

**ASHLEY BOROUGH**  
**LUZERNE COUNTY, PA**

**1993 ZONING ORDINANCE**

**AS AMENDED THROUGH NOVEMBER 21, 2013**

**John R. Varaly, AICP**  
**Varaly Associates, LLC**  
**Professional Planning Consultants**

50 FINN STREET  
WILKES-BARRE, PENNSYLVANIA 18705  
PHONE (574) 574-3061  
jvaraly@ptd.net

This page is intentionally left blank

<p><b>ASHLEY BOROUGH</b>  <b>1993 ZONING ORDINANCE, AS AMENDED</b></p>
--

**TABLE OF CONTENTS**

<b><u>ARTICLE 1</u></b>	<b><u>GENERAL PROVISIONS</u></b>	
	<b>SECTION</b>	<b>PAGE</b>
	101 TITLE	1-1
	102 COMMUNITY OBJECTIVES	1-1
<b><u>ARTICLE 2</u></b>	<b><u>DEFINITIONS</u></b>	
	<b>SECTION</b>	<b>PAGE</b>
	201 APPLICATION AND INTERPRETATION	2-1
	202 DEFINITIONS TERMS	2-1 to 2-27
<b><u>ARTICLE 3</u></b>	<b><u>GENERAL REGULATIONS</u></b>	
	<b>SECTION</b>	<b>PAGE</b>
	301 COMPLIANCE REQUIRED	3-1
	302 INTERPRETATION AND CONFLICT	3-1
	303 ATTACHED ACCESSORY STRUCTURES	3-1
	304 UNATTACHED ACCESSORY STRUCTURES	3-2
	305 CORNER LOT RESTRICTION	3-2
	306 TYPES OF RESIDENTIAL ACCESSORY STRUCTURES	3-2
	307 NONRESIDENTIAL ACCESSORY STRUCTURES IN A NONRESIDENTIAL ZONE	3-2
	308 PRIVATE NONCOMMERCIAL SWIMMING POOLS	3-3
	309 LOTS DIVIDED BY ZONING BOUNDARIES	3-3
	310 PROJECTIONS INTO REQUIRED YARDS	3-3

<b>SECTION</b>		<b>PAGE</b>
311	EXCEPTIONS TO HEIGHT LIMITATIONS	3-4
312	CONVERSION OF NONRESIDENTIAL STRUCTURES	3-4
313	REQUIRED ACCESS	3-5
314	USES REQUIRING APPROVAL AS A LAND DEVELOPMENT	3-4
315	VISIBILITY AT INTERSECTIONS AND PRIVATE DRIVEWAYS	3-5
316	FENCES AND WALLS	3-5
317	PUBLIC UTILITIES	3-6
318	SEWAGE DISPOSAL	3-6
319	EXEMPTIONS TO CERTAIN SIDEYARD SETBACKS	3-6
320	HIGHWAY OCCUPANCY PERMIT	3-7
321	SOIL EROSION AND SEDIMENTATION CONTROL PLAN	3-7
322	CONFLICTING REGULATIONS	3-7

**ARTICLE 4**                    **ZONING MAP AND ZONING DISTRICTS**

<b>SECTION</b>		<b>PAGE</b>
401	OFFICIAL ZONING MAP	4-1
402	CHANGES TO OFFICIAL ZONING MAP	4-1
403	INTERPRETATION OF BOUNDARIES	4-1
404	CLASSES OF ZONING DISTRICTS	4-2

**ARTICLE 5**                    **ZONING DISTRICT REGULATIONS**

<b>SECTION</b>		<b>PAGE</b>
501	R-1 SINGLE FAMILY RESIDENTIAL DISTRICT	5-1
502	R-2 TWO FAMILY RESIDENTIAL DISTRICT	5-3

<b>SECTION</b>		<b>PAGE</b>
503	R-3 MULTIFAMILY RESIDENTIAL DISTRICT	5-5
504	B-1 NEIGHBORHOOD COMMERCIAL DISTRICT	5-7
505	B-2 GENERAL BUSINESS DISTRICT	5-10
506	B-3 HIGHWAY COMMERCIAL DISTRICT	5-12
507	C-1 CONSERVATION DISTRICT	5-15
508	I-1 LIGHT INDUSTRIAL DISTRICT	5-17
509	1-2 HEAVY INDUSTRIAL DISTRICT	5-20
510	R-MHP RESIDENTIAL MOBILE HOME PARK	5-23

**ARTICLE 6**

**CONDITIONAL USES**

<b>SECTION</b>		<b>PAGE</b>
601	PURPOSE	6-1
602	GENERAL PROVISIONS	6-1
603	PROCEDURE FOR SUBMISSION AND DECISIONS	6-1
604	GENERAL STANDARDS	6-3
605	USES/DEVELOPMENTS CLASSIFIED AS CONDITIONAL USES	6-4
606	ENVIRONMENTAL IMPACT STATEMENT	6-4
607	REVIEW PROCEDURE OF ENVIRONMENTAL IMPACT STATEMENT	6-8
608	SUPPLEMENTARY REGULATIONS FOR SPECIFIC USES	6-8
	608.1 SOLID WASTE FACILITY	6-8
	608.2 EXCAVATION OF NATURAL RESOURCES	6-11
	608.3 ADULT USES	6-13
	608.4 TRUCKING TERMINALS	6-13
	608.5 PLANNED RESIDENTIAL DEVELOPMENT	6-13

<b>SECTION</b>		<b>PAGE</b>
	608.6 COMMERCIAL COMMUNICATION FACILITIES	6-26
	608.7 BULK FUEL STORAGE	6-29
	608.8 MOBILE HOME PARKS	6-29

**ARTICLE 7**      **SPECIAL EXCEPTIONS**

<b>SECTION</b>		<b>PAGE</b>
701	PURPOSE	7-1
702	GENERAL PROVISIONS	7-1
703	SITE PLAN	7-1
704	GENERAL STANDARDS	7-2
705	IMPACT ANALYSIS	7-3

**ARTICLE 8**      **SUPPLEMENTAL REGULATIONS**

<b>SECTION</b>		<b>PAGE</b>
801	PURPOSE AND INTENT	8-1
802	USE REGULATIONS	8-1
	802.01 ANIMAL HOSPITAL	8-1
	802.02 AUTOMOBILE RELATED ACTIVITIES	8-1
	802.03 BANKS	8-2
	802.04 BOARDING HOUSE	8-2
	802.05 CONTRACTORS' STORAGE YARDS	8-3
	802.06 CEMETERIES	8-3
	802.07 CONVENIENCE STORE WITH GAS PUMPS	8-3
	802.08 DAY CARE FACILITIES	8-4
	802.09 DWELLINGS OVER OR ATTACHED TO BUSINESS	8-4
	802.10 EATING AND DRINKING ESTABLISHMENTS	8-4

802.11 ENTERTAINMENT FACILITIES	8-5
802.12 FUNERAL HOME	8-5
802.13 GROUP RESIDENCES	8-5
802.14 HOME OCCUPATION	8-6
802.15 INDUSTRIAL ACTIVITIES	8-6
802.16 JUNK YARDS/AUTOMOBILE WRECKING YARDS	8-7
802.17 MOTELS AND HOTELS	8-8
802.18 NONPROFIT SOCIAL HALLS, CLUBS AND COMMUNITY CENTERS	8-8
802.19 OUTDOOR STORAGE	8-8
802.20 PLACE OF WORSHIP	8-9
802.21 PUBLIC USES	8-9
802.22 PUBLIC UTILITY BUILDINGS AND STRUCTURES	8-9
802.23 RECREATIONAL FACILITIES (OUTDOORS)	8-10
802.24 SEWAGE DISPOSAL AND SEWAGE TREATMENT PLANTS	8-10
802.25 TOWNHOUSES AND GARDEN APARTMENTS	8-10
802.26 WAREHOUSE AND DISTRIBUTION FACILITIES	8-11
802.27 WAREHOUSE (SELF-STORAGE)	8-12
802.28 FORESTRY ACTIVITIES	8-12
802.29 NO IMPACT HOME-BASED BUSINESS	8-13
802.30 RIPARIAN BUFFER	8-14
802.14 FOOD PROCESSING	8-14

**ARTICLE 9**

**NONCONFORMING LOTS, USES, STRUCTURES AND BUILDINGS SECTIONS**

<b>SECTION</b>		<b>PAGE</b>
901	INTENT	9-1
902	NONCONFORMING LOTS OF RECORD	9-1
903	CONTINUATION OF NONCONFORMITY	9-1
904	REGISTRATION OF NONCONFORMING USES	9-1
905	CHANGES OF NONCONFORMING USES	9-2
906	ENLARGEMENT OF NONCONFORMING USES AND STRUCTURES	9-2
907	RESTORATION OF USE	9-3
908	TERMINATION OF NONCONFORMING USE AND/OR STRUCTURE	9-3

**ARTICLE 10**

**SIGNS**

<b>SECTION</b>		<b>PAGE</b>
1001	TYPE AND USE OF SIGNS	10-1
1002	CONSTRUCTION TYPE	10-2
1003	PERMITTED SIGNS BY ZONING DISTRICT	10-2
1004	AREA, HEIGHT AND SETBACK REQUIREMENTS	10-2
1005	SETBACK FOR FREESTANDING SIGNS	10-4
1006	SIGNS RELATED TO NONCONFORMING USES	10-4
1007	AREA COMPUTATION OF SIGNS	10-4
1008	VERTICAL CLEARANCE	10-5
1009	PROHIBITED SIGNS	10-5
1010	PERMITS REQUIRED	10-6



**ARTICLE 11****OFF-STREET PARKING AND LOADING**

<b>SECTION</b>		<b>PAGE</b>
1101	PURPOSE	11-1
1102	SIZE OF OFF-STREET PARKING SPACES	11-1
1103	SIZE OF OFF-STREET LOADING SPACES	11-1
1104	ACCESS TO OFF-STREET PARKING OR LOADING AREAS	11-1
1105	LOCATION OF OFF-STREET PARKING AREAS	11-1
1106	DRAINAGE AND SURFACING OF OFF-STREET PARKING AREAS	11-2
1107	INTERIOR CIRCULATION	11-2
1108	SCREENING	11-2
1109	LIGHTING	11-2
1110	PARKING IN YARD AREAS	11-2
1111	EXISTING STRUCTURES AND USES	11-3
1112	CHANGES OF STRUCTURES OR USES	11-3
1113	FRACTIONAL SPACE	11-3
1114	MULTIPLE ACTIVITIES OR USES	11-3
1115	OFF-STREET PARKING REQUIREMENTS	11-3
1116	PARKING FOR OTHER COMMERCIAL USES	11-6
1117	OFF-STREET LOADING REQUIREMENTS	11-6
1118	PROVISION OF HANDICAPPED PARKING SPACES	11-6
1119	DESIGN FEATURES FOR HANDICAPPED PARKING SPACES	11-7
1120	SIGNAGE FOR HANDICAPPED PARKING	11-7

<b>SECTION</b>		<b>PAGE</b>
1121	MINIMUM NUMBER OF HANDICAPPED ACCESSIBLE SPACES	11-8

**ARTICLE 12**      **ENFORCEMENT AND ADMINISTRATION**

<b>SECTION</b>		<b>PAGE</b>
1201	ZONING OFFICER	12-1
1202	ZONING PERMIT	12-2
1203	CERTIFICATE OF OCCUPANCY	12-4
1204	ENFORCEMENT PROCEDURES	12-4
1205	SCHEDULE OF FEES, CHARGES AND EXPENSES	12-6

**ARTICLE 13**      **AMENDMENTS**

<b>SECTION</b>		<b>PAGE</b>
1301	AMENDMENT PROCEDURE	13-1
1302	APPLICATIONS FOR AMENDMENTS TO THE TEXT OR MAP	13-2
1303	CURATIVE AMENDMENTS	13-3
1304	ENACTMENT OF AMENDMENTS	13-5
1305	NOTIFICATION TO COUNTY	13-6

**ARTICLE 14**      **ZONING HEARING BOARD**

<b>SECTION</b>		<b>PAGE</b>
1401	MEMBERSHIP OF BOARD	14-1
1402	ALTERNATES TO ZONING HEARING BOARD	14-1
1403	REMOVAL FROM BOARD	14-1
<b>SECTION</b>		<b>PAGE</b>
1404	ORGANIZATION OF BOARD	14-1

1405	EXPENDITURES FOR SERVICES	14-2
1406	HEARINGS	14-2
1407	MEDIATION OPTION	14-5
1408	JURISDICTION OF ZONING HEARING BOARD	14-6
1409	VARIANCES	14-7
1410	SPECIAL EXCEPTIONS	14-8
1411	APPROVAL OF USE ON A TEMPORARY BASIS	14-9
1412	PARTIES APPELLANT BEFORE THE BOARD	14-10
1413	TIME LIMITATIONS	14-10
1414	STAY OF PROCEEDINGS	14-11
1415	APPEALS TO COURT	14-12

This page is intentionally left blank

**ARTICLE 1**

**GENERAL PROVISIONS**

**SECTION 101 SHORT TITLE**

This Ordinance shall be known and may be cited as the Zoning Ordinance the Borough of Ashley, Pennsylvania.

**SECTION 102 COMMUNITY DEVELOPMENT OBJECTIVES**

The community development objectives of the Borough of Ashley shall be to:

- A. Achieve the best use of land within the Borough, ensuring that varying land uses will complement one another and thus improve the economic and aesthetic character of the community.
- B. Provide and/or promote desirable educational and recreational facilities.
- C. Improve and maintain the road system for better internal circulation and movement of through traffic, which will facilitate efficient and safe movement of people and goods.
- D. Improve the health of residents of the Borough by controlling water, air and noise pollution, separating residences for adequate light, sun and air, with the provision of adequate facilities at the lowest possible cost.
- E. Establish realistic population densities in order to, ensure adequate circulation, health standards, privacy and open space and in order to provide utilities, protection and facilities in the most convenient and efficient manner.
- F. Improve the appearance of land and structures in the Borough, including the controlling of signs and billboards.
- G. Provide the best possible police and fire protection consistent with its needs, including cooperation with adjacent municipalities.
- H. Stimulate the local economy by encouraging controlled and appropriate commercial, industrial, residential, and recreational growth which will provide for local employment, local shopping and local recreational opportunities and which will strengthen the local tax base.
- I. Encourage and promote the provision of a wide range and variety of housing types to meet the needs of all Borough residents: newly formed households, growing families and senior citizens.
- J. Expand and activate a continuing planning program that will serve to continually update and revise planning goals and objectives, and the operational tools necessary for implementation, in light of new data and conditions.

This page is intentionally left blank

**ARTICLE 2**

**DEFINITIONS**

**SECTION 201    APPLICATION AND INTERPRETATION**

The definition of words included herein are provided to facilitate the interpretation of this Ordinance for administrative and enforcement purposes. Unless expressly stated otherwise, within the context of the Ordinance, the following shall apply:

1. Words used in the present tense shall include the future tense.
2. The word "person" shall include a profit or nonprofit corporation, company, partnership, or individual.
3. The words "used" or "occupied" as applied to any land or building shall include the words "intended", "arranged", or "designed" to be used or occupies.
4. The word "building" shall include "part thereof" and "structure".
5. The word "lot" shall include "plot" or "parcel".
6. The word "shall" is always mandatory.
7. The singular number shall include the plural, and the plural the singular.
8. The masculine gender shall include the feminine and neuter.
9. The word "street" shall include "road", "highway", and "lane".

**SECTION 202    DEFINITIONS OF TERMS**

For the purpose of this Ordinance, the following words, terms, and phrases have the meaning indicated herein:

**ABANDONMENT:**

To cease or discontinue a use or activity without intent to resume, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility.

**ABUTTING:**

Having a common border with, or being separated from such a common border by a right-of-way, alley, or easement.

**ACCESS:**

A way or means of approach to provide physical ingress and/or egress to a property.

### **ACCESSORY STRUCTURE:**

A subordinate structure detached from but located on the same lot as the principal structure, the use of which is incidental and accessory to that of the principal structure.

### **ACCESSORY USE:**

A use incidental to, and on the same lot as, a principal use.

### **ADULT USES:**

*Adult Bookstore:* An establishment that has as a substantial portion of its stock-in-trade and offers for sale, for any form of consideration, anyone or more of the following: (1) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas or (2) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

*Adult Cabaret:* A nightclub, bar, restaurant, or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities, or films, motion pictures, video cassettes, slides, or other photographic reproductions in which a substantial portion of the total presentation time is devoted to the showing of material that is characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

*Massage Parlor:* An establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional person licensed by the state. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa, or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

*Specified Anatomical Areas:* As used herein, specified anatomical areas means and includes any of the following: (1) less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areola; or (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified Sexual Activities:* As herein, specified sexual activities means and includes any of the following: (1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; (2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (3) masturbation, actual or simulated; or (4) excretory functions as part of or in connection with any of the activities set forth as an "Adult Use".



**ALLEY:**

A public right-of-way intended and/or used as a secondary means of access to abutting property.

**ALTERATION:**

Any change, addition, or modification in construction or occupancy of an existing structure.

**ALTERATION, STRUCTURAL:**

Any change in the supporting members of a building or structure, such as bearing walls, columns, beams, or girders.

**AMENDMENT:**

A change in the regulations and provisions of the Zoning Ordinance, including changes to boundaries of Zoning Districts as provided upon the Zoning Map.

**ANTENNA:**

SEE "SATELLITE DISH ANTENNA" and "TOWER".

**AUTOMOBILE WRECKING YARD: (SEE ALSO JUNKYARDS)**

The dismantling or wrecking of used motor vehicles or trailers, or the storage, sale, or dumping of dismantled or wrecked vehicles or their parts. The presence on any lot or parcel of land of two or more motor vehicles, which, for a period exceeding 30 days, have not been capable of operating under their own power and from which parts have been or are to be removed for reuse or sale, shall constitute prima-facie evidence of an automobile wrecking yard.

**AUTOMOTIVE SALES:**

The use of any building, structure or land, other than a street, for the display and sale or rental of motor vehicles, which are in operable condition. The owner\operator of this business must have a valid state license for the sale or rental of such motor vehicles. Any related repair shall be conducted within an enclosed building and shall be an accessory use.

**BASEMENT:**

That portion of a building that is partly or completely below grade. A basement shall be counted as a story if the vertical distance from the average adjoining grade to the ceiling five (5) feet or greater.

**BILLBOARD:**

A sign that identifies or communicates a commercial or noncommercial message related to an activity conducted, a service rendered, or a commodity sold at a location other than where the sign is located.

**BOARDING HOUSE: (SEE ROOMING HOUSE) BOROUGH:**

Ashley Borough, Luzerne County, Pennsylvania

**BUFFER AREA:**

A landscaped area intended to separate and partially obstruct the view of two adjacent land uses or properties from one another.

**BUILDING:**

Any structure having a roof supported by columns or walls and intended for shelter, housing or enclosure of persons, animals, or property.

**BULK FUEL STORAGE FACILITY:**

Any facility where (1) gasoline is stored in bulk for distribution by delivery truck; (2) fuel, including but not limited to kerosene, home heating oil, diesel fuel, gasoline, or propane, is stored in large volume tanks for distribution to retail or wholesale establishments; or (3) the total combined on-site storage of fuel exceeds twenty thousand (20,000) gallons.

**CHILD CARE FACILITY:**

*"Child Care Services"* means the provision of out-of-home care for children for part of a 24 hour day, excluding the care provided by relatives.

*"Group Child Care Home"* means a structure in which child care services are provided for seven (7) or more children at any one time, where the child care areas within the structure are not jointly used as a portion of a family residence.

*"Family Child Care Center"* means a residential structure in which child care services are provided for more than six (6) but less than twelve (12) children, at any one time, where the child care areas are also used as a portion of a family residence.

**CLEAR SIGHT TRIANGLE:**

An area of unobstructed Vision at street intersections defined by lines of sight between points at a given distance from the "corner" so as not to interfere with traffic visibility across the corner.

**CLINIC:**

A facility comprised of professional offices, for the examination and treatment of persons as outpatients by physicians, dentists or other licensed medical specialists, in which said medical practitioners work in cooperative association. Said clinics may provide medical

services customarily available at hospitals, excluding overnight care of patients and 24 hour emergency service.

**CLUB:**

Buildings or facilities owned or operated by a corporation, association, or persons for a social, educational, or recreational purpose; but not primarily for profit or to render a service that is customarily carried on as a business.

**COMMON OPEN SPACE:**

A parcel or parcels of land, which may include an area of water, within a development site and designated and intended for the use or enjoyment of residents of a planned residential development, exclusive of streets, off-street parking areas and areas set aside for public facilities.

**COMMERCIAL COMMUNICATION ANTENNA:**

Any device used for the transmission or reception of radio, television, wireless telephone, pager, commercial mobile radio services, or any wireless communication signals, including without rotation, omni-directional or whip antennas and directional or panel antennas, owned and operated by any person or entity licensed by the Federal Communications Commission (FCC) to operate such device. This definition shall not include private residences mounted satellite dishes or television antennas or amateur radio equipment, including without limitation, ham or citizen band radio antennas.

**COMMERCIAL COMMUNICATIONS EQUIPMENT BUILDING:**

An unmanned building or cabinet containing communication equipment for the operation of a Commercial Communication Antenna.

**COMMERCIAL COMMUNICATIONS FACILITY:**

The components normally associated with the use and operation of a Commercial Communication Antenna including a Commercial Communication Tower and Commercial Communications Equipment Building.

**COMMERCIAL COMMUNICATION TOWER:**

A structure other than a building, such as a monopole, self-supporting or guyed tower, designed and used to support a Commercial Communication Antenna.

**COMMERCIAL COMMUNICATIONS TOWER; HEIGHT:**

The vertical distance measured from the ground to the highest point on a communications Tower, including antennas mounted on the tower.

**COMMERCIAL USE:**

An occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.

**COMMUNITY CENTER:**

A place, structure, area, or other facility used for and providing religious, fraternal, social, and/or recreational programs generally open to the public and designed to accommodate and serve significant segments of the community.

**CONDITIONAL USE:**

A use that, owing to some special characteristics attendant to its operation or installation, is permitted in a zoning district subject to approval by the Governing Body and subject to special requirements, different from those usual requirements for the zoning district in which the conditional use may be located.

**CONDOMINIUM:**

A building, or group of buildings, in which units are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis.

**CONVENIENCE STORE:**

Any retail establishment offering for sale prepackaged food products, household items, and other goods commonly associated with the same.

**COUNTY PLANNING COMMISSION:**

The Planning Commission of Luzerne County.

**CRITICAL AREAS:**

An area with one or more of the following characteristics: stream corridors, streams, flood plain areas, wetlands, slopes which equal or exceed fifteen (15%) percent, soils classified as highly acidic or highly erodible, soils classified as having a high water table, land and associated soils which display poor percolation, mature stands of native vegetation and aquifer recharge and discharge area.

**CARPORT:**

A roofed structure opened on two (2) or more sides and used for the storage of private motor vehicles. It may be constructed as a separate accessory structure or part of the principal structure.

**CELLAR:**

The portion of any building which is located partly underground, but having one-half or more of its height, measured from finished floor grade to finished ceiling, below the average grade of the adjoining land. A cellar shall not be counted as a story for the purposes of administering height regulations of this Ordinance.

**CERTIFICATE OF OCCUPANCY:**

The certificate issued by the Zoning Officer after he has inspected any structure, building, sign and/or land or portion thereof for which a zoning permit was issued in order to determine compliance with the terms of the permit and the zoning ordinance before the structure, building, sign, and or land or portion thereof can be lawfully used and/or occupied.

**CHANGE OF USE:**

Any use which differs from the previous use of a building, structure or land.

**DENSITY:**

The number of dwelling units permitted per net unit of land.

**DECISION:**

Final adjudication of any board or other body granted jurisdiction under any land use ordinance or this act to do so, either by reason of the grant of exclusive jurisdiction or by reason of appeals from determinations. All decisions shall be appealable to the Court of Common Pleas of Luzerne County.

**DEVELOPMENT:**

The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure, any mining, excavation, landfill, or land disturbance; and any use or extension of the use of land.

**DETERMINATION:**

Final action by an officer, body or agency charged with the administration of any land use ordinance or applications hereunder, except the following:

1. the governing body;
2. the zoning hearing board; or
3. the planning commission, only if and to the extent the planning commission is charged with final decision on preliminary or final plans under the subdivision and land development ordinance or planned residential development provisions. Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal.

**DISTRICT: (See Zoning District)**

**DWELLING:**

A building or portion thereof used exclusively for residential purposes, including one-family, two-family, and multiple-family dwellings, but not including hotels and boarding houses and dormitories.

**DWELLING, MULTIFAMILY:**

A detached residential building containing three or more dwelling units, including what is commonly known as an apartment building.

**DWELLING, SINGLE-FAMILY, ATTACHED (GROUP, ROW, AND TOWNHOUSES):**

One of two or more residential buildings having a common or party wall separating dwelling units.

**DWELLING, SINGLE-FAMILY, DETACHED:**

A residential building containing not more than one dwelling unit.

**DWELLING, TWO FAMILY:**

A residential building containing two (2) dwelling units, entirely separated from each other by vertical walls or horizontal floors, excluding possible common access to enter/exit the building or for access to a common cellar or basement.

**DWELLING UNIT:**

One or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with separate toilets and facilities for cooking and sleeping.

**EASEMENT:**

A grant of one or more of the property rights by the property owner to and/or for the use by the public, a corporation or another person or entity.

**EASEMENT, DRAINAGE:**

An easement required for the installation of storm water sewers or drainage ditches, and/or required for the preservation or maintenance of a natural stream or water course or other drainage facility.

**ENTERTAINMENT FACILITIES:**

Commercial establishments engaged in providing entertainment for a fee or an admission charge, such as a arcade, bowling alley, billiard hall, roller skating rink or similar facilities.

**ENVIRONMENTAL IMPACT STATEMENT:**

A report and/or series of reports on the effect of a proposed development or major action which may significantly affect the environment and associated features hereunder.

**EXCAVATION:**

Removal or recovery by any means whatsoever of soil, rock, minerals, mineral substances or organic substances other than vegetation, from water or land on or beneath the surface thereof, or beneath the land surface, whether exposed or submerged.

**FAMILY:**

One or more persons occupying a dwelling unit and living together as a single nonprofit housekeeping unit. Foster children placed into the care and custody of a family shall be deemed to be a member of the family. A group in excess of three (3) individuals who are not related by blood, marriage or legal adoption, shall not be deemed to constitute a family.

**FLOOD:**

The temporary inundation of normally dry land.

**FLOOD, ONE-HUNDRED YEAR:**

A flood that on the average is likely to occur once every one hundred (100) years, i.e., that has a one percent (1%) chance of occurring each year, although the flood may occur in any year.

**FLOOD, REGULATORY:**

The flood which has been selected to serve as the basis upon which the flood plain management provisions of this and other ordinances have been prepared. The One Hundred-Year Flood shall be deemed as the regulatory flood.

**FLOODPLAIN:**

A relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river, or watercourse; and/or any area subject to the unusual and rapid accumulation of surface water from any source.

**FLOODPROOFING:**

Any combination of structural and non-structural additions, changes, or adjustments to properties and structures which reduce or eliminate flood damage to property, structures, and contents of buildings.

**FLOODWAY:**

The channel of a river, stream, or other watercourse and the adjacent land areas that must be reserved in order to discharge the 100-year flood within cumulatively increasing the water surface elevation more than one foot at any point.

**FLOODWAY FRINGE:**

All that land in a floodplain not lying within a delineated floodway. Land within a floodway fringe is subject to inundation by relatively low velocity flows and shallow water depths.

**FLOOR AREA, GROSS:**

The sum of the total horizontal areas of the several floors of all buildings on a lot, measured from the interior faces of exterior walls.

**FLOOR AREA RATIO:**

Determined by dividing the gross floor area of all buildings on a lot by the area of that lot.

**FOOD PROCESSING ESTABLISHMENT:**

Manufacturing establishments producing or processing foods for human consumption and certain related products. Includes (1) bakery products, sugar and confectionery products (except facilities that produce goods only for on-site sales with no wider distribution); (2) dairy products processing; (3) fats and oils products; (4) fruit and vegetable canning, preserving, and related processing; (5) grain mill products and by-products; (6) meat, poultry, and seafood canning, curing, and by-product processing (not including facilities that also slaughter animals); and (7) miscellaneous food preparation from raw products, including catering services that are independent from food stores or restaurants.

**FORESTRY:**

Activities involving the management of forests and timberlands when practice in accordance with accepted silvicultural principles, through developing, cultivating, harvesting, transporting and selling trees for commercial purposes, which does not involve any land development.

**FRONTAGE:**

The length of anyone property line of a premises, which property line abuts a legally accessible street right-of-way.



**GARAGE, PRIVATE:**

A noncommercial building for the private use of the owner or occupant of a principal building situated on the same lot of the principal building for the storage of motor vehicles with no facilities for mechanical service or repair of a commercial or public nature.

**GARAGE, REPAIR: (SEE ALSO SERVICE STATION)**

A commercial building designed and used for the storage, care, repair, or refinishing of motor vehicles including both minor and major mechanical overhauling, paint, and body work.

**GENERAL NUISANCE:**

Any use considered to be inconsistent with the public comfort, convenience health safety, and general welfare, including the following: fire and explosion hazards; electrical and radioactive disturbances; noise and vibration; dust, dirt, and fly ash; glare; smoke and odors; and other forms of air pollution.

**GOVERNING BODY:**

The Borough Council of Ashley Borough, Luzerne County, Pennsylvania.

**GROUP RESIDENCE:**

A dwelling unit which is shared under congregate living arrangements by more than three (3) persons, who are residents of the dwelling unit by virtue of their need to receive supervised services limited to health, social and/or rehabilitative services provided by a person or persons or their licensed or certified agents, a governmental agency or their licensed or certified agents, a responsible corporation or their licensed or certified agents, a partnership or limited partnership or their licensed or certified agents or any other legal entity. Such services shall be provided on a continuous basis in a family-like environment to persons who are in need of supervision and/or specialized services in a residential setting.

The following shall not be deemed to constitute a Group Residence:

A boarding home and/or a personal care boarding home.

A facility providing shelter and/or rehabilitative care or treatment of persons for alcoholism and/or an addiction to a controlled substance.

A facility for persons released from or under the jurisdiction of a governmental bureau of corrections or similar institution.

