

ZONING ORDINANCE



NEW BRIGHTON

P E N N S Y L V A N I A

"THE NEW BRIGHTON BOROUGH ZONING ORDINANCE OF 1984", AS AMENDED

**BOROUGH OF NEW BRIGHTON
CODE OF ORDINANCES
ORDINANCE 1065, CHAPTER 27**

**BOROUGH OF NEW BRIGHTON
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ZONING ORDINANCE ENACTMENTS

Current Ordinance

Ordinance 1076 "The New Brighton Borough Zoning Ordinance of 1984" - adopted October 18, 1984, cited as Borough of New Brighton Code of Ordinances 1065, Chapter 27 as amended.

Amendments:

- Ordinance 1078 – adopted June 27, 1985
- Ordinance 1090 – adopted December 18, 1986 (effective January 18, 1987)
- Ordinance 1092 – adopted May 28, 1987
- Ordinance 1094 – adopted December 17, 1987
- Ordinance 1099 – adopted May 26, 1988 (effective June 26, 1988)
- Ordinance 1141 – adopted February 22, 1996 (effective March 23, 1996)
- Ordinance 1152 – adopted March 25, 1999 (effective April 25, 1999)
- Ordinance 1181 – adopted June 17, 2004 (Zoning Map Change)
- Ordinance 1206 – adopted November 18, 2010 (effective December 18, 2010)
- Ordinance 1207 – adopted November 18, 2010 (effective December 18, 2010)
- Ordinance 1217 – adopted February 21, 2013 (Zoning Map Change)
- Ordinance 1223 – adopted July 17, 2014 (Zoning Map Change)
- Ordinance 1226 – adopted May 21, 2015 (effective June 21, 2015)
- Ordinance 1228 – adopted December 17, 2015 (effective January 17, 2016)
- Ordinance 1231 – adopted November 17, 2016 (effective December 17, 2016)
- Ordinance 1236 – adopted February 16, 2017 (effective March 16, 2017; includes Zoning Map Change)
- Ordinance 1243 – adopted August 17, 2017 (effective September 17, 2017)
- Ordinance 1253 – adopted July 18, 2019 (effective August 18, 2019)
- Ordinance 1265 – adopted October 21, 2021

Prior Zoning Ordinances (Repealed)

- Ordinance 764 - "New Brighton Zoning Ordinance of 1953" - adopted Feb. 16, 1953 (effective Feb. 27, 1953)
- Ordinance 907A - "New Brighton Zoning Ordinance of 1967" - adopted April 20, 1967
- Ordinance 935 - "New Brighton Zoning Ordinance of 1969" - adopted October 16, 1969 (effective October 27, 1969)

CHAPTER 27

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Part 1

Preliminary Provisions

§101. Short Title. This Chapter shall be known as, and may be cited as, "The New Brighton Borough Zoning Ordinance of 1984". (Ordinance 1076, October 18, 1984, Article I, § 1.1)

§102. Validity and Conflict.

1. If any section, subsection, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such action shall not affect the validity or constitutionality of the remaining sections, subsections, clauses or phrases.
2. Where conflicts exist between this Chapter and other ordinances or regulations of the Borough, or of a higher level of government, or legal restrictive covenants applied by landowners to their property, the ordinance, regulation, or covenant establishing the higher standard for the protection of the public health, safety and welfare shall prevail.
3. All ordinances or parts thereof in conflict with this zoning Chapter, inconsistent with its provisions or less restrictive are hereby repealed to the extent necessary to give this Chapter full force and effect.

(Ordinance 1076, October 18, 1984, Article I, §1.2)

§103. Purposes of the Ordinance. This ordinance [Chapter 27] is deemed necessary to:

1. To promote the public health, safety, morals and general welfare;
2. To encourage practical and coordinated community development;
3. To establish proper density of population in the various districts and provide adequate light, air and amenity therein;
4. To facilitate the economical provision of public highways and streets, vehicle parking, public transportation, water supply, sewage disposal, public schools, parks and open spaces and other public requirements;
5. To prevent the overcrowding or improper or incompatible development or use of land, to prevent blighting conditions and congestion or hazard in travel and transportation;
6. To secure safety of health, life and property from fire, flood, panic, noise, noxious fumes, explosion and other dangers;
7. To conserve and stabilize property values through encouragement of the most appropriate uses of land in relation to one another;
8. To preserve flood plains, steep hillsides and recreation lands from conflict with development and from erosion; and,
9. To facilitate generally, orderly and compatible growth and expansion within the Borough and the programming of public improvements.

(Ordinance 1076, October 18, 1984, Article I, §1.3)

§104. Community Development Objectives. In addition to the purposes listed in §103, the following specific community development objectives are considered the basis upon which the zone districts and regulations of this Chapter are established. These objectives have been expressed in the 1976 Comprehensive Plan Update and its 1984 revision. The objectives are concerned with land use patterns, density of population, and the location and function of streets and other community facilities and utilities.

1. The existing municipal tax base should be preserved and enhanced.
2. The spread of blight should be halted and older housing upgraded.
3. Vacant or underutilized structures should be recycled for new uses or more fully used.
4. Existing desirable commercial and industrial land uses should be encourage to remain, improve and expand, and new business should be invited to establish in the Borough in appropriate locations.
5. Areas susceptible to flooding and steep slope land should be left undeveloped except for recreational or open space uses.
6. The private and public renewal of the Borough in the future should result in an inviting and compatible residential, commercial and industrial environment.
7. Streets should function to move present and expected traffic volumes as safely and smoothly as possible and new development should not interfere with this objective.

(Ordinance 1076, October 18, 1984, Article I, §1.4)

(Reserved for future use)

Part 2

Definitions

§201. General Rules. For the purpose of this Chapter 27, certain terms and words used herein are defined as follows:

1. Words used in the present tense include the future tense;
2. The particular shall control the general;
3. The singular number includes the plural and the plural number includes the singular;
4. The masculine gender includes the feminine;
5. The word PERSON or the word DEVELOPER includes a firm, association, partnership, trust, company or corporation as well as an individual;
6. The word SHALL is mandatory; the word MAY is permissive;
7. The word LOT includes "plot", "piece" or "parcel" of land;
8. The words USED or OCCUPIED include the words "intended, arranged, maintained or designed to be used or occupied";
9. Words used in this Chapter and not otherwise defined in §202 shall have the same meaning as in a standard dictionary.

(Ordinance 1076, October 18, 1984, Article II, §2.1)

§202. Specific Definitions.

ACCESS LANE - the driveway within a parking lot designed to provide vehicular connection between parking spaces and a public street.

ACCESSORY USE - an activity that supports and is incidental to the principal use on a lot.

ALTERATIONS, STRUCTURAL - the removal or addition of supporting walls or members in a building including changes that increase or decrease any exterior dimension of a building.

AMENDMENT - any addition, deletion or revision of any part of the text or zoning map officially approved by Borough Council after public hearing.

APARTMENT - a suite of rooms in a building containing at least one (1) other dwelling unit, each unit with its own cooking, food storage, bathing and toilet facilities for the exclusive use of the residents of the unit, and each with access directly or by a common hallway to the outside.

APARTMENT BUILDING - a building containing at least three (3) apartments, access to each of which is via a stairway, or stairways and/or elevator and common hallways serving a number of apartments. A "garden" or "walk-up" building has stairs and common hallways and is not over three (3) stories high. An "elevator" building contains an elevator in addition to stairs and common hallway.

ATTACHED DWELLING - a dwelling unit connected along at least one common wall to a second similar unit, each unit with its own access directly to the outside and with no units above or below other units. This type of dwelling is often called a "townhouse" or "row dwelling".

BOARDING HOUSE - a single family dwelling occupied in addition to the resident family, by not more than three (3) individuals who occupy rooms in the dwelling and are provided meals for a fee. If meals are not provided such a house is a lodging house.

BUILDING - any structure having a permanent roof supported by columns and/or walls bearing upon and covering an area on the ground.

BUILDING, ENCLOSED - a building in which all exterior walls are solid except for windows and doors.

CHALLENGE - an appeal brought by a party aggrieved by any regulation of this Chapter or its map on the grounds that the regulation in question prevents him reasonable use of property in which he has an interest or downgrades the value of such property.

COMMUNITY CLUB - a non-profit civic, social, educational, recreational or cultural organization chartered under laws of the Commonwealth but not including residential accommodations except for the manger and his family.

COMPREHENSIVE PLAN - an analysis of past trends affecting future development of the Borough and a proposal of recommendations, based on analysis of the trends to cope with projected growth and change.

CONDITIONAL USE - the use of a property that may be permitted by the Borough in accordance with Part 5 of this Chapter provided that the proposed use is listed as a conditional use in the zone district containing the lot and provided the Borough decides that the proposed use on the proposed lot will not downgrade adjacent or nearby lots or cause dangerous conditions in the vicinity.

CONVERSION APARTMENT - a dwelling unit established from a portion of an already existing single family dwelling, each dwelling containing its own cooking, food storage, bathing and toilet facilities and separate means of access to the outside.

DAY CARE CENTER - a facility in which child day care services are provided for seven (7) or more school age, preschool or infant children in an institutional related structure suitable for such functions.

DAY CARE/FAMILY HOME - any family residence other than a child's own home or the home of a child's relative, operated for profit or not for profit, in which child day care is provided at any one time to four, five or six school age children (the date the child initially enters the first grade of a public or private school system to twelve (12) years of age), preschoolers (approximately three (3) years of age to initial school entry at the first grade level of a public or private school system) or to infants and toddlers (from birth to approximately three (3) years of age) who are not relatives of the care giver.

DENSITY - a measure of intensity of residential development, usually the number of dwelling units per acre of land exclusive of public streets and grounds.

DEVELOPER - any party who erects, expands or alters a structure, subdivides land, changes or paves the land surface, or any or all of these actions.

DWELLING, DETACHED - a dwelling unit completely surrounded on all sides and above by open space on the same lot as the dwelling.

DWELLING, SINGLE FAMILY - a detached building containing one dwelling unit, designed and intended to be occupied by one family.

DWELLING, TWO FAMILY - a detached building containing two dwelling units, each entirely separate from the other.

DWELLING UNIT - a group of connected rooms or spaces in a building for the residential use of one (1) family and containing cooking, food storage, bathing and toilet facilities for the exclusive use of the resident family.

EMERGENCY SHELTER - a temporary residential facility, which provided overnight accommodations and incidental services for homeless persons and/or families on a short term basis.

FAMILY - an individual or a group of persons related by blood, marriage or adoption, or not more than five (5) unrelated individuals living together in the same dwelling unit.

FOSTER CARE - full-time custodial responsibility for children, or other individuals unable to care for themselves when such individuals have been placed by court order or under the auspices of a recognized social service agency, and are maintained under regulations of the Commonwealth.

FRONTAGE - the width of a lot along the street that provides the principal access to the lot.

GARAGE - an accessory building on a residential lot that may be attached to a dwelling, or a space within a dwelling building, for storing vehicles operated by the residents of the dwelling, and not to be used as an auto repair shop except for such vehicles.

GARAGE SALE - see **YARD SALE**.

GRADING - the manipulation of the land surface in connection with a development project.

HALF-WAY HOUSE - a residential facility that provides a supervised environment to ease the transition of its residents between institution living and independent living, and is conducted under regulations of the Commonwealth and the auspices of a social service agency.

HEDGE, DENSE EVERGREEN - planting that provides year-round visual screening with an opacity of at least fifty percent (50%) of its total area when viewed from any direction, and capable of being maintained at not less than a prescribed height in a neat manner.

HOME OCCUPATION - a business operated within a one or two-family dwelling building by the residents thereof, involving no exterior changes to the dwelling's appearance and not creating nuisance or congestion conditions in the neighborhood where it is located.

HOMEOWNERS' ASSOCIATION - an organization of all the property owners in a residential planned development with responsibility to maintain all those areas of, and facilities within the plan held in common by the property owners.

INSTITUTIONAL FACILITY - an establishment that provides room and board to persons who are residents by virtue of receiving supervised specialized services limited to health, social and/or rehabilitative services provided by a governmental agency, their licensed or certified agents or other responsible private licensed social service providers. Hospitals, related health establishments, nursing homes and halfway care facilities shall be considered institutional facilities.

Institutional facilities shall not include day care/family homes or group residential facilities operated in conjunction with single family residential use as otherwise provided for under the terms of this ordinance.

LOT - a tract of land surface abutting a public street, such tract in one ownership and surrounded by a boundary that closes on itself.

LOT AREA - all the ground surface measured within the perimeter lines of a lot.

LOT COVERAGE - the maximum area within the setback lines in a lot that may be occupied by buildings.

LOT LINE - the boundary line, or part of such line, describing the perimeter of a lot. The front lot line abuts the street to which the lot has access and the rear lot line is the boundary most distant from the front lot line.

LOT WIDTH - the distance across a lot measured along the front setback line between the side lot lines.

LOT OF RECORD - a lot of legal record on file with the Beaver County Recorder of Deeds, pursuant with statutes governing recording.

MEDICAL MARIJUANA DISPENSARY - a person who holds a permit issued by the Pennsylvania Department of Health to dispense medical marijuana.

MOBILE HOME - a single family dwelling manufactured elsewhere in one or two structurally integral sections that can be towed to a lot on its own wheels and arrives ready for occupancy once the sections (if a double-wide) are joined and attachment is made to sewer and water system, but capable of being later disassembled and towed to a second lot.

NONCONFORMING LOT - a lot recorded prior to adoption of this Chapter containing less area and/or less frontage or width than required for the zone district in which the lot is located.

NONCONFORMING STRUCTURE - a structure lawfully existing prior to adoption of this Chapter but greater in height, or located in whole or in part closer to one or more lot lines than permitted by the setback and/or height regulations governing development in the zone district where the lot is located.

NONCONFORMING USE - a use of a lot, or a portion of a lot, or of a structure or part of a structure lawfully existing prior to adoption of this Chapter but not permitted by right or as a conditional use in the zone district where the lot is located.

OCCUPANCY PERMIT - a certificate issued by the zoning officer attesting that the construction for which a zoning permit has been issued has been completed in accordance with the zoning permit and may be occupied, or attesting that a proposed new occupancy or use on a lot, but not requiring a zoning permit, is a permitted use or has been approved as a conditional use.

OFF-STREET PARKING LOT - an area wholly outside any public street right-of-way constructed to accommodate the storage of vehicles and connected to a public street or streets by a driveway or access lane.

OPERATOR-OCCUPIED SHORT-TERM RENTAL – the short-term rental of a dwelling unit, or of no more three (3) individual bedrooms within such dwelling unit, that is the primary residence of its operator.

OWNER-ADJACENT SHORT-TERM RENTAL - the short-term rental of a dwelling unit that is not the primary residence of the operator, but is located within a residential building with a total of four or fewer dwelling units where all dwelling units in the building are owned by the operator, and one of the dwelling units in the building is the primary residence of the operator.

PARKING SPACE - an area within a parking lot intended for the storage of one (1) vehicle and adjacent to an access lane.

PATIO - a flat surface area at ground level without a permanent cover.

PERMITTED USE - an activity that is expressly allowed by right as the principal use of a lot because the lot is located in a zone district where the activity or use is permitted.

PERSONAL CARE HOME / GROUP CARE FACILITY - a residential facility, licensed by the Commonwealth, which provides personal care services, assistance, and/or supervision to four (4) or more persons not related to the operator of the facility, where no skilled and/or intermediate care is offered or allowed. Residents of a personal care home / group care facility need assistance or supervision in activities of daily living or instrumental activity of daily living; this does not include a boarding house, day care center, day care / family home, half-way house, or institutional facility.

PERSONAL SERVICE - a service with monetary value provided to an individual rather than a corporation, such service being not unlawful.

PETS, DOMESTIC - small animals normally permitted in and controlled on a residential lot, kept for pleasure and not offered for sale except incidentally.

PORCH - a construction with permanent roof and floor attached to a building and considered part of the building for purposes of setback from lot lines.

PORCH SALE- see **YARD SALE**

PRINCIPAL BUILDING - the building or group of buildings containing the principal permitted use on a lot.

PROFESSIONAL OFFICE BUILDING - a building containing office space for those licensed to practice a profession by the Commonwealth of Pennsylvania, including medical or dental laboratories or clinics.

PUBLIC HEARING - an official meeting called by Borough Council, the Planning Commission or the Zoning Hearing Board for the purpose of taking testimony from all parties having an interest in the matter being heard, as a basis for the calling body to make a decision at a later time.

PUBLIC STREET - an improved vehicular right-of-way open to the public as part of the Borough-wide circulation system and accepted for maintenance by the Borough or PennDOT.

PUBLIC UTILITY - a publicly regulated service distributing water, gas, electricity or communications, or collecting sanitary sewage, but not including offices or maintenance facilities unless permitted in a particular zone district.

REQUIRED PARKING - the minimum number of off-street parking spaces needed to serve a specific use.

RESIDENTIAL PLANNED DEVELOPMENT - an arrangement of residential buildings, together with supporting parking areas and open space, designed as a whole to encourage innovative and efficient use of the land and to minimize disturbance of the natural site.

RESTRICTIVE COVENANT - a legal agreement between a buyer and seller in which the buyer agrees to abide by certain stipulations of the sale, such stipulations usually applicable over a group of neighboring properties to prevent activities that would downgrade the value of the group as a whole.

SCREENING REQUIREMENTS - the use of hedges, fencing and/or natural grade changes to protect a lot from activities on an adjacent lot that could detract from the use and value of the first lot.

SETBACK - the minimum distance that a building must be held back from an adjacent lot line, depending on the zone district in which the lot is located.

SETBACK LINE - a line within a lot parallel to an adjacent property line and distant from it the setback depth required in the zone district containing the lot. The front setback line is parallel to the front lot line and distant from it the depth of the front yard. The side and rear setback lines are similarly situated.

SHIPPING (CARGO) CONTAINER – an industrial, standardized reusable metal vessel that was originally, specifically, or formerly designed for or used in the packing, shipping, movement, or transportation of freight, articles, goods, or commodities by commercial trucks, trains, and/or ships. A container modified in a manner that would preclude future use by a commercial transportation entity shall be considered a shipping container for the purpose of this definition.

SHORT-TERM RENTAL UNIT – any rental of a residential dwelling unit, or of a bedroom within a dwelling unit, in exchange for payment, as residential accommodations for a duration of less than thirty (30) consecutive days other than a hotel, motel, or bed-and-breakfast inn and home-exchanges, where homeowners temporarily occupy one another's property simultaneously during the same short-term period without rent or other exchange of money.

SHORT-TERM RENTER – any person or persons occupying a dwelling unit, or a bedroom within a dwelling unit, as a short-term rental for a duration of less than thirty (30) consecutive days.

SHORT-TERM RENTAL OPERATOR – the person or persons offering a dwelling unit or bedroom for short-term rental, who may be either the owner or the primary leaseholder of the dwelling unit with the written permission of the property owner and the condominium association, if applicable.

SIGHT DISTANCE - the unimpeded view a vehicle operator has along the street he is traveling or the street he is entering or crossing, such distance related to driver reaction time and posted speed limits and assuming the operator's eye level is between two feet six inches (2'6") and eight feet (8') above the pavement.

STORY - the vertical dimension between a building floor and the floor of the level next above or next below, when the dimension between floors is at least seven feet (7'), or if no floor is above, then the ceiling above.

STREET - the vehicular and pedestrian access to the lots that abut it, connecting with other streets to provide circulation throughout the Borough.

STRUCTURE - any permanent man-made construction in, on or over the ground surface and attached to the ground but not including surfaces treated for vehicular or pedestrian passage.

SWALE - a depression across the land surface running from higher to lower elevations that collects storm water run-off and directs it to a subsurface drainage system or to a stream.

THREE QUARTER HOUSE - a single-family dwelling, which provides a transitional living arrangement to three (3) or more unrelated individuals who occupy a room(s) in the dwelling for a fee, but not licensed by the Commonwealth of Pennsylvania as a Halfway House, and where no in-house services are provided to the occupants.

VARIANCE - a grant by the Zoning Hearing Board permitting a lot owner to build on his lot not wholly in accordance with this Chapter because the Board finds that strict conformance would be a hardship not created by the owner, depriving him reasonable use of the lot, and that specific variations in the requirements that would normally apply will not detrimentally affect abutting properties or the public.

YARD - the area of a lot between lot lines and adjacent parallel setback lines in the lot, the yard depth being specified for front, side and rear yards in each zoning district. Within yard areas no permanent roofed structure may be built.

YARD DEPTH - the horizontal distance between a lot line and the parallel setback line in the property.

YARD, FRONT - the area of a lot between the front lot line abutting the street on which the lot has access and the front setback line, and extending between the side lot lines.

YARD, REAR - the area of a lot between the rear lot line and rear setback line and extending between the side lot lines.

YARD SALE - a sale of limited duration conducted from the yard, porch or garage of a single family or two-family dwelling by the residents of the dwelling but including no sales in a public right-of-way. Such sale shall be of clothing and household items belonging to the residents only and not purchased for the purpose of resale on the premises. Yard, porch or garage sales shall be considered an accessory use and not a home occupation, and shall be limited to not more than twelve (12) days or any part of a day in any calendar year. Each sale event shall require a permit issued by the Borough. Permit fees shall be established by Council. Signs shall be controlled by §405.3.D.2 of this Chapter.

YARD, SIDE - the area of a lot between the side lot lines and side setback lines on each side of the lot and extending between the front and rear yards.

ZONING DISTRICT - a contiguous area of land on all parts of which the same uniform zoning controls apply.

ZONING DISTRICT BOUNDARY - the perimeter line completely enclosing a zoning district.

ZONING HEARING BOARD - a body appointed by Borough Council to examine and decide appeals for relief from strict conformance to this Chapter or relief from a decision of the Zoning Officer and to hear testimony regarding the validity of any regulations upon development in the Borough.

ZONING MAP - the official plan of zoning districts in the Borough showing precisely the boundaries and titles of each zoning district, such map a part of this Chapter.

ZONING OFFICER - a person retained by the Borough to enforce the regulations of this Chapter, with power to issue permits, to halt illegal construction, and to interpret literally the meaning of the various sections of the zoning Chapter subject to appeal of the Zoning Hearing Board.

ZONING PERMIT - a certificate issued by the Zoning Officer attesting that a developer proposal meets all requirements of this Chapter and construction is authorized to proceed.

(Ordinance 1076, October 18, 1984, Article II, §2.2; as amended by Ordinance 1141, February 22, 1996; as amended by Ordinance 1206, November, 18, 2010; as amended by Ordinance 1228, December 17, 2015; as amended by Ordinance 1231, November, 17, 2016; as amended by Ordinance 1236, February 16, 2017, as amended by Ordinance 1243, August 17, 2017, as amended by Ordinance 1253, July 18, 2019)

(Reserved for future use)

Part 3

Provisions that Apply in Each Zone District

§301. Official Zoning Map.

1. The Borough is hereby divided into zones or districts as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Chapter.
2. The Official Zoning Map shall be identified by the signature of the President of the Borough Council, attested by the Borough Secretary and shall bear the seal of the Borough under the following words: "We the undersigned do hereby certify that this map is the true official zoning ordinance map and that it is a part of the Official Zoning Ordinance as adopted by the Borough Council of the Borough of New Brighton, Beaver County, Pennsylvania", together with the date of adoption of this Chapter.
3. No changes of any nature shall be made to the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Chapter. Any unauthorized change of whatever kind by any person shall be considered a violation of this Chapter and punishable as provided under §804 of this Chapter. When any zoning amendment involves a change to the Official Zoning Map, notice of public hearing shall be conspicuously posted by the municipality at points deemed sufficient by the municipality along the perimeter of this 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.
4. The Official Zoning Map, which shall be located in the Borough Office, shall be the final authority as to the current zoning status of all land in the Borough.
5. Any amendments legally adopted to change any district boundaries of the Official Zoning Map shall be noted on such map by ordinance number and date of adoption of the amendment. The Official Zoning Map shall be changed to reflect the amendment within thirty (30) days of adoption.
6. Where uncertainty exists as to zone district boundaries, they shall be construed as following street or stream centerline or property lines, if appearing to follow such lines. Boundaries indicated as parallel to a street, stream or property line shall be construed as parallel thereto and at such a distance therefrom as indicated on the map.
7. When there is disagreement on the location of district boundaries, a decision shall be rendered by the Zoning Officer, with appeal from his decision made to the Zoning Hearing Board.

