

ARTICLE 6

PERFORMANCE STANDARDS

6.100 GENERAL APPLICATION

All existing and proposed permitted uses, special exceptions, and conditional uses and uses accessory thereto, are subject to the following performance standards and procedures.

6.200 PERFORMANCE STANDARDS PROCEDURES

6.210 Prior to Construction and Operation

Any application for a building permit for a use, which shall be subject to performance standards, shall be accompanied by a sworn statement by the owner of subject property that said use will be operated in accordance with the performance standards set forth herein.

Such application shall further be accompanied by a report prepared by a licensed professional engineer describing the methods or procedures to be undertaken to assure compliance with the Performance Standards specified herein; provided, however, that the Zoning Hearing Board will consider requests for a waiver of this requirement and may waive this requirement for uses which are not considered likely to violate any of the standards set forth herein.

6.220 Continued Compliance

Continued compliance with performance standards is required and enforcement of continued compliance with these performance standards shall be the responsibility of the Zoning Officer.

6.230 Determination of Violation

The Zoning Officer shall investigate any purported violation of performance standards and, if there is reasonable ground for the same, shall initiate the procedures set forth in Section 9.500 hereof.

6.300 REGULATION OF NUISANCE ELEMENTS

6.310 Definition of Elements

No land or building in any District which shall be used or occupied for manufacturing purposes shall be operated in such a manner so as to create any dangerous, injurious, noxious, or otherwise objectionable fire, explosive or other hazard; noise or vibration, smoke, dust, dirt or other form of air pollution; electrical or other disturbance; glare; or other nuisance, condition or element in such amount as to adversely affect the surrounding area or premises (referred to herein as "Dangerous or objectionable elements"); provided that any use permitted by this Ordinance may be undertaken and maintained in any District if it conforms to the regulations of this Subsection limiting dangerous and objectionable elements at the specified point or points of the determination of their existence.

6.320 Locations Where Determinations Are to be Made for Enforcement of Performance Standards

The determination of the existence of any dangerous and objectionable elements shall be made at:

- a. The point or points where such elements shall be most apparent for fire and explosion hazards, for radioactivity and electrical disturbances, for smoke and other forms of air pollution.
- b. The property lines of the use creating such elements for noise, for vibration, for glare and for odors.

6.400 STANDARDS TO BE ENFORCED

6.410 Fire and Explosion Hazards

- a. In all activities involving, and all storage of, inflammable and explosive materials, the owner or operator of such use shall provide adequate safety devices against the hazard of fire and explosion and adequate firefighting and fire suppression equipment and devices standard in this industry. Burning of waste materials in open fires is prohibited. The relevant provisions of State and local laws and regulations shall also apply.
- b. No highly flammable or explosive liquids, solids or gases shall be stored in bulk above the ground except in structures according to Commonwealth and Federal Specifications.

- c. All outdoor storage facilities for fuel shall be enclosed by an approved safety fence to prevent access thereto by unauthorized individuals.
- d. All materials or wastes which might cause fumes, constitute a fire hazard, or attract rodents or insects may only be stored if enclosed in buildings or containers which are adequate to eliminate such hazards.
- e. No materials, fuels, wastes, or flammable substances may be deposited or stored on a lot in such a manner as to allow them to be transferred off the lot by natural causes or forces. No substances, including but not limited to gasoline, oil, waste oil, and chemicals which can contaminate a stream or water course or render such stream or water source unusable or undesirable as a source of water supply, or recreation or which will destroy or damage aquatic life shall be stored in such a location so that it could be introduced into the said stream or water course by natural causes or forces, or by rupture of storage containers or accidental discharge.

6.420 Radioactivity or Electrical Disturbance

No activities shall be permitted which emit dangerous radioactivity or electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance.

6.430 Noise

At the points of measurement specified in Section 6.320, the maximum sound pressure level radiated in each standard octave band by any use or facility (other than transportation facilities or temporary construction work) shall not exceed the values for octave bands lying within the several frequency limits given in Table III after applying the corrections shown in Table IV. The sound pressure level shall be measured with a Sound Level Meter and associated Octave Band Analyzer conforming to standards prescribed by the American Standards Association.

