



## APPLICATION FOR CONDITIONAL USE HEARING

DATE \_\_\_\_\_

NAME OF APPLICANT \_\_\_\_\_

ADDRESS OF APPLICANT \_\_\_\_\_

TELEPHONE NUMBER OF APPLICANT \_\_\_\_\_

OWNER OF PROPERTY \_\_\_\_\_

ADDRESS OF OWNER \_\_\_\_\_

TELEPHONE NUMBER OF OWNER \_\_\_\_\_

GIVE EXACT LOCATION OF PROPERTY \_\_\_\_\_

TAX PARCEL NUMBER(S) \_\_\_\_\_

PRESENT ZONING CLASSIFICATION \_\_\_\_\_

PRESENT USE OF PROPERTY \_\_\_\_\_

A HEARING IS SOUGHT TO (describe proposed use) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

LIST NAMES AND ADDRESS OF ALL OWNERS OF PROPERTY ADJOINING AND OR ACROSS PUBLIC OR PRIVATE ROAD FROM PROPERTY FOR WHICH HEARING IS BEING SOUGHT (attach another sheet of paper if more space is needed).

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

STATE THE ARTICLES, SECTIONS AND SPECIFIC PROVISIONS OF THE WEST BRANDYWINE TOWNSHIP ZONING ORDINANCE INVOLVED IN THIS HEARING.

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UPON REQUEST OF A CONDITIONAL USE HEARING, THE APPLICANT SHALL PROVIDE ALL DOCUMENTATION AS PRESCRIBED IN SECTION 200-171 THROUGH SECTION 200-176 OF THE TOWNSHIP ZONING ORDINANCE. THIS DOCUMENTATION SHALL BE SUBMITTED ALONG WITH THE CONDITIONAL USE HEARING APPLICATION.

\*\* A cashier check or certified check shall be made out to West Brandywine Township and submitted with the application for a Conditional Use Hearing. Please note that a cashier check or certified check will be required for each and every hearing afterward until a decision is rendered.

**Please find attached Section #200-171 through #200-176. Please see current Fee Schedule located on Web**

**DO NOT FILL OUT BELOW THIS LINE**

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Date Received: \_\_\_\_\_ Received By: \_\_\_\_\_

Date Reviewed for Completeness \_\_\_\_\_ Reviewed By: \_\_\_\_\_

Comments: \_\_\_\_\_

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Township of West Brandywine, PA  
Thursday, July 20, 2017

## Chapter 200. Zoning

### Article XXI. Conditional Use Process

#### § 200-171. Compliance with other regulations required.

Nothing in this article shall be construed to relieve the owner or his agent, the developer, or the applicant for a conditional use approval from obtaining approval in accordance with Chapter 167, Subdivision and Land Development, of the Code of the Township of West Brandywine, or other applicable ordinances.

#### § 200-172. Consideration of conditional use standards and requirements.

The requirements of this article and the standards for specific types of conditional uses found elsewhere in this chapter shall be deemed an element of the definition under which a conditional use permit may be granted. The failure of the applicant to demonstrate compliance with these requirements, in the discretion of the Board, can be deemed either a basis for establishing conditions or limitations on an approval or the basis for a denial of a conditional use application.

#### § 200-173. General requirements.

- A. **Ownership.** The tract of land under application for conditional use approval shall be in one ownership, or shall be subject of an application filed jointly by the owners of the entire tract, and shall be under unified control. If ownership of the entire tract is held by more than one person or entity, the application shall identify and be filed on behalf of all of the said owners. Approval of the plan shall be conditioned upon agreement by the applicant or applicants that the tract shall be developed under single direction in accordance with the approved plan. No site preparation or construction shall be permitted other than in accordance with the approved plan. If ownership of all or any portion of the tract changes subsequent to approval of the plan, no site preparation or construction by such new owner or owners shall be permitted unless and until such owner or owners shall review the terms and obligations of the approved plan and agree in writing to be bound thereby with respect to development of the tract.
- B. **Sewer and water facilities.** Applicant shall demonstrate evidence of adequate water supply and sewage disposal capability. The tract of land shall be served by a water supply system and a sewage system deemed acceptable by the Board of Supervisors, upon recommendation of the Township Engineer. Such facilities shall be designed and constructed in compliance with §§ 167-57 and 167-58 of Chapter 167, Subdivision and Land Development, of the Code of the Township of West Brandywine and the West Brandywine Township Sewage Facilities (Act 537) Plan.
- C. **Development stages and permits.** The development of a tract carried out in either a single phase or in stages shall be executed in accordance with a development agreement. The owner, developer, and Township shall enter into said agreement embodying all details regarding compliance with this chapter to assure the binding nature thereof on the overall tract and its development, which agreement shall be recorded with the final development plan.

