

Chapter 27

Zoning

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Part 1**General Provisions****§27-101. Title.**

Ordinance dividing the Borough of Nesquehoning into districts and regulating the use of land and the location, use, density, and intensity of buildings within these districts, establishing a Zoning Hearing Board, setting forth functions and duties of the Board, establishing the position of Zoning Officer, regulating nonconforming uses and providing for the administration and enforcement of this Chapter.

(*Ord. 91-6, 6/20/1991, §1.100*)

§27-102. Short Title.

This Chapter known and cited as the “Borough of Nesquehoning Zoning Ordinance.”

(*Ord. 91-6, 6/20/1991, §1.200*)

§27-103. Application of Ordinance.

No building, sign, or other structure or land shall be used or occupied and no building or structure or part thereof shall be erected, constructed, reconstructed, moved, enlarged, or structurally altered unless in conformity with the regulations of this Chapter. However, this Chapter shall not require any change to any building, structure or use legally existing at the effective date of this Chapter, or any amendment thereto; or to any building, structure, or use planned and construction started in compliance with existing laws prior to the effective date of this Chapter, or any amendment thereto, and completed within a 1-year period after the effective date of this Chapter, or any amendment thereto, except as otherwise provided herein.

(*Ord. 91-6, 6/20/1991, §1.300*)

§27-104. General Intent and Purpose.

The intent of this Chapter is to regulate development and use of land in the Borough consistent with the Borough Comprehensive Plan and updated community development objectives in a manner which will promote and protect health, safety, comfort, convenience, and the general welfare of the people. The general purposes of this Chapter are to seek the following.

(*Ord. 91-6, 6/20/1991, §1.400*)

§27-105. General Objectives.

1. To promote, protect, and facilitate any or all of the following: the public health, safety, morals, and the general welfare; coordinated and practical community development and proper density of population; emergency management preparedness and operations, airports, and national defense facilities, the provisions of adequate light and air, access to incident solar energy, police protection, vehicle parking and loading space, transportation, water, sewage, schools, recreational facilities, public grounds, the provision of a safe, reliable, and adequate water supply for domestic, commercial,

agricultural, or industrial use, and other public requirements; as well as preservation of the natural, scenic, and historic values in the environment and preservation of forests, wetlands, aquifers, and floodplains.

2. To prevent one or more of the following: overcrowding of land, blight, danger, and congestion in travel and transportation, loss of health, life, or property from fire, flood, panic, or other dangers.

3. To provide for the use of land within the Borough for residential housing of various dwelling types encompassing all basic forms of housing, including single-family and two-family dwellings, and a reasonable range of multi-family dwellings in various arrangements, mobile homes and mobile home parks; provided, however, that this Chapter shall not be deemed invalid for the failure to provide for any other specific dwelling type.

4. To accommodate reasonable overall community growth, including population and employment growth, and opportunities for development of a variety of residential dwelling types and nonresidential uses.

(Ord. 91-6, 6/20/1991, §1.500)

§27-106. Nesquehoning Community Development Objectives.

1. *Updated Goals and Objectives.* The 1975 Comprehensive Plan goals and objectives were updated during 1989-1990 as follows. They are listed in order of publicly addressed priorities:

A. *Protect the Environmental Quality in the Borough.* By June of 1990, adopt new regulations to accomplish the following objectives:

(1) No new or expanded land use will be permitted if it pollutes the air, causes excessive noise or light; causes pollution of ground or water beyond established Federal, State, and environmental quality standards.

(2) Moderate to steep sloping (8 to 25 percent) land may only be developed if it is adequately (60 to 85 percent) covered by substantial tree cover.

B. The Borough does not seek to be exclusionary nor discriminatory in its land use goals. Uses will only be rejected if they would be below the local standards for health, safety, welfare, or environmental degradation.

C. Encourage new residential development in an orderly manner particularly in areas with central sewer and water services.

D. The Borough does not seek to regulate the color or type of building material to be used by a property owner under this Chapter. The goal of zoning will be to protect the common good relative to health (i.e., how close buildings may be to one another so as to afford adequate, healthy air, and light to each unit), safety (i.e., how high and accessible the building is relative to Borough fire apparatus), welfare and environment.

E. Assure that all residential properties in the Borough will have convenient park, recreation, and open space. By December of 1990 adopt new zoning and by December of 1991 a new subdivision and land development ordinance to accomplish the following objectives:

(1) Require new land developments to provide usable open space on each lot and help to the Borough in creating neighborhood park-recreation

improvements for each neighborhood.

(2) Encourage nonresidential land developers to contribute to improvement of the Community infrastructure such as community-wide park, fire service, etc.

F. Improve traffic flow and solve intersection problems.

G. Attract industrial and commercial activity which will provide new local jobs of good quality.

H. Keep the railroad active in the Borough for freight and passenger service.

I. Centralize Borough offices into one building.

J. *Discourage Floodplain Development.* Where possible, make the Nesquehoning Creek and its floodplain into a recreational area.

K. Remove the culm banks in order to make room for part of this economic development.

L. To advocate solid waste recycling. Initiate local recycling by June of 1991. Composting sites should be included.

M. All large scale developments should be reviewed by the Borough Planning Commission and/or Borough Council before those developments are approved. Large scale would involve 50 or more lots, or 50 employees or construction of 50,000 square feet of nonresidential floor space during any one phase of development. By December of 1990 adopt new zoning ordinance and by December of 1991 a new subdivision and land development ordinance to accomplish the following objective:

(1) Require that all large scale (over 50 housing units) developments be considered as special exception uses which in every case will require review by the Borough Planning Commission and final determination of approval by a Borough Zoning Hearing Board. Any review will be based upon a set of development, design standards.

N. Centralized sewerage should be provided as currently planned by the Borough. All new development should be served by the centralized sewerage system provided it is economically feasible to do so.

(Ord. 91-6, 6/20/1991, §1.600)

Part 2**Definitions****§27-201. Interpretation.**

Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this Chapter. Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word “structure” shall include the word “building”; the word “used” shall include “arranged,” “designed,” “constructed,” “altered,” “converted,” “rented,” “leased,” “occupied,” or “intended” to be used; and the word “shall” is mandatory and not optional. (*Ord. 91-6, 6/20/1991, §2.100*)

§27-202. Definitions.

Accessory use or structure—a use or structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building.

Adult-oriented facility—an establishment having a substantial amount (more than 20 percent of floor space or more than 20 percent of their show time) of its stock in trade, books, magazines, photographs, video tapes, on-site picture, or live shows, messages which are distinguished by their emphasis on matters depicting, describing, or relating to “obscene” materials, shows, or services as defined herein.

Agriculture—the cultivating of the soil, and the raising and harvesting of products of the soil including, but not by way of limitation, nursery, horticulture, and forestry; and the raising and maintenance of livestock and poultry. The keeping of horses or pets for domestic purposes shall not be considered as an agricultural use. Also see “greenhouse.”

Alley—a public or private way affording only secondary means of access to abutting property.

Additions, structural—as applied to a building or structure, a change or rearrangement in the structural parts of a structure including the replacement of a porch or garage with a structure of the same dimensions; or an enlargement whether by extending on a side or by increasing in height; but not including normal maintenance or minor repairs or improvements.

Animal husbandry—the raising and keeping of livestock and poultry, with the intent of producing capital gain, or profit or with the intent of selling any livestock or poultry products. The keeping of livestock or poultry as farm pets, or for domestic purposes pursuant to the regulations of this Chapter shall not be construed as animal husbandry.

Aquaculture—the cultivation, raising, and/or harvesting of fish or shellfish in natural water areas or in water tank containers.

Aquiculture—see definition of “hydroponics.”

Automotive junkyard—a place where two or more motor driven vehicles which do not bear a current State inspection sticker and license plate and their related parts are stored or disassembled.

Basement—a floor level partly or completely below grade. A basement shall be considered a story if more than one-third of the perimeter walls are 5 feet or more above the finished grade level of the ground immediately adjacent to the walls.

Board—the Zoning Hearing Board of Nesquehoning Borough.

Building—any structure having a roof supported by columns or walls, used for the shelter, housing, or enclosure of persons, animals, or property.

Building coverage—that percentage of the plot of land area covered by the principal and accessory buildings (including covered porches, carports, and breezeways, but excluding open patios).

Building height—the vertical distance measured from the mean level of the ground surrounding the building to a point midway between the highest and lowest point of the roof, but not including chimneys, spires, towers, tanks, and similar projections.

Child care facility—a building or structure in which care is provided to three or more unrelated children on a regular basis for less than 24 hours per day, or in which child care activities regulated by the Commonwealth of Pennsylvania take place. The term shall not include a private home where child care is provided on a cooperative, reciprocal basis by a group of parents in their respective homes. [Ord. 2004-7]

Club or lodge—an organization catering exclusively to members and their guests, or premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, providing there are not conducted any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club.

Clubhouse—a building to house a club or social organization not conducted for private profit and which is not an adjunct to or operated by or in connection with a public tavern, cafe, or other public place.

Cluster development—a grouping of houses more tightly together than required for standard development. The land saved through clustering is preserved as common greens, squares, open space preserves, and/or active recreational space. Also see “performance subdivision” definition.

Commercial vehicle—any motor vehicle which is required by law to bear any license plate other than that issued for passenger car use. Also, any motor vehicle including passenger cars which by reason of a characteristic coloring or marking exceeding 1 square foot in area is identified or commonly associated with any business, industry, or public agency shall be considered a commercial vehicle within the terms of this Chapter. Other passenger cars used in business by a resident shall not be considered a commercial vehicle.

Commission—the Borough of Nesquehoning Planning Commission.

Common area—that portion of a development tract owned in undivided fee interests by the owners such as a condominium and set aside for the exclusive use and enjoyment of the owners tenants or condominium owners.

Condominium—real estate and/or buildings, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions and, organized in accordance with the Pennsylvania Uniform Condominium Act, 68 P.S. §3101 *et seq.*

Conversion (commercial)—the redesign and change of residential or other

nonconforming structures to commercial use.

Conversion (residential)—the redesign and change of existing residential or nonresidential structures into a one-, two-family, and multi-family dwelling.

Correctional facility—a place of confinement while a person is on trial for an offense and/or a place of confinement for a person who has been convicted after a trial. This is a land use activity covered under miscellaneous public administration as a correctional institution. It has been assigned No. 9223 in the Standard Industrial Classification (SIC) numbering system. [Ord. 1992-3]

Deck—see definition of “patio” and “porch.”

Detached—used to describe a structure that has yards on all sides.

District or zone—a portion of the territory of the Borough within which certain uniform regulations and requirements of various combinations thereof apply under the provisions of this Chapter.

Dwelling—any building, or portion thereof designed or used as the residence or sleeping place of one or more persons. The term dwelling shall not be deemed to include mobile home park, rooming house, tourist home, hotel, hospital, nursing home, dormitory, fraternity or sorority house, or other similar residence.

A. *Dwelling unit*—one or more rooms, including a kitchen (or kitchenette) and sanitary facilities in a dwelling structure designed as a unit for occupancy by not more than one family (as defined herein) for living and/or sleeping purposes.

B. *Dwelling, single-family*—a detached building, designed for or occupied exclusively by one family.

C. *Dwelling, semi-attached*—a semi-attached building with not more than two individual dwelling units which are entirely separated by vertical walls. This is a building which utilizes a vertical common wall between dwelling units for economy of lot use and building construction.

D. *Dwelling, two-family*—a detached or semi-attached building where not more than two individual family or dwelling units that are entirely separated by vertical walls or horizontal floors, unpierced except for access to the outside or to a common cellar.

E. *Dwelling, mobile home*—a transportable dwelling structure, intended for permanent occupancy for use by one family, contained in one or two sections designed to be joined into one integral unit and constructed so that it may be used without a permanent foundation and capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations; except for a travel trailer as defined herein; and, excluding such mobile home dwellings or prefabricated homes or sections thereof which when assembled or combined into a single unit are more than 19 feet in width, which meet International Building Code requirements and which no longer are readily capable of being separated for repeated towing. [Ord. 2013-1]

F. *Dwelling, multi-family*—a building designed for occupancy by three or more families living independently of each other, and containing three or more dwelling units. Dwelling units contained in such structures may include units commonly referred to as apartments, garden apartments, and quadraplex units.

Dwelling, townhouse and/or rowhouse—a townhouse and rowhouse are special types of multi-family dwelling buildings and therefore for purposes of this Chapter they are defined and regulated separately. Townhouses and/or rowhouses are multi-family dwelling buildings with each dwelling unit separated from one another by a vertical wall(s) so that there is no other dwelling unit above or below another dwelling unit. Dwelling units may be adjacent to one another.

Efficiency unit—a dwelling unit consisting of one room for living and sleeping purposes, a bathroom, kitchen and closets directly off the principal room.

Electronic display screen—a sign, or a portion of a sign, that displays an electronic image or video, which may or may not include text. Electronic display screens include television screens, plasma screens, digital screens, flat screens, LED screens, video boards, holographic displays, or other technologies of a similar nature. [Ord. 2013-1]

Electronic message center—any sign or portion of a sign that uses changing lights to form a sign message or messages in text form wherein the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes. [Ord. 2013-1]

Electronic sign—a sign capable of displaying text, graphics, video, symbols, or images that can be electronically or mechanically changed by remote or automatic means, and which directs attention to a business, activity, product, commodity, service, entertainment, or communication, which may or may not contain an electronic display screen or an electronic message center. The following shall not be considered to be electronic signs:

A. Signs utilized by the Police Department, other law enforcement personnel and/or emergency service providers.

B. Signs that indicate only the date, time and/or temperature, provided that the remainder of the sign remains static at all times.

C. Score boards for athletic events (indoor and outdoor) provided the use of the score board is limited to only the time the athletic event is occurring.

[Ord. 2013-1]

Family—any individual, or two or more persons, all of whom are related by blood, marriage, legal adoption, or foster placement. A group of not more than six persons, some of whom are not related as defined above, living together in a dwelling unit shall also be considered to be a family. A “family” shall not be deemed to include the occupants of a hotel, motel, boarding house, rooming or lodging house, club, fraternity/sorority, or dormitory.

Family care facility—a facility which provides resident service in a private residence to five or fewer individuals who are not related to the resident household. These individuals are handicapped, aged, disabled, or in need of adult supervision and are provided service and supervision in accordance with their individual needs. This category includes foster or boarding houses for children. Group care facilities are not included in family care facilities. They are separately defined herein.

Fence—any outdoor barrier composed of fabricated materials which is placed or arranged as a line of demarcation between lots, or to enclose a lot or a part of a lot. For the purpose of this Chapter, a fence is a boundary line fence when the average center line of the fence is established on the lot within 2 feet of a property and/or lot line. The

height of any fence shall be the distance measured from the existing grade of the natural surface to the top of the fence.

Flood—a temporary inundation of normally dry land areas.

A. *Floodplain*.

(1) A low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation.

(2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source. For the purpose of this Chapter, the 100-year floodplain as defined in the Flood Insurance Study for the Borough of Nesquehoning prepared by the U.S. Department of Housing and Urban Development.

B. *Floodway*—the designated area of a floodplain required to carry and discharge flood waters of a given magnitude. For the purpose of this Chapter, the floodway and approximated floodplain, as defined in the Flood Boundary and Floodway Map and Floodway Data Table prepared by the U.S. Department of Housing and Urban Development.

C. *Flood fringe*—that portion of the floodplain outside the floodway.

D. *One-hundred year flood*—a flood that has a 1 percent chance of being equaled or exceeded in any given year.

Floor area—the sum of the areas of the several floors of the building or structure, including areas used for human occupancy or required for the conduct of the business or use, and basements, attics, and penthouses, as measured from the exterior faces of the walls. It does not include uninhabitable cellars, unenclosed or screened porches, attics not used for human occupancy, nor any floor space in an accessory building nor in the main building intended or designed for the parking of motor vehicles in order to meet the parking requirements of this Chapter, nor any such floor space intended and designed for accessory heating and ventilating.

Forest—areas, groves, or stands of mature or largely mature trees (i.e., greater than 6 inches caliper (diameter) at a height of 14 inches above ground), covering an area greater than $\frac{1}{4}$ of acre; or grooves of mature trees (greater than 12 inches caliper (diameter) at a height of 14 inches above ground) consisting of more than 10 trees.

Governing body—the Borough Council of the Borough of Nesquehoning.

Greenhouse—a structure usually covered with glass and devoted to the protection or cultivation of tender plants or for the conduct of agriculture, aquaculture, or aquiculture.

Group care facility—a facility which provides resident services to six or more individuals of whom one or more are unrelated. These individuals are handicapped, aged or disabled, are undergoing rehabilitation and are provided services to meet their needs. This category includes uses licensed or supervised by any Federal, State, or County health/welfare agency, such as group homes (all ages), halfway houses, resident schools, resident facilities, and foster or boarding homes.

Hydroponics—the growing of plants, especially vegetables, with their roots immersed in or subjected to a mist aqueous solution containing the essential mineral nutrient salts to support vegetable growth.

Home occupation—an occupation which is permitted under the terms of this Chapter to be conducted in a residential dwelling unit as an accessory use.

Hospital—a building or part thereof used for the medical, psychiatric, obstetrical, or surgical care, on a 24-hour basis, of four or more in-patients. Hospital shall include general hospitals, mental hospitals, tuberculosis hospitals, children’s hospitals, and any such facilities providing medical in-patient care.

Hotel—a building or group of buildings designed to serve the public, with one or more outside entrances which contains six or more permanent bedrooms and which is designed, arranged, and used for the overnight lodging of travelers or for temporary occupancy of transients; and, which may include a public dining room and kitchen.

Impervious surface—impervious surfaces are those surfaces which do not absorb rain. All buildings, parking areas, driveways, roads, sidewalks, and any areas in concrete and asphalt shall be considered impervious surfaces within this definition. In addition, other areas determined by the Borough Engineer to be impervious within the meaning of this definition will also be classed as impervious surfaces.

Impervious surface ratio—the impervious surface ratio is a measure of the intensity of land use of a piece of land. It is measured by dividing the total area of all impervious surfaces within the site by the net buildable site area.

Junk—shall include scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc, and all other scrap metals and their alloys, and bones, rags, used cloth, used rubber, used machinery, used vehicles, used tools, used appliances, used fixtures, used utensils, used lumber, used boxes or crates, used pipe or pipe fittings, used tires, and other manufactured goods, any of which are so worn, deteriorated, or obsolete as to make them unusable in their existing condition, but are subject to being dismantled or processed for reclamation, salvage, or recycling.

Junkyard—an area of land, with or without buildings, primarily used for the storage outside of a completely enclosed building, of junk including vehicles or parts thereof, with or without the dismantling, processing, salvage, sale or other use or disposition of the same, the deposit or storage of two or more wrecked or broken motor vehicles for a period of 2 months or longer, or the major parts of two or more such vehicles shall be deemed to make the lot a “junkyard.”

Lodge—see definition of “club.”

Lot—a tract or parcel of land intended for transfer of ownership, use or improvement.

A. *Lot, corner*—a lot abutting upon two or more streets or alleys at their intersection or upon two parts of the same street forming an interior angle of less than 135 degrees. The point of intersection of the street lot lines is the “corner.”

B. *Lot depth*—the mean horizontal distance between the front and rear lot lines.

C. *Lot lines*—the property lines bounding the lot.

(1) *Lot line, front*—the line separating the lot from the public right-of-way including alleys.

(2) *Lot line, rear*—the lot line opposite and most distant from the front lot line.

(3) *Lot line, side*—any lot line other than a front or rear lot line. A side lot line separating a lot from a street is called a side street lot line.

(4) *Lot line, street*—a lot line separating the lot from a street.

D. *Lot width*—the distance between the two side lot lines measured at the required setback line.

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

Mobile home—see definition of “dwelling, mobile home.”

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, which is leased by the park owner to the occupants of the mobile home erected on the lot.

Mobile home park—a parcel or contiguous parcels of land which have been so designated and improved that it contains two or more mobile home lots for the placement thereon of mobile homes.

Motel—a building, or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units, designed primarily for transient travelers, and provided with accessory off-street parking facilities. The term “motel” includes buildings designed as tourist courts, motor lodges, auto courts, and other similar uses.

Multi-family—see definition of “dwelling, multi-family.”

Municipality or municipal—Borough of Nesquehoning.

Nonconforming lot—a lot the area or dimension of which was lawful prior to the adoption or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption or amendment.

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

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

Nursing home—a type of group care facility which provides nursing care.

Obscene—the exhibition or dissemination of materials, shows, or services which contain sexually explicit nudity and/or sexual conduct as defined later, herein. If such use comprises more than 20 percent of the stock in trade of the premises or 20 percent of the show time, from time to time, then the obscene use also constitutes an adult facility.

Obscene materials—the exhibition or dissemination by sale, loan, or otherwise of explicit sexual materials of an obscene nature; if such use comprises more than 20 percent of the stock in trade of the premises or constitutes, from time to time, the primary or major attraction to the premises.

A. *Explicit sexual materials*, as used herein, means:

(1) Any picture, photograph, drawing, sculpture, motion picture film, or other similar visual representation of image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse.

(2) Any book, pamphlet, magazine, printed matter, video tape, however reproduced, or sound recording which contains any manner enumerated in subparagraph .1 above, or explicit and detailed verbal excitement, sexual conduct, or sadomasochistic abuse.

B. *Obscene nature*, as used herein, means that:

(1) The average person, applying contemporary community standards, would find that the subject matter taken as a whole appeals to the prurient interest.

(2) The subject matter depicts or describes in a patently offensive way materials of the type described herein above.

(3) The subject matter, taken as a whole, lacks serious literary, artistic, political, educational, or scientific value.

C. Words and phrases used herein shall have the meanings given to them under §5903 of the Crimes Code, 18 Pa.C.S.A. §5903, and any amendments, from time to time, thereto.

Open spaces—an unoccupied space to the sky, whether or not on the same lot with a principal building. Open space may include gardens, golf courses, landscaped areas, and pastures, whether public or private, and whether or not such areas are fenced. [Ord. 2004-7]

Open space ratio—the open space ratio is a measure of the intensity of land use. It is arrived at by dividing total amount of open space within the development by the base site area.

Parking facilities—parking facilities shall consist of paved outdoor areas used for the storage of vehicles or of specially designed buildings or garages used for the same purposes. Private parking facilities are those which are restricted to use by persons resident on the premises or residing in the immediate vicinity of such facility or by their guests. Public parking facilities are those which are open to the public as an accommodation for customers, clients or visitors.

Patio—an area or courtyard located in the rear or side yard of the principal structure, designed for outdoor living purposes an accessory use to a structure, which shall be completely unenclosed except for any side which may adjoin a structure or for any fences, shrubs, or hedges 3 feet or less in height. Outdoor areas enclosed by a permanent roof or awning shall be considered to be a structure.

Performance subdivision—same as “cluster development” definition. Performance subdivision regulations are provided as a means for departing from a standard subdivision procedure in order to achieve a quality cluster development.

Permit—a document issued by the Borough of Nesquehoning authorizing an applicant to undertake certain activities.

A. *Building permit*—a permit indicating that a proposed construction, alteration, or reconstruction of a structure is in accordance with the applicable provisions of any building code adopted by the Borough of Nesquehoning and authorizing an applicant to commence with said construction, alteration or reconstruction. Such a permit shall not be confused with a zoning permit or occupancy permit as required under the terms of this Chapter.

B. *Zoning permit*—a permit issued indicating that a proposed use, sign, building or structure, is in accordance with the provisions of this Chapter.

C. *Occupancy permit*—a permit issued upon completion of the construction of a structure, or change in use of structure or parcel of land indicating that the premises comply with the provisions of this Chapter and may be used for the purposes set forth in the occupancy permit.

Permitted use—any use which does not require special action by the Planning Commission or the Zoning Hearing Board before a zoning permit is granted by the Zoning Officer.

Planned residential development—an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, the development plan for which does not correspond in lot size, bulk, or type of dwelling, density, lot coverage, and required open space to the regulations established in any one residential district created, from time to time, under the provisions of this Chapter.

Planning Commission—the Planning Commission of the Borough of Nesquehoning.

Porch—a structure or part of a structure which is enclosed on one or more sides by a fence or wall over 3 feet high or by a roof or awning or a structure which would otherwise be classified as a patio or deck except that it is 1 foot or more above the ground elevation.

Principal use—the primary or most important use of a lot, parcel, or structure.

Public hearing—a formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment, prior to taking action in accordance with this act.

Public meeting—a forum held pursuant to notice under the Sunshine Act, 65 Pa.C.S.A. §701 *et seq.* [Ord. 2013-1]

Public notice—notice given not more than 30 days and not less than 7 days in advance of any public hearing required by Act 247, Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.* Such notice shall be published once each week for 2 successive weeks in a newspaper of general circulation in the Borough. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing, and the notice shall state the place or places where copies of items being considered may be examined. The first publication shall be not more than 30 days and the second publication shall not be less than 7 days from the date of the hearing.

Recreation vehicle (RV)—a vehicle which is designed for recreational use, regardless of its size, and which RV is not designed to be used as a permanent dwelling and which RV is self-propelled or is designed to be towed.

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

Resort—a business, situated on a lot containing 10 acres or more, combining lodging, eating, and recreational facilities as a single enterprise offered to the public at large or any segment thereof, subject to the requirements contained herein.

Rooming or boarding house—a building containing one or more dwelling units in which at least two rooms are offered for rent, to adults aged 18 years or older, payable in money or other consideration, whether or not meals are furnished to occupants, and in which no transients are accommodated and no public restaurant is maintained. A school or college dormitory, fraternity or sorority house, membership club with residents, and other similar uses is not deemed to be a boarding or rooming house.

