

CHAPTER 27

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Part 1
General Provisions

§ 101 Purpose and Enactment. The Borough Council of Windber in the County of Somerset under authority of Act 27, the Pennsylvania Municipalities Planning Code, in order:

- A. To promote, protect and facilitate the public health, safety, morals, general welfare, coordinated and practical community development, proper density of population, civil defense, disaster evacuation, airports, and national defense facilities, the provision of adequate light and air, police protection, vehicle parking and loading space, transportation, water, sewage, schools, public grounds and other public requirements;
- B. To prevent overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers; and,
- C. To conserve agricultural land.
- D. To endeavor to maintain the spirit of the Windber 2020 Comprehensive Plan, as amended from time to time, and perpetuate the goals as set forth in the document (Ord. 079-4, 10/31/1979, § 100)

§ 102 Title. This Chapter shall be known and may be cited as the “Zoning Ordinance of the Borough of Windber.” (Ord. 079-4, 10/31/1979, § 110)

§ 103 Borough Development Objectives.

- A To expand the range of housing options for Borough residents by allowing limited new development and the appropriate reuse of selected structures.
- B. To preserve the character of existing neighborhoods.
- C. To revitalize and consolidate the urban district. Residential uses will be encouraged in order to effectively use existing structures and add life and vitality to this district.
- D. To control the development of open areas of the Borough. Development that will adversely affect existing development will not be allowed.
(Ord. 079-4, 10/31/1979, § 140)

Part 2

Definitions

§ 201 Interpretation of Terms or Words. For the purpose of this Chapter certain terms or words used herein shall be interpreted as follows:

A. The word “person” includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

B. The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

C. The word “shall” is a mandatory requirement, the word “may” is a permissive requirement, and the word “should” is a preferred requirement.

D. The words “used” or “occupied” include the words “intended, designed, or arranged to be used or occupied.”

E. The word “lot” includes the words “plot” or “parcel.”

§ 202 Definitions

ABANDONED MOTOR VEHICLE – Reference Windber Borough Ordinance No. 098-1, §501. Unlawful Acts by Owners, for current definition.

ACCESSORY BUILDING – an accessory building is a subordinate building or a portion of the main building, the use of which is clearly incidental to or customarily found in connection with and (except as other wise provided in this ordinance) located on the same lot as the main building or principal use of land.

ACCESSORY USES – an accessory use is one which is clearly incidental to or customarily found in connection with, and [except as other wise provided in this Ordinance] is located on the same lot as the principal use of the premises. When the term “accessory” is used in this Ordinance, it shall have the same meaning as “Accessory Use.”

ACT 247 – the Pennsylvania Municipalities Planning Code, as amended.

AGRICULTURE – the use of land for farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce; provided, however that:

1. The operation of any such accessory uses shall be secondary to that of normal agriculture activities; and,

2. The above uses shall not include the feeding or sheltering of animals or poultry in penned enclosures within two hundred (200) feet of any residential lot. Agriculture does not include the feeding of garbage to animals or the operation or maintenance of a commercial stockyard or feed yard.

AIRPORT – any runway, land area or other facility designed or used either publicly or privately by any person for the landing and taking-off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, hangars and other necessary buildings, and open spaces.

ALLEY – A minor street used primarily for vehicular service access to the back or side of properties abutting on another street.

ALTERATIONS, STRUCTURAL – any change in the supporting members of a building such as bearing walls, columns, beams, or girders.

APARTMENT – See “dwelling, apartment.”

APPLICANT – a landowner or developer, who has filed an application for development including his heirs, successors and assigns.

AUTO BODY, AUTOMOTIVE REPAIR SHOP – a structure where the repair, rebuilding, or reconditioning of motor vehicles or parts thereof, including collision services, painting, and steam cleaning of vehicles, are performed.

AUTOMOTIVE, MOBILE HOME, TRAVEL TRAILER, and FARM IMPLEMENT SALES – sale or rental of new and used motor vehicles, mobile homes, travel trailers, or farm implements, but not including repair work except incidental warranty repair of same, to be displayed and sold on the premises.

BASEMENT – a story all or partly underground but having at least one-half ($\frac{1}{2}$) of its height below the average level of the adjoining ground.

BED AND BREAKFAST – a residential establishment where rooms are to be rented to transient guests on an overnight basis, including service of food by the facility owner.

BOARD – any body granted jurisdiction under a land use ordinance or under this Chapter to render final adjudication's. (Ord. 095-4)

BOARDING HOUSE – See “Dwelling, Rooming House.”

BOROUGH – the Borough of Windber, Somerset County, Pennsylvania

BUILDING – any structure designed or intended for the support, enclosure, shelter, or protection of persons, animals, chattels, or property.

BUILDING FAÇADE – the exterior face of the building.

BUILDING HEIGHT – the vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and the mean height between eaves and ridge for gable, hip and gambrel roofs.

BUILDING LINE – See “setback line.”

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

BUILDING PERMIT – a document issued by the Zoning Officer authorizing the construction, alteration, or demolition of structures or the excavation of land.

BUSINESS, CONVENIENCE – commercial establishments which cater to and can be located in close proximity to or within residential districts without creating undue vehicular congestion, excessive noise, or other objectionable influences. Convenience uses include, but need not be limited to, drugstores, beauty salons, barber shops, dry cleaning and laundry pickup facilities. Uses serve a day-to-day need in the neighborhood and are limited to less than two thousand (2,000) square feet.

BUSINESS, GENERAL – commercial uses which generally require locations on or near major thoroughfares and/or their intersections, and which tend, in addition to serving day to day needs of the community, also supply the more durable and permanent needs of the whole community. General business uses include, but need not be limited to, such activities as supermarkets; stores that sell hardware, apparel, footwear, appliances, and furniture; department stores; and discount stores.

BUSINESS HIGHWAY – commercial uses which generally require locations on or near major thoroughfares and/or their intersections, and which tend to serve the motoring public. Highway business uses include, but need not be limited to, such activities as filling stations; truck and auto sales and service; restaurants and motels; and commercial recreation.

BUSINESS OFFICE TYPE – quasi-commercial uses which may often be transitional between retail business and/or manufacturing, and residential uses. Office business generally accommodates such occupations as administrative, executive, professional, accounting, writing, clerical, stenographic, and drafting. Institutional offices of a charitable, philanthropic, or religious or educational nature are also included in this classification.

BUSINESS SERVICES – any profit making activity which renders services primarily to other commercial or industrial enterprises, or which services and repairs appliances and machines used in homes and businesses.

BUSINESS, WHOLESALE – business establishments that generally sell commodities in large quantities or by the piece to retailers, jobbers, other wholesale establishments, or manufacturing establishments. These commodities are basically for further resale, for use in the fabrication of a product, or for use by a business service.

CEMETERY – land used or intended to be used for the burial of the human or animal dead and dedicated for cemetery purposes, including crematories, mausoleums, and mortuaries if operated in connections with and within the boundaries of such cemetery.

CHANNEL – a natural or artificial watercourse of perceptible extent, with bed and banks to confine and conduct continuously or periodically flowing water.

CLINIC - a place used for the care, diagnosis and treatment of sick, ailing, infirm, or injured persons, and those who are in need of medical and surgical attention, but who are not provided with board or room or kept overnight on the premises.

CLUB – a building or portion thereof or premises owned or operated by a person or group for a social, literary, political, educational, or recreational purpose primarily for the exclusive use of members and their guests. A club may serve food and/or alcoholic beverages.

COMMERCIAL ENTERTAINMENT FACILITIES – any profit making activity which provides for the pleasure and enjoyment needs of the community, These types of facilities include, but need not be limited to; restaurants, taverns, motion picture theaters, nightclubs, arcades, and similar entertainment activities.

COMMISSION – the Planning Commission of the Borough of Windber, Somerset County, Pennsylvania.

COMMON OPEN SPACE – a parcel or parcels of land or an area of water, or a combination of land and water within a development site and designed and intended for the use of enjoyment of residents of a development, not including streets, off-street parking areas, and areas set aside for public facilities. (Ord. 095-4)

COMPREHENSIVE PLAN – a plan, or any portion thereof adopted by the Planning Commission and the Borough Council of the Borough of Windber showing the general location and extent of present and proposed physical facilities including housing, industrial and commercial uses, major thoroughfares, parks, schools, and other community facilities. This plan establishes the goals, objectives, and policies of the community.

CONDITIONAL USE – a use permitted in a particular zoning district by the Borough Council pursuant to the provisions of this Chapter and Article VI of the Pennsylvania Municipalities Planning Code, 53 P.S. S 10601 et seq. (Ord. 095-4)

CONDITIONAL USE PERMIT – a permit issued by the Zoning Officer upon approval by the Council to allow a use other than a principally permitted use to be established within the district.

CONDOMINIUM – a type of residential use in which the dwelling units are individually owned by the residents and the land is either in common ownership or owned by the developer or a management corporation.

CONVENIENCE STORE - a small retail store selling a limited variety of fast moving food and nonfood items, staple groceries and snacks usually with extended hours of operation, and is limited to less than two thousand five hundred (2,500) square feet in floor area.

CONVENIENCE STORE WITH FUEL DISPENSING FACILITY - a small retail store selling a limited variety of fast food and nonfood items, staple groceries and snacks, gasoline, diesel fuel, kerosene or other flammable liquids or gases, usually with extended hours of operation. The structure may be greater than two thousand five hundred (2,500) square feet in floor area.

CORNER LOT – See “lot types”

COUNTY – Somerset County, Pennsylvania.

COUNCIL – the Borough Council of Windber.

CUL-DE-SAC – See “Thoroughfares”

DAY CARE

1. Day Care Center – A facility in which care is provided for seven (7) or more children, at any one time, where the child care areas are not being used as a family residence.
2. Family Day Care Home – Any premises other than the child’s own home, operated for profit or not for profit, in which child day care is provided at any one time for four, five, or six children, who are not relatives of the caregiver.
3. Group Day Care Home – A facility in which care is provided for more than six (6) but less than twelve (12) children, at any one time, where the child care areas are being used as a family residence.
4. Adult Day Care Home – A facility or premises in which adults requiring some degree of support and/or assistance is provided on a daily basis but which does not provide overnight accommodations to clients and which meets all regulations and standard of the federal, state, and local regulatory agencies.

5. For purposes of this Ordinance, a child is a person under sixteen (16) years of age.

DEAD-END STREET – See “Thoroughfares”

DECISION – final adjudication of any board or other body granted jurisdiction under any land use ordinance or this Chapter 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 the county and judicial district wherein the (municipality) lies. (Ord. 095-4)

DENSITY – a unit of measurement; the number of dwelling units per acre of land.

1. Gross Density – the number of dwelling units per acre of the total land to be developed.
2. Net Density – the number of dwelling units per acre of land when the acreage involved includes only the land devoted to residential uses.

DETERMINATION – final action by an officer, body or agency charged with the administration of any land use ordinance or applications thereunder, except the following:

1. The Borough Council;
2. The Zoning Hearing Board; or
3. The Planning Commission, only if and to the extent the Planning Commission is charged with final decision on preliminary or final plans under the subdivision and land development or planned residential development ordinances. Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal. (Ord. 095-4)

DEVELOPER – any landowner, agent of such landowner, or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development. (Ord. 095-4)

DEVELOPMENT PLAN – the provisions for development including a planned residential development, a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities. The phrase “provisions of development plan” when used in this Chapter shall mean the written and graphic materials referred to in this definition. (Ord. 095-4)

DWELLING – any building or structure (except a house trailer or mobile home as defined by Act 247) which is wholly or partly used or intended to be used for living or sleeping by one (1) or more human occupants.

DWELLING, APARTMENT – a building, containing three (3) or more dwelling units, which is not owned by the residents thereof. See “CONDOMINIUM.”

DWELLING, INDUSTRIALIZED UNIT – an assembly of materials or products comprising all or part of a total structure which, when constructed, is self-sufficient or substantially self-sufficient and when installed, constitutes a dwelling unit, except for necessary preparations for its placement, and including a modular or sectional unit but not a mobile home.

DWELLING, MULT-FAMILY – a building consisting of three (3) or more dwelling units including condominiums and town houses with varying arrangements of entrances and party walls. Multi-family housing may include public housing and industrial units.

DWELLING, ROOMING HOUSE (Boarding House, Lodging House, Dormitory) – a building or part thereof, other than a hotel, motel, or restaurant where meals and/or lodging are provided for compensation, for three (3) or more unrelated persons where no cooking or dining facilities are provided in the individual rooms.

DWELLING, SINGLE FAMILY – a dwelling consisting of a single dwelling unit only, separated from other dwelling units by open space.

DWELLING, TOWNHOUSE – a multi-family structure in which each dwelling unit and the underlying property may be individually owned. For purposes of computation of side yard requirements, the building shall be considered to be on one lot.

DWELLING, TWO-FAMILY – a building consisting of two (2) dwelling units which may be either attached side by side or one (1) above the other and each unit having a separate or combined entrance or entrances.

DWELLING UNIT – a space, within a dwelling, comprising living, dining, sleeping room or rooms, storage closets, as well as space and equipment for cooking, bathing, and toilet facilities, all used by only one (1) family and its household employees.

EASEMENT – authorization by a property owner for the use by another, and for a specified purpose, or any designated part of his property.

ESSENTIAL SERVICES – the erection, construction, alteration, or maintenance, by public utilities or municipal or other governmental agencies, of gas, electrical, steam or water transmission, or distribution systems, collection, communication, supply or disposal systems or sites, including poles, wires, mains, drains, sewers, pipes, traffic signals, hydrants, or other similar equipment and accessories in connection therewith that are reasonably necessary for

the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, but not including buildings.

FAMILY – one (1) or more persons occupying a single dwelling unit, provided that unless all members are related by blood, adoption, or marriage, no such family shall contain over five (5) persons.

FARM VACATION ENTERPRISE (Profit or Non-Profit) – farms adapted for use as vacation farms, picnicking and sports areas, fishing waters, camping, scenery, and nature recreation areas; hunting areas; hunting preserves and watershed projects.