(Ordinance 1076, October 18, 1984, Article III, §3.1; as amended by Ordinance 1141, February 22, 1996)

§302. Application of Regulations in Each Zone District.

1. The regulations established by this Chapter within each district shall apply uniformly.
2. No building, structure or land in the Borough may be used, and no building or structure may be erected, constructed, reconstructed or altered on or after the effective date of this Chapter or any amendments thereto, unless intended or designed to be occupied or used for any of the permitted uses enumerated in this Part for the zoning district in which the property proposed for the use is located, or unless approved by the Borough Council, after receiving recommendations from the Planning Commission, for any of the conditional uses listed for the zoning district.

3. No building or other structure shall hereafter be erected or altered to exceed the height; to accommodate or house a greater number of families; to occupy a greater percentage of lot area; to have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein required; or in any other manner contrary to the provisions of this Chapter.
4. No part of a yard, or other open space, or off-street parking space required adjacent to or in connection with any building or use for compliance with this Chapter, shall be included as part of a yard, open space, or off-street parking space similarly required for any other building or use.
5. No yard or lot existing at the time of passage of this Chapter shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Chapter shall meet at least the minimum requirements established by this Chapter.
6. The lists of uses permitted by right or permitted conditionally in this Part are exclusive for each zone district. Uses in one zone district are not permitted in another zone district unless specifically listed in the second zone district, either by right or conditionally.
7. An accessory use may be constructed only if built and occupied concurrently with or later than the permitted use to which it is accessory on the same lot.
8. A temporary structure may be placed on a property in advance of or during construction of a permanent Building or improvement, but shall be removed upon completion of construction or three (3) years from the date of placement, whichever is sooner.
9. All territory which may hereafter be annexed to the Borough shall be placed in the Residential R-1 Zoning District until the Planning Commission has made a thorough study of the newly annexed area, reported its recommendations to the Borough Council, and Council has adopted a final zoning district classification. This study and report by the Planning Commission shall be made within six (6) months of the time of annexation.

(Ordinance 1076, October 18, 1984, Article III, §3.2; as amended by Ordinance 1141, February 22, 1996)

§303. R-1 Residence District.

303.1 Permitted Principal Uses -

- A. Single family detached dwelling
- B. Attached single family dwelling (townhouse)
- C. Two family dwelling
- D. (reserved for future use)
- E. Church, including church hall, educational building and/or single family residence of the minister, priest or rabbi
- F. Elementary or secondary school
- G. Municipal recreation ground
- H. Municipal and public utility structure, facility and/or right-of-way but not including offices or maintenance facilities

I. In-home employment activities of an office related nature that are clearly secondary to the use of the dwelling for living purposes provided that: activities are limited to residents of the dwelling unit; operations utilize no more than 15% of the ground floor area of the dwelling structure; and, there is no on site distribution of products or on site contact with patrons, customers, associates or similar individuals

J. Short Term Rental Unit (See §409)

303.2. Accessory Uses -

- A. Garage for the storage of vehicles and goods belonging to the residents of the property
- B. Parking area for licensed vehicles of residents of the property (see §404)
- C. Children's playhouse, garden equipment shed, housing for domestic pets, swimming pool, game court, patio, and/or greenhouse for the use of residents of the property
- D. Outside storage of camping trailer, boat and/or recreation equipment owned or leased by the residents of the property for their personal use, provided such equipment is stored in the off-season behind the dwelling structure
- E. Construction equipment utilized by the occupant of the property in his business and parked behind the front line of the dwelling on the property or in a garage
- F. Signs (see §405)
- G. Yard, porch or garage sale (see §202)

303.3 Conditional Uses (See Part 5) -

- A. Convalescent or retirement home or hospital
- B. Day care/family home and day care center
- C. Home occupation
- D. Garden or walk-up apartment dwelling building or residential planned development
- E. Non-profit community club or national fraternal, social or service organization
- F. Funeral home or cemetery
- G. Business or Professional Office
- H. Conversion apartment

303.4 Dimensional Requirements -

- A. Minimum lot area -
 - (1) Single family detached dwelling - three thousand (3,000) square feet
 - (2) Attached single family dwelling - thirteen hundred fifty (1,350) square feet
 - (3) Two family dwelling - four thousand (4,000) square feet
 - (4) All other principal permitted and conditional uses - six thousand (6,000) square feet

- B. Minimum lot width -
 - (1) Single family detached dwelling - forty feet (40')
 - (2) Attached single family dwelling - eighteen feet (18')
 - (3) Two family dwelling - fifty feet (50')
 - (4) All other principal permitted and conditional uses - sixty feet (60')
- C. Minimum front yard depth - fifteen feet (15')
- D. Minimum side yard depth -
 - (1) Side yard not abutting a street - not less than five feet (5') each of two side yards, or a total of twenty percent (20%) of lot width for both yards whichever is greater
 - (2) Side yard abutting a street - ten feet (10')
- E. Minimum rear yard depth -
 - (1) Principal buildings - twenty-five feet (25')
 - (2) Accessory buildings - five feet (5')
- F. Maximum lot coverage by principal permitted use - forty percent (40%) of lot area
- G. Maximum density for multi-family buildings -
 - (1) Attached single family dwellings (townhouses) - not more than fourteen (14) dwellings per acre
 - (2) (reserved for future use)
 - (3) One acre equals 43,560 square feet
- H. Maximum building height (see §403) -
 - (1) Principal permitted or conditional use - three (3) stories or forty feet (40'), whichever is less
 - (2) Accessory buildings - fifteen feet (15')

(Ordinance 1076, October 18, 1984, Art. III, §3.3; as amended by Ordinance 1099, May 26, 1988; as amended by Ordinance 1141, February 22, 1996; as amended by Ordinance 1228, December 17, 2015, as amended by Ordinance 1236, February 16, 2017, as amended by Ordinance 1253, July 18, 2019)

§304. R-2 Residence District.

304.1 Permitted Principal Uses -

- A. Single family detached dwelling
- B. Attached single family dwelling (townhouse)

- C. Two-family dwelling
- D. (reserved for future use)
- E. (reserved for future use)
- F. Church, including church hall, educational building and/or single family residence of the minister, priest or rabbi
- G. Elementary or secondary school
- H. Municipal recreation grounds
- I. Municipal and public utility structure, facility and/or right-of-way but not including offices or maintenance facilities
- J. Short Term Rental Unit (See §409)

304.2 Accessory Uses -

- A. Garage for the storage of vehicles and goods belonging to the residents of the property
- B. Parking area for licensed vehicles of residents of the property
- C. Children's playhouse, garden equipment shed, housing for domestic pets, swimming pool, game court, patio, and/or greenhouse for the use of residents of the property
- D. Outside storage of camping trailer, boat and/or recreation equipment owned or leased by the residents of the property for their personal use provided such equipment is stored in the off-season behind the dwelling structure
- E. Pharmacy within a medical office building, or restaurant, office supply outlet or newsstand within an office building
- F. Signs (see §405)
- G. Yard, porch or garage sale (see yard sale, §202)

304.3 Conditional Uses (see Part 5) -

- A. Convalescent or retirement home
- B. Boarding or lodging home
- C. Halfway house or foster care
- D. Home occupation
- E. Garden or walk-up apartment building, elevator apartment building or planned residential development
- F. Business office, professional or government offices
- G. Non-profit community, club or national fraternal, social or service organization

- H. Funeral home
- I. Landscaped parking lot for adjacent or nearby business
- J. Restaurant
- K. Day care/family home and day care center
- L. Conversion apartment
- M. Institutional facility
- N. Personal Care Home / Group Care Facility
- O. Three Quarter House

304.4 Dimensional Requirements -

- A. Minimum lot area -
 - (1) Single family dwelling - three thousand (3,000) square feet
 - (2) Attached single family dwelling - thirteen hundred fifty (1,350) square feet
 - (3) Two family dwelling - four thousand (4,000) square feet
 - (4) All other principal permitted and conditional uses - six thousand (6,000) square feet
- B. Minimum lot width –
 - (1) Single family detached dwelling - forty feet (40')
 - (2) Attached single-family dwelling - eighteen feet (18')
 - (3) Two family dwelling - fifty feet (50')
 - (4) All other principal permitted and conditional uses - sixty feet (60')
- C. Minimum front yard depth - fifteen feet (15')
- D. Minimum side yard depth -
 - (1) Side yard not abutting a street - not less than five feet (5') each of two (2) side yards, or a total twenty percent (20%) of lot width for both yards, whichever is greater
 - (2) Side yard abutting a street - ten feet (10')
 - (3) Side yard on a property with a building over forty feet (40') in height - the side yard depth shall be increased by four feet (4') for each ten feet (10') or fraction thereof that the building height abutting the yard exceeds forty feet (40')
- E. Minimum rear yard depth -

- (1) Where the rear lot line abuts a residential property - twenty-five feet (25')
 - (2) Where the rear lot line abuts a public street or a property in a commercial or industrial zone district - ten feet (10')
 - (3) Accessory buildings - five feet (5')
- F. Maximum lot coverage by principal permitted use -
- (1) All residential uses - forty percent (40%) of lot area
 - (2) Offices and other non-residential uses - seventy-five percent (75%) of lot area provided required off-street parking and servicing are accommodated on the lot
- G. Maximum density for multi-family buildings -
- (1) Attached single family dwellings (townhouses) - not more than twenty (20) dwellings per acre
 - (2) (reserved for future use)
 - (3) (reserved for future use)
 - (4) One acre equals 43,560 square feet
- H. Maximum building height (see § 403)
- (1) All principal permitted or conditional uses except elevator apartment buildings - three (3) stories or forty feet (40'), whichever is less
 - (2) Elevator apartment dwelling buildings - seven (7) stories, or seventy-five feet (75'), whichever is less
 - (3) Accessory buildings - fifteen feet (15')

(Ordinance 1076, October 18, 1984, Article III, §3.4; as amended by Ordinance 1078, June 27, 1985, §1; as amended by Ordinance 1141, February 22, 1996, as amended by Ordinance 1206, November 10, 2010; as amended by Ordinance 1228, December 17, 2015, as amended by Ordinance 1253, July 18, 2019)

§305.A C-1 Retail Commercial District

305A.1 Permitted Principal Uses -

- A. Antique sales and repair
- B. Apparel or clothing sales
- C. Appliances, household, new or used
- D. Arts, crafts and hobbies sales and/or instruction
- E. Auto accessories sales

- F. Bakery or confectionery
- G. Bank or savings and loan institution or credit union
- H. Bar or restaurant supplies
- I. Barber or beauty shop
- J. Bowling alley or roller skating rink
- K. Catering service
- L. Church and associated social and/or educational buildings
- M. Club, lodge or social hall
- N. Commercial, school
- O. Copy and reproductive service
- P. Dance or art studio and instruction
- Q. Department or variety store
- R. Drug store or pharmacy
- S. Dry cleaning pick-up and delivery outlet
- T. Florist
- U. Food sales (retail) or supermarket
- V. Furniture sales including draperies and floor coverings
- W. Garden supplies (not including major machinery)
- X. Gift shop
- Y. Hardware and/or paint sales
- Z. Hotel or motel
- AA. Jewelry and watch sales and repair
- BB. Laundromat or hand laundry
- CC. Municipal government and public utility buildings and facilities
- DD. Musical instrument, sheet music or recording sales and instruction
- EE. Offices, business, professional or government
- FF. Office supplies and stationery

- GG. Parking lot or garage
- HH. Pet shop
- II. Photo studio or photo supplies sales
- JJ. Public or semi-public institution
- KK. Repair services but not including auto repair
- LL. Sporting goods sales
- MM. State liquor store
- NN. Tailor or seamstress
- OO. Tavern and/or restaurant
- PP. Theater or movie house
- QQ. Tuxedo Rental
- RR. Union hall
- SS. Wholesale or factory outlet sales
- TT. Medical Marijuana Dispensary
- UU. Short Term Rental Unit (See §409)

305A.2 Accessory Uses -

- A. Parking lots or garages
- B. Truck servicing areas
- C. Apartments on the second or higher floors of a building the first floor of which contains a principal permitted use
- D. Signs (see §405)
- E. Yard, porch, garage sale (see Yard Sale, §202)

305A.3 Conditional Uses (see Part 5) -

- A. Day care center
- B. Pool hall or enclosed amusement business when more than two (2) pool tables or four (4) electronic games are on the same premises
- C. Apartment building

305A.4 Dimensional Requirements -

- A. Minimum lot area - three thousand (3,000) square feet
- B. Minimum lot width - thirty feet (30')
- C. Minimum front yard depth
 - (1) Buildings shall be sited with the front of the structure at the inside boundary of the pedestrian sidewalk
- D. Minimum side yard depth –
 - (1) Buildings may abut along a common side lot line but if not, a three foot (3') side yard shall be required
 - (2) Buildings erected on corner lots shall extend to the inside boundary of the sidewalk
- E. Minimum rear yard depth - eight feet (8')
- F. Maximum building height –
 - (1) Buildings shall not exceed three (3) stories or thirty five feet (35'), whichever is less
 - (2) See also §403 of this Ordinance

(Ordinance 1076, October 18, 1984, Article III, §3.5; as amended by Ordinance 1152, March 25, 1999, as amended by Ordinance 1243, August 17, 2017, as amended by Ordinance 1253, July 18, 2019)

§305.B C-2 General Commercial District

305B.1. Permitted Principal Uses -

- A. Business offices
- B. Business services/equipment sales
- C. Commercial parking lot/garage
- D. Financial institutions/services
- E. Food, beverage and confectionery/production, distribution, sales
- F. Professional and personal services
- G. Public and semipublic/offices, services, recreation
- H. Printing and binding
- I. Medical Marijuana Dispensary
- J. Short Term Rental Unit (See §409)

305B.2. Accessory Uses -

- A. Parking lots/garages
- B. Signs (see §405)

305B.3 Conditional Uses (See Part 5) -

- A. Automobile truck sales and service
- B. Custom cabinetmaking and similar light manufacturing
- C. Day care center
- D. Drive-in facilities/restaurant, car wash, banking, retail sales
- E. Dry cleaning/machine laundry
- F. Motor vehicle repair shop
- G. Repair shops for furniture, appliances and similar items
- H. Vehicle fuel service station
- I. Adult businesses
- J. Single family detached dwelling
- K. Attached single family dwelling (townhouse)
- L. Two-family dwelling
- M. Garden or walk-up apartment building, elevator building
- N. Conversion apartment

305B.4 Dimensional and design requirements

- A. Minimum lot area - three thousand (3,000) square feet
- B. Minimum lot width - thirty feet (30')
- C. Minimum front yard depth - none required
- D. Minimum side yard depth - buildings may abut along a common side lot line but if not, a three foot (3') side yard shall be required
- E. Minimum rear yard depth - eight feet (8')
- F. Maximum building height - seven (7) stories or seventy-five feet (75') whichever is less (see also §403)
- G. All Permitted Principal Uses and Conditional Uses shall be designed to ensure compatibility with the operations generated within the district, the character of perimeter areas and the community in general.

- H. Applications for all uses shall include a plan that: (a) provides for adequate ingress, egress and circulation of all contemplated vehicular activity; (b) provides for architectural design that is appropriate for the harmonious integration of the use within the general vicinity; and (c) present a unified and organized arrangement of buildings and service facilities that will have a functional relationship to the properties that comprise the remainder of the district in which the development will be situated.

(Amended by Ordinance 1243, August 17, 2017, as amended by Ordinance 1253, July 18, 2019)

§305.C C-3 Commercial Office/Limited Industrial Campus District

305C.1 Procedure for Approvals -

All uses in a C-3 District shall be processed as Conditional Uses and allowed or denied by the Borough Council pursuant to public notice and hearing and recommendations by the Borough Planning Commission.

Determinations shall be made pursuant to express standards and criteria set forth herein below, and such other reasonable conditions and safeguards as the Borough Council and Planning Commission may deem necessary to implement the purposes of the C-3 District and the Zoning Ordinance.

305C.2 Permitted Conditional Uses -

Uses permitted within this district shall be limited to the following:

- A. Business, sales and professional offices
- B. Commercial storage, packaging and distribution, exclusive of processing or related activities that are not consistent with the intent and the purposes for which this district is established. No activities shall be permitted that involve the handling, testing or processing or other use of waste materials, sludge or by-products thereof nor shall any chemicals or substances that have the potential to create threats to the general health and welfare of the population or to the environment in general be stored, treated, handled, transported or disposed of.
- C. Governmental and public service facilities
- D. Light manufacturing limited to processing or fabrication of materials and products and equipment repair and/or rehabilitation, provided that no functions or activities are involved that produce, or have the potential to produce or result in, noise, vibration, air pollution, noxious or offensive emissions, fire hazard, explosion hazard, high traffic volumes or other factors and conditions which will disturb or endanger neighboring properties.
- E. Accessory uses shall be limited to parking lots, loading bays and on-site storage of materials and products that are requisite to the principal activity. All junk, scrap and discarded materials shall be removed in an expeditious manner at regular intervals.

305C.3 General Requirements -

- A. Site Data - Applications for a Conditional Use Permit shall include the following site and Development data:
 - (1) A survey drawn to scale prepared by a licensed professional land surveyor, registered in the Commonwealth of Pennsylvania, showing the exact size, shape and dimensions of the site proposed for development.

- (2) The exact size and location of all existing buildings and structures on the lot.
- (3) The proposed size and location of structures or buildings proposed to be erected, moved, repaired or altered.
- (4) All adjacent streets with traffic flow patterns.
- (5) A written description of the proposed scope of the projected activity, including the estimated maximum number of shifts, employees and employment per shift.
- (6) A description of all proposed fuels and energy sources to be used for heating and in business processes, and documentation of arrangement with suppliers for delivery of said services and/or materials.
- (7) Water supply and sewage disposal plans prepared by a registered civil engineer.
- (8) The proposed parking facilities including the size, arrangement and number of parking stalls and placement of lighting standards.
- (9) A circulation plan for all vehicles, including ingress and egress drives for all off-street parking and loading areas, both front and rear, to ensure the prevention of blockage of vehicles entering and leaving the site and to provide for clear lines of vision and compatibility with adjacent circulation systems and traffic flow.
- (10) Preliminary architectural and engineering sketches showing plan levels, elevations and other necessary information related to water runoff control, slope, contours, type of building construction, etc.
- (11) Areas to be utilized for the exterior storage of materials and type of architectural screen to be provided.
- (12) Such other information as may be required by the Borough Council and the Planning Commission.

B. Standards -

- (1) Uses and buildings shall be planned and organized to achieve a unified and harmonious development of the total site area.
- (2) Structures shall not exceed a maximum height of fifty (50) feet.
- (3) Maximum building coverage shall not exceed 50% of total site area unless specifically authorized by Borough Council.
- (4) Minimum front setback of structures from public road right-of-ways shall be 25 feet. No parking areas shall be permitted within a front yard area.
- (5) Minimum side and rear setbacks of structures along the perimeter of the property shall be 25 feet.
- (6) Parking shall be provided as required by §404 of this Ordinance. Owners or tenants of lots shall not permit their employees, tenants or visitors to park on public streets. All areas used for driveways, loading, service, parking or vehicular storage shall be surfaced with hard, dust free, paved surface.

- (7) Streets shall be constructed in accordance with the prevailing specifications for local street construction in the Borough.
- (8) Signs shall conform to the requirements specified in §405 of this Ordinance. No flashing or animated signs will be permitted. No free standing signs shall be permitted and no building sign shall project above the roof line of the building.
- (9) Fire hydrants and street lighting shall be provided by the developer and properly located. Storm drainage and facilities shall meet all requirements of the Borough and other applicable State requirements.
- (10) The total ground area of the site not covered by buildings, paved parking, interior roadways and service areas is to be landscaped. Front yard areas are to be landscaped with lawn and/or other plant materials such as trees and shrubs. Side and rear yards and all slopes are to be covered by grass or ground cover or other appropriate plant materials. Paved areas and roadways shall be limited to portions of the site required for efficient operations of permitted business activities. In no instance shall paving cover more than 25% of the gross site area unless specifically authorized by Borough Council.
- (11) A buffer consisting of plant materials or other appropriate treatments shall be established and maintained along all portions of the site perimeter deemed reasonably necessary by the Planning Commission and Borough Council to protect the environmental quality and/or aesthetic and monetary values of residential properties that are adjacent to, or in reasonably close proximity to, the development site. Natural vegetation or existing topographical conditions may be utilized if approved by the Borough Council as adequate to achieve the purposes of a buffer. Planting, walls, fencing or other treatments incorporated in buffer corridors as approved by the Borough Council shall be sufficient to provide yearlong visual screening from residential uses. Buffers shall be established consistent with the following minimum standards:

The required buffer strip shall be established along the property perimeter in a manner best suited to achieve its screening purpose.

The required buffer shall have a height adequate to achieve its purpose. Plant materials shall consist of dense evergreen plants of a kind, and used in a manner, so as to provide a continuous opaque screen within 36 months after planting. The Borough Council shall require new planting or alternative screening if an opaque buffer is not achieved within said period.

Initial planting shall consist of evergreen plant materials such as White Pine, Red Pine, Austrian Pine or other conifers with a similar growth rate.

Plant materials shall have a minimum initial height of five (5') feet when planted.

Plant materials shall be spaced at a minimum distance of ten (10') feet on center in a double line or otherwise located in such a manner and density that a complete screen purpose is achieved within 36 months.

Walls, fences and similar structures may be used along or in conjunction with plant material to create a required buffer strip if approved by the Borough Council pursuant to the following standards and criteria:

Structures shall be sited and erected consistent with all provision of this

Ordinance.

Structures shall be aesthetically compatible with adjacent residential and related uses in terms of material, styling and color.

No advertising shall be permitted in conjunction with said structures.

- (12) Outdoor storage areas shall be permitted only in areas that do not front on streets and shall be permitted only if such areas are enclosed or screened by wall, planting or other barriers providing year round visual screening.
- (13) Development may be constructed in phases. Subsequent stages shall be consistent with the tentatively approved plan and shall constitute economically sound units of development.
- (14) The developer shall provide easements, covenants and other necessary arrangements, and furnish performance bonds or assurances, as determined necessary by the Borough to reasonably assure performance in accordance with the plan, and to protect the public interest in the event of abandonment prior to the completion.

(Ordinance 1076, October 18, 1984, Article III, §3.5; as amended by Ordinance 1141, February 22, 1996)

§306. M Manufacturing and Industrial District.

306.1 Permitted Principal Uses -

- A. Automobile, truck, motorcycle, construction equipment or recreational vehicle sales, service, painting, repair or rebuilding
- B. Bakery, commercial
- C. Beverage distributorship
- D. Bottling works or brewery
- E. Box or packaging materials manufacturing
- F. Building materials sales and storage
- G. Cabinet or furniture making
- H. Cleaning or dyeing plant
- I. Contractors' equipment and materials storage, assembly and service yard
- J. Laboratory, research or development, testing or film processing
- K. Lumber, millwork or planing mill
- L. Machine shop, with punch press or drop hammer capacity limited to fifty (50) tons
- M. Machinery, sales, repair and display
- N. Mechanical, electronic or electrical appliance or precision instrument manufacture

- O. Manufacture, fabrication, compounding or treatment of articles for retail or wholesale sale from components produced elsewhere
- P. Manufacture, compounding, canning, packaging or treatment of food products, pharmaceuticals or cosmetics but not including rendering of fat or oils or the manufacture of dog or cat food or meat or fish products
- Q. Manufacture of plastic molds and products
- R. Paint and pigment manufacture
- S. Printing, lithographing and binding
- T. Public utility structures and facilities
- U. Railroad rights-of-way and switching tracks
- V. Recreation area, including boat marinas and boat servicing
- W. School, industrial or trade
- X. Sheet metal fabrication with punch press or drop hammer capacity limited to fifty (50) tons
- Y. Specialty steel manufacture
- Z. Stone or monument works
- AA. Tire retreading or recapping
- BB. Transportation system vehicle storage and servicing
- CC. Truck terminal
- DD. Warehouse or cold storage building
- EE. Wholesale sales and distribution of manufactured products
- FF. Short Term Rental Unit (See §409)

306.2 Accessory Uses -

- A. Parking lot
- B. Truck servicing area
- C. Railroad siding
- D. Offices serving the principal use
- E. Outdoor storage of finished products or materials prior to assembly but not including waste materials of any kind
- F. Apartment of a caretaker

G. Incidental retail sales

H. Signs (see §405)

306.3 Conditional Uses (see Part 5) -

A. Manufacturing or light industrial use similar to and compatible with those listed as permitted principal uses

B. Bulk fuel storage and distribution

C. Auto wrecking yard

D. Emergency Shelter

E. All other uses not specifically provided for within this Ordinance

306.4 Dimensional Requirements -

A. Minimum lot area - three thousand (3,000) square feet

B. Minimum lot width - thirty feet (30')

C. Minimum yard depths - none required except that when an industrial lot abuts or is directly across the street from a residence or residentially zoned land, any building on the industrial lot shall be set back not less than ten feet (10') from the street or property line and the yard landscaped.

