

CHAPTER 27

ZONING

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PART 1

SHORT TITLE, PURPOSE AND COMMUNITY OBJECTIVES

§27-101. Short Title.

This Chapter shall be known and may be cited as the "Biglerville Borough Zoning Ordinance."

(Ord. 2-89, 4/4/1989, §100)

§27-102. Purpose.

This Chapter is enacted to:

- A. Promote, protect and facilitate the public health, safety and general welfare; coordinated and practical community development; the provision of adequate light and air, vehicle parking and loading areas, transportation, sewer and water facilities, schools, public grounds, and other public concerns.
- B. To prevent overcrowding of land, blight, danger and congestion in travel and transportation; loss of life, health or property from fire, flood, panic or other dangers.

(Ord. 2-89, 4/4/1989, §101)

§27-103. Community Objectives.

The following community objectives form the basis of this Chapter.

- A. To guide the future development of the Borough in a manner which represents the most reasonable use of the land.
- B. To protect the character and social and economic stability of the Borough.
- C. To provide for an adequate supply of safe, decent housing for all residents of the Borough, and to prevent future blight.
- D. To provide for residential, commercial, industrial and recreational use in a manner beneficial to the Borough and its citizens.

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- E. To eliminate conflicting land uses harmful to the residents or the proper functioning of the Borough.

(Ord. 2-89, 4/4/1989, §102)

PART 2

RULES OF INTERPRETATION AND DEFINITION OF TERMS

§27-201. Rules of Interpretation.

Unless indicated otherwise, the terms or words used herein shall have the meaning given in §27-202 of this Chapter and shall be interpreted as follows:

- A. Words in the present tense include the future tense.
- B. Words in the singular include the plural.
- C. The words "used" and "occupied" include the intent of the design.
- D. The word "shall" indicates a mandatory requirement. The word "may" indicates an optional requirement.
- E. The male gender includes the female gender.
- F. The word "lot" includes the words "plot" or "parcel."
- G. The word "person" includes an individual, a partnership, a corporation, an incorporated association or any other similar entity.

(Ord. 2-89, 4/4/1989, §200)

§27-202. Definition of Terms.

ABANDONMENT - the relinquishment of property, or a cessation of the use of the property, by the landowner with the intention neither of transferring rights to the property to another landowner nor of resuming use of the property.

ABUTTING - having a common border with, physically touching, adjoining or contiguous, or being separated by a common property line, right-of-way, alley or easement.

ACCESSORY APARTMENT - a second dwelling unit either in or added to an existing single family detached dwelling, or in a separate accessory building on the same lot as the principal building, for use as a complete, independent dwelling unit with provisions for cooking, eating, sanitation and sleeping. Such a dwelling unit is an accessory use to the principal dwelling use.

ACCESSORY USE - a use incidental and subordinate to the principal use, located on the same lot with such principal use.

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ALLEY - a minor right-of-way, whether private or ordained, whose primary purpose is to provide access to the rear of properties.

ALTERATION - a change, rearrangement, renovation or enlargement in the structural parts or exterior of a building or other structure.

AMUSEMENT ARCADE - a building or part of a building where coin-operated amusement machines or devices are available to the public. This includes pinball machines, video games and similar gaming or amusement devices.

APPLICANT - a landowner or developer, as hereinafter defined, who has filed an application for development including his heirs, successors, or assigns.

APPLICATION FOR DEVELOPMENT - every application, whether preliminary, tentative or final, required to be filled and approved prior to start of construction or development including, but not limited to, an application for a building permit, for the approval of a subdivision plat or plan or for the approval of a development plan.

APPOINTING AUTHORITY - the Council in Biglerville Borough, Adams County, Pennsylvania.

APPROVED PRIVATE STREET - a legally established right-of-way which provides the primary vehicular access to a lot and which has not been dedicated or deeded to the Borough, but still meets Borough and Pennsylvania Department of Transportation specifications and standards.

AREA - the extent of surface contained within the boundary lines of land or buildings.

AUTHORITY - a body politic and corporate created pursuant to the act of May 2, 1945 (P.L. 382, No. 164), known as the "Municipality Authorities Act of 1945."

BOARD - any body granted jurisdiction under any land use ordinance or under the Municipalities Planning Code, as amended, to render final adjudications. [*Ord. 6-2003*]

BOARDING, LODGING OR ROOMING HOUSE - a private dwelling in which rooms are offered for rent, whether or not table board is furnished and in which no transients are accommodated and no public restaurant is maintained.

BOROUGH COUNCIL - the elected council of the Borough of Biglerville, Adams County, Pennsylvania.

BOROUGH PLANNING COMMITTEE - the planning agency comprised of members appointed by Borough Council.

BUFFER STRIP - any lot area of finite width, reserved or set aside for the purpose of physical or visual separation of that lot from an adjoining use.

BUFFER ZONE - any peripheral area of a finite width, reserved or set aside for the purpose of physical or visual separation of a given development comprised of more than one lot, building or unit; whether residential, commercial or industrial from an adjoining use.

BUILDING - any structure enclosed within exterior walls, built, erected and framed of component structural parts, designated to house, shelter or enclose: individuals, animals or property of any kind. For the purpose of this Chapter, "building" shall include bus shelters, lean-to's, and other structures having less than four sides.

BUILDING, ACCESSORY - a detached, subordinate building, the use of which is customarily incidental and subordinate to that of the principal building, and which is located on the same lot as that occupied by the principal building.

BUILDING COVERAGE - the horizontal area measured within the outside limits of the exterior walls of the ground floor of all principal and accessory buildings on a lot.

BUILDING HEIGHT - the vertical distance measured from the average elevation of the finished grade at the two front corners of the building to the highest point of the roof, chimneys, spires, solar collectors and other similar projections shall not be used in calculating the height of a building.

BUILDING, PRINCIPAL - a building in which is conducted the principal or main use of the lot on which it is situated.

BUILDING SETBACK LINE - an established line within a lot or property defining the minimum required distance between the face of any structure to be erected and an adjacent right-of-way or street line.

CARTWAY - the portion of a street right-of-way usually paved, that is intended for vehicular traffic.

CHANGE OF USE - the alteration of a building, structure or land in such a manner that the use, and therefore the regulations governing that use, are changed.

CLUB - an establishment operated by an organization for social, recreational, educational and fraternal purposes, but open only to members and their guests.

COMMERCIAL OFFICE - an occupation, employment or enterprise that is carried on for profit by the landowner, lessee or licensee in an office room or building.

COMMON OPEN SPACE - a parcel or parcels of land or an area of water or a combination of land and water within a development site and designed and intended for the use of enjoyment of residents of a development, not including streets, off-street parking areas, and areas set aside for public facilities.

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CONDITIONAL USE - a use of land or buildings within a given district permitted only with approval of the Borough Council. Such approval may be subject to express standards and criteria or additional conditions and safeguards as are deemed necessary by Borough Council.

CONSTRUCTION - the erection, alteration, repair, renovation, expansion, extension or relocation of a building or other structure, including the reconstruction of damage and the placement of mobile homes.

CONVENIENCE STORE - any retail establishment offering for sale prepackaged food products, household items and other goods commonly associated with the same.

COTTAGE INDUSTRY - the production or creation within a dwelling unit, of a product intended to be sold either at wholesale or retail value, on the same premises or elsewhere, provided that such production is incidental or secondary to the residential use of that dwelling.

COUNTY - Adams County, Pennsylvania.

DECISION - final adjudication of the Board granted jurisdiction under this Chapter either by reason of the grant of exclusive jurisdiction or by reason of appeals from determinations. All decisions shall be appealable to the Court of Common Pleas of Adams County and judicial district wherein Biglerville Borough lies.

DEDICATION - the deliberate appropriation of land, by its owner, for any general and public or limited public use and reserving to himself no other rights than those which have been granted to the general public by his dedication.

DETERMINATION - final action by an officer, body or agency charged with the administration of any land use ordinance (Chapter 22, "Subdivision & Land Development" and this Chapter 27, "Zoning") or applications thereunder, except the following:

- (1) The Borough Council.
- (2) The Zoning Hearing Board.
- (3) The Planning Committee, only if and to the extent the planning agency is charged with final decision on preliminary or final plans under Chapter 22, "Subdivision & Land Development."

Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal.

[Ord. 6-2003]

DEVELOPER - any landowner, agent of such landowner or tenant with the permission of such landowner, who makes or cause to be made, a subdivision of land or a land development.

DEVELOPMENT PLAN - the provisions of development, including a planned residential development, a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use of density of development, streets, ways and parking facilities, common open space and public facilities. The phrase "provisions of the development plan" when used in this act shall mean the written and graphic materials referred to in this definition.

DRIVEWAY - the vehicular method of entrance or exit from street to a lot.

DWELLING UNIT - one or more rooms having cooking and sanitary facilities and access directly outdoors or through a common entrance hall.

- A. **SINGLE FAMILY DETACHED RESIDENTIAL UNIT** - a residential structure containing only one dwelling unit.
- B. **TWO FAMILY DETACHED RESIDENTIAL UNIT** - a residential structure used by two households or families with one dwelling unit arranged over the other dwelling unit and having two side yards.
- C. **CONVERSION UNIT** - existing residential structure which has been modified structurally in such a way as to convert it from one dwelling unit to multiple dwelling units.
- D. **SEMI-DETACHED UNIT** - a residential structure containing two single dwelling units having one common wall; also known as a duplex.
- E. **ATTACHED, ROW OR TOWNHOUSE UNIT** - a residential structure containing three or more dwelling units which are separated from each other by two common walls, except for the end units.
- F. **MULTIPLE DWELLING OR APARTMENT UNIT** - a residential structure of two or more stories containing three or more dwelling units which are not row or townhouse units.
- G. **CONDOMINIUM** - a given set of dwelling units, each of which is owned by an individual person or persons in fee simple, and which is assigned a proportionate interest in all common elements, as set forth in the "Uniform Condominium Act," act of the General Assembly of July 2, 1980, P.L. No. 82, Section I, as amended and supplemented.

