

**ARTICLE XI
ADMINISTRATION**

1100 Applicability

1100.1 Conformance

Any activity regulated by this Ordinance shall only occur or be undertaken and be continued in conformance with the requirements of this Ordinance.

1100.2 Authorization

This Ordinance regulates all matters and activities authorized by Article VI of the Pennsylvania Municipalities Planning Code, as amended.

1100.3 Regulated Activities

Any of the following activities or any other activity or matter regulated by this Zoning Ordinance shall only be undertaken after the required permit or approval has been obtained in full compliance with this Ordinance:

- A. Erection, construction, movement, placement or extension of a structure, building or regulated sign;
- B. Change in the type of use or expansion of the use of a structure or area of land; and/or,
- C. Creation of a lot or alteration of lot lines.

1100.4 Repairs and Maintenance

Ordinary repairs, structural strengthening, facade improvements and maintenance to existing structures that do not infringe upon a required setback may be made without a zoning permit provide such activity does not involve 1) a change in use; 2) an expansion, construction or placement of a structure; 3) an increase in the number of dwelling units or boarding house units; and/or any other activity regulated by this Ordinance.

1101 General Procedure for Permits

1101.1 Principal Permitted Use

Within ninety (90) days of receiving a proper and complete application for a principal permitted use (permitted by right), the Zoning Officer shall either:

- A. Issue the permit under this Ordinance; or,
- B. Refuse the permit, indicating at least one applicable reason in writing to the applicant or his/her representative.

1101.2 Reviews

Certain activities require review and/or approval of the Zoning Hearing Board and/or of the Board of Supervisors, and/or the recommendations of the Planning Commission. In such case, the Zoning Officer shall not issue a Zoning Permit until such required review or approval occurs.

1101.3 Appeal

See §1105.2 which describes processes to appeal actions of the Zoning Officer to the Zoning Hearing Board.

1101.4 Timing

After a zoning permit has been received by the applicant, the applicant may undertake the action permitted by the

permit under this Ordinance provided the work complies with other Township Ordinances. However, it is recommended that applicants wait thirty (30) days to begin construction if there is a possibility of an appeal by another party to have the permit revoked. Any commencement of construction or a use within this thirty (30) day appeal period shall be at the risk of the applicant. (See use permit process in §1102.7)

1102 Permits and Certificates

1102.1 Applicability See §1100.

1102.2 Types of Uses

- A. Principal Permitted Uses (Permitted by Right Uses) - If a use is listed as a principal permitted use by this Ordinance and meets the requirements of this Ordinance, the Zoning Officer shall issue a permit in response to a complete application.
- B. Special Exception Use or Application Requiring a Variance - A permit under this Ordinance for a use requiring a Special Exception or Variance shall be issued by the Zoning Officer only upon the written order of the Zoning Hearing Board after a hearing.
- C. Conditional Use - A permit under this Ordinance for a Conditional Use shall be issued by the Zoning Officer only upon the written order of the Board of Supervisors, after the Planning Commission has been given an opportunity to review the application.

1102.3 Applications

- A. Applications - Any request for a decision, interpretation or variance by the Zoning Hearing Board, application for a conditional use, or for a permit under this Ordinance shall be made in writing on a form provided by the Township and in accord with the procedures established by the Township. Such completed application, with any required fees, and with any required site plans or other required information, shall be submitted to the Township employee responsible for processing such application. The applicant is responsible to ensure that a responsible Township official notes the date of the official receipt on the application.
- B. Number of Copies - Unless waived by the Zoning Officer, five (5) copies of a site plan shall be submitted if an application requires action by the Zoning Hearing Board or Board of Supervisors, and two (2) copies shall be submitted if action by the Zoning Hearing Board or Board of Supervisors is not required.
- C. Information Required - Any application to the Zoning Officer, Zoning Hearing Board, Planning Commission or Board of Supervisors shall include the following information.

In the case of an application involving the construction of any new structure or any addition to an existing structure, all of the information required in this §1102.3 shall be provided by the applicant. However, the Zoning Officer, Planning Commission, Board of Supervisors, or the Zoning Hearing Board, as the case may be, may determine, as part of the review process, that certain information is not required for a particular application, and upon such determination, the specified information need not be provided by the applicant.

In the case of an application which does not involve the construction of any new structure or any addition to an existing structure, a narrative providing details of the project shall be provided as required by this section. However, a plot plan, as required by §§6 which follows, shall not generally be required unless the Zoning Officer, Planning Commission, Board of Supervisors, or the Zoning Hearing Board, as the case may

be, deems such plot plan necessary to evaluate and make a decision on the application. The Zoning Officer, Planning Commission, Board of Supervisors, or the Zoning Hearing Board, as the case may be, shall determine, as part of the review process, the type of information and level of detail of the plot plan if such plot plan is required.

In any case, the Zoning Officer, Planning Commission, Board of Supervisors, or the Zoning Hearing Board, as the case may be, may require any other additional information or any level of detail deemed necessary to determine compliance with this Ordinance or to identify any impacts of the proposed use.

