

## ***Article 11: Administration and Enforcement***

### **Section 1101: Purpose**

- (A) The purpose and objective of the provisions established under Article 11 of this Joint Zoning Ordinance is to establish specific regulations and guidelines for the administration and enforcement of this Joint Zoning Ordinance.
- (B) Where a conflict or discrepancy should arise concerning the procedural requirements specified by this Joint Zoning Ordinance and the Pennsylvania Municipalities Planning Code, the appointed Solicitor of the municipality with jurisdiction shall review the conflict or discrepancy and advise the municipality of the procedural requirements that should be followed.
- (C) The provisions established for administration and enforcement, as established under Article 11 of this Joint Zoning Ordinance shall be subject to the interpretation of the Zoning Officer of the municipality with jurisdiction. Should a dispute arise concerning the interpretation of these regulations, the person aggrieved by the interpretation may file an appeal with the Zoning Hearing Board.

### **Section 1102: Zoning Officer**

- (A) **Appointment:** The provisions of the Joint Zoning Ordinance shall be administered, interpreted and enforced by the Zoning Officer who shall be appointed by the governing body with municipality with jurisdiction. The Zoning Officer shall not hold any elective office within the municipality with jurisdiction and shall continue to serve the municipality with jurisdiction until such time the municipality with jurisdiction declares otherwise.
- (B) **Duties and Responsibilities:** The Zoning Officer is responsible to administer, interpret and enforce the provisions of this Joint Zoning Ordinance, which shall include the following duties and powers:
  - (1) **Applications:** The Zoning Officer shall receive applications and issue Zoning Permits and Certificates of Use and Occupancy, as further specified by this Joint Zoning Ordinance.
  - (2) **Inspections:** Before issuing any Zoning Permit or Certificate of Use and Occupancy, the Zoning Officer may, at his discretion, examine or cause to be examined all buildings, structures, signs, or land and portions thereof for which an application has been filed for a Zoning Permit or a Certificate of Use and Occupancy. Thereafter, he may make such inspections during the completion of the work for which a Zoning Permit has been issued. Upon completion of such work and before issuing a Certificate of Use and Occupancy, a final inspection shall be made and all violations of the approved plans or Zoning Permit shall be noted and the holder of the Zoning Permit shall be notified of the discrepancies. The Zoning Officer shall have the right to enter any building or structure or enter upon any land at any reasonable hour in the course of his duties.
  - (3) **Official Records:** It shall be the duty of the Zoning Officer to maintain and to be responsible for all pertinent records on zoning matters in the municipality with jurisdiction. These records shall include, but not be limited to, all applications received, copies of all zoning permits and certificates issued, copies of orders and findings of the Zoning Hearing Board, written complaints of alleged violations, records of all inspections made, a current copy of this Joint Zoning Ordinance, and all amending ordinances, the official Zoning Map, and all other pertinent information. The records of Zoning Officer shall be available for the use of the municipality with jurisdiction and for inspection by any interested party during normal office hours. The Zoning Officer shall at least annually submit to the governing body a written statement of all permits and certificates of use and occupancy issued and violations and enforcement notices recommended or promulgated.
  - (4) **Violations:** The Zoning Officer shall serve notice of violations on any person, firm, corporation, or partnership responsible for violating any of the provisions of this Joint Zoning Ordinance. He shall also be responsible for instituting civil enforcement proceedings as a means of enforcement pursuant to the provisions specified under this Joint Zoning Ordinance.

- (5) **Complaints:** The Zoning Officer shall investigate alleged violations of this Joint Zoning Ordinance. If a signed, written complaint is received, said investigation shall be completed within fifteen (15) days of said complaint. A written report of all investigations of this Joint Zoning Ordinance shall be prepared and filed by the Zoning Officer and a copy sent to the municipality with jurisdiction. If after the investigation the Zoning Officer determines that a violation has occurred, he shall take the appropriate actions as specified by this Joint Zoning Ordinance and the Pennsylvania Municipalities Planning Code.
  - (6) **Requests:** Upon the request of the governing body, Planning Commission or the Zoning Hearing Board, the Zoning Officer shall present to such bodies facts, records, and similar information in the interest of assisting such bodies in reaching their decisions.
  - (7) **Zoning Ordinance and Zoning Map:** The Zoning Officer shall be responsible for keeping this Joint Zoning Ordinance and the Zoning Map up-to-date, including any amendments thereto.
  - (8) **Floodplain Records:** The Zoning Officer shall be responsible for all records concerning the provisions and approvals relating to the Floodplain Overlay District, as further specified by this Joint Zoning Ordinance and the Floodplain Ordinance, as adopted by the governing body with municipal jurisdiction.
  - (9) **Preliminary Opinion:** The Zoning Officer shall render a preliminary opinion regarding a proposed land use and zoning interpretation in accordance with the provisions specified under this Joint Zoning Ordinance and the Pennsylvania Municipalities Planning Code.
  - (10) **Non-Conformities:** The Zoning Officer shall inspect nonconforming uses, buildings and lots of records by examining them periodically, with the view of eliminating the nonconforming uses under the existing laws and regulations and to issue certificates of occupancy for them.
  - (11) **Other Duties:** The Zoning Officer shall perform all other required administrative duties specified by this Joint Zoning Ordinance in accordance with the provisions of the Pennsylvania Municipalities Planning Code and The municipality with jurisdiction Code.
- (C) **Assistant Zoning Officer:** In order to enforce the provisions of this Joint Zoning Ordinance, The municipality with jurisdiction may appoint an Assistant Zoning Officer who shall work under the direction of the municipality with jurisdiction Manager and Zoning Officer.

