ZONING

Chapter 215

Borough

of

MCSHERRYSTOWN

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Chapter 215

ZONING

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[HISTORY: Adopted by the Borough Council of the Borough of McSherrystown 1-27-1993 by Ord. No. 1993-2 as Part 14 of the 1993 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Adult uses — See Ch. 47.
Building construction — See Ch. 62.
Floodplain management — See Ch. 107.
Stormwater management — See Ch. 182.
Subdivision and land development — See Ch. 190.

ARTICLE I
Title, Purpose and Community Development Objectives

§ 215-1. Purpose.

This chapter is designed to:

A. Promote, protect, and facilitate the public health, safety, and general welfare; coordinated and practical community development; proper density of population; 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. 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.

§ 215-2. Title.

This chapter shall be known and may be cited as the "McSherrystown Borough Zoning Ordinance."

§ 215-3. Community development objectives.

It is the finding of the McSherrystown Borough Council that land use relationships in the Borough are becoming increasing complex, and conflicts more frequent. After examining development, redevelopment, and population trends, and in order to further protect the public health, safety, and welfare, the following community development objectives are hereby established:

A. Land use.

(1) To guide the future development for the Borough in a manner which represents the most beneficial land use relationships among residential, commercial, industrial and public areas.

(2) To protect the character and the social and economic stability of all areas of the Borough.

(3) To protect and conserve the value of land and buildings throughout the Borough.

(4) To eliminate conflicting land uses harmful to residents or the proper functioning of the Borough.

B. Population density. To limit population densities to reasonable standards which provide attractive surroundings, sufficient parking, and which avoid congestion.

C. Streets.

(1) To strive for the most beneficial relationship between traffic movement and land use.

(2) To mitigate all traffic and safety hazards.

(3) To provide safe and adequate access, parking, and streets of sufficient capacity for all new and existing development. No new development should unduly burden the capacity of existing streets.

(4) To improve street circulation, reduce traffic congestion and discourage nonlocal traffic in residential areas.

D. Community facilities.

(1) To strengthen the institutions of the Borough so they may be of value to the community and surrounding areas.

(2) To continue to provide existing services and to strive to meet any unmet or partially served needs of the community.

(3) To make available to all members of the community a better living and working environment.

E. Utilities.

(1) To insure that as demand increases adequate public and private utilities continue to be provided for all Borough residents.

(2) To require that all utilities be placed underground whenever feasible.

F. Energy conservation.

(1) To regulate the use of land and encourage development which minimizes the demand for energy and maximizes the efficiency of energy consumed.

(2) To exert governmental leadership and innovation related to energy conservation for community facilities and services.

(3) To reduce the Borough's dependence on nonrenewable fuels by encouraging safe and efficient forms of alternative renewable energy sources such as solar energy.

G. Recreation.

(1) To preserve the existing recreation areas within the Borough limits in order to maintain a stimulating use of leisure time.

(2) To improve the Borough Community Park in such a manner and at such time as future studies warrant.

H. Environment.

(1) To discourage development in designated flood-prone areas and any other critical environmental area.

(2) To prevent, eliminate, or reduce, to the lowest levels economically feasible, sources of pollution which may pose as a threat to the health and well-being of Borough residents.

(3) To strive for aesthetic improvement and a pleasing community appearance in all areas of the Borough.

(4) To preserve the natural amenities and historical resources of the Borough.

I. Housing.

(1) To provide an adequate supply of decent, sanitary and safe housing for all residents of the Borough, including rehabilitation of existing structures.

(2) To prevent future blight and other slum conditions in the Borough.

(3) To eliminate or rehabilitate existing substandard or obsolete buildings throughout the Borough.

(4) To meet future housing demands by encouraging a variety of housing types, designs, and layouts which conserve energy and use land efficiently.

J. Economic.

(1) To develop a local economy capable of assuring employment opportunities and raising the standards of living.

(2) To encourage commercial development in concentrated areas of the Borough so that the greatest amount of services possible are available to the greatest number of people.

(3) To retain and strengthen the industrial sector so as to make it an asset to the community.

§ 215-4. Definitions.

For the purpose of this chapter, certain terms, phrases and words shall have the meanings given in this section, unless a contrary intention clearly appears. Words used in this chapter and not specifically defined in this section shall be defined as in the definition given in the Pennsylvania Municipalities Planning Code, as last amended by Act 170 of 1988,[1] and words not defined in this section or in the Planning Code, as amended, shall have the same meanings as in a standard dictionary.

A. Language interpretation.

(1) Words in the present tense include the future.

(2) Words used in the singular imply plural.

(3) The word "shall" is mandatory; the word "may" is optional.

(4) The male gender includes the female gender.

B. Specific words and phrases. As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY USE — A use customarily incidental and subordinate to the principal use or building which is located on the same lot with such principal use or building.

ACCESSWAY — See "driveway."

1. **Editor's Note: See 53 P.S. § 10101 et seq.**

ALLEY — A minor right-of-way privately or publicly owned, primarily for service access to the back or side of properties.

ALTERATION — As applied to a building, structure or sign, means a change, rearrangement, renovation, relocation, or enlargement in the structural parts or exterior, or which would change its use classification.

APARTMENT BUILDING — A building designed and used exclusively as a residence for three or more families living independently of each other.

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 PennDOT specifications and standards.

AREA — The extent of surface contained within the boundaries of extremities if land or building.

BOARD — The Zoning Hearing Board of McSherrystown Borough.

BOARDING, LODGING OR ROOMING HOUSE — A private dwelling, other than a hotel or restaurant, in which rooms are offered to persons not related to its other occupants, for rent, whether or not table board is furnished to lodgers, and in which no transients are accommodated and no public restaurant is maintained. Boarding or rooming houses shall not be considered as a home occupation. **[Amended 9-8-1999 by Ord. No. 1999-5]**

BOROUGH COUNCIL — Council of the Borough of McSherrystown, Adams County.

BOROUGH PLANNING COMMITTEE — The planning agency comprised of members appointed from Borough Council.

BUFFER STRIP — A continuous strip of landscaped land which is clear of all buildings and parking areas. (See also "landscaping.")

BUILDING — Any structure enclosed within exterior walls or fire walls, built, erected, and framed of component structural parts, designed for the housing, shelter, enclosure, or support of individuals, animals, or property of any kind; and occupying more than 10 square feet of area.

(1) DETACHED — A building which has no party wall.

(2) SEMIDETACHED — A building which has only one party wall.

(3) ATTACHED — A building which has two or more party walls in common.

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 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 LENGTH — The horizontal measurement of any continuous building wall.

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

BUILDING SETBACK LINE — A line parallel to and set back from a street right-of-way line. No building is permitted between the street (or road) right-of-way line and the building setback line.

CARPORT — A roofed structure, open on at least two sides, used in conjunction with a dwelling for storage of private motor vehicles.

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 and by change of use, theretofore existing, to a new use group which imposes other special provisions of law governing building construction, equipment, exits or zoning regulations. (See also "alteration.")

CONDITIONAL USE — A use or structure permitted subject to express standards and criteria or additional conditions and safeguards as determined by Borough Council, and permitted pursuant to Article VI of the Pennsylvania Municipalities Planning Code. [2]

CONSTRUCTION — The construction, reconstruction, renovation, repair, extension, expansion, alteration, or relocation or a building or structure, including the placement of mobile homes.

CORNER LOT — See "lot, corner."

DECISION — Final adjudication by any board or other body granted jurisdiction under this chapter or the Pennsylvania Municipalities Planning Code to do so, 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.

DEDICATION — The deliberate appropriation of land by its owner for any general and public, or limited public, use, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted.

DETERMINATION — Final action by an officer, body or agency charged with the administration of this chapter or applications thereunder, except the following:

(1) Council;

(2) The Zoning Hearing Board;

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2. **Editor's Note: See 53 P.S. § 10601 et seq.**

(3) The planning agency, only and to the extent the planning agency is charged with final decision on planned residential development provisions.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, the placement of mobile homes, streets, and other paving, utilities, filling, grading, excavation, mining, dredging, or drilling operations and the subdivision of land.

DRIVEWAY — The vehicular method of entrance to or exit from a land use.

DWELLING — A building designed for residential purposes and used as living quarters for one or more persons.

(1) DWELLING UNIT — One or more rooms used for living and sleeping purposes and having a separate kitchen with fixed cooking facilities arranged for occupancy by one family or a single person.

(2) DWELLING, SINGLE-FAMILY DETACHED — A building used by one family, having one dwelling unit from ground to roof, independent outside access and open space or yards on all sides.

(3) DWELLING, SINGLE-FAMILY SEMIDETACHED — A dwelling having only one dwelling unit from ground to roof, independent outside access, and not more than one wall in common with an adjoining dwelling.

(4) DWELLING, SINGLE-FAMILY ATTACHED (ROW- OR TOWNHOUSE) — A dwelling having only one dwelling unit from ground to roof, independent outside access, and not more than two walls in common with adjoining units. For purposes of this chapter, a single-family attached building shall contain no more than six dwelling units.

(5) DWELLING, TWO-FAMILY DETACHED — A building used by two families, with one dwelling unit arranged over the other, having two side yards.

(6) DWELLING, TWO-FAMILY SEMIDETACHED — A building used by two families, with one dwelling unit arranged over the other having one side yard, and having one party wall in common with another building.

(7) DWELLING, MULTIFAMILY — A building having three or more dwelling units which are completely separated by party walls, but share outside access.

EASEMENT — The authorization by a property owner of a right-of-way granted, but not dedicated, for limited use of private land; and within which the owner of the property shall not erect any permanent structures, but shall have the right to make any other use of the land which is not inconsistent with the rights of the grantee.

FAMILY — One or more persons living and cooking together as a single housekeeping unit.

FENCE — Any structure erected for the purpose of screening or enclosing one property from another either to assure privacy or to protect the property enclosed.

FLOOD — A temporary inundation of normally dry land areas.

(1) FLOODPLAIN AREA — A relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.

(2) FLOODPROOFING — Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

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

(4) REGULATORY FLOOD ELEVATION — The one-hundred-year flood elevation plus a freeboard safety factor of 1 1/2 feet.

(5) SPECIAL PERMIT — A special approval which is required for hospitals, nursing homes, jails, and new mobile home parks and substantial improvements to such existing parks, when such development is located all in, or in a designated portion of, a floodplain.

GARAGE, PRIVATE — An accessory building maintained primarily for the convenience of the occupant or occupants of the main building and in which no service is rendered to the general public.

HEARING — See "public hearing."

HOME OCCUPATION — Any lawful occupation or use conducted within a dwelling unit which is incidental or secondary to the residential use of the dwelling or within an accessory building. (See § 215-83 for specific criteria for a conditional use.)

IMPERVIOUS SURFACE — Sidewalks, streets, driveways, patios, buildings, all man-made constructions that water does not readily penetrate and thereby hinders groundwater recharge, increases runoff which leads to erosion, stream sedimentation, and flooding. Additional areas may be determined by the Borough Engineer to be impervious within the meaning of this definition.

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

JUNKYARD — Any place or establishment where junk is stored or accumulated on the outside of any enclosed building or structure, or where the business of selling, buying, or dealing in junk is carried on, or where two or more motor vehicles are stored which are

unlicensed, inoperable, and do not have a current and valid inspection sticker as required by the motor vehicle laws of the Commonwealth of Pennsylvania.

KENNEL — A structure wherein dogs or cats are kept for the purpose of breeding, boarding, sale, or show purposes, and which is so constructed that dogs or cats cannot stray therefrom.

LAND USE ORDINANCE — Any ordinance or map adopted pursuant to the authority granted by any of the following articles of the Planning Code: Article IV, Official Map; Article V, Subdivision and Land Development; Article VI, Zoning; and Article VII, Planned Residential Development.

LANDSCAPING — For purposes of this chapter, the planting or arranging of natural scenery including, but not limited to, grass and other plantings such as trees and shrubs for an aesthetic effect. (See also "buffer strip.")

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.

LOT AREA — The total horizontal area included within lot lines excluding space within any street or right-of-way, but including the area of any easement.

LOT, CORNER — A lot at the intersection of and fronting on two or more intersecting streets.

LOT COVERAGE — The percentage of the lot area that is occupied by the area of building(s), including any areas or surfaces covered by impervious materials.

LOT, INTERIOR — Any lot other than a corner lot.