Screening—screening as required by this Chapter shall consist of a visual screen or obstruction, of sufficient height (but not less than 6 feet high) to effectively obscure the area being screened from adjoining uses. Such a screen or obstruction shall consist of a suitable fence or wall or of appropriate planting materials such as shrubs, hedges, or trees located within a buffer strip having a minimum width of 5 feet.

Sexual conduct—ultimate sexual acts, normal or perverted, actual or simulated, involving a person or persons, or a person or persons or an animal, including acts of masturbation, sexual intercourse, fellatio, cunnilingus, anilingus, or physical contact with a person's nude or partially denuded genitals, pubic area, perineum, anal region, or, if such a person be female, a breast.

Sexual explicit nudity—a sexually oriented and explicit showing or exhibition, by any means or manner, which presents or exposes to the viewer the following anatomical areas: the human genitals, pubic area, perineum, buttocks or anal region, with less than a fully opaque covering; the covered human male genitals in a discernible turgid state; the post-pubertal, full or partially developed human female breast with less than fully opaque covering of a portion thereof below the top of the areola nipple.

Sign—any permanent or temporary structure or part of a structure, or any device attached, represented, projected, or applied by paint or otherwise, or a structure or other outdoor surface, to communicate by words, pictures, symbols, or lights, any information, message, or advertisement, or to attract the attention of the public to a subject or location. The term “sign” shall include flat or curved surfaces, flags, banners, streamers, pennants, insignias, and medals with or without words or pictures. Business or advertising signs on vehicles shall be defined as a sign for zoning purposes when the vehicle is located or parked on or in front of a zoning lot under the control of an occupant of the lot.

Sign—function and construction type:

A. *Functional Sign Types.*

- (1) *Advertising sign*—a sign which directs attention to a business,

commodity, service, or entertainment conducted, sold, or offered elsewhere than on the premises where the sign is located.

(2) *Business sign*—a sign which directs attention to a business or profession or to a commodity, service, or entertainment conducted, sold, or offered upon the premises where such sign is located, or to which it is affixed.

(3) *Name or identification sign*—a sign which communicates the name or address or a permitted home occupation of an occupant on which the sign is located.

(4) *Real estate signs*—a sign which advertises the sale, rental, or development of the premises upon which the sign is located.

(5) *Institutional sign*—an identification type of sign pertaining to a school, church, hospital, or other institution of a similar public or semipublic nature.

B. *Types of Sign Construction and Support.*

(1) *Free standing sign*—a sign not attached or applied to a principal building but supported by another structure, including structures designed for the sign itself and accessory structures.

(2) *Wall sign*—a sign attached or applied to the wall of a main building, not projecting over any public right-of-way and not extending more than 18 inches from such wall.

(3) *Projecting sign*—a sign which might project over the public right-of-way (usually sidewalk) or extends more than 18 inches from the building or structure to which it is attached.

Special exception—a provision of this Chapter which may be granted or denied by the Board pursuant to express standards and criteria established in this Chapter. Requests for such “special exceptions” shall be decided by the Board after a hearing to determine compliance with said standards and criteria and after review by the Planning Commission.

Special use—shall have the same meaning and be identical with “special exception.”

Story and half-story—that portion of a building included between the surface of any floor, but excluding the basement or cellar, and the ceiling next above it and having a vertical distance of not less than 7 feet. Any such portion of a building having a distance of less than 7 feet shall be considered to be a half-story.

Street—a public thoroughfare which provides the principal means of access to abutting property.

Structure—anything constructed including a building, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including stationary, porches, and below-ground swimming pools, but not including sheds without foundation, pad or other permanent attachment to the ground. [Ord. 2013-1]

Swimming pool—any body of water or receptacle for water having a surface area of more than 80 square feet and/or a depth at any point greater than 2 feet, used or intended to be used for swimming or bathing and constructed, installed, or maintained in or above the ground.

Temporary accessory structure—a use that will normally not last for more than 6

months.

Townhouse and/or *rowhouse*—see definition of “dwelling, townhouse” and/or “rowhouse.”

Transient lodging—a building or other facility, or group thereof, intended and used primarily for temporary occupancy by travelers and transients and including hotels, motels, bed and breakfast establishments, inns, lodges, and villas. [Ord. 2004-7]

Travel trailer—see definition of “recreation vehicle.”

Variance—the Board’s authorized departure to a minor degree from the text of this Chapter in direct regard to a hardship peculiar to an individual lot in accordance with the procedure set forth in this Chapter.

Water survey—an inventory of the source, quantity, yield, and use of groundwater and surface water resources within the Borough.

Watershed reservoir—a natural or man-made surface water body intended for the collection and storage of water to be used as a public or private drinking water supply. [Ord. 2004-7]

Watershed stream—a stream or watercourse that feeds a watershed reservoir. [Ord. 2004-7]

Wetlands—wetlands are lowlands greater than ¼ acre which are covered with shallow and sometimes temporary or intermittent waters. Wetlands lie along streams, channels or swales or are adjacent to floodplains soils and usually have a slope of less than .5 percent. In addition, wetlands may be areas identified as marshes, swamps, and bogs, or any other areas recognized as such by the Pennsylvania Department of Environmental Protection, the U.S. Fish and Wildlife Association, or the Army Corps of Engineers. [Ord. 2013-1]

Yard—an open space, which lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward except as herein permitted.

A. *Yard, front*—an open space, which lies between the principal building or group of buildings and the front lot lines, unoccupied and unobstructed from the ground upward exclusive of shrubs or fences. For measurement of minimum front yard and building set back distance, any existing curb face line shall be substituted for the front lot line.

B. *Yard, rear*—an open space extending the full width of the lot between a principal building and the rear lot line, unoccupied and unobstructed from the ground upward, except for accessory structures as permitted in this Chapter. For measurement of the minimum rear yard on a double frontage lot, an existing curb face line may be substituted for the rear lot line.

C. *Yard, side*—an open space extending from the front yard to the rear yard between a principal building and the nearest side lot line, unoccupied and unobstructed from the ground upward. For measurement of the minimum side yard on a corner lot, an existing curb face line shall be substituted for the side lot line.

Zoning Hearing Board—the Zoning Hearing Board of the Borough of Nesquehoning.

Zoning Officer—the administrative officer charged with the duty of enforcing the provisions of this Chapter.

(*Ord. 91-6*, 6/20/1991, §2.200; as amended by *Ord. 92-3*, 2/20/1992; by *Ord. 2004-7*, 12/15/2004; and by *Ord. 2013-1*, 6/26/2013)

Part 3**Establishment and Designation of Districts****§27-301. Establishment of Districts.**

The Borough of Nesquehoning is divided into the following districts:

- A. CO-1 Conservancy District.
- B. R-1 Residential District.
- C. R-2 Residential District.
- D. C-1 Commercial Transition District.
- E. C-2 General Commercial District.
- F. I-1 Industrial District.
- G. M-R Mining, Reclamation, Open Space District.
- H. RC Resort Commercial.
- I. * Floodplain Overlay.

*In addition to the above eight zoning districts, there are floodplain overlay districts which shall also be applicable. The Borough has adopted a separate Floodplain Management Ordinance, *Ord. 2002-3, 6/3/2002* [Chapter 8]. All specific floodplain management regulations are contained in that separate ordinance.

(*Ord. 91-6, 6/20/1991, §3.100; as amended by Ord. 2004-7, 12/15/2004; and by Ord. 2013-1, 6/26/2013*)

§27-302. Zoning Map.

Said districts are bounded as shown on the map entitled “Borough of Nesquehoning Zoning Map,” adopted _____, 19 ____, which accompanies, and which, with all explanatory matter thereon, is hereby made a part of this Chapter.

(*Ord. 91-6, 6/20/1991, §3.200*)

§27-303. Interpretation of Boundaries.

1. *Designation of District Boundaries.* The district boundary lines are intended generally to follow the centerlines of streets, the centerlines of railroad rights-of-way, existing lot lines, the mean water level of streams, and other waterways, or Borough boundary lines, all as shown on the Zoning Map; but where a district boundary line does not follow such a line, its position is shown on said Zoning Map by a specific dimension expressing its distance in feet from a street centerline or other boundary line as indicated.

2. *Determination of Locations of Boundaries.* In case of uncertainty as to the true location of a district boundary line in a particular instance, the Zoning Officer shall request the Zoning Hearing Board to render its determination with respect thereto; provided, no boundary shall be changed by the Zoning Hearing Board. Wherever this Chapter states more restrictive or less restrictive district, the above order of districts shall apply with the first noted being the more restrictive and the last the least

restrictive.

3. *Boundary Tolerances.* Where a district boundary line divides a lot held in single and separate ownership at the effective date of this Chapter, the regulations applicable to the less restrictive district shall extend over the portion of the lot in the more restrictive district a distance of not more than 50 feet beyond the district boundary line. (Ord. 91-6, 6/20/1991, §3.300)

§27-304. Statement of Zoning Districts Intent and Purpose.

The general intent and purpose for each of the zoning districts established in §27-301 above are as follows:

A. *CO-1 Conservancy District.* To establish and preserve areas for watershed, flood control, forestry, reclamation settlement, and the general conservation of the land with its flora and fauna. Uses such as low-intensity outdoor recreation and other uses that do not significantly change the natural character of the land or do not attract large numbers of people would be compatible with this intent.

B. *R-1 Residential District.* To establish and preserve the low density residential areas in the Borough for quiet single-family home neighborhoods free from incompatible activities which would generate distracting sights, sounds, traffic or which would in any way compromise the privacy and serenity of the living environment for the individual residential lots.

C. *R-2 Residential District.* To establish and preserve medium density residential areas where a variety of housing types including single, two-family and multi-family uses are protected in the same manner as the R-1 Residential District above.

D. *C-1 Commercial Transition District.* To establish and preserve areas in transition from open space along highways and from residential to commercial so that the quality of the human living environment and the business environment may be jointly considered, respected, and preserved to the greatest extent possible during the time of change in predominant land use for the area.

E. *C-2 General Commercial District.* To establish and preserve compact business areas where a variety of retail, office, and service businesses would receive priority consideration and protection. Residential uses already in existence or well-planned mixed uses would be permitted to coexist with the business uses. An attractive environment should be maintained within which to do business and/or to reside.

F. *I-1 Industrial District.* To establish and preserve areas for a variety of industrial uses, for certain commercial-type uses and for agricultural, aquiculture, aquaculture and related uses. All uses would be required to comply with Borough performance standards. Permitted, accessory and special uses would be given priority. Other uses would be considered to be incompatible and would not be permitted.

G. *M-R Mining, Reclamation, Open Space.* To establish areas for coal and other mining. As mining takes place, the mined land will be systematically reclaimed to open space land use. A return of the natural plant and animal life to the M-R areas will be encouraged. All State and Federal mine reclamation

standards will be followed by the property owner as a basis for the use of land in this zoning district.

H. *RC Resort Commercial*. To establish and preserve areas to accommodate the needs and desires primarily of visitors, tourists, and transient guests, as well as permanent residents, and provide for a variety of uses related to recreation, sports, entertainment, dining and lodging, and related services and residential uses. [*Ord. 2004-7*]

(*Ord. 91-6, 6/20/1991, §3.400; as amended by Ord. 2004-7, 12/15/2004*)

Part 4**District Regulations****§27-401. Schedules of Regulations.**

The restrictions and controls intended to regulate use, reuse, and development in each district are set forth in the attached Schedules which are supplemented by other Sections of this Chapter.

(*Ord. 91-6, 6/20/1991, §4.100*)

§27-402. Application of Regulations.

Except as hereinafter otherwise provided:

A. No building shall be erected and no existing building shall be moved, altered, added to, or enlarged, nor shall any land or building be designed, used, or intended to be used for any purpose or in any manner other than as permitted in the district in which such building or land is located.

B. No building shall be erected, reconstructed, or structurally altered to exceed in height the limit hereinafter designated for the district in which such building is located.

C. No building shall be erected, no existing buildings be altered, enlarged, or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity to the yard, lot area, and building location regulations hereinafter designated for the district in which such building or open space is located.

D. No yard or other open space provided around any building for the purpose of complying with the provisions of this Chapter shall be considered as providing a yard or open space for any other building, and no yard or other open space on one lot shall be considered as providing a yard or open space for a building or any other lot.

(*Ord. 91-6, 6/20/1991, §4.200*)

§27-403. Floodplain Regulation Overlay.

A separate Nesquehoning Floodplain Ordinance¹ has been adopted by the Borough Council of Nesquehoning. The floodplain regulations from that separate ordinance shall be considered to be an overlay of additional regulations in addition to the zoning requirements.

(*Ord. 91-6, 6/20/1991, §4.300*)

§27-404. Land Use Activity Interpretation.

1. The Standard Industrial Classification (SIC) system is the basis for the land use activity system of categories in Schedule 27-I. The Zoning Officer shall use the SIC

¹Editor's Note: *Ord. 2002-3, 6/3/2002* [Chapter 8].

system to clarify and/or classify any questionable land use activity. If the Zoning Officer can not arrive at a determination, then the Zoning Hearing Board shall use the SIC system as a guide to make an interpretation as to whether the proposed land use activity is similar to or compatible with other land uses and therefore appropriate for inclusion in one of this Chapter’s land use activity categories.

2. Following is a listing of the SIC code and categories at the two and three digit levels. Additional levels of detail are also available and should be updated periodically by the Federal Government:

Listing of SIC Codes

Code	Category
<i>A. Residential</i>	
001	Housing units <ul style="list-style-type: none"> a. Single-family detached b. Single-family attached c. Two-family detached dwelling d. Religious quarters e. Townhouses, rowhouses f. Multi-family g. Mid-rise, high rise apartments h. Dwellings in conjunction with nonresidential use i. Cluster development j. Planned residential developments
002	Residential hotels, motels, and group quarters
003	Mobile home parks or courts
004	transient lodgings
005	Conversion (to residential)
<i>B. Agriculture, Forestry, and Fishing (SIC 01-09)</i>	
010	Agricultural production - crops*
020	Agricultural production - livestock
070	Agricultural services including veterinarian
080	Forestry
090	Fishing, hunting, and trapping
***	Greenhouses
<i>C. Resource Production and Extraction (SIC 10-14)</i>	
100	Metal mining
110	Anthracite mining
120	Bituminous coal and lignite mining
130	Oil and gas extraction
140	Nonmetallic minerals, except fuels

Code	Category
<i>D. Construction (SIC 15-17)</i>	
150	General building contractors
160	Heavy construction contractors
170	Special trade contractors
<i>E. Manufacturing (SIC 20-39)</i>	
200	Food and kindred products
210	Tobacco manufacturers
220	Textile mill products
230	Apparel and other textile products
240	Lumber and wood products
250	Furniture and fixtures
260	Paper and allied products
270	Printing and publishing
280	Chemicals and allied products
290	Petroleum and coal products
300	Rubber and miscellaneous plastic products
310	Leather and leather products
320	Stone, clay, and glass products
330	Primary metal industries
340	Fabricated metal products
350	Machinery, except electrical
360	Electric and electronic equipment
370	Transportation equipment
380	Instruments and related products
390	Miscellaneous manufacturing industries
<i>F. Transportation, Communication, and Public Utilities (SIC 40-49)</i>	
400	Railroad transportation
410	Local and interurban passenger transit
420	Trucking and warehousing
430	U.S. Postal Service

Code	Category
440	Water transportation
450	Transportation by air
460	Pipe lines, except natural gas
470	Transportation services
480	Communication
490	Electric, gas, and sanitary services
<i>G.1. Trade, Wholesale Trade (SIC 50, 51)</i>	
500	Wholesale trade - durable goods
510	Wholesale trade - nondurable goods
<i>G.2. Trade, Retail Trade (SIC 52-59)</i>	
520	Blog, materials and garden supplies
530	General merchandise stores
540	Food stores
550	Auto dealers and service stations
560	Apparel and accessory stores
570	Furniture and home furnishings
580	Eating and drinking places
590	Miscellaneous retail
<i>H. Services - Finance, Insurance, and Real Estate (SIC 60-83, 89)</i>	
600	Banking
610	Credit agencies other than banks
620	Security, commodity brokers and service
630	Insurance carriers
640	Insurance agents, brokers and service
650	Real estate, except cemetery
660	Combined real estate, insurance, etc.
670	Holding and other investment offices
	Cemetery, Mausoleum and crematories
700	Hotels and other lodging places
720	Personal services

Code	Category
730	Business services
750	Auto repair service and garage
760	Miscellaneous repair services
780	Motion pictures
790	Amusement and recreation services
800	Health services
810	Legal services
820	Educational services
830	Social services
890	Miscellaneous services
<i>I. Cultural, Entertainment, and Recreation (SIC 84-86)</i>	
840	Museums, botanical, zoological gardens
860	Membership organizations
	Churches and membership clubs
<i>J. Miscellaneous Public Administration (SIC 91-97)</i>	

*Includes roadside farm stand (on a farm, farms produce is 80% from the farm)

3. For mixed land use activities, any land use activity which constitutes 10 percent or more of the total activity shall be considered separately as to whether it is a permitted; special or accessory according to Schedule 27-I of this Chapter.

4. All land uses that are controlled by a State and/or Federal requirement shall be permitted by this Chapter only if the land use and/or structures are in compliance with the applicable State and Federal regulations and are listed in Schedule 27-I as a permitted or special use and are not prohibited elsewhere in this Chapter. Example of these regulations include: Pennsylvania Department of Labor and Industry requirements for fire and panic and handicapped access; Pennsylvania Department of Environmental Protection requirements relative to water, sewerage for land development, and mining-reclamation for mining activity. [Ord. 2013-1]

5. In regard to mining land use activity, this Chapter requires that Federal and State regulations that require mine reclamation shall be a contingent requirement of permitted or special uses covered by land use activity Code C above SIC, Codes 100 to and including 140.

(Ord. 91-6, 6/20/1991, §4.400; as amended by Ord. 2004-7, 12/15/2004; and by Ord. 2013-1, 6/26/2013)

§27-405. Resort Commercial - Additional Uses.

In addition to the uses indicated in Schedule 27-I of this Part, the following types

of uses and structures are permitted in the RC District:

- A. Accessory structures and uses related to all permitted uses.
- B. Bar/tavern, night clubs.
- C. Barbershop and beauty shop.
- D. Childcare facility.
- E. Equestrian facilities, including stables, barns, paddocks, pastures, corrals, and facilities for medical care.
- F. Golf courses (public and private) and related activities and facilities.
- G. Laundromat.
- H. Museums and cultural and entertainment uses and facilities.
- I. Professional offices.
- J. Public parks and monuments.
- K. Recreation, including sports and clubs.
- L. Restaurants and food service, including catering/banquet facilities.
- M. Retail dry-cleaning.
- N. Shopping centers.
- O. Theaters.

(Ord. 91-6, 6/20/1991; as added by Ord. 2004-7, 12/15/2004)

**Schedule 27-I
Zoning Schedule of Use Controls**

Land Use Activity Category	Conservancy District (CO-1)	Residential Low Intensity (R-1)	Residential Medium Intensity (R-2)	Service and Business Low Intensity (C-1)	Service and Business Medium Intensity (C-2)	Manufacturing Industrial, Communications, Utilities (I-1)	Mining, Reclamation, Open Space (M-R)	Resort Commercial (RC)
A. Residential								
1. Household units								
a) single-family detached	P	P	P	P	P			P
b) single-family semi-attached		P [Ord. 2013-1]	P	P	P			P
c) two-family dwelling		P [Ord. 2013-1]	P	P	P			P
d) religious quarters ¹	P	P	P	P	P			P
e) townhouses, rowhouses			P	P	P			P
f) multi-family			S	S	S			P
g) mid-rise apartments					P			P
h) dwellings in conjunction with a nonresidential use				P	P			P
i) cluster development	S	S	S					S
j) PRD	S	S	S					S
2. Residential hotels, motels, and group quarters			S	P				P
3. Mobile home parks or courts		[Ord. 2013-1]	S [Ord. 2013-1]				P	
4. Transient lodgings					[Ord. 2013-1]			P

¹“Religious quarters” are permitted only when accessory to a church or other recognized religious institution as evidenced by nonprofit status recognition by the Internal Revenue Service. [Ord. 2013-1]

Land Use Activity Category	Conservancy District (CO-1)	Residential Low Intensity (R-1)	Residential Medium Intensity (R-2)	Service and Business Low Intensity (C-1)	Service and Business Medium Intensity (C-2)	Manufacturing Industrial, Communications, Utilities (I-1)	Mining, Reclamation, Open Space (M-R)	Resort Commercial (RC)
5. Conversion (to residential)		S	S [Ord. 2013-1]	S [Ord. 2013-1]	S [Ord. 2013-1]			P
B. Agriculture, Forestry and Fishing (SIC 01-09) ²	P	S	S	S	S	P	P	P
1. Veterinarian, animal hospital, kennel				[Ord. 2013-1]	S [Ord. 2013-1]	S	P	P
C. Resource Protection and Extraction (SIC 10-11)	S			S	S	S	P	S
D. Construction (SIC 15-17)						P	P [Ord. 2013-1]	
E. Manufacturing (SIC 20-39)						P		
F. Transportation, Communication, and Utilities (SIC 40-49) ²		S	S	S	S	S	S	S
1. Refuse and co-generation plants						S	S	
2. Sanitary landfill	[Ord. 2013-1]					S	S	
3. Junkyards and recycling centers						S	S [Ord. 2013-1]	
G. Trade								
1. Wholesale (SIC 50, 51)				P [Ord. 2013-1]	P [Ord. 2013-1]	P		
2. Retail (SIC 52-59) ²				P	P	P [Ord. 2013-1]		P
3. Adult facilities				[Ord. 2013-1]	[Ord. 2013-1]		S [Ord. 2013-1]	

²Except for the land use categories listed below unless they are specifically permitted by the S or P for the zone district. See Part 6 for special use standards, regulations, and requirements.

Land Use Activity Category	Conservancy District (CO-1)	Residential Low Intensity (R-1)	Residential Medium Intensity (R-2)	Service and Business Low Intensity (C-1)	Service and Business Medium Intensity (C-2)	Manufacturing Industrial, Communications, Utilities (I-1)	Mining, Reclamation, Open Space (M-R)	Resort Commercial (RC)
H. Services (SIC 60-83, 89) ²		S	S [Ord. 2013-1]	P	P	S		P
1. Cemeteries, crematoriums	S	S	S			S	S	
2. Family care facility		S	S [Ord. 2013-1]	P	P			P
3. Group care facility		S	S	S	S [Ord. 2013-1]	S [Ord. 2013-1]	S [Ord. 2013-1]	S
4. Hospital, sanitoriums			S	S	S	S [Ord. 2013-1]	S [Ord. 2013-1]	
5. Storage facilities, warehousing, mini-storage				S [Ord. 2013-1]	S	S		P
6. Recreation Services								P
7. ATV, RV, Motorcycle repairs [Ord. 2013-1]			S [Ord. 2013-1]	S [Ord. 2013-1]	S [Ord. 2013-1]	S [Ord. 2013-1]	S [Ord. 2013-1]	
8. Hotels [Ord. 2013-1]					S [Ord. 2013-1]	S [Ord. 2013-1]	S [Ord. 2013-1]	
9. Medical (professional) [Ord. 2013-1]			P [Ord. 2013-1]					
I. Cultural, Entertainment, and Recreational (SIC 84-86) ²	S	S	S	P	P	P [Ord. 2013-1]	P [Ord. 2013-1]	P
1. Club house			S	P	P	S	S	P
2. Resort facility	S			[Ord. 2013-1]	S [Ord. 2013-1]			P
3. Target range							S	S

²Except for the land use categories listed below unless they are specifically permitted by the S or P for the zone district. See Part 6 for special use standards, regulations, and requirements.

Land Use Activity Category	Conservancy District (CO-1)	Residential Low Intensity (R-1)	Residential Medium Intensity (R-2)	Service and Business Low Intensity (C-1)	Service and Business Medium Intensity (C-2)	Manufacturing Industrial, Communications, Utilities (I-1)	Mining, Reclamation, Open Space (M-R)	Resort Commercial (RC)
J. Miscellaneous								
1. Home occupation	A	A	A	A	A			P
a) Bed and breakfast			S	P	P			P
2. Conversion (to commercial)				P	P	S		P
3. Public admin. (SIC 91-97)	P	P	P	P	P	P		P
4. RV parks								S

P=permitted by right; S=special use - a special use permitted by special exception. See Part 5 of this Chapter for the supplementary regulations for special uses. A=accessory use. See §27-704. PRD=planned residential development.