FLOODPLAIN – that land, including the floodway fringe and the floodway, subject to inundation by the regional flood.

FLOOD, REGIONAL – large floods which have previously occurred or which may be expected to occur on a particular stream because of like physical characteristics. The regional flood generally has an average frequency of the one hundred (100) year recurrence interval flood one (1%) percent probability flood.

FLOODWAY – that portion of the floodplain, including the channel, which is required to convey the regional flood waters. Floods of less frequent recurrence are usually contained completely within the floodway.

FLOODWAY FRINGE – that portion of the floodplain, excluding the floodway, where development may be allowed under certain restrictions.

FLOOR AREA OF A RESIDENTIAL BUILDING – the sum of the gross horizontal area of the several floors of a residential building, excluding basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between interior faces of walls.

FLOOR OF A NONRESIDENTIAL BUILDING (To be used in calculation parking requirements) – the floor area of the specified use excluding stairs, washrooms, elevator shafts, maintenance shafts and rooms, storage spaces, display windows, and fitting rooms, and similar areas.

FLOOR AREA, USABLE – the total amount of usable floor area shall be the sum of the horizontal areas of the several floors of the building, measured from the interior faces of the exterior walls.

FOOD PROCESSING – the preparation, storage, or processing of food products. Examples of these activities include bakeries, dairies, canneries, and other similar businesses.

FUEL DISPENSING FACILITY – a location where gasoline or other volatile flammable liquids or liquefied flammable gases are sold and transferred to the fuel tanks

(including auxiliary fuel tanks) of self propelled vehicles or approved containers from underground or above ground storage tanks.

GARAGES, PRIVATE – a detached accessory building or portion of a principal building for the parking or temporary storage of automobiles, travel trailers and/or boats for the occupants of the premises and wherein:

1. Not more than one (1) space is rented for parking to persons not resident on the premises;
2. No more than one (1) commercial vehicle per dwelling unit is parked or stored;
3. The commercial vehicle permitted does not exceed two (2) tons capacity.

GARAGE, PUBLIC – a principal or accessory building other than a private garage, used for parking or temporary storage of passenger automobiles, and in which no service shall be provided for remuneration.

GARAGE, SERVICE STATION – buildings and premises where gasoline, oil, grease, batteries, tires, and motor vehicle accessories may be supplied and dispensed at retail, and where, in addition, the following services may be rendered and sales made:

1. Sales and service of spark plugs, batteries, and distributor parts.
2. Tire servicing and repair, but not recapping or regrooving.
3. Replacement of mufflers and tail pipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and blades, grease retainers, wheel bearings, mirrors, and the like.
4. Radiator cleaning and flushing.
5. Washing, polishing, and sale of washing and polishing materials.
6. Greasing and lubrication.
7. Providing and repairing fuel pumps, oil pumps, and lines. Minor servicing and repairing brakes.
8. Minor motor adjustment not involving removal of the head or crankcase or racing the motor.
9. Sales of cold drinks, packaged food, tobacco, and similar convenience goods for service station customers, as accessory and incidental to principle operations.

10. Provision of road maps and other informational material to customers, provision or restroom operations.
11. Warranty maintenance and safety inspections.

Uses permissible at a service station do not include major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in a filling station. A filling station is not a repair garage, nor a body shop.

GOVERNING BODY – the Borough Council of the Borough of Windber, Somerset County, Pennsylvania.

HOME OCCUPATION/HOBBY – an occupation conducted in a dwelling unit, provided that:

1. No more than one (1) person other than members of the family residing on the premises shall be engaged in such home occupation.
2. The use of the dwelling unit for the home occupation or hobby shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25%) percent of floor area of the dwelling unit shall be used in the conduct of the home occupation.
3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation or hobby other than one (1) sign, not exceeding four (4) square feet in area, non-illuminated, and mounted flat against the wall of the principal building.
4. No traffic shall be generated by such home occupation or hobby in greater volume than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation or hobby shall meet the off-street parking requirements as specified in this Chapter, and shall not be located in a required front yard.
5. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in the line voltage off the premises.

6. When within the above requirements, a home occupation or hobby included, but is not limited to the following:
 - a) art studio;
 - b) dressmaking;
 - c) professional office of a physician, dentist, lawyer, engineer, architect, accountant, salesman, real estate agent, insurance agent, or other similar occupation;
 - d) teaching, with musical instruction limited to one or two pupils at a time; however, a home occupation shall not be interpreted to include barber shops, beauty parlors, tourist homes, animal hospitals, child care centers, tea rooms and restaurants.

HOTEL or MOTEL and APARTMENT HOTEL – a building in which lodging or boarding and lodging are provided and offered to the public for compensation. As such it is open to the public, distinct from a boarding house, rooming house, lodging house, or dormitory which is herein separately defined.

INSTITUTION – a building and/or land designed to aid individuals in need of mental, therapeutic, rehabilitative counseling, or other correctional services.

JUNK BUILDINGS, JUNK SHOPS, JUNKYARDS – any land, property, structure, building, or combination of the same, on which junk is stored or processed.

KENNEL – any lot or premises on which four (4) or more domesticated animals more than four (4) months of age are housed, groomed, bred, boarded, trained, or sold and which offers provisions for minor medical treatment.

LAND DEVELOPMENT – any of the following activities:

1. The improvement of one (1) lot or two (2) or more contiguous lots, tracts or parcels of land for any purpose involving:
 - a) A group of two (2) or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
 - b) The division or allocation of land or space, whether initially or cumulatively, between or among two (2) or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features;
2. A subdivision of land.

3. “Land development” does not include development which involves:
- a) The conversion of an existing single family detached dwelling or single family semi-detached dwelling into not more than three (3) residential units, unless such units are intended to be a condominium;
 - b) The addition of an accessory building, including farm building, on a lot or lots subordinate to an existing principal building; or
 - c) The addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park. For the purposes of this subsection, an amusement park is defined as a tract or area principally as a location for permanent amusement structures or rides. This exclusion shall not apply to newly acquired acreage by an amusement park until initial plans for the expanded area have been approved by the proper authorities.
(Ord. 095-4)

LOADING SPACE, OFF-STREET – space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space. All off-street loading spaces shall be located totally outside of any street or alley right-of-way.

LOCATION MAP – See “vicinity map.”

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. (Ord. 095-4)

LOT COVERAGE – the ratio of enclosed ground floor area of all buildings on a lot to the horizontally projected area of the lot, expressed as a percentage.

LOT FRONTAGE - the front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under “yards” in this Section.

LOT, MINIMUM AREA OF – the area of a lot is computed exclusive of any portion of the right-of-way of any public or private street.

LOT MEASUREMENT – a lot shall be measured as follows:

1. Depth. The Distance between the mid-points of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

2. Width. The distance between straight lines connecting front and rear lot lines at each side of the lot, measured at the building setback line.

LOT OF RECORD – a lot which is part of a subdivision recorded in the office of the County Recorder, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

LOT TYPES – terminology used in this Chapter with reference to corner lots, interior lots and through lots is as follows:

1. Corner Lot. A lot located at the intersection of two (2) or more dedicated streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than one hundred thirty-five (135) degrees. Does not apply to properties bordering an alley.
2. Interior Lot. A lot with only one (1) frontage on a street.
3. Through Lot. A lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets may also be a corner lot.
4. Reversed Frontage Lot. A lot on which frontage is at right angles to the general pattern in the area. A reversed frontage lot may also be a corner lot.

LUMBERYARD – a place where lumber and building supplies are stored and sold.

MAJOR THOROUGHFARE PLAN – the portion of the comprehensive plan adopted by the Borough Planning Commission indicating the general location recommended for arterial, collector, and local thoroughfares within the Borough.

MAINTENANCE and STORAGE FACILITIES – land, buildings, and structures devoted primarily to the maintenance and storage of construction equipment and material.

MANAGER – the Borough Manager

MANUFACTURED HOME – a manufactured home is built to the Manufactured Home Construction and Safety Standards (HUD Code) and displays a **RED CERTIFICATION LABEL** on the exterior of each transportable section. Manufactured Homes are built in a controlled environment of a manufacturing plant. They are transported in one or more sections on a temporary or permanent chassis. A HUD label is attached to each section of the home to indicate it is in compliance with HUD Code, which became law in 1976. The HUD Code home must meet regional standards for roof load, wind resistance, thermal efficiency and durability.

All manufactured homes are required to have a shingled roof, house type siding and secured to a permanent foundation. All wheels, axles and hitches must be removed from the home.

MANUFACTURING, HEAVY – manufacturing, processing, assembling, storing, testing, and similar industrial uses which are generally major operations and extensive in character; require large sites, open storage and service areas, extensive services and facilities, ready access to regional transportation; and normally generate some nuisances such as smoke, noise, odor, or dust; operating and storing within enclosed structures; and generating little industrial traffic and no nuisances.

MANUFACTURING, EXTRACTIVE – any mining, quarrying, excavating, processing, storing, separating, or cleaning of any mineral natural resource.

MOBILE HOME – a mobile home is a manufactured home designed for dwelling use and is designed and built on a permanent chassis. May also be known as a recreational vehicle.

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. (Ord. 095-4)

MOBILE HOME PARK – a parcel or contiguous parcels of land which has been so designated and improved that it contains two (2) or more mobile home lots for the placement thereon of mobile homes. (Ord. 095-4)

MODULAR HOME – a modular home is a Manufactured Home designed for dwelling use to be erected or installed on a permanent foundation.

MUNICIPAL AUTHORITY – a body politic and corporate created pursuant to the Act of May 2, 1945 (P. L. 382, NO. 164), known as the “Municipalities Authority Act of 1945.”

NFPA – National Fire Protection Association

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

(Ord. 095-4)

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

NONCONFORMING USE – a use, whether of land or structure, which does not comply with the applicable use provisions in this Chapter or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of this Chapter or amendment or prior to the application of this chapter or amendment to its location by reason of annexation. (Ord. 095-4)

NURSING HOME – a home or facility for the care and treatment of disabled or elderly people.

NURSERY, PLANT MATERIALS – land, building, structure, or combination thereof for the storage, cultivation, transplanting of live trees, shrubs, or plants offered for retail sale on the premises including products used for gardening or landscaping.

OPEN SPACE – an area substantially open to the sky which may be on the same lot with a building. The area may include, along with the natural environmental features, water areas, swimming pools, and tennis courts, any other recreational facilities that the Planning Commission deems Permissive. Streets, parking areas, structures for habitation, and the like shall not be included.

PARKING SPACE, OFF-STREET – for the purpose of this Chapter, an off-street parking space shall consist of an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room, but shall be located totally outside of any street or alley right-of-way.

PERFORMANCE BOND or SURETY BOND – an agreement by a sub-divider or developer with the Borough for the amount of the estimated construction cost guaranteeing the completion of physical improvements according to plans and specifications within the time prescribed by the sub-divider’s agreement.

PERSONAL SERVICES – any enterprise conducted for gain which primarily offers services to the general public such as shoe repair, watch repair, barber shops, beauty parlors, and similar activities.

PLANNING AGENCY – the Windber Borough Planning Commission.

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

PROFESSIONAL ACTIVITIES – the use of offices and related spaces for such professional services as are provided by medical practitioners, lawyers, architects, engineers, and similar professions. Professional Activities shall be subject to the same conditions as set forth in the definition of Home Occupation/Hobby.

PUBLIC GROUNDS – includes:

1. Parks, playgrounds, trails, paths and other recreational areas and other public areas;
2. Sites for schools, sewage treatment, refuse disposal and other publicly owned or operated facilities; and
3. Publicly owned or operated scenic and historic sites.
(Ord. 095-4)

PUBLIC HEARING – a formal meeting held pursuant to public notice by the Borough Council or Planning Commission, intended to inform and obtain public comment, prior to taking action in accordance with this Chapter. (Ord. 095-4)

PUBLIC MEETING – a forum held pursuant to notice under the Act of July 3, 1986 (P. L. 388, No 84), known as the “Sunshine Act,” 53 P. S. S271 et seq.
(Ord. 095-4)

PUBLIC NOTICE – notice published once each week for two (2) successive weeks in a newspaper of general circulation in the (municipality). Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than thirty (30) days and the second publication shall not be less than seven (7) days from the date of the hearing.
(Ord. 095-4)

PUBLIC SELF STORAGE UNITS (MINI) – a one story structure that is divided into a series of separated units each has its own door, which is leased to private or public individuals for the long term storage of useful personal belongings that may include vehicles. Its use does not include the storage of junk, debris, hazardous materials or materials that may attract vermin or pests.

PUBLIC SERVICE FACILITY – the erection, construction, alteration, operation or maintenance of buildings, power plants, or substances, water treatment plants or pumping stations, sewage disposal or pumping plants and other similar public service structures by a public utility, by a railroad, whether publicly or privately owned, or by a municipal or other governmental agency, including the furnishing of electrical, gas, rail transport, communications, public water and sewage services.

PUBLIC USES – public parks, schools, administrative and cultural buildings and structure, not including public land or buildings devoted solely to the storage and maintenance of equipment and materials and public service facilities.

PUBLIC WAY – an alley, avenue, boulevard, bridge, channel, ditch, easement, expressway, freeway, highway, land, parkway right-of-way, road, sidewalk, street, subway, tunnel viaduct, walk, bicycle path or other ways in which the general public or a public entity have a right, or which are dedicated, whether improved or not.

QUASI-PUBLIC USE – churches, Sunday schools, parochial schools, colleges, hospitals, and other facilities of an educational, religious, charitable, philanthropic, or non-profit nature.

RECREATION CAMP – an area of land on which two (2) or more travel trailers, campers, tents or other similar temporary recreational structures are regularly accommodated with or without charge, including any building, structure, fixture or equipment that is used or intended to be used in connection with providing such accommodations.

RECREATION FACILITIES – public or private facilities that may be classified as either “extensive” or “intensive” depending upon the scope of services offered and the extent of use. Extensive facilities generally require and utilize considerable areas of land include, but need not be limited to, hunting, fishing, and riding clubs and parks. Intensive facilities generally require less land (used more intensively) and include, but need not be limited to, miniature golf courses, amusement parks, stadiums, and bowling alleys.