D. Maximum building height - seventy-five feet (75') (see also §403)

(Ordinance 1076, October 18, 1984, Article III, §3.6; as amended by Ordinance 1231, November 17, 2016, as amended by Ordinance 1253, July 18, 2019)

§307. P Conservation District

307.1 Permitted Principal Uses -

A. Railroad rights-of-way

B. Recreation areas open to the public

C. Public utility structures and facilities

307.2 Accessory Uses -

A. Parking lots

307.3 Conditional Uses (See Part 5) -

A. Boat Marinas, boat sales and servicing and off-season boat storage

B. Retail sales of marine accessories, supplies, fuel, bait and food in connection with a marina

C. Restaurant

307.4 Dimensional Requirements -

- A. Minimum lot size - twenty thousand (20,000) square feet
- B. Minimum lot width - none
- C. Minimum yard depths -
 - (1) Front yard - fifteen feet (15')
 - (2) Side yard - ten feet (10')
 - (3) Rear yard - twenty-five feet (25') for a principal building and ten feet (10') for an accessory building
- D. Maximum lot coverage by buildings - forty percent (40%) of lot area
- E. Maximum building heights -
 - (1) Principal buildings - three (3) stories or forty feet (40'), whichever is less
 - (2) Accessory buildings - fifteen feet (15')

(Ordinance 1076, October 18, 1984, Article III, §3.7; as amended by Ordinance 1141, February 22, 1996)

(Reserved for future use)

Part 4

Supplementary Regulations

§401. Lot Exceptions.

401.1 Lots of Record with Inadequate Area or Street Frontage -

- A. A lot legally recorded prior to the adoption of this Chapter and containing less area and/or having less frontage on a public street than required as a minimum for the zone district in which the lot is located, may be developed for any use permitted in the zone district without application for a variance provided:
 - (1) The lot does not abut along a common line other properties in the same ownership; and
 - (2) No reduction of front, side or rear yards or required parking is needed to accommodate the proposed development.
 - (3) The Zoning Officer may issue a zoning permit directly if the above conditions can be met. If they cannot be met, the applicant shall be directed to the Zoning Hearing Board to apply for a variance.
- B. In the event a lot with inadequate area or frontage abuts other lots in the same ownership, the lots shall be combined to create properties that are more conforming in area or frontage than the original lots or equal or exceed the minimum requirements for area and/or frontage in the zone district.

401.2 Lot Frontage Measurement - Lot frontage shall be measured in all cases along the front yard setback line.

401.3 Maximum Number of Single-Family or Two-Family Dwellings on a Lot - Not more than one (1) single family dwelling or two-family dwelling may occupy an undivided lot. No apartment may be constructed in an accessory building. Lots existing at the adoption of this Chapter and containing two (2) or more single-family or two-family dwellings may be subdivided even though nonconforming lots are created provided each new lot has adequate frontage on a public street.

(Ordinance 1076, October 18, 1984, Article IV, §4.1)

§402. Yard Exceptions.

402.1 Setbacks on Partially Developed Streets -

- A. When a vacant lot occurs between two (2) lots containing structures within twenty-five feet (25') of the vacant lot and forward of the front setback line, construction on the vacant lot may be set back from the street the average of the setbacks of the structures on either side of the vacant lot.
- B. When a vacant lot occurs adjacent to a lot containing a structure within twenty-five feet (25') of the vacant lot and forward of the front setback line, construction on the vacant lot may be setback from the street the average of the existing structure and the minimum setback required in the zone district.

402.2 Permitted Projections into Required Yard Areas -

- A. A structure may be set on its lot so that the average distance between the nearest and furthest points of a side wall and the adjacent side lot line measured at right angles to the lot line is not less

than the required minimum side yard depth and no part of the wall is less than three feet (3') from the side lot line.

- B. Chimneys, canopies, one-story bay windows, open porches and balconies, provided they are no more than eight feet (8') in width, and fire escapes, cornices, eaves and gutters may extend not more than eighteen inches (18") into a required yard area.
- C. In a front or rear yard, or a side yard abutting a public street, an open porch or patio may be erected that extends not more than ten feet (10') into the required yard area but is no closer than five feet (5') from any lot boundary line. Such porch or patio shall never be permanently covered or enclosed and shall not be above the level of the first floor of the building to which it is attached.
- D. Driveways, parking areas, walkways, steps, fences, walls and landscaping may occupy required yard areas. However, unless a written agreement exists between adjacent property owners allowing driveways, parking areas, walks, steps or walls to be placed along the common lot line, such features shall be held back at least one foot (1') from the lot line.
- E. Structures and landscaping on a lot abutting a street intersection shall be held back from lot lines or limited as to height in order to assure adequate sight distances for motorists approaching the intersection. The zoning officer may require greater setbacks than would normally apply in order to assure the public safety.
- F. Fences, hedges or walls placed along a lot line shall be no higher above ground level than six feet (6') or no higher than the horizontal distance between the lot line and any residential building on the adjacent lot, whichever is less. Any fence, hedge or wall forward of the front setback line on a lot shall not exceed four feet (4') in height.
- G. On lots used for commercial, industrial or public purposes a fence not higher than ten feet (10') above grade may be erected along any property line, provided the portion in excess of six feet (6') in height is of an open metal-mesh type.

(Ordinance 1076, October 18, 1984, Article IV, §4.2)

§403. Height Exceptions.

- 403.1 Measurement of Height - Height shall be measured as the vertical distance along the wall of a structure between the average of the highest and lowest elevation at finish grade on the front or rear wall, whichever has the lower ground elevations, and the top of the parapet on a flat roof building or halfway between the eave and ridge on the highest portion of the structure on a sloped roof building.
- 403.2 Chimneys, exhaust stacks, church steeples, flagpoles, water tanks, roof-mounted air handling equipment and communications equipment erected under Federal Communications Commission requirements shall be exempt from height regulations.

(Ordinance 1076, October 18, 1984, Article IV, §4.3)

§404. Off-Street Parking and Loading Standards.

- 404.1 Any development proposal, whether new construction, expansion of an existing use, or renovation of a building for a new use shall provide, or have available, off-street parking spaces as required by this section.
- 404.2 Dimensional Requirements -
 - A. Each parking space in a parking lot shall contain at least one hundred sixty (160) square feet of

area and be a least nine and a half feet (9-1/2') in width, exclusive of access lanes.

- B. The minimum dimensions, including access lane, across a double-loaded parking aisle with parking spaces at right angles to the access lane shall be at least fifty-eight feet (58'), and for a single-loaded aisle at least forty feet (40').
- C. Where parking spaces form a forty-five degree (45°) angle with the access lane the dimension across a double-loaded aisle shall be at least fifty-two feet (52') and across a single-loaded aisle thirty feet (30').
- D. A parking aisle includes the access lane and the parking space to which the lane provides access. A double-loaded aisle denotes parking spaces on both sides of the access lane.
- E. Required parking may be provided on lots adjacent to or nearby the use to be served, provided the parking lot is in the same ownership as the lot containing the use or a long-term lease guarantees the parking will be available for the life of the use. Any non-residential use may be served by parking that is not more than six hundred feet (600') walking distance from the primary entrance to the use. Any residential use may be served by parking that is not more than two hundred feet (200') walking distance from the entrance to the use.
- F. In the commercial district, a developer may subtract from the number of parking spaces he is required to provide, fifteen percent (15%) of the public and commercial parking spaces in the commercial district located within six hundred feet (600') walking distance of the primary entrance to the use, plus any on-street spaces that are immediately adjacent to his property on the same side of the street.
- G. When several uses share the same property, the parking required for each use shall be added together to determine the total number of spaces needed.
- H. In the C-1 Retail Commercial District, off-street parking shall not be permitted at the front of the structure.
- I. In the C-1 Retail Commercial District, off-street parking shall be permitted at the side of an adjacent use to be served when visually screened by landscaping and not to exceed sixty-feet (60') in width.

404.3 Design Standards -

- A. Parking lots or areas serving any commercial, industrial, public or semi-public use or any residential development where more than two (2) dwelling units share the same parking area shall be surfaced with at least one and a half inches (1-1/2") of binding and wearing courses of an asphaltic mix meeting current State Department of Transportation specifications, over at least four inches (4") of well compacted and choked base course of crushed limestone.
- B. Parking lots or areas shall be sloped not less than one half of one percent (1/2%) nor more than six percent (6%) toward an acceptable storm drainage system.
- C. Parking spaces shall be marked off in white or yellow paint with lines at least five inches (5") wide.
- D. Where the edge of a parking area slopes downhill and parking spaces are arranged at right angles to the slope, stop bars or a curb shall be provided.
- E. Where a parking lot or area designed to accommodate five (5) or more vehicles is located adjacent

to a residentially zoned lot or a lot occupied by a residence, the parking area shall be screened along the common lot line by a dense evergreen hedge, maintained at a height of not less than four feet (4') or more than six feet (6') in height. In lieu of a hedge earth mounding, natural changes of grade or an opaque-surfaced fence not less than four feet (4') nor more than six feet (6') in height may be approved by the Zoning Officer.

- F. Lighting of parking lots or areas shall be screened and directed away from any adjacent residential properties and from drivers on abutting streets. Lighting levels shall be the minimum to provide safety and security.

404.4 Minimum Off-Street Parking Requirements -

A. Residential Uses -

- (1) Any dwelling unit except those within a development designed exclusively for the elderly – one (1) space per dwelling.
- (2) Dwelling units in an elderly housing development - one (1) space per three (3) dwelling units.
- (3) Boarding or lodging home - one (1) space for each lodger or boarder.
- (4) Convalescent or retirement home - one (1) space for each three (3) apartments and/or beds.
- (5) Foster care or half-way house - one (1) space for each staff member on the largest shift plus one (1) space.
- (6) Home occupation - one (1) space for each three hundred (300) square feet of floor area occupied by the home occupation
- (7) Personal care home / group care facility – one (1) space for every bed provided, plus one (1) space for each staff member on the largest shift, plus one (1) space.
- (8) Three quarter house – one (1) space for every possible occupant of the structure, plus one (1) space.
- (9) Emergency shelter – two (2) spaces for staff, plus one (1) space per six (6) occupants allowed at maximum capacity.

B. Public and semi-public uses -

- (1) Church or other place of assembly including a theater - one (1) space for each four (4) persons who can be seated simultaneously, or one (1) space for each seventy-five (75) square feet of floor area in the assembly hall, whichever is greater.
- (2) School - two (2) spaces for each classroom.
- (3) Hospital - one (1) space for each two (2) beds.
- (4) Municipal, government or public utility service building - one (1) space for each five hundred (500) square feet of floor area.

- (5) Clubs, lodges, social or service clubs - one (1) space for each one hundred fifty (150) square feet of floor area.

C. Commercial uses -

- (1) Retail commercial, personal service shop or medical or dental clinic or office - one (1) space for each three hundred (300) square feet of floor area.
- (2) Offices except medical or dental - one (1) space for each five hundred (500) square feet of floor area.
- (3) Restaurants or taverns - one (1) space for each three (3) persons who can be seated simultaneously, plus five (5) spaces if take-out service is available as a part of the operation.
- (4) Motel or hotel - one (1) space for each sleeping room.
- (5) Roller rink or pool hall - one (1) space for each one hundred fifty (150) square feet of floor area.
- (6) Bowling alley - six (6) spaces for each lane.
- (7) Funeral home - ten (10) spaces for each reposeing room.
- (8) Outdoor retail sales - one (1) space for each six hundred (600) square feet of lot area devoted to outdoor sales.

D. Industrial uses -

- (1) Manufacturing, processing or research - one (1) space for each two (2) employees on the largest shift or one (1) space for each seven hundred fifty (750) square feet of floor area, whichever results in the larger figure.
- (2) Warehousing, storage, terminal operations - one (1) space for each one thousand five hundred (1,500) square feet of floor area and outdoor lot area used in the operation.
- (3) Boat marinas - one (1) space for each boat, slip or maximum number of boats that can be accommodated overnight.

E. Business vehicles -

- (1) All vehicles utilized or stored in conjunction with a business shall be parked on off-street sites provided by the business operator. Spaces provided for this purpose shall be in addition to basic parking requirements specified in §404.A, B, C and D.
- (2) Applicants for zoning permits shall certify to the Zoning Officer the estimated number and location of both the initial and anticipated off-street parking spaces that will be required for business vehicles.

(Ordinance 1076, October 18, 1984, Article IV, §4.4; as amended by Ordinance 1141, February 22, 1996; as amended by Ordinance 1152, March 25, 1999, as amended by Ordinance 1206, November 10, 2010; as amended by Ordinance 1228, December 17, 2015; as amended by Ordinance 1231, November 17, 2016)

§405. Signs.

405.1 Definition of Terms Peculiar to this Section -

BILLBOARD - a sign advertising goods or services not produced or available on the premises containing the sign, exception political, public or charitable agency signs.

DYNAMIC DISPLAY SIGNS - dynamic display signs shall mean any characteristics of a sign that appear to have movement or that appear to change, caused by any method other than physically removing and replacing the sign or its components, whether the apparent movement or change is in the display, the sign structure itself, or any other component of the sign. This includes a display that incorporates a technology or method allowing the sign faces to change the image without having the physical or mechanically replace the sign face or its components. This also includes any rotating, revolving, moving, flashing, blinking, or animated display and any display that incorporates relating panels, LED lights manipulated through digital input, “digital ink”, or any other method or technology that allows the sign to present a series of images or displays.

GROUND POLE SIGN - a free-standing sign supported entirely by its own structure set in or on the ground and not attached to a building or other structure.

MARQUEE, AWNING OR CANOPY - a marquee is a permanent shelter over a building entrance supported by the building and extending laterally from the building's face; an awning is a seasonal covering over an entrance that may be retracted mechanically and removed; a canopy is a free-standing seasonal structure covering a building entrance.

PROJECTING SIGN - a sign attached to a building wall along one edge of the sign, or attached to the wall by a bracket perpendicular to the wall surface.

SIGN - a structure or device, self-supporting, attached to a building or any part of a building or to another structure, or painted on a building or structure projecting a message by words, symbols and/or pictures designed to be viewed by the public from any public street or space open to the public, but not including the support of the sign.

SIGN AREA - all the area of a panel containing the sign message or all the area enclosed by connecting the extremities of the sign's inter-related parts. Where a sign has several faces the total of all faces shall constitute the sign's area.

WALL SIGN - a sign applied flat to or painted on a building wall and extending no more than one foot (1') in depth from the wall face.

405.2 General limitations -

- A. No sign shall be placed upon the roof of a building or to project above the top or beyond the ends of a building wall.
- B. Ground pole signs shall be placed only in yards abutting a public street and shall not project into a public right-of-way.
- C. Exemptions from these regulations -
 - (1) Any sign erected by Borough Council or any State or Federal agency;
 - (2) Memorial tablets erected by public or non-profit organizations;

- (3) Directional or informational signs on a property provided they are strictly functional and contain no advertising;
- (4) Holiday decorations.

405.3 Permits -

- A. A permit issued by the Zoning Officer shall be required before any sign may be erected, except for those listed in §405.3.E.
- B. Sign permits shall contain the following information provided by the applicant:
 - (1) Name, address and phone number of the applicant, the contractor to erect the sign, and the owner of the property, as well as address of property if different from owner's;
 - (2) Statement of permission granted by the owner of the property for erection of the sign if owner and applicant are not the same;
 - (3) Location of the sign on the property relative to buildings and property lines, and height of sign from ground level to top of sign, with dimensions noted;
 - (4) A copy of the drawing from which the contractor will create and erect the sign, including an elevation view and method of attaching the sign to the ground or to a building.
- C. The cost of sign permits shall be established by resolution of Council. A permit shall be required for the replacement, enlargement or moving of a sign.
- D. Temporary Signs -
 - (1) Signs advertising candidates for political office shall not be placed on public property or attached to trees. Not more than one (1) political sign shall be permitted on a lot at any time. Such signs shall not exceed five (5) square feet in area and shall not be placed more than thirty (30) days before the election or left up more than three (3) days after the election. There shall be no fee required for a political sign, but owners of lots on which such signs are placed shall be responsible for removal of the signs.
 - (2) Garage, yard or porch sale signs shall be placed only on the property where the sale is occurring, limited to one (1) sign not exceeding five (5) square feet in area. Signs shall be in place not more than three (3) days prior to the sale and shall be removed not later than the day after the sale is ended. See §202, Yard Sale, for further guidance on such sales.
- E. The following types of signs shall not require permits for erection:
 - (1) Real estate signs not exceeding sixteen (16) square feet in area.
 - (2) Signs denoting designers and/or contractors when placed on the property where the firm is doing work, limited to sixteen (16) square feet in area, and to be removed when the work is completed.
 - (3) Home occupations or other personal name plate or sign not more than two (2) square feet in area.

- F. The following types of signs shall require permits but no fees:
 - (1) Signs or bulletin boards put up by public, charitable or religious institutions when located on the same property as the institution. Temporary signs advertising special events of such institutions and not exceeding thirty-two (32) square feet in area may be approved by Borough Council in other locations for a period not exceeding thirty (30) days.
- G. Before the Zoning Hearing Board shall act on a request for a variance from the regulations contained in this section, it shall first receive recommendations from the Planning Commission. The Zoning Officer shall present sign variance requests first to the Commission for its action before submitting to the Zoning Hearing Board, which may subpoena a member of the Commission to defend the recommendations at the Board's hearing.

405.4 Signs in the Residential Districts -

- A. Property identification sign limited to name and address of occupants, and/or name and nature of home occupation conducted in the dwelling, such sign not more than two (2) square feet in area each face.
- B. Sign indicating property for sale, rental or lease identifying the broker's or owner's name, address and phone number and nature of proposed transaction, such sign not greater than sixteen (16) square feet in area each face.
- C. Signs identifying a public or semi-public institution and activities carried on by the institution, such signs not greater than thirty-two (32) square feet in area each face.
- D. Sign identifying designers or contractors employed on the property, such sign not exceeding sixteen (16) square feet each face, limited to one (1) sign per designer or contractor.
- E. Sign identifying an office or offices on the same property, such sign not greater than eight (8) square feet in area each face.
- F. Memorial tablets erected by a public or non-profit organization; traffic or other governmental signs authorized and/or erected by a public body.
- G. Signs may be applied flat to the principal structure on the property, attached to a private lamp post or fence or to a ground pole. Only one (1) sign may be permitted on a property, except that if the property abuts two (2) streets, one (1) sign on each street may be approved.
- H. No sign shall exceed ten feet (10') in height measured from the topmost part of the sign to the ground level below.
- I. No sign shall be lighted except signs identifying public or semi-public institutions, provided such lighting is from an indirect, hidden source.

405.5 Signs in the Commercial and Industrial Districts -

- A. Permitted types of signs -
 - (1) Any sign permitted in the residential zone districts;
 - (2) Sign identifying a business or industry on the same property as the business or industry;

- (3) Billboard in the industrial district only;
- (4) Signs may be ground pole, projecting or wall mounted. In addition signs may be attached to or be a part of the edges of a marquee, retractable awning or canopy, provided such edge does not exceed three feet (3') in height.

B. Size of signs -

- (1) Ground pole signs shall not exceed sixty-four (64) square feet in area on any face and no more than a total area on all faces of one hundred twenty-eight (128) square feet, limited to one on any property street frontage.
- (2) Wall signs shall not exceed in area ten percent (10%) of the area of the wall to which they are attached, including the area of windows and doors. However, regardless of wall area a wall sign of at least twenty (20) square feet shall be permitted.
- (3) Projecting signs shall not exceed in area fifteen (15) square feet on any face and shall not extend more than three feet (3') from the face of the wall to which attached or more than eighteen inches (18") over a public sidewalk or way. Projecting signs shall not extend to less than ten feet (10') above a sidewalk and shall not project laterally closer than two feet (2') from a curb or over a vehicular way.
- (4) Billboards shall be not less than one hundred fifty (150) square feet nor more than three hundred (300) square feet in area for any face. Billboards shall not be located within one hundred feet (100') of any property in a residential district.
- (5) On any commercial or industrially zoned property the total area of all signs on the premises shall not exceed the total street frontage multiplied by two (2).

C. Height and location of signs -

- (1) No sign in the commercial or industrial zone districts shall exceed twenty-five feet (25') in height measured from the topmost part of the sign to the ground level below.
- (2) Signs shall be located in yards abutting public streets. Wall signs and projecting signs shall be located between the heads of windows and doors on the ground floor of a building and the sills of windows on the second floor, or between the window and door heads and the top of the wall parapet or gutter line above, if a one-story building.

D. Lighting - Signs may be lighted provided the light source is within the sign, or if removed from the sign, is not visible from any adjacent or nearby street or property. Lighted signs shall be screened from view of residential properties within two hundred feet (200') of the sign.

E. Temporary Commercial Signs - Temporary commercial free-standing signs or "grand opening" signs not exceeding in area thirty-two (32) square feet on either of two (2) faces, may be approved by the Zoning Officer for a period not exceeding thirty (30) days provided no more than one (1) such sign is present on the same property at the same time.

F. Dynamic Display Signs - Dynamic display signs shall only be permitted in the C1 – Light Commercial and C2 – General Commercial zoning district, however, no dynamic display sign shall be located within the Central Business District on Third Avenue from Eighth Street to Thirteenth Street. Dynamic display signs are only permitted on monument type of ground pole type signs. No dynamic display sign shall be located within fifty (50) feet of another dynamic display sign, within seventy-five (75) feet of an intersection controlled by a traffic light, or within one hundred

and fifty (150) feet of a change in traffic patterns.

- (1) **Prohibited Digital Display Signs.** All signs not expressly permitted under this ordinance or exempt from regulation hereunder in accordance with the previous section are prohibited in the Borough. Prohibited signs include, but are not limited to:
 - (a) All signs which imitate or resemble any official traffic sign, signal or device; or which use a revolving beam or beacon resembling any emergency vehicle, or are located or illuminated in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, or so as to obstruct or interfere with the view of a driver of approaching, emerging, or intersecting traffic, or so as to prevent any traveler on any street from obtaining a clear view of approaching vehicles for a distance of 250 feet along the street.
 - (b) Beacons.
 - (c) Signs that are located in or interfere with the use of a required off-street parking space or maneuvering area.
 - (d) Illuminated signs, illuminated from within or without, which are illuminated in such a manner, to high intensity, or without proper shielding, so as to constitute a hazard to the operation of motor vehicles upon a public street or substantially interfere with the reasonable enjoyment of residential property, or have any type of intermittent illumination, including flashing, fading, revolving, intermittently lighted, changing color or blinking lights, except those displaying time and temperature information only.
- (2) **Size Regulations.** Dynamic display signs shall not be permitted as an independent sign and must be incorporated into the body of another approved type sign. Dynamic display signs shall not be larger than twelve (12) square feet, with no single dimension greater than four (4) feet. Additionally, dynamic display signs may not occupy more than fifteen percent (15%) of the actual copy and graphic area of the sign to which it is incorporated, whichever is less. The remainder of the sign shall not have the capability to have dynamic displays even if not used. Only one contiguous dynamic display area is permitted on a sign face. Time, date, or temperature information is considered one dynamic display and may not be included as a component of any other dynamic display. Dynamic display signs shall be no higher than fifteen (15) feet above ground level.
- (3) **Public Purpose Signs.** Any digital display sign with 66% or more of images, displayed for equal amounts of time, being for public purposes shall be exempt from the size regulations in the above paragraph. Public purpose digital display signs shall not exceed thirty-two (32) square feet in area. Additionally, public purpose digital display signs shall be exempt from meeting the fifteen percent (15%) size requirement in the above paragraph. Furthermore, any sign erected by the Borough of New Brighton shall be exempt from any requirement of this ordinance.
- (4) **Motion, Animation, and Video Regulations.** A dynamic display sign may not change or move more often than once every one (1) minute. A display of time, date, or temperature shall remain for at least one (1) minute before changing to a different display, but the time, date, or temperature information itself may change no more often than once every five (5) seconds. Information displayed on dynamic display signs shall be static and the transition from one static display to another shall be instantaneous or a dark screen, for no longer than two (2) seconds, without any special effects. Informational content shall be static and consist of alphabetic content, numeric content, and graphical images (pictures)

only. Displays shall not include the application of any type of motion, animation, or video. The informational message displayed shall be complete in themselves without continuation of content in the next display.