**HAZARDOUS SUBSTANCE/MATERIAL:**

Any substance and/or material that, by reason of its quantity, concentration, or physical, chemical or infectious characteristics, may:

- a. Cause, or significantly contribute to, an increase in mortality or an increase in a serious irreversible or incapacitating illness.
- b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Hazardous substances and/or materials shall also include but not be limited to explosives and blasting agents, compressed gases, flammable and combustible liquids, flammable solids, organic peroxides, oxidizers, pyrophoric materials, unstable (reactive) materials, water-reactive solids and liquids, cryogenic fluids, highly toxic and toxic materials, radioactive materials, corrosives, carcinogens, irritants, sensitizers, and other health hazards.

**HEALTH/RECREATION FACILITY:**

An indoor facility including uses such as game courts, exercise equipment, locker rooms, jacuzzi, and/or sauna and pro shop.

**HOME OCCUPATION:**

An occupation, profession, activity, or use that is clearly a customary, incidental, and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.

**HOSPITAL:**

An institution specializing in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and injured persons, and licensed by state law to provide facilities and services in surgery, obstetrics, and general medical practice.

**HOTEL: (ALSO SEE MOTEL)**

A facility offering transient lodging accommodations on a daily rate to the general public and providing additional services, such as restaurants, meeting rooms, and recreational facilities.

**IMPACT ANALYSIS:**

A study and/or report, which may be required at the discretion of the Borough Council prior to approval of a conditional use, to determine the potential impact of the proposed use on activities, utilities, traffic generation and circulation, surrounding land uses, community facilities, environmental features, critical areas, the public health, safety and welfare and other factors directly, indirectly or potentially affected. The applicant shall be responsible for all costs related to the any and all reports and/or studies required by the Borough Council under or within the context of the term "IMPACT ANALYSIS." The landowner and/or applicant shall also be responsible to fully reimburse Ashley Borough for any and all engineering and or other consulting fees which are incurred for the review of any required impact studies or reports.

**IMPERVIOUS MATERIAL:**

Any material and/or development that substantially reduces or prevents the infiltration of storm water into previously undeveloped land. Impervious surfaces shall include, but may not be limited to, buildings, roofs, surfaced, graveled or compacted parking areas, streets, sidewalks, driveways and similar vehicular and/or pedestrian right-of-ways.

**INDUSTRY, HEAVY:**

A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous substances or commonly recognized offensive conditions and having potential external effects such as noise, dust, glare, odors or vibration. "Heavy Industry" shall also mean those uses engaged in the operation a solid waste facility regulated by the Pennsylvania Department of Environmental Protection including but not limited to sanitary waste transfer stations, recycling facilities extraction of natural resources and truck terminals

**INDUSTRY, LIGHT:**

Uses engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, or distribution of such products. Light industry must be capable of operation in such a manner to control the external effects of the manufacturing process, such as smoke, noise, soot, dirt, vibration, odor, etc. Light industry shall not include uses such as mining and extracting industries, petrochemical industries, rubber refining, primary metal and/or any form of basic industrial processing, facilities and/or operations involving but not limited to the use and/or storage of hazardous substance and/or material.

**INSTITUTIONAL USE:**

A structure or facility which provides medical, health, educational, social and/or rehabilitative services to more than eight (8) persons on a continuous and/or regular basis.

**JUNK:**

Old, dilapidated, scrap or abandoned metal, paper, building material and equipment, bottles, glass, appliances, furniture, beds and bedding, rags, rubber, motor vehicles, and parts thereof

**JUNKYARD (See also Automobile Wrecking Yard):**

An open area where wastes or used or secondhand materials are bought, sold, exchanged, stored, processed, or handled. Materials shall include but are not limited to scrap iron and other metals, paper, rags, rubber tires, and bottles. An automobile wrecking yard is also considered a junkyard.

## **LAND DEVELOPMENT**

The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving

- A. a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, a single nonresidential building on a lot or lots regardless of the number of occupants or tenure, with the size of the building exceeding five thousand (5,000) square feet
- B. The division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features, including mobile home parks under single ownership.
- C. a single residential structure, including new construction or the conversion of an existing structure, designed to contain more than five (5) residential units.
- D. The conversion of an existing single-family detached dwelling or single family semidetached dwelling into more than three (3) residential units. Any conversion, described above, which results in not more than three (3) residential units shall be deemed as a land development if the units are intended to be a condominium.

## **LANDOWNER:**

The legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner, or other person having a propriety interest in land.

## **LOT:**

A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit, for principal and accessory buildings or structures.

## **LOT AREA:**

The total horizontal area within the lot lines of a lot.

## **LOT, CORNER:**

A lot abutting on and at the intersection of two or more streets.

## **LOT COVERAGE:**

Determined by dividing that area of a lot which is occupied or covered by the total horizontal projected surface of all buildings, including covered porches and accessory buildings and structures, by the gross area of that lot.

**LOT DEPTH:**

The average horizontal distance between the front and rear lot lines.

**LOT LINE:**

A line dividing one lot from another lot or from a street or alley.

**LOT LINE, REAR:**

The lot line not intersecting a front lot line that is most distant from and most closely parallel to the front lot line. A lot bounded by only three lot lines will not have a rear lot line.

**LOT LINE, SIDE:**

Any lot line not a front or rear lot line.

**LOT OF RECORD:**

A lot which exists as shown or described upon a plat or deed and duly recorded in the Office of the Recorder of Deeds of Luzerne County, Pennsylvania, on the effective date of the adoption of this Ordinance.

**LOT, THROUGH:**

A lot having its front and rear yards each abutting on a street.

**LOT WIDTH:**

The horizontal distance between side lot lines, measured at the required front setback line.

**MACHINE SHOPS:**

Shops where lathes, presses, grinders, shapers, and other wood- and metal-working machines are used such as blacksmith, tinsmith, welding, and sheet metal shops; plumbing, heating, and electrical repair shops; and overhaul shops.

**MEDIATION:**

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

**MOBILE HOME:**

A transportable, single family dwelling intended for permanent occupancy, contained in one unit, or in two or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for

occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundations.

**MOBILE HOME LOT:**

A parcel of land in a mobile home park, improved with the necessary utility connections and other appurtenances necessary for the erections thereon of a single mobile home.

**MOBILE HOME PARK OR MANUFACTURED HOME:**

Any area, lot, parcel, or tract held in common ownership, and on which individual portions of said area, lot, parcel, or tract are leased for the placement of manufactured homes as a primary residence.

**MOTEL (See also Hotel):**

A building or group of buildings containing apartments and/or rooming units, each of which maintains a separate outside entrance. Such building or group of buildings is designed, intended, or used primarily for the accommodations of automobile travelers and provides automobile parking conveniently located on the premises.

**MUNICIPALITY:**

Ashley Borough, Luzerne County, Pennsylvania.

**NIGHTCLUB:**

A commercial establishment dispensing alcoholic beverages for consumption on the premises and in which dancing is permitted, including the term "cabaret."

**NO IMPACT HOME BASED BUSINESS:**

A business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling, and which involves no customer, client or patient traffic, whether vehicular or pedestrian, pick-up, delivery, or removal functions to or from the premises in excess with those normally associated with a residential use.

**NONCONFORMING LOT:**

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

**NONCONFORMING STRUCTURE:**

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

**NONCONFORMING USE:**

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

**OFFICE:**

A building or portion of a building, wherein services are performed involving predominantly administrative, professional, or clerical operations.

**OPEN SPACE:**

An area that is intended to provide light and air, and is designed for either environmental, scenic, or recreational purposes. Open space may include, but is not limited to, lawns, decorative planting, walkways, active and passive recreation areas, playgrounds, fountains, swimming pools, wooded areas, and water courses. Open space shall not be deemed to include driveways, parking lots, or other surfaces designed or intended for vehicular travel.

**OUTDOOR STORAGE:**

The keeping, in an unroofed area, of any goods, material, merchandise, equipment or vehicles which are related to the operation of a commercial business, excluding the storage of solid waste, hazardous substances, refuse, junk or any inoperative durable items.

**OUTDOOR WOOD-FIRED BOILER:**

A fuel-burning device designed: (1) to burn clean wood or other approved solid fuels; (2) by the manufacturer specifically for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals (e.g., garages); and (3) to heat building space and/or water via distribution, typically through pipes of a fluid heated in the device, typically water or a water/antifreeze mixture. Outdoor wood-fired boilers are also known as outdoor wood-fired furnaces, outdoor wood-burning appliances, or outdoor hydronic heaters, etc.

**PARCEL:**

A continuous quantity of land in the possession of or owned by, or recorded as the property of, the same person or persons.

**PARKING SPACE:**

An unobstructed space or area other than a street or alley that is permanently reserved and maintained for the parking of one motor vehicle. The minimum area of such a space shall be one hundred and eighty (180) square feet, with the linear dimensions being nine (9) feet by twenty (20) feet.

**PERSONAL SERVICES:**

Any enterprise conducted for gain, which primarily offers services to the general public, such as shoe repair, valet service, watch repairing, barber shops, beauty parlors, and related activities.

**PLACE OF WORSHIP:**

A building used for religious services, including churches, synagogues, mosques and similar edifices.

**PLANNING COMMISSION:**

The Planning Commission of Ashley Borough.

**PLANNED RESIDENTIAL DEVELOPMENT:**

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

**PRINCIPAL USE:**

The main use of land or structures, as distinguished from a secondary or accessory use.

**PRIVATE:**

Something owned, operated and supported by private individuals or a corporation, rather than by government, and not available for public use.

**PUBLIC:**

Something owned, operated and supported by the Community or the residents for the use and benefit of the general public.

**PUBLIC HEARING:**

A formal meeting held pursuant to public notice by the Governing Body, Planning Commission or Zoning Hearing Board, which is intended to inform and obtain public comment prior to taking action on a particular subject matter or development.

**PUBLIC MEETING:**

A forum held pursuant to notice under the Act of July 3, 1986 (P.L. 388, No. 84), known as the "Sunshine Act."



**PUBLIC NOTICE:**

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

**PUBLIC USES:**

Public schools, parks and administrative cultural and service buildings excluding public land or buildings primarily devoted to the storage and maintenance of equipment and materials.

**PUBLIC UTILITIES FACILITIES:**

Telephone, electric and cable television lines, equipment and structures; water or gas pipes, mains, valves, or structures, pumping stations; telephone exchanges and all other facilities, equipment and structures necessary for conducting a service by public utility.

**RECREATIONAL FACILITIES, COMMERCIAL:**

Recreational facilities operated as a business and open to the public for a fee.

**RECREATIONAL FACILITIES, PRIVATE:**

Recreational facilities other than commercial or public, not operated for a profit, and only open to its members and their guests.

**RECREATIONAL FACILITIES, PUBLIC:**

Recreational facilities operated as a nonprofit enterprise by a governmental entity or a nonprofit organization, and open to the general public.

**RECYCLING CENTER:**

A facility licensed by the Pennsylvania Department of Protection designed to be a collection point where only recyclable materials are sorted and/or temporarily stored prior to delivery to a permanent disposal site, or shipment to others for reuse, and/or processing into new products.

**REPORT:**

Any letter, review, memorandum, compilation or similar writing made by anybody, board, officer or consultant other than a solicitor to any other body, board, officer or consultant for the purpose of assisting the recipient of such report in the rendering of any decision or determination. All reports shall be deemed recommendatory and advisory only and shall not be binding upon the recipient, board, officer, body or agency, nor shall any appeal lie therefrom. Any report used, received or considered by the body, board, officer or agency rendering a determination or decision shall be made available for

inspection to the applicant and all other parties to any proceedings upon request, with copies thereof provided at the cost of reproduction.

**RESEARCH AND DEVELOPMENT FACILITY:**

Research, development, and testing laboratories that do not involve the mass manufacture, fabrication, processing, or sale of products. Such uses shall not produce noise, dust, glare, odors or vibration beyond its property line.

**RESTAURANT:**

A business establishment whose principal business is the selling of unpackaged food to the customer in a ready-to-consume state, in individual servings, or in indispensable containers, and where the customer consumes these foods while seated at tables or counters located within the building.

**RIGHT-OF-WAY:**

A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer line, or other special use.

**ROOMING HOUSE:**

A building, or portion thereof, in which lodging is provided by the owner or operator for not more than four (4) persons

**SATELLITE DISH ANTENNA:**

A device incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, cone, horn, or cornucopia. Such device shall be used to transmit and/or receive radio or electromagnetic waves between terrestrial and/or orbital based uses. This definition is meant to include but not be limited to what are commonly referred to as satellite earth stations. TVROs (television reception only satellite dish antennas), and satellite microwave antennas.

**SEWAGE DISPOSAL CENTRALIZED**

A sanitary sewage collection system, approved by the Pennsylvania Department of Environmental Resources, in which sewage is carried from individual lots by a system of pipes to a central treatment and disposal facility.

**SEWAGE DISPOSAL ON-LOT:**

Any facility designed to biochemically treat sewage within the boundaries of an individual lot in accordance with the applicable rules and regulations of the Pennsylvania Department of Environmental Resources.

**SCHOOL:**

A facility that provides a curriculum of elementary and secondary academic instruction, including kindergartens, elementary schools, junior high schools, and high schools.

**SCREENING:**

The method by which a view of one site from another adjacent site is shielded, concealed, or hidden. Screening techniques include fences, walls, hedges, berms, or other features.

**SEATING CAPACITY:**

The actual seating capacity of an area based upon the number of seats or one seat per 18 inches of bench or pew length. For other areas where seats are not fixed, the seating capacity shall be determined as indicated by the Uniform Building Code.

**SELF-SERVICE STORAGE FACILITY:**

A building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual compartmentalized and controlled access stalls or lockers for the storage of customer's goods or wares.

**SERVICE STATION: (SEE ALSO GARAGE, REPAIR)**

Any premises where gasoline and other petroleum products are sold and/or light maintenance activities such as engine tune-ups, lubrication and minor repairs are conducted. Service stations shall not include service and maintenance activities which include or are comparable to those provided for under the definition of a "Repair Garage".

**SELF-SERVICE STATION:**

An establishment where liquids used as motor fuels are stored and dispersed into the fuel tanks of motor vehicles by persons other than the service station attendant and may include facilities available for the sale of other retail products, subject to the sales of other retail products being secondary and incidental to the principal use.

**SETBACK:**

The required minimum horizontal distance between the building line and the related front, side or rear property line.

**SIGN:**

A structure or device designed or intended to convey information to the public in written or pictorial form.

**SIGN AREA:**

The entire area within a continuous perimeter, enclosing the extreme limits of sign display, including any frame or border. Curved, spherical, or any other shaped sign face shall be computed on the basis of actual surface area. The copy of signs composed of individual letters, numerals, or other devices shall be the sum of the area of the smallest rectangle or other geometric figure encompassing each of said letter or devices. The calculation for a double-faced sign shall be the area of one face only. Double-faced signs shall be so constructed that the perimeter of both faces coincide and are parallel and not more than 24 inches apart.

**SITE PLAN:**

A plan prepared to scale, showing accurately and with complete dimensions, the boundaries of a site and the location of all buildings, structures, uses, and features proposed for a specific parcel of land.

**SPECIAL EXCEPTION:**

A use which may only be permitted in a particular zoning district, by special approval, granted by the Zoning Hearing Board in accordance with the applicable provisions of this Ordinance.

**SOCIAL HALL:**

A room or building used for friendly or convivial gatherings, normally owned and/or operated by a nonprofit or civic organization.

**SOLID WASTE OR WASTE:**

Any garbage, refuse, industrial, lunchroom or office waste or other material including solid, liquid, semisolid or contained in gaseous material, resulting from the operation of residential, municipal, commercial or institutional establishments and from community activities, excluding "Hazardous Substances" as so defined by this Ordinance and "Hazardous Waste", as so defined by the Pennsylvania Department of Environmental Resources, pursuant to Chapter 271.1, under the Solid Waste Management Act, as amended.

**SOLID WASTE FACILITY:**

Any facility whose operations include the following as defined and regulated by the Pennsylvania Department of Environmental Protection: landfills, transfer facilities, refuse vehicle staging areas, resource recovery facilities, waste disposal and processing facilities and recycling facilities.

**STAGING AREA:**

Any area where vehicles containing solid waste are parked, stored or located prior to depositing said solid waste at a solid waste facility. Said use shall be classified and regulated as a "Solid Waste Facility".

**STORY:**

That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, the space between such floor and the ceiling above. A basement shall be counted as a story if its ceiling equals or exceeds five (5) feet of the finished ground surface adjoining the exterior walls of such story.

**STREET:**

A public (dedicated) or private (undedicated) right-of-way, whether or not improved, intended for use by vehicular and pedestrian traffic.

**STRUCTURE:**

Any man-made object, the use of which requires an ascertainable stationary location on land, whether or not it is affixed to the land.

**SUBDIVISION:**

The division or redivision of a lot, tract or parcel of land into two or more lots, tracts or parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership of buildings or lot development.

**TOWER:**

A structure situated on a nonresidential site or lot which is intended for transmitting or receiving television, radio, or telephone communications.

**TOWNHOUSE:**

An attached residential building containing not less than three (3) single family dwelling units, but not more than six (6) single family dwelling units, having separate front and rear access to the outside, with no dwelling unit located above any other. Each dwelling unit is separated from one another by one or more common walls.

**TRANSFER STATION:**

A facility which receives and temporarily stores solid waste at a location other than the generation site, which facilitates the bulk transfer of accumulated solid waste to another facility or site for further processing and/or disposal of said solid waste. Said use shall be classified and regulated as a " Solid Waste Facility".

**TRUCK TERMINAL:**

An area and building where trucks load and unload cargo and freight, and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation, which may also include the incidental storage or parking of trucks awaiting cargo as well as facility for servicing trucks.

**VARIANCE:**

A waiver granted by the Zoning Hearing Board from the terms and requirements of this Ordinance in accordance with Section 1509 of this Ordinance.

**WAREHOUSE:**

A building used primarily for storage of goods and material.

**WAREHOUSING AND DISTRIBUTION:**

A use engaged in storage, wholesale and distribution of manufactured products, supplies and equipment, excluding the bulk storage of material that are inflammable, explosive, hazardous or commonly recognized as offensive.

**WATER SUPPLY SYSTEM CENTRALIZED:**

A public or privately owned system, under the jurisdiction of the Pennsylvania Public Utility Commission, designed to transmit potable water from a common source to users, and in compliance with the governing standards of all applicable State agencies. Any water supply system not deemed as a centralized water supply system shall be deemed to be an on-site water supply system.

**WETLANDS:**

Those areas that are inundated or saturated by the surface or ground water at a frequency or duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas. The term includes but is not limited to wetland areas listed in The State Water Plan, The United States Forest Service Wetlands Inventory of Pennsylvania, The Pennsylvania Coastal Zone Management Plan and any wetland area designated by a river basin commission.

**YARD:**

An open space that lies between the principal building and the nearest lot line. Such yard is unoccupied and unobstructed from the ground up except for accessory buildings or projections which are expressly permitted by this Ordinance.

**YARD, FRONT:**

A space extending the full width of the lot between the principal building and the front lot line and measured perpendicular to the building at the closest point to the front lot line.

**YARD, REAR:**

A space extending the full width of the lot between the principal building and the rear lot line and measured perpendicular to the building at the closest point to the rear lot line.

**YARD, SIDE:**

A space extending from the front yard to the rear yard between the principal building and the side lot line measured perpendicular from the side lot line to the closest point of the principal building.

**ZONING DISTRICT:**

A portion of Ashley Borough illustrated upon the Official Zoning Map, within which certain uniform regulations and requirements apply under the provisions of the Zoning Ordinance.

**ZONING HEARING BOARD:**

The Zoning Hearing Board of Ashley Borough, Luzerne County, Pennsylvania.

**ZONING MAP:**

The official map which is part of the Zoning Ordinance and indicates and delineates the zoning districts of Ashley Borough, Luzerne County, Pennsylvania.

**ZONING OFFICER:**

The administrative officer appointed by the Governing Body to administer and enforce the Zoning Ordinance of Ashley Borough, Luzerne County, Pennsylvania.

This page is intentionally left blank



**ARTICLE 3**

**GENERAL REGULATIONS**

**SECTION 301    COMPLIANCE REQUIRED**

No structure or land shall be used or occupied, and no structure or part of a structure shall be erected, demolished, altered converted or moved, unless in compliance with all applicable provisions and regulations of this Ordinance

**SECTION 302    INTERPRETATION AND CONFLICT**

In interpreting and applying the provisions of this Ordinance, they shall be held to the minimum requirements for the protection and promotion of the public health, safety, convenience, comfort, morals, and general welfare of the residents of the Borough. In the event of any conflict ill the application of this Ordinance with other applicable public or private provisions, the following shall apply:

**A. PUBLIC PROVISIONS**

The regulations of this Ordinance are not intended to interfere with or abrogate or annul any other ordinance, rules or regulations previously adopted or previously issued by the Borough which are not in conflict with any provisions of this Ordinance. Where this Ordinance imposes a greater restriction upon the use of land, structure or building than any other previously adopted ordinance, rules, or regulations of the Borough, the provisions of this Ordinance shall apply.

**B. PRIVATE PROVISIONS**

The regulations of this Ordinance are not intended to interfere with or abrogate or annul any easement, covenant or other form of private agreement or restriction, provided that where the provisions of this Ordinance impose a greater restriction, the requirements of this Ordinance shall govern. Where the provisions of any easement, covenant or other form of private agreement or restriction imposes obligations, duties and/or requirements which are more restrictive and/or impose higher standards than the requirements of this Ordinance, and such private provisions are not inconsistent with the requirements of this Ordinance, then such private provisions shall be operative and supplemental to the requirements of this Ordinance.

**SECTION 303    ATTACHED ACCESSORY STRUCTURES**

Accessory structures which are attached to a principal structure shall be considered a part of the principal structure and shall comply with the same yard and lot requirements applicable to the principal structure.

## **SECTION 304 UNATTACHED ACCESSORY STRUCTURES**

### **314.1 NONRESIDENTIAL**

When the principal use or structure is nonresidential, an unattached accessory structure shall comply with the front yard setback requirements applicable to the principal structure or use for the zoning district in which it is located and shall not be less than fifteen (15') feet from any side yard lot line or rear yard lot line.

### **314.2 RESIDENTIAL**

When the principal structure is residential, unattached accessory structures shall only be erected within the rear yard or side yard areas of the lot subject to the following requirements:

- a) The maximum height shall not exceed one and one-half (1.5) stories or fifteen (15') feet, whichever is the lesser.
- b) An accessory structure shall not be located less than five (5') feet from a side lot line or the rear lot line; in cases where it abuts a street or alley a setback of ten (10') feet shall be required.

## **SECTION 305 CORNER LOT RESTRICTION**

On a corner lot there shall be provided on each side thereof, adjacent to a street, a yard setback equal in depth to the required front yard setback of the prevailing zoning district in which the corner lot is located.

## **SECTION 306 TYPES OF RESIDENTIAL ACCESSORY STRUCTURES**

For residential lots, permitted accessory structures shall include noncommercial greenhouses, tool or lawn sheds, private garages or carports, private noncommercial swimming pools and noncommercial satellite antenna dishes.

## **SECTION 307 RESIDENTIAL ACCESSORY STRUCTURES IN A NONRESIDENTIAL ZONE**

In cases when a residential structure is a nonconforming use, located in a nonresidential zone, the proposed erection of an accessory residential structure shall be deemed exempt from classification as an expansion of a nonconforming use, but shall be subject to the regulations contained under Section 304.2 of this Ordinance.

## **SECTION 308 PRIVATE NON COMMERCIAL SWIMMING POOLS**

Swimming pools shall be located in either the rear yard or side yard of the property on which it is an accessory use. The swimming pool and any accessory structures thereto, shall have a minimum setback of five (5') feet from any rear or side yard lot line; if the rear or side yard abuts a street or an alley, a setback of ten (10) feet shall be required. All

swimming pools, capable of containing water to a depth, at any point, in excess of eighteen (18) inches shall be enclosed in accordance with the following subsections:

**308.1 IN-GROUND POOLS**

The pool or the entire property, on which the pool is located, shall be enclosed with a permanent fence not less than four (4') feet in height, which includes a gate secured with a lock.

**308.2 ABOVE GROUND POOLS**

An above ground pool shall be enclosed with a permanent fence not less than four (4') feet in height which includes a gate secured with a lock in accordance with the above requirements of Section 308.1 or in lieu of a fence, a barrier not less than four (4') feet in height. Said barrier may include the pool wall and any extension thereto which equals or exceeds a height of four (4') feet. Access into the pool shall be secured by a gate with a lock, retractable steps or any similar device which prohibits uncontrolled access into the pool when not in use. Shrubbery is not to be considered as a barrier. Decks which are attached to the pool shall not project into any required yard setback for the pool.

**308.3 EXISTING POOLS**

Existing pools shall conform to the requirements of this Section within one (1) year from the effective date of this Ordinance.

**SECTION 309 LOTS DIVIDED BY ZONING BOUNDARIES**

If a zoning district boundary line divides a lot held in single and separate ownership prior to the effective date of this Ordinance, placing eighty-five (85%) percent or more of the lot area in a particular zoning district, the location of such district boundary line may be construed to include the remaining fifteen (15%) percent or less of the lot so divided.

**SECTION 310 PROJECTIONS INTO REQUIRED YARDS**

The following projections shall be permitted into required yards and shall not be considered in the determination of yard setback requirements or building coverage:

- a) Terraces or Patios: provided that such terraces or patios are not under roof, without walls or other form of enclosure and are not closer than five (5') feet to any adjacent lot line.
- b) Projecting Architectural Features: such as bay windows, cornices, eaves, fireplaces, chimneys, window sills, or other similar architectural features provided that any of the aforementioned features do not extend more than two feet into any required setback.
- c) Uncovered Porches: provided that such does not exceed four (4') feet in length and four and one-half (4.5') feet in depth as extended from the structure.

- d) Handicapped Ramps: may be constructed without meeting any applicable front and/or rear yard setback requirements in any Zoning District, but shall have a minimum side yard setback of not less than five (5') feet.

**SECTION 311    EXCEPTIONS TO HEIGHT LIMITATIONS**

The height limitations of this Ordinance shall not apply to church spires, belfries, cupolas, domes, chimneys, flagpoles, water towers, television or radio transmission towers, skylights; nor to any accessory mechanical appurtenances usually located above the roof level.

**SECTION 312    CONVERSION OF NONRESIDENTIAL STRUCTURES**

The conversion of a building not constructed for residential use which is located in an R Zone or a nonresidential district may be converted into a residential use upon approval of such as a special exception use and subject to the following:

- a) A ratio of one (1) dwelling unit for every three thousand (3,000) square feet of lot area, provided that not more than six (6) dwelling units shall be created in the conversion of any such building in an R-1 or R-2 District.
- b) All other applicable requirements of this Ordinance are met, including but not limited to, the provision of one (1) off-street parking space for each dwelling unit created.

**SECTION 313    REQUIRED ACCESS**

Every building or structure hereafter erected shall have access to or be located upon a lot adjacent to a public or private street.

**SECTION 314    USES REQUIRING APPROVAL AS A LAND DEVELOPMENT**

**314.1    LAND DEVELOPMENT APPROVAL FOR MULTIPLE STRUCTURES AND/OR USES**

In addition to zoning approval, the proposed development of more than one principal use and/or one principal structure on a zoning lot, whether initially or cumulatively, shall be classified as a "land development," requiring approval under the applicable provisions of the Ashley Borough Subdivision and Land Development Ordinance.

**314.2    LAND DEVELOPMENT APPROVAL FOR CERTAIN ONRESIDENTIAL USES**

In addition to zoning approval, the proposed construction of a nonresidential building with a two (2) or more occupants or a single nonresidential building having a minimum gross floor area of not less than five thousand (5,000) square feet and/or located upon a lot or parcel containing a minimum land area of not less than one acre shall be classified

as a "land development," requiring approval under the applicable provisions of the Ashley Borough Subdivision and Land Development Ordinance.

**SECTION 315 VISIBILITY AT INTERSECTIONS AND PRIVATE DRIVEWAYS**

**315.1 INTERSECTION OF STREETS**

On any corner lot no visual obstruction between two and one-half (2.5') feet and eight (8') feet in height, excluding street signs, utility poles or traffic signs, shall be erected or maintained within the triangle formed by a line projected between two points measured at a minimum distance of ten (10') feet from the intersection of the side yard lot lines of the property which about the public right of way.

**315.2 PRIVATE DRIVEWAYS**

No visual obstruction between two and one-half (2.5') feet and eight (8') feet in height, shall be erected or maintained within the triangles formed by a line projected between two points measured at a minimum distance of eight (8') feet from the outer edge of each side of the driveway in each direction to a depth of eight (8') feet along the centerline of the driveway.

**SECTION 316 FENCES AND WALLS**

**316.1 RESIDENTIAL**

Fences and walls to be constructed within a residential zoning district or upon a lot in any other type of zoning district which contains a residential property, shall be permitted according to the following subsections:

**a) FRONT YARD**

The maximum height of any fence or wall in a front yard shall not exceed four (4') feet in height above the adjacent ground level.

**b) SIDE AND REAR YARDS**

The maximum height of any fence or wall located in a side yard or rear yard shall not exceed six (6') feet in height.

**c) MATERIALS**

All fences shall be constructed with materials recognized by the fencing industry and designed to provide a permanent enclosure. No barbed wire or other potentially injurious material shall be contained upon the fence or as part of the material to construct the fence.

**316.2 NONRESIDENTIAL**

Fences to be constructed within any commercial zoning district shall not exceed eight (8') feet in height above the adjacent ground level. Fences to be constructed within any

industrial zoning district shall not exceed ten (10') feet in height above the adjacent ground level.

**316.3 EXEMPTIONS**

The provisions of this Section shall not be applied to prevent the construction of a chain link, not to exceed fifteen (15') feet in height, designed as an enclosure to public property, a public park, a public playground or similar outdoor recreational facility.

**SECTION 317 PUBLIC UTILITIES**

With the exception of storage yards, the provisions and regulations of this Ordinance shall not apply to any existing or proposed building or extension thereof, used or to be used by a public utility corporation deemed necessary for the convenience or welfare of the public in accordance with Section 619 of the Pennsylvania Municipalities Planning Code, Act 247, as amended.

