

SECTION A100 General Purpose

The intent of this Article is to establish a precise and detailed plan for the use of land in the Borough, and it is enacted to promote and to protect the public health, safety, morals, comfort, convenience, and general welfare of the people in accordance with the Pennsylvania Municipalities Planning Code.

SECTION A101 Specific Purpose

1. The specific purposes of this Article are as follows and the same shall be construed liberally to promote and advance such declared purposes:
 - A. Preserve and enhance Pottstown's traditional town character, protect its historic resources, and revitalize its older areas.
 - B. Promote the general welfare by increasing the amenities of the borough and lowering the cost of living in Pottstown through good urban design.
 - C. Carry out the Community Development Objectives listed in the Preface and Community Development Objectives, which is attached to this Ordinance and marked as Exhibit A.
 - D. Carry out the purpose and scope of Section 105 of the Pennsylvania Municipalities Planning Code, which authorizes the promotion and preservation of Commonwealth historic resources.
 - E. To guide and regulate the orderly growth and development of the Borough in accordance with the Borough Comprehensive Plan and with long-term objectives, principles, and standards deemed beneficial to the interest and welfare of the people.
 - F. To protect the established character and the social and economic well-being of both private and public property.
 - G. To prevent overcrowding of land and buildings, and to avoid undue concentration of population.
 - H. To protect and strengthen the industrial, commercial, and residential tax bases of the Borough.
 - I. To encourage innovation and the promotion of flexibility, economy, and ingenuity in development in the Borough.

SECTION A 102 Interpretation and Application.

All standards set up in this Article are to be interpreted as minimum standards required. Nothing contained herein shall be construed to prohibit or prevent the use of higher standards.

SECTION A 103 Relationship to Other Laws

Whenever regulations or restrictions imposed by this Article are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule, or regulation, the rules or restrictions that are more restrictive or that impose higher standards or requirements shall govern. Regardless of any other provision of this Article, no land shall be used and no structure erected or maintained in violation of any Commonwealth or Federal pollution control or environmental protection law or regulation.

SECTION A104 Administrative Standards

Whenever, in the course of administration and enforcement of this Article, it is necessary or desirable to make any administrative decision, then, unless other standards are provided in this Article, the decision shall be made so that the result will not be contrary to the spirit and purpose of this Article or injurious to the surrounding neighborhood.

Applications

SECTION A200 Permits Required

All zoning permits shall be issued in accordance with this Article by the Zoning Officer who shall affix his signature to such permit.

1. No person shall excavate for or store material machinery, or equipment on a lot in connection with the erection, construction, placement, reconstruction, alteration, repair, extension, replacement, restoration or conversion of any structure, building, or sign, except if specifically excluded by this Article; or change the use, area of use, or percentage of use; or extend or displace the use in part or in total of any structure, building, sign, or land without first filing an application in writing for subsequently receiving approval for a zoning permit. Regardless of whether or not said activity is in conformity with this Article, failure to obtain said permit shall constitute a violation of this Article and said failure shall subject the violator to the penalties specified herein.
2. The application for a permit shall be made by the owner or lessee of the structure, building, sign, or land, or by the agent of either. If the application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner or the qualified person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make such application; in the absence of said affidavit, affixing a signature a zoning application shall constitute the making of such affidavit. Attorneys at law and others governed by the law of agency, when acting as the agent of the owner or lessee, are excluded from this requirement. The full names and addresses of the owner, lessee, applicant, or, if the owner or lessee is a corporate body, the responsible officers of said body, shall be stated in the application.
3. A zoning permit shall be deemed to have been abandoned six months after its date of issuance unless such application has been prosecuted diligently, except that for reasonable cause the Zoning Officer may grant one or more extensions of time for additional periods not exceeding 90 days each. Such permit issued shall become invalid if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work. Upon expiration or invalidation of the zoning permit, all other permits issued thereon shall become invalid.
4. No building shall be occupied or otherwise used until such time as a certificate of occupancy is approved by the Zoning Officer after determining that the building, structure, or use is in conformance with the provisions of this Article and is a safe and sound building.
5. The Zoning Officer may revoke a permit or approval issued under the provisions of this Article in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based. Any such revocation shall make null and void any other permit issued on the strength of zoning approval.
6. Any permit issued in conflict with the provisions of this Article shall be null and void and may not be construed as waiving any provisions of this Article.

Applications

SECTION A200 Permits Required (continued)

8. Exclusion. This Section shall not apply to repairs or improvements required to meet Borough codes when said repairs or improvements do not create a change, intensification, or expansion of use.

SECTION A 200.1 Site Plan Approval Requirements

1. No person shall commence any use or erect any structure without first obtaining the approval by the Zoning Officer of a site plan as set forth in these sections, and no use shall be carried on, no structure erected or enlarged and no other improvement or construction undertaken except as shown upon an approved site plan.
2. No certificate of occupancy shall be granted until all improvements shown on an approved site plan have been completed in accordance therewith. However, upon a finding by the Zoning Officer that certain improvements cannot be completed due to seasonal or other factors beyond the control of the developer, and that temporary occupancy prior to completion will involve no health or safety hazard, he may authorize a temporary certificate of occupancy bearing an expiration date. The expiration date shall allow reasonable time for completion. It will require posting of a cash bond in double the sum estimated by the Zoning Officer to be needed to complete all required improvements, and it will be conditioned on completion of all required improvements prior to the date of expiration of the temporary certificate of occupancy.
3. Acceptance of a temporary certificate implies consent to application of the bond money to completion of any required improvements not completed prior to the expiration date of the temporary certificate of occupancy and forfeiture of any portion thereof not so applied. However, no action or inaction by the Borough of Pottstown in respect to any required improvement shall serve to extend the time of validity of any temporary certificate of occupancy or excuse any violation of this Article. A temporary certificate of occupancy may be extended in time, however, and from time to time, for good cause shown. Any such extension shall operate to extend, for the same period, the time for completion under the terms of the bond.

SECTION A300 Establishment of Districts

The Borough of Pottstown is divided hereby into zoning districts. The boundaries of said zoning districts are established hereby as shown on the map in the office of Pottstown's Zoning Officer and listed immediately below:

Conservation (Overlay District)	NR	Neighborhood Residential
	TTN	Traditional Town Neighborhood
	D	Downtown
Gateway (Overlay District)	NB	Neighborhood Business
	DG	Downtown Gateway
	GE	Gateway East
	GW	Gateway West
	P	Park
Contemporary	FO	Flex-Office
	HB	Highway Business
	HM	Heavy Manufacturing
Special Overlay Districts	Floodplain	
	Airport	

SECTION A301 Zoning Map

The official map on file in the Office of the Zoning Officer is declared hereby to be a part of this Article and shall be known and may be cited as the "Pottstown Borough Zoning Map."

SECTION A301.1 Interpretation of the Zoning Map

1. Where, due to the scale, lack of detail or illegibility of the zoning map, there is any uncertainty, contradiction or conflict as to the intended location of any zoning district boundary, as shown thereon, the Zoning Officer shall make an interpretation of said map upon request of any person. Any person aggrieved by any such interpretation may appeal such interpretation to the Zoning Hearing Board. The Zoning Officer and the Zoning Hearing Board in interpreting the zoning map or deciding any appeal shall abide by the following standards:
 - A. The zoning district boundary lines are intended to follow lot lines or be parallel or perpendicular thereto, or to be along the centerlines of alleys, streets, rights-of-way or water courses unless such boundary lines are fixed by dimensions as shown on the zoning map.
 - B. Where zoning district boundary lines are so indicated that they approximately follow lot lines such lot lines shall be construed to be such boundary lines.
 - C. Where a zoning district boundary line divides a lot, the location of any such zoning district boundary line, unless indicated by dimensions shown on the zoning map, shall be determined by the use of the map scale shown thereon.
 - D. If, after the application of the foregoing rules, uncertainty still exists as to the exact location of the zoning district boundary line, the boundary line shall be determined in a reasonable manner considering the history of uses of property and the history of zoning ordinances and amendments in the Borough of Pottstown as well as all other relevant facts.
 - E. The floodplain and airport districts are overlay districts, the maps of which are available for inspection in the office of the Zoning Officer.

SECTIONS A302 through A318

No additional regulations

SECTION A319 Special Exceptions

The following uses shall be permitted by the Zoning Hearing Board as special exceptions where an applicant shall meet or exceed the following regulations and criteria:

1. Dwelling, Boarding Home

- A. Buildings used as boarding homes may not use rooms smaller than 150 square feet for lodging guests.
- B. The boarding home must maintain the appearance of a single family home.
- C. The boarding home shall be owner-occupied.
- D. No more than one person or couple shall inhabit a single room.
- E. Buildings used as boarding homes shall be more than 3,500 square feet.
- F. No kitchen facility shall be located in any bedroom.
- G. A boarding home may lodge a maximum of six guests.
- H. One parking space per lodging room shall be provided.
- I. The boarding home shall comply with all other Borough Ordinances.

2. Dwelling, Convalescent Home

- A. Convalescent homes shall have a bed capacity of at least 20 beds, but no more than 200 beds.
- B. The operator of a convalescent home shall be licensed by the appropriate state agency or agencies.
- C. Twenty-four hour supervision shall be provided by a staff qualified by the sponsoring state agency.
- D. Adequate provisions shall be made for emergency and fire vehicles.
- E. One off-street parking space shall be provided for each staff member per maximum shift and one off-street parking space per every five beds.
- F. The use of the convalescent home shall comply with all other Borough Ordinances.

3. Dwelling, Group Home

- A. The facility shall be certified by the appropriate state agency. The license or certification shall be obtained prior to issuance of an occupancy permit by the Borough. A copy of an annual report with evidence of continuing certification shall be submitted to the Zoning Officer in January of each year
- B. A plan for security of the premises shall be prepared if the facility is a transitional home.
- C. Twenty-four hour supervision shall be provided at all transitional and personal care facilities by staff qualified by the sponsoring governmental agency.
- D. No kitchen facilities shall be located in any bedroom.
- E. The number of residents occupying the group home, including staff, shall not exceed seven persons.
- F. Any medical or counseling services provided shall be done only for residents of the group home.
- G. The use of the dwelling shall comply with all other Borough Ordinances.

SECTION A319 Special Exceptions (continued)

3. Dwelling, Group Home (continued)

- H. The group home must maintain the appearance of a single family home.
- I. One off-street parking space shall be provided for each staff member per shift and one space for every two residents.

4. Dwelling, Tourist Home/Bed and Breakfast

- A. Buildings used as tourist homes may not use rooms smaller than 150 square feet for lodging guests.
- B. Buildings used as tourist homes shall be more than 3,500 square feet.
- C. The tourist home shall be owner-occupied.
- D. One parking space per lodging room shall be provided.
- E. The tourist home/bed and breakfast must maintain the appearance of a single family home.
- F. The use of the dwelling as a tourist home shall comply with all other Borough Ordinances.