1. Names and address of the applicant, or appellant; and the name and address of the owner of the affected property
2. A description of the existing and proposed use(s) of the property, including numbers of dwelling units, minimum square feet of proposed dwelling units and number of proposed business establishments, if any.
3. A description of any proposed non-residential operations and storage in sufficient detail to indicate potential nuisances and hazards regarding noise, large truck traffic, glare, odors, dust, fire or toxic or explosive hazards or other significant public health and safety hazards.
4. If a principal non-residential use is proposed within close proximity to dwellings, a description of hours of operation and proposed methods of storing garbage outdoors on-site.
5. A listing of any specific sections of this Ordinances being appealed, with the reasons for any appeal and
6. A plot plan legible in every detail and drawn to scale but not necessarily showing precise dimensions, and including the following information:
 - a. Name of the development.
 - b. Name and address of land owner and/or land developer. (if corporation give name of officers.)
 - c. Location map.
 - d. North arrow, true or magnetic.
 - e. Graphic scale.
 - f. Written scale.
 - g. Date plot plan was completed.
 - h. Names of adjacent property owners and tax map numbers, including those across adjacent roads.
 - I. Proposed and existing street and lot layout including street names and right-of-way widths.
 - j. Existing and proposed man-made and/or natural features:
 1. Water courses, lakes and wetlands (with names).
 2. Rock outcrops, ledges and stone fields.
 3. Buildings, structures, signs and setbacks required by the Zoning Ordinance.
 4. Approximate location of tree masses.
 5. Utility lines, wells and sewage system(s).
 6. Entrances, exits, access roads and parking areas including the number of spaces.
 7. Drainage and storm water management facilities.
 8. Plans for any required buffer plantings
 9. Any and all other significant features.
7. Location of permanent and seasonal high water table areas and 100 year flood zones.
8. Tract boundaries accurately labeled.
9. The total acreage of the tract and extent of the areas of the site to be disturbed and percentage lot coverage when the project is completed.
10. Location and type of rights-of-way or other existing restrictive covenants which might affect the subdivision and/or development.
11. A statement of the type of water supply and sewage disposal proposed.
12. The present zoning district and major applicable lot requirements.

- D. Other Laws - The Zoning Officer may withhold issuance of a permit under this Ordinance if there is clear knowledge by the Zoning officer that such a use would violate another Township, State or Federal law or regulation.
- E. Ownership - No person other than a landowner or their specifically authorized agent or a tenant or lessee with written permission of the landowner shall submit a zoning application. (See definition of "landowner" in Article III.)
- F. Advisory Reviews - The Zoning Officer may submit a copy of any plan and application to any appropriate agencies and/or individuals (such as the Planning Commission, the Wyoming County Regional Planning Commission, the County Conservation District or Township Engineer) for review and comment.
- G. Subdivision Approval - Applications for uses which also necessitate approvals under the Township Subdivision Ordinance shall be processed in the manner provided for plat approval under that Ordinance. Such applications shall also contain all information or data normally required for a submission under the Subdivision Ordinance. A zoning permit shall not be issued until the proposed use has been granted a Preliminary Approval under the Subdivision Ordinance. However, no building or property shall be occupied or used until final subdivision approval has been granted and a Certificate of Use has been properly issued pursuant to §1102.7 of this Ordinance.

1102.4 Issuance of Permit

- A. At least two (2) copies of any permit required under this Ordinance shall be made.
- B. One (1) copy of any such permit shall be retained in Township files and one (1) copy shall be retained by the applicant. A copy of any such permit shall be shown by the applicant to the Zoning Officer upon the Zoning Officer's request.
- C. The Zoning Officer shall issue or deny a permit for a principal permitted use within a maximum of ninety (90) days after a complete, duly filed application and fees are submitted.
- D. No owner, contractor, worker or other person shall perform building or construction activity of any kind regulated by this Ordinance unless a valid zoning permit has been issued for such work, nor shall such persons conduct such work after notice that a zoning permit has been revoked.

1102.5 Revocation of Permits

The Zoning Officer shall revoke a permit or approval issued under the provisions of the Zoning Ordinance in case of:

- A. Any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based: (The Pennsylvania Criminal Code provides for penalties for providing false information to a municipal employee in the carrying out of his/her duties); or,
- B. Upon violation of any condition lawfully imposed upon a special exception, variance or conditional use; or,
- C. Any work being accomplished or land or structures being used in such a way that does not comply with this Ordinance or an approved site plan or approved permit application; or,
- D. For any other just cause set forth in this Ordinance.

If a zoning permit is revoked, the person holding the permit shall immediately surrender such permit and all copies to the Zoning Officer.