**SECTION 318 SEWAGE DISPOSAL**

**318.1 SANITARY SEWERS**

Any use or development, which shall generate waste water, shall be connected to a public or private sanitary sewage system, in accordance with the applicable regulations of the Pennsylvania Department of Environmental Resources. The utilization of any type of on-lot sewage disposal shall be prohibited.

**318.1 HOLDING TANKS**

The use of a holding tank shall be expressly prohibited to service any use and/or development.

**SECTION 319 EXEMPTIONS CERTAIN FOR SIDEYARD SETBACKS**

Any structure proposed to subdivided, containing two or more units, residential or nonresidential, shall be exempted from the governing sideyard setback requirements under the Zoning Ordinance relative only to interior sideyards. When a sideyard of a proposed subdivision is directly attached to another unit within the structure, subdivision approval shall exempt the property from requesting and/or securing an interior sideyard variance from the Zoning Hearing Board.

**SECTION 320 HIGHWAY OCCUPANCY PERMIT**

Zoning approval for any proposed use and/or development of a property, which includes the construction and/or relocation of a driveway onto a State Legislative Route, shall be conditioned upon the applicant securing a Highway Occupancy Permit from the Pennsylvania Department Transportation.

**SECTION 321    SOIL EROSION AND SEDIMENTATION CONTROL PLAN**

A prerequisite of zoning approval for any proposed use and/or development of a property which includes earthmoving moving activities shall be subject to the applicant's submission of a Soil Erosion and Sedimentation Control Plan to the Luzerne County Conservation District and approval of said Plan by said agency or written notification that said Plan is not required for the proposed use and/or development.

**SECTION 322    CONFLICTING REGULATIONS**

If in any instance where the use and/or development of a property are subject to any conflicting regulations, the more restrictive shall apply.

This page is intentionally left blank



**ARTICLE 4**

**ZONING MAP AND ZONING DISTRICTS**

**SECTION 401    OFFICIAL ZONING MAP**

Ashley Borough is hereby divided into zoning districts, as shown on the Official Zoning Map, which together with all explanatory matter thereon, is hereby adopted by reference and declared to be part of this Ordinance, together with all future notations, references and amendments.

**SECTION 402    CHANGES TO OFFICIAL ZONING MAP**

Any changes to the location of zoning district boundaries or other matters portrayed upon the Official Zoning Map shall be undertaken in accordance with the applicable provisions contained within Article 14 of this Ordinance and the Pennsylvania Municipalities Planning Code, Act 247, as amended. Such changes shall be provided upon the Official Zoning Map promptly after the enactment of the subject amendment by the Ashley Borough Council.

**SECTION 403    INTERPRETATION OF BOUNDARIES**

For the interpretation of zoning district boundaries, the following subsections shall apply if or when a determination is not made by the Zoning Officer.

**403.1        ZONING HEARING BOARD**

If uncertainty exists as to the boundary of any zoning district shown upon the Official Zoning Map, the Zoning Hearing Board shall determine the location of such boundary according to the guidelines set forth in Section 403.2.

**403.2        GUIDELINES**

- A. Zoning district boundary lines are intended to follow or parallel the center line of streets, streams and railroads; and the lot or property lines as they exist on a recorded deed or plan in the Luzerne County Recorder of Deeds Office at the time of adoption of this Ordinance, unless such zoning district boundary lines are fixed by dimensions as shown on the Official Zoning Map.
- B. Where a zoning district boundary is not fixed by dimensions and where it approximately follows lot lines, and does not scale more than ten (10) feet therefore, such lot lines shall be construed to be such boundaries unless specifically shown otherwise.
- C. If the guidelines as stated above fail to provide and establish the boundary of a zoning district, a survey of the property or area of land in question

shall be made by a registered surveyor, with the cost of the survey paid by the party who is questioning or contesting the boundary location.

**SECTION 404    CLASSES OF ZONING DISTRICTS**

For the purpose of this ordinance, Ashley Borough is hereby divided into zoning districts as designated below:

- |       |  |
|-------|--|
| R-1   | Single-Family Residential District       |
| R-2   | Two-Family Residential District          |
| R-3   | Multi-Family Residential District        |
| R-MHP | Residential Mobile Home Park District    |
| B-1   | Neighborhood Commercial District         |
| B-2   | Highway Service Commercial District      |
| B-3   | General Business District                |
| I-1   | Light Industrial District                |
| 1-2   | Heavy Industrial District                |
| C-1   | Conservation District                    |
| PRD   | Planned Residential Development District |

**ARTICLE 5**

**ZONING DISTRICT REGULATIONS**

**SECTION 501    R-1 SINGLE FAMILY RESIDENTIAL DISTRICT**

**501.1        PURPOSE**

The purpose of this district is to preserve and enhance areas primarily composed of single-family residences at low to moderate land use and population densities. This district is primarily reflective of areas of the Borough which contain stable residences with a minimal amount of nonconforming uses. The majority of land under this classification is located upon streets which are local in nature and carry relatively low volumes of traffic

**501.2        PERMITTED USES**

Single-family Detached Dwellings  
Public Utility Facilities (excluding storage yards)  
Accessory Uses to the Above

**501.3        USES PERMITTED BY SPECIAL EXCEPTION**

Home Occupations  
Public Uses  
Public Recreational Facilities  
Day Care Homes  
Place of Worship  
Accessory Uses to the Above

**501.4        CONDITIONAL USES**

Planned Residential Developments (SEE ARTICLE 6)

**501.5        DIMENSIONAL REGULATIONS**

Each principal building, structure and/or use shall be governed by the following regulations, unless more restrictive standards are applicable, including but not limited to State regulations and supplementary regulations contained in Article 8 of this Ordinance.

- A. Minimum Lot Area: Each principal building or use shall be located upon a lot having a minimum lot area of not less than five thousand (5,000) square feet.
- B. Minimum Lot Width: Fifty (50) feet, as measured from a depth of the required front yard setback.

- C. Front Yard: Twenty (20') feet in depth as measured from the front lot line.
- D. Rear Yard: Twenty-five (25') feet in depth as measured from the rear lot line.
- E. Side Yard: The side yard shall be not less than ten (10') feet on each side.
- F. Lot Coverage: Not more than thirty-five (35%) percent of the lot area shall be covered with buildings or structures.
- G. Building Height: The maximum height of any building shall not exceed two and one-half (2.5) stories or thirty-five (35') feet.
- H. Maximum Density: Not to exceed five thousand (5,000) square feet per dwelling unit.

**501.6      SUPPLEMENTARY REGULATIONS (SEE ARTICLE 8)**

**501.7      SUBDIVISION AND LAND DEVELOPMENT**

Any property proposed to be divided into parcels or developed in accordance with the definitions of a "Subdivision" or "Land Development", as provided in Article 2 of this Ordinance, shall also be subject to the governing regulations and provisions of the Ashley Borough Subdivision and Land Development Ordinance.

**SECTION 502    R-2 TWO FAMILY RESIDENTIAL DISTRICT**

**502.1    PURPOSE**

The majority of residential land within Ashley Borough is classified as R-2. The uses within this District are primarily single family and two-family residences with land use and population densities which are moderate, but higher than those within the R-1 District. Similar to the R-1 District, the majority of land under this classification is located upon local streets designed and intended to carry relatively low volumes of traffic.

**502.2    PERMITTED USES**

Single-family Detached Dwellings  
Two-family Dwellings  
Public Utility Facilities (excluding storage yards)  
Accessory Uses to the Above

**502.3    USES PERMITTED BY SPECIAL EXCEPTION**

Single-family Attached Dwellings  
Townhouses  
Garden Apartments  
Home Occupations  
Public Uses  
Public Recreational Facilities  
Semipublic Uses  
Day Care Homes  
Place of Worship  
Group Residences  
Conversion of Nonresidential Building into Residences  
(Section 312)  
Accessory Uses to the Above

**502.4    CONDITIONAL USES**

Planned Residential Developments (SEE ARTICLE 6)

**502.5    DIMENSIONAL REGULATIONS**

Each principal building, structure and/or use shall be governed by the following regulations, unless more restrictive standards are applicable, including but not limited to state regulations and supplementary regulations contained in Article 8 of this Ordinance.

- A. Minimum Lot Area: Each principal building, structure and/or use shall have a minimum lot area of not less than four thousand (4,000) square feet.

- B. Minimum Lot Width: Forty (40) feet as measured from a depth of the required front yard setback.
- C. Front Yard: The minimum front yard shall be not less than twenty (20') feet in depth as measured from the front lot line.
- D. Rear Yard: The rear yard shall be not less than twenty (20') feet in depth as measured from the rear lot line.
- E. Side Yard: The side yard shall be not less than eight (8') feet on each side.
- F. Lot Coverage: Not more than forty-five (45%) percent of the lot area shall be covered with buildings or structures.
- G. Building Height: The maximum height of any building shall not exceed two and one-half (2.5) stories or thirty-five (35') feet.
- H. Maximum Density: Not to exceed four thousand (4,000) square feet per dwelling unit.

**502.6**      **SUPPLEMENTARY REGULATIONS (SEE ARTICLE 8)**

**502.7**      **SUBDIVISION AND LAND DEVELOPMENT**

Any property proposed to be divided into parcels or developed in accordance with the definitions of a "Subdivision" or "Land Development", as provided in Article 2 of this Ordinance, shall also be subject to the governing regulations and provisions of the Ashley Borough Subdivision and Land Development Ordinance.

**SECTION 503    R-3 MULTIFAMILY RESIDENTIAL DISTRICT**

**503.1        PURPOSE**

The purpose of this District is to provide and recognize existing areas of higher density and to allow for a further diversification of housing types within Ashley Borough. The uses within this District include a mix of all housing types, including manufactured and/or mobile home parks.

**503.2        PERMITTED USES**

Single-family Detached Dwellings  
Single-family Attached Dwellings  
Manufactured and/or Mobile Homes  
Two-family Dwellings  
Townhouses  
Public Utility Facilities (excluding storage yards)  
Accessory Uses to the Above

**503.3        USES PERMITTED BY SPECIAL EXCEPTION**

Multifamily Dwellings  
Garden Apartments  
Home Occupations  
Public Uses  
Public Recreational Facilities  
Semipublic Uses  
Day Care Homes  
Place of Worship  
Home Occupations  
Boarding Homes  
Group Residences  
Conversion of Nonresidential Building into Residences (Section 312)  
Accessory Uses to the above

**503.4        CONDITIONAL USES**

Planned Residential Developments (SEE ARTICLE 6)

**503.5        DIMENSIONAL REGULATIONS**

Each principal building, structure and/or use shall be governed by the following regulations, unless more restrictive standards are applicable, including but not limited to state regulations and supplementary regulations contained in Article 8 of this Ordinance.

A. Minimum Lot Area: Each principal building, structure and/or use shall have a minimum lot area of not less than:

- 1) Four Thousand (4,000) square feet for a detached single family dwelling or a two family dwelling.
- 2) Three Thousand (3,000) square feet for each dwelling unit for any type of multifamily residential structure or development.

B. Minimum Lot Width:

- 1) Forty (40) feet for lots requiring a minimum lot area of four thousand (4,000) square feet.
- 2) Seventy-five (75) feet for any type of multifamily residential structure or development.

C. Front Yard: The minimum front yard shall be not less than twenty (20') feet in depth as measured from the front lot line.

D. Rear Yard: The rear yard shall be not less than twenty (20') feet in depth as measured from the rear lot line.

E. Side Yard: The side yard shall be not less than six (6') feet on each side.

F. Lot Coverage: Not more than sixty (60%) percent of the lot area shall be covered with buildings or structures.

G. Building Height: The maximum height of any building shall not exceed two and one-half (2.5) stories or thirty-five (35') feet.

H. Maximum Density: Four (4,000) square feet per dwelling unit for detached single family dwellings and two family dwellings and three thousand (3,000 ) square feet for any type of multifamily residential structure or development.

**503.6**      **SUPPLEMENTARY REGULATIONS (SEE ARTICLE 8)**

**503.7**      **SUBDIVISION AND LAND DEVELOPMENT**

Any property proposed to be divided into parcels or developed in accordance with the definitions of a "Subdivision" or "Land Development", as provided in Article 2 of this Ordinance, shall also be subject to the governing regulations and provisions of the Ashley Borough Subdivision and Land Development Ordinance.



**SECTION 504    B-1 NEIGHBORHOOD COMMERCIAL DISTRICT**

**504.1    PURPOSE**

The purpose of this district is intended to create, preserve and enhance business areas which primarily serve residential neighborhoods. This District is characterized by small scale retail establishments serving frequently recurring needs in locations convenient to residents.

**504.2    PERMITTED USES**

A. RETAIL BUSINESS, INCLUDING BUT NOT LIMITED TO THE SALE OF:

Food  
Drugs  
Clothing and Clothing Accessories  
Convenience Stores  
Newspapers, Books and Stationery  
Dry Goods  
Hardware, Paint  
Variety Goods  
Household Goods and Appliances  
Garden Supplies  
Building, Lumber or Plumbing Supplies  
Sporting Goods  
Artist, Music and Hobby Supplies  
Furniture or Office Supplies and Equipment  
Automotive Supplies  
Accessory uses to the above

B. SERVICE-ORIENTED BUSINESS INCLUDING BUT NOT LIMITED TO:

Personal Services  
Professional Offices  
Service Offices  
Banks, Credit Unions and similar uses  
Funeral Homes  
Automotive Sales  
Gasoline Service Stations  
Convenience Store  
Restaurants  
Taverns  
Public Uses  
Clinics  
Day Care Centers  
Health Clubs  
Public Utility Facilities (excluding storage yards)  
Accessory uses to the above

C. RECREATION AND ENTERTAINMENT RELATED BUSINESS INCLUDING BUT NOT LIMITED TO:

Commercial Recreational Facilities  
Private Recreational Facilities  
Public Recreational Facilities  
Entertainment Facilities  
Nonprofit Social Halls, Clubs and Community Centers  
Accessory uses to the above

D. RESIDENTIAL USES

Single-family Detached Dwellings  
Single-family Attached  
Townhouses  
Two-family Dwellings  
Dwelling over Business  
Conversion of Nonresidential Building into Residences (Section 312)  
Accessory uses to the above

**504.3**      **USES PERMITTED BY SPECIAL EXCEPTION**

Public Uses  
Multifamily Dwellings  
Garden Apartments  
Group Residences  
Boarding Homes  
Accessory uses to the above

**504.4**      **CONDITIONAL USES**

NONE

**504.5**      **DIMENSIONAL REGULATIONS**

Each principal building, structure and/or use shall be governed by the following regulations, unless more restrictive standards are applicable, including but not limited to State regulations and supplementary regulations contained in Article 8 of this Ordinance.

- A. Minimum Lot Area: None
- B. Minimum Lot Width: None
- C. Front Yard: The minimum front yard shall be not less than five (5') feet in depth as measured from the front lot line.

- D. Rear Yard: The rear yard shall be not less than ten (10') feet in depth as measured from the rear lot line.
- E. Side Yard: The side yard shall be not less than five (5') feet on each side.
- F. Lot Coverage: None
- G. Building Height: The maximum height of any building shall not exceed three (3) stories or forty (40') feet.

**504.6      SUPPLEMENTARY REGULATIONS (SEE ARTICLE 8)**

**504.7      SUBDIVISION AND LAND DEVELOPMENT**

Any property proposed to be divided into parcels or developed in accordance with the definitions of a "Subdivision" or "Land Development," as provided in Article 2 of this Ordinance, shall also be subject to the governing regulations and provisions of the Ashley Borough Subdivision and Land Development Ordinance.

This page is intentionally left blank

**SECTION 505    B-2 GENERAL BUSINESS DISTRICT**

**505.1        PURPOSE**

The purpose of this district is to provide for certain types of commercial uses which are more intense than the uses and general characteristics of a Neighborhood Commercial District, but lack the geographic location for a Highway Service District classification.

**505.2        PERMITTED USES**

Retail Businesses as provided under Section 504.2(A)  
Wholesale businesses  
Equipment sales and repair  
Lumberyards  
Vehicular sales  
Professional Offices  
Service Offices  
Gasoline Service Stations  
Restaurants  
Fast Food Restaurants  
Taverns  
Public Utility Facilities (excluding storage yards)  
Personal services  
Animal hospitals  
Commercial recreation  
Hotels/Motels  
Accessory Uses to the Above

**505.3        USES PERMITTED BY SPECIAL EXCEPTION**

Cemeteries  
Public Uses  
Institutional Uses  
Clinics  
Stone or Monument Works  
Machine shops  
Tire retreading and recapping  
Accessory Uses to the Above

**505.4        CONDITIONAL USES**

Any use permitted by right or by special exception shall be deemed a conditional use if it involves either of the following:

- a) The initial or cumulative disturbance which equals or exceeds 87,120 square feet of surface area.
- b) The initial or cumulative construction, placement or installation which equals or exceeds 43,560 square feet of buildings, structures and/or other impervious surface area.

**505.5**      **DIMENSIONAL REGULATIONS**

A principal building, structure and/or use shall be governed by the following regulations, unless more restrictive standards are applicable, including but not limited to State regulations and supplementary regulations contained in Article 8 of this Ordinance.

- A. Minimum Lot Area: None.
- B. Minimum Lot Width: None.
- C. Front Yard: The minimum front yard shall be not less than five (5') feet in depth as measured from the front lot line.
- D. Rear Yard: The rear yard shall be not less than ten (10') feet in depth as measured from the rear lot line.
- E. Side Yard: None.
- F. Lot Coverage: Not more than sixty (60%) percent of a lot shall be covered by buildings.
- G. Building Height: The maximum height of any building shall not exceed two and one-half (2.5) stories or thirty-five (35') feet.

**505.6**      **SUPPLEMENTARY REGULATIONS (SEE ARTICLE 8)**

**505.7**      **SUBDIVISION AND LAND DEVELOPMENT**

Any property proposed to be divided into parcels or developed in accordance with the definitions of a "Subdivision" or a "Land Development", as provided in Article 2 of this Ordinance, shall also be subject to the governing regulations and provisions of the Ashley Borough Subdivision and Land Development Ordinance.

**SECTION 506    B-3 HIGHWAY COMMERCIAL DISTRICT**

**506.1    PURPOSE**

The purpose of this district is intended to create, preserve and enhance business areas with a wide range of retail and service establishments typically appropriate along major traffic arteries, due to the fact that the volume portion of their sales is related to vehicular traffic.

**506.2    PERMITTED USES**

A. RETAIL BUSINESS, INCLUDING BUT NOT LIMITED TO THE SALE OF:

Food  
Drugs  
Clothing and Clothing Accessories  
Convenience Stores  
Newspapers, Books and Stationery  
Dry Goods  
Hardware, Paint  
Variety Goods  
Household Goods and Appliances  
Garden Supplies  
Building, Lumber or Plumbing Supplies  
Sporting Goods  
Artist and Hobby Supplies  
Furniture or Office Supplies and Equipment  
Automotive Supplies  
Accessory uses to the above

B. SERVICE-ORIENTED BUSINESS INCLUDING BUT NOT LIMITED TO:

Personal Services  
Professional Offices  
Service Offices  
Banks, Credit Unions and similar uses  
Funeral Homes  
Automotive Sales  
Gasoline Service Stations  
Restaurants  
Fast Food Restaurants  
Taverns  
Public Uses  
Night Clubs  
Clinics  
Day Care Centers  
Institutional Uses  
Health Clubs

Public Utility Facilities (excluding storage yards)  
Accessory uses to the above

C. RECREATION AND ENTERTAINMENT RELATED BUSINESS  
INCLUDING BUT NOT LIMITED TO:

Health and Recreational Facilities  
Commercial Recreational Facilities  
Private Recreational Facilities  
Public Recreational Facilities  
Entertainment Facilities  
Nonprofit Social Halls, Clubs and Community Centers  
Accessory uses to the above

D. RESIDENTIAL USES

Dwelling over Business

**506.3**      **USES PERMITTED BY SPECIAL EXCEPTION**

Hotels and Motels  
Public Uses  
Self Storage Facility  
Accessory uses to the above

**506.4**      **CONDITIONAL USES**

Adult Uses

**506.5**      **DIMENSIONAL REGULATIONS**

Each principal building, structure and/or use shall be governed by the following regulations, unless more restrictive standards are applicable, including but not limited to State regulations and supplementary regulations contained in Article 8 of this Ordinance.

- A. Minimum Lot Area: None
- B. Minimum Lot Width: None
- C. Front Yard: The minimum front yard shall be not less than twenty (20') feet in depth as measured from the front lot line.
- D. Rear Yard: The rear yard shall be not less than thirty (30') feet in depth as measured from the rear lot line.
- E. Side Yard: The side yard shall be not less than fifteen (15') feet on each side.



- F. Lot Coverage: Not more than forty (40%) percent of the lot area shall be covered by buildings or structures.
- G. Building Height: The maximum height of any building shall not exceed three (3) stories or forty (40') feet.

**506.6**      **SUPPLEMENTARY REGULATIONS (SEE ARTICLE 8)**

**506.7**      **SUBDIVISION AND LAND DEVELOPMENT**

Any property proposed to be divided into parcels or developed in accordance with the definitions of a "Subdivision" or "Land Development," as provided in Article 2 of this Ordinance, shall also be subject to the governing regulations and provisions of the Ashley Borough Subdivision and Land Development Ordinance.

This page is intentionally left blank

**SECTION 507 C-1 CONSERVATION DISTRICT**

**507.1 PURPOSE**

The purpose of this district is to provide for the protection and preservation of natural and environmentally sensitive areas which are inappropriate for intensive development. Such areas shall include, but shall not be limited to agricultural land, streams, wooded areas, wildlife habitats, low lying areas with poor drainage, flood plains, watersheds and wetlands or other "Critical Areas" as so defined in Article 2 of this Ordinance.

**507.2 PERMITTED USES**

Greenhouses and Nurseries  
Private Recreational Facilities  
Public Recreational Facilities  
Outdoor Storage as defined in Article 2  
State Game Lands and State Parks  
Single-family Detached Dwellings  
Public Uses  
Public Utility Facilities (excluding storage yards)  
Accessory Uses to the Above

**507.3 USES PERMITTED BY SPECIAL EXCEPTION**

Home Occupations  
Commercial Recreational Facilities  
Cemeteries  
Accessory Uses to the Above

**507.4 CONDITIONAL USES (SEE ARTICLE 6)**

Commercial Communications Facilities.

Any use permitted by right or special exception shall be deemed a conditional use if it involves either of the following:

- (a) the initial or cumulative disturbance which equals or exceeds 40,000square feet of surface area.
- (b) the initial or cumulative construction, placement or installation of a building and/or structure which equals or exceeds twenty thousand 20,000 square feet of gross floor area and/or any development which has a cumulative impervious surface area of which equals or exceeds twenty thousand 20,000 square feet.

**507.5 DIMENSIONAL REGULATIONS**

A principal building, structure and/or use shall be governed by the following regulations, unless more restrictive standards are applicable, including but not

limited to State regulations and supplementary regulations contained in Article 8 of this Ordinance.

- A. Minimum Lot Area: Each principal building or use shall be located upon a lot having a minimum lot area of not less than one (1) acres.
- B. Minimum Lot Width: Each lot shall have a lot width not less than one hundred fifty (150') feet.
- C. Front Yard: The minimum front yard shall be not less than fifty (50') feet in depth as measured from the front lot line.
- D. Rear Yard: The rear yard shall be not less than fifty (50') feet in depth as measured from the rear lot line.
- E. Side Yard: The side yard shall be not less than twenty-five (25') feet on each side.
- F. Lot Coverage: Not more than twenty (20%) percent of a lot shall be covered by buildings. Total impervious cover shall not exceed thirty (30%) percent.
- G. Building Height: The maximum height of any building shall not exceed two and one-half (2.5) stories or thirty-five (35') feet.

**507.6      SUPPLEMENTARY REGULATIONS (SEE ARTICLE 8)**

**507.7      SUBDIVISION AND LAND DEVELOPMENT**

Any property proposed to be divided into parcels or developed in accordance with the definitions of a "Subdivision" or a "Land Development", as provided in Article 2 of this Ordinance, shall also be subject to the governing regulations and provisions of the Ashley Borough Subdivision and Land Development Ordinance.

**SECTION 508 I-1 LIGHT INDUSTRIAL DISTRICT**

**508.1 PURPOSE**

The primary purpose of this District is to provide for light industrial and certain commercial uses that are capable operating such a manner as to control adverse the external effects of its operation in, such as smoke, noise, soot, dirt, vibration, odor, etc. uses engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing.

**508.2 PERMITTED USES**

Automotive Repair Garages  
Automotive Sales  
Public Utility Facilities  
Businesses Engaged in the Manufacturing and Sale of Concrete Blocks and Related Masonry Products.  
Businesses Engaged in the Sale and Repair of Equipment  
Businesses Engaged in the Sale of Contractors' Supplies and Material as Lumber, Building, Heating, Plumbing, Masonry, Electrical, Fencing and Similar Materials  
Communication antennas mounted on an existing public utility transmission tower, building or other structure.  
Food Processing Establishment  
Forestry  
Light Industrial Uses  
Outdoor Storage  
Print Shops  
Public Uses.  
Self Storage Facilities  
Warehousing and Distribution Facilities

**508.2 SPECIAL EXCEPTION USES**

None

**508.3 CONDITIONAL USES (SEE ARTICLE 6)**

Commercial Communications Facility  
Any nonresidential use permitted by right or by special exception in the I-1 District shall be deemed a conditional use if it involves any of the following:

- (a) the initial or cumulative earth disturbance activity which equals or exceeds 40,000 square feet of surface area.
- (b) the initial or cumulative construction, placement or installation of a

building and/or structure which equals or exceeds twenty thousand 20,000 square feet of gross floor area and/or any development which has a cumulative impervious surface area of which equals or exceeds twenty thousand 20,000 square feet

**508.4**                    **DIMENSIONAL REGULATIONS**

Each principal building, structure and/or use shall be governed by the following regulations, unless more restrictive standards are applicable, including but not limited to State regulations and supplementary regulations contained in Article 8 of this Ordinance.

- A. Minimum Lot Area: Each principal building, structure or use shall be located upon a lot having a lot area of forty thousand (40,000) square feet.
- B. Minimum Lot Width: Each lot shall have a lot width not less than one hundred fifty (150) feet.
- C. Minimum Front Yard Setback: The minimum front yard shall be not less than thirty (30) feet in depth as measured from the front lot line.
- D. Minimum Rear Yard Setback: The rear yard shall be not less than thirty (30) feet in depth as measured from the rear lot line.
- E. Minimum Side Yard Setback: The side yard shall be not less than twenty (20) feet on each side.
- F. Maximum Lot Coverage: Not more than fifty (50%) percent of the lot area shall be covered by buildings and/or structures.
- G. Maximum Building Height: The maximum height of any building and/or structure shall not exceed three (3) stories or forty-five (45) feet.
- H. Buffer Area: Where an I-1 District abuts any residential district, an additional twenty (20) feet shall be added to the otherwise applicable setback distance for the area abutting the residential district. A landscaped strip of land not less than ten (10) feet in width shall be planted and maintained within said area with appropriate vegetative landscaping materials. Such vegetative planting, including any architectural screens or fences, shall be planted or constructed and maintained at not less than five (5) feet in height, excluding corner lots where a clear site triangle shall be maintained. The above requirements shall not be applied in such cases where properties within an abutting residential district are physically separated by a street, road, alley or other public right-of-way.
- J. Noise: For any proposed light industrial use, the applicant shall establish the continuous seventy-two hour ambient noise for all level of frequencies at all boundaries of the property on which the proposed use or facility is to be located, with prior approval of the testing times and

dates by the Borough Council. All noise level measurements for all level of frequencies shall be made using a sound level meter meeting the most current American National Standard Specification for Sound Level Meters (ANSI 1.4- not less than Type 2 instruments). The instrument shall have been field calibrated according to the manufacturer's directions within the periodicity required by the manufacturer prior to the measurements. All measurements shall be taken using the FAST response time and A-weighting. The decibel level for all level of frequencies for any proposed heavy industrial use or proposed light industrial use shall not exceed established ambient noise level outside the boundaries of the property by more than 3 decibels.

**508.5**            **SUPPLEMENTARY REGULATIONS (SEE ARTICLE 8)**

**508.6**            **SUBDIVISION AND LAND DEVELOPMENT**

Any property proposed to be divided into parcels or developed in accordance with the definitions of a "Subdivision" or a "Land Development", as provided in Article 2 of this Ordinance, shall also be subject to the governing regulations and provisions of the Ashley Borough Subdivision and Land Development Ordinance.

This page is intentionally left blank



## **SECTION 509 I-2 HEAVY INDUSTRIAL DISTRICT**

### **509.1 PURPOSE**

The primary purpose of this District is to provide for industrial uses which generally have a greater intensity and impact upon a community and surrounding properties as compared to light industrial uses. Such uses may be engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous substances or commonly recognized offensive conditions and having potential external effects such as noise, dust, glare, odors or vibration. "Heavy Industry" shall also mean those uses engaged in the operation a solid waste facility regulated by the Pennsylvania Department of Environmental Protection including but not limited to or sanitary waste transfer stations, recycling facilities. Truck terminals and any operation related to the extraction of natural resources shall also be classified as "Heavy Industry."

### **509.2 PERMITTED USES**

Automotive Repair Garages  
Automotive Sales, Public Utility Facilities  
Businesses Engaged in the Manufacturing and Sale of Concrete Blocks and Related Masonry Products.  
Businesses Engaged in the Sale and Repair of Equipment  
Businesses Engaged in the Sale of Contractors' Supplies and Material as Lumber, Building, Heating, Plumbing, Masonry, Electrical, Fencing and Similar Materials  
Communication antennas mounted on an existing public utility transmission tower, building or other structure.  
Food Processing Establishment  
Forestry  
Light Industrial Uses  
Machine Shops  
Outdoor Storage  
Print Shops  
Public Uses.  
Research and Development Facility  
Self Storage Facilities  
Warehousing and Distribution Facilities

### **509.2 SPECIAL EXCEPTION USES**

None

### **509.3 CONDITIONAL USES (SEE ARTICLE 6)**

Automotive Wrecking Yards  
Bulk Fuel Storage  
Commercial Communications Facility  
Extraction of Natural Resources  
Heavy Industrial Uses  
Junkyards  
Outdoor Fuel Burning Furnace  
Recycling Center  
Solid Waste Facilities  
Truck Terminals

Any nonresidential use permitted by right or by special exception in the I-2 district shall be deemed a conditional use if it involves any of the following:

- (a) the initial or cumulative earth disturbance activity which equals or exceeds 40,000 square feet of surface area.
- (b) the initial or cumulative construction, placement or installation of a building and/or structure which equals or exceeds twenty thousand 20,000 square feet of gross floor area and/or any development which has a cumulative impervious surface area of which equals or exceeds twenty thousand 20,000 square feet
- (c) Any use which utilizes and/or stores any hazardous substances and/or materials

### **509.4 DIMENSIONAL REGULATIONS**

Each principal building, structure and/or use shall be governed by the following regulations, unless more restrictive standards are applicable, including but not limited to State regulations and supplementary regulations contained in Article 8 of this Ordinance.