SECTIONS A320 through A338

No additional regulations

SECTION A339 Floodplain Overlay District

1. Purpose. The purpose of this Section is to prevent the loss of property and life, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public money for flood protection and relief, and the impairment of the tax base by:

- A. Regulating uses, activities and development which, alone or in combination with other existing or future uses, activities and development, will cause unacceptable increases in flood heights, velocities and frequencies.
- B. Restricting or prohibiting certain activities and development from locating within areas subject to flooding.
- C. Requiring all those uses, activities and developments that do occur in flood-prone areas to be protected from against flooding and flood damage.
- D. Protecting individuals from buying lands and structures which are unsuited for intended purposes because of flood hazards.

2. Applicability. These provisions, along with the regulations contained in Article 8, Floodplains, of the Code of Ordinances of the Borough of Pottstown, Ordinance No. 1735 of 1993, shall apply to all lands within the jurisdiction of the Borough of Pottstown and shown on the Flood Insurance Rate Map, as amended or superseded, as being located within the boundaries of any Floodplain District.

3. Compliance. No structure or land shall hereafter be used and no structure shall be located, relocated, constructed, reconstructed, enlarged or structurally altered, except in full compliance with the terms and provisions of this Section and any other ordinances and regulations that apply to uses within the jurisdiction of this Section.

SECTION A339 Floodplain Overlay District (continued)

4. **Warning and Disclaimer of Liability.** The degree of flood protection sought by the provisions of this Section is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Section does not imply that areas outside the Floodplain Districts, or that land uses permitted within such districts, will be free from flooding or flood damages.

5. This Section shall not create liability on the part of the Borough or any administrator or employee thereof for any flood damages that result from reliance on this Section or any administrative decision lawfully made thereunder.

5. Description of Districts.

A. **Identification.** The identified floodplain area shall be those areas of the Borough of Pottstown which are subject to the one hundred (100) year flood, as identified in the Flood Insurance Study (FIS) dated December 19, 1996, and the accompanying maps prepared for the Borough of Pottstown by the Federal Emergency Management Agency (FEMA) or the most recent revision thereof.

B. **Description of Floodplain Areas.** The identified floodplain area shall consist of the following specific areas:

1. **FW (Floodway Area).** The areas identified as "Floodway" in the AE Zone in the Flood Insurance Study prepared by the FEMA.

2. **FF (Flood Fringe Area).** The remaining portions of the one hundred (100) year floodplain in those areas identified as an AE Zone in the Flood Insurance Study, where a floodway has been delineated. The basis for the outermost boundary of this area shall be the one hundred (100) year flood elevations as shown in the flood profiles contained in the Flood Insurance Study.

C. Overlay Concept.

1. The floodplain districts described above shall be overlays to the existing underlying districts as shown on the official Zoning Map, and as such, the provisions for the floodplain district serve as a supplement to the underlying district provisions.

2. Where there happens to be any conflict between the provisions or the requirements of any floodplain districts and those of any underlying district, the more restrictive provisions apply.

3. In the event, any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial discretion, the basic underlying district provisions shall remain applicable.

6. **Zoning Map.** The boundaries of the Floodplain Districts are established as shown, or incorporated by reference, on the official Zoning Map of the Borough of Pottstown. Said map hereby is declared to be a part of this Section and shall be kept on file at the office of the Zoning Officer.

SECTION A339 Floodplain Overlay District (continued)

7. District Boundary Changes. The delineation of any of the Floodplain Districts may be revised by the Borough where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U. S. Army Corps of Engineers, River Basin Commission or other qualified agency or individual documents the justification for such change. However, prior to such change, approval shall be obtained from the Federal Insurance Administration (FIA).

8. Interpretation of District Boundaries. Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Officer. Should a dispute arise concerning the boundaries of any of the districts, the Zoning Hearing Board shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Zoning Hearing Board and to submit his own technical evidence if he so desires.

9. District Provisions Compliance.

A. All uses, activities and development occurring within any floodplain district shall be undertaken only in strict compliance with the provisions of this Section and with all other applicable codes and ordinances, including all required permits from those governmental agencies from which approval is required by Federal or common law.

B. Under no circumstances shall any use, activity and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch or any other drainage facility or system.

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

10. Floodway District (FW). In the Floodway District, no development shall be permitted except where the effect of such development on the flood heights is fully offset by accompanying improvements which have been approved by all appropriate local and/or Commonwealth authorities as required above.

A. Permitted Uses. In the Floodway District the following uses and activities are permitted provided that they are in compliance with the provisions of the underlying district and are not prohibited by any other ordinance and provided that they do not require structures, fill or storage of materials and equipment:

1. Agricultural uses such as general farming, pasture, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming and wild crop harvesting.

2. Public and private recreational uses and activities such as parks, day camps, picnic grounds, golf courses, boat launching and swimming areas, hiking and horseback riding trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas.

3. Accessory residential uses such as yard areas, gardens, play areas, and pervious parking areas.

SECTION A339 Floodplain Overlay District (continued)

4. Accessory industrial and commercial uses such as yard areas, pervious parking and loading areas, airport landing strips, and the like.

B. Uses Permitted by Special Exceptions. The following uses and activities may be permitted by special permit provided that they are in compliance with the provisions of the underlying district and are not prohibited by any other ordinance:

1. Structures, except for mobile homes, accessory to the uses and activities in subsection 10(A) hereof.
2. Utilities company operational facilities and public facilities and improvements such as railroads, streets, bridges, transmission lines, pipe lines, water and sewage treatment plants, and other similar or related uses.
3. Water-related uses and activities such as marinas, docks, wharves, piers, etc.
4. Extraction of sand, gravel and other materials.
5. Temporary uses such as circuses, carnivals and similar activities.
6. Storage of materials and equipment provided that they are not buoyant, flammable or explosive, and are not subject to major damage by flooding, or provided that such material and equipment is anchored firmly to prevent flotation or movement, and/or can be removed readily from the area within the time available after flood warning.
7. Other similar uses and activities provided they cause no increase in flood heights and/or velocities. All uses, activities and structural developments, shall be undertaken in strict compliance with the floodproofing provisions contained in all other applicable codes and ordinances.

11. Flood-Fringe District (FF). In the Flood-Fringe District the development and/or use of land shall be permitted in accordance with the regulations of the underlying district provided that all such uses, activities and/or development shall be undertaken in strict compliance with the floodproofing and related provisions contained in all other applicable codes and ordinances.

12. Special Exceptions and Variances.

A. In passing applications for special exceptions and variances, the Zoning Hearing Board shall follow the procedures given elsewhere in this Part and shall consider all relevant factors, among them:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments. No special exception or variance shall be granted within the floodway district for any proposed use, development or activity that will cause any increase in flood levels during the one hundred (100) year flood. [Ord. 1835]
2. The danger that materials may be swept on to other lands or downstream to the injury of others.

SECTION A339 Floodplain Overlay District (continued)

3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
 4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 5. The importance of the services provided by the proposed facility to the community.
 6. The requirements of the facility for a waterfront location.
 7. The availability of alternative locations not subject to flooding for the proposed use.
 8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 9. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 10. The safety of access to the property in times of flood of ordinary and emergency vehicles.
 11. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.
 12. Such other factors which are relevant to the purposes of this Section.
- B. The Zoning Board may refer any application and accompanying documentation pertaining to any request for a special exceptions or variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for protection and other related matters.
- C. Special exceptions and/or variances shall be issued only after the Zoning Hearing Board has determined that the granting of such will not result in:
1. Unacceptable or prohibited increases in flood heights.
 2. Additional threats to public safety.
 3. Extraordinary public expenses.
 4. Nuisances.
 5. Fraud or victimization of the public.
 6. Conflict with national, Commonwealth, or local laws.

SECTION A339 Floodplain Overlay District (continued)

13. Existing Structures in Floodplain Districts. A structure or use of a structure or premises which lawfully existed before the enactment of these provisions but that is not in conformity with these provisions may be continued subject to the conditions set forth in Article 8, Floodplains, 9105, "Existing Structures in Identified Floodplain Areas, of the Code of Ordinances of the Borough of Pottstown, Ordinance No. 1735 of 1993.

14. Special Definitions. Certain terms as used in this Section are defined as follows:

DEVELOPMENT - Any manmade change to improve or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or the storage of equipment or materials. [Ord. 1835]

FLOOD - a temporary inundation of normally dry land areas.

FLOOD FRINGE - that portion of the floodplain outside the floodway.

FLOODPLAIN -

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

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

FLOODPROOFED - constructed in accordance with the floodproofing regulations set forth in the various building codes of the Borough.

FLOODWAY - the designated area of a floodplain required to carry and discharge flood waters of a given magnitude. For the purposes of this Section, the floodway shall be capable of accommodating a flood of the 100 year magnitude.

HISTORIC STRUCTURES - any structure that is:

A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminary determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register.

B. Certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminary determined by the Secretary to qualify as a registered historic district.

C. Individually listed on a State inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior.

SECTION A339 Floodplain Overlay District (continued)

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By an approved State program as determined by the Secretary of the Interior; or,
2. Directly by the Secretary of the Interior in states without approved programs.

ONE HUNDRED (100) YEAR FLOOD - a flood that, on the average is likely to occur once every one hundred (100) years, (i.e. that has a one (1%) percent chance of occurring each year, although the flood may occur in any year).

SUBSTANTIAL DAMAGE - damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. [Ord. 1835]

SUBSTANTIAL IMPROVEMENT - any repair, reconstruction, rehabilitation, addition to other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, as defined herein, regardless of their actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or,
2. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

15. Prohibited Activities and Obstructions.

A. Development that may endanger human life. In accordance with the administrative regulations promulgated by the Pennsylvania state agencies to implement the Pennsylvania Floodplain Management Act (Act 166 of 1978), the following activities have been identified as being dangerous to human life or posing a special hazard in floodplain areas:

1. Any new or substantially improved structure that will be used for a production or storage of any of the following materials or substances or that will be used for any activity requiring the maintenance of a supply (more than 550) gallons or other comparable volume, or any amount of radioactive substances) of any of the following dangerous materials or substances on the premises:
 - (a) Acetone.
 - (b) Ammonia.
 - (c) Calcium.
 - (d) Carbide.
 - (e) Benzene.
 - (f) Carbon Disulfide
 - (g) Celluloid.

SECTION A339 Floodplain Overlay District (continued)

- (h) Chlorine.
- (i) Hydrochloric Acid.
- (j) Hydrocyanic Acid.
- (k) Magnesium.
- (l) Nitric Acid and Oxides of Nitrogen.
- (m) Petroleum products (gasoline, fuel oil, etc.).
- (n) Phosphorus.
- (o) Potassium.
- (p) Sodium.
- (q) Sulphur and Sulphur products.
- (r) Pesticides (including insecticides, fungicides, and rodenticides).
- (s) Radioactive substances (insofar as such substances are not regulated otherwise).

2. Within any floodway area, any structure of the kind described in subsection (1) above shall be prohibited.

3. Where permitted within any flood-fringe area, any structure of the kind described in (1) above shall be: elevated or designed and constructed to remain completely dry up to at least 1 1/2 feet above the 100 year flood; and, designed to prevent pollution from the structure or activity during the course of a 100 year flood.

