

WESTTOWN TOWNSHIP PLANNING COMMISSION MEETING AGENDA

Wednesday, October 4, 2023 – 7:00 pm

Stokes Assembly Hall – Township Administration Building
1039 Wilmington Pike, West Chester, PA

For general inquiries or questions about any of the items on this agenda, please contact the Township office either by phone (610) 692-1930 or via e-mail at administration@westtown.org.

Call to Order and Pledge of Allegiance

Adoption of Agenda

Approval of Minutes

Planning Commission Meeting September 6, 2023

Announcements

1. The ZHB application for 1131 S Chester Road for special exception to allow for the sole practitioner's medical office to be located at the lower level of the dwelling has been approved.

Public Comment – Non-Agenda Items

Old Business

New Business

1. Land Development Application – Westtown School

The applicant, Westtown School, has submitted a land development application for number of improvements to the athletic fields located on the school's campus within the A/C Agricultural/Cluster Zoning District. Proposed improvements include but not limited to athletic fields support building, conversion of grass fields into synthetic turf, installation of bleachers, benches and scoreboards, permanent lighting for one athletic field, conversion of gravel/grass parking area into paved 93 parking spaces, walkways, associated stormwater management facilities and landscaping. The approval for permanent lighting of one athletic field has been granted via conditional use under Section 170-1514.D(5) of the Zoning Ordinance.

2. Ordinance Amendments

The following items are considered for potential regulatory changes as per feedback from the Township staff and consultants. No draft ordinance amendments have been prepared.

- a. **Shopping Center Parking**
- b. **Fences**
- c. **Outdoor Burning**

Public Comment

Reports

Board of Supervisors Meeting October 2, 2023 – Kevin Flynn/Jim Lees

Adjournment

Next PC Meeting: **October 11, 2023, 7:00 PM**

PC Representative at next Board of Supervisors Meeting:

- **Monday October 16, 2023, 7:30 PM** – Tom Sennett/Joe Frisco

WESTTOWN TOWNSHIP PLANNING COMMISSION MEETING MINUTES

Stokes Assembly Hall, 1039 Wilmington Pike
Wednesday, September 6, 2023 – 7:00 PM

Present

Commissioners – Jack Embick (JE), Tom Sennett (TS), Jim Lees (JL), Brian Knaub (BK), Joseph Frisco (JF) and Kevin Flynn (KF) were present. Absent was Russ Hatton (RH). Also present was Michael Gill, Planning Commission Solicitor.

Call to Order and Pledge of Allegiance

Mr. Embick called the meeting to order at 7:01 PM.

Adoption of Agenda (JE/JF) 6-0

Ms. Carter requested to amend agenda to remove the discussion on the Westtown School Oak Lane Project land development application. She noted that the applicant expressed desire to address consultant's comments prior to appearing in front of the PC. Mr. Embick made a motion to adopt the agenda as amended. Mr. Flynn asked whether the applicants for the Stokes Estate conditional use application were in attendance. Mrs. Carter did not believe anyone on behalf of said application was present. Mr. Flynn believed that it should be important for the applicants to be present and voiced his disappointment. Mr. Embick repeated the motion. Mr. Lees seconded. All were in favor of the motion.

Approval of Minutes (JF/KF) 5-0-1

Mr. Frisco made a motion to adopt the meeting minutes from August 23, 2023. Mr. Flynn seconded. All were in favor of the motion, with Mr. Sennett abstaining.

Announcements

1. Ms. Carter announced that the ZHB application for 1115 Butternut Road to construct a garage within the front yard setback was denied.
2. Ms. Carter also announced that the ZHB application for Crebilly Lot #4 to convert existing barn into an accessory dwelling unit was approved with conditions.
3. Ms. Carter further announced that the applicant for the Visual Arts Center asked for an extension of the conditional use application until the end of the year.

Public Comment – Non Agenda Items

Ms. Carter noted that "Guest x" entered the virtual waiting room on Zoom, but she did not feel comfortable letting that attendee in due to the lack of name.

Old Business

1. Conditional Use Application – Stokes Estate Flexible Development

Mr. Embick announced that the PC intended on finalizing its recommendations and conditions on the conditional use application for the flexible residential development of the Stokes Estate, and asked Mr. Gill to summarize the changes made as discussed at the previous PC's meeting. Michael Gill highlighted the main changes, which include:

- 1) addition of the footnote that the Township engineer did not yet review the supplementary information provided by the applicant on August 23, 2023 prior to the PC's meeting;
- 2) clarification on which specific rights under the Environment Rights Amendment the proposed development would have an adverse impact on;

- 3) additional language that the applicant did not provide any analysis of the impact a pipeline break might have on traffic flows;
- 4) additional reason for denial that the proposed cul-de-sac does not comply with the Township regulations;
- 5) deletion of references to specific lot numbers (due to inconsistency of numbering between several provided plans);
- 6) clarification on the amount of required open space to be dedicated for active recreation;
- 7) additional requirement for the applicant to notify the County Department of Emergency Services and all required emergency respondents in case of any damage to the pipelines during construction;
- 8) additional condition corollary to the basis of denial regarding the Environmental Rights Amendments if the BOS should reject that the PC recommends that the BOS require the applicant to prepare an environmental impact assessment.

