

## CHAPTER 27

### ZONING

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Part 1

Short Title, Purpose and  
Community Development Objectives

§101. Short Title. This Chapter shall be known as "The Smethport Borough Zoning Ordinance of 1974." (Ord. 230, 3/11/1974, §100)

§102. Purpose. The regulations of this Chapter are made in accordance with a comprehensive land use plan and designed:

A. To promote, protect and facilitate one (1) or more of the following: the public health, safety, morals, general welfare, coordinated and practical community development, proper density of population, civil defense, disaster evacuation, airports and national defense facilities, the provision of adequate light and air, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, public grounds, and other public requirements.

B. To prevent one (1) or more of the following: overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers.

(Ord. 230, 3/11/1974, §101)

§103. Community Development Objectives. This Chapter is intended to further facilitate implementation of Smethport Borough's Community Development Objectives. These objectives are:

A. Achievement of the highest and best use of land.

B. Protection of transportation corridors.

C. The establishment of a realistic population density control.

D. To effectuate a logical road and street pattern designed to adequately serve business, industry and residence and, insofar as possible, maintain a separation necessary to protect the neighborhood environment.

E. To guide development with a view to providing adequate and economical community facilities and utilities.

F. To achieve adequate public protection.

G. To permit economical installation of sanitary sewers and treatment facilities.

H. To ultimately eliminate pollution factors and pollutants from water and air.

(Ord. 230, 3/11/1974, §102)



Part 2

Zoning Districts

§201. Establishment of Districts. The Borough of Smethport as indicated on the Zoning Map is hereby divided into the following zoning districts:

A. Residential - "R" District.

B. Commercial-Residential - "CR" District.

C. Agricultural-Conservation - "A-C" District.

(Ord. 230, 3/11/1974, §200)

§202. Zoning Map.

1. The boundaries of the districts are established as shown on the map entitled "The 1974 Zoning Map of Smethport Borough" and called the "Zoning Map" in this Chapter. The Zoning Map, including all the explanatory material on it, is made a part of this Chapter.

2. The Borough Secretary shall certify the Zoning Map as part of this Chapter and shall keep it on file in his office.

3. Any changes in district boundaries or other matter shown on the Zoning Map shall be promptly made on the map, with a signed statement substantially as follows:

"On the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by action of the Borough Council, the following change was made on this map:

(Brief description of the change)

ATTEST:

\_\_\_\_\_  
President  
Smethport Borough Council

\_\_\_\_\_  
Borough Secretary

The ordinance making the change shall provide for its immediate entry upon the Zoning Map.

(Ord. 230, 3/11/1974, §201)

§203. Interpretation of District Boundaries. If there is uncertainty of the exact boundaries of districts as shown on the Zoning Map, the following rules shall apply:

A. Boundaries shown as approximately following the center lines of streets or highways shall be construed to follow such center lines.

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B. Boundaries shown as approximately following the platted lot lines shall be construed to follow such lot lines.

C. Boundaries shown as following shore lines of rivers, streams, lakes and reservoirs shall be construed to follow such shore lines and to move with changes in the actual shore lines.

D. Distances not specifically determined on the Zoning Map shall be determined by the Zoning Hearing Board.

(Ord. 230, 3/11/1974, §202)



Part 3

Application of District Regulations

§301. District Regulations.

1. No structure or land shall hereafter be used or occupied, and no structure shall hereinafter be erected, constructed, reconstructed, moved or structurally altered unless in conformity with all of the regulations for the district in which it is located except as may be otherwise provided in this Chapter.

2. No part of a yard, open space, parking space or loading space required for any structure under this Chapter shall be included as part of a yard, open space, parking space or loading space similarly required for another structure.

3. No yard, lot or parking space now existing shall be reduced in size below the minimum requirements of this Chapter. Yards or lots created after the effective date of this Chapter shall meet its minimum requirements.

(Ord. 230, 3/11/1974, §300)

§302. General Exceptions to Lot Size Requirement. If a property ownership, consisting of the entire contiguous land holdings held in a single ownership at the time of passage of this Chapter, has an area or dimension which does not meet the lot size requirements of the zone; in which the property is located, the holdings may be occupied by a use permitted in the zone subject to the other requirements of the zone; provided, that if there is an area deficiency, residential use shall be limited to a single-family dwelling or to the number of dwelling units consistent with the density requirement of the zone. The record of ownership as recorded in the Office of the County Recorder of Deeds at the time of passage of this Chapter shall be the basis for application of this exception unless the owner submits proof that a different ownership existed at the time the provisions of this Chapter became applicable to the land concerned. (Ord. 230, 3/11/1974, §301)

§303. Exemptions. This Part shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. (Ord. 230, 3/11/1974, §302)

§304. Uniformity. Within each district, the regulations established by this Chapter shall be minimum regulations and shall be applied uniformly to each class or kind of structure or land. (Ord. 230, 3/11/1974, §303)



Part 4

Residential "R" Districts

§401. Uses Permitted Outright in a Residential "R" Zone. In an "R" zone the following uses and their accessory uses are permitted outright:

- A. Dwellings except mobile homes.

(Ord. 230, 3/11/1974, §400)

§402. Conditional Uses Permitted in an "R" Zone. In an "R" zone the following uses and their accessory uses are permitted when authorized in accordance with Part 9.

- A. Church.
- B. Community building.
- C. Funeral home.
- D. Governmental use.
- E. Nursing or convalescent home, physician's office or dental office.
- F. Mobile home park, in accordance with Parts 7, 8 and 9.
- G. School.
- H. Utility structure.
- I. Community parks and playgrounds.