1102.6 Changes to Approved Plans

- A. After the issuance of a permit and/or approval under this Ordinance by the Township, such approved application shall not be changed without the written consent of the Township, as stated in subsection "B" below.
- B. Changes to an approval by the Zoning Hearing Board as a special exception use or by the Board of Supervisors as a conditional use shall require re-approval of the changes by such bodies if the Zoning Officer determines that such changes affect matters that were within the scope of approval of such body. Such approval by the Hearing Board or the Board of Supervisors is not required for clearly minor technical adjustments or matters that are solely corrections of information that do not affect any of the significant features of the site plan or the intensity of the use, as determined by the Zoning Officer.
- C. A copy of such adjustment or correction shall be provided in writing to the Chairperson of the Planning Commission, the President of the Board of Supervisors or the Chairperson of the Zoning Hearing Board if the change concerns a plan approved by such bodies.

1102.7 Certificate of Use

- A. A Certificate of Use shall be required by the Township upon a change of use or completion of work authorized by a permit or approval under this Ordinance. It shall be unlawful to use and/or occupy a structure, building and/or land or portions thereof until such Certificate has been issued. A new Certificate of Use shall be required if a change in use of the property is proposed, and then such Certificate shall be issued only after all required approvals are obtained.
- B. An application for such Certificate shall be made on an official Township form. If such use is in conformance with Township ordinances and approvals, such Certificate should be issued in duplicate within ten (10) days of a properly submitted and duly filed application. A minimum of one (1) copy shall be retained in Township records.
- C. The Zoning Officer shall inspect such structure or land related to an application for such Certificate. If the Zoning Officer determines, to the best of his/her current knowledge, that such work conforms with this Ordinance and applicable Township codes, approvals and permits, then the Certificate of Use shall be issued.
- D. The applicant shall show a valid Certificate of Use to the Zoning Officer upon request.

1103 Fees

1103.1 Application Fees

As authorized by §617.2(e) and §908(1.1) of the Pennsylvania Municipalities Planning Code, the Board of Supervisors shall establish a uniform schedule of fees, charges and expenses, as well as a collection procedure, for zoning permits, conditional use permits, Zoning Hearing Board proceedings and other matters pertaining to this Ordinance. No application shall be considered complete, and permits, certificates, conditional use permits, special exception permits and variances shall be issued only after fees have been paid in full, and the Zoning Hearing Board shall take no action on appeals until all fees have been paid in full.

1103.2 Stenographer Fees

The appearance fee for a stenographer shall be shared equally by the applicant and the Township. The cost of the original transcript shall be paid by the Township if the transcript is ordered by the Township or shall be paid by the person appealing the decision of the Township 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.

1104 Zoning Officer

1104.1 Appointment

The Zoning Officer(s) shall be appointed by the Board of Supervisors. The Zoning Officer(s) shall not hold any elective office within the Township, but may hold other appointed offices not in conflict with the State Planning Code.

1104.2 Duties and Powers

The Zoning Officer shall:

- A. Administer the Zoning Ordinance.
- B. Provide information to applicants regarding required procedures.
- C. Receive and examine all applications required under the terms of this Ordinance, and issue or refuse permits within this Ordinance.
- D. Issue a written enforcement notice to any person violating any provision of this Ordinance. An enforcement notice may be issued upon the Zoning Officer's observation of the violation, or following the confirmation by the Zoning Officer of any written complaint.
- E. Keep records of applications, permits, certificates, written decisions and interpretations issued, of variances and special exception granted by the Zoning Hearing Board, of conditional uses approved by the Board of Supervisors, of complaints received, of inspections made, of reports rendered, and of notice or orders issued.
- F. Make all required inspections and perform all other duties as called for in this Ordinance.
- G. Not have the power to permit any activity which does not conform to this Ordinance, or all other Ordinances of the Township known to the Zoning Officer.

1104.3 Qualifications

Pursuant to §614 of the Pennsylvania Municipalities Planning Code, the following minimum qualifications shall apply to any Zoning Officer(s) appointed to serve the Township after the adoption of this Ordinance, unless such mandatory qualifications are waived by motion of the Board of Supervisors.

- A. The person shall demonstrate a working knowledge of zoning.
- B. The person shall have one of the following combinations of education and experience:
 - 1. An high school diploma or equivalent and a minimum of four (4) years responsible experience in administering and enforcing municipal zoning and/or subdivision and land development ordinances;
 - or,
 - 2. An high school diploma or equivalent and two (2) additional years of continuing education, such as an Associate Degree (such continuing education preferably should be in a filed such as law

- enforcement, community planning and/or public administration) and a minimum of two (2) years responsible experience in administering and enforcing municipal zoning and/or subdivision and land development ordinances; or,
3. A college or university Bachelor's degree in a field related to zoning (such as law enforcement, community planning and/or government administration) and a minimum of 8 months responsible experience in administering and enforcing municipal zoning and/or subdivision and land development ordinances.
- C. The person shall be familiar with Constitutional issues concerning search and seizure and with the process of filing actions with the District Justice.
 - D. The person shall exhibit an ability to thoroughly evaluate site plans and building plans.
 - E. The person shall demonstrate excellent oral and written communication skills.
 - F. The person shall be familiar with the Pennsylvania Municipalities Planning Code.