4. Any structure or part thereof, that will be built below the Regulatory Flood Elevation shall be designed and constructed in accordance with the standards for completely dry flood-proofing contained in the publication "Flood-Proofing Regulations" (U.S. Army Corps of Engineers, June, 1972), or with some other equivalent watertight standard.

5. Except for a possible modification of the freeboard requirements involved, no variance shall be granted for any of the other requirements of this Section.

B. Floodplain Special Obstructions. Within any identified floodway or flood-fringe, the following obstruction and activities shall be prohibited and no variance shall be granted.

6. The construction, enlargement, or expansion of any structure used, or intended to be used, for any of the following:

- (a) Hospitals (public or private).
- (b) Nursing home (public or private).
- (c) Jail or prison.

2. The commencement of, or any construction of, a new mobile home park or mobile home subdivision, or substantial improvement to an existing mobile home park or mobile home subdivision.

SECTIONS A340 through A341

No additional regulations

SECTION A342 Airport Overlay District

1. Short Title. This Section shall be known as the "Pottstown Municipal Airport Zoning Ordinance."
2. Purpose. This Section is enacted, pursuant to Act 164 of 1984, codified at 74 Pa. Cons. State 95101 et seq., to protect the lives and property of users of the Pottstown Municipal Airport and of occupants of land in its vicinity, and to protect the utility of the airport and the public investment therein by preventing the creation or establishment of airport hazards, and by the elimination, removal, alteration, mitigation or marking and lighting of existing airport hazards.
3. Applicability. These provisions shall apply to all lands within the Borough that are shown on the Official Zoning Map as being located within the boundaries of any airport zone. The Airport District map shall be kept for public inspection in the office of the Zoning Officer.
4. Creation of District and Overlay Concept. The Airport District is created hereby and the airport zones described herein shall be overlays to the existing underlying districts as shown on the Official Zoning Map and, as such, the provisions for the airport zones shall serve as a supplement to the underlying district provisions. Where there happens to be any conflict between the provisions or requirements of any of the airport zones and those of any underlying district, the more restrictive provisions shall apply.
5. Definitions. As used in this Section, the following words and phrases shall be interpreted as follows, unless the context clearly indicates otherwise:

AIRPORT - the Pottstown Municipal Airport.

AIRPORT ELEVATION - two hundred fifty-six (256) feet above the mean sea level.

APPROACH SURFACE - a surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitations slope set forth in subsection (7) hereof. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

APPROACH, TRANSITIONAL, HORIZONTAL AND CONICAL ZONES - those zones described in subsection (6) hereof.

CONIAL SURFACE - a surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of four thousand (4,000) feet.

HAZARD TO AIR NAVIGATION or HAZARD - an obstruction determined to have a substantial adverse effect of the safe and efficient utilization on the navigable airspace.

HEIGHT - as measured from two hundred fifty-six (256) feet above mean sea level elevation, or airport elevation, unless specified, or indicated clearly, otherwise.

HORIZONTAL SURFACE - a horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which, in plan, coincides with the perimeter of the horizontal zone.

SECTION A342 Airport Overlay District (continued)

LARGER THAN UTILITY RUNWAY - a runway that is constructed for and intended to be used by propeller-driven aircraft of greater than twelve thousand five hundred (12,500) pounds maximum gross weight and by jet-powered aircraft.

NONCONFORMING USE - any structure, object of natural growth or use of land that is inconsistent with provisions of this Section or amendment thereto and that is in existence as of the effective date of this Section or of such amendment hereto, as the case may be.

NONPRECISION INSTRUMENT RUNWAY - a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.

OBSTRUCTIONS - any structure, growth or other object, including a mobile object, that exceeds a limiting height set forth in subsection (7) hereof.

PRECISION INSTRUMENT RUNWAY - a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

PRIMARY SURFACE - a surface centered longitudinally on a runway. When the runway has a specifically prepared hard surface, the primary surface extends two hundred (200) feet beyond each end of that runway. The width of the primary surface is set forth in subsection (6) hereof. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

RUNWAY - a defined area on an airport prepared for landing and take-off of aircraft along its length.

STRUCTURE - an object, including a mobile object, constructed or installed by man, including but not limited to buildings, towers, cranes, smokestacks, earth formations, and overhead transmission lines.

TRANSITIONAL SURFACES - those surfaces extending outward at ninety (90) degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of five thousand (5,000) feet measured horizontally from the edge of the approach surface and at ninety (90) degree angles to the extended runway centerline.

TREE - any object of natural growth.

UTILITY RUNWAY - a runway that is constructed for and intended to be used by propeller-driven aircraft of twelve thousand five (12,500) pounds maximum gross weight and less.

SECTION A342 Airport Overlay District (continued)

VISUAL RUNWAY - a runway intended solely for the operation of aircraft using visual approach procedures.

6. Establishment of Zones. In order to carry out the provisions of this Section, there are created and established, hereby, certain zones that include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to the Pottstown Municipal Airport Height Limitation and Zoning District Map, prepared by the Pennsylvania Department of Transportation, Bureau of Aviation, dated 1989, which is attached to this Article and made part hereof. An area located in more than one (1) of the following zones is considered to be in only the zone with the more restrictive height limitation. The various zones are established hereby and are defined as follows:

A. Utility Runway Visual Approach Zone. The inner edge of this approach zone coincides with the width of the primary surface and is two hundred fifty (250) feet wide. The approach zone extends outward uniformly to a width of one thousand two hundred and fifty (1,250) feet at a horizontal distance of five thousand (5,000) feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

B. Transitional Zones. The transitional zones are the areas beneath the transitional surfaces.

C. Horizontal Zone. The horizontal zone is established by swinging arcs of five thousand (5,000) feet radii for all runways, designated utility or visual, and ten thousand (10,000) [feet] for all others from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zone.

D. Conical Zone. The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward therefrom a horizontal distance of four thousand (4,000) feet.

7. Airport Zone Height Limitations. Except as provided otherwise in this Section, no structures shall be erected, altered or maintained, and no tree shall be allowed to grow in any zone created by this Section to a height in excess of the applicable height established herein for such zone. Such applicable height limitations are established hereby for each of the zones in question as follows:

A. Utility Runway Visual Approach Zone. Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of five thousand (5,000) feet along the extended runway centerline.

B. Transitional Zones. Slopes seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and extending to a height of one hundred fifty (150) feet above the airport elevation. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending a horizontal distance of five thousand (5,000) feet measured at ninety (90) degree angles to the extended runway centerline.

SECTION A342 Airport Overlay District (continued)

C. Horizontal Zone. Established at one hundred fifty (150) feet above the airport elevation.

D. Conical Zone. Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at one hundred fifty (150) feet above the airport elevation and extending to a height of three hundred fifty (350) feet above the airport elevation.

E. Excepted Height Limitations. Nothing in this Section shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to thirty-five (35) feet above the surface of the land

8. Use Restrictions. Notwithstanding any other provision of this Section, no use may be made of the land or water with any zone established by this Section in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport.

9. Nonconforming Uses.

A. The regulations prescribed in this Section shall be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Section, or otherwise interfere with continuance of a legal nonconforming use. Nothing contained herein shall require any change of the construction, alteration, or intended use of any structure, the construction or alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Section, and is diligently prosecuted.

B. Notwithstanding the preceding subsection, the owner of any existing legal nonconforming structure or tree is required hereby to permit the installation, operation and maintenance thereon of such markers and lights as shall be deemed necessary by the airport to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstructions.

10. Future Uses. Except as provided, specifically in (A), (B), and (C) hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone created hereby unless a permit therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient information to permit it to be determined whether the resulting use, structure or tree would conform to the regulations prescribed herein. If each determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this Section shall be granted unless a variance has been approved pursuant to subsection (13) hereof.

A. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required by this Section for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when, because of terrain, land contour or topographic features, such tree or structure would extend above the height limits prescribed for such zones.

SECTION A342 Airport Overlay District (continued)

B. In areas lying within the limits of the approach zones, but at a horizontal distance of, not less than four thousand two hundred (4,200) feet from each end of the runway, no permit shall be required by this Section for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.

C. In areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required by this Section for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such transition zones. Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits of this Section except as set forth in subsection (7) hereof.

11. Existing Uses. No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure or tree to become a greater hazard to air navigation than it was on the effective date of this Section or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

12. Nonconforming Uses Abandoned or Destroyed. Whenever the Zoning Officer determines that a nonconforming tree or structure has been abandoned or more than eighty percent (80%) torn down, physically deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

13. Appeal to Zoning Hearing Board. The Zoning Hearing Board is empowered to grant variances in order to prevent or lessen such practical difficulties and unnecessary physical hardships inconsistent with [the] objectives of this Section as would result from strict or literal interpretation and enforcement of certain of the regulations prescribed herein, provided that the relief granted would not be contrary to the public interest, would not violate the spirit of this Section, and would not contravene any rule or regulation of any Commonwealth or Federal body having jurisdiction over the airport, and, provided that any relief granted may be subject to any reasonable conditions that the Board may deem necessary to effect the purposes of this Section. In granting any variance under this Section the Board may, if it deems such action advisable to effect the purposes of this Section and reasonable in the circumstances, so condition such variance as to require the owner of the structure or tree in question, at his or her own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard. Appeals shall be taken pursuant to 9909(3) et seq., except that the following additional regulations shall apply:

A. The application for a variance shall be accompanied by a determination from the Federal Aviation Administration and from the Pennsylvania Department of Transportation, Bureau of Aviation, as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace.

B. No application for a variance may be considered by the Board unless a copy of the application has been furnished, by the Zoning Officer to the Airport Manager for advice as to the aeronautical effects of the proposal. If the Airport Manager does not respond within fifteen (15) days after the receipt of the application, it shall be presumed that the Airport Manager has approved the proposal. An unfavorable report or failure to report shall not be binding on the Board.

SECTION A343 District Boundaries

There are no additional regulations.

SECTION A344 Effect

There are no additional regulations.

Conditional Uses

SECTION A400 Procedure for Conditional Use Application

Any application for conditional use as specified in the various parts of this Article shall be considered by Borough Council according to Section 400 of the main ordinance.

1. The Borough shall conduct hearings and make decisions in accordance with the following requirements:
 - A. By advertising a legal notice published once each week for two successive weeks in a newspaper of general circulation. Such notice shall state the location of the building or lot, the general nature of the question involved and the time and place of the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing.
 - B. By mailing at least one week in advance of the hearing, notice to the owner and to the occupants of every property within 300 feet of the lot in question; provided, the failure to give any such notice to these, other than the owner, shall not be involved in any action taken by Borough Council.
 - C. By posting notice conspicuously on the affected tract of land at least one week in advance of the hearing.
 - D. Borough Council shall schedule a public hearing within 60 days of the application date to consider the proposal and shall render a verbal decision within 15 days from the close of the last hearing and notify the applicant, in writing, within 15 days after the verbal decision.
 - E. Borough Council shall consider the comments and recommendations of the Borough and County Planning Commission, other advisors and those present at the public hearing prior to deciding to approve or deny the proposed use and any conditions to be imposed upon approval.
 - F. The time limits in this Section may be waived by the applicant as necessary.