- A. Minimum Lot Area: Each principal building, structure or use shall be located upon a lot having a lot area of sixty-five thousand (65,000) square feet.
- B. Minimum Lot Width: Each lot shall have a lot width not less than two hundred (200) feet.
- C. Minimum Front Yard Setback: The minimum front yard shall be not less than fifty (50) feet in depth as measured from the front lot line.
- D. Minimum Rear Yard Setback: The rear yard shall be not less than fifty (50) feet in depth as measured from the rear lot line.
- E. Minimum Side Yard Setback: The side yard shall be not less than twenty-five (25) feet on each side.
- F. Maximum Lot Coverage: Not more than fifty (50%) percent of the lot area shall be covered by buildings and/or structures.

- G. Maximum Building Height: The maximum height of any building and/or structure shall not exceed three (3) stories or forty-five (45) feet.
- H. Buffer Area: Where an I-2 District abuts any residential district, an additional twenty (20) feet shall be added to the otherwise applicable setback distance for the area abutting the residential district. A landscaped strip of land not less than ten (10) feet in width shall be planted and maintained within said area with appropriate vegetative landscaping materials. Such vegetative planting, including any architectural screens or fences, shall be planted or constructed and maintained at not less than five (5) feet in height, excluding corner lots where a clear site triangle shall be maintained. The above requirements shall not be applied in such cases where properties within an abutting residential district are physically separated by a street, road, alley or other public right-of-way.
- J. Noise: For any proposed light industrial use, the applicant shall establish the continuous seventy-two hour ambient noise for all level of frequencies at all boundaries of the property on which the proposed use or facility is to be located, with prior approval of the testing times and dates by the Borough Council. All noise level measurements for all level of frequencies shall be made using a sound level meter meeting the most current American National Standard Specification for Sound Level Meters (ANSI 1.4- not less than Type 2 instruments). The instrument shall have been field calibrated according to the manufacturer's directions within the periodicity required by the manufacturer prior to the measurements. All measurements shall be taken using the FAST response time and A-weighting. The decibel level for all level of frequencies for any proposed heavy industrial use or proposed light industrial use shall not exceed established ambient noise level outside the boundaries of the property by more than 3 decibels.

**509.5 SUPPLEMENTARY REGULATIONS (SEE ARTICLE 8)**

**509.6 SUBDIVISION AND LAND DEVELOPMENT**

Any property proposed to be divided into parcels or developed in accordance with the definitions of a "Subdivision" or a "Land Development", as provided in Article 2 of this Ordinance, shall also be subject to the governing regulations and provisions of the Ashley Borough Subdivision and Land Development Ordinance.

This page is intentionally left blank

**SECTION 510**      **R-MHP RESIDENTIAL MOBILE HOME PARK**

**510.1**      **PERMITTED USES**

Mobile Homes on a foundation in compliance with the governing standards of the UCC (Uniform Construction Code)  
Single-Family Detached Dwellings  
No Impact Home-Based Businesses  
Public Utility Facilities (excluding storage yards)  
Accessory Uses to the Above

**510.2**      **USES PERMITTED BY SPECIAL EXCEPTION**

Home Occupations  
Accessory Uses to the Above

**510.3**      **CONDITIONAL USES (SEE ARTICLE 6)**

The development, expansion and/or alteration of a mobile home park; such a use shall also be subject to the governing provisions of the Ashley Borough Subdivision and Land Development Ordinance

Any use permitted by right or by special exception shall be deemed a conditional use if it involves either of the following:

- (a) the initial or cumulative earth disturbance activity which equals or exceeds 40,000 square feet of surface area.
- (b) the initial or cumulative construction, placement or installation of a building and/or structure which equals or exceeds twenty thousand 20,000 square feet of gross floor area and/or any development which has a cumulative impervious surface area of which equals or exceeds twenty thousand 20,000 square feet

**510.4**      **DIMENSIONAL REGULATIONS**

Each principal building, structure and/or use shall be governed by the following regulations, unless more restrictive standards are applicable, including but not limited to state regulations and supplementary regulations contained in Article 8 of this Ordinance.

A.      **Minimum Lot Area:**

**Mobile Home Parks:**

A Mobile Home Park shall have a minimum lot size of not less than ten (10) acres.

**All Other Uses:**

Each principal building, structure and/or use not located within a mobile home park shall have a minimum lot area of not less than five thousand (5,000) square feet

B. Minimum Lot Width:

Mobile Home Parks: Four Hundred (400) feet.

All Other Uses: Fifty (50) feet.

C. Front Yard:

Mobile Home Parks: The minimum front yard shall be not less than seventy-five (75) feet in depth as measured from the front lot line.

All Other Uses: The minimum front yard shall be not less than twenty (20) feet in depth as measured from the front lot line.

D. Rear Yard:

Mobile Home Parks: The rear yard shall be not less than one hundred (100) feet in depth as measured from the rear lot line.

All Other Uses: The rear yard shall be not less than twenty (20) feet in depth as measured from the rear lot line.

E. Side Yard:

Mobile Home Parks: Each side yard shall be not less than seventy-five (75) feet.

All Other Uses: Each side yard shall be not less than ten (10) feet.

F. Lot Coverage:

Mobile Home Parks: Not more than forty-five (45%) percent of the lot area shall be covered with buildings or structures.

All Other Uses: Not more than thirty-five (35%) percent of the lot area shall be covered with buildings or structures.

G. Building Height: The maximum height of any building shall not exceed two (2) stories or twenty-five (25) feet.

**510.5**            **SUPPLEMENTARY REGULATIONS (SEE ARTICLE 8)**

**510.6**            **SUBDIVISION AND LAND DEVELOPMENT**

Any property proposed to be divided into parcels or developed in accordance with the definitions of a "Subdivision" or a "Land Development", as provided in Article 2 of this

Ordinance, shall also be subject to the governing regulations and provisions of the Ashley Borough Subdivision and Land Development Ordinance.

This page is intentionally left blank



## ARTICLE 6

### CONDITIONAL USES

#### **SECTION 601   PURPOSE**

The purpose of a use classified as a "conditional use" is to provide expressed standards to regulate uses classified as such in particular zoning districts, as provided in Article 5, Zoning District Regulations.

#### **SECTION 602   GENERAL PROVISIONS**

The authority for approving or denying applications for uses permitted as a conditional use shall be vested in the Borough Council, with the Borough Planning Commission having the authority to review and submit their recommendations to the Borough Council. Decisions by the Borough Council shall be made in accordance with standards and criteria set forth in this Article, the respective zoning district in which the use is located, all other applicable regulations of this Ordinance, other ordinances of the Borough and any applicable State and/or Federal regulations.

#### **SECTION 603   PROCEDURE FOR SUBMISSION AND DECISIONS**

The procedure for approval or denial of a conditional use shall be in accordance with the following:

- A. An application for a conditional use permit shall be submitted to the Zoning Officer with a site plan at a scale of not greater than one (1") inch equals one fifty (50') feet. Such plan shall, at minimum, indicate:
  1. The location and size of all buildings and structures, both principal and accessory, open space, parking areas, traffic access and circulation.
  2. All public or private streets within five hundred (500') feet of the site.
  3. Contours of the site for each two (2) feet of change in elevation, based upon a field survey of the site, with the name of the person or firm who conducted survey and the date of survey.
  4. Streams, ponds, watercourses, wetlands or any other bodies of water, including natural or man-made drainage swales located both on the site and within five hundred (500) feet of the site.
  5. The location, nature and terms of any existing or proposed easements on the site and any existing or proposed easements both on-site and off-site which are used or intended to be used for access to the site.
  6. The location, type and height of any required screening.

7. The location of all residential structures within five hundred (500) feet of any property line boundary of the subject site.
  8. The Map, Block and Lot Number of the subject parcel.
  9. Any other information required by the Borough Council for determining the conformance of the conditional use with the regulations for that particular use.
- B. Prior to approving or denying an application for a conditional use, the Borough Council shall conduct a public hearing pursuant to public notice. The Borough Council shall submit the application for the proposed conditional use to the Borough Planning Commission not less than thirty (30) days prior to the public hearing to allow for the submission of recommendations from the Planning Commission.
  - C. The public hearing shall be held and conducted in accordance with the same procedural guidelines which govern the Zoning Hearing Board under Section 806 of this Ordinance. The term "Borough Council" shall replace the term "Zoning Hearing Board" in relevant passages of said Section.
  - D. The Borough Council shall convene a public hearing within sixty (60) days from the submission of a completed application and supporting material and render a final decision on a conditional use application not less than forty-five (45) days following the conclusion of the last public hearing. Failure to convene a public hearing and/or render a decision within the aforementioned time periods, shall constitute approval of the application and plans as submitted.
  - E. The Borough Council shall grant an approval for a conditional use upon its determination that adequate evidence and information has been provided, which indicates the applicant's proposal meets the general and specific requirements for the type of conditional use in question.

**SECTION 604 GENERAL STANDARDS**

The general standards contained herein, shall be utilized in the review of applications and plans for any use which is classified as a conditional use.

- A. The proposed use shall not jeopardize the "Community Development Objectives" of this Ordinance or the public health, safety and welfare.
- B. Public services and facilities such as streets, sewage disposal, water, police and fire protection shall be adequate for the proposed use.
- C. Existing and future streets and access to the site shall be adequate for emergency services, for avoiding undue congestion, and for providing for the safety and convenience of pedestrian and vehicular traffic.

- D. The relationship of the proposed use to other activities existing or planned in the vicinity shall be harmonious in terms of location and size relative to the proposed operation and the nature and intensity of the operation involved.
- E. The relationship of the proposed use to other activities existing or planned in the vicinity shall be harmonious in terms of the character and height of buildings, walls and fences, so that the use, development and value of adjacent property is not impaired.
- F. The proposed use shall not be more objectionable in its operation in terms of noise, fumes, gases, smoke, vapors, heat, glare, odors, vibration, lighting or electrical disturbances than would be the operations of any permitted use in the district.
- G. The submission of any reports and/or studies within the context of the definition "Impact Analysis" as contained within Article 2 of this Ordinance, which conclusively demonstrates that the proposed use or development will not have a negative impact upon the particular subject or subjects as defined by the Borough Council. In their review of an Impact Analysis, the Borough Council shall have the discretion to retain the services of firms or agencies which have expertise within the subject or subjects addressed therein. All fees and costs Incurred for such consultation shall be paid by the applicant.
- H. Any other reasonable conditions and safeguards, in addition to those expressed in this Ordinance, may be imposed by the Borough Council in the interest of protecting the health, safety and welfare of the public.

**SECTION 605 USES/DEVELOPMENTS CLASSIFIED AS CONDITIONAL USES**

- 1. Solid Waste Facilities.
- 2. Extraction, excavation, removal and or surface mining of coal and/or coal byproducts.
- 3. Extraction, excavation and/or removal of natural resources.
- 4. Adult uses
- 5. Truck Terminals
- 6. Planned Residential Developments in The industry, (as defined in Article 2 of this Ordinance).
- 7. Heavy Industry, (as defined in Article 2 of this Ordinance).
- 8. Automotive Wrecking Yards
- 9. Bulk Fuel Storage
- 10. Commercial Communications Facilities
- 11. Junkyards
- 12. Recycling Centers
- 13. Outdoor Fuel Burning Furnace
- 14. Any nonresidential use permitted by right or by special exception in the I-1 District or C-1 District shall be deemed a conditional use if it involves any of the following:

- (a) the initial or cumulative earth disturbance activity which equals or exceeds

40,000 square feet of surface area.

- (b) the initial or cumulative construction, placement or installation of a building and/or structure which equals or exceeds twenty thousand 20,000 square feet of gross floor area and/or any development which has a cumulative impervious surface area of which equals or exceeds twenty thousand 20,000 square feet
15. Any nonresidential use permitted by right or by special exception in the I-2 District shall be deemed a conditional use if it involves any of the following:
- (a) the initial or cumulative earth disturbance activity which equals or exceeds 40,000 square feet of surface area.
  - (b) the initial or cumulative construction, placement or installation of a building and/or structure which equals or exceeds twenty thousand 20,000 square feet of gross floor area and/or any development which has a cumulative impervious surface area of which equals or exceeds twenty thousand 20,000 square feet
  - (c) Any use which utilizes and/or stores any hazardous substances and/or materials

**SECTION 606 ENVIRONMENTAL IMPACT STATEMENT**

In addition to all other requirements, an Environmental Impact Statement shall be required for any use/development which is classified as a conditional use. The Borough Council, at their sole discretion, may exempt uses and/or developments which are residential in character. The purpose of the Environmental Impact Statement is to disclose the environmental consequences of a proposed action. This requirement is designed to protect the natural environment with respect to water quality, water supply, soil erosion, pollution of any kind, flooding and waste disposal. The intent is to preserve trees and vegetation, to protect water courses, air quality, aquifers and the quality of life throughout Ashley Borough and its environs.

An Environmental Impact Statement shall include a response to the following items and said proposed use/development shall further comply with all other applicable standards and requirements of this Ordinance:

**606.1 SOIL TYPES**

- a) U.S.D.A. Soil Types (illustrated upon map)
- b) Permeability of soil on the site
- c) Rate of percolation of water through the soil for every five acres

**606.2 SURFACE WATERS**

- a) Distance of site from the nearest surface water and head waters of streams

- b) Sources of runoff water from the site
- c) Rate of runoff from the site
- d) Destination of runoff water and method of controlling downstream effects
- e) Chemical additives to runoff water on the site
- f) Submission of a soils erosion and sedimentation control plan meeting the requirements of the Luzerne County Conservation District
- g) A storm water management plan which shall be developed in coordination with the soils erosion and sedimentation plan

**606.3      GROUND COVER INCLUDING TREES**

- a) Extent of existing impervious ground cover on the site
- b) Extent of proposed impervious ground cover on the site
- c) Extent of existing vegetative cover on the site
- d) Extent of proposed vegetative cover on the site

**606.4      TOPOGRAPHY**

- a) Maximum existing elevation of site
- b) Minimum existing elevation of site
- c) Maximum proposed elevation of site
- d) Minimum proposed elevation of site
- e) Description of the topography of the site and all proposed changes in topography

**606.5      GROUND WATER**

- a) Average depth to seasonal high water table
- b) Minimum depth to water table on site
- c) Maximum depth to water table on site

**606.6**      **WATER SUPPLY**

- a) The source and adequacy of water to be provided to the site
- b) The projected water requirements (G.P.D.) for the site
- c) The uses to which the water will be put

**606.7**      **SEWAGE SYSTEM**

- a) Sewage disposal system (complete description, plans and location on the site of system)
- b) Expected content of sewage effluents (human waste, pesticides, detergents, oils, heavy metals, other chemicals)
- c) Projected daily volumes of sewage
- d) Affected sewage treatment plant and pumping stations present capacity and design capacity

**606.8**      **SOLID WASTE**

- a) Estimated quantity of solid waste to be developed and/or processed on the site during and after construction
- b) Method of disposal and/or processing of solid waste during and after construction
- c) Plans for recycling of solid waste during and after construction.

**606.9**      **AIR QUALITY**

- a) Expected changes in air quality due to activities at the site during and after construction
- b) Plans for control of emissions affecting air quality
- c)

**606.10**      **NOISE**

- a) Noise levels, above existing levels, anticipated to be generated at the site, (source and magnitude), for pre-construction, during construction and post-construction.
- b) Proposed method for control of additional noise on-site during and after construction.
- c)

**606.11      IMPACT OF PROPOSED USE/DEVELOPMENT**

A written report, which describes in full detail, the impact of the proposed use/development on the environment and any proposed mitigating action in relation to the following:

- a) Existing plant species, (upland and marine), and effects thereon.
- b) Existing animal species and effects thereon.
- c) Existing wild fowl and other birds and effects thereon.
- d) Effects on drainage and stormwater runoff, both on and off site.
- e) Effects on ground water quality.
- f) Effects on surface water quality.
- g) Effects on air quality.
- h) Alternatives to proposed use/development, consistent with the zoning of the site.
- i) Effects on sites of historic significance.
- j) Projected amount and type of traffic to be generated and the effects of the same on public roads and highways, based upon a traffic study.

**606.12      IMPACT UPON CRITICAL AREAS**

The applicant shall define, describe and identify upon a map, critical areas as defined in Article 2 of this Ordinance. A statement of any potential impact upon critical areas shall be provided by the applicant, including but not limited to adverse impacts which cannot be avoided and/or fully mitigated as a resulting effect of the development.

**606.13      OTHER GOVERNMENTAL JURISDICTION**

A list of all licenses, permits and other approvals required by County, State or Federal law and the status of each.

**SECTION 607      REVIEW PROCEDURE OF ENVIRONMENTAL IMPACT STATEMENT**

- 607.1**      Upon receipt of an Environmental Impact Statement, the Borough Council shall promptly forward the Environmental Impact Statement to the Borough Planning Commission, the Borough Engineer and any other

agency, firm or individual which the Borough Council may desire for their consultation and input.

**607.2** The Planning Commission shall review the applicant's Environmental Impact Statement and provide the Borough Council with its comments and recommendations within thirty (30) days from the date of its submission to the Planning Commission.

**607.3** The Borough Council shall have the discretion to retain the expertise of appropriate parties in their review of the Environmental Impact Statement. All fees and costs incurred for such consultation shall be paid by the applicant.

**607.4** A determination of a potential adverse impact which may result based upon the Environmental Impact Statement or the Borough Council's review of the same shall constitute a sufficient basis for the denial of a conditional use permit.

## **SECTION 608**    **SUPPLEMENTARY REGULATIONS FOR SPECIFIC USES**

### **608.1**    **SOLID WASTE FACILITY**

The following regulations are supplementary in nature, separate and distinct from the requirements of Section 606 of this Ordinance, and are applicable to any use/development which is classified as a solid waste facility in accordance with the definition of the same as contained in Article 2 of this Ordinance. A solid waste facility must demonstrate compliance and/or conformance with the following:

- A. The applicant shall provide a comprehensive soil analysis and ground water report which shall conclusively demonstrate that the proposed design, construction and operation of the facility shall not pollute surface or ground water, nor otherwise cause any potential health or environmental hazard. Said report shall be jointly signed and certified by the applicant and the consultant who prepares the report, attesting to the accuracy of information and the validity of said report.
- B. The applicant shall sign an agreement, prepared by the Borough's Solicitor, prior to final approval of the application for a Conditional Use Permit which shall specify all the terms and conditions of approval, including the Borough's authority to revoke the permit for the violation of any terms and/or conditions under which the application was approved. Prior to formal action to revoke the Conditional Use Permit, the Borough Council shall convene a public hearing, pursuant to public notice, to consider testimony and evidence relative to the alleged violations. Based upon the testimony and evidence provided, the Borough Council shall render a decision.



- C. The applicant of a proposed solid waste facility shall provide conclusive evidence, based upon a mining report, soil analysis, test boring and other appropriate technical data, which conclusively demonstrates that the subsurface conditions beneath any area to be used as a landfill is safe and capable of sustaining the bearing load of projected and/or planned quantities of material to be deposited and/or disposed of upon the site. The applicant and the person, party or firm providing such evidence shall jointly sign and certify the accuracy and validity of the information and data which is provided as conclusive evidence.
- D. A solid waste facility may conduct and operate all approved functional aspects of their operation within the facility from the hours of 7:00 A.M. to 3:00 P.M. from Monday through Friday. Said facility shall not conduct and/or operate any approved functional aspects associated with the facility on Saturdays, Sundays and all legally recognized holidays by the Federal Government and/or the Commonwealth of Pennsylvania.
- E. A solid waste facility shall be completely enclosed by an industrial gauge chain link fence not less than ten (10') feet in height. All gates shall be closed and locked at the end of business hours. There shall be no advertising of any kind displayed upon the fence.
- F. No operation and/or activities permitted within a solid waste facility shall be permitted within 1,000 feet of any property line, boundary and/or within 2,500 feet of any residences and/or zoning districts in which residences are permitted.
- G. The area or areas upon which any permitted operations and/or activities within a solid waste facility are conducted shall be entirely screened. Such screening shall consist of a variety of evergreen trees, approved by the Borough Council, planted not more than six (6') feet apart and being not less than eight (8') feet in height at the time of planting. Said screening shall be located not greater than 300 feet from the operations and/or activities which are subject to be screened. The owner and/or operator of the facility shall be responsible to maintain such screening, including the placement of any trees which are damaged, die, removed by whatever means or otherwise fail to grow.
- H. All solid waste facilities and staging areas which store the solid waste at any stage prior to disposal at an approved facility shall maintain the aforesaid solid waste within a completely enclosed building. Storage of materials, supplies or solid waste in motor vehicles, trucks, trailers or other containers normally used to transport the materials shall not be permitted unless the aforesaid motor vehicles, trucks, trailers or other containers shall be stored within a completely enclosed building.
- I. A solid waste facility shall provide for treatment and disposal of all liquid effluent and discharges generated by the facility due to the storage,

washing or other process used in treating and/or processing the solid waste. Any water discharge from the facility after being treated by the waste water treatment system shall meet all applicable regulations and requirements of the Pennsylvania Department of Environmental Resources.

- J. All storm water collected on the site shall be treated by the facility's waste water treatment system. Parking of motor vehicles containing solid waste or motor vehicles which have not been properly cleaned and washed shall only be permitted in completely enclosed buildings with handling areas or parking areas in which containment of spillage, leakage or other contaminants is provided.
- K. The owner and/or operator of any solid waste facility shall be required to monitor the ground and surface water in the vicinity of the facility. Water testing shall be conducted every three (3) months on any stream within 500 feet of any areas used for the storage, treatment or disposal of solid waste, if water drainage from the facility is discharged into said stream. For each testing period two (2) testing samples shall be collected: one sample shall be taken from the stream at a point upstream of the facility drainage area and one sample shall be taken from the stream at a point below the facility drainage area. In addition, the well location, if applicable, located on the premises shall also be sampled every three (3) months. All water samples shall be collected and analyzed by an independent party which is a certified water analysis laboratory for hydrocarbons or other parameters deemed appropriate by the Borough Council, and the results shall be provided to the Borough. If said samples exceed the limits established by the Pennsylvania Department of Environmental Resources, the facility shall immediately cease operation until such time as the source of the contamination has been identified and totally corrected. The cost of testing water samples shall be borne by the developer.
- L. The owner/operator of a solid waste facility shall provide a detailed narrative which fully describes the daily operations of all permitted functions and activities within the proposed facility, including the projected daily volumes and tonnage of solid waste being accepted for processing, storage and/or disposal. Said narrative shall address the type and classification of solid waste proposed to be accepted by the facility.
- M. The applicant shall submit to the Borough Council a copy of their commercial policy of liability insurance covering third party claims for property damage and personal injury.
- N. The owner and or operator of a solid waste facility shall provide an emergency response plan to address potential hazards associated with its operations. Said plan shall be submitted for review and comment to the local fire companies which serve Ashley Borough.

- O. All vehicular access for ingress, egress and regress to a solid waste facility shall be solely limited to private access roads, constructed in accordance with appropriate PennDOT Standards related to the anticipated type and volume of traffic.

**608.2 EXCAVATION OF NATURAL RESOURCES**

Extraction, excavation, removal and/or surface mining of coal and/or coal by products and the extraction, excavation and/or removal of other natural resources including sand, gravel, rock, topsoil and peat moss shall be considered a temporary use. New excavations shall be permitted in only an I-2 Zoning District. In the case of coal mining, new extraction, excavation, removal and/or surface mining shall be defined as any area not physically engaged in such activities on the date this Ordinance takes effect. Applications for the extraction, excavation, removal and/or surface mining of coal or coal by products shall not exceed ten (10) acres in area on any lot and shall be subject to the following requirements:

- A. **Map:** Submission of a map which outlines the entire proposed area subject to be the proposed extraction, excavation, removal and/or surface mining of coal or coal by products. Said map shall contain surface features showing the location of buildings, dwellings, places of worship, schools, railroads, highways and lot lines of public and semipublic uses within a distance of 1,000 feet from the perimeter of the proposed use. In addition, said map shall indicate the proposed maximum depth of any excavation.
- B. **Bond, Backfilling and Fees:** The applicant shall provide documentation that all applicable State requirements relative to providing a bond which guarantees the restoration and backfilling any land proposed to be excavated or otherwise disturbed has been secured. A fee of three (\$3.00) dollars per ton for the extraction, excavation, removal and/or surface mining of coal or coal by products is hereby imposed upon the party approved to be engaged in such activity. Said party shall submit monthly tonnage reports and monthly remittances to the Zoning Officer. Failure to comply with this provision shall result in an immediate revocation of the permit, with the Zoning Officer authorized to provide an immediate cease and desist order for all subject operations. Nothing contained within this provision shall prevent the Borough and the applicant from entering into a written agreement for the payment of a fee greater or less than three (\$3.00) dollars per ton.
- C. **Insurance:** That a Certificate of Insurance with limits of \$100,000 per person and \$300,000 per accident for personal injuries, and \$300,000 for property damage, be filed with the Borough Council both for the benefit of all persons who might be injured or suffer property damage as a result of said mining operations, and to save the Borough of Ashley and its Officials harmless from any and all claims, suits or demands caused any coal operation.

- D. Supervision of Blasting: The use of explosives for the purpose of blasting in connection with coal operations shall be undertaken in accordance with regulations promulgated by and under the supervision of a representative of the Pennsylvania Department of Environmental Resources.
- E. Distance Provisions: The perimeter of any excavation under this Section shall not be nearer than 300 feet from any building, property line or street, except that owned by the excavator.
- F. Timing: Blasting in any coal operation shall occur only between the hours of 9:00 A.M. and 4:00 P.M. local time. The applicant shall provide the Borough with not less than a twenty-four (24) advance notice.
- G. Location of Processing Equipment: To reduce airborne dust, dirt and noise, all structures for sorting, crushing, grinding, loading, weighing, washing and other operations shall be not less than 300 feet from the right-of-way of any street, and/or 500 feet from any residential building or the boundary of a residential zoning district.
- H. Drainage: All excavations both during operations and after completion shall be adequately drained to prevent the formation of pools of water. Adequate measures shall be taken prior to any excavation and fully documented prior to approval of the coal operation.
- I. Compliance with State Requirements: Final and/or unconditional approval under the provisions of this Ordinance will not be issued until the required license or permit has been properly secured from the Pennsylvania Department of Environmental Resources.

**608.3      ADULT USES**

No adult use, as so defined in Article 2 of this Ordinance, shall be located less than 1,000 feet from any of the following uses:

- 1. A residential dwelling
- 2. A place of worship
- 3. A public or quasi-public use or structure
- 4. A zoning boundary of any residential zoning district.

Measurements of the required distance shall be made in a straight line, from the nearest portion of the structure or premises of an adult use, to the nearest property line of the above noted uses. The structure and/or premises of an adult use, including all off-street parking areas shall be completely enclosed by a fence, not less than eight (8') feet in height and screened by a variety of evergreen trees which shall be planted not more than six (6') feet apart and being not less than

eight (8') feet in height at the time of planting. The owner of the property shall be responsible to maintain such screening, including the replacement of any trees which are damaged, die, removed by whatever means or otherwise fail to grow.

#### **608.4      TRUCKING TERMINALS**

The property shall not be less than four (4) acres in area. Access drives shall be no more than twenty-five (25') feet in width. Where the operation abuts on the rear or side lot lines of a zoning district containing residences as a principal permitted use, a solid wall or substantial, attractive fence not less than eight (8') feet in height shall be constructed and maintained in good condition along such boundary. No truck parking or terminal operation shall be allowed within fifty (50') feet of any lot line. Outside lighting shall be directed away from adjacent properties.

#### **608.5      PLANNED RESIDENTIAL DEVELOPMENT**

##### **608.501      PURPOSE**

The purpose of this district, as stated in the Pennsylvania Municipalities Planning Code, Act 247 as amended, is to achieve the following:

- A. To insure that the provisions of the Ashley Borough Zoning Ordinance, which are concerned with the uniform treatment of dwelling type, bulk, density and open space within each zoning district, shall not be applied to the improvement of land by other than lot-by-lot development in a manner which would distort the objectives of the Ordinance.
- B. To encourage innovations in residential development and renewal so that the growing demand for housing may be met by greater variety in type, design and layout of dwellings and by the conservation and more efficient use of open space ancillary to said dwellings.
- C. To provide greater opportunities for better housing and recreation for all who are or may become residents of the Borough.
- D. To encourage a more efficient use of land and public services and to reflect changes in the technology of land development so that the economies so secured may insure the benefits of those who need housing.
- E. To encourage more flexible land development which will respect and conserve natural resources such as streams, flood plains, groundwater, wooded areas, areas of unusual attractiveness related to the topography of the land in the natural environment and in the aid of these purposes.
- F. To provide a procedure which can regulate the type, design and layout of a residential development to the particular site and particular demand for

housing existing at the time of development in a manner consistent with the preservation of property values within existing residential areas. To assure that the increased flexibility of regulations over land development established hereby is carried out pursuant to sound, expeditious and fair administrative standards and procedures.

**608.502**      **USE REGULATIONS**

The principal permitted uses shall include:

- A. Single-family Detached Dwellings
- B. Two-family Dwellings
- C. Multifamily Dwellings
- D. Townhouses
- E. Accessory Uses: Customary accessory uses and buildings to the above shall be permitted in accordance with Section 304 of this Ordinance.

**608.503**      **DENSITY REGULATIONS**

The density of a Planned Residential Development, based upon the existing residential zoning district in which the Planned Residential Development is proposed to be established, shall not exceed the minimum lot area per dwelling unit as provided for in Article 5 of the Borough's Zoning Ordinance, along with the corresponding maximum lot coverage requirements and required Common Open Space requirements as set forth in Section 608.504 (D.) of this Ordinance.

