

ZONING ORDINANCE
BOROUGH OF TOPTON
BERKS COUNTY, PENNSYLVANIA

July 13, 2015

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Section 100 TITLE

An Ordinance regulating and restricting the height of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes; creating districts and boundaries thereof; defining certain terms used herein; and providing for the administration, enforcement and amendment of this Ordinance in accordance with the provision of the Pennsylvania Municipalities Planning Code, as amended.

Section 101 SHORT TITLE

This Ordinance shall be known and may be cited as “The Borough of Tipton Zoning Ordinance of 2015.”

Section 102 PURPOSE

The purpose of this Ordinance is the promotion of the public health, safety, morals and general welfare of the residents and inhabitants of the Borough of Tipton, Berks County, Pennsylvania, by giving effect to the community development objectives of the Borough, which are:

1. Encourage the most appropriate use of land;
2. Prevent the overcrowding of land;
3. Conserve the value of land and buildings;
4. Lessen the congestion of traffic on the roads and highways;
5. Avoid undue congestion of the population;
6. Provide for adequate light and air;
7. Protect natural resources;
8. Secure safety from fire, panic, flood, and other dangers;
9. Facilitate the adequate provision of transportation, water, sewerage, school and other public facilities;
10. Encourage the harmonious and orderly development of land;
11. Give effect to the objectives, policies and purposes set forth in the Joint Comprehensive Plan.

Article I – Title, Purpose, Interpretation & Application

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Section 103 INTERPRETATION

In their interpretation and application, the provisions of this Ordinance shall be held to the minimum requirements adopted for the promotion of the public health, safety, morals and/or the general welfare of the residents and inhabitants of the Borough.

Section 104 APPLICATION OF ORDINANCE

Except as hereinafter provided, no building, structure, land, or parts thereof shall be used or occupied, erected, constructed, assembled, moved, enlarged or structurally altered unless in conformity with the provisions of this Ordinance.

Section 105 LIMITED MUNICIPAL EXEMPTION

The dimensional requirements of this Ordinance shall not apply to property, uses or structures owned by the Borough and intended for a public recreation or public health and safety purpose.

Article II – Definitions

Section 200 DEFINITIONS

Section 201 Tense, Gender, and Number

Words used in the present tense include the future; words in the masculine gender include the feminine and the neuter; the singular number includes the plural, and the plural the singular.

Section 202 General Terms

The word “shall” or “must” is always mandatory; the word “may” is permissive. The words “used for” include “designed for,” “arranged for,” “intended for,” “maintained for,” or “occupied for.” The word “building” includes “structure” and shall be construed as if followed by the phrase “or part thereof.” The word “person” includes “individual,” “profit or non-profit corporation,” “organization,” “partnership,” “company,” “unincorporated association,” or other similar entities.

Section 203 Terms, Phrases, and Words Not Defined

When terms, phrases, or words are not defined herein, they shall have their meaning as stated in the Borough of Topton Subdivision and Land Development Ordinance (SALDO). When terms, phrases or words are not defined in this Ordinance or the SALDO, they shall have their ordinarily accepted meanings or such as the context may imply.

Section 204 Specific Terms

Terms or words used herein, unless otherwise expressly stated, shall have the following meanings:

Accessory Building - A building subordinate to the principal building on the same lot and used for purposes customarily incidental to those of the principal building.

Accessory Use - A use subordinate to the principal use of land or of a building on the same lot and customarily incidental thereto.

Adaptive Re-Use - A process that adapts buildings for new uses while retaining their historic features.

Adult Book Store – See Article 5.

Adult Motion Picture Theater – See Article 5.

Age-Restricted – A grouping of residences constructed and organized to meet age-related regulations under the Housing for Older Persons Act, such as the

requirement that one member of the residence must be at least 55 years of age in 80 percent or more of the occupied dwellings.

Alteration - Any change or rearrangement in the structural parts of a building or structure, or any enlargement thereof, whether by extension on any side or by an increase in height; or the moving such building or structure from one location or position to another.

Apartment Building - A building on a single lot intended and designed for a residence for three or more families and in which the dwelling units may be separated horizontally and/or vertically

Apartment Unit - A dwelling unit within an apartment building.

Assisted Living Facility - A facility licensed as an “Assisted Living Facility” by the Commonwealth of Pennsylvania, specifically any premises in which food, shelter, assisted living services, assistance or supervision and supplemental health care services are provided for a period exceeding 24-hours for four or more adults who are not relatives of the operator, who require assistance or supervision in matters such as dressing, bathing, diet, financial management, evacuation from the residence in the event of an emergency or medication prescribed for self-administration.

Basement - A story partly below the finished grade but having at least one-half of its height (measured from finished floor to finished ceiling) above the average level of the finished grade where such grade abuts the exterior walls of the building. A basement shall be considered as one story in determining the permissible number of stories.

Borough - The Borough of Tipton, Berks County, Pennsylvania.

Borough Council - The Council of the Borough of Tipton, Berks County, Pennsylvania.

Borough Planning Commission - The Planning Commission of the Borough of Tipton, Berks County, Pennsylvania.

Bring Your Own Bottle Establishment (BYOB) - A place of assembly or any other use defined in this ordinance, other than a dwelling unit, including but not limited to restaurants, taverns, clubs and social buildings, that is not licensed by the Pennsylvania Liquor Control Board, in which no intoxicating beverages are sold, but where patrons are permitted to bring intoxicating beverages upon the premises for their own use and consumption only.

Building - Any combination of materials forming any structure which is designed, intended or arranged for the housing, sheltering, enclosure or structural support of persons, animals or property of any kind.

Building Area - The aggregate of the maximum horizontal cross-section areas of all buildings on a lot, excluding cornices, unroofed porches, paved terraces, steps, eaves and gutters.

Building Height - The vertical distance measured from the average elevation of the finished grade at the two front corners of the building to the highest point of the roof. Chimneys, spires, and other similar projections shall not be included in calculating the height of a building.

Building Setback Line - The line that designates the minimum required distance between any building or structure or portions thereof to be erected or altered and an adjacent street right-of-way or property line, whichever is closer. Such line shall be measured at right angles from the street right-of-way line which abuts the property upon which said building or structure is located or to be located and shall be parallel to said right-of-way line.

Cabaret – See Article 5.

Cellar - A story partly below the finished grade, having at least one-half of its height (measured from finished floor to finished ceiling) below the average level of the adjoining finished grade where such grade abuts the exterior walls of the building. A cellar shall not be considered a story in determining the permissible number of stories.

Cluster development - An area of land under single and separate ownership, to be developed as a single entity for a number of dwelling units, the development plan for which complies in lot size, density, dwelling type, lot coverage, open space land, other dimensional characteristics set forth in any residential zoning district

Certificate of Use and Occupancy - A statement, based on an inspection, signed by the Zoning Officer, setting forth that a building, structure, sign and/or land complies with the Zoning Ordinance, and/or that a building, structure, sign and/or land may be lawfully employed for specific uses, or both, as set forth therein.

Common Open Space - Parcel or parcels of land or an area of water or a combination of land and water within the development site designed and intended for use or enjoyment of all residents of the development in which it is located. Land included within the right-of-way lines of streets shall not be classified as common open space. Dwellings units and residential accessory uses shall not be located within common open space areas, nor shall loading areas and parking areas unless they are strictly incidental to common open space uses.

Common Parking Area - A parking facility other than those provided within the lot lines of a lot on which one single family detached dwelling, one single family semi-detached dwelling, one townhouse, one two family detached dwelling or one two family semi-detached dwelling is located.

Commercial Communication Antenna – Any device mounted on a tower on stable platform such as an existing building or structure used for the transmission or reception of radio, television, cellular phone, commercial mobile radio service, satellite, or any other wireless communication signals including, without limitation, omnidirectional or whip antennas and directional or panel antennas, and including any device that radiates or captures electromagnetic waves, digital signals, radio frequencies or other communications signals, owned or operated by any person or entity licensed by the Federal Communications Commission (FCC) to operate such devices. This definition shall not include private residence mounted satellite dishes or television antennas or amateur radio equipment including, without limitation, ham or citizen band radio antennas.

Commercial Communications Facility – A use consisting of towers, antennas, building, parking and accessory uses necessary for the operation of a commercial communication system.

Commercial Communications Facility Colocation - The use of a commercial communications facility by more than one (1) commercial communications entity, including joint permitting, leasing or joint ventures among commercial communications entities.

Commercial Communications Tower - Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers, or structures appended or attached to existing buildings or structures. The term includes radio and telephone transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereof.

Conditional Use – In accordance with Section 603 (c) of the PA Municipalities Planning Code, uses to be allowed or denied by the governing body pursuant to public notice and hearing and recommendations by the planning agency and pursuant to express standards and criteria set forth in the zoning ordinance. In allowing a conditional use, the governing body may attach such reasonable conditions and safeguards, other than those related to off-site transportation improvements, in addition to those expressed in the ordinance, as it may deem necessary.

County Planning Commission - The Planning Commission of the County of Berks, Commonwealth of Pennsylvania.

Day Care Center - The premises in which out-of-home care is provided, at any one time, for part of a 24-hour day to seven or more children, 15 years of age or younger, including care provided to a child at the parent's work site when the parent is not present in the child care space, care provided in private or public, profit or nonprofit facilities, and care provided before or after the hours

of instruction in nonpublic schools and in private nursery schools and kindergartens, all under a certificate of compliance issued by the Commonwealth of Pennsylvania.

Demolish – The voluntary or elective removal of a structure to grade.

Destroy – The involuntary removal of substantial portions of a structure.

Directional Sign - A sign containing directional information locating public places owned or operated by Federal, State or local governments or their agencies; public or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or which are naturally suited for outdoor recreation.

District - A portion of the Borough of Tipton within which certain uniform regulations and requirements or combinations thereof apply under the provisions of this Ordinance.

Dwelling- A building or portion thereof arranged, intended, designed or used as the living quarters for one or more families living independently of each other. Such buildings as hospitals, hotels, boarding, rooming and lodging houses, motels, hotels, and institutional residences are not included in the definition of dwelling.

Single Family Detached Dwelling - A building arranged, designed or intended for occupancy exclusively as a residence for one family and having no common or party wall with an adjacent building.

Single Family Semi-Detached Dwelling - A building arranged, designed, or intended for occupancy exclusively as a residence for two families, each living on one side of a common or party wall.

Townhouse - A building arranged, designed, or intended for occupancy exclusively as a residence for one family, which is one of a group of three or more such buildings, placed side by side and separated by party walls.

Two Family Detached Dwelling - A building arranged, designed or intended for occupancy exclusively as a residence for two families, with one family living wholly or partly over the other and having no common or party wall with an adjacent building.

Two Family Semi-Detached Dwelling - A building arranged, designed or intended for occupancy exclusively as a residence for two families living on one side of a common or party wall and one of the families living wholly or partly over the other.

Two Family Attached Dwelling - A building arranged, designed or intended for occupancy exclusively as a residence for two families, with

one family living wholly or partly over the other and having two or more common or party walls with adjacent buildings.

Dwelling Unit - A building or portion thereof providing one (1) or more rooms arranged for the use of one (1) or more individuals living together as a single housekeeping unit, and having no cooking or sanitary facilities in common with any other dwelling unit.

Essential Services - Services customarily associated with residential living in a community setting such as public utilities. However, commercial communications antennas are not considered essential services.

Family - One or more persons, related by blood, marriage or adoption, with not more than two (2) boarders, roomers, lodgers, or not more than four (4) unrelated persons, living together as a single housekeeping unit and using cooking facilities and certain rooms in common.

Floor Area - The sum of the gross horizontal areas of every floor of a building, including basement space devoted to residential commercial or industrial use, and roofed porches, breezeways, roofed garages, carports and other accessory buildings. Cellar area is excluded.

Free Standing Sign - An independently supported sign, not attached to any building.

Garage - a building that is accessory to a principal dwelling(s) and is used primarily for the parking of a maximum of three motor vehicles. Such a garage shall not be used for business purposes unless specifically approved for such purposes, nor shall any repairs be made to motor vehicles within the garage other than to those vehicles registered to the property owner or lessee of any dwelling located on the property. Such a garage may be used for the parking of a maximum of one commercial vehicle, which shall be operated by a resident of the lot.

Height of Signs - The vertical distance measured from the average grade at the front of the sign to its highest point. The highest point in the case of a sign shall include the supporting structure.

Height of Tower - The overall height of the tower from the base of the tower to the highest point of the tower, including, but not limited to, antennas, transmitters, satellite dishes or any other structures affixed to other otherwise placed on the tower. If the base of the tower is not on ground level, the height of the tower shall include the base of the building or structure to which the tower is attached.

Highway Access Point The location or place of egress from or access to a street or highway created by a driveway, minor street, or another highway.

Article II – Definitions

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Highway Frontage - The lot dimension measured along the right-of way line of any street or highway abutting a lot.

Home Occupation - A use customarily conducted entirely within a dwelling unit and carried on by the inhabitants thereof, which is clearly incidental and secondary to the use of the dwelling unit.

Hotel - A building or group of buildings containing individual rooms for rental, primarily for transients, with common hallways for all rooms on the same floor.

Lot - A parcel of land held in single or joint ownership occupied or to be occupied by one or more principal buildings and accessory buildings, including the open spaces required under this Ordinance. The area and depth of a lot abutting a street shall be determined by measurements to the street line.

Lot Area - The area contained within the lot lines of a lot.

Lot, Corner - A lot abutting two or more intersecting public or private streets or at the point of abrupt change of direction of a single street (an interior angle of less than 135 degrees).

Lot Coverage - The percentage of the lot area covered by buildings.

Lot Line - A line forming the front, rear or side boundary of a lot.

Lot Size - The area of a lot.

Lot Width - The distance between the side lot lines at the front yard setback line.

Massage – See Article 5.

Massage Parlor – See Article 5.

Massage Therapy – The service provided by a Massage Therapist as licensed by the Commonwealth of Pennsylvania.

Medical Clinic – A health care facility devoted to inpatient or outpatient medical care.

Methadone Clinic – A clinic established for the dispensing of methadone (Dolophine), to those who abuse opiate drugs.

Mobile Home - A transportable, single family dwelling constructed in accordance with the specifications of the State of Pennsylvania as stated in law, intended for permanent occupancy contained in one unit, or in two units designed to be joined into one 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. It shall be considered a single family detached dwelling.

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 thereon 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 of land under single ownership which has been planned and improved for the placement of mobile homes for non-transient use, consisting of two or more mobile home lots.

Motel - A group of attached or detached buildings containing individual sleeping or living units where a majority of such units open individually and directly to the outside, and where a garage is attached or a parking space is conveniently located to each unit, all for the temporary use by automobile tourists or transients.

Municipality - Borough of Tipton, Berks County, Pennsylvania.

Municipal Use - A land use owned and maintained by the Borough or a municipal authority and including such uses as a library, park, playground or administrative or equipment storage building.

No-impact home-based business - A business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves no customer, client or patient traffic, whether vehicular or pedestrian, pickup, delivery or removal functions to or from the premises, in excess of those normally associated with residential use. The business or commercial activity must satisfy the following requirements:

- (1) The business activity shall be compatible with the residential use of the property and surrounding residential uses.
- (2) The business shall employ no employees other than family members residing in the dwelling.
- (3) There shall be no display or sale of retail goods and no stockpiling or inventory of a substantial nature.
- (4) There shall be no outside appearance of a business use, including, but not limited to, parking, signs or lights.
- (5) The business activity may not use any equipment or process which creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.
- (6) The business activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood.
- (7) The business activity shall be conducted only within the dwelling and may not occupy more than 25% of the habitable floor area.
- (8) The business may not involve any illegal activity.

Non-Conforming Building, Lot, Structure or Use - A building, lot, structure or use which does not conform to the regulations of the district in which it is located, but which lawfully existed prior to the enactment of this Zoning Ordinance. Non-conforming structures include non-conforming signs.

Open Space - Ground surface upon which no principal buildings or uses are permitted.

Nursing Home – A facility licensed by the Commonwealth of Pennsylvania as a Nursing Home.

Parking Space - A space within a building or on a lot, used for the parking of a motor vehicle.

Party Wall - A wall used or adopted for joint service between two buildings.

Personal Care Home – A facility licensed as a “Personal Care Home” by the Commonwealth of Pennsylvania, specifically a residence or residences that provide shelter, meals, supervision and assistance with personal care tasks, typically for older people, or people with physical, behavioral health, or cognitive disabilities who are unable to care for themselves but do not need nursing home or medical care.

Premises - A descriptive word to include all improvements, buildings structures and land on or within a lot.

Preschool Institutional - Care furnished in churches during religious services, care in public or private elementary, junior high or high schools, before, during or after hours of instruction.

Principal Building - A building in which is conducted the principal use of the lot on which it is situated.

Principal Use - The main or primary purpose for which any land, structure or building is designed, arranged or intended, and for which they may be occupied or maintained under the Zoning Ordinance.

Professional - Doctor, surgeon, dentist, architect, artist, accountant, insurance agent, real estate broker, teacher, engineer, lawyer, musician, surveyor, landscape architect, land planner.

Public Road - A public thoroughfare, including a street, road, lane, alley, or court, which has been dedicated or deeded to the Borough and accepted by it and which affords the principal means of access to the abutting property.

Public Utility Transmissions Tower - A structure owned and operated by a public utility electric company regulated by the Pennsylvania Utility Commission designated and used to support overhead electricity transmission lines.