EASEMENT - a right granted for the use of private land for a certain public purpose; also the land to which such right pertains.

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ESSENTIAL SERVICES - the construction, alteration or maintenance by public utilities, the municipality or other governmental agencies of underground or overhead gas, electric, steam and water transmission or distribution systems, sanitary and storm sewer systems including buildings, enclosures, wells, pumping stations, poles, wires, mains, drains, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith reasonably necessary for the furnishing of adequate services by such public utilities or municipality or other governmental agencies.

FENCE - any structure erected for the purpose of screening, enclosing or protecting property, ensuring privacy or prohibiting entrance by unauthorized persons.

GENERAL SERVICE - services rendered to the public including, but not limited to, catering, management, employment; except health care and automotive repair.

GOVERNING BODY - the Council of Biglerville Borough, Adams County, Pennsylvania.

HAZARDOUS OR CONTROLLED MATERIALS - a solid waste or substance, or a combination of wastes of materials with concentration or physical, chemical or infectious characteristics, may:

- A. Cause, or significantly contribute to an increase in mortality or morbidity in either an individual or the total population.
- B. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed.

HEARING - an administrative proceeding conducted by a board pursuant to §909.1 of the Pennsylvania Municipalities Planning Code (see §27-1305(1)(2), "Other Board Functions," of this Chapter). [*Ord. 6-2003*]

HOME OCCUPATION - any lawful occupation or use conducted within a dwelling unit which is incidental or secondary to the residential use of that dwelling unit and the exterior appearance of the structure or premises is constructed and maintained as a residential dwelling.

IMPERVIOUS COVERAGE - the placing of structures or material so as to prohibit the passage or entrance of water or other liquid into the soil.

JUNK - any discarded materials, machinery, scrap metals, articles or objects possessing value in part, gross or aggregate including, but not limited to, scrapped motor vehicles or parts thereof and vehicles which are inoperable and do not have a current, valid inspection as required by the motor vehicle laws of the Commonwealth of Pennsylvania, but not including garbage or other organic waste or farm machinery used in connection with bona fide farm operation.

JUNKYARD - a lot or structure, or part thereof, used primarily for the collection, storage and sale of junk.

LAND DEVELOPMENT - any of the following activities:

- A. The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
 - (1) A group of two or more residential or nonresidential building, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure.
 - (2) The division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of, streets, common areas, leaseholds, condominiums, building groups or other features.
- B. A subdivision of land.
- C. Excluded from this definition are the following:
 - (1) The conversion of an existing single-family detached dwelling or single-family semidetached dwelling into not more than three residential units, unless such units are intended to be a condominium.
 - (2) The addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building.
 - (3) The addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park. For purposes of this subclause, an amusement park is defined as a tract or area used principally as a location for permanent amusement structures or rides. This exclusion shall not apply to newly acquired acreage by an amusement park until initial plans for the expanded area have been approved by proper authorities.

LANDOWNER - the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner or other person having a proprietary interest in land.

LAND USE ORDINANCE - any ordinance or map adopted pursuant to the authority granted in Articles IV, V, VI and VII of the Municipalities Planning Code. [*Ord. 6-2003*]

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

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LOT AREA - the area contained within the property lines of a lot excluding the area within any street right-of-way, but including the area of any easement.

LOT, CORNER - a lot at the junction of and abutting on two or more intersecting streets.

LOT, DEPTH OF - the average horizontal distance between the front and rear lot lines.

LOT COVERAGE - that portion of the lot that is covered by buildings and structures.

LOT, INTERIOR - a lot other than corner lot.

LOT OF RECORD - a lot which has been recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania.

LOT WIDTH - the horizontal distance between the side lines of a lot measured at right angles at its depth along a straight line parallel to the front lot line at the minimum required building setback line.

MEDIATION - a voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences, culminating in a written agreement which the parties themselves create and consider acceptable.

MOBILE HOME - a transportable, single-family dwelling intended for permanent occupancy, contained in one unit or in two or more units designed to be joined into one integral unit capable again of being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation.

MOBILE HOME LOT - a parcel of land in a mobile home park, improved with the necessary utility connections and other appurtenance necessary for the erection thereon of a single mobile home.

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

MUNICIPAL AUTHORITY - a body politic and corporate created pursuant to the Act of May 2, 1945 (P.L. 382, No. 164), known as the Municipality Authorities Act of 1945.

MUNICIPAL ENGINEER - a professional engineer licensed as such in the Commonwealth of Pennsylvania, duly appointed as the Borough Engineer.

MUNICIPALITY - Biglerville Borough.

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

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

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

OUTDOOR STORAGE - the keeping in any unroofed area of any goods, junk material, merchandise or vehicles in the same place for more than 24 hours.

PERSON - a profit or nonprofit organization, corporation, institution, firm, association, partnership, company, individual or other entity.

PERSONAL SERVICES - services rendered to the public including, but not limited to, hair care and beauty, health and fitness, personal security, modeling, grooming or behavior training and private instruction.

PLANNING AGENCY - Borough Planning Committee.

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

PORNOGRAPHIC - appealing to the prurient interest, as in pornographic materials. Materials described as pornographic may be literature, books, magazines, pamphlets, newspaper, story paper, comic book, drawing, photograph, figure, image, motion picture, sound recording, article, instrument or any other material which:

- A. Depicts or describes in a patently offensive manner, sexual conduct, sexual excitement or sadomasochistic abuse or (in the case of articles or instruments) is designed to intended for use in achieving artificial sexual stimulation.
- B. Taken as a whole, appeals to the prurient interest.
- C. Taken as a whole does not have serious literary, artistic, political or scientific value.

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PROFESSIONAL OFFICE - the use of office space or buildings for professional services as those that are provided by doctors, dentists, lawyers, architects, engineers and others entitled to practice a profession under the laws of the Commonwealth of Pennsylvania.

PUBLIC GROUNDS - includes:

- A. Parks, playgrounds, trails, paths and other recreational areas and other public areas.
- B. Sites for schools, sewage treatment, refuse disposal and other publicly owned or operated facilities.
- C. Publicly owned or operated scenic or historic sites.

PUBLIC HEARING - a formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment prior to taking action in accordance with the Pennsylvania Municipalities Planning Code; an administrative proceeding conducted by the Board pursuant to its exclusive jurisdiction to hear and render final adjudications in accordance with §909.1 of the Pennsylvania Municipalities Planning Code.

PUBLIC MEETING - a forum held pursuant to public notice under the Act of July 3, 1986 (P.L. 388, No. 84), known as the Sunshine Act.

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

RECREATIONAL VEHICLE - a mobile vehicle which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreation, camping and travel use and including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

RENEWABLE ENERGY SOURCE - any method, process or substance whose supply is rejuvenated through natural processes and including, but not limited to, biomass conversion, geothermal energy, solar and wind energy and hydroelectric energy and excluding those sources of energy used in the fission and fusion processes.

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

other parties to any proceeding upon request, and copies thereof shall be provided at cost of reproduction. [Ord. 6-2003]

RESTAURANT - an establishment that serves food and beverages primarily to persons seated in a building.

SCREENING - the method by which a view of one site from an adjacent site is shielded, concealed or hidden. Screening techniques include fences, walls, hedges, berms, plantings or similar devices.

SERVICE STATION - any business enterprise where gasoline and other petroleum products are sold and light maintenance activities such as engine tune-ups, lubrication, minor repair and cleaning are conducted. This does not include major maintenance activities such as engine overhauls, painting and body work.

SETBACK - the distance between the street right-of-way line and the front line of a building or any projection thereof.

SIGN - any device or representation used as, or for, announcement, direction, publicity or advertisement for any purpose on or off the premises, including interior lighted signs which are visible from the street.

SIGN, TEMPORARY - any sign meant to remain in place for a period of 6 months or less.

SPECIALTY SHOP - retail store catering to unusual market segments and adapted to a theme of small scale establishments such as boutique and craft shops.

STORM DRAINAGE PLAN - a plan showing all present and proposed grades and facilities for stormwater management.

STORY - that portion of any building included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between such floor and the ceiling over it.

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

STRUCTURE - any manmade object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

STRUCTURE, TEMPORARY - any structure which meets one or more of the following criteria:

- A. Having no fixed location on the ground.
- B. Having no permanent foundation or intended use.

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- C. Intended for use and/or placement for a period of less than 6 months.

Such temporary structures shall include, but need not be limited to, tents, display buildings, and amusements.

SUBDIVISION - the division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development. Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

VARIANCE - relief granted pursuant to the provisions of this Chapter.

YARD - an unoccupied space other than a court open to the sky on the same lot with a building or structure.

YARD, FRONT - an open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the street right-of-way line and the front line of said building projected to the side lines of the lot. The depth of the front yard shall be measured between the front line of the building and the street right-of-way line. Covered porches, whether enclosed or unenclosed, shall be considered as part of the principal building and shall not project into a required front yard.

YARD, REAR - an open unoccupied space on the same lot with the principal building, extending the full width of the lot and situated between the rear line of the lot and the rear line of said building projected to the side lines of the lot. The depth of the rear yard shall be measured between the rear line of the lot and the rear line of the building. The principal building shall not extend into the required rear yard.

YARD, SIDE - an open unoccupied space on the same lot situated between the principal building and the side line of the lot, and extending from the front yard to the rear yard. Any lot line not considered a front line or a rear line shall be deemed a side line. The principal building shall not extend into the required side yards.

ZONING DISTRICT - a classification for all surface land areas, buildings and lots within certain designated boundaries as indicated on the Zoning Map.

ZONING MAP - the map containing the Zoning Districts of Biglerville Borough, Adams County, Pennsylvania together with all amendments subsequently adopted.