(American Standard Sound Level Meters for Measurement of Noise and Other Sounds, Z24.3-1944, American Standards Association, Inc., New York, N.Y., and American Standard Specification for an Octave-Band Filter Set for the Analysis of Noise and Other Sounds Z24.10-1953, or latest approved revision thereof, American Standards Association, Inc., New York, N.Y., shall be used.)

TABLE III

Octave Band Frequency (Hz)		Residential District (Decibels)	Non-Residential (Decibels)
>	≤		
20	75	72	79
75	150	67	74
150	300	59	66
300	800	52	59
800	1200	46	53
1200	2400	40	47
2400	4800	34	41
4800	-	32	39

If the noise is not smooth and continuous and is not radiated between the hours of 10 P.M. and 7 A.M. one or more of the corrections in Table IV shall be applied to the octave band levels given in Table III.

TABLE IV

Type or Location of Operations or Character of Noise	Correction in Decibels
1. Daytime operation only	5
2. Noise source operates less than*	
a. 20% of any one-hour period	5
b. 5% of any one-hour period	10
3. Noise of impulsive character, hammering, etc.	-5
4. Noise of periodic character, hum, screech, etc.	-5
5. Property is located in an "M" District and is not within 500 feet measured horizontally or vertically of any R District	10

* Apply one of these corrections only.

6.440 Vibration

No activity or operation shall produce at any point along the property line continuous earthborne vibrations greater than the maximum displacement as permitted in the following table:

Frequency (Hz)		Residential District Displacement (In Inches)	Non-Residential District Displacement (In Inches)
>	≤		
0	10	.0004	.0020
10	20	.0002	.0010
20	30	.0001	.0006
30	40	.0001	.0004
40	50	.0001	.0003
50	-	.0001	.0002

Discrete pulses that do not exceed 100 impulses per minute may not produce more than twice the displacement specified in the table.

6.450 Glare

No direct or sky-reflected glare, whether from floodlights or from high-temperature processes such as combustion or welding or otherwise, so as to be visible at the points of measurement specified in Subsection 6.320. This restriction shall not apply to signs otherwise permitted by the provisions of this Ordinance. In no event shall a lighting intensity greater than one twenty-five hundredths (.25) footcandle (2.7 lux), measured at grade, be permitted beyond property lines.

6.460 Smoke, Dust, Fumes, Vapor, and Gas Control

The emission of dust, dirt, flyash, fumes, vapors, or gases which cause any damage to human health, to animals or to vegetation or other forms of property, or which can cause soiling or staining of persons or property at any point beyond the lot line of the use creating such emission is hereby prohibited.

No activity in any industrial district shall be reactivated, established, modified, constructed, or operated without having obtained valid permits and/or certificates from the Pennsylvania Department of Environmental Protection or its successor agency for airborne emissions. Such proof of compliance shall consist of duplicate copies of such permits and/or certificates for the current time period. In addition to the requirements of the Department of Environmental Protection or its successor agency, the following requirements shall apply:

- a. Particulate Matter. No use shall exceed the national ambient air quality standards established in the federal Clean Air Act or the requirements of Titles 25 and 35 of the Pennsylvania Code as they are amended and adopted for particulate matter.
- b. Smoke or Steam. No use may emit from a vent, stack, chimney, or combustion process any smoke that exceeds a density or equivalent capacity of Ringelmann No. 1, except that an emission that does not exceed a density of equivalent capacity of Ringelmann No. 2 is permissible for a duration of not more than four minutes during any eight-hour period if the source of such emission is not located within 250 feet of a residential district. All measurements shall be taken at the point of emission of the smoke. [For the purpose of determining the density of equivalent opacity of smoke, the Ringelmann Chart, as adopted and published by the United States Department of Interior, Bureau of Mines Information Circular 8333, May 1967, shall be used. The Ringelmann number referred to in this section refers to the number of the area of the Ringelmann Chart that coincides most nearly with the visual density of equivalent opacity of the emission of smoke observed. For example, a reading of Ringelmann No. 1 indicates a 20 percent density of the smoke observed.]
- c. Toxic Matter and Hazardous Material. Emissions of chemicals, gases, components, or elements, listed as being toxic matter or hazardous material by the American Conference of Governmental Industrial Hygienists, the Pennsylvania Department of Environmental Protection or the U.S. Environmental Protection Agency, or their successor agencies, shall not exceed any stated Threshold Limit Value in any industrial district. No emission of toxic matter shall exceed fifty percent (50%) of the Threshold Limit Value in any adjacent residential or commercial district.