- (5) **Illumination.** Brightness of dynamic display signs shall be no greater than 7,000 nits during daylight hours and no greater than 500 nits during nighttime hours. However, regardless of luminance, no dynamic display signs shall be illuminated in such a manner that creates glare conditions on adjacent properties or adjacent streets, impairs the vision of a motor vehicle driver, interferes with a motor vehicle drivers operation of a vehicle, or interferes with the effectiveness of an official traffic sign, device, or signal. All dynamic display signs shall be equipped with a dimmer control and a photo cell, which constantly keeps track of ambient light conditions and adjusts the sign brightness accordingly. A written certification is required from the sign manufacturer that the light intensity has been preset not to exceed the illumination levels established by this ordinance, and the preset intensity level is protected from end user manipulation by password protected software or other method approved by the Zoning Officer.
- (6) **Malfunctions.** In the event of a malfunction, all dynamic display signs shall be designed and equipped to freeze the device in one position. The sign must also be equipped with a means to immediately discontinue the display if it malfunctions.
- (7) **Violations.** When notified by the Zoning Officer that a dynamic display sign is not in compliance with the standards of this ordinance, the sign owner must immediately disable or turn off the dynamic display. The device must remain inoperable until such time that the owner demonstrates to the Zoning Officer that the device is in satisfactory working condition.

405.6 Maintenance -

- A. If the Zoning Officer shall find any sign or sign structure to be unsafe or to have been erected or maintained in violation of this Chapter, he shall give written notice to the owner citing the conditions found and the actions needed to gain compliance.
- B. If, after thirty (30) days from the date the notice was sent, the corrections have not been made, the owner shall be subject to summary proceedings as provided by §804 of this Chapter, and in addition the Zoning Officer may cause to have the offending sign repaired or removed with the costs assessed the owner, who shall be denied any further sign permits until such costs have been paid in full.
- C. Signs which are found to be causing an immediate menace to the public may be removed or caused to be removed immediately by the Zoning Officer without notice and the costs assessed the owner.
- D. Signs advertising places of business or activities which terminate operations shall be removed by the owner within thirty (30) days of such termination or be subject to §405.6.B. Removal shall include all sign supports, brackets and lighting conduit.

(Ordinance 1076, October 18, 1984, Article IV, §4.5, as amended by Ordinance 1207, November 10, 2010)

§406. Site Grading and Storm Drainage.

406.1 Site Grading -

- A. No earth movement shall be permitted except to implement a development for which a building permit has been issued or to construct public utility, street or other improvements contracted for a public body or agency.

- B. Graded slopes shall not exceed one foot (1') vertical rise for each two feet (2') of horizontal run except that in excavations of land surfaces that have laid dormant for at least two (2) years a slope of one foot (1') vertical rise for each one and a half feet (1-1/2') of horizontal run shall be permitted. Steeper slopes may be allowed in areas where, in the written opinion of a registered professional engineer, soil and subsoil conditions are such as to allow a slope up to a maximum grade determined by the engineer. His report shall bear his seal.
- C. Slopes created by filling shall be keyed in to undisturbed ground and shall be compacted in eight inch (8") layers. The tops and toes of slopes shall be provided with graded swales parallel with the face of the slope to divert storm water.
- D. No grading shall occur within two feet (2') of any property boundary except as is needed for driveway or sidewalk entrances or to meet grades on adjacent properties.
- E. Retaining walls, designed by a registered professional engineer who shall supervise construction, may be built up to a property line provided a guard rail at least thirty inches (30") high along the entire length of the wall is installed.
- F. Graded areas not covered by buildings or paved surfaces shall be planted with erosion resisting grasses or ground cover immediately after the completion of grading. Graded areas shall be protected from construction activity, covered with straw and contained along their lower elevations by hay bales until the planting has secured the slope.

406.2 Storm Drainage -

- A. A system of storm drain pipes, inlets and surface drainage swales shall be provided as part of any development to insure the unimpeded but controlled flow of natural water courses crossing or abutting the development site.
- B. Storm water shall be controlled on the property upon which it originates. It shall be directed to the Borough's storm drainage system and shall not be permitted to flow over a neighboring property or street.
- C. In the case of major developments involving large building and/or paved areas, the Planning Commission may require the developer to have a site drainage plan to be prepared by a registered professional engineer to assure that the public drainage system will not be overloaded.
- D. In no case shall sewage other than that from storm run-off be permitted to enter a storm drainage system.

(Ordinance 1076, October 18, 1984, Article IV, §4.6)

§407. Site Plan Review.

- 407.1 Application - This section shall apply to any commercial, industrial or multi-family (three or more dwellings) development proposal involving new exterior construction, whether of new buildings, extensions of existing buildings or site improvements.
- 407.2 Submission - Any developer proposing such construction shall submit to the Zoning Officer a site plan showing the following:
 - A. The boundaries of the property described by bearings and distances.

- B. The location of adjacent streets indicating street curbs and street width, as well as existing and/or proposed cuts entering the property.
- C. The location of existing to remain and proposed buildings, showing distances to property lines, height and use of each building.
- D. Arrangement of off-street parking on the property, indicating number of spaces and location of access lanes, as well as truck servicing areas.
- E. Proposed areas of grading on the site, indicating steepness of slopes and means to collect and dispose of storm water.
- F. Proposed landscaping of the site, indicating also pedestrian walks, retaining walls, fences and other features.
- G. For all buildings to be erected, extended, remodeled, or otherwise improved in the C-1 Retail Commercial District, the site plan shall include the following information:
 - (1) Drawings, elevations, perspectives, and related design criteria pertaining to structures, landscaping, and façade treatments.
 - (2) A statement and supporting documentation that addresses compatibility with the character of the Central Business District, consistency with National Main Street Program criteria, and coordination with applicable ongoing façade and related business enhancement endeavors.

407.3 Review - The Planning Commission shall review the drawing as to conformance with this Chapter, the arrangement and safety of circulation into and within the property, congestion that may be created by the development on adjacent streets, the likely impact of the development on adjacent and nearby properties and the general arrangement of buildings and landscaping.

407.4 Decision - The Commission shall complete its review and submit its recommendations to Borough Council, and Council shall make a decision to approve the plan as presented, approve it with conditions or reject it within ninety-five (95) days after the plan was first submitted to the Planning Commission. The developer and Council may jointly agree to postpone the decision further. If the developer withdraws his plan and resubmits it, the review period shall be suspended during the withdrawal. The developer may negotiate with the Planning Commission and/or Council on conditions, if any, that are to be attached to approval.

(Ordinance 1076, October 18, 1984, Article IV, §4.7; as amended by Ordinance 1152, March 25, 1999)

§408. Storage Containers.

- A. Residential and Conservation Zoning Districts. Shipping containers are not permitted in any residential zoning district or the conservation zoning district unless authorized by Part D of this section.
- B. Commercial Zoning Districts. Shipping containers are not allowed in any commercial zoning district unless authorized by Part D of this section.
- C. Manufacturing Zoning District. Shipping containers are permitted in the manufacturing zoning district, provided that the container(s):
 - (1) Are screened with fencing or landscaping approved by the Planning Commission.

- (2) Are being used as a shipping container and that all applicable Department of Transportation licenses for the container(s) are valid.
 - (3) Are not permanently installed.
 - (4) Meet established setbacks within the manufacturing zoning district.
- D. Construction Sites. Shipping containers are permitted on construction sites in any zoning district where there is an active building permit for a project on the subject property. If the building permit has expired or a certificate of use and occupancy has been issued for the permitted construction, the container shall be removed within ten (10) calendar days. If construction ceases for a period of thirty (30) day or more, or the project is abandoned, the container shall be removed within ten (10) calendar days.

(Ordinance 1236, February 16, 2017)

§409. Short Term Rental Units.

- A. Short term rental units will be allowed in single-family homes, townhouses, condos, mobile homes and apartments as a permitted principal use in specified districts, with limitations.
- B. The maximum number of lodgers per night may not exceed a total of six (6) guests per dwelling and/or two (2) guests per bedroom, whichever is less.
- C. The maximum number of rental contracts per night is one. All lodgers occupying a short term rental unit must be associated with the same rental contract.
- D. Events and activities, including luncheons, banquets, parties, weddings, meetings, fund raising, commercial or advertising activities, and any other gathering of persons other than the authorized lodgers, whether for direct or indirect compensation, are prohibited in association with any short term rental unit.
- E. Short-term rental units shall not adversely affect the character of a neighborhood nor shall the use generate noise, vibration, glare, odors, or other effects that unreasonably interfere with any person's enjoyment of his or her residence.
- F. An owner-adjacent short-term rental may be rented only as a whole unit to one party of short-term renters at any one time and not rented as separate bedrooms to separate parties.
- G. The number of individual bedrooms made available for operator-occupied short-term rentals within a dwelling unit shall not be greater than the number of lawful bedrooms in the dwelling unit.
- H. All advertisements for short term rental units, posted on any platform online or in any other format, must include the short term rental unit zoning occupancy permit number and identify the location of the required off-street parking space(s) and any other available parking or public transportation options.
- I. Exterior signs advertising the presence of a short term rental unit are not permitted.
- J. Hotel Occupancy Tax must be paid to the County of Beaver for each short term rental unit. Operators must file proof of payment annually prior to February 1.
- K. Short term rental units are prohibited in an accessory structure, outdoors, or in recreational vehicles.

- L. Renting for an hourly rate shall not be permitted.
- M. A short term rental unit must:
 - (1) Be inspected for compliance with applicable regulations in accordance with the New Brighton Borough Rental Registration and Inspection Ordinance 1176, as amended.
 - (2) Have a working multi-purpose fire extinguisher, interconnected smoke detectors and carbon monoxide detectors, when a fuel burning appliance is present in the structure.
 - (3) Have a plan posted inside the door of each sleeping room showing the exit pathway from the sleeping room used for a short term rental unit to the nearest exit from the dwelling.
 - (4) Have one designated off-street parking space available for lodgers for each dwelling unit or bedroom in a short-term rental, which the Operator has the authority to reserve for short term rental unit purposes.
- N. A short-term rental operator must:
 - (1) Apply for a certificate of zoning occupancy prior to short-term rental use and occupancy.
 - (2) Be a permanent resident of the property hosting the short term rental unit.
 - (3) Obtain written consent from the owner of the property for the short term rental unit, when applicable.
 - (4) Maintain a guest log including the name, address, and telephone number of all overnight lodgers. The guest log must be made available upon request to any Borough employee or agent tasked with enforcing the Zoning Ordinance or other applicable part of the Borough Code.
 - (5) Maintain liability insurance appropriate to cover the short term rental unit and provide proof of insurance coverage annually prior to February 1.
- O. The following information shall be provided to all short-term renters upon execution of a rental contract:
 - (1) Instructions for disposal of waste in accordance with local refuse and recycling programs.
 - (2) Contact information for the short-term rental operator, or when the operator is not present, the contact information for a locally available contact designated to respond to all emergencies and problems that may arise during the rental period, whether from renters, neighbors or municipal authorities.
 - (3) The certificate of zoning occupancy for the short-term rental.

(Ordinance 1253, July 18, 2019)

Part 5

Conditional Uses

§501. General Criteria.

- 501.1 Conditional uses for each zone district are listed in §303.3, 304.3, 305.A.3, 305.B.3, 305.C.2, 306.3 and 307.3 of this Chapter.
- 501.2 Any application for a conditional use shall demonstrate that:
- A. The use will not endanger the public health and safety if located where proposed and will not deteriorate the environment or generate nuisance conditions.
 - B. The use can be accommodated on the site with none, or only minimum variances required.
 - C. The use is compatible with or will support the uses in the neighborhood of the site.
 - D. The use does not require substantial earthmoving, revision of drainage patterns, or create excessive traffic congestion or substantial increase in storm water flow.
 - E. Off-street parking is provided as required by §404 of this Chapter and areas not covered by buildings or paved are landscaped and maintained.
 - F. Access to parking lots are located as remote as possible from nearby street intersections and adequate sight distances are available at access points for motorists entering and leaving the property proposed for the use.

(Ordinance 1076, October 18, 1984, Article IV, §5.1)

§502. Procedure for Review.

- 502.1 A developer proposing a conditional use shall submit to the Zoning Officer five (5) copies of the following materials at least five (5) calendar days before a regular meeting of the Planning Commission:
- A. A written statement supporting the general criteria outlined in §501.2 above and describing in detail the proposed use;
 - B. A scaled illustrative site plan showing the arrangement of the proposed use on the site, including property lines, setback lines, uses on adjacent properties, abutting streets, buildings existing and proposed on the site by use and height, points of access into the site, internal driveways, parking area layout with number of spaces noted, free-standing signs, areas of earth moving with grade of finished slope noted, means of disposing of storm water, proposed landscaping and other pertinent information.
 - C. The Commission may waive parts of the site plan submission that are clearly irrelevant in a particular case.
- 502.2 The Commission shall review the documents required by §502.1 together with the specific criteria that apply to the proposed use at its next meeting and may recommend approval of the plan as submitted, rejection or approval with specific conditions to be met by the developer. Also, the Commission may table it for further information, or schedule a public hearing on it to gather public opinion.
- 502.3 The Commission shall note its discussion of the proposal and its recommendation to Borough Council in its

minutes of the meeting and shall submit a copy to the developer and copies to Council, together with the developer's submission.

- 502.4 Council shall review the Planning Commission's recommendation at a Public Hearing and shall vote to accept or reject the recommendation. A copy of Council's decision shall be sent to the Planning Commission and the applicant. The Borough Council may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, as it may deem necessary to implement the purposes of this Ordinance.
- 502.5 Council's decision shall be made not more than ninety (90) days after the submission was first reviewed by the Planning Commission, provided the plan is not withdrawn and resubmitted. The review period shall start over upon resubmission. When Council fails to render a decision within the allotted time period (ninety (90) days), the application for a conditional use shall be deemed to be approved, unless an extension of time has been agreed to by the applicant.
- 502.6 If Council grants approval, it shall authorize the Zoning Officer to issue a zoning permit for the proposed development. If conditions are attached to approval, they shall be noted on the building permit

(Ordinance 1076, October 18, 1984, Article V. §5.2); as amended by Ordinance 1141, February 22, 1996)

§503. Criteria for Judgment of Specific Uses in the Residential Zone Districts.

503.1 Convalescent or retirement homes or hospital -

- A. A convalescent or nursing home is a facility for long term care requiring skilled monitoring of the patients who are mainly bed-ridden. A retirement home is a permanent residence designed and maintained for the elderly, including special facilities to support the elderly but medical services only as an incidental element. A hospital is a facility providing a full range of equipment and personnel to diagnose and treat accident and illness patients for as long as intensive bed care is needed in each case.
- B. The institution shall be accredited by the Commonwealth and sole occupant of the property.
- C. Parking, lot size, setback and height limitations shall determine the maximum occupancy of the institution.

503.2 Day care center -

- A. The facility shall be in a single family dwelling or in a building operated by a public or semi-public agency such as a church or social service organization.
- B. The center shall be approved by the Beaver County Department of Health.
- C. It shall have a capacity of not more than eight (8) pre-school age children or dependent adults if in a single family dwelling, and a capacity as determined by the County Health Department if in other facilities.
- D. No overnight accommodations shall be provided.

503.3 Boarding or lodging home -

- A. Any single family dwelling or dwelling in a two-family building may also accept boarders or lodgers not exceeding three (3) in number.

- B. The name of each boarder or lodger shall be filed with the Zoning Officer as well as the dates that each boarder and lodger arrives at and leaves the facility.

503.4 Half-way house or foster care -

- A. The services shall be provided in a family environment.
- B. The facility shall not include business or professional offices (other than incidental offices), business activities, fraternal or social clubs, hospitals, clinics or other such activities.
- C. The total number of residents in any single facility shall be limited to no more than twelve (12) persons, including clients, staff, and family of staff. Clients shall be limited to no more than eight (8) ambulatory persons.
- D. Supervision shall be provided by responsible and appropriately qualified adults on duty, on the premises on a 24 hour-a-day basis. A minimum of one (1) such adult shall be in residence at the facility and on duty for five (5) or less clients. A minimum of two (2) such adults shall be in residence at the facility and on duty for six (6) to eight (8) clients.
- E. Lot, yard, and all other dimensional requirements of the zoning district in which the facility is shall be met. Each lot shall include a minimum of 1,200 square feet of exterior open space that is maintained and suitable for passive and/or active recreational use.
- F. In addition to normal residential requirements, on-site parking facilities shall be provided at the ratio of one (1) off-street space for every two (2) full time staff members and one (1) additional space for every non-staff resident permitted by the sponsor to operate a motor vehicle.
- G. A facility shall be located not less than 1,000 feet from any other facility.
- H. All structures shall be equipped with acceptable fire escapes which shall provide egress and ingress for all residents on each level. As part of the Conditional Use Application process, the Chief of the Borough Fire Department, or the designated agent thereof, shall inspect the premises to evaluate access, fire hazard potential, structure layout and adequacy of smoke and fire alarm devices. No Certificate of Occupancy shall be issued prior to an unqualified approval of such authority.
- I. Sanitary facilities, consisting of a sink, water closet, and tub or shower shall be provided at the ratio of one (1) each for every four (4) inhabitants of the facility.
- J. A minimum of 72 square feet of contiguous sleeping and personal area shall be provided for each client. Said area, for purposes of this requirement, shall be computed exclusive of areas used for sanitary facilities, hallways, aisles, stairwells, and other circulation areas, storage areas, dining areas, kitchen and food preparation areas, game rooms and related recreation spaces, instruction areas and other common use spaces. A dining area shall be provided that is of sufficient size to accommodate all clients, staff and residents at a single seating.
- K. A license or certification shall be obtained from the Commonwealth of Pennsylvania, Department of Labor and Industry, Department of Public Welfare and any other state or county agency having jurisdiction, prior to the issuance of a Certificate of Occupancy. In the event that an appropriate licensing or certifying agency does not exist, the applicant shall demonstrate to the Borough Council that the proposal for establishing such a facility satisfies a demonstrated need and will be conducted in a responsible manner without detriment to surrounding properties.
- L. The sponsor shall file annually with the Borough Secretary, information certifying that the facility continues to adequately meet the conditions of the original approval. Changes of sponsorship or of

any conditions of original approval shall constitute a new use and the full conditional use procedures of obtaining a new use shall be exercised.

M. All state and municipal code requirements shall be met, consistent with the use of the site.

503.5 Home Occupation -

- A. The business may be conducted in a single family or duplex dwelling but shall not be permitted in multi-family dwellings that contain three (3) or more dwelling units.
- B. Only members of the family residing on the premises shall be engaged in the business.
- C. The business shall be limited in floor area to no more than 25% of the primary dwelling structure, 50% of an accessory structure, or a combined total area not to exceed 500 square feet.
- D. No changes to the exterior of a structure shall be made to accommodate the occupation.
- E. No activity shall be conducted that creates hazards to persons or property, creates interference or nuisance, or that generates traffic, parking or utility use in excess of normal single family residential levels.
- F. There shall be no display of the business or advertising visible from adjacent streets except for an unlighted sign (see §405.4.A).
- G. Activities shall be limited to professional, technical or business pursuits that are restricted to office related functions and practices, personal services, light handicrafts, teaching instruction limited to three (3) students at any one time period, small appliance and minor equipment repair and servicing, and home based businesses limited to off-site product delivery. In all instances, clients shall be seen only by appointment, retail sales shall be incidental to a related service, and repair services shall be limited to items that can be carried by an individual.

503.6 Garden, walk-up and elevator apartment buildings -

- A. Multi-family apartment units and structures, when situated on individual unsubdivided lots or tracts of land, may be under single or multi-ownership. When dwelling units and/or structures are under multi-ownership, the development and maintenance of common building elements, land, improvements and amenities shall be provided for and guaranteed by trust indentures, or such other financial security or agreements, which the Borough Council may approve and accept.
- B. The following design standards shall apply:
 - (1) No garden or walk-up apartment structure shall exceed three (3) stories or forty (40') feet in height.
 - (2) No elevator apartment structure shall exceed seven (7) stories or seventy (70') feet in height.
 - (3) No apartment structure shall be set back less than fifteen (15') feet from any road or street (right of way) line and there shall be minimum side and rear yard setbacks of fifteen (15') feet along the lot perimeter.
 - (4) Off-street parking spaces shall be provided at the rate of one and one-half (1.5) for each dwelling unit and each space shall be within one hundred fifty (150') feet of any commonly used entrance way for such dwelling units.

- (5) Buildings shall be designed so as to avoid monotonous patterns of construction or repetitive spaces or modules between buildings.
- (6) No structure shall be erected within twenty-five (25') feet of another structure.
- (7) Multi-family apartment housing shall not exceed the following maximum densities:

Garden and walk-up apartments

R-1 District	-	15 dwelling units per gross acre
R-2 District	-	30 dwelling units per gross acre
C-2 District	-	30 dwelling units per gross acre

Elevator apartments

R-2 District	-	70 dwelling units per gross acre
C-1 District	-	70 dwelling units per gross acre
C-2 District	-	70 dwelling units per gross acre

- C. All developments shall be served by an approved municipal sanitary sewerage system and an approved municipal water system.
- D. All multi-family apartment unit developments shall be subject to preliminary site plan review and approval by the Borough Planning Commission and Council in accordance with the following application requirements:

Overall development plans showing:

- (1) Kind, location, occupancy capacity of structures and uses.
- (2) General floor plan of building.
- (3) Location and identification of open space, streets and all other means for pedestrian and vehicular circulation, parks, recreational areas and other non-building sites.
- (4) Provisions for automobile parking and loading.
- (5) General landscape plan.
- (6) Location and nature of public and private utilities (including underground utilities) and other community facilities and services.
- (7) Location of fire hydrants which shall be within six hundred (600') feet of each structure.
- (8) Provisions for a storm drainage system sufficient to collect and accommodate predictable surface water runoff. The adequacy of the system shall be determined by the Borough Engineer.

- (9) Common open space that shall be provided in all developments of six (6) units or more. Twenty percent (20%) or more of the site shall be developed and maintained for common use by residents of the development. Said areas shall consist of open spaces designed and developed for the leisure and recreational pursuits of site residents and shall not include space devoted to streets and parking areas.
- E. Following tentative approval of the application by the Planning Commission and the Borough Council, the final processing of the application shall proceed with the submission of final detailed plans of site improvements, detailed utility plans, all required approvals and certifications and proposed documents to provide security for the installation and maintenance of utilities and common areas and facilities.
- F. No building permits or occupancy permits shall be issued until after final approval of the application by the Borough Council.

503.7 Planned Residential Development -

- A. The application process for approval of Planned Residential Development as a Conditional Use shall be consistent with Article VII of PA Act 170, 1988 as amended, and shall consist of the following steps:
 - (1) An application for tentative approval shall be filed by or on behalf of the landowner.
 - (2) Within sixty (60) days after filing of an application for tentative approval, a public hearing (or hearings) shall be held by the Borough Council.
 - (3) Tentative approval shall not qualify a plat for recording nor authorize the issuance of any permits.
 - (4) Following tentative approval, an application for final approval may be submitted for the entire development site or incremental parts thereof.
 - (5) Public hearings on applications for final approval shall not be required provided the application is in compliance with the tentative plan previously given approval. The application for tentative approval shall include the following:
- B. A location map of the site at a scale no smaller than 1" = 100', showing boundaries, road systems and land uses within one-half mile of the site perimeter.
 - (1) A site plan of the project defining the location of proposed uses; acreage by proposed use; density of dwelling units; street system plans for traffic and vehicular parking; plans for sewage disposal systems, storm water and other utilities; the location of recreation facilities, open spaces and site amenities, proposed lot lines and plat designs; and a detailed landscape plan.
 - (2) Developments shall be any complex of two (2) or more dwelling structures on the same undivided property, with the dwelling units available for rent or as condominiums.
 - (3) Plan documentation shall include the form of organization proposed to own and maintain common facilities and open space; and the substance of covenants, easements or other restrictions.