ZONING OFFICER - the appointed administrator and enforcement agent of the Zoning Ordinance of Biglerville Borough, Adams County, Pennsylvania.

ZONING PERMIT - a permit, granted by the Borough or its official representative, giving permission for a specific use which shall be specified in the permit. Such permit shall be in addition to a Borough building permit and shall again be required with any subsequent change in use of lot or structure.

(Ord. 2-89, 4/4/1989, §201; as amended by Ord. 6-2003, 9/2/2003, §1)

PART 3

ADMINISTRATION

§27-301. Application.

The provisions of this Chapter shall apply to all buildings, structures, uses, land and all accessory buildings, structures and uses. Nothing in this Chapter shall require any change in plans or construction of a use of which a building permit has been heretofore issued prior to the effective date of this Chapter.

(Ord. 2-89, 4/4/1989, §301)

§27-302. Enforcement Notice.

1. If it appears to the Borough that a violation of this Chapter or prior enabling laws has occurred, the Borough shall initiate enforcement proceedings by sending an enforcement notice as provided in this Section.
2. The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel and to any other person requested in writing by the owner of record.
3. An enforcement notice shall state at least the following:
 - A. The name of the owner of record and any other person against whom the Borough intends to take action.
 - B. The location of the property in violation.
 - C. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of this Chapter.
 - D. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
 - E. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a period of 10 days.
 - F. That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.

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4. In any appeal of an enforcement notice to the Zoning Hearing Board the Borough shall have the responsibility of presenting its evidence first.
5. Any filing fees paid by a party to appeal an enforcement notice to the Zoning Hearing Board shall be returned to the appealing party by the Borough if the Zoning Hearing Board, or any court in a subsequent appeal, rules in the appealing party's favor.

(*Ord. 2-89, 4/4/1989; as added by Ord. 6-2003, 9/2/2003, §1*)

§27-303. Enforcement Remedies.

1. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Chapter shall, in a civil enforcement proceeding commenced by the Borough found being liable therefor in a civil enforcement proceeding commenced by the Borough, pay 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 the violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating this Chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice, and thereafter, each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of this Chapter shall be paid over to the Borough of Biglerville.
2. The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem judgment pending a final adjudication of the violation and judgment.
3. Nothing contained in this Section shall be construed or interpreted to grant to any person or entity other than the Borough the right to commence any action for enforcement pursuant to this Section.
4. District justices shall have initial jurisdiction in proceedings brought under this Section.

(*Ord. 2-89, 4/4/1989, §302; as amended by Ord. 6-2003, 9/2/2003, §1*)

§27-304. Causes of Action.

In case any building, structure or land is or is proposed to be erected, constructed, reconstructed, altered, covered, maintained or used in violation of this Chapter, the Borough Council, or the Zoning Officer of the Borough, with the approval of the Council, may institute in the name of Biglerville Borough any appropriate action or proceedings to prevent, restrain, correct or abate such building, structure or land or to prevent in or about such premises, any act, conduct, business or use constituting a violation.

(Ord. 2-89, 4/4/1989, §303; as amended by Ord. 6-2003, 9/2/2003, §1)

§27-305. Appointment and Powers of Zoning Officer

For the administration of this Chapter, a Zoning Officer shall be appointed who shall not hold any elective office in the Borough. The Zoning Officer shall administer and enforce the zoning ordinance in accordance with its literal terms and shall not have the power to permit any construction or any use or change of use which does not conform to this Chapter. The Zoning Officer may be authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of their employment.

(Ord. 2-89, 4/4/1989, §304; as amended by Ord. 6-2003, 9/2/2003, §1)

§27-306. Duties of the Zoning Officer.

It shall be the duty of the Zoning Officer to:

- A. Receive and review all applications for building permits.
- B. Receive appeals and applications for conditional uses and variances and forward them to Borough Council or the Zoning Hearing Board, as appropriate.
- C. Issue permits only where there is compliance with the provisions of this Chapter and with the laws of the Commonwealth. Permits for construction of uses requiring a variance shall be issued only upon order of the Zoning Hearing Board. Permits requiring a conditional use approval shall be issued only upon order of the Borough Council.
- D. Conduct inspections and surveys to determine compliance or noncompliance with the terms of this Chapter.
- E. Issue stop, cease and desist orders and order in writing by certified mail or served personally upon persons, firms or corporations deemed by the Zoning Officer to be violating the terms of this Chapter directing them to correct all

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conditions found in violation. If any such person or persons does not comply with the written notice of violation within 5 days of receipt, the Zoning Officer shall notify the Borough Council for their action.

- F. With the approval of the Borough Council, or when directed by them, institute in the name of the Borough any appropriate action or proceedings to prevent the unlawful erection construction, reconstruction, alteration, repair, conversion, demolition, maintenance or use of any building or structure, to restrain , correct or abate such violation, so as to prevent the occupancy or use of any building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- G. Revoke, by order, a building permit issued under a mistake of fact or contrary to the law or the provisions of this Chapter.
- H. Record and file all applications and plans for permits and the action taken thereon. All applications, plans and documents shall be a public record.
- I. Maintain a map or maps showing the current zoning districts and overlay areas for all the land within the Borough. Upon request, the Zoning Officer shall make determinations of any zoning map district boundary question. Such determination may be appealed to the Zoning Hearing Board.
- J. Upon the request of the Borough Council, Planning Committee or Zoning Hearing Board, present facts, records or information to assist them in making decisions.
- K. The global change where the word permit is used shall be a change from “permit” to “zoning permit” and the fee shall be in an amount to be established, from time to time, by resolution of the Borough Council per application. This is an application fee. This fee is non-refundable and does not guarantee approval of the application.

(Ord. 2-89, 4/4/1989, §305; as amended by Ord. 3-2003, 5/5/2002)

§27-307. Building Permits.

The building permit shall be obtained from Pennsylvania Association of Boroughs (PSAB) or any other organization ordained by the Borough Council that meets the requirements of the Statewide building code.

(Ord. 2-89, 4/4/1989, §306; as amended by Ord. 3-2003, 5/5/2003)

§27-308. Subdivision and Land Development.

The Zoning Officer shall not issue a building permit for the erection, construction, reconstruction or alteration of a building in a subdivision of land development prior to the final approval of the subdivision and/or land development plan in compliance with whatever Subdivision and Land Development Ordinance is in force at the time, and recording of the plan with the Adams County Recorder of Deeds.

(Ord. 2-89, 4/4/1989, §307)

PART 4

ESTABLISHMENT OF ZONING DISTRICTS

§27-401. Types of Districts.

For the purposes of this Chapter the following districts are hereby designed within the Borough of Biglerville:

- A. R-1 Residential (Single Family Only)
- B. R-2 Residential (Various Type Dwellings)
- C. RC Transitional Residential/Commercial
- D. C Commercial
- E. I Industrial

(Ord. 2-89, 4/4/1989, §401)

§27-402. Zoning Map.

The boundaries of each district are established as shown on the official zoning map of the Borough which is declared to be a part of this Chapter and which shall be kept on file at the Borough offices.

(Ord. 2-89, 4/4/1989, §402)

§27-403. District Boundaries.

District boundary lines are intended to coincide with lot lines, centerlines of streets, alleys and highways, the corporate boundary of the Borough or as dimensioned on the official zoning map. In case of doubt or disagreement concerning the exact location of any boundary line, the matter shall be decided by the Zoning Officer. Such decision may be appealed to the Zoning Hearing Board.

(Ord. 2-89, 4/4/1989, §403)

PART 5

RESIDENTIAL DISTRICT

§27-501. Purpose.

The purpose of this Part is to provide for and encourage residential development of appropriate density which will be in keeping with the character of Biglerville Borough, and to provide for that development to take place in those areas best suited for such development. The provisions set forth in this Part are intended to sustain a desirable residential environment.

(Ord. 2-89, 4/4/1989, §501)

§27-502. R-1 District; Uses Permitted by Right.

The following uses, buildings and activities are permitted by right within the R-1 Residential District.

- A. Single detached residential units.
- B. Single semidetached residential units.
- C. Public buildings and grounds.
- D. Essential services.
- E. Churches and similar places of worship.
- F. Accessory buildings and accessory uses on the same lot with and incidental to any of the above permitted uses.

(Ord. 2-89, 4/4/1989, §502; as amended by Ord. 6-89, 9/5/1989, §1)

§27-503. R-1 District; Uses Permitted by Conditional Use.

- 1. Conversion residential units and accessory apartments.
- 2. Home occupations.

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3. Outdoor storage areas.
4. Attached, row or townhouse units.

(Ord. 2-89, 4/4/1989, §503; as amended by Ord. 6-89, 9/5/1989, §1)

§27-504. R-2 District; Uses Permitted by Right.

The following uses, buildings and activities are permitted by right within the R-2 residential district:

- A. Single detached residential units.
- B. Single semidetached residential units.
- C. Conversion residential units and accessory apartments.
- D. Attached, row or townhouse units.
- E. Multiple dwelling or apartment units.
- F. Home occupations.
- G. Public buildings and grounds.
- H. Schools.
- I. Churches.
- J. Public utilities and appurtenant buildings.
- K. Essential services.
- L. Accessory buildings and accessory uses on the same lot with and incidental to any of the above permitted.

(Ord. 2-89, 4/4/1989, §504)

§27-505. R-2 District; Uses Permitted by Conditional Use.

1. Specialty shops.

2. Professional offices.
3. Outdoor storage areas.

(Ord. 2-89, 4/4/1989, §505)

§27-506. Lot Requirements.