Mr. Gill further noted that he would add references to specific sections of the ordinances in the letter prior to the issuance.

Mr. Gill explained that as directed by the PC, he connected with a fire hazard expert who stated the likelihood of a break in a pipeline is exceedingly small, or on the order of magnitude of less than 1 percent for every one thousand (miles or kilometers). He recapped that the expert characterized pipeline ruptures as low probability/high consequence events, and suggested that the PC ask the applicant to prepare two analyses. Mr. Gill described one as a flame acceleration simulator, which is a modelling software used to demonstrate what would happen in the event of a pipeline rupture and the starting of a fire. The other analysis, specifically pertaining to liquid petroleum, is a spill simulator which determines where the pipeline material would go after the development is built, and how emergency services would be able to access to assist the residents. Mr. Gill stressed that currently the Township does not have regulations to require applicants to perform such analyses and asked for a feedback from the PC whether it shall be included as a condition of approval for the BOS.

Mr. Knaub asked about estimated costs to perform such studies. Mr. Gill did not know, but reiterated that the Township would be asking the applicant to complete these studies. Mr. Sennett was in favor of requiring the applicant to perform additional studies as suggested by the fire hazard expert to ensure public safety. Mr. Lees also was in favor and made a comment that several items in the consultant review letters were not fully addressed by the applicant.

Mr. Flynn made suggestions to clarify and edit some items in the recommendations which were minor. Mr. Frisco was concerned that the applicant did not provide responses to the outstanding items prior to moving forward with the conditional use hearing. Mr. Gill summarized the conditional use process and importance of the PC's recommendations that spell out how the applicant failed to demonstrate compliance with the Township's requirements. He noted that the applicant has to demonstrate such compliance to the BOS and may choose to revise the application during the conditional use hearing to do so, in which case the BOS may impose specific conditions (including those developed by the PC) on the applicant to mitigate impacts of proposed development. He stressed that the PC developed 30 conditions in the event that the BOS approved the application. Mr. Gill also explained that the applicant can appeal the decision and/or a specific condition of approval to the Chester County Court of Common Pleas.

Mr. Embick opened discussion to public comment prior to making a motion.

Levert Hans, 904 Shiloh Hill Drive, referred to public pipeline data available through the

Department of Transportation which documented a pipeline rupture by a bulldozer in 2016. He showed support for additional studies to be performed by the applicant, but noted that there were only a few companies that developed mathematical models to do so, including Quest Consultants Inc., which provided hazard calculation for the Mariner East II Pipeline. He stressed that finding a qualified expert is extremely important. Mr. Hans also pointed out that these models are not cheap, but might address all concerns that residents raised about developing in close proximity to existing pipelines. Mr. Gill suggested that the PC consider adding a recommendation that the applicant shall consult with the Township Fire Marshal regarding the nature and scope of these studies. Mr. Hans also made a case for developing the pipeline ordinance to address resident's concerns. Mr. Sennett acknowledged the importance of considering such ordinance language, but noted that it would be discussed with the PC at a later time.

Charles Bolz, 915 Shippen Lane, was also concerned with proposed development in close proximity to existing pipelines and demonstrated his professional knowledge on vapor cloud ignitions and adverse impacts in case of rupture or leak. Mr. Gill asked whether Mr. Boltz believed flame acceleration simulator and spill simulator analyses can address these concerns. Mr. Boltz explained that in case of explosion a vapor cloud will be generated which can spread over long distances, and it is very challenging to predict its occurrence due to many underlying factors. He provided an example of the vapor cloud ignition due to explosion in Philadelphia in 2019 at the old Sunoco refinery and suggested the PC watch the video which is available online of that explosion to get a better understanding of what it looks like.

Shirley LeClerc, 940 Kilduff Circle, insisted that Mr. Boltz obtain party status and testify at the hearing due to his demonstrated knowledge on pipeline related issues.