1105 Zoning Hearing Board

1105.1 Appointment and Qualifications

- A. Appointment - The Board of Supervisors shall appoint a Zoning Hearing Board, which shall have the number of members and alternate members with such powers and authority, and which shall conduct all proceedings as set forth in Article IX of the Pennsylvania Municipalities Planning Code as enacted or hereafter amended.
- B. Recommended Qualifications - Each Zoning Hearing Board member should:
 1. Demonstrate a working knowledge of zoning prior to appointment.
 2. Become familiar with the Pennsylvania Municipalities Planning Code.
 3. Attend at least one (1) seminar and/or workshop pertaining to municipal planning and/or zoning within each calendar year.
- C. Vacancies. The Board shall promptly notify the Board of Supervisors of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of a term.
- D. Removal of Members. See §905 of the Pennsylvania Municipalities Planning Code.
- E. Organization.
 1. Officers - The Board shall elect officers from its own membership. Officers shall serve annual terms and may succeed themselves.
 2. Quorum - For the conduct of any hearing and taking of any action a quorum shall be not less than a majority of all members of the Board, except that 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 by the PA. Municipalities Planning Code. The quorum may be met by alternate members, serving as permitted by the Pennsylvania Municipalities Planning Code.
 3. Rules - The Board may make, alter, and rescind rules and forms for its procedure, consistent with all

applicable Township ordinances and State law.

1105.2 Jurisdiction

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 governing body pursuant to §609.1 (Curative Amendments) and §916.1(a)(2) (Ordinance Validity) of the Pennsylvania Municipalities Planning Code.
- 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 thirty (30) days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the municipality 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. Applications for variances from the terms of the Zoning Ordinance pursuant to §910.2 of the Pennsylvania Municipalities Planning Code.
- E. Applications for special exceptions under the Zoning Ordinance pursuant to §912.1 of the Pennsylvania Municipalities Planning Code and the requirements of this Ordinance.
- F. Appeals from the Zoning Officer's determination under §916.2 (Preliminary Opinion) of the Pennsylvania Municipalities Planning Code.
- G. Appeals from the determination of the Zoning Officer or municipal 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 applications.
- H. The Zoning Hearing Board shall not, under any circumstances, have the authority to order any specific change in or amendment to the Zoning Map or to allow any use of property substantially different from those permitted by Article III for the particular district.

1106 Zoning Hearing Board -- Hearings and Decisions

The Zoning Hearing Board shall conduct hearings and make decisions in accordance with §908 of the Pennsylvania Municipalities Planning Code, as amended, and the following:

1106.1 Notice of Hearings

Notice of all hearings of the Board shall be given as follows:

- A. Advertisement - Public notice shall be published, as defined by §107 of the PA. Municipalities Planning Code. The notice shall state the time and place of the hearing and the particular nature and property address of the matter to be considered.
- B. Posting - Notice of such hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing. Such notice shall state the time and place of the hearing and a general

description of the request.

- C. Persons Given Notices - All notice under this sub-section should be intended to be received or posted at least five (5) days prior to the hearing date.
 - 1. Written notice shall be mailed or personally delivered to the Applicant or his/her representative listed on an official application form.
 - 2. Notice may be delivered or mailed to the Chairperson of the Planning Commission or Township Secretary, and the last known address of owners of record of property abutting or directly across the street from the boundaries of the subject property. The applicant shall provide the Township with a list of such property-owners. Failure of the Township to notify all such persons shall not invalidate any action by the Board.
 - 3. Also, such notice shall be mailed or delivered to the address of any other person or group (including civic or community organizations) who has made a written timely request (including an address) for such notice.
- D. Adjacent Municipalities - In any matter which relates to a lot which lies within two hundred and fifty (250) feet of the boundary of another municipality, and where the Zoning Officer determines the proposed activity may have significant impact on that municipality, the Township staff may transmit to the offices of the adjacent municipality a copy of the official notice of the public hearing on such matter prior to the hearing date. Representatives of such adjacent municipality shall have the right to appear and be heard at the public hearing. Failure of the Township to notify such municipality shall not invalidate any action by the Board.
- E. Fees - The Board of Supervisors may, by resolution, establish a reasonable fee schedule, based on cost, to be paid by: a) the Applicant for any notice required by this Ordinance and b) those persons requesting any notice not required by the Ordinance.

1106.2 Parties in Hearings

The Zoning Hearing Board shall have the authority, if it chooses to exercise it, to determine who has standing on each case before the Board. (Note-Standing generally means a party being sufficiently affected or threatened by affects by a controversy to obtain judicial resolution of that controversy.)