(*Ord. 91-6*, 6/20/1991, Schedule I; as amended by *Ord. 2004-7*, 12/15/2004; and by *Ord. 2013-1*, 6/26/2013)

**Schedule 27-II
Regulations Governing the Size of Lots, Yards, and Buildings**

Type of Regulation	Zoning District							
	CO-1	R-1	R-2 ¹		C-1	C-2	I-1	RC [Ord. 2004-7]
			S.F.D.	T.F. & S.F.S.A.				
Minimum Lot Characteristics								
With Central Water & Central Sewer								
Area (sq. ft.)	87,000	18,000	6,000	5,000	8,000	5,000	10,000	8,000
Width	200	100 ²	60 ³	50 ³	80 ⁴	50 ⁵	100	80
With On-Lot Water & On-Lot Sewer								
Area	130,000	43,560	43,560	43,560	43,560	43,560	43,560	43,560
Width	250	175	175	175	175	175	175	175

¹In the Eastwood Section of Lake Hauto no building or part of building of any kind shall be erected within 20 feet of the street line or lines or within 10 feet of the remaining side lines or rear line of any lot, except when such lines are the closest lot lines to the lake front, in which case no building or part of building of any kind shall be erected within 25 feet of said lake front or stream edge lot line. [Ord. 2013-1]

²Existing lots may have a minimum width of 80 feet. [Ord. 2013-1]

³Existing lots may have a minimum width of 30 feet. [Ord. 2013-1]

⁴Existing lots may have a minimum width of 40 feet. [Ord. 2013-1]

⁵Existing lots may have a minimum width of 40 feet. [Ord. 2013-1]

Type of Regulation	Zoning District							
	CO-1	R-1	R-2		C-1	C-2	I-1	RC [Ord. 2004-7]
			S.F.D.	T.F. & S.F.S.A.				
Minimum Yards (ft.) ^{6, 7}								
Front	50	25 [Ord. 2013-1]	10 [Ord. 2013-1]	10 [Ord. 2013-1]	20	–	50	15
Rear	100	20 [Ord. 2013-1]	6 [Ord. 2013-1]	6 [Ord. 2013-1]	20	–	20	15
One side	50	15	4 [Ord. 2013-1]	4 [Ord. 2013-1]	10	4	20	5
Both sides	100	25	8 [Ord. 2013-1]	8 [Ord. 2013-1]	20	6	40	10
Maximum Building Height								
Number of stories	2.5	3	3	2.5	2.5	4	8	10
Height in feet	35	40	40	35	35	50	100	100 ⁸
Maximum Building Coverage %	10	20	30	40	50	70	50	50

Schedule 27-II regulations shall apply to permitted and special uses except where higher or more restrictive standards are required elsewhere.

S.F.D. = Single-family detached

S.F.S.A. = Single-family semi-attached

(Ord. 91-6, 6/20/1991, Schedule II; as amended by Ord. 2004-7, 12/15/2004; and by Ord. 2013-1, 6/26/2013)

⁶Any property located within a municipal watershed boundary shall have a minimum yard of at least 500 feet from the edge of the watershed reservoir and/or watershed stream. No on-site sewage disposal system shall be permitted in any yards which are located within a municipal water system watershed. Only centralized sewage disposal systems shall be permitted in municipal watershed development.

There shall be a minimum setback of 50 feet from the edge of any stream or lake. A greater setback shall apply where the Borough floodplain regulations require more than 50 feet for land use activity to be safely out of the flood hazard areas.

Special setbacks shall apply to commercial and industrial buildings adjacent to a residential zoning district. There shall be a 50-foot yard between commercial and/or industrial buildings and an adjacent residential zone. This shall apply to the side or rear yards regardless of zoning district.

⁷Single-family and duplex residential use in the C-1 District shall have the following setbacks: front, 15 feet; side, 8 feet; rear, 15 feet. [Ord. 2013-1]

⁸100-foot building height permitted if approved by the Borough and if the building has an approved fire suppression system.

Part 5**Performance Standards, Requirements, and Prohibited Uses****§27-501. Performance Standards for All New Development and Subdivisions.**

1. *Compliance.* The creation of lots usually is controlled by a subdivision and land development ordinance. The general performance standards in this Article will help to assure that adequately sized lots will be created through subdivision and land development particularly for cluster developments and planned residential developments (PRD). These special types of subdivisions or land developments shall be called Performance Subdivisions. Following are the threshold criteria for a performance subdivision.

2. *Threshold Criteria for Performance Subdivisions.*

A. Where the developer of a parcel of land wishes to develop a property under the more intensive criteria of a performance subdivision, and at the greater densities allowed in a performance subdivision the following minimum design standards will be required:

(1) A central water system will be provided by the developer meeting the standards of the PA DEP. with storage tanks and line sizes sufficient to meet the standards of the National Fire Protection Association, and such other standards as the Borough may promulgate from time to time. Potable water delivered through such a system shall be tested periodically, shall be chlorinated and filtered as appropriate according to the rules of the PA DEP. [Ord. 2013-1]

(2) Central sewers shall be installed according to an approved plan of the Borough, and as permitted by the PA DEP. The Borough allows and encourages the installation of central sewer systems which are designed to release treated effluent into subsurface seepage beds except within municipal watershed areas. However, stream discharge of treated effluent will also be permitted where it is approvable by the PA DEP. Where subsurface seepage beds for treated effluent are to be used, there shall be at least two permissible sites for the location of the seepage beds within the performance subdivision. Where surface discharge of treated effluent is proposed the volume of the discharge will be counted against any stormwater limitations imposed on the subdivision. [Ord. 2013-1]

(3) All access roads will be paved according to the Standards of the Pennsylvania Department of Transportation, *Design Manual*, Part 2, "Highway Design," latest edition, and *A Policy on Geometric Design of Rural Highways*, AASHTO, latest revision. Access roads and parking areas shall be counted against the open space area of the performance subdivision, and the total impervious surface of same shall be counted against the impervious surface ratio of the subdivision. If permeable pavers are used in parking areas, those areas may be considered as a permeable surface.

B. All required improvements shall be maintained by an approved property owners association, condominium association, or other legal entity approved by the Borough after installation.

C. Land required for all utilities shall be permanently set aside but will be counted against the open space set aside in designing the subdivision, not against the buildable area. The subdivider may designate at the time of subdivision that after the subtraction of land required for recreation and the dedication of land required for all utilities, that the remaining open space may be active farmland in the possession of the subdivider, his grantees or assigns; however, without the right to further subdivision, and subject to whatever additional set back requirements that the Borough may require. If the remaining open space is set aside as active farmland with the rights of succession, the subdivider will be required to offer the Borough a deed of dedication of the development rights at the time of subdivision approval.

3. *Site Capacity Calculations.*

A. The following calculations are required of the developer to determine the net buildable site area, the maximum number of dwelling units, the maximum impervious surfaces and the required open space. Net buildable site area shall not include any of the following classes of land:

- (1) Land which is not contiguous or land which is cut from the parcel by a road or railroad.
- (2) Land shown on previous subdivisions or land development plans as reserved from development for open space.
- (3) Land unusable by virtue of resource protection, such as any municipal watershed land.

B. For calculating the net buildable site area, the following form should be used:

(1) *Base Site Area.* Calculate base site area—subtract Non Base Area (existing road and utility rights-of-way and land in subsection .3.A(1) and (2) above) from total site area.

Total Site Area		_____ acres
Nonbase Area	-	_____ acres
Base Site Area	=	_____ acres

(2) *Land with Resource Restrictions and Resource Protection Land.* Calculate the land with resource restrictions and the resource protection land. In the event that two or more resources overlap, only the resource with the highest open space ratio shall be used in the calculations to arrive at the resource protection land below:

Resource Restrictions	Open Space Ratio	Acres of Land in Resources Restrictions	Resource Protection Land (acres X open space ratio)
Floodplains	1.00		
Floodplain soils	1.00		
Steep Slopes			

Resource Restrictions	Open Space Ratio	Acres of Land in Resources Restrictions	Resource Protection Land (acres X open space ratio)
8-15%	.60		
15-25%	.70		
25% or more	.85		
Lakes or Ponds			
Watercourses	1.00		
Municipal watershed	1.00		
Wetlands	1.00		
Lake Shore*	.70		
Pond Shore*	.80		

Land with resource restrictions _____ acres

Total resource protection land _____ acres

*Defined as the land within 50 feet horizontally of the line or 15 feet vertically above the mean high water line, whichever is less.

(3) *Recreation Land.* Calculate land for recreation.

Base Site Area _____ acres
 Subtract land with resource restrictions - _____ acres
 Remainder _____ acres
 Multiply by 1/3 minimum open space ratio x _____ (§27-503)
 Recreation land = _____ acres

(4) *Combine Resource Protection Land and Recreation Land.*

Resource protection land _____ acres
 Add recreation land + _____ acres
 Resource protection land and recreation land = _____ acres

(5) *Standard Minimum Open Space.* Calculate the standard minimum open space.

Base site area _____ acres
 Multiply by minimum open space ratio x _____ (§27-503)
 Standard minimum open space = _____ acres

(6) *Buildable Portion of the Site.* Calculate the buildable portion of the site. From the base site area, subtract the resource protection and recreation land or the standard minimum open space, whichever is greater.

Base site area _____ acres
 Subtract resource protection and recreation land
 or standard minimum open space whichever
 is greater - _____ acres
 Buildable portion of the site = _____ acres

(7) *Number of Dwelling Units.* Calculate the maximum number of dwelling units.

Net buildable site area _____ acres

$$\begin{array}{l} \text{Multiply by maximum density} \quad \times \text{ _____ } (\S27-503) \\ \text{Number of dwelling units} \quad \quad = \text{ _____ } \text{ dwelling units} \end{array}$$

(8) *Impervious Surfaces.* Calculate the maximum area of impervious surfaces. Multiply the net buildable site area by the maximum impervious surface ratio.

$$\begin{array}{l} \text{Net buildable site area} \quad \quad \quad \text{ _____ } \text{ acres} \\ \text{Multiply by maximum impervious} \\ \text{surface ratio} \quad \quad \quad \times \text{ _____ } (\S27-503) \\ \text{Impervious surfaces} \quad \quad \quad = \text{ _____ } \text{ acres} \end{array}$$

(9) *Site Capacity Summary.*

$$\begin{array}{l} \text{Maximum number of dwelling units} \quad \quad \quad \text{ _____ } \text{ dwellings} \\ \text{Maximum impervious surface} \quad \quad \quad \text{ _____ } \text{ acres} \\ \text{Buildable portion of the site} \quad \quad \quad \text{ _____ } \text{ acres} \\ \text{Open space (resource protection and recreation} \\ \text{land or standard minimum open spaces,} \\ \text{whichever is greater) (see subsection .4) } \quad \quad \quad \text{ _____ } \text{ acres} \end{array}$$

4. *Table of Performance Standards.* The following table establishes the performance standards for the various zoning districts. All of the applicable standards for a zoning district shall be met. If, after doing the calculations in the preceding Section, one or more of the calculated standards or the standards in any other Section of this Chapter is greater than on this table, the strictest standard shall govern.

A. *Minimum Open Space Ratio.* For uses where this is applicable, the figure in the column shall be the minimum amount of open space provided. However, if in doing the calculations in subsection .3 the open space ratio in subparagraph (5) is greater than the standard in this column, then the greater shall become the minimum required.

B. *Maximum Density DU/Acre.* The number in this column shall be the maximum allowable density for residential uses. This number may be increased only under the provision of §27-504.

C. *Maximum Impervious Surface Ratio.* This number shall be the maximum amount of impervious surface for a use or development.

D. *Minimum Site Area.* This is the minimum acreage required in order to qualify for a particular permitted use. The minimum site for development shall be 2 acres for all districts.

E. *Minimum Lot Size.* This column refers to the minimum area for each individual lot in a single-family or nonresidential use. For single-family cluster uses, this column refers to the minimum average lot size.

Table of Performance Standards

Category	Zoning District and Land Use Activity	Basic Density*	Minimum Open Space Ratio	Maximum Density DU/Acre	Maximum Impervious Surface	Minimum Site Area	Minimum Lot Size*
CO-1	Single-family detached housing units	.5	–	1.90	.05	50A	87,000
	Cluster developments or PRD	.5	.80	2.75	.11	100A	32,000
	Other permitted land uses**		–	–	.10	10A	
R-1	Single-family detached housing units	2.42	–	1.90	.17	20A	18,000
	Cluster developments or PRD	2.42	.55	2.75	.22	50A	12,500
	Other permitted land uses	1.21	–	–	.20	10A	35,000
R-2	R-2 Single-family housing units	7.26	–	1.90	.20	10A	6,000
	Single-family semi-detached	7.26	–	1.90	.20	2A	5,000
	Cluster developments or PRD	7.26	.45	3.80	.30	30A	6,000
	Other permitted land uses**	7.25	–	–	.25	5A	6,000
C-1	All permitted land uses**	5.4	–	–	.85	2A	3,000
C-2	All permitted land uses**	8.7	–	–	.80	2A	5,000
I-1	All permitted land uses**	4.4	–	–	.80	2A	10,000

*Basic density is a net density. It is calculated on the land area devoted directly to dwelling unit use (where permitted). It does not include land in a neighborhood, a subdivision, nor development tract devoted to streets, resource protection, park or recreation lands, fire house nor other public uses. Higher densities may only be permitted subject to the bonus density provisions of §27-504 of this Chapter.

**Unless otherwise specified.

5. *Dimensional and Area Requirements.* See §27-404, Schedule 27-II, for minimum yard requirements, minimum lot width requirements, or maximum building height regulations for permitted uses. Cluster developments shall also be regulated by the special density and other performance standards in this Part as well as by any special land development standards in the Nesquehoning Subdivision and Land Development Ordinance [Chapter 22].

(Ord. 91-6, 6/20/1991, §5.100; as amended by Ord. 2013-1, 6/26/2013)

§27-502. Environmental Performance Standards for All Developments.

Site alterations, regarding filling or clearing of vegetation by a landowner or developer which would violate the following standards shall be in violation of this Chapter. The developer shall determine the presence of environmental or natural features on the site and shall meet the following standards for environmental protection.

A. *Floodplains*. All such lands shall remain as permanent open space, except that roads and utilities may cross the floodplain where design approval is obtained from the Pennsylvania Department of Environmental Protection. (Also see separate Floodplain Ordinance, *Ord. 2002-3, 6/3/2002* for Nesquehoning floodplain regulations [Chapter 8].) [*Ord. 2013-1*]

B. *Floodplain Soils*. All such lands shall remain as permanent open space, except that roads and utilities may cross the floodplain where design approval is obtained from the Pennsylvania Department of Environmental Protection. (Also see separate Floodplain Ordinance, *Ord. 2002-3, 6/3/2002* for Nesquehoning floodplain regulations [Chapter 8].) Floodplain soils shall not be used where a floodplain line has been drawn. [*Ord. 2013-1*]

C. *Steep Slopes*. In areas of steep slopes, i.e., those above 8 percent, the following standards shall apply:

(1) Eight to 15 percent—no more than 50 percent of such areas shall be developed and/or regraded or stripped of vegetation, except where the area affected is revegetated, or otherwise permanently stabilized in a manner acceptable to the Borough and consistent with the ordinances.

(2) Fifteen to 25 percent—no more than 30 percent of such areas shall be developed and/or regraded or stripped of vegetation, except where the area affected is revegetated, or otherwise permanently stabilized in a manner acceptable to the Borough and consistent with the ordinances.

(3) Twenty-five percent or more—no more than 15 percent of such areas shall be developed and/or regraded or stripped of vegetation, except where the area affected is revegetated, or otherwise permanently stabilized in a manner acceptable to the Borough and consistent with the ordinances.

[*Ord. 2004-7*]

D. *Lakes, Ponds, Wetlands, or Watercourses*. These areas shall be left as open space. No development, filling, piping, or diverting shall be permitted except for required roads and utilities, or unless approved by the Borough and permitted by the Pennsylvania Department of Environmental Protection. [*Ord. 2004-7*]

E. *Lake Shorelines*. The shorelines of presently undeveloped lakefront lands; to a distance of 100 feet from the shorelines, shall contain no more than 10 percent impervious surfaces. At least 70 percent shall be permanent open space.

F. *Pond Shorelines*. The shorelines of ponds shall, to a distance of 50 feet from the shorelines, contain no more than 10 percent impervious surfaces. At least 80 percent shall be permanent open space.

G. *Stormwater*. All developments shall limit the rate of stormwater runoff so that the rate of runoff generated is no more than that of the site in its natural condition. Where farm field or disturbed earth is the existing condition, meadow

shall be used as the starting base for such calculations instead of the actual condition. All runoff calculations shall be based on 100-year, 24-hour storms. The method for such calculations shall be that contained in United States Department of Agriculture, Soils Conservation "Engineering Field Manual," Notice #4, of April 30, 1971, as amended. A development shall not be required to meet the above provisions if it meets all of the following criteria:

- (1) The site area is 2 acres or less.
- (2) The impervious surface ratio of the developed site is not greater, than .30 in residential and .80 in nonresidential districts.

H. *Soil Erosion and Sedimentation.* All developments shall protect streams, lakes and ponds from sedimentation damage and control erosion in accordance with the "Clean Streams Law, 35 P.S. §691.1 *et seq.* and 25 Pa.Code, Chapter 102," except that in addition all development shall submit a soil erosion and sedimentation plan as part of the preliminary land development plan even where they are less than 25 acres in extent.

I. *On-Site Sewage Disposal.* Soil suitability for on-site sewage disposal is a critical performance characteristic. The following performance standards shall apply to single-family detached dwellings and other permitted or special uses where individual, community, or Borough sewerage systems dispose of sewage in ground on the tract of land.

(1) Where uses are proposed on parcels of land in areas which have a high flooding hazard, seasonally high water tables, poorly drained, or have a combination thereof resulting in the lot requiring a non-standard, in-ground (turkey mount-elevated sand mound) on-lot sewerage system, then such areas shall have a minimum lot size of not less than 2 acres regardless of the district in which they are located.

(2) No treated nor untreated sewage shall be placed into the ground, onto the ground, nor into streams which are within a Borough watershed of an active water system serving the public with water from that watershed. Sewage may be collected and properly disposed of according to Pennsylvania Department of Environmental Protection downstream from a Borough water reservoir or outside the catchment area of any active Borough watershed catchment area. [*Ord. 2013-1*]

An exception to this requirement is that if the municipal authority responsible for the water service in question may give the developer of lands permission to dispose of sewage within the watershed. Conditions of such approval could relate to the authority installing a Borough water filtration and treatment system for the water system.

J. *The Permanent Removal of Topsoil.* The permanent removal of topsoil from any parcel of land shall be prohibited, except as follows:

(1) During actual construction on premises, that portion of the topsoil present which covers an area to be occupied by permanent structures or permanently located materials of an impervious nature or ponds and lakes may be considered excess, and may be removed by the owner.

(2) During regrading operations conducted upon premises whether or not

carried on in conjunction with on-site construction, excess topsoil remaining after restoring proper topsoil cover to the areas of the parcel upon which regrading operations were conducted may be removed by the owner.

K. *Permanent Removal of Subsurface Solids.* The permanent removal of subsurface solids, whether soil, clay, or mineral in nature, for other than on-site construction or grading purposes shall be prohibited except if otherwise qualified under the provisions of this Chapter. Removal of top soil and any other subsurface solids shall be considered to be resource production and extraction and shall be conducted with Schedule 27-I of this Chapter and other related requirements.

(Ord. 91-6, 6/20/1991, §5.200; as amended by Ord. 92-3, 2/20/1992; by Ord. 2004-7, 12/15/2004; and by Ord. 2013-1, 6/26/2013)

§27-503. Buffer Yards and Screen Planting.

Buffer yards are required for all performance standard subdivisions, mobile home parks, commercial districts, and industrial districts where they adjoin any residential district. [Ord. 2004-7]

A. The buffer yards may be part of the lot area assigned to a dwelling unit in accordance with the provisions of this Chapter. However, the portion of the lot area containing the buffer yard must be in addition to the required minimum lot area.

B. The buffer yard shall be measured from the property boundary line or from the near street line where a street serves as the property boundary line.

C. The buffer yard may be coterminous with required front, side, or rear yards, and in case of conflict, the larger yard requirements shall apply.

D. In all buffer yards, the exterior 50-foot width (30 feet in a performance standard subdivision and 20 feet for a hospital) shall be maintained and kept clean of all debris, rubbish, weeds, and tall grasses in conformance with existing regulations.

E. No structure, manufacturing or processing activity, or storage of materials shall be permitted in the buffer yard; however, parking of passenger automobiles and on-lot sewer and water facilities shall be permitted in the portion of the buffer yard exclusive of the exterior 50-foot width.

F. All buffer yards except performance standard subdivisions shall include a dense screen planting of trees, shrubs, or other plant materials, or both, to the full length of the lot line to serve as a barrier to visibility, air-borne particles, glare and noise. Such screen planting shall be located within the exterior 50 feet of the buffer yard, and shall be in accordance with the following requirements:

(1) Plant materials used in the screen planting shall be at least 4 feet high when planted and be of such species as will produce ultimately a dense visual screen at least 8 feet high.

(2) The screen planting shall be maintained permanently, and any plant material which does not live shall be replaced within one year.

(3) The screen planting shall be so placed that at maturity it will be not closer than 3 feet from any street or property line.

(4) In accordance with this Chapter, a clear sight triangle shall be maintained at all street intersections and at all points where private access

ways intersect public streets. Said sight triangle, upon request of the Borough, shall be determined by the Borough Engineer with the cost therefore to be paid by any party or owner obstructing said sight triangle. Said costs to be in addition to the cost of removal of any obstruction. [Ord. 2013-1]

(5) The screen planting shall be broken only at points of vehicular or pedestrian access.

G. In cluster developments or performance subdivisions, the following shall apply:

(1) The buffer yard may be averaged. The width in subparagraph (4) below is average with the minimum being 60 percent of the average.

(2) All existing deciduous and coniferous trees above 2 inches caliper and/or 6 feet in height shall be preserved in the buffer yard except where clearance is required to ensure adequate sight distances. Any removal should, where feasible, involve relocation rather than clearing.

(3) Buffer width and planting material shall be laid out to respect existing or proposed off-site uses. The minimum width may be used where compatible single-family uses adjoin, or where the property abuts nonbuildable land. The object of the planting shall be defined in the plan as: visual, noise, or to prevent access to hazardous areas.

(4) Generally, a minimum of 25 percent of plant material shall be evergreen, 10 percent flowering. Planting shall be adequate in quantity to fully cover the minimum 30-foot buffer, but may be clumped or grouped for maximum efficiency.

(a) Where noise and glare are problems, 50 percent of the planting shall be evergreens.

(b) Where hazardous conditions exist, hedge rows with thick, thorny plants are desirable. Planting should be such as to make access difficult.

(c) Where visual screening is most important, evergreens and flowering trees should be increased to 50 percent of the total.

(5) Self-maintaining ground cover or grass shall be planted to the edge of the buffer.

H. No screen planting shall be required along streets which form district boundary lines, provided that:

(1) No outdoor processing or manufacturing activity and no outdoor storage of materials shall be so located as to be visible from the adjacent residential district.

(2) Only the front of any proposed building shall be visible from the adjacent residential district.

I. Prior to the issuance of any zoning permit, complete plans showing the arrangement of all buffer yards, the placement, species, and size of all plant materials, and the placement, size, materials, and type of all fences to be placed in such buffer yard shall be reviewed by the Zoning Officer, to ascertain that the plans are in conformance with the terms of this Chapter.

J. *Size of Buffer Yards.*

(1) I-1 against all district boundaries: 50 feet.

(2) Junkyards against all district boundaries: 30 feet. A special exception may be granted by the Board for those junkyards and/or recycling facilities which are enclosed in a structure or those which are more than 100 feet set back from a property line and are not visible from a road and/or adjacent property line.

(3) All commercial uses against any residential use, except in the C-2 District: 50 feet. [Ord. 2013-1]

(4) Mobile home park: 60 feet on all boundaries.

(5) Hospital use: 20 feet on all boundaries with residential uses.

(6) Performance standard subdivisions: 30 feet on all boundaries with no more than 30 percent of required open space area in the buffer yard. For performance standards subdivisions in excess of 30 acres in area, an additional foot of buffer yard shall be required for each additional acre above 30, up to a maximum of 50 feet of buffer yard.

[Ord. 2004-7]

(Ord. 91-6, 6/20/1991, §5.300; as amended by Ord. 2004-7, 12/15/2007; and by Ord. 2013-1, 6/26/2013)

§27-504. Residential Density Bonus.

1. *Bonus Density.* In the CO-1 Conservation District and R-1 Residential District, a bonus density of up to 40 percent in performance subdivisions may be achieved by meeting specific criteria beyond the basis performance standards. For planned residential developments, the bonus is increased to a maximum of 45 percent in the CO-1 Conservancy and R-1 Residential Districts. All other standards of this Chapter must be met in order to get the bonus. No bonus shall be granted without those requirements being met. The various bonuses are additive; for example:

R-1 Low Density Residential District	
Basic Density	2.42
Bonus - For Housing	15%
- For Park Facility	10%
- For Fire House	10%
- For PRD bonus	<u>10%</u>
Total Bonus	45% or (1.45 multiplier)

$$2.42 \times 1.45 = 3.5*(rounded) \text{ units/acre}$$

*This is the net density. (Net density is the density after removing lands devoted to streets, resource protection areas, lands set aside for park, recreation: fire house, and other public uses.) This higher net density is then applied to the net buildable site area in §27-501.3.B(7) of this Chapter to calculate the number of dwelling units.

2. *Specific Criteria.*

A. *Moderate Income Housing.* For each unit of nonsubsidized housing with two or more bedrooms built to sell below \$100,000 (in 1990 dollars), an additional dwelling unit may be built. The maximum bonus shall be in accordance with the

Table of Bonuses [paragraph .E].

B. *Fire Equipment or Facilities.* A density bonus of 10 percent may be permitted where the developer provides a cash contribution of \$1,000 per acre of site area to the Borough Council for disbursement for fire equipment or facilities.