RECREATIONAL VEHICLE – A motorized vehicle, camper or a travel trailer that is towed and which has been designed and may be used as a temporary dwelling or shelter that may utilize designated facilities or areas while vacationing or camping. One licensed and registered recreational vehicle may be stored in the rear yard.

REPORT – any letter, review, memorandum, compilation or similar writing made by any 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 proceedings upon request, and copies thereof shall be provided at cost of reproduction.

(Ord. 095-4)

RESEARCH ACTIVITIES – research, development, and testing related to such fields as chemical, pharmaceutical, medical, electrical, transportation, and engineering. All research, testing, and development shall be carried on entirely within enclosed buildings, and no noise, smoke, glare, vibration, or odor, which constitutes a nuisance, shall be detectable outside of said building.

ROADSIDE STAND – a temporary structure designed or used for the display or sale of agricultural and related products.

RIGHT-OF-WAY – a strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting, and drainage facilities, and may include special features (required by the topography or treatment) such as grade separation, landscaped areas, viaducts, and bridges.

SEAT – for purposes of determining the number of off-street parking spaces for certain uses, the number of seats is the number of seating units installed or indicated. The amount of seats shall be determined by allowing twenty-four (24) lineal inches for benches, pews, or space for loose chairs, and eighteen (18) lineal inches for bleacher type seating.

SETBACK LINES – a line established by this Chapter, generally parallel with and measured from the lot line, defining the limits of a yard in which no building, other than an accessory building, or structure may be located above ground, except as may be provided in this Chapter.

SEWER, CENTRAL or GROUP – an approved sewage disposal system which provides a collection network and disposal system and central sewage treatment facility for a single development, community, or region.

SEWER, ON-SITE – a septic tank or similar installation on an individual lot which utilizes an aerobic bacteriological process or equally satisfactory process for the elimination of sewage and provides for the proper and safe disposal of the effluent, subject to the approval of health and sanitation officials having jurisdiction.

SEXUALLY ORIENTED BUSINESS – an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency, nude model studio, or sexual encounter center.

SIDEWALK – that portion of the road right-of-way outside the roadway, which is improved for the use of pedestrian traffic.

SIGN – any device designated to inform or attract the attention of persons not on the premises on which the sign is located.

1. Sign, On-Premises. Any sign related to a business, or profession conducted, or a commodity or service sold or offered, upon the premises where such sign is located.
2. Sign, Off-Premises. Any sign unrelated to a business, or profession conducted, or to a commodity or service sold or offered upon the premises where such sign is located.
3. Sign, Illuminated. Any sign illuminated by electricity, gas, or other artificial light including reflecting or phosphorescent light.
4. Sign, Lighting Device. Any light, string of lights, or group of lights located or arranged so as to cast illumination on a sign.
5. Sign, Projecting. Any sign which project from the exterior of a building.

6. Sign, Free Standing. A sign principally supported by a structure affixed to the ground, and not supported by the building.

SPECIAL EXCEPTION – a use permitted in a particular zoning district pursuant to the provisions of this Chapter and Articles VI and IX of the Pennsylvania Municipalities Planning Code, 53 P. S. S10601 et seq., 10901 et seq. (Ord. 095-4)

STORY – that part of a building between the surface of a floor and the ceiling immediately above

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

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 re-division of a lot, tract or parcel of land by any means into two (2) or more lots, tracts, parcels or other division of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten (10) acres, not involving any new street or easement of access or any residential dwelling, shall be exempted. (Ord. 095-4)

SUBSTANTIALLY COMPLETED – where in the judgment of the Borough engineer, at least ninety (90%) percent (based on the cost of the required improvements for which financial security was posted pursuant to the requirements of this Chapter) of those improvements required as a condition for final approval have been completed in accordance with the approved plan, so that the project will be able to be used, occupied or operated for its intended use. (Ord. 095-4)

SUPPLY YARD – a commercial establishment storing and offering for sale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods.

SWIMMING POOL – a pool, pond, lake, or open tank containing at least one and one-half (1 ½) feet of water at any point and maintained by the owner or manager.

1. Private. Exclusively used without paying an additional charge for admission by the residents and guests of a single household, a multi-family development, or a community, the members and guests of a club, or the patrons of a motel or hotel; an accessory use.
2. Community. Operated with a charge for admission; a primary use.

THOROUGHFARE, STREET, or ROAD – the full width between property lines bounding vehicular traffic and designated as follows:

1. Alley. A minor street used primarily for vehicular service access to the back or side of properties abutting on another street.
2. Arterial Street. A general term denoting a highway primarily for through traffic, carrying loads and large volume of traffic, usually on a continuous route.
3. Collector Street. A thoroughfare, whether within a residential, industrial, commercial, or other type of development, which primarily carries traffic from local streets to arterial streets, including the principal entrance and circulation routes within residential subdivisions.
4. Cul-de-Sac. A local street of relatively short length with one (1) end open to traffic and the other end terminating in a vehicular turnaround.
5. Dead-end Street. A street temporarily having only one (1) outlet for vehicular traffic and intended to be extended or continued in the future.
6. Local Street. A street primarily for providing access to residential or other abutting property.
7. Loop Street. A type of local street, each end of which terminates at an intersection with the same arterial or collector street, and whose principal radius points of the one hundred eighty (180) degree system of turns are not more than one thousand (1,000) feet from said arterial or collector street, not normally more than six hundred (600) feet from each other.
8. Marginal Access Street. A local or collector street, parallel and adjacent to an arterial or collector street, providing access to abutting properties and protection from arterial or collector streets. (Also call “frontage street.”)

THROUGH LOT – See “lot types.”

TRANSPORTATION SERVICE – train, taxi, bus, or other public transportation facility, building, structure, or service.

USE – the specific purposes for which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained.

VARIANCE – relief granted pursuant to the provisions of this Chapter and Articles VI and IX of the Pennsylvania Municipalities Planning Code, 53 P. S. S10101 et seq. (Ord. 095-4)

VETERINARY ANIMAL HOSPITAL or CLINIC – a place used for the care, grooming, diagnosis, and treatment of sick, ailing, infirm, or injured animals, and those who are in need of medical or surgical attention, and may include overnight accommodations on the premises for treatment, observation and/or recuperation. It may also include boarding that is incidental to the primary activity.

VICINITY MAP – a drawing located on the plat which sets forth by dimensions or other means, the relationship of the proposed subdivision or services within the general area in order to better locate and orient the area in question.

WALKWAY – a public way, four (4) feet or more in width, for pedestrian use only, whether along the side of a road or not.

WAREHOUSE – a free standing structure where goods are stored, usually in large quantities.

WATERSHED, MUNICIPAL – an area of land within the municipality usually bordered by a ridge of high land that drains into a river, stream or other body of water.

YARD – a required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from three (3) feet above the general ground level of the graded lot upward; provided, accessories, ornaments, and furniture may be permitted in any yard, subject to height limitations and requirements limiting obstruction of visibility.

1. Yard, Front. A yard extending between side lot lines across the front of a lot and from the front lot line to the front of the principal building.
2. Yard, Rear. A yard extending between side lot lines across the rear of a lot.
3. Yard, Side. A yard extending from the principal building to the side lot line on each side of the principal building between the lines establishing the front and rear yards.

ZONING PERMIT – a document issued by the Zoning Officer authorizing the use of lots, structures, uses of land and structures, and the characteristics of the uses.

(Ord. 095-4, 10/31/1979, Art. 2; as amended by Ord. 085-6, 8/19/1985; and by Ord. 095-4, 12/11/1995)

Part 3

Enforcement

§301 Zoning Permits Required. No building or other structure shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use without a permit therefore issued by the Zoning Officer. Zoning permits shall be issued only in conformity with the provisions of this Chapter unless the Zoning Officer receives a written order from the Board of Council deciding an appeal, conditional use, or variance.

(Ord. 079-4, 10/31/10979, §3000)

§302 Contents of Application for Zoning Permit. The application for zoning permit shall be signed by the owner or applicant attesting to the truth and exactness of all information supplied on the application. Each application shall clearly state that the permit shall expire and may be revoked if work has not begun within six (6) months or substantially completed within one and one-half (1½) years from the date of the issuance of the permit. At a minimum, the application shall contain the following information:

- A. Name, address, and phone number of the applicant.
- B. Legal description and owner of the property.
- C. Existing use.
- D. Proposed use.
- E. Zoning district.
- F. Plans in triplicate drawn to scale, showing the actual dimensions and the shape of the lot to be built upon; the exact size and location of existing buildings on the lot, if any; and the location and dimensions of the proposed building(s) or alteration.
- G. Building heights.
- H. Number of off-street parking spaces or loading berths.
- I. Number of dwelling units.
- J. Such other matters as may be necessary to determine conformance with, and provide for the enforcement of this Chapter.

(Ord. 079-4, 10/31/1979, §301)

§303 Approval of Zoning Permit. Within thirty (30) days after the receipt of an application, the zoning officer shall either approve or disapprove the application in conformance with the provision of this Chapter. All zoning permits shall, however, be conditional upon the commencement of work within six months. One (1) copy of the plans shall be returned to the applicant by the Zoning Officer, after the Zoning Officer shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. One (1) copy of the plans, similarly marked, shall be retained by the Zoning Officer. The third copy, similarly marked, shall be sent to Council. The Zoning Officer shall issue a placard, to be posted in a conspicuous place on the property in question, attesting to the fact that the use or alteration is in conformance with the provisions of this Chapter.

(Ord. 079-4, 10/31/1979, §302)

§304 Expiration of Zoning Permit. If the work described in any zoning permit has not begun within six (6) months from the date of issuance thereof, said permit shall expire; it shall be revoked by the Zoning Officer; and written notice thereof shall be given to the persons affected. If the work described in any zoning permit has not been substantially completed within one and one half (1½) years of the date of issuance thereof, said permit shall expire and be revoked by the Zoning Officer, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new zoning permit has been obtained or extension granted. (Ord. 079-4, 10/31/1979, §303)

§305 Certificate of Occupancy. It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy shall have been issued therefore by the Zoning Officer stating that the proposed use of the building or land conforms to the requirements of this Chapter. (Ord. 079-4, 10/31/1979, §310)

§306 Temporary Certificate of Occupancy. A temporary certificate of occupancy may be issued by the Zoning Officer for a period not exceeding six (6) months during alterations or partial occupancy of a building pending its completion. (Ord. 079-4, 10/31/1979, §311)

§307 Record of Zoning Permits and Certificates of Occupancy. The Zoning Officer shall maintain a record of all zoning permits and certificates of occupancy and copies shall be furnished upon request to any person. The Zoning Officer may collect a reasonable fee for provision of copies. Said fee shall be based on the actual cost of copying plus the time required to make the copy. (Ord. 079-4, 10/31/1979, §312)

§308 Failure to Obtain a Zoning Permit or Certificate of Occupancy. Failure to obtain a zoning permit or certificate of occupancy shall be a violation of this Chapter and punishable under §311 of this Chapter. (Ord. 079-4, 10/31/1979, §320)

§309 Conformity to Applications, Plans, Permits, and Certificates. Zoning permits or certificates of occupancy issued on the basis of plans and applications approved by the Zoning Officer authorize only the use and arrangement set forth in such approved plans and applications or amendments thereto, and no other use, arrangement, or construction. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of this Chapter, and punishable as provided in §311 of this Chapter. (Ord. 079-4, 10/31/1979, §330)

§310 Complaints Regarding Violations. Whenever a violation of this Chapter occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Officer. The Zoning Officer shall record properly such complaint, immediately investigate, and take action thereon as provided by this Chapter. (Ord. 079-4, 10/31/1979, §340)

§311 Enforcement Notice.

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

6. That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.

(Ord. 079-4, 10/31/1979; as added by Ord. 095-4, 12/11/1995)

§312 Enforcement Penalties.

- A. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Chapter shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than five hundred (\$500.00) dollars 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 this Chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one (1) such violation until the fifth (5th) 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.
- 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 Borough the right to commence any action for enforcement pursuant to this Section.
- D. District justices shall have initial jurisdiction over proceedings brought under this Section. (Ord. 079-4, 10/31/1979, §§350; as amended by Ord. 095-4, 12/11/1995)

§313 Enforcement Remedies. In case any building, structure, or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of this Chapter the Zoning Officer, or, in addition to other remedies, may institute in the name of the Borough any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation.