- D. Stormwater management. The control of erosion and sediment during construction, and the ongoing management of stormwater on the tract, shall be accomplished in accordance with applicable provisions of Article VIII of Chapter 167, Subdivision and Land Development, of the Code of the Township of West Brandywine.
- E. Covenants and restrictions. The language, terms and conditions of any proposed covenants or restrictions shall be subject to review and recommendation by the Township Solicitor.

## § 200-174. Application.

- A. Application for conditional use shall be filed with the Township Manager on such forms as may be prescribed for said purpose. The application shall be accompanied by a fee as prescribed by the Board of Supervisors by population enacted after the approval of this chapter. The application shall state the following:
  - (1) The name and address of the applicant.
  - (2) The name and address of the owner of the real estate to be affected by the proposed conditional use application.
  - (3) A description and location of the real estate on which the conditional use is proposed.
  - (4) A statement of the present zoning classifications of the real estate in question, the improvements thereon, and the present use thereof.
  - (5) A statement of the section of this chapter which authorizes the conditional use.
- B. Development plan. The application for conditional use approval shall be accompanied by a unified, overall site plan covering the entire tract, regardless of any intended phasing of development. The plan shall be prepared with sufficient detail to adequately illustrate the proposed development uses and nondevelopment uses of the tract, including (where appropriate), reserve areas for possible future expansion; coordinated internal and external vehicular and pedestrian circulation; well related, convenient and efficient parking and loading areas; agreeable surroundings that provide comfort, safety, and convenience for prospective residents, customers, and/or workers; and high quality design in terms of building relationship, facade treatment, signage, lighting, landscaped and planted buffers and screens, as well as other natural and constructed amenities in furtherance of the comprehensive planning objectives of West Brandywine Township.
- C. Site analyses. The application for conditional use approval shall be accompanied by site analyses in accordance with the requirements of § 167-26 of Chapter 167, Subdivision and Land Development, of the Code of the Township of West Brandywine. The applicant shall indicate how any or all of the inventoried resources will be affected by the proposed development, and shall describe mitigating measures to be employed in addressing these impacts. The development impacts and the proposed mitigating measures shall be described in narrative and graphic form, as appropriate.  
[Amended 8-6-1998 by Ord. No. 98-08]
- D. Market analysis.
  - (1) Purpose. A market analysis, while not required, shall be submitted if requested by the Board. If such an analysis is requested, it shall contain information indicating the likelihood of the proposed conditional use meeting with market support.
  - (2) Contents of market analysis. A market analysis shall contain the following information:
    - (a)

Uses evaluated. A description of the land uses evaluated as a part of the market analysis shall be provided. Included shall be the nature of the proposed uses in terms of the intended attraction of the proposed use to neighborhood, community, and/or regional populations and markets.

- (b) Identification of competition. Existing and approved developments that are likely to be in competition with the proposed use shall be identified. The analyst selected to perform the market study shall determine the area within which existing developments are likely to compete with the proposed use.
  - (c) Analysis. Dependent upon type of use proposed, the market analysis shall include identification of the trade area to be served, where relevant the supportability of floor areas to be devoted to specific use(s), a computation of existing floor areas of a nature similar to the use proposed, and a determination of the net supportable floor area within the trade area or study area defined.
  - (d) Conclusions. The analyst shall proffer an opinion regarding the likelihood of the proposed use meeting with market support. Included in the conclusions shall be a statement regarding the appropriate time frame to consider construction of the development and scheduling of the development. Additionally, the types of tenants (if a leased project) which are likely to meet with market support in the development shall be identified.
- E. Traffic analysis. The Board of Supervisors at its sole discretion may require applicant to provide traffic studies demonstrating feasible compliance with the objectives of this chapter and the West Brandywine Township Comprehensive Plan.<sup>[1]</sup> Such studies shall estimate traffic volumes, turning movements and levels of service at intersections, and potentially unsafe conditions existing prior to development as well as may be reasonably expected to occur after proposed development and shall suggest action(s) to mitigate any anticipated reduction of level of service or other negative impact to traffic conditions resulting from development as proposed. In granting conditional use approval, the Board may attach conditions requiring specific improvements to local roads to be incorporated into plans for development, to the extent necessary to maintain pre-existing levels of service, correct unsafe conditions which may be worsened by traffic impacts of development, and otherwise provide for safe and convenient access for residents, visitors, employees, and emergency service personnel and vehicles.