Right-of-Way - The total width of any land reserved or dedicated as a street, road, lane, alley or crosswalk.

Screen - Vegetative material, fence, etc. planted or constructed to screen the buildings and/or structures and uses on the lot on which the screen is located from the view of people on adjoining properties.

Sight Triangle - An, area within which no vision obstructing object is permitted above a height of three feet and below a height of ten feet.

Sign - Any structure, wall or other outdoor surface, or any device or part thereof, which displays or includes any letter, word, model, banner, flag, pennant, insignia, device, or other representations used for announcement, direction or advertisement.

Sign, Advertising - A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the premises where the sign is displayed.

Sign, Business - A sign which directs attention to a business, profession or industry conducted on the premises or to products sold, manufactured or assembled upon the same premises upon which it is displayed.

Sign, Dynamic – A sign with characteristics that appear to have movement or that appear to change, caused by any method other than physically removing and replacing the sign or its components, whether the apparent movement or change is in the display, the sign structure itself, or any other component of the sign. This includes a display that incorporates a technology or method allowing the sign face to change the image without having to physically or mechanically replace its components. This includes any rotating, revolving, moving, flashing, blinking or animated display, rotating panels, LED lights manipulated through digital input, or any other method or technology allowing the sign face to present a series of images.

Solar Energy System -

Accessory Solar Energy System - A solar collection system consisting of one or more roof and/or ground mounted solar collector devices and solar related equipment, which has a rated capacity of less than or equal to ten (10) kilowatts (for electricity) or rated storage volume of the system of less than or equal to two hundred forty (240) gallons or that has a collector area of less than or equal to one thousand (1,000) square feet (for thermal), and is intended to primarily reduce on-site consumption of utility power. A system is considered an accessory solar energy system only if it supplies electrical or thermal power solely for on-site use, except that when a property upon which the facility is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company.

Principal Solar Energy System - An area of land or other area used for a solar collection system principally used to capture solar energy and convert it to electrical energy. Principal solar energy production facilities consist of one or more free-standing ground, or roof mounted solar collector devices, solar related equipment and other accessory structures and buildings including light reflectors, concentrators, and heat exchangers, substations, electrical infrastructure, transmission lines and other appurtenant structures and facilities, which has a rated capacity of more ten (10) kilowatts (for electricity) or rated storage volume of the system of more than two hundred forty (240) gallons or that has a collector area of more than one thousand (1,000) square feet (for thermal).

Special Exception - A use permitted in a particular district by the Zoning Hearing Board, to occupy or use land and/or a building or structure erected thereon for a specific purpose in accordance with this Ordinance, when such use is not permitted by right.

Specified Anatomical Areas, Sexual Activities – See Article 5.

Story - That portion of a building included between the surface of any floor and the surface of the floor next above it or if there be no floor above it, then the space between any floor and the ceiling next above it. A basement, but not a cellar, shall be deemed to be a story. Each level of a split level building, excluding cellars, shall be considered a one-half story.

Street - A public or private right-of-way, excluding driveways, intended for use as a means of vehicular and pedestrian circulation which provides a means of access to abutting property. The word “street” includes thoroughfare, avenue, boulevard, court, drive, expressway, highway, service street (alley), lane and road or similar terms.

Street Frontage - The lot dimension measured along the street line or right-of-way line of any street or highway abutting a lot.

Street Line - The dividing line between a lot and, the outside bounds of a public street, road, or highway right-of-way legally open or officially plotted by a municipality or higher governmental authority, between a lot and the outside boundary of a street shown on a recorded subdivision or land development plan, or between a lot and a private street, road or way over which. the owners or tenants of two or more lots held in single and separate ownership have a right-of-way.

Structure - Any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

Swimming Pool - An erected or constructed pool used for swimming or bathing which has a depth in any part of twenty-four inches (24”) or more, includes in-ground, above-ground, on-ground, permanent construction and inflatable/collapsible pools. This definition does not include prefabricated pools that are accessory to single-family detached homes, less than 24” deep, hold less than 5,000 gallons and are situated entirely on- or above-ground.

Use - The specific purpose for which land, sign, structure, or building is designed, arranged, intended, or for which it may be occupied or maintained, or any activity, occupation: business, or operation which may be carried on, thereon or therein. The term “permitted use” or its equivalent shall not be deemed to include any non-conforming use.

Variance - A waiver, granted by the Zoning Hearing Board, from the terms and conditions of this Ordinance where literal enforcement would create unnecessary hardship and when granting of the waiver would not be contrary to the public interest.

Wind Energy System

Accessory Wind Energy System - A wind energy conversion system consisting of a wind turbine, tower, and associated control or conversion electronics, which has a rated capacity of less than or equal to hundred (100) kilowatts and is intended to primarily reduce on-site consumption of utility power. A system is considered an accessory wind energy system only if it supplies electrical power solely for on-site use, except that when a parcel on which the system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company.

Principal Wind Energy Facility - An area of land or other area used for a wind energy conversion system principally used to capture wind energy and convert it to electrical energy. Principal wind energy production facilities consist of one or more wind turbines, tower, and associated control or conversion electronics and other accessory structures and

buildings including substations, electrical infrastructure, transmission lines and other appurtenant structures and facilities, which has a rated capacity of more than one hundred (100) kilowatts.

Yard - The required open unoccupied space on the same lot with a building. The space shall be open and unobstructed from the ground upward, except as otherwise provided in this Ordinance, and not less in depth or width than the minimum required in each zoning district.

Front Yard - The required open space between the street line and the principal building on a lot, extending the full width of a lot.

Rear Yard - The required open space between the rear lot line and the principal building on a lot, extending the full width of the lot.

Side Yard - The required open space between a side lot line and the principal building on a lot, extending from the front line to the rear line of the principal building.

Zoning Hearing Board - Borough of Topton Zoning Hearing Board.

Zoning Officer - Borough of Topton Zoning Officer.

Zoning Ordinance - Borough of Topton Zoning Ordinance of as referenced in Section 101 and as from time to time amended.

Section 300 TYPES OF ZONING DISTRICTS

For the purpose of this Ordinance, the Borough of Topton is hereby divided into the following districts:

- R-1 Suburban Residential District
- R-2 Urban Residential District
- R-2A Urban Residential District
- R-3 Mixed Use
- C-1 Commercial District
- I-G Institutional-Government District
- I-1 Industrial District
- I-1A Industrial-Residential Overlay District
- PO Parking Overlay District
- RBO Riparian Buffer Overlay District
- WSO Weis Street Overlay District

Section 301 OFFICIAL ZONING MAP

1. The boundaries of the Zoning Districts shall be as shown on the Official Zoning Map of the Borough of Topton, which shall be located in the Borough Hall. The Official Zoning Map and all notations, references and data shown thereon are hereby incorporated by reference into this Ordinance.

2. The Official Zoning Map shall be so labeled and identified by the signature of the President of the Borough Council, attested by the Secretary of said Council, and bear the seal of the Borough under the following words:

 “This is to certify that this is the Official Zoning Map of the Borough of Topton adopted July 13, 2015” to include the date of adoption.

3. If an amendment is made to the Official Zoning Map, an entry indicating the change made and the date of any change shall be made on the map and the entry shall include the signatures of the President and Secretary of the Borough Council.

4. In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret by reason of the nature and number of changes and additions made thereon, the Borough Council may by resolution adopt a new Official Zoning Map which shall supersede such prior map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the President of the Borough Council, attested by the Secretary of said Council, and bear the seal of the Borough under the following words:

“This is to certify that this is the Official Zoning Map of the Borough of Topton adopted July 13, 2015. This map supersedes and replaces the previous Official Zoning Map.”

Section 302

DISTRICT BOUNDARIES - RULES FOR INTERPRETATION

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Where district boundaries are indicated as approximately coinciding with the center lines of streets, highways, or alleys, such center lines shall be construed to be such boundaries.
2. Where district boundaries are indicated as approximately coinciding with plotted lot lines, such lot lines shall be construed to be such boundaries.
3. Where district boundaries are indicated as being approximately parallel to the center or right-of-way lines of streets or highways, such district boundaries shall be construed as being parallel to the center or right-of-way lines and at such distances from the center or right-of-way lines as is indicated on the Official Zoning Map. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of map.
4. Where district boundaries are indicated as being approximately perpendicular to the right-of-way lines of streets or highways: such district boundaries shall be construed as being perpendicular to the right-of-way lines.
5. Boundaries indicated as approximately following Borough limits shall be construed as following such limits.
6. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

7. Boundaries indicated as parallel to or extensions of features indicated in Sections 1 through 6 above shall be so construed.
8. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by Sections 1 through 7 above, the Zoning Hearing Board shall interpret the district boundaries.
9. Where a district boundary line divides a lot which was in single ownership at the effective date of this Ordinance, at the election of the property owner the regulations of either zoning district may be extended a distance of not more than thirty feet beyond the district boundary line into the remaining portion of the lot.

Section 303

APPLICATION OF DISTRICT REGULATIONS

1. Except as hereafter provided in this Ordinance, no building, structure, or land shall be used or occupied and no building, structure, or part thereof shall be erected, constructed, reconstructed, or structurally altered except in conformity with all the regulations specified within this Ordinance for the district in which the building, structure, or land is located.
2. No building, structure, or land shall be used or occupied and no building, structure, or part thereof shall be erected, constructed, reconstructed, or structurally altered without the issuance of a Building Permit and/or Certificate of Use and Occupancy by the Zoning Officer.
3. No part of a yard, other open space, or off-street parking or loading space required in connection with one structure, building, or use of the land shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other structure, building, or use of the land except as permitted or required by this Ordinance or other Borough Ordinance or regulations.
4. No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth in this Ordinance. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.
5. All territory which may hereafter be annexed to the Borough shall be considered to be an R-1 District until otherwise classified.

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Section 400 R-1 SUBURBAN RESIDENTIAL DISTRICT

Section 401 Specific Intent

To provide for the maintenance and orderly expansion at similar densities and dwelling types of several residential areas in the Borough.

Section 402 Uses Permitted by Right

Land and buildings in an, R-1 District may be used for the following purposes and for no others:

As indicated on Table-1

1. Accessory uses to the above permitted uses as defined in Article-V.

Section 403 Uses Permitted by Special Exception

The following uses are permitted when special exceptions are granted by the Zoning Hearing Board:

1. As indicated in Table-1.

Section 404 Area, Yard and Height Requirements As indicated on Table-2.

Section 405 Not Used

Section 406 WSO – WEIS STREET OVERLAY DISTRICT (see Ordinance 2013-5)

Section 406.1 Specific Intent

The Weis Street Overlay District is established as a special overlay to the underlying Zoning Districts, for all properties situated along Weis Street from the Township line at the intersection of Weis Street with Locust Street to the property line between Brandywine Heights Elementary School and the western property line of the property on the northwest corner of Weis Street and Callowhill Street. The objectives and specific intent of this overlay zoning district are as follows:

1. To establish reasonable standards of performance and to encourage adaptive re-use development of appropriate buildings and lands within the Borough as a conditional use.
2. To provide regulations specifically tailored to encourage and promote the rehabilitation of older non-used and under-utilized industrial, commercial, and institutional buildings.

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3. To provide for a mix of residential and neighborhood-oriented commercial uses within said adaptive re-use developments which promote the economic revitalization of the Borough of Tipton.
4. To promote the retention of older buildings and lands which enhance the image and preserve the heritage of the Borough of Tipton.
5. To provide locations for neighborhood-oriented business and related activities for the use and convenience of area and district consumers at a scale which is in concert with the existing residential and non-residential development in the area. The uses are intended as low-impact uses which shall not have detrimental or adverse effects on the surrounding community and shall not impact negatively its current character.

Section 406.2 Uses Permitted by Right

Land and buildings in the WSO District may be used for the following purposes and for no others:

As indicated on Table-1.

Section 406.3 Uses Permitted by Conditional Use

As indicated on Table-1, subject to the following:

1. Indoor place of amusement or recreation, subject to hours restrictions to be determined by Borough Council.
2. Restaurant or café, not to exceed six hundred (600) square feet of gross floor area.
3. Retail and wholesale sale of goods in a building not to exceed two thousand (2,000) square feet of gross floor area, selling antiques, appliances, beverages, books (but not an adult bookstore), clothing, confections, pharmaceuticals, dry goods, flowers, food, furniture, gifts, hardware, jewelry, newspapers, notions, periodicals, personal, office, and household supplies, stationery, and pre-packaged tobacco products.
4. Repair shops for goods permitted to be sold by No. 3 above, excluding automotive and combustion engine repairs, unless the property has a prior variance, special exception, or is a pre-existing non-conforming use which includes automotive and/or combustion engine repairs.
5. Dwelling unit in combination with a commercial use (up to four) subject to specific performance standards.

Section 406.4 Area, Yard and Height Requirements

As indicated on Table-2, subject to the following:

1. In cases where an existing building is being re-used in a manner which does not change the footprint of the building, and the existing building does not conform to the setback requirements in the underlying Zoning District, a permanent screening buffer shall be provided as determined by Borough Council.
2. In cases where an existing building is being completely or partially razed, or where the footprint of an existing building is being altered, the new building, building addition, or renovated structure shall, under no circumstances have any greater nonconformity from the required setbacks in the underlying Zoning District than the structure being replaced or altered.

Section 406.5 Performance Standards for Conditional Uses

See Article 5 for additional requirements.

Section 407 Not Used

Section 408 Not Used

Section 409 Not Used

Section 410 R-2 and R2-A URBAN RESIDENTIAL DISTRICTS

Section 411 Specific Intent

To provide for the maintenance and expansion of the higher density residential areas within the Borough

Section 412 Uses Permitted by Right

Land and buildings in an R-2 District may be used for the following purposes and for no others

1. As indicated on Table-1
2. Apartment buildings, two family attached dwellings and townhouse subject to:
 - a. Not less than fifteen percent of the total area of the development shall be permanently set aside for non-commercial common open space purposes, such as park or recreation. The common open space areas shall be suitable for the designated purpose.

Written agreements satisfactory to and approved by the Borough shall be made for the perpetual preservation and maintenance of the

common open space areas. The written agreements shall be submitted to the Borough at the time of submission of a preliminary subdivision or land development plan and shall be recorded before a zoning permit shall be issued by the Borough. The Applicant may offer the common open space areas for dedication to the Borough upon mutually acceptable terms. Acceptance of such offered dedication shall be at the Borough's sole discretion.

- b. The maximum length of an apartment building, a continuous grouping of townhouses, or a continuous grouping of two family attached dwellings shall be 160 feet. The minimum width of each townhouse shall be eighteen feet.

- 3. Accessory uses to the above permitted uses as defined in Article-V.

Section 413 Uses Permitted by Special Exception

The following uses are permitted when special exceptions are granted by the Zoning Hearing Board:

- 1. As indicated on Table-1.

Section 414 Area, Yard and Height Requirements As indicated on Table-2.

Section 415 Not Used

Section 416 R-3 MIXED USE RESIDENTIAL DISTRICT

Section 416.1 Specific Intent:

To provide for the maintenance and expansion of the highest density areas within the Borough that are substantially residential in character but either have a mix of uses or are most suitable to hosting a mix of uses because of the predominant density of structures, current land uses, and small parcel sizes,

Section 416.2 Uses Permitted by Right:

- 1. Land and buildings in an R-3 District may be used for the purposes indicated on Table-1 and for no others.
- 2. Accessory uses to the above permitted uses as defined in Article-V.

Section 416.3 Uses Permitted by Special Exception

The following uses are permitted when special exceptions are granted by the Zoning Hearing Board:

- 1. As indicated on Table-1.

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Section 416.4 Area, Yard & Height Requirements: As indicated on Table-2.

Section 417 Not Used.

Section 418 Not Used.

Section 419 Not Used.

Section 420 C-1 COMMERCIAL DISTRICT

Section 421 Specific Intent

To provide for the orderly expansion of general commercial uses in areas where a nucleus of such uses already exists. Dwelling units are allowed within the same buildings as commercial uses.

Section 422 Uses Permitted by Right

Land and buildings in the C-I District may be used for the following purposes and for no others

1. As indicated on Table-1
2. Plumbing, heating, carpentry, masonry, and similar shops of skilled tradesmen.
3. Retail and wholesale sale of goods such as, but not limited to, antiques, appliances, beverages, books, clothing, confections, medicines, dry goods, flowers, food, furniture, gifts, hardware, jewelry, liquor, newspapers, notions, paint, periodicals, personal and household supplies, stationery and tobacco.
4. Personal and household service establishments, such as but not limited to, barber shops, beauty shops, laundromats, laundry and dry cleaning shops and tailor shops.
5. Dwelling unit in combination with. a commercial use, subject to:
 - a. All dwelling units shall be located on a story above those stories used for commercial uses, except that a dwelling unit occupied by a proprietor or a caretaker) watchman or similar employee may be located on the same story as a commercial use.
 - b. When a new building is constructed, in addition to those parking spaces required for the commercial use, two off- street parking spaces shall be provided per dwelling

- c. When a new building is constructed, in addition to the required minimum lot area for the commercial use, an additional 1500 square feet of lot area shall be provided for each dwelling unit.
 - d. The number of dwelling units shall not exceed four.
6. Accessory uses to the above permitted uses as defined in Article-V.

