

ARTICLE XVIII

ADMINISTRATION AND ENFORCEMENT

Section 1801 - Enforcement

For the administration of this Ordinance, a Zoning Officer, who shall not hold any elective office in the Township, shall be appointed by the Township Board of Supervisors. The Zoning Officer shall meet qualifications established by the Board of Supervisors and shall be able to demonstrate to the satisfaction of the Board of Supervisors a working knowledge of municipal zoning. The Zoning Officer shall administer this Ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to this Ordinance and other applicable Township codes and ordinances. The Zoning Officer shall issue all permits required by this Ordinance. The Zoning Officer may be authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his employment by the Township.

Section 1802 - Certificates, Permits, and Licenses

1. Zoning Permits.

Zoning permits shall hereafter be secured from the Zoning Officer's office prior to the issuance of a building permit for the construction, erection or alteration of structure, including fences and walls, signs, parts of a structure, or upon a change in the use of a structure or land.

2. Building Permits.

No building or structure in any District shall be constructed, reconstructed, enlarged or restored, structurally altered or demolished without a building permit for such work duly issued upon application to the Municipal Building Permit Officer.

3. Temporary Use Permits. It is recognized that it may be in accordance with the purpose of the Ordinance to permit temporary activities for a limited period of time, which activities may be prohibited by other provisions of this Ordinance. If such uses are of such a nature and are so located that, at the time of petition, they will:

- a. In no way exert a detrimental effect upon the uses of land and activities normally permitted in the zone or
- b. Contribute materially to the welfare of the Township, particularly in a state of emergency, under conditions peculiar to the time and place involved; then the Board of Supervisors may, subject to all regulations for the issuance of a temporary use permit elsewhere specified, direct the Zoning Officer to issue a permit for a period

not to exceed six (6) months. Such permits may be extended not more than once for an additional period of six (6) months.

4. Certificate of Use. No land or building or part thereof hereafter erected or altered in its use or structure shall be used until the Zoning Officer shall have issued a Certificate of Use stating that such land, building or part thereof and the proposed use thereof are found to be in conformity with the provisions of this Ordinance. Within three days after notification that a building or premises or part thereof is ready for occupancy or use, it shall be the duty of the Zoning Officer to make a final inspection thereof and to issue a Certificate of Use if the land, building or part thereof and the proposed use thereof are found to conform with the provisions of this Ordinance; or, if such certification is refused, to state refusal in writing, with the cause, and immediately thereupon mail notice of such refusal to the applicant at the address indicated in the application.

5. Sign Permits.

It shall be unlawful to commence the erection of any permanent sign or to commence the moving or alteration of any permanent sign until the Zoning Officer has issued a sign permit for such work. Applications for permits to erect, alter or modify permanent signs shall be made to the Zoning Officer in accordance with the requirements of Section 1501 of this Ordinance.

6. Home Business Permits.

Applications for Home Business Permits shall be made to the Zoning Officer in accordance with the requirements of Section 1613 of this Ordinance.

7. Child or Adult Care Facility Permits.

Applications for Child or Adult Care Facility Permits shall be made to the Zoning Officer in accordance with the requirements of Section 1614 of this Ordinance.

8. Conditional Use Permit.

It shall be unlawful to establish a use that requires conditional use approval by the Penn Township Board of Supervisors until a conditional use permit is issued by the Zoning Officer.

9. Sexually Oriented Business License - No Sexually Oriented Business shall be issued a Zoning Permit and/or Building Permit until the Board of Supervisors have issued a business license pursuant to Ordinance #2001-03

10. Junk yard, Recycling Yard, and Automobile Wrecking License - No person, business, cooperation, or other entity shall engage in a business as a junk yard, recycling yard or automobile wrecking yard shall be issued a Zoning Permit and/or Building Permit without first obtaining a license from the Penn Township Board of Supervisors.