SECTION A401 Conditional Uses

1. Adult Entertainment Uses

A. Intent. The Borough of Pottstown has determined that adult entertainment uses frequently have secondary effects which can have a negative impact upon the health, safety and welfare of Borough residents. These situations include difficulties with law enforcement, municipal maintenance, trash, negative effects on business and residential property values, increased crime and prostitution. The Borough of Pottstown considers that limiting the location of adult entertainment uses is a legitimate and reasonable means of addressing the secondary effects of such uses without affecting or suppressing any activities protected by the First Amendment of the United States Constitution.

B. Development Regulations. All adult entertainment uses shall meet the following conditions:

1. Adult entertainment uses shall not be located in any zoning district, except for the HM Heavy Manufacturing District, where they are permitted as a conditional use.

Conditional Uses

SECTION A401 Conditional Uses (continued)

1. Adult Entertainment Uses (continued)

2. No adult entertainment use shall be located within 500 feet of a church, school, child day care facility, hospital, park, playground, residential use or residential zoning district.
3. No adult entertainment use shall be located within 1,000 feet of another adult entertainment use.
4. For the purpose of this Section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure containing an adult entertainment use to the nearest property line of the premises of a church, school, child day care facility, hospital or residential use, or to the nearest boundary of a park, playground, or residential zoning district.
5. Adult uses shall be housed in completely enclosed buildings, designed and used in a manner which prevents the viewing of adult use activities or materials from outside the building.
6. No exterior display of products, activities or shows shall be permitted, except for a sign. In addition to the sign requirements contained in Article 7 of this Ordinance, a sign for an adult entertainment use shall meet the following requirements:
 - A. The sign shall only identify the name of the establishment and/or its hours of operation
 - B. The area of the sign shall not exceed 40 square feet.
7. If any portion of a use meets the definition of adult entertainment use, except for limited sale of adult materials as listed under the adult bookstore definition, then that portion must comply with the requirements of this Section.

2. Building Size

No additional regulations

3. Car Wash

No additional regulations

4. Cellular Communications

In recognition of the quasi-public nature of cellular communications systems, the following regulations shall apply:

A. Purposes.

1. To accommodate the need for cellular communications antennae while regulating their location and number in the Borough.
2. To minimize adverse visual effects of cellular communications antennae and antenna support structures through proper design, siting and vegetative screening.

Conditional Uses

SECTION A401 Conditional Uses (continued)

4. Cellular Communications (continued)

3. To avoid potential damage to adjacent properties from antenna support structure failure and falling ice, through engineering and proper siting of antenna support structures.

4. To encourage the joint use of any new antenna support structures to reduce the number of such structures needed in the future.

B. Use Regulations.

1. A cell site with antenna that is attached to an existing communications tower, smoke stack, water tower or other tall structure is permitted in all zoning districts. The height of the antenna shall not exceed the height of the existing structure by more than 15 feet. If the antenna is to be mounted on an existing structure, a full site plan shall not be required.

2. A cell site with antenna that is either not mounted on an existing structure, or is more than 15 feet higher than the structure on which it is mounted, is permitted by conditional use in all zoning districts.

3. All other uses ancillary to the antenna and associated equipment (including a business office, maintenance depot, vehicle storage, etc.) are prohibited in the zoning district in which the cell site is located.

C. Standards of Approval of Conditional Use.

1. The cellular communications company is required to demonstrate, using technological evidence, that the antenna must be located where it is proposed in order to satisfy its function in the company's grid system.

2. If the cellular communications company proposes to build a tower (as opposed to mounting the antenna on an existing structure), it is required to demonstrate that it contacted the owners of tall structures within a one-quarter (-) mile radius from the proposed site, requested permission to install the antenna on those structures, and was denied for reasons other than economic ones. Tall structures include, but are not limited to, smoke stacks, water towers, tall buildings, antenna support structures of other cellular communications companies, other communications towers (fire, police, etc.) and other tall structures. The Zoning Officer may deny the application to construct a new tower if the applicant has not made a good faith effort to mount the antenna on an existing structure.

D. Standards of Approval of All Cellular Communications Antennae.

1. **Antenna Height.** The applicant must demonstrate that the antenna is the minimum height required to function satisfactorily. No antenna that is taller than this minimum shall be approved.

2. **Setbacks From Base of Antenna Support Structure.** If a new antenna support structure is constructed (as opposed to mounting the antenna on a existing structure), the minimum distance between the base of the support structure or any guy wire anchors and any property line shall be the largest of the following:

Conditional Uses

SECTION A401 Conditional Uses (continued)

4. Cellular Communications (continued)

- (a) Thirty percent of antenna height.
- (b) The minimum setback in the underlying zoning district.
- (c) Forty feet.

3. Antenna Support Structure Safety. The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice or other debris, electromagnetic fields or radio frequency interference. All support structures shall be fitted with anticleimbing devices, as approved by the manufacturers.

4. Fencing. A fence shall be required around the antenna support structure and other equipment, unless the antenna is mounted on an existing structure. The fence shall be a minimum of 6 feet in height.

5. Landscaping. Landscaping shall be required to screen as much of the support structure as possible, the fence surrounding the support structure and any other ground level features (such as a building), and in general to soften the appearance of the cell site. The landscape screening shall comply with Pottstown's Subdivision Ordinance.

6. In order to reduce the number of antenna support structures needed in the community in the future, the proposed support structure shall be required to accommodate other users, including other cellular communications companies, and local police, fire and ambulance companies.

7. The cellular communication company must demonstrate it is licensed by the Federal Communications Commission.

8. Required Parking. If the cell site is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, the number of required parking spaces shall equal the number of people on the largest shift.

9. Antenna support structures under 200 feet in height should be painted silver or have a galvanized finish retained, in order to reduce the visual impact. Support structures may be painted green up to the height of nearby trees. Support structures 200 feet in height or taller, or those near airports, shall meet all Federal Aviation Administration regulations. No antenna support structure may be artificially lighted except when required by FAA.

10. A full site plan shall be required for all cell sites, showing the antenna support structure, building, fencing, buffering, access and all other items required in the Subdivision and Land Development Ordinance. The site plan shall not be required if the antenna is to be mounted on an existing structure.

5. Cemeteries

No additional regulations

Conditional Uses

SECTION A401 Conditional Uses (continued)

6. Child Care Facility

- A. General Provisions. The following general provisions apply to each of the three defined types of child day care facilities. In addition, each type of child day care facility shall comply with the specific individual regulations for each type of facility:
1. Categories Included. The provisions of this Section pertain to day care service for children by caregivers in:
 - a. Family Day Care homes
 - b. Group Day Care homes
 - c. Day Care Centerssubject to Article II, Sections 8A, 8B and 8C of DPW Social Services Manual Regulations. Day care service for children shall include out-of-home child day care service for part of a 24 hour day for children under 16 years of age by caregivers, excluding care provided by relatives. Day care service for children shall not include babysitting or day care furnished in places of worship during religious services.
 2. Registration and Licensing. Family day care homes, as defined in this Article, must hold an approved and currently valid DPW registration certificate. Group day care homes and day care centers, as defined in this Article, must hold an approved and currently valid DPW license. In addition, all child day care facilities shall comply with all current DPW regulations, including those standards governing adequate indoor space, accessible outdoor play space and any applicable State or local building and fire safety codes.
 3. Municipal Notification. Each operator of a newly established child day care facility shall notify the municipality in writing at least 15 days prior to the initiation of such use, for the purpose of allowing the municipality to establish a record of new land use. Already existing licensed or registered facilities shall be required to notify the municipality of its operation in writing at least 60 days after the enactment of this Section. In addition, the operator of any facility must certify compliance with all aspects of this Section and all other applicable municipal requirements.
 - a. Family day care homes must provide proof of an approved DPW registration certificate at the time of initial notification to the municipality, and must show proof of the registration renewal every two years. At such time that a family day care home wishes to expand its operation to the level of a group day care home, the operator of the facility shall notify the municipality in writing at least 15 days prior to the expansion of the use, and provide proof that all requirements for licensure by DPW have been met. The operator must also satisfactorily demonstrate that the facility meets the standards for group day care homes established in subsection (3), herein.
 - b. Group day care homes and day care centers must provide proof of an approved and currently valid DPW license at the time of initial notification to the municipality, and must provide proof of annual license renewal.
 4. Inspection. The operator of a family day care home, group day care home or day care center will allow appropriate representatives of the municipality to enter the property at reasonable times to inspect such use for compliance with the requirements of this Section and all other applicable municipal and State ordinances

Conditional Uses

SECTION A401 Conditional Uses (continued)

6. Child Care Facility (continued)

5. General Safety. No portion of a child care facility shall be located within a 300 foot distance from any potentially hazardous land use or activity which could pose a threat to the safety and welfare of the children, staff and other occupants at the facility. Hazardous land uses or activities include, but shall not be limited to, gasoline service stations, heavy industrial operations, storage of flammable or high pressure underground pipelines, truck or rail loading areas, etc.
6. Hours of Outside Play. Outside play shall be limited to the hours between 8:00 a.m. and sunset, as defined by the National Weather Service.
7. Outdoor Play Area. An outdoor play area, as required by DPW regulations, shall be provided for any proposed child day care facility.
 - a. On-Site Outdoor Play Area. An on-site outdoor structured play area or areas of high outdoor activity shall be located in yard areas which provide adequate separation, safety and protection from adjoining uses, properties and roadways. Whenever possible, the on-site outdoor play area shall not be located in the front yard. The outdoor play area should be located immediately adjacent to the child care facility.
 - b. Off-Site Outdoor Play Area. In accordance with DPW standards, a child day care facility may utilize off-site play areas in lieu of or as a supplement to an on-site play area. These standards permit the use of off-site play areas which are located within a 1/2 mile distance of the facility, measured from the property line of the facility. When the use of an off-site play area is proposed, the applicant shall inform the municipality about the means of transportation that will be used to access the off-site play area. For reasons of safety, when children will be walked to an off-site play area, the route to the off-site play area shall not involve the crossing of avenues or state roads (as defined by Pottstown's Subdivision Ordinance). Pedestrian access on sidewalks or improved walkways shall be required.
8. Altering Exterior of Residential Structures. Any addition or improvement to an existing residential structure or property for purposes of child day care shall preserve its residential character. The scale, bulk, height and roof pitch of any addition and the building materials used shall be compatible with the existing structure. Any improvements to the structure shall be in compliance with all other applicable municipal regulations relating to building and/or zoning permits.
9. Traffic Impact Study. Any proposed child day care facility which will generate 100 or more new trips during the morning or evening peak hour shall be required to conduct a traffic impact study
 - a. Objective. The purpose of the traffic impact study is to provide the local Planning Commission and governing body with adequate information and data to properly assess:
 - (a) The impact of the proposed facility on the surrounding road and street network, as well as on streets and roads providing immediate access to the proposed development.