**Section 1103: Permits**

- (A) The following general requirements shall apply to zoning permits, certificates of occupancy, as reviewed and issued by the Zoning Officer:
  - (1) Persons desiring to undertake any new construction, structural or site alteration, or changes in the use of a building or lot shall apply to the Zoning Officer of the municipality with jurisdiction for a permit by filling out the appropriate application form and by submitting the required fee.
  - (2) The Zoning Officer shall either issue the appropriate permit or shall refuse the permit, indicating in writing the reason for refusal. Certain construction activities, alterations or land use activities may require approval of the governing body, Planning Commission and/or Zoning Hearing Board.
  - (3) If the permit is refused by the Zoning Officer, the applicant may appeal to the Zoning Hearing Board for further consideration.
  - (4) After the permit has been received by the applicant, he may undertake the action that is specifically referenced on the approved permit application..
  - (5) Upon completion of such action, the applicant may apply to the Zoning Officer for an occupancy permit (where such a permit is required).

- (6) If the Zoning Officer finds that the action of the applicant is in accordance with the zoning permit, building permit and any other required permit approvals, the Zoning Officer shall issue an occupancy permit allowing the premises to be occupied.
- (B) The following specific provision shall apply to an application for a zoning permit and/or building permit within The municipality with jurisdiction:
- (1) No person shall erect, alter, convert, move or add to any building, structure or sign, or alter the use of any land or structure, until the Zoning Officer issues a zoning permit and/or building permit to the person or applicant for said change or construction.
  - (2) Unless otherwise specified by this Joint Zoning Ordinance, a zoning permit and/or building permit is not required for normal maintenance and repairs.
  - (3) The following provisions shall apply to the types of procedural requirements for a use permitted by right, special exception or conditional use:
    - (a) A zoning permit and/or building permit may be issued by the Zoning Officer for all uses permitted by right, subject to the provisions and requirements of this Joint Zoning Ordinance.
    - (b) A zoning permit and/or building permit may be issued by the Zoning Officer for all uses permitted as part of a zoning variance application, which has been approved by the Zoning Hearing Board and subject to the provisions and requirements of this Joint Zoning Ordinance.
    - (c) A zoning permit and/or building permit may be issued by the Zoning Officer for all uses permitted as part of a special exception application, which has been approved by the Zoning Hearing Board and subject to the provisions and requirements of this Joint Zoning Ordinance.
    - (d) A zoning permit and/or building permit may be issued by the Zoning Officer for all uses permitted as part of a conditional use application, which has been approved by the governing body and subject to the provisions and requirements of this Joint Zoning Ordinance.
  - (4) All applications for a zoning permit shall be made in writing to the Zoning Officer and shall be accompanied by two (2) complete sets of plans accurately drawn to scale indicating or illustrating the following information if applicable:
    - (a) The actual dimensions and shape of the lot to be built upon.
    - (b) The exact size and location on the lot of buildings, structures or signs existing and/or proposed extensions thereto.
    - (c) The number of lots or dwelling units.
    - (d) Off-street parking spaces provided and/or loading facilities.
    - (e) Statement indicating the existing or proposed use.
    - (f) The detailed scale drawing of the structure, building, sign or other improvement, including the precise dimensions.
    - (g) A written agreement or an attested statement that the applicant is the owner of the premises on which the improvement will be conducted or that the applicant has obtained the consent of the owner or lessee of such premises to improve the property in accordance with the permit application.
    - (h) All other information necessary for such Zoning Officer to determine conformance with and provide for enforcement of this Joint Zoning Ordinance.