- C. Applications for final approval shall include any drawings, specifications, covenants, easements, performance bonds and other such requirements as may be specified by local officials at the time of tentative application approval.
- D. The following requirements shall govern the approval and development of all planned residential development.
 - (1) The minimum land area for a planned residential development shall be one (1) contiguous acre.
 - (2) The development shall be serviced by public sewerage and water systems. No on-site sewage disposal or portable water source shall be authorized.
 - (3) The developer shall provide within the planned development a storm drainage system sufficient to dispose of all predictable surface water runoff within the development.
 - (4) Off-street parking shall be provided at the rate of one and one-half (1.5) spaces for each dwelling unit.
- E. Permitted Uses - A building may be erected or used, and a lot may be used or occupied for any of the following purposes:
 - (1) Single family detached dwelling
 - (2) Townhouse units
 - (3) Apartment buildings, not to exceed three (3) stories in height
 - (4) Public or private park and related recreation facilities
- F. Within a development, the following percentages of the total land area shall be devoted to the specified uses listed herewith:
 - (1) A maximum of eighty-five percent (85%) for residential use; land devoted to residential use shall be deemed to include those streets, alleys, parking areas, private open spaces and courts that abut and service residences or groups of residences.
 - (2) A minimum of fifteen percent (15%) for open air recreational uses and other usable open space. Usable open space shall be defined as an open area designed and developed for use by the occupants of the development for recreation, courts, gardens or household service activities. This space shall be effectively separated from automobile traffic and parking and readily accessible; space devoted to streets and parking shall not be included.
- G. Residential density shall not exceed twelve (12) dwelling units per gross acre of land within the development.
 - (1) There shall be no minimum lot size, setbacks, percentage of lot coverage or lot width, except as required in item (2) below.
 - (2) No structure shall be erected within twenty (20) feet of any other structure.
 - (3) There shall be a yard setback of at least twenty-five (25') feet along the perimeter of each planned residential development tract and adjacent to all adjoining roads.

- (4) No structure shall exceed three (3) stories in height.
 - (5) There shall be no continuous structure of townhouses containing more than four (4) dwelling units.
 - (6) Apartment buildings shall not exceed six (6) dwelling units per building.
 - H. Open spaces between structures, including those spaces being used as public or private recreational areas, shall be protected by adequate covenants running with the land or by conveyances or dedications.
 - I. In cases where the Borough will not be accepting dedications of streets, recreation areas or open spaces, the landowner shall provide for an organization or trust for ownership and maintenance.
 - J. The dimensions and construction of roads, alleys and parking areas within the development, whether or not dedication to the Borough is contemplated, shall conform with all applicable Borough ordinances and regulations.
- 503.8 Non-profit community club or national fraternal, social or service organization -
- A. The club, with required off-street parking, shall be the sole occupant of the lot.
 - B. No dwelling shall be included on the lot except that an apartment for the club manager or caretaker may be provided in the clubhouse.
- 503.9 Funeral home or cemetery -
- A. Grave sites shall be set back from property lines the same as for buildings.
 - B. No crematorium shall be a part of a cemetery operation.
 - C. Maintenance areas in a cemetery shall be screened from adjacent residentially zoned properties.
 - D. Caskets shall be loaded and/or unloaded from any vehicle within the funeral home garage.
- 503.10 Elevator apartment building - Parking areas shall be located in side and/or rear yards of the property, and shall be separated from the building by a landscaped strip at least four feet (4') wide.
- 503.11 Business, professional or government offices -
- A. Such offices shall be on lots that abut public streets with a paved width of at least thirty feet (30').
 - B. One (1) free-standing sign in the front yard or one (1) wall sign not more than eight (8) square feet in area, unlighted or lighted from an internal source, may be permitted on the property.
- 503.12 Landscaped parking lot for adjacent or nearby business -
- A. The lot shall be surrounded by a dense evergreen hedge, planted and maintained at a height of not less than four feet (4') or more than six feet (6'), except for entrances to the lot or sides of the lot abutting or directly across a street from a commercial or industrial use or zone.
 - B. The lot may have no more than one (1) sign at each entrance not greater than four (4) square feet in area indicating the ownership and the use of the lot. Such sign may be illuminated from an indirect source if the lot is to be open after dark.

- C. Where the lot abuts a residential street, the edge of the parking surface shall not be closer to the street than the setback line, or closer than the average setback of buildings on adjacent lots, whichever is less. Except for access driveways and walkways, the area between the parking surface and the street shall be planted and maintained.

503.13 Restaurant -

- A. A buffer between the restaurant and residential users shall be installed.
- B. No take out, counter service or drive through service shall be permitted.
- C. Meals shall be served by a waiter or waitress to patrons seated at tables.
- D. Meals will be prepared on site by a chef.
- E. All exterior signs shall be submitted to the Planning Commission for prior approval of size, style and lighting which shall be judged as deemed appropriate.

503.14 Business or Professional Office in the R-1 District -

- A. Activity must occur in the principal structure.
- B. Office must be operated by owner(s) of the structure with no more than three (3) employees. Additional employees must be approved by Council.
- C. No changes to the exterior of the structure to accommodate the office use without the prior approval of Council.
- D. No more than one (1) floor shall be occupied for the office use.
- E. The office shall be of a personal service nature with clients seen by appointment only and any retail sales shall be incidental.
- F. Offices shall be on lots whose fronts abut public streets with a paved width of at least thirty (30') feet.
- G. Signs shall comply with §405 of this Chapter.
- H. Off-street parking requirements shall comply with §404 of this Chapter with the following additional requirements:
 - (1) The minimum number of off-street parking spaces shall be one (1) space for each dwelling unit and one (1) space for every three hundred (300²) square feet of office floor area or fraction thereof; or sufficient off-street parking spaces for all tenants, employees and clients.
 - (2) All off-street parking shall be located in the rear of the property. However, Borough Council may at its discretion grant the use of side yard parking when rear yard parking is not possible.
 - (3) All parking lots shall be designed to be screened from the front street and adjacent residential property.

503.15 Day care/Family home -

- A. All activities shall be conducted in an occupied detached single family residence.
- B. Activities shall be limited to functions normally associated with the part time tending of children and shall not include overnight lodging.
- C. Activities shall be conducted within a home atmosphere that is void of any special facilities or appurtenances other than secure play areas and/or apparatus that are deemed to be normal single family accessory uses within the immediate neighborhood.
- D. Safe off-street pickup and drop-off areas shall be provided at the site.
- E. Outdoor play areas shall be fenced to control access to adjacent properties and vehicular ways. No portion of the outside play areas shall be less than ten (10') feet from a neighboring dwelling without the owner's written consent. Outdoor play shall be limited to the hours between 8:00 A.M. and 7:00 P.M., prevailing local time.
- F. Day care services shall be limited to a total of six (6) children at any one time for the following categories of clientele: (A mix of categories shall be permitted)
 - (1) Preschoolers - at no time shall the number of children in care exceed six (6), excluding relatives* of the care giver.
 - (2) Infants and toddlers - there shall be no more than four (4) infants and/or toddlers in a family day care home at any one time, including relatives* of the care giver.
 - (3) School age children - at no time shall the number of children in care exceed six (6) children, excluding relatives* of the care giver.
- G. The BOCA Fire Official of the Borough of New Brighton shall inspect the premises to evaluate emergency access, fire hazards, evacuation provisions, structure layout, fire alarm devices and emergency firefighting provisions. No Occupancy Permit shall be issued prior to a satisfactory report and approval of such authority.
- H. All rules, requirements and guidelines promulgated in the Day Care Service for Children Regulations Family Day Care Home, Chapter II, §8.C of the Pennsylvania Department of Public Welfare Social Services Manual, effective June 13, 1981, and any amendments subsequent thereto, shall be strictly observed. All required State Licenses and Certifications shall be obtained as conditions precedent to granting of required Borough Zoning and Occupancy Permits.

* For purposes of these requirements, "relative" shall be deemed to be a child, stepchild, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, stepbrother or stepsister.

503.16 Day care center -

- A. Day care centers shall be located only in public or semipublic institutional buildings, such as schools, churches, governmental or similar structures that meet all requirements specified by the Pennsylvania Department of Public Welfare for such activities. Day care centers shall not be conducted on residential premises.
- B. Activities shall be limited to functions normally associated with part time tending of children and shall not include overnight or drop-in care.

- C. Operational hours shall be limited to the hours between 7:00 A.M. and 8:00 P.M., prevailing local time.
- D. The BOCA Fire Official of the Borough of New Brighton shall inspect the premises to evaluate emergency access, fire hazards, evacuation provisions, structure layout, fire alarm devices and emergency firefighting provisions. No Occupancy Permit shall be issued prior to a satisfactory report and approval of such authority.
- E. All rules, requirements and guidelines promulgated in the Regulations for Child Day Care Centers, Chapter II, §8.A of the Department of Public Welfare Social Services Manual, effective April 2, 1978, and any amendments subsequent thereto, shall be strictly observed. All required State licenses and Certifications shall be obtained as conditions precedent to granting of required Borough Zoning and Occupancy Permits.

503.17 Conversion apartments -

- A. Each conversion apartment (dwelling unit) shall contain a minimum of four hundred (400) square feet of separate habitable living area, its own independent integral cooking, food storage, bathing and toilet facilities and a separate means of outside access.
- B. The existing single family dwelling to be subdivided shall contain one thousand (1,000) square feet or more of net habitable living area (exclusive of basements, garages and related storage areas).
- C. Existing single family dwellings in R-1 Districts shall not exceed a total of two (2) dwelling units per structure.
- D. In R-2 Districts the total square foot area of conversion apartments shall not exceed forty (40%) percent of the original net habitable living area of the single family dwelling prior to subdividing.
- E. One off-street parking space shall be provided for each dwelling unit in a residential structure.

503.18 Institutional facility -

- A. All applications shall include and be supported by documents, maps, plans and other materials that contain the following information and such other related data as may be specified by the Borough Planning Commission and/or Borough Council.
 - (1) Name and address of the owner and/or applicant, and a statement that the applicant if not the owner has the permission of the owner to make application and act as agent.
 - (2) Legal description, street address, and other identifying data concerning the site.
 - (3) A description of the precise nature of the proposed use and its operating characteristics, and measures proposed to make the use compatible with other properties in the vicinity. This data shall include a complete description of proposed supervision procedures and policies.
 - (4) A dossier on the organization and all principals involved in any manner with the control, establishment and operation of the facility for which the application is being made, including organizational structure, financial status, experience, qualifications, references and any pertinent documentation deemed necessary by Borough officials to evaluate the application.
 - (5) A site plan showing proposed development of the site, including topography, building

locations, parking, traffic circulation, usable open space, landscaped area, and utilities and drainage features.

- (6) Preliminary building and/or remodeling plans and elevations sufficient to indicate the dimensions, general appearance, scale, and interior plan of all buildings.
 - (7) Such additional material as may be prescribed or that the applicant may submit pertinent to the application and to the findings prerequisite to the issuance of a Conditional Use Permit.
- B. All uses in conjunction with a Conditional Use Permit issued by the authority of the Borough Council pursuant to this section shall comply with the following:
- (1) Compliance with any and all local, state, county and federal laws and regulations relating to the approval, development and operation of the facility.
 - (2) The correction, within the time specified, of any violation by the facility owner or operator of any local, county, state or federal law, regulation, rule or enforcement order or any condition to any permit, license, or authorization of authority issued in connection with the facility.
- C. The applicant shall obtain, as required, from each appropriate local, county, state and federal regulatory agency or authority, a permit issued in accordance with all applicable regulations for the proposed use. In the event any required permits have not been issued at the time Borough zoning approval is requested, the zoning approval shall be expressly conditioned on the granting of necessary permits. At the time of making application to such local, county, federal or state authorities, the applicant shall file with the Borough Manager, a copy of each state or federal application with supporting documentation for the proposed use.
- D. Institutional Facilities shall comply with the current editions of the BOCA National Fire Prevention Code and the BOCA National Building Code and with the Pennsylvania Fire and Panic Act and regulations promulgated pursuant to that Act.
- E. Applicants for a Conditional Use Permit for operating an institutional facility shall agree to the following criteria with respect to facility residents. Any deviation or violation of any of these measures shall constitute grounds for the immediate cancellation of the Conditional Use Permit.
- (1) Individuals accepted for residence shall meet a profile of nonviolence that insures the unity. Convictions for offenses such as rape or child molestation will preclude consideration. The same is true for offenses such as murder, manslaughter, aggravated assault, or any other similar offense.
 - (2) Any individual accepted by the institutional facility will be removed if said individual is or has become unsuitable for residence by virtue of his or her attitude, actions, threat to others, or disruptive tendencies, and most particularly if he appears likely to cause concerns in the New Brighton community.
 - (3) The applicant and those responsible for the operation of the institutional facility shall certify that in their professional opinion residents of the facility do not require security and controls of a prison and do not belong in a jail or a similar secure environment. They shall further certify that placement in the facility authorized under the Conditional Use Permit is an appropriate and lawful action within the terms of any applicable court order with respect to each resident, and that there is no court order which requires his or her confinement in a prison.

- (4) The applicant and operators, as a condition of operating the facility, agree that the police authorities of New Brighton, as designated by the Mayor, Council President, and Police Chief have the right and authority to review resident records of prior arrests. They may obtain, by simple request, identifying information on any resident in order to make an N.C.I.C. check possible. The facility operators agree, as part of such review, to meet and discuss with the Borough the advisability of retaining any resident then under review. Further, the police authority may obtain identifying information on any current, new or prospective employee in order to make an N.C.I.C. check.
- (5) Trained staff in sufficient number to maintain security shall be on the premises at all times that residents are present.
- F. The facility shall comply with all applicable sign requirements of §405 of the New Brighton Borough Zoning Ordinance.
- G. The facility shall comply with all applicable off-street parking requirements of §405 of the New Brighton Borough Zoning Ordinance.
- H. No institutional facility shall be allowed to locate within two thousand feet (2,000') of another institutional facility as defined by this Ordinance.
- I. Institutional facilities shall be limited to sites that abut arterial streets (those streets that carry major movements of traffic within and through the Borough). No institutional facility shall be permitted on collector streets (those streets that carry internal traffic within the Borough and connect areas with the arterial system) or on local streets (those streets that provide access to immediately adjacent land).
- J. Sufficient internal and external active and passive recreation and leisure areas and facilities to accommodate all residents shall be available on-site. Said amenities shall be situated within or to the rear of the principal structure. All external activity areas shall be screened from normal public vistas with fencing and decorative vegetation that provides all year buffering. Screening and fencing materials and placement shall be approved by Borough officials prior to installation.
- K. The institutional use shall not be developed and/or operated if it will negatively affect neighboring property or alter the essential character of the neighborhood through congestion, depreciation of property values or adverse effects on the health and safety of local residents.

503.19 Personal Care Home / Group Care Facility

- A. The facility shall be approved by the Pennsylvania Department of Welfare. Information shall be filed annually with the Borough certifying the facility continues to meet Commonwealth regulations.
- B. Supervision shall be provided by responsible and appropriately qualified/educated adults on duty, on the premises on a 24 hours a day basis, as required by the Pennsylvania Department of Welfare. Initial and ongoing training for staff persons must be provided.
- C. All Commonwealth and Borough building and/or fire code requirements shall be met, consistent with the use on the site.
- D. Off-street parking shall be provided in accordance with Part 4 of this Chapter.
- E. No personal care home / group care facility shall be located within two thousand feet (2000') of another such facility.

- F. A minimum of one hundred (100) square feet of sleeping area shall be provided for each occupant. Facilities shall not be occupied by more persons than permitted by this requirement.

503.20 Three Quarter House

- A. Supervision shall be provided by responsible and appropriately qualified/educated adults on duty, on the premises on a 24 hours a day basis. Initial and ongoing training for staff persons must be provided. Supervision shall not be provided by a resident of the house.
- B. All Commonwealth and Borough building and/or fire code requirements shall be met, consistent with the use on the site.
- C. Off-street parking shall be provided in accordance with Part 4 of this Chapter.
- D. No three quarter house shall be located within one thousand feet (1,000') of another such facility.
- E. A minimum of one hundred (100) square feet of sleeping area shall be provided for each occupant. Facilities shall not be occupied by more persons than permitted by this requirement.
- F. The name of each occupant shall be filed with the Borough of New Brighton as well as the dates that each occupant arrives and leaves the facility.
- G. Three quarter houses shall only be operated in detached single-family dwellings.
- H. No three quarter house shall accept more than five (5) occupants.
- I. Sanitary facilities consisting of a lavatory, water closet and shower and/or bathtub shall be provided at a ratio of one (1) for every four (4) occupants of the facility.

(Ordinance 1076, October 18, 1984, Article V, §5.3; as amended by Ordinance 1078, June 17, 1985, §2; as amended by Ordinance 1099, May 26, 1988, §2; as amended by Ordinance 1141, February 22, 1996, as amended by Ordinance 1206, November 8, 2010; as amended by Ordinance 1228, December 17, 2015)

§504. Criteria for Judgment of Specific Uses in the Commercial Zone District.

504.1 Retail, commercial, service or office use similar to and compatible with the principal permitted uses -

- A. The business shall be conducted entirely from within a permanent enclosed building except for special sales that may be approved on an individual basis by Borough Council.
- B. No products or residue from the business shall be stored outside.
- C. No sales shall occur from a parked trailer or from a motorized vehicle.
- D. The building required for the use shall be substantially similar in size and appearance to buildings containing permitted uses.
- E. The hours of operation shall be similar to those of permitted businesses.

504.2 Automobile or truck sales and service -

- A. The business shall be conducted from a permanent enclosed building. Such structure shall be placed upon a foundation with footer below the frost line (36 inches) and be connected to the

water, sewage and electric utilities.

- B. Outdoor display areas shall be paved with one and one-half (1-1/2") inches of asphalt or six (6") inches of rolled crushed limestone or slag and must be properly maintained. All asphalt paved areas must be drained. If night business hours are maintained, lighting must be supplied in accordance with §404.3.F.
- C. Service shall be limited to dealer preparation, periodic maintenance and repair for vehicles sold by the business and still under warranty.
- D. Where the outdoor sales and parking area abuts a residentially used property along a common side or rear line, such area shall be screened by a dense evergreen hedge or opaque fence along its entire length maintained at a height of not less than four (4') feet nor more than six (6') feet in accordance with §404.3.E.
- E. Minimum lot size shall be four thousand seven hundred fifty (4,750) square feet.
- F. Maximum lot coverage by buildings shall not exceed fifty percent (50%) of the total lot area.
- G. No display of vehicles or storage shall take place upon the public right-of-way for any reason.

504.3 Drive-in facilities -

- A. Points of vehicular ingress and egress shall be limited to adjacent thoroughfares having business zoned frontage only. The angle and siting of driveway intersections with adjacent thoroughfares shall be based upon safe traffic movements and shall be approved only following a positive report from the Borough Engineer.
- B. Provisions shall be established and maintained on a continuing basis to control and eliminate litter on, and adjacent to, the site.
- C. Space shall be available on the property for adequate stacking of vehicles entering the facility to prevent habitual traffic congestion at the business site.
- D. Points of access and exit and on site circulation shall be clearly marked.
- E. A fence or wall shall be erected along all abutting properties. Said fence or wall shall be protected from potential damage from vehicles by means of properly installed freeway type metal bumper guards or equal protective measures.

504.4 Custom cabinet making - similar light manufacturing -

- A. Any store windows shall display only finished products available for sale on the premises.
- B. No such operation shall be permitted that abuts or is directly across the street from a residential zone or use unless landscaped and buffeted in an aesthetically appropriate manner.
- C. Dust and other residue from the operation shall be collected within the building and disposed of off the premises on a regular basis by contract hauler.
- D. Machinery shall be isolated structurally from the building to dampen vibration and noisy machinery shall be within insulated enclosures.
- E. The operation shall have been approved by the State Department of Labor and Industry prior to

issuance of an occupancy permit.

- F. All sales inventory, supporting equipment, storage and display functions shall be contained and conducted within all-weather structures.
- G. The centerline of access way or driveways to any public street or highway shall be located at least twenty-five (25') feet from the intersection of any street lines; and be at least fifty (50') feet from the edge of another driveway on the same property.
- H. All access ways shall be designed in a manner conducive to safe ingress and egress.
- I. No activities shall be permitted that involve the handling, testing, processing or other use of waste materials resulting from residential, municipal, commercial, industrial, institutional, mining, agricultural operations or from any combination of the above.
- J. No activities or substances of a hazardous nature shall be employed, stored or utilized in a manner that will constitute a danger to the health, safety or general welfare of site occupants, adjacent areas or the community at large. Where reasonable cause for concern is raised by the Borough officials, residents or other affected parties, the applicant for a Conditional Use shall be required to certify that no such conditions will be present.
- K. Such other factors and criteria as the Planning Commission and/or Borough Council deem necessary.

504.5 Dry cleaning and/or machine laundry -

- A. All chemicals and machinery to be used in the operation shall be approved by the local Fire Marshal and State Department of Labor and Industry.
- B. No part of the building shall be used for residential purposes except for the apartment of the owner or operator.

504.6 Vehicle fuel service station -

- A. Pump islands shall not be closer than ten feet (10') to any street right-of-way. Overhanging canopies shall not extend over a right-of-way.
- B. Sufficient space shall be provided on each side of each pump island to accommodate at least three (3) vehicles being serviced or awaiting service.
- C. Access points to the property shall be limited to no more than two (2), each not greater than thirty-five feet (35') in width at the property line and each as remote as possible from street intersections.
- D. All hoists, pits, lubricating, greasing, washing and repair facilities shall be entirely within an enclosed building.
- E. Waste greases and oils shall be collected in containers for disposal off the property. Discarded car parts shall be stored within the station building for periodic disposal.
- F. Services performed on the premises shall not include spray painting, major engine overhaul, body work or tire recapping.

504.7 Motor vehicle repair shop -

- A. Derelict, damaged or junked cars and discarded parts shall be stored within an enclosed building or completely surrounded by a solid fence, or solid fence and building on the property, at least five feet (5') high.
- B. Welding, spray painting or hammer work shall be done in enclosed spaces. Light from welding, odors from painting and noise from body work shall be controlled in the building.
- C. No such operation shall be approved if it abuts or is directly across the street from a residential zone or use.

504.8 Single family detached dwelling -

- A. A dwelling may be approved if the lot selected for it is too small in area or width or awkward in shape to be reasonably developed for a use permitted in the district.
- B. Approval for conversion of a storefront to a single family dwelling shall only be given if the storefront is converted to residential-type windows and the appearance of a store is removed.
- C. If a new structure is proposed it shall be set on its lot in accordance with the setback requirements applicable in the R-2 zone district.

504.9 Repair shops for furniture, appliance and similar items -

Generally, the criteria that apply to custom cabinetmaking and similar light manufacturing shall apply. (see §504.4)

504.10 Pool halls and enclosed amusement businesses -

- A. A pool hall shall be considered a business in which the premises contain at least two (2) pool tables and the operation is devoted to rental of the tables and no alcoholic beverages are available. An enclosed amusement business shall be considered a business operating at least four (4) electronic games of skill or chance or games operated by the insertion of a coin.
- B. Such operations shall have an adult supervisor on the premises at all times the business is open, responsible for customer behavior.
- C. Such operations should be discouraged from storefront locations in favor of second floor or first floor rear premises.
- D. The pool tables and/or electronic games shall be arranged so that an unobstructed aisle at least four feet (4') wide leads through the area containing the tables and/or games to a marked building exit. A floor area equivalent to six (6) times the dimensions of each game shall be set aside for each game. Games shall be separated by at least two feet (2').

504.11 Day care center -

- A. Day care centers in Commercial zones shall be subject to the requirements of §503.16 of this Ordinance.

