

**NORTH WHITEHALL TOWNSHIP
LEHIGH COUNTY, PENNSYLVANIA**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF NORTH WHITEHALL
TOWNSHIP, LEHIGH COUNTY, PENNSYLVANIA, TO AMEND THE ZONING
ORDINANCE OF 2002, BY ADDING PROVISIONS TO THE ZONING ORDINANCE
RELATING TO AGRITAINMENT AND AGRITOURISM, INCLUDING
DEFINITIONS, DISTRICTS PERMITTED, AND SPECIFIC REQUIREMENTS**

ORDINANCE NO. 2021-6

WHEREAS, the Municipalities Planning Code (MPC) "ensure[s] that municipalities enact zoning ordinances that facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impede the owner or operator's need to change or expand their operations in the future in order to remain viable." 53 P.S. § 10105;

WHEREAS, the Municipalities Planning Code (MPC) precludes a municipality from enacting a zoning ordinance that regulates the activities related to commercial agricultural production if it exceeds the requirements under the Right to Farm Act or the Agricultural Area Security Law, 53 P.S. § 10603(b), (h);

WHEREAS, North Whitehall Township encourages farmland preservation and has instituted a program to preserve farmland and open space within the Township;

WHEREAS, the Municipalities Planning Code (MPC) requires that "[z]oning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present unless the agricultural operation will have a direct adverse effect on the public health and safety. Nothing in this subsection shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the [Nutrient Management Act (NMA), Agricultural Area Security Law (AASL), or the Right to Farm Act (RFL)]." 53 P.S. § 10603(h);

WHEREAS, the Right to Farm Act defines a normal agricultural operation in broad and anticipatory terms to include the "activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities" and "includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry." 3 P.S. § 952;

WHEREAS, the Right to Farm Act mandates that direct commercial sales of agricultural commodities by a landowner who produces not less than 50% of the commodities sold be a permitted by right use and precludes a municipality from regulating normal agricultural operations as a nuisance. 3 P.S. § 953(b);

WHEREAS, the Agricultural Area Security Law precludes a municipality from enacting "ordinances which would unreasonably restrict farm structures or farm practices" 3 P.S. § 911;

WHEREAS, the Pennsylvania Farmland and Forest Land Assessment Act of 1974 allows an owner of agricultural land to engage in direct commercial sales, recreational and agritainment activities on the tract without losing eligibility for the preferential tax program. 72 P.S. § 5490.2, .3(f), .8(f);

WHEREAS, the Pennsylvania General Assembly amended the Liquor Code in 1994 to recognize the "interest of promoting tourism and recreational development in Pennsylvania" through limited winery licenses. 47 P.S. § 5-505.2(a) and notes;

WHEREAS, the North Whitehall Township Board of Supervisors finds that the proposed amendments to the Zoning Ordinance will promote, protect and facilitate the public health, safety and welfare; and

WHEREAS, pursuant to Section 609 of the Municipalities Planning Code, 53 P.S. § 10609, the Township of North Whitehall is authorized and empowered to enact amendments to the North Whitehall Township Zoning Ordinance after public hearing thereon pursuant to public notice; and

WHEREAS, the Board of Supervisors of the Township of North Whitehall has conducted a public hearing pursuant to public notice concerning the following amendments to the North Whitehall Township Zoning Ordinance; and,

WHEREAS, after public hearing pursuant to public notice, the Board of Supervisors of the Township of North Whitehall desires to ordain and enact the amendments to the North Whitehall Township Zoning Ordinance set forth hereinafter.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors of the Township of North Whitehall, County of Lehigh, Commonwealth of Pennsylvania, as follows:

SECTION 1. TERMS DEFINED

Agritainment is an accessory use to a single-family dwelling or farming use which may include the rental of an accessory structure for purposes of weddings, family gatherings, reunions, or other similar events, subject to the additional regulations contained in the zoning ordinance.