**608.504**      **DIMENSIONAL REGULATIONS**

All planned residential developments shall be subject to the following:

- A. Minimum Lot Area: A planned residential development shall have an area of not less than ten (10) acres.
- B. Distance Between Buildings: No buildings or structure, including porches, decks or balconies shall be less than thirty (30') feet to any other building or structure.
- C. Setback Requirements: The minimum front, side and rear setbacks for a Planned Residential Development shall each be not less than fifty (50) feet to the property lines of adjoining properties. A planting strip of not less than twenty (20) feet in width shall be along all property lines at the periphery of the development where necessary to preserve the privacy of neighboring residents.

- D. Bodies of Water: Land adjacent to a pond, stream, wetlands, or watercourse shall remain as permanent open space for a distance of not less than one hundred (100') feet from the water's edge, unless superseded by more restrictive standards.
- E. Common Open Space: Not less than twenty (20%) percent of the total area of a Planned Residential Development, excluding streets and off-street parking areas, shall be designated, designed and devoted to common open space for the use and enjoyment of the residents therein.

**608.505      DEVELOPMENT REGULATIONS**

A Planned Residential Development shall be subject to the following standards and regulations:

- A. Requirements For Improvements and Design: All improvements, including but not limited to, streets, curbing, sidewalks, stormwater detention facilities, drainage facilities, water supply facilities, sewage disposal, street lighting, tree lawns, etc., unless otherwise exempted, shall be designed and constructed in conformance with the standards and requirements of the Ashley Borough Subdivision and Land Development Ordinance.
- B. Sewage Disposal: Disposal of sanitary sewage shall be by means of centralized sewers and shall conform to the design standards of the Ashley Borough Subdivision and Land Development Ordinance. The proposed sewage collection system and treatment facility shall require D.E.R. approval as a prerequisite and/or condition to tentative approval of a development plan.
- C. Water Supply: The water supply shall be a centralized off-site system. Evidence shall be provided that the planned residential development is to be supplied by a certified public utility, a bona fide cooperative association of lot owners, or by a municipal corporation, authority or utility. A copy of a Certificate of Public Convenience from the Pennsylvania Public Utility Commission or an application for such certificate, a cooperative agreement or a commitment or agreement to serve the planned residential development in question shall be required. Whichever form is appropriate, shall be considered as acceptable evidence.
- D. Environmental Considerations: A proposed planned residential development shall be designed in relationship to environmental considerations addressed within the Environmental Impact Statement requirements of Section 606 of this Ordinance.

**608.506      LOCATION/MANAGEMENT OF COMMON OPEN SPACE**

Common open space within a planned residential development shall be designed as a contiguous area which shall be easily accessible to the residents. A planned residential development must insure that the common open space shall remain as such and be properly maintained by the developer's compliance with one of the following:

- A. Dedicate such land to public use, providing the Borough will accept such dedication.
- B. Retain ownership and responsibility for maintenance of such land.
- C. Provide for and establish an organization for the ownership and maintenance of such land, which includes provisions that such organization shall not be dissolved nor shall it dispose of such land, by sale or otherwise (except to an organization conceived and established to own and maintain the common open space), without first offering to dedicate such land to the Borough.

The Borough shall utilize the appropriate procedures and remedies, as set forth in Article 7 of the Pennsylvania Municipalities Planning Code, Act 247, as amended, should an organization established to own and maintain common open space fail to do so in a reasonable order and conditioned in accordance with the development plan.

#### **608.507      PHASING OF DEVELOPMENT**

A planned residential development may be constructed in phases subject to the following:

- A. The application for tentative approval shall cover the entire area to be developed, which indicates the location of each phase, with the approximate start and completion date for each phase.
- B. Not less than twenty (20%) percent of the total number of dwelling units to be constructed shall be included in the first phase.
- C. The second and any subsequent phases shall be completed in accordance with the tentatively approved plan, with each phase containing not less than fifteen (15%) of the total number of dwelling units.

#### **608.508      ENFORCEMENT AND MODIFICATION OF PROVISIONS OF THE PLAN**

To further the mutual interest of the residents of the planned residential development and of the public in the preservation of the integrity of the development plan, as finally approved, and to insure that modifications, if any, in the development plan shall not impair the reasonable reliance of said residents upon the provisions of the development plan, nor result in changes



that would adversely affect the public interest, the enforcement and modifications of the provisions of the development as finally approved, whether those are recorded by plat, covenant, easement or otherwise, shall be subject to the following:

- A. Provisions of the development plan relating to the use, bulk and location of buildings and structures; the quantity and location of common open space, except as otherwise provided herein; and the intensity of use or the density of residential units shall run in favor of the Borough and shall be enforceable in law or in equity by the Borough, without limitation on any powers of regulation otherwise granted the Borough by law.
- B. All provisions of the development plan shall run in favor of the residents of the planned residential development, but only to the extent expressly provided in the development plan and in accordance with the terms of the development plan, and to that extent said provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced at law or in equity by said residents acting individually, jointly or through an organization designated in the development plan to act on their behalf; provided, however, that no provisions of the development plan shall be implied to exist in favor of residents of the planned residential development except as to those portions of the development plan which have been finally approved and have been recorded.
- C. All those provisions of the development plan authorized to be enforced by the Borough under this Section may be modified, removed or released by the Borough, except grants of easements relating to the service or equipment of a public utility, subject to the following conditions:
  1. No such modification, removal or release of the provisions of the development plan by the Borough shall affect the rights of the residents of the planned residential development to maintain and enforce those provisions, at law or in equity, as provided in this Section.
  2. No modification, removal or release of the provisions of the development plan by the Borough shall be permitted except upon a finding by the Borough Council, after a review by the Planning Commission, following a public hearing pursuant to public notice, called and held in accordance with the provisions of this Section, that the same is consistent with the efficient development and preservation of the entire planned residential development, does not adversely affect either the enjoyment of land abutting upon or across the street from the planned residential development or public interest, and is not granted solely to confer a special benefit upon any person.

- D. Residents of the planned residential development may, to the extent and in the manner expressly authorized by the provisions of the development plan, modify, remove or release their rights to enforce the provisions of the development plan, but no such action shall affect the right of the Borough to enforce the provisions of the development plan in accordance with the provisions of this Section.

**608.509      APPLICATION FOR TENTATIVE APPROVAL**

The application for approval, tentative and final, of a planned residential development prescribed in this Article shall be in lieu of all other procedures or approvals otherwise required by the Zoning Ordinance and Subdivision and Land Development Ordinance of the Borough, except where specifically indicated. The procedures herein described for approval or disapproval of a development plan for a planned residential development and the continuing administration thereof are established in the public interests in order to provide an expeditious method for processing a development plan for a planned residential development and to avoid the delay and uncertainty which would arise if it were necessary to secure approval, by a multiplicity of local procedures, of a plat of subdivision as well as approval of a change in the zoning regulations otherwise applicable to the property. An application for tentative approval shall be consistent with the following:

- A. Informal Consultation: The landowner, Borough Council, and Planning Commission shall consult informally concerning the proposed planned residential development prior to the filing of an application for tentative approval, provided that no statement or representation by a member of the Borough Council or the Planning Commission shall be binding upon the Borough Council or Planning Commission as a whole. The informal consultation is intended to allow the landowner and Borough officials to exchange comments and discuss issues which may be of particular significance to the site.
- B. Application: An application for tentative approval shall be filed by or on behalf of the landowner with the Zoning Officer upon payment of the required application fee.
- C. Relationship to Planning, Zoning and Subdivision: All planning, zoning and subdivision matters relating to the platting, use and development of the planned residential development and subsequent modifications of the regulations relating thereto, to the extent such modification is vested in the Borough, shall be determined and established by the Borough Council after review by the Planning Commission.
- D. Required Documentation: The application for tentative approval shall include documentation illustrating compliance with all of the standards

for a planned residential development and, where necessary, the Borough shall order such documentation to aid them in their review. An original and five (5) copies of the application along with twenty (20) copies of the development plan shall be required. Required documentation shall include, but not be limited to, documents and information illustrating the following:

1. Any reports and/or studies which may be required by the Borough Council within the context of an "Impact Analysis." Council may require such prior to or during the course of reviewing an application and development for tentative approval.
2. An Environmental Impact Statement shall be required by Council, unless the applicant requests and receives approval by Council for the exclusion of such. Any request by the applicant shall be in writing and shall include all information and the basis which supports the exclusion of such information.
3. The location, size and topography of the site and the legal nature of the landowner's interest in the land proposed to be developed.
4. The density of land use to be allocated to parts and/or phases of the site to be developed.
5. The location and size of common open space and the form of organization proposed to own and maintain the common open space.
6. The use and approximated height, bulk and location of buildings and other structures.
7. The feasibility of proposals for the disposition of sanitary waste and storm water.
8. The substance of covenants, grants or easement or other restrictions proposed to be imposed upon the use of the land, buildings and structures including proposed easements or grants for public utilities.
9. Provisions for parking of vehicles and the location and width of proposed streets and any other form of public right-of-ways, excluding common open space.
10. The required modifications in the Borough land use regulations otherwise applicable to the subject property.
11. The feasibility of proposals for energy conservation and the effective utilization of renewable energy sources.

12. In the case of development plans, which call for development over a period of years, a schedule showing the proposed timetable within which applications for final approval of all phases of the planned residential development are intended to be filed and this schedule must be updated annually, on the anniversary of its approval, until the development is completed and accepted.
  13. A plan map at a scale of not less than one (1") inch equals one hundred (100') feet, with contours for each five (5') feet change in elevation.
- E. Statement of Landowner: The application shall also include a written statement by the landowner setting forth the reasons why, in his opinion, the planned residential development would be in the public interest and consistent with the Comprehensive Plan of the Borough.
- F. Application and Approval Procedures in Lieu of Others: The application for tentative and final approval of a development plan for a planned residential development prescribed herein shall be in lieu of all other procedures and approvals required by the Zoning Ordinance and Subdivision and Land Development Ordinance of the Borough, unless otherwise expressly stated.
- G. Referrals and Review of Plan: The application for tentative approval shall be filed with the Zoning Officer, who shall be authorized to accept such applications under the Zoning Ordinance. Copies of the application and tentative plan shall be referred to the agencies and officials identified in the Subdivision and Land Development Ordinance of the Borough for their review and comment. The Planning Commission shall submit their report to the Borough Council for the public hearing.

#### **608.510      PUBLIC HEARINGS**

Within sixty (60) days after the filing of an application for tentative approval of a planned residential development pursuant to this Article, a public hearing pursuant to public notice on said application shall be held by the Borough Council in the manner prescribed in the Ordinance for the enactment of an amendment to the Zoning Ordinance.

The chairman or in his absence, the acting chairman, of the Borough Council, may administer oaths and compel the attendants of witnesses. All testimony by witnesses shall be given under oath and every party of record at a hearing shall have the right to cross-examine adverse witnesses.

A verbatim record of the hearing shall be provided by the Borough Council whenever such records are requested by any party to the proceedings; but the cost of making and transcribing such a record shall be paid by those parties wishing to obtain such copies. All exhibits, accepted as evidence,

shall be properly identified and the reason for any exclusion shall be clearly noted in the record.

The Borough Council may continue the public hearing as required and may refer the plan and the application back to the Planning Commission for a report, provided that in any event, the public hearing or hearings shall be concluded within sixty (60) days following the date of the first public hearing.

**608.511      FINDINGS**

The Borough Council, within sixty (60) days following the conclusion of the public hearing, shall by official written communication to the landowner, either:

- A. Grant tentative approval to the development plan as submitted.
- B. Grant tentative approval subject to specified conditions not included in the development plan as submitted.
- C. Deny the tentative approval to the development plan.

Failure to act within the prescribed time period shall be deemed to be a grant of tentative approval of the development plan as submitted. In the event, that tentative approval is granted subject to conditions, the landowner may, within thirty (30) days after receiving a copy of the official written communication of the Borough Council, notify said Board of his/her refusal to accept all said conditions, in which case the Borough Council shall be deemed to have denied tentative approval of the development plan. In the event the landowner does not notify the Borough Council of his refusal to accept all said conditions within thirty (30) days after receiving a copy of the official written communication of the Borough Council, tentative approval of the development plan, with all said conditions, shall stand as granted.

The grant or denial of tentative approval by official written communication shall include not only conclusions, but also findings of fact related to the specific proposal and shall set forth the reasons for the denial, and said communication shall set forth particulars in what respect the development plan would or would not be in the public interest including but not limited to findings of facts and conclusions based upon the following:

- A. Those respects in which the development plan is or is not consistent with the Comprehensive Plan for the development of the Borough.
- B. The extent to which the development plan departs from zoning and subdivision regulations otherwise applicable to the subject property,

including but not limited to density, bulk and use and the reasons why such departures are or are not deemed to be in the public interest.

- C. The purpose, locations and amount of common open space in the planned residential development, the reliability of the proposals for maintenance and conservation of the common open space and the adequacy or inadequacy of the amount and purpose of the common open space as related to the proposed density and type of residential development.
- D. The physical design of the development plan and the manner in which said design does or does not make adequate provisions for public services, provide adequate control for vehicular traffic, and further the amenities of light and air, recreation and visual enjoyment.
- E. The relationship, beneficial or adverse, of the proposed planned residential development to the neighborhood or area of the Borough in which it is proposed to be established.
- F. In the case of a development plan which proposes development over a period of years, the sufficiency of the terms and conditions intended to protect the interest of the public and of the residents of the planned residential development in the integrity of the development plan.

In the event a development plan is granted tentative approval, with or without conditions, the Borough Council may set forth in the official written communication, the time within which an application for final approval of the development plan shall be filed or, in the case of a development plan which provides for development over a period of years, the periods of time within which applications for final approval of each part or phase thereof shall be filed. Except upon the consent of the landowner, the time so established between grant of tentative approval and an application for final approval shall not be less than ninety (90) days. In the case of development plans which extend over a period of years, the time between applications for final approval of each part of the plan shall not be less than one (1) year.

**608.512 STATUS OF PLAN AFTER TENTATIVE APPROVAL**

The official written communication provided for in this Article shall be certified by the Borough Secretary and filed in his/her office; a certified copy shall be mailed to the landowner. Where tentative approval has been granted, it shall be deemed as an amendment to the Zoning Map, effective and so noted upon the Zoning Map upon final approval.

Tentative approval of a development plan shall not qualify a plan of the planned residential development for recording nor authorize development or the issuance of any zoning permit. A development plan, which has been given tentative approval with conditions which have been accepted by the

landowner (and provided that the landowner has not defaulted nor violated any of the conditions of the tentative approval), shall not be modified or revoked nor otherwise impaired by action of the Borough pending the application or applications for final approval, without the consent of the landowner, provided an application for final approval is filed or, in the case of development over a period of years, provided applications are filed within the periods of time specified in the official written communication granting tentative approval.

In the event that a development plan is given tentative approval and thereafter, but prior to the final approval, the landowner shall elect to abandon said development plan and shall so notify the Borough Council in writing, or in the event the landowner shall fail to file application or applications for final approval within the required period of time or times, as the case may be, the tentative approval shall be deemed to be revoked and all that portion of the area included in the development for which final approval has not been given shall be subject to those local ordinances otherwise applicable thereto as they may be amended from time to time, and the same shall be noted on the Zoning Map and in the records of the Borough Secretary.

#### **608.513      APPLICATION FOR FINAL APPROVAL**

An application for final approval may be for all of the land included in a development plan or, to the extent set forth in the tentative approval, a section thereof. Said application shall be made through the Zoning Officer to the Borough Planning Commission and the Borough Council within the time or times specified by the official written communication granting tentative approval. If the application for final approval is in compliance with the tentatively approved development plan, a public hearing is not required.

The application shall include all drawings, specifications, covenants, easements, performance bond and such other requirements as specified in the Subdivision and Land Development Ordinance of the Borough as well as any conditions set forth in the official written communication granting tentative approval.

In the event that the application for final approval has been filed, together with all drawings, specifications and other documents in support thereof, and as required by the Ordinance and the official written communication of tentative approval, the Borough Council shall, within forty-five (45) days of such filing, grant such development plan final approval.

In the event the development plan as submitted contains variations from the development plan given tentative approval, the Borough Council may refuse to grant final approval and shall, within forty-five (45) days from the filing of the application for final approval, so advise the landowner in writing of

said refusal, setting forth in said notice the reasons why one (1) or more said variations are not in the public interest.

In the event of such refusal the landowner may either:

- A. Refile his application for final approval without the variations to which the Borough Council deemed objectionable and not in the public interest.
- B. File a written request with the Borough Council that it hold a public hearing on his/her application for final approval.

If the landowner wishes to take either of such alternate action, he/she may do so at any time within which he/she shall be entitled to apply for final approval, or within thirty (30) additional days if the time for applying for final approval shall have already passed at the time when the landowner was advised that the development plan was not in substantial compliance. In the event the landowner shall fail to take either of these alternate actions within said time, he/she shall be deemed to have abandoned the development plan.

Any such public hearing shall be held pursuant to public notice within thirty (30) days after the request for the hearing is made in writing by the landowner. The hearing shall be conducted in the manner prescribed in this Ordinance for public hearings on applications for tentative approval. Within thirty (30) days after the conclusion of the public hearing, the Borough Council shall, by official written communication, either grant final approval to the development plan or deny final approval.

The grant or denial of final approval of the development plan shall, in cases arising under this Section, be in the form and contain findings required for an application for tentative approval as set forth in this Article.

A development plan, or any part thereof, which has been given final approval, shall be so certified without delay by the Borough Council and shall be filed of record forthwith in the Office of the Recorder of Deeds of the County before any development shall take place in accordance therewith. Upon filing of record of the development plan, the zoning and subdivision regulations otherwise applicable to the land included in such plan shall cease to apply thereto. Pending completion within a reasonable time of said planned residential development or of that part or phase thereof, as the case may be, that has been finally approved, no modification of the provisions of said development plan, or part thereof, as finally approved, shall be made except with the consent of the landowner. Upon approval of a final plat the developer shall record the plat in accordance with Section and post a financial security in accordance with Section

In the event that a development plan, or section thereof, is given final approval and thereafter the landowner shall abandon such plan or section



thereof that has been finally approved, and shall so notify the Borough Council in writing; or in the event the landowner shall fail to commence and carry out the planned residential development within such reasonable period of time as may be fixed by Ordinance after final approval has been granted, no development or further development shall take place on the property included in the development plan until after the said property is resubdivided and is reclassified by enactment of an amendment to the Borough Zoning Ordinance in the manner prescribed for such amendments by this Ordinance.

**608.514**      **LEGAL PROCEEDINGS AND ENFORCEMENT  
REMEDIES**

Any person, partnership or corporation, who or which has violated the provisions of this Article, shall be prosecuted in accordance with Section 712.1 and Section 712.2 of the Pennsylvania Municipalities Planning Code, Act 247, as amended.

**608.6**      **COMMERCIAL COMMUNICATION FACILITIES**

Commercial Communication Facilities shall be subject to the following requirements.

A.      **COMMERCIAL COMMUNICATIONS ANTENNA**

- (1)      Commercial Communications Antenna shall comply with all applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic radiation. A copy of the subject standards shall be submitted with a Zoning Permit Application.
- (2)      The applicant shall provide a copy of its current Federal Communication Commission license.

B.      **COMMERCIAL COMMUNICATION TOWER**

- (1)      A written statement and graphic depiction that describes and depicts the proposed Tower including the type of construction (monopole, lattice tower, guyed tower), tower height and the provision for co-location;
- (2)      The submission of not less than three color photos, no smaller than 8 inches by 10 inches, taken from locations within a three (3) mile radius of the proposed site of a Communications Tower, as selected by the Borough Council and computer enhanced to simulate the as-built appearance of the Tower as it would appear from these locations.
- (3)      Certification and documentation from a Pennsylvania registered professional engineer that the proposed Tower will be designed in accordance with the current Structural Standards for Steel Antenna Towers and Antenna Supporting Structures,

published by the Electrical Industrial Association/Telecommunications Industry Association and applicable requirements of the Pennsylvania Uniform Construction Code and other applicable regulations.

- (4) The name, address, and emergency telephone number for operator of the Tower;
- (5) The applicant shall demonstrate, using technological evidence, that the Tower must be located where it is being proposed and that it represents the minimum height required to function satisfactorily.
- (6) All new Towers shall be engineered and constructed to accommodate at least one (1) other user.
- (7) Unless required by the FAA, no Tower may use artificial or strobe lighting. The tower shall be a brownish color (whether painted brown or caused by oxidation or otherwise to lessen its visual impact) up to the height of the tallest nearby trees. Above that height, it shall be painted silver or another color that will minimize its visual impact.
- (8) A Tower shall be setback from all property lines a distance that is not less than one hundred and twenty (120%) percent of the height of the Tower as measured in linear feet.
- (9) An applicant proposing the construction of a Tower shall demonstrate that a good faith effort has been made to obtain permission to mount the Communications Antennas on an existing building, structure or Communications Tower. A good faith effort shall require that all owners of potentially suitable structures within a one-half ( $\frac{1}{2}$ ) mile radius of the proposed Tower site be contacted. The applicant shall supply supporting documentation for not selecting an alternate location.
- (10) All guy wires associated with a Guyed Tower shall be clearly marked at ground level so as to be visible at all times and shall be located within a fenced enclosure. The exposed, aboveground portion of guy anchors shall be no less than 10 feet from the nearest property line.
- (11) No signs shall be mounted on a Tower, except as may be required by the Federal Communications Commission, Federal Aviation Administration or other governmental agency that has jurisdiction, provided, however, that a sign shall be affixed to the security fence in an accessible and visible location containing the name and address of the owner of the Tower and a 24-hour emergency telephone number.

C. COMMERCIAL COMMUNICATIONS EQUIPMENT BUILDING:

- (1) A Commercial Communications Equipment Building shall not exceed four hundred (400) square feet of floor area.
- (2) A Commercial Communications Equipment Building shall meet the

governing setback distances applicable to the district in which it is located.

D. DECOMMISSIONING AND RESTORATION REQUIREMENTS

A tower shall be removed from the site within six (6) months of its cessation of use. The applicant shall include the following information regarding decommissioning and removal of the tower and restoring the site:

- (1) The anticipated and/or estimated life of the project;
- (2) The estimated decommissioning costs in current dollars;
- (3) The method and schedule for updating the costs of decommissioning and restoration;
- (4) The method of ensuring that funds will be available for decommissioning and restoration;
- (5) The anticipated manner in which the project will be decommissioned and the site restored.
- (6) The applicant shall provide an appropriate and adequate demolition bond for purposes of removing the tower in case the applicant fails to do so as required above. Proof of this bond shall be provided each year and shall be a continuing condition for the life of the project.
- (7) The sufficiency of the demolition bond shall be confirmed at least every five years by an analysis and report of the cost of removal and property restoration to be performed by a licensed professional engineer, the cost of same to be borne by the applicant. If said analysis and report determines that the amount of the bond in force is insufficient to cover the removal, disposal and restoration costs, the bond shall be increased to the amount necessary to cover such costs within 10 days of the applicant's receipt of such report.

E. INSURANCE REQUIREMENTS

- (1) The applicant shall provide a Certificate of Insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 million per occurrence covering the Commercial Communications Facility.

**608.7 BULK FUEL STORAGE**

Bulk fuel storage shall be located on a tract of land not less than five (5) acres. Storage tanks shall be located not less than one hundred (100) feet from any property line and shall be not less than five hundred (500) feet from any dwelling, school, church or similar use. Cylinder filling rooms, pumps, compressors and truck filling stations shall be located two hundred fifty (250) feet from all property lines. The tank storage area shall be fenced with an eight (8) feet high

industrial gauge fence. If the storage property abuts on the side or rear property line containing a residence, the fence shall be screened from view by a dense growth of evergreens at least five (5) feet in height at the time of planting. Bulk fuel storage facilities shall be developed in full compliance with all applicable federal, state and insurance regulations.

## **608.8      MOBILE HOME PARKS**

### **SITE LOCATION STANDARDS**

- A. All mobile home parks shall be serviced by a centralized sewage disposal system and a central water supply and distribution system. Said water system shall be designed and installed to meet the standards of the National Fire Protection Association, including the installation of fire hydrants and related appurtenances.
- B. All mobile home parks shall be located on well drained land with the average natural slope not exceeding ten (10%) percent.
- C. All mobile home parks shall have access to public streets or roads.
- D. Access to mobile home sites shall be from interior driveways, access drives, or private streets and shall not be from public street or roads Entrance roads shall have a paved cartway width of at least twenty-four (24') feet.
- E. Every mobile home site shall be provided with a minimum of two (2) off-street parking spaces.
- F. The minimum area of land per mobile home site shall be not less than seven thousand two hundred (7,200) square feet, with the dimensions being sixty feet by one hundred and twenty (60x120) feet. There shall be an interior spacing distance of not less than thirty (30) feet from the defined site on which the mobile home is located to the next defined site for a mobile home.
- G. A buffer area shall be provided around the mobile home park. No mobile home lot shall be located closer than fifty (50) feet to any public road right-of-way or closer than seventy-five (75) feet to any other exterior property line.
- H. A vegetative screening of evergreen trees shall be required along the property boundary line separating the park and any adjacent use. The variety of evergreen trees shall subject to approval by the Borough Council. Said trees shall be minimum height of six (6) feet at the time of planting and shall be planted not more than six (6) feet apart. The applicant and/or operator of the mobile home park shall be responsible to maintain such screening, including the replacement of any trees which are damaged, die or otherwise fail to grow.
- I. Every mobile home park shall provide a defined recreational site or sites which shall contain an area of land not less than five (5%) percent of the total gross land area within the boundaries of the mobile home park. All recreational sites shall be located in areas which are readily accessible to all residents of the mobile home park. A recreational development plan shall be provided which identifies passive and active recreational

features to be provided upon the site, including recreational equipment, play apparatus, benches, and all other features and facilities to be incorporated into the design of the recreational site. The location of the recreational site and the recreational development plan shall be subject to the review and approval of the Planning Commission. The recreational site must be identified and approved by the Planning Commission prior to final approval of the development or expansion of a mobile home park. To guarantee the installation of all improvements to the site, the applicant shall be required to complete the installation of all such improvements prior to receiving an unconditional final approval or to post an irrevocable letter of credit in the amount of 110% of the estimated cost of improvements. The procedures and standards contained within Section 509 of the Pennsylvania Municipalities Planning Code, Act 247, as amended shall apply to posting the aforementioned irrevocable letter of credit. The procedures and standards within Section 510 of Act 247, as amended, shall apply to the release of the irrevocable letter of credit upon the completion of the required improvements. The applicant shall be required to reimburse the Borough for any consulting and engineering fees associated with the inspection of improvements to the site. Said reimbursement must be paid at the same meeting of the Borough Council at which the applicant seeks final and unconditional approval of said improvements.

- J. Each mobile home lot shall be improved to provide a permanent poured concrete foundation for the placement and tie-down of the mobile home, thereby securing the structure against uplift, sliding, rotation and overturning. The foundation shall be constructed in accordance with governing standards contained in the Pennsylvania Uniform Construction Code.
- K. Every mobile home shall be securely anchored or tied-down governing standards contained in the Pennsylvania Uniform Construction Code. All mobile homes shall be enclosed from the bottom of the mobile home to the ground or paving using industry approved fire resistant skirting material with sufficient ventilation to inhibit decay and deterioration of the mobile home.
- L. The owner/operator of each mobile home park shall provide a refuse disposal plan.
- M. An approved Soils Erosion and Sedimentation Plan and a Stormwater Management Plan shall be required prior to the unconditional approval for the development or expansion of a mobile home park.
- N. An approved Department of Environmental Protection Planning Module shall be required prior to the unconditional approval for the development or expansion of a mobile home park.

**608.9                    OUTDOOR FUEL BURNING FURNACE:**

An outdoor fuel burning furnace shall be deemed to be an accessory structure. Said furnaces shall only be located within a rear yard of a property. An outdoor fuel burning furnace shall comply with the following standards

- A. A safe flue or chimney shall be provided which has a minimum termination height

of twenty-five (25) feet above the natural ground level upon which the furnace is located.

- B. A fan or blower attached to the appliance to increase the efficiency of the furnace.
- C. An outdoor fuel burning furnace shall be located not less than one hundred (100) feet from any property line and not less than forty (40) feet to any principal structure or building located upon the property.
- D. All outdoor fuel burning furnaces are required to meet emission standards currently required by the Environmental Protection Agency (EPA). Emission standards currently required by the EPA are hereby adopted by reference together with any amendments or modifications made to them in the future.
- E. All outdoor fuel burning appliances shall be installed, operated and maintained in strict conformance with the manufacturer's instructions and the regulations promulgated hereunder. In the event of a conflict, the regulations promulgated within this Section shall apply unless the manufacturer's instructions are stricter, in which case the manufacturer's instructions shall apply.
- F. The owner of the outdoor fuel burning furnace shall produce the manufacturer's instructions for all devices that do not conform to the requirements of this Section.
- G. All outdoor fuel burning furnaces may only be utilized for the sole purpose of furnishing heat to a structure or building and/or providing hot water during the time period of October 1 through April 30; and subject to meeting the requirements of this Section.
- H. No homemade outdoor fuel burning appliances will be allowed.
- I. Only natural wood, coal, heating oil, natural gas, kerosene or wood specifically permitted by the manufacturer in writing may be burned in outdoor furnaces. The burning in outside furnaces of processed wood products and non-wood products, household or other garbage, recyclable material, rubber tires, railroad ties, leaves, laminated wood, wet or soggy wood, painted or treated wood and any item not specifically and in writing permitted by the manufacturer is prohibited.
- J. All storage of materials to be burnt in the outdoor fuel burning furnace shall be neatly stacked and/or stored under cover and free from insects (termites, ants, etc.) or any type of disease carrying rodents.
- K. Ashes or waste cannot be accumulated in a large area on the property. They may be dispersed on the property as long as no accumulation can be seen (for example: spread in a driveway). Any large accumulation of ashes or waste must be disposed of weekly with the owner's trash.

## **ARTICLE 7**

### **SPECIAL EXCEPTIONS**

#### **SECTION 701    PURPOSE**

The purpose of a use classified as a "special exception" is to provide expressed standards for regulating unique or special characteristics of certain uses which may otherwise allow such uses to be permitted by right within their respective zoning district, as provided in Article 5, Zoning District Regulations.