- A. The parties to a hearing shall be the Board of Supervisors, the Planning Commission, any person affected by the application who has made timely appearance of record before the Board, representatives of any legitimate civic or community organization, and any other person permitted to appear before the Board.
- B. The Board shall have power to require that all person who wish to be considered parties enter appearances in writing on forms provided by the Board for that purpose.
- C. The Board shall determine that a person or business does not have standing if the Board finds that such person or business is apparently motivated primarily by an attempt to inhibit competition in an area of business, and that such person or business would not otherwise be threatened with substantive harm from the application.

1106.3 Oaths and Subpoenas

The Chairperson of the Board or Hearing Officer shall have the 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 reasonably needed by and requested by the parties.

1106.4 Representation by Counsel

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

1106.5 Evidence and Record

Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded. The Board or the Hearing Officer, as applicable, shall keep a record of the proceedings as required by State law.

1106.6 Communications Outside of Hearings

- A. The Board shall not meet with, visit the site with or directly communicate specifically on the matter with the applicant or any officially protesting party or their representatives in connection with any issue involved, except if opportunity is provided for the applicant and any officially protesting party to participate.
- B. The Board shall not take notice of any communications, reports, staff memoranda, or other materials directly affecting a proposed application unless the parties are afforded an opportunity to examine and contest the material so noticed or unless such materials are already a matter of public record. This restriction shall not apply to advice from the Board's solicitor.

1106.7 Advisory Review

The Zoning Hearing Board may request that the Planning Commission, County Conservation District or Township Engineer provide an advisory review on any matter before the Board.

1106.8 Initiation of Hearings

A hearing required under this Ordinance shall be initiated within sixty (60) days of the date of an applicant's request for a hearing, unless the applicant has agreed in writing to an extension of time. A request for a hearing by an applicant shall not be accepted prior to submission of a duly filed application.

1106.9 Decision/Findings

- A. The Board shall render a written decision or make written findings (when no decision is called for) on each application within forty-five (45) days after the last hearing on that application before the Board, unless the applicant has agreed in writing to an extension of time.
- B. The decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons for such conclusions.
- C. Any conclusion based on any provision of the Pennsylvania Municipalities Planning Code or of this Ordinance shall contain a section reference to that specific provision.

1106.10 Notice of Decision

A copy of the final decision or a copy of the findings (when no decision is called for), shall be personally delivered or mailed to the applicant or his or her representative at their last known address not later than the day following its date in accord with §908(10) of the Pennsylvania Municipalities Planning Code. To all other persons who have filed their name and address with the Zoning Hearing 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.

1106.11 Solicitor Conflict

- A. The Zoning Hearing Board Solicitor shall not represent private clients in cases before the Zoning Hearing Board.
- B. If a conflict of interest exists for the Zoning Hearing Board Solicitor on a particular application, the Zoning Hearing Board Solicitor shall notify the Chairperson of the Board at least seven (7) days before the scheduled hearing date.
- C. The Board of Supervisors may appoint an Alternate Solicitor to the Zoning Hearing Board to serve as needed for a specific application or for a term of office.

1107 Variances

The Board shall hear requests for variances filed with the Board in writing by any landowner (or any tenant with the permission of such landowner).

1107.1 Standards

The Board may grant a variance only within the limitations of the Municipalities Planning Code. **The applicant shall have the burden of proof to show compliance with such standards.** As of 1993, the Municipalities Planning Code provided that **all** of the following findings must be made, where relevant in a particular case:

- A. 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 Ordinance in the neighborhood or district in which the property is located; and,
- B. Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and a variance is therefore necessary to enable the reasonable use of the property; and,
- C. Such unnecessary hardship has not been created by the appellant; and,
- D. 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, not be detrimental to the public welfare; and,
- E. 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.

1107.2 Re-Application

The Zoning Officer shall refuse to accept a proposed application that is not materially or significantly different from an appeal on the same property that was denied by the Board within the previous year.

1107.3 Variance Conditions

In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Municipalities Planning Code and this Ordinance, and to protect the public health, safety and welfare.

1108 Conditional Uses and Special Exceptions

1108.1 Applications

Applications for conditional uses and special exceptions shall, at a minimum, include the information required in §1108.6. The Township Planning Commission, Board of Supervisors, or the Zoning Hearing Board shall require any other information deemed necessary for the review of the proposal.

1108.2 Conditional Uses

Uses specified as conditional uses shall be permitted only after review and approval pursuant to the express standards as provided for specific conditional uses in this Ordinance and in §1108.4 and any other applicable standards in this Ordinance.