LOT LINE — Any boundary of a lot.

LOT LINE, FRONT — The line separating such lot from any street or other public way.

LOT LINE, REAR — The lot line, or lines, opposite the front lot line.

LOT LINE, SIDE — Any lot line not a rear lot line or a front lot line.

LOT, THROUGH OR DOUBLE FRONTAGE — A lot with front and rear street frontage.

LOT WIDTH — The straight line distance between the side lot lines, measured at the required setback line.

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 of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, 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 appurtenances necessary for the erection thereon of a single mobile home.

MOBILE HOME PARK — A parcel or continuous parcels of land which has been improved for the placement of mobile homes for nontransient use, so designed and improved that it contains two or more mobile home lots for the placement thereon of mobile homes.

NONCONFORMING — A building, lot, structure or use of land or of a building which does not conform to the regulations of the district in which it is located, and lawfully existing prior to the enactment of this chapter. Nonconforming structures include nonconforming signs.

(1) NONCONFORMING STRUCTURE — A structure or part of a structure manifestly not designed to comply with the applicable use provisions in a zoning ordinance or amendment theretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of such ordinance or amendment prior to the application of such ordinance or amendment to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs.

(2) 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.

PARKING AREA — A lot or part thereof used for the storage or parking of motor vehicles, with or without the payment of rent or charges in money or other consideration.

PARKING SPACE — A stall or berth which is arranged and intended for parking of one motor vehicle in a garage or parking area.

PARTY WALL — A wall used or adopted for joint service between two buildings or dwelling units.

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

PLANNING AGENCY — See "Borough Planning Committee."

PLANNING CODE — The Pennsylvania Municipalities Planning Code, being the Act of July 31, 1968, P.L. 805 No. 247, as amended. [3]

PUBLIC HEARING — A formal meeting held pursuant to public notice by Borough Council or the planning agency, intended to inform and obtain public comment, prior to taking action in accordance with the Planning Code and/or this chapter.

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3. **Editor's Note: See 53 P.S. § 10101 et seq.**

PUBLIC MEETING — A forum held pursuant to notice under 65 Pa.C.S.A. § 701 et seq., known as the "Sunshine Act." [4]

PUBLIC NOTICE — A notice published once each week for two successive weeks in a newspaper of general circulation in the Borough. 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 or less than seven days from the date of the hearing.

RECREATIONAL VEHICLE — A boat, boat trailer, snowmobile, or a vehicle with or without motive power which is designed for human occupancy under transient circumstances, such as camping, travel or other recreation purposes.

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 the body, board, officer or agency 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.

RESIDENTIAL CONVERSION — A multifamily dwelling created by converting or altering an existing single-family or two-family dwelling into apartments for two, three or four families living independently of each other. (See § 215-82.)

RIGHT-OF-WAY — The total width of any land reserved or dedicated as a street, alley, crosswalk, or other public or semipublic purpose.

SIGN — Any permanent or temporary structure or part thereof, or any device attached, painted or represented directly or indirectly on a structure or other surface that shall display or include any letter, word, insignia, flag or representation used as, or which is in the nature of an advertisement, announcement, visual communication, direction, or which is designed to attract the eye, or bring the subject to the attention of the public.

(1) AREA OF SIGNS:

(a) The area of a sign shall be construed to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed (but not including any supporting framework and bracing which are incidental to the display itself).

(b) Where the sign consists of individual letters or symbols attached to a building wall or window, the area shall be considered to be that of the smallest rectangle or regular geometric shape which encompasses all of the letters and symbols.

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4. **Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

(c) In computing the area of a double-face sign, only one side shall be considered, provided that both faces are identical. If the double-faced sign is greater than 45°, then both sides of such sign shall be considered in calculating the sign area.

(2) ILLUMINATION OF SIGNS:

(a) A directly illuminated sign is designed to give forth artificial light directly (or through transparent or translucent material) from a source of light within such sign, including but not limited to neon and exposed lamp sign.

(b) An indirectly illuminated sign is a sign illuminated with a light so shielded that no direct rays therefrom are visible elsewhere on the lot where said illumination occurs. If such shielding device is defective, such sign shall be deemed to be a directly illuminated sign.

(3) LOCATION OF SIGNS:

(a) An on-premises sign which advertises or otherwise directs attention to an activity conducted on the same lot.

(b) An advertising sign (billboard) is an off-premises sign which advertises or otherwise directs attention to a commodity, business, industry or other similar activity which is sold, offered or conducted elsewhere than on the lot upon which such sign is located.

(c) A business sign is an on-premises sign which advertises or otherwise directs attention to a business, commodity, service, industry or other activity which is sold, offered or conducted other than incidentally on the premises upon which such sign is located, or to which it is affixed.

(4) TYPES OF SIGNS:

(a) A freestanding sign is a self-supporting sign resting on or supported by means of poles or standards. The height of freestanding signs shall be measured from the ground level.

(b) A parallel or wall sign is mounted parallel to a wall or other vertical building surface. Parallel signs shall not extend beyond the end of any wall or other surface to which they are mounted, or shall not project more than eight inches from its surface.

(c) A projecting sign is mounted to a wall or other vertical building surface other than a parallel sign. Projecting signs shall not project more than four feet from the wall or surface to which they are mounted nor in any way interfere with normal pedestrian or vehicular traffic.

SPECIAL EXCEPTION — A use permitted in a particular zoning district pursuant to the provisions of Articles VI and IX of the Planning Code and of § 215-97C of this chapter.

STREET — A right-of-way or portion thereof, including any street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct and any other way used or intended to be used by vehicular traffic or by pedestrians, whether public or private.

STREET LINE — The dividing line between a lot and the outside boundary of a public street or street right-of-way, or between a lot and a private street which serves two or more separately owned homes or buildings.

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

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, or lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development; provided, however, that the subdivision of land for agricultural purposes into parcels of more than 10 acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

SWIMMING POOL, PRIVATE — Any constructed pool used for swimming or bathing which has a depth of 24 inches or more, used as an accessory to a residence, available only to the family of the householder and his private guests, not open to the public or publicly owned, not owned and/or operated by any organization, partnership or corporation, and not otherwise regulated by any statutes or by rules and regulations other than those of the Borough.

USE — Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure, or on a tract of land.

VARIANCE — Relief granted pursuant to the provisions of Articles VI and IX of the Planning Code and § 215-97B of this chapter.

YARD — An open space, as may be required by this chapter, on the same lot with a building or a group of buildings, which open space lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward except as specified elsewhere in this chapter.

(1) FRONT YARD — An open space extending the full width of the lot between a building and the front lot line.

(2) REAR YARD — An open space extending the full width of the lot line between a building and the rear lot line.

(3) SIDE YARD — An open space extending from the front yard and the rear yard between a building and a side lot line.

ARTICLE II
Establishment of Zoning Districts

§ 215-5. Types of districts. [5]

For the purposes of this chapter, the following districts are hereby designated within the Borough of McSherrystown:

R-1	Residential
R-2	Residential
C-1	Commercial
I-1	Industrial
IN-1	Institutional
OLI	Office Light Industrial
FP	Floodplain Overlay

§ 215-6. 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.

§ 215-7. District boundaries.

District boundary lines are intended to coincide with lot lines, center lines 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.

ARTICLE III
R-1 Residential District

§ 215-8. Purpose.

The purpose of this article is to provide for and encourage moderate density of development in those areas of the Borough best suited for such development. The provisions expressed herein are intended to sustain a desirable residential environment and protect property values.

§ 215-9. Uses permitted by right.

The following uses, buildings, and activities are permitted by right within an R-1 District:

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5. **Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

A. Single-family detached dwellings.

B. Single-family semidetached dwellings.

C. Public parks and playgrounds.

D. Elementary and secondary schools.

E. Accessory buildings and accessory uses on the same lot with an incidental to any of the above permitted uses.

§ 215-10. Permitted conditional uses.

The following uses may be permitted as conditional uses when authorized by Borough Council:

A. Conversion apartments in accordance with the criteria of § 215-82.

B. Home occupations in accordance with the criteria of § 215-83.

C. Uses which, in the opinion of Borough Council, are of the same general character as the above uses, and which will not be detrimental to the intended purposes of this chapter.

§ 215-11. Lot requirements.

A. Minimum lot area per dwelling unit.

(1) Single-family detached: 7,500 square feet per dwelling unit.

(2) Single-family semidetached: 3,750 square feet per dwelling unit.

B. Minimum lot width at the building setback line.

(1) Single-family detached: 60 square feet per dwelling unit.

(2) Single-family semidetached: 30 square feet per dwelling unit.

C. Maximum lot coverage: No more than 35% of any lot shall be covered by buildings and other impervious surface.

§ 215-12. Yard requirements and setbacks.

A. Minimum setback from street right-of-way: 25 feet, except where the provisions of § 215-54 may be applicable.

B. Side yard setback.

(1) Single-family detached dwellings shall have two yards not less than 20 feet in aggregate width, neither yard being less than eight feet.

(2) Single-family semidetached dwellings shall have one yard per dwelling unit not less than 10 feet.

(3) All other principal buildings shall have two yards, neither yard being less than 10 feet.

C. Rear yard setbacks: 30 feet minimum.

§ 215-13. Height requirements.

A. No principal building shall exceed 30 feet, or 2 1/2 stories.

B. No accessory building shall exceed 15 feet in height.

ARTICLE IV
R-2 Residential District

§ 215-14. Purpose.

The purpose of this district is to provide for and encourage an ample supply and variety of higher density residential development, along with certain other compatible uses and activities in those areas of the Borough best suited for such development.

§ 215-15. Uses permitted by right.

The following uses, buildings, and activities are permitted by right within an R-2 District:

A. Single-family detached dwellings.

B. Single-family semidetached dwellings.

C. Two-family dwellings.

D. Single-family attached dwellings.

E. Apartments

F. Professional offices.

G. Medical clinics.

H. Elementary and secondary schools.

I. Churches.

J. Municipal buildings and uses.

K. Accessory buildings and uses on the same lot with and incidental to any of the above permitted uses.

§ 215-16. Permitted conditional uses.

The following uses may be permitted as conditional uses when authorized by Borough Council:

A. Conversion apartments in accordance with the criteria of § 215-82.

B. Home occupation in accordance with the criteria of § 215-83.

C. Public utility buildings and facilities in accordance with the criteria of § 215-84.

D. Mobile home parks in accordance with the criteria of § 215-88.

E. Uses which, in the opinion of Borough Council, are of the same general character as the above uses, and which will not be detrimental to the intended purposes of this chapter.

§ 215-17. Lot requirements.

A. Minimum lot area per dwelling unit.

(1) Single-family detached: 6,000 square feet per dwelling unit.

(2) Single-family semidetached: 4,500 square feet per dwelling unit.

(3) Two-family: 4,500 square feet per dwelling unit.

(4) Single-family attached: 3,500 square feet per dwelling unit.

(5) Apartments: 4,000 square feet for the first dwelling unit plus 2,500 square feet for each additional unit.

(6) All other permitted uses: 6,000 square feet per use or activity.

B. Minimum lot width at the building setback line.

(1) Single-family detached: 50 feet per dwelling unit.

(2) Single-family semidetached: 40 feet per dwelling unit.

(3) Two-family: 25 feet per dwelling unit.

(4) Single-family attached: 25 feet per dwelling unit.

(5) Apartments: 40 feet for the first dwelling unit, plus 20 feet for each additional unit up to 200 feet.

(6) All other permitted uses: 50 feet.

C. Maximum lot coverage: No more than 45% of any lot shall be covered by buildings or other impervious surfaces.

§ 215-18. Yard requirements and setbacks.

A. Minimum setback from street right-of-way: 25 feet, except where the provisions of § 215-54 may be applicable.

B. Side yard setback.

(1) Single-family detached dwellings shall have two yards not less than 20 feet in aggregate width, neither yard being less than eight feet.

(2) Single-family semidetached dwellings shall have one yard per dwelling unit of not less than 10 feet.

(3) All other principal buildings shall have two yards, neither yard being less than 10 feet.

C. Rear yard setback: 25 feet minimum.

§ 215-19. Height requirements.

A. No principal building shall exceed 40 feet in height.

B. No accessory building shall exceed 20 feet in height.

ARTICLE V
C-1 Commercial District

§ 215-20. Purpose.