Conditional Uses

SECTION A401 Conditional Uses (continued)

6. Child Care Facility (continued)

- b. The need for capital improvements to the existing transportation network which will be needed to accommodate the additional traffic generated by the proposed facility.
 - c. Traffic and/or pedestrian safety issues which may arise from the proposed facility.
- B. Family Day Care Homes. Any proposed family day care home shall comply with the following standards in addition to the general provisions for all types of child day care facilities in subsection 1 above.
- 1. Development Standards. The following standards shall apply to all proposed family day care homes:
 - a. Drop-Off Area. One on-site drop-off space for clients shall be provided. An existing driveway or common parking lot space may be used as the drop-off area if it can be demonstrated that there is sufficient space available in the driveway that is not otherwise occupied or committed to safely accommodate a parked vehicle. If a driveway is used for the drop-off area and the proposed use fronts an arterial or major collector street, an onsite turn around area shall be provided so that vehicles can exit the site driving forward. In cases where the existing driveway cannot function as a drop-off area, an on-site drop-off space shall be provided. The drop-off area shall conform to the municipal dimensional standards for residential parking spaces.
 - 1. In cases where the drop-off area cannot be accommodate on the site, the applicant shall demonstrate that there is on-street parking or some other available parking area located within 250 feet of the property line of the proposed facility.
 - 2. The required drop-off area may be waived by the municipality if the applicant can demonstrate that the clients of the family day care home will walk to the facility, thereby eliminating the need for the additional parking space.
 - b. Fencing. If there are unsafe areas, such as open drainage ditches, wells, holes, heavy street traffic, etc., in or near to an outdoor play area, there shall be fencing to restrict children from these areas. Natural or physical barriers, such as hedge rows, walls or dense vegetation may be used in place of fencing so long as such barriers functionally restrict children from unsafe areas.
 - 2. The following standards shall apply to family day care homes:
 - a. The applicant shall demonstrate that the children in the family day care home can safely, quickly and easily vacate the premises in case of emergency.
 - b. The hours of operation shall be limited to the hours between 6:30 a.m. and 8:00 p.m.

Conditional Uses

SECTION A401 Conditional Uses (continued)

6. Child Care Facility (continued)

- c. The applicant shall demonstrate that the current lease or homeowners' covenants for the apartment contains no clause which prohibits the proposed use.
 - d. The applicant shall provide the name and address of adjacent apartment dwellers to allow the municipality to notify such individuals of the proposed use. Adjacent apartments shall be considered all apartments located within 10 feet from any wall, floor or ceiling of the proposed use.
3. Group Day Care Homes. Any proposed group day care home shall comply with the following standards in addition to the general provisions for all types of child day care facilities in subsection 1 above:
- a. Minimum Distance Between Facilities.
 1. Neighborhood Residential District
Traditional Town Neighborhood District
 - a. In order to avoid a concentration of individual group day care homes in residential neighborhoods, group day care homes shall be located a minimum of 300 feet from each other as measured from the respective property lines. This dispersion requirement shall not apply in cases where a proposed group day care home is located within 300 feet of a school facility or church which provides child care services.
 2. The above requirement may be waived if the applicant provides a petition signed by 2/3 of the residents within 300 feet of the proposed facility, stating that the residents do not object to the proposed use.
 - b. Drop-Off Area.
 1. A drop-off area shall be provided with sufficient area to allow the temporary parking of two vehicles. An existing driveway or common parking lot spaces may be used as the drop-off area if it can be demonstrated that there is sufficient space available in the driveway that is not otherwise occupied or committed to safely accommodate two parked vehicles. If a driveway is used for the drop-off area and the proposed use fronts an avenue or state road as defined in Pottstown's Subdivision Ordinance, an on-site turn around area shall be provided so that vehicles can exit the site driving forward. In cases where the existing driveway cannot function as a drop-off area, two new on-site drop-off spaces shall be provided. The drop-off area shall conform to the municipal dimensional standards for residential parking spaces.
 2. In cases where the on-site drop-off area cannot be accommodated, the applicant shall demonstrate that there is on-street parking or some other available parking area located within 250 feet of the property line of the proposed facility.

Conditional Uses

SECTION A401 Conditional Uses (continued)

6. Child Care Facility (continued)

3. Fencing of Outdoor Play Area. In order to physically contain the activity of children in the outdoor play area, a minimum four feet high fence shall be erected along the perimeter of the outdoor play area. When applicable, the fence shall be located along property lines. Fencing may be substituted by natural barriers such as hedge rows, walls, dense vegetation, etc., if it can be demonstrated that such barriers can effectively contain the activity of the children
4. Day Care Centers. Any proposed day care center shall comply with the following standards in addition to the general provisions for all types of child day care facilities in subsection (1) above.
 - a. Minimum Distance Between Facilities.
 1. Neighborhood Residential District
Traditional Town Neighborhood District
 1. In order to avoid a concentration of individual group day care homes in residential neighborhoods, group day care homes shall be located a minimum of 300 feet from each other as measured from the respective property lines. This dispersion requirement shall not apply in cases where a proposed group day care home is located within 300 feet of a school facility or church which provides child care services.
 2. The above requirement may be waived if the applicant provides a petition signed by 2/3 of the residents within 300 feet of the proposed facility, stating that the residents do not object to the proposed use.
 - b. Drop-Off Area.
 1. Number of Drop-Off Spaces. A minimum of one safe drop-off space shall be provided for each 20 children that the facility is licensed to accommodate.
 2. Drop-Off Area Location and Design.
 - a. Whenever possible, the drop-off area shall be located immediately adjacent to the facility. The drop-off area should be designed in such a way that pedestrians do not cross vehicular traffic lanes in any parking area or driveway. The drop-off area may be designed either as a part of the on-site parking area or the required drop-off spaces may be designed as a party of driveway providing direct access to the facility.

Conditional Uses

SECTION A401 Conditional Uses (continued)

6. Child Care Facility (continued)

- b. When the drop-off area is incorporated into the on-site parking area, the parking spaces nearest to the facility shall be designated as drop-off spaces. When the drop-off area is incorporated into a driveway, the drop-off spaces shall be located within a vehicle turnout area 12 feet in width exclusive of the driveway through traffic lane(s).
3. Miscellaneous
 1. Fencing of Outdoor Play Area. In order to physically contain the activity of children in the outside play area, a minimum four feet high fence shall be erected along the perimeter of the outside play area. When applicable, the fence may be located along property lines. Natural barriers such as hedge rows, dense vegetation, etc., may be substituted for fencing if it can be demonstrated that such barriers can effectively contain the activity of the children.
 2. Play Equipment Setback. Play equipment in designated onsite play areas shall be located at least 10 feet from an abutting property line.
 3. The proposed day care center shall not be detrimental to the use, development, peaceful enjoyment and economic value of the surrounding properties or the neighborhood.
 4. The proposed day care center shall be compatible with the existing character of the neighborhood.

7. Churches

No additional regulations

8. Convenience Store with Gasoline Dispensing Center

No additional regulations

9. Drive-through Windows as an Accessory Use

No additional regulations.

10. Dwelling, Attached Single Family

No additional regulations.

11. Dwelling, apartments (in building with a minimum of 2,400 square feet on the first floor)

There are no additional regulations.

Conditional Uses

SECTION A401 Conditional Uses (continued)

12. Dwelling, single family attached

There are no additional regulations.

13. Golf Course

There are no additional regulations.

14. Kennels, Commercial (With or without accompanying veterinary practice)

There are no additional regulations.

15. Mobilehome Park

In the Highway Business district subject to the following conditions:

A. The proposed development shall be designed as a unified project and shall be owned and operated as a single management and maintenance unit.

B. Each application to establish a mobilehome park shall be accompanied by a plan that shall show:

1. The location, boundaries, dimensions, and ownership of the land to be included in the area for which the application is made and the owners of adjoining properties.
2. The location and arrangement of all spaces or areas to be provided for the mobile homes and all other proposed buildings or uses.
3. The location and capacity of all areas to be used for parking, loading and unloading, streets, automobile access, or any other form of automobile or pedestrian circulation.
4. Provisions for sewage and waste disposal.
5. Sufficient information in all instances to enable the Board to review the overall layout of the proposed use and determine its compliance with the requirements of this Part or any other ordinance or regulation of the Borough relating to mobile homes.

C. Each mobile home lot or space shall be not less than 4,000 square feet in area, exclusive of any street or other tract area, and the gross density shall be not more than six mobile homes per acre. Each space shall be defined clearly.

D. No mobile home or other building shall be located closer than 20 feet from an internal street or 25 feet from another mobile home (including additions, carports, or storage sheds).

E. A planting strip of evergreen trees and/or shrubs, not less than 15 feet in width, shall be placed along any public street or mobile home boundary line. Along each boundary that abuts either a residential district or a property devoted to residential use, such planting strip shall be sufficient in height and density to constitute an effective screen.

F. All areas of mobile home tract not covered by buildings or paving shall be landscaped appropriately in accordance with an approved landscaping plan. Natural features such as trees and streams shall be preserved wherever practicable.

Conditional Uses

SECTION A401 Conditional Uses (continued)

15. Mobilehome Park (continued)

G. Each mobile home shall be provided with a foundation designed and constructed in accordance with the requirements of the Borough.

H. All parking bays or areas, loading and unloading areas, streets, and other facilities for circulation shall be arranged for proper and safe vehicular and pedestrian circulation within the tract and shall be paved with an acceptable hard surface.

I. In order to encourage an attractive building arrangement, variations in the placement and orientation of mobile homes shall be encouraged.

J. The proposed development shall be served by public sewer and water facilities.

K. Provision shall be made for the recreational requirements of residents thereof. Recreational areas shall be of such dimensions and in such locations that they are suitable for the intended purpose.

L. Adequate provision shall be made for the disposal of refuse, subject to approval by Borough health and sanitation officials.

M. All areas shall be graded and drained to the satisfaction of the Borough Engineer to the extent necessary to prevent erosion, dust, and the flow of excessive water across streets or onto adjacent properties. Arrangements satisfactory to the Borough shall be made for the lighting of internal streets and public areas and for safety and fire protection.

N. No business enterprise, other than an office for the leasing of mobilehome lots or spaces, shall be conducted upon land utilized as a mobilehome park, unless authorized specifically by Borough Council and in conjunction with a service, management, or recreational purpose clearly accessory to the mobilepark and for the benefit of residents thereof.

16. Neighborhood Automobile Service Station

There are no additional regulations.

17. Parking Garage

There are no additional regulations.

18. Parking Lot

There are no additional regulations.

19. Parks

- A. Applicant shall demonstrate that the scale, location and intended use of the park will not adversely affect the surrounding neighborhood.
- B. Hours of operation shall be limited to 7 a.m. to 8 p.m. unless extended by Borough Council.

Conditional Uses

SECTION A401 Conditional Uses (continued)

- C. The Borough may require a traffic study and a parking study to ensure the proposed development will not adversely impact pedestrian, bicycle, and automobile traffic in the neighborhood within 1,000 feet of the property. Any required parking lot shall meet the standards in Article 6.
- D. All lighting shall be shielded and reflected away from adjacent properties and streets to prevent glare on adjoining properties.
- E. The applicant shall submit a litter control plan as part of the application.