- (5) If requested by the municipality with jurisdiction, the detailed information included with the zoning permit or building permit shall be prepared by a professional architect, engineer, planner, surveyor and/or contractor.
  - (6) Upon approval or disapproval of the zoning permit, the Zoning Officer shall return one (1) copy of the permit application and plans to the applicant. The Zoning Officer shall indicate that the permit has been approved or disapproved by signing the application. Where appropriate, conditions of approval should be specified on the zoning permit application. One (1) copy of such plans shall be retained by the Zoning Officer for his permanent records and one (1) copy shall be retained by the municipality with jurisdiction.
  - (7) Approval or denial of the requested zoning permit application shall be made within thirty (30) days from the date of application was considered complete by the Zoning Officer. In denying a zoning permit application, the Zoning Officer shall inform the applicant of the reasons for denial and specify the provision(s) of this Joint Zoning Ordinance, which has not been satisfied. Applicants shall be informed of their rights of appeal and provided with all necessary information to pursue such appeals.
  - (8) Zoning permits shall expire within one (1) year from date of issuance, if the work described in any permit has not begun. If the work described in any zoning permit has begun, said permit shall expire after one (1) year, exclusive of any time required for administration and permitting, from date of issuance thereof, within which time said work shall be completed.
- (C) The following specific provision shall apply to an application for a certificate of use and occupancy:
- (1) A certificate of use and occupancy shall be required upon the completion of the work and improvements authorized as part of the zoning permit. It shall be unlawful to use and/or occupy any structure, building and/or portions thereof in any manner until a certificate of use and occupancy has been issued by the Zoning Officer.
  - (2) The application for certificate of use and occupancy shall be submitted on such form as the Zoning Officer may prescribe.
  - (3) The Zoning Officer shall inspect any structure, building, sign, improvements and/or land or portions thereof to determine compliance with this Joint Zoning Ordinance and permit requirements. If satisfied that the completed work is in conformity with this Joint Zoning Ordinance and permit requirements, a certificate of use and occupancy shall be issued.
  - (4) Upon inspection, the Zoning Officer shall either grant or deny the certificate of use and occupancy in writing, within fifteen (15) from the date of application or last inspection.
  - (5) In situations in which performance standards are imposed, no certificate of occupancy shall become permanent until thirty (30) days after the use or facility is fully operating and only after, upon inspection by the Zoning Officer, it is determined that the facility is in compliance with the performance standards. After said inspection, the Zoning Officer shall notify the applicant that the facility is in full compliance with all performance standards and that the certificate of use and occupancy is permanent or that the facility does not comply and that the certificate of use and occupancy is still temporary. In no case shall a temporary certificate of use and occupancy extend ninety (90) days past the date of first inspection.
  - (6) The certificate of use and occupancy shall be kept on the premises and shall be publicly displayed in a manner required by the municipality with jurisdiction.
- (D) The following specific provision shall apply to an application for a special use permit, seasonal permits and/or temporary permit within The municipality with jurisdiction:
- (1) Where a special use, seasonal use or a temporary use are permitted by this Joint Zoning Ordinance, the Zoning Officer may issue a special use permit, seasonal permit or a temporary use permit to the applicant.
  - (2) A special use permit may be issued by the Zoning Officer for a use having a periodic, intermittent or short duration of time not exceeding thirty (30) consecutive or cumulative days within a calendar year. Such special uses shall include the following: carnivals; circuses; bazaars; fairs; municipal and civic events; the

sale of food, product and similar merchandise; the sale of Christmas trees, seasonal flowers or other seasonal items excluding fireworks; and other similar activities conducted by a nonprofit or charitable organization, provided that activities are conducted on the same premises as the use and location of the principal activity of the sponsor.

- (3) A seasonal or temporary use permit may be issued for a use having a short time period, which shall not exceed ninety (90) consecutive or cumulative days within a calendar year. The seasonal or temporary use shall be a permitted use specified by this Joint Zoning Ordinance or within the zoning district to which the use is located.
- (E) The owner of the premises occupied by a lawful nonconforming use or structure may secure a Certificate of Nonconforming Use or Structure from the Zoning Officer. Such Certificate shall be authorized by the Zoning Officer and shall certify to the owner his right to continue such nonconforming use or structure.
- (F) Pursuant to the provisions established by the municipality with jurisdiction, additional permits may be required by local, regional, county, state and federal agencies, which shall be issued prior to the commencement of any improvement or site activities.

**Section 1104: Zoning Hearing Board**

- (A) The governing body of the municipality with jurisdiction shall appoint three (3) residents plus alternates to serve as members of the Zoning Hearing Board in accordance with the provisions of the municipality with jurisdiction and Pennsylvania Municipalities Planning Code.
- (B) The following provisions shall apply to the establishment of the Zoning Hearing Board:
  - (1) The members of the Zoning Hearing Board shall serve three (3) year terms and shall be so fixed that the term of office of one member shall expire each year.
  - (2) The Zoning Hearing Board shall promptly notify the governing body of any vacancies, which may occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.
  - (3) The members of the Zoning Hearing Board shall not be an employee of the municipality with jurisdiction and shall not hold any other office within the municipality with jurisdiction.
  - (4) Any 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 governing body taken after the member has received fifteen (15) days of advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.
- (C) The following provisions shall apply to the organization of the Zoning Hearing Board:
  - (1) The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves.
  - (2) For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Board, but where two members are disqualified to act in a particular matter, the remaining member may act for the Zoning Hearing Board.
  - (3) The Zoning Hearing 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 Zoning Hearing Board, as provided by the municipality with jurisdiction.
  - (4) The Zoning Hearing Board may appoint a solicitor or attorney to oversee the procedures of the hearing in accordance with the provisions established by of the municipality with jurisdiction and the Pennsylvania Municipalities Planning Code.