(Ord. 230, 3/11/1974, §401)

§403. Dimensional Standards in an "R" Zone. In an "R" zone the following dimensional standards shall apply:

- A. The front yard shall be a minimum of twenty (20) feet.
- B. Each side yard shall be a minimum of ten (10) feet, except that on a corner lot the side yard on the street side shall be a minimum of twenty (20) feet. [Ord. 259]
- C. The rear yard shall be a minimum of fifteen (15) feet.
- D. The lot area shall be a minimum of eight thousand (8,000) square feet and shall exceed the minimum by two thousand five hundred (2,500) square feet for each additional dwelling unit in multi-family structure.
- E. The lot width at the front building line shall be a minimum of sixty (60) feet.

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F. Building height shall be a maximum of thirty-five (35) feet.

(Ord. 230, 3/11/1974, §402; as amended by Ord. 259, 9/5/1979, §1)

§404. Home Occupations. Home occupations shall be permitted in an "R" zone provided such use is carried on by the residents of the dwelling and is clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not otherwise be defined as a nuisance or generator of substantial pedestrian or vehicular traffic in the neighborhood. (Ord. 230, 3/11/1974, §403)

Part 5

Commercial-Residential "CR" Districts

§501. Uses Permitted Outright in a Commercial-Residential "CR" Zone. In a "CR" zone the following uses and their accessory uses are permitted outright:

- A. A use permitted outright or as a conditional use in the "R" zone.
- B. Retail or wholesale trade establishment.
- C. Repair and maintenance service.
- D. Office.
- E. Personal or business service establishment.
- F. Eating or drinking establishment.
- G. Financial institution.
- H. Amusement establishment.
- I. Community parks and playgrounds.

(Ord. 230, 3/11/1974, §500)

§502. Conditional Uses in a "CR" Zone.

- A. Light manufacturing.

(Ord. 230, 3/11/1974, §501)

§503. Dimensional Standards in a "CR" Zone. In a "CR" zone the dimensional standards of the "R" zone shall apply to a lot or a structure used for a dwelling purpose. The maximum building height shall be thirty-five (35) feet. There shall be no other dimensional standards for uses permitted outright in a "CR" zone. Dimensional standards for conditional uses shall be determined by the Planning Commission. (Ord. 230, 3/11/1974, §502)



Part 6

Agricultural-Conservation "A-C" Districts

§601. Uses Permitted Outright in an Agricultural-Conservation "A-C" Zone. In an "A-C" zone the following uses and their accessory uses are permitted outright:

- A. Dwelling.
- B. General farming.
- C. Growing of trees and harvesting the same.

(Ord. 230, 3/11/1974, §600)

§602. Conditional Uses Permitted in an "A-C" Zone.

- 1. Hospital, nursing or retirement home.
- 2. Kennel or animal hospital.
- 3. Public or governmental utility structure or facility.
- 4. Communications transmitter tower or station.
- 5. Community building or fraternal organization building.
- 6. Church.
- 7. Golf course or other open land recreational use.
- 8. Cemetery.
- 9. Mobile home park in accordance with Parts 7, 8 and 9.
- 10. Community parks and playgrounds.

(Ord. 230, 3/11/1974, §601)

§603. Dimensional Standards in an "A-C" Zone.

- 1. Dimensional standards for dwellings shall be the same as those required in an "R" zone.
- 2. There shall be no dimensional standards for the other uses permitted outright in an "A-C" zone.
- 3. For conditional uses permitted in an "A-C" zone, dimensional standards shall be as determined by the Planning Commission in approving the conditional use, as prescribed in Part 8 or 9.

(Ord. 230, 3/11/1974, §602)





Part 7

Mobile Home Skirting Requirements

§701. Mobile Home Skirting Requirements. All mobile homes, either on individual lots or in mobile home parks, shall be provided and maintained with a skirting shielding the undercarriage of the unit when the unit is not placed on permanent cement block or concrete foundations. The type of material used and the adequacy of the skirting shall be approved by the Zoning Officer and installed within sixty (60) days from date the mobile home is moved onto the site, or the effective date of this Chapter. (Ord. 230, 3/11/1974, Art. VII; as amended by Ord. 322, 3/4/1996)



Part 8

Mobile Home Park Requirements

§801. Mobile Home Park Requirements. Mobile home parks shall be established and maintained in compliance with the following minimum requirements: [Ord. 264]

A. No mobile home park shall have an area of less than five (5) acres.

B. Each mobile home site within the park shall have an area of four thousand (4,000) square feet.

C. Not less than ten (10) percent of the gross area of the park must be set aside and maintained for recreational activities of the residents of the park.

D. No mobile home shall be closer than twenty (20) feet to any other mobile home or building.

E. The park shall be appropriately landscaped.

F. All roads and streets shall have an all-weather surface and be properly maintained.

(1) An all-weather surface is hereby defined as a black-top or cement surface. [Ord. 264]

(Ord. 230, 3/11/1974, Art. VIII; as amended by Ord. 264, 1/5/1981, §1)



Part 9

Conditional Uses

§901. Authorization to Grant or Deny Conditional Uses.

1. A conditional use listed in this Chapter may be permitted, enlarged or altered upon authorization of the Planning Commission in accordance with the standards and procedures of this Part.

2. In permitting a new conditional use or the alteration of an existing conditional use the Borough Council may impose, in addition to those standards and requirements expressly specified by this Chapter, additional conditions which the Borough Council considers necessary to protect the best interest of the surrounding area or the Borough as a whole. These conditions may include, but are not limited to, the following: [Ord. 322]

- A. Increasing the required lot size or yard dimension.
- B. Limiting the height, size or location of buildings.
- C. Controlling the location and number of vehicle access points.
- D. Increasing the street width.
- E. Increasing the number of required off-street parking spaces.
- F. Limiting the number of required off-street parking spaces.
- G. Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
- H. Designating sites for open space.