The purpose of this article is to provide for and encourage the continuation of existing local retail business establishments which serve the nearby community, and to provide for the location of new uses and activities of a compatible nature.

§ 215-21. Uses permitted by right.

The following uses, buildings and activities are permitted by right within any C-1 District:

A. Retail businesses and stores when conducted entirely within a building.

B. Professional and business offices.

C. Financial institutions (banks, savings and loan associations, etc.).

D. Restaurants and taverns.

E. General service and repair shops (radio, TV, and other appliances, but excluding service stations and motor vehicle repair shops).

F. Retail personal service establishments (such as barber, beauty, shoe repair, laundry, or tailor shops) in which only noncxplosive and nonflammable materials are used, and where no work is done for retail outlets elsewhere.

G. Funeral homes.

H. Medical clinics.

I. Rooming or boarding houses, subject to all of the provisions of § 215-72. **[Amended 9-8-1999 by Ord. No. 1999-5]**

J. Municipal or other governmental buildings and facilities.

K. Parking garages and lots.

L. Clubs, lodges, and fraternal organizations.

M. Apartments when in combination with another permitted use, provided that no dwelling shall be located on the first floor of any structure.

N. Accessory buildings and accessory uses on the same lot with and incidental to any of the above permitted uses.

§ 215-22. Permitted conditional uses.

The following uses may be permitted as conditional use when authorized by the Borough Council:

A. Conversion apartments in accordance with the criteria of § 215-82.

B. Service stations and motor vehicle repair shops in accordance with the criteria of § 215-86.

C. Public utility buildings and facilities in accordance with the criteria of § 215-84.

D. Uses which, in the opinion of Borough Council, are of the same general character as the above uses and which will not be detrimental to the intended purposes of this chapter.

E. Adult uses, as further regulated under Chapter 47, Adult Uses, of the Code.[6]

§ 215-23. Lot requirements.

A. Minimum lot area: 3,000 square feet per use, activity, or dwelling unit.

B. Minimum lot width at the building setback line: 40 feet.

C. Maximum lot coverage: No more than 60% of any lot shall be covered by buildings, and not more than 75% shall be covered by buildings and other impervious surfaces.

§ 215-24. Yard requirements and setbacks.

A. Minimum setback from street right-of-way: 10 feet.

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6. **Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

B. Side yard setback: two yards each having a minimum width of five feet.

C. Rear yard setback: 20 feet minimum.

§ 215-25. Height requirements.

A. No principal building shall exceed 40 feet.

B. No accessory building shall exceed 20 feet in height.

§ 215-26. Parking and loading.

See § 215-70.

ARTICLE VI
I-1 Industrial District

§ 215-27. Purpose.

The purpose of this article is to provide for the continuation and expansion of existing industry, and to provide for the establishment of new industrial and manufacturing development which will benefit the community. Due to the proximity of this zone to residential and commercial areas, it is intended for uses with limited external impacts.

§ 215-28. Uses permitted by right.

The following uses, buildings, and activities are permitted by right within any I-1 District:

A. Office buildings.

B. Offices or shops for contractors or craftsmen (i.e., plumbers, carpenters, electricians, printers, etc.).

C. Nursery, greenhouses, or garden shops.

D. Wholesale or distribution businesses.

E. Warehousing and indoor storage.

F. Agriculture.

G. Assembly, fabrication, or compounding or products from materials previously manufactured or processed.

H. Manufacture of small items such as precision instruments, optical goods, electrical components, etc.

I. Packaging and crafting establishments.

J. Trucking establishments.

K. Printing and bookbinding.

L. Accessory buildings and accessory uses on the same lot with and incidental to any of the above permitted uses.

§ 215-29. Permitted conditional uses.

The following uses may be permitted as conditional uses when authorized by Borough Council in accordance with the criteria of Article XII:

A. Outdoor storage, provided that such storage is enclosed by a satisfactory fence or planting and is not visible from the property line.

B. Junkyard, pursuant to § 215-89.

C. Light metal processes such as plating, finishing, stamping or extrusion of small parts or products.

D. Processing or manufacturing of food products.

E. Furniture manufacturing.

F. Retail sale of goods produced as a permitted use, provided the goods are sold on the same lot on which they are produced.

G. Uses which, in the opinion of Borough Council, are of the same general character as the above uses and which will not be detrimental to the intended purposes of this chapter.

H. Adult uses, as further regulated under Chapter 47, Adult Uses, of the Code.[7]

§ 215-30. Lot requirements.

A. Minimum lot area: 15,000 square feet per use or activity.

B. Minimum lot width at the building setback line: 100 feet.

C. Maximum lot coverage: No more than 60% of any lot shall be covered by buildings, and not more than 75% shall be covered by buildings and other impervious surfaces.

§ 215-31. Yard requirements and setbacks.

A. Minimum setback from a street right-of-way: 25 feet.

B. Side yard setback: a total of 20 feet, with neither side yards being less than eight feet.

C. Minimum rear yard setback: 30 feet.

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7. **Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

D. Where a side or rear yard adjoins a residential district, a setback of 30 feet shall be provided, including a landscape planting of trees in accordance with the provisions of § 215-69.

§ 215-32. Height requirements.

A. Principal buildings shall not exceed 40 feet.

B. No accessory building shall exceed 20 feet.

§ 215-33. Parking and loading.

See § 215-70.

ARTICLE VII
OLI Office-Light Industrial

§ 215-34. Purpose.

The purpose of this article is to provide for the continuation and expansion of existing light industry and the establishment of offices. Due to the proximity of residential uses, this district is intended for uses with limited external impacts.

§ 215-35. Uses permitted by right.

The following uses, buildings, and activities are permitted by right within any OLI District:

A. Professional offices.

B. Office buildings.

C. Offices or shops for carpenters or craftsmen (i.e., plumbers, carpenters, electricians, printers, etc.)

D. Warehousing and indoor storage.

E. Accessory buildings and uses on the same lot with and incidental to any of the above permitted uses.

§ 215-36. Permitted conditional uses.

The following uses may be permitted as conditional uses when authorized by Borough Council in accordance with the criteria of Article XII:

A. Outdoor storage, provided that such storage is enclosed by a satisfactory fence or planting and is not visible from the property line.

B. Assembly, fabrication, or compounding of products from materials previously manufactured or processed.

C. Manufacture of small items such as precision instruments, optical goods, electrical components, etc.

D. Uses which, in the opinion of the Borough Council, are of the same general character as the above uses and which will not be detrimental to the intended purposes of this chapter.

§ 215-37. Lot requirements.

A. Minimum lot area: 15,000 square feet per use or activity.

B. Minimum lot width at building setback line: 100 feet.

C. Maximum lot coverage: No more than 60% of any lot shall be covered by buildings, and not more than 75% shall be covered by buildings and/or impervious surfaces.

§ 215-38. Yard requirements and setbacks.

A. Minimum setback from a street right-of-way: 25 feet.

B. Side yard setback: a total of 20 feet, with neither side yard being less than 8 feet.

C. Minimum rear yard setback: 30 feet.

D. Where a side or rear yard adjoins a residential use or district, a setback of 30 feet shall be provided, including a landscape planting of trees and shrubs in accordance with the provisions of § 215-69.

§ 215-39. Height requirements.

A. Principal buildings shall not exceed 40 feet.

B. No accessory building shall exceed 20 feet.

§ 215-40. Parking and loading.

See § 215-70.

ARTICLE VIII
IN-1 Institutional District

§ 215-41. Purpose.

The purpose of this article is to provide for existing and future institutions of the Borough so they may continue to be an asset to the community and surrounding areas. It is also intended to minimize any potential adverse affect of institutional developments on nearby properties.

§ 215-42. Uses permitted by right.

The following uses, buildings, and activities are permitted by right within any IN-1 District:

A. Churches, chapels, or other places of worship, and their accessory residential structures.

B. Colleges, universities, and theological schools.

C. Schools (private, nursery, elementary, junior high and senior high).

D. Convents and monasteries.

E. Institutional headquarters for educational, professional, religious, and other nonprofit organizations.

F. Hospitals, sanitariums, charitable institutions, and boardinghouses.

G. Cemeteries.

H. Nursing homes.

I. Accessory buildings and accessory uses of the same lot with and incidental to any of the above permitted uses.

§ 215-43. Permitted conditional uses.

The following uses may be permitted as conditional uses when authorized by Borough Council:

A. Agricultural uses in accordance with the criteria of § 215-81.

B. Recreational uses in accordance with the criteria of § 215-85.

C. Uses which, in the opinion of Borough Council, are of the same general character as the above uses and which will not be detrimental to the intended purposes of this chapter.

§ 215-44. Lot requirements.

A. Minimum lot area: one acre per use or activity.

B. Minimum lot width at the building setback line: 100 feet.

C. Minimum lot coverage: No more than 45% of any lot shall be covered by buildings or other impermeable surfaces.

§ 215-45. Yard requirements and setbacks.

A. Minimum setback from street right-of-way: 25 feet.

B. Side yard setback: two yards not less than 50 feet in aggregate width, and neither yard being less than 20 feet.

C. Rear yard setback: 25 feet.

§ 215-46. Height requirements.

A. No principal building shall exceed 40 feet.

B. No accessory building shall exceed 20 feet.

§ 215-47. Parking and loading.

See § 215-70.

ARTICLE IX
Floodplain Overlay District

§ 215-48. Purpose.

The purpose of these provisions is to prevent the loss of property and life, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

A. Regulating uses, activities and development which, acting alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities and frequencies;

B. Restricting or prohibiting certain uses, activities, and development from locating within areas subject to flooding;

C. Requiring all those uses, activities, and developments that do occur in flood-prone areas to be protected or floodproofed against flooding and flood damage;

D. Protecting individuals from buying lands and structures which are unsuited for intended purposes because of flood hazards.

§ 215-49. Overlay concept.

A. The Floodplain Overlay District shall be an overlay to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the Floodplain Overlay District shall serve as a supplement to the underlying district provisions.

B. Where there happens to be any conflict between the provisions or requirements of the Floodplain Overlay District and those of any underlying district the more restrictive provisions shall apply.

C. In the event any provisions concerning the Floodplain Overlay District are declared inapplicable as a result of any legislative or administrative actions or judicial discretion, the basic underlying district provisions shall remain applicable.[8]

§ 215-50. Construction and development in district. [9]

Construction and development in the Floodplain Overlay District shall be as regulated in Chapter 107, Floodplain Management.

ARTICLE X
Supplemental Provisions

§ 215-51. Purpose.

This article contains provisions which qualify or supplement the district regulations appearing elsewhere in this chapter.

§ 215-52. 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.

§ 215-53. Reduction of lot area and yard requirements.

No lot shall be so reduced that the area of the lot, or dimensions of the required yard areas, shall be less than prescribed by this chapter, except that a semidetached dwelling 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 dwelling existed 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.

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8. **Editor's Note: Original Sections 802 through 807, which immediately followed this section, pertaining to development and construction in the Floodplain Overlay District, were deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

9. **Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

§ 215-54. Building setback lines.

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.

§ 215-55. 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.

§ 215-56. 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, or pier of a building may project not more than two feet into a required yard.

B. Fire escapes, steps, bay windows, balconies, eaves, and canopies may project not more than three feet into a required yard.

C. Apparatus or architectural structures 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 four feet into any required yard.

§ 215-57. More than one principal structure on a 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.

§ 215-58. Visual obstructions.

No wall, fence, sign, or other structure shall be erected or altered, and no hedge, trees, shrubs, crops, etc., shall be maintained, which may cause hazard to pedestrians or traffic.

§ 215-59. Fences.

In residential districts, no fence shall be erected in any required front yard area that is more than four feet in height, and no fence shall be erected in any other required yard area that is more than six feet in height. Fences in all districts shall be constructed of accepted fencing material, maintained in good condition, and shall not create a hazard.

§ 215-60. Private swimming pools accessory to residential uses. [10]

A. 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 an adequate enclosure either surrounding the property or pool area, sufficient to make such body of water inaccessible to small children. Such enclosure, including gates therein, must be not less than four feet above the underlying ground. All gates must be self-latching with latches placed four feet above the underlying ground and otherwise made inaccessible from the outside to small children.

B. A natural barrier, hedge, pool cover or other protective device approved by the Borough Council may be used so long as the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate and latch described herein.

C. No pool shall be located in any required front, side or rear yard area.

D. All pools shall be properly maintained in a safe and sanitary condition and equipped with a filtering system meeting all applicable state requirements.