[1] *Editor's Note: See Ch. A206, Comprehensive Plan.*

## § 200-175. Procedures.

- A. Upon receipt of a complete application for conditional use approval, the Township Manager shall submit the application for recommendation to the Planning Commission. The application shall be deemed complete when the Township is in receipt of the accompanying fee, plan(s) for development, natural and cultural resources analysis, and market analysis if required. Upon receipt of application and proposed site plan when required, the Planning Commission shall review the conditional use request with the applicant at its next regularly scheduled meeting or at a special meeting at the discretion of the Planning Commission. If the Planning Commission does not render a decision within 60 days from the date that the application is delivered to it, then it shall be deemed that the Planning Commission recommends the approval of the application. The Planning Commission may extend its period of deliberation beyond 60 days upon written authorization by the applicant. Should applicant submit new or revised plans for development under application for conditional use approval during the period of review by the Planning Commission, the Commission may request that the Board of Supervisors, at its sole discretion, require that said sixty-day period start anew.
- B. After review by the Planning Commission, the Board of Supervisors shall hold a public hearing on the conditional use application in accordance with the following procedures:
  - (1)

Notice of the hearing shall be given to the public by publication in a newspaper of general circulation in the Township at least twice, the first such notice to be not less than 10 days prior to the date of the scheduled hearing. Abutting property owners shall be notified in writing no less than 14 days prior to the scheduled hearing. Additionally, like notice thereof shall be given to the applicant, the Code Enforcement Officer, and to any person who has made timely written request for same. Notice of the hearing shall be conspicuously posted on the affected tract of land at least one week prior to the date of the hearing. The Board of Supervisors shall conduct its first hearing on the application within 90 days from the date the application is filed with the Township Manager.

- (2) The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of the record before the Board of Supervisors, and any other person, including civic or community organizations, permitted to appear by the Board. The Board shall have the power to require that all persons who wish to be considered parties submit written request on such forms as the Board may provide for that purpose.
- (3) The Chairman or Acting Chairman of the Board shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties;
- (4) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- (5) The Board shall keep a stenographic record of the hearing proceedings. Copies of the written or graphic material received in evidence shall be made available to any party at cost.
- (6) The Board shall render a written decision within 45 days after the last hearing before the Board. Where the application is contested or denied, the decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons for the final decision.
- (7) A copy of the final decision shall be delivered to the applicant and the parties before the Board personally or mailed to them not later than the day following the date of the decision.
- (8) Appeals from a determination of the Board pursuant to any application for a conditional use shall be only as prescribed within such times permitted by the applicable provisions of Act 247, the Municipalities Planning Code, as amended.<sup>[1]</sup>

[1] *Editor's Note: See 53 P.S. § 10101 et seq.*

- C. In granting a conditional use permit, where such use is authorized under this chapter, the Board of Supervisors may also attach such conditions and safeguards, in addition to those expressed in this chapter, as it may deem necessary to implement the purpose of Act 247, the Municipalities Planning Code, as amended, or this chapter. Conditional uses shall be subject to compliance with particular standards contained in this chapter and criteria defined in the application review process. The standards described shall be deemed additional and shall in no way impair any other applicable standard from this chapter or any other Township ordinance. Where there is a conflict between the standards set forth in this section and other provisions of this chapter or other Township ordinances, it is intended that the more stringent provision shall apply, unless the Board expressly agrees to an alternative condition. In addition, the applicant shall be responsible for demonstrating compliance with the additional standards and criteria required for conditional use approval. Such conditions may include, but need not be limited to:
- (1) Specific modifications to area and bulk requirements as might otherwise be applicable;
  - (2) Provisions for additional utility or traffic safety facilities;
  - (3) Securing of additional easements or property to assure proper sight design; or
  - (4) Modification to the applicable design standards.