504.12 Adult Businesses -

- A. This use shall be subject to the following express standards and criteria, and to any other standards

and criteria generally applicable to all conditional uses:

- (1) Adult businesses may be established only in the C-2 Commercial District.
- (2) Persons or owners who intend to open an adult business must obtain from New Brighton Borough a license to operate such an enterprise and must pay a \$500 investigation fee to New Brighton Borough. In addition, such persons or owners must supply to the Borough detailed information as to the ownership and financing as required on the licensing application form. This form can be obtained at the office of the Borough Manager.
- (3) No adult business can be located within 300 feet of a property boundary line of a pre-existing school, hospital, day care center, nursing home, sanitarium, retirement or convalescent home, group home, personal care home, public park, church, residence, or establishment which is licensed to and does sell alcoholic beverages.
- (4) No adult business can be located within 1,000 feet of a property boundary line of another adult business.
- (5) An adult business shall be initially licensed, where it has met all ordinance requirements, through December 31st of the year in which the license is issued. For each year thereafter that the adult business intends to continue its business as an adult commercial enterprise, it must seek, from the office of the Manager of the Borough of New Brighton a renewal of this license. The application for renewal is due in the Manager's Office no later than November 1st of the year preceding the year for which the license renewal is sought. The lack of a license or the failure to seek license renewal on a timely basis shall be a proper basis for the Borough to deny or revoke an Occupancy Permit to an adult business.
- (6) Any adult business found to be in violation of the Borough of New Brighton Zoning Ordinance as amended shall be subject to the enforcement penalties provided for the Borough of New Brighton Zoning Ordinance and/or the Municipalities Planning Code.
- (7) Any adult business which exhibits on the premises, film, video cassette or other method of image production which depicts nudity or sexual conduct shall comply with the following:
 - (a) At least one (1) employee shall be on duty at all times that any patron is on the premises.
 - (b) Where viewing rooms are located on the premises, an unobstructed view of access to all such rooms shall be available to the employee on duty.
 - (c) No viewing room shall be occupied by more than one (1) person at any time.
 - (d) No connections or openings to adjoining viewing rooms shall be permitted.
 - (e) A minimum of one (1) foot candle of illumination measured at floor level shall be provided in every area where patrons are permitted access.
 - (f) Where live performances are given, separate stage and viewing areas shall be provided with separate access to each and no connecting access between the areas.
 - (g) Alcoholic beverages shall not be permitted on the premises of an adult business.
 - (h) An annual Occupancy Permit issued by the Zoning Officer shall be secured prior

to the operation of any adult business.

- (i) Signs shall be limited to the name and hours of the business with no pictures or graphic representations allowed.

B. The following definitions shall apply:

ADULT BOOKSTORE - Any commercial establishment in which is offered for sale as a substantial or significant portion of its stock in trade video cassettes, movies, books, magazines or other periodicals or other media which are distinguished or characterized by their emphasis on nudity or sexual conduct or on activities which if presented in live presentation would constitute adult entertainment.

ADULT BUSINESS - An adult bookstore, commercial movie theater or movie house, or other adult entertainment as defined herein. In the event that an activity or business which might fall under a use category other than adult business is combined with and/or includes activities which constitutes an adult bookstore, adult movie theater or movie house or adult entertainment as defined herein, then such activity or business shall constitute an adult business and shall be governed by those provisions in this Ordinance applicable to adult business uses and not by provisions applicable to any other use category.

ADULT ENTERTAINMENT - A commercial establishment providing, either as a sole use or in connection with or in addition to other uses, entertainment consisting of the use of nudity or of live dancing, posing, displaying, acting, or other live presentation or use of persons whose actions are distinguished or characterized by emphasis on use of the human body in a manner intended to or resulting in arousal of sexual excitation or sexual titillation or a prurient interest or intended to or resulting in producing lustful emotions.

ADULT MOVIE THEATER OR MOVIE HOUSE - (Including Adult Mini-Theaters) Any commercial movie theater which on a regular continuing basis shows films rated "X" by the Motion Picture Coding Association of America, or any movie theater which presents for public viewing on a regular, continuing basis so-called "adult films" depicting sexual conduct, as defined by this Ordinance.

NUDITY - The showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of nipple, or the depiction of covered male genitals in a discernable turgid state.

SEXUAL CONDUCT - Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, and patently offensive, representations, descriptions or acts of masturbation, excretory functions, homosexuality, sodomy, sexual intercourse or physical contact with a persons' clothed or unclothed genitals, public area, buttocks or if such person be female, breasts.

(Ordinance 1076, October 18, 1984, Article V, §5.5; as amended by Ordinance 1090, December 18, 1986, §1; as amended by Ordinance 1141, February 22, 1996)

§505. Criteria for Judgment of Specific Uses in the Manufacturing and Industrial Zone District.

505.1. Manufacturing or light industrial uses similar to and compatible with those listed as principal permitted uses -

- A. The manufacturing process or any other business shall be conducted entirely within an enclosed building.

- B. The process shall produce a product from components that have been prepared from raw materials elsewhere.
- C. Finished products may be stored outside but components or materials used in the process or residue from the process shall be stored inside or behind a completely enclosed fence at least five feet (5') high.

505.2 Bulk fuel storage and distribution -

- A. Above ground storage tanks shall be surrounded by dikes enclosing sufficient volume to contain the contents of the tanks if ruptured.
- B. Tanks shall be set back at least one hundred feet (100') from the nearest property line and two hundred feet (200') from any dwelling.
- C. No residue or run-off from any tanks or distribution or loading process shall be permitted to enter the ground or drain off the property.

505.3 Auto wrecking yard -

- A. Yards shall be surrounded by a solid fence at least five feet (5') high. Natural topography which completely hides the yard from adjacent or nearby residential properties and streets may be substituted.
- B. An acceptable plan to control rodent infestation and to process and dispose of wrecked vehicles and parts shall be provided and approved.
- C. The business shall be operated from a permanent building on the site.
- D. The business shall not include the storage or accumulation of tires, waste oils or grease or other inflammable or toxic substances.
- E. No such business shall be permitted abutting a residential zone or use.

505.4 Emergency Shelter

- A. Emergency shelters are permitted as a conditional use in the M Manufacturing and Industrial zoning district.
- B. Emergency shelters shall comply with all applicable federal, state, and/or local food preparation, housing, building, and fire code requirements.
- C. Emergency shelters shall be located within one quarter (1/4) mile of a bus stop on a Beaver County Transit Authority route.
- D. The facility shall have on-site security during all hours when the shelter is open. A minimum of one (1) supervisory level staff member must be present on the site during hours of operation. Management staff must make best efforts to ensure that loitering does not occur on the property during off hours and must ensure that clients are not creating a nuisance in the neighborhood.
- E. A security guard/officer must be present during the intake period. The shelter shall have set hours of operation and the hours shall be posted in a publicly visible and accessible location.

- F. Facilities shall provide exterior lighting on pedestrian pathways and parking lot areas on the property. Lighting shall reflect away from any residential use property and public streets.
- G. Facilities shall provide secure areas for personal property.
- H. Emergency shelters shall not exceed twenty (20) beds.
- I. The maximum term of stay at an emergency shelter shall be six (6) months in a consecutive twelve (12) month period.
- J. Emergency shelters shall provide off-street parking in accordance with Part 4 of this ordinance.
- K. No emergency shelter shall be located within three hundred and fifty feet (350') of any other similar shelter program.
- L. A minimum of one hundred (100) square feet of sleeping area shall be provided for each occupant. Facilities shall not be occupied by more persons than permitted by this requirement.
- M. All outdoor activity, smoking areas, and intake areas shall be screened from public view and from the view of adjacent properties.
- N. A management plan is required for all emergency shelters to address management experience, services provided, neighborhood communication plan, transportation, client supervision, client services, a client identification process, timing and placement of outdoor activities and smoking areas, standards governing expulsion, hours of operation and standard lights out, loitering control, policies regarding safety and security, and food services. Such plan shall be submitted for review and approval prior to the operation of the emergency shelter. The plan shall include a floor plan that demonstrates compliance with the physical standards of this section. The operator of any emergency shelter shall annually submit the management plan to the Borough with updated information for review and approval. Borough Council may establish a fee by resolution to cover the administrative cost of review of the required management plan.

505.5 All other uses not specifically provided for within this ordinance.

- A. All uses not specifically provided for within this ordinance may be considered for conditional use approval. Such approval is subject to the attachment of reasonable conditions as deemed fit by the New Brighton Borough Planning Commission and New Brighton Borough Council.

(Ordinance 1076, October 18, 1984, Article V; as amended by Ordinance 1231, November 17, 2016)

§506 Criteria for Judgment of Specific Uses in the Conservation Zone District

506.1 All Conditional Uses shall be developed and operated in accordance with the following criteria:

- A. All structures shall be constructed to compliment the public recreational character of the Conservation District. All proposed building elevations and materials shall be subject to the review and approval of the Borough Council.
- B. Boat, trailers and related materials and articles being stored or on view for sale shall be arranged in an orderly manner and the site of each shall be free of clutter and supplementary storage.
- C. Outdoor storage areas shall not be permitted to front directly on streets and shall be enclosed or screened by wall, planting or other barriers providing year round visual screening and shall be placed so as to conform with building line restrictions as set forth in the zoning requirements. All

outside storage must be approved by the Zoning Officer for its effectiveness in disguising its contents from onlookers. (Exceptions: Boats, boat trailers, or other recreational vehicles being stored or on view or sale.) No site or lot shall be used for any purpose or business which is considered dangerous or unsafe or which constitutes a nuisance or is noxious or offensive by reason or emission of dust, odor, gas smoke, fumes, vibration, radiation or noise.

- D. The total ground area of the site not covered by buildings, paved parking, interior roadways and service areas is to be landscaped. A minimum of 50% of the front yard area is to be landscaped with lawn or other planting materials, such as trees and shrubs. Side and rear yards are to be landscaped with grass or other planting materials and all slopes are to be covered by grass or ground cover.
- E. Site access drives and parking areas shall consist of defined entrances and exits and shall have a minimum width of twenty (20') feet.
- F. Any parking area with five (5) or more spaces shall be surfaced with a paved dust free surface. Where feasible, all parking and vehicular site access shall be to the side or rear of a site.

§507 Criteria for Judgment of Specific Uses in All Zoned Districts.

507.1. Wireless Communication Facilities

- A. General Requirements for All Tower-Based Wireless Communications Facilities. The following regulations shall apply to all tower-based wireless communications facilities:
 - (1) Standard of Care. Any tower-based WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. Any tower-based WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Borough.
 - (2) Wind. Any tower-based WCF structures shall be designed to withstand the effects of wind according to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSFEINTIA-222-E Code, as amended).
 - (3) Height. Any tower-based WCF shall be designed at the minimum functional height and shall not exceed a maximum total height of 150 feet, which height shall include all subsequent additions or alterations. All tower-based WCF applicants must submit documentation to the Borough justifying the total height of the structure.
 - (4) Public Safety Communications. No tower-based WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
 - (5) Maintenance. The following maintenance requirements shall apply:
 - (a) Any tower-based WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.

- (b) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Borough's residents.
- (c) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
- (6) Radio Frequency Emissions. No tower-based WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (7) Historic Buildings or Districts. No tower-based WCF may be located on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places or the official historic structures and/or historic districts list maintained by the Borough, or have been designated by the Borough as being of historic significance.
- (8) Identification. All tower-based WCFs shall post a notice in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency, subject to approval by the Borough.
- (9) Lighting. Tower-based WCF shall not be artificially lighted, except as required by law and as may be approved by the Borough. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.
- (10) Appearance. Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings.
- (11) Noise. Tower-based WCFs shall be operated and maintained so as not to produce noise in excess of applicable noise standards under State law and the Borough Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
- (12) Aviation Safety. Tower-based WCFs shall comply with all Federal and State laws and regulations concerning aviation safety.
- (13) Retention of Experts. The Borough may hire any consultant(s) and/or expert(s) necessary to assist the Borough in reviewing and evaluating the application for approval of the tower-based WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Chapter. The applicant and/or owner of the WCF shall reimburse the Borough for all costs of the Borough's consultant(s) in providing expert evaluation and consultation in connection with these activities.
- (14) Timing of Approval. Within 30 calendar days of the date that an application for a tower-based WCF is filed with the Borough, the Borough shall notify the applicant in writing of any information that may be required to complete such application. All applications for tower-based WCFs shall be acted upon within 150 days of the receipt of a fully completed application for the approval of such tower-based WCF and the Borough shall advise the applicant in writing of its decision. If additional information was requested by the Borough to complete an application, the time required by the applicant to provide the information shall not be counted toward the 150-day review period.

Within 10 calendar days of the date that an application for a SWF filed with the Borough,

the Borough shall notify the applicant in writing of any information that may be required to complete such application. All SWF applications shall be acted upon within 60 days of the receipt of a fully completed application to co-locate and within 90 days of the receipt of a fully completed application to replace an existing utility pole or install a new utility pole with SWF and the Borough shall advise the applicant in writing of its decision. If additional information was requested by the Borough to complete an application, the time required by the applicant to provide the information shall not be counted toward the applicable review period.

- (15) Nonconforming Uses. Nonconforming tower-based WCFs which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored at their former location, but must otherwise comply with the terms and conditions of this Chapter.
- (16) Removal. In the event that use of a tower-based WCF is planned to be discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
 - (a) All unused or abandoned tower-based WCFs and accessory facilities shall be removed within 6 months of the cessation of operations at the site unless a time extension is approved by the Borough.
 - (b) If the WCF and/or accessory facility is not removed within 6 months of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and accessory facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner of the WCF.
 - (c) Any unused portions of tower-based WCFs, including antennas, shall be removed within 6 months of the time of cessation of operations. The Borough must approve all replacements of portions of a tower-based WCF previously removed.
- (17) Permit Fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a tower-based WCF, as well as related inspection, monitoring and related costs.

B. Tower-Based Facilities Outside the Rights-of-Way. The following regulations shall apply to tower-based wireless communications facilities located outside the rights-of-way:

- (1) Development Regulations.
 - (a) Prohibited in Residential Zones. With the exception of SWF, no tower-based WCF shall be located in a district zoned residential or within 500 feet of a lot in residential use or a residential district boundary. Tower-based WCFs, other than SWFs are permitted only in the C-3 Commercial Office/Limited Industrial Campus District; M Manufacturing and Industrial District; P Conservation District(s).
 - (b) Gap in Coverage. An applicant for a tower-based WCF must demonstrate that a significant gap in wireless coverage exists with respect to all wireless operators in the applicable area and that the type of WCF being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or nonexistence of a gap in wireless coverage shall be a factor in the Borough's

decision on an application for approval of tower-based WCF's. This provision shall not apply to SWF.

- (c) Sole Use on a Lot. A tower-based WCF is permitted as a sole use on a lot subject to the minimum lot area and yards complying with the requirements for the applicable zoning district. This provision shall not apply to SWF.
- (d) Combined with Another Use. A tower-based WCF may be permitted on a property with an existing use or on a vacant parcel in combination with another industrial, commercial, institutional or municipal use, subject to the following conditions:
 - 1. The existing use on the property may be any permitted use in the applicable district, and need not be affiliated with the communications facility.
 - 2. Minimum Lot Area. The minimum lot shall comply with the requirements for the applicable district and shall be the area needed to accommodate the tower-based WCF and guy wires, the equipment building, security fence, and buffer planting.
 - 3. Minimum Setbacks. The tower-based WCF and accompanying equipment building shall comply with the requirements for the applicable zoning district, provided that no tower-based WCF shall be located within 500 feet of a lot in residential use or a residential district boundary.

- (2) Notice. Upon receipt of an application for a tower-based WCF, the Borough shall mail notice thereof to the owner or owners of every property zoned residential on the same street within 500 linear feet of the parcel or property of the proposed facility and of every property zoned residential not on the same street within 500 feet of the parcel or property of the proposed facility. This provision shall not apply to SWF.
- (3) Co-location. An application for a new tower-based WCF shall not be approved unless the Borough finds that the wireless communications equipment planned for the proposed tower-based WCF cannot be accommodated on an existing or approved structure or building. Any application for approval of a tower-based WCF shall include a comprehensive inventory of all existing towers and other suitable structures within a 2-mile radius from the point of the proposed tower, unless the applicant can show to the satisfaction of the Borough that a different distance is more reasonable, and shall demonstrate conclusively why an existing tower or other suitable structure cannot be utilized.

In the case of SWF, when applying to install a new utility pole, the applicant must demonstrate that it cannot meet the service reliability and functional objectives of the application by co-locating on an existing utility pole or municipal pole instead of installing a new utility pole. The applicant must self-certify that it has made the determination in good faith and provide a summary of the basis of the determination in accordance with the SWFDA.

- (4) Design Regulations.
 - (a) The WCF shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic

impact. The application of the stealth technology chosen by the WCF applicant shall be subject to the approval of the Borough.

- (b) Any height extensions to an existing tower-based WCF shall require prior approval of the Borough. The Borough reserves the right to deny such requests based upon aesthetic and land use impact, or any other lawful considerations related to the character of the Borough.
 - (c) Any proposed tower-based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF applicant's antennas and comparable antennae for future users.
 - (d) The WCF shall comply with all other design requirements as adopted by the Borough.
- (5) Surrounding Environs.
- (a) The WCF applicant shall ensure that the existing vegetation, trees and shrubs located within proximity to the WCF structure shall be preserved to the maximum extent possible.
 - (b) The WCF applicant shall submit a soil report to the Borough complying with the standards of Appendix I: Geotechnical Investigations, ANSI/ETA 222-B, as amended, to document and verify the design specifications of the foundation of the tower-based WCF, and anchors for guy wires, if used.
- (6) Fence / Screen.
- (a) A security fence having a maximum height of 6 feet shall completely surround any tower-based WCF, guy wires, or any building housing WCF equipment.
 - (b) An evergreen screen that consists of a hedge or a row of evergreen trees shall be located along the perimeter of the security fence.
 - (c) The WCF applicant shall submit a landscape plan for review and approval by the Borough Planning Commission for all proposed screening.
- (7) Accessory Equipment.
- (a) Ground-mounted equipment associated to, or connected with, a tower-based WCF shall be underground. In the event that an applicant can demonstrate that the equipment cannot be located underground to the satisfaction of the Borough Engineer, then the ground mounted equipment shall be screened from public view using stealth technologies, as described above.
 - (b) All utility buildings and accessory structures shall be architecturally designed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district.
- (8) Additional Antennae. As a condition of approval for all tower-based WCFs, the WCF applicant shall provide the Borough with a written commitment that it will allow other service providers to co-locate antennae on tower-based WCFs where technically and economically feasible. The owner of a tower-based WCF shall not install any additional antennae without obtaining the prior written approval of the Borough.

- (9) Access Road. An access road, turnaround space and parking shall be provided to ensure adequate emergency and service access to tower-based WCF. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion. Where applicable, the WCF owner shall present documentation to the Borough that the property owner has granted an easement for the proposed facility.
- (10) Bond. Prior to the issuance of a permit, the owner of a tower-based WCF outside the ROW shall, at its own cost and expense, obtain from a surety licensed to do business in Pennsylvania and maintain a bond or other form of security acceptable to the Borough Solicitor, in an amount of \$100,000 to assure the faithful performance of the terms and conditions of this Chapter. The bond shall provide that the Borough may recover from the principal and surety any and all compensatory damages incurred by the Borough for violations of this Chapter, after reasonable notice and opportunity to cure. The owner shall file the bond with the Borough.
- (11) Visual or Land Use Impact. The Borough reserves the right to deny an application for the construction or placement of any tower-based WCF based upon visual and/or land use impact.
- (12) Inspection. The Borough reserves the right to inspect any tower-based WCF to ensure compliance with the provisions of this Chapter and any other provisions found within the Borough Code or State or Federal law. The Borough and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

C. Tower-Based Facilities in the Rights-of-Way. The following regulations shall apply to tower-based wireless communications facilities located in the rights-of-way:

- (1) Prohibited in Residential Zones. No tower-based WCF shall be located within a residential zone or within 500 feet of a lot in residential use or a residential district boundary. Tower-based WCFs are only permitted in the C-3 Commercial Office/Limited Industrial Campus District; M Manufacturing and Industrial District; P Conservation District(s). SWF that fall under the SWFDA are permitted in all zoning districts.
- (2) Gap in Coverage. An applicant for a tower-based WCF must demonstrate that a significant gap in wireless coverage exists with respect to all wireless operators in the applicable area and that the type of WCF being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or non-existence of a gap in wireless coverage shall be a factor in the Borough's decision on an application for approval of tower-based WCF's in the ROW. SWF under the SWFDA shall not be subject to this Section (2).
- (3) Notice. Upon receipt of an application for a tower-based WCF, the Borough shall mail notice thereof to the owner or owners of every property zoned residential on the same street within 500 linear feet of the property or parcel of the proposed facility and of every property zoned residential not on the same street within 500 feet of the parcel or property of the proposed facility.
- (4) Co-location. An application for a new tower-based WCF in the ROW shall not be approved unless the Borough finds that the proposed wireless communications equipment

cannot be accommodated on an existing structure, such as a utility pole or traffic light pole. Any application for approval of a tower-based WCF shall include a comprehensive inventory of all existing towers and other suitable structures within a 1-mile radius from the point of the proposed tower, unless the applicant can show to the satisfaction of the Borough that a different distance is more reasonable, and shall demonstrate conclusively why an existing tower or other suitable structure cannot be utilized.

In the case of SWF, when applying to install a new utility pole, the applicant must demonstrate that it cannot meet the service reliability and functional objectives of the application by co-locating on an existing utility pole or municipal pole instead of installing a new utility pole. The applicant must self-certify that it has made the determination in good faith and provide a summary of the basis of the determination in accordance with the SWFDA.

- (5) Time, Place and Manner. The Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all tower-based WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the Borough and the requirements of the Public Utility Code.
- (6) Equipment Location. Tower-based WCFs and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the Borough. In addition:
 - (a) In no case shall ground-mounted equipment, walls, or landscaping be located within 18 inches of the face of the curb.
 - (b) In no case shall ground-mounted poles, equipment, walls, or landscaping be located to obstruct a sidewalk or crosswalk that would interfere with ADA access standards.
 - (c) Ground-mounted equipment that cannot be undergrounded shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Borough.
 - (d) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Borough.
 - (e) Any graffiti on the tower or on any accessory equipment shall be removed at the sole expense of the owner within 10 business days of notice of the existence of the graffiti.
 - (f) Any underground vaults related to tower-based WCFs shall be reviewed and approved by the Borough.
- (7) Design Regulations.
 - (a) The WCF shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the stealth technology chosen by the WCF applicant shall be subject to the approval of the Borough.

- (b) Any height extensions to an existing tower-based WCF shall require prior approval of the Borough, and shall not increase the overall height of the tower-based WCF to more than fifty (50) feet or five (5) feet above an existing pole. The Borough reserves the right to deny such requests based upon aesthetic and land use impact, or any other lawful considerations related to the character of the Borough.
 - (c) Any proposed tower-based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF applicant's antennas and comparable Antennae for future users.
 - (d) The WCF shall comply with all other design requirements as adopted by the Borough.
- (8) Visual or Land Use Impact. The Borough reserves the right to deny the construction or placement of any tower-based WCF in the ROW based upon visual and/or land use impact.
- (9) Additional Antennae. As a condition of approval for all tower-based WCFs in the ROW, the WCF applicant shall provide the Borough with a written commitment that it will allow other service providers to co-locate antennae on tower-based WCFs where technically and economically feasible. The owner of a tower-based WCF shall not install any additional antennae without obtaining the prior written approval of the Borough.
- (10) Relocation or Removal of Facilities. Within 60 days following written notice from the Borough, or such longer period as the Borough determines is reasonably necessary or such shorter period in the case of an emergency, an owner of tower-based WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Borough, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
- (a) The construction, repair, maintenance or installation of any Borough or other public improvement in the right-of-way.
 - (b) The operations of the Borough or other governmental entity in the right-of-way.
 - (c) Vacation of a street or road or the release of a utility easement.
 - (d) An emergency as determined by the Borough.
- (11) Compensation for ROW Use. In addition to permit fees as described in subsection .1.0, above, every tower-based WCF in the ROW is subject to the Borough's right to fix annually a fair and reasonable compensation to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Borough's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Borough. The owner of each tower-based WCF shall pay an annual fee to the Borough to compensate the Borough for the Borough's costs incurred in connection with the activities described above. The annual ROW management fee for tower-based WCFs shall be determined by the Borough and authorized by resolution of Borough Council and shall be based on the Borough's actual ROW management costs as applied to such tower-based WCF.

- (12) **Bond.** Prior to the issuance of a permit, the owner of a tower-based WCF in the ROW shall, at its own cost and expense, obtain from a surety licensed to do business in Pennsylvania and maintain a bond, or other form of security acceptable to the Borough Solicitor, in an amount of \$100,000 to assure the faithful performance of the terms and conditions of this Chapter. The bond shall provide that the Borough may recover from the principal and surety any and all compensatory damages incurred by the Borough for violations of this Chapter, after reasonable notice and opportunity to cure. The owner shall file a copy of the bond with the Borough.