- (5) The Zoning Hearing Board may make, alter and rescind rules and forms for its procedure, consistent with the provisions of the municipality with jurisdiction and laws of the Commonwealth of Pennsylvania.
  - (6) If requested by the governing body, the Zoning Hearing Board shall submit an annual report of its activities to the governing body.
- (D) The following provisions shall apply to expenditures and fees for the Zoning Hearing Board:
- (1) The members of the Zoning Hearing Board may receive compensation for the performance of their duties and services, which shall be established by the governing body.
  - (2) Within the limits of funds appropriated by the governing body, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services.
  - (3) The applicant before the Zoning Hearing Board shall deposit with the designated secretary or treasurer of the municipality with jurisdiction such a sum of money as shall be deemed sufficient by the Zoning Hearing Board and established in a resolution to pay the cost of the expenses for the hearing. These costs may include compensation in accordance with the provisions of the Pennsylvania Municipalities Planning Code.
  - (4) Funds deposited in excess of the actual cost of the requested hearing shall be returned to the applicant upon completion of the proceedings, and, in the event that the cost of the hearing exceeded the funds deposited, the applicant shall pay to the designated secretary or treasurer of The municipality with jurisdiction the appropriate funds equal to such excess cost.
- (E) The following provision shall apply to the general functions of the Zoning Hearing Board:
- (1) The Zoning Hearing Board shall act in strict accordance with the procedures specified within the municipality with jurisdiction and the Pennsylvania Municipalities Planning Code.
  - (2) The Zoning Hearing Board shall consider applications for variances, special exceptions, appeals concerning the interpretation of this Joint Zoning Ordinance by the Zoning Officer, and other duties that are specified by the municipality with jurisdiction.
  - (3) All appeals and applications made to the Zoning Hearing Board shall be in writing, on forms prescribed by the governing body or Zoning Hearing Board.
  - (4) Every appeal or application shall refer to the specific provision of this Joint Zoning Ordinance involved and shall exactly set forth the interpretation that is claimed, the grounds for any challenges to validity of this Joint Zoning Ordinance, the use for which a special exception 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.
- (F) In all cases before the Zoning Hearing Board, the governing body, Planning Commission and Zoning Officer may review and comment on the application prior to rendering a decision.

**Section 1105: Public Hearings and Procedures**

- (A) **Zoning Variances:** The Zoning Hearing Board of the municipality with jurisdiction shall hold a public hearing to consider a zoning variance application that has been submitted to the municipality with jurisdiction. The public hearing shall be scheduled, advertised and conducted in accordance with the provisions that are specified by the Pennsylvania Municipalities Planning Code and this Joint Zoning Ordinance.
- (B) **Special Exceptions:** The Zoning Hearing Board of the municipality with jurisdiction shall hold a public hearing to consider a special exception application that has been submitted to the municipality with jurisdiction. The public hearing shall be scheduled, advertised and conducted in accordance with the provisions that are specified by the Pennsylvania Municipalities Planning Code and this Joint Zoning Ordinance.

- (C) Conditional Uses: The municipality with jurisdiction Governing body shall hold a public hearing to consider a special exception application that has been submitted to the municipality with jurisdiction. The public hearing shall be scheduled, advertised and conducted in accordance with the provisions that are specified by the Pennsylvania Municipalities Planning Code and this Joint Zoning Ordinance
- (D) Appeals: All appeals concerning the review, application, interpretation and decisions authorized by this Joint Zoning Ordinance shall be in accordance with the provisions that are specified by the municipality with jurisdiction and the Pennsylvania Municipalities Planning Code.

**Section 1106: Zoning Variances**

- (A) The Zoning Hearing Board shall hear requests for zoning variance applications, whereas it is alleged that the provisions of this Joint Zoning Ordinance inflict unnecessary hardship upon the applicant. The application shall be considered by the Zoning Hearing Board in accordance with the provisions specified by this Joint Zoning Ordinance.
- (B) In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Joint Zoning Ordinance and the Pennsylvania Municipalities Planning Code. The Zoning Hearing Board may, by rule, prescribe the form of application and may require a preliminary application to be issued and reviewed by the Zoning Officer.
- (C) In all cases before the Zoning Hearing Board, the governing body, Planning Commission and Zoning Officer may review and comment on the zoning variance application prior to rendering a decision.
- (D) The Zoning Hearing Board may grant a variance provided that all 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 condition, and not circumstances or conditions generally created by the provisions of this Joint Zoning Ordinance 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 Joint Zoning Ordinance 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 as granted by the Zoning Hearing Board is the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- (E) If a subdivision or land development plan is required to implement a variance granted by the Zoning Hearing Board, the variance shall remain valid provided that the following time frames, terms and conditions have been achieved:
  - (1) A complete preliminary plan shall be submitted to the municipality with jurisdiction within one (1) year from the date the zoning variance was granted by the Zoning Hearing Board.
  - (2) The preliminary plan shall be approved by the municipality with jurisdiction within two (2) years from the date the zoning variance was granted by the Zoning Hearing Board.
  - (3) The final plan shall be approved by the municipality with jurisdiction and recorded by the landowner or applicant within five (5) years from the date the preliminary plan was approved. If required, a municipal improvements agreement shall be executed to ensure that the municipal improvements have been completed in accordance with the approved final plan.

- (4) All site improvements required to implement the conditions of the zoning variance and the approved final plan shall be completed within five (5) years from the date the preliminary plan was approved by the municipality with jurisdiction.
- (F) If a subdivision or land development plan is not required to implement a variance granted by the Zoning Hearing Board, the variance shall remain valid provided that the following time frames, terms and conditions have been achieved:
  - (1) If required, the landowner or applicant shall apply for the necessary permits for the site work and building improvements within two (2) years from the date the zoning variance was granted by the Zoning Hearing Board.
  - (2) All site and building improvements required to implement the conditions of the zoning variance shall be completed within five (5) years from the date the zoning variance was granted by the Zoning Hearing Board.
- (G) If the applicant should fail to comply with the terms and conditions specified under Sections 1106.E or 1106.F of this Joint Zoning Ordinance, the decision and order issued by the Zoning Hearing Board shall expire and any relief granted by the zoning variance application shall become voided.
- (H) Unless otherwise stipulated as part of the variance decision issued by the Zoning Hearing Board, the governing body may consider granting a time extension in order for the landowner or applicant to comply with the provisions specified under Sections 1106.E or 1106.F of this Joint Zoning Ordinance.