Mr. Embick made a motion to approve the PC's letter of recommendations for the conditional use application for the Stokes Estate flexible residential development of Fox Clearing, LLC, as presented by Mr. Gill, with additional provisions to require the applicant to complete the fire acceleration study and spill simulator analysis and additional edits as discussed at the meeting. Mr. Flynn seconded. Mr. Lees abstained. All were in favor of the motion. (JE/KF) 5-0-1

New Business

None

Public Comment

None

Reports

1. Mr. Lees gave the BOS report from the September 5 meeting.

Adjournment (TS/JL) 6-0

The meeting was adjourned at 8:12 PM.

Respectfully submitted,
Mila Carter
Planning Commission Secretary

§ 170-1706. Shared parking. *(EXISTING)*

- A. Up to 50% of the parking spaces required for a theater or other place of primarily evening entertainment, for a church, for multifamily dwelling units, for a VAC, or for a school may be provided and used jointly by banks, offices, certain retail stores, repair shops, service establishments, VAC accessory uses, and similar uses which are not normally open, used or operated during evening hours (beyond normal business hours of 8:00 a.m. to 5:00 p.m.) if specifically approved by the Board.
- B. Written agreement assuring the retention for such purpose shall be properly drawn and executed by the parties concerned and approved as to form and execution by the Township Solicitor, and shall be filed and made part of the application for a building permit.
- C. Such approval may be rescinded by the Board and additional parking shall be obtained by the owners, in the event that the Board determines that such joint use is resulting in a public nuisance or otherwise adversely affecting the public health, safety, or welfare.
- D. Upon approval of the Board, as prescribed in Subsection B above, two or more uses may satisfy their individual parking requirements in a common parking lot, provided that the number of parking spaces in the lot equals the sum of the parking spaces required for each use. Parking spaces shall be located so that no space is greater than 500 feet from the building or use it is intended to serve, except in the case where off-street parking for a VAC use is provided off premises under § 170-802G, in which case such parking spaces may be located 650 feet from property on which the VAC use is located.
- E. Shared or common parking lots shall be provided with appropriate signage indicating the buildings and/or uses for which the spaces have been made available.

§ 170-1706. Shared Parking. **(PROPOSED)**

- A. The parking spaces required by § 170-1705 may be reduced when two or more uses on abutting lots share a parking area, subject to the following conditions:
 - 1. That some portion of the shared off-street parking area lies within 200 feet of an entrance, regularly used by patrons, into the buildings served by the shared parking facilities.
 - 2. Pedestrian facilities comply with current standards for accessibility and § 149-916
 - 3. Access and parking easements are prepared and recorded for each property affected by the shared parking.
- B. The minimum amount of shared parking required shall be based on the application of the below percentages to the parking required for each land use per § 170-1705.

Use	Weekday		Weekend		Other
	Day (9 AM to 4 PM)	Evening (6 PM to 12 AM)	Day (9 AM to 4 PM)	Evening (6 PM to 12 AM)	Other (12 AM to 9 AM)
Office	100%	10%	10%	5%	5%
Retail	60%	90%	100%	70%	5%
Hotel/Motel	60%	100%	60%	100%	100%
Restaurant	50%	100%	80%	100%	10%
Entertainment	40%	100%	80%	100%	10%
Other Uses	The Board shall determine with which of the preceding categories any unlisted use shall comply.				

§ 170-1707. Parking reserve area. *(EXISTING)*

The number of parking spaces to be constructed may be less than the number required herein only where the following conditions are met to the satisfaction of the Township:

- A. Evidence is submitted firmly documenting that the special nature of the proposed occupancy or use of the building requires less parking area or fewer spaces than that required by this article.
- B. The land development plan submitted by the applicant indicates that the location and layout of that portion of the required parking or loading area deemed unnecessary at the time of application can and will be constructed on the surface of the site, according to the requirements of this article, in the event that the Township determines at any time that all or any additional portion of this parking or loading is necessary and in the interest of the public health, safety, and welfare.
- C. In no event shall that authorized portion of the required parking area which is not to be constructed, but reserved for possible future use, be counted as open space or other nonpaved area required by other provisions of this chapter.
- D. The parking reserve area shall be designed so that any required minimum area of vegetative cover would be maintained in the event that the parking reserve area is subsequently developed.
- E. The parking reserve area shall be landscaped according to an approved plan and in accordance with § 170-1507 of this chapter.
- F. The parking reserve area shall have no building, whether temporary or permanent, erected on it at any time, except as provided in § 170-1709A.