C. *Recreation Facilities.* Where the developer provides recreation facilities for the general public in accordance with recommendations from the County and Borough Planning Commissions, a bonus shall be awarded as per the Table of Bonuses. Eligible recreation facilities shall meet the approval of the Planning Commission and Park Board as to design, access, size, and location. The following items shall be eligible for this bonus:

(1) *Trail System.* An all-weather trail system suitable for walking and bicycling. The trail shall be built to include all necessary signs, bridges, etc. The system shall be deeded public right-of-way upon acceptance by the Borough or County. Any, connectors to adjoining development required by the Planning Commission shall be part of the system.

(2) *Playfield.* A public field with two improved baseball diamonds, convertible for football or soccer or other sports, equipped with night lights and skid-mounted bleachers for 200. Parking for 30 cars shall be provided. The field shall have suitable planting and screening to protect adjoining neighbors.

(3) *Capital Contribution of \$500 per Acre of Site Area.* To Borough Recreation Board for capital improvements at existing municipal facilities or for acquisition of new facilities.

(4) *Other Recreational Facilities.* Such as: swimming pool, tennis court, or basketball court, etc., with appropriate parking.

D. *Planned Residential Development (PRD) or Cluster Development.* Where the Borough grants tentative approval for a PRD or cluster development, a bonus of 10 percent shall be available to that development.

E. *Table of Bonuses.*

	Percentage Bonus		
	CO-1	R-1	R-2
(1) Moderate-income housing	15	15	15
(2) Fire contribution	10	10	10
(3) Park facilities	10	10	10
(4) PRD or cluster development	10	10	10

Note: All bonuses are stated as a maximum not to exceed percentage by type. See text for criteria used to determine eligibility for bonus.

(Ord. 91-6, 6/20/1991, §5.400)

§27-505. Performance Requirements.

1. No use shall be permitted in any district if it is to be operated in such a manner so as to create any dangerous, injurious, noxious, or otherwise objectionable fire,

explosive, radioactivity, environmental, or other hazard; noise or vibration; smoke, dust, dirt, or other form of air, persistent odor, solid waste, or water pollution; electrical, glare, or other disturbance which will adversely affect the surrounding area or premises, or be dangerous to public health and safety.

2. All uses shall be developed in a manner consistent with the preservation of the quality of the existing environment and of any natural amenities present on the site. Such uses shall provide for the preservation and the minimum destruction of natural drainage areas, minimum grading the destruction of the ground surface, the preservation of substantial stands of trees and wetland areas, the preservation of attractive views and any other natural features existing on the site.

3. All new uses or conversions shall comply with the following performance standards:

A. *Noise Control.* The ambient sound level of any operation (other than the operation of motor vehicles or other transportation facilities, operations involved in the construction or demolition of structures, emergency alarm signals or time signals) shall not exceed the decibel levels listed in the tables shown. The sound pressure level or ambient level is the all-encompassing noise association with a given environment, being a composite of sounds from any source, near and far. For the purpose of this Chapter, ambient noise level is the average over 15 minutes of the alleged offensive noise, excluding random or intermittent noises. Averaging may be done by instrument analysis in accordance with American National Standard S. 13-1971, or may be done manually as follows:

(1) Observe a sound level meter for 5 seconds and record the best estimate of central tendency of the indicator needed, and the highest and lowest indications.

(2) Repeat the observations as many times as necessary to provide that observations be made at the beginning and at the end of the 15-minute period and that there shall be at least as many observations as there are decibels between the lowest low indication and the highest high indication.

(3) Calculate the arithmetical average of the observed central tendency indications. It shall be unlawful for any person to operate any fixed machinery or equipment, or similar mechanical device in any manner so as to create any noise which would cause the noise level measured at the property line of the property affected by the noise emission, in excess of the following:

Zoning District	Time Period	Sound Level DBA
CO-1, R-1, R-2	anytime	50
C-1, C-2, I-1, M-R, RC [Ord. 2004-7]	10 p.m. to 7 a.m.	55

If the measurement location is on a boundary between two zoning districts, the lower sound level shall apply.

B. *Smoke Control.* No smoke shall be emitted from any chimney or other source of visible gray opacity greater than No. 1 on the Ringlemann Smoke Chart as published by the U.S. Bureau of Mines, except that smoke of a shade not darker than No. 2 on the Ringlemann Chart may be emitted for not more than 4 minutes in any 30-minute period.

C. *Dust, Fumes, Vapors, and Gases Control.*

(1) The emission of dust, dirt, fly ash, fumes, vapors, or gases which can cause any damage to human health, to animals, or vegetation, or to property, or which can cause any soiling or staining of persons or property at any point beyond the lot line of the use creating the emission, is herewith prohibited.

(2) No emission of liquid or solid particles from any chimney or other source shall exceed 0.3 grains per cubic foot of the carrying gas at any point beyond the lot line of the use creating the emission. For measurement of the amount of particles in gases resulting from combustion, standard correction shall be applied to a stack temperature of 500° Fahrenheit and 50 percent excess air stack at full load.

D. *Heat Control.* No use shall produce heat perceptible beyond its lot lines.

E. *Odor Control.*

(1) No use shall emit odorous gases or other odorous matter in such quantities as to be offensive at any point on or beyond its lot lines. The guide for determining such quantities of offensive odors shall be the 50 percent response level of Table 1 (Odor Thresholds in Air), "Research on Chemical Odors: Part I - Odor Thresholds for 53 Commercial Chemicals," October, 1968, Manufacturing Chemists Association, Inc., Washington, D.C.

(2) Subparagraph (1) above shall not apply to odors normally created as part of an agricultural or horticultural use except that no animal waste produced off of the property shall be stockpiled unless processed to eliminate all offensive odors.

F. *Glare Control.* No use shall produce a strong, dazzling light or a reflection of a strong, dazzling light beyond its lot lines or onto any public road except as required by the business operation of a permitted business by the regulations of the U.S., OSHA; U.S., FAA; U.S., FCC

G. *Vibration Control.* No use shall cause earth vibrations or concussions detectable beyond its lot lines without the aid of instruments, with the exception of vibration produced as a result of temporary construction activity.

H. *Storage and Waste Disposal Control.*

(1) No highly flammable or explosive liquids, solids, or gases shall be stored in bulk above ground, except the following:

(a) Tanks or drums of fuel connected directly with energy devices or heating appliances located and operated on the same lot as the tanks or drums of fuel.

(b) Tanks or drums for storage of less than 300 gallons of fuel oil (other than that used for home heating or gasoline, provided such tanks are located no closer than 25 feet to any building or lot line or 50 feet from any street line).

(2) All outdoor industrial or commercial storage facilities or fuel, raw materials, and products, and all industrial or commercial fuel, raw materials and products stored outdoors, shall be enclosed by an approved safety fence.

(3) No materials or wastes shall be deposited upon a lot in such form or

manner that they may be transported off the lot by natural causes or forces, nor shall any substance which can contaminate a stream or watercourse or otherwise render such stream or watercourse undesirable as a source of water supply or recreation, or which will destroy aquatic life, be allowed to enter any stream or watercourse.

(4) Any materials or wastes which might cause fumes or dust, or which constitute a fire hazard, or which may be edible or otherwise attractive to rodents or insects, shall be stored outdoors only if enclosed in containers adequate to eliminate such hazards.

(5) All nonconforming storage and waste disposal uses must be brought into conformity with this Section within 3 years of the adoption of this Chapter.

(Ord. 91-6, 6/20/1991, §5.500; as amended by Ord. 2004-7, 12/15/2004)

§27-506. Floodplain Performance Standards.

See Floodplain Ordinance, Ord. 2002-3, 6/3/2002 for floodplain regulations [Chapter 8].

(Ord. 91-6, 6/20/1991, §5.600; as amended by Ord. 2004-7, 12/15/2004; and by Ord. 2013-1, 6/26/2013)

§27-507. Open Space in Residential Developments.

1. *General Open Space.* Residential performance subdivisions shall meet the open space requirements of this Chapter. The plan shall contain or be supplemented by such material as required to establish the method by which open space shall be perpetuated, maintained, and administered. The plan and other materials shall be construed as a contract between the land owner(s) and the Borough, and shall be noted on all deeds.

2. *Layout of Open Space.* The open space shall be laid out in accordance with the best principles of site design and to be compatible with the Nesquehoning Borough Comprehensive Plan. It is intended that the open space shall be as close to all residences as possible, with green ways leading to major recreation spaces. Major recreation areas shall be located to serve all residents of the development. The open space is most needed in areas of highest density.

3. *Open Space Designation.* All land held for open space shall be designated on the plans. The plans shall contain the following statement:

“Open space may not be separately sold nor shall land be further developed or subdivided except for transfer to the municipality or other conservation organization approved by the Borough in conformance with Nesquehoning Comprehensive Plan.”

The subdivision plans shall further designate the use of open space, the type of maintenance to be provided, and a planting plan or schedule. In designating use and maintenance, the following classes may be used:

A. *Lawn.* A grass area with or without trees which may be used by the residents for a variety of purposes and which shall be mowed regularly to insure a neat and tidy appearance.

B. *Natural Area.* An area of natural vegetation undisturbed during

construction, or replanted; such areas may contain pathways. Maintenance may be minimal but shall prevent the undue proliferation of weeds and undesirable plants such as poison ivy. Litter shall be removed, and streams shall be kept in free-flowing condition.

C. *Recreation Area.* An area designated for a specific recreation use including, but not limited to, tennis, swimming, shuffle board, playfield, and tot lot. Such areas shall be maintained so as to avoid creating a hazard or nuisance, and shall perpetuate the proposed use.

4. *Open Space Performance Bond.* Designated planting and recreation facilities within the open space areas shall be provided by the developer. A performance bond or other securities may be required to cover costs of installation in accordance with provisions of any subdivision ordinance adopted by the Borough.

5. *Ownership and Preservation of Open Space.*

A. Any of the following methods may be used to preserve, own, or maintain open space: condominium, homeowners association, dedication of fee simple, dedication of easements, or transfer to a private conservation organization. The following specific requirements are associated with each of the various methods.

(1) *Condominium.* The open space may be controlled through the use of condominium agreements. Such agreements shall be in conformance with the Uniform Condominium Act, 68 Pa.C.S.A. §3101 *et seq.* All open space land shall not be eligible for sale to another party except for transfer to another method of ownership permitted under this Section, and then only where there is no change in the open space ratio. [*Ord. 2013-1*]

(2) *Homeowners Association.* The open space may be held in common ownership by a homeowners association. This method shall be subject to all of the provisions for homeowners associations set forth in Article VII of the Pennsylvania Municipalities Planning Code, 53 P.S. §10701 *et seq.*

(3) *Fee-Simple Dedication.* The Borough may, but shall not be required to, accept any portion or portions of the open space provided: (a) such land shall be freely accessible to the public, (b) there shall be no cost to the Borough involved, (c) the Borough agrees to and has access to maintain such lands, and (d) the open space shall be in acceptable condition to the Borough at the time of transfer.

(4) *Dedication of Easements.*

(a) The Borough or County may accept, but shall not be required to accept, easements to any portion or portions of the open space.

(b) In such cases, the land remains in the ownership of the individual, condominium, or homeowners association while the easements are held in public ownership. The County shall accept the easements only in accordance with the provisions of Act of January 19, 1958, P.L. (1967) 992, No. 442, 32 P.S. §5001 *et seq.* and County plans. The Borough may accept such easements as it sees fit. In either case, there shall be no cost to County or Borough for acquisition or maintenance. The Borough may require this method where it seems this is the most appropriate way of preserving land in open space. In planned residential developments,

performance standard subdivisions, single-family detached clusters, and mobile home parks, this provision for the ownership and preservation of open space can not be used except for open space incorporated in required buffer yards.

(5) *Transfer to a Private Conservation Organization.* With permission of the Borough, an owner may transfer either the fee simple title, with appropriate deed restrictions running in favor of the Borough, or easements, to a private nonprofit organization, among whose purposes are to conserve open space land and/or natural resources; provided, that: (a) the organization is acceptable to the Borough and is a bona fide conservation organization with perpetual existence; (b) the conveyance contains appropriate provision for proper reverter or retransfer in event that the organization becomes unwilling or unable to continue carrying out its functions; and (c) a maintenance agreement acceptable to the Borough is entered into by the developer and the organization.

(6) *Deed Restrictions.*

(a) Buffer yards, as required by this Chapter, may be held in the ownership of the individual property owners of residential developments. This form of ownership of open space will be subject to the following requirements:

- 1) This form of ownership will be limited to buffer yards.
- 2) It may be used only if approved by the Borough.
- 3) Restrictions, meeting Borough specifications, must be placed in the deed for each property that has buffer within its boundaries. The restrictions shall provide for the continuance of the buffer yard in accordance with the provisions of this Chapter.
- 4) It will be clearly stated in the individual deeds that the maintenance responsibility lies with the individual property owner.

(b) For nonresidential uses, buffer yards, and areas of natural resource features may be held with the ownership of the entire parcel provided the buffer yards and natural features are deed restricted to ensure their protection and continuance.

(c) In the case of residential developments where all of the units are rental, the open space land may be in the same ownership as that of the development provided that the land is deed restricted to ensure its protection and continuance and that a maintenance agreement suitable to the Borough is provided.

(d) For any of these options the Borough may accept, but is not required to accept, an easement to the open space land in the development.

B. Unless otherwise agreed to by the Borough or County, the cost and responsibility of maintaining open space shall be borne by the property owner, condominium association, or homeowners association. If the open space is not properly maintained, the Borough may assume responsibility of maintenance and charge the property owner, condominium association, or homeowners association

a fee which covers maintenance cost, administrative costs, and penalties as stipulated in Part 8 of this Chapter.

(*Ord. 91-6, 6/20/1991, §5.700; as amended by Ord. 2013-1, 6/26/2013*)

§27-508. Prohibited Use.

The following use shall be prohibited:

A. *Obscene Activities, Sales, or Services.*

(1) Any use involving activities which constitute violation of §5903 of the Crimes Code, 18 Pa.C.S.A. §5903, as amended, relating to display, sale, lending, distribution, or exhibiting of obscene and other sexual materials are prohibited in every zoning district.

(2) The exhibition or dissemination of obscene materials, as defined herein, which do not constitute a violation of §5903 of the Crimes Code, 18 Pa.C.S.A. 5903, as amended, shall only be permitted in a zoning district which clearly lists such a use, and all such uses shall be special uses as defined herein.

(*Ord. 91-6, 6/20/1991, §5.800*)

§27-509. Animals and Fowls.

1. In any district the establishment, maintenance, and operation of animal hospitals, boarding stables, dog kennels, boarding kennels, aviaries, or similar facilities for the housing, boarding, service, treatment, care, breeding, or sale of animals and fowls is prohibited, except for the M-R Mining Reclamation District or RC Resort Commercial District where these uses are permitted, or in the I-1 Industrial District where these uses may be permitted by special exception by the Zoning Hearing Board.

2. The provisions of this Section shall not apply to the keeping of pets which are the personal property of persons residing on the premises, provided that such pets shall not create nuisance or health problems. See §27-704.14 of this Chapter.

(*Ord. 91-6, 6/20/1991, §5.900; as amended by Ord. 2004-7, 12/15/2004*)

Part 6**Supplementary Regulations Governing Selected Uses****§27-601. Special Use General Requirements.**

1. Special uses, as enumerated in Schedule 27-I, shall be permitted only upon authorization by the Zoning Hearing Board and review by the Planning Commission; provided, that such uses shall be found by the Zoning Hearing Board to comply with the following requirements and other applicable requirements as set forth in this Chapter:

A. That the use is a permitted special use as set forth in Schedule 27-I hereof.

B. That the use is so designed, located, and proposed to be operated that the public health, safety, welfare, and convenience will be protected.

C. That the use will not cause substantial injury to the value of other property in the neighborhood where it is to be located. A soil erosion and stream sedimentation plan shall be required for each special use.

D. That the use will be compatible with adjoining development and the principal character of the zone district where it is to be located.

E. That adequate landscaping and screening is provided as required herein.

F. That adequate off-street parking and loading is provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting and/or nearby streets and intersections.

G. That the use conforms with all applicable regulations governing the district where located. If no minimum lot size is specified for the specific special use, then the minimum lot sizes in the Table of Performance Standard shall apply. See Table in §27-501.4.E.

2. The Planning Commission and Zoning Hearing Board may use a separately adopted set of standards schedule to assign potential development points in determining the degree to which a proposed special use would meet special use standards.

(*Ord. 91-6, 6/20/1991, §6.100*)

§27-602. Site Plan Review.

1. *Purpose and Procedure.* Site plan review and the submission of a site plan may be required herein for certain “special uses” in accordance with the requirements of the Zoning Hearing Board. At the discretion of the Zoning Hearing Board, the Board may select one of the following three options:

A. No site plan review requirement.

B. Optional site plan review procedure.

C. Site plan review.

The following site plan procedure shall be followed to ensure the safe and efficient movement of traffic, adequate drainage and connection to utilities, compliance with other applicable regulations and to promote the development of an attractive and well-planned Borough; to enhance sound site planning and to best serve the interests of public health, safety, and general welfare and with the objectives of this Chapter.

2. *Optional Site Plan Review Procedure.* In lieu of submittal of all of the site plan requirements itemized below, the Zoning Officer, in behalf of the Board, may require a preliminary sketch site plan, containing lesser information, for unofficial review by the Planning Commission. Such sketch site plan shall be for the purpose of indicating to the Planning Commission the general nature and intent of the proposal which will enable the Commission to present its initial considerations for the purpose of guiding the developer in accordance with these Zoning requirements.

3. *Site Plan Requirements.* When required by the Zoning Hearing Board, the Zoning Officer may require an official site plan. The official site plan shall include the following information:

A. The applicant shall submit three complete sets of site plans certified by a registered engineer or registered surveyor.

B. When a site plan has been officially submitted, it shall be placed on the Borough Planning Commission agenda for review at its next regular meeting, provided the official submission is made 10 days or more before the regular meeting.

C. Within 45 days after the official submission of a site plan, the Planning Commission shall make a written recommendation to the Zoning Hearing Board on whether the plan should be approved or disapproved. The written recommendation shall include the underlying findings and reasons affecting the Planning Commission's recommendation. In making such a recommendation, the Planning Commission may receive advice and review comments from the Borough Engineer or any other competent review authority.

D. The following information shall be included on the site plan:

(1) A statement as to the proposed use of the building or land.

(2) A site layout drawn to a scale of not less than 1 inch equals 100 feet showing the location, dimensions, and area of each lot, the location, dimensions, and height of proposed buildings, structures, streets, roads, and any existing buildings in relation to property and street lines. If the application relates to property which is scheduled to be developed in successive stages, such plans shall show the relationship of the portion scheduled for initial development to the proposed layout of the entire property.

(3) The location, dimensions, and arrangements of all open spaces and yards, landscaping, fences, and buffer yards, including methods and materials to be employed for screening.

(4) The location, size, arrangement, and capacity of all areas to be used for motor vehicle access, off-street parking, off-street loading and unloading, and provisions to be made for lighting such areas.

(5) The dimensions, location, and methods of illumination for signs and exterior lighting.

(6) The location and dimensions of sidewalks and all other areas to be devoted to pedestrian use.

(7) Sewer and water facilities and connections. Provisions to be made for treatment and disposal of sewage and industrial wastes, water supply and storm drainage.

(8) The capacity and arrangement of all buildings, used or intended to be used for dwelling purposes, including information on total land area, area to be reserved in common open space, density, maximum building coverage, total area to be covered with impervious surfaces and other information which will assist the Commission in determining compliance with this Chapter.

(9) A description of any proposed use in sufficient detail to permit the Commission to determine compliance with the performance requirements set forth in §27-505 and the Flood Prone Area Requirements.

(10) Site contours at 5-foot intervals.

(11) All proposed site grading; drainage provisions; road, driveway and parking lot construction and proposals.

(12) A key map showing the entire project and its relation to surrounding properties and existing building thereon.

(13) Soils, slopes, and floodplain delineations.

(14) Certification by engineer or surveyor.

(15) Certification of ownership and acknowledgment of plan by owner or developer.

4. *Site Design Guidelines.* The following guidelines are divided into nine categories to assist the applicant in the preparation of site and building plans and to assist the Planning Commission in the review of all site plans. These guidelines are meant to encourage creativity, innovation and well-designed developments. They not only apply to principal buildings and structures, but also to all accessory buildings, structures, free-standing signs and other site features.

A. *Preservation of Landscape.* Preserve the landscape in its natural state by minimizing tree and soil removal. Ensure that grade changes are compatible with the general appearance of neighboring developed areas.

B. *Relation of Proposed Buildings to Environment.* Relate proposed structure(s) harmoniously to the terrain and to existing buildings that have a visual relationship to the proposed structure(s). To achieve this favorable relationship between existing and proposed uses, create focal points with respect to avenues of approach, terrain features, or other buildings and relate open space between all existing and proposed buildings.

C. *Drive, Parking, and Circulation.* For vehicular and pedestrian circulation, including walkways, interior drives, and parking, give special attention to the location and number of access points to public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, arrangement of safe and convenient parking areas. Design these vehicular and pedestrian areas to enhance the appearance of and access to the proposed buildings and structures and to the neighboring properties.

D. *Surface Water Drainage.* Give special attention to proper site surface drainage to ensure that removal of surface waters will not adversely affect either neighboring properties or the public storm drainage system. Remove and efficiently carry away all stormwater from all roofs, canopies and paved areas. Collect surface water in all paved areas to permit vehicular and pedestrian movement.

E. *Utility Service.* Place electric and telephone lines underground, where

possible. Locate, paint, and undertake any other treatment to ensure that any utilities which remain above ground will have a minimal adverse impact on neighboring properties.

F. *Advertising Features.* Ensure that the size, location, lighting, and materials of all permanent signs and outdoor advertising structures or features will enhance rather than detract from the design of proposed buildings and structures and the neighboring properties.

G. *Special Features.* Provide needed setbacks, screen plantings, and other screening methods for exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures to help make them compatible with the existing or contemplated site design and with neighboring properties.

H. *Performance and Traffic Impact.* Adequately address all problems identified through the application of the traffic impact study and analysis where required.

I. *Land Subdivision Ordinance Requirements.* Where the zoning proposal requires approval under the Borough's Subdivision and Land Development Ordinance [Chapter 22], the site plan may also address the major requirements of that Ordinance.

(Ord. 91-6, 6/20/1991, §6.200)

§27-603. Special Use Guidelines: Adult Facility.

1. Adult facilities or businesses which contain an adult facility section shall comply with the following requirements:

A. An adult facility shall not be located within 1,000 feet of any other adult facility.

B. An adult facility shall not be permitted to be located within 1,000 feet of any public or private school, daycare facility, public recreation facility, or any house of worship.

C. No materials, merchandise, film, or service offered for sale, rent, lease, loan, or for view shall be exhibited, displayed, or graphically represented outside of a building or structure.

D. Any building or structure used and occupied as an adult facility shall be windowless or have an opaque covering over all windows or doors of any area in which materials, merchandise, film, service, or entertainment are exhibited or displayed and no sale materials, merchandise, film, or offered items of service or entertainment shall be visible from outside the structure.

E. No sign shall be erected upon the premises depicting or giving a visual representation of the type of materials, merchandise, film, service, or entertainment offered therein.

F. If all adult facility video tape rental uses are restricted to a discrete small area of 150 square feet or less within a larger non-adult facility business, then the requirements under paragraphs .D and .E, above, only apply to that section of the business which is devoted to an adult facility video tape rental use area within the business space.

2. Adult facilities containing obscene activities, sales, or services are prohibited uses. See §27-508 of this Chapter.

(*Ord. 91-6, 6/20/1991, §6.300*)

§27-604. Special Use Guidelines: Family Care Facility and Group Care Facility.

1. A family care facility and a group care facility shall meet the following general requirements:

A. The site shall be conveniently located in regard to those support facilities that are essential to the functioning of the specific facility. These may include public transportation, medical, educational, recreational, work opportunities; job training, social service, and/or other facilities deemed necessary for the particular use.

B. Each site shall be:

(1) At least 500 feet from another such facility (such distance shall be measured in a horizontal straight line from the nearest point on one lot to the nearest point on the other lot).

(2) Limited to no more than one facility on either side of one street along a two-block area.

(3) Limited to no more than one facility within a two-block area.

(4) Approved for all applicable Federal, State, County, and Borough licenses and permits.

(5) Operated so that all medical, counseling, or other services be provided for the sole benefit of those persons residing in the facility.

(6) Subject to providing off-street parking space for the occupants plus one per employee for the maximum number of employees on any one shift.

2. Additional special requirements shall be met for a small group care facility, large group care facility as follows:

A. Each family care facility shall meet the following requirements:

(1) No more than six residents.

(2) Adequate supervision by people qualified by training and experience in the field for which the family care facility is intended.

B. Each group care facility shall meet the following requirements:

(1) Adequate supervision by people qualified by training and experience in the field for which the facility is intended.

(*Ord. 91-6, 6/20/1991, §6.400*)

§27-605. Special Use Guidelines: Miscellaneous Uses.

1. *Animal Hospitals, Veterinarian Office.*

A. A minimum lot size of at least 2 acres shall be required for those animal hospitals treating small animals (e.g., cats, birds, exotic animals). A minimum lot size of at least 3 acres shall be required for those animal hospitals which house or treat large animals (e.g., cattle, horses, etc.) at the animal hospital.

B. All buildings in which animals are housed or provided care shall be located at least 100 feet from all lot lines. Buildings shall be adequately soundproofed so that sounds generated within the buildings cannot be perceived at the lot lines.