§ 215-61. Corner lots.

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

§ 215-62. 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 and area requirements for any other building or structure.

§ 215-63. Access to structure.

Every building or structure hereafter erected or moved shall be located on a lot that abuts a public street or with access to an acceptable private 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.

§ 215-64. Commercial equipment storage and parking.

Commercial equipment including but not limited to trucks of one-ton capacity or more, construction equipment and machinery, and any other commercial or industrial materials, equipment, and supplies shall not be parked overnight or stored in any residential district. This requirement shall not apply to vans or pickup trucks parked in the owner's residential driveway or garage.

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10. **Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

§ 215-65. Recreational vehicle storage.

No recreational vehicle, as defined by this chapter, shall be parked or stored on any required setback in a residential district except in a carport or enclosed building, except that such equipment may be parked anywhere on a residential property for a period of up to 24 hours for the purpose of loading, unloading, or minor maintenance and repair. No such equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot.

§ 215-66. On-lot storage of vehicles 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 outside in any residential or commercial district within any front yard area (except in a driveway), and no more than one such item shall be stored outside in any front yard at any time on a single property.

§ 215-67. Accessory buildings and structures.

A. No accessory building or structure shall be located within any required front or side yard. However, such buildings or structures may be located within 20 feet of any rear lot line in any district. An accessory building may be permitted within the same side setback line or lines as established by an existing nonconforming principal structure located on the same lot.

B. The minimum distance between buildings and/or structures shall be 10 feet.

C. Accessory buildings and structures shall not occupy more than 25% of the total rear yard area.

D. Where two properties have rear property lines abutting each other, then an accessory building may be located within five feet of the rear property lines.

§ 215-68. Storage of petroleum.

Storage of more than 10 gallons of gasoline or 55 gallons of other liquefied petroleum products, except home heating fuel in an approved manner, shall be prohibited in any residential district. Storage of such products shall be permitted in any commercial or industrial district when permitted by right or as an accessory activity directly related to and necessary for the proper functioning of a permitted principal use, provided that it is stored underground or in a fireproof building, and in compliance with Pennsylvania State Police Fire Marshal Division regulations governing the storage, handling, and use of flammable and combustible substances pursuant to the Act of April 27, 1927, P.L. 450, as amended,[11] and all applicable local regulations.

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11. **Editor's Note: See 35 P.S. § 1181 et seq.**

§ 215-69. Landscaping requirements.

Where the district or other provisions of this chapter indicate, a landscape planting of trees and shrubs shall be provided. The amount, density of planting, and types of plant materials used shall be dependent upon existing conditions, proximity to existing dwellings, compatibility of adjacent uses, and any other pertinent considerations. All required plants shall be at least 30 inches high when planted, be maintained in a healthy condition and so pruned as to provide maximum opacity. Where adjacent property has been developed in such a manner that privacy from the development is desirable, the planting shall be of sufficient density and contain sufficient evergreen material to provide an effective visual screen.

§ 215-70. Parking and loading requirements.

No building or structure shall hereafter 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 or accessways, 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 (combined) 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. Parking space requirements.

(1) The minimum off-street parking provided shall be as follows:

(a) Dwelling: two spaces; 200 square feet per space per dwelling unit.

(b) Church: one space for each 10 seats.

(c) Club, lodge: one space for each 10 members the facility is designed to accommodate.

(d) Theater, auditorium: one space for each 10 seats.

(e) Mortuary, funeral home: one space for each five visitors the facility is designed to accommodate.

(f) Nursing, convalescent home: one space for each four patient beds.

(g) Medical or dental clinic: four spaces for each doctor practicing at the clinic plus one space for each employee.

(h) Restaurant, tavern: one space for each eight seats.

(i) Offices: two spaces for each employee or occupant.

(j) Retail stores, general business, commercial and personal service establishments: one space for each 200 square feet of gross floor area.

(k) Auto service stations, repair shops and garages: two spaces for each service bay or area.

(l) Industrial uses or activities: one space for each employee on the largest shift.

(m) Laundromat: one space for each 200 square feet of gross floor area.

(2) Borough Council shall determine the parking requirements for any uses, structures, or activities not specifically provided for above.

D. Design requirements.

(1) Individual parking spaces shall have a minimum area of 200 square feet, excluding driveways and accessways, and a minimum width of 10 feet.

(2) Parking areas shall be designed so that each vehicle may proceed to and from any parking space without requiring the moving of any other vehicle.

(3) All parking spaces and access drives for multiple dwellings shall be at least 10 feet from any building.

(4) Parking areas shall be graded and paved with concrete or asphalt so as to provide for the adequate drainage of surface water and the prevention of dust, erosion, or flow of water across streets or adjoining property.

(5) Maximum width of residential driveways at the right-of-way line shall be 20 feet.

E. Off-street loading. In addition to providing off-street parking, all commercial and industrial establishments shall provide adequate off-street areas for the loading and unloading of supplies, merchandise, etc., to and from vehicles, as follows:

(1) At least one loading berth or area shall be provided for each establishment with a gross floor area under 10,000 square feet. For establishments with gross floor areas of more than 10,000 square feet, additional berths or loading areas may be required, depending upon the nature of the use of activity.

(2) The dimensions of such a berth or area shall not be less than 12 feet by 25 feet.

(3) All such loading facilities shall be located and designed so as not to interfere with the movement of other vehicles and pedestrians.

§ 215-71. Kennels.

A. No kennel shall be constructed or extended into a required yard area.

B. All kennels shall meet state laws and sanitation requirements.

C. No kennels shall be allowed to become a nuisance to neighbors. A dog or cat shall be considered a nuisance if it:

(1) Damages, soils, defiles, or defecates on private property other than the owner's or on public walks and recreation areas unless such waste is immediately removed and properly disposed of by the owner;

(2) Causes unsanitary, dangerous, or offensive conditions;

(3) Causes a disturbance by excessive barking or other noisemaking;

(4) Chases vehicles; or

(5) Molests, attacks, or interferes with persons or other domestic animals on public property.

§ 215-72. Boarding or rooming houses [Added 9-8-1999 by Ord. No. 1999-5]

A. Occupancy. Each room is intended for single occupancy. Multiple occupancy of a room is prohibited.

B. Parking. One and one-half spaces for each room occupied by a person. The parking spaces shall be designed in accordance with § 215-70D.

C. Rest room facilities. There is required for each five rooms or fraction thereof one urinal, shower, bathtub, lavatory and washbasin. Separate facilities shall be provided for male and female guests. There shall be an equal number of rest room facilities on each floor for male and female users, and the facilities shall be located on the same floor as the user's room.

D. Miscellaneous provisions.

(1) Cooking facilities are prohibited in the rooms occupied by any persons.

(2) Transient occupancy is not permitted.

(3) Boardinghouses offering food services shall have separate kitchen and dining areas approved by the Department of Labor and Industry.

(4) Maximum number of occupants per boarding or rooming house, including the owner or manager, shall be one occupant for each 200 square feet of habitable floor area.

ARTICLE XI
Signs

§ 215-73. Intent.

It is recognized that signs perform important functions, but that control of signs is necessary to promote the safety and general welfare and, in part, the following objectives:

A. Safety. To promote the safety of persons and property by providing that signs:

(1) Do not create a hazard due to collapse, fire, collision, decay or abandonment;

(2) Do not obstruct fire fighting or police surveillance;

(3) Do not create traffic hazards by confusing or distracting motorist and tourists or by impairing the driver's ability to see pedestrians, obstacles or other vehicles, or to read traffic signs.

B. Communication efficiency. To promote the efficient transfer of information in sign message by providing that:

(1) Those signs which provide messages and information most needed and sought by the public are given priorities;

(2) Businesses and services may identify themselves;

(3) Customers and other persons may locate a business or service;

(4) No person or group is arbitrarily denied the use of the sight lines from the public right-of-way for communication purposes; and

(5) Persons exposed to signs are not overwhelmed by the number of messages presented and are able to exercise freedom of choice to observe or ignore said messages, according to the observer's purposes.

C. Landscape quality and preservation. To protect the public welfare and to enhance the appearance and economic value of the landscape by providing that signs:

(1) Do not create a nuisance to persons using the public right-of-way;

(2) Do not constitute a nuisance to occupancy of adjacent and contiguous property by their brightness, size, height or movement; and

(3) Are not detrimental to land or property values.

§ 215-74. Signs permitted in any district.

The following signs are permitted in any district:

A. Public service signs erected by public agencies for regulatory, directional or informational purposes.

B. Temporary real estate signs advertising the sale or rental of premises, provided that:

(1) The area of one side of any such sign shall not exceed 12 square feet in any residential district or 20 square feet in any other district.

(2) No more than two such signs shall be placed on any property held in single ownership.

C. Temporary sign:

(1) Indicating the location of premises in the process of development;

(2) Of contractors, mechanics, and craftsmen during the time work is being undertaken; and

(3) Concerning civic, religious or charitable events, provided that:

(a) The area of one side of any such sign shall not exceed 12 square feet.

(b) Such signs are removed upon completion of the work or event.

(c) No more than one such sign shall be placed on each 500 linear feet of street frontage.

D. Signs for public, religious, charitable institutions or uses such as parks, schools, churches, and similar uses, provided that:

(1) The area of one side of any such sign shall not exceed 20 square feet.

(2) No more than one such sign shall be placed on each street frontage.

E. Signs identifying home occupations, provided that:

(1) The area of such signs shall not exceed six square feet.

(2) No more than one such sign shall be permitted for each home occupation.

(3) Such signs shall be attached to the building or structure in which the occupation is located, or a freestanding sign located 10 feet behind the street right-of-way.

(4) No part of any freestanding sign shall be closer than 10 feet to any adjacent lot or property line.

F. Signs prohibiting or otherwise controlling trespassing upon a premises or indicating the private nature of a road, driveway or premises, provided that the area of one side of any such sign shall not exceed two square feet.

G. Temporary signs advocating or opposing a candidate for public office or a position on an issue to be determined at an election, provided that such signs are removed within seven days after the election.

§ 215-75. General regulations.

A. No sign shall be placed so that it will cause any danger to traffic by obstructing or interfering with the view of any motorist or pedestrian.

B. No sign or sign structure shall be located within or extend into or over any street or road cartway.

C. No part of any sign shall be more than 20 feet from the ground.

D. No animated, flashing or moving signs shall be permitted. Illumination of any sign shall be indirect, shielded, or otherwise arranged to prevent glare.

E. No illuminated sign shall be permitted in any residential district until a plan for the illuminated sign has been approved by the Zoning Officer so that the sign is not visible from abutting or nearby properties.

F. All signs projecting or extending over the cartway of any street or alley or over any sidewalk shall be at least 10 feet above the sidewalk grade and shall not extend within three feet of the curbline.

G. Freestanding signs shall be:

(1) Located at least 10 feet behind all established street right-of-way lines; and

(2) No part of the sign shall be closer than 10 feet to any adjacent lot or property line.

H. Except for a sign or lettering painted or placed directly on a door or store window identifying the occupant or activity of a building or structure, no sign shall be painted directly on any surface which is not in itself the sign structure.

I. All signs shall be constructed of durable materials and shall be kept in good condition and repair. Any sign which is allowed to become dilapidated shall be removed at the expense of the owner or lessee.

J. All signs shall be removed by the owner or lessee of the premises upon which the sign is located, at his expense, when the business or activity it advertises is no longer conducted.

K. Signs illuminated in the colors, red, green, or amber, either by colored bulbs or tubing, or in high reflection by the use of special preparations such as fluorescent paint or glass, shall not be located within a radius of 200 feet of a highway traffic light or similar safety device.

L. All signs erected along the right-of-way of a state highway shall be in accordance with the regulations of the Pennsylvania Department of Transportation.

§ 215-76. District regulations.

A. In any residential district, no signs are permitted except those enumerated in § 215-74.

B. In any commercial or industrial district, the following signs, in addition to those noted in § 215-74, are permitted:

(1) Identification sign: one such sign for each business or activity, attached to the building or structure in which the business or activity is located, provided that the sign area is not more than two square feet.

(2) Business signs: two freestanding, wall or projecting signs for each property with a total aggregate square footage of sign area for both signs not to exceed one square foot for each linear foot of property street frontage (or store frontage in a shopping center), but under no circumstances shall any single sign have a sign area greater than 50 square feet.