**Section 1107: Special Exceptions**

- (A) The Zoning Hearing Board shall hear requests for special exception applications, as permitted under the provisions of this Joint Zoning Ordinance. By so providing, the Zoning Hearing Board recognizes that certain uses may or may not be appropriate at every location within any specific district and, where it appears that a use permitted by special exception fails to comply with all of the definitional aspects thereof or would be contrary to the public health, safety, morals and/or welfare of the community at specific locations within a zoning district, that the use would not be permitted there.
- (B) In granting any special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Joint Zoning Ordinance and the Pennsylvania Municipalities Planning Code, as amended. The Zoning Hearing Board may, by rule, prescribe the form of application and may require a preliminary application to be issued and reviewed by the Zoning Officer.
- (C) The Zoning Hearing Board shall consider the comments issued by the municipality with jurisdiction Governing body, Planning Commission, Engineer, Zoning Officer and/or other agencies that could assist the Zoning Hearing Board with the special exception application. All such comments shall be made either in writing and presented as evidence during the hearing or as part of sworn testimony at the public hearing.
- (D) The Zoning Hearing Board shall consider the following issues prior to rendering its decision on a special exception application:
  - (1) That such use is consistent with the Joint Comprehensive Plan for The municipality with jurisdiction and Mount Penn Borough.
  - (2) That such use shall be one, which is specifically authorized as a special exception use within the zoning district wherein the applicant seeks a special exception.
  - (3) That the property is suitable for the use desired and that the proposed request is consistent with the goals, objectives and policies established by this Joint Zoning Ordinance.
  - (4) That such special exception shall only be granted subject to any applicable condition and safeguards as required by this Joint Zoning Ordinance.



- (5) That such use shall not adversely affect the general character of the neighborhood and/or property values of the adjacent uses.
  - (6) That such use shall not adversely affect the health, safety and/or welfare of residents or property owners within the general neighborhood.
  - (7) That there will be no adverse effect of the proposed special exception upon the logical, efficient and economical extension of public facilities and services, including, public water, sanitary sewers, streets, police and fire protection, public schools, and all other similar facilities and services that are considered appropriate by the Zoning Hearing Board.
  - (8) That the proposed location of any residential or non-residential use is suitable with respect to probable effects upon highway traffic and assures adequate access arrangements in order to protect major streets and highways from undue congestion and hazard.
  - (9) The adequacy of sanitation and public safety provisions.
  - (10) The Zoning Hearing Board may impose such conditions, in addition to those required, as are necessary to assure that the intent of this Joint Zoning Ordinance is complied with, which conditions may include, but are not limited to: harmonious design of buildings; planting and its maintenance as a sight or sound screen; the minimizing of noxious, offensive or hazardous elements; adequate standards for parking and sanitation; and other reasonable conditions.
- (E) If a subdivision or land development plan is required to implement a special exception granted by the Zoning Hearing Board, the special exception shall remain valid provided that the time frame, terms and conditions have been achieved:
- (1) A complete preliminary plan shall be submitted to the municipality with jurisdiction within one (1) year from the date the special exception was granted by the Zoning Hearing Board.
  - (2) The preliminary plan shall be approved by the municipality with jurisdiction within two (2) years from the date the special exception was granted by the Zoning Hearing Board.
  - (3) The final plan shall be approved by the municipality with jurisdiction and recorded by the landowner or applicant within five (5) years from the date the preliminary plan was approved. If required, a municipal improvements agreement shall be executed to ensure that the municipal improvements have been completed in accordance with the approved final plan.
  - (4) All site improvements required to implement the conditions of approval for the special exception and the approved final plan shall be completed within five (5) years from the date the preliminary plan was approved by the municipality with jurisdiction.
- (F) If a subdivision or land development plan is not required to implement a special exception granted by the Zoning Hearing Board, the special exception shall remain valid provided that the following time frames, terms and conditions have been achieved:
- (1) If required, the landowner or applicant shall apply for the necessary permits for the site work and building improvements within two (2) years from the date the special exception was granted by the Zoning Hearing Board.
  - (2) All site and building improvements required to implement the conditions of approval for the special exception shall be completed within five (5) years from the special exception application was approved by the Zoning Hearing Board.
- (G) If the applicant should fail to comply with the terms and conditions specified under Section 1107.E or 1107.F of this Joint Zoning Ordinance, the decision and order issued by the Zoning Hearing Board shall expire and that the approval of the special exception application shall become voided.

- (H) Unless otherwise stipulated as part of the special exception decision issued by the by the Zoning Hearing Board, the governing body may consider granting a time extension in order for the landowner or applicant to comply with the provisions specified under Sections 1107.E or 1107.F of this Joint Zoning Ordinance.