(Ord. 230, 3/11/1974, Art. IX; as amended by Ord. 322, 3/4/1996)



Part 10

Zoning Hearing Board

§1001. Zoning Hearing Board.

1. There is hereby created for the Borough a Zoning Hearing Board in accordance with the provisions of Article IX of the Pennsylvania Municipalities Planning Code, 53 P.S. §10901 et seq.

2. The membership of the Board shall consist of three (3) residents of the Borough appointed by resolution by the Borough Council. The terms of office shall be for three (3) years and shall be so fixed that the term of office of one (1) member shall expire each year. The Board shall promptly notify the Borough Council of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the Borough.

3. Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Borough Council which appointed the member, taken after the member has received fifteen (15) days advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

4. The Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action a quorum shall be not less than a majority of all the members of the Board, but the Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Board as provided in this Chapter.

5. The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Borough and laws of the Commonwealth. The Board shall keep full public records of its business, which records shall be the property of the Borough and shall submit a report of its activities to the Borough Council as requested by the Borough Council.

6. Within the limits of funds appropriated by the Borough Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties, as may be fixed by the Borough Council, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the Borough Council.

(Ord. 230, 3/11/1974, §1100-1101; as amended by Ord. 322, 3/4/1996)

§1002. Hearings. The Zoning Hearing Board shall conduct hearings and make decisions in accordance with the following requirements:

1. Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner

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as shall be prescribed by rules of the Board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.

2. The hearing shall be held within sixty (60) days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.

3. The hearings shall be conducted by the Board or the Board may appoint any member as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Board, however, the appellant or the applicant, as the case may be, in addition to the Borough, may, prior to the decision of the hearing, waive decision or findings by the Board and accept the decision or findings of the hearing officer as final.

4. The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Board, and any other person including civic or community organizations permitted to appear by the Board. The Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Board for that purpose.

5. The chairman or acting chairman of the Board or the hearing officer presiding 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.

6. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.

7. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.

8. The Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Board. The cost of the original transcript shall be paid by the Board if the transcript is ordered by the Board or hearing officer or shall be paid by the person appealing from the decision of the Board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.

9. The Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.



10. The Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the Board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this Chapter or of any law, ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the Board shall make his report and recommendations available to the parties within forty-five (45) days and the parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings, and the Board's decision shall be entered no later than thirty (30) days after the report of the hearing officer. Where the Board fails to render the decision within the period required by this subsection, or fails to hold the required hearing within sixty (60) days from the date of the applicant's request for a hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Board to meet or render a decision as hereinabove provided, the Board shall give public notice of the said decision within ten (10) days from the last day it could have met to render a decision in the same manner as provided in subsection (1) of this Section. If the Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

11. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the day following its date. To all other persons who have filed their name and address with the Board not later than the last day of the hearing, the Board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

12. The Borough Council shall establish, by resolution, fees with respect to hearings before the Zoning Hearing Board.

(Ord. 230, 3/11/1974, §§1101-1102; as amended by Ord. 322, 3/4/1996)

#### §1003. Jurisdiction.

1. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

A. Substantive challenges to the validity of any land use ordinance, except those brought before the Borough Council pursuant to §§609.1 and 916.1(a)(2) of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P.S. §§10609.1, 10916.1.

B. Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within

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thirty (30) days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the Borough and a Zoning Hearing Board has not been previously established, the appeal raising procedural questions shall be taken directly to court.

C. Appeals from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.

D. Appeals from a determination by the Borough engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance.

E. Applications for variances from the terms of this Chapter and flood hazard ordinance or such provisions within a land use ordinance, pursuant to §910.2 of the MPC, 53 P.S. §10910.2.

F. Applications for special exceptions under this Chapter or floodplain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to §912.1 of the MPC, 53 P.S. §10912.1.

G. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Chapter.

H. Appeals from the Zoning Officer's determination under §916.2 of the MPC, 53 P.S. §10916.2.

I. Appeals from the determination of the Zoning Officer or Borough engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving applications under Article V or VII of the MPC, 53 P.S. §§10501 et seq., 10701 et seq.

2. The Borough Council, shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

A. All applications for approvals of planned residential developments under Article VII of the MPC pursuant to the provisions of §702 of the MPC, 53 P.S. §10702.

B. All applications pursuant to §508 of the MPC, 53 P.S. §10508, for approval of subdivisions or land developments under Article V of the MPC, 53 P.S. §10501 et seq.

C. Applications for conditional use under the express provisions of this Chapter.

D. Applications for curative amendment to this Chapter or pursuant to §§ 609.1 and 916.1(a) of the MPC, 53 P.S. §§10609.1, 10916.1(a).

E. All petitions for amendments to land use ordinances, pursuant to the procedures set forth in §609 of the MPC, 53 P.S. §10609.

F. Appeals from the determination of the Zoning Officer or the Borough engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to applications for land development under Articles V and VII of the MPC, 53 P.S. §§10501 et seq., 10701 et seq. Where such determination relates only to development not involving an Article V or VII application, the appeal from such determination of the Zoning Officer or the Borough engineer shall be to the Zoning Hearing Board pursuant to this Section. Where the applicable land use ordinance vests jurisdiction for final administration of subdivision and land development applications in the Planning Commission, all appeals from determinations under this subsection shall be to the Planning Commission and all appeals from the decision of the Planning Commission shall be to court.

(Ord. 230, 3/11/1974, §§100-1102; as amended by Ord. 322, 3/4/1996)

§1004. Variances.