(Ord. 079-4, 10/31/1979, §351)

§314 Schedule of Fees, Charges, and Expenses. The Council shall by resolution establish a schedule of fees, charges, and expenses and a collection procedure for zoning permits, amendments, appeals, variances, conditional use permits, plan approvals, and other matters pertaining to the administration and enforcement of this Chapter requiring investigations, inspections, legal advertising, postage, and other expenses. The schedule of fees shall be posted in the office of the Zoning Officer and may be altered or amended by the Council. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal. (Ord. 079-4, 10/31/1979, §360)

Part 4

Nonconforming Uses

§401 Definitions

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

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

(Ord. 079-4, 10/31/1979, §400)

§402 Pre-Existing, Nonconforming Uses. Subject to the provisions of this Section, a use of building or land existing at the time of the legal adoption of this Chapter may be continued even though such use does not conform with the provisions of this Chapter for the district in which it is located. (Ord. 079-4, 10/31/1979, §401)

§403 Abandonment. A nonconforming use of a building or land which has been abandoned shall not thereafter be returned to such a nonconforming use. A nonconforming use shall be considered abandoned when one (1) or more of the following conditions exist:

- A. When the intent of the owner to discontinue the use is apparent.
- B. When the characteristic equipment and furnishing of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within ninety (90) days, unless other facts show intention to resume the nonconforming use.
- C. When a nonconforming use has been discontinued for a period of six (6) months.
- D. When it has been replaced by a conforming use.
- E. When it has been changed to a permitted use under permit from the Zoning Hearing Board. (Ord. 079-4, 10/31/1979, §402)

§404 Alterations, Structural. Upon issuance of a building permit, and in accordance with the standards of §605 *Special Exceptions*:

- A. a nonconforming building or structure may be altered, improved or reconstructed provided such work does not increase the impact of the nonconforming use upon the surrounding community or;
- B. a nonconforming building or structure may be changed to a conforming use.
(Ord. 079-4, 10/31/1979, §403)

§405 Conversion. If no structural alterations are made, any nonconforming use can be changed to another nonconforming use provided that the Zoning Hearing Board shall find that the proposed use is more appropriate to the district than the existing nonconforming use. Conversion of nonconforming buildings or structures into residential uses shall be permitted as a special exception under the following requirements:

- A. The minimum yard and area requirements are in accordance with the district in which said conversion is located.
- B. Each living unit contains a minimum of not less than six hundred (600) square feet of habitable living area.
- C. Each living unit contains not less than one (1) bathroom and three (3) habitable rooms, at least one (1) of which shall be a bedroom.
- D. Separate and private sanitary facilities are provided for each living unit.
- E. Fire and safety provisions are certified to be adequate by the chief of the fire department with jurisdiction.
- F. A minimum of two (2) off-street parking spaces are provided for each residential unit.
(Ord. 079-4, 10/31/1979, §404)

§406 Construction Approved Prior to Enactment of this Chapter. Nothing herein contained shall require any change in plans, construction or designated use of a building or structure for which a zoning permit has been issued or the construction of which shall have been diligently prosecuted within two (2) months of the date of such permit, and the ground story framework of which shall have been completed within four (4) months of the date of the permit, and which entire building shall be completed according to such plans as filed within one (1) year from the date of enactment of this Chapter.
(Ord. 079-4, 10/31/1979, §405)

§407 District Changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one (1) district to another district of a different classification, the foregoing provisions shall apply to any nonconforming uses existing therein.

(Ord. 079-4, 10/31/1979, §406)

§408 Extension of Existing Non-Conforming Uses.

A. A nonconforming use may be extended as a special exception upon approval of the Zoning Hearing Board, subject to the following provisions:

1. The extension becomes an attached part of the main structure and does not utilize additional or adjoining land area other than the original parcel.
2. The extension does not encroach upon the yard or height requirements of the district in which the nonconforming use is presently located.
3. The extension is for the purpose of expanding only that nonconforming use in existence at the time of the legal acceptance of this Chapter.
4. The expense of such an extension shall not exceed eighty (80%) percent of the fair market value of the building or structure existing at the time of enactment of this Chapter.

B. Extension of a lawful use to any portion of a nonconforming building or structure which existed prior to the enactment of this Chapter shall not be deemed the extension of such nonconforming use.

(Ord. 079-4, 10/31/1979, §407)

§409 Recording. All nonconforming uses existing at the time of the enactment of this Chapter shall be recorded and maintained for public use by the Zoning Officer.

(Ord. 079-4, 10/31/1979, §408)

§410 Restoration. Nothing in this Chapter shall prevent the reconstruction, repairing, rebuilding and continued use of any nonconforming building or structure damaged or destroyed by fire, collapse, explosion or act of God subsequent to the date of legal acceptance of this Chapter wherein reconstruction of the destroyed or damaged building is initiated within one (1) year of the date of damage; and said construction, repairing, or rebuilding reduces the nonconformity or the structure to the maximum extent feasible.

(Ord. 079-4, 10/31/1979, §409)

§411 Unlawful Use Not Authorized. Nothing in this Chapter shall be interpreted as authorization for or approval of the continuance of the illegal use of a structure or premises in

violation of Borough regulations in existence at the time of the effective date of enactment of this Chapter. (Ord. 079-4, 10/31/1979, §410)

§412 Unsafe Structure. Nothing in this Chapter shall prevent the strengthening or restoring to a safe condition of an portion of a building or structure declared unsafe by a proper authority. (Ord. 079-4, 10/31/1979, §411)

Part 5

Administration

§501 Appointment and Powers of Zoning Officer.

- A. For the administration of this Chapter, a Zoning Officer, who shall not hold any elective office in the Borough, shall be appointed.
- B. The Zoning Officer shall meet the qualifications established by the Borough and shall be able to demonstrate to the satisfaction of the Borough a working knowledge of municipal zoning and construction.
- C. The Zoning Officer shall administer 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.
- D. The Zoning Officer is hereby authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his employment.
- E. Duties of Zoning Officer. The Zoning Officer shall have the following duties:
 - 1. Upon finding that any of the provision of this Chapter are being violated, he shall notify in writing the person responsible for such violation(s), ordering the action necessary to correct such violation.
 - 2. Order the discontinuance of illegal uses of land, buildings, structures, or signs.
 - 3. Order removal of illegal buildings, structures, signs or illegal additions or structural alterations.
 - 4. Order discontinuance of any illegal work being done.
 - 5. Take any other action authorized by this Chapter to ensure compliance with or to prevent violation(s) of this Chapter. This may include the issuance of and action on zoning and certificate of occupancy permits and such similar administrative duties as are permissible under the law. (Ord. 079-4, 10/31/1979, §§500, 510 & 520; as amended by Ord. 095-4, 12/11/1995)

§502 Job Description and Compensation for Zoning Officer. The Council shall adopt a written job description and compensation schedule for the Zoning Officer which shall include as a minimum:

- A. Procedures for processing applications for zoning and occupancy permits.
- B. Requirements for written and verbal reports to Borough officials.
- C. Procedures for coordination with the Zoning Hearing Board and other Borough officials.
- D. Office hours and/or hours Zoning Officer will be available to the public.
- E. A compensation schedule based either on an hourly rate or a set fee for services rendered.
(Ord. 079-4, 10/31/1979, §530)

§503 Procedure for Processing Request for Conditional Use Permits.

- A. Application. The applicant for a conditional use permit shall submit the application to the Zoning Officer on forms supplied by the Zoning Officer. The information required shall be generally that required for a zoning permit.
- B. Review by Zoning Officer. The Zoning Officer shall review the application for a conditional use permit and forward it together with his comments within seven (7) days to the Borough Planning Commission.
- C. Review by Planning Commission.
 - 1. The Planning Commission shall review the application for a conditional use permit and forward their recommendations together with a copy of the Zoning Officer's comments to the Council within forty-five (45) days of receipt of the application.
 - 2. The Planning Commission may hold a public hearing pursuant to official public notice to take testimony from the public concerning the application. As a minimum, the Planning Commission shall provide public notice that the application will be reviewed at a designated public meeting of the Planning Commission. (Ord. 095-4)
- D. Action by Council. The Council shall review the application for a conditional use permit and either approve, approve with modifications, or deny the application within 45 days. The Council action shall be taken at an official public meeting

after official public notice that the application is to be considered. All comments and recommendations submitted by the Zoning Officer and Planning Commission shall be read into and made a part of the official minutes of the meeting. (Ord. 079-4, 10/31/1979, §540)

§504 Variances . Refer to §604, *Variances*.

§505 Procedure for Processing Requests for Special Exceptions. Refer to §605 *Special Exceptions*.

Part 6

Zoning Hearing Board

§601 Zoning Hearing Board.

- A. There is hereby created for the Borough a Zoning Hearing Board (Board) in accordance with the provisions of Article IX of the Pennsylvania Municipalities Planning Code, 53 P. S. S10901 et seq.
- B. The membership of the Board shall consist of three (3) residents of the Borough appointed by resolution by the Borough Council. The terms of office shall be for three (3) years and shall be so fixed that the term of office of one (1) member shall expire each year. 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. Members of the Board shall hold no other office in the Borough, except for sitting on the board appointed to hear construction code appeals. There may be one alternate member for a three (3) member board.
- C. Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Borough Council which appointed the member, taken after the member has received fifteen (15) days' advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.
- D. The Board shall elect from its own membership its officers (Chairman and Vice Chairman), who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action a quorum shall be not less than a majority of all members of the Board, but the Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Board as provided in this Chapter.
- E. The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Borough and laws of the Commonwealth. The Board shall keep full public records of its business, which records shall be the property of the Borough and shall submit a report of its activities to the Borough Council as requested by the Borough Council.
- F. Within the limits of funds appropriated by the Borough Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties, as may be fixed by the Borough Council, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the Borough Council. (Ord. 079-4, 10/31/1979, §§600-603; as amended by Ord. 095-4, 12/11/1995)

§602 Hearings. The Zoning Hearing Board shall conduct hearings and make decisions in accordance with the following requirements:

- A. Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by rules of the Board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.
- B. The hearing shall be held within sixty (60) days from the date of the applicant's request, unless the applicant has agreed, in writing, to an extension of time.
- C. 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.
- D. 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 organization permitted to appear by the Board. The Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Board for that purpose.
- E. 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.
- F. 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.
- G. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- H. 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 of 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.

- I. 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.
- J. The Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the Board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reason therefore. Conclusions based on any provisions of this Chapter or of any law, ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the Board shall make his report and recommendations available to the parties within forty-five (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 thirty (30) days after the report of the hearing officer. Where the Board fails to render the decision within the period required by this subsection, or fails to hold the required hearing within sixty (60) days from the date of the applicant's request for a hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Board to meet or render a decision as hereinabove provided, the Board shall give public notice of the said decision within ten (10) days from the last day it could have met to render a decision in the same manner as provided in subsection (1) of this Section. If the Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.
- K. A copy of the final decision or, where no decision is called or, of the findings, shall be delivered to the applicant personally or mailed to him not later than the day following its date. To all other persons who have filed their name and address with the Board not later than the last day of the hearing, the Board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

- L. The Borough Council shall establish, by resolution, fees with respect to hearings before the Zoning Hearing Board. (Ord. 079-4, 10/31/1979, §604; as amended by Ord. 095-4, 12/11/1995)

§603 Jurisdiction.

- A. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
1. Substantive challenges to the validity of any land use ordinance, except those brought before the Council pursuant to SS609.1 and 916.1(a)(2) of the Pennsylvania Municipalities Planning Code (hereinafter “MPC”), 53 P. S. §§10609.1, 10916.1.
 2. Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within thirty (30) days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the Borough and a Zoning Hearing Board has not been previously established, the appeal raising procedural questions shall be taken directly to court.
 3. Appeals from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefore, 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 floodplain or flood hazard ordinance or such provisions within a land use ordinance.
 5. Applications for variances from the terms of this Chapter and flood hazard ordinance or such provisions within a land use ordinance, pursuant to §910.2 of the MPC, 53 P. S. §10910.2.
 6. Applications for special exceptions under this Chapter or floodplain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to §912.1 of the MPC, 53 P. S. §10912.1.
 7. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Chapter.
 8. Appeals from the Zoning Officer’s determination under §916.2 of the MPC, 53 P. S. §10916.2.
 9. Appeals from the determination of the Zoning Officer or Borough engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving

applications under Article V or VII of the MPC, 53 P. S. §§10501 et seq., 10701 et seq.

- B. The Borough Council, shall have exclusive jurisdiction to hear and render final adjudication's in the following matters:
1. All application for approvals of planned residential developments under Article. VII or the MPC pursuant to the provisions of §702 of the MPC, 53 P. S. §10702.
 2. All applications pursuant to §508 of the MPC, 53 P. S. §10508, for approval of subdivisions or land developments under Article V of the MPC, 53 P. S. §10501 et seq.
 3. Applications for conditional use under the express provisions of this chapter.
 4. Applications for curative amendment to this Chapter or pursuant to §§609.1 and 916.1(a) of the MPC, 53 P. S. §§10609.1, 10916.1 (a).
 5. All petitions for amendments to land use ordinances, pursuant to the procedures set forth in §609 of the MPC, 53 P. S. §10609.
 6. Appeals from the determination of the Zoning Officer or the Borough engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation, erosion control and storm water management insofar as the same relate to applications for land development under Articles V and VII of the MPC, 53 P. S. §§10501 et seq., 10701 et seq. Where such determination relates only to development not involving an Article V or VII application, the appeal from such determination of the Zoning Officer or the Borough engineer shall be to the Zoning Hearing Board pursuant to this Section. Where the applicable land use ordinance vests jurisdiction for final administration of subdivision and land development applications in the Planning Commission, all appeals from determinations under this subsection shall be to the Planning Commission and all appeals from the decision of the Planning Commission shall be to court. (Ord. 079-4, 10/31/1979, §§605 & 606; as amended by Ord. 095-4, 12/11/1995)

§604 Variances.

- A. The Zoning Hearing 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 application and may require preliminary application to the Zoning Officer. The Board may grant a variance,

provided that all of the following findings are made where relevant in a given case:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Chapter in the neighborhood or district in which the property is located.
 2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 3. That such unnecessary hardship has not been created by the applicant.
 4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
 5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- B. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P. S. §10101 et seq. (Ord. 079-4, 10/31/1979, §607; as amended by Ord. 095-4, 12/11/1995)

§605 Special Exceptions.

- A. Where the Borough Council, in this Chapter, has stated special exceptions to be granted or denied by the Zoning Hearing Board pursuant to express standards and criteria, the Board shall hear and decide requests for such special exceptions in accordance with such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P. S. §10101 et seq. (Ord. 095-4)
- B. The special exception shall be sited, oriented and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.

- C. The special exception shall produce a total visual impression and environment which is consistent with the environment of the neighborhood.
- D. The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood. The special exception shall preserve the purpose of this Chapter.
- E. Such use shall be one which is specifically authorized as a special exception use in the district in which it is to be located.
- F. Such permits shall only be granted subject to any applicable conditions and safeguards required by this ordinance.
- G. Such permit may be granted subject to any additional conditions and safeguards as may be deemed by the Board to be advisable and appropriate.
- H. Such use shall be found by the Board to be in harmony with the general purposes and intent of this ordinance.
- I. Such use shall not adversely affect the character of the District, or the conservation of property values, or the health and safety of residents or workers on adjacent properties and in the general neighborhood.
- J. Such use shall be such appropriate size and so located and laid out in relation to its access streets that vehicular and pedestrian traffic to and from such use will not create undue congestion or hazards prejudicial to the general neighborhood.
- K. Such use shall not conflict with the direction of buildings development in accordance with any Comprehensive Plan or portion thereof which has been adopted by the Planning Commission.
(Ord. 079-4, 10/31/1979, §608; as amended by Ord. 095-4, 12/11/1995)

§606 Parties Appellant Before the Board. Appeals may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Borough, or any person aggrieved. This includes appeals:

- raising the substantive validity of any land use ordinance (except those to be brought before the Borough Council pursuant to the Pennsylvania Municipalities Code), or
- procedural questions or alleged defects in the process of enactment or adoption of a land use ordinance; or
- 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 therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot; or

- from a determination by the Borough engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance; or
- from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Chapter; or
- from the determination of the Zoning Officer or Borough engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving subdivision and land development or planned residential development.