Section 1803 - Records

It shall be the duty of the Zoning Officer to keep a record of all applications for planning and zoning permits, a record of all permits issued and a record of all certificates of occupancy which he countersigns, together with a notation of all special conditions involved. The Zoning Officer shall file and safely keep copies of all plans submitted which shall be available for the use of the Board of Supervisors, and shall prepare a monthly report for the Board of Supervisors summarizing for the period since his last previous report all zoning permits issued and certificates countersigned by him and all complaints or violations and the action taken by him consequent thereon.

Section 1804 - Jurisdiction

1. Zoning Hearing Board's Jurisdiction.

The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

- a. Substantive challenges to the validity of any land use ordinance, except those brought before the Board of Supervisors pursuant to Sections 1842.1. (Procedure for Landowner Curative Amendments) and 1830 (Validity of Ordinance: Substantive Questions).
- b. Challenges to the validity of any land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within thirty (30) days after the effective date of said ordinance.
- c. Appeals from the determination of the Zoning Officer including, but not limited to, the granting or denial of any permit, or failure to act on the application therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.
- d. Appeals from the Zoning Officer's determination of Preliminary Opinion pursuant to the requirements of Section 1831.
- e. Appeals from the determination of the Zoning Officer or Township Engineer in the administration of any land use

ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving Subdivision/Land Development Ordinance or Planned Residential Development applications.

- f. Appeals from the determination of the Zoning Officer or Township Engineer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.
- g. Applications for variances from the terms of this Ordinance or any flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 1810.1.

2. Board of Supervisors' Jurisdiction.

The Board of Supervisors shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

- a. All applications for approval of subdivisions or land developments in accordance with the requirements of the Penn Township Subdivision and Land Development Ordinance.
- b. Applications for conditional uses under this Ordinance pursuant to Section 1820.2.
- c. Applications for curative amendment to this Ordinance pursuant to Section 1842.
- d. All petitions for amendments to land use ordinances.
- e. Appeals from the determination of the Zoning Officer or Township Engineer in the administration of any provision of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to application for development involving Subdivision/Land Development Ordinance applications. Where such determination relates only to development not involving an application for Subdivision/Land Development or Planned Residential Development, the appeal from such determination of the Zoning Officer or Township Engineer shall be to the Zoning Hearing Board pursuant to Section 1804.1.e.

3. Applicability of Judicial Remedies.

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

Section 1805 - RESERVED FOR FUTURE USE (2004-02 - 5/26/2004)

Section 1806 - Zoning Hearing Board Creation and Appointment

Pursuant to Article IX of the Pennsylvania Municipalities Planning Code, as amended, the Penn Township Board of Supervisors do hereby create a Zoning Hearing Board consisting of three members who shall be residents of the Township. Members of the Zoning Hearing Board shall hold no other office in the Township.

1. Terms of Office.

- a. The terms of office shall be five years and shall be so fixed that the term of office of no more than one member shall expire each year.
- b. The Zoning Hearing Board shall promptly notify the Board of Supervisors of any vacancies that occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.

2. Alternate Members.

The Board of Supervisors may appoint by resolution at least one but no more than three residents of the Township to serve as alternate members of the Zoning Hearing Board. The term of office of an alternate member shall be three years. When seated in accordance with Section 1807, 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 Zoning Hearing 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 Ordinance and otherwise provided by law. Alternates shall hold no other office in the Township, 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 unless designated as a voting alternate member pursuant to Section 1807 of this Ordinance.

3. Removal of Members.

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 Board of Supervisors taken after the member has received fifteen days' advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

Section 1807 - Organization of the Zoning Hearing Board

1. The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms and as such may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall not be 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 of the Board as provided in Section 1809 of this Ordinance.
2. If, by reason of absence or disqualification of a member, a quorum is not reached, the chairman of the Board shall designate as many alternate members of the Board 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.
3. The Zoning Hearing Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Township of Penn and laws of the Commonwealth of Pennsylvania. The Zoning Hearing Board shall keep full public records of its business, which records shall be the property of the Township, and shall submit a report of its activities to the Board of Supervisors as requested by the Board of Supervisors.

Section 1808 - Expenditures for Services

Within the limits of funds appropriated by the Board of Supervisors, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services.