Section 423 Uses Permitted by Special Exception

The following uses are permitted when special exceptions are granted by the Zoning Hearing Board:

- 1. As indicated on Table-1
- 2. Apartment buildings, two family attached dwellings and townhouse subject to:
 - a. Not less than fifteen percent of the total area of the development shall be permanently set aside for non-commercial common open space purposes, such as park or recreation. The common open space area shall be suitable for the designated purpose.

Written agreements satisfactory to and approved by the Borough Council shall be made for the perpetual preservation and maintenance of the common open space areas. The written agreements shall be submitted to the Borough at the time of submission of a preliminary subdivision or land development plan and shall be recorded before a zoning permit shall be issued by the Borough. The Applicant may offer the common open space areas for dedication to the Borough upon mutually acceptable terms. Acceptance of such offered dedication shall be at the Borough's sole discretion.

- b. The maximum length of an apartment building, a continuous grouping of townhouses, or a continuous grouping of two family attached dwellings shall be 160 feet. The minimum width of each townhouse shall be eighteen feet.
- 3. Repair garage, subject to:
 - a. All repair activities shall be performed within a building.
 - b. All painting shall be performed within a fully enclosed, well ventilated area.
 - c. All automobile parts, dismantled vehicles (which shall be under repair and licensed), and similar articles shall be stored within a building.

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- 4. Motor vehicle service station, subject to:
 - a. All automobile parts, dismantled vehicles (which shall be under repair and licensed), and similar articles shall be stored within a building.
 - b. All repair activities shall be carried out within a building

- 5. Car Wash, subject to:
 - a. No water used in the washing of cars shall be discharged directly into unfiltered storm sewers, onto public sidewalks or roads or onto other properties.
 - b. Car washing activities shall be carried out within a building.

 - c. An approach drive or parking area to accommodate a minimum of four cars per bay shall be constructed.

Section 424 Area, Yard and Height Requirements As indicated on Table-2.

Section 425 Not Used

Section 426 I-G INSTITUTIONAL-GOVERNMENT DISTRICT

Section 427 Specific Intent:

To provide for the maintenance and expansion of institutional and governmental uses where a nucleus of such uses already exists.

Section 428 Uses Permitted by Right:

- 1. Land and buildings in an I-G District may be used for the purposes indicated on Table-1 and for no others.
- 2. Accessory uses to the above permitted uses as defined in Article-V.

Section 429 Uses Permitted by Special Exception

The following uses are permitted when special exceptions are granted by the Zoning Hearing Board:

- 1. As indicated on Table-1.

Section 430 Area, Yard & Height Requirements: As indicated on Table-2

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Section 431 I-1 INDUSTRIAL DISTRICT

Section 432 Specific Intent

To provide an area where a variety of industrial and office uses, as well as certain commercial, may locate.

Section 433 Uses Permitted by Right

Land and buildings in the I-1 District may be used for the following purposes and for no others

1. As indicated on Table-1
2. Testing, cleaning, production, packaging, fabrication, processing, assembly, manufacture, compounding and bottling of goods and materials.
3. Repair garage, subject to those conditions listed in Section 423
4. Motor vehicle service station, subject to those conditions listed in Section 423:
5. Car wash, subject to those conditions listed in Section 423.
6. Accessory uses to the above permitted uses as defined in Article-V.

Section 434 Uses Permitted by Special Exception

The following uses are permitted when special exceptions are granted by the Zoning Hearing Board:

1. As indicated on Table-1.
2. Commercial Communications Facilities having a tower height up to one hundred seventy-five feet (175') shall be allowed as a use by Special Exception, providing all requirements are met.
 - a. General Requirements.
 - (1) Commercial Communications Antenna may be placed on an existing commercial communications tower, Public Utility Transmission Tower, or placed on any structure other than a single-family detached dwelling, duplex dwelling, townhouse dwelling or any residential accessory structure. A structure shall not include, for these purposes, concrete or macadam pavement and/or a concrete slab.
 - (2) Dimensional Requirements: A Commercial Communications Facility is permitted as a sole use on a stand-alone lot or a lot divided off in a Subdivision or Land Development Application subject to the following dimensional requirements:

- i. The right-of-way from public street to tower site must be a minimum of twenty-four (24') feet in width.
- ii. The maximum height of the height of tower (a defined term) shall not exceed one hundred seventy-five (175') feet.

b. Combination of Uses.

Combined with another use, a commercial communications facility may be permitted on an improved property with an existing non-residential use or on a vacant parcel in combination with another use, subject to the following conditions:

- (1) The existing use on the property may be any permitted non-residential use in the applicable district or any lawful non-conforming use and need not be affiliated with the commercial communications tower.
- (2) Minimum lot areas. The minimum lot area shall comply with the requirements for the applicable district and shall be the area needed to accommodate the tower and guy wires (if used), the equipment building, security fence and buffer planting.
- (3) Minimum setbacks. The tower, telecommunications equipment building, guy wires and accessory buildings must satisfy the minimum zoning district set back requirements, and shall comply with the requirements for the zoning district for principal uses.
- (4) Where the commercial communications facilities is located on a property with another principal use, vehicular access to the facility shall, whenever feasible, be provided along the circulation driveways of the existing use. The applicant shall present documentation that the owner of the property has granted an easement for the proposed facility which shall be recorded as provided by law.

c. Combined with an existing structure.

- (1) An antenna with or without a commercial communications tower for commercial communications may be attached to an existing structure or building except a residential use subject to the following conditions:
 - i. Maximum height. The maximum height of the tower set forth herein shall apply.
 - ii. If the applicant proposes to locate the commercial communications equipment in a separate building not included within the compound enclosing the commercial communications tower and fencing, the building shall comply with the minimum requirements for the zoning district.
 - iii. A six-foot height security fence shall surround any separate commercial communications equipment building.

- iv. Vehicular access to the commercial communications facility shall not interfere with the parking or vehicular circulation on the site for the principal use.

d. Additional Requirements.

- (1) Site Plan. A facility plan shall be prepared and submitted for any proposed commercial communications facility pursuant to applicable zoning and subdivision and land development requirements regarding preparation of a site plan. No site plan is required for commercial communications antenna which are co-located on an existing commercial tower.
- (2) Landscaping. The following landscaping shall be required to screen the facility. Any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping may be permitted, if they achieve the same degree or screening as the required landscaping. If the antenna is mounted on an existing structure, and other equipment is housed inside an existing structure, landscaping shall not be required.
 - i. An evergreen or hedge screen shall be required to surround the facility. The screen can be either a hedge (planted 3 feet on center maximum) or a row of evergreen trees (planted 10 feet on center maximum). The screen shall be a minimum height of four (4') feet at maturity.
 - ii. In addition, existing vegetation on and around the site shall be preserved to the greatest extent possible.
 - iii. A minimum of two (2) off-street parking spaces shall be provided for a commercial communication facility.
 - iv. Fence. A six-foot high security fence with additional two (2') feet of security wire, including barbed wire shall fence the facilities perimeter.
 - v. In connection with any facility, no signs other than an owner and occupier identification sign shall be allowed at the tower site, as specified in § 508.

e. Co-location/Alternative Technology.

Availability of suitable existing towers, other structures, or alternative technology. No new facility shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Zoning Officer that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information to the Zoning Officer related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

- (1) No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.
- (2) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
- (3) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- (4) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause the interferences with the applicant's approved antenna.
- (5) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- (6) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wire line system, is unsuitable.

f. Separation distance between facilities.

In order to avoid the proliferation of commercial communications facilities and to insure the desired goals of co-location and cooperation, there shall be a separation distance which shall be applicable for and measured between the proposed and existing facilities. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a facility plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown on Table 1 (refer to Ordinance No. 4-1998).

g. Separation from Dwelling Unit.

A free-standing commercial communications tower shall not be located within five hundred (500) feet of a dwelling unit.

h. Removal of Commercial Communications Facilities.

If a commercial communications facility remains unused for a period of twelve (12) consecutive months, the owner or operator shall dismantle and remove the facility within six (6) months of notice to do such by the Borough. Abandonment takes place when electrical service to the site has been discontinued for a period of twelve (12) months. Further, the owner or operator of the facility shall post security in a form acceptable to the Borough in a sufficient amount to cover the facility removal and site cleanup prior to the issuance of any permits to construct or use said facility. The security shall be utilized by the Borough in the event that the owner or operator of the facility fails to remove the facility within six (6) months of the aforesaid notice by the Borough to remove the facility.

Exemption. A commercial communications tower or antenna necessary for and clearly used for emergency communications by a police department,

fire company, emergency medical service, and other similar public safety organizations is exempt from the requirements of this Section.

i. Administration

The applicant for commercial communications facilities shall submit the following documentation to the Borough along with the application for the zoning permit, subdivision and land development approval:

(1) Federal Aviation Administration (FAA):

Documentation of FAA approval, if required, for commercial communication towers or antennas shall be provided. Commercial communication towers or antennas shall meet the requirements of 14 Code of Federal Regulations Part 77.13 (a), as amended.

No commercial communications tower or antenna shall be artificially lighted except when required and approved by the FAA.

Airport Coordination. The applicant for a proposed commercial communications facility located within a five (5) mile radius of an existing airport shall submit documentation that said airport was notified of its intent to place such structure(s). In addition, all new commercial communications facilities applications shall be forwarded by the Applicant to the Reading Regional Airport Authority for the Authority's comments.

(2) Federal Communications Commission (FCC):

Documentation that the commercial communications company is licensed by the FCC shall be provided.

Documentation of FCC application for approval for the proposed commercial communication facility shall be provided.

Certification from a registered professional engineer that the tower and facility meets the construction standard of the Borough Building Code, and that appropriate anti-climbing devices are built into any proposed tower.

Section 435 Area, Yard and Height Requirements: As indicated on Table-2.

Section 436 I-1A INDUSTRIAL-RESIDENTIAL OVERLAY DISTRICT

Section 437 Specific Intent

To provide an area where a variety of industrial and office uses, as well as certain commercial, public and residential uses, may locate.

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Section 438 Uses Permitted by Right

Land and buildings in the I-1A District may be used for the following purposes and for no others

1. As indicated on Table-1
2. Testing, cleaning, production, packaging, fabrication, processing, assembly, manufacture, compounding and bottling of goods and materials.
3. Repair garage, subject to those conditions listed in Section 423
4. Motor vehicle service station, subject to those conditions listed in Section 423:
5. Car wash, subject to those conditions listed in Section 423.
6. Accessory uses to the above permitted uses as defined in Article-V.

Section 439 Uses Permitted by Special Exception

The following uses are permitted when special exceptions are granted by the Zoning Hearing Board:

1. As indicated on Table-1.

Section 440 Area, Yard and Height Requirements: Same as the underlying district.

Section 441 RBO RIPARIAN BUFFER OVERLAY DISTRICT

Section 442 Specific Intent

To maintain and improve surface water quality by reducing the entry of detrimental substances, including nutrients, sediment, organic matter, pesticides, and other harmful substances that reach watercourses, wetlands, and surface and subsurface water bodies; to reduce the entry of detrimental substances by restricting development and uses in riparian areas that intercept surface water runoff, wastewater; to attenuate flooding and reduce soil loss; to improve and maintain the safety, reliability and adequacy of the water supply for domestic, agricultural, commercial, industrial and recreational use; to conserve headwater areas, groundwater recharge zones, floodway, floodplain, springs, seeps, streams, wetlands; to regulate the use, location, engineering and maintenance of development to be consistent with the purposes and intent of this article and accepted conservation practices and to work with the carrying capacity of existing natural resources.

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Section 443 Application

1. The RBO provisions shall apply to the bed and banks of the Toad Creek within the I-G District and as further delineated on the Borough Zoning Map, except as further clarified below in subsection (3) below.
2. The provisions shall apply in accordance with subsection (1) above where any application for special exception, conditional use, variance, subdivision, land development, or building or zoning permit is required, or when a violation of the provisions of this article require an enforcement action.
3. The provisions shall not apply to the footprints of existing primary and accessory uses, including but not limited to all agricultural uses and research related thereto, buildings, transportation facilities, fences, lawns, gardens, utility lines, roads, driveways, sidewalks, bikeways, decks, piers, water, septic and sewage supply facilities and their related appurtenances (well houses, utility pump and lift stations, manholes, etc.).
4. For lands lying within a PADEP-designated Special Protection Watershed, the riparian buffer requirements of Section 102.14 of Chapter 102 (Erosion and Sedimentation Pollution Control Rules and Regulations) of the Commonwealth of Pennsylvania, shall apply when more restrictive than the regulations provided herein.
5. As hereinafter further described, RBO Zone 1 shall be a minimum of 25 feet from the defined edge of the Toad Creek at solid bank full flow, measured perpendicular lines on the Soil Survey maps to the edge of the watercourse.
6. RBO Zone 2 shall be a minimum of 60 feet from the outer edge of Zone 1, measured perpendicular to the edge of Zone 1, or equal to the extent of the 100-year floodplain, or 25 feet beyond the outer edge of a wetland along the stream, whichever is greater (the total width of Zones 1 & 2 = 150 feet plus the width of the stream).
7. The Applicant shall identify watercourses, wetlands and/or water bodies on and abutting the Applicant's site, and locating these features accurately on the Applicant's plans. The identification of such water features shall be subject to the review and approval of the Borough.

Section 444 Uses permitted by Right

Land and buildings in the RBO District may be used for the following purposes and for no others:

1. Zone-1:
 - a. Open space uses that are primarily passive in character shall be permitted to extend into Zone-1, including wildlife sanctuaries, nature

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- preserves, forest preserves, fishing areas, passive areas of public and private parklands, reforestation, and streambank stabilization.
- b. Forestry operations approved by County Conservation District.
- c. Corridor crossings:
 - (1) Agricultural crossings by farm vehicles and livestock.
 - (2) Driveways, roadways, recreational trails, railroads and utilities, subject to mitigation measures described below.
- 2. Zone-2:
 - a. Uses allowed in Zone-1.
 - b. Accessory structures permitted in the underlying district have an area less than or equal to 225 square feet.
 - c. Passive uses such as camps, campgrounds, picnic areas.
 - d. Active recreation uses, such as ball fields, playgrounds and courts, provided these uses are designed in a manner to prevent concentrated flow of stormwater runoff, subject to mitigation measures described below.
 - e. Centralized sewer and/or water lines and public utility transmission lines running along the corridor. When proposed as part of a subdivision or land development, installing the lines shall be subject to mitigation measures described below.

Section 445 Uses permitted by Special Exception

None.

Section 446 Prohibited uses.

Same as the underlying district, plus the following:

1. Clearing existing vegetation, except where necessary to prepare land for a permitted use.
2. Storage of hazardous or noxious materials.
3. Use of fertilizers, pesticides, herbicides, and/or other chemicals in excess of prescribed industry standards or the recommendations of the County Conservation District.
4. Motor or wheeled vehicle traffic in any area not designed to adequately accommodate the type and volume.
5. Parking lots.
6. Any type of permanent structure, including fences, except those permitted above.
7. Subsurface sewage disposal areas.
8. Stormwater basins, including berms and outfall facilities.

Section 447 Mitigation measures.

1. Uses permitted above involving corridor crossings or other encroachments within the RBO shall be mitigated by increasing the width of Zone-2 as replacement for the area lost due to the encroachment or disturbance, so

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that the total corridor area of zones 1 and 2 for each applicable side of the creek is equal to that required.

2. The corridor area is the product of the corridor width required by Section 437 and the total length of each applicable side of the creek. Perimeter shall be used in place of length for determining the wetland buffer area. The increased width shall be evenly spread throughout the corridor to the maximum extent possible.

Section 448 Area, yard and height requirements.