- A. Expansions - Expansions or additions to uses classified as conditional uses shall also be considered conditional uses. The addition of an accessory structure shall not be considered a conditional use.
- B. Procedure
 - 1. Submission - The applicant shall submit the application as follows:
 - a. Five (5) complete copies of any required plan shall be submitted to the Zoning Officer.
 - b. The Zoning Officer shall refuse to accept an incomplete application which does not provide sufficient information to determine compliance with this Ordinance.
 - 2. Distribution - The Zoning Officer shall distribute copies of the site plan to the Planning Commission and the Board of Supervisors. A minimum of one (1) copy shall be retained in the Township files. The Township Fire Company should be given an opportunity for a review, if deemed appropriate by the Zoning Officer.
 - 3. Zoning Officer Review - The Zoning Officer shall report in writing or in person to the Planning Commission or the Board of Supervisors stating whether the proposal complies with this Ordinance. The Zoning Officer may request a review by the Township Engineer.
 - 4. Planning Commission - The Planning Commission shall be given an opportunity to review the conditional use application and submit a recommendation to the Board of Supervisors.
 - 5. Board of Supervisors Action
 - a. Prior to rendering a decision, the Board of Supervisors shall conduct a public hearing on the application. Such hearing shall be conducted pursuant to public notice within sixty (60) days from the date of receipt of a complete application.
 - b. The Board of Supervisors shall render a written decision or, when no decision is called for, make written findings on the conditional use application within forty-five (45) days after the last hearing before the Board of Supervisors. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefor. Conclusions based on any provision of the Pennsylvania Municipalities Planning Code or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in light of the facts found.
 - c. Where the Board of Supervisors 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 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 public 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 decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this Ordinance. If the Board shall fail to provide such notice, the applicant may do so.

- d. In granting a conditional use, the Board of Supervisors may attach such reasonable conditions and safeguards (in addition to those expressed in this Ordinance) as it determines are necessary to implement the purposes of the Pennsylvania Municipalities Planning Code and this Ordinance, and to protect the public health, safety and welfare.
- e. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction. 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 no later than the day following its date.

1108.3 Special Exceptions

Uses specified as special exceptions shall be permitted only after review and approval by the Township Zoning Hearing Board pursuant to the express standards as provided for specific special exceptions in this Ordinance and in §1108.4.

- A. Expansions - Expansions or additions to uses classified as special exceptions shall also be considered special exceptions. The addition of an accessory structure shall not be considered a conditional use.
- B. Procedure
 - 1. All applicants for a special exception use shall submit five (5) sets of plans for the proposed use to the Zoning Officer together with a written application. Photographs of the existing site or buildings may also be requested to be presented by the applicant.
 - 2. All plans shall contain the information required in §1108.6.
 - 3. Township Procedures.
 - a. The Zoning Officer shall forward the application to the Zoning Hearing Board, the Planning Commission and the Zoning Hearing Board solicitor. A minimum of one (1) copy shall be retained in the Township files.
 - b. The Zoning Officer shall, prior to the next Zoning Hearing Board meeting where the application will be discussed, review the Plan to determine compliance with this Ordinance and report these findings to the Zoning Hearing Board.
 - 4. Planning Commission Review of Special Exception Uses.
 - a. The Planning Commission shall be provided with an opportunity to review any proposed special exception use at a regular meeting prior to a decision by the Zoning Hearing Board. The Commission, at its option, may provide a written advisory review.
 - b. If such review is not received within the time limit within which the Board must issue a decision, or within thirty (30) days of such application being sent to the Planning Commission, then the Board may make a decision without having received comments from the Planning Commission.

5. Zoning Hearing Board Action on Special Exception Uses.
 - a. The Board shall hear and decide such request for a special exception use under the procedures of this Ordinance and the State Planning Code.
 - b. The Board shall schedule the first hearing within sixty (60) days of submission of a proper application, unless granted a written extension by the applicant. The Board shall issue a decision within forty-five (45) days after the conclusion of the final hearing on the matter.
 - c. The decision of the Board shall be in writing and shall be communicated to the applicant or their representative in accordance with this Ordinance.

1108.4 Standards and Criteria

The standards and criteria applied to conditional uses and special exceptions are intended to ensure that the proposed use will be in harmony with the purposes, goals, objectives and standards of this Ordinance and other ordinances of the Township. In addition to the applicable general provisions of this Ordinance and to the standards provided in this Ordinance for specific conditional uses and special exceptions, the following standards and criteria shall be applied in the review of applications for conditional uses and special exceptions.

- A. The proposed use shall be in harmony with purposes, goals, objectives and standards of the Township Comprehensive Plan, this Ordinance and all other ordinances of the Township.
- B. The proposal shall also be evaluated as to the degree to which the proposed location may be particularly suitable or unsuitable for the proposed use in terms of the physical characteristics of the site.
- C. The proposed use at the proposed location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, adjacent property values, or other matters affecting the public health, safety, and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of this Ordinance, or any other plan, program, map or ordinance of the Township or other government agency having jurisdiction to guide growth and development.
- D. The proposed use shall not impose an undue burden on any of the improvements, facilities, utilities, and services of the Township, whether such services are provided by the Township or some other entity. The applicant shall be wholly responsible for providing such improvements, facilities, utilities, or services as may be required to adequately serve the proposed use when the same are not available or are inadequate to serve the proposed use in the proposed location. As part of the application and as a condition of approval of the proposed use the applicant shall be responsible for establishing ability, willingness and binding commitment to provide such improvements, facilities, utilities and services in sufficient time and in a manner consistent with this and other ordinances of the Township. The permit approval shall be so conditioned.
- E. In reviewing an application, the following additional factors shall be considered:
 1. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
 2. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
 3. Location, arrangement, appearance and sufficiency of off-street parking and loading.
 4. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
 5. Adequacy of storm water and drainage facilities storm water leaving any site shall not exceed pre-development levels and facilities shall be designed to accommodate a 10 year storm.