Section 1809 - Hearings of the Zoning Hearing Board

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

1. Public Notice.

Public notice shall be given and written notice shall be given to (1) the applicant, (2) the Township Zoning Officer and (3) to any person who has made timely request for same. Written notices shall be given at such time and in such manner as shall be prescribed by rules of the Zoning Hearing Board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.

2. Fees.

The Board of Supervisors may prescribe reasonable fees with respect to hearings before the Zoning Hearing Board. Fees for said hearings may include compensation for the secretary 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.

3. Conduct of Hearing. (2005-03 - 12/28/2005)

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. Each subsequent hearing shall be within 45 days of the prior hearing unless otherwise agreed to by the applicant. Any party aggrieved by the schedule or progress of the hearings may apply to the court of common pleas for judicial relief. The hearing shall be completed no later than 100 days after the completion of the applicant's case in chief, unless extended by good cause upon application to the court of common pleas. The hearings shall be conducted by the Zoning Hearing Board or the Zoning Hearing Board may appoint any member, or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Zoning Hearing Board; however, the appellant or the applicant, as the case may be, in addition to the Township, may, prior to the decision of the hearing, waive decision or findings by the Zoning Hearing Board and accept the decision or findings of the hearing officer as final.

4. The parties to the hearing shall be the Township of Penn, any person affected by the application who has made timely appearance of record before the Zoning Hearing Board, and any other person including civic or community organizations permitted to appear before the Board. The Zoning Hearing Board shall have the power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Board for that purpose.
5. The chairman or acting chairman of the Zoning Hearing 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.
6. 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.
7. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.

8. The Zoning Hearing 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.
9. The Zoning Hearing Board or 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.
10. Decisions.

The Zoning Hearing Board, the hearing officer, or independent attorney, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the Zoning Hearing Board, hearing officer, or independent attorney. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with reasons therefor.

Conclusions based on any provisions of this Ordinance or any Township ordinance, rule or regulation, or the Pennsylvania Municipalities Planning Code, Act 247, as amended, 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 Zoning Hearing Board shall make his report and recommendations available to the parties within forty-five (45) days and the parties shall be entitled to make written representations thereon to the Zoning Hearing Board prior to final decision or entry of findings, and the Board's decision shall be entered no later than thirty (30) days after the report of the hearing officer or independent attorney. Where the Zoning Hearing Board fails to render the decision within the period required by this subsection, or fails to hold the required hearing pursuant to Section 1809, 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. Nothing in this Section shall

prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

11. To all other persons who have filed their name and address with the Zoning Hearing Board no 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.

12. Effect of Board's Decision.

a. If the variance or special exception is granted or the issuance of a permit is finally approved, or other action by the appellant or applicant is authorized, the necessary permit shall be secured and the authorized action begun within six (6) months after the date when the variance or special exception is finally granted, or the issuance of a permit is finally approved or the other action by the appellant or applicant is authorized and provided further that the building or alteration, as the case may be, shall be completed within twelve (12) months of authorization by the Zoning Hearing Board. For good cause, the Board, upon application by the developer in writing stating the reasons therefor, may grant an extension or extensions of time for the commencement of the authorized in six (6) month increments, or may grant an extension or extensions of time for the completion of the authorized action in six (6) month increments. Where time allowed for the commencement of the authorized action has been granted an extension, the time allowed for the completion of the authorized action shall be automatically extended by an equal amount of time.

b. Should the appellant or applicant fail to obtain the necessary permits within the required period, or having obtained the permit should he fail to commence work thereunder within such period, it shall be conclusively presumed that the applicant has withdrawn or abandoned his appeal or his application, and all provisions, variances, special exceptions and permits granted to him shall be deemed automatically rescinded by the said Board.

c. Should the appellant or applicant commence construction or alteration within the required period but fail to complete such construction or alteration within such period, the Board may, upon ten (10) days' notice in writing, rescind or revoke the granted variance or special exception, or the issuance of the permit or permits, or the other action authorized to the appellant or applicant, if the board finds that no good cause appears for the failure to complete such construction or alteration within such period, and if the Board further finds that conditions have so altered or changed in the

interval since the granting of the variance, special exception, permit or action, that revocation or rescission of the action is justified.