**Section 1108: Conditional Uses**

- (A) The governing body shall hear requests for conditional use applications, as permitted under the provisions of this Joint Zoning Ordinance. By so providing, the governing body recognize that certain uses may or may not be appropriate at every location within any specific district and, where it appears that a conditional use fails to comply with all of the definitional aspects thereof or would be contrary to the public health, safety, morals and/or welfare of the community at specific locations within a district, that the use would not be permitted there.
- (B) In granting any conditional use, the governing body may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Joint Zoning Ordinance.
- (C) Unless otherwise required by the municipality with jurisdiction, a preliminary subdivision plan or preliminary land development plan shall be prepared and submitted with the conditional use application for review and consideration in accordance with the procedures and requirements specified by the municipality with jurisdiction.
- (D) Prior to the commencement of the conditional use hearing or during the proceedings of the conditional use hearing, the governing body shall consider the comments of the municipality with jurisdiction Planning Commission, Zoning Officer, Engineer, the appointed professional consultants and/or other agencies that could assist the governing body with the merits of the conditional use application. All such comments shall be made either in writing and presented as evidence during the hearing or as part of sworn testimony at the conditional use hearing.
- (E) All of the standards for conditional uses hereinafter set forth shall, where relevant, apply to all conditional uses within The municipality with jurisdiction and are deemed definitional in character so that the failure to comply with any standards shall be deemed a failure to bring the applicant within that definitional aspect for which a conditional use may be granted; or, in the discretion of the governing body, such failure to comply with the standards may be deemed a basis for the impositions of appropriate conditions to such grant. It is further the intention of the governing body that the standards hereinafter described shall be deemed additional standards and shall in no way impair any other applicable standard described elsewhere in this Joint Zoning Ordinance. Where there is a conflict between the standards set forth in this article and other standards elsewhere established by this Joint Zoning Ordinance or other applicable ordinances, it is intended that the more stringent thereof shall apply, and it is not the intent of this article to abrogate or impair any other such standards or requirements.
- (F) The governing body shall consider the following general issues and site requirements prior to rendering its decision on a conditional use application:
  - (1) That such use is consistent with the Joint Comprehensive Plan for the municipality with jurisdiction and Mount Penn Borough.
  - (2) That the property is suitable for the use desired and that the proposed request is consistent with the goals, objectives and policies established by this Joint Zoning Ordinance.
  - (3) The minimum and maximum dimensional requirements for the proposed use within the appropriate zoning district shall be held in compliance by the applicant.
  - (4) The applicant shall establish by a fair preponderance of credible evidence that the use intended at the location intended shall not be contrary to the public health, safety, morals and/or public welfare.
  - (5) The applicant shall provide evidence with supporting documentation that the capacity of the road system providing access to the property or lot in question has sufficient capacity to accommodate the use.
  - (6) The applicant shall provide evidence with supporting documentation that the interior traffic circulation for the proposed use at the proposed location, including but not limited to acceleration and deceleration lanes where required at the proposed entrances to the location, shall be adequate to provide safe and convenient

circulation for users of the facility, visitors to the facility, employees of the facility and all emergency vehicles that may require entrance thereon.

- (7) The applicant shall provide evidence with supporting documentation the facility or use provides safe and convenient pedestrian access and internal circulation within the grounds of the facility and particularly for points of access from the facility to the parking areas.
  - (8) The applicant shall provide evidence with supporting documentation that adequate screening and buffering is provided between the lands in question and surrounding residential uses and residentially zoned districts to screen the facility from view and preclude any glare from lighting or noise from being ascertainable beyond the boundaries of the property.
  - (9) The applicant shall provide evidence with supporting documentation that the local fire departments have the abilities to provide adequate fire protection and emergency management services for the use.
  - (10) The applicant shall provide evidence with supporting documentation that adequate water supply and storage is available within the region for fire-fighting purposes without adversely impairing the uses of the water supply for ordinary purposes on the premises and shall be in compliance with all applicable governmental regulations.
  - (11) The applicant shall provide evidence with supporting documentation that the existing or proposed municipal water supply facilities have sufficient capacity for the proposed use.
  - (12) The applicant shall provide evidence with supporting documentation that the existing or proposed sanitary sewage disposal facilities have sufficient capacity for the proposed use.
  - (13) Where in the opinion of the governing body, the use or facility may require supervision and protection, the applicant shall provide evidence with supporting documentation that additional security measures will be accounted for by the owner or site manager so the facility or use does not create a continuous burden on the emergency management services and providers.
- (G) The following provisions shall apply for the public hearing procedures and administrative requirements for all conditional use applications within The municipality with jurisdiction:
- (1) The governing body shall schedule and hold a public hearing on the application pursuant to public notice within sixty (60) days from the date of receipt of the applicant's application. The request for a hearing shall be accompanied by a completed application on required form. The date for the scheduling of the first hearing may be extended by the applicant on the record or in writing addressed to the governing body, in which event the date agreed upon by the applicant shall be considered timely for purposes of this subsection.
  - (2) As part of the conditional use hearing, the governing body shall consider those comments issued by the municipality with jurisdiction Planning Commission, Zoning Officer, Engineer, the appointed professional consultants and all other agencies providing comments, as may be authorized by The municipality with jurisdiction and the Pennsylvania Municipalities Planning Code.
  - (3) The governing body shall conduct the hearing or the governing body may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the governing body. However, the appellant or the applicant, as the case may be, in addition to the municipality with jurisdiction, may waive decision or findings by the governing body and accept the decision or findings of the hearing officer as final. All hearings must be completed no later than one hundred (100) days after the completion of the applicant's case-in-chief, unless extended for good cause upon application to the Court of Common Pleas.
  - (4) Any substantial revisions to the application or plan made by the applicant subsequent to filing of the application or plan or its review by the Planning Commission shall be subject to review and recommendation by the Planning Commission as specified by this Joint Zoning Ordinance. In such event, the Zoning Officer shall secure from the applicant a written extension of the date within which the governing body must hold a public hearing pursuant to the provisions of this Joint Zoning Ordinance. If the applicant fails to execute the