Same as the underlying district, subject to the following:

1. At least half of any required yard setback for any individual lot shall be entirely outside of the RBO.

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(insert Table-1)

(insert Table-2)

Table-1 : Uses

<p><u>Key</u> P - Use Permitted by Right CU - Conditional Use SE - Special Exception Use A - Accessory Use N - Not Permitted</p>

Uses	Suburban Resid. R1	Urban Resid. R2-2A	Mixed Use R3	Commercial C-1	Institutional-Gov't I-G	Industrial I-1	Ind'l-Resid'l Overlay I-1A	Weis St. Overlay WSO	Notes
Residential									
Single family detached	P	P	P	N	N	N	N		
Single family semi-detached	N	P	P	N	N	N	N	CU	
Two-family detached	N	P	P	N	N	N	SE	CU	
Two-family semi-detached	N	P	P	N	N	N	SE	CU	
Conversion, residential (See 517)	N	N	N	SE	N	N	SE		(1)
Cluster development (townhomes)	N	SE	SE	N	N	N	SE		(1)
Apartment Buildings	N	P	P	SE	N	N	SE	CU	(1)
Two-family attached	N	P	P	SE	N	N	SE		(1)
Townhomes (row homes)	N	P	P	SE	N	N	SE		(1)
Mobile home park	N	N	N	N	N	N	N		(5)
Boarding/Rooming	N	N	SE	SE	N	N	SE		
Group Homes	N	SE	SE	N	N	N	SE		(1)
Age-Restricted	N	N	P	N	N	N	P		
Student housing	N	N	SE	N	N	N	SE		(1)
Solar Energy System (accessory)	A	A	A	A	N	A	A		(1)
Swimming Pools, household	A	A	A	N	N	N	N		
Wind Energy System (accessory)	N	A	A	A	N	A	A		(1)
Commercial									
Adult oriented (per 1982-5, 519.2)	N	N	N	N	N	SE	SE		
Amusement/recreation, indoor	N	N	N	P	N	P	P	CU	(1)
Assisted living facilities	N	N	SE	SE	N	SE	SE		
Banks	N	N	N	P	N	P	P	CU	
Bed and Breakfast Inn	N	N	N	P	N	P	P		
Betting	N	N	N	SE	N	P	P		
Business offices	N	N	N	P	N	P	P	CU	(1)
BYOB club	N	N	N	N	N	SE	SE		
BYOB restaurant	N	N	N	P	N	P	P		
Car wash	N	N	N	SE	N	P	P		(1)
Club or lodge	N	N	N	P	N	P	P		
Day Care Center, adult	N	N	N	SE	N	SE	SE		
Day Care Center, child	N	N	SE	SE	N	SE	SE		
Day Care Center, accessory	A	A	A	A	A	A	A		
Drive-thru service	N	N	N	A	N	A	A		(1)
Dwellings combined with commercial	N	N	SE	P	N	SE	SE	CU	(1)
Funeral homes	N	SE	SE	P	N	P	P		
Gas station	N	N	N	SE	N	P	P		
Gas station w/convenience store	N	N	N	N	N	SE	SE		
Gym, fitness, studio (dance, excersize, MA)	N	N	N	P	N	P	P	CU	
Home occupation (no-impact)	P	P	P	P	N	N	N		
Home occupation	P	P	P	P	N	N	N		
Hotel or motel	N	N	N	P	N	P	P		

Table-1 : Uses

<p><u>Key</u> P - Use Permitted by Right CU - Conditional Use SE - Special Exception Use A - Accessory Use N - Not Permitted</p>

Uses	Suburban Resid.	Urban Resid.	Mixed Use	Commercial	Institutional-Gov't	Industrial	Ind'l-Resid'l Overlay	Weis St. Overlay	Notes
	R1	R2-2A	R3	C-1	I-G	I-1	I-1A	WSO	
Massage therapy, licensed	N	SE	SE	P	N	P	P		
Medical clinic	N	SE	SE	P	N	P	P		
Medical office	N	N	N	P	N	P	P	CU	
Motor vehicle repair	N	N	N	SE	N	P	P		(1)
Motor vehicle sales	N	N	N	SE	N	P	P		
Motor vehicle service station	N	N	N	SE	N	P	P		(1)
Personal & household service	N	N	N	P	N	P	P	CU	
Nursing home, convalescent, retirement	N	SE	SE	P	N	P	P		
Office Building	N	N	P	P	N	P	P		
Parking, Off-Street (principal)	N	N	N	SE	N	P	P		
Professional office	N	SE	P	P	N	P	P	CU	
Restaurant, café, tavern	N	N	N	P	N	P	P	CU	(1)
Retail & wholesale repair	N	N	N	P	N	P	P	CU	(1)
Retail & wholesale sales	N	N	N	P	N	P	P	CU	(1)
Self-Storage Facility	N	N	N	N	N	P	P		
Shopping center	N	N	N	SE	N	P	P		
Studio	N	N	N	P	N	P	P		
Theater or Civic and/or Cultural	N	N	N	P	N	P	P		
Trade School	N	N	SE	P	N	P	P		
(Trade) Shops -P, H, carpentry, mason	N	N	N	P	N	N	N		
Veterinary office w/kennel	N	SE	SE	P	N	P	P		(1)
Industrial									
Agricultural operation	N	N	N	N	N	P	P		
Bottling	N	N	N	N	N	P	P		
Commercial communication facility	N	N	N	N	N	SE	SE		(1)
Fabricating, processing, assembly	N	N	N	N	N	P	P		
Forestry	P	P	P	P	P	P	P		(2)
Helistop	N	N	N	N	N	SE	SE		
Junkyard (includes Scrap Yard)	N	N	N	N	N	SE	SE		
Kennel	N	N	N	N	N	P	P		
Lumber yard	N	N	N	N	N	P	P		
Manufacturing	N	N	N	N	N	P	P		
Metal processes	N	N	N	N	N	P	P		
Mineral Extraction, process, stockpile	N	N	N	N	N	SE	SE		(3)
Personal Care Home	N	N	SE	SE	N	SE	SE		
Printing, publishing	N	N	N	N	N	P	P		
Recycling Collection, Publicly Owned	N	N	N	N	SE	P	P		
Recycling Collection, privately owned	N	N	N	N	N	P	P		
Recycling Processing Center	N	N	N	N	N	SE	SE		
Research facility	N	N	N	N	N	P	P		
Slaughterhouse or Stockyard	N	N	N	N	N	SE	SE		
Solar Energy System (principal)	N	N	N	N	N	SE	SE		

Table-1 : Uses

<p><u>Key</u> P - Use Permitted by Right CU - Conditional Use SE - Special Exception Use A - Accessory Use N - Not Permitted</p>

Uses	Suburban Resid.	Urban Resid.	Mixed Use	Commercial	Institutional-Gov't	Industrial	Ind'l-Resid'l Overlay	Weis St. Overlay	Notes
	R1	R2-2A	R3	C-1	I-G	I-1	I-1A	WSO	
Solid Waste Transfer/Energy	N	N	N	N	N	SE	SE		
Testing, cleaning, production, packaging	N	N	N	N	N	P	P		
Tires, Bulk Storage	N	N	N	N	N	P	P		
Treatment Center	N	N	N	SE	N	N	N		
Trucking Terminal	N	N	N	N	N	P	N		
Wholesaling, warehousing	N	N	N	N	N	P	P		
Wind Energy Facility (principal)	N	N	N	N	N	SE	SE		
Public									
Airports and Related Uses	N	N	N	N	CU	CU	CU		
Cemetery	SE	N	N	N	SE	N	N		
College or University	N	N	SE	P	P	N	P		
Correctional (jail, work release)	N	N	N	N	N	SE	SE		
Fire station	P	N	N	P	P	P	P	CU	(1)
Library	N	P	N	P	P	N	N		
Heliport	N	N	N	N	N	CU	CU		
Hospital	N	N	N	SE	SE	SE	SE		
Municipal	P	P	P	P	P	N	P		
Places of Worship	P	P	P	P	P	N	N		(1)
Playground, public or non-profit	P	P	P	N	P	N	N		
Pre-School Institutional	SE	SE	SE	P	P	N	P		
Government office	N	N	N	P	P	N	N	CU	
Recreation, non-commercial, non-profit	P	P	P	P	P	N	P		
Recreation, commercial, for-profit	N	N	P	P	N	N	P		
School (for-profit, rehab, remedial)	N	N	SE	P	N	N	P		(1)
School (not profit, rehab, remedial)	N	P	P	P	P	N	P		(1)

- (1) Qualified - see text.
- (2) Per MPC 603(f)
- (3) Per MPC 603(i)
- (4) See text for specific application of overlay districts.
- (5) Removed per Joint Regional Comprehensive Plan analysis.

Topton Zoning Ordinance
Table-2: Dimensional Standards

District	Use Type	Maximum				Minimum					
		Bldg. Ht.	Bldg. cover	Imp. cover	Density	Lot size	Lot width	Bldg. setback	Side yard total	Side yard (one)(A)	Rear yard
		ft/stories	%	units/ac.	SF	Feet					
R-1	Fire station					1 ac.		30	100	50	50
	Place of worship					1 ac.		30	100	50	50
	all other permitted uses	35 (3)	30			10,500	90	30	30	15	40
R-2	Apt bldgs, 2FA, THs (B)	35 (3)	30	30	10	20,000	18	25		25	25
	(in-dvpmnt bldgs, unattached)							25		30	40
	SFD	35 (3)	35			5,000	50	25	20	10	30
	Non-residential	35 (3)	35			5,000	50	25	20	10	30
	2FD	35 (3)	35			7,500	60	25	20	10	30
	SFSD	35 (3)	35			7,500	60	25	20	10	30
	2FSD	35 (3)	35			15,000	80	25	30	15	30
R-2A	All permitted uses	35 (3)	35			5,000	50	10	20	10	30
R-3	All permitted uses	35 (3)	35			5,000	50	10	20	10	30
C-1	Apt bldgs, 2FA, THs (B)	35 (3)	30	35	10	20,000	18	0	0	25	25
	(in-dvpmnt bldgs, unattached)							0	0	30	40
	Car wash					10,000		0			
	Commerical w/dwelling					+1,500/DU		0			
	MV service					10,000		0			
	all other permitted uses	40 (3)	50			5,000	50	0	12	6	20
WSO	All permitted uses	C	C	C	B	B	B	C	B	B	B
I-G	All permitted uses	40 (3)	50	65		5,000	18	0	0	0	25
I-1	All permitted uses	40 (3)	35	65		1 ac.	125	40	60	30	30
I-1A	Residential uses	35 (3)	35			5,000	50	10	20	10	30
	All other permitted uses	40 (3)	35	65		1 ac.	125	40	60	30	30

Notes:

- Imp. Impervious
- 2FA Two-family attached home.
- 2FD Two-family detached home.
- 2FSD Two-family semi-detached home.
- TH Town home
- SFD Single family detached home.
- MH Mobile Home
- MHP Mobile Home Park
- MV Motor vehicle
- SFSA Single-family semi-attached home

Cluster development = combination of SFD, SFSD, THs per Sec. 403(2)c

- A The minimum distance between two primary or more structures on the same lot, not in the same continuous row of structures, shall be 40'
- B Same as underlying district
- C Same as underlying district unless otherwise permitted via Conditional Use
- D See text for more complete application of overlay districts

Section 500 PROHIBITED USES

No building may be erected, altered, or used, and no lot or premises may be used for any activity which is noxious, injurious, or offensive by reason of dust, smoke, odor, fumes, noise, vibration, gas, illumination, or similar substances or conditions.

Section 501 Access to Buildings and Structures

Every building and structure hereafter erected or moved shall be on a lot adjacent to a public street or have access to a private street approved by the Borough Council. All buildings and structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection and required off-street parking.

Section 502 Erection of More Than One Principal Building or Structure on a Lot

1. In any district, more than one building or structure housing a permitted or permissible principal use may be erected on a single lot, provided that the area, yard and other requirements of this Ordinance pertinent to the District in which the lot is located shall be met for each building or structure as though it were on an individual lot, unless otherwise specifically provided in this Ordinance.
2. Completely detached principal buildings on the same lot shall maintain the separation distance required by the International Building Code, most recent addition.

Section 503 Accessory Uses - Residential

1. General:
 - a. No accessory use shall be permitted on a lot without a primary use.
 - b. No accessory uses shall be permitted within any required front or side yard.
 - c. No accessory uses shall be permitted within any required rear yard, except: i) garages shall be permitted with 0 feet of a rear lot line along an alley and ii) accessory uses of 150 square feet or less shall be permitted within ten feet of the rear lot line.
 - d. No activities or accessory uses shall be permitted which create a public nuisance or interfere with the use of adjacent lots.
 - e. The maximum height of any accessory building or structure shall not exceed 50% of the permitted height of the primary structure.

- f. Accessory uses include, but are not limited to, animal shelters, detached garages, swimming pools, greenhouses, storage sheds and tennis courts.

2. Use Regulations:

a. Swimming Pool

- (1) No swimming pool shall be permitted within a front or side yard.
- (2) No swimming pool shall be permitted less than fifteen feet from any rear lot line.
- (3) Private non-commercial swimming pools shall be entirely enclosed with a permanent barrier or fence not less than four feet in height. Walls of buildings may serve as part of such barrier or fence. Where pools are constructed above-ground, that portion of the pool wall extending above the ground may be included as part of a barrier or fence.
- (4) All such barriers or fences shall have a gate which can be securely locked
- (5) Above-ground pools shall have a ladder or stairway which can be removed or rendered unusable and the entrance of the pool shall be capable of being securely closed to a height of four (4) feet.
- (6) All pool installations components shall meet IBC requirements.

b. Detached Garages

- (1) The maximum height shall be twenty feet.
- (2) The maximum length shall be thirty-six feet.
- (3) No temporary structure shall be permitted.
- (4) Detached garages are not required to be set back from alleys (service streets) the distances which are specified as the minimum building setback line requirements in this Ordinance, but detached garages shall comply with all requirements of Section 503 of this Ordinance.

- c. Apartment Building; Townhouse, and Two Family Attached Dwelling Accessory Uses shall be restricted to uses designed for residents of the dwelling units and may include such uses as areas for washing machines and dryers and vending machines; lockers and storage areas; recreational rooms, areas and lounges; swimming pools and outdoor recreational areas. One office per project for the purpose of administering and renting dwelling units may be established. One “sample” dwelling unit for display purposes shall be permitted for each type of dwelling unit to be constructed.

d. Solar Energy System.

- (1) A building-mounted residential Solar Energy System as defined is allowed as a permitted accessory use to any lawful residential use where listed on Table-1 subject to the requirements of this Ordinance.
- (2) A system is considered an accessory solar energy system only if it supplies electrical or thermal power primarily for on-site use, except that when a property upon which the facility is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company. The owner of the accessory solar energy system shall provide written confirmation that the public utility company has been informed of the customer's intent to install an interconnected customer-owned generator and also approves of such connection. Off-grid systems shall be exempt from this requirement.
- (3) This section applies to Solar Energy Systems to be installed and constructed after the effective date of this Ordinance, and all applications for Solar Energy Systems on existing structures or property.
- (4) Compliance with other regulations: The Solar Energy System shall comply with all applicable building and construction codes as amended and any regulations adopted by the Department of Labor and Industry. The design and installation of accessory solar energy systems shall conform to applicable industry standards, including those of the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM), or other similar certifying organizations, and shall comply with the Building Code and with all other applicable fire and life safety requirements.
- (5) The manufacturer specifications shall be submitted as part of the application.
- (6) Any upgrades, modifications or changes that materially alter the size or placement of an existing Solar Energy System shall comply with the provisions of this section.
- (7) Accessory solar energy systems shall be designed and located in order to prevent reflective glare toward any inhabited structure on adjacent properties as well as adjacent street rights-of-way.
- (8) No portion of an accessory solar energy system shall be located within or above any front yard, along any street frontage, nor within any required setback of any property.
- (9) Building- or roof- mounted solar energy systems shall not exceed the maximum allowed height in any zoning district. For purposes for the height measurement, solar energy systems other than building-integrated systems shall be considered to be mechanical devices and are restricted consistent with other building-mounted mechanical devices

- (10) **Setback:** In addition to the building setback, the collector surface and mounting devices for roof-mounted solar energy systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built. Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the building on a side yard exposure.
- (11) **Clearance:** Roof-mounted solar energy systems shall be set back at least three (3) feet from the roof edge and roof ridge line for fire department access.
- (12) **Applications:** Plan applications for solar energy systems shall be accompanied by to-scale horizontal and vertical (elevation) drawings. The drawings must show the location of the system on the building or on the property for a ground-mount system, including the property lines. Applicants must use an installer who is on DEP's approved list. For all roof-mounted systems other than a flat roof the elevation must show the highest finished slope of the solar collector and the slope of the finished roof surface on which it is mounted. For flat roof applications a drawing shall be submitted showing the distance to the roof edge and any parapets on the building and shall identify the height of the building on the street frontage side, the shortest distance of the system from the street frontage edge of the building, and the highest finished height of the solar collector above the finished surface of the roof.
- (13) To the extent reasonably possible, the design of the solar energy system shall use materials, colors and textures that will blend the system into existing structures and the environment.
- (14) Upon issuance of a zoning permit for a solar energy system, the Zoning Officer shall provide written notice of the issuance by first class mail to the owner of record of each adjoining lot along with a copy of this section of the Ordinance.
- (15) When a solar energy system is installed on a lot, new accessory structures or vegetation established thereafter on an adjoining lot shall not be located in a manner that blocks the solar collector access to solar energy, or the solar access plane, so as to cause a major loss of efficiency. The portion of a solar collector that is protected is the portion which is located so as not to be shaded between the hours of 10 AM and 3 PM on December 21 by a hypothetical minimum 12-foot high obstruction located on the lot line. This subsection shall not apply to structures or vegetation existing on an adjoining lot at the time of the installation of the solar energy system, or the effective date of this Ordinance, whichever is later. It shall apply to the erection of an accessory structure and to the planting of new vegetation and its subsequent growth on adjoining lots after the installation of the solar energy system.
- (16) Installation of a solar energy system does not guarantee the creation of a permanent easement for solar access. However, existing solar energy systems and solar access

requirement shall be considered by the Zoning Officer, Planning Commission and Council when reviewing applications for Land Development or subdivision.

- (17) It shall be the burden of the owner of a solar energy system claiming that the erection of an accessory structure or planting of vegetation is causing a major loss of efficiency to establish all facts necessary to support the claim, including but not limited to the actual power output of the system prior to the alleged impact, test conditions and comparable illumination levels, all of which shall be supported by a state-certified solar energy system installed or a professional engineer.
- (18) Abandonment: If a solar energy system is inoperable for twelve (12) consecutive months the owner shall be notified that they must, within three (3) months of receiving the notice, restore their system to operating condition. If the owner fails to restore the system to operating condition within the six-month time frame, then the owner shall be required, at his expense, to remove the solar energy system for safety reasons. The system then would be subject to the Public Nuisance provisions of the Municipal code.

e. Wind Energy System.