D. **General Requirements for All Non-Tower Wireless Communications Facilities.**

- (1) The following regulations shall apply to all non-tower wireless communications facilities that do not substantially change the physical dimensions of the wireless support structure to which they are attached:
 - (a) **Permitted in All Zones Subject to Regulations.** Non-tower WCFs are permitted in all zones subject to the restrictions and conditions prescribed below and subject to the prior written approval of the Borough.
 - (b) Upon receipt of an application for any non-tower-based WCF, the Borough shall mail notice thereof to the owner or owners of every property zoned residential on the same street within 500 linear feet of the parcel or property of the proposed facility and of every property zoned residential not on the same street within 500 feet of the parcel or property of the proposed facility.
 - (c) **Standard of Care.** Any non-tower WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. Any WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Borough.
 - (d) **Wind.** Any non-tower WCF structures shall be designed to withstand the effects of wind according to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSFEINTIA-222-E Code, as amended).
 - (e) **Public Safety Communications.** No non-tower WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
 - (f) **Aviation Safety.** Non-tower WCFs shall comply with all Federal and State laws and regulations concerning aviation safety.
 - (g) **Radio Frequency Emissions.** No non-tower WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.

- (h) Removal. In the event that use of a non-tower WCF is discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
 - 1. All abandoned or unused WCFs and accessory facilities shall be removed within 3 months of the cessation of operations at the site unless a time extension is approved by the Borough.
 - 2. If the WCF or accessory facility is not removed within 3 months of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and/or associated facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner of the WCF.
 - (i) Timing of Approval. Within 10 calendar days of the date that an application for a non-tower WCF is filed with the Borough, the Borough shall notify the applicant in writing of any information that may be required to complete such application. Within 60 calendar days of receipt of a complete application, the Borough shall make its final decision on whether to approve the application and shall advise the applicant in writing of such decision. If additional information was requested by the Borough to complete an application, the time required by the applicant to provide the information shall not be counted toward the Borough's 60-day review period.
 - (j) Permit Fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a non-tower WCF or \$1,000, whichever is less, or as set by resolution of the Borough.
- (2) The following regulations shall apply to all non-tower wireless communications facilities that substantially change the wireless support structure to which they are attached:
- (a) Permitted in All Zones Subject to Regulations. Non-tower WCFs are permitted in all zones subject to the restrictions and conditions prescribed below and subject to the prior written approval of the Borough.
 - (b) Upon receipt of an application for any non-tower-based WCF, the Borough shall mail notice thereof to the owner or owners of every property zoned residential on the same street within 500 linear feet of the parcel or property of the proposed facility and of every property zoned residential not on the same street within 500 feet of the parcel or property of the proposed facility.
 - (c) Standard of Care. Any non-tower WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. Any WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Borough.
 - (d) Wind. Any non-tower WCF structures shall be designed to withstand the effects

of wind according to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSFEINTIA-222-E Code, as amended).

- (e) Public Safety Communications. No non-tower WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- (f) Historic Buildings. Non-tower WCFs may not be located on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places or the official historic structures and/or historic districts lists maintained by the Borough, or have been designated by the Borough as being of historic significance.
- (g) Aviation Safety. Non-tower WCFs shall comply with all Federal and State laws and regulations concerning aviation safety.
- (h) Maintenance. The following maintenance requirements shall apply:
 - 1. The non-tower WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - 2. Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Borough's residents.
 - 3. All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
- (i) Radio Frequency Emissions. No non-tower WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including, but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (j) Removal. In the event that use of a non-tower WCF is discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
 - 1. All abandoned or unused WCFs and accessory facilities shall be removed within 3 months of the cessation of operations at the site unless a time extension is approved by the Borough.
 - 2. If the WCF or accessory facility is not removed within 3 months of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and/or associated facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner of the WCF.
- (k) Timing of Approval. Within 10 calendar days of the date that an application for a non-tower WCF is filed with the Borough, the Borough shall notify the

applicant in writing of any information that may be required to complete such application. Within 60 calendar days of receipt of a complete application, the Borough shall make its final decision on whether to approve the application and shall advise the applicant in writing of such decision. If additional information was requested by the Borough to complete an application, the time required by the applicant to provide the information shall not be counted toward the Borough's 60-day review period.

- (l) Retention of Experts. The Borough may hire any consultant(s) and/or expert(s) necessary to assist the Borough in reviewing and evaluating the application for approval of the WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Chapter. The applicant and/or owner of the WCF shall reimburse the Borough for all costs of the Borough's consultant(s) in providing expert evaluation and consultation in connection with these activities.
- (m) Bond. Prior to the issuance of a permit, the owner of each individual non-tower WCF shall, at its own cost and expense, obtain from a surety licensed to do business in Pennsylvania and maintain a bond, or other form of security acceptable to the Borough Solicitor, in an amount of \$25,000 for each individual non-tower WCF, to assure the faithful performance of the terms and conditions of this Chapter. The bond shall provide that the Borough may recover from the principal and surety any and all compensatory damages incurred by the Borough for violations of this Chapter, after reasonable notice and opportunity to cure. The owner shall file a copy of the bond with the Borough.
- (n) Permit Fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a non-tower WCF, as well as related inspection, monitoring and related costs.

E. Non-Tower Wireless Facilities Outside the Rights-of-Way. The following additional regulations shall apply to non-tower wireless communications facilities located outside the rights-of-way that substantially change the wireless support structure to which they are attached:

- (1) Development Regulations. Non-tower WCFs shall be co-located on existing structures, such as existing buildings or tower-based WCFs subject to the following conditions:
 - (a) Such WCF does not exceed a maximum height of 150 feet.
 - (b) If the WCF applicant proposes to locate the communications equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district.
 - (c) A 6-foot high security fence shall surround any separate communications equipment building. Vehicular access to the communications equipment building shall not interfere with the parking or vehicular circulations on the site for the principal use.
- (2) Design Regulations.
 - (a) Non-tower WCFs shall employ stealth technology and be treated to match the supporting structure in order to minimize aesthetic impact. The application of the stealth technology chosen by the WCF applicant shall be subject to the approval

of the Borough.

- (b) Non-tower WCFs, which are mounted to a building or similar structure, may not exceed a height of 15 feet above the roof or parapet, whichever is higher, unless the WCF applicant obtains a conditional use permit.
- (c) All non-tower WCF applicants must submit documentation to the Borough justifying the total height of the non-tower structure. Such documentation shall be analyzed in the context of such justification on an individual basis.
- (d) Antennae, and their respective accompanying support structures, shall be no greater in diameter than any cross-sectional dimension than is reasonably necessary for their proper functioning.
- (e) Noncommercial Usage Exemption. The design regulations enumerated in this paragraph shall not apply to direct broadcast satellite dishes installed for the purpose of receiving video and related communications services at residential dwellings.
- (f) The WCF shall comply with all other design requirements as adopted by the Borough.

(3) Removal, Replacement, Modification.

- (a) The removal and replacement of non-tower WCFs and/or accessory equipment for the purpose of upgrading or repairing the WCF is permitted, so long as such repair or upgrade does not increase the overall size of the WCF or the numbers of antennae.
- (b) Any material modification to a wireless telecommunication facility shall require a prior amendment to the original permit or authorization.

(4) Visual or Land Use Impact. The Borough reserves the right to deny an application for the construction or placement of any non-tower WCF based upon visual and/or land use impact.

(5) Inspection. The Borough reserves the right to inspect any WCF to ensure compliance with the provisions of this Chapter and any other provisions found within the Borough Code or State or Federal law. The Borough and/or its agents shall have the authority to enter the property upon which a WCF is located at any time upon reasonable notice to the operator, to ensure such compliance.

F. Non-Tower Wireless Facilities in the Rights-of-Way. The following additional regulations shall apply to all non-tower wireless communications facilities located in the rights-of-way:

(1) Co-location. Non-tower WCFs in the ROW shall be co-located on existing poles, such as existing utility poles or light poles.

In the case of SWF, when applying to install a new utility pole, the applicant must demonstrate that it cannot meet the service reliability and functional objectives of the application by co-locating on an existing utility pole or municipal pole instead of installing a new utility pole. The applicant must self-certify that it has made the determination in good faith and provide a summary of the basis of the determination in accordance with the SWFDA.

- (2) Design Requirements.
 - (a) WCF installations located above the surface grade in the public ROW including, but not limited to, those on streetlights and joint utility poles, shall consist of equipment components that are no more than 6 feet in height and that are compatible in scale and proportion to the structures upon which they are mounted. All equipment shall be the smallest and least visibly intrusive equipment feasible.
 - (b) Antennae and all support equipment shall be treated to match the supporting structure. WCFs and accompanying equipment shall be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
 - (c) The WCF shall comply with all other design requirements as adopted by the Borough.
- (3) Compensation for ROW Use. In addition to permit fees as described above, every non-tower WCF in the ROW is subject to the Borough's right to fix annually a fair and reasonable compensation to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Borough's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Borough. The owner of each non-tower WCF shall pay an annual fee to the Borough to compensate the Borough for its costs incurred in connection with the activities described above. The annual ROW management fee for non-tower WCFs shall be determined by the Borough and authorized by resolution of Borough Council and shall be based on the Borough's actual ROW management costs as applied to such non-tower WCF.
- (4) Time, Place and Manner. The Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all non-tower WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the Borough and the requirements of the Public Utility Code.
- (5) Equipment Location. Non-tower WCFs and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the Borough. In addition:
 - (a) In no case shall ground-mounted equipment, walls, or landscaping be located within 18 inches of the face of the curb.
 - (b) In no case shall ground-mounted poles, equipment, walls, or landscaping be located to obstruct a sidewalk or crosswalk that would interfere with ADA access standards.
 - (c) Ground-mounted equipment shall be located underground. In the event an applicant can demonstrate, to the satisfaction of the Borough Engineer, that ground-mounted equipment cannot be undergrounded, then all such equipment shall be screened, to the fullest extent possible, through the use of landscaping or

other decorative features to the satisfaction of the Borough.

- (d) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Borough.
 - (e) Any graffiti on the tower or on any accessory equipment shall be removed at the sole expense of the owner within 10 business days of notice of the existence of the graffiti.
 - (f) Any underground vaults related to non-tower WCFs shall be reviewed and approved by the Borough.
- (6) Relocation or Removal of Facilities. Within 60 days following written notice from the Borough, or such longer period as the Borough determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Borough, consistent with its police powers and applicable Public Utility Commission regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
- (a) The construction, repair, maintenance or installation of any Borough or other public improvement in the right-of-way.
 - (b) The operations of the Borough or other governmental entity in the right-of-way.
 - (c) Vacation of a street or road or the release of a utility easement.
 - (d) An emergency as determined by the Borough.
- (7) Visual or Land Use Impact. The Borough retains the right to deny an application for the construction or placement of a non-tower WCF based upon visual and/or land use impact.

G. Violations Applicable to All Wireless Facilities.

- (1) Penalties. Any person violating any provision of this Section shall be subject, upon finding by a magisterial district judge, to a penalty not exceeding \$500, for each and every offense, together with attorney's fees and costs. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur. In addition to an action to enforce any penalty imposed by this Section and any other remedy at law or in equity, the Borough may apply to a Federal District Court for an injunction or other appropriate relief at law or in equity to enforce compliance with or restrain violation of any provision of this Chapter.
- (2) Determination of Violation. In the event a determination is made that a person has violated any provision of this Section, such person shall be provided written notice of the determination and the reasons therefore. Except in the case of an emergency, the person shall have 30 days to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the Borough may, in its reasonable judgment, extend the time period to cure, provided the person has commenced to cure and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the Borough may take any and all actions authorized by this Section and/or Federal and/or Pennsylvania law and regulations.

H. Miscellaneous.

- (1) Police Powers. The Borough, by granting any permit or taking any other action pursuant to this Section, does not waive, reduce, lessen or impair the lawful police powers vested in the Borough under applicable Federal, State and local laws and regulations.

I. Definitions. Unless otherwise expressly stated, the following words and phrases shall be construed throughout this Chapter to have the meanings indicated:

ADA - Americans with Disabilities Act

ANTENNA - any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. An antenna shall not include tower-based wireless communications facilities defined below.

BOROUGH - Borough of New Brighton, Beaver County, Pennsylvania.

BOROUGH COUNCIL - the governing body of the Borough of New Brighton, Beaver County, Pennsylvania.

CO-LOCATION - the mounting of one or more WCFs, including antennae, on an existing tower-based WCF or utility or light pole.

DISTRIBUTED ANTENNA SYSTEMS (DAS) - network of spatially separated antenna sites connected to a common source that provides wireless service within a geographic area or structure.

EMERGENCY - a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the rights-of-way to be unusable and result in loss of the services provided.

FCC - Federal Communications Commission.

MONOPOLE - a WCF or site which consists of a single pole structure, designed and erected on the ground or on top of a structure, to support communications antennae and connecting appurtenances.

NON-TOWER WIRELESS COMMUNICATIONS FACILITY (NON-TOWER WCF) - all non-tower wireless communications facilities, including, but not limited to, antennae and related equipment. Non-tower WCF shall not include support structures for antennae and related equipment.

PERSONS - individuals, corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, corporations and other entities established pursuant to statutes of the Commonwealth of Pennsylvania; provided, that "person" does not include or apply to the Borough or to any department or agency of the Borough.

RIGHT-OF-WAY OR ROW - the surface of and space above and below any real property in the Borough in which the Borough or Commonwealth has a regulatory interest, or interest as a trustee for the public, as such interests now or hereafter exist, including, but not limited to, all streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the

control of the Borough or Commonwealth, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for utility purposes, but excluding lands other than streets that are owned by the Borough or Commonwealth. The phrase "in the right(s)-of-way" and means in, on, over, along, above and/or under the right(s)-of-way.

SMALL WIRELESS FACILITY (SWF) --The equipment and network components, including antennas, transmitters and receivers, used by wireless providers that meet the following qualifications:

Each antenna associated with the deployment is no more than three cubic feet in volume.

The volume of all other equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet. Any equipment used solely for the concealment of the small wireless facility shall not be included in the calculation of equipment volume.

STEALTH TECHNOLOGY - camouflaging methods applied to wireless communications towers, antennae and other facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennae, building-mounted antennae painted to match the existing structure and facilities constructed to resemble trees, shrubs, flag poles and light poles.

SUBSTANTIALLY CHANGE - (1) any increase in the height of a wireless support structure by more than 10 percent, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, except that the mounting of the proposed wireless communications facility may exceed the size limits set forth herein if necessary to avoid interference with existing antennas; or (2) any further increase in the height of a wireless support structure which has already been extended by more than 10 percent of its originally approved height or by the height of one additional antenna array.

SWFDA – Small Wireless Facilities Deployment Act

TOWER-BASED WIRELESS COMMUNICATIONS FACILITY (TOWER-BASED WCF) - any structure that is used for the purpose of supporting one or more antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, utility poles and light poles. DAS hub facilities are considered to be tower-based WCFs.

WIRELESS - transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.

WIRELESS COMMUNICATIONS FACILITY (WCF) - the antennae, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless communications services including SWF.

WIRELESS COMMUNICATIONS FACILITY APPLICANT (WCF APPLICANT) - any person that applies for a wireless communication facility building permit, zoning approval and/or permission to use the public ROW or other Borough owned land or property.

WIRELESS SUPPORT STRUCTURE - a freestanding structure, such as a tower-based wireless communications facility or any other support structure that could support the placement or installation of a wireless communications facility if approved by the Borough.

(Ordinance 1076, October 18, 1984, Article V, §5.7; as amended by Ordinance 1141, February 22, 1996; as amended by Ordinance 1226, May 21, 2015, as amended by Ordinance 1265, October 21, 2021)

(Reserved for future use)

(Reserved for future use)

Part 6

Nonconforming Uses

§601. Application. The provisions of this Part shall apply to buildings, structures, signs, lands and uses which were legal prior to adoption of this Chapter but which would not be permitted as the result of the application of this Chapter to their location or use in the Borough, or as a result of the reclassification of the property containing them, or of the adoption of other amendments to this Chapter after the initial passage. This Part is concerned with properties of inadequate area and/or frontage, uses of land and/or structures for activities not permitted in the zone districts where such land and/or structures are located and structures placed on a property too close to property boundary lines or too high for compliance with standards of the zone district in which they are located.

(Ordinance 1076, October 18, 1984, Article VI, §6.1)

§602. Nonconforming Lots of Record. Any property in separate ownership legally recorded in the Beaver County Recorder of Deeds Office prior to enactment of this Chapter and abutting properties in a different ownership may be developed for any use permitted in the zone district where such property is located regardless of the property area, width or shape, except that if the proposed development includes a reduction of minimum yard widths or required parking or loading areas, a variance shall be obtained from the Zoning Hearing Board before development may commence. Properties of inadequate size or frontage shall be developed for no more than one (1) dwelling unit in zone districts where dwellings are permitted.

(Ordinance 1076, October 18, 1984, Article VI, §6.2)

§603. Nonconforming Uses of Lands and Structures.

- 603.1 Where at the effective date of adoption or amendment of this Chapter lawful use of land, or land and the structure or structures on it, exists and is made no longer permissible under the requirements of this Chapter, as adopted or amended, such use may be continued indefinitely, so long as it remains otherwise lawful, provided the following conditions are applied.
- 603.2 No such nonconforming use of land shall be extended by acquisition of additional land to occupy a greater land area than was occupied at the effective date of adoption or amendment of this Chapter, nor shall such nonconforming use be expanded to occupy an area on the lot larger than was occupied at the date of adoption of this Chapter, or adoption of an amendment that made the use nonconforming.
- 603.3 No structure containing a nonconforming use but capable of being enlarged without violating setback or height requirements in the zone district where it is located may be increased in volume over the volume of such structure at the time of adoption of this Chapter or subsequent amendments that made the use nonconforming. A nonconforming use which occupies part of a structure may be extended throughout the structure it occupied at the time of adoption of this Chapter or subsequent amendment that made the use nonconforming, but the expansion under such circumstances may not be extended to occupy land outside the original structure.
- 603.4 If any such nonconforming use of land or use of land and structures in combination ceases or is abandoned for any reason including destruction of buildings, for a period of at least one (1) year, any subsequent use of such land, or land and structures in combination, shall conform to the regulations for the zone district where such land is located, except that where a hardship to the operator of the nonconforming use clearly exists as a result of financial, health or other calamity, the Zoning Hearing Board may grant an extension of the one (1) year limit consistent with the hardship, but for not more than six (6) months.
- 603.5 Assuming no structural alterations are made to the building containing a nonconforming use, the use may be changed to a second nonconforming use but only after an application has been filed with the Zoning Hearing Board and the Board concludes that the second use is more compatible with the uses permitted in the zone district than is the original nonconforming use.

- 603.6 Each succeeding owner by purchase of a nonconforming commercial or industrial use shall secure an occupancy permit from the Zoning Officer who may ask the Zoning Hearing Board for a decision if he has reason to doubt that the nonconforming use will be continued in the same manner as formerly or in a manner more compatible with the permitted uses in the zone district.
- 603.7 The nonconforming use of a structure and/or land, or combination of structure and land may be superseded by a use permitted in the zone district where the property is located and the use of the premises shall thereafter conform to the regulations of the zone district.
- 603.8 Where a nonconforming use of structure and premises exists in combination, the removal of the structure and/or use in the structure shall terminate the nonconforming use of the premises.
- 603.9 The maintaining or strengthening to a safe condition of any nonconforming structure shall not be interpreted as being denied by any portion of this Part.

(Ordinance 1076, October 18, 1984, Article VI, §6.3)

§604. Nonconforming Structures.

- 604.1 Where a structure exists on a property at the effective date of this Chapter or any amendment to it and does not conform to the requirements regarding height or minimum setbacks from adjacent streets or lot lines, such structure may remain indefinitely subject to the following provisions.
- 604.2 No structures may be enlarged or altered in a way that creates nonconformity or increases an existing nonconformity.
- 604.3 Any replacement of a nonconforming structure shall be made in compliance with the regulations governing development for the zone district in which the property is located, except that if a hardship is alleged by the owner, he may request a variance of the Zoning Hearing Board which may approve replacement on the same foundation that supported the structure to be replaced, but in no case a location that was less conforming than the original location.
- 604.4 If a nonconforming structure is moved, it shall thereafter conform to setback requirements regarding location on the property or be so located as to be more conforming than before the move.

(Ordinance 1076, October 18, 1984, Article VI, §6.4)

§605. Record of Nonconforming Uses.

- 605.1 The Zoning Officer shall identify and register all uses of land and structures in New Brighton Borough made nonconforming as a result of adoption of this Chapter.
- 605.2 The Zoning Officer shall keep the date current by the addition of nonconforming uses as amendments to this Chapter are adopted and by the deletion of nonconforming uses as they are eliminated.
- 605.3 The record may be kept by map or written documentation.
- 605.4 Any property owner of a nonconforming use may request a certificate of nonconformance from the Zoning Officer, guaranteeing the owner the rights of this Part. The Officer shall inspect the property and shall issue the certificate if he verifies a nonconformity exists. The certificate shall describe the nonconformity specifically. One (1) copy of the certificate or letter of certification shall be retained in the Zoning Officer's file and one copy sent to the applicant.

(Ordinance 1076, October 18, 1984, Article VI, §6.5)

(Reserved for future use)

Part 7

Zoning Hearing Board

§701. Functions of the Board.

701.1 Appeals from Decisions of the Zoning Officer -

- A. The Board shall hear and decide appeals where it is alleged by the appellant that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of this Chapter.
- B. An appeal may be filed with the Board in writing by any landowner affected, any officer or agency of the borough, or any person aggrieved.

701.2 Challenges to the Validity of an Ordinance or Map -

- A. The Board shall hear challenges to the validity of any part of this Chapter or amendment thereof, unless such challenge is accompanied by a curative amendment or challenges the procedure of adoption of this Chapter or any amendment.
- B. In the case of a challenge to the process of adoption, appeal from the action of Borough Council shall be made directly to the Beaver County Courts. If the challenge is accompanied by a curative amendment, appeal shall be made to Council.
- C. In challenges of the validity of this Chapter, the Board shall take evidence and make a record thereon. At the conclusion of the hearing the Board shall decide all contested questions and shall make findings on all relevant issues of fact which shall become part of the record on appeal to the Courts.
- D. A challenge may be filed with the Board in writing by any landowner affected, any officer or agency of the Borough, or any person aggrieved.
- E. The written request of a landowner shall include a short statement informing the Board of the matters that are at issue and the grounds for the challenge as well as a certification by the landowner that he was not aware that the Borough was considering a scheme of rezoning that would detrimentally affect a plan he proposes and that such a scheme would be inconsistent with his proposed plan. The request shall be accompanied by plans describing the proposed use.
- F. A person aggrieved by a development on lands of another but in conformance with this Chapter may challenge this Chapter by filing a written request with the Board that it hold a hearing on the challenge. The request shall contain a short statement reasonably informing the Board of the matters that are in issue and the grounds for the challenge. Such challenges must be made no later than thirty (30) days after an application for development has been filed.

701.3 Variances -

- A. The Board shall hear requests for variances where it is alleged that the provisions of the Zoning Chapter inflict unnecessary hardship upon the applicant. An appeal for variance may be filed with the Board by any landowner or any tenant with the landowner's permission.
- B. Variance from the terms of this Chapter shall not be granted by the Board unless a written application for a variance is submitted to the Zoning Officer demonstrating:

- (1) That there are unique physical circumstances or conditions including but not limited to irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to such conditions and not the circumstances or conditions generally created by the provisions of this Chapter in the neighborhood in which the property is located.
 - (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - (3) That such unnecessary hardship has not been created by the appellant.
 - (4) That the variance, if authorized, will not alter the essential character of the neighborhood in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property or be detrimental to the public welfare.
- C. The variance, if authorized, shall represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- D. If the Board finds in favor of the appellant, it may prescribe appropriate conditions and safeguards deemed necessary to implement the purposes and intent of this Chapter and the comprehensive plan of New Brighton Borough.
- E. The Board shall prescribe a time limit, consistent with the nature of the variance granted and the conditions surrounding the property, within which the action for which the variance is granted, shall be completed. Failure to comply with the time limit shall render the variance void.
- F. Under no circumstances shall the Board grant a variance to allow a use not permissible under the Terms of this Chapter in the zoning district containing the property for which the variance is sought. (Ord. 1099)
- G. Before considering a variance from the regulations of §405 (signs), the Board shall receive written recommendations from the Planning Commission supporting or discouraging the proposal, and may subpoena a member of the Commission to attend the hearing to testify on the Commission's recommendation.