extension, the governing body shall decide the conditional use application on the basis of the plan and application as originally filed.

- (5) A stenographic record of the hearing shall be made by a certified court reporter, whose appearance fee shall be reimbursed through the application fee paid to the municipality with jurisdiction as part of the initial application. The cost of the original transcript shall be paid by the municipality with jurisdiction or by any party requesting an original transcript. In either case, the cost of additional copies shall be paid by the party or person requesting such copies.
  - (6) The governing body shall render a written decision or, when no decision is called for, make written findings on the conditional use application within forty-five (45) days after the last hearing before the governing body. Where the application is contested or denied, each decision shall be accompanied by findings of fact, reasons or conclusions based thereon. Any conclusions based upon this Joint Zoning Ordinance, the Pennsylvania Municipalities Planning Code, or any 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. A copy of the decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him no later than the day following its date.
  - (7) If, after the conclusion of the public hearing(s), the application is amended or revised, the governing body shall hold one or more public hearings thereon as may be necessary and shall issue a new decision thereon in conformance with the procedure established in this section. In the event that the governing body fail to commence the public hearing within 60 days from the date of the applicant's request for a hearing or fail to complete the hearing no later than 100 days after the completion of the applicant's case-in-chief, unless extended for good cause upon application to the Court of Common Pleas, 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 the governing body failed to commence the hearings, complete the hearings, or render a decision as required by this section, the governing body shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this section. If the governing body shall fail to provide such notice, the applicant may do so. Nothing in this section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.
- (H) Nothing in this section shall be construed to relieve the applicant for a conditional use approval from obtaining all other required approvals mandated by the municipality with jurisdiction as well as other pertinent laws, ordinances and regulations that have been adopted by local, state and federal agencies. This may include the submission of a subdivision plan and/or land development plan to be prepared by the applicant and submitted to the municipality with jurisdiction for review and consideration.
- (I) If a subdivision or land development plan is required to implement the approval of a conditional use application by the governing body, the conditional use shall remain valid provided that the following time frames, terms and conditions have been achieved::
- (1) A complete preliminary plan shall be submitted to the municipality with jurisdiction within one (1) year from the date the conditional use application was approved by the governing body.
  - (2) The preliminary plan shall be approved by the municipality with jurisdiction within two (2) years from the date the conditional use application was approved by the governing body.
  - (3) The final plan shall be approved by the municipality with jurisdiction and recorded by the landowner or applicant within five (5) years from the date the preliminary plan was approved. If required, a municipal improvements agreement shall be executed to ensure that the municipal improvements have been completed in accordance with the approved final plan.

- (4) All site improvements required to implement the conditions of approval for conditional use and the approved final plan shall be completed within five (5) years from the date the preliminary plan was approved by the municipality with jurisdiction.
- (J) If a subdivision or land development plan is not required to implement the conditional use decision, the conditional use shall remain valid provided that the following time frames, terms and conditions have been achieved:
  - (1) If required, the landowner or applicant shall apply for the necessary permits for the site work and building improvements within two (2) years from the date the conditional use application was approved by the governing body.
  - (2) All site improvements required to implement the conditions of the conditional use zoning variance shall be completed within five (5) years from the date the conditional use application was approved by the governing body with municipal jurisdiction.
- (K) If the applicant should fail to comply with the terms and conditions specified under Section 1108.I or 1108.J of this Joint Zoning Ordinance, the decision and order issued by the governing body shall expire and that the approval of the conditional use application shall become voided.
- (L) Unless otherwise stipulated as part of the conditional use decision, the governing body may consider granting a time extension in order for the landowner or applicant to comply with the provisions specified under Sections 1108.I or 1108.J of this Joint Zoning Ordinance