Agritourism is an accessory use that consists of an enterprise that shall be considered any activity conducted on and accessory to an existing and operational farm and offered to the public or to invited groups for the purpose of recreation, education, or active involvement in the farm operation. These activities must be directly related to agricultural or natural resources and incidental to the primary operation of the farm.

SECTION 2. ZONING DISTRICTS

Agritainment is available as an accessory use, by Special Exception approval in the AR, AR-I and AR-L zoning districts.

Agritourism is available as an accessory use, by Special Exception approval in the AR, AR-I and AR-L zoning districts.

SECTION 3. ADDITIONAL REQUIREMENTS FOR AGRITAINMENT.

Special Standards:

- A. The use shall be accessory to an owner-occupied residential dwelling or farm, and the use shall be owned and operated by the residential dwelling or farm owner(s).
- B. The use shall require a minimum lot of 10 acres, and no portion of the event including parking, shall take place within 100 feet of the boundaries of the lot.
- C. The events held at the venue shall be private family or social events for invited guests, for which fees may be charged, and shall not be open to the general public.
- D. The event may be conducted in buildings on the residential or farming lot and in the outdoor areas of the lot, and the owner or his/her designated representative shall be present at all times during any event.
- E. The venue shall not host more than 150 persons at one time.
- F. Catered food, drinks (including beer and wine), and related event services may be provided by the owner or by providers retained by the owner. Alcoholic beverages shall not be permitted outside of the venue. All federal, state and local laws and regulations shall be complied with by the owner and any providers in connection with such services.
- G. Lighting, sound and music equipment and/or musicians may be provided at the venue, provided no sound or artificial light shall be permitted to leave the boundaries of the lot. Refer to Zoning Ordinance Section V for requirements.
- H. Parking shall be provided for patrons of the event, and no parking by patrons shall be permitted on any public road. The owner(s) shall ensure that ingress and egress during the event to the venue does not cause congestion on any public road. Refer to Zoning Ordinance Section VI for requirements.

I. Signs for this use are regulated in Section 704.A as “All Residential Districts permitted principle non-residential signs”.

- a. Free standing signs – maximum 8 feet high.
- b. Maximum square footage of sign area – 1 sign on each street that the lot abuts, maximum 20 square feet for each sign.
- c. No wall signs or window signs allowed.
- d. Illumination of signs shall be external and within the regulations of Section 511.

J. The owner(s) shall be responsible to provide:

- (1) Sanitation (municipal waste and recycling) facilities at the event commensurate with the number of patrons attending;
- (2) Sanitary sewer facilities at the event commensurate with the number of patrons attending;

K. No public liability or property insurance shall be required by the Township for this use.

L. The operation of the use shall at all times comply with all federal, state and local laws and regulations.

M. This use shall be subject to the submission of a site plan for review and approval by Special Exception based on the information required by North Whitehall Township Zoning Ordinance Sections 103.D. and 117.

SECTION 4. ADDITIONAL REQUIREMENTS FOR AGRITOURISM

Special standards:

A. The use shall require a minimum lot of 10 acres;

B. The following activities, and activities that the applicant proves are closely similar, shall be permitted as an agritourism enterprise:

- (1) Farmers Markets, providing all vendors and sales are located in an enclosed building;
- (2) “U-pick” operations;
- (3) Dairy, ice cream and bakery retail facilities;
- (4) Wineries, winery tours and tasting rooms;
- (5) Local farm products retail operations (including crafts, food products, garden and nursery products, and clothing products made from the wool of animals raised on the farm use, etc.);
- (6) Corn mazes (with educational/interpretation components);
- (7) Farm-related interpretive facilities and exhibits;
- (8) Agriculturally related educational and learning experiences;
- (9) Agriculturally related special events, agricultural fairs and festivals;
- (10) On-site farm, garden, greenhouse and nursery tours;
- (11) Walking and bicycle tours and trails;
- (12) Horseback/pony rides, petting zoos and other animal exhibits;

C. The following activities shall be prohibited:

- (1) Restaurants, taverns, breweries and/or microbreweries;
- (2) Flea markets;

(3) Any other use that is not agriculturally related, or is not related to the natural resources that are present on the property, or is deemed not to be incidental to the agricultural operation on the property, or is otherwise deemed to be too intense for the Agricultural Zoning District whereby the intent of the Agricultural Zoning District will not be preserved.