- 6. Adequacy of water supply and sewage disposal facilities.
 - 7. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
 - 8. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
 - 9. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- F. No application shall be approved unless it is found that, in addition to complying with each of the standards enumerated above, any of the applicable standards contained in this Ordinance shall be met. In instances where the supplemental standards contained herein do not adequately protect the general health, safety and welfare of parties effected, all conditions and safeguards deemed necessary by the Board to protect the general health, safety and welfare and implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code shall be imposed as conditions of approval in accord with §912.1 or §913.2 of the Pennsylvania Municipalities Planning Code, as the case may be.

Conditions which might be imposed shall include (but not be limited to) provisions for additional parking, traffic control, submission of landscaping plans for screening, setbacks, special measures addressing sales period activities, environmental controls and other measures which mitigate any potential adverse impact the use may have on adjoining uses.

The applicant shall supply evidence regarding compliance with the express standards and criteria contained herein; and data or evidence may be accepted from protestants. Such evidence shall be evaluated relative to the injurious impact on the health, safety and welfare of the Township; and the proposed use shall be approved with appropriate conditions or denied based on said evaluation.

1108.5 Limitation of Approval

Any conditional use approval granted by the Township Supervisors and any special exception approval granted by the Zoning Hearing Board shall expire one (1) year from the date such approval was granted if no building construction as approved has taken place or the use is not otherwise established as a functional and constructive activity prior to the expiration date. Upon such expiration, the said approval, and any permit issued subsequent thereto, shall be deemed null and void and the developer shall be required to submit another application for the same. The Board of Supervisors or Zoning Hearing Board as the case may be, however, may grant an extension of the time limitations, for good cause.

1108.6 Information Required

The applicant shall supply the information required by §1102.3 of this Ordinance and evidence regarding compliance with the express standards and criteria contained herein; and data or evidence may be accepted from protestants. Such evidence shall be evaluated relative to the injurious impact on the health, safety and welfare of the Township; and the proposed use shall be approved with appropriate conditions or denied based on said evaluation.

1109 Time Limits on Permits and Variances

1109.1 Zoning Permit

After a variance is approved or a conditional or special exception approval is officially authorized under this Ordinance, then a Zoning Permit shall be secured by the applicant within twelve (12) months of such approval, otherwise, such approval shall be deemed null and void and the developer shall be required to submit another application for the same.

1109.2 Review Completion

If the applicant submits complete plans for a subdivision or land development approval or special exception or

conditional use approval that is related to the variance or issuance of a permit under this Ordinance within the above time limits, then such time limits shall begin after such plan review is completed or such plan approval is granted.

1109.3 Extension

For good cause the Zoning Officer may, upon application in writing stating the reasons therefore, extend in writing the 12-month application period to up to eighteen (18) months.

1109.4 Expiration

If an applicant fails to obtain the necessary permits within the above time period, or after having obtained the permit fails to diligently commence substantial construction within twelve (12) months or allows interruptions in substantial construction of longer than six (6) months, it shall be conclusively presumed that the applicant has waived, withdrawn or abandoned the approval, and all such approvals, variances and permits shall be deemed automatically rescinded.

1109.5 Completion

Any building construction shall be completed within twelve (12) months of issuance of an applicable permit, unless a written extension is granted by the Zoning Officer for good cause. Otherwise, a permit shall be considered to have automatically expired at the end of such 12-month period.

1110 Mediation

Parties to proceedings authorized by this Ordinance and the Pennsylvania Municipalities Planning Code may use the Mediation Option as authorized by and in accord with §908.1 of said Code.

1111 Time Limits for Appeals

The time limitations for appeals shall be as follows:

1111.1 Zoning Hearing Board -- County Court

No person shall be allowed to file any appeal with the Zoning Hearing Board later than thirty (30) days after the officially issued decision by the Zoning Officer, or appeal with the County Court of Common Pleas later than thirty (30) days after the officially issued decision of the Board of Supervisors or the Zoning Hearing Board, except as may be provided under §914.1 of the Pennsylvania Municipalities Planning Code.

1111.2 Temporary Permits

This 30 day time limit for appeal shall not apply to the revocation of a permit under §1102.5.

1111.3 Subdivision or Land Development Approval

The failure of an aggrieved person other than the landowner to appeal an adverse decision directly related to a preliminary subdivision or land development plan shall preclude an appeal from a final plan approval except in the case where the final submission substantially deviates from the approved preliminary plan.