In addition, requests for a variance and for special exception may be filed with the Board by any landowner or any tenant with the permission of such landowner. (Ord. 079-4, 10/31/1979, §610; as amended by Ord. 095-4, 12/11/1995).

§607 Conditional Uses. Where the Borough Council, in this Chapter, has stated conditional uses to be granted or denied by the Borough Council pursuant to express standards and criteria, the Borough Council shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria. In granting a conditional use, the Borough Council may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq. (Ord. 079-4, 10/31/1979, §609; as amended by Ord. 095-4, 12/11/1995).

§608 Time Limitations.

A. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for development, preliminary or final, has been approved by the Borough if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan or from an adverse decision by the Zoning Officer on a challenge to the validity of this Chapter or an amendment hereto or map or an amendment thereto shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

B. All appeals from determinations adverse to the landowner shall be filed by the landowner within thirty (30) days after notice of the determination is issued (Ord. 079-4, 10/31/1979, §611; as amended by Ord. 095-4, 12/11/1995).

§609 Stay of Proceedings.

1. Upon filing of any appeal proceeding before the Zoning Hearing Board and during its pendency before the Board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or of any agency or body, and all official action thereunder, shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the Board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the court having jurisdiction of zoning appeals, on petition, after notice to the Zoning Officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the Board.
2. After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court.
3. 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.
4. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellate court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by the petitioner.
(Ord. 079-4, 10/31/1979, §612; as amended by Ord. 095-4, 12/11/1995).

Part 7

Provisions for Official Zoning Map

§701 Official Zoning Map. The districts established in Part 8 of this Chapter as shown on the Official Zoning Map which, together with all explanatory matter thereon, are hereby adopted as part of this Chapter. (Ord. 079-4, 10/31/1979, §700)

§702 Identification of the Official Zoning Map. The Official Zoning Map shall be identified by the signature of the President of the Borough Council, attested by the Borough Secretary, dated, and bearing the seal of the Borough. If the map is amended, a new set of signatures shall be affixed, and the map redated and resealed. (Ord.079-4, 10/31/1979, §710)

§703 Interpretation of District Boundaries. Where uncertainty exists with respect to the boundaries of any of the zoning districts as shown on the Official Zoning Map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following the center lines of thoroughfares or highways, street lines, or highway right-of-way lines, such center lines, street lines, or highway right-of-way lines shall be construed to be such boundaries.
- B. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.
- C. Where district boundaries are so indicated that they are approximately parallel to the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Official Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on the Official Zoning Map.
- D. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located in the middle of the main tracks of said railroad line.
- E. Where the boundary of a district follows a stream, lake, or other body of water, said boundary line shall be deemed to be at the limit of the jurisdiction of the Borough unless otherwise indicated.
(Ord. 079-4, 10/31/1979, §720)

Part 8

Establishment and Purpose of Districts

§801 Intent. The following zoning districts are hereby established for Windber Borough. The districts have been formulated to realize the general purposes and objectives as set forth in §§101 and 103 of this Chapter. In addition, the specific purposes of each zoning district shall be as stated. (Ord. 079-4, 10/31/1979, §800)

§802 Single Family Residential District (R-1). The purpose of the R-1 district is to promote the development of single family homes on larger lots in conformance with modern design standards. Peripheral and accessory uses are strictly limited in recognition of the commonly held values of residents of this type of development. (Ord. 079-4, 10/31/1979, §801)

§803 General Residential District (R-2). The purpose of the R-2 district is to promote the preservation and revitalization of the older residential areas within the Borough. Lot and yard requirements are less restrictive than in the R-1 district and various types of dwelling units are allowed. In addition, selected nonresidential uses are permitted in recognition of the mixed use development common in older neighborhoods. (Ord. 079-4, 10/31/1979, §820)

§804 High Density Residential District (R-3). The purpose of the R-3 district is to promote and regulate the development of larger, multi-unit residential uses and structures. Services commonly offered in conjunction with this type of housing are permitted. Mobile home parks are conditionally permitted in this district. (Ord.079-4, 10/31/1979, §830)

§805 Central Business District (CB). The purpose of the CB district is to promote the preservation and revitalization of the primary commercial area of the Borough. The continued economic viability of this area is vital to the Borough. Apartments are permitted in order to allow the structures in the district to be used to their full potential and to provide housing choices close to services. (Ord. 079-4, 10/31/1979, §840)

§806 General Commercial District (GC). The purpose of the GC district is to permit commercial uses not normally found in the Central Business District, such as warehouses, lumberyards, and shopping centers. (Ord. 079-4, 10/31/1979, §850)

§807 Industrial District.(I) The purpose of the I district is to permit manufacturing and mining uses within designated areas of the Borough. (Ord. 079-4, 10/31/1979, §860)

§808 Floodplain District.(FP) The FP district is provided to conform with the requirements of the Federal Flood Insurance Program and the Pennsylvania Flood Plain Management Act, and to restrict development in flood prone areas to those uses that will not be damaged by periodic inundation or that will not increase flood heights by reducing the floodway cross-sectional area. The FP district is an overlay district and is designed to add

additional conditions and restrictions to the conditions and restrictions established for the other districts. (Ord. 079-4, 10/31/1979, §807)

§809 Conservation District (C). The purpose of the C district is to conserve valuable open space within the Borough. Areas of the Borough that are unique and have special hazards for development are placed in the C district. Development of any kind is severely restricted. (Ord. 079-4, 10/31/1979, §880)

§810. Downtown Development Overlay District (DDO). The purpose of the DDO district is to promote the preservation and revitalization of a delineated area of the Central Business District and to regulate types of development within the overlay. The Downtown Development Overlay District shall be deemed to be an overlay on the CB Central Business Zoning District and enacted to regulate the use of buildings, structures, and land within the Borough's Downtown area. The requirements of this section shall supersede the requirements of the underlying CB Central Business District.

Part 9

District Regulations

§901 Compliance with Regulations. The regulations for each district set forth by this Chapter shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided:

- A. No building, structure, or land shall be used or occupied and no building or structure or part thereof shall be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.
- B. No building or other structure shall be erected or altered:
 - 1. To provide for greater height or bulk;
 - 2. To accommodate or house a greater number of families;
 - 3. To occupy a greater percentage of lot area;
 - 4. To have narrower or smaller rear yards, front yards, side yards, or other open spaces;

than herein required, or in any other manner contrary to the provisions of this Chapter.

- C. No yard or lot existing at this time of passage of this Chapter shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Chapter shall meet at least the minimum requirements set forth herein.
(Ord. 079-4, 10/31/1979, §900)

§902 Single Family Residential District Requirements (R-1). The following set forth the use standards, requirements, and restrictions for the Single Family Residential District. Additional requirements pertaining to the R-1 district are contained in other sections of this Chapter:

- A. R-1 District Permitted Uses. The following uses are permitted in the R-1 District:
 - 1. Single family dwellings.
 - 2. Open space, parks, playgrounds, schools.

B. R-1 District Conditionally Permitted Uses. The following uses are conditionally permitted in the R-1 District:

1. Essential services.
2. Home Occupations and Professional Activities in conformity with Part 2, *Definitions*.
(Ord. 079-4, 10/31/1979, §910)

§903 General Residential District Requirements (R-2). The following set forth the use standards, requirements, and restrictions for the General Residential District. Additional requirements pertaining to the R-2 district are contained in other sections of this Chapter.

A. R-2 District Permitted Uses. The following uses are permitted in the R-2 district:

1. Uses permitted in the R-1 District.
2. Two (2) family dwellings

B. R-2 District Conditionally Permitted Uses. The following uses are conditionally permitted in the R-2 district:

1. Apartment buildings, townhouses, or condominiums containing up to eight (8) units;
2. Nursing Homes, funeral homes;
3. Essential Services;
4. Home Occupations, and Professional Activities in conformity with Part 2, *Definitions*;
5. Quasi-public uses;
6. Convenience Businesses;
7. Bed and Breakfasts;
8. Day Care Facilities.
(Ord. 079-4, 10/31/1979, §920)

§904 High Density Residential District Requirements (R-3). The following sets forth the use standards, requirements, and restrictions for the High Density Residential District. Additional requirements pertaining to the R-3 district are contained in other sections of this Chapter.

A. R-3 District Permitted Uses. The following uses are permitted in the R-3 district:

1. Uses permitted in the R-1 and R-2 districts;
2. Apartment buildings, townhouses, or condominiums;
3. Home Occupations and Professional Activities, in conformity with Part 2, *Definitions*;
4. Commercial uses normal and incidental to the above uses when provided as part of the overall development.

B. R-3 District Conditionally Permitted Uses. The following uses are conditionally permitted in the R-3 district:

1. All R-2 conditionally permitted uses;
2. Convenience Businesses;
3. Mobile homes;
4. Mobile home parks;
5. Commercial uses not part of a residential development.
6. Sexually Oriented Businesses (must comply with Borough Ordinance No. 094-2 dealing with sexually oriented businesses.)

§905 Central Business District Requirements. The following set forth the use standards, requirements, and restrictions for the Central Business District. Additional requirements pertaining to the CB district are contained in other sections of this Chapter.

A. Central Business District Permitted Uses. The following uses are permitted in the CB district:

1. Professional Activities.
2. Convenience, general, office, and service businesses.

3. Hotel, Motel, Apartment Hotel, or Bed and Breakfast.
4. Apartment uses contained within commercial structures.
5. Public and Quasi-Public uses.
6. Transportation Services.
7. Personal Services.
8. Public Garages.
9. Convenience Store
10. Commercial Entertainment Facilities
11. Clubs

B. Central Business District Conditionally Permitted Uses. The following uses are conditionally permitted in the CB district:

1. Automobile repair.
2. Wholesale business.
3. Convenience Stores with Fuel Dispensing Facility
4. Fuel Dispensing Facility
(Ord. 079-4, 10/31/1979, §940)

§906. Downtown Development Overlay District The following set forth the boundary, use standards, requirements, and restrictions for the Downtown Development District Overlay. Additional requirements pertaining to the DDO district are contained in other sections of this chapter.

- A. Boundaries of the Downtown Development Overlay District. The Downtown Development Overlay District shall consist of an area bounded by all lots having a lot line along Graham Avenue beginning at the center of the intersection of Jefferson Avenue and continuing to the center of the intersection of 9th Street.
- B. Downtown Development Overlay District Permitted Uses
 1. Uses permitted in the underlying CB Central Business District unless otherwise noted.

C. Uses Not Permitted in the Downtown Overlay District

1. Convenience Stores with Fuel Dispensing Facility
2. Fuel Dispensing Facility
3. Single or two family dwellings
4. Warehouses
5. Lumberyards
6. Playgrounds
7. Recreation Facilities, Extensive or Intensive

D. Site Development. Construction or development of a new building requires that a land development plan be reviewed by the Borough Planning Commission with final approval to be given by Borough Council. Final approval must be given by Borough Council before the Building/zoning permit process can begin.

E. All existing uses not in compliance with the requirements of the Downtown Development Overlay District shall become existing non-conforming uses.

§907 General Commercial District Requirements. The following set forth the use standards, requirements, and restrictions for the General Commercial District. Additional requirements pertaining to the GC district are contained in other sections of the Chapter.

A. General Commercial District Permitted Uses. The following uses are permitted in the GC district:

1. Uses permitted in the CB district.
2. Wholesale businesses.
3. Up to six (6) unit residential structures.
4. Public Self Storage Units (mini)

B. General Commercial District Conditionally Permitted Uses. The following uses are conditionally permitted in the GC district:

1. Automobile repair
2. Lumberyards

3. Warehouses
4. Convenience Stores with Fuel Dispensing Facility
5. Fuel Dispensing Facility

(Ord. 079-4, 10/31/1979, §950)

§908 Industrial District Requirements. The following set forth the use standards, requirements, and restrictions for the Industrial District. Additional requirements pertaining to the I district are contained in other Sections of this Chapter.

A. Industrial District Permitted Uses. The following uses are permitted in the I district:

1. Light manufacturing.
2. Automobile repair.
3. Public Self Storage Units (mini)
4. Convenience, general, and office businesses.
5. Convenience Stores with Fuel Dispensing Facility
6. Fuel Dispensing Facility
7. Commercial Entertainment Facilities
8. Clubs
9. Recreation Facilities

B. Industrial District Conditionally Permitted Uses. The following uses are conditionally permitted in the I district:

1. Heavy and extractive manufacturing.
 2. Wholesale Businesses
- (Ord. 079-4, 10/31/1979, §960)

§909 Floodplain District Requirements. The following set forth the use standards, requirements, and restrictions for the Floodplain District. Additional requirements pertaining to the FP district are contained in other sections of this Chapter.

- A. FP District Permitted Uses. Any use permitted within the underlying district is permitted in the FP district provided the following conditions are met:
- A. The use is not a use designated as a special hazard in the regulations promulgated under the Pennsylvania Floodplain Management Act.
 - B. The use will not reduce the cross-sectional area of the floodway.
 - C. The use is flood proofed or elevated in a manner such that the use and structure will not be damaged by flood waters.
 - D. All structures and equipment are anchored to prevent flotation.
 - E. The site will be developed such that installation which have the potential of polluting the stream, i.e., on-lot sewage systems and fuel storage installations are located in the floodway fringe at an elevation above the one hundred (100) year flood elevation.
- B. FP District Conditionally Permitted Uses. Special hazard uses as listed in the regulations promulgated under the Pennsylvania Floodplain Management Act are conditionally permitted provided they meet all applicable provisions of this Chapter, are permitted or conditionally permitted in the underlying district, and a special use permit is issued by the Department of Community Affairs.
(Ord. 079-4, 10/31/1979, §970)

§910 Conservation District Requirements. The following set forth the use standards, requirements, and restrictions for the Conservation District. Additional requirements pertaining to the C district are contained in other Sections of this Chapter.