Section 1810 - Zoning Hearing Board - Functions (2004-02 - 5/26/2004)

1. Variances. The Zoning Hearing Board shall hear and decide requests for variances in accordance with the standards and criteria set forth in Section 1821 of this Ordinance. In granting a variance, the Zoning Hearing Board may attach reasonable conditions and safe guards as it might deem necessary to implement the purpose of this Ordinance and in the Pennsylvania Municipalities Planning Code (MPC).

Sections 1811 - 1814 - Reserved for Future Use

Section 1815 - Parties Appellant before Zoning Hearing Board

Appeals under Section 1804. may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Township, or any person aggrieved. Requests for a variance under Section 1810.1 may be filed with the Zoning Hearing Board by any landowner, equitable owner, or tenant with the permission of such landowner.

Section 1816 - Time Limitations

1. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after any application for development, preliminary or final, has been approved by an appropriate Township officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision by the Zoning Officer on a challenge to the validity of the Zoning Ordinance or Zoning Map shall preclude an appeal from the final approval except in the case where the final submission substantially deviates from the approved preliminary approval.
2. All appeals from determinations adverse to the landowners shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

Section 1817 - Stay of Proceedings

Upon filing of any proceeding referred to in Section 1815 and during its pendency before the Zoning Hearing 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 Zoning Hearing 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 Zoning Hearing 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 Zoning Hearing 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 Zoning Hearing Board.

Sections 1818 - 1819 - Reserved for Future Use

Section 1820 - Conditional Uses

It is the intent of this Section to provide special controls and regulations for particular uses that may, under certain conditions, be conducted within the various Zoning Districts established in This Ordinance. These particular controls and requirements are additional to those imposed by the District Regulations and by the Supplementary Regulations of this Ordinance.

1. Applicability, Limitations, Compliance.

- a. Applicability. The controls imposed by Article XVI are applicable where cited specifically for a Conditional Use listed in Article III of this Ordinance.
- b. Limitations. Conditional Uses shall be permitted only where specifically cited in the District Regulations of this Ordinance.
- c. The applicant shall bear the burden of proof that the proposed use meets all requirements and objectives of this Ordinance.
- d. Compliance. Nothing in this Section shall relieve the Owner or his agent, the developer, or the applicant for a Conditional Use Permit from obtaining Subdivision and/or Land Development Plan approval in accordance with the Penn Township Subdivision and Land Development Ordinance.
- e. Conditions and Safeguards of Conditional Use Permits. The Township Board of Supervisors may require the conditional use permits be periodically renewed. Such renewal shall be granted upon a determination by the Township Board of Supervisors to the effect that such conditions as may have been prescribed in conjunction with the issuance of the original permit have not been, or are being no longer, complied with. In such cases, a

period of 60 days shall be granted the applicant for full compliance prior to the revocation of said permit.

- f. Effect of Approval. Any use for which a conditional use permit may be granted shall be deemed to be a conforming use in the District in which such use is located provided that such permit shall be deemed to affect only the lot or portion thereof for which such permit shall have been granted.
- g. Fees and Other Costs. In addition to the filing fee and other costs requisite for Land Development Plan approval in accordance with the Subdivision and Land Development Ordinance, the applicant shall pay the following costs:
 - (1). All costs related to any required public hearing including but not limited to advertising of the hearing, services of the Township Solicitor and Engineer and/or Planner, public stenographer, transcripts of proceedings, and similar costs.

An applicant by filing for a conditional use shall then be obligated to pay all costs hereinabove provided. Payment of such costs shall be promptly submitted to the Township by the applicant upon the submission of bills therefor from time to time. Payment shall be by check or money order made payable to Penn Township.

No building permit or other requisite permit shall be issued by the Township Zoning Officer until all such fees and costs have been paid in full by the applicant.

2. General Procedures for Conditional Uses.

- a. Application. Requests for a Conditional Use shall be submitted, together with all required fees, in a written application setting forth the grounds for the request in detail.