1. The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this Chapter inflict unnecessary hardship upon the applicant. The Board may by rule prescribe the form of application and may require preliminary application to the Zoning Officer. The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

A. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Chapter in the neighborhood or district in which the property is located.

B. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

C. That such unnecessary hardship has not been created by the applicant.

D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

E. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

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2. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq.

(Ord. 230, 3/11/1974, §1102; as amended by Ord. 322, 3/4/1996)

§1005. Special Exceptions. Where the Borough Council, in this Chapter, has stated special exceptions to be granted or denied by the Zoning Hearing Board pursuant to express standards and criteria, the Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq. (Ord. 230, 3/11/1974; as added by Ord. 322, 3/4/1996)

§1006. Conditional Uses. Where the Borough Council, in this Chapter, has stated conditional uses to be granted or denied by the Borough Council pursuant to express standards and criteria, the Borough Council shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria. In granting a conditional use, the Borough Council may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq. (Ord. 230, 3/11/1974; as added by Ord. 322, 3/4/1996)

§1007. Parties Appellant Before the Board. Appeals raising the substantive validity of any land use ordinance (except those to be brought before the Borough Council pursuant to the Pennsylvania Municipalities Code, procedural questions or alleged defects in the process of enactment or adoption of a land use ordinance; or from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot; from a determination by the Borough engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance; from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Chapter; from the determination of the Zoning Officer or Borough engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving subdivision and land development or planned residential development may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Borough, or any person aggrieved. Requests for a variance and for special exception may be filed with the Board by any landowner or any tenant with the permission of such landowner. (Ord. 230, 3/11/1974; as added by Ord. 322, 3/4/1996)

### §1008. Time Limitations.

1. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for develop-

ment, preliminary or final, has been approved by the Borough if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan or from an adverse decision by the Zoning Officer on a challenge to the validity of this Chapter or an amendment hereto or map or an amendment thereto shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

2. All appeals from determinations adverse to the landowner shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

(Ord. 230, 3/11/1974; as added by Ord. 322, 3/4/1996)

§1009. Stay of Proceedings.

1. Upon filing of any appeal proceeding before the Zoning Hearing Board and during its pendency before the Board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or of any agency or body, and all official action thereunder, shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the Board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the court having jurisdiction of zoning appeals, on petition, after notice to the Zoning Officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the Board.

2. After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court.

3. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.

4. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellate court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and

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after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by the petitioner.

(Ord. 230, 3/11/1974; as added by Ord. 322, 3/4/1996)

Part 11

Nonconforming Uses

§1101. Nonconforming Uses.

1. The lawful use of a building or structure or the lawful use of any land, excepting mobile home parks, as existing and lawful at the time of enactment of this Chapter, or of an amendment thereto, may be continued except as hereinafter provided, although such use does not conform with the provisions of such ordinance or amendment. [Ord. 264]

2. Nonconforming uses shall not be increased in area or intensity except that a nonconforming use of a structure may be extended throughout any parts of the structure that were manifestly arranged or designed for such use at the time of adoption of this Chapter.

3. Nonconforming uses may be increased in area or intensity when approved by the Zoning Hearing Board. A request to increase the area or intensity of a nonconforming use shall be administered as a variance. Before granting such a request, the Zoning Hearing Board must consider all significant relevant factors and determine that the increase in area or intensity will not materially add to the deleterious effect of the use upon nearby property and uses or upon the community.

4. A nonconforming use may be changed to decrease its nonconformity upon approval as a variance by the Zoning Hearing Board.

5. The Zoning Officer shall make an official registration of each and every nonconforming use as of the date of enactment of this Chapter.

6. A single family dwelling unit, presently located on a substandard size lot, may be rebuilt on its original foundation following destruction by fire or natural disaster, upon approval of the Zoning Hearing Board.

7. Any nonconforming uses which are abandoned for a period of one (1) year may not be continued thereafter and in any event continued nonconforming use for residential occupation is restricted to the original owner of the property.

A. Abandonment is hereby defined as relinquishment of the right to a nonconforming use by cessation of such nonconforming use for any reason.

[Ord. 264]

8. All existing mobile homes on individual lots are refined as a nonconforming use for residential occupation. In any event, this nonconforming use for residential occupation is restricted to the existing mobile home on any individual lot. No mobile home on any individual lot shall be replaced with another mobile home without prior approval of the Borough Council. [Ord. 309]

(Ord. 230, 3/11/1974, Art. XI; as amended by Ord. 264, 1/5/1981, §2; and by

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Ord. 309, 2/1/1993)



Part 12

Amendments

§1201. Enactment of Zoning Ordinance Amendments.

1. The Borough Council may from time to time amend, supplement, or repeal any of the regulations and provisions of this Chapter. The procedure for the preparation of a proposed zoning ordinance as set forth in §607 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10607, is hereby declared optional.

2. Before voting on the enactment of an amendment, the Borough Council shall hold a public hearing thereon, pursuant to public notice. In addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by the Borough at points deemed sufficient by the Borough along the perimeter of the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one (1) week prior to the date of the hearing.

3. In the case of an amendment other than that prepared by the Planning Commission the Borough Council shall submit each such amendment to the Planning Commission at least thirty (30) days prior to the hearing on such proposed amendment to provide the Planning Commission an opportunity to submit recommendations.

4. If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised, to include land previously not affected by it, the Borough Council shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment.

5. At least thirty (30) days prior to the public hearing on the amendment by the Borough Council, the Borough shall submit the proposed amendment to the county planning agency for recommendations.

6. Within thirty (30) days after enactment, a copy of the amendment to this Chapter shall be forwarded to the county planning agency.

(Ord. 230, 3/11/1974, §§1200,1201; as amended by Ord. 322, 3/4/1996)

§1202. Procedure for Landowner Curative Amendments.