- D. The applicant shall have the burden to prove, by preponderance of evidence, that the proposed use will comply in all respects with this chapter and other Township ordinances, county, state or federal legislation. When the applicant does not provide information as required, then it shall be presumed that the proposed use is not in accordance with the requirements applicable for the granting of conditional use approval. If, after any public hearing, the application is amended or changed substantially, the Board of Supervisors may resubmit the application to the Planning Commission for review and may hold an additional public hearing or hearings pursuant to public notice as aforesaid.
- E. Any grant of conditional use approval shall be deemed null and void six months from the date of such approval if, within that period, no application is made for a building permit, a use and occupancy permit, or subdivision or land development approval, as appropriate, unless the Board of Supervisors shall grant an extension at its sole discretion.
- F. The Board of Supervisors shall have the power in approving a conditional use, to grant modifications and waivers to the applicable provisions of this Chapter **200** when the Board deems such modifications and waivers to be in the public interest.  
[Added 11-16-1994 by Ord. No. 94-08]
- G. Any conditions of approval set forth in an order of conditional use approval issued by the Board of Supervisors shall be stated verbatim in plan notes on any applicable preliminary or final subdivision or land development plan submitted to the Township.  
[Added 10-4-2001 by Ord. No. 01-02]

## § 200-176. Criteria for review of conditional use applications.

The following criteria shall be used as a guide by the Board of Supervisors in evaluating a proposed conditional use. It shall be the burden of the applicant to demonstrate compliance with all applicable criteria:

- A. The uses proposed shall be limited to those authorized as conditional uses within the district in which the lot or parcel is situated. The property subject to conditional use application shall be suitable for the use desired.
- B. The size, scope, extent and character of the conditional use desired shall be consistent with the spirit, purposes and intent of the West Brandywine Township Comprehensive Plan, the Open Space, Recreation and Environmental Resources Plan,<sup>[1]</sup> and this Chapter **200**, Zoning.  
*[1] Editor's Note: See Ch. A206, Comprehensive Plan; and Ch. A207, Open Space, Recreation and Environmental Resources Plan.*
- C. The proposed use at the location set forth in the application shall be in the public interest and best serve the public health, safety, morals and general welfare.
- D. Consideration of the character and the type of development in the area surrounding the location for which the request is made, and a determination that the proposed change will constitute an appropriate use in the area and will not injure or detract from the use or value of the surrounding properties or from the character of the neighborhood.
- E. The development, if more than one building, will consist of a harmonious grouping of buildings or other structures.
- F. There will be no adverse effect of the proposed conditional use upon the logical, efficient and economical extension of public services and facilities, such as public water, sewers, police and fire protection, recreational opportunities, open space and public schools and, where necessary, adequate arrangements for expansion or improvement are assured.
- G.

The design and use of any new construction and proposed change in use of existing buildings will be compatible with the existing designs and uses in the immediate vicinity and that the proposed design or use shall be compatible with the character of the neighborhood.

- H. If the development is to be carried out in progressive stages, each stage shall be so planned that the conditions and intent of this chapter shall be fully complied with at the completion of any stage.
- I. The location and layout of the proposed use is suitable with respect to probable effects upon highway traffic, assure adequate access arrangements in order to protect major streets and highways from undue congestion and hazard. The proposed use will not lower the level of service on adjacent road segments and intersections as defined by the most recent edition of the Highway Capacity Manual from the Transportation Research Board. As a policy, proposed projects should incorporate designs which assure safe and efficient access and maintain a level of service "C," as a minimum, on all adjacent road segments and intersections.
- J. The interior traffic circulation shall provide safe and convenient circulation for all users, including pedestrian and vehicular modes of transit. Applicant shall demonstrate that sufficient safeguards such as parking, traffic control, screening, and setbacks can be implemented to remove any potential adverse influences the use may have on adjoining uses. In addition, all emergency access design considerations shall be addressed and incorporated into the proposed plan.
- K. The adequacy of sanitation and public safety provisions, where applicable, and the necessity to provide a certificate of adequacy of sewage and water facilities from a governmental health agency in such case required or deemed necessary.
- L. Sufficient land area available to be able to effectively screen the proposed conditional use from adjoining different uses if required by the Board of Supervisors.
- M. Consideration of any other development impacts and proposed mitigation identified by the required natural and cultural resources analysis.
- N. Consideration of likelihood of market success of proposed use(s), as indicated by market analyses, where required.
- O. Any unique circumstances for which the conditional use is sought were nether created by the owner of the property, nor were due to, or the result of, general conditions in the zoning district in which the property is located.
- P. The Board shall consider additional standards and criteria set forth in § **200-153**, Standards for review of special exception, to the degree the Board deems applicable to review of conditional use approval.
- Q. Uses shall meet the provisions and requirements of Chapter **167**, Subdivision and Land Development, of the Code of the Township of West Brandywine and all other applicable ordinances and regulations whether or not propounded by West Brandywine Township.
- R. The Board may impose such conditions, in addition to those required, as are necessary to assure that the intent of this chapter 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 noise, glare, and noxious, offensive or hazardous elements, adequate standards of parking and sanitation.