1112 Appeals to Court and Other Administrative Proceedings

Appeals to court and other administrative proceedings shall be governed by Article X-A and Article IX of the Pennsylvania Municipalities Planning Code, respectively.

1113 Public Utility Exemptions

See §619 of the Pennsylvania Municipalities Planning Code.

1114 Limited Township Exemption

The minimum lot area requirements of this Ordinance shall not apply to uses or structures owned by the Township for uses and structures that are intended for a legitimate governmental, recycling, public recreation, storm water control or public health and safety purpose.

1115 Amendments

The Board of Supervisors may amend the Zoning Ordinance by complying with the requirements set forth in Article VI of the Pennsylvania Municipalities Planning Code. A landowner who desires to challenge on substantive grounds the validity of an ordinance or 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 governing body with a written request that his challenge and proposed amendment be heard and decided on as provided in §609.1 and §916.1 of the Pennsylvania Municipalities Planning Code.

1116 Violations

1116.1 Compliance

Failure to comply with any provision of this Ordinance, failure to secure or comply with a decision of the Board of Supervisors or Zoning Hearing Board or the failure to secure a permit, when required, prior to or (when ordered) after the erection, construction, extension, or addition to a building or prior to or after the use or change of use of land; or failure to secure a Certificate of Use Permit, shall be violations of this Ordinance.

1116.2 Complaints; Zoning Officer Observation; Other Township Officials

Whenever a violation of this Ordinance occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Zoning Officer, who shall record receipt of the said complaint and investigate and report thereon. However, a complaint need not be received for the Zoning Officer to proceed with an enforcement notice should the violation be observed directly by the Zoning Officer. Police officers, firefighters, construction inspectors, other Township staff and Township officials may report possible zoning violations to the Zoning Officer for determination.

1116.3 Enforcement Notice

When written notice of a violation of any of the provisions of this Ordinance shall be served by the Zoning Officer, personally or by certified mail, in the manner prescribed by §616.1 of the Pennsylvania Municipalities Planning Code and set forth in this §1116.3, such violation shall be discontinued or corrected as set forth in said notice.

- A. If it appears to the Township that a violation of this Zoning Ordinance has occurred, the Township shall initiate enforcement proceedings by sending an enforcement notice as provided in this §1116.3
- B. 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.
- C. An enforcement notice shall state at least the following:
 - 1. The name of the owner of record and any other person against whom the municipality intends to take action.
 - 2. The location of the property in violation.
 - 3. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the ordinance.
 - 4. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
 - 5. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a prescribed period of time in accordance with procedures set forth in this Ordinance.
 - 6. 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.
- D. In any appeal of an enforcement notice to the Zoning Hearing Board, the Township shall have the

responsibility of presenting its evidence first.

- F. Any filing fee paid by a party to appeal an enforcement notice to the Zoning Hearing Board shall be returned to the appealing party by the Township if the Zoning Hearing Board, or any court in subsequent appeal, rules in the appealing party's favor.

1117 Penalties and Remedies

1117.1 Causes of Action

In case any building, structure or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of any provisions of this Ordinance, the Board of Supervisors or, with the approval of the Board of Supervisors, an officer of the municipality, 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 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 Township at least thirty (30) days prior to the time the action is begun by serving a copy of the complaint on the Board of Supervisors. No such action may be maintained until such notice has been given.

1117.2 Enforcement Remedies

- A. Any person, partnership or corporation who or which has violated or permitted the violation of any of the provisions of this Zoning Ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than \$500 (state law) plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or be 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 Township 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 the Ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth 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. All judgments, costs and reasonable attorney fees collected for the violation of this Zoning Ordinance shall be paid over to the Township.
- B. 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.
- C. Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the Township, the right to commence any action for enforcement pursuant to this section.

1118 Liability

Neither the approval nor the granting of any review, issuance of permit or approval related to construction, activity within the flood plain, site plan review, subdivision or land development approval erosion control, storm water runoff, activity on steep slopes or any other review or permit of this Ordinance, by an officer, employee, consultant or agency of the Township, shall constitute a representation, guarantee or warranty of any kind by the Township, or its employees, officials, consultants or agencies, of the practicality or safety of any structure, use or subdivision, and shall create no liability upon, nor a cause of action against such public body, official, consultant nor employee for any damage that may result pursuant thereto.

If the Zoning Officer mistakenly issues a permit under this Ordinance, the Township shall not be liable for any later lawful withdrawal of such permit for valid cause shown.

PLANNING COMMISSION RESPONSIBILITIES

The zoning administration responsibilities of the Glenburn Township Planning Commission are included in various sections of this Article XI and are advisory to the Board of Supervisors or the Zoning Hearing Board. Planning Commission responsibilities include the following:

1. Preparation or review of all proposed zoning ordinance and zoning map amendments. See §1115.
2. Review of all applications for conditional uses. See §1108.2.
3. Review of all applications for special exceptions. See §1108.3.