1. A landowner who desires to challenge on substantive grounds the validity of this Chapter or the Zoning Map or any provision thereof, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the Borough Council with a written request that his challenge and proposed amendment be heard and decided as provided in §916.1 of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P.S. §10916.1. The curative amendment and challenge shall be referred to the Planning Commission and the county planning agency as provided in §609 and notice of the hearing thereon shall be given as provided in §§610 and 916.1 of the MPC, 53 P.S. §§10609, 10610, and 10916.1.

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2. The hearing shall be conducted in accordance with §908 of the MPC, 53 P.S. §10908, and all references therein to the Zoning Hearing Board shall, for purposes of this Section be references to the Borough Council . If the Borough does not accept a landowner's curative amendment brought in accordance with this subsection and a court subsequently rules that the challenge has merit, the court's decision shall not result in a declaration of invalidity for this entire Chapter and Zoning Map, but only for those provisions which specifically relate to the landowner's curative amendment and challenge.

3. The Borough Council, if it determines that a validity challenge has merit, may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment which will cure the challenged defects. The Borough Council shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:

A. The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;

B. If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of this Chapter or Zoning Map;

C. The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources and other natural features;

D. The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and,

E. The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

(Ord. 230, 3/11/1974, §1200; as amended by Ord. 322, 3/4/1996)

### §1203. Procedure for Borough Curative Amendments.

1. If the Borough determines that this Chapter, or any portion hereof, is substantially invalid, it shall take the following actions:

A. The Borough shall declare by formal action, this Chapter or portions hereof substantially invalid and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days such declaration and proposal the Borough Council shall:

(1) By resolution make specific findings setting forth the declared invalidity of this Chapter which may include:

(a) References to specific uses which are either not permitted or not permitted in sufficient quantity;

(b) Reference to a class of use or uses which requires revision; or,

(c) Reference to this entire Chapter which requires revisions.

(2) Begin to prepare and consider a curative amendment to this Chapter to correct the declared invalidity.

2. Within one hundred eighty (180) days from the date of the declaration and proposal, the Borough shall enact a curative amendment to validate, or reaffirm the validity of, this Chapter pursuant to the provisions of §609 of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P.S. §10609, in order to cure the declared invalidity of this Chapter.

3. Upon the initiation of the procedures as set forth in subsection (1), the Borough Council shall not be required to entertain or consider any landowner's curative amendment filed under §609.1 of the MPC, 53 P.S. §10609.1, nor shall the Zoning Hearing Board be required to give a report requested under §§909.1 or 916.1 of the MPC, 53 P.S. §§10909.1, 10916.1, subsequent to the declaration and proposal based upon the grounds identical or substantially similar to those specified by the resolution required by subsection (1)(A). Upon completion of the procedures set forth in subsections (1) and (2), no rights to a cure pursuant to the provisions of §§609.1 and 916.1 of the MPC, 53 P.S. §§10609.1, 10916.1, shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of this Chapter for which there has been a curative amendment pursuant to this Section.

4. The Borough, having utilized the procedures set forth in this Section, may not again utilize said procedure for a period of thirty-six (36) months following the date of enactment of a curative amendment, or reaffirmation of the validity of this Chapter; provided, however, if after the date of declaration and proposal there is a substantially new duty imposed upon the Borough by virtue of a change in statute or by virtue of a Pennsylvania Appellate Court decision, the Borough may utilize the provisions of this Section to propose a curative amendment to this Chapter to fulfill said duty or obligation.

(Ord. 230, 3/11/1974, §1200; as amended by Ord. 322, 3/4/1996)

#### §1204. Amendments.

1. Amendments to this Chapter shall become effective only after a public hearing held pursuant to public notice. A brief summary setting forth the principal provisions of the proposed amendment and a reference to the place within the Borough where copies of the proposed amendment may be secured or examined shall be incorporated in the public notice. Unless the proposed amendment shall have been prepared by the Planning Commission, the Borough Council shall submit the amendment to the Planning Commission at least thirty (30) days prior to the hearing on such amendment to provide the Planning Commission an opportunity to submit recommendations. In addition, at least thirty (30) days prior to the public hearing on the amendment, the Borough shall submit the proposed amendment to the County planning agency for recommendations.

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2. Within thirty (30) days after adoption, the Borough Council shall forward a certified copy of the amendment to the County planning agency.

3. Proposed amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this Section, and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the Borough where copies of the proposed amendment may be examined without charge or obtained for a charge not greater than the cost thereof. The Borough Council shall publish the proposed amendment once in a newspaper of general circulation in the Borough not more than sixty (60) days nor less than seven (7) days prior to passage. Publication of the proposed amendment shall include either the full text thereof or the title and a brief summary, prepared by the Borough solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:

A. A copy thereof shall be supplied to a newspaper of general circulation in the Borough at the time the public notice is published.

B. An attested copy of the proposed amendment shall be filed in the County law library (or other County office designated by the County Commissioners).

4. In the event substantial amendments are made in the proposed amendment, before voting upon enactment, the Borough Council shall, at least ten (10) days prior to enactment, readvertise, in one (1) newspaper of general circulation in the Borough, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

(Ord. 230, 3/11/1974, §1203; as amended by Ord. 322, 3/4/1996)

§1205. Record of Amendments. The Borough Secretary shall maintain records of amendments to the text and Zoning Map of this Chapter. (Ord. 230, 3/11/1974, §1202)

Part 13

Enforcement

§1301. Appointment and Powers of Zoning Officer.

1. For the administration of this Chapter, a Zoning Officer, who shall not hold any elective office in the Borough, shall be appointed. The Borough Council may also designate as many deputy zoning officers as it deems necessary.