- (1) An accessory wind energy system as defined is allowed as a permitted accessory use to any lawful residential use where listed on Table-1 subject to the requirements of this Ordinance.
- (2) The maximum number of wind energy systems per property shall be one.
- (3) Appearance: Wind turbines shall be a non-obtrusive color, such as white, off-white or gray.
- (4) Setback: The base of the tower shall be set back from all property lines, public right-of-ways, and public utility lines a distance equal to the total extended height. Turbines shall be allowed closer to a property line than its total extended height if the abutting property owner(s) grants written permission and the installation poses no interference with public utility lines or public road and rail right-of-ways.
- (5) Tower Height: Not to exceed the greater of the permitted height of a Communications Tower if permitted in the district, or two (2) times the permitted height of a principal structure on the lot.
- (6) Sound: Sound produced by the turbine under normal operating conditions, as measured at the property line, shall not exceed the definition of nuisance noise. Sound levels, however, may be exceeded during short-term events out of anyone's control such as utility outages and/or severe wind storms.
- (7) Wind Turbine Equipment: The design and installation of all accessory wind energy systems shall conform to applicable industry standards, including those of the American National Standards Institute (ANSI), Underwriters Laboratories, the

American Society for Testing and Materials (ASTM), or other similar certifying organizations, and shall comply with the Building Code and with all other applicable fire and life safety requirements. The manufacturer specifications shall be submitted as part of the application.

- (8) Engineered Drawings: Building permit applications for accessory wind energy systems shall be accompanied by standard drawings of the wind turbine structure and stamped engineered drawings of the tower, base, footings, and/or foundation as provided by the manufacturer.
- (9) Electrical Code Compliance: Building permit applications for accessory wind energy systems shall be accompanied by a line drawing of the electrical components, as supplied by the manufacturer, in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
- (10) Utility Notification: No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- (11) Abandonment: If a wind turbine is inoperable for twelve (12) consecutive months the owner shall be notified that they must, within three (3) months of receiving the notice, restore their system to operating condition. If the owner fails to restore the system to operating condition within the six-month time frame, then the owner shall be required, at his expense, to remove the wind turbine from the tower for safety reasons. The tower then would be subject to the Public Nuisance provisions of the Municipal code.
- (12) Signage: All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a small wind energy system visible from any public road shall be prohibited.
- (13) Lighting: No illumination of the turbine or tower shall be allowed unless required by the FAA.
- (14) Access: Any climbing foot pegs or rungs below twelve (12) feet of a freestanding tower shall be removed to prevent unauthorized climbing

Section 504

Commercial and Industrial Accessory Uses

1. General:

No building or structure shall be located within any required front or side yard or within twenty feet of the rear lot line.

2. Use Regulations:

- a. Storage Areas - All such facilities shall be located in an area which has direct access to a loading area and a street or driveway.
- b. In industrial districts living quarters shall be permitted for proprietors and for watchmen, caretakers, or similar employees.
- c. In industrial districts, restaurants, cafeterias and recreational facilities shall be permitted, provided that they are primarily for the use of employees.
- d. See Table-1 for additional accessory uses permitted in this District.

Section 505 Highway Frontage Development in Commercial and Industrial Districts

- 1. All areas for off-street parking, off-street unloading and loading, and the storage or movement of motor vehicles shall be physically separated from the public street or highway by a raised curb, planting strip, or other suitable barrier against unchanneled motor vehicle entrance or exit, except for necessary accessways or access roads which supply entrance to and egress from such parking, loading, or storage area.
- 2. Each use with less than 100 feet of frontage on a public street shall have not more than two accessways to each such street. No use with 100 feet or more frontage on a public street shall have more than two accessways to anyone street for each 300 feet of frontage.
- 3. The width of entrances to and exits from parking areas, measured at the street line, shall conform to the following schedule:

	<u>Width in Feet</u>	
	<u>Minimum</u>	<u>Maximum</u>
One Way	10	26
Two Way	20	36

Each lane provided shall be a minimum of ten feet (10') in width.

The radius of the edge of the driveway apron shall be at least fifteen feet (15') and no more than fifty feet (50').

- 4. The location and width of exit and entrance driveways shall be planned to interfere as little as possible with the use of adjacent property and with pedestrian and vehicular traffic on adjacent streets. Access driveways shall not be located in such a manner that they will cause a hazard to the free movement of normal highway traffic or cause areas of undue traffic congestion on the highway.

Section 506 Landscaping

1. Screening, planting strips, and the like shall be subject to approval of the Zoning Officer prior to planting. The type and density of planting shall adequately provide the screening effect required.
2. Any portion of a site which is not used for buildings, structures, paved areas, and designated storage areas shall be landscaped according to an overall plan.
3. Landscaped screening shall be required whenever a new non-residential principal building is located on a lot whose side or rear lines abut or are across and alley from a residential district or an existing residential use.
 - a. Plant materials used in screen planting shall be at least four feet in height when planted.
 - b. The screen planting shall be maintained permanently and plant material which does not live shall be replaced within one year.
4. See Section 510 for parking lot landscaping requirements.

Section 507 Lighting

1. When the property on which any activity is conducted is illuminated at night, such illumination shall be so designed and located that the light sources are shielded from adjoining properties and streets to prevent lights from shining into the eyes of passing pedestrians or motorists.
2. No direct beams of light shall be directed toward adjacent properties or toward roads, except from street lights intended for the lighting of streets, the location of which have been approved by the Borough and the appropriate utility company.
3. All light sources, including signs, shall be properly diffused with a translucent or similar cover to prevent the lighting element from being directly visible from streets, public sidewalks, dwellings or adjacent lots.
4. No lighting shall be utilized in such a manner to produce a light intensity greater than 0.2 foot-candles beyond the lot lines.
5. Flashing, flickering or strobe lighting are prohibited, except for seasonal holiday lights between October 25th and January 10th.

Section 508 Signs

Signs may be erected and maintained only when in compliance with the provisions of this Ordinance and all other Ordinances and Regulations of the Borough of Tipton relating to the erection, alteration, or maintenance of signs.

1. General:
 - a. Signs shall not contain moving parts nor use flashing or intermittent illumination or any type of dynamic display except as specifically provided for in this Ordinance. The source of light shall be steady and stationary. Units which alternately display time and temperature shall be permitted.
 - b. No sign shall be placed in such a position, or have such a source of illumination, that it will cause any danger to pedestrians or vehicular traffic.
 - c. No sign other than official traffic signs shall be erected within the right-of-way lines of any street or extend over any street right-of-way.
 - d. Every sign must be constructed of durable material and be kept in good condition. Any sign which is allowed to become dilapidated shall be removed at the expense of the owner or lessee. The Borough Zoning Officer shall make such determination as to state of repair.
 - e. No sign shall be utilized in a manner which produces a light intensity greater than zero foot candles beyond the lot lines. No direct beams of light shall be directed towards adjacent properties or roads.
 - f. The distance from the ground to the highest part of any sign shall not exceed ten feet in residential districts. The distance from the ground to the highest part of any free standing sign in a commercial or industrial district shall not exceed twenty-five feet. In commercial or industrial districts no portion of a sign which is attached to a building or supported by a building shall extend above the height of the building.
 - g. No sign shall be erected or located as to prevent free ingress to or egress from any window, door, or fire escape.
2. Signs Permitted in Residential Districts
 - a. Official traffic signs.
 - b. Identification signs or bulletin or announcement boards for schools, churches, hospitals, or similar institutions, and for clubs, lodges, estates, or similar uses, provided that:
 - (1) No more than two such signs shall be erected on any frontage of anyone lot.
 - (2) The area on one side of any such sign shall not exceed twenty square feet.

- (3) No such sign may be closer than ten feet to the front lot line.
- c. Signs indicating the name, profession, or activity of the occupant of a dwelling, provided:
 - (1) No side of any such sign shall exceed two square feet in area.
 - (2) No such sign shall be located within ten feet of the front lot line
 - (3) No more than one such sign shall be permitted for each permitted use or dwelling.
- d. Signs advertising the rental or sale of premises, provided that:
 - (1) The area on anyone side of any such sign shall not exceed twelve square feet.
 - (2) A sign shall be located on the lot to which it refers.
 - (3) No sign shall be located within ten feet of the front lot line.
 - (4) Not more than one such sign shall be placed on any one street frontage.
- e. Temporary signs of contractors, architects, and the like, provided that:
 - (1) Such signs shall be removed promptly upon completion of the work.
 - (2) The area of such signs shall not exceed twelve square feet on anyone side.
 - (3) Such signs shall be located on the lot which the work is being done.
 - (4) Such signs shall be no closer than ten feet to the front lot line.
- f. Signs advertising a lawful non-residential, non-conforming use, provided that:
 - (1) The area on one side of such sign shall not exceed twelve square feet.
 - (2) The sign shall be erected only on the lot on which such non-conforming use is located.

- (3) No more than two such signs shall be erected on any one street frontage.
 - (4) No sign shall be located within ten feet of the front lot line.
 - g. Signs necessary for the identification and protection of public utility facilities, provided that the area of any one side of such sign shall not exceed twelve square feet.
 - h. Signs within a residential subdivision to direct persons to a rental office or sample unit within that subdivision provided that the area on any one side of any such sign shall not exceed four square feet.
 - i. “No Trespassing” signs and signs indicating the private nature of premises. The area of anyone side of such signs shall not exceed two square feet.
3. Signs in Commercial, Institutional-Government and Industrial Districts
- Signs may be erected and maintained, provided that:
- a. No more than one advertising sign and no more than two directional sign shall be permitted on a lot.
 - b. The total area on one side of all signs placed on or facing any one street frontage of any one lot shall not exceed 200 square feet except in the case of a building housing more than one commercial or industrial use.
 - c. The area on one side of a directional or advertising sign shall not exceed twenty square feet.
 - d. No part of any sign shall be located within five feet of the front lot line.
 - e. No more than one free standing sign shall be allowed on any one lot.
 - f. No more than three separate signs shall face any one street frontage on any one lot except in the-case of-a building housing more than one commercial or industrial use.
 - g. In the case of a building housing more than one commercial or industrial use, one permanent identifying sign for the building, the area on one side of which shall not exceed 150 square feet, may be erected. In addition, for each commercial or industrial use located within that building, one sign, the area of which shall not exceed fifty square feet, may be attached to that portion of the building housing the use, provided that no such sign shall equal more than twenty percent of the total area of the wall to which it is attached.

- h. Dynamic signs shall only be permitted as follows:
 - (1) Dynamic signs shall be permitted only in the C-1 and I-G Districts, as follows:
 - I. In excess of 100 feet from a residential district.
 - II. In place of two business identification signs otherwise permitted by this Ordinance or present as a pre-existing non-conformity.
 - III. At 80% of the surface area of the otherwise permitted sign type.
 - (2) Dynamic signs shall not be illuminated in excess of zero foot-candles as measured at the property line.
 - (3) Dynamic signs shall be equipped with automatic day/night dimming software to reduce the illumination intensity from one hour after sunset to one hour prior to sunrise.
 - (4) Dynamic signs shall cease all illumination by the later of 11:00 p.m. or 30 minutes after business hours.
 - (5) The time interval used to change from one complete message, image or display to the next complete message, image or display shall be a maximum of one second.
 - (6) Dynamic sign messages, images or displays shall not change more than once every 15 seconds.
 - (7) Light level intensity and contrast shall remain constant throughout the sign face.

Section 509

Loading Areas

Paved off-street loading and unloading spaces, with proper access from a street, common driveway or alley, shall be provided on any lot on which a building for trade or business is hereafter erected or substantially altered. All such areas for the loading and unloading of vehicles, and for the servicing of establishments or shops by refuse collection, fuel and other service vehicles, shall be of such size, design and arrangement that they may be used without blocking or otherwise interfering with the use of automobile accessways, parking facilities and pedestrian ways. All loading areas shall be paved. Loading areas shall not be located within required front yards.

The number and size of loading spaces provided shall be appropriate for the use to be conducted on the premises. At least one loading space shall be provided for each use. When a zoning permit is applied for, the application for the permit shall show all provisions for off-street loading and include supporting data (data on number, frequency and size of vehicles which will

use the loading facilities) which justify the number and size of spaces provided. Each required off-street loading and unloading space shall be at least 12 feet wide by 35 feet deep.

Section 510 Off-Street Parking

Off-street parking facilities shall be provided in the C-1 District whenever a new building is constructed and in all other Districts whenever:

- a. A building is constructed or a new use established.
 - b. The use of an existing building is changed to a use requiring more parking facilities.
 - c. An existing building is altered so as to increase the amount of parking space required.
1. Each parking space shall have a minimum area of 200 square feet and minimum dimensions of ten feet (10') by twenty feet (20'). In addition, in industrial and commercial districts and in multiple-family developments, appropriate driveways, aisles, and maneuvering space shall be provided to permit safe and convenient access to and use of the areas provided for parking purposes. Aisles shall be twelve feet (12') wide for one-way traffic, twenty-four feet (24') for two-way traffic. Proper access from a street, alley, or other driveway shall be provided.
 2. Parking spaces for residential uses shall be located on the same lot as the use served and shall be located behind the street right-of-way line. Parking spaces for other uses shall be provided for on the same lot as the use being served or in parking facilities within 500 feet of the use, except in the case of a shopping center or similar grouping of buildings on a lot, in which case all parking areas shall be provided entirely within the lot lines of the property.
 3. Joint parking facilities for two or more uses may be established, provided that the number of spaces provided is not less than the sum of the spaces required for each individual use. Applicants may offer evidence that the peak demand for required parking of different types of uses (such as office, entertainment and places of worship) are sufficiently offset so as to allow for a reduction in the sum of parking spaces otherwise required. Reduced parking requirements for joint parking shall only continue in effect as long as such uses or their closely similar successor uses remain in operation, and shall be guaranteed by a legally binding agreement on file with the Borough. If such agreement becomes legally ineffective, then all parking shall be provided as would otherwise be required by this Article.
 4. Common parking areas (serving two or more structures, uses, and/or units) shall:

- a. Be designed or located so as not to require cars to back into public streets in order to leave the parking areas. All dead-end parking lots shall provide adequate areas into which cars parked in the end stalls of the lots may back up without encroaching onto a public street.
 - b. Be located a minimum of ten feet from all structures and from the exterior lot lines of the development.
 - c. Be located a minimum of ten feet from all street rights-of-way.
 - d. Have entrance and exit ways a minimum width of ten feet for each lane of traffic entering or leaving the areas.
 - e. Be designed to accommodate through traffic to other parking areas.
 - f. Be designed with entrances to and exits from common parking areas located a minimum of forty feet from the point of intersection of the nearest street curb lines.
5. Parking lots shall include a perimeter landscaping buffer strip whenever any of the following is located on a lot whose side or rear lines abut or are across an alley from a residential district:
- a. Routine overnight parking of 1 or more tractor-trailer trucks,
 - b. Loading docks, or
 - c. A parking lot involving 8 or more parking spaces.
 - d. Such buffer strip shall not be required where the non-residential building, loading dock or parking would not be visible from existing or approved dwellings.
6. Parking lots of 20 or more spaces shall include landscaping of ten percent (10%) of the total paved area for all common parking areas with a capacity of twenty or more vehicles. Such threshold may be met in part by perimeter landscaping.
7. All parking spaces and means of access, other than those relating to a dwelling, shall be adequately illuminated during night hours of use. The illumination must be designed and located so that the light sources are shielded from adjoining properties and public and private streets consistent with the requirements of Section 507.
8. All parking areas shall be paved and shall be graded to provide convenient vehicular access and proper drainage. The maximum grade of the parking area shall not exceed six percent. Surface water shall not discharge onto public sidewalks or other premises
9. No areas necessary to fulfill the off-street parking requirements of this Ordinance shall be used for the sales, dead-storage, repair, dismantling, or servicing of vehicles.
10. Off-street parking facilities existing at the effective date of this Zoning Ordinance shall not be subsequently reduced to an amount less than that required under this Ordinance for a similar new building.

11. When the required number of parking spaces is computed and a fraction of a parking space results, any fraction below one-fourth (1/4) may be disregarded and any fraction over one-fourth (1/4) shall necessitate the provision of a full parking space.

12. If a reduction in the required parking is permitted under this Section, the Zoning Hearing Board may require as a condition of the relief that the lot include the reservation, permanently or for a specified number of years, of areas sufficient to otherwise meet the required number of spaces, if needed in the future.
 - a. Such reservation shall be provided in a legal form acceptable to the Zoning Hearing Board such as a legally binding deed restriction and be officially filed with the Borough.
 - b. In such case, the Applicant shall be required to submit site plans to the Zoning Officer showing where and how the additional parking could be accomplished. Such future parking areas shall not be covered by buildings and shall be attractively landscaped unless needed for parking.
 - c. Such additional parking shall be required to be provided within one year after the Zoning Hearing Board may determine it to be necessary to meet actual demand. Such determination may be made by the Board based upon a filing with the Board by the Zoning Officer, based upon field analysis by the Zoning Officer.