C. Outdoor animal runs may be provided for small animals so long as a visual barrier at least 4 feet in height is provided between the runs and a double evergreen screen at least 6 feet in height is provided around the runs. No animal shall be permitted to use the outdoor runs from 8 p.m. to 8 a.m.

2. *Animal Husbandry.*

A. The use shall be conducted on a lot at least 10 acres in size.

B. Every barn, animal shelter, stable, feed yard, or manure storage area shall be at least 150 feet from all lot lines.

3. *Campground.*

A. No loudspeaker or amplifying device shall be permitted which will project sound beyond the boundaries of the property.

B. No lighting shall be permitted which will shine on adjacent property.

4. *Crematoriums.* Crematoriums shall be screened from any adjacent residential or commercial developed land use. Any smoke vent pipes shall be constructed according to requirements of State and local codes and shall be a minimum of 5 feet higher than the tallest building within 500 feet of the smoke vent pipe.

5. *Forestry, Commercial.*

A. No more than 33 percent of the existing forest land on any lot may be harvested in any calendar year.

B. Erosion and sedimentation control plans shall be approved by the Soil Conservation Service.

C. Replanting plans specifying the type of replanting and the schedule of replanting shall be approved by the Board.

6. *Hospital, Sanatoriums, Private or Parochial Education Institutions.* These special uses shall be permitted only when the applicant meets all of the following guidelines, standards, and requirements:

A. The parcel of land for this special use shall front on a major street. The major street shall have a paved cartway width of at least 40 feet. Vehicular ingress and egress for the special use shall be from a major street.

B. The parcel of land for the special use shall be at least 65,000 square feet in size or approximately 1.5 acres.

C. The minimum yard requirements for the special use shall be at least twice the largest minimum yards required for that zoning district.

D. The parcel of land shall be developed with a buffer screen strip along the inside of the property lines which face residential properties, vacant lots which are zoned to permit residential use and which could be developed for residential purposes or which face any other uses which the Zoning Hearing Board shall deem to be incompatible with the potential special use noise or land use activity.

E. A major traffic and parking impact study shall be prepared by the applicant. If the special use is deemed to have a major traffic and/or parking

impact, then the developer must provide a plan and program to mitigate that impact.

F. Any proposed special use, alteration, or enlargement of a special use shall meet the site plan review and requirements Section of this Chapter.

7. *Junkyards.* Junkyards shall be screened from view from any public street and any developed lot adjacent to the junkyard. See buffer yards and screening standards in Part 5 of this Chapter.

8. *Kennel.*

A. All kennels shall provide the minimum area for kennels required by State regulations.

B. All buildings in which animals are housed and all runs shall be located at least 100 feet from all lot lines.

C. Buildings shall be adequately soundproofed so that sounds generated within the building cannot be perceived at the lot lines.

D. Outdoor animal runs may be provided for small animals so long as a visual barrier at least 4 feet in height is provided between the runs and a double evergreen screen at least 6 feet in height is provided around the runs. No animal shall be permitted to use the outdoor runs from 8 p.m. to 8 a.m.

E. All kennels shall be properly licensed, if so required, by the Commonwealth of Pennsylvania in accordance with Article II of the Dog Law, 3 P.S. §459-201 *et seq.* [Ord. 2013-1]

9. *Outdoor Target Range.*

A. All outdoor target ranges shall have a barrier behind the target area which is of sufficient height and thickness to adequately provide for the public safety.

B. The applicant for the special exception use shall present to the Board a petition which indicates approval of the proposed use by 51 percent of the persons owning, residing, or doing business within a radius of 500 feet of the location of the proposed use. The applicant shall have attempted to contact all eligible locations within this radius, and must supply a list of all addresses at which no contact was made. The circulator of the petition shall subscribe to an affidavit attesting to the fact that the circulator personally witnessed the signatures on the petition and that the same were affixed to the petition by the persons whose names appear thereon. [Ord. 2004-7]

10. *Refuse and Resource Recovery or Co-generation Plants.*

A. The minimum site area for these facilities is listed below:

(1) *Refuse and Resource Recovery.* Minimum of 3 acres.

(2) *Co-generation Plant.* Minimum of 30 acres. A 50-foot landscaped buffer yard shall be required as per §27-504 of this Chapter.

B. These facilities shall comply with the most stringent of Federal, State, regional, and County requirements. Documentation demonstrating compliance from the appropriate agencies shall be submitted with the zoning application.

C. Operation and maintenance of these facilities shall also be in conformance with the appropriate Federal, State, regional, and County agency requirements

which apply to such facilities.

D. The operator of a facility shall take appropriate measures to guarantee that all waste materials shall remain within the vehicles delivering wastes to the facility for treatment or disposal and to promptly remove any such material that may be dropped upon roads or neighboring properties.

E. These facilities shall comply with the performance requirements (§27-505) of this Chapter. For any solid waste or, refuse recovery operations, the following additional standards shall apply:

(1) All loading and unloading shall be conducted within the confines of a building and all buildings except incinerators shall be set back at least 100 feet from all street and property lines. Incinerators shall be set back at 300 feet from all street and property lines.

(2) There shall be no storage of waste, temporarily or otherwise, outside of buildings.

(3) Each facility shall be operated and maintained in such manner as to prevent health hazards, environmental degradation, the attraction, harborage or breeding of insects, rodents, or vectors, and to eliminate conditions which create safety hazards or public nuisances or which impose an undue burden upon the Borough or its municipal services infrastructure.

F. Access to a facility shall be limited in the following manner. Access to the site or facility shall be limited to normal operating hours and attendants shall be present at the site during all operating hours. Gates or other suitable barriers shall be erected at all vehicular entrances or exits of the site to block access to the site or facility when it is not in operation.

11. *Resort Facilities.*

A. Any proposed resort facility should include land development proposals which are compatible with the environmental limitations of the tract. No occupied structures should be constructed in the floodway. Any historic buildings, historic canal artifacts, nationally designated canal walkways, any architecturally significant buildings and/or any archeologically significant sites should be identified. These sites should then be dealt with respect and should be carefully integrated into the proposed resort facility development plan.

B. A major traffic and parking impact study may be required by the Borough. If a traffic study is required by the Borough, it shall be prepared by the applicant. If this special use is deemed to have a major traffic and/or parking impact, then the developer must provide a plan and program to mitigate that impact.

[*Ord. 2004-7*]

12. *Riding Stable, Service.*

A. A minimum lot size of 5 acres plus ½ acre for each additional horse over 10 shall be required.

B. All buildings used to shelter horses and all areas used to corral or pasture horses shall be at least 50 feet from all lot lines in the RC district, and 300 feet from zoning district boundary lines. [*Ord. 2004-7*]

13. *Sanitary Landfills.* The State Department of Environmental Protection

regulations and/or standards for siting sanitary landfills shall be used as guidelines for Zoning Hearing Board approval. [Ord. 2013-1]

14. *Transportation Facility: Public Airport, Private Airport, or Air Strip and Heliport.*

A. The Pennsylvania Bureau of Aviation within the Pennsylvania Department of Transportation shall find the landing area safe and acceptable for licensing for a private airstrip, private airport, or heliport.

B. The Federal Aviation Administration shall have granted approval for the use of the air space.

C. The use shall comply with any other applicable Federal and State regulations and requirements.

D. Areas used for landings, take-offs, and ground circulation shall be located at least 1,500 feet away from adjacent property lines.

E. Heliports located in the RC zoning district shall comply with the following requirements:

(1) Areas used for landings, take-offs, and circulation shall be located at least 500 feet from any residential district, or 200 feet from any other adjacent property line.

[Ord. 2004-7]

15. *Warehousing and Mini Storage.*

A. All storage units shall be fireproof and waterproof. Each shall have separate ingress and egress secured by a locking device.

B. Outdoor storage shall be limited to recreational vehicles, campers, and boats on trailers parked on paved areas. All such items must be licensed and inspected (if applicable), and in operable condition.

C. Trash, garbage, refuse, explosive or flammable materials, hazardous substances, animal, animal carcasses or skins, or similar items shall not be stored.

D. Nothing shall be stored in interior traffic aisles, off-street parking areas, loading areas, or driveway areas.

E. Servicing or repairing of boats, vehicles, trailers, lawn mowers, or any similar equipment shall not be permitted.

F. Adequate lighting shall be provided to illuminate the areas, but directed away or shielded to direct light away from adjacent uses.

16. *Correctional Institutions.*

A. *Eligibility Requirements.* No application for approval of a correctional institution shall be considered or approved unless the following minimum requirements are met:

(1) The site shall contain a minimum area of 35 acres undivided by any highway, right-of-way of any type, stream, lake, or any other natural or man-made feature.

(2) The site shall have a minimum frontage of 250 feet on a collector or arterial street or highway.

(3) The relationship of the site to any existing residence shall be such that

any required or proposed security fencing shall be not less than 375 feet to the nearest portion of the residence.

(4) The relationship of the site to any existing commercial or industrial building shall be such that any required or proposed security fencing shall be not less than 150 feet to the nearest portion of the commercial or industrial building.

(5) The site development plan shall be such that any proposed building housing inmates and any required or proposed maximum security exterior exercise area shall be located and developed consistent with the Floodplain Management Act (1978–166): The Borough Floodplain Ordinance [Chapter 8].

B. *Site Design Standards.* The site shall be improved in accordance with the following minimum requirements:

(1) The building shall be set back a minimum of 300 feet from the right-of-way line of the abutting collector or arterial street.

(2) A landscaping and screening strip not less than 75 feet in width shall be established along all side and rear site lines, unless there is a topographic barrier, wooded area, or other existing natural feature that might take the place of this screening strip. Evergreen trees shall be planted 5 feet in height, 5 feet apart and maintained.

(3) Outdoor exercise and recreation area shall be provided to conform with the American Correctional Association standards for Small Jail Facilities.

(4) Driveways and aisles serving the facility shall have a minimum width of 24 feet.

(5) Parking spaces shall have a minimum dimension of 9 feet by 19 feet and shall be provided as follows:

(a) Staff parking, six spaces plus one space for each seven cells.

(b) Visitor parking, one space for each 16 cells.

(c) Official parking, one space for each 40 cells.

(6) There shall be one loading or receiving space, for commercial deliveries. The loading space shall have a minimum dimension of 10 feet by 40 feet for each 200 cells.

(7) All roads shall be improved with a minimum compacted thickness of 1½ inches wearing course of ID-2 over a minimum of 5-inch BCBC over a minimum 6-inch thick crushed aggregate base course, constructed in accordance with PennDOT standards.

(8) All driveways, aisles, and parking space areas shall be improved with a minimum compacted thickness of 1 inch wearing course over a 3-inch BCBC over a 6-inch crushed stone base course.

(9) Adequate provisions shall be provided by either surface drainage facilities or storm sewer facilities to transport runoff from a 25-year frequency storm without localized flooding of improved areas of the site.

(10) Exterior lighting shall be provided in accordance with the American Correction Standards.

C. *Building Design Standards.* The building shall be designed in conformance

with the Department of Labor and Industry requirements and in conformance with the Department of Justice requirements and receive approval from all appropriate Departments or agencies. The following additional requirements are established by the Borough:

- (1) Maximum two stories and/or 30 feet in height.
- (2) Yard hydrants shall be provided around the perimeter of the building at a spacing not to exceed 350 feet.
- (3) A maximum of two-person cells should be the design standard.

D. *Utility Requirements.* The facility shall be provided with the following:

- (1) Electricity.
- (2) Potable water supply.
- (3) Emergency engine generator sized for the basic building demand and all exterior security lighting.
- (4) Primary water storage for the automatic sprinklers in an amount equal to the total possible flow for ½ hour.
- (5) Wastewater treatment plant or connection to a central sewerage system.

E. *Review Requirements.* The Zoning Officer will review the proposed prison or correctional institutional plans to determine their conformance to the requirements of this Section. This use shall be considered a permitted use subject to the above requirements.

[Ord. 1992-3]

(Ord. 91-6, 6/20/1991, §6.500; as amended by Ord. 92-3, 2/20/1992; by Ord. 2004-7, 12/15/2004; and by Ord. 2013-1, 6/26/2013)

§27-606. Mobile Homes.

1. *Location of Mobile Homes.* Mobile homes erected or placed on individual lots shall be required to have a building permit and a certificate of occupancy prior to habitation and to be firmly anchored to a foundation or slab which are at least the same dimensions as the mobile home's outside (footprint) dimensions. Mobile homes in mobile home parks shall be subject to the requirements and standards of this Section.

2. *License, Application, and Issuance.*

A. No mobile home park shall be operated without a license. Such license shall expire on January, following the issuance, but may be renewed under the provisions of this Chapter for additional periods of 1 year.

B. The application for such license or for the renewal thereof shall be filed in triplicate with the Zoning Officer and shall be accompanied by the appropriate fee as hereinafter provided.

C. The application shall be verified by the applicant and shall contain:

- (1) The name, address, and telephone number of the applicant.
- (2) The nature and extent of his interest in the business for which the license is desired.
- (3) Whether or not applicant is the owner of the real property for which

license is desired and, if not, the name, address and telephone number of the owner thereof.

(4) If the applicant is not the owner of the real property for which the license is desired, the application shall be accompanied by a duly verified statement of the owner of the real property and that the applicant is authorized by him to construct and maintain the mobile home park and to make application for a license therefor.

(5) A description of the premises on which the mobile home park is or will be located as will readily identify and definitely locate same.

(6) The number of units to be contained in said mobile home park.

(7) The date of arrival of each mobile home or trailer unit in the park.

(8) Name and permanent address of owner of mobile home or trailer unit.

(9) Make of mobile home or trailer, state in which registered and registration number.

(10) Year of issuance of registration.

(11) Such other information as may reasonably be required.

D. The application shall be accompanied by three copies of the mobile home park plan, drawn to scale and prepared by a civil engineer or land surveyor duly licensed by the State of Pennsylvania showing in detail the following:

(1) The extent and area used for mobile home park purposes with a location insert in smaller scale showing the park location on the entire property.

(2) Roadways, driveways, and sidewalks.

(3) Location of mobile home lots with dimensions and boundary lines.

(4) Location of parking facilities for cars and tow vehicles.

(5) Method and plan of sewage disposal system showing sizes of pipe and connection locations.

(6) Location and number of auxiliary sanitary facilities including toilets, washrooms, laundries, and utility rooms.

(7) Method and plan of solid waste collection and disposal system.

(8) Plan of water supply showing location of all home and auxiliary connections; all fire hydrants.

(9) Plan of electric power and lighting system, with location of power plug for each lot as well as location and wattage of street lighting facilities.

The above prints will bear the approval of the Pennsylvania Department of Environmental Protection and the Zoning Officer. [Ord. 2013-1]

E. The Zoning Officer shall immediately submit said application and plan to the Zoning Hearing Board who shall promptly consider the application and render a decision. If approved, the Board shall endorse the application in writing with the date thereof and direct the Zoning Officer to issue and record the license. If the application is disapproved by the Board, they shall direct the Zoning Officer to notify the applicant in writing of such disapproval together with the reasons

therefor.

F.

The annual fees, in an amount as established from time to time by resolution by Borough Council, are hereby established for mobile home parks, and are to be paid by the park owner. [Ord. 2013-1]

3. *Mobile Home Parks; Procedure for Construction or Expansion.*

A. All plans for mobile home park expansion shall be first submitted to the Zoning Hearing Board for review and action.

B. If approved by the Board, the Zoning Officer will issue a construction permit with specific reference thereon to the approved plan.

C. When the new section of the mobile home park is completed and ready for occupancy, and complies with all requirements indicated by this Chapter and the Board, the Zoning Officer may issue a certificate of occupancy which entitles the owner to apply to the Borough Secretary for a license for the new section.

4. *General Design Requirements for Mobile Home Parks.*

A. All mobile home parks shall be located on high and well drained land and shall have not less than a total land area of 5 acres.

B. All mobile home parks shall have paved access roads to and from any such site and in no instance shall such sites be in conflict with any other ordinance of the Borough.

C. All streets within any mobile home park shall be not less than 40 feet right-of-way with a paved width of not less than 20 feet and shall meet minimum paving thickness and other requirements as required by the Borough for minor streets. All streets shall be properly drained and shall be kept free of debris or other obstructions to provide clear access for fire, police, or other emergency access.

D. All mobile home parks shall provide not less than 10 percent of the total land area for public open space purposes and such lands shall be improved whereby the same will be accessible to all families residing within said tract and whereby such open space may be used for recreation purposes.

E. All mobile home parks shall provide to each lot line a continuing supply of safe and potable water as approved by the Pennsylvania Department of Environmental Protection as well as a sanitary sewerage disposal system in accordance with, and as approved by, the Pennsylvania Department of Environmental Protection, all such systems being provided to the lot lines of all lots in any such mobile home park. [Ord. 2013-1]

F. There shall be provided in each mobile home park such other improvements as the Commission may require whereby such requirements shall at all times be in the best interests of the public health, safety, and general welfare and may include, but shall not be limited to, garbage and trash collection and disposal facilities as approved by the Pennsylvania Department of Environmental Protection, and an adequate park lighting system. [Ord. 2013-1]

G. No lot in any mobile home park shall be less than 50 feet wide and have less than 5,000 square feet of total lot area exclusive of easements or rights-of-way.

H. No structure located on any lot in any mobile home park shall be closer to

any front lot line than 25 feet; to any side lot line than 8 feet; nor to any rear lot line than 20 feet.

I. All lots in any mobile home park shall be well drained and graded to a point where trailers or mobile homes may be parked so that the parking of the same shall result in safety to all concerned. In all instances as much natural growth as is reasonably possible shall be preserved by any mobile home park developer.

(Ord. 91-6, 6/20/1991, §6.600; as amended by Ord. 2013-1, 6/26/2013)

§27-607. Multi-family Housing and Conversions to Residential.

1. Multi-family dwelling structures are permitted as special uses as set forth in Schedule 27-I provided that central sewer and central water-systems are provided. Minimum lot areas, lot width yard, building height, and maximum lot coverage for multi-family housing structures as special uses shall be those set forth in Schedule 27-II for two-family housing structures within the R-2 Zone.

2. In addition, 300 square feet of usable open space, of less than 15 percent slope and free of health and safety hazards shall be provided for each housing unit. There shall be a maximum of 12 dwelling units per structure.

3. Minimum floor area per dwelling unit shall comply with requirements of subsection .3.A. Buffering and screening from adjacent commercial and/or single-family residential uses may be required by the Board. Landscaping and planting plans shall be prepared and submitted for review and approval of the Board. Conversions to residential use shall meet the Schedule 27-II requirements of the R-2 Residential District for two-family housing. They shall also meet the requirements of subsection .3.A.

A. *Size of Dwelling Units.* In order to promote the public health, safety, and welfare of occupants residing in residential dwelling structures, the following minimum floor areas for human habitation shall be required in all dwelling units designed for permanent occupancy.

(1) *Single Dwelling Unit Structures.* Minimum floor space for human habitation in a detached structure containing only one dwelling unit shall be 720 square feet.

(2) *Two or More Dwelling Unit Structures.* Minimum floor space for human habitation in any structure containing two or more dwelling units shall meet the following requirements:

Number of Bedrooms	Minimum Floor Space (square feet)
Efficiency unit	400 sq. ft.
One bedroom unit	550 sq. ft.
Two bedroom unit	650 sq. ft.
Three or more bedroom unit	775 + 100 sq. ft. for each additional bedroom

No dwelling unit shall be less than 12 feet wide.

(Ord. 91-6, 6/20/1991, §6.700)

§27-608. Public Administration.

1. When public administration uses are special uses, they shall meet the following standards:

A. The character of the proposed public administration uses should be consistent with the intent and purpose of the zoning district.

B. The size, shape, and mass of the building and land use activity should be not more than 10 percent greater in scale than the average of size, shape, and mass of the building within 1,000 feet of the proposed use.

C. The amount of traffic and parking to be generated by the proposed use should not exceed 50 percent of the total of all traffic and parking within 1,000 feet of the proposed use.

2. All public administration uses should be landscaped so that the building mass is blended into the surroundings. Off-street parking areas should be screened from the street view as much as possible.

3. Public administration uses should clearly be related to public administrative activities. For example, any pilot industrial development, business development, housing, or social service should be considered as a separate land use activity and not as public administration land use just because it may be owned by a public or quasi-public organization.

(Ord. 91-6, 6/20/1991, §6.800; as amended by Ord. 94-8, 9/14/1994)

§27-609. Other Special Uses.

Other special uses not separately identified above shall comply with all Federal, State, and County requirements for such uses. A site plan shall be required by the Board. Documentation shall be submitted to the Board indicating compliance with requirements of Federal, State, and County regulations.

A. *Garages, Service Stations, and Body Repair Shops.*

(1) All repair work shall be performed indoors, except fan belt replacement, spark plug replacement, minor carburetor adjustments, and similar minor adjustments.

(2) Pumps, lubricating, or other fuel dispensing devices shall be located at least 15 feet from any street line or highway right-of-way.

(3) All fuel, oil or similar substances shall be stored at least 25 feet distance from any street or lot line.

(4) All automobile parts, dismantled vehicles and similar articles shall be stored within a building:

(5) All body repair work especially spray painting shall be in an enclosed area where paint spray, fumes, dust, and other pollutants are contained within the structure.

(6) Buffer yards shall be required when the property abuts a residential district.

B. *Junk Cars and Unlicensed Vehicles.* All properties shall be in compliance with the Borough of Nesquehoning Abandoned Vehicle Ordinance [Chapter 10, Part 1]. [Ord. 2013-1]

C. *Cluster Development.* Cluster developments shall follow the requirements of Part 5 of this Chapter.

(Ord. 91-6, 6/20/1991, §6.900; as amended by Ord. 2013-1, 6/26/2013)

Part 7**Supplementary Regulations****§27-701. Nonconforming Uses and Buildings.**

Any legal and nonconforming use may be continued, repaired, maintained, and improved in accordance with the regulations of this Section.

A. *Enlargement.* Except for special exception approval of the Board, such nonconforming use or structure may not be enlarged more than 50 percent of the existing floor area and/or lot area and such enlargement shall not exceed the maximum height or maximum building coverage requirements set forth in Schedule 27-II for the district in which such nonconforming use is located.

B. *Restoration.*

(1) If any such nonconforming use is damaged or demolished, a permit for its restoration or reconstruction may be obtained if such application is filed within 90 days of the initial damage or destruction and if restoration is completed within 12 months of the issuance of the permit.

(2) If a nonconforming building is destroyed by fire and/or is demolished by the owner, a new building may be rebuilt on the same foundation or replacement foundation to the same dimensions as existed prior to the fire except that any new construction shall have adequate fire walls, and other minimum requirements of the Pennsylvania Department of Labor and Industry for new construction. [Ord. 2013-1]

C. *Discontinuance.* No such use may be reestablished after it has been discontinued or vacated for a period of 12 months.

D. *Change of Use.* A nonconforming use or structure may be changed to another nonconforming use or structure only if such change is more appropriate to the character of the district in which it is located as determined by the Zoning Officer. [Ord. 2013-1]

E. *Special Exception Nonconforming Use.* The owner or agent of the owner of a nonconforming use may seek relief from the limitations: imposed by paragraphs .B, .C, and .D above. The Zoning Hearing Board may treat the request for relief as if it were a special exception use. The owner will be obligated to justify special exception relief. The Board shall hold a hearing regarding the request. The Board shall also request a Borough Planning Commission recommendation regarding the owner's request. The Board may grant change of use, discontinuance, and restoration relief without limits; however, any building enlargement authorized by special exception shall be no greater than 175 percent of the existing nonconforming building total floor area.

(Ord. 91-6, 6/20/1991, §7.100; as amended by Ord. 2013-1, 6/26/2013)

§27-702. Lot Regulations and Permitted Deviations from Required Areas.

The minimum lot, yard, and height requirements of Part 4 shall prevail in all cases, except as follows:

A. *Existing Nonconforming Lots.*

(1) In any zone, where a nonconforming lot exists, the Zoning Hearing Board may permit development of the nonconforming lot if the applicant can present evidence that any proposed development on the nonconforming lot shall conform to all minimum yards and height of building regulations as prescribed by Schedule 27-II, the Regulations Governing the Size of Lots, Yards, and Buildings of this Chapter. In addition, any proposed development requiring on-lot sewage disposal must produce evidence to the Hearing Board that the nonconforming lot qualifies to receive a sewage disposal permit and that this lot meets the minimum State standards and requirements for safe and healthy disposal of such waste. The burden of proof for all aspects of this application rests with the applicant, not the Hearing Board.

(2) Upon review by of the Board, the zoning application for a subdivision which would create a nonconforming lot may be approved by the Zoning Hearing Board for the purpose of dividing an existing attached single-family structure, a two- or a multi-family structure into separate ownership parcels of land located under the separate dwelling units.

B. *Changes to Conforming Uses and Buildings on a Nonconforming Lot.*

(1) Any conforming use or building on a nonconforming lot may be repaired, maintained, restored, or rebuilt to the same dimensions existing at the time that the use or building was originally constructed or started.

(2) Any enlargement or addition to any conforming use on a nonconforming lot must comply in all respects with the regulations of this Chapter, except that in the case of any enlargement or addition of buildings legally existing at the effective date of this Chapter, the maximum building coverage requirements of Schedule 27-II shall not apply; provided, however, that all of the off-street parking and loading requirements of this Chapter shall be complied with. In such a case the maximum building coverage for the enlarged section shall not exceed 80 percent for commercial and manufacturing buildings or 60 percent for residential buildings. Provided, that in any event, no part of said building or structure shall overhang any lot line. [Ord. 2013-1]

C. *Changes to Conforming Uses and Buildings on a Conforming Lot.*

(1) Any conforming use or building may be repaired, maintained, restored, or rebuilt up to the same dimensions existing at the time that this Chapter was adopted.