6.470 Odors

No emission shall be permitted of malodorous gases or other malodorous matter in such quantities as to be readily detectable at the property line of the zone lot from which they are emitted without instruments.

6.480 Liquid and Solid Wastes

No operation shall discharge wastes of any kind into a surface water or a groundwater source. All methods of waste disposal shall be approved by the Pennsylvania Department of Environmental Protection. Such evidence of approval shall be provided. Such evidence of approval shall be provided to the Borough. The owner of any parcel governed by this ordinance may be required at the discretion of the Borough to monitor the ground water and surface water in the vicinity of his premises. Water testing shall be conducted at an interval deemed appropriate by the governing body on any stream located on the premises or any stream within five hundred (500) feet of any area used for storage of liquid or solid wastes. In addition, the well located on the premises shall also be sampled at an interval to be deemed appropriate by the governing body. The sample shall be collected and analyzed by a certified water analysis laboratory for hydrocarbons or other parameters deemed appropriate by the governing body and results shall be provided to the Borough. If samples exceed the limits established by the Pennsylvania Department of Environmental Protection, remedial action shall be taken in accordance with this Ordinance.

6.490 Heat

No activity or use shall produce heat perceptible beyond its property lines and no use shall be permitted that would cause the ambient water temperature, as defined by the Pennsylvania Department of Environmental Protection, or its successor agency, to rise or fall more than five (5) degrees Fahrenheit (2.8 degrees Celsius) during the ten (10) year, seven (7) day low flow in any natural pond, stream, river, or other watercourse.

ARTICLE 7

NONCONFORMING USES AND BUILDINGS

7.100 CONTINUATION OF USE

A use, building or structure lawfully in existence prior to the adoption of this Ordinance, which does not comply with the applicable use provisions of this Ordinance or any applicable amendment thereto may be continued except as otherwise provided in this Article.

7.200 REGULATION OF NONCONFORMING USES

No existing building or premises devoted to a nonconforming use shall be enlarged, extended, reconstructed, substituted, or structurally altered except when changed to a conforming use, or when required to do so by law or order and as follows:

7.210 Restoration

Any nonconforming building or structure which is damaged may be restored, reconstructed, or used as before, provided it shall not exceed the volume of space which existed prior to such damage; and, provided further that it shall be completed within one year of such happening, and that such restoration shall be in conformity with the requirements of this Ordinance.

7.220 Displacement

A nonconforming use shall not be extended to displace a conforming use.

7.230 Change of Use

- a. A nonconforming use or structure shall not be changed into a use which is permitted in a less restrictive district than the district where the nonconforming use is first permitted.
- b. A nonconforming use may be changed into a conforming use.
- c. A nonconforming use which is not permitted in any district or which is permitted only as a special exception or a conditional use may only be changed into a conforming use.
- d. When a nonconforming use shall be changed in accordance with the provisions hereof, the use of the building or other structure or tract of land shall not thereafter be changed again except in accordance with these regulations.

7.240 Repairs

- a. Normal maintenance, repairs, and incidental alteration of a building or other structure containing a nonconforming use is permitted, provided it does not extend the area or volume of space occupied by the nonconforming use.
- b. A building or other structure containing residential nonconforming uses may be altered in any way to improve interior livability, provided that no structural alterations shall be made which would increase the number of dwelling units or the bulk of the building.

7.250 Expansion

A nonconforming use or structure may be expanded up to twenty-five (25%) percent of its floor area and/or lot area as it exists at the time of the adoption of this Ordinance. Such use shall not be expanded, however, into a more restrictive district than where it is located; and, such use shall not be permitted to expand except in accordance with all of the building regulations herein. Such enlargement must conform to all other regulations of the District where it is situated. This provision may be used only once for each zone lot.