§ 170-1707. Parking reserve area. **(PROPOSED)**

The number of parking spaces to be constructed may be less than the number required herein only where the following conditions are met to the satisfaction of the Township:

- A. Evidence is submitted firmly documenting that the special nature of the proposed occupancy or use of the building requires less parking area or fewer spaces than that required by this article.
- B. The land development plan submitted by the applicant indicates that the location and layout of 50% of the required parking area deemed unnecessary at the time of application can and will be constructed on the surface of the site, according to the requirements of this article, in the event that the Township determines at any time that this parking is necessary and in the interest of the public health, safety, and welfare.
- C. In no event shall that authorized portion of the required parking area which is not to be constructed, but reserved for possible future use, be counted as open space or other nonpaved area required by other provisions of this chapter.
- D. The parking reserve area shall be designed so that any required minimum area of vegetative cover would be maintained in the event that the parking reserve area is subsequently developed.
- E. The parking reserve area shall be landscaped according to an approved plan and in accordance with § 170-1507 of this chapter.
- F. The parking reserve area shall have no building, whether temporary or permanent, erected on it at any time.
- G. Prior to approving a change of use or other modification that results in a requirement for greater total off-street parking, the owner must demonstrate continued compliance with this Article.

§ 170-1709. Shopping center parking. (EXISTING)

- A. Except as specified in Subsection B below, a minimum of 4.5 spaces shall be provided for each 1,000 square feet of gross leasable area, or fraction thereof, within the proposed shopping center. In addition, a parking reserve area, consistent with the terms of § 170-1707, shall be designed and shown on the plan so that, if developed, it would yield a ratio of 5.0 spaces for each 1,000 square feet of gross leasable area. If, at the end of the sixth year following full development of the tract, the parking reserve area or any part thereof has not been developed as an additional parking area, the applicant or the then present landowner may petition the Board for permission to develop or otherwise utilize the parking reserve area in accordance with the terms of this chapter.
- B. A minimum of 4.0 spaces shall be provided for each 1,000 square feet of gross leasable area or fraction thereof devoted to office use. An initial reduction of up to 25% of this area may be permitted by the Board, provided that sufficient land is reserved and properly identified as such to meet the full requirements of this chapter, should the Board subsequently deem it necessary.

§ 170-1709. Shopping center parking (PROPOSED)

- A. The number of parking spaces for an existing shopping center may be reduced to 3.5 for each 1,000 square feet of gross leasable area, or fraction thereof, within the shopping center only when the following conditions are met to the satisfaction of the Township:
 - 1. The owner shall submit to the Township for review and approval a Parking Study including:
 - a. Evidence documenting that the special nature of the proposed occupancy or use of the buildings require less parking area or fewer spaces than that required by this article.
 - b. Documentation of parking occupancy based on two separate observations completed during peak summer and winter periods, the specific time of which are confirmed with the Township Traffic Engineering prior to collecting data.
 - c. A comparison of the observed and proposed parking relative to the 85th percentile parking demand presented in the Institute of Transportation Engineer's Parking Generation, latest edition.
 - 2. An area equal to 10% of the parking being removed will be landscaped, including full depth removal of the existing paving.

Memo

To: Westtown Township Planning Commission
From: Liudmila Carter, Director of Planning & Zoning
Date: September 27, 2023
Re: Proposed ordinance amendments re: fences

Over the course of this year, several concerns have been raised about the current fence regulations, which resulted in the Planning Commission's request to reevaluate them to determine whether any changes shall be considered. The raised concerns include:

- 1) Currently, a permit is required for the installation of all fences, except in the Township District, exceeding the 40 feet in length and within the front, side or rear side setback areas. The proposed fences shall comply with placement, type, height related and other requirements as stated in the ordinance. However, the current language does not address fence installation where one desires to place it outside of the required building setback area of any yard. The Township staff has seen attempts to install an 8-foot high fence to enclose a patio area at the rear of the house and a 10-foot high fence to enclose the immediate area of the house for privacy purposes.
- 2) Existing fence regulations do not address the use of barb wire for fencing purposes. The Township staff is only aware of one property that has it installed.
- 3) The maximum permitted height for a fence in a residential district or a residential or agricultural lot in another zoning district, except for enclosing recreational facilities, is 6 feet. The maximum permitted height for a fence located on any nonresidential lot is 8 feet. It has been brought to attention that allowable height is not sufficient to address concerns of deer browsing and its impacts in residential yards, specifically to plants and vegetable gardens.

It is important to note that the Township is in receipt of permit applications for garden enclosures from the residents who are trying to protect their crops from deer. One of the proposed garden enclosures is 20 feet by 20 feet and 12 feet high, consisting of wooden frame with metal netting on the sides and the top, which shall comply with accessory structure regulations.

The Township staff conducted research on the history of fencing in the United States, reviewed the Pennsylvania Fence Law and existing regulations pertaining to fences across local municipalities, and provided summary of items to be discussed with the Planning Commission whether any amendments might be needed. The discussion items are grouped by the subject matter below.