(3) Advertising signs (billboards): advertising signs, to be erected only in the commercial and industrial districts under the following restrictions and controls:

(a) In commercial districts, advertising sign structures are limited to one for each street frontage. No such structure shall contain over one advertising sign per facing, nor shall any individual advertising sign exceed 12 feet in vertical measurement or 25 feet in length.

(b) In industrial districts, advertising sign structures are limited to one for each street frontage.

(c) In industrial districts, no such structure shall contain over one advertising sign per facing, nor shall any individual advertising sign exceed 14 feet in vertical measurement or 48 feet in length.

(d) No advertising sign shall be permitted to be erected upon the roof of any building, and advertising signs shall be required to setback 30 feet from the front lot line or to the established building line, whichever is less.

(e) No advertising sign shall be permitted to be erected within 50 feet of an adjoining residential district or preexisting residential use if visible from and designed to face into such district or preexisting residential use.

(f) Advertising signs, if lighted, shall be indirectly illuminated, and all such signs shall conform to the height regulations for buildings in the district in which they are located.

(g) V-shaped advertising sign structures shall be permitted, provided that the angle formed by the two sides of the advertising sign structure does not exceed 30°.

(h) No advertising sign may be spaced closer than 500 feet from another advertising sign.

§ 215-77. Nonconforming signs.

All nonconforming signs may be continued, provided that replacement of such signs conforms to the general regulations in § 215-75.

§ 215-78. Sign permits.

A. Building permit required. It shall be unlawful to erect, construct, or alter any sign without first filing with the Zoning Officer an application in writing and obtaining a formal building permit.

B. Application form. An application for a permit for the erection, construction, or alteration of a sign shall be submitted to the Zoning Officer on such form as the McSherrystown Borough Council may prescribe.

C. Plans. Applications for sign permits shall be accompanied by drawings of the proposed work, drawn to scale, showing the structural details of the sign and such other details as the Zoning Officer may require.

D. Fees. All applicants for sign permits shall pay to the Zoning Officer for the use of the Borough a fee at the rate of $1 per each square foot, or fraction thereof, of sign area.

§ 215-79. Exemption from sign permits.

A. The exemption from the permit provisions of this article shall not be construed as relieving the owner or person in control of the sign from complying with all other applicable provisions of this article and chapter.

B. The following signs are exempt from building permit requirements:

(1) Signs described in § 215-74.

(2) Signs not exceeding two square feet which contain only noncommercial messages including designation of rest rooms, telephone locations, restrictions on smoking, door openings and private traffic control, and parking signs and other similar signs.

(3) One sign per parking lot not exceeding nine square feet per sign face and 12 feet in height identifying the business and providing driving and parking information.

(4) Replacing copy. The changing of the advertising copy or message on an approved painted or printed sign, or on a theater marquee and similar approved signs which are specifically designed for the use of replaceable copy.

(5) Maintenance. Painting, repainting, cleaning and other normal maintenance and repair of a sign or a sign structure unless a structural change is made.

ARTICLE XII
Standards and Criteria for Conditional Uses

§ 215-80. Purpose.

This article contains standards and criteria for the granting of conditional uses upon application to Borough Council. These conditions shall supplement the regular district provisions and general provisions of this chapter. Hearings for conditional uses shall be conducted in accordance with §§ 215-96 and 215-98B, and all references therein to the Zoning Hearing Board and to special exceptions shall be read as references to Borough Council and conditional uses.

§ 215-81. Agricultural uses.

A. Agricultural uses and activities shall be restricted to the growing of crops and horticulture. The keeping of animals, including barns and livestock pens, shall be prohibited.

B. No agricultural use or activity shall take place within 25 feet of a residential district boundary.

C. Required setbacks may be waived or reduced by the Borough Council for nonstructural agricultural uses and activities such as the tilling of soil along common property lines where the adjacent lot is also in agricultural use and no threat to public health or safety would result.

§ 215-82. Conversion apartments.

A. No conversion shall contain more than a total of four dwelling units.

B. The lot area per dwelling unit shall be not less than 3,000 square feet.

C. No alteration of the building exterior shall be made except as may be necessary for health or safety purposes.

D. Fire escapes shall not be located on any wall facing a street.

E. Each dwelling unit shall have separate and private cooking and bathroom facilities.

F. Off-street parking shall be provided in accordance with § 215-70 of this chapter.

§ 215-83. Home occupations.

A. The activity or occupation shall be conducted entirely within the dwelling or an accessory building by a resident of the dwelling.

B. The amount of floor area used for such occupation shall not exceed 25% of the total floor area of the dwelling.

C. No nonresidents shall be employed.

D. A sufficient number of additional off-street parking spaces shall be provided. See § 215-70.

E. There shall be no change to the exterior of the building.

F. One identification sign shall be permitted in accordance with the appropriate provisions of Article XI.

G. Activities involving the commercial manufacture or processing of products shall not be permitted.

§ 215-84. Public utility buildings and facilities.

A. Minimum side yard setback shall be 15 feet.

B. When any equipment or facility is not within a building, it shall be enclosed with a chain link fence at least six feet in height.

C. When a fence is required to enclose any equipment or facility, it shall be surrounded by a landscape planting in accordance with § 215-69 of this chapter.

D. When equipment or other facilities are totally enclosed within a building, no fence or landscape planting shall be required.

E. The external design of any building shall be compatible with the other buildings of the district.

F. Where employment takes place on the site, one off-street parking space shall be provided for every employee, with additional spaces for visitor or customer parking, when applicable.

G. All accessways and driveways shall be paved.

§ 215-85. Recreational uses.

A. Only noncommercial recreational uses shall be permitted (those not conducted for sale or profit).

B. Minimum lot area shall be 20,000 square feet.

C. Any recreational facility, such as a clubhouse, swimming pool, rest room, or other similar facility having a high use or noise potential, shall be located at least 50 feet from all property lines.

D. Adequate off-street parking shall be provided when applicable.

§ 215-86. Service stations and motor vehicle repair shops.

A. All activities, except the dispensing of fuel, shall be conducted within a building.

B. All buildings and structures on the site shall be at least 100 feet from any hospital, convalescent home, school, church, or similar use.

C. No building or structure (including fuel, gasoline pumps, compressed air equipment, etc.) shall be located less than 25 feet from a property line.

D. Driveways shall be at least 40 feet from the intersection of any street right-of-way lines, and there shall be at least 15 feet between driveways.

E. Maximum width of any commercial driveway at the right-of-way line shall be 30 feet.

F. Off-street parking shall be provided in accordance with the requirements of § 215-70 of this chapter.

G. When any part of the site is used for outdoor storage of machinery or spare parts, a visual barrier approved by Borough Council consisting of a fence, planting screen or both shall be erected.

§ 215-87. Industrial uses.

A. No industrial use or activity shall:

(1) Constitute a nuisance or danger to human health and safety, livestock or plants or any other property as a result of the emission or dissemination of any fumes, smoke, odor, or dust beyond the property line of the premises upon which such use of activity is located.

(2) Create any noise or vibration exceeding the average intensity of noise or vibration occurring from other sources at the property line.

(3) Endanger any surrounding area by reason of fire or explosion.

(4) Produce any objectionable heat or glare beyond the property line.

(5) Create any electrical disturbances or adversely affect the operation of equipment located off the premises.

(6) Discharge any dangerous or untreated effluent into any stream or other body of water, or otherwise contribute to the pollution of surface or underground water.

(7) Create an undesirable or dangerous traffic condition on the street or in a nearby area, or generate a nuisance to any nearby property because of increased traffic.

(8) Create any other objectionable condition which will endanger public health and safety or be detrimental to the proper use of the surrounding area.

B. In order to determine that the proposed use or activity will comply with the above standards, Borough Council may require the submission of impartial expert opinions or judgments from official agencies or private consultants, and/or written assurances from the applicant that the above standards will be met.

§ 215-88. Mobile home parks.

A. A plan for the mobile home park shall be referred to the McSherrystown Planning Committee for advisory comments to be submitted to Borough Council. The following standards and criteria shall be satisfied:

(1) The mobile home park shall be serviced by public water and sewer systems.

(2) A plan for storm water management shall meet DEP regulations.

(3) A plan for grading and control of erosion and sedimentation shall meet DEP regulations.

(4) Streets:

(a) A safe and convenient vehicular access shall be provided from abutting public streets or roads.

(b) Internal park streets shall have a cartway of 26 feet constructed to Borough standards on which no parking is allowed.

(5) Two off-street parking spaces shall be provided for each mobile home pad. An overflow and visitor parking area shall also be provided consisting of 1/2 parking space per total mobile home pads planned.

(6) The total number of mobile home lots shall not exceed a density of six per acre.

(7) The mobile home park shall have a gross area of at least 10 acres.

(8) Mobile homes shall be located at least 60 feet from the center line of any abutting Borough street and at least 70 feet from the center line of any abutting collector street or road.

(9) Mobile homes shall be located at least 25 feet from any park property line and at least 10 feet from any side or rear mobile home lot line.

(10) There shall be a minimum distance of 25 feet between an individual mobile home, including accessory structures attached thereto, and adjoining pavement of a park street or common (overflow) parking area.

(11) Mobile homes shall be separated from each other and from other buildings, structures and outdoor living areas by at least 20 feet on all sides.

(12) Mobile home parks shall provide a screen planting (trees, shrubs) along the property boundary line separating the park and adjacent uses.

(13) Mobile home parks shall be provided with pedestrian walks on both sides of the street at least three feet in width. The pedestrian walks shall be constructed of concrete material that can be easily maintained, in accordance with Borough specifications.

(14) In all mobile home parks a recreation area or areas, with suitable facilities, shall be maintained for the use of all park residents. Land required for such recreation area or areas shall not be less than 5% of the gross area of the park.

(15) The storage, collection and disposal of refuse in the mobile home park shall be the responsibility of the park manager and shall be so conducted as to create no litter, health hazards, rodent harborage, insect breeding areas, fire hazards, or air pollution and shall comply with all applicable Borough and state regulations.

B. This section shall be applicable only to mobile home parks in existence in the Borough as of the effective date of Chapter 190, Subdivision and Land Development, which was enacted May 15, 1991. All later-established mobile home parks shall be subject to the provision of Article VII of Chapter 190, Subdivision and Land Development.

§ 215-89. Junkyards.

A. All junkyards shall meet the licensing and screening requirements of Pennsylvania's Act 4 of Special Session No. 3 of 1966,[12] which prohibits junk from being located within 1,000 feet from the right-of-way of any interstate or primary road. In the case of lesser roads or streets, the setback from the right-of-way shall be at least 300 feet. In addition, the following criteria shall be met:

B. All fuel and oil shall be drained from vehicles.

C. All glass shall be removed from any broken windshield, window or mirror.

D. All upholstery shall be removed.

E. All trunk lids shall have their locks removed.

F. No water shall be allowed to stand in any place on the premises to afford a breeding place for mosquitoes.

G. Junk shall be stored in piles not exceeding 10 feet in height and shall be arranged so as to permit easy access for fire-fighting purposes.

H. No open burning whatsoever shall be permitted.

I. The premises shall at the setback line be enclosed by a fence or by evergreen screen plantings, or both, so as not to be visible from the traveled road or street.

J. No noisy processing of junk or other noisy activity shall be carried on in connection with the business at any time between the hours of 6:00 p.m. and 7:00 a.m..

K. Such premises shall at all times be maintained so as not to constitute a nuisance or a menace to the health, safety or welfare of the Borough.

§ 215-90. Outdoor storage areas.

Outdoor storage area uses shall not be less than 25 feet from existing residential development, a residential street or any R District, and the operation thereof shall be governed by the following provisions and any other conditions as may be required by Borough Council to protect the public health, safety, comfort, convenience, and general welfare and especially with regard to abutting properties and the occupants thereof:

A. Inflammable and explosive liquids. No highly inflammable or explosive liquids, solids, or gases shall be stored in bulk above ground. Tanks or drums of fuel directly connecting with heating devices or appliances located on the same premises as the tanks or drums of fuel are excluded from this provision.

B. Fencing and setbacks. All outdoor storage facilities shall be enclosed by a fence, wall or hedge seven feet in height to conceal such facilities and the contents thereof from adjacent property. Such walls and fences shall be distant not less than 25 feet from all

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12. **Editor's Note: See 36 P.S. § 2719.1 et seq.**

property lines which abut an R District or existing residential development, but in any other case shall be distant not less than 10 feet from any property line and shall be distant not less than 25 feet from any public street.