1. Minimum lot area per dwelling unit:
 - A. **Single detached residential unit** - 8,000 sq. ft.
 - B. **Semidetached residential unit** - 6,000 sq. ft.
 - C. **Attached, row or townhouse unit** - 2,500 sq. ft.
 - D. **Multiple dwelling or apartment unit** - 750 sq. ft.
 - E. **Other permitted uses** - 10,000 sq. ft.
 - F. **Maximum number of units per acre: 16**
2. Minimum lot width per dwelling unit:
 - A. **Single detached residential unit** - 75 feet
 - B. **Semidetached residential unit** - 60 feet
 - C. **Attached, row or townhouse unit** - 20 feet
 - D. **Other permitted uses** - 100 feet
 - E. **Maximum lot coverage: 40%**

(Ord. 2-89, 4/4/1989, §506)

§27-507. Yard Requirements.

1. **Minimum front setback** - 25 feet.
2. **Minimum side setback** - 10 feet.
3. **Minimum rear setback** - 25 feet.

(Ord. 2-89, 4/4/1989, §507)

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§27-508. Height Requirements.

1. **Principal building** - 35 feet or 2 stories.
2. **Accessory building** - 15 feet maximum.

(Ord. 2-89, 4/4/1989, §508)

PART 6

TRANSITIONAL RESIDENTIAL/COMMERCIAL DISTRICT

§27-601. Purpose.

The Transitional Residential/Commercial District is established in order to make provision for the orderly adaptation, reuse and renovation of buildings contained within this district, which are of such size or configuration that (1) they are not longer viable as single residential units, or (2) they are adaptable to commercial/professional uses or mixed residential and commercial/professional combinations.

(Ord. 2-89, 4/4/1989, §601)

§27-602. Uses Permitted By Right.

1. Single detached residential units.
2. Single semidetached residential units.
3. Attached, row or townhouse units.
4. Multiple dwelling or apartment units and condominium units.
5. Conversion residential units and accessory apartments.
6. Commercial and professional offices.
7. Specialty shops.
8. Home occupations.
9. Accessory buildings and accessory uses on the same lot with and incidental to any of the above permitted uses.

At no time shall any of the above mentioned uses be construed as permitting the establishment of any use which, in the course of conducting business, stores or sells, controlled materials considered to be hazardous under United States Environmental Protection Agency or Pennsylvania Department of Labor and Industry Standards.

(Ord. 2-89, 4/4/1989, §602)

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§27-603. Lot Requirements.

1. **Minimum lot area** - 8,000 sq. ft.
2. **Minimum lot width** - 75 feet

(Ord. 2-89, 4/4/1989, §603)

§27-604. Yard Requirements.

1. **Minimum front setback** - 15 feet.
2. **Minimum side setback** - 10 feet.
3. **Minimum rear setback** - 15 feet.
4. **Maximum lot coverage** - 60%.

(Ord. 2-89, 4/4/1989, §604)

§27-605. Height Requirements.

1. **Principal building** - 35 feet or 2 stories.
2. **Accessory building** - 15 feet maximum.

(Ord. 2-89, 4/4/1989, §605)

PART 7

COMMERCIAL DISTRICT

§27-701. Purpose.

The Commercial District is established to provide for regulation of stores, offices and related commercial uses within this district in order to encourage the continuation of existing local retail business establishments which serve the community and the orderly development of new establishments of a compatible nature.

(Ord. 2-89, 4/4/1989, §701)

§27-702. Uses Permitted by Right.

1. Retail and wholesale businesses.
2. Banks and financial institutions.
3. Restaurants.
4. Personal service establishments.
5. General service establishments, including establishments for the service of passenger vehicles.
6. Boarding, lodging and rooming houses.
7. Clubs and fraternal organizations.
8. Home occupations and cottage industries.
9. Commercial and professional offices.
10. Churches.
11. All dwelling units as permitted within the residential districts.
12. Accessory buildings and accessory uses on the same lot with and incidental to any of the above permitted uses.

(Ord. 2-89, 4/4/1989, §702)

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§27-703. Uses Permitted by Conditional Use.

1. Convenience stores.
2. Outdoor storage areas.
3. Amusement arcades.

(Ord. 2-89, 4/4/1989, §703)

§27-704. Lot Requirements.

Minimum lot area - Sufficient to allow for required parking, setbacks, buffer and screening areas as required by this Chapter.

(Ord. 2-89, 4/4/1989, §704)

§27-705. Yard Requirements.

1. **Minimum front setback** - as established by existing setback lines within 200 feet on each side.
2. **Minimum side setback** - as established by existing setback lines within 200 feet on each side.
3. **Minimum rear setback** - 15 feet.
4. **Maximum lot coverage** - 75%.

(Ord. 2-89, 4/4/1989, §705)

§27-706. Height Requirements.

1. **Principal building** - 35 feet or 2 stories.
2. **Accessory building** - 15 feet maximum.

(Ord. 2-89, 4/4/1989, §706)

PART 8
INDUSTRIAL DISTRICT

§27-801. Purpose.

The purpose of this Part is to provide for the continuation and expansion of existing industry, and to provide for the orderly establishment of new industrial development which will benefit the community. Because of the size of the Borough, it is the intent of this article that these regulations will limit the external impact of industrial use upon the community.

(Ord. 2-89, 4/4/1989, §801)

§27-802. Uses Permitted By Right.

1. Office buildings.
2. Nurseries, greenhouses, or garden shops.
3. Assembly, fabrication or compounding of products from previously processed materials.
4. Manufacture of products from raw materials.
5. Trucking establishments, including shops for the repair and maintenance of such vehicles.
6. Packaging industries, including the manufacture of such packaging.
7. Accessory buildings and accessories uses on the same lot with and incidental to any of the above permitted uses.
8. Mini storage units. [*Ord. 2-2002*]

(Ord. 2-89, 4/4/1989, §802; as amended by Ord. 2-2002, 11/7/2002)

§27-803. Uses Permitted By Conditional Use.

1. Mobile home parks.
2. Junkyards.

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3. All dwelling units as permitted within the residential districts.

(Ord. 2-89, 4/4/1989, §803)

§27-804. Lot Requirements.

1. **Minimum lot area** - 20,000 sq. ft.
2. **Minimum lot width** - 100 feet

(Ord. 2-89, 4/4/1989, §804)

§27-805. Yard Requirements.

1. **Minimum front setback** - 25 feet
2. **Minimum side setback** - 15 feet
3. **Minimum rear setback** - 25 feet
4. **Maximum lot coverage** - 60%
5. **Screening Requirements** - Along each side and rear property line which adjoins a residential use or district.

(Ord. 2-89, 4/4/1989, §805)

§27-806. Height Requirements.

1. **Principal building** - 40 feet maximum
2. **Accessory building** - 20 feet maximum

(Ord. 2-89, 4/4/1989, §806)

PART 9

SUPPLEMENTAL PROVISIONS

§27-901. Purpose.

This Part contains provisions which qualify or supplement the district regulations appearing elsewhere in this Chapter.

(Ord. 2-89, 4/4/1989, §901)

§27-902. Prohibited Uses.

No use or activity shall be permitted which by reason of noise, dust, odor, appearance, smoke or other objectionable factor creates a nuisance, hazard or other adverse effect upon the value or reasonable use or enjoyment of surrounding properties.

(Ord. 2-89, 4/4/1989, §902)

§27-903. Reduction of Lot Area and Yard Requirements.

No lot shall be so reduced that the area of the lot, or dimensions of the required yards, shall be less than prescribed by this ordinance, except that semidetached residential units existing under single ownership may be subdivided for the sale or transfer of ownership of each individual unit regardless of lot size, width, setback or coverage requirements of this Chapter, provided that:

- A. The dwellings existing prior to the effective date of this Chapter.
- B. The nonconforming feature created by the proposed subdivision will be the minimum that will permit the subdivision to be effectuated.
- C. The proposed subdivision will create no change or alteration on, or to, the premises that will increase any existing nonconforming feature.
- D. The proposed subdivision plan is submitted to and approved by the Adams County Planning Commission.

(Ord. 2-89, 4/4/1989, §903)

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§27-904. Building Setback Line.

Where a building setback line has been established on at least 50% of the properties in a block, the required setback may be reduced by the Zoning Officer. In no case shall the setback distance be less than the existing average setback of all properties in the block.

(Ord. 2-89, 4/4/1989, §904)

§27-905. Exceptions to Height Restrictions.

The height limitations contained in the district regulations of this Chapter do not apply to spires, belfries, antennas, water tanks, ventilators, chimneys, solar energy systems or other appurtenances usually located above the roof of a building or structure.

(Ord. 2-89, 4/4/1989, §905)

§27-906. Projections Into Required Yard Areas.

No building or structure or part thereof shall project into any required yard area in any district, except that:

- A. A buttress, chimney, cornice, gutter or pier of a building may project not more than 2 feet into a required yard.
- B. Fire escapes, steps, decks, porches, bay windows, balconies, eaves and canopies may project not more than 3 feet into a required yard.
- C. Apparatus or architectural structure needed for the efficient operation of solar energy systems including, but not limited to, overhangs, insulating walls and roofs, solar collectors or reflectors may project not more than 4 feet into any required yard.

(Ord. 2-89, 4/4/1989, §906)

§27-907. Two or More Principal Structures on One Lot.

In any district, more than one building or structure having a permitted principal use may be erected on a single lot, provided that all the applicable requirements of this Chapter shall be met for each building or structure as though it were on an individual lot.

(Ord. 2-89, 4/4/1989, §907)

§27-908. Visual Obstructions.

No walls, fence, sign or other structure shall be erected or altered and no hedge, trees, shrubs, crops, et cetera, shall be maintained, which may cause hazard to pedestrian or vehicular traffic.

(Ord. 2-89, 4/4/1989, §908)

§27-909. Fences.

In residential districts, no fence shall be erected in a required front yard area that is more than 4 feet in height and no fence shall be erected in any other required yard area that is more than 8 feet in height. Fences in all districts shall be constructed of accepted fencing material, maintained in good condition and shall not create a hazard. Fences may be erected no closer than 1 foot to any lot line. They may be constructed of wood, metal, plastic or masonry, singly or in combination.

(Ord. 2-89, 4/4/1989, §909)

§27-910. Private Swimming Pool.