2. The Zoning Officer shall meet the qualifications established by the Borough and shall be able to demonstrate to the satisfaction of the Borough a working knowledge of municipal zoning.

3. The Zoning Officer shall administer this Chapter in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to this Chapter.

4. The Zoning Officer is hereby authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his employment.

(Ord. 230, 3/11/1974, §1300; as amended by Ord. 322, 3/4/1996)

§1302. Enforcement Notice.

1. If it appears to the Borough that a violation of this Chapter has occurred, the Borough shall initiate enforcement proceedings by sending an enforcement notice as provided in this Section.

2. The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record.

3. An enforcement notice shall state at least the following:

A. The name of the owner of record and any other person against whom the Borough intends to take action.

B. The location of the property in violation.

C. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of this Chapter.

D. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.

E. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a period of ten (10) days.

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F. That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.

(Ord. 230, 3/11/1974; as added by Ord. 322, 3/4/1996)

§1303. Causes of Action. In case any building, structure, landscaping or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of this Chapter, the Borough Council or, with the approval of the Borough Council, an officer of the Borough, or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the Borough at least thirty (30) days prior to the time the action is begun by serving a copy of the complaint on the Borough Council. No such action may be maintained until such notice has been given. (Ord. 230, 3/11/1974; as added by Ord. 322, 3/4/1996)

### §1304. Enforcement Remedies.

1. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Chapter shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than five hundred (\$500.00) dollars plus all court costs, including reasonable attorney fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating this Chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one (1) such violation until the fifth (5<sup>th</sup>) day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation.

2. The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.

3. Nothing contained in this Section shall be construed or interpreted to grant to any person or entity other than the Borough the right to commence any action for enforcement pursuant to this Section.

4. District justices shall have initial jurisdiction over proceedings brought under this Section.

(Ord. 230, 3/11/1974, §1301; as amended by Ord. 322, 3/4/1996)

Part 14

Definitions

§1401. Rules of Interpretation. In the interpretation of this Chapter, the following rules shall apply:

- A. Words used in the present tense include the future tense.
- B. The singular includes the plural.
- C. The word "person" includes a corporation as well as an individual.
- D. The word "lot" includes the words "plot" or "parcel."
- E. The terms "used" or "occupied" as applied to any land or structure shall be construed to include the words "intended," "arranged," or "designed" to be used or occupied.

(Ord. 230, 3/11/1974, §1400)

§1402. Particular Definitions.

ACCESSORY BUILDING - a building, the use of which is customarily incidental to that of the principal building, such as a private garage, private swimming pool, private stable, and tool house or children's playhouse.

ACCESSORY USE - a use, not otherwise contrary to law, customarily incidental to the use of the building.

BOARD - any body granted jurisdiction under a land use ordinance or under this Chapter to render final adjudications. [Ord. 322]

BUILDING - a structure, but not a mobile home, built for the support, shelter, or enclosure of persons, animals, chattles, or property of any kind and having a fixed base on, or fixed connection to the ground.

CONDITIONAL USE - a use permitted in a particular zoning district by the Borough Council pursuant to the provisions of this Chapter and Article VI of the Pennsylvania Municipalities Planning Code, 53 P.S. §10601 et seq. [Ord. 322]

DECISION - final adjudication of any board or other body granted jurisdiction under any land use ordinance or this Chapter to do so, either by reason of the grant of exclusive jurisdiction or by reason of appeals from determinations. All decisions shall be appealable to the court of common pleas of the county and judicial district wherein the Borough lies. [Ord. 322]

DETERMINATION - final action by an officer, body or agency charged with the administration of any land use ordinance or applications thereunder, except the following:

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1. The Borough Council;
2. The Zoning Hearing Board; or,
3. The Planning Commission, only if and to the extent the Planning Commission is charged with final decision on preliminary or final plans under the subdivision and land development or planned residential development ordinances. Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal.

### [Ord. 322]

DWELLING - a building designed or used exclusively as the living quarters for one (1) or more families, but not including a mobile home.

DWELLING UNIT - one (1) or more rooms in a building designed for occupancy by one (1) family and having not more than one (1) cooking facility.

HEIGHT OF BUILDING (called "building, height") - the vertical distance measured from the highest ground elevation of the building to the highest point of the roof.

HOME OCCUPATION - any use customarily conducted entirely within a dwelling provided that such use is carried on by the residents of the dwelling and is clearly incidental and secondary to the use of the dwelling for dwelling purposes.

LOT - a designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit. [Ord. 322]

LOT, CORNER - a lot abutting on two (2) or more streets at their intersection.

LOT DEPTH - the mean distance from its front lot line to its rear lot line, measured in the general direction of its side lot lines.

LOT LINE - the property line bounding a lot.

LOT LINE, FRONT - the line between side lot lines which extends along a street.

LOT LINE, REAR - the lot line which is opposite and most distant from the front lot line. In the case of an irregular, triangular or other shaped lot, a line ten (10) feet in length within the lot parallel to and at a maximum distance from the front lot line.

LOT LINE, SIDE - any lot line not a front or rear lot line.

LOT WIDTH - the average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.

MOBILE HOME - a transportable, single family dwelling, over thirty-five (35) feet in length, intended for permanent occupancy, office or place of



assembly contained in one (1) unit, or in two (2) units designed to be joined into one (1) integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation.

MOBILE HOME LOT - a parcel of land in a mobile home park, improved with the necessary utility connections and other appurtenances necessary for the erection thereof of a single mobile home, which is leased by the park owner to the occupants of the mobile home erected on the lot.