C. Deposit of wastes. No materials or wastes shall be deposited on any premises in such form or manner that they may be transferred off such premises by natural causes or forces. All lots must be served by public water and sewer, and be provided with electric power connections.

D. Other hazardous or toxic materials. All materials or wastes which might cause fumes or dust or which constitute a fire, safety or health hazard or which may be edible by or otherwise be attractive to rodents or insects shall be stored outdoors only in closed containers.

ARTICLE XIII
Nonconformities

§ 215-91. Applicability.

The following provisions shall apply to existing lawful uses, buildings, structures and lots which do not conform to the requirements of this chapter or any amendments thereto. The purpose of these provisions is to reasonably provide for such existing nonconformances. The conversion or reversion of such nonconformances, however, shall be encouraged whenever possible.

§ 215-92. Nonconforming buildings, structures and uses.

A. Continuation. Any building, structure or lawful use existing at the time this chapter becomes effective may be continued indefinitely.

B. Extension:

(1) A lot or parcel occupied by a nonconforming use shall not be enlarged for purposes of enlarging or extending the nonconforming use.

(2) A nonconforming use which is not entirely enclosed within a building shall not be enlarged or extended.

(3) A building occupied by a nonconforming use shall not be enlarged, extended or structurally altered except for the following which may be authorized as a special exception by the Zoning Hearing Board:

(a) The extension of a nonconforming use of a portion of a building to another portion of the building;

(b) The expansion of a building up to 50% of the original lot coverage, provided that such expansion conforms to the height and yard regulations of the district in which it is located and is not detrimental to the character of the surrounding area.

(4) A nonconforming building may be rebuilt or altered only:

(a) To eliminate or decrease the building's nonconformity;

(b) For reasons as stated in Subsection D, Restoration, of this section.

C. Change. A nonconforming use may be changed to another nonconforming use by grant of special exception only upon determination by the Zoning Hearing Board, after public hearing, that the proposed new use will be no more detrimental to its neighborhood and surroundings than is the use it is to replace.

D. Restoration. A nonconforming building or buildings occupied by a nonconforming use which is wholly or partially destroyed by fire, explosion or other phenomenon, or which has been legally condemned, may be reconstructed or repaired and/or used for the same nonconforming use, provided that such building reconstruction shall be commenced within one year from the date the building was destroyed or condemned and shall be carried on without interruption. For structures damaged by flooding, Chapter 107, Floodplain Management, § 107-29.

E. Abandonment. If a nonconforming use of a building or land is voluntarily discontinued for a period of one continuous year or more, subsequent use of such building or land shall be in conformity with the provisions of this chapter.

§ 215-93. Nonconforming lots.

A. Lots held in single and separate ownership. A building may be erected or altered on any lot held in single and separate ownership at the time this chapter becomes effective which is not of the required minimum area or width or is of such unusual dimensions or shape that the owner would have difficulty in providing the required open spaces for the district in which such lot is located, provided that the plans for the proposed building shall be approved as a variance by the Zoning Hearing Board after review of the plans to assure reasonable compliance with the intent of the regulations for the district.

B. Included in approved plans. Buildings may be erected on lots which are not held in single and separate ownership at the time this chapter becomes effective and which are not of the required area or width if such lots are included in a land subdivision plan which has been approved by the Borough or the Adams County Planning Commission, as appropriate, within a five-year period prior to the effective date of this chapter.

§ 215-94. Registration of nonconforming uses, structures and lots.

The Zoning Officer shall identify and register all nonconforming uses, structures and lots, together with the reasons why the Zoning Officer identified them as nonconformities.

ARTICLE XIV
Zoning Hearing Board

§ 215-95. Establishment and membership.

A. Creation of Board. The Zoning Hearing Board, the members of which shall be appointed by resolution of Council, is hereby created.

B. Membership of the Board; alternate members

(1) Membership of Board. The membership of the Board shall consist of three residents of the Borough, whose terms shall be three 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.

(2) Alternate members. Council may appoint by resolution at least one but no more than three residents of the Borough to serve as alternate members. The term of office of an alternate member shall be three years. When seated under the provisions of § 215-95E(2), an alternate shall be entitled to participate in all proceedings and discussions of the Board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in the Planning Code and as otherwise provided by law. Alternates shall hold no other office in the Borough, including that of Zoning Officer. Any alternate may participate in any proceeding or discussion of the Board, but shall not be entitled to vote as a member of the Board pursuant to § 215-95E, unless designated as a voting alternate member under § 215-95E.

C. Vacancies. 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.

D. Removal of members. Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of 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.

E. Organization of the Board.

(1) 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 as provided in § 215-97D.

(2) If, by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Board shall designate as many alternate members of the Board as may be needed to provide a quorum. Any alternate member of the Board shall continue to serve on the Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Board has made a final determination of the matter or case. Designation of an alternate pursuant to the

section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.

(3) The Board may make, alter and rescind rules and regulations for its proceedings consistent with the ordinances of the Borough and laws of the Commonwealth.

(4) Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The 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.

(5) The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep full public records of its business and other official action, which records shall be the property of the Borough. The Board shall also submit a report of its activities to Borough Council, annually or as otherwise requested by Council.

F. Expenditure for services. 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.

§ 215-96. Functions and jurisdiction.

A. Functions of the Zoning Hearing Board. The functions of the Zoning Hearing Board shall include the following:

(1) Where this chapter states that special exceptions are to be granted or denied by the Board pursuant to express standards and criteria, the Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the Board 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 the Planning Code and this chapter. The Board shall send all requests for special exceptions to the planning agency for an advisory review and comment.

(2) The Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship upon the applicant. The Board may by rule prescribe the form of the application and may require preliminary application to the Zoning Officer. The Board shall send all requests for variances to the planning agency for an advisory review and recommendations. The Board may grant a variance, provided that all the findings are made where relevant to a given case:

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

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this 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 appellant.

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

(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.

(3) In granting the variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the provisions of the Planning Code and this chapter.

B. Jurisdiction of the Zoning Hearing Board. 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 of the Borough, including this chapter, except for those challenges brought before Borough Council pursuant to Sections 609.1 and 916.1(a, b) of the Planning Code.[13]

(2) Challenges to the validity of any land use ordinance of the Borough, including this chapter, 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 that ordinance.

(3) Appeals from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease-and-desist order, or the registration or refusal to register any nonconforming use, structure or lot.

(4) Appeals from a determination by the Borough Engineer or the Zoning Officer with reference to the administration of any flood hazard ordinance or such provision within a land use ordinance.

(5) Applications for variance from the terms of any land use ordinance, including this chapter and flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 910.2 of the Planning Code.[14]

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13. **Editor's Note: See 53 P.S. §§ 10609.1 and 10916.1.**

14. **Editor's Note: See 53 P.S. § 10910.2.**

(6) Applications for special exceptions under this chapter or Chapter 107, Floodplain Management, or such provisions within a land use ordinance, pursuant to Section 912.1 of the Planning Code.[15]

(7) Appeals from the determination of any officer or Borough Engineer in the administration of any land use ordinance of the Borough, including this chapter, or provision thereof, with reference to sedimentation and erosion control and stormwater management in so far as they relate to development not involving applications under Article V or Article VII of the Planning Code.

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

§ 215-97. Hearings.

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

A. Persons entitled to initiate action before the board. Requests for variances and special exceptions under § 215-96A may be filed by the landowner, or with permission of the landowner, by his tenant. Appeals under § 215-97B may be filed by any officer or agency of the Borough or by any person aggrieved.

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. The hearing shall be held within 60 days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time. 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 § 215-101 of this chapter shall have been paid).

C. Notification of hearings. Public notice shall be given, and written notice shall be given to the applicant, the Zoning Officer, the Borough planning agency, the Adams County Planning Commission, and to such other persons who have made timely request for the same. In addition to the written notice provided herein, written notice of the hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.

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

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15. **Editor's Note: See 53 P.S. § 10912.1.**

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 presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers including witnesses and documents requested by the parties.

G. Representation. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross examine 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.

J. Communications. The Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate; shall not take notice of any communication, reports, staff memoranda, or other materials, except advice 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 to be present.

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 conclusion based thereon, together with the reasons therefor. Conclusions based on any provisions of the Planning Code or of this or any other ordinance or any rule or regulation shall contain a reference to the provisions relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.

(3) If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the Board shall make his reports and recommendations available to the parties, within 45 days, and the parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings, and the Board's decision shall be entered no later than 45 days after the report of the hearing officer.

(4) Where the Board fails to render the decision within the period required by this subsection, or fails to hold the required hearing within 60 days from the date of the applicant's request for a hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time.

(5) When a decision has been rendered in favor of the applicant because of the failure of the Board to render a decision as hereinabove provided, the Board shall give public notice of said decision within 10 days from the last day it could have met to render a decision in the same manner as provided in § 215-97C. If the Board fails to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the applications to appeal the decisions to a court of competent jurisdiction.

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

§ 215-98. Standards for certain action by Zoning Hearing Board.

A. In any instance where the Board is required to consider a special exception or variance in accordance with the provisions of this chapter, the Board shall, among other factors, apply the following standards

(1) For variances. 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 this chapter in the neighborhood or district in which the property is located;

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this 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 appellant, or that the appellant did not acquire the land or structure involved with a knowledge that a variance would subsequently be required;

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare;

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

(2) In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes and intent of the chapter and the statement of goals and objectives.

(3) Except for a possible modification of the freeboard requirements involved in the floodplain areas, no variance shall be granted for any of the other requirements pertaining specifically to development which may endanger human life; see § 107-25 of Chapter 107, Floodplain Management. For those uses prohibited in § 107-27, no variances shall be granted.

(4) No variance shall be granted for any construction, development, use, or activity within the floodplain area that would, together with all other existing and anticipated development, increase the one-hundred-year flood elevation more than one foot at any point.

(5) Whenever a variance is granted in floodplain areas, the Board shall notify the applicant in writing that:

(a) The granting of the variance may result in increased premium rates for flood insurance;

(b) Such variance may increase the risks to life and property.

(6) In reviewing any request for a variance in floodplain areas, the Board shall consider, at a minimum, the following:

(a) That there is good and sufficient cause;

(b) That failure to grant the variance would result in exceptional hardship to the applicant;

(c) That the granting of the variance will neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety or extraordinary public expense; nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.

(7) A complete record of all variance requests in floodplain areas and related actions shall be maintained by the Board. In addition, a report of all variances granted in

the floodplain areas during the year shall be included in the annual report to the Federal Insurance Administration.

B. For special exceptions.

(1) The Board shall not grant a special exception unless it has determined:

(a) That the proposed request is consistent with the spirit, purpose and intent of this chapter, and does not impair the development of the statement of goals and objectives;

(b) That the proposed special exception will not substantially injure or detract from the use of neighboring property or from the character of the neighborhood and that the use of property adjacent to the area included in the proposed special exception is safeguarded;

(c) That the surrounding streets are protected from undue congestion and traffic hazards and are sufficient to handle any expected increase in traffic generated by the proposed request;

(d) That all yard, open space, height limitations, and maximum lot cover requirements for the district or use have been met;

(e) That the provisions of a planning screen and/or additional yard or open space area to reduce the effect of the proposed use upon adjacent properties is incorporated where deemed necessary;

(f) That the provisions for off-street parking and the number and location of vehicular access points and also pedestrian access to the property are adequate and properly safeguarded;

(g) That no adverse effect of the proposed special exception upon the availability and adequacy of public facilities and utilities will result;

(2) In granting any special exception, the Board may attach additional reasonable conditions as deemed necessary to assure compliance with the intent of this chapter.

§ 215-99. Other Board functions.

A. Challenge to the validity of any ordinance or map.

(1) When a landowner who, on substantive grounds, desires to challenge the validity of a zoning ordinance or map, or any provision thereof which prohibits or restricts the use or development of land in which he has an interest, he shall submit the challenge to the Board, except where he seeks a curative amendment, in which case the challenge is to be brought before Borough Council under Sections 609.1 and 916.1(a-2) of the Planning Code.[16]

16. Editor's Note: See 53 P.S. §§ 10609.1 and 10916.1.

(2) The submissions to the Board referred to in Subsection A(1) of this section shall be governed by § Section 916.1(c) of the Planning Code, as added by the Act of 1988, P.L. 1329, No. 170,[17] which sets out detailed procedures, refers to legal counsel for the Borough and establishes the considerations to be made by the Board in arriving at its decision.