#### **SECTION 702    GENERAL PROVISIONS**

The authority for approving or denying applications for uses permitted by special exception shall be vested in the Zoning Hearing Board in accordance with the provisions contained in Article 15. Decisions by the Zoning Hearing Board shall be made pursuant to the standards and criteria set forth in this Article (Section 1504), the respective zoning district in which the use is located, all other applicable regulations of this Ordinance, other ordinances of the Borough and any applicable State and/or Federal regulations.

#### **SECTION 703    SITE PLAN**

Uses classified as a special exception shall file, in addition to a zoning permit, a site plan at a scale of not greater than one (1") inch equal fifty (50') feet, which shall be submitted to the Zoning Officer. Such plan shall provide all information required for the Zoning Hearing Board to render a decision, including but not limited to the following:

- A. The location and size of all buildings and structures, both principal and accessory.
- B. The location of all off-street parking areas and/or loading areas.
- C. The location of all open space areas, including buffer areas and fencing, if applicable.
- D. Traffic access to the site and internal traffic circulation within the site.
- E. All streets, both public and private, within five hundred (500') feet of the site.
- F. Contours of the site for each five (5) feet of change in elevation, based upon a field survey of the site, with the name of the person or firm who conducted the survey and the date of the survey.
- G. The location, nature and terms of any existing or proposed easements on the site and any easements both on-site and off-site which are used or intended to be used for access to the site.
- H. Streams, ponds, watercourses, wetlands or any other type bodies of water, including natural or man-made drainage swales, located on the site or within five hundred (500) feet of the site.

- I. The location of any residential structure within five hundred (500') feet of any property boundary line of the subject site.
- J. The Map, Block and Lot Number of the subject parcel.

**SECTION 704    GENERAL STANDARDS**

The general standards contained herein shall be utilized in the review of applications and plans for any use which is classified as a special exception:

- A. The proposed use shall not jeopardize the objectives of the "Community Development Objectives" of this Ordinance.
- B. Public services and facilities such as streets, sewage disposal, water, police and fire protection shall be adequate for the proposed use.
- C. Existing and future streets and access to the site shall be adequate for emergency services, for avoiding undue congestion, and for providing for the safety and convenience of pedestrian and vehicular traffic.
- D. The relationship of the proposed use to other activities existing or planned in the vicinity shall be harmonious in terms of the location and size relative to the proposed use, and the nature and intensity of the operation involved.
- E. The relationship of the proposed use to other activities existing or planned in the vicinity shall be harmonious in terms of the character and height of buildings, walls and fences so that the use, development and value of adjacent property is not impaired.
- F. The proposed use shall not be more objectionable in its operation in terms of noise, fumes, smoke, vapors, gases, odors, heat, glare, vibration, lighting or electrical disturbances than would be the operation of any permitted use in the district nor shall it constitute a "General Nuisance" as so defined in Article 2 of this Ordinance.
- G. Any other reasonable conditions and safeguards, in addition to those expressed in this Ordinance, may be imposed by the Zoning Hearing Board in the interest of protecting the health, safety and welfare of the public.

**SECTION 705    IMPACT ANALYSIS**

In considering an application for a special exception, the Zoning Hearing Board shall have the authority to require the applicant to prepare an "Impact Analysis" on a particular aspect of the subject application in accordance with the definition of said term as provided within Article 2 of this Ordinance.



## **ARTICLE 8**

### **SUPPLEMENTAL REGULATIONS**

#### **SECTION 801    PURPOSE AND INTENT**

Certain uses of land and/or buildings, as specified herein, whether permitted by right, special exception and or conditional use, shall be subject to supplemental regulations in addition to those of the district in which the use is located.

#### **SECTION 802    USE REGULATIONS**

##### **802.1        ANIMAL HOSPITAL**

An animal hospital shall maintain all activities within a completely enclosed soundproof building, and no objectionable odors shall be vented outside the building. No animal hospital shall be located less than twenty-five (25') feet from any property line.

##### **802.2        AUTOMOBILE RELATED ACTIVITIES**

- A. Automotive Repairs (Repair Garage): Activities including the repair of automobiles, trucks, snowmobiles and motorcycles shall be conducted within a completely enclosed building where adequate measures shall be taken to minimize noise, vibrations, fumes and glare. Only vehicles to be repaired on the premises or picked up by the vehicles' owner may be stored in the yard area. Where the operation abuts on the side or rear property line of a district having residences as a principal permitted use, a solid wall or substantial attractive fence six (6') feet in height shall be constructed and maintained in good condition along such boundary. Outside lighting shall be directed away from adjacent properties.
  
- B. Automotive Sales: The outdoor display of new or used automobiles, panel trucks or vans, trailers, recreational vehicles, all terrain vehicles, motorcycles, snowmobiles, mobile homes or boats shall meet the appropriate yard requirements for the zoning district in which such use is located. Uses which are normally accessory to such sale establishments (such as engine repairs, body repairs, painting, radiator repair and undercoating) shall be permitted, provided such uses are clearly incidental and subordinate to the principal use and further provided that such uses are conducted within a completely enclosed building designed and constructed to minimize noise, fumes, vibrations and glare. Where an automotive sales use abuts a rear or side lot line of any district having residences as a principal permitted use, a solid wall or substantial, attractive fence six (6') feet in height shall be constructed and maintained in good condition along such boundary. Outside lighting shall be directed away from adjacent properties.

- C. Car Wash: Car wash operations abutting on the side or rear property lines of a district having residences as a principal permitted use shall provide a solid wall or substantial, attractive, tight fence being six (6') feet in height and well maintained along such boundary. Outside lighting shall be directed away from adjacent activities. Appropriate drainage facilities for washing activities shall be provided. The site shall be sufficiently large to accommodate cars awaiting washing during peak periods so that lines along public streets are avoided. Such operations shall also comply with any applicable regulations of the Pennsylvania Department of Environmental Resources.
  
- D. Gasoline Service Stations: When a service station abuts on the rear or side lot line of a district having residences as a principal use, a solid wall or substantial attractive fence being six (6') feet in height shall be constructed and maintained in good condition along such boundary. When a service station occupies a corner lot, the access driveways shall be located at least sixty (60') feet from the intersection of the front and side street lines of the lot. All access driveways shall not exceed twenty-five (25') feet in width. Gasoline pumps or other service appliances may be located in the required front yard not to exceed fifteen (15') feet. All repairs, service, storage or similar activities in connection with the use shall be conducted within the building where adequate measures shall be taken to minimize noise, fumes and glare. Outside lighting shall be directed away from adjacent properties.

**802.3**      **BANKS**

Banks and other similar financial offices shall provide sufficient space to accommodate parking, vehicular circulation areas for drive-in tellers, access areas for parking lots separated from drive-in areas, and areas for pedestrian traffic separated from vehicular traffic for safety. Access driveways shall be no more than twenty-five (25) feet in width. Canopies over drive-through areas shall meet all yard setback requirements.

**802.4**      **BOARDING HOUSE**

The property shall maintain all yard areas for the zoning district in which it is located and shall be limited to providing lodging for not more than four (4) persons, excluding the owner of the property. Off-street parking spaces shall be provided for each boarder.

**802.5**      **CONTRACTORS STORAGE YARDS**

A contractor's storage yard uses utilizing outdoor storage space of more than 2,000 square feet, shall be located upon a parcel of land not less than 25,000 square feet and shall be enclosed with a chain link fence eight (8) feet in height. A Soil Erosion and Sedimentation Control Plan and Stormwater Management Plan shall be required for all areas of impervious surface to be provided for such storage. A complete listing of all types of machinery, material and items to be

stored therein shall be attached to the required Zoning Application. No hazardous substance and/material, shall be permitted upon the site. Supplies stored outdoors shall be neatly arranged and shall be required to meet the applicable yard setback for the zoning district in which they are located. There shall be a roadway 14 feet with provided for every 40 linear feet of stored materials. The roadway shall be kept passable for firefighting equipment. Where such storage areas abuts on the side or rear property line of any R District, a solid wall or solid opaque fencing eight (8) feet in height, designed to conceal and screen the storage area from adjoining properties, shall be constructed and maintained in good condition along such boundary. In front of the fence or wall there shall also be a landscaped planting strip at least four (4) feet wide, planted with shrubs or trees which are not less than three (3) feet high at the time of planting and which are of a type that may be expected to form a year-round dense screen at least four (4) feet high within three (3) years. The provision of any outside lighting shall be directed away from adjacent properties and shall be included upon the plan required to be submitted with the Zoning Permit Application

#### **802.6      CEMETERIES**

A structure, grave or place of permanent burial shall be set back not less than fifty (50') feet from the property line. The cemetery shall be enclosed by a fence, wall or shrubbery at least three (3') feet in height. The interior roads shall have a minimum width of twelve (12') feet and shall be properly maintained with either gravel or paving.

#### **802.7      CONVENIENCE STORE WITH GASOLINE PUMPS**

The property shall have a lot area of not less than twenty-five thousand (25,000) square feet. The principal structure as well as the canopy over gasoline pumps shall meet all the minimum setback requirements for all yards in the district in which it is located. Where the operation abuts on the rear or side lot line of a district having residences as a principal permitted use, a solid wall or substantial fence being six (6') feet in height shall be constructed and maintained in good condition along such boundary. A parking area accommodating all spaces required by Article 11 shall be provided. Access driveways shall be no more than twenty-five (25) feet wide at the street line, and in the case of a corner lot, access driveways shall be at least sixty (60) feet from the intersection of the two streets, as measured from the right-of-way line. All lighting shall be directed away from adjoining property.

#### **802.8      DAY CARE FACILITIES**

All day care facilities, as so defined in Article 2 of this Ordinance, shall comply with the following:

- A. The applicant or owner shall provide evidence of certification of compliance with all appropriate regulations of any designated State agency whose approval is required by the laws of the Commonwealth.

- B. Noise and all other possible disturbing aspects connected with such use shall be controlled to the extent that the operation of such use shall not unduly interfere with the use and enjoyment of properties in the surrounding area.
- C. All outdoor play areas shall be completely enclosed with a fence being six (6') feet in height. Outdoor play activities shall be limited to the hours between 10:00 A.M. to 5:00 P.M. local time.
- D. The applicant shall provide evidence that vehicular traffic congestion will be avoided in "pick-up and drop-off points utilized in transporting children to and from the facility.

**802.9 DWELLING OVER OR ATTACHED TO A BUSINESS ESTABLISHMENT**

Dwellings units may be permitted over or attached to business establishments in any zoning district. Such dwellings shall be designed as living quarters having adequate natural light and kitchen and bathroom facilities. Such dwellings shall also have private access and the required residence parking spaces in addition to commercial parking spaces as required by Article 11.

**802.10 EATING AND DRINKING ESTABLISHMENTS (NIGHT CLUBS AND RESTAURANTS)**

All eating and drinking establishments shall meet the parking requirements as set forth in Article 11 of this Ordinance. Access drives shall not exceed twenty-five (25') feet in width and for those establishments located on a corner lot, no access drive shall be located less than sixty (60') feet of an intersection, as measured from the right-of-way lines, from the intersection of the two abutting streets. Outside lighting shall be directed away from adjacent properties.

**802.11 ENTERTAINMENT FACILITIES**

Entertainment facilities as defined in Article 2 of this Ordinance shall provide proper parking areas with vehicular circulation and access designed to minimize any potential traffic congestion. Such facilities shall not be closer than twenty (20') feet from any boundary of a district having residences as principal permitted use, shall provide adequate screening from any residential district, and shall be conducted entirely within an enclosed structure.

**802.12 FUNERAL HOME**

Funeral homes shall accommodate all of the parking areas required as provided in Article 11 of this Ordinance. In addition, sufficient area shall be provided for vehicular circulation on the lot and for the assembly area for the procession beyond the street right-of-way line. Points of vehicular access to the site shall not create traffic hazards on the street. Loading and unloading areas for ambulances and hearses shall be within an enclosed building or shall be screened from view

from adjacent properties by a solid wall or substantial, attractive fence being six (6') feet in height. Outside lighting shall be directed away from adjacent properties.

**802.13      GROUP RESIDENCE**

Any party wishing to establish and/or operate a "Group Residence", in addition to all other applicable zoning regulations and/or requirements, shall be subject to the following supplemental requirements:

- A. The maximum occupancy of a Group Residence shall not exceed eight (8) persons, excluding staff. The occupancy of said Group Residence shall be governed by the standards and requirements as provided for within the most recent housing code standards of the I.B.C. Code.
- B. The Group Residence shall be under the jurisdictional and regulatory control of a governmental entity (County, State and/or Federal).
- C. The applicant and/or operator of Group Residence shall provide written documentation from the applicable governmental entity which certifies said Group Residence complies with the location, supervised services, operation, staffing and management of all applicable standards and regulations of the subject governing program.
- D. The applicable requirements and standards which govern off-street parking for a single family dwelling shall also govern for a Group Residence.

**802.14      HOME OCCUPATIONS**

A home occupation which is conducted within a dwelling unit or a building accessory to the dwelling shall be subject to the following provisions:

- A. The occupation shall be carried on wholly indoors, within the principal building or within a building accessory thereto.
- B. There shall be permitted a sign, not to exceed two (2) square feet in surface area, placed flat against the building as a wall sign, and shall not be permitted above the first story level. No other exterior display or exterior storage of materials or any other exterior indication of the home occupation shall be permitted.
- C. There shall be no maintenance of a stock in trade or show windows or displays or advertising visible outside the premises.
- D. No articles shall be sold or offered for sale except those which are produced on the premises.
- E. There shall be no repetitive servicing by truck.

- F. No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced.
- G. The occupation shall be carried on only by members of the immediate family residing in the dwelling unit, plus not more than one (1) additional employee.
- H. The floor area devoted to a home occupation, regardless of where located on a lot, shall be equivalent to not more than twenty (20%) percent of the floor area of the principal residential structure.
- I. Each home occupation shall have off-street parking as indicated below, in addition to that required for the dwelling unit:
  - 1) Four (4) spaces for each physician, dentist, or other licensed medical practitioner.
  - 2) Two (2) spaces for all other home occupations.

**802.15     INDUSTRIAL ACTIVITIES**

In addition to the applicable requirements of this Ordinance, all industrial activities and uses permitted by right, special exception and/or conditional use shall comply with all regulations governing odors, fumes, dust, smoke, vibration, noise, sewage, industrial waste, fire hazards and any other of the activities and uses with side effects that are deemed injurious to the public health, safety and welfare by the United States Environmental Protection Agency (EPA), the Pennsylvania Department of Environmental Protection (DEP) and the Pennsylvania Department of Labor and Industry. It shall be the responsibility of the applicant to provide the Zoning Officer with a complete listing of all State and Federal regulations governing the proposed use and written compliance from the governing agency. All industries are required to supply the Borough Emergency Management Agency and the Fire Department with all applicable MSDS sheets, emergency operations and evacuation plans.

**802.16     JUNK YARDS AND AUTOMOTIVE WRECKING YARDS**

All junk yards and automotive wrecking yards existing at the effective date of this Ordinance shall comply within one (1) year after the adoption thereof. All new junk yards and automotive wrecking yards shall comply with the following:

- A. Such premises shall at all times be maintained so as not to constitute a nuisance or menace to the health of the community or residents nearby or a place for the breeding of rodents and vermin.
- B. Burning of any materials shall be prohibited.
- C. No oil, grease, tires or gasoline shall be burned at any time.

- D. No garbage, organic waste, rubbish, toxic materials and hazardous materials shall be stored on such premises.
- E. Whenever any motor vehicle shall be received on such premises as junk, all gasoline and oil shall be drained and removed therefrom.
- F. The storage of any combustible materials, such as gasoline, oil or related items, shall be placed in fireproof containers and stored within fireproof sheds.
- G. The manner of storage and arrangement of junk and the drainage facilities on the site shall be such as to prevent the accumulation of stagnant water upon the premises. A storm water drainage plan shall be required.
- H. There shall be no stockpiling of motor vehicles, nor shall there be any junk piled higher than four (4') feet.
- I. There shall be a roadway fourteen in width provided for every forty (40) linear feet of junk. The roadway shall be kept open and unobstructed for proper access for firefighting equipment and safety purposes.
- J. Junk shall not be stored within one hundred (100') feet of any adjoining property line or nearer than one hundred (100') feet to any adjoining or abutting street.
- K. All junk yards shall be completely screened from view on all sides by a solid wall or substantial fence being six (6') feet in height and an evergreen hedge with such evergreens being a minimum height of at least five (5') feet at the time of planting. Any fence or wall shall be no closer than five (5') feet to the property lines.
- L. Such premises may be open for business or any work in connection with the storage, processing and transportation or removal of junk only on Monday, through Saturday from 8:00 A.M. to 4:00 P.M., local time.

**802.17      MOTELS AND HOTELS**

Motels and Hotels shall meet the following requirements:

- A. There shall be more than ten (10) sleeping rooms.
- B. Fifty (50%) percent or more of the gross floor area shall be devoted to sleeping rooms.
- C. Business may be conducted when accessory and incidental.
- D. There may be club rooms, ballrooms, and common dining facilities.

**802.18**      **NONPROFIT SOCIAL HALLS, CLUBS AND COMMUNITY CENTERS**

Buildings utilized for such purposes shall not be less than ten (10') feet from the property line, nor shall any designated parking area be within ten (10') feet from a property line.

**802.19**      **OUTDOOR STORAGE**

Commercial or industrial uses utilizing outdoor storage space of more than 2,000 square feet, shall be located upon a parcel of land not less than 25,000 square feet and shall be enclosed with a chain link fence eight (8) feet in height. A Soil Erosion and Sedimentation Control Plan and Stormwater Management Plan shall be required for all areas of impervious surface to be provided for such storage. A complete listing of all types of machinery, material and items to be stored therein shall be attached to the required Zoning Application. No hazardous substance and/material, shall be permitted upon the site. Supplies stored outdoors shall be neatly arranged and shall be required to meet the applicable yard setback for the zoning district in which they are located. There shall be a roadway 14 feet with provided for every 40 linear feet of stored materials. The roadway shall be kept passable for firefighting equipment. Where such storage areas abuts on the side or rear property line of any R District, a solid wall or solid opaque fencing eight (8) feet in height, designed to conceal and screen the storage area from adjoining properties, shall be constructed and maintained in good condition along such boundary. In front of the fence or wall there shall also be a landscaped planting strip at least four (4) feet wide, planted with shrubs or trees which are not less than three (3) feet high at the time of planting and which are of a type that may be expected to form a year-round dense screen at least four (4) feet high within three (3) years. The provision of any outside lighting shall be directed away from adjacent properties and shall be included upon the plan required to be submitted with the Zoning Permit Application

**802.20**      **PLACE OF WORSHIP**

A parking area shall accommodate all parking spaces as required in Article 11 of this Ordinance. Access driveways shall be not greater than twenty-five (25') feet in width. In the case of a corner lot, access driveways shall be not less than sixty (60') feet from the intersection of the two streets, as measured from the intersection of their right-of-way lines. Where the parking area abuts existing residences on the side or rear property line, a buffer area, consisting of shrubbery or evergreen trees, being not less than four (4) feet in height at the time of planting, shall be provided.

**802.21**      **PUBLIC USES**

- A. MUNICIPAL, POLICE AND FIRE BUILDINGS: Where the parking area abuts the side or rear property lines of an adjoining residential use, a fence



being six (6') feet in height and a buffer area consisting of shrubbery or evergreen trees shall be provided.

- B. PUBLIC AND PRIVATE SCHOOLS: The size of a lot shall meet the minimum requirements as prescribed by the Pennsylvania Department of Education. Access to the site shall be from an arterial or collector street. Access driveways shall not exceed twenty-five (25') feet in width. In the case of a corner lot, access driveways shall be not less than sixty (60') feet from the intersection of the two streets, as measured from the intersection of their right-of-way. Loading and unloading areas, parking areas and circulation shall be provided in accordance with Article 11 of this Ordinance.

**802.22 PUBLIC UTILITY BUILDINGS AND STRUCTURES**

Public utility facilities as defined in Article 2, shall conform to the following regulations for properties containing such uses:

- A. Access and parking shall be provided only for maintenance and servicing of such facilities.
- B. A chain-link fence and locked gate not less than eight (8') feet in height shall surround the building or structures of such facilities.
- C. A buffer area not less than ten (10') feet in depth and comprised of trees and/or shrubs designed to conceal such buildings or structures of such facilities.
- D. Outside lighting shall be directed away from adjacent properties.
- E. The location, design and operation of such facilities shall not adversely affect the character of any adjacent residential properties.

**802.23 RECREATIONAL FACILITIES (OUTDOORS)**

All such facilities, whether public, private or commercial, shall conform to the following regulations:

- A. No outdoor recreation activity shall be conducted closer than fifty (50') feet to any property line.
- B. A buffer area, at least ten (10') feet in depth and planted with trees, shrubs or other landscaping, shall surround the property except for access drives.
- C. Access drives shall be not greater than twenty-five (25') feet in width; parking areas shall not be located within buffer areas.
- D. Storm drainage from the site shall be channeled to natural drainage courses and away from adjoining properties.

**802.24      SEWAGE DISPOSAL AND SEWAGE TREATMENT PLANTS**

The location and operation of a public or private sewage disposal and/or sewage treatment plant shall be in full compliance with the applicable regulations of the Pennsylvania Department of Environmental Resources. Written approval from D.E.R. shall be secured prior to the installation of such facilities.

**802.25      TOWNHOUSES AND GARDEN APARTMENTS**

Townhouses and/or garden apartments which are not being developed as part of a Planned Residential Development shall be subject to the following provisions and all applicable provisions of the Ashley Borough Subdivision and Land Development Ordinance:

- A. Minimum lot width shall be 120 feet.
- B. Maximum percentage of building coverage on a lot per dwelling unit, exclusive of common or public open areas, shall be 50%.
- C. Minimum lot width per dwelling unit shall be 20 feet.
- D. Minimum lot depth per dwelling unit shall be 100 feet.
- E. Minimum lot area per dwelling unit shall be 2,000 square feet.
- F. Minimum front yard setback shall be 15 feet.
- G. Minimum side yard setbacks shall be 10 feet. Side yard setbacks shall be required only at the ends of rows of attached dwellings.
- H. Minimum rear yard setback shall be 20 feet.
- I. Maximum density shall be 1 unit per each 3,000 square feet of land area.
- J. Minimum width of each dwelling unit shall be 20 feet.
- K. Maximum building height shall be 3 stories or 35 feet.
- L. Minimum distance between principal structures shall be 30 feet.
- M. Minimum front yard setback for off-street parking areas shall be 10 feet.
- N. Minimum side yard setbacks for off-street parking areas shall be 10 feet.
- O. Minimum rear yard setbacks for off-street parking areas shall be 15 feet.
- P. Two (2) off-street parking spaces shall be provided for each dwelling unit.

- Q. Unattached accessory structures such as pools, garages, carports and sheds shall be prohibited in the front yard. Unattached accessory structures located in the side or rear yard shall have five (5) feet side and rear yard setbacks. Attached accessory structures shall have the same setbacks as required for principal structures.

**802.26      WAREHOUSE AND DISTRIBUTION FACILITIES**

All materials shall be stored within a completely enclosed building and yard areas shall be kept clear of junk, trash or other types of debris. Access drives shall not exceed twenty-five (25') feet in width; parking and loading areas shall conform with the regulations of Article 11 of this Ordinance. No warehouse activities, including parking and/or loading areas, shall be allowed within twenty (20') feet of any property line abutting a zoning district which allows residences as a principal permitted use.

**802.27      WAREHOUSE (SELF-STORAGE)**

These facilities may be a building or group of buildings in a controlled-access and fenced compound, containing varying sizes of individual compartmentalized and controlled-access stalls or lockers for dead storage of customers' goods and personal property, with storage space available for rental to the general public. All storage shall be contained within a completely enclosed building or buildings. There shall be a minimum spacing of twenty-five (25') feet between buildings for traffic circulation, parking and fire lane purposes. No activities including off-street parking shall be allowed within twenty (20') feet of a property line abutting a district having residences as a principal permitted use. All outside lighting shall be directed away from adjacent properties.

**802.28      FORESTRY ACTIVITIES (TIMBER HARVESTING)**

In order to preserve forests and the environmental and economic benefits that they provide, it is the policy of Ashley Borough to encourage the owners of forest land to continue to use their land for forestry purposes, including the long-term production of timber, recreation, wildlife, historical and amenity values. The timber harvesting regulations set forth in this Section are intended to further this policy by:

1. promoting good forest stewardship;
2. protecting the rights of adjoining property owners;
3. minimizing the potential for adverse environmental impacts;
4. preserving historical and environmental sensitive areas; and
5. avoiding unreasonable and unnecessary restrictions of the right to practice forestry.

“Forestry activities that include timbering operations that exceed five (5) acres shall be conducted in accordance with the following requirements:

1. A Zoning Permit Application shall be submitted to the Ashley Borough Zoning Officer prior to harvesting or otherwise removing trees on any tract of land larger than five (5) acres;
2. Prior to the start of operations, a Forestry Management Plan shall be prepared and filed with the submission of the Zoning Permit Application. Said plan shall be prepared by a qualified forester or forest technician, with a four year degree from an accredited college;
3. The Forestry Management Plan shall be consistent with the Timber Harvesting Guidelines of the Pennsylvania Forestry Association;
4. Prior to the approval of the Zoning Permit Application, an Erosion and Sediment Control Plan shall be submitted by the Applicant to the Luzerne County Conservation District for its review, recommendation and approval;
5. Clear cutting shall be prohibited except on tracts of less than five (5) acres;
6. When harvesting or otherwise removing on tracts larger than five (5) acres, at least 30% of the forest cover (canopy) shall be kept and the residual trees shall be well distributed. At least 30% of these residual trees shall be composed of highest value species as determined and documented by the Forestry Management Plan;
7. Clear cutting is prohibited on acres with slopes greater than 15% or within the 100 year floodway.

**802.29**                    **NO IMPACT HOME-BASED BUSINESS**

A No Impact Home-Based Business, as defined in Article 2 of this Ordinance, shall be permitted by right in all Residential Zoning Districts and zoning districts in which residences are permitted as a principal permitted use, except that such permission shall not supersede any deed restriction, covenant, or agreement restricting the use of the land, nor any master deed, bylaw, or other document applicable to common interest ownership community. The following standards and criteria shall apply to a No Impact Home-Based Business:

- A. The business activity shall be compatible with the residential use of the property and surrounding residential uses.
- B. The business shall employ no employees other than the family members residing in the dwelling.
- C. There shall be no display or sale of retail goods and no stockpiling or inventory of a substantial nature.

- D. There shall be no outside appearance of a business, including, but not limited to, parking, signs or lights.
- E. The business activity shall not use any equipment or process which creates noise, vibration, glare, fumes, odors, or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.
- F. The business activity shall not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with a residential use in the neighborhood.
- G. The business activity shall not occupy more than twenty-five (25%) of the habitable floor area.
- F. The business shall not involve any illegal activity.

**802.30      RIPARIAN BUFFER:**

In all Zoning Districts, a minimum setback of one hundred (100) feet from any Watercourse, (as defined in Article 2) shall be required for any form of development and/or improvements. Stormwater detention facilities, flood-proofing structures and/or similar devices shall be excluded

**802.31      FOOD PROCESSING**

The processing, packaging, dressing and treatment of meat, poultry and fish products, shall be conducted wholly within a completely enclosed building. Smoke, noise, or odors affecting adjacent property shall be prohibited.

This page is intentionally left blank

**ARTICLE 9**

**NONCONFORMING LOTS, USES, STRUCTURES AND BUILDINGS**

**SECTION 901    INTENT**

Within the zoning districts established by this Ordinance or subsequent amendments thereto, there may exist or will exist certain nonconforming uses of structures and/or land which if lawful before this Ordinance was passed or amended, may be continued, subject to certain limitations, although such uses would be prohibited, regulated or restricted under the terms and provisions of this Ordinance or subsequent amendments thereto.

**SECTION 902    NONCONFORMING LOTS OF RECORD**

In any zoning district, structures, both principal and accessory, maybe erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions or regulations of this Ordinance, even though such lots fail to meet the requirements for the area and/or width of the zoning district in which such lot is located. The erection of a structure on such a lot shall, however, conform to front, rear and side yard requirements for the zoning district in which such lot is located. Variances from the aforementioned yard requirements may be obtained only through action of the Zoning Hearing Board.

If two (2) or more adjacent lots, with continuous frontage, in single ownership, are lots of record at the effective date of the adoption or amendment of this Ordinance, and if such lots do not meet the required lot area and/or width requirements, such lots shall be considered to be an undivided parcel and no portions of such parcel shall be used or sold in a manner which further diminishes compliance with the required lot area and/or width requirement for the zoning district in which such lots are located.

**SECTION 903    CONTINUATION OF NONCONFORMITY**

Any lawful nonconforming use and/or nonconforming structure may be continued except as otherwise provided in this Article, but any nonconforming use and/or structure shall not be enlarged, reconstructed, structurally altered or changed except as permitted by provisions of this Article.

**SECTION 904    REGISTRATION OF NONCONFORMING USES AND STRUCTURES**

The Zoning Officer may prepare and maintain an accurate listing of all nonconforming uses and structures. The Zoning Officer or the property owner may initiate the process of certifying the nonconformity of a given property. The Zoning Officer shall issue a Certificate of Nonconformity where he finds the use or structure, although not in compliance with all applicable requirements of the zoning district in which it is located, to be a lawful nonconforming use or structure.

**SECTION 905    CHANGES OF NONCONFORMING USE**

The Zoning Hearing Board may grant a special exception to allow one (1) nonconforming use to be changed to another nonconforming use, if the Board finds that all of the following provisions will be met:

- A. No structural alterations are made.
- B. The proposed change shall be less objectionable in external effects than that of the previous or existing nonconforming use, and shall be more consistent with its physical surrounding.
- C. There shall be no increase in traffic generation or congestion, including both vehicular and pedestrian traffic.
- D. There shall be no increase in the danger of fire or explosion.
- E. There shall be no increase in noise, smoke, dust, fumes, vapors, gases, heat, odor, glare, vibration, lighting or electrical disturbances.
- F. There shall be no increased threat to health by any reason, including that of rodent, vermin or otherwise.