20. Recreational Rental Facilities

- A. Although there is no minimum lot size, the site shall be sufficient to accommodate any proposed facilities.
- B. The site shall be developed so as to preserve its natural character, particularly preserving natural vegetation.
- C. Use of the site shall conform to the floodplain overlay district, Section A339.

21. Restaurants (Park District)

- A. The size, design, hours of operation, and parking facilities of any restaurant within the Park District shall be determined by Borough Council to compliment the most enjoyable, efficient, and environmentally sound use of the Park District.

22. School

There are no additional regulations

23. Social Club

There are no additional regulations

24. Solid Waste Facility

- A. Operational parts of said facility shall be located at least 500 feet away from any residential or business zoning district and from the Schuylkill River or Manatawny Creek.
- B. The capacity of the facility shall be limited to 40 tons received per day.
- C. All storage, loading, unloading, processing, reduction, transfer, recycling, or conversion to energy of solid waste shall be conducted within enclosed structures.
- D. The operational parts of buildings and enclosed structures shall have a minimum of openings to the exterior. All entries shall be provided with doors. Doors used for the passage of solid waste hauling vehicles shall be open only at times required for such passage.
- E. All operational parts of the solid waste facility not enclosed in buildings shall be fenced with a fence at least six feet high. Fence fabric shall have openings not larger than one and one-half inch by one and one-half inch (1 1/2" x 1 1/2") mesh.

Conditional Uses

SECTION A401 Conditional Uses (continued)

24. Solid Waste Facility

F. All operational parts of the solid waste facility shall be graded in such a manner as to prevent surface drainage from flowing to non-operational parts of the facility and from flowing to any adjacent property or street and all outdoor operational parts of the solid waste facility shall be surfaced with an impervious, dust free surface capable of being washed down. The entire site shall be kept clean and free from debris, litter, residual liquids, ash, or dust at all times.

G. No operational parts of the solid waste facility, including outdoor areas, shall be located within a designated floodway.

H. No operational parts, including outdoor areas, located within a floodplain, shall be less than one and one-fifth (1 1/5') feet above the floodplain.

I. All solid waste facilities shall provide adequate space and means for cleaning, washing, and rinsing of solid waste hauling vehicles.

J. All solid waste hauling vehicles must be cleaned, washed, and rinsed before leaving the facility. Tires, wheels, and undercarriages of vehicles shall be kept free of solid waste and residue liquids

K. All development plans shall be reviewed for impact upon the Borough's storm drainage system and sanitary treatment facilities. The Borough may require prior treatment of liquid wastes prior to any disposal into drainage or sanitary systems.

L. All non-operational parts of solid waste facilities shall be subject to the regulations of the HM zoning district

M. The facility shall be operated by a municipal entity.

25. Theater or Other Indoor Entertainment (excluding Adult Entertainment)

A. The application shall submit such evidence as required by Borough Council to assure that nearby residential areas will be protected from noise and other potentially adverse impacts of the proposed facility.

B. The Borough shall require a traffic study and a parking study to ensure the proposed development will not adversely impact pedestrian, bicycle, and automobile traffic in the neighborhood within 1,000 feet of the property.

C. Hours of operation shall be limited to 9 a.m. to 12 p.m. unless extended by Borough Council.

26. Utility Company Operational Facility

There are no additional regulations.

Accessory Uses

SECTION A402 Accessory Uses

There are no additional regulations.

General Regulations

SECTION A500

There are no additional regulations.

SECTION A501

There are no additional regulations.

SECTION A502 Performance Standards

All uses allowed in the Conservation and Gateway Districts shall be managed as follows:

1. **Air Pollution Control.** All uses shall comply with the standards of the Air Pollution Control Act, 35 P.S. 4001-4015 as amended, and the following standards:
 - A. Smoke. Visible air contaminants shall not be emitted in such a manner that the opacity of the emissions is equal to or greater than 10 percent for a period or periods aggregating more than 3 minutes in any one hour; or equal to or greater than 30 percent at any time, and shall comply with PA Code Title 25, Chapter 127.A, or its most recent update.
 1. Particulate, Vaporous, and Gaseous Emissions.
 - A. No emission shall be made which can cause any damage to health, to animals or vegetation or other forms of property, or which can cause any excessive soiling at any point.
 - B. No emission of particulate matter shall exceed 0.0115 grams per dry standard cubic foot, corrected to 7 percent oxygen. Provisions must be made to reduce dew point cycling and resulting damage to particulate control devices.
 - C. For measurement of the amount of particles in gases resulting from combustion, standards correction shall be applied to a stack temperature of 500 degrees Fahrenheit and 50 percent excess air.
 - B. Hazardous Air Emission. All emissions shall comply with National Emissions Standards for Hazardous Air Pollutants promulgated by the United States Environmental Protection Agency under the Federal Clean Air Act (42 U.S.C.S., Section 7412) as promulgated in 40 CFR Part 61, or its most recent update.
2. **Noise Control.** The proposed development shall not increase noise levels to the extent that abutting or nearby properties are adversely affected. In order to comply with this, the development must meet the following requirements.
 - A. The maximum permissible sound level of any continuous, regular, frequent, or intermittent source of sound produced by any activity shall be limited according to the time of day and land use which abuts it as listed below.

Abutting Use	Sound Level Limits dBA	
	7 a.m. - 7 p.m.	7 p.m. - 7 a.m.
Residential	55	45
Commercial	65	55
Industrial	70	60
All other uses	55	45

General Regulations

SECTION A 502 Performance Standards (continued)

2. Noise Control (continued)

- B. Where abutting property is undeveloped, the sound level shall be equal to or less than the most restrictive other abutting use. Where there are no uses on abutting properties, the sound level at the property line shall be equal to or less than the least stringent use allowed by zoning.
 - 1. Sound levels shall be measured at least 4 feet above the ground at the property line of the development. Sound levels shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the latest version of American National Standards Institute (ANSI S1.4) “American Standard Specification for General Purpose Sound Level Meters” and shall have been calibrated at a recognized laboratory within the past year.

3. Odor Control.

- A. No person shall cause, suffer, or permit the emission into the outdoor atmosphere of any malodorous air contaminants from any source in such a manner that the malodors are detectable outside the property of the person where the source is being generated.
- B. Any process which causes an odor emission shall be operated in a manner such that escaping odors are eliminated. Backup odor reduction equipment shall be maintained to support primary odor reduction equipment.

4. **Glare or Heat Control.** Any operation producing intense glare or heat shall be performed within an enclosed building as to be completely imperceptible from any point beyond the lot lines.

5. **Vibration Control.** No vibration, which is discernable to the human sense of feeling, shall be perceptible without instruments at any point beyond the lot line.

6. **Control of Radioactivity or Electrical Disturbance.** There shall be no activities, which emit dangerous or harmful radioactivity. There shall be no electrical disturbance (except from domestic household appliances) adversely affecting the operation of any equipment located beyond the property boundary of the creator of such disturbance.

7. **Fire and Explosive Hazards.** Flammable and explosive materials shall be stored, used, and transported in accordance with the applicable state and federal regulations regarding such materials and associated storage vessels.

8. **Outdoor Storage.** There shall be no activities which require the outside storage of materials or finished products.

9. Waste Disposal.

- A. No wastes shall be deposited upon a lot in such form or manner that they may be transferred off the lot by natural causes or forces.
- B. Whenever possible, outdoor refuse areas shall be setback 50 feet from abutting properties that have residential or institutional uses or zoning and 20 feet from all other abutting properties.
- C. No use shall be conducted in such a way as to discharge any treated or untreated sewage except as shall be approved by the Department of Environmental Protection and/or County Health Department, as appropriate; nor shall industrial wastes be stored, discharged, incinerated, or otherwise disposed of except in conformance with the applicable state and federal regulations regarding solid and hazardous wastes.

Parking

There are no additional regulations.

There are no additional regulations

Non-conformities

There are no additional regulations.

SECTION A900 Zoning Hearing Board and Other Administrative Proceedings.

1. The Pottstown Zoning Hearing Board hereby is created. The Board shall consist of three Borough residents appointed by resolution of Council. Their terms of office shall be three years each and shall be so fixed that the term of office of one member shall expire each year. The Board shall notify promptly Council of any vacancies that occur. Appointments to fill vacancies shall be for only the unexpired portion of the term. Members of the Board shall hold no other office in the Borough. At no time shall there be two members of the Board from the same profession or business. The Zoning Officer shall serve as secretary of the Board.

2. Borough Council may appoint, by resolution, at least one but no more than three Borough residents to serve as alternate members of the Board. The term of office of an alternate member shall be three years. When seated pursuant to the provisions of this Article, an alternate shall be entitled to participate in all proceedings and discussions of the Board to the same and full extent as provided by law for Board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth by the Pennsylvania Municipalities Planning Code, as amended (53 P.S. 910101 et seq.), and as may otherwise be provided by law. Alternate members shall hold no other office in the Borough. Any alternate may participate in any proceeding or discussion of the Board, but shall not be entitled to vote as a member of the Board nor be compensated pursuant to this Part unless designated as a voting alternate member.

SECTION A900.1 Jurisdiction

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

A. Substantive challenges to the validity of any land use ordinance, except requests for Curative Amendments, said requests being taken to Council pursuant to Section A908 1.B.

B. Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance.

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

D. Appeals from a determination by the Zoning Officer.

E. Application for variances from the terms of this Article or such provisions within any other land use ordinance, pursuant to A906, or to the Floodplain and Airport zoning district regulations of this Ordinance.

F. Application for special exceptions under this Ordinance or such provisions within any other land use ordinance or to the Floodplain and Airport zoning district regulations of this Article.

2. Borough Council shall have exclusive jurisdiction to hear and render final adjudications in applications for curative amendments, or applications governed by the Pottstown Subdivision and Land Development Ordinance, including those regarding sedimentation and erosion control and storm management controls.

Zoning Hearing Board

SECTION A901 Organization

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 meeting and the taking of any action, a quorum shall not be less than a majority of all the members of the Board, but, where any members are disqualified to act in a particular matter, the remaining members 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 further action by the Board as provided in Section A905. The Board may make, alter, and rescind rules and forms for its procedures consistent with Borough ordinances and Commonwealth laws. The Board shall keep full public records of its business and shall submit a report of its activities to Council at least once a year.

SECTION A901.1 Removal of Members

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

SECTION A901.2 Expenditures for Services

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

SECTION A902 Applications

Every application for a special exception, or variance, or for an interpretation of a ruling of the Zoning Officer, shall be made on a form prepared by the Board providing space showing the ownership of the property involved, the dimensions of the property, all supporting documentation required by this Article, and the reasons for the application. Such application shall be filed with the Zoning Officer who shall forward the application and all relevant information to the Board. Such application shall be subject to a fee fixed by resolution of Council.