7.260 Prior Approval

Nothing herein contained shall require any change in the plans, construction, or designated use of a building complying with existing laws, a permit for which had been duly granted and the construction of which shall have been started before the date of adoption of this Ordinance or any applicable amendment thereto, and the ground story framework of which, including the second tier of beams, shall have been completed within six (6) months of the date of the permit, and which entire building shall have been completed, according to such plans as have been filed, within one (1) year of the date of adoption of this Ordinance or any applicable amendment thereto.

7.300 TERMINATION OF NONCONFORMING USES

The discontinuance of a nonconforming use for a period of one (1) year and/or the change of use to a more restricted or conforming use for any period of time shall be considered an abandonment and such nonconforming use shall not thereafter be revived. Intent to resume active operations shall not affect the foregoing.

7.400 REGISTRATION OF NONCONFORMING USES

The Zoning Officer may identify and register nonconforming uses and nonconforming structures as provided in Section 613 of the Pennsylvania Municipalities Planning Code, Act 247 as amended.

ARTICLE 8

ZONING HEARING BOARD

8.100 ORGANIZATION AND PROCEDURE

8.110 Establishment

Pursuant to the provisions of the Pennsylvania Municipality Planning Code, Article IX, a Zoning Hearing Board is hereby established.

8.120 Appointment

8.121 Members of the Board shall be residents of the municipality, appointed by resolution of the Governing Body. The Zoning Hearing Board shall consist of three (3) members, one of whom shall be designated to serve until the first day of January following the adoption of the Zoning 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 three (3) years. Members of the Board shall hold no other public office in the municipality.

8.122 Appointment to Fill Vacancies

The Board shall promptly notify the Governing Body of any vacancies which occur. Appointment to fill vacancies shall be for the unexpired term of the member or members whose term or terms become vacant and such appointments to fill vacancies shall be made in the same manner as the original appointment.

8.123 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 Governing Body who appointed the member, taken after the member has received fifteen (15) days advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

8.124 Organization of Board

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

Board as provided in Section 8.140. The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Borough and laws of the Commonwealth. The Board shall keep full public records of its business which records shall be the property of the Borough and shall submit a report of its activities to the Governing Body as requested by the Governing Body.

- b. If, by reason of absence or disqualification of a member, a quorum is not reached, the chairman of the board shall designate as many alternate members of the board to sit on the board as may be needed to provide a quorum. Any alternate member of the board shall continue to serve on the board in all proceedings involving the matter or case for which the alternate was initially appointed until the board has made a final determination of the matter or case. Designation of an alternate pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.

8.125 Appointment of Alternate Members

The governing body may appoint up to three (3) alternate members of the Zoning Hearing Board in accordance with the provisions of Section 903(b) of Act 247 as amended.

8.130 Expenditures for Services

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

8.140 Hearings

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

- 8.141 a. Notice shall be given to the public, the applicant, the local planning agency, the Zoning Officer, such other persons as the Governing Body shall designate by ordinance and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provision, by rules of the Board. The Governing Body may establish reasonable fees, based on cost, to be paid by the applicant and by persons requesting any notice not required by this ordinance. In addition to the written notice provided herein, notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.

- b. The hearing shall be held within 60 days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.
- 8.142 The hearings shall be conducted by the Board or the Board may appoint any member as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Board; however, the appellant or the applicant, as the case may be, in addition to the Borough, may, prior to the decision of the hearing, waive decision or findings by the Board and accept the decision or findings of the hearing officer as final.
- 8.143 The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Board, and any other person including civic or community organizations permitted to appear by the Board. The Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Board for that purpose. 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.
- 8.144 The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and cross-examine adverse witnesses on all relevant issues. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- 8.145 The Board or the Hearing Officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the board. The cost of the original transcript shall be paid by the board if the transcript is ordered by the board or hearing officer or shall be paid by the person appealing from the decision of the board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.
- 8.146 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 commencement of hearings, with any party or his representative unless all parties are given an opportunity to be present.