**Section 1109: Zoning Amendments and Curative Amendments**

- (A) Zoning Amendments: Lower Alsace Township and Mount Penn Borough may from time to time amend, supplement, change, modify or repeal the contents of this Joint Zoning Ordinance. Any amendment, supplement, reclassification or change may be initiated by Lower Alsace Township, Mount Penn Borough, or by a petition by a landowner within Lower Alsace Township or Mount Penn Borough. If considered, a public hearing shall be scheduled by Lower Alsace Township and Mount Penn Borough, which shall be advertised and conducted in accordance with the provisions that are specified by Lower Alsace Township, Mount Penn Borough and the Pennsylvania Municipalities Planning Code.
- (B) Zoning Map Amendments of Revisions: Lower Alsace Township and Mount Penn Borough may from time to time amend or revise the Joint Zoning Map. Any amendment or revisions may be initiated by Lower Alsace Township, Mount Penn Borough, or by a petition by a landowner within Lower Alsace Township or Mount Penn Borough. If considered, a public hearing shall be scheduled by Lower Alsace Township and Mount Penn Borough, which shall be advertised and conducted in accordance with the provisions that are specified by Lower Alsace Township, Mount Penn Borough and the Pennsylvania Municipalities Planning Code.
- (C) Curative Amendments: A landowner who desires to challenge on substantive grounds the validity of this Joint Zoning Ordinance, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to Lower Alsace Township and Mount Penn Borough with a written request that his challenge and proposed amendment be heard. All such landowner curative amendments shall be scheduled, advertised and conducted in accordance with the provisions that are specified by Lower Alsace Township, Mount Penn Borough and the Pennsylvania Municipalities Planning Code.

**Section 1110: Joint Comprehensive Plan Implementation Agreement**

- (A) The Joint Zoning Ordinance has been adopted in accordance with: the requirements of Pennsylvania Municipalities Planning Code, as amended; with the goals, objectives and policies established within the Joint Comprehensive Plan for The municipality with jurisdiction and Mount Penn Borough considering issues relative to growth, development, preservation and redevelopment.
- (B) As part of the provisions established within the intergovernmental agreement for the implementation of the Joint Comprehensive Plan, Lower Alsace Township and Mount Penn Borough has forwarded a complete copy of this Joint

Zoning Ordinance to the Berks County Planning Commission and Antietam School District for municipal and intergovernmental review under the provisions of the Pennsylvania Municipalities Planning Code.

- (C) The purpose statements and community development objectives should be utilized when considering amendments to the Joint Zoning Ordinance of 2011. All future amendments this Joint Zoning Ordinance should be generally consistent with the Joint Comprehensive Plan for Lower Alsace Township and Mount Penn Borough, as may be revised and/or amended.
- (D) Prior to the adoption of any future amendments, the municipality with jurisdiction should follow the procedural guidelines referenced in the intergovernmental agreement for the implementation efforts associated the Joint Comprehensive Plan for Lower Alsace Township and Mount Penn Borough.

**Section 1111: Opinions, Mediation and Appeals**

- (A) Preliminary Opinion: In order not to delay unreasonably the time when a landowner may secure assurance that this Joint Zoning Ordinance or Joint Zoning Map under which he proposes to build is free from challenge, and recognizing that the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the landowner may advance the date from which time for any challenge to this Joint Zoning Ordinance or Joint Zoning Map will run under Section 914.1 of the Pennsylvania Municipalities Planning Code by following the procedures set forth in the Pennsylvania Municipalities Planning Code.
- (B) Mediation: If necessary, mediation proceedings shall be conducted in accordance with the provisions established by the municipality with jurisdiction and the Pennsylvania Municipalities Planning Code.
- (C) Appeals: All appeals concerning the review, application, interpretation and decisions authorized by this Joint Zoning Ordinance shall be in accordance with the appropriate provisions that are established by the municipality with jurisdiction and the Pennsylvania Municipalities Planning Code. All such appeals concerning an alleged error in the processing or enactment of any components of this Joint Zoning Ordinance shall be raised by appeal taken directly from the action of the governing body to the appropriate court, which shall not be filed later than thirty (30) days from the effective date of this Joint Zoning Ordinance.

**Section 1112: Filing Fees and Costs**

- (A) The governing body shall establish by resolution a schedule of fees, charges and expenses as well as the collection procedures for zoning permits, certificates of occupancy, special exceptions, variances and appeals and other matters pertaining to this Joint Zoning Ordinance. The resolution or schedule of the fees shall be available for inspection in the office of the Zoning Officer with municipal jurisdiction.
- (B) The governing body may alter or change the schedule of the fees by resolution in accordance the appropriate provisions established by the municipality with jurisdiction and the Pennsylvania Municipalities Planning Code.

**Section 1113: Violations, Penalties and Remedies**

- (A) Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Joint Zoning Ordinance shall, upon being found liable in a civil enforcement proceeding commenced by The municipality with jurisdiction, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by The municipality with jurisdiction as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the municipality with jurisdiction may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determines otherwise as prescribed by the Pennsylvania Municipalities Planning Code.
- (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 Joint Zoning Ordinance shall be construed or interpreted to grant to any person or entity other than the municipality with jurisdiction the right to commence any action for enforcement pursuant to this Joint Zoning Ordinance.
  
- (D) In the event any building, structure or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained or used in violation of this Joint Zoning Ordinance, or in case any land, building or structure for which a use and occupancy permit is required is conveyed or possession otherwise transferred to a bona fide purchaser or lessee without obtaining such certificate of occupancy and delivering the same to such bona fide purchaser or lessee at or prior to conveyance or transfer of possession, whichever first occurs, the governing body, in addition to other remedies, may institute in the name of The municipality with jurisdiction any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure or land or the conveyance thereof, or to prevent in or about such premises any act, conduct, business or use constituting a violation.