SECTION A903 Time Limitation

1. 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 Borough 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 by the Zoning Officer on a challenge to the validity of an ordinance or map shall preclude an appeal from a final approval except in the case where the final submission deviates substantially from the approved tentative approval.
2. All appeals from determinations adverse to the landowners shall be filed by the landowner within 30 days after notice of the determination is issued.
3. If, after a permit has been authorized by the Board, such permit is not applied for within 12 months or if the application fails to comply with the conditions of such authorized permit within 12 months from the date of authorization thereof (unless contrary time limits are specified herein), then such authorization will be null and void.

Zoning Hearing Board

SECTION A904 Hearings -- Notification

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

A. By advertising a legal notice published once each week for two successive weeks in a newspaper of general circulation. Such notice shall state the location of the building or lot, the general nature of the question involved and the time and place of the hearing. The first publication shall not be more than thirty days, and the second publication shall not be less than seven days from the date of the hearing.

B. By mailing at least one week in advance of the hearing, notice to the owner and, at the discretion of the Zoning Officer, to the occupant of every property within 300 feet of the lot in question; provided, that failure to give such notice to these, other than the owner, shall not invalidate any action taken by the Board.

C. By giving notice to the appellant, the Zoning Officer, Council, Planning Commission, and to the governing body of any municipality located within 500 feet of the property in question. Such notice shall be given in writing at least one week in advance of the hearing.

D. By mailing at least one week in advance of the hearing, notice to every interested resident, or association of residents, of the Borough who has registered or this purpose with the Board.

E. By posting notice conspicuously on the affected tract of land at least one week in advance of the hearing.

SECTION A904.1 Hearings -- Notification

1. Council may prescribe, by resolution, fees as regard hearings before the Board. Fees for said hearings may include compensation for the secretary and members of the Board, notice and advertising costs, and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Board, expenses for engineering, architectural, or other technical consultants or expert witness costs.

2. The hearings 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.

SECTION A905 Hearings -- Procedures

1. 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. If, by reason of absence or disqualification of a member, a quorum is not attained, the Chairman of the Board shall designate as many duly appointed 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 subsection shall be made on a case by case basis in rotation according to declining seniority among all alternates. The decision or, where no decision is called for, the findings, shall be made by the Board, but the applicant or appellant, as the case may be, as well as the Borough, may waive the decision or findings by the Board and accept the decision or findings of the hearing officer, if one is appointed pursuant to A901 of this Article, as final.

2. A decision or findings by the Board shall be by majority of the members. A tie vote shall be deemed a denial of appeal.

Zoning Hearing Board

SECTION A905 Hearings – Procedures (continued)

3. The parties to the hearings 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 the power to require that all persons who wish be considered parties enter appearances in writing on forms provided by the Board for that purpose.

4. The chairman or acting chairman of the Board or the hearing officer presiding shall have the power to administer oaths and issue subpoenas and to compel the attendance of witnesses and the production of relevant documents and papers including witnesses and documents requested by the parties.

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

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

7. 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. The Board or the hearing officer, as the case may be, 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 communications, 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 with any party or his representatives unless all parties are given an opportunity to be present.

9. 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 45 days after the last hearing before the Board or hearing officer.

Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefore. Conclusions based on any provisions of this or any ordinance, rule, or regulation 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 within 45 days after the last hearing 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 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 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.

Zoning Hearing Board

SECTION A905 Hearings – Procedures (continued)

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 10 days from the last day it could have met to render a decision in the same manner as provided in subsection (1) of this Section. If the Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

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

SECTION A906 Zoning Hearing Board's Functions; Variances

1. The Board shall hear requests for variances where it is alleged that the provisions of this Article inflict unnecessary hardship upon the applicant. The Board may grant a variance, provided all of the following findings are made where relevant in a given case:

- A. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions created in the neighborhood or district in which the property is located.
- B. That, because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Article and that the authorization of a variance is necessary, therefore, to enable the reasonable use of the property.
- C. That such hardship has not been created by the appellant or his predecessor in interest.
- D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor impair substantially or permanently the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- E. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

2. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of the Pennsylvania Municipalities Planning Code and this Article.

SECTION A906.1 Zoning Hearing Board's Functions; Special Exceptions

The Board shall hear and decide requests for special exceptions in accordance with the standards and criteria set forth in this Ordinance. 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 the Pennsylvania Municipalities Planning Code and this Article.

Zoning Hearing Board

SECTION A907 Procedure to Obtain Preliminary Opinion

In order not to delay unreasonably the time when a landowner may secure assurance that the ordinance or map under which he proposes to build is free from challenge, and recognizing that the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the landowner may advance the date from which time any challenge to the ordinance or map is made by the following procedure:

A. The landowner may submit plans and other materials describing his proposed use or development to the Zoning Officer for a preliminary opinion as to their compliance with the applicable ordinances and maps. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative, or final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed use or development and a sufficient basis for a preliminary opinion as to its compliance.

B. If the Zoning Officer's preliminary opinion is that the use or development complies with the ordinance or map, notice thereof shall be published once each week for two successive weeks in a newspaper of general circulation in the Borough. Such notice shall include a general description of the proposed use or development and its location, by some readily-identifiable directive, and the place and times where the plans and other materials may be examined by the public. The favorable preliminary approval and the time specified therein for commencing a proceeding with the Board shall run from the time when the second notice thereof has been published.

SECTION A908. Validity of Ordinance; Substantive Questions

1. A landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof that prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either:

A. To the Zoning Hearing Board under Section A900.1.A.

B. To Borough Council under Section A900.1.2, together with a curative amendment under Section A1201.

2. Persons aggrieved by a use or development permitted on the land of another by an ordinance or map, or any provisions thereof, who desires to challenge its validity on substantive grounds shall first submit their challenge to the Board for a decision thereon under Section A906.

3. The submission referred to in subsections (1) and (2) above shall be governed by the following:

A. In challenges before the Board, the challenging party shall make a written request to the Board that it hold a hearing on its challenge. The request shall contain the reasons for the challenge. Where the landowner desires to challenge the validity of such ordinance and elects to proceed by curative amendment under Section A1201, his application to Borough Council shall contain, in addition to the requirements of the written request hereof, the plans and explanatory materials the use or development proposed by the landowner in lieu of the use or development permitted by the challenged ordinance or map. Such plans or other materials shall not be required to meet the standards prescribed for preliminary, tentative, or final approval or for the issuance of a permit, so long as they provide reasonable notice of the proposed use or development and a sufficient basis for evaluating the challenged ordinance or map in light thereof. Nothing contained herein shall preclude the landowner from seeking first a final approval before submitting his challenge.

B. If the submission is made by the landowner to Borough Council under subsection 1.B. above, the request shall be accompanied also by an amendment or amendments to the ordinance proposed by the landowner to cure the alleged defects therein.

SECTION A908 Validity of Ordinance; Substantive Questions (continued)

C. If the submission is made to Borough Council, the Borough Solicitor shall represent and advise it at the hearing or hearings referred to in A900.1.2.

D. Borough Council may retain an independent attorney to present the defense of the challenged ordinance or map on its behalf and to present witnesses on its behalf.

E. Based upon the testimony presented at the hearing or hearings, Borough Council or the Board, as the case may be, shall determine whether the challenged ordinance or map is defective, as alleged by the landowner. If a challenge heard by Borough Council is found to have merit, Borough Council shall proceed as provided in Section A1202. If a challenge heard by the Board is found to have merit, the decision of the Board shall include recommended amendments to the challenged ordinance that will cure the defects found. In reaching its decision, the Board shall consider the amendments, plans, and explanatory material submitted by the landowner and shall consider also:

1. The impact of the proposal upon roads, sewer facilities, water supplies, schools, and other public 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 unlawfully excluded otherwise by the challenged provisions of the ordinance or map.
3. The suitability of the site for the intensity of use proposed as regards to the site's soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources, and other natural features.
4. The impact of the proposed use -on the sites soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development, and any adverse environmental impacts
5. The impact of the proposal on the preservation of agriculture and other land uses that are essential to public health and welfare.

F. Borough Council or the Board, as the case may be, shall render its decision within 45 days after the conclusion of the last hearing.

G. If Borough Council or the Board, as the case may be, fails to act upon the landowner's request within the time limits referred to in (F) immediately above, a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.

4. The Board or Borough Council, as the case may be, shall commence its hearings within 60 days after the request is filed unless the landowner requests or consents to an extension of time.

5. Public notice of the hearing shall include notice that the validity of the ordinance or map is in question and shall give the place where and the times when a copy of the request, including any plans, explanatory material, or proposed amendments may be examined by the public.

SECTION A908 Validity of Ordinance; Substantive Questions (continued)

6. The challenge shall be deemed denied when:
- A. The Board or Borough Council, as the case may be, fails to commence the hearing within the time limits set forth in (4) immediately above.
 - B. Borough Council notifies the landowner that it will not adopt the curative amendment.
 - C. Borough Council adopts another curative amendment that is unacceptable to the landowner.
 - D. The Board or Borough Council, as the case may be, fails to act on the request 45 days after the close of the last hearing on the request, unless the time is extended by mutual consent by the landowner and the said Board or Borough Council.
7. Where a curative amendment proposal is approved by the grant of a curative amendment application by Borough Council pursuant to Section A900.1.2. or a validity challenge is sustained by the Board pursuant to Section A900.1 or the court acts finally on appeal from denial of a curative amendment proposal or a validity challenge, and the proposal or challenge so approved requires a further application for subdivision or land development, the developer shall have two years from the date of such approval to file an application for preliminary or tentative approval pursuant to the Pottstown Subdivision and Land Development Ordinance.

Within the two year period, no subsequent change or amendments, in the zoning, subdivision, or other governing ordinance or plan shall be applied in any manner that affects adversely the rights of the applicant as granted in the curative amendment or the sustained validity challenge. Upon the filing of the preliminary or tentative plan, the provisions of the Pottstown Subdivision and Land Development Ordinance pertaining to approval of plats shall apply.

Where the proposal appended to the curative amendment application or the validity challenges is approved but does not require further application under any subdivision or land development ordinances, the developer shall have one year within which to file for a building permit. Within the one year period, no subsequent change or amendment in the zoning, subdivision, or other governing ordinance or plan shall be applied in any manner that affects adversely the rights of the applicant as granted in the curative amendment or the sustained validity challenges. During these protected periods, the court shall retain or assume jurisdiction for the purpose of awarding such supplemental relief as may be necessary.

SECTION A909 Applicability of Judicial Remedies

Nothing contained herein shall be construed to deny the appellant the right to proceed directly to court where appropriate, pursuant to the Pennsylvania Rules of Civil Procedure No 1091 (relating to action in mandamus).

SECTION A910 Parties Appellant Before the Board

Appeals to the Board, as permitted above, may be filed with the Board in writing by the landowner affected, any officer or agency of the Borough, or any person aggrieved, except in the cases of appeals for variances or special exceptions, in which cases appeals may be filed by only the landowner or any tenant with the permission of such landowner.