1. Every person owning land on which there is situated a swimming pool, which contains 24 inches or more of water in depth at any point, shall erect and maintain thereon a permanent enclosure not less than 4 feet in height, capable of being secured against intrusion. For the purpose of this Chapter, yard enclosures shall be deemed sufficient, provided they can be secured against intrusion. Above ground pools shall be provided with entrance ways which can be so secured. The top railing of such pools shall not be less than 4 feet above the ground at the lowest point.
2. No pool shall be located in any required front or side yard areas. The minimum rear setback line shall be 15 feet for the location of a pool.
3. Pools existing as of the date of this Chapter shall be provided with enclosures as described in subsection (1) above within 1 calendar year of the effective date of this Chapter.

(Ord. 2-89, 4/4/1989, §910)

§27-911. Corner Lots.

On any corner lot, side yards abutting streets shall be subject to all the front yard requirements of this Chapter.

(Ord. 2-89, 4/4/1989, §911)

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§27-912. Yards.

Space provided to satisfy the yard and area requirements for any building or structure, either existing or proposed, shall not be used to meet the yard area requirements for any other building or structure.

(Ord. 2-89, 4/4/1989, §912)

§27-913. Access.

Every building or structure erected after the date of this Chapter shall be located on a lot that abuts a public street and all buildings and structures shall be located so as to provide safe and convenient access for servicing, fire protection and off-street parking.

(Ord. 2-89, 4/4/1989, §913)

§27-914. Recreational Vehicle Storage.

No recreational vehicle shall be parked or stored on any required front or side yard except in a carport or enclosed building, however such vehicle may be parked anywhere on a residential property for a period of 24 hours for the purpose of loading, unloading or emergency repairs, provided that its position on the lot does not obstruct traffic sight distance. No such vehicle shall be used for living, sleeping or housekeeping purposes when parked or stored.

(Ord. 2-89, 4/4/1989, §914)

§27-915. Onlot Storage in Residential and Commercial Districts.

Except for licensed, operable motor vehicles with current inspection stickers, no vehicle, trailer, boat or other similar vehicle shall be parked or stored in any residential district within any front yard sales.

(Ord. 2-89, 4/4/1989, §915)

§27-916. Parking and Loading.

No building or structure shall be constructed, enlarged or modified and no use or activity shall be initiated or expanded unless provision is made on the same or adjacent premises for off-street parking and loading facilities meeting the following requirements:

- A. Except for private driveways, parking areas shall not be located in any required front or side yard area. In addition, no part of any public right-of-way shall be used in computing the required area for parking.
- B. In lieu of separate parking facilities, the required parking space for two or more uses may be provided in a joint parking area. When such parking areas are provided, the requirements concerning the affected yards may be altered or waived by Borough Council as a conditional use subject to adequate safeguards to minimize traffic hazards.
- C. The minimum off-street parking provided shall be as follows:
 - (1) **Church** - one space for every five seats.
 - (2) **Club, Lodge** - one space for every two persons the facility is designed to accommodate.
 - (3) **Theater, Auditorium** - one space for every five seats.
 - (4) **Mortuary, Funeral Home** - one space for every three persons the facility is designed to accommodate.
 - (5) **Nursing, Convalescent Home** - one space for every four beds.

(Ord. 2-89, 4/4/1989, §916)

§27-917. Nonconforming Uses, Lots and Structures.

Any nonconforming use of buildings or open land, may be continued indefinitely, provided that:

- A. Any such nonconforming use of structure or land may be enlarged, altered, extended, reconstructed or restored (except, as provided in subsection (E) of this Section) after the effective date of this Chapter to not more than 25% of the area which was in nonconformance upon the adoption of this Chapter.
- B. Shall not be moved to another location where such use would be nonconforming.
- C. Shall not be changed to another nonconforming use without approval by the Zoning Hearing Board and then only to a use which, in the opinion of the Zoning Hearing Board is of the same or of a more restricted nature.

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- D. Shall not be re-established if such use has been discontinued for any reason for a period of 1 year or more or has been changed to, or be replaced by, a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.
- E. Shall not be restored for other than a conforming use after damage from any cause, unless the nonconforming use is reinstated within 1 year of such damage; if the restoration of such building is not completed within the said 1 year period, the nonconforming use of such building shall be deemed to have been discontinued, unless such nonconforming use is carried on without interruption in the undamaged portion of such building.

(Ord. 2-89, 4/4/1989, §917)

§27-918. Repairs and Maintenance.

Notwithstanding any of the above regulations nothing in this Part shall be deemed to prevent normal maintenance and repair of any nonconforming use or structure or the carrying out upon the issuance of a building permit or major structural alterations or demolitions necessary in the interest of public safety. In granting such a building permit, the Borough shall state the precise reason such alterations are deemed necessary.

(Ord. 2-89, 4/4/1989, §918)

§27-919. Registration of Nonconforming Uses, Lots and Structures.

All lawful uses and structures existing at the effective date of this Chapter which do not conform to the requirements set forth in this Chapter, or any amendments thereto, shall be identified and registered by the zoning officer within 120 days of the effective date of this Chapter or any amendments thereto together with the reasons why the Zoning Officer identified them as nonconforming.

(Ord. 2-89, 4/4/1989, §919)

PART 10

STANDARDS AND CRITERIA FOR CONDITIONAL USES

§27-1001. Purpose.

The purpose of this Part is to set forth the standards and criteria for the consideration of conditional uses. The conditions set forth in this Part shall be a supplement to the district provisions and general provisions of this Chapter and are not meant to replace them or to be considered in their stead.

(Ord. 2-89, 4/4/1989, §1001)

§27-1002. Procedures.

1. Ten days prior to the date of the next meeting of the Borough Planning Committee, the applicant shall file an application for approval of the conditional use, along with such fee as shall be prescribed in the Biglerville Borough Zoning Fee Schedule.
2. At the next meeting of the Planning Committee after the application has been properly filed, the Planning Committee shall set a date on which the public hearing on the application shall be held. In no case shall land application for a conditional use be considered or recommended to the Borough Council for approval or denial until a public hearing on the application shall be held.
3. Each application for a conditional use shall be accompanied by a proposed plan showing the size and location of the lot, the location of all buildings and proposed facilities including access drives, parking areas and all streets within 500 feet of the lot. In addition, as a minimum, the following shall be shown:
 - A. The nature, size and intensity of the proposed use.
 - B. The site layout including vehicular and pedestrian traffic routes and the intensity of that traffic.
 - C. The location, nature and height of any walls, fences, landscaping and accessory structures.
 - D. The location of any naturally occurring areas. Such areas shall include, but may not be limited to, floodplain, sinkholes and steep slopes.

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- E. Accompanying data to show that all proposed structures, equipment and material is readily accessible of fire and police protection; that in general, the proposed use will be in keeping with existing development on adjacent properties; that the proposed use will not present a hazard or inconvenience to adjacent properties.
- F. In recommending the approval of any such use, the Planning Committee shall take into consideration the public health, safety and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular and may recommend appropriate conditions and safeguards as may be required in order that the result of the approval, to the maximum extent possible, further the expressed intent of this Chapter.

(Ord. 2-89, 4/4/1989, §1002)

§27-1003. Referral to the County Planning Commission.

Should any conditional use approval involve any area of subsidence, steep slope or storage, creation or use of hazardous substances, the secretary of the Planning Committee shall forward a copy of all pertinent materials to the County Planning Commission, along with a copy of the notice of public hearing at least 15 days prior to that hearing. The transmittal shall request a written report of the County Planning Commission review. Such report shall then be made to a part of the recommendation of the Borough Planning Committee to the Borough Council.

(Ord. 2-89, 4/4/1989, §1003)

§27-1004. Public Hearing.

1. The Borough Planning Committee shall not recommend any application for a conditional use without first holding a public hearing, notice of which shall be given by publication in a newspaper at least 10 days before the date of such hearing, and notice of said hearing may be posted by certified mail at least 5 days before the hearing, to the following: All owners of property which lies adjacent to the property which is subject to the request for conditional use; all other parties as the Committee may deem advisable.
 - A. The names of said owners shall be taken as they appear on the last completed tax roll of the Borough.
 - B. Provided that due notice shall have been published as set forth above and that there shall have been substantial compliance with the remaining provisions of the paragraph, the failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the Committee in connection with the approval of any conditional use.

2. Where the Borough Council, in this Chapter, has stated conditional uses to be granted or denied by the Borough Council pursuant to express standards and criteria, the Planning Committee shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria. The hearing shall be conducted by the Board or the Board may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Board. However, the appellant or the applicant, as the case may be, in addition to the Borough, may, prior to the decision of the hearing, waive decision or findings by the Board and accept the decision or findings of the hearing officer as final. In granting a conditional use, the Borough Council may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*
3. Where the Borough Council fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in §908(1.2), the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Borough Council to meet or render a decision as hereinabove provided, the Borough Council shall give public notice of the decision within 10 days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this Act. If the Borough Council shall fail to provide such notice, the applicant may do so.
4. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him no later than the day following its date.

(*Ord. 2-89, 4/4/1989, §1004; as amended by Ord. 6-2003, 9/2/2003, §1*)

§27-1005. Committee Action.

The Committee shall render a written decision or, when no decision is called for, make written findings on the conditional use application within 45 days after the last hearing before the Committee. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefor. Conclusions based on any provisions of the Chapter, the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.

(*Ord. 2-89, 4/4/1989, §1005; as amended by Ord. 6-2003, 9/2/2003, §1*)

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§27-1006. Conditions and Safeguards.

The Borough Council may require the conditional use permit to be periodically reviewed to determine compliance with the conditions set forth as part of the original approval. In the case where the original conditions have not been or are no longer being complied with, a period of 60 days shall be granted the applicant or other responsible party for full compliance prior to the revocation of the conditional use permit, at which time the use shall cease.