**SECTION 906    ENLARGEMENT OF NONCONFORMING USES AND STRUCTURES**

The Zoning Hearing Board may grant a special exception for the enlargement of a nonconforming use and/or structure, if the Board finds the following standards will be met:

- A. The enlargement will not replace a conforming use.
- B. The nonconforming structure and/or use, after enlargement, shall comply with the yard and lot coverage requirements applicable to the zoning district in which it is located.
- C. The use and/or structure, after enlargement, shall comply with all applicable off-street parking and/or loading requirements for said use and/or structure.
- D. Not more than one (1) enlargement of a nonconforming use and/or structure shall be permitted.
- E. A nonconforming structure and/or use shall not be enlarged beyond the limits of the zoning lot on which it is located. Expansion to an adjoining lot shall be prohibited, even if such adjoining lot was in the same ownership at the effective date of the adoption of this Ordinance.
- F. The enlargement shall not exceed twenty-five (25%) percent of the floor area or land area as it existed at the time the structure or use first became nonconforming.



**SECTION 907 RESTORATION OF USE**

A nonconforming use and/or structure which has been damaged or destroyed by fire, explosion, windstorm, flood or other similar act or cause to the extent of more than sixty (60%) percent of its reproduction value at the time of the damage shall not be restored except in conformity with the regulations of the zoning district in which it is located.

When damage is less than sixty (60%) percent of its reproduction value, a nonconforming building or other structure may be repaired or reconstructed and used as before the time of the damage, provided such repairs or reconstruction are completed within one (1) year of the date of such damage.

A conforming residential use, which is constructed on a lot that is nonconforming with respect to lot area, lot width, and/or yard areas, may be reconstructed on the same lot subject to receiving approval from the Zoning Hearing Board for any necessary variances.

**SECTION 908 TERMINATION OF NONCONFORMING USE AND/OR STRUCTURE**

**908.1 NONCONFORMING USE AND/OR STRUCTURE**

A nonconforming use and/or structure shall not be reconstructed when damaged to an extent greater than sixty (60%) percent of its reproduction value at the time of the damage and said nonconforming use and/or structure shall be deemed terminated.

**908.2 CHANGE OF NONCONFORMING USE**

Where a nonconforming use is changed into a conforming use, a nonconforming use shall not thereafter be resumed. A change of one (1) nonconforming use, without approval by the Zoning Hearing Board, shall be considered an abandonment of the prior nonconforming use, which shall not thereafter be resumed.

**908.3 ABANDONMENT OF NONCONFORMING USE**

The right to a nonconforming use shall be terminated and a nonconforming use shall not be resumed if a nonconforming use is abandoned. A nonconforming use shall be deemed abandoned, if it is changed as set forth in Section 908.2 of this Ordinance or if it is discontinued for a continuous period of one (1) year with no evidence which indicates his or her intent to resume the nonconforming use.

**908.4 NONCONFORMING MOBILE HOME**

A nonconforming mobile home or trailer, located on a lot in any zoning district where such use is not permitted, shall not be relocated on the lot, or replaced by another mobile home or trailer once it is removed from such lot.

**908.5**      **UNSAFE STRUCTURES**

If a nonconforming structure, containing a nonconforming use, becomes physically unsafe due to lack of maintenance or repairs and has been legally condemned, it shall not thereafter be restored, repaired or rebuilt except in conformity with uses permitted within the zoning district in which such structure is located.

## ARTICLE 10

### SIGN REGULATIONS

#### **SECTION 1001 SIGNS**

##### **1001.1 TYPE AND USE OF SIGNS**

All signs shall be classified according to type and use as provided herein:

- A. IDENTIFICATION SIGN: A sign which communicates the name and/or address of an occupant or a permitted home occupation upon the zoning lot on which the sign is located.
- B. BUSINESS SIGN: A sign which communicates information concerning a business, profession, commodity, service, entertainment or development which is sold, offered, prepared, manufactured or conducted upon the zoning lot where the sign is located.
- C. BILLBOARD OR OFF PREMISE ADVERTISING SIGN: A sign which communicates information concerning a subject, business, profession, activity, commodity, service, entertainment or development not related to, sold, offered, prepared or manufactured on the zoning lot where the sign is located.
- D. REAL ESTATE SIGN: A temporary sign, having an area not greater than eight (8) square feet in area which advertises the sale, rental or development of the premises upon which the sign is located.
- E. SUBDIVISION/DEVELOPMENT SIGN: A temporary real estate sign, not greater than sixty (60) square feet in area, which advertises the sale of property within an approved subdivision or planned residential development.
- F. INSTITUTIONAL SIGN: A sign which identifies a use pertaining to a school, church, hospital or other institution of a similar public or semipublic nature.
- G. ON-SITE DIRECTIONAL AND/OR INFORMATIONAL SIGN: A sign commonly associated with, and limited to, information and directions necessary for visitors entering or exiting a property, including signs marking entrance and exits, parking areas, circulation direction, restrooms and pick-up and delivery areas. Such signs shall contain no advertising material.

## **SECTION 1002 CONSTRUCTION TYPES**

All signs shall be classified according to construction types as provided herein:

- A. FREESTANDING SIGN: A sign not attached or applied to a principal building but supported by another structure, including structures designed for the sign itself and accessory structures.
- B. WALL SIGN: A sign attached, painted or affixed to the wall of a principal structure or accessory structure, not projecting over any public right-of-way and not extending more than two (2') feet from the building or structure.
- C. PROJECTING SIGN: A sign which projects outward or extends more than two (2') feet from the building or structure.

## **SECTION 1003 PERMITTED SIGNS BY ZONING DISTRICT**

The establishment, erection or reconstruction of any sign shall be in accordance with the regulations as set forth herein:

- A. IDENTIFICATION SIGN: Such signs shall be permitted in all zoning districts.
- B. BUSINESS SIGNS: Such signs shall be permitted in B-1, B-2, B-3, 1-1 and I-2 Zoning Districts.
- C. REAL ESTATE SIGNS: Such signs shall be permitted in all zoning districts.
- D. SUBDIVISION/DEVELOPMENT SIGNS: Such signs shall be permitted in all zoning districts and any PRD zoning district, upon the creation of such.
- E. INSTITUTIONAL SIGNS: Such signs shall be permitted in all zoning districts.
- F. ON-SITE DIRECTIONAL AND/OR INFORMATIONAL SIGN: Such signs shall be permitted in all zoning districts.
- G. BILLBOARD SIGNS: Such signs shall be permitted in a B-3 zoning district.

## **SECTION 1004 AREA, HEIGHT AND SETBACK REQUIREMENTS**

The establishment, erection or reconstruction of permitted signs shall be governed by the following regulations:

- A. IDENTIFICATION SIGN: An identification sign shall not exceed two (2) square feet in area. Such a sign shall be setback not less than ten (10') feet from the front lot line. The maximum height of an identification sign, if free standing, shall not exceed ten (10') feet in height, or if attached to a building shall not be higher than the first story of the building to which it is attached.

- B. **BUSINESS SIGN:** A business sign shall not exceed thirty (30) square feet in a B-1 Zone, sixty (60) square feet in a B-2 Zone or, four times the frontage a lot in a B-3, I-1 or I-2 Zone (calculated in square feet). In a shopping center or an integrated grouping of commercial or industrial uses which is classified as a "Land Development", in addition to permitting each individual business establishment to display a business sign, one (1) sign shall be permitted on the lot, which indicates the name of the shopping center and/or the names of the business establishments located therein. Only one (1) such sign shall be permitted on the lot and such sign shall not exceed one hundred fifty (150) square feet in area. A business sign shall have a minimum front yard setback of not less than fifty (50%) percent of the required setback for a principal structure in the zoning district in which the sign is located. If an existing building has a front yard setback which is less than ten (10) feet, the sign shall be attached flat against the building as a wall sign. The maximum height of any business sign shall not exceed eighteen (18') feet.
- C. **REAL ESTATE SIGN:** A temporary real estate sign shall not exceed eight (8) square feet in area and shall be located on the same lot on which the property is offered for sale or rental. The sign shall be setback not less than ten (10') feet from the front lot line and shall be removed from the premises within thirty (30) days after the sale or rental of the property.
- D. **SUBDIVISION/DEVELOPMENT SIGN:** A subdivision/development sign shall be considered a temporary real estate sign and shall not exceed sixty (60) square feet in area. The sign shall be located on the same property on which lots and/or homes in the subdivision are offered for sale. Not more than one (1) sign shall be erected in any subdivision, and such signs shall be setback not less than thirty-five (35') feet from the front lot line. The sign shall be removed from the premises within thirty (30) days after the last lot and/or home is sold.
- E. **INSTITUTIONAL SIGN:** An institutional sign for public and semipublic facilities, such as schools, churches, hospitals, libraries, colleges or other institutions of a similar nature shall not exceed thirty (30) square feet in area. The maximum height of such signs shall not exceed the maximum height restriction established for a principal structure in the district in which the sign is located. An institutional sign shall be not less than ten (10') feet from the front lot line.
- F. **ON-SITE DIRECTIONAL AND/OR INFORMATIONAL SIGN:** An on-site directional and/or informational sign shall not exceed six (6) square feet in area. A front, rear or side yard setback of not less than five {5'} feet shall be required for such signs. The maximum height of such signs shall not exceed six (6') feet.
- G. **BILLBOARD SIGN OR OFF PREMISE ADVERTISING SIGN::** The following regulations shall apply to any billboard and/or off-premise advertising sign: The advertising surface area of any panel shall not exceed 300 square feet and not more than one double-faced panel shall be permitted on the same structure or standard. Such a sign shall not be located within 200 feet of any residential structure or residential zoning district. There shall be a minimum spacing distance

of 1,000 feet between all such signs. Such signs shall be setback not less than 600 feet from the center line of any limited access highway and/or a State Legislative Route. Such signs shall not be attached to a building nor shall such signs be permitted to project above the maximum height limitation for the zoning district in which it is located.

- H. NUMBER OF SIGNS: Excluding on-site directional and/or informational signs, not more than two (2) signs shall be permitted on any property located in any zoning district. In the case of a property located upon a corner lot, a total of three (3) signs may be permitted.

#### **SECTION 1005 SETBACK FOR FREESTANDING SIGNS**

The minimum side yard setback and rear yard setback for any freestanding sign shall be the same as the minimum side yard or rear yard setback for a principal structure in the zoning district in which the sign is located. The minimum front yard setback, with the exception of Section 1004 (F), On-Site Directional and/or Informational Sign and Section 1004 (G), Billboard Sign or Off-Premise Advertising Sign, shall be the more restrictive of fifty (50%) percent of the required setback for a principal structure in the zoning district in which the sign is located, or ten (10') feet.

#### **SECTION 1006 SIGNS RELATED TO NONCONFORMING USES**

An existing sign related to a legally established nonconforming use shall be considered a nonconforming sign, which may be continued at its present dimensions and location, but shall not be enlarged. Where a nonconforming use is lawfully changed to another nonconforming use, a new sign shall be permitted being the same type and size as the previous sign. The new sign shall be erected on the property at the same location as the previous sign. The sign may be erected at a different location provided it meets all applicable regulations within Article 5 and for the zoning district in which it is located.

#### **SECTION 1007 AREA COMPUTATION OF SIGNS**

The area of a sign shall be construed to include all lettering, wording and accompanying design and symbols, together with the background including border and trim, whether open or enclosed on which they are displayed, but not including any supporting framework and bracing which are incidental to the display itself. Computation of the area for particular signs shall be in accordance with the following regulations:

- A. WALL SIGN: For a sign painted upon or applied to a building, the area shall be considered to include all lettering, wording and accompanying design or symbols together with any backing associated with the sign.
- B. SEPARATE SYMBOLS: Where the sign consists of individual letters or symbols attached to or painted on a surface; building, wall or window, the area shall be considered to be that of the smallest rectangle or other shape which encompasses all of the letters and symbols.

- C. DOUBLE-FACE SIGN: With the exception of a billboard, when computing the area of a double-face sign, only one (I) sign shall be considered, provided both faces are identical.
- D. CYLINDRICAL SIGN: The area of a cylindrical sign shall be computed by multiplying one-half (.5) of the circumference by the height of the sign.

### **SECTION 1008 VERTICAL CLEARANCE**

A freestanding sign and a projecting sign shall have a vertical distance of not less than nine (9) feet as measured from the lowest edge or point of the sign to the highest ground elevation located beneath the sign.

### **SECTION 1009 PROHIBITED SIGNS**

The following types of signs shall not be permitted in any zoning district:

- A. Signs which are located in such a position which endangers vehicular and/or pedestrian traffic by obscuring the slightest distance.
- B. Signs which by design and/or location may be confused with traffic signs or signals.
- C. Any sign located in or extending into a public right-of-way, including sidewalk areas, except an official street sign or traffic control sign.
- D. Any freestanding or projecting sign within an area bounded by the intersection of two (2) public or private streets, for a distance of twenty (20') feet along the centerline of the right-of-way of such streets from the point of their intersection.
- E. Freestanding or projecting signs over any type of public right-of-way, including sidewalk areas.
- F. Sequential, flashing or oscillating signs.
- G. Signs which due to their construction and/or location would constitute a hazard or a potential danger to the community.
- H.

### **SECTION 1010 PERMITS REQUIRED**

A zoning permit shall be required for the erection, alteration or relocation of any sign which exceeds eight (8) square feet in surface area. Real estate signs and subdivision/land development signs shall be exempt.

This page is intentionally left blank



## ARTICLE 11

### OFF-STREET PARKING AND LOADING

#### **SECTION 1101 PURPOSE**

Off-street parking, loading and unloading facilities shall be provided to lessen traffic congestion in the streets. The facilities required by these provisions shall be available throughout the hours of operation for the particular business or use for which such facilities are provided. As uses herein, the term "parking space" includes covered garage or carport or uncovered parking lot space located off the public right-of-way.

#### **SECTION 1102 SIZE OF OFF-STREET PARKING SPACES**

Each off-street parking space shall have an area of not less than one hundred and eighty (180) square feet, being nine (9') feet in width and twenty (20') feet in length, exclusive of access drives or aisles. The provision of off-street parking spaces for existing single family or two family residences shall be exempt from the above minimum size requirements.

#### **SECTION 1103 SIZE OF OFF-STREET LOADING SPACES**

Each off-street loading space shall be not less than fifty (50') feet in depth, twelve (12') feet in width and provide an overhead clearance of not less than fourteen (14') feet. All loading areas shall be designed, constructed and used so that all vehicular maneuvering is contained within the lot and no vehicle shall be permitted to back into or out of the public right-of-way.

#### **SECTION 1104 ACCESS TO OFF-STREET PARKING OR LOADING AREAS**

There shall be adequate ingress or egress to all parking spaces. There shall be provided an access drive leading to off-street parking and/or loading areas. Such access drive shall not be less than ten (10') feet in width for residential uses and not less than twenty (20') feet, nor greater than thirty (30') feet for any nonresidential use. Access drives to such off-street parking and/or loading areas shall be limited to well defined locations, not to exceed two (2) along each front, side or rear lot lines. For corner properties, all access drives shall be not less than thirty-five (35') feet from the intersection of streets, as measured along the right-of-way lines.

#### **SECTION 1105 LOCATION OF OFF-STREET PARKING AREAS**

The required off-street parking spaces for any type of use shall be located on the same lot as the principal use to which it is accessory. The required off-street parking may be permitted on another lot subject to the following requirements:

- A. The lot to be used for off-street parking and the lot on which the principal use is located shall be in the same zoning district.

- B. The lot to be used for off-street parking and the lot on which the principal use is located shall be held under the same ownership
- C. The lot to be used for off-street parking shall be not less than four hundred (400') feet to any lot line on which the principal structure is located.

**SECTION 1106 DRAINAGE AND SURFACING OF OFF-STREET PARKING AREAS**

Any off-street parking area shall be graded for proper drainage and shall be surfaced so as to provide a durable and dustless surface, such as gravel, concrete or bituminous concrete surface. The design, location and material for any proposed catch basins may be referred to the Borough Engineer for review and approval.

**SECTION 1107 INTERIOR CIRCULATION**

Interior access ways and aisles shall be designed so as to prevent the blocking of vehicles entering or exiting the site.

**SECTION 1108 SCREENING**

Properties which contain off-street parking for five (5) or more vehicles and/or any amount of off-street loading, along a side yard or rear yard which abuts a residential district or residential use, shall be screened by a substantial, tight fence not less than six (6') feet in height and a planting strip not less than five (5') feet in depth, with shrubbery, plants or trees which are a minimum of three (3') feet in height at the time of planting.

**SECTION 1109 LIGHTING**

Any lighting used to eliminate off-street parking or loading areas shall be arranged to reflect the light away from adjoining properties and the public right-of-way.

**SECTION 1110 PARKING IN YARD AREAS**

Required parking shall be permitted within the required front or side yard setbacks, provided that the minimum setback distance to any area used for off-street parking is not less than five (5') feet to the nearest point of a side yard property line and not less than ten (10') feet from the front yard property line. Any off-street parking areas for a nonresidential use, when abutting a residential zoning district or a residential property shall be setback a minimum of fifteen (15) feet from the rear yard and any side yard.

**SECTION 1111 EXISTING STRUCTURES AND USES**

Structures and uses in existence at the date of adoption of this Ordinance shall not be subject to the off-street parking or off-street loading requirements, so long as a structure or use is not changed, altered or expanded. Existing off-street parking or off-street loading facilities provided prior to the adoption of this Ordinance shall not be reduced below the minimum required in this Ordinance.

## **SECTION 1112 CHANGES OF STRUCTURES OR USES**

Whenever the existing use of a building, structure or land shall hereafter be changed to a new use, off-street parking and/or off-street loading facilities shall be provided as required for such new use. However, if said building or structure was erected or the use of the land established prior to the effective date of this Ordinance, additional off-street parking or off-street loading facilities shall be mandatory only in the amount by which the requirements for the new use would exceed those for the existing use.

## **SECTION 1113 FRACTIONAL SPACES**

When required parking computation results in fractions, any fraction less than one-half (.50) shall be disregarded and any fraction equal to or greater than one-half (.50) shall be construed to require a full space.

## **SECTION 1114 MULTIPLE ACTIVITIES OR USES**

In any instance where a nonresidential structure, building or use of land contains more than one (1) defined use, the required parking for each specific use shall be provided.

## **SECTION 1115 OFF-STREET PARKING REQUIREMENTS**

Any structure, building or use of land hereafter erected, converted, enlarged or placed into use shall comply with the minimum off-street parking spaces as provided herein:

- 1) Single-family Structure: Two (2) spaces for each dwelling unit.
- 2) Two-family Structure: Two (2) spaces for each dwelling unit.
- 3) Multifamily Residential, (Townhouses and Garden Apartments): Two (2) spaces for each dwelling unit.
- 4) Rooming House: One (1) space for each guest room.
- 5) Home Occupation: Three (3) spaces, excluding those required for the dwelling unit.
- 6) Residential Conversion: Three (3) spaces for each additional dwelling unit.
- 7) Churches and Similar Places of Worship: One (1) space for every four (4) seats in the main assembly room or one (1) space for each twelve (12) feet of bench length.
- 8) Places of Public or Private Assembly, including Auditoriums or Meeting Halls: One (1) space for every four (4) seats or one (1) space for each fifty (50) square feet of floor area when there is no fixed seating.
- 9) Schools, Elementary and Secondary: One (1) space for each staff member, plus one (1) space for every twenty (20) classroom seats.

- 10) College, Commercial, Business or Vocational Trade Schools: One (1) space for each staff and/or faculty member, plus one (1) space for every five (5) classroom seats.
- 11) Nursery or Day Care Schools: One (1) space for each employee, plus one (1) space for every five (5) children, based upon the maximum number of children which the facility is licensed to serve.
- 12) Nursing Homes: One (1) space for every five (5) beds, plus one (1) space for each employee on the maximum working shift.
- 13) Medical or Dental Offices or Clinics: Six (6) spaces for every doctor, dentist, chiropractor or other licensed medical practitioner.
- 14) Nonprofit Social Halls. Clubs and Lodges: One (1) space for everyone hundred (100) square feet of gross floor area.
- 15) Public Uses: One (1) space for everyone hundred (100) square feet of gross floor area.
- 16) Public Utility Facilities: Two (2) spaces per facility; if the facility includes maintenance and/or storage yards then the required number of spaces shall be one (1) for each employee assigned to work at such facility.
- 17) Outdoor Recreational Facilities: In cases where such facilities include spectator seating, there shall be one (1) space for every four (4) seats; facilities which do not provide any spectator seating shall provide one (1) space for every two thousand (2,000) square feet in the recreational site, plus an additional ten (10) spaces, if there is a swimming pool and an additional two (2) spaces if there is playground equipment.
- 18) Retail Businesses: One (1) space for every two hundred (200) square feet of gross floor area.
- 19) Eating and Drinking Establishments: One (1) space for every three (3) seats, plus two (2) spaces every three (3) employees based upon the maximum working shift.
- 20) Fast Food Restaurant: One (1) space for every eighty (80) square feet of service or dining area, with a minimum of five spaces. A fast food restaurant with a drive-in window shall, in addition to the above requirements, provide eight (8) stacking spaces for the drive-in window designated for the ordering station. Such spaces shall be designed in a manner not to impede pedestrian or vehicular circulation on the site or on any abutting street.
- 21) Entertainment Facilities: Such facilities as defined in Article 2 of this Ordinance shall require one (1) space for everyone hundred (100) square feet of gross floor area.

- 22) Miniature Golf: Two (2) spaces for each tee.
- 23) Personal Services: As defined in Article 2 of this Ordinance, such establishments shall provide one (1) space for every three hundred (300) square feet of gross floor area; the following exceptions include:
- A. Self-service Coin Operated Laundries and Dry Cleaners: Shall provide one (1) space for every two (2) washing or drying machines.
  - B. Health Clubs: Shall provide one (1) space for every two hundred (200) square feet of gross floor area; any such club which also serves food and/or beverages shall also comply with the parking requirements of any eating or drinking establishment.
- 24) Animal Hospital: Five (5) spaces for every veterinarian.
- 25) Group Residence: One (1) space for each two employees based upon the maximum working shift and one (1) space for each two residents who are eligible to operate a vehicle.
- 26) Funeral Homes and Crematories: Twenty (20) spaces, for each viewing parlor.
- 27) Professional Offices: One (1) space for every two hundred (200) square feet of gross floor area.
- 28) Motels and Hotels: One (1) space for each unit for guest accommodations; any such facility which also serves food and/or beverages shall also comply with the parking requirements of an eating or drinking establishment.
- 29) Self Storage Warehouse: One (1) space for every ten (10) stalls or lockers available for rental, plus one (1) for each employee on the maximum working shift.
- 30) Gasoline Service Stations: Two (2) exterior spaces for each service bay, one (1) space for each pump, plus one (1) space for every two hundred (200) square feet of gross floor area which is used for the sale of retail goods, including food and/or beverages.
- 31) Automobile Car Washes: One (1) space for each employee on the maximum working shift.
- 32) Automotive Sales: One (1) exterior space for every six hundred (600) square feet of gross interior floor space plus one (1) additional space per each 5,000 square feet open sales or display area.
- 33) Automotive Repairs: One (1) exterior space for every two hundred (200) square feet of gross interior floor area.

34) Equipment Sales and Repairs: One (1) exterior space for every two hundred (200) square feet of gross floor space.

35) Industrial, Manufacturing, Wholesale and Warehouse Establishments, Truck Terminals, Research and Testing Facilities: One (1) space for every one thousand (1000) square feet of gross floor area; plus one (1) space for every two (2) employees on the maximum working shift; in any case, however, the total parking area shall be not less than twenty-five (25%) percent of the total gross square feet of the building.

#### **SECTION 1116 PARKING FOR OTHER COMMERCIAL USES**

Any commercial use or nonresidential use of a structure, building or land, not specifically listed within Section 1115 of this Ordinance shall provide one (1) off-street parking space for every three hundred (300) square feet of gross floor area or lot area.

#### **SECTION 1117 OFF-STREET LOADING REQUIREMENTS**

All commercial and industrial establishments shall provide off-street loading, unloading and commercial vehicle storage space adequate for their needs. In no case shall a public right-of-way be used for the loading, unloading or storage of such vehicles.

#### **SECTION 1118 PROVISION OF HANDICAPPED PARKING SPACES**

Any business, individual or corporation that owns, leases or operates a facility which includes the provision of public accommodations and/or commercial facilities shall be governed by the provision of this section. A facility which provides public accommodations shall include, but may not be limited to the following:

- Places of lodging
- Establishments serving food or drink
- Places of exhibition or entertainment
- Places of public gathering
- Sales or rental establishments
- Service establishments, stations used for specified public transportation
- Places of public display or collection
- Places of recreation
- Places of education
- Social service center establishments and places of exercise or recreation

A commercial facility shall include any business whose operations are open to the general public.

#### **SECTION 1119 DESIGN FEATURES FOR HANDICAPPED PARKING SPACES**

The following provisions shall apply for required handicapped parking spaces:

- 1) An area not less than five (5) feet in width shall be provided between each handicapped parking space. Said area shall be marked and/or designed to prevent parking therein.
- 2) An area not less than eight (8) feet in width shall be provided between each van accessible parking space. Said area shall be marked and/or designed to prevent parking therein.
- 3) Vehicular access to handicapped parking areas shall have a minimum vertical clearance of not less than nine and one half (9.5) feet.
- 4) An off-street parking area shall be designed to provide accessible routes from the handicapped parking areas to an accessible building entrance and to public streets and sidewalks which adjourn the off-street parking area. Handicapped accessible spaces, serving a particular facility, shall be located on the shortest accessible route of travel from the parking area to an accessible entrance.

**SECTION 1120 SIGNAGE FOR HANDICAPPED PARKING**

Handicapped accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. Parking spaces designed for vans shall have an additional sign reading "Van-Accessible" mounted below the accessibility sign. Such signs shall be located in a manner so they cannot be obscured by a vehicle.

**SECTION 1121 MINIMUM NUMBER OF HANDICAPPED ACCESSIBLE SPACES**

When parking spaces are provided for self-parking by employees or visitors, or both, within the total number of off-street parking spaces required under Section 1115 and/or Section 1116 of this Ordinance, the following table shall be used to determine the required number of handicapped accessible spaces.

<b><u>TOTAL NUMBER OF SPACES</u></b>	<b><u>REQUIRED NUMBER OF ACCESSIBLE</u></b>
1 TO 25	1
26 TO 50	2
51 TO 75	3
76 TO 100	4
101 TO 150	5
151 TO 200	6
201 TO 300	7
301 TO 400	8
401 TO 500	9
500 TO 1000	2% of total spaces

This page is intentionally left blank



**ARTICLE 12**

**ENFORCEMENT AND ADMINISTRATION**

**SECTION 1201 ZONING OFFICER**

**1201.1 APPOINTMENT**

A Zoning Officer, who shall not hold any elected office within Ashley Borough, shall be appointed by the Borough Council. The Zoning Officer shall meet qualifications established by Ashley Borough, which shall at minimum include, a working knowledge of municipal zoning.

**1201.2 DUTIES AND POWERS OF THE ZONING OFFICER**

It shall be the duty of the Zoning Officer to enforce the provisions of this Ordinance in accordance with its literal terms and said Officer shall not have the power to permit any construction, alteration or any use or change of use to land or structure which does not conform to the applicable provisions within this Ordinance. The Zoning Officer's duties shall include but are not limited to the following;

- (A) Receive and review all applications for zoning permits and to approve and issue zoning permits, when warranted.
- (B) Keep an official record of all business and activities, including all complaints of zoning violations of any of the provisions of this Ordinance and the resulting action of said complaints.
- (C) Conduct inspections of properties as required to fulfill his/her duties. In conducting such activities, the Zoning Officer may have access to any land, building or structure.
- (D) Issue permits as authorized by the Zoning Hearing Board or the Planning Commission, pursuant to the requirements and applicable procedures of this Ordinance or by written order of a Court of proper jurisdiction.
- (E) Issue Certificates of Zoning Compliance in accordance with the terms and provisions of this Ordinance.
- (F) Issue Certificates of Nonconformity to nonconforming uses and/or structures and to maintain a listing of such as required.
- (G) Maintain the Zoning Map, showing the current zoning districts of all land and the zoning text, including amendments thereto.

- (H) Notify the Zoning Hearing Board of required and/or requested hearings based upon the completion of his review and processing of applications for a zoning permit. The submission of an application for a zoning permit to the Zoning Officer and his determination that a hearing before the Board is either required or requested shall be a prerequisite for any application being forwarded to the Zoning Hearing Board for consideration.
- (I) Participate in proceedings before the Zoning Hearing Board and the Planning Commission and at their request, furnish such facts, records and similar information which may assist them in rendering decisions.

**SECTION 1202 ZONING PERMIT**

**1202.1 ISSUANCE OF PERMIT**

No building, structure or sign shall be erected, constructed, moved, added to or structurally altered, nor shall any land, structure or building be put to any use without first obtaining a zoning permit from the Zoning Officer. No application shall be submitted to or considered by the Zoning Hearing Board until the Zoning Officer has received an application for a Zoning Permit and has determined that an approval and/or review by the Zoning Hearing Board is required or requested by the applicant. No such permit shall be issued except in conformity with the provisions of this Ordinance or upon written order from the Zoning Hearing Board in the form of a Special Exception, Variance or as otherwise provided for by this Ordinance or any Court of proper jurisdiction. Normal and routine maintenance and repairs to a structure shall be exempt from obtaining a zoning permit. Interior remodeling of a structure shall also be exempt from obtaining a zoning permit provided that such remodeling does not include structural alterations or result in a change in the use of the structure.

**1202.2 FORM OF APPLICATION**

All applications for permits shall be made in writing by the owner, his authorized agent or equitable owner and shall be filed with the Zoning Officer on forms prescribed by the same. All applications shall be accompanied by two sets of plans and information which includes but is not limited to the following:

- (A) A plan drawn to scale, indicating the actual dimensions and shape of the lot to be built upon and a written statement that the applicant is the owner or authorized agent of the owner or equitable owner.
- (B) The exact size and location on the lot of existing and/or proposed structures, buildings or signs, including proposed additions thereto.

- (C) The number and type of dwelling units, if applicable.
- (D) The amount and location of parking and/or loading facilities.
- (E) The existing use and/or proposed use of the property.
- (F) The height of the building, structure and/or sign.
- (G) A detailed scale drawing of all signs, existing and proposed, indicating their location and how they are and/or will be affixed to the property.
- (H) Existing and/or proposed access to the site.
- (I) Any other information deemed necessary by the Zoning Officer to determine conformance with the provisions and regulations of this Ordinance.