Fence Purposes

- Residential: demarcation of property boundaries, privacy, safety (e.g., swimming pools), enclosure for various purposes (dogs, beekeeping), screening and aesthetics.
- Commercial: property security and anti-trespassing measures (renewable energy systems, wireless communication facilities, stormwater management facilities), public safety (quarry, mining areas and landfills), screening of junkyards, privacy for outdoor sitting areas and adjacent residential areas, safety for kennel, animal shelter and veterinary office.
- Recreational purposes: demarcation of dog parks and outdoor playing areas, recreational areas, such as basketball, tennis courts, and etc.

- Agricultural: grazing or pasture areas and/or keeping of domestic animals, protection of livestock from wildlife.
- Fence use as a deer management tool: According to the information provided by the Pennsylvania Game Commission, deer exclosures has been effectively used in forest habitat management to establish, protect, or increase regeneration of forest and to promote plant species diversity. The issue of deer management on private property has become more apparent in recent years. The results of [the Annual Deer Population Report \(2022-2023\)](#) demonstrate that geographic areas where more than 25% of residents say that deer population is too high has increased between 2011 and 2019. Several municipalities in Chester County has taken proactive steps in an attempt to manage deer population on a local level, including establishment of deer management committees, development of deer management programs, implementation of bow hunting in designated Township owned open spaces, and deer harvesting referral programs. However, zoning regulations supportive of deer management on private property, are not prevalent in Chester County. In order to be effective in keeping deer away, it is recommended for a fence to be at least 8 feet high, which is higher than the average allowable height on residential properties across the County.

Fence Placement

- Placement of fencing is generally regulated within required yards or specific setback areas. Consideration shall be given whether there is a need for regulating all fences on private property.
- Current regulations do not specify distance required from fence to property lines. The Township has been requesting applicants to install fence no closer than 6 inches from all property lines. The PC's feedback is needed whether a specific setback shall be set. The trend across the County for such setback is from 3 inches to 2 feet.
- Additionally, fences are permitted to be located on the property line as long as there is a written agreement between the adjacent property owners.

Fence Height

- Majority of local municipalities permit fences between 3 to 4 feet high within the front yard or setback areas. For side and rear yards and/or setback areas, fences no more than 6 feet in height are permitted within residential areas. For recreational facilities, solid fence of 10 feet is widely permitted.
- Consideration shall be given whether any changes to fence height requirements shall be made.

Types of Fence

Prohibited Fences

- Westtown does not have provisions addressing the use of barbed wire, electrified fence and/or fence made from other anti-trespass materials, for example, razor ribbon and glass shards. Several municipalities prohibit the use of chain link or stockdale fencing, while discouraging the use of plastic and vinyl materials, or permit their use in certain circumstances.
- Zoning regulations can either prohibit certain type of material in fencing or allowing it in specific zoning districts or as per the Zoning Officer approval in appropriate circumstances, for example, for security or keeping of domestic animals purposes.

Temporary Fences

- Several municipalities adopted provisions pertaining to temporary fences (such as snow fences, expandable or collapsible fences), which are permitted only by special permission of the Zoning Officer during a construction project or the snow season.

- Westtown requires construction fencing to be installed around the stormwater management system and septic drain fields to protect these areas during construction activities. No permit is needed.

Deer Fence

- The use of fence for deer management on private property is limited. One municipality in Chester County adopted the language that *“fences surrounding sports courts or those used to control deer may be 12 feet high”*, but does not provide any specifics.
- One of the definitions used for deer and plant protection fence is *“any fence constructed for the purpose of controlling the movement of deer or the protection of plants”*. Such fence is permitted in the residential and agricultural districts as long as it meets the following requirements:
 - a) Deer and plant protection fencing shall be constructed of a monofilament material that is dark green, black, or brown in color or of a similar material with low visibility.
 - b) Low-visibility polypropylene fencing used to control deer may include metal hexagrid fencing products used for segments of perimeter or boundary control.
 - c) Fence posts shall be dark green, black, or brown in color or of a material that will provide minimal visual impact.
 - d) Deer and plant protection fencing shall not exceed a height of 10 feet.
 - e) Deer fencing shall not encircle an entire property perimeter. Deer fencing shall be set back from any property line by the distance required for accessory buildings.
 - f) Deer fencing shall be set back at least 20 feet from existing Township trails. Deer fencing shall not cross or close off existing Township trails.