MOBILE HOME PARK - a parcel or contiguous parcels of land which has been so designated and improved that it contains two (2) or more mobile home lots for the placement thereon of mobile homes. [Ord. 322]

MUNICIPAL AUTHORITY - a body politic and corporate created pursuant to the Act of May 2, 1945 (P.L. 382, No. 164), known as the "Municipalities Authority Act of 1945." [Ord. 322]

NONCONFORMING LOT - a lot the area or dimension of which was lawful prior to the adoption or amendment of this Chapter, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption or amendment. [Ord. 322]

NONCONFORMING STRUCTURE - a structure or part of a structure manifestly not designed to comply with the use or extent of use provisions of this Chapter or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of this Chapter or amendment or prior to the application of this Chapter or amendment to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs. [Ord. 322]

NONCONFORMING USE - a use, whether of land or of structure, which does not comply with the applicable use provisions in this Chapter or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of this Chapter or amendment, or prior to the application of this Chapter or amendment to its location by reason of annexation. [Ord. 322]

PLAT - the map or plan of a subdivision or land development, whether preliminary or final.

PUBLIC GROUNDS - includes:

A. Parks, playgrounds, trails, paths and other recreational areas and other public areas;

B. Sites for schools, sewage treatment, refuse disposal and other publicly owned or operated facilities; and,

C. Publicly owned or operated scenic and historic sites.  
[Ord. 322]

PUBLIC HEARING - A formal meeting held pursuant to public notice by the Borough Council or Planning Commission, intended to inform and obtain public

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comment, prior to taking action in accordance with this Chapter. [Ord. 322]

PUBLIC MEETING - a forum held pursuant to notice under the Act of July 3, 1986 (P.L. 388, No. 84), known as the "Sunshine Act," 53 P.S. §§271 et seq. [Ord. 322]

PUBLIC NOTICE - notice published once each week for two (2) successive weeks in a newspaper of general circulation in the Borough. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than thirty (30) days and the second publication shall not be less than seven (7) days from the date of the hearing. [Ord. 322]

RECREATION VEHICLES - a vacation trailer or other vehicular or portable unit less than thirty-five (35) feet long which is either self-propelled or towed or is carried by a motor vehicle and which is intended for human occupancy and is designed for vacation or recreational purposes but not permanent residential use.

REPORT - any letter, review, memorandum, compilation or similar writing made by any body, board, officer or consultant other than a solicitor to any other body, board, officer or consultant for the purpose of assisting the recipient of such report in the rendering of any decision or determination. All reports shall be deemed recommendatory and advisory only and shall not be binding upon the recipient, board, officer, body or agency, nor shall any appeal lie therefrom. Any report used, received or considered by the body, board, officer or agency rendering a determination or decision shall be made available for inspection to the applicant and all other parties to any proceeding upon request, and copies thereof shall be provided at cost of reproduction. [Ord. 322]

SPECIAL EXCEPTION - a use permitted in a particular zoning district pursuant to the provisions of this Chapter and Articles VI and IX of the Pennsylvania Municipalities Planning Code, 53 P.S. §§10601 et seq., 10901 et seq. [Ord. 322]

STREET - includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct or any other ways used or intended to be used by vehicular traffic or pedestrians whether public or private. [Ord. 322]

STRUCTURE - any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land. [Ord. 322]

USE - the specific purpose for which any land or building is designed, arranged, intended, for which it is or may be occupied or maintained.

VARIANCE - relief granted pursuant to the provisions of this Chapter and Articles VI and IX of the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq. [Ord. 322]

YARD - an open space or lot which is unobstructed from the ground upward except as otherwise provided in this Chapter.

YARD, FRONT - the ground space on a lot between the street right-of-way

line and the nearest point of the principal building or use, extending to the side boundaries of the lot and, in residential districts, unoccupied except for fences and/or other decorative or landscaping uses.

YARD, REAR - the ground space on a lot between the rear line of the lot and the nearest point of the principal building or use, extending to the side boundaries of the lot.

YARD, SIDE - a yard between the front and rear yard, measured at right angles from the side lot line to the nearest point of a building.

(Ord. 230, 3/11/1974, §1401; as amended by Ord. 279, 6/6/1986, §1; and by Ord. 322, 3/4/1996)



Part 15

Floodplain Conservation District

§1501. Declaration of Specific Intent. The intent of this Part is to:

A. Promote the general health, welfare, and safety of the community.

B. Reduce financial burdens imposed on the community, its governmental units and its individuals by preventing excessive development in areas subject to periodic flooding.

C. Minimize danger to public health by protecting water supply and natural drainage.

D. Promote responsible floodproofing measures within the Floodplain Conservation District.

(Ord. 230, 3/11/1974; as added by Ord. 251, 4/3/1978, §1500)

§1502. Special Definition.

1. The "floodplain" is defined as:

A. A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or completed inundation.

B. An area subject to the usual and rapid accumulation or runoff of surface waters from any source.

FLOODWAY - the designated area of a floodplain required to carry and discharge flood waters of a given magnitude.

FLOOD WATERS OF THE ONE HUNDRED (100) YEAR FREQUENCY - the waters of a flood that, on the average, is likely to occur once every one hundred (100) years, (i.e., that has a one (1) percent chance of occurring each year).

SUBSTANTIAL IMPROVEMENT - any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either (a) before the improvement is started, or (b) if the structure has been damaged and is being restored, before the damage occurred.

(Ord. 230, 3/11/1974; as added by Ord. 251, 4/3/1978, §1501)

§1503. Establishment of the Floodplain Conservation District (FP).