Appeals

There are no additional regulations

Enforcement

SECTION A1100 Enforcement by Zoning Officer

1. The position of Zoning Officer is created hereby. The Zoning Officer, who shall hold no elective office in the Borough, shall be appointed by Council, and he may be removed at the will of Council. Council may designate an employee as his deputy who shall exercise all the powers of the Zoning Officer during his absence or temporary disability.

2. The provisions of this Article shall be administered and enforced by the Zoning Officer in accordance with its literal terms. In no case shall a permit be granted for the construction, or use or change of use that does not conform to this Article. The Zoning Officer hereby is authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his employment. It shall be the duty of all code enforcement officials of the Borough to cooperate in the enforcement of this Article and to report to the Zoning Officer any violation that may come to their attention.

3. All appeals from decisions of the Zoning Officer shall be taken in the manner set forth in this Article.

SECTION A1100.1 Relief from Personal Responsibility

The Zoning Officer, or any employee or other person charged with enforcing or otherwise carrying out the provisions of this Article, while acting for the Borough, shall not thereby render himself personally liable, and he is relieved hereby from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties. Any suit instituted against any such person because of an act performed by him in the lawful discharge of his duties shall be defended by legal representatives of the Borough. In no case shall any such person be liable for costs in any action or suit or proceeding that may be instituted in pursuance of the provisions of this Article when he performs his duties in good faith and without malice.

SECTION A1101 Right of Entry

In the discharge of his duties, the Zoning Officer shall have the authority to enter, at any reasonable hour, any structure, building, premises, or land in the Borough to enforce the provisions of this Article.

SECTION A1102 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 under this Article, Borough Council, the Zoning Officer, or, with the approval of Borough Council, another official of the Borough, or any aggrieved owner or tenant of real property who shows that his property or person will be affected substantially 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 the action shall be given to Borough Council and the Zoning Officer at least 30 days prior to the time the action is begun by serving them a copy of the complaint. No action may be maintained until such notice been given.

SECTION A1103 Enforcement Notice

1. If it appears to the Zoning Officer that a violation of this Article has occurred, he shall initiate enforcement proceedings by sending an enforcement notice to the owner of record of the parcel on which 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. Said notice shall be by certified letter or by delivery in person. If notice is given in person, the person serving the notice shall obtain a notarized affidavit stating such service was made at a place and time shown on the affidavit.

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

A. The name of the owner of record and any other person against whom the Zoning Officer intends to take action and the location of the property in violation.

B. The specific violation with a description of the requirements that have not been met, citing, in each instance, the applicable provisions of this Article.

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

D. That the recipient of the notice has the right to appeal to the Board within a prescribed period in accordance with the procedures set forth in this Article.

E. That failure to comply with the notice within time specified, unless extended by appeal to the Board, constitute a violation, with possible sanctions specified clearly.

SECTION A1104 Jurisdiction

District justices shall have initial jurisdiction over proceedings brought under Section A1105.

SECTION A1105 Enforcement Remedies

1. Any person, partnership, or corporation who or that has violated or permitted the violation of the provisions of this Article shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough (or by the Zoning Officer as authorized by this Article, or, with the approval of Borough Council, another official of the Borough), pay a judgment of not more than \$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 appeals timely the judgment, the Borough, may enforce the judgment pursuant to the applicable rules of civil procedure. Each day a violation continues shall constitute a separate violation, unless the district justice determining there has been a violation determines further that there was a good-faith basis for the person, partnership, or corporation violating this Article 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 a violation continues shall constitute a separate violation. All judgments, costs, and reasonable attorney fees collected for the violation of this Article shall be paid over to the Borough.

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 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 A1106 Finances and Expenditures

1. Borough Council may appropriate money to finance the preparation of zoning ordinances and shall appropriate money for administration, for enforcement, and for actions to support or oppose, upon appeal to the courts, decisions of the Zoning Hearing Board. Borough Council, also, may set fees, by resolution or by ordinance, for applications or appeals, as such power is granted herein, or is granted by enabling legislation, or by any other law or regulation, expressed or implied.

2. Borough Council shall make provision in its budget and appropriate money for the operation of the Zoning Hearing Board.

3. The Board may employ or contract for and fix the compensation of legal counsel, as the need arises. The legal counsel shall be an attorney other than the Borough Solicitor. The Board also may employ or contract for and fix compensation of experts and other staff and may contract for services as it shall deem necessary. The compensation of legal counsel, experts, and staff, and the sums expended for services shall not exceed the amount appropriated by Borough Council for this use. For these purposes, Borough Council may accept gifts and grants of money and services from private sources and from County, Commonwealth, and Federal governments.

4. Borough Council may prescribe reasonable fees with respect to the administrator of this Article and with respect to hearings before the Zoning Hearing Board. Fees for these hearings may include compensation for the secretary and members of the Board, notice and advertising costs, and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Board, expenses for engineering, architectural or other technical consultants or expert witness costs.

SECTION A1107 Exemptions

These sections shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. It shall be the responsibility of said Commission to ensure that both the corporation and the Borough have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties, and otherwise exercise the rights of a party to the proceedings.

Amendments

SECTION A1200 Enactment of Zoning Ordinance Amendments

Amendments may be prepared by or for the Planning Commission or by others. If an amendment to this Article is so substantial so as to warrant reenactment of the ordinance, as amended, still it shall be considered an amendment to the present ordinance and the procedures thereof shall be the same as those stipulated in the Pennsylvania Municipalities Planning Code and herein for the enactment of Zoning ordinance amendments.

1. Amendments Prepared by or for the Planning Commission.

A. In preparing an amendment proposed for this Article, the Planning Commission shall hold at least one public meeting pursuant to public notice and may hold additional public meetings upon such notice as it shall determine it to be advisable.

B. Upon completion of its work, the Planning Commission shall present to Borough Council the amendment proposed, together with recommendations and explanatory materials.

C. Before voting on the enactment of the amendment, Borough Council shall hold a public hearing thereon, pursuant to public notice and, if the amendment involves a zoning map change, shall give additional notice as stipulated in (D) immediately below.

D. If the amendment proposed involves a zoning map change, notice of said public hearing shall be posted conspicuously by the Borough at points deemed sufficient by the Borough along the perimeter of the tract or tracts affected, or, if the amendment involves wholesale map changes, shall post said notice conspicuously throughout the Borough as Borough Council deems necessary. Said notices shall be posted at least one week prior to the date of the hearing.

E. At least 30 days prior to the hearing by Borough Council, it shall submit the amendment to the Montgomery County Planning Commission for recommendations.

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

G. The vote by Borough Council on enactment, of the ordinance shall be within 90 days after the last public hearing.

H. Within 30 days after enactment, a copy of the amendment to this Article shall be forwarded to the Montgomery County Planning Commission.

Amendments

SECTION A1200 Enactment of Zoning Ordinance Amendments (continued)

2. Amendments Not Prepared by or for the Planning Commission. Amendments not prepared by the Planning Commission shall be subject to the provisions of subsection (1) immediately above with the following differences:

A. The person preparing the amendment shall submit the same to Borough Council. In the event the amendment shall require the rezoning of land, the person shall submit an application fee which shall be set by Borough Council from time to time by resolution.

B. At least 30 days prior to the hearing on the amendment by Borough Council, it shall submit such amendment to both the Montgomery County and Pottstown Borough Planning Commissions for recommendations thereon.

C. Within the 30 day review period accorded, the Borough Planning Commission shall hold at least one public meeting pursuant to public notice.

SECTION A1201 Procedure for Landowner Curative Amendments

1. A landowner who desires to challenge on substantive grounds the validity of this Article and map or any provision thereof, that prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to Borough Council with a written request that his challenge and proposed amendment be heard and decided as provided in Section A900.1. Borough Council shall commence a hearing thereon within 60 days of the request as provided in Section A900.1. The curative amendment and challenge shall be referred to the Borough Planning Commission as provided in Section A1200 and notice of the hearing thereon shall be given as provided in Section A1200 and in Section A900.1 and A904.

2. The hearing shall be conducted in accordance with Section A904 and A904.1, and all references therein to the Zoning Hearing Board shall, for purposes of this Section, be references to Borough Council. If Borough Council does not accept a landowner's curative amendment, brought in accordance with this subsection, and a court subsequently rules that the challenge has merit, the court's decision shall not result in a declaration of invalidity for the entire Article and map, but only for those provisions that relate specifically to the landowner's curative amendment and challenge.

3. If Borough Council determines that a validity challenge has merit, it may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment that will cure the challenged defects. Borough Council shall consider the curative amendments, plans, and explanatory material submitted by the landowner and shall consider also those concerns enumerated in Section A908.

SECTION A1202 Procedures for Municipal Curative Amendments

If Borough Council determines this Article or portions thereof substantively invalid, it shall take the following steps:

1. Borough Council shall declare, by formal action, this Article or portions thereof substantively invalid and propose to prepare a curative amendment to overcome such invalidity. Within 30 days following such declaration and proposal, Borough Council shall:
 - A. By resolution, make specific findings setting forth the declared invalidity of this Article, which may include:
 1. References to specific uses that are either not permitted or not permitted in sufficient quantity;
 2. Reference to a class of use or uses that require revision; or
 3. Reference to the entire ordinance that requires revisions.
 - B. Begin to prepare and consider a curative amendment to the ordinance to correct the declared invalidity.
2. Within 180 days from the date of the declaration and proposal, Borough Council shall enact a curative amendment to validate, or reaffirm the validity of, this Article pursuant to the provisions required by Section A1200 to cure the declared invalidity of this Article.
3. Upon the initiation of the procedures, as set forth in (1) above, Borough Council shall not be required to entertain or consider any landowner's curative amendment filed under Section A1202 nor shall the Zoning Hearing Board be required to give a report requested under Section A900.1 or A908 subsequent to the declaration and proposal based upon the grounds identical or substantially similar to those specified in the resolution required in (1) above. Upon completion of the procedures set forth in (1) and (2) above, no rights to a cure pursuant to the provisions of Section A1202 and A908 shall, from the date of the declaration and proposal, accrue to any landowner on basis of the substantive invalidity of this unamended ordinance for which there has been a curative amendment pursuant to this Section.
4. Borough Council, having utilized the procedures as set forth in (1) and (2) above may not again utilize said procedure for a 36 month period following the date of the enactment of a curative amendment, or reaffirmation of the validity of this Part, pursuant to (2); provided, however, if after the date of declaration and proposal there is a substantially new duty or obligation imposed upon the Borough by virtue of a change in statute or by virtue of a Pennsylvania Appellate Court decision, the Borough may utilize the provisions of this Section to prepare a curative amendment to this Part to fulfill said duty or obligation.

Amendments

SECTION A1203 Publication, Advertisement and Availability of Ordinances

1. Proposed zoning ordinances and amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this Section and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the Borough where copies of the proposed ordinance or amendment may be examined without charge or obtained for a charge not greater than the cost thereof. Borough Council shall publish the proposed ordinance or amendment in one newspaper of general circulation in the Borough not more than 60 days nor less than seven 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 Borough Solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:

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

B. An attested copy of the proposed ordinance shall be filed in the Montgomery 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.

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

Severability

There are no additional regulations