(2) Any enlargement of a structure, which houses an existing conforming use, on the same lot, must comply in all respects with the regulations of this Chapter, except that an existing structure legally not in conformance with a side or rear yard setback may be enlarged to line up with and be as wide or as deep as the principal structure on the lot. [Ord. 2013-1]

D. *Height Limitations.*

(1) District height limitations shall not apply to church spires, cupolas and domes, monuments, water and/or cooling towers, chimneys, smokestacks, silos, elevators, fire towers, flagpoles, radio and television towers, masts and aerials (not satellite dishes), public utility poles and towers, bulkheads, gas

tanks, and parapet walls extending not more than 40 percent above the limiting height of the building.

(2) No tower shall be used as a place of habitation or for tenant purposes.

(3) No sign, nameplate, display, or advertising device of any kind whatsoever shall be inscribed upon or attached to any chimney, tower, tank, or other structure which extends above the height limitation of the zone district.

E. *Lot Width.* The minimum lot width of any lot shall be measured along the minimum building setback line as required for the district in which it is located.

F. *Front Yard Exception.* When an unimproved lot is situated between two improved lots, each having a principal building within 20 feet of the side lot line of the unimproved lot, the front yard for the unimproved lot may be reduced to a depth equal to that of the greater front yard of the two adjoining lots; provided, however, that it may not be reduced to below 10 feet.

G. *Front Yard Exception for Corner Lots.* When an unimproved corner lot is situated adjacent to two improved lots, then the front yard of the corner lot may be reduced to the respective front yard of the adjacent lots along the designated front of the corner lot. However, neither the front or the side yard shall be reduced to less than 10 feet.

H. *Side Yard Exception.* When an unimproved lot having 50 feet or less frontage is situated between two improved lots then the side yards of the existing vacant lot shall be not less in width than the respective adjacent side yards in the event a dwelling is erected.

I. *Projections Into Yards.* Projections into required yards shall be permitted as follows [*Ord. 2013-1*]

(1) Bay windows, carports, fireplaces, fire escapes, chimneys, uncovered stairs and landings, and balconies and cornices, canopies, marquees, eaves, or other architectural features not required for structural support may project into the required side, front, or rear yard not more than a total of 2 feet.

(2) Accessory structures may project into yards as set forth in §27-704.1.

(3) Unroofed patios and decks less than 30 inches in height shall have minimum side yard setback of 2 feet. Patios with roofs shall conform with accessory structure setbacks and Uniform Construction Code regulations. [*Ord. 2013-1*]

(*Ord. 91-6, 6/20/1991, §7.200; as amended by Ord. 2013-1, 6/26/2013*)

§27-703. Unique Lots and Building Locations.

1. *Two or More Buildings on a Lot.* Two or more principal buildings located on a parcel in single ownership shall conform to all the requirements of this Chapter which would normally apply to each building if each were on a separate lot.

2. *Lots Fronting on an Alley.* Where individual lots exist at the effective date of this Chapter with frontage only on an alley, the alley shall be construed as a street for application of all the requirements of this Chapter and the district in which said lots are located.

3. *Through Lots.* Where a lot extends from street to alley, then the front lot line shall be the street lot line and the rear lot line shall be the line separating the lot from the alley.

4. *Side Yard of a Corner Lot.* The side yard of a corner lot which abuts a street shall be equal to at least one-half of the required front yard for that street except as per §27-702.G of this Chapter.

5. *Corner Obstruction to Vision.* No obstruction to vision (other than an existing building, post, column, public utility pole or tower, or tree) between 30 inches in height and 8 feet in height shall be erected or maintained on any lot within the triangle formed by the street intersection, created by the right-of-way of each street extended to a point, and a line drawn between two points each located 30 feet from the street intersection. All plant materials shall be kept trimmed to ensure uninterrupted vision for motor vehicle traffic.

(Ord. 91-6, 6/20/1991, §7.300)

§27-704. Accessory Structures and Uses.

1. *Accessory Structures.* All accessory structures shall conform with the minimum yard regulations established in Part 4, except as permitted below:

A. *Unattached Structure Accessory to Residential Buildings.* Structures accessory to residential buildings which are not attached to a principal structure may be erected within the required side and rear yards of a principal structure provided that they conform with the following:

(1) *Maximum Height.* One and one-half stories or 15 feet in height.

(2) *Distance from Side Lot Line.* Not less than 4 feet from the side lot line, except in the case of corner lots where the full side yard as specified in §27-703.5 shall be maintained and except that a common or joint garage which is not part of a principal building may be erected on or along the common boundary line of the adjoining lots. However, each garage must have at least one side yard of not less than 3 feet and a rear setback of not less than 6 feet. [Ord. 2013-1]

(3) *Distance from Rear Lot Line.* Not less than 6 feet from the rear lot line. [Ord. 2013-1]

(4) *Distance from Principal Structure.* Not less than 3 feet from a principal structure. [Ord. 2013-1]

(5) Sheds up to 10 feet by 12 feet or a maximum of 120 square feet without a concrete pad do not require a permit or setback. If the shed, regardless of size, has a garage door the building is considered a garage and not a shed and must comply with all regulations of this Chapter and the Uniform Construction Code, if applicable. [Ord. 2013-1]

B. *Unattached Structures Accessory to Nonresidential Building.* Such accessory structure shall comply with front and side yard requirements for the principal structure and shall have a minimum rear yard of at least 6 feet. [Ord. 2013-1]

C. *Fences and Walls.* Unless specifically noted, the provisions of this Chapter shall not apply to fences, terraces, or walls less than 6 feet in height above the

average natural grade, nor to terraces, steps, unroofed porches, or other similar features not over 3 feet high above the level of the floor of the ground story.

2. *Home Occupations.*

A. A single home occupation per dwelling unit is permitted as an accessory use to a residential structure provided that such home occupations shall be conducted only by residents of the dwelling unit who may not employ more than two additional nonresident persons, that the only external evidence of the home occupation shall have a sign not exceeding 1½ square feet in area. Such home occupations shall be restricted to professional offices, the training of children in small classes, custom dressmaking, millinery or tailoring, women's beauty salons, the rooming or boarding of not more than two persons and bed and breakfast. Any additional home occupation may be permitted as a special exception by the Board if the applicant can prove to the Board that the particular home occupation will be no more harmful than the listed home occupation activities.

B. Bed and breakfast home is a specific type of home occupation which involves short-term lodging rooms where a breakfast meal may be provided. Bed and breakfast home occupations shall meet the following requirements:

(1) The dwelling shall contain a minimum floor area of 2,500 square feet of habitable space as defined in the International Building Code. [*Ord. 2013-1*]

(2) There shall be a ⅓-acre minimum lot size.

(3) A maximum of four bedrooms shall be utilized for lodging rentals, and not more than two adults plus any related children shall be permitted to stay in each room.

(4) The bed and breakfast home use shall be clearly incidental and secondary to the principal use of the building as an owner-occupied primary dwelling of the owner.

(5) In addition to the parking requirements in §27-705 of this Chapter for the principal use; off-street parking shall be provided on the subject property for a number of parking spaces equal to the number of rooms designated for rental use within the bed and breakfast home.

(6) Off-street parking shall be separated from adjoining properties by live evergreen screen planting as per §27-503 of this Chapter. Alternate screening may be recommended by the Planning Commission and approved as a substitute for the evergreen screening by the Zoning Hearing Board.

(7) No sign or other designation of the bed and breakfast home shall be established except as may be otherwise allowed for home occupations under this Chapter.

(8) All refuse receptacles shall be completely screened from view.

(9) Guests shall be permitted occupancy for no more than 14 consecutive days.

(10) Food service shall be limited to breakfast served only to guests lodging at the facility.

(11) Rooms used for overnight accommodations shall be part of the primary residential structure and shall not have been specifically constructed for rental

purposes.

(12) No exterior alterations, other than those necessary to ensure the safety of the structure or its occupants, shall be made to any building for the purpose of providing a bed and breakfast.

3. *Home Gardening, Nurseries, and Greenhouses.* Home gardening and accessory structures used for nurseries or as greenhouses are permitted in residential areas; provided, they are used by the residents for noncommercial purposes, except in compliance with the home occupations provisions set forth above; and, provided further, that these uses shall not include the outdoor storage of equipment and supplies.

4. *Dormitory Accessory Use.* An accessory building for the residency of students, religious orders, teachers, or others engaged in the primary activity of the institution where individuals need to live on the site. The density in such areas shall be based on persons per acre, since dormitories are not family dwellings. The following standards shall apply:

A. *Habitable Area.* Each dormitory resident shall have a minimum of 180 square feet of living/sleeping space within the building.

B. *Density Requirements.* The net density of the dormitory area shall not exceed 16 persons per acre of the lot.

C. *Parking Requirement.* Dormitories shall have the same requirement as accessory dwelling units in the parking schedule of this Chapter [§27-705.3.K].

5. *Outside Storage or Display Accessory Use.*

A. *Permitted Uses.* Outside storage or display, other than storage as a primary use of the land, necessary but incidental to the normal operation of a primary use, subject to the following additional provisions:

(1) No part of the street right-of-way, no sidewalks or other areas intended or designed for pedestrian use, no required parking areas, and no part of the required front yard shall be occupied by outside storage or display.

(2) Outside storage and display areas shall occupy an area of less than one-half the existing building coverage.

(3) Outside storage and display areas shall be shielded from view from the public streets and adjacent lots.

B. *Special Exception Uses.* Uses requiring more substantial amounts of land for storage or display may be exempt from the provisions of paragraphs .A(2) and .A(3) above when granted as a special exception by the Zoning Hearing Board. Such uses shall be subject to the following additional provisions:

(1) Neither the principal use nor the outside storage and display use shall encroach upon the minimum required yards and buffer yards of the district.

(2) In particular, uses appropriate for consideration under this provision include, but are not limited to, public or private educational institutions, churches, office buildings, motor vehicle sales, and extraction of stone, sand, or gravel.

(3) Among the uses that shall not be considered appropriate for inclusion under this provision are retail stores, repair shops, gasoline service stations, automobile repair garage, sale of automobile accessories, wholesale business

and storage, contractor offices and shops, large retail stores, and crafts.

6. *Temporary Accessory Structure.* A temporary permit may be issued for structures or uses necessary during construction or other special circumstances of a non-recurring nature, subject to the following additional provisions:

A. *Time Limit.* The time period of the initial permit shall be 6 months. This permit may be renewed for 3-month time periods.

B. *Nonconforming Structures.* Temporary nonconforming structures or uses shall be subject to authorization by the Zoning Hearing Board at their discretion if the structure is deemed to be safe. Compliance with International Code or equal would constitute a safe nonconforming structure. [Ord. 2013-1]

C. *Removal of Structure.* Such structure or use shall be removed completely upon expiration of the permit without cost to the Borough.

7. *Off-Street Parking Accessory Use.* Off-street parking is subject to the provisions and requirements of §27-705 of this Chapter. Boats and other recreation vehicles (RVs) may only be parked in the rear yard of the property occupied by the RV owner. No RV may be occupied while parked as an accessory use. [Ord. 2013-1]

8. *Fence and Wall Accessory Uses.* Permitted accessory uses may include fabricated or natural barriers, dividers, fences, terraces, and walls of 6 feet or less in height with the height measured from the average grade of the lot in vicinity of the fence and they shall conform with the following:

A. *Maximum Height.* Except for the I-1 Industrial and C-2 General Commercial Districts, fences, partitions, or walls shall not exceed 6 feet in height above the natural grade, except that front yard fences shall not exceed 4 feet in height, nor shall front yard fences obstruct vision of oncoming traffic as defined by §27-703.5 of this Chapter.

B. *Setback Requirements.* A side yard fence may be constructed along or up to the side property line provided that poles and all fence parts and vegetative growth will not encroach on adjacent property as with a common fence as provided for below. Where properties abut an alley in the rear, fences may be installed in accordance with requirements for side yard fences above, but not across any right-of-way or walkway. [Ord. 2013-1]

C. *Common Fences.* Common fences may be erected on the property line with the written consent of both owners. No fence shall be constructed or maintained in the vicinity of any street intersection or driveway entrance which provides an obstruction to vision, thereby creating potential vehicular safety hazards. An "obstruction to vision" is defined as any fence which obstructs vision between a height of 30 inches and 8 feet above the center line grade of the adjoining street or streets, within a distance of 30 feet from the point of intersection of intersecting streets as measured back along the street right-of-way lines from their point of intersection.

The foregoing provisions shall not apply In the RC District. [Ord. 2004-7]

9. *Private Outdoor Swimming Pools.* A single private outdoor swimming pool per dwelling unit is permitted as an accessory use to a residential structure provided that such swimming pool is for the private use of the residents of the dwelling unit or for their guests and provided that such pool is not located closer than 3 feet to any property

line. Pools capable of holding 24 inches or more of water must comply with the UCC [Chapter 5, Part 1]. [Ord. 2013-1]

10. *General Sign Regulations.* The following regulations shall apply to all sign uses:

A. *Zoning Permit for a Sign.* A zoning permit shall be required for the erection or alteration of any sign which has a total sign surface area of more than 6 square feet.

B. *Artisan's Signs.* Signs of mechanics, painters, and other artisans may be erected and maintained during the period such persons are performing work on the premises on which such signs are erected, provided:

- (1) The size thereof is not in excess of 12 square feet.
- (2) Such signs are removed promptly upon completion of the work.

C. *Directional Signs.* Signs indicating the location and direction of premises available for or in process of development, but not erected upon such premises, and having inscribed thereon the name of the owner, developer, builder, or agent, may be erected and maintained; provided:

- (1) The size of any such sign is not in excess of 10 square feet and not in excess of 5 feet in length.
- (2) Not more than one such sign is erected on each 500 feet of street frontage.
- (3) The individual who will erect such directional sign shall obtain permission from the property owner on which the sign is to be erected and shall remove such sign or signs upon completion of the project.

D. *Vehicle Signs.* Any vehicle to which a sign is affixed in such a manner that the carrying of such sign or signs no longer is incidental to the vehicle's primary purpose but becomes a primary purpose in itself, shall be considered free standing signs and as such, be subject to the provisions regarding free standing signs in the districts in which such vehicle is located.

E. *Temporary Signs.* All temporary signs erected for a special event or activity which is legally permissible in the Borough are permitted in all districts subject to the following:

- (1) A zoning permit shall not be required provided that such signs shall be removed by the property owner within 15 days after the circumstances leading to their erection no longer applies; and, provided that such signs do not exceed three in number or together total more than 18 square feet in area; and, provided that they are located on private property and not in any public right-of-way.

F. *Sign Location and Characteristics.* All free-standing advertising signs shall conform to the side yard, front yard, and rear yard requirements established for principal buildings in the district in which the sign is located, except as otherwise provided for in this Chapter. [Ord. 2013-1]

- (1) *Free-Standing Signs.* All free standing signs shall be set back a minimum or one-half the distance required for other buildings and structures. No free standing signs in other than a residential or CO-1 zone shall extend

within 25 feet of any residential or CO-1 Conservancy District boundary line. The location of signs for service stations shall not be located within any dedicated street right-of-way. No new free-standing signs shall be permitted in the C-2 District. [Ord. 2013-1]

(2) *Wall Signs.* Wall signs shall not extend beyond the edge of any wall or other surface to which they are mounted, and shall not project more than 18 inches from its surface.

(3) *Tree and Rock Signs.* Signs attached to or applied to trees, rocks, or other natural features shall not be permitted.

G. *Signs Within Street Right-of-Way.* No signs except those of a duly constituted governmental body, including traffic signs and similar regulatory notices, shall be allowed within street lines unless specifically authorized by other ordinances and regulations of the Borough.

H. *Access to Buildings.* No sign shall be erected or maintained so as to prevent free ingress or egress from any door, window or fire escape, or so as to prevent free access from one part of a roof to any other part. No sign of any kind shall be erected to a stand-pipe or fire escape.

I. *Traffic or Visual Obstruction.* No sign shall be erected at the intersection of streets so as to obstruct free and clear vision, and if located within the direct line of vision of any traffic control sign or signal, shall not have flashing or intermittent lighting, or red, green, or amber illumination nor a shape which resembles a stop sign or other common traffic control devices.

J. *Sign Illumination.* Signs may be illuminated by direct lighting but shall have such lighting shielded so no direct light will shine on abutting properties or in the normal line of vision of the public using the streets or sidewalks. No flood or spot lights shall be mounted higher than 30 feet above level ground.

K. *Sign Construction.* All signs except temporary signs shall be constructed of durable material and kept in good condition and repair. Electrical signs shall be subject to the performance criteria of the Underwriters Laboratory, Incorporated, and to periodic inspection by the Borough Code Enforcement Officer.

L. *Nonconforming Signs.* Signs existing at the time of passage of this Part which do not conform to the requirements of the Part, shall be considered nonconforming signs. However, nonconforming signs may be repainted, repaired, (including lighting) or replaced provided such repainted, repaired, or replaced signs do not exceed the dimensions of the existing sign. Copy may also be changed. Nonconforming signs, once removed for a period of 90 days, may be replaced only with signs which conform to provisions of this Part.

M. *Electronic Signs.*

(1) *Purpose.* The purpose of this paragraph is to regulate the use of electronic signs within the Borough to minimize the impact of such signs that may distract drivers and be detrimental to neighboring properties, and to limit the aesthetic impact that a proliferation of electronic signs could have on Borough properties.

(2) Where permitted, all electronic signs shall comply with the following requirements:

(a) *Message Display.*

1) Each message displayed on an electronic sign must be static or depicted for a minimum of 1 minute and the screen must completely fade-out before a new message is displayed.

2) Where text is displayed on a background, the text shall be brighter than the background, i.e., dark text shall not be displayed on a bright background.

3) Each complete message must fit onto one screen, i.e., no scrolling or incomplete messages permitted.

(b) *Illumination.* Lighting from the sign must not exceed an intensity of 0.5 footcandles of light at the property line, as measured with a portable hand-held light sensor.

(c) *Content.* The display of electronic signs may only be used to advertise goods and services sold on the premises, time and temperature, and public service announcements.

(d) The addition of any electronic sign to any nonconforming sign is prohibited.

(e) No more than one electronic sign is permitted per premises, regardless of number of signs permitted or the number of uses.

(f) Electronic signs shall comply with other applicable sign regulations.

[*Ord. 2013-1*]

N. Flashing signs, with the exception of the time and temperature portion of a sign or an electronic display screen or electronic message center, where permitted. Beacon lights. [*Ord. 2013-1*]

O. Electronic signs are not permitted in connection with a residential use. [*Ord. 2013-1*]

11. *Area Computation of Signs.* The following shall be used for computing area of signs:

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

B. Where the sign consists of individual letters, pictures, or symbols attached to or painted on a surface, building, wall, or window, the area shall be considered to be that of the smallest rectangle which encompasses all of the letters, pictures, and symbols.

C. In computing square foot area of a double-faced sign, only one side shall be considered provided both faces are identical. If the interior angle formed by the two faces of the double-faced sign is greater than 45 degrees, then both sides of such sign shall be considered in calculating the sign area.

12. *Signs in Residential and Open Space Zones.*

A. In R-1, R-2, CO-1, and M-R subject to the provisions of this Part, the

following signs shall be permitted:

Type of Sign	Maximum Area (sq. ft.)
Identification signs	1.5
Real estate signs	6
Institutional signs	16
Business signs pertaining to nonconforming uses	See paragraph .B(5) below
Electronic sign for all permitted uses for general purpose (one sign per premises) [Ord. 2013-1]	40% of total permitted sign area
Electronic sign for theater for marquee [Ord. 2013-1]	50

B. Signs in R-1, R-2, R-3, CO-1, and M-R shall be subject to restrictions as follows:

(1) *Projecting Signs.* In R-1 and CO-1 zones, projecting signs shall not be permitted.

(2) *Height Limitations.* In R and CO-1 zones, the highest portion of a sign attached to a building shall not be above the first story of the building, and signs on other structures shall not exceed 15 feet in height.

(3) *Number of Signs.* The number of signs shall be restricted to one sign for each street which the property fronts and for each dwelling unit, entrance, exit or building to which it pertains.

(4) *Flashing and Mobile Signs Prohibited.* No signs in an R-1, R-2, or CO-1 zone shall display any flashing lights or motion, whether powered by wind or otherwise. Any such sign presently existing in an R-1, R-2 or CO-1 zone may continue in use for a period of 1 year from the effective date of this Chapter, but thereafter all flashing light and motion features shall be removed from such sign.

(5) *Signs Related To Nonconforming Uses.* Identification, institutional and business signs related to nonconforming uses in R-1, R-2, and CO-1 zones may be continued in use but shall not be enlarged. Where the nonconforming use is lawfully changed to another nonconforming use, there shall be permitted a new sign, the same size as the old sign, or a sign having an area not greater than 1 square foot per foot frontage of the zoning lot, whichever area is smaller. Such sign shall be placed flat against the building. In the case of corner properties, the frontage on the shorter side shall be the frontage used for the purpose of this Section.

[Ord. 2013-1]

13. *Signs in Commercial, Industrial, and Mining Zones.* In C-1, C-2, I-1, and M-R subject to the provisions of this Section, the following signs shall be permitted if an “x” is shown in the appropriate line and column:

Type of Sign	Zone			
	C-1	C-2	I-1	M-R
Type				
Advertising sign	x	x	x	x
Business sign	x	x	x	x
Identification sign	x	x	x	x
Institution sign	x	x	x	x
Real estate sign	x	x	x	x
Electronic sign for all permitted uses for general purpose [Ord. 2013-1]			x	x
Electronic sign for theater for marquee [Ord. 2013-1]	x	x		
Construction				
Free standing sign	x		x	x
Wall sign	x	x	x	
Projecting sign*	x	x	x	
Height				
Signs projecting above roof line			x	
Maximum height above roof line			10 ft.	
Maximum height of free-standing sign 30 ft.			30 ft.	30 ft.
Area				
Maximum area of sign square foot per foot of lot frontage**	2	2	3	3

x indicated permitted in district.

No sign shall project from the face of a building or structure more than 4 feet. [Ord. 2013-1]

** Corner properties are limited by the lesser of their two frontages. On through-lots with two frontages, additional sign area, measured in relation to 50 percent of the second frontage, shall be permitted.

B. Signs in C-1, C-2, C-3, I-1, and M-R shall be subject to restrictions as follows:

(1) *Maximum Area of Signs.* In no case shall single size structure exceed 300 square feet.

(2) *Flashing and Mobile Signs.* Mobile (moving) signs are prohibited. Flashing signs may be permitted as a special use in C-1, C-2, I-1, and M-R Districts. Criteria for approving flashing signs shall include the unique article and aesthetic values of the sign proposed as well as its negative impact upon surrounding land uses, particularly residential uses.

(3) *Marquees.* Marquees are permitted for theaters and hotels only. They may not extend beyond the curb line.

(4) *Minimum Clearance of Projecting and Free Standing Signs.* All projecting or free-standing signs shall have a minimum vertical clearance of 14 feet above any vehicular public way and 9 feet above any pedestrian public way.

(5) *Political Signs.* All political signs in clear sight triangle may be removed by Borough. [Ord. 2013-1]

14. *Animal Pet Accessory Use.*

A. The keeping of a reasonable number of animal pets is permitted as an accessory use provided that the animals, their litter and presence do not pose a public health, safety, or nuisance problem for the neighborhood. A reasonable number of small animals and fowl (dogs, cats, chicken, and ducks) may be kept on a lot accessory to the residential use. Keeping of more than 5 small pets or more than 14 fowl shall be considered to be an agricultural use or a kennel commercial use. Also see §27-509 of this Chapter.

B. Large animals (cows, horses, goats, and pigs) may be kept on an acre lot or larger as an accessory residential use. The density of large animals shall be no greater than one animal per acre of land. All large animals shall be kept at least 50 feet from any lot line. [Ord. 2013-1]

C. The reasonable number of animals per lot shall be determined by the Board upon appeal by any interested party. The Board shall look at the density of people per acre, the number of animals per acre and the method of controlling the animals' excrement, noise, odor, and general impact upon the neighborhood. The Board shall use the Borough Comprehensive Plan intent, purpose, and density recommendations as a guide in making a decision regarding the number of humans and animal pets that are considered to be the density limit from a public health, safety, and welfare standpoint. [Ord. 2013-1]

(Ord. 91-6, 6/20/1991, §7.400; as amended by Ord. 2004-7, 12/15/2004; and by Ord. 2013-1, 6/26/2013)

§27-705. Off-Street Parking and Loading.

1. *Off-Street Parking.* In all districts, off-street parking spaces shall be provided as set forth in Schedule 27-III whenever any building is erected, enlarged, or converted.

2. *Off-Street Loading.* Every commercial, industrial, resort, or other building which requires the receipt or distribution by vehicles of materials or merchandise shall provide one off-street loading space for each 25,000 square feet of gross building ground floor area or part thereof, and each such space shall be at least 300 square feet in area. An off-street loading space may occupy a part of the required yard if the space is developed consistent with the design requirements for loading spaces described in this Part of this Chapter. Said loading spaces shall apply only to any new construction, new uses or to the enlarged section of any addition which may be approved by the Borough after the effective date of this Chapter.

