generally fall into this category.
- 2) *Variances.* An applicant may request a variance from the provisions of the ordinance when it is felt that a literal enforcement of the ordinance would create an unnecessary hardship as defined by law, including court decisions, on the applicant's use of the property.
- 3) *Special Exceptions.* The Board hears and decides requests for special exceptions in accordance with the standards and criteria expressed within the ordinance. When the ordinance permits a use "by special exception", this represents a decision by the commissioners that the use generally should be allowed unless it is injurious to the public interest in the particular instance.

HEARINGS CONDUCTED BY THE ZHB

The purpose of a hearing is to establish facts relative to the application. Therefore, a factual presentation outlining the reasons why a particular proposal does or does not meet the requirements of the ordinance, why the ordinance creates a hardship in the particular case, and how the proposal will or will not be harmful to the public generally should be provided.

Witnesses should have an organized presentation. If there are several witnesses, each should devote his or her time to different facets of the case rather than presenting repetitive comments.

If the testimony consists of rambling emotional comments, it will be of little value to the Board. It is normally a good idea to have a central spokesperson to help develop the case. An organized factual presentation will provide the Board with a better understanding of the facts and the concerns of the community.

The ZHB handles hearings in formal “court-like manner”. Those present should be mindful of this and should hold any questions, comments or testimony until it is called for by the Chairman.

Applicant’s Presentation:

- 1) Applicant is called forward by the Chairman to present case.
- 2) Applicant or any witness is sworn by the Chairman in order to present evidence. ZHB members can and will be asking questions both during and after examination of the witness.
- 3) The Chairman will then allow anyone present to ask questions of the witness currently on the stand. Questions should relate to the evidence presented. Statements, comments or evidence by the audience are not permitted at this time.
- 4) The applicant can then swear additional witnesses for further testimony; otherwise, he/she will close his/her case with a summary statement or brief.
- 5) The Chairman will then allow anyone in the audience to come forward to make a statement or comment. Keep in mind that the Board views statements and comments as an opinion by an individual or group. If someone wishes to present evidence, that person must be sworn in and is subject to cross-examination by the applicant.

Protestant’s Presentation:

If protestants are organized, the opposition will most likely be presented in a formal manner much like that of the applicant’s. Otherwise individual protestants may ask to be sworn in to present evidence. This evidence can be cross-examined and attacked in rebuttal.

Conclusion:

Anyone wishing to become a party and receive a copy of the decision of an individual case must fill out an appearance slip provided at the podium in the front of the Board Room.

The Board generally renders a written decision on an application within 45 days after the last hearing before the Board.

A party aggrieved by a decision of the ZHB may appeal to the Court of Common Pleas within 30 days after the Board's decision. The Court, while having the power to hear evidence, usually considers only the record taken before the Board.

Unless the Board goes into executive session, anyone is welcome to remain after the close of the last hearing of the evening to hear possible discussion on the individual cases. There must, however, be absolutely no talking among members of the audience or with Board members at this time. Any additional questions can be addressed to the Zoning Officer during normal business hours at 610-645-6200.

LOWER MERION TOWNSHIP ZONING HEARING BOARD