A. Conservation District Permitted Uses.

- 1. Open space uses
- 2. Agriculture, general gardening, and growing of trees and nursery stock;
- 3. Recreation area
- 4. Tourist attractions and historic or culturally significant areas
- 5. Public reservoirs and their associated watersheds.

B. Uses by Special Exception

- 1. One-family dwellings;
- 2. Home occupations; and
- 3. Communications Towers

C. Non-Permitted Uses

- 1. Manufacturing Heavy;

2. Manufacturing, Extractive; and
3. Business Uses not provided in Part A.

D. Height

1. One-family detached dwelling – thirty-five (35) feet.
2. Agricultural structures – sixty (60) feet.
3. Accessory building – twenty (20) feet.
4. Any other permitted building – thirty-five (35) feet.

E. Lot Area

The minimum lot area for every building hereafter erected or altered shall be two (2) acres.

§911 Principal Building Yard and Setback Requirements. The following table lists the minimum distance in feet between property lines or street right-of-way and buildings:

<u>District</u>	<u>Front</u>	<u>Side</u>	<u>Both Sides</u>	<u>Rear</u>
R-1	30	10	20	50
R-2	20	5	10	40
R-3	40	20	40	60
CB	6	0	0	10
GC	15	4	8	10
I	40	10 ¹	20 ²	10
C	40	10 ¹	20 ²	60

- A. Accessory Building Yard and Setback Requirements. Within the rear one quarter (1/4) of any lot a detached accessory building may be placed within two (2) feet of the lot line or eleven (11) feet from the centerline of any adjoining right-of-way or alley, whichever distance results in the greater dimension.
- B. Maximum Building Height. The maximum allowable building height is thirty-five (35) feet from the finished ground elevation, for all districts, except conservation.
- C. Maximum Lot Coverage. The maximum allowable lot coverage expressed as a percentage of lot area shall be as listed below:

<u>District</u>	<u>Principal Building</u>	<u>Accessory Building</u>
R-1	26	9
R-2	39	12
R-3	33	33
CB	90	5

¹ There shall be a side yard setback of not less than 20 feet when adjoining any residential district.

² The setback for both sides will not be less than 40 feet when adjoining a residential district.

GC	80	10
I	50	30
C	22	8

(Ord. 079-4, 10/31/1979, §990)

§912 Supplemental Yard and Height Regulations. In addition to all yard regulations specified in the official schedule of district regulations and in other Sections of this Chapter, the provisions of the following shall be used for interpretation and clarification:

A Setback Requirements for Corner Buildings. On a corner lot the principal building and its accessory structures shall be required to have the same setback distance from all street right-of-way lines as required for the front yard in the district in which such structures are located.

B Visibility at Intersections. On a corner lot in any district, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede visions between a height of two and one-half (2 ½) and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the right-of-way lines of such corner lots and a line joining points along said street lines fifty (50) feet from the point of intersection, or fifteen (15) feet behind the edge of pavement, whichever is greater. *See Sketch 1 & 2 on following page.*

C. Yard Requirements for Two-Family or Multi-Family Dwellings. A two-family or multi-family dwelling shall be considered as one (1) building for the purpose of determining front, side, and rear yard requirements. The entire group as a unit shall require one front, one (1) rear, and two (2) side yards as specified for dwellings in the appropriate district. Each individual building shall meet all yard requirements for the appropriate district as though it were on an individual lot.

1. Side and Rear Yard Requirements for Nonresidential Uses Abutting Residential Uses. The minimum yard requirements may be reduced to twenty (20) feet if acceptable landscaping or screening approved by the Zoning Officer is provided. Such screening shall be a masonry or solid fence between six (6) and eight (8) feet in height maintained in good condition and free of all advertising or other signs on the residential side. Landscaping provided in lieu of such wall or fence shall consist of a strip of land not less than twenty (20) feet in width planted with an evergreen hedge or dense planting of evergreen shrubs not less than four (4) feet in height at the time of planting. Either type of screening shall not obscure traffic visibility as per the standards of Uses that do not negatively impact the district in any manner. §911(B). Agricultural or unimproved lots shall be considered residential lots for purposes of applying the provisions of this Section.

D Architectural/Structural Projections.

1. Structures such as canopies, balconies, marquees, awnings, overhangs, and similar structural projections shall be considered parts of the building to which attached and may project to within two feet (2') of the side property line as long as the projection maintains a height of eight feet (8') above the walking surface.
2. Porches, decks, and covered patios are considered parts of the building and may not project into the required front, rear, or side yard setback requirements.
3. Wheelchair ramps, chair lifts or other similar handicap accessibility devices may project in the front, side, and rear setbacks up to the property line in order to facilitate accessible construction requirements of the ADAAG (American Disability Act Accessibility Guidelines) and the current building code used by the Municipality.

E Exceptions to Height Regulations. The height limitations contained in Part 9 do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy except where the height of such structures will constitute a hazard to the safe landing and take-off of aircraft at an established airport.

F Solar Access Requirements. For at least fifty (50%) percent of the lot width as measured due East/West, no building or wall shall be built above the height of the plane formed by the ground ten (10) feet beyond the northern lot boundary line(s) and the sun at Noon on December 21. No newly planted evergreen vegetation shall be allowed to grow above this line.

(Ord. 079-4, 10/31/1979, §1010)

§ 913 Recreation Facility [Intensive] – An Intensive Recreation Facility, as defined in §202, may be permitted in the R-3 (High Density Residential), CB (Central Business), I (Industrial), and FP (Flood Plain) subject to the requirements set forth in this ordinance as a Special Exemption and as hereinafter set forth:

- A. Height. The maximum height shall be 60 feet.
- B. Lot Area. The minimum lot area shall be one (1) acre.
- C. Yard Area. As required in each District.
- D. Percentage of Lot Coverage. As permitted in each District.
- E. Off-Street Parking Facilities. As required under Part 11 herein; however, the Board may waive the strict requirements of §1102 thru 1118 where there is ample open space to address requirements for restrictive stall sizes, paving, lane widths and the like with random parking.

- F. Lighting. The facility shall provide for ample lighting when the recreation activities shall be conducted during periods of darkness.
- G. Fencing. The facility shall provide suitable fencing for protection of the public as well as security from attractive nuisance when the recreation facility is unattended.

Part 10

Supplementary District Regulations

§1001 General. The purpose of supplementary district regulations is to set specific conditions for various uses, classification of uses, encountered:

A. Conversion of Dwelling to More Units. A residence may not be converted to accommodate an increased number of dwelling units unless:

1. The yard dimensions shall meet the yard dimensions required by the zoning regulations for new structures in that district.
2. The lot area per family equals the lot area requirements for new structures in that district.
3. The floor area per dwelling unit is not reduced to less than that which is required for new construction in that district.
4. The conversion is in compliance with all other relevant codes and ordinances, including the terms of this Chapter.

B. Private Swimming Pools. No private swimming pool shall be allowed in any commercial or residential district, except as an accessory use and it shall comply with the following conditions and requirements:

1. The pool is intended and is to be used solely for the enjoyment of the occupants and guests of the principal use of the property on which it is located.
2. It may not be located closer than ten (10) feet to any property line.
3. The swimming pool, or the entire property on which it is located, shall be walled or fenced to prevent uncontrolled access by children from the street or from adjacent properties. Said fence or wall shall not be less than six (6) feet in height and maintained in good condition with a gate and lock.
4. Swimming pools that are less than two (2) feet deep or portable swimming pools with a diameter less than twelve (12) feet or with an area of less than one hundred (100) square feet are exempt from these requirements.

5. Portable swimming pools may only be erected from May 1 to October 31 of each year. On November 1st they must be drained and taken down.

C. Community or Club Swimming Pools. Community and club swimming pools are permitted in any district, but shall comply with the following conditions and requirements:

1. The pool is intended solely for the enjoyment of the members, families and guests of members of the association or club whose ownership or jurisdiction the pool is operated.

2. The pool and accessory structures thereto, including the areas used by the bathers, shall not be closer than fifty (50) feet to any property line.

3. The swimming pool and all of the area used by the bathers shall be walled or fenced to prevent uncontrolled access by children from the thoroughfare or adjacent properties. Said fence or wall shall be not less than six (6) feet in height and maintained in good condition with a gate and lock.

D. Ponds and Water Gardens. Limit one hundred (100) square feet, two (2) feet depth excluding ponds required for erosion and sediment control.

E. Temporary Buildings. Temporary building, construction trailers, equipment, and materials used in conjunction with construction work only may be permitted in any district during the period construction work is in progress, but such temporary facilities shall be removed upon completion of the construction work.

F. Parking and Storage of Certain Vehicles. Automotive vehicles or trailers of any kind or type without current license plates and current inspection shall not be parked or stored on a street, alley, or any residential property other than in completely enclosed buildings. However, one (1) boat and one (1) travel trailer may be stored in the rear yard if they have a current license.

G. Required Trash Enclosures. All commercial, industrial, and multi-family residential uses that provide trash and/or garbage collection areas shall be enclosed on a least three (3) sides by a solid wall or fence of at least four (4) feet in height if such area is not within an enclosed building or structure. All trash enclosures shall also be gated on the fourth/front side. Provisions for adequate vehicular access to and from such area or areas for collection of trash and/or garbage as determined by the Zoning Officer shall be required. (Ord. 079-4, 10/31/1979, §

H. Manufacturing, Extractive - Proximity to Residential Areas and Municipal Watershed, where permitted as a Conditional Use:

1. All mining operations and blasting activities shall maintain, at a minimum of one thousand (1000) foot distance from residential structures.
2. All mining operations shall maintain a minimum horizontal distance of one thousand (1000) feet from all municipal watershed areas, and a minimum horizontal distance of three hundred (300) feet from any watercourse (stream or river), and wetlands.
3. All mining operations shall maintain a minimum horizontal distance of two hundred (200) feet from all adjoining property lines.

§1002 Nuisance Abatement Standards. No land or building in any district shall be used or occupied in any manner creating dangerous, injurious, noxious, or otherwise objectionable conditions which could adversely affect the surrounding areas or adjoining premises. However, any use permitted by this Ordinance may be undertaken and maintained if acceptable measures and safeguards are taken to reduce dangerous and objectionable conditions to acceptable limits as established by the performance requirements following:

A. Fire Hazards. Any activity involving the use or storage of flammable or explosive materials shall be protected to NFPA standards by adequate fire fighting and fire prevention equipment and by such safety devices as are normally used in the handling of any such material. Such hazards shall be kept removed from adjacent activities to a distance that is compatible with the potential danger involved, also to NFPA standards.

B. Radioactivity or Electrical Disturbance. No activity shall emit dangerous radioactivity at any point, or electrical disturbance adversely affecting the operation of any equipment at any point other than that of the creator of such disturbance.

C. Noise. Objectionable noises as determined by the Zoning Officer which is due to volume, frequency, or beat shall be muffled or otherwise controlled. Air-raid sirens and related apparatus used solely for public purposes are exempt from this requirement.

D. Vibration. No vibration shall be permitted which is discernible without instruments on any adjoining lot or property.

E. Air Pollution. Air pollution shall be subject to the requirements and regulations established by the Pennsylvania Department of Environmental Protection.

F. Glare. No direct or reflected glare shall be permitted which is visible from any residential property or from any street.

G. Erosion. No erosion, by either wind or water, shall be permitted which will carry objectionable substances onto neighboring properties.

H. Water Pollution. Water pollution shall be subject to the requirements and regulations established by the Pennsylvania Department of Environmental Protection.

I. Water. No use shall be permitted which would contaminate or destroy any public or private water supply or water course. (Ord. 079-4, 10/31/1979, §1020)

§1003 Storm Water

1. All storm water control systems shall be designed in conformance with the applicable standards of PennDot and regulations adopted pursuant to the requirements of the Pennsylvania Storm Water Management Act.
2. As a minimum, all storm water control systems shall be designed to handle the ten (10%) percent probability (ten (10) year) storm event. (Ord. 079-4, 10/31/1979, §1030)

§1004 Enforcement Provisions. The Zoning Officer, prior to the issuance of a zoning permit, may require the submission of statements and plans indicating the manner in which dangerous and objectionable elements (as referenced in the publications set forth in Section 1002) are to be eliminated or reduced to acceptable limits and tolerances. In addition, the Zoning Officer may require the posting of a bond sufficient to guarantee compliance. (Ord. 079-4, 10/31/1979, §1031)

§1005 Measurement Procedures. Methods and procedures for the determination of the existence of any dangerous and objectionable elements shall conform to applicable standard measurement procedures published by the American Standards Association, Inc., New York, the Manufacturing Chemists' Association, Inc., Washington, D.C., the United States Bureau of Mines, and the Pennsylvania Department of Environmental Protection, as amended. (Ord. 079-4, 10/31/1979, §1032)

§1006 Restrictions on Use and Location of Mobile Homes. Mobile homes are prohibited in all but the R-3 district. (Ord. 079-4, 10/31/1979, §1040)

§1007 Fences

1. Fences in Residential Districts.

A. Fences within Front Yard setbacks are Prohibited. No continuous constructed barrier shall be allowed forward of the front building setback line. The exceptions to this rule are:

1. Where the yard on the side of the house (i.e. perpendicular to the main entrance of the house) is defined by this Chapter as a front yard due

to abutting road frontage, a fence may be erected within this yard perpendicular to the main entrance, provided the minimum setback of the fence in ten (10) feet from any house on the abutting property.