3. *General Regulations Applying to Required Off-Street Parking Facilities.*

A. *Existing Parking.* Structures and uses in existence at the date of adoption of this Chapter shall not be subject to the requirements of this Section so long as the kind or extent of use is not changed, and provided that any parking facility is

now serving such structures or uses shall not in the future be reduced below such requirements.

B. *Change in Requirements.* Whenever there is an alteration of a structure or a change or extension of a use which increases the parking requirements according to the parking standards of Schedule 27-III, the total additional parking required for the alteration, change, or extension shall be provided in accordance with the requirements of that Section.

C. *Continuing Character of Obligation.* All required parking facilities shall be provided and maintained so long as the use exists where the facilities were designed to serve. Off-street parking facilities shall not be reduced in total extent after their provision except in conformity with the requirements of this Section. Reasonable precautions shall be taken by the owner or sponsor of particular uses to assure the availability of required facilities to the employees or other persons whom the facilities are designed to serve. Such facilities shall be designed and used in such a manner as to at no time constitute a nuisance or a hazard or unreasonable impediment to traffic.

D. *Joint Use.* Two or more uses may provide for required parking in a common parking lot if the total space provided is not less than the sum of the spaces required for each use individually. However, the number of spaces required in a common parking facility may be reduced below this total by approval of the Zoning Hearing Board if it can be demonstrated to the Board that the hours or days of peak parking needed for the uses are so different that a lower total will provide adequately for all uses served by the facility.

E. *Fractional Spaces.* Where the computation of required parking space results in a fractional number any fraction of the next higher number shall be counted as one.

F. *Location of Off-Site Parking Lot.* Required off-street parking spaces shall be on the same lot or premises with the principal use served, or, where this requirement cannot be met, within 300 feet of the principal use served within the same district.

G. *Maintenance of Parking Area.* For parking areas of 10 or more vehicles, the area not landscaped and so maintained, including driveways, shall be graded, surfaced with dustless, durable, all-weather pavement parking surface, and drained to the satisfaction of the Borough Engineer to the extent necessary to prevent dust, erosion, or excessive water flow across streets or adjoining property. All off-street parking stall spaces shall be marked so as to indicate their location. [Ord. 2013-1]

H. *Lighting.* All parking areas and driveways serving commercial uses shall be adequately illuminated during the hours of use between sunset and sunrise.

I. *Home Occupation Parking Requirements.*

(1) Home occupations shall provide the following number of off-street parking spaces:

(a) The required number of spaces for the residential structure as shown in Schedule 27-III.

(b) The required number of spaces for the most applicable use listed

in Schedule 27-III to which the home occupation is most similar, or if greater, one off-street parking space for each nonresident employee and one additional for each roomer, student, patron, patient, customer, or other visitor which the home occupation serves during any 1-hour period of maximum use.

(2) The total number of off-street parking spaces for a home occupation may be reduced by the number of legal curb parking spaces which exist directly abutting the home occupation.

J. *Screening and Buffering.* Screening shall be provided as required in §27-503.

4. *Design Standards.* The design standards specified below shall be required for all off-street parking facilities with a capacity of three or more vehicles built after the effective date of this Chapter.

A. *Minimum Parking Stall and Aisle Standards.* Parking lot dimensions shall be no less than those listed in the following table:

Angle of Parking	Parking Width	Stall Depth	Aisle Width	
			One-way	Two-way
90	10'	21'	18'	21'
45	10'	20'	15'	18'
30	10'	18'	12'	15'
parallel	8'	22'	12'	18'

B. Dimensions of valet parking facilities located in the RC District, shall be no less than those listed in the following table:

Angle of Parking	Parking Width	Stall Depth	Aisle Width	
			One-way	Two-way
90	9'	19'	18'	21'
45	9'	19'	15'	18'
30	9'	18'	12'	15'
parallel	8'	22'	12'	18'

[Ord. 2004-7]

C. *Parking Stall Access Standards.* Parking areas shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other motor vehicle.

D. *Parking Lot Access Standards.*

(1) The width of entrance and exit drives shall be:

- (a) A minimum of 12 feet for one-way use only.
- (b) A minimum of 20 feet for two-way use.
- (c) A maximum of 40 feet at the street line.

(2) Any use with less than 100 feet of lot frontage on a public street shall

have no more than one accessway to each such street. Any business or other use with 100 feet or more of frontage on a public street shall have no more than two accessways to any one street for each 300 feet of frontage. Where more than one accessway is permitted, their center line, shall be placed at least 80 feet apart. On all corner properties, they shall be spaced a minimum of 60 feet, measured at the curb line, between the center line of any entrance or exit drive and the street, line or the street parallel to said access drive.

E. *Direct Access to Parking Stalls.* In no case shall parking areas for three or more vehicles be designed to require or encourage cars to back into a public street in order to leave a lot.

F. *Lot Line Setback Standards.* For all uses except for townhouses and row house development, all parking spaces and access drives shall be at least 2 feet from side and rear lot lines. [Ord. 2013-1]

G. *Street Line Setback Standards.* Except where entrance and exit drives cross street lines, all parking areas for any purpose other than single-family residences shall be physically separated from any public street by a concrete curb, sidewalk (where required) and by a planting strip which shall be not less than 2 feet in width.

H. *Lighting Standards.* All artificial lighting used to illuminate any parking space or spaces shall be so arranged that no direct rays from such lighting shall fall upon any neighborhood property.

I. *Safety Standards.* Such facilities shall be designed and used in such a manner as to at no time constitute a nuisance or a hazard or unreasonable impediment to traffic or emergency fire or ambulance access to adjacent buildings. Adequate wheel stops, curbs and/or other barriers shall be provided to protect buildings and sidewalks from vehicular encroachment.

(Ord. 91-6, 6/20/1991, §7.500; as amended by Ord. 2004-7, 12/15/2004; and by Ord. 2013-1, 6/26/2013)

§27-706. Temporary Uses, Excavations, and Fill Activity.

1. *Special Events or Activities.*

A. Any applicant may submit a zoning application for the purposes of requesting permission to undertake or conduct a special event, activity or use (hereinafter referred to as a “temporary use”) that shall be temporary in nature. Such a temporary use shall exist for a period of time not to exceed 1 year. Said application shall be submitted to the Borough in accordance with the special exception use procedure established in §27-902, and the temporary use shall be clearly related to the requirements for permitted uses set forth in this Chapter. Said application shall clearly set forth the following:

(1) The exact purpose, nature, and location of the proposed temporary use, including all private and public lands and right-of-way involved.

(2) The relationship of the temporary use to other uses permitted in the Zoning District.

(3) The number of employees, spectators, participants, or other persons or agencies, equipment or other paraphernalia to be involved or used in such

temporary use.

(4) Evidence that the Borough will be held harmless from any unforeseen adverse consequences resulting from such temporary use and evidence of the availability of sufficient insurance coverage.

(5) An evaluation of the traffic impact of said use.

(6) The length of time for which a temporary use permit is requested.

(7) Any special requirements, hardships, or conditions to be imposed on the Borough, or residents of the Borough, and on other uses which may be affected by the temporary use.

B. The Zoning Hearing Board shall review the proposed application as a special exception use and shall reach a decision after receipt of a recommendation from the Planning Commission as required by this Chapter.

C. The Zoning Hearing Board may reject the application or may determine that the temporary use is needed to support an existing or permitted use or to serve the needs of the majority of the Borough or neighborhood residents affected by such use. Any approval of such a temporary use shall be subject to the applicable safeguards and procedures established elsewhere in this Chapter.

(Ord. 91-6, 6/20/1991, §7.600; as amended by Ord. 2013-1, 6/26/2013)

**Schedule 27-III
Regulations for Off-Street Parking Spaces (a)**

Type of Use (b)	No. of Parking Spaces Required
1. Recreation and Open Space Uses	
Forestry, park use	1 per employee
Outdoor recreation	1 per potential peak 1 for every 3 person capacity, whichever is greater
Indoor recreation	1 for every 3 persons capacity or 1 for ever whichever is greater.
2. Residential	
Conventional residential dwelling units	2 per dwelling unit
Units for the elderly (over age 61)	1 per 2 dwelling unit
Conversion and accessory dwelling units	1 per 1 dwelling unit
Home occupations	1 for every 300 sq. ft. home occupation space
3. Lodging	
Motels, hotels, inns, bed and breakfast establishments	4 for every 3 sleeping rooms
Rooming houses and dormitories	1 for every bed
4. Eating and Drinking Establishments	
Restaurants and dining facilities	1 for every 2.5 seats
Nightclubs, taverns, bars, cocktail rooms	1 for every 2 seats
5. Membership for Private Clubs, Social Halls and Lodges	1 for every 200 gross sq. ft.
6. Commercial	
Retail, services, administrative offices, shopping centers and commercial entertainment	1 for every 300 gross sq. ft.
Banks and financial institutions	1 for every 200 gross sq. ft.
Gasoline service stations	1 for each 200 gross sq. ft.
Auto rentals or sales	1 for each 100 gross sq. ft.
Funeral homes	1 for each 4 chapel seats plus 1 for 2 employees
Bowling alleys	5 for each alley
Adult facility	1 for each 100 gross sq. ft. plus 1 for each employee
7. Medical and Related Facilities	
Hospitals	1 for every 1.5 beds
Nursing homes and group homes	1 for every 3 beds

Type of Use (b)	No. of Parking Spaces Required
Medical, dental and veterinarian offices and clinics	1 for each employee
8. Educational Facilities	
Commercial and other schools	1 for every 10 classroom seats
9. Places of Assembly	
Churches, theaters, auditoriums and other places of assembly including spectator recreation and cultural facilities	1 for every 3.5 seats or persons to be accommodated
10. Manufacturing and Wholesale or Warehouse Establishments	1 for each 3 employees plus 1 for each 1,000 gross sq. ft.

Footnotes:

- (a) This table applies only to new construction or to new uses and to the enlarged section of any addition. For multi-purpose facilities, use the cumulative total of all uses included.
- (b) For any use not specifically listed, the Zoning Officer shall apply the requirements of that listed use which he determines to be most similar.

(Ord. 91-6, 6/20/1991, Schedule III)

Part 8**Administration and Enforcement****§27-801. General Procedure.**

1. *General Sequence of Steps.* All persons desiring to undertake any new construction, structural additions, or changes in the use of a building or lot shall apply to the Zoning Officer for a zoning permit by filling out the appropriate application form and by submitting the required fee. The Zoning Officer will then either issue or refuse the zoning permit or refer the application to the Zoning Hearing Board or other appropriate agency. After the zoning permit has been received by the applicant, he may proceed to undertake the action permitted in the zoning permit and upon completion of such action, shall apply to the Zoning Office for a certificate of occupancy. If the Zoning Officer finds that the action of the applicant has been taken in accordance with the zoning permit, he will then issue a certificate of occupancy allowing the premises to be occupied.

2. *Zoning Permit Types.* Under the terms of this Chapter, the following classes of zoning permits may be issued:

A. *Permitted Use.* A zoning permit for a permitted use may be issued by the Zoning Officer of his own authority.

B. *Special Uses.* A zoning permit for a special use may be issued by the Zoning Officer after review by the Planning Commission and upon the order of the Zoning Hearing Board.

C. *Zoning Permit After an Appeal or a Request for a Variance.* A zoning permit may be issued by the Zoning Officer upon the order of the Zoning Hearing Board and after a public hearing held by the Zoning Hearing Board for the purpose of deciding upon the appeal or a request for a variance.

D. *Temporary Permits.* A temporary permit may be authorized by the Zoning Hearing Board as a special exception for a nonconforming structure or use which it deems necessary to promote the proper development of the community, provided that such nonconforming structure or use shall be completely removed upon expiration of the permit without cost to the Borough. Such a permit shall be issued for a specified period of time not exceeding 1 year, and may be renewed, annually for an aggregate period of not more than 3 years. Fees for such permits shall be the same as for zoning permits.

3. *Preliminary Opinion.* A landowner may seek a preliminary opinion from the Zoning Officer that the ordinance or map under which he proposes to build is free from challenge. The specific procedure for this opinion is presented in Part 8 of this Chapter. (Ord. 91-6, 6/20/1991, §8.100)

§27-802. Zoning Permit and Zoning Officer.

This Chapter shall be enforced by the Zoning Officer who shall be appointed by the Borough Council. No zoning permit or certificate of occupancy shall be issued by him except where all the provisions of this Chapter have been complied with.

A. *Zoning Permits.*

(1) *General.* No building or structure shall be erected, added to, until a permit therefore has been issued by the Zoning Officer, except upon a written order of the Zoning Hearing Board. No such zoning permit or certificate of occupancy shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any of the provisions of this Chapter.

(2) *Information Necessary for Application.* There shall be submitted with all applications for zoning permits two copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, any existing building, and such other information as may be necessary to determine and provide for the enforcement of this Chapter.

(3) *Public Record.* One copy of such layout or plot plan shall be returned when approved by the Zoning Officer together with such permit to the applicant upon the payment of a fee as indicated in this Part. The second copy with a copy of each application with accompanying plan shall become a public record after a permit is issued or denied.

(4) *Sewage Disposal.*

(a) Where centralized sewage service is available, the lot proposed for development under this Chapter shall be connected to the system. All on-lot sewage disposal installations shall conform with the Pennsylvania Department of Protection regulations. [Ord. 2013-1]

(b) No plot plan shall be approved by the Zoning Officer in any zone unless conformity is certified on the plan.

(5) *Issuance of Permits.*

(a) It shall be the duty of the Zoning Officer to issue a zoning permit, provided he is satisfied that the structure, building, a sign, parking area of premises, and the proposed use thereof, conform with all requirements of this Chapter, and, that all other reviews and actions, if any called for in this Chapter, have been complied with and all necessary approvals secured therefor.

(b) The issuance of any building, occupancy, or use permit under the terms of this Chapter is not intended to assure, suggest, or imply that any public access or roadway is available to the structure, nor does it commit the Borough to provide or to maintain any public access or roadway to or from the structure involved.

(6) *Denial of Permits.* When the Zoning Officer is not satisfied that the applicant's proposed development will meet the requirements of this Chapter, he shall refuse to issue a zoning permit and the applicant may appeal to the Zoning Hearing Board for a reversal of the Zoning Officer's decision.

(7) *Expiration of Zoning Permit.* A zoning permit shall expire after 1 year if the applicant fails to implement his application as filed with the Zoning Officer. Extensions of the expiration date may be granted by the issuing officer upon presentation of sufficient cause.

(8) *Revocation of Permits.* If it shall appear, at any time, to the Zoning Officer that the application or accompanying plot is in any material respect false or misleading, or that work is being done upon the premises differing materially from that called for in the application filed with him under existing laws or ordinances, he may forthwith revoke the zoning permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to the said Zoning Officer. After the zoning permit has been revoked, the Zoning Officer, in his discretion, before issuing a new zoning permit, shall require the applicant to file an indemnity bond in favor of the Borough with sufficient surety conditioned for compliance with this Chapter and all building laws and ordinances then in force and in a sum sufficient to cover the cost of removing the building or part thereof if it does not so comply.

(9) *Special Uses.* All such applications shall be accompanied by plans and such other information as may be required.

(Ord. 91-6, 6/20/1991, §8.200; as amended by Ord. 2013-1, 6/26/2013)

§27-803. Certificate of Occupancy.

1. *General.* No land shall be occupied or used and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the Zoning Officer, stating that the buildings or proposed use thereof complies with the provisions of this Chapter.

2. *Application for Certificate of Occupancy.* All certificates of occupancy shall be applied for coincident with the application for a zoning permit. Said certificate shall be issued within 10 days after the erection or alteration shall have been approved as complying with the provisions of this Chapter.

3. *Record.* The Zoning Officer shall maintain a record of all certificates and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected.

4. *Application Mandatory for Any Construction, Addition.* No permit for excavation for, or the erection of an addition, or repairs to any building shall be issued until an application has been made for a certificate of occupancy.

(Ord. 91-6, 6/20/1991, §8.300)

§27-804. Planning Commission Review.

1. *Review Applications and Appeals.*

A. *Referral from the Board.* The Zoning Hearing Board shall refer to the Planning Commission for recommendation only all applications for special uses and may refer any other applications or appeals.

B. *Criteria for Review.* The Planning Commission shall review such applications in accordance with applicable criteria.

C. *Report to the Zoning Hearing Board.* The Planning Commission may recommend approval, disapproval, or may recommend approval subject to conditions, or modifications and shall report its findings to the Zoning Hearing Board within 30 days of receipt thereof. Such report shall state all recommended conditions and modifications and the reasons for such recommended approval or

disapproval.

(Ord. 91-6, 6/20/1991, §8.400)

§27-805. Nonconforming Use Registration.

The Zoning Officer may be responsible to do a systematic survey of the exterior of properties within the Borough in order to identify and register nonconforming uses and nonconforming structures. Reasons for why the Zoning Officer identified each register entry as nonconforming should also be kept on file in the register of nonconforming uses. The Zoning Officer shall attempt to complete this survey and registration process within 24 months of any major zoning amendment.

(Ord. 91-6, 6/20/1991, §8.500)

§27-806. Violations.

1. *Complaints of Violations.* Whenever a violation of this Chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Zoning Officer who shall properly record such complaint and immediately investigate and report thereon to the Borough Council. Provided, that the Zoning Officer may, if warranted, investigate without a written complaint, and if he finds a violation shall himself file a written complaint.

2. *Causes of Action.* In case any building, structure, landscaping, or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained, or used in violation of any ordinance enacted under this act or prior enabling laws, the Borough Council or, with the approval of the Borough Council, an officer of the Borough, or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct, or abate such building, structure, landscaping, or land, or to prevent, in or about such premises, any act, conduct, business, or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the Borough at least 30 days prior to the time the action is begun by serving a copy of the complaint on the Borough Council of the Borough. No such action may be maintained until such notice has been given.

3. *Enforcement Notice.*

A. If it appears to the Borough that a violation of any zoning ordinance enacted under this act or prior enabling laws has occurred, the Borough 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 prescribed period of time in accordance with procedures set forth in this Chapter.

(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.

4. *Jurisdiction.* Magisterial district judges shall have initial jurisdiction over proceedings brought about as an appeal from the Zoning Hearing Board. [Ord. 2013-1]

5. *Violation, Penalties, and Enforcement Remedies.*

A. Any person, partnership, or corporation who or which has violated or permitted the violation of the provisions of any zoning ordinance enacted under this act or prior enabling laws shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by a 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 magisterial district judge. 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 magisterial district judge determining that there has been a violation further determines that there was a good faith basis for the person, partnership, or corporation violating this Chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the magisterial district judge and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs, and reasonable attorney fees collected for the violation of zoning ordinances shall be paid over to the Borough whose ordinance has been violated. [Ord. 2013-1]

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.

(Ord. 91-6, 6/20/1991, §8.600; as amended by Ord. 2013-1, 6/26/2013)

§27-807. Appeal from Zoning Officer.

1. *Procedure for Appellant.*

A. An appeal to the Zoning Hearing Board from any ruling of any administrative officer administering any portion of this Chapter, may be taken by any person

aggrieved, or by an officer, board, or bureau or department of the Borough affected hereby. Such appeal shall be taken to the Zoning Hearing Board by filing with the Secretary thereof, a notice of appeal, specifying the grounds therefor.

B. All applications and appeals made to the Board shall be in writing on forms prescribed by the Board. Every application or appeal shall refer to the specific provision of this Chapter and shall exactly set forth the interpretation that is claimed, the plans for a special use or the details of the variance that is applied for, in addition to the following information:

- (1) The name and address of the applicant/appellant.
- (2) The name and address of the owner of the district lot and/or lots to be affected by such proposed change or appeal.
- (3) A brief description and location of the district lot to be affected by such proposed change or appeal.
- (4) A statement of the present zoning classification of the district lot and/or lots in question, the improvements thereon and the present use thereof.
- (5) A reasonably accurate description of the present improvements, and the additions or changes intended to be made under this application, indicating the size of such proposed improvements, material and general construction thereof. In addition, there shall be attached a plot plan of the real property to be affected, indicating the location and size of the lot and size of improvements thereon and proposed to be erected thereon.

C. A mediation option is available at the option of the appellant. Specific procedures for the mediation option are presented in Part 10 of this Chapter.

2. *Procedure for Zoning Officer.*

A. The notice of appeal in any case where a permit has been granted or denied by the Zoning Officer shall be prescribed by the Board after notice of such action granting or denying the permit has been mailed to the applicant. The Zoning Officer shall forthwith transmit to the Zoning Hearing Board all papers constituting the record upon which the action appealed from was taken, or in lieu thereof, certified copies of said papers.

B. It shall be competent for the Zoning Officer to recommend to the Zoning Hearing Board a modification or reversal of his action in cases where he believed substantial justice requires the same but where he has not himself sufficient authority to grant the relief sought.

3. *Procedure for the Zoning Hearing Board.* The Zoning Hearing Board shall decide each appeal within 45 days after a final hearing. At the hearing any party shall appear in person or be represented by an agent or attorney. The Zoning Hearing Board decision shall be immediately filed in its office and be a public record. In the exercise of its functions upon such appeals or upon exceptions, the Zoning Hearing Board may, in conformity with the provisions of this Chapter, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from or may make such order, requirement, decision, or determination in accordance with the provisions hereof. If the Board fails to render a decision within the period required by this subsection, the decision shall be deemed to have been rendered in favor of the applicant.

4. *Expiration of Appeal Decision.* Unless otherwise specified by the Zoning Hearing Board, a decision on any appeal or request for a variance shall expire if the applicant fails to obtain any necessary zoning permit, or comply with the conditions of said authorized permit within 6 months from the date of authorization thereof.

5. *Stay of Proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Officer certifies for the Zoning Hearing Board, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, they would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Hearing Board or by the court having jurisdiction on application, on notice to the Zoning Officer and on due cause shown. Further requirements and procedures for a stay of proceedings are presented in Part 9.

6. *Appeal From Decision of Zoning Hearing Board.* All decisions of the Zoning Hearing Board are subject to court review in accordance with the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*, and applicable laws of the Commonwealth of Pennsylvania.

(Ord. 91-6, 6/20/1991, §8.700)

§27-808. Public Hearings and Notice.

The Zoning Hearing Board shall fix a reasonable time for the hearing of an appeal or other matters referred to it and give public notice thereof by the publication in the official paper as required by the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*, and as currently described in the definition Section of this Chapter.

A. *When Appealing Action of the Zoning Officer.* In case of an appeal alleging error or misrepresentation in any order or other action by the Zoning Officer, the following persons shall be notified: the appellant and the person or persons, if any, who benefit from the order, requirement, regulation, or determination.

B. *Public Hearings to be Held by Board.* Upon filing with the Board of an appeal or a request for a variance as required by the terms of this Chapter, or for such other purposes as provided herein where the Board deems it in the public interest, the Board shall fix a time and place for a public hearing thereof as follows:

(1) *Public Notice.* A public notice shall be given in advance of any public hearing required by Act 247, Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.* The public notice shall be as defined in this Chapter.

(2) *Notice to Appellant.* By mailing a notice thereof by certified mail to the appellant.

(3) *Notice to Local Officials.* By mailing a notice to the President of Council, the Planning Commission, and the Borough Secretary.

(4) *Notice to Interested Parties.* By mailing a notice thereof to abutting property owners, to every association of residents of the Borough, and any other interested party who shall have registered their names and addresses for this purpose with the Board.

(5) *Posted Notice.* A notice shall be conspicuously posted on the affected tract of land at least 1 week prior to the hearing.

(6) *Nature of Notice.* The notice required shall be posted upon instructions

from the Board and shall state the location of the building or lot in question and the general nature of the question involved.

C. *Adjournment of Hearing.* Upon the day for hearing any application or appeal, the Zoning Hearing Board may adjourn the hearing for a reasonable period for the purpose of causing such further notice as it deems proper to be served upon such other property owners as it decides may be interested in said application or appeal.

D. *Required Interval for Hearing on Applications and Appeals after Denial.* Whenever the Board, after hearing all the evidence presented upon an application or appeal, under the provisions of this Chapter, denies the same, the Zoning Hearing Board shall refuse to hold further hearings on the said or substantially similar application or appeal by the same applicant, his successor, or assign for a period of 1 year, except and unless the Zoning Hearing Board shall find and determine from the information supplied by the request for a rehearing, that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity, and general welfare and that a reconsideration is justified. Such rehearing would be allowable only upon a motion initiated by a member of the Zoning Hearing Board and adopted by the unanimous vote of the members present, but not less than a majority of all members.

(*Ord. 91-6, 6/20/1991, §8.800*)

§27-809. Filing Fees.

All fees shall be paid at the office of the Zoning Officer upon the filing of an application and shall be in such amounts as may be established from time to time by resolution of Borough Council.

(*Ord. 91-6, 6/20/1991, §8.900; as amended by Ord. 2004-7, 12/15/2007; and by Ord. 2013-1, 6/26/2013*)

Part 9

Zoning Hearing Board and Zoning Officer

§27-901. Organization and Expenditures.

1. *Establishment.* Pursuant to the provisions of the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*, a Zoning Hearing Board is hereby established in Nesquehoning Borough.

2. *Appointment.*

A. The Board shall consist of five members to be appointed by Council. The terms of office of the five-member Board shall be 5 years and shall be so fixed that the term of office of one member shall expire each year. In order to achieve this one Board member per year replacement, the Council shall use the following initial schedule for Board member terms.