A development plan of the total area to be included in the application, which shall be drawn to scale, shall accompany and be part of the Conditional Use Application and contain the following:

- (1). The location, boundaries, dimensions and ownership of the land.
- (2). In the case of commercial or industrial development, a general description of the activities to take place as may be appropriate such as maximum employment, working hours, customer traffic, delivery services, development schedule staging plan.

- (3). The location, use, and ground area of such proposed building and other structure.
- (4). The locations, dimensions, arrangements and proposed use of all open spaces, yards, streets, accessways, entrances, exits, off-street parking facilities, loading and unloading facilities, pedestrian ways and buffer yards.
- (5). The capacity arrangement and controls for all areas to be used for automobile access, parking, loading and unloading in sufficient detail to demonstrate that satisfactory arrangements will be made to facilitate traffic movement from the street or highway.
- (6). The character of the buffer area and screening devices to be maintained including the dimensions and arrangements of all areas devoted to planting, lawns, trees or similar purposes.
- (7). A description of the proposed methods of control of development in sufficient detail to indicate the noise, glare, air pollution, water pollution, fire hazards, traffic congestion, and other safety hazards to be produced.
- (8). A description of the methods to be used for water supply treatment and disposal of sewage, wastes, refuse, and storm drainage.
- (9) The names and addresses of all adjoining property owners.

b. Referral to Penn Township Planning Commission. Applications for a Conditional Use shall be referred to the Penn Township Planning Commission for comment. In their review the Planning Commission shall take into consideration the public health, safety, and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular, and may recommend appropriate conditions and safeguards as may be required in order that the result of its action may, to the maximum extent possible, further the expressed intent of This Ordinance and the accomplishment of the following objectives in particular.

- (1). That all proposed structures, equipment, or material shall be readily accessible for fire and police protection.
- (2). That the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly

development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.

(3). That, in addition to the above, in the case of any use located in, or directly adjacent to, a Residential District:

(a) The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to, or incongruous with, said Residential District or conflict with the normal traffic of the neighborhood; and

(b) The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

4. Conditional Uses - Specific Procedures. Upon receipt of a Conditional Use Application the following procedure shall prevail.

a. Planning Commission Review. The Township Planning Commission shall review said application together with all supporting information and forward its written recommendations to the Township Board of Supervisors. The Commission may recommend approval, disapproval or modification. In the case of disapproval or modification the Commission shall set forth the reasons for the recommendation in writing.

b. Board of Supervisors Action. Within sixty (60) days from receipt of a Conditional Use Application, the Township Board of Supervisors, after giving notice to the public shall hold a public hearing on the Conditional Use Application and render its decision within forty-five (45) days from the date of the final public hearing. The Board of Supervisors shall complete the hearing no later than 100 days after the completion of the applicant's case in chief, unless extended for a good cause upon application to the court of common please. Written notice of said hearing shall be

conspicuously posted on the affected tract of land at least one week prior to the hearing.

The Township Board of Supervisors shall make its final decision based upon findings of fact as to the general factors set forth in Section 1820. 2.b. and upon the specific factors for which a conditional use application is filed.

Each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions shall contain a reference to the provisions relied on and the reasons why the conclusion is deemed appropriate in light of the facts found.

In allowing a Conditional Use, the Township Board of Supervisors may attach such reasonable conditions and safeguards, in addition to those expressed in this Ordinance, as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code.

Section 1821 - Zoning Hearing Board Functions (2004-02 - 5/26/08)

Variances. - It is the intent of this Section to provide specific direction for the Zoning: Hearing Board in their responsibility to hear and decide requests for variances. The Zoning Hearing Board may grant a variance provided that all of the following findings are made where relevant in a given case:

- a. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or the 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 the Zoning Ordinance in the neighborhood or district in which the property is located;
- b. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
- c. That such unnecessary hardship has not been created by the applicant;
- d. That the variance, if 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; and

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

Sections 1822 - 1829 - Reserved for Future Use (2004-02 - 5/26/2004)

Section 1830 - Validity of Ordinance: Substantive Questions

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 (1) to the Zoning Hearing Board or (2) to the Township Board of Supervisors, in accordance with the requirements of the Municipalities Planning Code, 53 P.S. Section 10916.1.