8.147 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 days after the last hearing before the Board or Hearing Officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this ordinance, rules, or regulations 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 the final decision or entry of findings, and the Board's decision shall be entered no later than thirty (30) days after the report of the Hearing Officer. Where the Board fails to render the decision within the period required by this subsection, or fails to hold the required hearing within sixty (60) days from the date of the applicant's request for a hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Board to meet or render a decision as hereinabove provided, the Board shall give public notice of said decision within ten days from the last day it could have met to render a decision in the same manner as provided in subsection 8.141 of this section. If the Board fails to provide such notice, the appellant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

8.148 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.

8.150 Jurisdiction

The zoning hearing board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

- 8.151 Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to sections 609.1 and 916.1(a)(2) of Act 247 as amended.
- 8.152 Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance.

- 8.153 Appeals from the determination of the zoning officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.
- 8.154 Appeals from a determination by a municipal engineer or the zoning officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.
- 8.155 Applications for variances from the terms of the zoning ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 8.200 hereof.
- 8.156 Applications for special exceptions under the zoning ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 912.1 of Act 247 as amended.
- 8.157 Appeals from the zoning officer's determination under section 916.2 of Act 247 as amended.
- 8.158 Appeals from the determination of the zoning officer or municipal engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving applications under the municipality's Subdivision and Land Development Ordinance.

8.200 ZONING HEARING BOARD FUNCTIONS

8.210 a. Variances

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

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

- (3) That such unnecessary hardship has not been created by the appellant.
 - (4) 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.
 - (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- b. In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this zoning ordinance and Act 247 as amended.
 - c. Upon approval of a variance, the Board shall direct the Zoning Officer to issue a permit to the applicant, which permit shall authorize the applicant to proceed with development in accordance with the terms of the approved variance.
 - d. Variance approvals shall be valid a period of one (1) year from the date of approval. If the proposed development is not completed within one (1) year of approval, the applicant shall submit a new application for a variance and shall require approval thereof.

8.220 Special Exceptions

- 8.221 Board Action. Special Exceptions, as enumerated in Article 3, shall be permitted only upon authorization by the Zoning Hearing Board. The Board may refer such applications to the Planning Commission for their review and recommendations. The Board shall hear and decide requests for special exceptions in accordance with the standards and criteria set forth herein. In granting a special exception, the board may attach such reasonable conditions and safeguards, in addition to those expressed in this ordinance, as it may deem necessary to implement the purposes of this zoning ordinance and Act 247 as amended.
- 8.222 Review Criteria. Approval of special exceptions shall be authorized only if they are found to comply with the following requirements and other applicable requirements as set forth in this Ordinance.
 - a. That the use is a permitted Special Exception as set forth in Article 3 hereof.
 - b. That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected.
 - c. That the use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.

- d. That the use shall be compatible with adjoining development and the character of the zone district where it is proposed to be located.
- e. That adequate landscaping and screening is provided as required in Section 4.700 and as otherwise provided herein.
- f. That adequate off-street parking and loading is provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.
- g. That the use conforms with all applicable regulations governing the district where located, except as may otherwise be determined for large-scale development.

8.223 Special Exceptions: Affect of Filing an Application. When an application for a special exception has been filed with the Zoning Hearing Board, and the subject matter of such application would ultimately constitute either a "land development" as defined in Section 107 or a "subdivision" as defined in Section 107 of the PA Municipalities Planning Code, Act 247, as amended, no change or amendment of the zoning, subdivision or other governing ordinance or plans shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed. Provided, further, should such an application be approved by the Zoning Hearing Board, the applicant shall be entitled to proceed with the submission of either land development or subdivision plans within a period of six (6) months or longer or as may be approved by the Zoning Hearing Board following the date of such approval in accordance with the provisions of the governing ordinance or plans as they stood at the time the application was duly filed before the Zoning Hearing Board. If either a land development or subdivision plan is so filed within said period, such plan shall be subject to the provisions of Section 508 (1) through (4) of the PA Municipalities Planning Code, Act 247, as amended, and specifically to the time limitations of Section 508 (4) which shall commence as of the date of filing such land development or subdivision plan.