D. It shall be the responsibility of the applicant and/or landowner to prove compliance with these regulations at the time of application for a zoning permit.

E. Agritourism enterprises must be incidental to and directly supportive of the agricultural use of the property and will not have significant impacts on the agricultural viability or rural character of neighboring properties.

F. An agritourism enterprise shall be conducted by a resident or owner of the property and/or his/her immediate relatives. Up to four unrelated full-time employees may be employed by the owner or immediate relatives. Additional part time employees or volunteers may be permitted for special events, fairs or festivals.

G. At least 50% of the products for display and sale shall be grown, prepared, or produced on the subject property.

H. The applicant shall identify the anticipated hours of operation for the agritourism enterprise. In no case shall the agritourism enterprise generate noxious odors, noise or glare beyond amounts that are typically generated by agricultural operations. Agritourism enterprises shall not routinely occur in a manner that generates traffic or noise heard by neighbors between the hours of 9:00 p.m. and 7:00 a.m.. This shall not include commercial retail sale of agricultural products that are regulated under laws of the Commonwealth.

I. The parking area shall be designed in accordance with the North Whitehall Township Zoning Ordinance.

J. All signage advertising the agritourism enterprise shall comply with North Whitehall Township Zoning Ordinance Section VII.

K. For purposes of this Section, existing and new buildings shall maintain a residential or agricultural appearance, as viewed from a public street.

L. The reuse of an existing barn or other existing buildings shall be given priority over the construction of new building(s). If a new building is proposed, any land development plan shall be in accordance with the regulations of the North Whitehall Township Subdivision and Land Development Ordinance. The total of all building floor areas utilized for an agritourism use after the adoption of this Ordinance shall not exceed 5% of the total lot area. All structures shall be subject to the requirements of the Pennsylvania Uniform Construction Code.

M. All food and beverages sold for consumption on site shall comply with federal, state and local regulations. Food and beverages should be limited to only those value-added products that are produced from or grown on the farm, unless they are secondary and incidental to the primary agricultural use on the property. In all cases the use of locally grown or produced food and/or beverages is encouraged.

N. Applicant must provide evidence that sufficient sanitary sewer facilities will be provided in accordance with all applicable DEP regulations.

O. Applicant shall provide evidence that all other applicable state and federal permits for operation of an agritourism enterprise have been obtained.

P. There shall be no outside display, sales, or storage permitted, unless this activity is fully screened with a combination of opaque wood fencing, and dense landscaping. This activity shall be prohibited within 100 feet along all public rights-of-way. This shall not be interpreted to prohibit outside sales or display of products during a permitted special event, agricultural fair or festival.

Q. This subsection shall not regulate agricultural uses that are permitted under other provisions of this Ordinance or laws of the Commonwealth.

SECTION 5. EFFECTIVE DATE

This Ordinance shall become effective five (5) calendar days after the date of enactment.

SECTION 6. SEVERABILITY

In the event that any provision, section, sentence, clause or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this ordinance, it being the intent of this Township that such remainder shall be and shall remain in full force and effect.

SECTION 7. REPEALER

All other Ordinances or parts of Ordinances inconsistent herewith shall be and the same expressly are repealed.

(Signatures appear on the following page.)

ENACTED AND ORDAINED the 6th day of December, 2021, by the Board of Supervisors of the Township of North Whitehall, Lehigh County, Pennsylvania, in a lawfulnessession duly assembled.

ATTEST:

**BOARD OF SUPERVISORS OF
NORTH WHITEHALL TOWNSHIP**

BY: Brenda Norder
Brenda Norder,
Secretary

BY: Ronald J. Heintzelman
Ronald J. Heintzelman,
Chairman

BY: [Signature]
Mark H. Hills, Jr.,
Vice-Chairman

BY: [Signature]
Dennis Klusaritz,
Member