§ 170-1505. Fences and walls. [Amended 3-3-2003 by Ord. No. 2003-2; 2-6-2012 by Ord. No. 2012-1]

- A. A permit is not required for a fence in the Township District.
- B. A permit is required for the installation of all other fences exceeding 40 feet in length and within the front, rear or side setback areas, except fences enclosing agricultural uses, or those constructed in conjunction with a permit for the installation of a swimming pool. A plot plan locating the proposed fence shall be submitted with the permit application. The plot plan may be an informal sketch plan, not necessarily to exact scale, showing the property boundaries and accurately locating the proposed fence. The property owner or contractor shall notify the PA One Call System before beginning construction of the fence.
- C. In a residential district or a residential or agricultural lot in another zoning district:
 - (1) A fence located within the required front building setback area of any yard shall have a maximum height of five feet and shall have a ratio of open to structural areas of at least 1:1 (such as a split-rail or picket fence).
 - (2) A wall within the required front building setback area shall not exceed a height of three feet.
 - (3) A fence or wall located within a minimum principal building setback area, other than the minimum front building setback, shall have a maximum height of six feet (decorative post tops may extend above six feet).
 - (4) If one side of a fence is smoother or more finished than the other side of the fence, the smoother or more finished side shall face onto any abutting lot or public road.
 - (5) A fence higher than six feet is permitted to enclose a recreation facility such as a tennis court if the fence is integral to the recreational use and complies with the required building setbacks applicable to the zoning district.
- D. On any nonresidential lot, a fence or wall shall not exceed a height of five feet within the minimum front building setback area and eight feet in any other minimum principal building setback area.
- E. Where landscaping is required as a buffer around a use, all fencing shall be located on the inside of the landscaping, except for fencing that is mostly open (such as split-rail or picket fencing) and is constructed of wood or materials with a similar appearance.
- F. This section shall not restrict retaining walls that are necessary to hold back slopes, nor walls of a building that are permitted by this chapter.
- G. No fence or wall shall be constructed on a property within the existing or future right-of-way of a street, nor in any location that would obstruct a permanent easement.
- H. Fences and their support materials shall be placed entirely within the boundaries of the property being fenced. If the fence is to be located on or near the property line and the property owner cannot demonstrate that the property line location is known and identified in the field, as well as on the permit plan, the Township may require a survey of the property.
- I. The repair or replacement of any fence that currently exists as of the date of the adoption of this chapter shall not require a permit.
- J. Regulations for fencing associated with wireless communications facilities are set forth in Article

§ 170-1505 § 170-1505
XXV, Wireless Communications Facilities, and those provisions are the applicable standards to apply to such fencing. **[Added 6-15-2015 by Ord. No. 2015-6; amended 4-4-2022 by Ord. No. 2022-04]**

K. Regulations applicable to fencing associated with surface land uses affiliated with transmission pipelines are set forth in § 170-1612A(3)(b). **[Added 7-17-2017 by Ord. No. 2017-2]**

Memo

To: Westtown Township Planning Commission
From: Liudmila Carter, Director of Planning & Zoning
Date: September 29, 2023
Re: Proposed ordinance amendments re: outdoor burning

Back in June 2023, Gerry DiNunzio, Township Fire Marshal, has raised a concern with Chapter 63, Open Burning, regulations that in his opinion lacked details about the use of fire pits. He brought to everyone's attention the increasing popularity of outdoor fireplaces and fire pits with which the number of calls to the fire department has increased. As more residents use these fire burning devices for recreational purposes, it is crucial to ensure there is no adverse impact on public health and safety. Mr. DiNunzio proposed to modify current regulations to include the following definitions and applicable standards:

1. **RECREATIONAL FIRE** - An outdoor fire used to cook food for human consumption or entertainment purposes in a stationary or portable fire pit with or without a removable cover.
2. **FIRE PIT** - A fire pit or a fire hole can vary from a pit dug in the ground to an elaborate gas-burning structure of stone, brick, and metal. The defining feature of fire pits is that they are designed to contain fire and prevent it from spreading. The proposed requirements for fire pits are:
 - a. Fire must be contained within an enclosed fire pit, container, incinerator, fireplace, or grill;
 - b. Located at least 10 feet away from any building;
 - c. Continuous attendance.

Currently, the Township does not have provisions addressing fire pits. The purpose of Chapter 63 is to regulate outdoor burning of trash, domestic waste material, brush, grass or wood, leaves or commercial/industrial waste, and burning on public roads. The required setbacks for outdoor burning are included within these provisions based on the material subject to burning restrictions as summarized below:

Trash and domestic waste: completely enclosed container, incinerator, fireplace or grill; at least 10 feet from a building, attendance required. Note that Incinerators, fireplaces or grills which are constructed as part of a building and meet the requirements of the Township Building Code are excluded from the ten-foot requirement.