13. Off-street parking requirements shall be as follows:

a. Residential Uses	Two parking spaces per dwelling unit
b. Industrial, Wholesaling or Warehousing Establishment	Two-thirds (2/3) space per employee on the combined employment of the two largest successive shifts
c. Restaurant, Tavern or Similar Use	One space for each four seats plus one space for each employee on the largest shift
d. Retail and Service Establishments	One space for each 200 square feet of gross floor area
e. Office Buildings	One space for each 200 square feet of gross floor area
f. Motel, Hotel, Tourist Home or	One space for each rental

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	Similar Establishment	unit plus one space for each employee on the largest shift
g.	Medical, Dental, and Paramedical Offices and Clinics	Five spaces for each person engaged in practice
h.	Nursing Home, Convalescent Home or Retirement Home	One space for each employee on the largest shift plus one space for each four beds
i.	Funeral Home	At least five spaces for each parlor
j.	Drive-In Eating Establishment (no indoor seating provided)	One space for each 1,000 square feet of lot area
k.	Bowling Alley	Five parking spaces per alley
l.	Auditorium, Theater, Municipal Building, Place of Worship, Club or Lodge, or Other Place of Public Assemblage	One space for every three seats
m.	Library or Museum	One space per 300 square feet of gross floor area
n.	Nursery Schools	One space per employee plus one space for loading and unloading of children for each five children accommodated in the school
o.	Elementary and Junior High School	One space per employee
p.	High Schools	One space per employee and one space per four students
q.	Motor Vehicle Service Station, Repair Garage	Two parking spaces per service bay
r.	Skating Rink, Swimming Pool, Dance Hall, Indoor Recreational Establishment	One space per fifty square foot devoted to patron use

For any building or use not covered above, the Zoning Officer shall apply the standard for off street parking spaces in the above schedule deemed to most closely approximate the proposed building or use.

14. Handicapped parking shall be provided in accordance with state and federal requirements, including the Americans with Disabilities Act.

Section 511 Private Residential Driveways

1. Private driveway entrances or exits into a street from a corner lot shall be located at least forty feet from the intersection of any street lines.
2. No driveway or driveway entrance or exit shall be less than ten feet in width.
3. No driveway serving a single family detached dwelling shall be located within five feet of any side lot line, except in the case of adjoining driveways.

Section 512 Front Yard Exceptions

1. When a new or expanded structure is proposed for a lot situated on a block where the average front yard dimension is less than those required for the zoning district in which the subject lot is located, the front yard required for the subject lot may be reduced to a depth equal to the average of the block.

Section 513 Obstructions

1. On a corner lot, no wall, fence, or other structure may be erected or altered and no hedge, tree, shrub, or other growth shall be maintained which may cause danger to the drivers of vehicles on a public road by obscuring the drivers' view.
2. Clear sight-triangles shall be provided at all street intersections. Within such triangle, no object shall be permitted which obscures vision above the height of three (3) feet and below ten (10) feet, measured from the center line grade of intersecting streets. Such triangles shall be established from a distance of seventy-five feet from the point of intersection of the center lines of the intersecting streets.

Section 514 Home Occupations Regulations

1. At least fifty percent of the goods available for retail sale shall be produced in the dwelling unit.
2. No storage of materials or products shall be permitted outside buildings.

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3. No display of products shall be visible from adjoining properties or streets.
4. There shall be no outside advertising other than one one-sided or two-sided sign of no more than two square feet on each side.
5. Not more than two persons, other than: persons residing in the dwelling unit may be employed by the practitioner of the occupation to provide secretarial, clerical or other similar assistance, not including being the primary service provider.
6. No noise, odor, dust, vibration, electromagnetic interference, smoke, heat or glare shall be perceptible at or beyond the lot lines.
7. Such occupations shall be incidental or secondary to the use of the property as a residence and are limited to those occupations customarily conducted within a dwelling unit.
8. Not more than the equivalent of thirty percent (30) of the area of the first floor of the principal building may be used for the purposes of the home occupation.
9. For those occupations which serve patrons, one off-street parking space shall be provided for each 150 square feet of floor area devoted to patron use except in the case of dental, medical, or paramedical offices. Four off-street parking spaces shall be provided for each person engaged in dental, medical, or paramedical practice.

These requirements for off-street parking shall be met in addition to the provision of off-street parking for residences as required by this Ordinance.

Section 515 Fences

In all Districts no fence, wall, or hedge may be erected or planted within the right-of-way lines of any street, nor may they encroach upon any street right-of-way at any time.

Section 516 Corner Lot Restrictions

On every corner lot there shall be provided a yard, equal in depth to the front yard requirement of the particular zoning district in which the corner lot is located, on each side of the lot which is adjacent to a street.

Section 517 Residential Conversion Regulations

1. A single family detached dwelling may be converted into a dwelling for a greater number of families in a where permitted as listed in Table-1, subject to the following requirements:

- a. Each dwelling unit shall not have less than 600 square feet of floor area.
- b. Two off-street parking spaces shall be provided for each dwelling unit.
- c. The lot area per family shall not be reduced to less than 3000 square feet per family.
- d. The yard, height, and lot coverage requirements for the District in which the dwelling is located shall be met.
- e. The Zoning Hearing Board shall specify the maximum number of families permitted to occupy such building, and may prescribe such further conditions and restrictions as the Board may consider appropriate.

Section 518 Floodway Controls

1. Designation of Area

Areas subject to Floodway Controls shall be those areas indicated as Special Flood Hazard Areas on the most recent Federal Emergency Management Agency Flood Insurance Rate Map and all present or future amendments, supplements or additions thereto.

2. Uses Permitted by Right

- a. Open areas or yards, subject to the restrictions of this Ordinance, provided that such open areas or yards shall not be used for on-lot sewage disposal systems.

3. Uses Permitted by Special Exception

- a. Public or private recreational areas such as parks, picnic grounds, and playgrounds, which shall not include enclosed structures except toilet facilities which are connected to public water and sewer systems, when permitted by the prevailing zoning district regulations and conducted in accordance with the regulations of the prevailing zoning district.

4. Controls Applicable to all Areas Subject to Floodway Controls

- a. Not more than five percent of the area subject to Floodway Controls shall be covered with impervious surfaces.
- b. Adjacent stream neighbors shall not be unreasonably affected by any use of the flood plain areas.

- c. The cross-sectional profile of watercourses and flood plain areas shall not be substantially altered unless approved by the Borough Council and, where applicable, the appropriate State agencies.
 - d. No outside storage of materials is permitted within flood plain areas.
 - e. Fills shall not be located within flood plain areas unless permitted by the Borough Council.
 - f. Fences or similar items which may impede, retard, or change the direction of the flow of flood waters, or that will catch or collect debris carried by flood waters, or that are placed where the natural flow of the stream would carry the same downstream, are not permitted to be constructed.
 - g. Any structure constructed shall be firmly anchored to prevent the structure from floating away during time of flooding.
 - h. Where any excavation or grading is proposed or where any existing trees, shrubs, or other vegetative cover are proposed to be removed, approval shall first be granted by the Borough Council.
 - i. The public interest and general welfare of municipalities and residents in the same watershed shall not be adversely affected.
 - j. If another statute, ordinance, or regulation is applicable, the more stringent standard shall apply.
5. Boundary Disputes and Appeals Procedures
- a. Should a dispute concerning the boundaries of those areas subject to Floodway Controls arise, an initial determination of the boundaries shall be made by the Zoning Officer, using the criterion listed in Subsection One of Section 518 of this Ordinance.
 - b. Any person aggrieved by this decision, claiming that the criterion listed in Subsection One of Section 518 is or has become incorrect because of changes due to natural or other causes, may appeal to the Zoning Hearing Board.
 - c. The burden of proof shall be on the person appealing the decision of the Zoning Officer.
 - d. If it is determined that the Flood Hazard Boundary Map is inaccurate regarding the land in question, the area subject to floodway controls shall be determined on the basis of a one hundred (100) year storm and all calculations shall be subject to the approval of the Borough Engineer.

Section 519 Adult Book Stores, Adult Motion Picture Theaters, Cabarets and Massage Parlors

1. Definitions for Purposes of Section 519

For the purpose of the within Section 519 of this Ordinance, the terms, phrases and words herein referred to are defined as follows:

Adult Book Store - A commercial establishment, including a building or a portion thereof, having as a substantial or significant portion of its stock in trade, books, magazines, photographs or other materials which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "Specified Sexual Activities" or Specified Anatomical Areas" (as defined below), or an establishment with a segment or section devoted to the sale or display of such material.

Adult Motion Picture Theater - A commercial building or establishment used in whole or in part for presenting motion pictures distinguished or characterized by an emphasis on matters depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" (as defined below), for observation by patrons therein.

Cabaret - A club, restaurant, bar, tavern, theater, hall or similar commercial establishment which features male and/or female entertainers, including but not limited to, topless or bottomless dancers, entertainers, strippers or employees, whose performance or activities include, even though not limited to, simulated sex acts, live or actual sex acts or other "Specified Sexual Activities" (as defined below), and/or reveal or display "Specified Anatomical Areas" (as defined below).

Massage - Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body with the hands or with the aid of any mechanical electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment, or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or any gratuity therefor.

Massage Parlor - Any establishment having a source of income or compensation derived from the practice of massage and which has a fixed place of business where any person, firm, association or corporation engages in or carries on the practice of massage; provided, however, that this definition shall not be construed to include a hospital, nursing home, medical clinic or the office of a physician, surgeon, chiropractor, osteopath, massage therapist or physical therapist duly licensed by the

Commonwealth of Pennsylvania, nor barber shops or beauty salons in which massages are administered only to the scalp, face, neck or the shoulders. In addition, this definition shall not be construed to include a volunteer fire department, a volunteer rescue squad or a non-profit organization operating a community center, a swimming pool, tennis court or other educational, cultural, recreational or athletic facilities and facilities for the welfare of the residents of the area.

Specified Sexual Activities

- a. Human genitals in a state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse or sodomy; and
- c. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

Specified Anatomical Areas

- a. Less than completely or opaquely covered human genitals, pubic region, buttocks or female breast below a point immediately above the top of the areola; or
- b. Human male genitals in a discernibly turgid state, even if completely or opaquely covered.

2. Prohibition in Residential and Commercial Zones

It shall be unlawful to establish an adult book store, an adult motion picture theater, a cabaret or massage parlor in any district other than the I-1 Industrial District as hereinafter qualified.

3. One Thousand Feet (1,000') Separation Requirement

It shall be unlawful to establish an adult book store, an adult motion picture theater, a cabaret or a massage parlor within one thousand lineal feet (1,000') of any other adult book store, adult motion picture theater, cabaret, massage parlor or game room.

4. Allowance of Special Exception

It shall be unlawful to establish an adult book store, an adult motion picture theater, a cabaret, or a massage parlor within five hundred feet (500') of any school, church, playground, any other area designated as a recreational area or a residential area, except as a special exception in accordance with the procedure set forth in Article VIII of this Ordinance. The Zoning Hearing Board may authorize the establishment of an adult book store, an adult motion picture theater, a cabaret or a massage parlor within five hundred feet (500') of a school, church, playground, any other

area designated as a recreational area or any other adult book store, adult motion picture theater, cabaret, massage parlor, or game room as a special exception only if the following findings are made by the Zoning Hearing Board:

- a. That the applicant has presented to the Zoning Hearing Board a Petition which indicates approval of the proposed use by fifty-one percent (51) of the persons owning, residing or doing business within a radius of five hundred feet (500') of the location of the proposed use. The applicant shall have attempted to contact all eligible locations within this radius and must supply a list of all addresses at which no contact was made. The circulator of the Petition shall subscribe to an affidavit attesting to the fact that the circulator personally witnessed the signatures on the Petition and that the same were affixed to the Petition by the persons whose names appear thereon.
- b. That the proposed use will not adversely affect the safe and comfortable enjoyment of properties in the neighborhood and will not be detrimental to the general character of the area.
- c. That the establishment of the proposed use in the area will not be contrary to any program of neighborhood conservation and will not interfere with any program of urban renewal.
- d. That the conditions set forth in Section 803.5 of this Ordinance relating to special exceptions will be met.
- e. That all other applicable regulations of this Ordinance will be observed.

Section 520 Environmental Performance Standards

Borough Council may require safeguards to assure compliance with the following standards. Upon Borough request, Owner shall furnish or obtain proof at his own expense that he is in compliance with these standards.

- 1. Minimized impact on adjacent properties.

All uses shall be planned and designed to minimize and reduce light, noise and odor emissions onto adjacent properties. Where feasible, as determined by Borough Council or the Zoning Officer, buffer yards and landscaping enhancements shall be established around the perimeter of the property. See sections below for more specific standards.

- 2. Air Management

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- a. Open burning is prohibited, with the exception of controlled burning in residential grills, chimineas or masonry enclosures with an area of sixteen (16) square feet or less, and only in a residential district.
 - b. No gases, vapors or particulates shall be emitted from the facility which are harmful to persons, property, animals or vegetation beyond the lot lines of the lot on which such gases, vapors, or particulates originate.
 - c. No radioactive vapors or gases shall be emitted from the facility in amounts which are harmful.
 - d. No odors causing annoyance or discomfort to the public shall be detectable beyond the lot lines of the lot on which such odors originate.
 - e. The emission of any smoke at a density greater than No. 1 of the Ringlemann Smoke Chart as published by the U.S. Bureau of Mines shall not be permitted, except that smoke of a density of No. 2 may be emitted for not more than four (4) minutes in any thirty (30) minute period. This standard shall not be applied to emissions where the presence of uncombined water is the only reason for the failure of the emission to meet the opacity limits. (Uncombined water produces a white "smoke" which vanishes a short distance from the stack.)
3. Waste Water Management
- a. Effluent must meet federal, state and Borough standards as listed.
 - b. Discharge of potentially dangerous effluent from plant operations prohibited.

4. Solids Waste Management

No permanent storage of waste materials on the lot shall be permitted. All waste materials awaiting transport shall be concealed from view from all adjacent properties.

5. Noise and Vibration

- a. Noise limits at lot lines shall be as follows:

Permissible Noise Limits in d^bA

		<u>Between 10 P.M. and 7 A.M.</u>	<u>Between 7 A.M. and 10 P.M.</u>
At lot line adjacent to land zoned residential	90% of time must be less than:	60	70
	Maximum:	70	80

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At lot line adjacent to land zoned industrial or commercial

90% of the time must be less than:
Maximum:

65
75

75
85

b. No physical vibration shall be perceptible without use of instrument at or beyond the lot lines.

6. Visual

a. No lighting shall be utilized in a manner which produces glare perceptible at or beyond the lot lines

b. No advertising displays shall be utilized in a manner which produces periodic flashing or other intensity changes beyond the lot lines.

7. Heat

Any operation producing heat shall be conducted in such a manner as to prevent any effect from the heat beyond the lot lines of the lot on which the operation is located.

8. Electromagnetic

No electromagnetic radiation shall be radiated that does not comply with the regulation of the Federal Communication Commission or which interferes with radio or television reception or the operation of other equipment.

9. Compliance with other regulations

Regulations of all authorities having jurisdiction shall be complied with, including but not limited to following:

- a. Pennsylvania Department of Environmental Protection.
- b. International Building Code as adopted by the Borough.

10. Safety

Applicant shall demonstrate that the use will not create significant public safety hazards, including fire, toxic, or explosive hazards.

Section 521

Trash Screening and Security

- 1. Exterior storage areas for trash and rubbish shall be completely screened from view on three sides and all trash and rubbish shall be contained in air-tight, vermin-proof containers.

Section 522 Traffic

1. Applicant shall demonstrate that the use will not result in traffic hazards or significantly add to traffic hazards, including obstruction of required clear sight triangles, blocking of streets, or vehicular ingress and egress points which endanger users of streets and/or sidewalks.
2. Borough Council may require as a condition of approval that Applicant demonstrate through traffic studies using methodology approved by the Borough Engineer that the use will not create traffic congestion which will cause degradation of the level of service at nearby intersections. See Section 817 of the Subdivision and Land Development Ordinance.

Section 523 Performance Standards for Conditional Uses

1. Code Compliance. All uses shall comply with the minimum building code requirements, as specified by the Borough of Topton and by the Pennsylvania Department of Labor and Industry. Prior to the issuance of a use and occupancy permit for the proposed use, the applicant shall provide evidence to the Borough that all plans and permits have been approved by all federal, state, and local agencies having jurisdiction.
2. Expansion Projects. All proposed facility expansion projects, external structural development projects, and/or land development projects must comply with the following criteria:
 - a) Unless otherwise permitted as part of a conditional use application, all proposed expansion projects must comply with the maximum building and lot coverage requirements of the underlying Zoning District.
 - b) As part of the conditional use application, the Borough Council may consider an increase in the maximum building and lot coverage requirements, provided that the applicant demonstrates that:
 - (1) there will be no adverse effects to adjacent property owners;
 - (2) that the stormwater management and erosion control facilities are sufficient to accommodate any increase in impervious surfaces; and,
 - (3) that additional landscaping features are integrated into the overall design as required by Borough Council to mitigate any adverse impacts.
3. Off-Street Parking and Loading Space Requirements. Unless otherwise directed by the Borough Council in a decision on an application for conditional use approval, all individual uses considering adaptive reuse shall be subject to off-street parking and loading requirements specified under Article V of the Zoning Ordinance. Under no circumstances,

however, shall any conditional use application be approved under this section where the applicant for a commercial use has not demonstrated the availability of a sufficient number of off-street parking spaces for the maximum number of employees who will be on the premises at any one time, and where the applicant for a residential use has not demonstrated the availability of sufficient off-street parking to accommodate the number of dwelling units proposed. All off-street parking shall be provided in the side or rear yard of the structure, or parking on another property within safe walking distance shall be demonstrated.