(Ord. 2-89, 4/4/1989, §1006)

§27-1007. Effect of Conditional Use Permit.

Any use for which a conditional use permit may be granted shall be deemed to be a conforming use in the District in which such use is located provided the use remains in compliance with the conditions set forth at the time of approval, and further provided that conforming use status shall affect only the lot or portion thereof which was set forth in the application for approval.

(Ord. 2-89, 4/4/1989, §1007)

§27-1008. Consideration of Borough Council.

1. On application, and after a public hearing and recommendation by the Planning Committee, the Borough Council may approve or disapprove a conditional use permit for the proposed use. In the course of its consideration, the Council may modify the conditions as recommended by the planning committee and/or require additional conditions. [*Ord. 6-2003*]
2. Where the Committee fails to render the decision within the period required by the subsection or fails to commence, conduct or complete the required hearing as provided in §27-1004 of this Chapter, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Committee to meet or render a decision as hereinabove provided, the Borough Council shall give public notice of the decision within 10 days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.* If the Borough Council shall fail to provide such notice, the applicant may do so. [*Ord. 6-2003*]

3. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him no later than the day following its date.

(Ord. 2-89, 4/4/1989, §1008; as amended by Ord. 6-2003, 9/2/2003, §1)

§27-1009. Subdivision and Land Development Approval.

No application for a conditional use permit shall be considered by the Borough unless and until any required subdivision and land development plan approval shall have been secured prior to the application.

(Ord. 2-89, 4/4/1989, §1009)

§27-1010. Conversion Residential Units and Accessory Apartments.

When an existing single residential unit is proposed to be altered to contain two or more residential units, a conditional use permit shall be secured prior to any construction, renovation, demolition or alteration. At a minimum, the following conditions shall apply:

- A. Such units being created for the purpose of housing an elderly or handicapped or incapacitated parent, stepparent or parent-in-law of the residence shall be approved for a conditional use permit without further conditions provided no structural changes are proposed for the residence. At such time as the unit ceases to be occupied by the aforementioned relative, a new permit must be sought.
- B. Such units being created for the purpose of housing a handicapped or incapacitated child or stepchild or daughter-in-law or son-in-law or grandchild of the owner of the property shall be subject to the same requirements as set forth in subsection (A) above.
- C. Such units being created for rent to the general public or under conditions other as set forth in subsections (A) and (B) above, shall be subject to the following:
 - (1) The resident shall not be altered, renovated or changed in any way without the approval of the Zoning Officer.
 - (2) The residence shall not be enlarged by more than 10%.
 - (3) A separate entrance directly to the outdoors shall be provided.
 - (4) Two off-street parking spaces shall be provided for each such unit.

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- D. In any case, such units shall be approved and continue to be considered in compliance with the requirements of this Chapter only for the length of time that the owner also lives in one of the units. At no time shall the intent of this Chapter be construed as permitting the creation of multi-family or apartment rental units wherein the owner does not reside.

(Ord. 2-89, 4/4/1989, §1010)

§27-1011. Home Occupations and Cottage Industries.

When any residential unit is proposed to be used as a location for a home occupation, that use shall be in addition to the primary residential use of the property as set forth in §27-502. In addition, the following conditions shall be required:

- A. No renovations shall be approved which would change the general character of the exterior of the residential unit, with the exception of the addition of separate outside or safety entrances.
- B. No sign shall be erected for the purpose of advertising the occupation and/or product which is not compatible with the architecture of the residential unit. Such signs shall not be in excess of 12 square feet in area.
- C. The home occupation shall be the effort of the occupant of the residential unit, who will preferably be the owner of the property. Any application for approval of a home occupation by a tenant shall not be approved unless and until the property owner signifies his permission in writing.
- D. Parking spaces shall be provided as required by Council in accordance with this Chapter.
- E. Upon the cessation of any home occupation use, that use or any use considered to be a home occupation shall be again permitted only upon new application. The use shall be considered to have ceased after a period not in excess of 6 months has passed in which the use has not been active.

(Ord. 2-89, 4/4/1989, §1011)

§27-1012. Mobile Home Parks.

Mobile home parks shall be permitted on the condition that they are designed, constructed and maintained in compliance with the requirements of Part 10 of the Subdivision and Land Development Ordinance [Chapter 22], which is the ordinance governing mobile home parks within the Borough, with the following exceptions:

- A. The minimum lot area of a mobile home lot shall be given 5,000 square feet with a minimum width of 50 feet. Maximum overall density shall be eight units per acre.
- B. At no time shall the term "mobile home" be considered synonymous with "industrialized housing" as it applies to "double-wide mobile homes".
- C. The minimum lot area for the development of a mobile home park shall be 2 acres.

(Ord. 2-89, 4/4/1989, §1012)

§27-1013. Junkyards.

- 1. When any property is proposed for use as a junkyard an application shall be submitted showing how the applicant intends to comply with all applicable regulations of the Pennsylvania Department of Environmental Protection. In addition, the Council may require any studies and/or actions it deems necessary to insure that the proposal, if approved, will not adversely affect the health, safety and general welfare of the surrounding community. [*Ord. 6-2003*]
- 2. Regardless of the placement of any buildings, sheds, etc., located on the same property, no junk of any kind shall be placed within 250 feet of any property line; either vegetative or constructed visual barriers shall be placed within this setback area. Such barriers shall be in keeping with the general character of the neighborhood.

(Ord. 2-89, 4/4/1989, §1013; as amended by Ord. 6-2003, 9/2/2003, §1)

§27-1014. Storage of Controlled Materials.

- 1. Storage of materials as listed in Title III, Superfund Enactment and Re-authorization Act as published in the Federal Register of April 22, 1987, or amendments to that list; and/or materials listed as hazards in the work place may be approved as a conditional use provided the applicant can show continuing compliance with the regulations governing the storage of those materials. For the purposes of this Chapter, copies of OSHA, EPA or other pertinent agency approval shall be considered evidence of compliance. Such copies shall be forwarded to the Borough Council as often as they are obtained.

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2. Nothing in this Chapter shall be construed to require any action which is in conflict with the Emergency Response Plan which Adams County has formulated on behalf of the Borough.

(Ord. 2-89, 4/4/1989, §1014)

§27-1015. Convenience Stores.

Convenience stores shall be permitted on the condition that they are designed and constructed in accordance with any regulations governing the underground storage of liquid fuels. In addition:

- A. They shall not be located in such a manner that entrance and exit points form a "short cut" to any traffic control facilities.
- B. Adequate parking shall be provided in accordance with the provisions of this Chapter.
- C. There shall be one entrance and one exit point, which shall be controlled and defined.

(Ord. 2-89, 4/4/1989, §1015)

§27-1016. Attached, Row or Townhouse Units.

1. Attached, row or townhouse units shall be subject to the following:
 - A. **Minimum Lot Area Per Unit** - 2,500 square feet
 - B. **Minimum Lot Width Per Unit** - 20 feet
 - C. **Maximum units in one Structure** - 8
 - D. **Maximum Units per Acre** - 10
 - E. **Minimum Separate Distance between Buildings** - 60 feet
 - F. **Minimum Parking Spaces Per Unit** - 2
 - G. **Front Yard** - 25 feet
 - H. **Side Yard (End Units)** - 30 feet
 - I. **Rear Yard** - 20 feet

2. There shall be located parallel to the rear property line an easement, 5 feet in width for the purpose of pedestrian ingress and egress by the interior property owners.

(Ord. 2-89, 4/4/1989, §1016)

§27-1017. Outdoor Storage Areas.

Outdoor storage areas are subject to the following requirements:

- A. They shall not be permitted in the required front yard area.
- B. They shall be completely shielded by screening a buffer strip of 10 feet in width around the perimeter of this strip.

(Ord. 2-89, 4/4/1989, §1017)

§27-1018. Specialty Shops.

Specialty shops are subject to the requirements of the R-2 Zoning District except as herein modified and provided:

- A. Off-street parking shall be accommodated for each employee located on the lot and screening provided along the edge of this parking area.
- B. Maximum paved area shall be 40%.

(Ord. 2-89, 4/4/1989, §1018)

§27-1019. Professional Offices.

Professional offices are subject to the requirements of the R-2 Zoning District except as herein modified and provided:

- A. They shall be conducted wholly within a completely enclosed building and compatible to the general character of the residential neighborhood.
- B. No advertising sign identifying these uses shall exceed 12 square feet in area.
- C. Off-street parking shall be provided for each 150 square feet of gross floor area.

(Ord. 2-89, 4/4/1989, §1019)

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§27-1020. Amusement Arcades.

Amusement arcades are permitted as principal or accessory uses provided that they meet the following requirements:

- A. Screening shall be erected adjacent to parking areas and along the residential property line. This shall be placed in a buffer strip of 15 feet in width.
- B. No more than three machines shall be viewed as an accessory use.
- C. They shall be separated from adjacent occupiable areas of the principal building by a wall extending from floor to roof for noise control.
- D. They shall be conducted wholly within a completely enclosed building.
- E. Where off-street parking areas, pedestrian walkways and other open spaces are present, provisions for litter control shall be made.
- F. Off-street parking shall be allocated for one space per two players for which these facilities are designed.

(Ord. 2-89, 4/4/1989, §1020)

PART 11
[RESERVED]

PART 12

ZONING HEARING BOARD

§27-1201. Zoning Hearing Board.

1. Creation of the Board.

- A. Zoning Hearing Board shall be appointed by the Borough Council upon the enactment of a Zoning Ordinance.

2. Membership of Board.

- A. The membership of the Board shall consist of three residents of the borough whose term of office shall be 3 years and shall be so fixed that the term of office of one member shall expire each year. Members of the Board shall hold no other office in the Borough.

3. Vacancies.

- A. The Board shall promptly notify the Borough Council of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.