(Ordinance 1076, October 18, 1984, Article VII, §7.1; as amended by Ordinance 1099, May 26, 1988, §3; as amended by Ordinance 1141, February 22, 1996)

§702. Operation of the Board.

702.1 Membership -

- A. The membership of the Board shall consist of five (5) persons, all residents of New Brighton Borough, who shall be appointed by the Borough Council and may be reappointed upon completion, of a term.
- B. Members of the Board shall hold no other office in the Borough except that one (1) member of the Board may be a member of the Borough Planning Commission. (Ord. 1094)

702.2 Term of Office -

- A. Members of the Board shall be appointed for three (3) year staggered terms, with appointments

each year to refill completed terms.

- B. Appointments to fill vacancies shall be made by Council for the unexpired portion of a term only. (Ord. 1094)

702.3 Removal of Members -

- A. Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of Borough Council, taken after the Board member has received at least fifteen (15) days' notice such vote will be taken.
- B. The Board member thus accused may request by written communication to the Borough Secretary no later than seven (7) days prior to the meeting of Council at which the vote for removal is to be taken, a hearing before Council after which Council, at its discretion, may take a vote for removal of the Board member.

702.4 Organization of the Board -

- A. The Board shall annually elect officers from among its membership, to include a Chairman, Vice Chairman and Secretary.
- B. The Board shall reorganize at its first meeting in each calendar year. Board members may succeed themselves in their positions.
- C. The Chairman shall call and chair all meetings of the Board. The Vice Chairman shall act in the Absence of the Chairman and shall assist the Secretary.
- D. The Secretary shall keep the minutes of the proceedings, recording the vote of each member; shall transcribe and distribute, or arrange to have transcribed and distributed, all testimony given at hearings under procedures described below; shall draw up the agenda for each meeting; shall be responsible for placing of notices for public hearings; and shall handle all correspondence.
- E. The Board may make, alter or rescind rules and forms for its procedure consistent with this and other ordinances of the Borough and the laws of the Commonwealth.
- F. The Board shall keep full public records of its business and shall submit an annual report of its activities to Borough Council not later than sixty (60) days after the start of the subsequent year.
- G. The Zoning Hearing Board may employ or contract for and fix the compensation of legal counsel, as the need arises. The legal counsel shall be an attorney other than the Borough Solicitor. The Board may also employ or contract for and fix the compensation of experts and other staff and may contract for services as it shall deem necessary. The compensation of legal counsel, experts and staff and the sums expended for services shall not exceed the amount appropriated by the Borough Council for this use.

702.5 Alternate Membership -

The Borough Council may appoint by resolution at least one, but no more than three, residents of New Brighton Borough to serve as alternate members of the board. The term of office of an alternate member shall be three years. Alternates shall hold no other elective or appointive office in the Borough. Any alternate may participate in proceedings or discussion of the board but shall not be entitled to vote as a member of the board nor be compensated unless designated as a voting alternate member pursuant to the following process:

- A. 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.

- B. 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.
- C. Designation of an alternate shall be made on a case by case basis in rotation according to declining seniority among all alternates.

(Ordinance 1076, October 18, 1984, Article VII, §7.2; as amended by Ordinance 1094, December 17, 1987, §2; as amended by Ordinance 1141, February 22, 1996)

§703. Hearings Procedure.

- 703.1 Hearings shall be conducted by the Board or the Board may appoint any member as a hearing officer. The decision, or where no decision is called for, the findings, shall be made by the Board, but the parties may waive a decision or findings by the Board and accept the decision or findings of the hearing officer as final.
- 703.2 The parties to a hearing shall be New Brighton Borough, the party filing the application, any party affected by the application who has made a request to appear in writing with the Board Secretary prior to the hearing, and any other person or civic or community organization which the Board permits to appear after filing a request to appear at least five (5) days before the hearing.
- 703.3 Before a hearing may commence all fees and costs relative to the proceedings shall be paid by the applicant. Fees shall be established by resolution of Borough Council.
- 703.4 Public Notice -
 - A. Public notice of the hearing shall be placed in a newspaper of general local circulation once, at least seven (7) days before the hearing. The notice shall state the date, time, place and purpose of the hearing.
 - B. A mailed notice shall be sent at least seven (7) days prior to the hearing to the applicant, to the Secretaries of Borough Council and Planning Commission, and to other parties who have filed a timely request to receive notice. In addition, when the hearing involves a particular property or properties, notice shall be sent to the owners and tenants of property abutting and directly across an intervening street in front of, beside and/or behind the affected property or properties. The applicant shall provide the Zoning Officer with the names and address of the abutting property owners.
 - C. A copy of the notice shall be posted at the Municipal Building and, in a case involving particular properties, in a conspicuous location on the affected property.
- 703.5 The chairman or acting chairman of the Board or the hearing officer presiding shall have the 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.
- 703.6 The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and arguments and to cross-examine adverse witnesses on all relevant issues. Formal rules of evidence shall not apply but irrelevant, immaterial or unduly repetitious evidence may be excluded.
- 703.7 The Board or the hearing officer shall keep or arrange to have kept a stenographic record of the proceedings, and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made

available to any party at cost. In lieu of a stenographic record of the hearing, a tape recording may be kept if agreeable to the Board and the appellant. 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 part requesting the original transcript shall bear the cost thereof.

703.8 The Board, or the hearing officer, shall not communicate, directly or indirectly, with any party, and/or representatives of any party in connection with any issue relevant to the hearing, except upon notice and opportunity for all parties to participate; shall not take legal notice of any communications, reports or other materials unless all parties are afforded an opportunity to contest the material so noticed; and shall not inspect any site or its surroundings with any party and/or representative of any party after the start of hearings unless all parties are given an opportunity to be present.

703.9 Hearing Decisions -

A. The Board or hearing officer shall render a written decision, or when no decision is required, written findings on the application, within forty-five (45) days after the conclusion of the hearing before the Board or hearing officer. Decision shall be accompanied by findings of fact and conclusions based on them together with the reasons therefore. Conclusions based on any provisions of this Chapter or any other ordinance or regulation of New Brighton Borough or the Pennsylvania Municipalities Planning Code shall contain a reference to the provision relied on and the reasons why a conclusion is deemed appropriate in the light of the facts.

B. When a hearing is conducted by a hearing officer and there is no stipulation that his decision or findings are final, the Board shall make his report and recommendations available to the parties who shall be entitled to make written representations thereon to the Board prior to the Board's final decision and entry of findings, which shall occur not later than forty-five (45) days after the hearing officer's decision.

C. When the Board or hearing officer fails to render a decision where it or he has the power to do so within forty-five (45) days after hearing the application or fails to hold a hearing within sixty (60) days of the applicant's request, the decision shall be deemed to have been rendered in favor of the applicant, and the Board shall place a public notice of the decision thus granted not later than ten (10) days after the expiration of the forty-five (45) day period in a newspaper of general local circulation. In addition the decision shall be posted on the affected property and sent by mail to all parties having an interest in the decision. Any extension of the forty-five (45) day period for any other reasons shall be agreeable to both the Board and the applicant and shall be for a fixed period.

D. A copy of the final decision, or the findings if no decision is required, shall be mailed to the applicant not later than the day after the date of the decision. All others requesting notice of the decision not later than the last day of the hearing shall receive by mail a summary of the findings or decision and a statement of the place at which the full decision or findings may be examined. Any reproduction of the proceedings shall be paid for by the party requesting the transcription.

(Ordinance 1076, October 18, 1984, Article VII, §7.3; as amended by Ordinance 1141, February 22, 1996)

§704. Zoning Appeals.

704.1 No one shall be permitted to file an appeal with the Board not later than thirty (30) days after an application for development, whether preliminary or final, has been approved by the Zoning Officer or Borough Council if such appeal is intended to reverse or limit the approval in any manner. Only if the appellant is able to prove he had no notice or knowledge of the approval can the Board extend the time limit. Successor owners shall be bound by the knowledge of their predecessors in interest.

704.2 Upon the filing of an appeal, and while an appeal is pending before the Board, any development pursuant to any challenged ordinance, order or approval of the Zoning Officer of any agency or body and all official action there under shall be stayed unless the Zoning Officer certifies to the Board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the Court.

704.3 Zoning Appeals to Court -

- A. The Courts may act upon appeals from the decisions of the Board and findings and conclusions of the Board in proceedings to challenge the validity of this Chapter.
- B. The court having jurisdiction shall be the Beaver County Court of Common Pleas.
- C. Zoning appeals may be taken to court by any party before the Board or any officer or agency of New Brighton Borough.
- D. All zoning appeals shall be filed not later than thirty (30) days after issuance of notice of the decision or report of the Board.
- E. A developer having received approval from the Borough for his development and faced with an appeal brought by others before the Board may petition the court to order those bringing the appeal to post a bond in an amount established by the Court as a condition of the appeal's continuation before the Board. The Court shall hear the petition, determine whether the appeal is frivolous or is designed to delay, and if so may require the posting of the bond.

704.4 If any application for a variance, or appeal from the zoning officer is denied by the Board, another application for the same request shall not be filed within a period of one (1) year from the date of denial.

(Ordinance 1076, October 18, 1984, article VII, §7.4)

(Reserved for future use)

Part 8

Administration

§801. Duties of the Zoning Officer.

- 801.1 The Zoning Officer shall administer and enforce this Chapter in accordance with its literal terms. He shall be appointed by Borough Council and may hold no elective office in New Brighton Borough. The Zoning Officer shall be qualified by demonstrating to the satisfaction of the Borough Council a working knowledge of the Zoning Ordinance, an understanding of municipal development goals and objectives, an ability to work harmoniously with local citizens, and such other criteria as may be established by the Borough to qualify for the office.
- 801.2 Applications for zoning and occupancy permits shall be made to the Zoning Officer, who shall process the applications in accordance with §802 or §803.
- 801.3 The Zoning Officer shall investigate alleged violations and take action to gain compliance in accordance with §804. He shall also testify at hearings of the Zoning Hearing Board on contested decisions he has made.
- 801.4 All questions of interpretation of this Chapter shall be first presented to the Zoning Officer and such questions shall be considered by the Zoning Hearing Board only on appeal from the decision of the Zoning Officer.

(Ordinance 1076, October 18, 1984, Article VIII, §8.1; as amended by Ordinance 1141, February 22, 1996)

§802. Zoning Permits.

- 802.1 No building or structure including a mobile home shall be erected, moved, or enlarged unless a permit for such action has been issued by the Zoning Officer. Permits shall not be required for the erection of paved walks, patios, or the repaving of existing residential driveways. Nor shall a permit be required for painting, for replacement of siding, roofing, windows, doors, soffit or gutters, for repointing masonry, or for altering interior partitions or doorways when no structural changes are needed. Permits shall be required for permanent roofs over open porches or patios or for closing in such areas with screening or windows.
- 802.2 An application shall include the following in duplicate on forms provided by the Zoning Officer:
- A. A description of the proposed work and the proposed use of the structure, if a new building, indicating the number of dwelling units or commercial units the building is designed to accommodate.
 - B. A site plan drawn to scale showing the boundary lines of the property to receive the new construction, if a new building or expansion of an existing building is proposed, indicating bearings and distances of each line, area of the property and name of owner of record.
 - C. The site plan shall also show the building setback line from each property boundary, public roads abutting the property, any public utilities serving the property and the location of free-standing signs and of parking areas, with the number of parking spaces indicated, if a multi-family residential, commercial or industrial development.
 - D. The proposed building or addition shall be shown on the site plan, with dimensions and height noted and distances indicated between it and adjacent roads and property lines.
 - E. Existing buildings already on the property and topographical features such as steep slopes, swamps and streams shall be shown if on the property.

- F. If the building is for commercial, industrial, multi-family or public use, a certificate of approval from the State Department of Labor and Industry shall be provided.
 - G. The applicant shall swear that all the information given on the form and drawings shall be true and correct to the best of his knowledge.
- 802.3 If the application is satisfactory, the Zoning Officer shall inspect the premises where the construction is proposed to occur. If new construction is proposed, the Zoning Officer shall verify on the site the location of the construction relative to adjacent property lines and may order the owner to have stakes positioned by a registered surveyor to indicate the property line and outline of the new construction. Upon completing his inspection and finding the application and premises compatible, the Zoning Officer shall approve the application and return one (1) copy of the application together with a signed zoning permit authorizing the applicant to proceed. The applicant shall post the permit prominently on the building site during construction and shall keep one (1) set of the documents available on the site as well.
- 802.4 If the application is not satisfactory, the Zoning Officer shall return one (1) set of the application documents together with a letter indicating the specific reasons why the application cannot be approved and the changes needed to make it acceptable.
- 802.5 The Zoning Officer shall from time to time visit the property whereon the approved construction is taking place in order to assure himself that the work is proceeding in accordance with the application documents. The Zoning Officer shall not be denied access to the property during working hours in order to inspect the construction in progress and may order the work halted pending appeal to the Zoning Hearing Board or corrected to conform to the permit.
- 802.6 If an applicant wishes to amend the use, arrangement or construction of his building from that shown on the permit after the permit is approved, he shall file with the Zoning Officer an application for an amended zoning permit.
- 802.7 A zoning permit shall become void, if after six (6) months from the date of issue, construction has not commenced and been vigorously pursued. The life of a zoning permit shall be one (1) year from the date of issue. Permits may be extended for not more than one (1) additional year on large projects or where the applicant can prove to the Zoning Officer a hardship exists making it impossible to complete the project in one (1) year.
- 802.8 The Zoning Officer shall keep records of all applications either approved or disapproved, including one (1) copy of each permit issued, shall maintain a journal of his activities, and shall submit an annual report to Borough Council detailing building activity in the Borough during the preceding year.

(Ordinance 1076, October 18, 1984, Article VIII, §8.2)

§803. Occupancy Permits.

- 803.1 For new uses or expansion of existing uses -
- A. Upon completion of any new building or structure, or upon completion of the expansion of an existing commercial, public, semi-public or industrial building, or a structure containing more than two (2) dwelling units, or the placing of a mobile home on its foundation, the contractor or builder shall apply to the Zoning Officer for an occupancy permit.
 - B. The Zoning Officer shall inspect the premises and if satisfied that all conditions of the zoning permit have been met, shall issue occupancy permit certifying that the premises comply with the provisions of this Chapter and may be used for the purposes set forth on the zoning permit.

- C. If the Zoning Officer upon inspection finds the premises to have been developed in violation of any of the conditions of the zoning permit, he shall order the violations corrected to conform to the zoning permit and shall not issue an occupancy permit until satisfied these corrections have been made. The contractor shall be responsible for requesting a re-inspection after violations have been corrected and the Zoning Officer shall not issue an occupancy permit until he verifies all violations have been corrected.
- D. It shall be a violation of this Chapter for a new structure covered by this section to be occupied without an occupancy permit first having been issued.

803.2 For changing existing uses -

- A. If a property owner wishes to change the use of any building, structure or premises, or if a new owner seeks to occupy a property that has been used for commercial or industrial purposes, he shall apply to the Zoning Officer for an occupancy permit. Changes for which an occupancy permit shall be required include addition of a dwelling unit or units in the structure, introduction of a home occupation, conversion of premises to a different commercial or industrial use, or continuation of the use of a commercial or industrial property by a new owner. The Zoning Officer shall first determine that no zoning permit is needed to effect the proposed change, but if so the developer shall proceed as under §802 above.
- B. If the Zoning Officer is satisfied that such change or addition is in conformance with all requirements of this Chapter, he shall issue an occupancy permit.
- C. It shall be the responsibility of the owner of a property to determine that any persons leasing or subleasing the premises will use them only for activities permitted by this Chapter, and if a use is contemplated or undertaken by a lessee or sub lessee which is not permitted, or is permitted only as a conditional use, it shall be the responsibility of the owner to either secure permission from the Borough for the use or to remove the use from the premises.

(Ordinance 1076, October 18, 1984, Article VIII, §8.3; as amended by Ordinance 1141, February 22, 1996)

§804. Enforcement and Penalties.

- 804.1 If the Zoning Officer shall find that any provisions of this Chapter are being violated, he shall notify the owner of the property upon which such violation is allegedly occurring by certified mail, return receipt requested, such notice being deemed adequate if persons other than the owner are perpetrating the alleged violation.
- 804.2 Communications regarding violations shall indicate the nature of the violation by specific paragraph of this Chapter relied on and shall order the action necessary to correct it.
- 804.3 Such communications shall order the discontinuance of illegal uses of land or structures, or the removal or moving of illegal structures or additions or alterations thereto, as well as any other action necessary to assure compliance with or prevent violation of this Chapter and shall indicate the owner's alternative actions under the terms of this Chapter.
- 804.4 The Zoning Officer shall allow a period not to exceed thirty (30) days from date of notice within which a violation shall be corrected. The Zoning Officer shall inspect the site of the violation at the conclusion of the period specified and if he finds the violation still not corrected, shall take the owner before a magistrate, who if he finds the owner guilty, may assess penalties in accordance with §804.5.
- 804.5. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Zoning Ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough of New Brighton, pay a judgment of not less that \$25 nor more than \$500, plus all

court costs, including reasonable attorney fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure.

Each day that a violation continues shall constitute a separate violation, unless the District Justice, determining that there has been a violation, further determines that there was a good faith basis for the person, partnership or corporation violating the Ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the District Justice and thereafter each day that violation continues shall constitute a separate violation. All judgment costs and reasonable attorney fees collected for the violation of zoning ordinances shall be paid over to the Borough of New Brighton.

- 804.6 The owner or tenant of any building, structure, premises or part thereof, and any architect, engineer, builder, contractor, agent or other person who commits, participates in, assists in, or maintains a violation may each be found guilty of a separate offense and suffer the penalties herein provided.
- 804.7 Nothing herein contained shall prevent the Borough from taking such other lawful action as is necessary to prevent or remedy any violation, or to bring an action to enjoin any violation of this Chapter.
- 804.8 The granting of a zoning or occupancy permit shall not constitute a guarantee of any kind by the Borough or any official or employee thereof for the safety of any structure from any cause whatever and shall create no liability against any Borough official or employee for any structural or other failure that may result therefrom.

(Ordinance 1076, October 18, 1984, Article VIII, §8.4; as amended by Ordinance 1141, February 22, 1996)

§805. Schedule of Fees.

- 805.1 A schedule of fees for zoning permits, occupancy permits, sign permits and applications for petitions to amend this Chapter, or to initiate action on conditional uses before the Planning Commission or action on variances, challenges to the validity of the Chapter, or challenges to a decision of the Zoning Officer before the Zoning Hearing Board shall be established by resolution of Borough Council, posted conspicuously in the Borough Building, and subsequently amended only by action of Council. Fees for hearing before the Zoning Hearing Board may include compensation for the secretary and members of the Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs.
- 805.2 No permit, certificate, application, or variance shall be issued unless, or until such established costs, charges, fees or expenses have been paid in full; nor shall any action be taken on proceedings before the Zoning Hearing Board unless or until preliminary charges and fees have been paid in full.

(Ordinance 1076, October 18, 1984, Article VIII, §8.5; as amended by Ordinance 1141, February 22, 1996)

§806. Amendment of the Ordinance.

- 806.1 An amendment, supplement, change or repeal of this chapter may be initiated by:
 - A. A resolution or request by Borough Council;
 - B. An official proposal by the Planning Commission; or
 - C. A petition presented to the Planning Commission by a property owner or a person who has entered into an agreement to purchase a property in the Borough.

806.2 Procedure -

- A. Upon receipt of a petition from a property owner for an amendment to this Chapter or its map, the Planning Commission shall review the proposal and submit recommendations, with specific reasons in support of either adopting the proposal, rejecting it or adopting it with conditions, to Borough Council not later than the third meeting after which the Commission officially received the petition.
- B. The Planning Commission may hold a public hearing, properly noticed, if it feels the proposal is of such a controversial nature or is so widespread in its jurisdiction that additional testimony should be gathered.
- C. Council shall review the Planning Commission's recommendations and shall call a public hearing, properly noticed, after which Council shall vote approval or disapproval of the proposed amendment within ninety (90) days of the conclusion of the hearing. At least thirty (30) days prior to the hearing the Board shall submit the amendment proposal to the Beaver County Planning Commission for comment.
- D. When Council proposes an amendment it shall allow the Planning Commission at least thirty (30) days to review the proposal and submit recommendations before Council holds a public hearing.
- E. If a proposed amendment is revised before final approval to include property not previously affected or to further alter the text, Council shall hold another public hearing before proceeding to vote on the change.
- F. The hearing record shall be kept by stenographic or sound recording and copies may be provided any party to the hearing at cost.
- G. Appeal from a decision of Borough Council on an amendment proposal shall be to the County Court of Common Pleas.

806.3 Public Hearing Requirements -

- A. Public notice shall be published in a newspaper of general local circulation once in each of two (2) consecutive weeks, the first notice appearing not more than thirty (30) days nor less than fourteen (14) days before the hearing. The notice shall state the date, time, place and purpose of the hearing.
- B. A notice shall simultaneously be posted at a conspicuous location at the Borough Building and at least one (1) location on property or properties to be affected by the proposal, if it involves the zoning map.
- C. Owners of property within one hundred feet (100') of any boundary of a property or properties or portion of a property for which a change in the zoning district boundaries is sought shall be informed by mail at their addresses of record by letter sent at least fifteen (15) days prior to the hearing, indicating the date, time and place of the hearing and describing the proposed change.

806.4 If Council receives a clearly adverse report from the Borough or County Planning Commission, or, prior to taking a vote for adoption of a zone district boundary change, is presented with a petition, signed in opposition by owners representing at least one half (1/2) of the property proposed to be rezoned and by a least one half (1/2) of the owners within one hundred feet (100') of such property, Council shall adopt the amendment only by a two-thirds (2/3) vote of all the Council members.

806.5 Curative Amendments -

- A. Landowner Curative Amendment - A landowner who desires to challenge on substantive grounds the validity of any portion of this Chapter which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the Borough Council. The request shall include a written statement informing Council of the matters that are in issue and the grounds for the challenge, the proposed amendment as the landowner wishes it to be adopted, and proposed plans for development of the land in question that are frustrated by the existing zoning. Council shall seek comments from the Borough and Beaver County Planning Commissions at least thirty (30) days prior to a public hearing, which shall be held, with proper public notice, not later than sixty (60) days after the landowner's request is received at a regular meeting of Council. A stenographic record of the hearing shall be kept unless Council and the appellant agree to a tape recording and Council shall have the power to administer oaths, issue subpoenas, compel the attendance of witnesses and production of relevant documents. The parties may be represented by counsel which may present evidence and cross-examine adverse witnesses. The landowner's proposed amendment shall be considered denied when Council informs the landowner it will not adopt the amendment, when Council adopts another amendment unacceptable to the landowner, or when Council fails to act on the landowner's amendment within thirty (30) days after the public hearing unless the time period is extended by mutual consent.

- B. Municipal Curative Amendment - Borough Council may by official vote declare any part or all of the Chapter invalid and propose to prepare a curative amendment to overcome the invalidity. Within thirty (30) days thereafter, Council by resolution shall specify the portions of the Chapter to be cured and shall commence preparation of the amendment. The consideration of the amendment shall include review by the Borough and County Planning Commission and public hearing before Council, properly noticed as specified in §806.3. Within one hundred eighty (180) days after the declaration of invalidity, Council shall adopt the curative amendment or reaffirm its Chapter as it stood prior to the declaration. While a municipal curative amendment is in process, Council shall not be required to receive any landowner's curative amendment nor shall any rights accrue to a landowner as a result of Council's action relative to a landowner curative amendment. The municipal curative amendment procedure may not be used by Council for at least thirty-six (36) months after Council's decision on a previous amendment unless State law compels Council to act sooner.

- C. Rehearing - If a petition for amendment, supplement, change or repeal of this Chapter is denied by Borough Council, another petition for a similar change shall not be filed within a period of one (1) year from the date of denial, except upon the initiation of Council and recommendation of the Planning Commission based upon a change in circumstances which would warrant a rehearing.

(Ordinance 1076, October 18, 1984, Article VIII, §8.6)

§807. Enactment of the Ordinance.

This Chapter is necessary for the immediate preservation of the public health, safety and general welfare and shall be effective upon its passage and signing.

(Ordinance 1076, October 18, 1984, Article VIII, §8.7)

(Reserved for future use)