8.300 PARTIES APPELLANT BEFORE THE BOARD

Parties appellant before the Board shall be as set forth in section 913.3 of Act 247 as amended.

8.400 TIME LIMITATIONS

8.410 Filing Proceedings with the Board

No person shall be allowed to file any proceeding with the board later than 30 days after an application for development, preliminary or final, has been approved by an

appropriate municipal officer, 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 had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan pursuant to section 709 of Act 247 as amended or from an adverse decision by a zoning officer on a challenge to the validity of this ordinance pursuant to section 916.2 of Act 247 as amended shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

8.420 Appeals From Adverse Determinations

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

8.500 ZONING CHALLENGES

8.510 Procedure for Landowner Curative Amendments

The procedure to be followed for landowner curative amendments shall be as set forth in Section 609.1 of Act 247 as amended.

8.520 Procedure for Curative Amendment by the Borough

If the Borough determines that this ordinance or portions thereof are substantially invalid, it shall take action in accordance with the procedures set forth in Section 609.2 of Act 247 as amended.

8.530 Mediation

The Borough may offer a mediation option as an aid in resolving conflicts which may arise under this Ordinance. In exercising such an option, the Municipality and mediating parties shall meet the stipulations and follow the procedures set forth in Article IX of Act 247 as amended.

8.600 STAY OF PROCEEDINGS

8.610 Upon filing of any proceeding referred to in Section 913.3 of Act 247 as amended 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 proceeding before the Board.

- 8.620 After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court.
- 8.630 The questions whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.
- 8.640 If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellate court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses, and attorney fees incurred by the petitioner.

8.700 GENERAL GRANT OF POWER

The Zoning Hearing Board shall perform all the duties and have all the powers prescribed by the Pennsylvania Municipalities Planning Code and as herein more particularly provided.

8.800 ZONING APPEALS TO COURTS

Zoning Appeals to Courts. The procedure for appeals for any decision made under Act 247 as amended shall be pursuant to Article X-A of said Act.

ARTICLE 10

AMENDMENTS

10.100 PROCEDURE

The procedures set forth in Section 607 of Act 247 as amended shall be followed in the preparation of zoning ordinance amendments.

10.110 Enactment

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

10.120 Referral to Borough Planning Commission

In the case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency at least thirty (30) days prior to the hearing on such proposed amendment to provide the planning agency an opportunity to submit recommendations.

10.130 Rehearings

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

10.140 Referral to County Planning Commission

At least thirty (30) days prior to the public hearing on the amendment by the local governing body, the Municipality shall submit the proposed amendment to the Lackawanna County Regional Planning Commission for its recommendations. Within 30 days after enactment, a copy of the amendment to the zoning ordinance shall be forwarded to the LCRPC.

10.200 PROCEDURE FOR CURATIVE AMENDMENTS

The procedure for landowner curative amendments shall be as set forth in Section 609.1 of Act 247 as amended.

10.300 PROCEDURE FOR MUNICIPAL CURATIVE AMENDMENTS

The procedure for municipal curative amendments shall be as set forth in Section 609:2 of Act 247 as amended.

10.400 PUBLICATION, ADVERTISEMENT AND AVAILABILITY OF ORDINANCES

10.410 Publication. Publication shall include the time and place of the meeting at which passage will be considered, a reference to a place within the municipality where copies of the proposed ordinance or amendments may be examined without charge or obtained for a charge not greater than the cost thereof. The governing body shall publish the proposed ordinance or amendment once in one newspaper of general circulation in the municipality not more than 60 days nor less than 7 days prior to passage. Publication of the proposed ordinance or amendment shall include either the full text thereof or the title and a brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:

- (1) A copy thereof shall be supplied to a newspaper of general circulation in the municipality at the time the public notice is published.
- (2) An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinances.

10.411 Rehearings

In the event substantial amendments are made in the proposed ordinance or amendment, before voting upon enactment, the governing body shall at least ten days prior to enactment readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

10.412 Recording

Zoning ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.