4. Modification of Design and Dimensional Provisions. The design and dimensional provisions pertaining to landscaping, buffer yards, exterior lighting, internal access drives, off-street parking, off-street loading, and stormwater management, as further specified in Article V of the Zoning Ordinance and in the Subdivision and Land Development Ordinance, may be modified as part of a conditional use application submitted to Borough Council, except as set forth in Section 523.1, above. As part of the conditional use application, the applicant must demonstrate the following: that there will be no adverse effects to adjacent property owners; that the standard design and dimensional provisions cannot be applied based on upon the existing site conditions, and that the proposal is consistent with the goals and objectives of the Weis Street Overly District. Borough Council, in its decision on a conditional use application, may attach reasonable conditions and safeguards.
5. Division of Internal Building or Structure. All projects considering adaptive reuse which involve the division of the internal building or structural space of an existing building shall be subject to all pertinent requirements for subdivision and land development, as set forth in the Borough Subdivision and Land Development Ordinance. The perimeter of all divided areas or subcomponents of the principal building shall be described by bearings and distances. All such applications may be permitted as part of a conditional use application, which shall be subject to the review and approval of Borough Council. All such conditional use applications shall only be considered for approval if consistent with the goals and objectives of the Weis Street Overly District.
6. The divided or subcomponents of an existing principal building may be either owned by fee simple deed or leased as a condominium. All deeds or lease agreements shall contain a description of the occupied area, by bearing and distances, the existing and proposed facility improvements, a maintenance agreement, a list of restrictive covenants, and all other relevant documentation required by the Borough Solicitor and/or Borough Engineer. Any deed or lease agreement shall be subject to the approval of the Borough Council, and shall be recorded with the Office of the Recorder of Deeds of Berks County.
7. Utilities. All individual uses shall be required to have separate sanitary sewer connections, water supply connections, and all other utilities servicing the property. All utility connections shall be installed in accordance with all specifications adopted by the Borough of Topton, the

Borough of Tipton Municipal Authority, and/or the public utility company providing service to the use.

8. Hours of Operation. Entities in the Weis Street Overlay District shall not open for business prior to 5:00 a.m., prevailing time, and shall not operate after 11:00 p.m., prevailing time. Borough Council may set additional or greater restrictions on hours of operation as a part of the decision on the conditional use.

Section 524

Principal Solar Energy System Regulations

1. A principal solar energy system as defined is allowed via Special Exception where listed on Table-1 subject to the requirements of this Ordinance.
2. Acreage: A principal solar energy system shall occupy less than one (1) acre.
3. Height and Setback: For purposes of determining compliance with lot coverage standards of the underlying zone, the total surface area of all ground-mounted and freestanding solar collectors including solar photovoltaic cells, panels, arrays, and solar hot air or water collector devices shall be considered impervious. Panels mounted on the roof of any building shall be subject to the maximum height regulations specified within each the underlying zone.
4. All on-site utility and transmission lines shall, to the extent feasible, be placed underground.
5. All large solar energy production facilities shall be designed and located in order to prevent reflective glare toward any inhabited buildings on adjacent properties as well as adjacent street rights-of-way.
6. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
7. Whenever practical, all principal solar energy systems should be attached to a building; or if ground mounted and/or freestanding, the applicant shall demonstrate by credible evidence that such facilities cannot feasibly be attached to a building due to structural limitations of the building.
8. All mechanical equipment of principal solar energy systems including any structure for batteries or storage cells, shall be completely enclosed by a minimum eight (8) foot high fence with a self-locking gate, and provided with screening in accordance with the landscaping provisions of the Borough subdivision and land development ordinance.
9. If the applicant ceases operation of the energy project or begins, but does not complete, construction of the project, the applicant shall restore the site according to a plan approved by the Borough. A principal solar energy system owner is required to notify the Borough immediately upon cessation or abandonment of the operation. The owner shall be responsible for the removal of the facility within six (6) months from the date the applicant ceases use of the facility or the facility becomes

obsolete. The owner shall then have twelve (12) months in which to dismantle and remove the principal solar energy system from the property. At the time of issuance of the permit for the construction of the system, the owner shall provide financial security in form and amount acceptable to the Borough to secure the expense of dismantling and removing said structures.

Section 525 Principal Wind Energy Facility Regulations

1. A principal wind energy facility as defined is allowed via Special Exception where listed on Table-1 subject to the requirements of this Ordinance.
2. A principal wind energy facility shall meet the requirements of an accessory wind energy facility in addition to the regulations described in this section.
3. Land Development Plan requirements
 - a. The land development plan shall demonstrate that the proposed Wind Energy Facility will comply with this Section and the PA Uniform Construction Code, Act 45 of 1999 as amended, and the regulations adopted by the Department of Labor and Industry.
 - b. The land development plan, in addition to the other requirements of the Borough's Subdivision and Land Development Ordinance shall contain the following:
 - c. A narrative describing the proposed Wind Energy Facility, including an overview of the project; the project location; the approximate generating capacity of the Wind Energy Facility; the approximate number, representative types and height or range of heights of Wind Turbines to be constructed, including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities.
 - d. An affidavit or similar evidence of agreement between the property owner and the Facility Owner or Operator demonstrating that the Facility Owner or Operator has the permission of the property owner to apply for necessary permits for construction and operation of the Wind Energy Facility.
 - e. Identification of the properties on which the proposed Wind Energy Facility will be located, and the properties adjacent to where the Wind Energy Facility will be located.
4. Warnings
 - a. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
 - b. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten feet from the ground.
5. Setbacks

- a. Wind Turbines shall be set back from the nearest Occupied Building a distance not less than the greater of the maximum setback requirements for that zoning classification where the turbine is located* or 1.1 times the Turbine Height, whichever is greater. The setback distance shall be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.
 - b. Wind Turbines shall be set back from the nearest Occupied Building located on a Non-participating Landowner's property a distance of not less than five (5) times the Hub Height, as measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.
 - c. Wind Turbines shall be set back from the nearest property line a distance of not less than the greater of the maximum setback requirements for that zoning classification where the turbine is located* or 1.1 times the Turbine Height, whichever is greater. The setback distance shall be measured to the center of the Wind Turbine base.
 - d. Wind Turbines shall be set back from the nearest public road a distance of not less than 1.1 times the Turbine Height, as measured from the right-of-way line of the nearest public road to the center of the Wind Turbine base.
6. Noise and Shadow Flicker
- a. Audible sound from a Wind Energy Facility shall not exceed fifty (55) dBA, as measured at the exterior of any Occupied Building on a Non-participating Landowner's property. Methods for measuring and reporting acoustic emissions from Wind Turbines and the Wind Energy Facility shall be equal to or exceed the minimum standards for precision described in AWEA Standard 2.1 - 1989 titled Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I: First Tier.
 - b. The Facility Owner and Operator shall make reasonable efforts to minimize shadow flicker to any Occupied Building on a Non-participating Landowner's property.
7. Signal Interference
- a. The Applicant shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television or similar signals, and shall mitigate any harm caused by the Wind Energy Facility.
8. Decommissioning
- a. The Facility Owner and Operator shall, at its expense, complete decommissioning of the Wind Energy Facility, or individual Wind Turbines, within (12) twelve months after the end of the useful life of the Facility or individual Wind Turbines. The Wind Energy Facility or individual Wind Turbines will presume to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.

- b. Decommissioning shall include removal of Wind Turbines, buildings, cabling, electrical components, roads, foundations to a depth of 36 inches, and any other associated facilities.
- c. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.
- d. An independent and certified Professional Engineer shall be retained to estimate the total cost of decommissioning (“Decommissioning Costs”) without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment (“Net Decommissioning Costs”). Said estimates shall be submitted to the Borough after the first year of operation and every fifth year thereafter.
- e. The Facility Owner or Operator shall post and maintain Decommissioning Funds in an amount equal to Net Decommissioning Costs; provided, that at no point shall Decommissioning Funds be less than twenty five percent (25%) of Decommissioning Costs. The Decommissioning Funds shall be posted and maintained with a bonding company or Federal or Commonwealth chartered lending institution chosen by the Facility Owner or Operator and participating landowner posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within the Commonwealth and is approved by the Borough.
- f. Decommissioning Funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the Borough.
- g. If the Facility Owner or Operator fails to complete decommissioning within the period prescribed by Paragraph 17(A), then the landowner shall have six (6) months to complete decommissioning.
- h. If neither the Facility Owner or Operator, nor the landowner complete decommissioning within the periods prescribed by Paragraphs 17(A) and 17(G), then the Borough may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the Borough shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Borough may take such action as necessary to implement the decommissioning plan.
- i. The escrow agent shall release the Decommissioning Funds when the Facility Owner or Operator has demonstrated and the Borough concurs that decommissioning has been satisfactorily completed, or upon written approval of the Borough in order to implement the decommissioning plan.
- j. A site plan showing the planned location of each Wind Turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the Wind Energy Facility to the substation(s), ancillary equipment, buildings, and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.

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- k. Documents related to decommissioning, including a schedule for the decommissioning and financing security.
- l. Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Borough to ensure compliance with this section.

Section 600 – Statement of intent

1. Within the zoning districts established by this Ordinance or subsequent amendments thereto, there exists or will exist certain non-conformities which, if lawful before this Ordinance was passed or amended, may be continued subject to certain limitations, although such non-conformities would be prohibited, regulated, or restricted under the terms of this Ordinance or amendments thereto.
2. To avoid such hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building or structure on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and on which actual building construction has been continuously carried on and not abandoned as described in Section 603.

Section 601 – Non-conforming lots of record

1. Where there is a vacant lot of official record, which lot at the time of adoption of this ordinance does not include sufficient land to conform to the yard or other requirements of this ordinance, an application may be submitted to the ZHB by the owner of said lot for variance from the terms of this ordinance.
2. Any existing lot of record held in single and separate ownership different from the ownership of abutting lots may be used for the establishment of a use and/or erection of a structure which will contain a use permitted by the applicable zoning district in which it is located even though its dimensions are less than the minimum requirements of this chapter, except as set forth herein. Lots held in single and separate ownership – Any lot held single and separate ownership of the effective date of this Ordinance which does not meet the minimum size requirements of the Zoning District in which it is located may be used for any use permitted in that district provided that all yard, height and open space requirements are met. Provided that if two or more lots, combination of lots and portion or lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and/or are, the land involved shall be considered to be an undivided parcel for the purpose of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and/or area requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot width or area below the requirements stated in this Ordinance.

Section 602 – Abandonment

1. A non-conforming use may not be re-established if the use is abandoned for a continuous twelve-month period.
2. Vacation of land or building or the termination of the use normally carried on upon the property shall be evidence of abandonment, as shall any of the following:
 - a. Failure to file an executed lease

- b. Failure to secure the building envelope
 - c. Failure to maintain utility service.
 - d. Failure to secure or maintain a license or permit for a non-conforming use.
3. Applicants may submit a one-time written request for a six-month extension of the permitted abandonment period for cause.
 4. A non-conforming use, building or structure shall be considered immediately abandoned without right of reestablishment if the building or structure is demolished or if the non-conforming use, building or structure is replaced with a conforming use, building or structure.

Section 603 – Change

1. A non-conforming use may be changed to a conforming use by right.
2. A non-conforming use may not be changed to any other non-conforming use unless the Zoning Hearing Board shall grant a Special Exception.
 - a. The proposed use shall be of the same or more restricted classification than the existing use and shall not be more detrimental to the district than the existing use of the property.
 - b. The Zoning Hearing Board may specify such appropriate conditions and safeguards as may be required in connection with the granting of a Special Exception.
3. A non-conforming use, if changed to a conforming use, shall not be changed back to a non-conforming use.

Section 604 – Expansion

1. A non-conforming use, building or structure shall not be enlarged or increased upon land not owned, leased or under option to purchase at the time of enactment of this Ordinance.
2. A non-conforming use, building or structure shall not be enlarged or increased in a manner which will further violate any regulation imposed by this Zoning Ordinance. No additional structures, uses, or buildings which do not conform to the requirements of this Ordinance shall be erected or established in connection with existing non-conforming uses, structures or buildings.
3. A non-conforming use, building or structure may be expanded once up to 5%.
4. A non-conforming use, building, or structure may not be expanded more than 5% unless such expansion has been approved as a Special Exception by the Zoning Hearing Board.

- a. A dimensional non-conformity may be extended provided that the extent of the non-conformity is not increased, and no new non-conformity is created.
5. Total future expansion of a non-conforming building, structure or use shall not exceed fifty percent of the lot area occupied by the building, structure or use at the time this Zoning Ordinance becomes effective.
6. Non-conforming signs shall not be expanded.

Section 605 – Repair, movement and replacement

1. Non-conforming buildings and structures and buildings and structures containing non-conforming uses may be repaired, provided that no repairs shall be made which will further extend the violation of any requirements of this Ordinance.
2. A building or structure containing a non-conforming use or a non-conforming building or structure may be replaced by a new building or moved to another location on the same lot provided that the new or relocated building or structure complies with all coverage, yard and height requirements of the zoning district in which it is located.

Section 606 – Damage of destruction

1. Any non-conforming building or structure or a building or structure containing a non-conforming use of which the basic structural elements are totally destroyed by any means and declared structurally unsound for occupancy by the Building Code Official may be rebuilt and used for the same non-conforming use or a non-conforming use of a more restricted classification. Any subsequent building or structure or use of land shall not be more non-conforming in any respect than the building, structure or use of land which existed prior to destruction, unless a special exception is granted by the Zoning Hearing Board. New construction shall begin within twelve months of the date of destruction and diligently pursued. Applicants may submit a one-time written request for a six-month extension of the construction start date for cause.
2. A non-conforming building or structure or a building or structure containing a non-conforming use of which the basic structural elements are partially destroyed but the building or structure is not declared structurally unsound for occupancy by the Building Code Official, may be reconstructed. The reconstructed portions of a building or structure shall not be more non-conforming in any respect than the portions of the building or structure which were destroyed.

Section 701 Enforcement

1. Zoning Officer

Zoning officer shall be appointed by the Borough Council to administer and enforce this Zoning Ordinance. The Zoning Officer may not hold any elective office in the Borough.

2. Duties and Powers of Zoning Officer

It shall be the duty of the Zoning Officer to enforce literally the provisions of this Ordinance and the amendments thereto and he shall have such duties and powers as are conferred on him by this Ordinance and as are reasonably implied for that purpose. The Zoning Officer's duties shall include but are not limited to the following:

- a. Receive applications for and issue zoning permits and sign permits as permitted by the terms of this Ordinance.
- b. Keep an official record of all business and activities, including complaints of a violation of any of the provisions of this Ordinance and of the subsequent action taken on each such complaint. All such records shall be open to public inspection. File copies of all applications received, permits issued, reports and inspections made in connection with any structure, building, sign and/or land shall be retained as long as the use or structure remains in existence.
- c. Make inspections as required to fulfill his duties. He shall have the right to enter any building or structure or enter upon any land at any reasonable hour in the course of his duties.
- d. Issue permits for special exception uses or for variances only after a special exception or variance has been approved by the Zoning Hearing Board in accordance with the regulations of this Ordinance.
- e. Issue permits for Conditional Use only after such Conditional Use has been approved by Borough council.
- f. Maintain records of adopted amendments to this Ordinance and the Zoning Map.
- g. Issue certificates of Use and Occupancy in accordance with the terms of this Ordinance.
- h. Identify and register non-conforming structures and uses created as a result of the adoption of this Ordinance and the official Zoning Map or created as a result of amendments thereto.

3. Notice of Violations
 - a. The Zoning Officer shall serve a notice of violation on any person, firm, corporation, partnership or other entity responsible for violating any of the provisions of this Ordinance, or any amendment thereto, or in violation of a detailed statement or a plan approved thereunder.
 - 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, stating 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 the 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.
 - c. If the notice of violation is not complied with in the time period set forth in said notice, the Zoning Officer shall order the discontinuance of such unlawful use of the structure, building, sign and/or land involved in said violation.
 - d. Refer to MPC Section 616.1 for additional enforcement provisions.

Section 702 Zoning Permit

2. No building, structure or sign shall be erected, constructed, moved, added to, or structurally altered, nor shall land be put to any use without a permit therefore issued by the Zoning Officer.
 - a. No such permit shall be issued, except in conformity with the provisions of this Ordinance, or upon written order from the Zoning Hearing Board in the form of a special exception, variance, or as otherwise provided for by this Ordinance, any applicable laws or any court of competent jurisdiction.
 - b. In addition, in special flood hazard areas as delineated on the most recent Federal Emergency Management Agency Flood Insurance

Rate Map and all present or future amendments, supplements or additions thereto, a zoning permit shall be required for:

- (1) all mining, dredging, filling, grading, paving, excavation and drilling activities
- (2) any repair, reconstruction or improvement of a building or structure, the cost of which exceeds fifty percent (50%) of the market value of the building or structure either (i) before the improvements or repair is started, or (ii) if the structure has been damaged and is being restored, before the damage occurred.

3. Form of Application

All applications shall be made in writing and shall be accompanied by two (2) sets of plans showing at least the following information:

- a. Actual dimensions and shape of the lot to be built upon;
- b. The exact size and location on the lot of buildings, structures, or signs existing, proposed extensions thereto, and/or to be constructed thereon;
- c. The number of dwelling units, if any, to be provided;
- d. Parking spaces provided and/or loading facilities;
- e. Statement indicating the existing or proposed use;
- f. A copy of the deed, and if applicant is not the record owner, authorization to proceed with application;
- g. In the case of new construction, additions or replacement, the height of structures, buildings, or signs;
- h. All other information necessary for such Zoning Officer to determine conformance with and provide for enforcement of this Ordinance. When deemed appropriate by the Zoning Officer, the site plan referenced above for any new structure and/or addition(s) to an existing structure shall be produced on a survey plan of the entire property prepared and sealed by a registered surveyor.
- i. One (1) copy of the plans shall be returned to the applicant by the Zoning Officer after he shall have marked such copies either as approved or disapproved and attested to same by his signatures on such copy.
- j. One (1) copy of all such plans shall be retained by the Zoning Officer for his permanent records.