Brush, grass or wood: completely enclosed container, incinerator, fireplace or grill; open fire at least 15 feet from the building; cleared area free of trees, shrubs and other combustible materials of at least 15 feet around it; attendance required; for large areas, adequate manpower and equipment are required.

Leaves or commercial/industrial waste: prohibited.

On public roads: prohibited upon or within 5 feet of a public road, curb or utility pole/equipment.

Additionally, there are general provisions within the Zoning Code, specifically 170-1520, pertaining to the vibration, odor, and dust and burning within the Township. The Township staff reviewed current outdoor burning regulations, recommendations provided by the Fire Marshal, explored

similar regulations in other local municipalities, and compiled a list of recommendations for the Planning Commission as noted below.

Definitions

- Revising the definition of recreational fire to include “fire pit” and specify permitted burning material (i.e., dried wood).
- Revising the definition of ceremonial fire to more widely used “bonfire”.
- Adding a definition section with potential terms: open fire, bonfire, campfire, outdoor fire appliance, patio wood burning unit, fire pits, and fire rings. The sample definitions utilized by other municipalities are displayed below:

BARBEQUE STRUCTURE - A commercially constructed grill or masonry constructed grill for the purposes of heating, cooking and preparing food for the purpose of consumption.

BONFIRE - An outdoor fire used for ceremonial purposes that has a total fuel area of five feet or less in diameter and three feet or less in height.

CAMPFIRE - A small outdoor fire that has a total fuel area of three feet or less in diameter and two feet or less in height, intended for recreation or cooking but not intended for disposal of waste wood or refuse.

CONTROL FIRE - A fire kindled for the purpose of recognized silviculture, range or wildlife management, or control of disease or pests.

CHIMINEA - A single-mouth-opening fireplace that has a chimney to fuel the fire with fresh air.

FIRE PIT - An aboveground or below-ground structure built into the ground or constructed of stones, masonry, brick or other noncombustible material for the purpose of containing and controlling a wood or charcoal fire.

INCINERATOR - A burn barrel or other similar enclosed woodburning container equipped with a spark- or ember-arresting device, which has a total fuel area of two feet or less in diameter and three feet or less in height (maximum capacity of 55 gallons).

OPEN BURNING - The burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. Open burning does not include smudge pots, road flares and similar devices associated with safety or occupational uses typically considered open flames or use of patio wood-burning units.

OPEN FIRE - A fire that is not contained within a fire pit, fire ring or other container, which has a total fuel area of six feet or less in diameter and three feet or less in height, wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney.

OUTDOOR FIRE APPLIANCE - Any aboveground structure constructed of concrete block, brick or other noncombustible material for the purpose of containing and controlling a wood or charcoal fire.

OUTDOOR FIRE PIT - Freestanding fireplaces or portable devices intended to contain and control outdoor fires, including fireplaces, chimeneas and fire pits, constructed of noncombustible materials such as steel, brick or masonry. An outdoor fire pit does not include charcoal- or gas-powered grills that are intended to be used for cooking purposes.

PATIO WOOD-BURNING UNIT - A chimenea or other similar screened, stacked, enclosed portable wood-burning device with a spark- or ember-arresting device used for outdoor recreation and/or heating.

RECREATIONAL FIRE - An outdoor fire burning materials other than rubbish, leaf or leaf waste where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area three feet (914 mm) or less in diameter and two feet (610 mm) or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes.

SMUDGE POT - A receptacle in which oil or another smoky fuel is burned to protect an orchard from insects or frost.

Standards

- Potential size limitations on fire containers for specific type of fires and provisions for handling of ashes and rubbish.
- Provisions for portable fireplaces versus stationary. Currently, there is no permit requirement for outdoor fire pits and/or fireplaces unless they are constructed as part of building addition or a patio.
- Additional requirements pertaining to fire pits, such as the hours of operation (i.e., 10 pm to be consistent with current noise ordinance), location within the yard, placement area materials, setbacks, any screening and lid type to enclose the fire. Considerations shall be given to distances from buildings, structures, trees and/or utilities.
- Regulations pertaining to bonfires, which might include size limitations, adequate setbacks, hours of operation, and attendance.
- Include requirement to have a portable fire extinguisher or garden hose available for immediate use or within immediate vicinity of any fire.
- Notification to the Fire Marshall shall be considered in certain cases, for example bonfires.
- Considerations of the Homeowners Association (HOAs) rules and regulations on the use of fire pits or any outdoor fire burning devices.
- Specifying restrictions on open burning within the Township-owned open spaces and parks.