B. Fences in Side and Rear Yards. Fences may be installed along the side lot lines between the rear lot line and the building setback line and along the rear lot line to a height not exceeding six (6) feet.

C. Materials and Construction.

1. If the fence is wood cover or wood frame, the framework must face the interior of the lot.

2. If the fence is open metal mesh supported by posts or frames of either pipe or wood, the posts and frame must face the interior of the lot.

3. If the fence is of masonry construction, a finished surface must be provided on the exterior side.

D. Fences on Corner Lots. Fences installed on corner lots shall also be subject to the clear sight triangle provisions of this Chapter.

2. Fences in Commercial and Industrial Districts.

A. Fences in the front yard are prohibited.

B. Fences in Side and Rear Yards. Fences of vinyl, wood, metal or masonry may be erected to a height not exceeding six (6) feet along the side lot line between setback line and the rear lot line and along the rear lot line, except as provided in §911(D).

C. Fences on Corner Lots. Fences installed on corner lots shall also be subject to the clear sight triangle provisions of this Chapter.

3 Construction.

A. Every fence shall be constructed in a neat and orderly manner of materials which are not intrinsically unsightly.

B. No electrified or barbed wire fence shall be erected or maintained except that electrified fences operating on no more than six (6) volts of electricity are permitted.

C. Easement and Drainage Ways. Fences shall not be placed within the area of an

easement necessary for access and maintenance on any utility within that easement.

Fences shall also not be placed within the area of any drainage way.

D. Fence Setbacks. All fences may be erected on the property line provided the following conditions are met to confirm the property lines:

1. A registered surveyor must survey the property to confirm and designate the property lines.
2. If the location of the property lines is known or have previously been determined, and the adjoining property owners concur with the location, the survey of the property may be waived.
3. Before a permit can be issued, proper documentation of 1 and/or 2 must be presented.
4. If conditions 1 or 2 cannot be met, the fence setback will be two (2) feet inside the property line.

F. Permits. No fence shall be installed or erected without first obtaining a permit from the Windber Borough Zoning Officer. Failure to obtain a permit shall result in fines and penalties as provided in this Chapter.

(Ord. 079-4, 10/31/1979; as added by Ord. 095-4, 12/11/1995)

Part 11

Off-Street Parking and Loading Facilities

§1101 General Requirements.

1. No building or structures shall be erected, substantially altered or its use changed unless permanently maintained off-street parking and loading spaces have been provided in accordance with the provision of this Chapter.

2. The provisions of this Part, except where there is a change of use, shall not apply to any existing building or structure. Where the new use involves no additions or enlargements, there shall be provided as many of such spaces as may be required by this Chapter.

3. Whenever a building or structure constructed after the effective date of this Chapter is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity, or otherwise to create a need for an increase in the number of existing parking spaces, additional parking spaces shall be provided on the basis of the enlargement or change. Whenever a building or structure existing prior to the effective date of this Chapter is enlarged to the extent of fifty (50%) percent or more in floor area, number of employees, number of housing units, seating capacity or otherwise, said building or structures shall then and thereafter comply with the full parking requirements set forth herein. (Ord. 079-4, 10/31/1979, §1100)

§1102 Parking Space Dimensions.

A parking space shall have minimum rectangular dimensions of not less than nine (9) feet in width and nineteen (19) feet in length for ninety (90) degree parking, nine (9) feet in width and twenty-three (23) feet in length for parallel parking, ten (10) feet in width and nineteen (19) feet in length for sixty (60) degree parking, and twelve (12) feet in width and nineteen (19) feet in length for forty-five (45) degree parking. All dimensions shall be exclusive of driveways, aisles, and other circulation areas. The number of required off-street parking spaces is established in S1118 of this Part. ((Ord. 079-4, 10/31/1979, §1110)

§1103 Loading Space Requirements and Dimensions.

A loading space shall have minimum dimensions of not less than twelve (12) feet in width, fifty (50) feet in length, exclusive of driveways, aisles, and other circulation areas, and a height of clearance of not less than fifteen (15) feet. One (1) off-street loading space shall be provided and maintained on the same lot for every separate occupancy requiring delivery of goods and having a modified gross floor area of up to five thousand (5,000) square feet. One (1) loading space shall be provided for each additional ten thousand (10,000) square feet or fraction thereof. (Ord. 079-4, 10/31/1979, §1111)

§1104 Paving.

The required number of parking and loading spaces set forth in S1103, together with driveways, aisles, and other circulation areas, shall be improved with such material to provide a durable and dust-free surface. (Ord. 079-4, 10/31/1979, §1112)

§1105 Drainage.

All parking and loading areas shall provide for proper drainage of surface water to prevent the drainage of such water onto adjacent properties or walkways. (Ord. 079-4, 10/31/1979, §1113)

§1106 Maintenance.

The owner of property used for parking and/or loading shall maintain such area in good condition without holes and free of all dust, trash, and other debris. (Ord. 079-4, 10/31/1979, §1114)

§1107 Lighting.

Any parking area which is intended to be used during non-daylight hours shall be properly illuminated to avoid accidents. Any lights used to illuminate a parking lot shall be so arranged/shielded as to reflect the light away from the adjoining property. (Ord. 079-4, 10/31/1979, §1115)

§1108 Location of Parking Spaces.

The following regulations shall govern the location of off-street parking spaces and areas:

A. Parking spaces for all residential uses shall be located on the same lot as the structure that they are intended to serve.

B. Parking spaces for commercial, industrial, or institutional uses shall be located not more than seven hundred (700) feet from the principal structure.

C. Parking spaces for apartments, dormitories, or similar residential uses shall be located not more than three hundred (300) feet from the principal use. (Ord. 079-4, 10/31/1979, §1116)

§1109 Screening and/or Landscaping.

Whenever a parking area is located adjacent to a residential lot it shall be effectively screened on all sides which adjoin or face any property used for residential purposes, by an acceptably designed wall, fence, or planting screen. Such fence, wall, or planting screen shall be not less than four (4) feet nor more than six (6) feet in height and shall be maintained in good condition. The space between such fence, wall, or planting screen, and the lot line of the adjoining premises shall be landscaped with grass, hardy shrubs or evergreen ground cover, and maintained in good condition. In the event that terrain or other natural features are such that the erection of such fence, wall, or planting screen will not serve the intended purpose, then no such fence, wall, or planting screen and landscaping shall be required. (Ord. 079-4, 10/31/1979, §1117)

§1110 Disabled Vehicles.

The parking of a disabled vehicle for a period of more than two (2) weeks shall be prohibited, unless such vehicle is stored in an enclosed garage or other accessory building. (Ord. 079-4, 10/31/1979, §1118) (See also §1001E).

§1111 Minimum Distance and Setbacks. The following regulations shall govern the minimum distance and setbacks for parking areas:

- A. No part of any parking area for more than ten (10) vehicles shall be closer than twenty (20) feet to any dwelling unit, school, or other institution for human care located on an adjoining lot, unless separated by an acceptably designed screen.
- B. If the parking area is on the same lot with a one(1) family residence, the parking area shall not be located within the front yard required for such building.
- C. In no case shall any part of a parking area be closer than four (4) feet to any established street or alley right-of-way. (Ord. 079-4, 10/31/1979, §1119)

§1112 Joint Use Parking.

Two (2) or more nonresidential uses may jointly provide and use parking spaces when their hours of operation do not normally overlap, provided that a written agreement approved by the Zoning Officer shall be filed with the application for a zoning permit. (Ord. 079-4, 10/31/1979, §1120)

§1113 Width of Driveway Aisle.

Driveways serving individual parking spaces shall be not less than twenty-five (25) feet wide for ninety (90) degree parking, twelve (12) feet wide for parallel parking, seventeen and one-half (17 ½) feet for sixty (60) degree parking, and thirteen (13) feet for forty-five (45) degree parking. (Ord. 079-4, 10/31/1979, §1122)

§1114 Access.

Any parking area shall be designed in such a manner that any vehicle leaving or entering the parking area from or into a public or private street shall be traveling in a forward motion. Access driveways for parking areas or loading spaces shall be located in such a way that any vehicle entering or leaving such area shall be clearly visible for a reasonable distance to any pedestrian or motorist approaching the access or driveway from a public or private street. (Ord. 079-4, 10/31/1979, §1123)

§1115 Width of Access Driveway.

The entrances and exits to the parking area shall be clearly marked. Interior vehicular circulation by way of access roads shall maintain the following minimum standards:

A. For one way traffic the minimum width of fourteen (14) feet except for forty-five (45) degree parking in which case the minimum width of the access road shall be seventeen (17) feet.

B. Access roads for two way traffic shall have a minimum width of twenty-four (24) feet.

C. Parking areas having more than one (1) aisle or driveway shall have directional signs or markings in each aisle or driveway.
(Ord. 079-4, 10/31/1979, §1124)

§1116 Striping.

All parking areas with a capacity of more than ten (10) vehicles shall be striped with six (6) inch wide yellow lines both sides of center, between stalls to facilitate the movement into and out of the parking stalls. (Ord. 079-4, 10/31/1979, §1126)

§1117 Parking Space Requirements.

A. For the purpose of this Chapter the following off-street parking space requirements shall apply:

<u>Type of Use</u>	<u>Parking Spaces Required</u>
RESIDENTIAL	
*Single family or two family dwelling	Two (2) for each unit
*Apartments or multi-family dwellings	Two (2) for each unit
*Boarding houses, rooming houses, dormitories, and fraternity houses which have sleeping rooms	One (1) for each sleeping room or one (1) for each permanent occupant
*Mobile homes	Two (2) for each unit
COMMERCIAL	
*Automobile service garages which also provide repair	One (1) for each two (2) gasoline pump and two (2) for each service bay
*Hotels, motels	One (1) per each sleeping room plus one (1) for each two (2) employees
*Funeral parlors, mortuaries and similar type uses	One (1) for each one hundred (100) square feet of floor area in parlors or service rooms
RECREATIONAL OR ENTERTAINMENT	
*Dining rooms, restaurants, taverns, night clubs, etc.	One (1) for each two hundred (200)

	square foot of floor area
*Bowling alleys	Four (4) for each alley or lane plus one (1) additional space for each one hundred (100) square feet of the area used for restaurant, cocktail lounge, or similar use.
*Dance floors, skating rinks	One (1) for each one hundred (100) Square feet of floor area used for the activity
*Outdoor swimming pools, public or community or club	One for each five (5) persons capacity plus one (1) for each four (4) seats or one (1) for each thirty (30) square foot floor area used for seating purposes whichever is greater
*Auditoriums, sport arenas, theaters, and similar uses	One (1) for each (4) seats
*Retail stores	One (1) for each two hundred fifty (250) square foot of floor area
*Banks, financial institutions and similar uses	One (1) for each two hundred (200) square feet of floor area
*Offices, public or professional administration, or service buildings	One (1) for each four hundred square feet of floor area
*All other types of business or commercial uses	One (1) for each three hundred (300) square feet of floor area
INSTITUTIONAL	
*Churches and other places of religious assembly	One (1) for each five (5) seats
*Hospitals	One (1) for each bed
*Sanitariums, homes for the aged, nursing homes, children homes, asylums, and similar uses	One (1) for each two (2) beds
*Medical and dental clinics	One (1) for every two hundred (200) square feet floor area of examination, treating room office, and waiting room

*Libraries, museums, and art galleries One (1) for each four hundred (400) square feet of floor area

SCHOOLS (Public, Parochial, or Private)

*Elementary and junior high schools Two (2) for each classroom and one (1) for every eight (8) seats in auditoriums or assembly halls

*High Schools One (1) for every ten (10) students and one (1) for each teacher and employee

*Business, technical and trade schools One (1) for each two (2) students

*Colleges, universities One (1) for each four (4) students

*Kindergartens, child care centers, nursery schools, and similar uses Two for each classroom but not less than six (6) for the building

MANUFACTURING

*All types of manufacturing, storage, and wholesale uses One (1) for every two (2) employees (on the largest shift for which the building is designed) plus one (1) for each motor vehicle used in the business

*Cartage, express, parcel delivery, and freight terminals One (1) for every two (2) employees (on the largest shift for which the building is designed) and one (1) for each motor vehicle maintained on the premises

(Ord. 079-4, 10/31/1979, §§1131-1136)

§1118 General Interpretations.

In the interpretation of this Part, the following rules shall govern:

A. Parking spaces for other permitted or conditional uses not listed in this Part shall be determined by the Board upon an appeal from a decision of the Zoning Officer.

B. Fractional numbers shall be increased to the next whole number.

C. Where there is an adequate public transit system or where for any other reason parking demand is unusually low, then the parking space provision cited

above may be reduced proportionally by the Board upon an appeal from a decision of the Zoning Officer.

D. Where a property has multiple uses, the parking requirements for each use must be met cumulatively.
(Ord. 079-4, 10/31/1979, §1140)

Part 12

Signs

§1201 Intent.

The purpose of this Part is to promote and protect the public health, welfare, and safety by regulating existing and proposed outdoor advertising, outdoor advertising signs, and outdoor signs of all types. It is intended to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, and preserve the scenic and natural beauty of designated areas. It is further intended to reduce sign or advertising distraction and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, provide more open space, curb the deterioration or the natural environment, and enhance community development. (Ord. 079-4, 10/31/1979, §1200)

§1202 Governmental Signs Excluded.

For the purpose of this Chapter “sign” does not include signs erected and maintained pursuant to and in discharge of any governmental function, or required by any law, ordinance, or governmental regulation. (Ord. 079-4, 10/31/1979, §1201)

§1203 General Requirements for all Signs and Districts.

The regulations contained in this section shall apply to all signs and all districts.

A. Any illuminated sign or lighting device shall only employ light of constant intensity, and no sign shall be illuminated by or containing flashing, intermittent, rotating, or moving light or lights. In no event shall an illuminated sign or lighting device be placed or directed so as to permit the beams and illumination therefrom to be directed or beamed upon a public thoroughfare, highway, sidewalk, or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance.

B. No sign shall employ any parts or elements which revolve, rotate, whirl, spin or otherwise make use of motion to attract attention.