(3) The Board shall commence its hearings within 60 days after the request is filed unless the landowner requests or consents to an extension of time, and if the Board fails to do so within the required time limit, the challenge shall be deemed denied.

(4) Public notice of the hearing shall include notice that the validity of the ordinance or map is in question, and shall state the place where and the time when a copy of the request including any plans and explanatory material may be examined by the public.

(5) The Board shall render its decision within 45 days after the conclusion of the last hearing on the matter. If the Board fails to act on the landowner's request within the forty-five-day limit, a denial of the request is deemed to have occurred on the 46th day after the close of the hearing.

B. Unified appeals.

(1) Where the Board has jurisdiction over a zoning matter pursuant to §§ 215-96A and B and 215-99A, the Board shall also hear all appeals which an applicant may elect to bring before it with respect to any Borough ordinance or requirement pertaining to the same development plan or development.

(2) In any such case, the Board shall have no power to pass upon the nonzoning issues, but shall take evidence and make a record thereon as provided in § 215-97, Hearings.

(3) At the conclusion of the hearing, the Board shall make findings on all relevant issues of fact, which shall become part of the record on appeal to the court.

C. Time limitations.

(1) No person shall be allowed to file any proceeding with the Board later than 30 days after an application for development, preliminary or final, has been approved by an appropriate Borough officer, agency or body, if such proceeding is designed to secure reversal or to limit the approval in any manner unless that person alleges and proves that he had no notice, knowledge, or reason to believe that such approval had been given.

(2) If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest.

(3) The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan pursuant to Section 709 of the Planning Code[18] (the findings

17. **Editor's Note: See 53 P.S. § 10916.1.**

18. **Editor's Note: See 53 P.S. § 10709.**

within 60 days following the conclusion of required public hearings for planned residential developments), or from an adverse decision by the Zoning Officer on a challenge to the validity of an ordinance or map pursuant to Section 916.2, Procedure to obtain preliminary opinion, of the Planning Code.[19] shall preclude an appeal from a final approval except in the case where the final submission deviates from the approved tentative approval.

D. Stay proceedings.

(1) Upon filing of any proceeding referred to in Section 913.3, Parties appellant before the board, of the Planning Code[20] and during its pendency before the Board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or of any agency or body, and all official action thereunder, shall be stayed unless the Zoning Officer or other appropriate agency or body certifies to the Board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the court having jurisdiction of zoning appeals, on petition, after notice to the Zoning Officer or other appropriate agency or body.

(2) When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approvals are filed with the Board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the Board.

(3) After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for the bond to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court.

(4) 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. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.

§ 215-100. Appeals to Court.

Appeals from all land use decisions rendered under Article IX of the Planning Code or deemed to have been made under that Act shall be taken to the Court of Common Pleas of Adams County within time limits prescribed by Section 1002-A of the Planning Code, and in

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19. Editor's Note: See 53 P.S. § 10916.2.

20. Editor's Note: See 53 P.S. § 10913.3.

accordance with Article X-A, Appeals to Court, of the Planning Code, as added by the Act of 1988 P.L. 1329 No. 170.[21]

§ 215-101. Fees.

A. Permit fees. Fees for permits shall be paid in accordance with the provisions of a fee schedule adopted by resolution of Borough Council.

B. Zoning hearing board and other fees. Each applicant for an interpretation, special exception, variance or other appeal before the Board, or for a curative amendment before the 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.

C. Basis for amount of fees. Fees for administration of this chapter and with respect to hearings before the Board shall bear a reasonable relationship to the costs of administration or in respect to the hearing, as the case may be. Fees for hearings may include compensation for the Secretary and members of the Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses or architectural or other technical consultants or expert witness costs.

D. Return of excess fee. 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 or Council.

E. Prior payment. Payment of all fees must be made in full before any application is processed or permit issued.

ARTICLE XV
Administration

§ 215-102. 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 for which a building permit has been heretofore issued prior to the effective date of this chapter.

§ 215-103. Causes of action.

In case any building, structure, landscaping or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of this chapter, Borough Council or, with approval of Council, the Zoning Officer, or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land,

21. **Editor's Note: See 53 P.S. § 10901 et seq., 11002-A and 11001-A et seq., respectively.**

or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the Borough at least 30 days prior to the time the action is begun by serving a copy of the complaint on Borough Council. No such action may be maintained until such notice has been given.

§ 215-104. Enforcement remedies.

A. Any person, partnership or corporation, who or which violates or permits the violation of any provision of this chapter shall, upon being found liable therefor in a civil enforcement proceed commenced by the Borough, pay a judgment of not more than $500 plus all court costs, including reasonable attorney fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the District Justice determining that there has been a violation further determines that there was a good-faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the District Justice, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of zoning ordinances shall be paid over to the Borough.

B. The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.

C. Nothing contained in this section shall be construed or interpreted to grant to any person or entity, other than the municipality, the right to commence any action for enforcement pursuant to this section.

§ 215-105. Appointment, qualifications and general authority of Zoning Officer.

For the administration of this chapter, the Borough Council shall appoint a Zoning Officer, who shall not hold any elective office in the Borough. He shall meet qualifications established from time to time by the Borough, and shall be able to demonstrate to the satisfaction of the Borough a working knowledge of municipal zoning. The Zoning Officer shall administer and enforce this chapter 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 shall have authority to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his employment.

§ 215-106. 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, special exceptions 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 other Borough ordinances, and with the laws of the commonwealth and applicable federal agencies. Permits for construction or uses requiring a special exception or variance shall be issued only upon order of the Zoning Hearing Board. Permits requiring a conditional use 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 orders 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 conditions found in violation. If any such person or persons do not comply with the written notice of violation within five days, the Zoning Officer shall notify the Borough Council for its action.

F. With the approval of the Borough Council, or when directed by it, 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 of 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.

§ 215-107. Building permits.

A building permit shall be obtained from the Zoning Officer for the construction, development, enlargement, alteration, relocation, or conversion of any building or structure in accordance with the provisions of this chapter and any other ordinance in effect in the Borough at the time of such work or activity that relates to or regulates building construction or other work or activity covered by the permit.

§ 215-108. Issuance of building permit in subdivision or land development.

The Zoning Officer shall not issue a building permit for the erection, construction, reconstruction, or alteration of a building in a subdivision or land development prior to the final approval of the subdivision and land development plan in compliance with Chapter 190, Subdivision and Land Development, and recording of the plan with the Recorder of Deeds.

ARTICLE XVI
Miscellaneous Provisions

§ 215-109. Interpretation.

A. 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.

B. In interpreting the language of this chapter to determine the extent of the restriction upon the use of a property, the language shall be interpreted, where doubt exists, as to the intended meaning of the language written and enacted by Council, in favor of the property owner and against any implied extension of the restriction.

§ 215-110. Severability.

It is hereby declared to be the legislative intent that:

A. If a court of competent jurisdiction declares any 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.

§ 215-111. Amendments.

The McSherrystown Borough Council may from time to time amend this chapter including the Zoning Maps.

A. Enactment of amendments.

(1) Public hearing prior to amendment. Before acting on the enactment of an amendment, Council shall hold a public hearing thereon, pursuant to public notice.

In addition, if the proposed amendment involves a Zoning Map change, notice of the public hearing shall be conspicuously posted by the Borough, at points deemed sufficient by the Borough along the perimeter of the tract, to notify potentially interested citizens. The affected tract or area shall all be posted at least one week prior to the date of the hearing.

(2) Referral to planning agency. In the case of an amendment other than that prepared by the Borough Planning Committee, Council shall submit every 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.

(3) Revisions or substantial changes to proposed amendments. 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, Council shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment.

(4) Submission to County Planning Commission. At least 30 days prior to the public hearing on the proposed amendment by the Borough Council, the Borough shall submit the proposed amendment to the County Planning Commission. Within 30 days after enactment, a copy of the amendment to this chapter shall be forwarded to the County Planning Commission.

B. Landowner curative amendments.

(1) A landowner who desires to challenge on substantive grounds the validity of this chapter or an amendment to this chapter or a Zoning Map, or any provision of any of the same, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to Council with a written request that his challenge and proposed amendment be heard and decided as provided in Section 916.1 of the Planning Code.[22]

(2) Public hearing. Council shall commence a hearing thereon within 60 days of the request, as provided in Section 916.1 of the Planning Code.

(3) Referral to planning agency; notice. The curative amendment and challenge shall be referred to the planning agency as provided in Section 609 of the Planning Code, and notice of the hearing thereon shall be given as provided in Sections 610 and 916.1 of the Planning Code.[23]

(4) Conduct of Hearing. The hearing shall be conducted in accordance with § 215-97 of this chapter, and all references therein to the Zoning Hearing Board shall, for the purposes of this section, be referenced to the Borough Council.

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22. **Editor's Note: See 53 P.S. § 10916.1.**

23. **Editor's Note: See 53 P.S. §§ 10609 and 10610 and 10916.1.**

C. Municipal curative amendments. If the Borough determines that this chapter or any portion thereof is substantially invalid, it shall take the action prescribed in Section 609.2 of the Planning Code.[24]

24. **Editor's Note: See 53 P.S. § 609.2.**

BOROUGH OF McSHERRYSTOWN

ADAMS COUNTY, PENNSYLVANIA

ORDINANCE NO.: 2009-1

AN ORDINANCE AMENDING AND SUPPLEMENTING THE ZONING ORDINANCE OF THE BOROUGH OF McSHERRYSTOWN, CHAPTER 215 OF THE BOROUGH OF McSHERRYSTOWN CODE OF ORDINANCES BY CHANGING THE ZONING MAP; ADDING DEFINITIONS FOR GARAGE SALE, GOODS, PERSONS, AND AMENDING THE DEFINITION OF SIGN, LOCATION OF SIGNS; AMENDING THE LOT REQUIREMENTS IN SECTIONS 215-11, 215-17, AND 215-44; RENAMING AND REWRITING SECTION 215-55; AMENDING SECTION 215-60 PRIVATE SWIMMING POOLS ACCESSORY TO RESIDENTIAL USES, SECTION 215-65 RECREATIONAL VEHICLE STORAGE, AND SECTION 215-67 ACCESSORY BUILDINGS AND STRUCTURES; AMENDING AND SUPPLEMENTING ARTICLE XI SIGNS BY REGULATING WHICH TYPES, NUMBER AND SIZES OF SIGNS ARE PERMITTED IN VARIOUS DISTRICTS AND PROVIDING GENERAL REGULATIONS AND DISTRICT SPECIFIC REGULATIONS FOR VARIOUS TYPES OF SIGNS; AND ADDING ARTICLE XVI GARAGE AND YARD SALES, REQUIRING PERMITS FOR SUCH EVENTS AND REGULATING SUCH SALES.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Borough Council (the "Governing Body") of the Borough of McSherrystown, Adams County, Pennsylvania (the "Political Subdivision"), that the Zoning Ordinance of the Borough of McSherrystown, Chapter 27 of the Borough of McSherrystown Code of Ordinances, is hereby amended and supplemented as follows:

1. ***Zoning Map Change:***

The existing Zoning Map is amended to change the zoning for the entire city block bounded by South Street / Sixth Street / Delone Avenue and Oxford Avenue from R-1 Residential to IN-1 Institutional. The changes are indicated on the proposed Zoning Map which is attached hereto as Exhibit "A", and all proposed changes shown thereon are hereby adopted.

2. ***Article I, Section 215-4. - Definition.*** is amended as follows:

The following words and terms are added:

Garage Sale:

A. The sale or offering for sale of new, used or secondhand items of personal property at any one (1) residential premises at ay one (1) time.

B. Includes all sales in residential areas entitled "garage sale", "yard sale," "tag sale" "porch sale", "lawn sale", "attic sale", "basement sale", "rummage sale", "flea market sale" or any similar casual sale of tangible personal property.

Goods:

Any goods, warehouse merchandise or other personal property capable of being the object of a sale regulated hereunder.

Persons:

Individuals, partnerships, family groups, voluntary associations and corporations.