4. Removal of Members.

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

5. Organization of the Board.

- A. The Board shall elect from its own membership, its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be required consisting of not less than a majority of all the members of 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.
- B. The Board shall adopt such rules and forms in accordance with the provisions of this Chapter, and the provisions of the Pennsylvania Municipalities Planning Code. Meetings of the Board shall be held at the call of the Chairman and at such times as the Board may determine. Such chairman or in his absence, the acting chairman, may administer oaths, and compel the attendance of witnesses. All meetings of the Board shall be open to the public.

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- C. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicate such fact, and shall keep full public records of its examinations and other official action. The Board shall also submit an annual report of its activities to the Borough Council.

6. **Expenditure for Services.**

- A. Within the limits of funds appropriated by the Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, stenographers and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties only as may be fixed by the Borough Council.

(Ord. 2-89, 4/4/1989, §1201)

§27-1202. Hearings.

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

- A. **Persons entitled to Initiate Action Before the Board.** Appeals from a decision of the Zoning Officer pursuant to §27-1203 hereof and proceedings to challenge the validity of any ordinance or map under §27-1005 hereof may be filed by any officer or agency of the Borough or by any person aggrieved. Requests for a variance under §27-1204 hereof may be filed by any landowner or tenant with the permission of such landowner.
- B. **Manner of Initiating Action before the Board.** All action before the Board shall be initiated by a written application for hearing which shall be filed with the Zoning Officer at least three weeks prior to the meeting at which the particular matter is to be heard. However, the Board reserves the right to hold the required hearing up to 60 days after or subsequent to the applicant's request for the hearing. All applications shall be made on forms specified by the Board, and no application form shall be accepted unless the same shall be fully and legibly completed and unless all exhibits and supplemental material required by the application shall be attached (and until all fees required under §27-1207 of the Chapter shall have been paid).

C. Notification of Hearings.

- (1) Whenever a hearing has been scheduled, notice shall be given to the general public by means of publication once each week for two successive weeks in a newspaper of general circulation in the Borough. Such public notice shall state the time and place of the hearing and the particular nature of the matter to be considered. The first publication shall not be more than 30 days prior to the date of the hearing, and the second publication shall not be less than 7 days from the date of the hearing.
- (2) Direct individual notice shall also be given to the applicant, the Borough Planning Committee, the Adams County Planning Commission and such other persons who have made timely request for such notice. In addition to the notice provided, herein, notice of said hearing shall be conspicuously posted on the affected tract of land at least 1 week prior to the hearing.

D. Conduct of Hearings.

- (1) The Zoning Hearing Board shall conduct hearings and make decisions in accordance with the following requirements:
 - (a). Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by rules of the Board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least 1 week prior to the hearing
 - (b). The first hearing before the Board or hearing officer shall be commenced within 60 days from the date of receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the Board or hearing officer shall be held within 45 days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. The applicant shall complete the presentation of his case-in-chief within 100 days of the first hearing. Upon the request of the applicant, the Board or hearing officer shall assure that the applicant receives at least 7 hours of hearings within the 100 days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within 100 days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief provided the persons opposed to the application are granted an equal number

of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and the Borough, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.

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

[Ord. 6-2003]

- E. **Parties.** The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Board and any other person including civic or community organizations permitted to appear by the Board. The Board shall have the power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Board.
- F. **Witnesses.** The Chairman or acting chairman of the Board or the hearing officer president, shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers including witnesses and documents requested by the parties.
- G. **Representation.** The parties shall have the right to be represented by counsel and shall be afforded to opportunity to response and present evidence and argument and cross-examine adverse witnesses on all relevant issues.
- H. **Rules of Evidence.** Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.
- I. **Record.** 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. [Ord. 6-2003]

- J. **Communications.** The Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representative in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda or other materials, except advise from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity be present. [*Ord. 6-2003*]
- K. **Notice of Decision or Findings.**
- (1) 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.
 - (2) 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 Chapter or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.
 - (3) If the hearing is conducted by a hearing officer, and there has been no stipulation that his decisions or findings are final, the Board shall make his report and recommendations available to the parties within 45 days, and the parties shall be entitled to make written presentations 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. [*Ord. 6-2003*]
 - (4) Except for challenges to the validity of this Chapter filed under §10916.1 of the Municipalities Planning Code, where the Board fails to render the decision within the period required by this subsection, or fails to commence, conduct or complete the required hearing as provided in §27-1202(D) of this Section, 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. [*Ord. 6-2003*]
 - (5) 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 Borough Council shall give public notice of the said decision within 10 days from the last day it could have met to render

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a decision in the same manner as provided in §27-1202(C)(1) of this Section. If Borough Council 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. [*Ord. 6-2003*]

L. **Copies of Decision.**

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

(*Ord. 2-89, 4/4/1989, §1202; as amended by Ord. 6-2003, 9/2/2003, §1*)

§27-1203. Powers and Duties.

The Zoning Hearing Board shall have the following powers and duties:

- A. **Appeals from the Zoning Officer.** The Board shall hear and decide appeals where it is alleged by the appellant that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provisions of a valid ordinance or map or any valid rule or regulation governing the action of the Zoning Officer. Nothing contained herein shall be construed to deny to the applicant the right to proceed directly to Pennsylvania Rules of Civil Procedure, §§1091 to 1098, relating to mandamus.
- B. **Variances.** The Board shall hear requests for variances where it is alleged that the provisions of the Zoning Ordinance inflict unnecessary hardship upon the applicant. The Board may, by rule, prescribe the form of application to the Zoning Officer. All requests for variances shall then be sent by the Board to the Planning Committee for an advisory review and recommendations.

(*Ord. 2-89, 4/4/1989, §1203*)

§27-1204. Standards for Zoning Hearing Board Action.

In any instance where the Board is required to consider a variance in accordance with the provisions of this Chapter, the Board shall, among other factors, apply the following standards:

A. For Variances.

- (1) The Board shall not grant a variance unless it has determined:
 - (a) That there are unique physical circumstances or conditions, including irregularity, narrowness or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions generally created by the provisions of the Zoning Ordinance in the neighborhood or district in which the property is located.
 - (b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - (c) That such unnecessary hardship has not been created by the applicant.
 - (d) That the variance, if granted will not alter the essential character of the neighborhood or district in which it is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
 - (e) That the variance, if granted, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
 - (f) In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes and intent of the Chapter and the Statement of Goals and Objectives.
 - (g) No variance shall be granted for any development which may endanger human life.

(Ord. 2-89, 4/4/1989, §1204)

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§27-1205. Other Board Functions.

1. Jurisdiction of the Zoning Hearing Board.

- A. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
- (1) Substantive challenges to the validity of any land use ordinance, except those brought before the Borough Council pursuant to §27-1303.
 - (2) 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 this Chapter. Where the Chapter appealed from is the initial zoning ordinance of the Borough and a Zoning Hearing Board has not been previously established, the appeal raising procedural questions shall be taken directly to court.
 - (3) Appeals from the determination of the Zoning Officer including, but not limited to, the granting of denial of any permit or failure to act on the application therefor, the issuance of any cease to desist order or the registration or refusal to register any nonconforming use, structure or lot.
 - (4) Appeals from a determination by a Municipal Engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within this Chapter.
 - (5) Applications for variances from the terms of the zoning ordinance and flood hazard ordinance or such provisions within this Chapter, pursuant to §27-1204.
 - (6) Applications for special exceptions under the zoning ordinance or floodplain or flood hazard ordinance or such provisions within this Chapter.
 - (7) Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Chapter.
 - (8) Appeals from the Zoning Officer's determination under §27-1203.
 - (9) Appeals from the determination of the Zoning Officer or Municipal Engineer in the administration of this Chapter or provisions thereof with reference to sedimentation and erosion control and stormwater management insofar as the same related to development.

2. Jurisdiction of Borough Council.

- A. The Borough Council or, except to subsection (C) below, the Planning Committee, as so delegated by Borough Council, shall have exclusive jurisdiction to hear and render final adjudications in the following matters: [*Ord. 6-2003*]
- (1) All applications for approvals of planned residential developments in accordance with the Pennsylvania Municipalities Planning Code.
 - (2) All applications for approval of subdivisions or land developments in accordance with the Pennsylvania Municipalities Planning Code.
 - (3) Applications for conditional use under the expressed provisions of this Chapter pursuant to Part 10.
 - (4) Applications for curative amendments to this Chapter.
 - (5) All petitions of amendments to this Chapter.
 - (6) Appeals from the determination of the Zoning Officer or the Borough Engineer in the administration of this Chapter or provisions thereof with reference to sedimentation and erosion control and stormwater management insofar as the same relate to application for land development. Where such determination relates only to development not involving a subdivision or planned residential development, the appeal from such determination of the Zoning Officer or the Municipal Engineer shall be to the Zoning Hearing Board.
 - (7) Applications for a special encroachment permit and applications for a permit on time limitations on reservations for future acquisition.

3. Parties Appellant to the Board.

- A. Appeals under §27-1203 (from the Zoning Officer) and proceedings to challenge an ordinance under §27-1205 may be filed with the Board in writing by the landowner affected, and officer or agency of Biglerville Borough or any person aggrieved.
- B. Requests for a variance under §27-1024, may be filed with the Board by any landowner or any tenant with the permission of such landowner.

4. Time Limitations.

- A. No person shall be allowed to file any proceeding with the Board later than 30 days after any application for development, preliminary or final, has been approved by an appropriate Borough Officer, agency or body. If such

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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.

- B. If such person had succeeded in this interest after such approval, he shall be bound by the knowledge of his predecessor in interest.
- C. The failure of anyone other than the landowner to appeal from an adverse decision on:
 - (1) A tentative or preliminary plan pursuant to the Pennsylvania Municipalities Planning Code.
 - (2) An adverse decision by a Zoning Officer on a challenge to the validity of an ordinance or map pursuant to the Pennsylvania Municipalities Planning Code, shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative or preliminary approval.