Subsections (A) and (B) of this Section shall not apply to any sign performing a public service function indicating time, temperature, stock market quotation, upcoming events or similar services.

(A) All wiring, fittings, and materials used in the construction, connection and operation of electrically illuminated signs shall be in accordance with the provisions of the local electric code in effect.

(B) No projecting sign shall be erected or maintained from the front or face of a building a distance of more than two (2) feet, including those projecting from the face of any theater, hotel, or motel marquee.

C. No sign shall be placed on the roof of any building, except those signs whose supporting structure is screened so the sign appears to be a continuation of the face of the building.

D. No portable or temporary sign shall be placed on the front or face of a building or on any premises, except as provided in §1208, herein.

E. No sign or part thereof shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners, or other similar moving devices. Such devices, as well as strings of lights, shall not be used for the purpose of advertising or attracting attention when not part of a sign.

F. No sign erected or maintained in the window of a building, visible from any public or private street or highway, shall occupy more than fifty (50%) percent of the window surface.

G. No sign of any classification shall be installed, erected, or attached in any form, shape, or manner to a fire escape or any door or window giving access to any fire escape.

H. All signs hung and erected shall be plainly marked with the name of the person, firm, or corporation responsible for maintaining the sign.

I. Should any sign be or become unsafe or be in danger of falling, the owner thereof or the person maintaining the same, shall upon receipt of written notice from the Zoning Officer proceed at once to put such sign in a safe and secure condition or remove the sign.

J. No sign shall be placed in any public right-of-way except publicly-owned signs, such as traffic control signs and directional signs. Signs directing and guiding traffic and parking on private property but bearing no advertising matter shall be permitted on any property.

§1204 Measurement of Sign Area.

The surface area of a sign shall be computed as including the entire area within a regular, geometric form or combinations of regular, geometric forms comprising all of the display area of the sign and including all of the elements of the matter displayed. Frames and structural members not being advertising matter shall not be included in computation of surface area. (Ord. 079-4, 10/31/1979, §1203)

§1205 Signs Permitted in All Districts Not Requiring a Permit.

1. Signs advertising the sale, lease, or rental of the premises upon which the sign is located, shall not exceed twelve (12) square feet in area, except on all residential lots where the area of the sign shall not be more than six (6) square feet.

2. Professional name plates not to exceed four (4) square feet in area per professional.

3. Signs denoting the name and address of the occupants of the premises, not to exceed two (2) square feet in area. (Ord. 079-4, 10/31/1979, §1210)

§1206 Signs Permitted in Any District Requiring a Permit.

1. Signs or bulletin boards customarily incidental to places of worship, libraries, museums, social clubs, or societies, which signs or bulletin boards shall not exceed thirty-two (32) square feet in area and which shall be located on the premises of such institution.

2. Any sign advertising a commercial enterprise, including real estate developers or subdividers, shall not exceed twelve (12) square feet in area and shall advertise only the names of the owners, trade name, products sold and/or the business or activity conducted on the premises where such sign is located. (Ord. 079-4, 10/31/1979, §1202)

§1207 Signs Permitted in General Commercial and Industrial Districts Requiring a Permit.

The regulations set forth in this Section shall apply to signs on all commercial and industrial lots and such signs shall require a permit.

A. On a General Commercial or Industrial lot, each business shall be permitted one (1) flat or wall on-premises sign. Projection of wall signs shall not exceed two (2) feet measured from the face of the main building. The area of all permanent on-premises signs for any single business enterprise may have a one square foot area for each lineal foot of building width, or part of a building, occupied by such enterprise but shall not exceed a maximum area of one hundred (100) square feet.

B. Two (2) off-premises signs with a total area not exceeding six hundred (600) square feet may be permitted on a GC Commercial or Industrial lot. No single off-premises sign shall exceed six hundred (600) square feet, nor shall off-premises signs visible to approaching traffic have a minimum spacing of less than two hundred (200) feet. Off-premises signs shall conform to all applicable yard and height regulations for the appropriate zoning district, except that such signs intended to be viewed from an elevated highway shall be not more than twenty (20) feet above the level of the roadway at its nearest point. Off-premises wall signs shall have all structural and supporting members concealed from view. (Ord. 079-4, 10/31/1979, §1202)

§1208 Temporary Signs.

Temporary signs not exceeding fifty (50) square feet in area, announcing special public or institutional events, the erection of a building, the architect, the builders, or contractors may

be erected for a period of sixty (60) days plus the construction period. Such temporary signs shall conform to the general requirements listed in §1203, the setback requirements I §§1212-1215 and, in addition, such other standards deemed necessary to accomplish the intent of this Part as stated in §1201. Temporary signs shall be removed upon completion of the project. (Ord. 079-4, 10/31/1979, §1220)

§1209 Free Standing Signs.

Free-standing on-premises signs not over thirty (30) feet in height, having a maximum total sign area of one hundred (100) square feet per display area and located not closer than ten (10) feet to any street right-of-way line and not closer than thirty (30) feet to any adjoining lot line may be erected to serve a group of business establishments. There shall be only one (1) freestanding sign for each building, regardless of the number of businesses conducted in said building.

(Ord. 079-4, 10/31/1979, §1221)

§1210 Wall Signs Pertaining to Non-Conforming Uses.

On-premises wall signs pertaining to a nonconforming use shall be permitted on the same premises of such use, provided the area of such sign does not exceed twelve (12) square feet.

(Ord. 079-4, 10/31/1979, §1222)

§1211 Political Signs.

No political sign shall be posted in any place or in any manner that is destructive to public property upon posting or removal. No political sign shall be posted in a public right-of-way nor shall any such sign be posted on a utility pole. No political sign shall be posted more than sixty (60) days before an election. All candidates for public office, their campaign committees, or other person responsible for the posting on public property of campaign material shall remove such material within two (2) weeks following Election Day. (Ord. 079-4, 10/31/1979, §1230)

§1212 Sign Setback Requirements.

Except as modified in §§1213-1215, and subject to the visibility requirement of §§911, on-premises signs, where permitted, shall be set back from the established right-of-way line of any thoroughfare at least ten (10) feet. No off-premises sign shall be erected in front of the required setback line for the appropriate zoning district.

(Ord. 079-4, 10/31/1979, §1240)

§1213 Increased Setback.

For every square foot by which any on-premises sign exceeds fifty (50) square feet, the setback shall be increased by one-half (1/2) foot but need not exceed one hundred (100) feet.

(Ord. 079-4, 10/31/1979, §1241)

§1214 Setbacks for Off-Premises Signs.

If a setback line is not established for the appropriate zoning district, off-premises signs shall be set back a minimum of twenty (20) feet from the right-of-way line. (Ord. 079-4, 10/31/1979, §1242)

§1215 Setbacks for Public and Quasi-Public Signs.

Real Estate signs and bulletin boards for a church, school or any other public, religious or educational institution may be erected not less than ten (10) feet from the established right-of-way line of any street or highway provided such sign or bulletin board does not obstruct traffic visibility at street or highway intersections. (Ord. 079-4, 10/31/1979, §1243)

§1216 Special Yard Provisions.

On-premises signs, where permitted, shall be erected or placed in conformity with the side and rear yard requirements of the district in which located, except that on any residential lot, on-premises signs shall not be erected or placed within twelve (12) feet of a side or rear lot line. If the requirement for a single side yard in the appropriate zoning district is more than twelve (12) feet, the latter shall apply. (Ord. 079-4, 10/31/1979, §1244)

§1217 Limitations.

For the purposes of this Part, outdoor advertising off-premises signs shall be classified as a business use and be permitted in all districts zoned for manufacturing or business or lands used for agricultural purposes. In addition, regulation of signs along interstate and primary highways shall conform to the requirements of the Pennsylvania Department of Transportation.

(Ord. 079-4, 10/31/1979, §1244)

§1218 Violations.

In any case any sign shall be installed, erected, constructed, or maintained in violation of any of the terms of this Chapter, the Zoning Officer shall notify in writing the owner or lessee thereof to alter such sign so as to comply with this Part. Failure to comply with this Part shall be deemed a violation and shall be punishable under §311 of this Chapter. Political signs posted in violation of §1211 of this Part are subject to removal by the Zoning Officer five (5) days after written notice of violation of §1211 has been given. (Ord. 079-4, 10/31/1979, §1260)

Part 13

Sexually Oriented Nuisances

Sexually oriented businesses may be permitted as a conditional use in the R-3 High Density Residential District and must comply with Borough Ordinance No. 094.2 dealing with sexually oriented businesses.

Part 14

Amendments

§1401 Enactment of Zoning Ordinance Amendments.

1. The Borough Council may from time to time amend, supplement, or repeal any of the regulations and provisions of this Chapter. The procedure for the preparation of a proposed zoning ordinance as set forth in §607 of the Pennsylvania Municipalities Planning Code, -53 P.S. §10607, is hereby declared optional.

2. Before voting on the enactment of an amendment, the Borough Council shall hold a public hearing thereon, pursuant to public notice. In addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously 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 be posted at least one (1) week prior to the date of the hearing.

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

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

5. At least thirty (30) days prior to the public hearing on the amendment by the Borough Council, the Borough shall submit the proposed amendment to the county planning agency for recommendations.

6. Within thirty (30) days after enactment, a copy of the amendment to this Chapter shall be forwarded to the county planning agency.
(Ord. 079-4, 10/31/1979; as added by Ord. 095-4, 12/11/1995)

§1402 Procedure for Landowner Curative Amendments.

1. A landowner who desires to challenge on substantive grounds the validity of this Chapter or the Zoning Map or any provision thereof, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the Borough Council with a written request that his challenge and proposed amendment be heard and decided as provided in §916.1 of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P.S. §10916.1. The curative amendment and challenge shall be referred to the Planning Commission and the county planning agency as provided in §609 and notice of the hearing thereon shall be given as provided in §§610 and 916.1 of the MPC, 53 P.S. §§10609, 10610, and 10916.1.

2. The hearing shall be conducted in accordance with §908 of the MPC, 53 P.S. §10908, and all references therein to the Zoning Hearing Board shall, for purposes of this Section be references to the Borough Council. If the Borough does not accept a landowner's curative amendment brought in accordance with this subsection and a court subsequently rules that the challenge has merit, the court's decision shall not result in a declaration of invalidity for this entire Chapter.

3. The Borough Council, if it determines that a validity challenge has merit, may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment which will cure the challenged defects. The Borough Council shall consider the curative amendments, plans and explanatory materials submitted by the landowner and shall also consider:

A. The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;

B. If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of this Chapter or Zoning Map;

C. The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources and other natural features;

D. The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and

E. The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare. (Ord. 079-4, 10/31/1979; as added by Ord. 095-4, 12/11/1995)

§1403 Procedure for Borough Curative Amendments.

If the Borough determines that this Chapter or any portion hereof, is substantially invalid, it shall take the following actions:

A. The Borough shall declare by formal action, this Chapter or portions hereof substantially invalid and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days such declaration and proposal the Borough Council shall:

(1) By resolution make specific findings setting forth the declared invalidity of this Chapter which may include:

(a) References to specific uses which are either not permitted or not permitted in sufficient quantity;

(b) Reference to a class of use or uses which requires revision; or,

(c) Reference to this entire Chapter which requires revisions.

(2) Begin to prepare and consider a curative amendment to this Chapter to correct the declared amendment to this Chapter to correct the declared invalidity.

B. Within one hundred eighty (180) days from the date of the declaration and proposal, the Borough shall enact a curative amendment to validate, or reaffirm the validity of, this Chapter pursuant to the provisions of §609 of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 52 P.S. §10609, in order to cure the declared invalidity of this Chapter.

C. Upon the initiation of the procedures as set forth in subsection (1), the Borough

Council shall not be required to entertain or consider any landowner's curative amendment filed under §909.1 or 916.1 of the MPC, 53 P.S. §§10609.1, 10916.1 shall, from the date on the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of this Chapter for which there has been a curative amendment pursuant to this Section.

D. The Borough, having utilized the procedures set forth in this Section, may not again utilize said procedure for a period of thirty-six (36) months following the

date of enactment of a curative amendment, or reaffirmation of the validity of this Chapter; provided however, if after the date of declaration and proposal there is a substantially new duty imposed upon the Borough by virtue of a change in statute or by virtue of a Pennsylvania Appellate Court decision, the Borough may utilize the provisions of this Section to propose a curative amendment to this Chapter to fulfill said duty or obligation.

(Ord. 079-4, 10/31/1979; as added by Ord. 095-4, 12/11/1995)

§1404 Amendments.

1. Amendments to this Chapter shall become effective only after a public hearing held pursuant to public notice. A brief summary setting forth principal provisions of the proposed amendment and a reference to the place within the Borough where copies of the proposed amendment may be secured or examined shall be incorporated in the public notice. Unless the proposed amendment shall have been prepared by the Planning Commission, the Borough Council shall submit the amendment to the Planning Commission at least thirty (30) days prior to the hearing on such amendment to provide the Planning Commission an opportunity to submit recommendations. In addition, at least thirty (30) days prior to the public hearing on the amendment, the Borough shall submit the proposed amendment to the County planning agency for recommendations.

2. Within thirty (30) days after adoption, the Borough Council shall forward a certified copy of the amendment to the County planning agency.

3. Proposed amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this Section, and shall include the time and place within the Borough where copies of the proposed amendment may be examined without charge or obtained for a charge not greater than the cost thereof. The Borough Council shall publish the proposed amendment once in a newspaper of general circulation in the Borough not more than sixty (60) days nor less than seven (7) days prior to passage. Publication of the proposed amendment shall include either the full text thereof or the title and a brief summary, prepared by the Borough solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:

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

B. An attested copy of the proposed amendment shall be filed in the County law library (or other County office designated by the County Commissioners).

4. In the event substantial amendments are made in the proposed amendment, before voting upon enactment, the Borough Council shall, at least ten (10) days prior to enactment, readvertise, in one (1) newspaper of general circulation

in the Borough, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

(Ord. 079-4, 10/31/1979; as added by Ord. 095-4, 12/11/1995)

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