Section 1831 - Procedure to Obtain Preliminary Opinion

In order not to unreasonably delay the time when a landowner may secure assurance that the ordinance or map under which he proposed 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 the ordinance or map will run under Section 1816 by the following procedure:

1. 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 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.
2. If the Zoning Officer's preliminary opinion is that the use or development complies with the ordinance or map, notice thereof shall be published once each week for two successive weeks in a newspaper of general circulation in the Township. 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 under Section 1816 and the time therein specified for commencing a proceeding with the Zoning Hearing Board shall run from the time when the second notice thereof has been published.

Section 1832 - Violations and Penalties

1. Enforcement Notice.

- a. Whenever the Zoning Officer or other authorized Township representative determines that there are reasonable grounds to believe that there has been a violation of any provision of this Ordinance, or of any regulation adopted pursuant there to, the Zoning Officer shall initiate enforcement proceedings by sending an enforcement notice as provided in this Section.
- b. The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record.
- c. An enforcement notice shall state at least the following:
 - (1). The name of the owner of record and any other person against whom the Township 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 the Ordinance.
 - (4). The date before which the steps for compliance must be commenced, not to exceed thirty (30) days from receipt of notice, and the date before which the steps must be completed.
 - (5). An outline of remedial action, which, if taken, will effect compliance with the provisions of this Ordinance, or any part thereof, and with any regulations adopted pursuant thereto.
 - (6). A statement indicating 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 elsewhere in this Ordinance.
 - (7). A statement indicating 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.

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 this Ordinance or any other Township ordinances, code or regulation, the Board of Supervisors or any officer of the Township, 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 such action is instituted by a landowner or tenant, notice of that action shall be served upon the Township at least thirty (30) days prior to the time the action is begun by serving a copy of the complaint on the Township Board of Supervisors. No such action may be maintained until such notice has been given.

3. Jurisdiction. District justices shall have initial jurisdiction over proceedings brought under Section 1832.

4. Enforcement Remedies.

a. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than five hundred dollars (\$500) plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or be 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 Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fee collected for the violation of the Ordinance shall be paid over to the Township.

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 any person or entity other than the Township the right to commence any action for enforcement pursuant to this Section.

Section 1833 - Appeals to Court

All appeals from all land use decisions rendered pursuant to this Article shall be taken in accordance with the applicable requirements of the Municipalities Planning Code, as amended.

Sections 1834 - 1839 - Reserved for Future Use

Section 1840 - Power of Amendment

The Board of Supervisors may, from time to time, amend, supplement, change, modify or repeal this Ordinance or any part of this Ordinance, including the Zoning Map. When doing so, the Board of Supervisors shall proceed in the manner prescribed in this Article.

Section 1841 - Enactment of Zoning Ordinance Amendments

Proposals for amendment, supplement, change, modification, or repeal may be initiated by the Board of Supervisors on its own motion, by the Planning Commission, or by petition of one or more owners of property to be affected by the proposed amendment, subject to the following provisions:

1. Submission Dates.

Proposals for amendment, supplement, change or modification to this Ordinance, including the Zoning Map, will be accepted for review and recommendation by the Planning Commission. The regularly scheduled meetings of the Planning Commission are hereby established as the meetings at which such aforementioned proposals shall be considered. All proposals for amendment, supplement, change or modification to this Ordinance shall be submitted to the Township Secretary for referral to the Planning Commission not later than nine (9) regular business days prior to a regularly scheduled meeting of the Planning Commission.

2. Proposals Originated by Board of Supervisors.

The Board of Supervisors may on its own motion prepare proposals for amendment, supplement, change, modification or repeal of this Ordinance.

3. Proposals Originated by the Planning Commission.

The Planning Commission may on its own motion prepare proposals for amendment, supplement, change, modification or repeal of this Ordinance.