Term Expiration Dates	Initial Term
12/31/1993	3 years
12/31/1994	4 years
12/31/1995	4 years
12/31/1996	5 years
12/31/1997	5 years

B. After this initial term, the successors to all five Board members shall be appointed on the expiration of their respective terms to serve 5 years. An appointment to fill a casual vacancy shall be only for the unexpired portion of the term. Such appointments to fill such vacancies shall be made in the same manner as the original appointment.

C. The Borough Council may appoint by resolution at least one but no more than three residents of the Borough to serve as alternate members of the Board. The term of office of an alternate member shall be 3 years. When seated pursuant to the provisions this Section, an alternate shall be entitled to participate in all proceedings and discussions of the Board to the same and full extent as provided by law for Board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this act and as otherwise provided by law. Alternates shall hold no other office in the Borough, including membership on the Planning Commission and Zoning Officer. Any alternate may participate in any proceeding or discussion of the Board but shall not be entitled to vote as a member of the Board nor be compensated pursuant to subsection .5, "Expenditure for Services," unless designated as a voting alternate member pursuant to subsection .4, "Organization of Board."

3. *Removal of Members.* A member of the Zoning Hearing Board may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of the Borough Council taken after such member has received 15 days

advance notice of intent to take such vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

4. *Organization of Board.*

A. The Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the Board, but the Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Board as provided in §27-905, "Hearings and Decisions."

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

C. The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the municipality 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.

5. *Expenditures for Services.* 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. Alternate members of the Board may receive compensation, as may be fixed by the Borough Council, for the performance of their duties when designated as alternate members pursuant to subsection .2 above, but in no case shall compensation exceed the rate of compensation authorized to be paid to the members of the Borough Council.

(Ord. 91-6, 6/20/1991, §9.100)

§27-902. Jurisdiction and Functions.

1. *Zoning Hearing Board 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 Borough Council pursuant to curative amendments in Part 10 of this Chapter.

(2) Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of 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 therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure, or lot.

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

(5) Applications for variances from the terms of this Chapter and flood hazard ordinance.

(6) Applications for special exceptions under this Chapter or floodplain or flood hazard ordinance.

(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 any procedure to obtain a preliminary opinion as per the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*

(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 stormwater management insofar as the same relate to development not involving subdivision and land development ordinances nor planned residential development ordinance applications.

B. The Borough Council shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

(1) All applications pursuant to approval of subdivisions or land developments.

(2) Applications for curative amendment to a zoning ordinance.

(3) 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 and erosion control and stormwater management insofar as the same relate to application for land development under the Borough Subdivision and Land Development Ordinance [Chapter 22] Where such determination relates only to development not involving the Borough Subdivision and Land Development Ordinance [Chapter 22] application, the appeal from such determination of the Zoning Officer or the Borough Engineer shall be to the Zoning Hearing Board pursuant to paragraph .A(9) above.

2. *Zoning Hearing Board's Functions; Variances.*

A. The Board shall hear requests for variances where it is alleged that the provisions of this Chapter inflict unnecessary hardship upon the applicant. The Board may by rule prescribe the form of 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 appellant.

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

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

B. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and this Chapter.

3. *Zoning Hearing Board's Function; Interpretation.* The Board shall upon appeal of a decision by an administrative official, decide any question involving the interpretation of any provision of this Chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

4. *Zoning Hearing Board's Function; Special Uses.* Where this Chapter states that special uses or special exceptions shall be granted or denied by the Board pursuant to express standards and criteria, the Board shall hear and decide requests for such special uses in accordance with such standards and criteria. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of the zoning ordinance and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*

5. *Referral to Planning Commission.*

A. The Zoning Officer or the Board may refer the application to the Borough Planning Commission for Planning Commission review and recommendations to the Board. The Zoning Officer and/or the Hearing Board shall delineate those issues which they feel should be the focus of the review. If the Board or Zoning Officer has not submitted the application to the Borough Planning Commission, then the applicant may ask the Planning Commission for their review and comment; however, the time required for this applicant request review shall not affect the time requirement for Zoning Hearing Board action. The Board may refer any other pertinent matters for review and recommendations, and defer any

decision thereon for a period of not more than 45 days pending a report from the Planning Commission. Upon failure to submit such report with the Commission's recommendation, the Planning Commission shall be deemed to have recommended approval of the application for appeal.

B. Nothing in this Section shall require the approval of Borough Council of any Planning Commission recommendations.

C. The Zoning Officer should receive a copy of any Planning Commission recommendations to the Board or to Borough Council in regard to a property and/or applicant who has a decision pending before the Board. Therefore, a complete record of pending or potential changes related to a Board issue under consideration will be available for the Board to consider.

(Ord. 91-6, 6/20/1991, §9.200)

§27-903. Procedure for Zoning Hearing Board.

1. The Board shall act in strict accordance with the procedure specified by law, by this Chapter, and by any procedural resolutions adopted by the Board. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of this Chapter involved, and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted as the case may be. The application shall be completely filled out by the applicant or the application may be returned to the applicant before any action is scheduled by the Board.

2. All meetings and hearings shall be public and in accordance with State and local law.

3. Every decision of the Board shall be by written order, each of which shall contain a full record of the findings of the Board in the particular case.

(Ord. 91-6, 6/20/1991, §9.300)

§27-904. Time Limitations.

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

2. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan finding (pursuant to any future planned residential development) or from an adverse decision by a Zoning Officer on a challenge to the validity of an ordinance or map pursuant to §27-809 shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative or preliminary approval.

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

(Ord. 91-6, 6/20/1991, §9.400)

§27-905. Hearings and Decisions.

The 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, such other persons as the Borough Council shall designate by ordinance and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed in this Section and in Part 8, "Administration and Enforcement." In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least 1 week prior the hearing.

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

(2) The hearing shall be held within 60 days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.

B. 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.

C. The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Board, and any other person including civic or community organizations permitted to appear by the Board. The Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Board for that purpose.

D. 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.

E. 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.

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

G. The Board or the hearing officer, as the case may be, shall keep a

stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Board. The cost of the original transcript shall be paid by the Board if the transcript is ordered by the Board or hearing officer or shall be paid by the person appealing from the decision of the Board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.

H. 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.

I. The Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the Board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this Chapter or of any ordinance, rule, or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings, and the Board's decision shall be entered no later than 30 days after the report of the hearing officer. Where the Board fails to render the decision with the period required by this paragraph, or fails to hold the required hearing within 60 days from the date of the applicant's request for a hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. 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 herein above provided, the Board shall give public notice of said decision within 10 days from the last day it could have met to render a decision in the same manner as provided in paragraph .A 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.

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

(Ord. 91-6, 6/20/1991, §9.500)

§27-906. Parties Appellant Before the Board.

Appeals under §27-902.1.A(1), (2), (3), (4), (7), (8), and (9) may be filed with the Board in writing by the landowner affected, any officer or agency of the Borough, or any person aggrieved. Requests for a variance under §27-902.2 and for special exception under §27-902.4 may be filed with the Board by any landowner or any tenant with the permission of such landowner.

(*Ord. 91-6, 6/20/1991, §9.600*)

§27-907. Stay of Proceedings.

1. Upon filing of any proceeding referred to in §27-806 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 a 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. 91-6, 6/20/1991, §9.700*)

§27-908. Appointment and Powers of Zoning Officer.

For the administration of this Chapter, a Zoning Officer shall be appointed and shall not hold any elective office in the Borough. The Zoning Officer shall meet qualifications established by the Borough and shall be able to demonstrate to the satisfaction of the Borough a working knowledge of municipal zoning. The Zoning

Officer shall administer this Chapter in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to this Chapter. The Zoning Officer may be authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his employment.

(*Ord. 91-6, 6/20/1991, §9.800*)

§27-909. Procedure to Obtain Preliminary Opinion.

In order not to unreasonably delay the time when a landowner may secure assurance that this Chapter or map under which he proposed to build is free from challenge, and recognizing that the procedure for preliminary approval of his development (through the Borough Subdivision and Land Development Ordinance [Chapter 22] or any planned residential development requirements) may be too cumbersome or may be unavailable, the landowner may advance the date from which time for any challenge to this Chapter or map will run under §27-904 above by the following procedure:

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

B. If the Zoning Officer's preliminary opinion is that the use or development complies with this Chapter or map, notice thereof shall be published once each week for 2 successive weeks in a newspaper of general circulation in the Borough. Such notice shall include a general description of the proposed use or development and its location, by some readily identifiable directive, and the place and times where the plans and other materials may be examined by the public. The favorable preliminary approval consistent with §27-904 and the time therein specified for commencing a proceeding with the Board shall run from the time when the second notice thereof has been published.

(*Ord. 91-6, 6/20/1991, §9.900*)

Part 10**Amendments****§27-1001. Amendments.**

The Borough may, on its own motion or by petition amend, supplement, change, modify, or repeal this Chapter, including the Zoning Map, by proceeding in the following manner.

(Ord. 91-6, 6/20/1991, §10.100)

§27-1002. Public Hearing.

1. The Borough shall fix the time and place of a public hearing on the proposed amendment. A public notice as defined in this Chapter shall be published as notification to the public of the proposed amendment.

2. 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 1 week prior to the date of the hearing.

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

(Ord. 91-6, 6/20/1991, §10.200)

§27-1003. Review by Planning Commission.

Every such proposed amendment or change, whether initiated by the Borough or by petition shall be referred to the Planning Commission at least 30 days before the public hearing for report on the proposed amendment. If the Planning Commission shall fail to file such a report before the public hearing, it shall be presumed that the Planning Commission has approved the proposed amendment, supplement, or change.

(Ord. 91-6, 6/20/1991, §10.300)

§27-1004. Review by County Planning Agency.

The Borough Council shall submit the proposed zoning ordinance amendment to the County planning agency at least 30 days prior to the date of the Borough Council public hearing on the zoning amendment.

(Ord. 91-6, 6/20/1991, §10.400)

§27-1005. Opportunity to Be Heard.

At the public hearing, full opportunity to be heard shall be given to any citizen and all parties in interest.

(Ord. 91-6, 6/20/1991, §10.500)

§27-1006. Enactment of Amendment.

The adoption of an amendment shall be by simple majority vote of the Borough Council.

(Ord. 91-6, 6/20/1991, §10.600)

§27-1007. Copy to County Planning Agency.

Within 30 days after enactment, a copy of the amendment to this Chapter shall be forwarded to the county planning agency.

(Ord. 91-6, 6/20/1991, §10.700)

§27-1008. Curative Amendments.

1. A landowner who desires to challenge on substantive grounds the validity of a zoning ordinance or map or any provision thereof, which prohibits or restricts the use or development of land in which he has an interest 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, 53 P.S. §10916.1, as amended. The Borough Council shall commence a hearing thereon within 60 days of the request as provided in §916.1 of the Pennsylvania Municipalities Planning Code. The curative amendment and challenge shall be referred to the Borough Planning Commission and County planning agency as provided in Part 9 above, and notice of the hearing thereon shall be given as provided.

2. The hearing shall be conducted in accordance with §27-808, "Public Hearing and Notices," and all references therein to the Zoning Hearing Board shall, for purposes of this Section be references to the governing body. 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 the entire zoning ordinance and map, but only for those provisions which specifically relate to the landowner's curative amendment and challenge.

3. The Borough Council of the Borough which has determined 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 governing body shall consider the curative amendments, plans and explanatory material 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 map.

C. The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, 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.

E. The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

4. The required procedure for Borough curative amendments is as follows:

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

(1) The Borough shall declare by formal action this Chapter or portions thereof substantively invalid and propose to prepare a curative amendment to overcome such invalidity. Within 30 days following such declaration and proposal the Borough Council of the Borough shall:

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

- 1) References to specific uses which are either not permitted or not permitted in sufficient quantity.
- 2) Reference to a class of use or uses which require revision.
- 3) Reference to the entire ordinance which requires revisions.

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

(2) Within 180 days from the date of the declaration and proposal, the Borough shall enact a curative amendment to validate, or reaffirm the validity of this Chapter, pursuant to the provisions required by §609.2 of the Municipalities Planning Code, 53 P.S. §10609.2, in order to cure the declared invalidity of this Chapter.

(3) Upon the initiation of the procedures, as set forth in subparagraph (1), the Borough Council shall not be required to entertain or consider any landowner's curative amendment filed under this Section, nor shall the Zoning Hearing Board be required to give a report subsequent to the declaration and proposal based upon the grounds identical to or substantially similar to those specified in the resolution required by subsection .1. Upon completion of the procedures as set forth in the curative amendment subparagraphs (1) and (2), no rights to a cure pursuant to the provisions of subsection .1 and §27-1104, "Validity," shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of the unamended zoning ordinance for which there has been a curative amendment pursuant to this Section.

(4) The Borough having utilized the procedures as set forth in subparagraphs (1) and (2) may not again utilize said procedure for a 36-month period following the date of the enactment of a curative amendment, or reaffirmation of the validity of this Chapter, pursuant to subparagraph (2); provided, however, if after the date of declaration and proposal there is a substantially new duty or obligation imposed upon, the Borough by virtue of a change in statute or by virtue of a Pennsylvania Appellate Court decision, the Borough may utilize the provisions of this Section to prepare a curative amendment to this Chapter to fulfill said duty or obligation.

(*Ord. 91-6, 6/20/1991, §10.800*)

Part 11**Interpretation****§27-1101. Interpretation.**

In the interpretation and the application of the provisions of this Chapter, they shall be held to be the minimum requirements for the promotion of the health, safety, morals, and general welfare. It is not intended to interfere with or abrogate or annul other rules, regulations, or ordinances; provided, that where this Chapter imposes greater restrictions upon the use of buildings or premises, or upon the height or bulk of a building, or requires larger open spaces, the provisions of this Chapter shall apply. (*Ord. 91-6, 6/20/1991, §11.100*)

§27-1102. Exemptions.

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

(*Ord. 91-6, 6/20/1991, §11.200*)

§27-1103. Mediation Option.

The Borough may offer a mediation option as, an aid in completing proceedings authorized by this Part. In exercising such option, the following procedures shall apply:

A. Parties to proceedings authorized in Part 9, "Zoning Hearing Board," of this Chapter and Article X-A of the Pennsylvania Municipalities Planning Code, 53 P.S. §11001-A *et seq.*, may utilize mediation as an aid in completing such proceedings. In proceedings before the Zoning Hearing Board, in no case shall the Zoning Hearing Board initiate mediation or participate as a mediating party. Mediation shall supplement, not replace, those procedures in Part 9 of this Chapter and Article X-A of the Pennsylvania Municipalities Planning Code, 53 P.S. §11001-A *et seq.*, once they have been formally initiated. Nothing in this Section shall be interpreted as expanding or limiting Borough police powers or as modifying any principles of substantive law.

B. Participation in mediation shall be wholly voluntary. The appropriateness of mediation shall be determined by the particulars of each case and the willingness of the parties to negotiate. Any Borough offering the mediation option shall assure that, in each case, the mediating parties, assisted by the mediator as appropriate, develop terms and conditions for:

- (1) Funding mediation.

(2) Selecting a mediator who, at a minimum, shall have a working knowledge of Borough zoning and subdivision procedures and demonstrated skills in mediation.

(3) Completing mediation, including time limits for such completion.

(4) Suspending time limits otherwise authorized in this act, provided there is written consent by the mediating parties, and by an applicant or Borough decision-making body if either is not a party to the mediation.

(5) Identifying all parties and affording them the opportunity to participate.

(6) Subject to legal restraints, determining whether some or all of the mediation sessions shall be open or closed to the public.

(7) Assuring that mediated solutions are in writing and signed by the parties, and become subject to review and approval by the appropriate decision-making body pursuant to the authorized procedures set forth in the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*

C. No offers or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceedings.

(Ord. 91-6, 6/20/1991, §11.300)

§27-1104. Validity of Chapter; Substantive Questions.

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

A. To the Zoning Hearing Board under §27-902.1.A.

B. To the Borough Council under §27-902.1.B, together with a request for a curative amendment under §27-1008.

2. Persons aggrieved by a use or development permitted on the land of another by an ordinance or map, or any provision thereof, who desires to challenge its validity on substantive grounds shall first submit their challenge to the Zoning Hearing Board for a decision thereon under §27-902.1.A.

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

A. In challenges before the Zoning Hearing Board, the challenging party shall make a written request to the Board that it hold a hearing on its challenge. The request shall contain the reasons for the challenge. Where the landowner desires to challenge the validity of such ordinance and elects to proceed by curative amendment under §27-1008, his application to the Borough Council shall contain, in addition to the requirements of the written request hereof, the plans and explanatory materials describing the use or development proposed by the landowner in lieu of the use or development permitted by the challenged ordinance or map. Such plans or other materials shall not be required to meet the standards prescribed for preliminary, tentative, or final approval or for the issuance of a permit, so long as they provide reasonable notice of the proposed use or development and a sufficient basis for evaluating the challenged ordinance or map in light

thereof. Nothing herein contained shall preclude the landowner from first seeking a final approval before submitting his challenge.

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

C. If the submission is made to the Borough Council, the Borough Solicitor shall represent and advise it at the hearing or hearings referred to in §27-902.1.B.

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

E. Based upon the testimony presented at the hearing or hearings, the Borough Council or the Zoning Board, as the case may be, shall determine whether the challenged ordinance or map is defective, as alleged by the landowner. If a challenge heard by a Borough Council is found to have merit, the Borough Council shall proceed as provided in §27-1008. If a challenge heard by a Zoning Hearing Board is found to have merit, the decision of the Zoning Hearing Board shall include recommended amendments to the challenged ordinance which will cure the defects found. In reaching its decision, the Zoning Hearing Board shall consider the amendments, plans, and explanatory material submitted by the landowner and shall also consider:

(1) The impact of the proposal upon roads, sewer facilities, water supplies, schools, and other public service facilities.

(2) If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or map.

(3) 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.

(4) 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.

(5) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

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

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

4. The Zoning Hearing Board or Borough Council, as the case may be, shall commence its hearings within 60 days after the request is filed unless the landowner

requests or consents to an extension of time.

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

6. The challenge shall be deemed denied when:

A. The Zoning Hearing Board or Borough Council, as the case may be, fails to commence the hearing within the time limits set forth in subsection .4 above.

B. The Borough Council notifies the landowner that it will not adopt the curative amendment.

C. The Borough Council adopts another curative amendment which is unacceptable to the landowner.








D. The Zoning Hearing Board or Borough Council, as the case may be, fails to act on the request 45 days after the close of the last hearing on the request, unless the time is extended by mutual consent by the landowner and Borough.

7. Where, after the effective date of this act, a curative amendment proposal is approved by the grant of a curative amendment application by the Borough Council pursuant to §27-902.1.B or a validity challenge is sustained by the Zoning Hearing Board pursuant to §27-902.1.A or the court acts finally on appeal from denial of a curative amendment proposal or a validity challenge, and the proposal or challenge so approved requires a further application for subdivision or land development, the developer shall have 2 years from the date of such approval to file an application for preliminary or tentative approval pursuant to the Borough Subdivision and Land Development Ordinance [Chapter 22] or any planned residential development provisions of Borough ordinance. Within the 2-year period, no subsequent change or amendment in the zoning, subdivision, or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. Upon the filing of the preliminary or tentative plan, the provisions of the applicable Subdivision and Land Development Ordinance [Chapter 22] Section shall apply. Where the proposal appended to the curative amendment application or the validity challenge is approved but does not require further application under any Subdivision and Land Development Ordinance [Chapter 22], the developer shall have 1 year within which to file for a building permit. Within the 1-year period, no subsequent change or amendment in the zoning, subdivision, or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. During these protected periods, the court shall retain or assume jurisdiction for the purpose of awarding such supplemental relief as may be necessary.

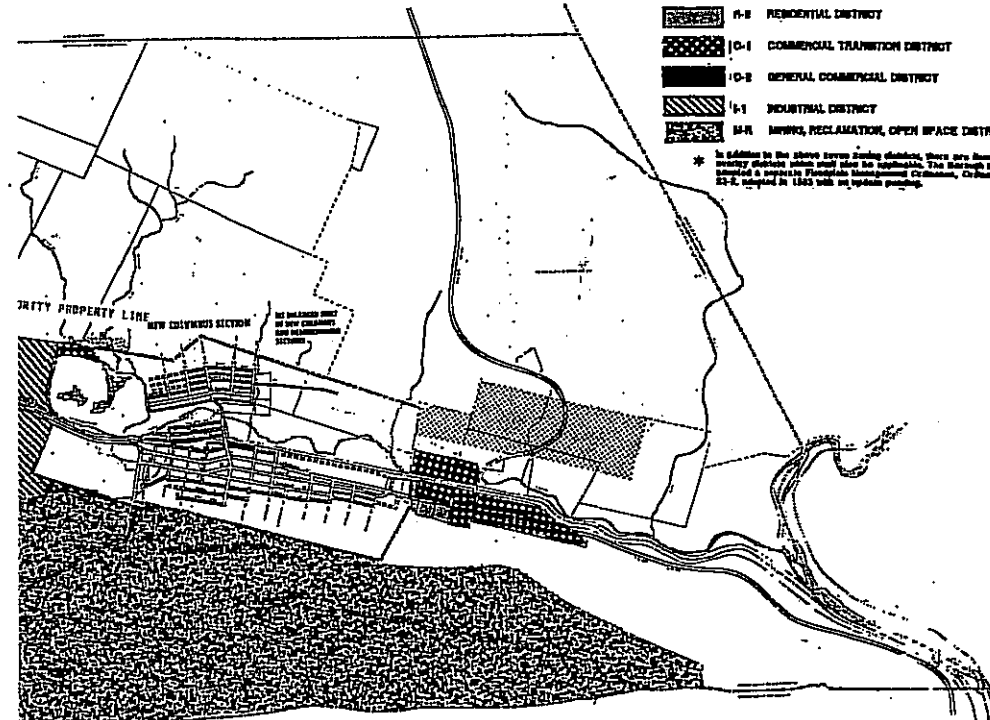
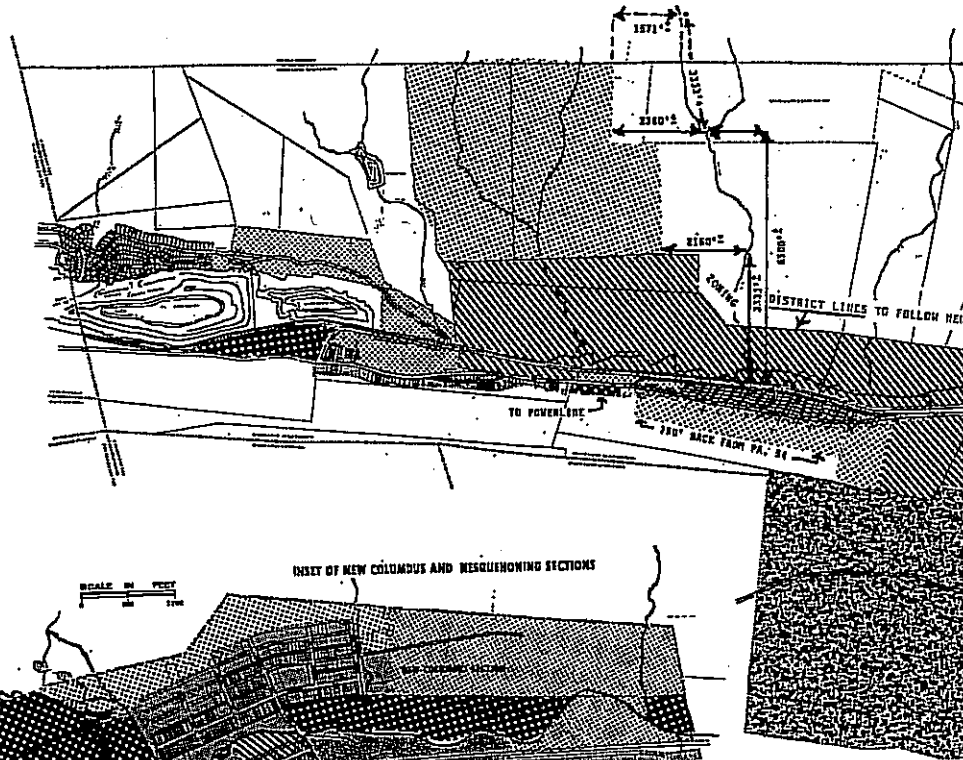
(*Ord. 91-6, 6/20/1991, §11.400*)

ZONING MAP

ZONING DISTRICTS:

-  CO-1 CONSERVANCY DISTRICT
-  R-1 RESIDENTIAL DISTRICT
-  R-2 RESIDENTIAL DISTRICT
-  CO-2 COMMERCIAL TRANSITION DISTRICT
-  CO-3 GENERAL COMMERCIAL DISTRICT
-  I-1 INDUSTRIAL DISTRICT
-  M-R MINING, RECLAMATION, OPEN SPACE DISTRICT

* In addition to the above zoning districts, there are boundary district lines which shall also be applicable. The boundary lines shown are for the purpose of determining the zoning district to be applied to a particular parcel. The boundary lines shown are for the purpose of determining the zoning district to be applied to a particular parcel.



INSET OF NEW COLUMBUS AND MESQUEHONING SECTIONS



PROVIDED IN ACCORDANCE WITH A RESOLUTION ADOPTED BY THE BOARD OF SUPERVISORS OF CARBON COUNTY, PENNSYLVANIA, AND THE CARBON COUNTY PLANNING AND ZONING COMMISSION, ON JUNE 15, 1965. THE ZONING MAP IS A PRELIMINARY PLAN AND IS SUBJECT TO CHANGE WITHOUT NOTICE.

ROUGH OF NESQUEHONING, CARBON COUNTY, PENNA.