1. The Floodplain Conservation District shall be deemed an overlay to the existing underlying districts. This district shall include all areas subject to inundation by flood waters of the one hundred (100) year frequency. It should be noted that flooding is a natural circumstance and overflows of considerable magnitude exceeding the limits of the one hundred

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year frequency can happen. The source of this information shall be the Flood Insurance Study prepared by the U.S. Department of Housing and Urban Development, Federal Insurance Administration, dated April 1978.

2. The Floodplain Conservation District shall be comprised of three (3) subdistricts as follows:

A. Floodway (FW). That portion of the Floodplain Conservation District required to carry and discharge the waters of the one hundred (100) year flood without increasing the water surface elevation at any point more than one (1) foot above existing conditions, as demonstrated in the Flood Insurance Study referenced above.

B. Floodway Fringe (FF). Those portions of land within the Floodplain Conservation District subject to inundation by the one hundred (100) year flood, lying beyond the floodway in areas where detailed study data and profiles are available.

C. Approximated Floodplain (FA). Those portions of land within the Floodplain Conservation District subject to inundation by the one hundred (100) year flood, where a detailed study has not been performed, but where a one hundred (100) year floodplain boundary has been approximated. Within these areas, if a specific one hundred (100) year flood elevation cannot be determined using other sources of data such as the U.S. Army Corps of Engineers' Floodplain Information Reports, U.S. Geological Survey's Flood Prone Quadrangles, etc., then the applicant for the proposed development shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualification. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Borough.

(Ord. 230, 3/11/1974; as added by Ord. 251, 4/3/1978, §1502)

§1504. Change in the Floodplain Conservation District. The delineation of the Floodplain Conservation District boundaries may be revised and modified by the Smethport Borough Council where there are changes through natural or other causes, or where changes can be validated by further detailed engineering studies employing on-site survey techniques as approved or recommended by the U.S. Army Corps of Engineers, Pittsburgh District, or the Soil and Water Conservation District of McKean County. All such changes are subject to the review and approval of the Federal Insurance Administrator. (Ord. 230, 3/11/1974; as added by Ord. 251, 4/3/1978, §1503)

### §1505. Permitted Uses and Activities.

1. Prior to any proposed alteration or relocation of any stream, watercourse, etc., within the Borough, a permit shall be obtained from the Department of Environmental Resources, Dams and Encroachment Division. Further, notification of the proposal shall be given to all affected adjacent municipalities. Copies of such notifications shall be forwarded to both the Federal Insurance Administration and the Department of Community Affairs.

2. In the Floodway District (FW) no development shall be permitted

except where the effect of such development on flood heights is fully offset by accompanying improvements which have been approved by all appropriate local and/or State authorities as required above.

3. In the Flood-Fringe District (FF) and the Approximated Floodplain (FA) use of land shall be permitted in accordance with the regulations of the underlying district provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the floodproofing and related provisions contained in the Smethport Borough Building Code, as amended, and with all other applicable codes and ordinances. [Ord. 322]

(Ord. 230, 3/11/1974; as added by Ord. 251, 4/3/1978, §1504; and amended by Ord. 322, 3/4/1996)

§1506. Conditional Uses. In addition, the following uses may be permitted in the Floodplain Conservation District as a special exception when authorized by the Zoning Hearing Board (subject to Part 9 of this Chapter) and after review by the Planning Commission.

A. Dams, culverts and bridges approved by the Commonwealth of Pennsylvania, Department of Environmental Resources.

B. Impoundment basins.

C. Storm sewers; however, flap gates shall be provided on all storm water outfalls where an area or portion thereof is susceptible to backflooding.

D. Other uses similar to the above; provided, the effect is not to alter substantially the cross-sectional profile of the stream basin at the point of the proposed construction or use.

(Ord. 230, 3/11/1974; as added by Ord. 251, 4/3/1978, §1505)

§1507. Special Regulations.

1. In case of any dispute concerning the boundaries of the Floodplain Conservation District, an initial determination shall be made by the Zoning Officer.

2. Any party aggrieved by a decision of the Zoning Officer as to the boundaries of the Floodplain Conservation District as defined in §1503, which may include the grounds that the said data referred to therein is or has become incorrect because of changes due to natural or other causes, may appeal to the Zoning Hearing Board. The burden of proof in such an appeal shall be on the appellant.

3. The Floodplain Conservation District shall be deemed an overlay on any zoning district now or hereafter applicable to any lot. Should the Floodplain Conservation District be declared inapplicable to any tract by reason of action of (i) the Smethport Borough Council in amending this Chapter; or (ii) the Zoning Hearing Board, or any court of competent jurisdiction in determining the legal effect of the same; the zoning applicable to such lot shall be deemed to be the district in which it is located without consideration of this Part.

## ZONING

(Ord. 239, 3/11/1974; as added by Ord. 251, 4/3/1978, §1506)

§1508. Variances and Conditional Uses. In passing upon applications for conditional uses and variances, the Zoning Hearing Board, in addition to the provisions continued within Part 10 of this Chapter, shall also consider the following factors:

A. The danger to life and property due to increased flood heights or velocities caused by encroachments. No conditional use or variance shall be granted for any proposed use, development, or activity that will cause any increase in the one hundred (100) year flood elevation.

B. The granting of a conditional use or variance will not result in (a) additional threats to public safety, (b) extraordinary public expense, (c) create nuisances, (d) cause fraud or victimization of the public, (e) conflict with local laws and ordinances.

(Ord. 230, 3/11/1974; as added by Ord. 251, 4/3/1978, §1507)

§1509. Municipal Liability. The grant of a zoning permit or approval of a subdivision plan in the Floodplain Conservation District shall not constitute a representation, guarantee, or warranty of any kind by the Borough or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Borough, its officials or employees. (Ord. 230, 3/11/1974; as added by Ord. 251, 4/3/1978, §1508)