5. **Stay of Proceedings.**

- A. Upon filing of any proceeding referred to in §§27-1203 and 27-1205 and during its pendency before the Board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or any agency or body, and all official action thereunder shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies the Board facts indicating that such a stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the court having jurisdiction of zoning appeals on petition after notice to the Zoning Officer or other appropriate agency or body.
- B. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as condition to continuing the proceedings before the Board.
- C. When the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous and is for the purpose of delay. At the hearing, evidence may be presented on the merits of the case. After consideration of all evidence presented, if the court determines that the appeal is frivolous and for the purpose of delay, it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked from a final decision of the court.

- D. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court.
- E. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing the court having jurisdiction of zoning appeals shall be liable for all reasonable costs, expenses and attorney fees incurred by the petitioner.

(Ord. 2-89, 4/4/1989, §1205; as amended by Ord. 6-2003, 9/2/2003, §1)

§27-1206. Court Appeals.

Appeals may be taken to the Court of Common Pleas of Adams County by any party before the Board or any officer or agency of Biglerville Borough within 30 days as provided for an in accordance with the Pennsylvania Municipalities Planning Code.

(Ord. 2-89, 4/4/1989, §1206)

§27-1207. Fees.

1. **Permit Fees.** Fees for permits shall be paid in accordance with the provisions of a fee schedule adopted by resolution of the Borough Council.
2. **Zoning Hearing Board and Other Fees.** Each applicant for an interpretation, variance or other appeal before Borough Council, shall at the time of making application, pay a fee in accordance with a schedule to be adopted by resolution of the Borough Council.
3. **Cost.** The amount of the fee shall be predicated upon the average cost to the Borough or the application of appeal, as nearly as it can reasonably be determined, including advertising, mailing, reproduction, stenographic and similar expenses.
4. **Return of Excess Fees.** The amount by which the fee exceeds the actual costs of the proceeding shall be returned to the applicant or appellant following the filing of the decision of the Board of Council.
5. **Prior payment.** Payment of all fees must be made in full before any application is processed or permit issued.

(Ord. 2-89, 4/4/1989, §1207)

PART 13

**MISCELLANEOUS LEGAL PROVISIONS, AMENDMENTS
AND ENACTMENT**

§27-1301. Interpretation.

In interpreting and applying the provisions of this Chapter, they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience, order and general welfare. Where the provisions of this Chapter impose greater restrictions than those of any statute, other ordinance, or regulation, the provisions of this Chapter shall control. Where the provisions of any statute, other ordinance, or regulation impose greater restrictions than this Chapter, the provisions of such statute, ordinance or regulation shall control.

(Ord. 2-89, 4/4/1989, §1301)

§27-1302. Separability.

It is hereby declared to be the legislative intent that:

- A. If a court of jurisdiction declares a provision of this Chapter to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this Chapter shall continue to be separately and fully effective.
- B. If a court of competent jurisdiction finds the application of any provision or provisions of this Chapter to any lot, building or other structure or tract of land, to be invalid or ineffective, in whole or in part, the effect of such decision shall be limited to the person, property, or situation immediately involved in the controversy, and the application of any such provision to other persons, property or situations shall not be affected.

(Ord. 2-89, 4/4/1989, §1402)

§27-1303. Amendments.

The Biglerville Borough Council may from time to time amend this Chapter including the zoning maps.

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A. **Public Hearings Prior to Amendment.**

- (1) Before voting on the enactment of an amendment, the Borough Council shall hold a public hearing thereon, pursuant to public notice. In addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously by the Borough at points deemed sufficient by the Borough along the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one week prior to the date of the hearing. [*Ord. 6-2003*]
- (2) In addition to the requirement that notice be posted under subsection (1) above, where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the Borough at least 30 days prior to the date of the hearing by first class mail to the addresses to which real estate tax bills are sent for all real property located within the area being rezoned, as evidenced by tax records within the possession of the Borough. The notice shall include the location, date and time of the public hearing. A good faith effort and substantial compliance shall satisfy the requirements of this subsection. [*Ord. 6-2003*]
- (3) This clause shall not apply when the rezoning constitutes a comprehensive rezoning. [*Ord. 6-2003*]
- (4) If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised to include land previously not affected by it, the Borough Council shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment. [*Ord. 6-2003*]

B. **Referral to Planning Committee.**

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

C. **Submission to County Planning Commission.**

- (1) At least 30 days prior to the hearing on the ordinance or amendment by the Borough Council, the Council shall submit the proposed ordinance to the Adams County Planning Commission for recommendations.

- (2) Within 30 days after enactment, a copy of the amendment to this Chapter shall be forwarded to the County planning agency. [*Ord. 6-2003*]

D. Landowner Initiated Curative Amendments.

(1) Submittal.

- (a) A landowner who desires to challenge on substantive grounds the validity of an ordinance or map or any provisions thereof, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the Borough Council with a written request that his challenge and proposed amendment be heard and decided as provided in §916.1 of the Pennsylvania Municipalities Code (hereinafter "MPC"), 53 P.S. §10916.1. The Borough Council shall commence a hearing thereon within 60 days of the request as provided in §916.1. of the MPC 53 P.S. §10916.1. The curative amendment and challenge shall be referred to the Planning Committee and the County planning agency as provided in §609 and notice of the hearing thereon shall be given as provided in §§610 and 916.1 of the MPC, 53 P.S. §§10609, 10610 and 10916.1. [*Ord. 6-2003*]

(2) Public Hearing.

- (a) The hearing shall be conducted in accordance with §908 of the MPC, 53 P.S. §10908, and all references therein to the Zoning Hearing Board shall, for purposes of this Section, be references to the Borough Council provided, however, that the provisions of §908 (1.2) and (9) of the MPC, 53 P.S. §10908 shall not apply and the provisions of §916.1. of the MPC 53 P.S. §10916.1. shall control. If the Borough does not accept a landowner's curative amendment brought in accordance with this subsection and a court subsequently rules that the challenge has merit, the court's decision shall not result in a declaration of invalidity for this entire Chapter and zoning map, but only for those provisions which specifically relate to the landowner's curative amendment and challenge.

(3) Planning Commission Referrals.

- (a) The curative amendment shall be referred to both the Borough Planning Committee and the County Planning Commission in the same manner as an amendment proposed by the Borough Council.

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(4) **Public Notices.**

- (a) Public notice of the proposed amendment 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 landowner's request, including the plans submitted may be examined by the public.

(5) **Hearing.**

- (a) The hearing shall be conducted in accordance with §27-1202 and all references therein to the Zoning Hearing Board, shall for the purposes of this section be references to the Borough Council.

(6) **Consideration of Amendment.**

- (a) The Borough Council, if it determines that a validity challenge has merit, may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment which will cure the challenged defects. The Borough Council shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:
- (i) The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.
 - (ii) If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of this Chapter or zoning map.
 - (iii) The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources and other natural features.

- (iv) The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts.
- (v) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

(7) **Additional Substantive Challenges by Landowner.**

- (a) A landowner who has challenged on substantive grounds the validity of this Chapter or zoning map either by submission of a curative amendment to the Borough Council under §916.1(a)(2) or to the zoning hearing board under §909.1(a)(1) of the MPC shall not submit any additional substantive challenges involving the same parcel, group of parcels or parts thereof until such time as the status of the landowner's original challenge has been finally determined or withdrawn; provided, however, that if after the date of the landowner's original challenge the Borough adopts a substantially new or different zoning ordinance or zoning map, the landowner may file a second substantive challenge to the new or different zoning ordinance or zoning map under §916.1(a) of the MPC.

E. Municipality Initiated Curative Amendments. If the Borough determines that this Chapter, or any portion hereof, is substantially invalid, it shall take the following actions:

- (1) The Borough shall declare by formal action this Chapter or portions hereof substantially invalid and propose to prepare a curative amendment to overcome such invalidity. Within 30 days of such declaration and proposal the Borough Council shall:
 - (a) By resolution make specific findings setting forth the declared invalidity of this Chapter which may include:
 - (i) References to specific uses which are either not permitted or not permitted in sufficient quantity;
 - (ii) Reference to a class of use or uses which requires revision; or,

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- (iii) Reference to this entire Chapter which requires revisions.
 - (b) Begin to prepare and consider a curative amendment to this Chapter to correct the declared invalidity.
- (2) Within 180 days from the date of the declaration and proposal, the Borough shall enact a curative amendment to validate or reaffirm the validity of this Chapter pursuant to the provisions of §609 of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P.S. §10609, in order to cure the declared invalidity of this Chapter.
- (3) Upon the initiation of the procedures as set forth in subsection (1), above, the Borough Council shall not be required to entertain or consider any landowner's curative amendment filed under §609.1 of the MPC, 53 P.S. §10609.1, nor shall the Zoning Hearing Board be required to give a report requested under §§909.1 or 916.1 of the MPC, 53 P.S. §§10909.1, 10916.1, subsequent to the declaration and proposal based upon grounds identical or substantially similar to those specified by the resolution required by subsection (1)(A), above. Upon completion of the procedures set forth in subsections (1) and (2), above, no rights to a cure pursuant to the provisions of §§609.1 and 916.1 of the MPC, 53 P.S. §§10609.1, 10916.1, shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of this Chapter for which there has been a curative amendment pursuant to this Section.
- (4) The Borough, having utilized the procedures set forth in this Section, may not again utilize said procedure for a period of 36 months following the date of enactment of a curative amendment, or reaffirmation of the validity of this Chapter; provided, however, if after the date of declaration and proposal there is a substantially new duty imposed upon the Borough by virtue of a change in statute or by virtue of a Pennsylvania appellate court decision, the Borough may utilize the provisions of this Section to propose a curative amendment to this Chapter to fulfill said duty or obligation.

[*Ord. 6-2003*]

(*Ord. 2-89, 4/4/1989, §1303; as amended by Ord. 6-2003, 9/2/2003, §1*)