4. Proposals Originated by Citizen Petition.

Owners of property in the Township may by petition submit proposals for amendment, supplement, change, modification or repeal of this Ordinance.

a. A fee shall be paid at the same time to cover costs, and no part of such fee shall be returnable to a petitioner. Said fee shall be in accordance with a fee schedule adopted by resolution of the Board of Supervisors from time to time.

b. On receipt of said petition and the requisite fee the Zoning Officer shall transmit a copy of the petition to the Planning Commission.

5. Within thirty (30) days after receipt of the Planning Commission's report and recommendation, the Board of Supervisors shall either fix a time for public hearing or notify the petitioner of its decision not to consider the proposal.

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

The Planning Commission shall make a report and recommendation to the Board of Supervisors.

a. The report shall set forth in detail reasons wherein public necessity, convenience, general welfare, and the objectives of the Penn Township Comprehensive Plan do or do not justify the proposed change, and may include any additions or modifications to the original proposal.

b. At its discretion, the Planning Commission may hold a public hearing before making such report and recommendation.

7. Referral to County Planning Commission.

At least thirty (30) days prior to the public hearing on the amendment by the Board of Supervisors, the Board of Supervisors shall submit the proposed amendment to the Perry County Planning Commission for recommendations.

8. Before voting on the enactment of an amendment, the Board of Supervisors shall hold a public hearing thereon, pursuant to public notice. Notice shall be given as follows:
 - a. By publication of the notice in a newspaper of general circulation in the Township. Said notice shall be published one each week for two successive weeks. The first publication shall not be more than thirty days or less than seven days from the date of the hearing.
 - b. When such hearing concerns a Zoning Map change, written notice shall be given to parties in interest, who shall be at least those persons whose properties adjoin or are across the street from the property in question.

If the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by the Township at points deemed sufficient by the Township along the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one week prior to the date of the hearing. In addition to the property posting, where the amendment involves a zoning map change, notice of the public hearing shall be mailed by the municipality at least thirty days prior to the date of the hearing by first class mail to the addresses to which real estate tax bills are sent for all real property within the area being rezoned, as evidenced by tax records within possession of the municipality. The notice shall include the location, date and time of the public hearing. The mailing notification referenced above shall not apply when the rezoning constitutes a comprehensive rezoning.

9. 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 Board of Supervisors shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment.

10. Enactment of Zoning Ordinance Amendment.

Within thirty (30) days after enactment, a copy of the amendment to the Zoning Ordinance shall be forwarded to the County Planning Commission.

Section 1842 - Curative Amendments

A curative amendment may be initiated by either a landowner or by the Board of Supervisors.

1. Procedure for Landowner Curative Amendments.

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 Board of Supervisors with a written request that his challenge and proposed amendment be heard and decided as provided in Section 1830.

- a. The Board of Supervisors shall commence a hearing thereon within sixty (60) days of the request as provided in Section 1830. The curative amendment and challenge shall be referred to the Township and County Planning Commissions as provided in Section 1841 and notice of the hearing thereon shall be given as provided in Section 1841.8. and in Section 1830.
- b. The hearing shall be conducted in accordance with Section 1809 and all references therein to the Zoning Hearing Board shall, for the purposes of this Section be references to the Board of Supervisors. If the Board of Supervisors 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.
- c. If the Board of Supervisors determines that a validity challenge has merit, the Board of Supervisors may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment that will cure the alleged defects. The Board of Supervisors shall consider the curative 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, woodland,

wetlands, flood plains, 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.

2. Procedure for Municipal Curative Amendments.

- a. If the Board of Supervisors determines that this Zoning Ordinance or any portion thereof is substantially invalid, the Board of Supervisors shall declare by formal action, this Zoning Ordinance or portions hereof substantively invalid and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days following such declaration and proposal, the Board of Supervisors shall:
 - (1). By resolution make specific findings setting forth the declared invalidity of the Zoning Ordinance that may include:
 - (a) References to specific uses that are either not permitted or not permitted in sufficient quantity.
 - (b) Reference to a class of use or uses which require revision.
 - (c) Reference to the entire ordinance that requires revisions.
 - (2). Begin to prepare and consider a curative amendment to the zoning ordinance to correct the declared invalidity.
- b. Within one hundred eighty (180) days from the date of the declaration and proposal, the Board of Supervisors shall enact a curative amendment to validate, or reaffirm the validity of the zoning ordinance.
- c. Upon initiation of the procedures, as set forth in Section 1842.2.a, the Board of Supervisors shall not be required to entertain or consider any landowner's curative amendment filed under Section 1842.1. nor shall the Zoning Hearing Board be required to give a report requested under Section 1830 subsequent to the declaration and proposal based upon the grounds