**1202.3 PROCESSING APPLICATIONS**

The Zoning Officer shall return one copy of the plans and accompanying information to the applicant upon marking such copies approved or denied and attested to the same by his signature. One copy of the plans and accompanying information shall be retained by the Zoning Officer and kept on file.

**1202.4 TIME PERIOD FOR PROCESSING APPLICATION**

A zoning permit shall be approved or denied within thirty (30) days from the date of receipt of a completed application and plans along with any additional information as required by the Zoning Officer. A zoning permit shall not be deemed complete, until all applicable and associated fees are paid in full. In cases of denial, the applicant shall be informed of his/her rights of appeal as prescribed within this Ordinance. Such notice shall be in writing under the signature of the Zoning Officer.

**1202.5 EXPIRATION OF ZONING PERMIT**

A zoning permit shall expire one year from the date of issuance, if the work described in said permit has not commenced, including permits authorized to be issued by the Zoning Hearing Board. If the work described within the zoning permit has commenced within the prescribed one year period, the permit shall expire two years from the date of issuance. An extension of time may be granted as a variance from the Zoning Hearing Board.

**1202.6 REVOCATION OF PERMITS**

The Zoning Officer may revoke a permit or approval issued in error under the provisions of this Ordinance or in the case of any false statements or misrepresentation of fact in the application or on the plans on which the permit or approval was based or for any other just cause as set forth in this Ordinance.

**SECTION 1203    ENFORCEMENT PROCEDURES**

**1203.1    NOTICE OF VIOLATION**

If in the judgment of the Zoning Officer, it appears that a violation of this Ordinance has occurred, the Zoning Officer shall initiate enforcement proceedings by sending a violation notice to the owner of record of the parcel of land on which the violation has occurred, to any person who has filed a written request to receive violation notices regarding the parcel of land and to any other person requested in writing by the owner of record. The violation notice shall include, but may not be limited to the following:

- (A)    The name of the owner of record and any other person against whom Ashley Borough intends to take action.
- (B)    The location and/or address of the property in violation.
- (C)    The specific violations with a description of the requirements which have not been met, citing in each instance the applicable sections and provisions of this Ordinance.
- (D)    The date by which the steps for compliance must be commenced and the date by which the steps for compliance must be completed.
- (E)    That the recipient of the notice has the right to appeal the violation notice and request a hearing on the same before the Zoning Hearing Board within thirty days from the issuance of the violation notice.
- (F)    Failure to comply with the notice within the specified time period, unless extended by an appeal to the Zoning Hearing Board, constitutes a violation, with a description of sanctions which shall result to correct or abate the violation.

**1203.2    CAUSES OF ACTION**

In case any building, structure, landscaping or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of this Ordinance, Borough Council or, with the approval of the Borough Council, an officer or agent of Ashley Borough, or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceedings to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation of this Ordinance. When such action is instituted by a landowner or tenant, notice of that action shall be served upon Ashley Borough at least thirty (30) days prior to the time the action is begun by serving a copy of the complaint to the Borough Council. No action may be taken until such notice has been given.

### **1203.3 JURISDICTION**

District justices shall have initial jurisdiction over proceedings brought under this Section 1203.4 of this Ordinance.

### **1203.4 ENFORCEMENT REMEDIES**

Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable therefor in a civil enforcement proceedings commenced by Ashley Borough or the Zoning Officer, shall pay a judgment of not more than five hundred dollars, plus all court costs, including reasonable attorney fees incurred by Ashley Borough as a result of said proceedings. 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, Ashley 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 has been a good faith basis for the person, partnership or corporation violating this Ordinance to have believed that there was no such violation. In such cases, there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable shall be paid over to Ashley Borough.

The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.

Nothing contained in this Section shall be construed or interpreted to grant any person or entity other than Ashley Borough the right to commence any action for enforcement pursuant to this Section.

### **SECTION 1204 SCHEDULE OF FEES, CHARGES AND EXPENSES**

The Borough Council shall establish by resolution a schedule of fees, charges and expenses and collection procedures for Zoning Permits, Certificates of Nonconformance, appeals to the Zoning Hearing Board, applications for conditional uses, amendments to the Zoning Ordinance, Zoning Map and any other matters pertaining to the administration of this Ordinance. The schedule of fees, charges and expenses shall be available for public inspection and may be altered or amended by resolution of the Borough Council. No action shall be taken on any application, appeal or certificate until all related fees, charges and expenses have been paid in full. An application shall not be deemed as filed until completed and submitted with payment in full of appropriate fees.

## ARTICLE 13

### AMENDMENTS

#### **SECTION 1301 AMENDMENT PROCEDURE**

The provisions of this Ordinance and the boundaries of the zoning districts as set forth upon the Zoning Map, may from time to time be amended by the Borough Council in accordance with the provisions as set forth in the Pennsylvania Municipalities Planning Code, Act 247, as amended. Prior to adopting any amendment to this Ordinance or to the Zoning Map, the following procedures shall be met:

- A. Any proposed amendment, not initiated by the Planning Commission, shall be referred to the Planning Commission at least thirty (30) days prior to a public hearing before the Borough Council to provide the Planning Commission an opportunity to submit any comments or recommendations regarding the proposed amendment.
- B. Prior to voting on the enactment of any proposed amendment, the Borough Council shall hold a public hearing pursuant to public notice. If, after any public hearing held upon a proposed amendment, said amendment is substantially changed, or is revised to include land not previously affected by the proposed amendment, the Borough Council shall hold another public hearing before proceeding to vote on the amendment.
- C. Any recommendation of the Planning Commission shall be submitted to the Borough Council in writing.
- D. At least thirty (30) days prior to the public hearing, the Borough Council shall submit the proposed amendment to the Luzerne County Planning Commission for its comments and recommendation. In addition to the proposed amendment, the Borough Council shall submit the required fees charged by the Luzerne County Planning Commission for their review.
- E. Proposed action shall not be taken until the Planning Commission and the Luzerne County Planning Commission comments and recommendations are submitted to the Borough Council. If either Commission fails to act within thirty (30) days, from its receipt of the proposed amendment, the Borough Council may proceed without such recommendation.
- F. If a proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by Ashley Borough at points deemed sufficient along the perimeter of the tract to notify potentially interested citizens. The affected tractor area shall be posted at least one week prior to the date of the public hearing.

In addition to posting the tract, written notice may be provided to the owners of all properties within a distance of two hundred (200) feet of any property boundary line of the property subject to the proposed zone change. It shall be the responsibility of the applicant to provide the Borough with the names and mailing addresses of the true and correct owners of record whose properties fall within the required distance of two hundred (200) feet. While it shall be the intent of Ashley Borough to provide written notice such owners, may be substantially interested in the proposed zone failure to do so, shall not invalidate an otherwise duly enacted ordinance which provides for a change in the zoning map.

## **SECTION 1302 APPLICATIONS FOR AMENDMENTS TO THE TEXT OR MAP**

The application for a proposed amendment, which is not submitted as a curative amendment, to the text of this Ordinance or to the Zoning Map, shall be submitted in writing to the Zoning Officer, who shall process said application in accordance with Section 1301 of this Ordinance. An application shall contain the following information when applicable:

- A. The applicant's name and address and/or the name and address of his authorized agent or the equitable owner.
- B. A signed statement by the owner of record attesting to the truth of the facts of all information contained within the application.
- C. A scaled plan of the area proposed to be rezoned, which indicates abutting streets, the zone classification of adjoining properties and the names and addresses of property owners within two hundred feet of the area proposed to be rezoned.
- D. Plans, drawings and explanatory material, which describes in detail the applicant's proposed use and/or development of the property.
- E. Specify those Sections of this Ordinance or areas upon the Zoning Map which will be affected by the proposed amendment.

## **SECTION 1303 CURATIVE AMENDMENTS**

### **1303.1 INTIATED BY LANDOWNER**

A landowner who desires to challenge on substantive grounds the validity of this Ordinance or the Zoning Map, or any provision thereof, which prohibits or restricts the use or development of land in which he has an interest, may submit a curative amendment to the Borough Council with a written request that his challenge and proposed amendment to cure the alleged defect, be heard and decided by the Borough Council. In addition to the written request and proposed amendment, the landowner shall also submit plans, drawings and explanatory material, which describes in detail his proposed use or development. The Borough Council shall commence a public hearing pursuant to public notice within sixty

days of the landowner's request. The sixty day period shall not commence until all required information and material is submitted, along with all related fees.

The curative amendment and supporting information shall be referred to the Planning Commission and the Luzerne County Planning Commission for their review and comment at least thirty (30) days prior to the public hearing.

The public hearing before the Borough Council shall be conducted in accordance with the procedures contained in Section 1506 of this Ordinance and all references therein to the Zoning Hearing Board shall, for the purposes of this Section, be references to the Borough Council. Public notice of the required public hearing shall include notice of the validity of those particular provisions of this Ordinance and/or the Zoning Map which are in question, along with the place where the proposed amendment, plans, drawings, explanatory material and any other pertinent information may be examined by the public.

If the Borough Council determines that a validity challenge has merit, it may accept a landowner's curative amendment, with or without revisions, or it may adopt an alternative amendment which will cure the challenged defects. The Borough Council shall consider in addition to the proposed curative amendment, plans, drawings and explanatory material the following items:

- A. The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.
- B. If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of this Ordinance and/or Zoning Map.
- C. The suitability of the site for the intensity of use proposed in relationship to the site's soils, slopes, woodlands, flood plains, aquifers, natural resources and other natural features.
- D. The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features, in relationship to the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts.
- E. The impact of the proposal on the preservation of agriculture and any other land uses which are essential to the public health and welfare.

The proposed curative amendment shall be deemed denied in accordance with any of the following:



- A. When the Borough Council notifies the landowner that it will not adopt the curative amendment.
- B. When the Borough Council adopts another curative amendment which is unacceptable to the landowner.
- C. When the Borough Council fails to act on the request within forty-five days after the close of the last public hearing on the request, unless the time is extended by mutual consent by the landowner and the Borough Council.

### **1303.2 INITIATED BY MUNICIPALITY**

If the Borough Council determines this Ordinance or the Official Zoning Map, or any portion thereof, to be substantially invalid, it shall declare such by a formal action and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days following said declaration, the Borough Council shall by resolution make specific findings setting forth the declared invalidity which may include:

- A. References to specific uses which are either not permitted or not permitted in sufficient quantity.
- B. Reference to a class of use or uses which require revision.
- C. Reference to the entire Ordinance and/or Map which requires revisions.

Within 180 days from the date of the declaration and proposal as set forth in this Section, the Borough Council shall enact a curative amendment to correct those portions deemed invalid or reaffirm the validity of those portions initially deemed to be invalid.

Upon the initiation of procedures as set forth in this Section, the Borough Council shall not be required to entertain or consider any landowner's curative amendment, nor shall the Zoning Hearing Board be required to give a report pursuant to Section 1508 of this Ordinance, based upon grounds identical to or substantially similar to those specified in the Borough Council's resolution.

The Borough Council, having utilized the procedures as set forth in this Section, may not again utilize said procedure for a thirty-six month period following the date of the enactment of a curative amendment or reaffirmation of the validity of this Ordinance and/or Zoning Map. However, if after the date of declaration and proposal, there is a substantially new duty or obligation imposed upon Ashley Borough by virtue of a change in statute or by virtue of a Pennsylvania Appellate Court decision, Ashley Borough may utilize the provisions of this Section to prepare a curative amendment to fulfill said duty or obligation.

## **SECTION 1304 ENACTMENT OF AMENDMENTS**

A proposed amendment to this Ordinance or to the Zoning Map shall be enacted in conformance with the following:

- A. The Borough Council shall conduct a public hearing pursuant to public notice and in accordance with the procedures as contained within Section 1301 of this Ordinance.
- B. Public notice shall include the time, place and date of the meeting at which enactment will be considered and a place within Ashley Borough where copies of the proposed amendment may be examined without charge or obtained for a charge not greater than the cost thereof.
- C. Public notice shall include either the full text of the amendment or the title and a brief summary of the amendment as prepared by the municipal solicitor. If the full text is not included, then a copy of such shall be supplied to the newspaper in which the public notice is published, and an attested copy to the County Law Library.
- D. In the event substantial changes are made to the proposed amendment, before voting upon enactment, the Borough Council shall, at least ten days prior to enactment, readvertise in one newspaper of general circulation in Ashley-Borough, a brief summary setting forth all the provisions in reasonable detail together with a summary of the changes.

## **SECTION 1305 NOTIFICATION TO COUNTY**

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

## **ARTICLE 14**

### **ZONING HEARING BOARD**

#### **SECTION 1401 MEMBERSHIP OF BOARD**

The membership of the Zoning Hearing Board shall consist of three (3) residents of Ashley Borough appointed by the Borough Council by resolution. The terms of office for Board members shall be three (3) years and shall be so fixed that the term of office of one member shall expire each year. The Board shall promptly notify the Borough Council of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the Borough, including membership upon the Planning Commission.

#### **SECTION 1402 ALTERNATES TO ZONING HEARING BOARD**

The Borough Council may appoint by resolution one resident of Ashley Borough to serve as an alternate member of the Board. When seated pursuant to the provisions of Section 1404 of this Ordinance, an alternate shall be entitled to participate in all proceedings and discussions of the Board to the same and full extent as provided by law for Board Members, including specifically the right to cast a vote as a voting member during proceedings, and shall have all the powers and duties set forth in this Ordinance and as otherwise provided by law. An alternate shall hold no other office in the Borough, including membership on the Planning Commission. An alternate may participate in any proceedings or discussions of the Board, but shall not be entitled to vote as a member of the Board unless designated as a voting alternate member pursuant to Section 1404 of this Ordinance. The term of office for an alternate member of the Zoning Hearing Board shall be one (1) year.

#### **SECTION 1403 REMOVAL OF MEMBERS**

Any Board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office or for any other just cause by the Borough Council Prior to any vote by the Borough Council; the member shall receive notice fifteen days in advance of the date at which it intends to take such a vote. A hearing before the Borough Council shall be held in connection with the vote, if the member requests a hearing in writing.

#### **SECTION 1404 ORGANIZATION OF BOARD**

The Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the Board. The Board, however, may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Board as provided in Section 1406. If by any reason of absence or disqualification of a member, a quorum is not reached, the chairman of the Board shall designate the alternate member of the Board to be seated to establish a quorum. The 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.

The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of Ashley Borough and laws of the Commonwealth. The Board shall keep full public records of its business, which records shall be the property of the Borough, and shall submit an annual report of its activities to the Borough Council.

### **SECTION 1405 EXPEDITURES FOR SERVICES**

Within the limits of appropriated funds, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and technical services which they may deem necessary to augment the Board in the performance of their duties.

### **SECTION 1406 HEARINGS**

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

- A. Notice of hearings before the Board shall be by public notice; a notice published once a week for two (2) successive weeks in a newspaper of general circulation in the Borough. Such notice shall state the time and place of the hearing and the particular nature of matters to be considered at the hearing by the Board. The first publication shall not be more than thirty (30) days and the second publication shall not be less than seven (7) days from the date of the hearing.
- B. Written notice shall be given to the following parties:
  1. The Zoning Officer.
  2. The applicant.
  3. The owner of record of the subject property before the Board, if different than that of the applicant.
  4. The owner of record of any property which has an adjoining or contiguous property boundary with the subject property subject property before the Board and to the owner of record of any property within two hundred (200) linear feet of the subject property before the Board. An adjoining or contiguous property boundary shall be deemed to also include such properties which have any amount of opposite front, rear or side yard areas including those properties that are separated from the subject property before the Board by a public or private street, road, alley and/or similar right-of-way. In cases of a corner property subject to a hearing before the Board, in addition to the owners of record with an adjoining or contiguous property boundary, notice shall also be given to any owner of record of any property which has frontage along the intersection of the public or private streets or roads in question.

5. Any party or person who has submitted a written request to receive notification on the subject property.

The applicant shall be responsible for providing the Zoning Hearing Board with the names and addresses of the true and correct owners of record based upon the records contained in the Luzerne County Tax Assessor's Office. While it shall be the intent of the Ashley Borough Zoning Hearing Board to provide written notice to property owners which have a common side yard, rear yard or opposite frontage to the subject property before the Board, failure to do so, shall not represent a basis for appeal or otherwise invalidate a decision and/or finding of the Zoning Hearing Board.

In the event a hearing is continued to a future date for the purpose of obtaining additional information, additional testimony or to render a decision, and the Zoning Hearing Board publicly announces during the course of the hearing, the time and date for the resumption of the hearing, additional written notice need not be provided to the above parties.

- C. The Borough Council may prescribe reasonable fees with respect to hearings before the Board. Fees for said hearings may include compensation for the secretary, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Board or expenses for engineering, architectural or other technical consultants or expert witnesses.
- D. The first hearing shall be held within sixty (60) days from the applicant's request, unless the applicant has agreed in writing to an extension of time. The sixty (60) day time period shall not commence until the applicant has submitted a properly completed application, with all required signatures, supporting information, the names and mailing addresses of parties to receive notice of the hearing, and all required fees. Each subsequent hearing shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of his case-in-chief within one hundred (100) days of the first hearing. Upon the request of the applicant, the Zoning Hearing Board or Hearing Officer shall assure that the applicant receives at least seven (7) hours of hearings within the one hundred (100) days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within one hundred (100) days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief provided the persons opposed to the application are granted an equal number of hearings. Persons opposed to the application may, upon written consent or consent on the record by the applicant and municipality, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.
- E. Hearings shall be conducted by the Board or by any member appointed by the Board as a hearing officer. The decision, or where no decision is called for, the findings shall be made by the Board, unless the appellant or applicant, as the case may be, in addition to the Borough, agree to waive any decision or findings by the Board and accept the decision or findings of the hearing officer as final. If the decision or findings of the

hearing officer are to be accepted as final, all parties to the hearing must agree to such stipulation at the outset of the hearing.

- F. The parties to the hearing shall be the Borough, any person affected by the application who has made a timely appearance of record before the Board, and any other person including civic or community organizations permitted to appear by the Board. The Board shall have power to require that all persons who wish to be considered parties to the hearing enter appearances in writing on forms provided by the Board for such purpose.
- G. The presiding chairman or acting chairman of the Board or hearing officer shall have the power to administer oaths and issue subpoenas to compel attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by parties to the hearing. The parties to the hearing shall have the right to be represented by legal counsel and shall be afforded the opportunity to respond and present evidence and arguments and to cross-examine adverse witnesses on all relevant issues.
- H. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.
- I. The Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Board. The cost of the original transcript shall be paid by the Board if the transcript is ordered by the Board or hearing officer, or shall be paid by the person appealing from the decision of the Board, if such appeal is made and in the event the cost of additional copies shall be paid by the person requesting such copies. In other cases the party requesting the original transcript shall bear the cost thereof.
- J. The Board, collectively or individually, or the hearing officer, shall not communicate directly or indirectly with any party or his representatives in connection with any issue before the Board involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from its solicitor, unless all parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.
- K. The Board or the hearing officer, as the case may be, shall render a written decision or, if no decision is called for, make written findings on the application within forty-five days after the last hearing before the Board or hearing officer. If the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons therefore. Conclusions based on any provisions of the Ordinance or any other ordinance, rule or regulation, shall contain a reference to the provisions relied upon and the reasons why the conclusion is deemed appropriate in light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the Board shall make his report and recommendations available to the parties of record within forty-five days. The parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings, with the Board's decision entered no later than thirty days

after the report of the hearing officer. If the Board fails to hold the required hearing within sixty days from the date of the applicant's request for hearing, the decision shall be deemed to have been rendered in favor of the applicant, unless the applicant has agreed in writing or on the record to an extension of time. If a decision has been rendered in favor of the applicant because of their failure of the Board to meet or render a decision as hereinabove provided, the Board shall give public notice of said decision within ten days from the last day it could have met to render a decision in the same manner as provided under Item A of this Section. Nothing contained within this Section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

- L. In any appeal of an enforcement notice under this Ordinance to the Zoning Hearing Board shall require that the Zoning Officer and/or Borough provide its evidence first to the Board regarding the basis, nature and supporting information regarding the subject enforcement notice. Upon the conclusion of the same, the appealing party shall provide the Board with his/her evidence in contesting the subject enforcement notice. Any filing fees paid by a party to appeal an enforcement notice to the Zoning Hearing Board shall be returned to said party, if Zoning Hearing Board or any subsequent Court rules in favor of the appealing party.
- M. The final decision or, where no decision is called for, the findings shall be rendered by the Zoning Hearing Board at a public hearing and/or public meeting. A copy of the written decision or findings shall be delivered to the applicant personally or mailed to him not later than the day following the date of the Board's decision or findings. The Zoning Hearing Board shall provide by mail or otherwise, to all persons who have filed their name and address with the Board, not later than the last day of the hearing, a statement of brief notice of the decision or findings and a statement of the place and at which a copy of the full decision or findings may be examined.

#### **SECTION 1407 MEDIATION OPTION**

**1407.1** Mediation may be utilized as an aid designed to supplement, as opposed to replacing, any proceedings before and under the jurisdiction of the Zoning Hearing Board. In no case, however, shall the Board or any member of the Board, initiate the use of mediation. No member of the Board shall be allowed to participate as a mediating party or be present during any sessions of mediation. Nothing within this Section shall be interpreted as expanding or limiting municipal police powers or modifying any principles of substantive law.

**1407.2** Mediation shall be voluntary among all subject parties with the appropriateness of mediation determined by the particular issues of each case and the willingness among all the subject parties to negotiate. In order to supplement proceedings before the Zoning Hearing Board, the following information shall be submitted to the Board in written form and signed by all parties to the mediation, the selected mediator, and the Zoning Hearing Board.

- A. Method and commitment of funding of mediation.

- B. The mediator shall be an attorney and/or an individual who is certified by the American Arbitration Association, who shall possess a working knowledge of municipal zoning and subdivision practices and procedures.
- C. A schedule which shall clearly prescribe the time limitations for both the start and completion of mediation. The completion date shall be adhered to even if the negotiations fail to result in a mediated agreement by said date.
- D. Suspension of the appropriate time limitations which apply to the Zoning Hearing Board in convening a hearing and/or rendering a decision, once a hearing is convened, subject to executing a document of expressed written consent by the mediating parties, and by the Zoning Hearing Board.
- E. Identification of all subject parties and affording them the opportunity to participate.
- F. A determination of whether some or all of the mediation sessions shall be opened or closed to the public, subject to governing legal constraints.
- G. An agreement among the mediating parties, that any mediated solution be in written form and subject to review and approval by the Zoning Hearing Board.
- H. Any mediation which concludes within the prescribed time limits under Item C of this Section, which does resolve in whole or in part, the issues subject to mediation, shall then proceed under the hearing process before the Zoning Hearing Board.
- I. No offer or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceedings.

**SECTION 1408 JURISDICTION OF ZONING HEARING BOARD**

The Zoning Hearing Board, in accordance with the Pennsylvania Municipalities Planning Code, Act 247, as amended, shall have exclusive jurisdiction to hear and render final adjudication in the following matters:

- A. Substantive challenges to the validity of any land use ordinance, except for those brought before the Borough Council under Section 1403.1 of this Ordinance.
- B. Challenges to the validity of any land use ordinance, based upon procedural questions or alleged defects in the process of enactment or adoption. Challenges based upon procedural questions or alleged defects shall be raised by an appeal to



the Board within thirty days after the effective date of the Ordinance subject to the appeal.

- C. Appeals from the determination of the zoning officer, including by not limited to, the granting or denial of any permit, or failure to act on the application therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.
- D. Appeals from a determination by the zoning officer with reference to the administration of any flood plain provision or regulation within any land use ordinance.
- E. Applications for variances, pursuant to Section 1409 of this Ordinance.
- F. Applications for special exceptions pursuant to Section 1410 of this Ordinance.
- G. Appeals from the determination of the zoning officer or municipal engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management not related to development which is classified as a subdivision, land development, or a planned residential development.
- H. Applications seeking approval of a use on a temporary basis pursuant to Section 1411 of this Ordinance.

## **SECTION 1409 VARIANCE**

### **1409.1 INITIAL DETERMINATION BY ZONING OFFICER**

An application for a variance shall not be submitted to or considered by the Zoning Hearing Board until the following procedure has been completed:

- 1) The applicant submits an application for a Zoning Permit to the Zoning Officer in accordance with Section 1302 of this Ordinance.
- 2) The Zoning Officer is reviewing the subject application renders a determination that the proposed development and/or use of property fails to comply with an applicable provisions and/or regulations of this Ordinance.
- 3) The Zoning Officer specifies the applicable Sections of this Ordinance relative to the applicant's need to secure a variance(s) from the Zoning Hearing Board.

### **1409.2 PROVISIONS FOR GRANTING VARIANCES**

The Zoning Hearing Board shall hear requests for variances if it is alleged that

the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The Board may by rule prescribe the form of application and may require preliminary application to the zoning officer. The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

- 1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- 2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- 3) That such unnecessary hardship has not been created by the appellant.
- 4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- 5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code, Act 247, as amended.

## **SECTION 1410      SPECIAL EXCEPTIONS**

### **1410.1      INITIAL DETERMINATION BY ZONING OFFICER**

An application for a special exception use shall not be submitted to or considered by the Zoning Hearing Board until the following procedure has been completed:

- 1) The applicant submits an application for a zoning permit to the Zoning Officer in accordance with Section 1302 of this Ordinance and a Site Plan in accordance with Section 703 of this Ordinance.
- 2) The Zoning Officer shall initially review the Site Plan to determine its compliance with Section 803 of this Ordinance.

- 3) The Zoning Officer shall also render a determination regarding whether the proposed development and/or use is required to secure any variances from the Zoning Hearing Board, in addition to securing a special exception approval.

#### **1410.2 PROVISIONS FOR GRANTING A SPECIAL EXCEPTION APPROVAL**

The Zoning Hearing Board shall hear and decide requests for uses and/or development which are permitted as special exception uses. Special exception uses shall be referred to the Planning Commission for their review, comments and recommendations prior to final action by the Board. The Board shall grant approval only upon the determination that the proposed use and/or development conforms with all applicable standards and provisions within this Ordinance and the following expressed standards and criteria:

- 1) Public services and facilities such as streets, sewers, water, police, and fire protection shall be adequate for the proposed use and/or development.
- 2) Existing and future streets and access to the site shall be adequate for emergency services, for avoiding undue congestion, and for providing for the safety and convenience of pedestrian and vehicular traffic.
- 3) The relationship of the proposed use and/or development to other uses and activities existing or planned in the vicinity shall be harmonious in terms of the location and site relative to the proposed operation, and the nature and intensity of the operation involved.
- 4) The relationship of the proposed use and/or development to other activities existing or planned in the vicinity shall be harmonious in terms of the character and height of buildings, walls, and fences so that the use, development, and value of adjacent property is not impaired.
- 5) The proposed use and/or development shall not be more objectionable in its operations in terms of noise, fumes, odors, vibration, or lights than would be the operations of any permitted use in the district.

In granting approval, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code, Act 247, as amended.

#### **SECTION 1411 APPROVAL OF USE ON TEMPORARY BASIS**

The Zoning Hearing Board may authorize the approval of a special exception and/or variance on a temporary basis. The proposed use of a building, structure or land on a temporary basis shall be in accordance with the following:

- 1) Shall not exceed a twelve (12) month period for any reason.

- 2) Shall not involve the structural attention of any existing structure and/or building.
- 3) Shall not involve construction of any new structure and/or building.
- 4) Shall not generate excessive traffic.
- 5) Shall not create excessive smoke, noise, odor, dust, vibration, electrical disturbance or other similar hazards and/or nuisances.
- 6) Shall not impair the use and/or development of adjoining properties.

In granting approval to a temporary use, the Zoning Hearing Board shall have the discretion to include any additional conditions which it deems necessary to safeguard the health, safety and general welfare of the public. The Zoning Hearing Board may revoke their approval prior to the expiration of the twelve (12) month period if any standards, conditions, or terms under which approval was granted, are violated.

The Zoning Hearing Board's approval shall become null and void at the termination of the twelve (12) month time period, with renewal of any additional term on a temporary basis prohibited. The applicant shall, however, have the right to seek a variance and/or special exception approval, whichever is appropriate, on a permanent basis on or before the termination of the twelve (12) month time period. Failure to cease all operations and activities at the termination of the twelve (12) month time period or be granted approval on a permanent basis shall constitute a violation of this Ordinance.

#### **SECTION 1412 PARTIES APPELLANT BEFORE THE BOARD**

Appeal and/or applications for hearings before the Zoning Hearing Board pursuant to those matters contained within Section 1409 of this Ordinance may be filed with the Board in writing by the affected landowner or by any aggrieved person or party. The Board shall not accept appeals or applications for hearings from any tenant or equitable owner of a property without the express written consent of the landowner. In such cases, the landowner's signature shall be required upon all applicable forms, applications or documents which are to be submitted to the Board.

#### **SECTION 1413 TIME LIMITATIONS**

- 1413.1** No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for the development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge, or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan for a Planned Residential

Development, pursuant to Section 709 of the Pennsylvania Municipalities Planning Code, Act 247, as amended, or from an adverse decision by a zoning officer on a challenge to the validity of an ordinance or map based upon substantive grounds, pursuant to Section 916.2 of the Pennsylvania Municipalities Planning Code, Act 247, as amended, shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

**1413.2** Any landowner wishing to appeal a decision of the Zoning Hearing Board shall be required to file such appeal to a court of competent jurisdiction within thirty days after the notice of the Board's determination is issued. Failure to do so within the prescribed thirty day time period shall preclude any further appeal of the Board's decision.

## **SECTION 1414**      **STAY OF PROCEEDINGS**

**1414.1** Upon filing of any proceeding referred to in Section 1408 of this Ordinance, and during its pendency before the Zoning Hearing Board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or of any agency or body, and all official action thereunder, shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the Board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the court having jurisdiction of zoning appeals, on petition, after notice to the zoning officer or other appropriate agency or body. When the application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post a bond as a condition to continuing the proceedings before the Board.

**1414.2** After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all the evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellate, but such waiver may be revoked by him if an appeal is taken from a final decision of the court.

**1414.3** The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.

**1414.4** If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellate court sustains the order below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses, and attorney fees incurred by the Petitioner.

**SECTION 1411 APPEALS TO COURT**

The procedures set forth in Article X-A of the Pennsylvania Municipalities Planning Code, Act 247, as amended, shall constitute the exclusive mode for securing judicial review of any decision rendered or deemed to have been made under this Ordinance.