- k. The Zoning Officer may submit a copy of any plan and application to any appropriate agencies and/or individuals (such as the Planning Commission or Township Engineer) for review and comment. The cost of such additional review or comment shall be funded by the applicant.
 - l. Such approval and Zoning Permit shall be issued or refused within thirty (30) days from date of application. In case of refusal, the applicant shall be informed of his rights of appeal to the Zoning Hearing Board within thirty (30) days of denial. The application for a permit shall be submitted in such form as the Zoning Officer may prescribe.
4. Expiration of Zoning Permit
- a. A by-right zoning permit shall expire six (6) months after the date of issuance, if work described in any permit has not begun. If work described in any permit has begun within said six (6) months period, said permit shall expire two (2) years from date of issuance thereof.
 - b. A zoning permit issued pursuant to a granted variance, or special exception, unless otherwise specified by the Zoning Hearing Board, shall expire if the applicant fails to obtain a building permit within 12 months of the authorization date, or if no building permit is required, fails to occupy the structure within 12 months of the authorization date.
 - c. A zoning permit issued pursuant to a granted conditional use, unless otherwise specified by Borough Council, shall expire if the applicant fails to obtain a building permit within 12 months of the authorization date, or if no building permit is required, fails to occupy the structure within 12 months of the authorization date.

Section 703 Certificate of Use and Occupancy

A Certificate of Use and Occupancy shall be required upon the completion of the work for which the zoning permit was issued. It shall be unlawful to use and/or occupy any structure, building and/or land or portions thereof in any manner until a Certificate of Use and Occupancy has been issued.

1. Form of Application

The application for a Certificate of Use and Occupancy shall be submitted in such form as the Zoning Officer may prescribe.

2. Issuance of Certificate of Use and Occupancy

The Zoning Officer shall inspect any structure, buildings, sign, and/or land or portions thereof and shall determine the conformity therewith. If the Zoning Officer is satisfied that the completed work is in conformity with this Ordinance and with the work listed in the Zoning Permit, the Zoning Officer shall issue a Certificate of Use and Occupancy.

A Certificate of Use and Occupancy shall be granted or refused in writing, within ten (10) days from the date of application. An applicant desiring to appeal must file with the Zoning Hearing Board within thirty (30) days.

3. In zoning districts in which performance standards are imposed, no Certificate of Use and Occupancy shall become permanent until the Zoning Officer has reinspected the facility and determined that it is in compliance with all performance standards. The owner of the facility shall request in such form as the Zoning Officer may prescribe, that the Zoning Officer reinspect said facility. Such request shall be made no less than thirty (30) nor more than forty-five (45) days after the facility is fully operating, but in no event shall such request be made more than one hundred and twenty (120) days after the Certificate of Use and Occupancy has been issued. The Zoning Officer shall reinspect the facility within thirty (30) days of receipt of such notification, and he shall notify the applicant, in writing within ten (10) days thereof that a) the facility is in full compliance with all performance standards and the Certificate of Use and Occupancy is permanent or b) the facility does not comply with the performance standards and that the Certificate of Use and Occupancy is still temporary and may be revoked if the applicant does not correct all violations. Requests for additional reinspections and action by the Zoning Officer for correction of violations shall follow the same procedure and requirement as described in this paragraph for reinspections. If the Zoning Officer fails to reinspect a facility within thirty (30) days of receipt of notification requesting reinspections, the facility shall be deemed to be in full compliance with all performance standards and the Certificate of Use and Occupancy shall be considered permanent without further action on the part of the applicant.

Section 704 Schedule of Fees, Charges and Expenses

The Borough Council shall establish, by resolution, a schedule of fees, charges, and expenses and collection procedures for zoning permits, certificates of use and occupancy, special exceptions, variances, and appeals and other matters pertaining to this Ordinance.

The schedule of fees shall be available for inspection in the office of the Zoning Officer and may be altered or amended by the Borough Council by resolution.

Until all application fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

Section 705 Amendments

The provisions of this Ordinance and boundaries of zoning districts as set forth on the Official Zoning Map, may from time to time be amended or changed by the Borough Council.

1. Procedure

The following procedures shall be observed prior to making any amendment or change of this Ordinance or parts thereof including the Official Zoning Map.

- a. Every such proposed amendment; or change not initiated by the Borough Planning Commission shall be referred to the Borough Planning Commission at least thirty (30) days prior to the Borough Council holding a public hearing thereon to provide the Borough Planning Commission an opportunity to submit recommendations.
- b. The recommendations, if any, of the Borough Planning Commission shall be submitted in writing to the Borough Council.
- c. All proposed amendments to this Ordinance shall be submitted to the County Planning Commission for their recommendations at least thirty (30) days prior to the public hearing. Within thirty (30) days after enactment, a copy of any amendment to the zoning ordinance shall be forwarded to the County Planning Commission.
- d. Curative Amendments by Landowner - A landowner who desires a 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 Borough Council with a written request that his challenge and proposed amendment be heard and decided as provided in the Pennsylvania Municipalities Planning Code, as amended. The Borough Council shall commence a hearing thereon within sixty (60) days of the request. The curative amendment shall be referred to the County and the Borough Planning Commissions as provided in this section and notice of the hearing thereon shall be given as provided in section 705.3 of this Ordinance and in the Pennsylvania Municipalities Planning Code, as amended. The hearing shall be conducted in accordance with subsections (4) to (8) of section 802 of this Ordinance and all references therein to the Zoning Hearing Board shall, for the purposes of this section, be references to the Borough Council. Consistent with Section 609.1.c of the MPC, Council shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:
 - (1) The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;

- (2) 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 the ordinance or map;
 - (3) The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features;
 - (4) The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, 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
 - (5) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
 - e. Curative Amendments by the Borough - If the Borough determines that its zoning ordinance or any portion thereof is substantially invalid, it shall take the actions proscribed by Section 609.2 of the MPC.
2. Public Hearing

The Borough Council shall hold a public hearing before voting on the enactment of any amendment or change, pursuant to public notice, all in a manner consistent with Section 609 of the MPC..
 3. The first notice of any public hearing shall be given no more than thirty (30) days and not less than fourteen (14) days in advance of any public hearing required by this Ordinance. Such notice shall be published once each week for two successive weeks in a newspaper of general circulation in the Municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. Second notice shall be no less than seven (7) days prior to public hearing.
 4. Electronic notice may be required pursuant to Section 109 of the MPC.

Section 801 Creation, Appointment and Organization

1. Creation of Board

The Borough Council hereby creates a Zoning Hearing Board, herein referred to as the Board consisting of three (3) residents of the Municipality appointed by the Borough Council pursuant to the Pennsylvania Municipalities Planning Code, as amended, who shall perform all the duties and have all the powers prescribed by said Code and as herein provided.

2. Appointment

One member of the Board shall be designated to serve until the first day of January following the adoption of this Ordinance, one until the first day of the second January thereafter and one until the first day of the third January thereafter. Their successors shall be appointed on the expiration of their respective terms to serve for a term of three (3) years. Members of the Board shall hold no other office in the Municipality except that no more than one member may also be a member of the Borough Planning Commission.

3. Removal

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, taken after the member has received fifteen (15) days advance notice of the intent to take such a vote. A hearing shall be held if the Board member requests one in writing.

4. Vacancies

Vacancies shall be filled by appointment by the Borough Council for the unexpired portion of the vacated term.

5. Compensation and Expenditures for Service

The members of the Board shall receive such compensation as shall be fixed by the Borough Council by resolution, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the Borough Council. 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.

6. Organization

The Board may promulgate such rules and forms for its procedure, not inconsistent with this and other Ordinances of the Municipality and laws of

the Commonwealth of Pennsylvania, as it may deem necessary to the proper performance of its duties and to the proper exercise of its powers. Such rules shall be continued in force and effect until amended or repealed by the Board or by law. The Board shall elect from its own membership its officers; who shall serve annual terms as such, and may succeed themselves.

7. Meetings

Meetings and hearings of the Board shall be held at the call of the chairman and at such other times as the Board, by majority vote, may determine.

8. Minutes and Records

The Board shall keep full public records of its proceedings showing the vote of each member upon each question or if absent or failing to vote indicating such fact. The Board shall also keep full public records of its business and other official action, copies of which shall be filed with the Secretary of the Borough Council. The Board shall submit an annual report of its activities each year to the Borough Council.

Section 802

Hearings

For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Board but where two members are disqualified to act in a particular matter, the remaining member may act for the Board. The Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive decisions or findings by the Board and accept the decision or findings by the Board and accept the decision of the Hearing Officer as final as provided in the Pennsylvania Municipalities Planning Code, as amended.

The Board shall conduct hearings and make decisions in accordance with the following requirements:

1. Pursuant to Section 908.1.2 of the MPC, the first hearing before the board or hearing officer shall be commenced within 60 days from the date of receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the board or hearing officer shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of his case-in-chief within one hundred (100) days of the first hearing. Upon the request of the applicant, the board or hearing officer shall assure that the applicant receives at least seven hours of hearings within the one hundred (100) days, including the first hearing. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and municipality, be granted additional hearings to complete their opposition

to the application provided the applicant is granted an equal number of additional hearings for rebuttal.

2. For the hearing of any appeal, the Board shall give notice to the public, the applicant, the Zoning Officer, and such other persons as the Borough Council shall designate by ordinance and to any person who has made timely request for the same. Notice to the public shall be in accordance with the provisions of Section 705 of this Ordinance. Notice to others herein provided for shall be by mail, mailed to the designated person or agency not less than fifteen (15) days prior to the date of the hearing. In addition to the notice provided herein, notice of said hearing shall be conspicuously posted on the affected tract of land.
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, but the parties may 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 Municipality, 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 appearance 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 all 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 stenographic records of the proceedings, and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.
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 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 hearing, or if said hearing is continued, within forty-five (45) days after said continued hearing. Each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of the Pennsylvania Municipalities Planning Code, as amended, or of this Ordinance shall contain a reference to the provisions 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 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 forty-five (45) days after the decision 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 forty-five (45) 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 to an extension of time. When a decision has been rendered in favor of the applicant because of failure of the Board to meet or render a decision as hereinabove provided, the Borough shall give public notice of said decision within ten (10) days in the same manner as provided in Section 802.1 of this Ordinance. Nothing in this subsection shall prejudice the right of any party opposing the application to urge that such decision is erroneous.
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.

Section 803 Functions of the Zoning Hearing Board

The Zoning Hearing Board shall have the following powers:

1. Appeals from the Zoning Officer: Interpretation and Review
 - a. To hear and decide appeals where it is alleged by the appellant that the Zoning Officer has failed to follow prescribed procedures or has

misinterpreted or misapplied any provision of this Ordinance or the Official Zoning Map or any valid rule or regulation governing the action of the Zoning Officer.

- b. Nothing contained herein shall be construed to deny the appellant the right to proceed directly to court, where appropriate, pursuant to Pennsylvania Rules of Civil Procedure, section 1091 to 1098 relating to mandamus.

2. Challenges to the Validity of Zoning Ordinance or the Official Zoning Map

The Board shall hear challenges to the validity of this Ordinance or the Official Zoning Map except as indicated in Section 1003 and subsection (1) (b) of Section 1004 of the Pennsylvania Municipalities Planning Code, as amended. In all such challenges, the Board shall take evidence and make a record thereon as provided in Section 802 of this Ordinance. At the conclusion of the hearing, the Board shall decide all contested questions and shall make findings on all relevant issues of fact which shall become part of the record on appeal to the court.

3. Unified Appeals

Where the Board has jurisdiction over zoning matters pursuant to sections 803.1, 803.2 and 803.4 of this Ordinance, the Board shall also hear all appeals which an applicant may elect to bring before it with respect to any municipal ordinance or requirement pertaining to the same development plan or development. In any such case, the Board shall have no power to pass upon the non-zoning issues, but shall take evidence and make a record thereon as provided in section 802 of this Ordinance. At the conclusion of the hearing, the Board shall make findings on all relevant issues of fact which shall become part of the record on appeal to the court.

4. Variances

To authorize, upon appeal in specific cases, such variance(s) from the terms of this Ordinance as will not be contrary to public interest, where a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship. In granting any variance the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code, as amended. 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 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 circumstances or conditions generally created by the provisions of the Zoning Ordinance 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 the Zoning Ordinance 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 appellant, subsequent to the adoption of this Ordinance; whether in violation of the provisions hereof or not, and that such circumstances or conditions are such that strict application of the provisions of this Ordinance would deprive- the applicant of the reasonable use of such land, structure or building;
- d. That for reasons fully set forth in the findings of the Board, the granting of the variance is necessary for the reasonable use of the land or buildings and that the variance as granted by the Board is the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue;
- e. 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;

The existence of non-conforming uses of land, structures, or buildings in the same or other zoning districts, shall in and of itself not be considered grounds for the granting of a variance.

In addition, economic gain or economic hardship shall not be considered grounds for a variance.

5. Special Exceptions

To issue, upon application, only such special exceptions to the terms of this Ordinance which the Board by the provisions of this Ordinance is specifically authorized to issue. The granting of a special exception when specifically authorized by the terms of the Ordinance shall be subject to the following standards and criteria:

- a. Such use shall be one which is specifically authorized as a Special Exception Use in the zoning district wherein the applicant seeks a special exception.

- b. Such permit shall only be granted subject to any applicable condition and safeguards as required by this Ordinance.
- c. Such permit may be granted subject to additional reasonable conditions and safeguards as may be deemed by the Board to be advisable and appropriate.
- d. Such use shall be found by the Board to be in harmony with the general purposes and intent of this Ordinance.
- e. Such use shall not adversely affect the character of the zoning district, nor the conservation of property values, nor the health and safety of residents or workers on adjacent properties and in the general neighborhood.
- f. Such use shall be of such size and so located and laid out in relation to its access streets that vehicular and pedestrian traffic to and from such use will not create undue congestion or hazards prejudicial to the general neighborhood.
- g. Such use shall not conflict with the direction of building development in accordance with any Comprehensive Plan or portion thereof which has been adopted by the Governing Body.

All applications for Special Exceptions and any exhibits that were submitted with the application shall be submitted to the Planning Commission for its review and recommendations. If the Planning Commission does not make any recommendations within thirty (30) days, it shall be deemed that the Planning Commission has recommended approval of the application for special exception.

Section 804

Procedures for Application to the Zoning Hearing Board

The Board shall act in strict accordance with the procedures specified by the Pennsylvania Municipalities Planning Code, as amended, and by this Ordinance. In the event the procedures set forth in this Ordinance shall be in conflict with or contrary to the procedures set forth in the Pennsylvania Municipalities Planning Code, as amended, the procedures set forth in the latter shall prevail. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of this Ordinance involved and shall exactly set forth the interpretation that is claimed, the grounds for any challenges to the validity of this Ordinance, the use for which a special exception is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.

Applications and appeals together with the required filing fee, as established by resolution of Borough Council, shall be submitted to the Secretary of the Zoning Hearing Board.

1. Parties Appellant Before the Zoning Hearing Board

Appeals under Section 803.1 and proceedings to challenge the Ordinance under section 803.2 may be filed with the Board in writing by the landowner affected, by any officer or agency of the Municipality, or any person aggrieved. Requests for a variance under Section 803.4 and for special exception under Section 803.5 may be filed with the Board by any landowner or any tenant with the permission of such landowner.

2. Time Limitations

No person shall be allowed to file any proceeding with the Board later than thirty (30) days after any application for development, preliminary or final, has been approved by an appropriate officer of the Municipality, agency or body 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 has 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.

Section 805

Stay of Proceedings

Upon filing of any proceeding referred to in Section 804.1 of this Ordinance 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. 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.

Section 901 Appeals

Proceedings for securing review of any ordinance, decision, determination or order of the Borough Council, its agencies or officer adopted or issued pursuant to this ordinance shall be in accordance with the Pennsylvania Municipalities Planning Code, as amended;

Section 902 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 any ordinance enacted under this act or prior enabling laws, the Borough, with the approval of 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 Council. No such action may be maintained until such notice has been given..

Section 903 Penalties

1. Pursuant to Section 617.2 of the MPC, any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable therefor in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than five hundred dollars (\$500) 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 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 zoning ordinances shall be paid over to the Borough for its general use.

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.

Section 904 Public Utilities Corporation Exempted

This Ordinance shall not apply to any existing or proposed buildings, 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.

Section 905 Severability

Should any article, section, subsection, paragraph, clause, phrase, or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such judgment shall not affect the validity of this Ordinance as a whole or any part or provision there, other than the part so decided to be invalid or unconstitutional.

Section 906 Repeal of Conflicting Ordinances

All existing ordinances or parts of ordinances, including, inter alia, the existing Zoning Ordinance of the Borough of Tipton, Berks County, Pennsylvania, enacted on October 6, 1969, together with the amendments and supplements thereto, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 907 Effective Date

This Ordinance shall become effective thirty (30) days after the date of its enactment and such advertisement thereof as is required by law.