identical to or substantially similar to those specified in the resolution required by Section 1842.2.a.(1). Upon completion of the procedures as set forth in Section 1842.2.a, no rights to a cure shall, from the date of 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.

- d. The Board of Supervisors having utilized the procedures as set forth in Section 1842.2.a may not again utilize said procedure for a thirty-six (36) month period following the date of the enactment of a curative amendment, or reaffirmation of the validity of the zoning ordinance provided, however, if after the date of declaration and proposal there is a substantially new duty or obligation imposed upon the Township by virtue of a change in statute or by virtue of a Pennsylvania Appellate Court decision, the Township may utilize the provisions of this Section to prepare a curative amendment to this Ordinance to fulfill said duty or obligation.

Section 1843 - Publication, Advertisement and Availability of Ordinances

1. Proposed zoning ordinance amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this Section, and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the Township where copies of the proposed amendment may be examined without charge or obtained for charge not greater than the cost thereof. The Board of Supervisors shall publish the proposed amendment once in one newspaper of general circulation in the Township not more than sixty (60) days or less than seven (7) days prior to passage. Publication of the proposed amendment shall include either the full text thereof or the title and a brief summary, prepared by the Township Solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:
 - a. A copy thereof shall be supplied to a newspaper of general circulation in the Township at the time the public notice is published.
 - b. An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinance.
2. In the event substantial amendments are made in the proposed amendment, before voting upon enactment, the Board of Supervisors shall at least ten (10) days prior to enactment readvertise, in one newspaper of general circulation in the

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

3. Zoning ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.

Sections 1844 - Fees

Fees associated with the administration of this ordinance shall be set by Resolution by the Penn Township Board of Supervisors and shall be paid prior to the issuance of any permit, or at the time of application for a Conditional Use Permit or Variance request.

Section 1845 - 1849 - Reserved for Future Use

Section 1850 - Repealer

All ordinances or parts of ordinances in conflict with this Zoning Ordinance or inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 1851 - Validity

If any section, clause, provision or portion of this Ordinance shall be held to be invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not affect any other section, clause, provision or portion of this Ordinance which is not in itself invalid or unconstitutional.

Section 1852 - Effective Date

This Ordinance shall become effective in accordance with applicable law and may be amended from time to time in accordance with procedures established by law.

Section 1853 - Relationship to Act 247 - The Pennsylvania Municipalities Planning Code

This Ordinance provides detailed procedures for action by the Board of Supervisors, Planning Commission, Zoning Hearing Board, and the public. The purpose of these sections is for the convenience of the user of this document; however, from time to time the enabling legislation will be revised. As such the procedural requirements of this ordinance shall be compared against Act 247. Act 247 will always preside and shall be the source for procedural protocol.

Section 1854 - Enactment

ENACTED, ORDAINED, AND ADOPTED this **23rd day of July, 2003** by the Supervisors of the Township of Penn, Perry County, Pennsylvania in a lawful session duly assembled.

Section 1855 - Effective Date

This Ordinance shall become effective in accordance with applicable law on the **1st day of October, 2003**, and may be amended from time to time in accordance with procedures established by law.

Supervisors of the Township of Penn

SIGNED ON JULY 23, 2003

Chairman

Vice-Chairman

Supervisor

CERTIFICATE OF ADOPTION

I hereby certify the foregoing to be an exact copy of an Ordinance adopted by the Supervisors of the Township of Penn, Perry County, Pennsylvania, at a regular meeting of the Board on the **23rd day of July, 2003**.

Secretary