3. ***Article I, Section 215-4 Definitions, Sign, Location of Signs.*** is amended by adding the following:

An advertising Sign (other than a billboard) is an on-premises sign which advertises or otherwise directs attention to any goods, products, or service to be affixed, or other similar sales offered or conducted on the lot upon which such sign is located.

4. ***Article III, Section 215-11 – Lot Requirements.***

Section 215-11 B.(1) and (2) are amended by deleting the word "square" from each sentence.

5. ***Article IV, Section 215-17 – Lot Requirements.***

Section 215-17 A.(2) is amended by reducing the required square feet per single-family semidetached dwelling unit from 4,500 to 3,000.

6. ***Article VIII, Section 215-44 – Lot Requirements.*** is amended by rewriting §215-44 (C.) to read as follows:

Maximum lot coverage: No more than 60% of any lot shall be covered by buildings, and no more than 75% shall be covered by buildings and other impervious surfaces.

7. ***Article X, Section 215-55 – Exceptions to Height Restrictions.*** is restated and rewritten to read in its entirety as follows:

Section 215-55. Exceptions.

A. 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.

B. The sales of retail merchandise sold or offered for sale through vending machines, storage cabinets, shelving or other similar devices located immediately adjacent to the store building, and only those uses, buildings and activities permitted in §215-21 (A,D) provided that the total area of sales does not exceed 80 square feet and all requirements of §187-52 are met.

C. Temporary outdoor seasonal sales (such as Christmas trees, plants or flowers).

D. Special events food sales provided requirements of §73-4 are met.

8. ***Section 215-60 – Private swimming pools accessory to residential uses.*** is amended by deleting the words "four feet" from the last sentence in subpart A., and by restating and rewriting subpart B. to read as follows:

A. In addition to the requirements of §215-60(A), all provisions of the "barrier requirements" regulated by the International Residential Code shall also be met.

9. ***Section 215-65 – Recreational Vehicle Storage.*** is amended by adding the words "front or side yard" between the word "required" and the word "setback" in the first sentence of text.

10. ***Section 215-67. Accessory buildings and structures.*** is amended by restating subpart B. to read as follows:

B. The minimum distance between accessory buildings and any principal structure shall be 10 feet.

11. ***Section 215-74. Signs permitted in any district. C. Temporary Sign:*** is amended and supplemented to read as follows:

C. Temporary Sign:

(1) Indicating the location of premises in the process of development:

(a) The area of one side of any such sign shall not exceed 32 square feet.

(2) Of contractors, mechanics, and craftsmen during the time work is being undertaken:

(a) The area of one side of any such sign shall not exceed 12 square feet.

(b) Such signs are removed upon completion of work.

(c) No more than one such sign shall be placed on each 500 linear feet of street frontage.

(3) Concerning civic, religious, charitable or recreational events provided that:

(a) The area of one side of any such sign shall not exceed 100 square feet.

(b) Such signs shall be displayed for no more than 14 days prior to the event.

(c) Such signs are removed within 5 days after the event.

(d) No more than two such signs shall be placed on any one street frontage. In no event, however, shall the maximum area of both signs combined exceed 150 square feet.

12. ***Section 215-74. Signs permitted in any district.*** is further amended by adding the following:

H. Temporary yard or garage sale signs, provided that such signs shall not be displayed for more than seventy-two (72) hours, that the total area of such signs shall not exceed nine (9) square feet, and that not more than two (2) signs shall be displayed for any sales event. No such signs shall be attached to any utility pole or street sign.

I. Temporary signs advertising the opening of a new business, provided that the maximum area of any one side of the sign shall not exceed twenty-five (25) square feet, that no more than one (1) sign advertising the opening of a new business be displayed, and that the sign shall be displayed for a period not to exceed 30 days.

13. Section 215-75. General regulations. shall be amended and rewritten to read in its entirety as follows:

A. No sign shall be placed so that it will cause any danger to traffic by obstructing or interfering with the view of any motorist or pedestrian.

B. No sign or sign structure shall be located within or extend into or over any street or road cartway, except for those permitted in §215-76(D).

C. No part of any sign shall be more than 20 feet from the ground.

D. No animated, flashing or moving signs shall be permitted. Illumination of any sign shall be indirect, shielded, or otherwise arranged to prevent glare.

E. No illuminated sign shall be permitted in any residential district until a plan for the illuminated sign has been approved by the Zoning Officer so that the sign is not visible from abutting or nearby properties.

F. All signs projecting or extending over any sidewalk shall be at least 10 feet above the sidewalk grade and shall not extend within three feet of the curbline.

G. Freestanding signs shall be:

(1) Located at least 10 feet behind all curbs or cartways located within the street right-of-way line; and

(2) No part of the sign shall be closer than 10 feet any adjacent lot or property line.

H. All signs shall be constructed of durable materials and shall be kept in good condition and repair. Any sign which is allowed to become dilapidated shall be removed at the expense of the owner or lessee.

I. All signs shall be removed by the owner or lessee of the premises upon which the sign is located, at his expense, when the business or activity it advertises is no longer conducted.

J. Signs illuminated in the colors, red, green, or amber, either by colored bulbs or tubing, or use the words "stop", "caution", or "danger" and/or resemble traffic signals or traffic control signs, shall not be located within a radius of 200 feet of a highway traffic light or similar safety device.

K. All signs erected along the right-of-way of a state highway shall be in accordance with the regulations of the Pennsylvania Department of Transportation.

L. Signs with pornographic or obscene content. Signs shall be prohibited where the content of such sign is consistent with the commonly accepted

definitions of the term "Pornography" or the term "Obscenities".

14. ***Section 215-76. District regulations.*** is amended by adding subpart B. (4) as follows:

B. (4) Advertising Signs (other than billboards): advertising signs, to be erected only in the commercial and industrial districts under the following restrictions:

(a) Window signs shall cover no more than fifty percent (50%) of the total window area on any side of a structure facing a public street. No limit on the number of window signs shall be established.

(b) No more than four (4) advertising signs located on the exterior of buildings or placed in any yard area shall be established, provided that the total of all signs combined does not exceed 200 square feet, and no one sign exceeds 50 square feet and that all requirements are met in §215-75.

15. Section 215-76. District regulations. is further supplemented by the addition of §215-76 (C) and §215-76 (D) which shall read as follows:

(C) In any Institutional District the following signs, in addition to those noted in §215-74 D are permitted.

(1) Signs that are located only within the defined areas of athletic fields, playground areas or parking area used for those types of facilities provided that the total area of one sign or combination of two signs or more, does not exceed 100 square feet, and no more than two sign structures shall be permitted on each street frontage.

(2) Scoreboards: Two such signs shall be permitted per defined area as stated in §215-76(C)(1) provided that the total area of any one (1) sign does not exceed two hundred (200) square feet.

(D) Community welcome sign: Signs erected by municipal, civic or community organizations, and designed to welcome visitors to the McSherrystown Community may be erected in any zoning district provided that the following standards are met:

(1) The maximum area of any one individual sign shall not exceed twelve (12) square feet.

(2) The maximum area of any two or more signs displayed on one sign standard shall not exceed one hundred fifty (150) square feet.

(3) The sign may only be illuminated by an indirect light source. Such light source shall direct the light to the external sign face. In no case shall indirect lighting be permitted that either directly or indirectly produces a glare noticeable from any adjoining residential properties or from any adjoining street.

16. Chapter 15 of the Borough of McSherrystown Code of Ordinance, Zoning, is further amended by adding **Article XVI Garage and Yard Sales** which shall read as follows:

ARTICLE XVI
Garage and Yard Sales

Article XVI, Section 215-112. ***Purpose.***

These rules and regulations are designed to control and restrict garage and yard sales in order to protect the public health, safety and convenience and to restrict such sales to casual and/or occasional occurrences only, in keeping with the character of the neighborhood where this activity is carried on in compliance with Chapter 215, Zoning, of the Code of the Borough of McSherrystown. The intent of this chapter is to eliminate perpetual, prolonged and extended garage and yard sales in residential areas. Such sales, if continued indefinitely, tend to become retail businesses in residential areas and zones, create a nuisance and often violate the zoning regulations of the Borough of McSherrystown. The provisions of this chapter arise from the need to limit, regulate, restrict and control garage and yard sales.

Section 215-113. ***Permit required; fee; conditions for sales.***

A. It shall be unlawful for any person to conduct a garage sale within the geographic boundaries of the Borough of McSherrsytown without first obtaining a garage and yard sale permit from the Codes Department after filing an application containing the information hereinafter specified.

B. It shall be unlawful to participate in more than two (2) garage sales in any one (1) calendar year.

C. Not more than two (2) garage and yard sale permits shall be issued to any one (1) person in any one (1) calendar year.

D. Not more than two (2) garage and yard sale permits shall be issued for any one (1) premise in any one (1) calendar year.

E. Each permit application shall be accompanied by a fee as shall be set from

time to time by resolution of the Borough Council.

F. It is a requirement of garage and yard sale permits that the names and addresses of all participating persons be listed on the application. The garage and yard sale permits must be posted at a visible location to the traveling public for the duration of the sale.

G. It shall be unlawful to conduct any garage sale with a duration exceeding three (3) consecutive days.

Section 215-114. Exemptions.

This chapter shall not be applicable to:

A. Persons selling goods pursuant to an order of process or a court of competent jurisdiction.

B. Persons acting in accordance with their powers and duties as public officials.

C. Any person selling or advertising for sale of an item or items of personal property which is specifically named or described in the advertisement.

D. Any publisher of a newspaper, magazine or other publication or other communications media which publishes or broadcasts anything in good faith without knowledge of its false, deceptive or misleading character or without knowledge that the provisions of this chapter have not been met.

E. Any sale conducted by any legitimate business or commercial or industrial establishment on property zoned under the zoning regulations of the Borough of McSherrystown with or without the protection of the nonconforming use section of the zoning laws, or any sale conducted by any other vendor or dealer when the sale is conducted in a properly zoned area and not otherwise prohibited by laws of the Commonwealth of Pennsylvania and ordinances of the Borough of McSherrystown, including this chapter.

F. Sales by a bona fide charitable, eleemosynary, educational, cultural or governmental institution, civic group, service club, religious or fraternal society or other tax-exempt organization; provided, however, that the burden of proof to establish the exemption under this subsection shall be on the organization or institution claiming such exemption.

G. Any public auction having a duration of no more than two (2) days and conducted by an auctioneer, licensed by the Commonwealth of Pennsylvania.

Section 215-115. Enforcement; complaints.

A. This chapter shall be enforced by the Codes Department, and it shall be its duty to investigate and prosecute any violation of this chapter.

B. If, after an investigation, a violation is found to exist, the Codes Department shall prosecute a complaint before a District Justice pursuant to the provisions of this chapter.

Section 215-116. Conduct.

A. The persons to whom the garage and yard sale permit was issued and the person conducting the sale and the owner, tenant or occupant of the premises where the sale or activity is conducted shall be jointly and severally responsible for the maintenance of good order and decorum on the premises during the hours of such sale or activity.

B. No such person shall permit any loud or boisterous conduct on such premises or permit vehicles to impede the passage of the traffic on any roads or streets in the area of the premises where the sale is being conducted.

C. In the event of an emergency, all such persons shall obey reasonable orders from any member of the Police Department or the Fire Department in order to maintain the public health, safety and convenience.

Section 215-117. Violation and Penalties.

Any person, firm or corporation who or which shall violate any provision of this chapter shall, upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars ($600.00), plus costs of prosecution, and, in default of payment thereof, to imprisonment for a term not to exceed thirty (30) days. Every day that a violation of this chapter continues shall constitute a separate offense.

17. All other provisions of Borough of McSherrystown Code of Ordinance not specifically amended or supplemented as stated herein shall remain in full force and effect.

18. Nothing contained in this Ordinance shall be construed to affect any suit or proceeding in any court, or any rights acquired or liability incurred, or any cause of action existing prior to the enactment of this Ordinance.

19. This Ordinance shall become effective immediately upon enactment hereof.

DULY ORDAINED AND ENACTED this 17TH day of May, 2009, by the Borough Council of the Borough of McSherrystown, Adams County, Pennsylvania.

BOROUGH OF McSHERRYSTOWN

Attest: _____
Secretary

By: _____
Council President (Vice)

(SEAL)

Approved this 17TH **day of** May**, 2009.**

Herbert L Riede
Its Mayor