Chapter 63

BURNING, OPEN

§ 63-1.	Outdoor burning restricted.	§ 63-5.	Burning on public roads.
§ 63-2.	Burning of trash and domestic waste material.	§ 63-6.	Permission required to burn on private property.
§ 63-3.	Burning of brush, grass or wood.	§ 63-7.	Fire ban due to drought.
§ 63-4.	Burning of leaves or commercial/ industrial waste.	§ 63-8.	Authority to extinguish fires.
		§ 63-9.	Violations and penalties.

[HISTORY: Adopted by the Board of Supervisors of the Township of Westtown 5-17-1993 by Ord. No. 93-4. Amendments noted where applicable.]

GENERAL REFERENCES

Fire Prevention Bureau — See Ch. 14.

Building Code — See Ch. 57, Art. II.

Brush, grass and weeds — See Ch. 54.

Fire prevention — See Ch. 87.

§ 63-1. Outdoor burning restricted.

Except for recreational and ceremonial fires, it shall henceforth be unlawful to burn or authorize (or, on one's own property, to permit) another to burn anything outdoors anywhere within the township, except between the hours of 8:00 a.m. and 4:00 p.m. A recreational fire is an outdoor fire which is used to cook food for human consumption. A ceremonial fire is an open fire used in conjunction with a recognized ceremony of a community, educational, service or scouting organization.

§ 63-1

§ 63-2

§ 63-2. Burning of trash and domestic waste material.

It shall henceforth be unlawful to burn or authorize (or, on one's own property, to permit) another to burn paper, rubbish or other domestic waste material outdoors anywhere within the township, unless the fire is confined within a completely enclosed container, incinerator, fireplace or grill, at least 10 feet from a building and unless someone remains in attendance during the burning. Incinerators, fireplaces or grills which are constructed as part of a building and meet the requirements of the Township Building Code¹ are excluded from the ten-foot requirement. Perforations, openings or screening for venting, but prohibiting burning particles or ash from being discharged, are permitted.

1. Editor's Note: See Ch. 57, Building Construction, Article II, Building Code.

§ 63-2

§ 63-3

§ 63-3. Burning of brush, grass or wood.

It shall henceforth be unlawful to burn or authorize (or, on one's own property, to permit) another to burn brush, grass, wood or other materials outdoors anywhere within the township, unless the fire is confined within an enclosure which meets the requirements of § 63-2 above or if:

- A. An open fire is at least 15 feet from a building; and
- B. There is a cleared area free of trees, shrubs and other combustible materials of at least 15 feet around it; and
- C. There is someone in attendance; and
- D. In large areas such as fields or woods, in addition to Subsections A through C above, adequate manpower and equipment are available to prevent its spread.

§ 63-3

§ 63-4

§ 63-4. Burning of leaves or commercial/industrial waste.

It shall henceforth be unlawful to burn or authorize (or, on one's own property, to permit) another to burn leaves or commercial/industrial waste material outdoors anywhere within the township at any time.

§ 63-4

§ 63-5

§ 63-5. Burning on public roads.

It shall henceforth be unlawful to burn or authorize (or, on one's own property, to permit) another to burn leaves, brush, grass, wood, paper, rubbish or other materials, or to light any fire upon or within five feet of a public road or curb, or to light any fire within five feet of a utility pole or utility equipment.

§ 63-5

§ 63-6

§ 63-6. Permission required to burn on private property.

It shall henceforth be unlawful to kindle a fire upon the land of another, without the permission of the owner thereof, which permission, except in the case of a family member or employee, shall be in writing.

§ 63-6

§ 63-7

§ 63-7. Fire ban due to drought.

It shall henceforth be unlawful to light or authorize (or, on one's own property, to permit) another to light or attempt to light any outdoor fire when a ban on such fires has been publicly announced by the Board of Supervisors, or their authorized representative, in a time of drought.

§ 63-7

§ 63-8

§ 63-8. Authority to extinguish fires.

Any fire on public or private property may be extinguished by the local fire company having jurisdiction, either with or without the consent of the landowner or person in charge, if, in the opinion of the Westtown Township Fire Marshal or a Westtown-East Goshen police officer, such fire constitutes a danger to persons or property.

§ 63-8

§ 63-9

§ 63-9. Violations and penalties.

Any person who violates or permits a violation of this chapter shall, upon conviction in a summary proceeding brought before a District Justice under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus costs of prosecution. In default of payment thereof, the defendant may be sentenced to imprisonment for a term not exceeding 90 days. Each day or portion thereof that such violation continues or is permitted to continue shall constitute a separate offense, and each section of this chapter that is violated shall also constitute a separate offense.

