

ASHLEY BOROUGH
LUZERNE COUNTY, PA

1993 ZONING ORDINANCE, AS AMENDED

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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.

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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 TERMS OR WORDS NOT DEFINED

When terms, phrases, or words are not defined, they shall have the meaning as defined in The Latest Illustrated Book of Development Definitions (H. S. Moskowitz and C. G. Lindbloom, Rutgers, The State University of New Jersey, 2004) or if not defined therein, they shall have their ordinarily accepted meanings or such as the context may imply.

SECTION 203 DEFINITIONS

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, subject to completion of the work within one year from the issuance of a zoning permit and/or building permit.

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 vehicular approach to provide physical ingress and/or egress to a property.

ACCESS DRIVE:

An improved cartway designed and constructed to provide for vehicular movement between a public or private street and off-street parking or loading areas, buildings or uses.

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.

ADDITION:

A new structure attached to an existing structure that increases the size of the existing structure whether it be upward or outward.

ADJOINING PROPERTY:

A property having a contiguous property boundary with a separate property, including properties with any amount of opposite front, rear or side yard areas that are separated by a right-of-way, alley, or easement.

AGRICULTURE OPERATION:

An enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock and livestock products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and agricultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produce consistent with practices and procedures that are normally engaged by farmers were consistent with technological development within the agricultural industry

AGRITAINMENT ENTERPRISE: A farm-based entertainment enterprise which includes activities or combination of activities such as hayrides, pony rides, wine tasting, cornfield-maze contests, farmer's markets, harvest festivals, rodeos, western style equestrian events and contests including but not limited to barrel racing and steer sorting that are offered to the public or to invited groups for the purpose of recreation, entertainment, education, or active involvement in the agricultural operation. A farm-based entertainment enterprise shall be located upon a property currently used for agricultural purposes.

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 Ashley Borough Zoning Ordinance, including changes to boundaries of Zoning Districts as provided upon the Zoning Map.

ANIMAL DAY CARE:

A use that involves the keeping of more than a total of five dogs, cats, or other domestic pets for temporary care a maximum of 12 hours per day.

ANIMAL HOSPITAL:

A building or structure used for the treatment of domesticated animals by a veterinarian or other medical practitioner licensed by the state, with short-term boarding incidental to the treatment.

ANIMAL KENNEL

A place where more than five animals are kept, housed, boarded, bred, or trained. The term includes the keeping of more than five dogs or cats or a combination of dogs or cats.

ANTENNA:

Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services

APPLICANT:

The person or entity filing an application under this Ordinance.

ASSISTED LIVING FACILITY:

Any premises in which food, shelter, assisted living services, assistance or supervision and supplemental health care services are provided for a period exceeding 24-hours for four or more adults who are not relatives of the operator, who require assistance or supervision in matters such as dressing, bathing, diet, financial management, evacuation from the residence in the event of an emergency or medication prescribed for self- administration intended to allow the individual to age in place. An assisted living residence is licensed by the state with or without a special care unit designation

AS-BUILT DRAWINGS:

Construction plans prepared after the completion of construction, by the engineer of record, in such a manner as to accurately identify and depict the location and design of all on-site improvements, which includes but is not limited to streets, structures, parking facilities, stormwater detention/retention areas, curbs, sidewalks and any other facilities approved for the subject development. As-Built Drawings shall be sealed by the engineer of record.

ASPHALT, BATCH OR CONCRETE PLANT:

An industrial facility used for the production of asphalt or concrete, or asphalt or concrete products, used in building or construction, and includes machinery and equipment for crushing, sorting, sizing and washing of stones, facilities for the administration or management of the business, the stockpiling of bulk materials used in the productions processor of finished products manufactured on the premises and the storage and maintenance of required equipment.

AUTOMOTIVE REPAIR GARAGE:

An establishment where “Major Automotive repairs” and “Minor Automotive repairs” are made.

a. Minor Automotive Repair:

Includes repairs other than major automobile repairs limited to oil changes, tune-ups, tire changing, servicing of spark plugs and batteries, adjustment of brakes, greasing, lubrication, radiator cleaning and flushing, replacement of mufflers, tail pipes, hoses, belts, lights, brakes and transmission and radiator fluids, wipers and emergency wiring repairs, and the installation of automobile radios and electric car starters.

b. Major Automotive Repair:

Includes general repair or reconditioning of engines, air-conditioning systems, and transmissions for automobiles; wrecker or towing service with on-site storage

of vehicles and an impoundment area; collision services including body, frame, or fender straightening or repair; customizing; painting; vehicle steam cleaning; tire retreading; insurance estimations with on-site storage; undercoating and rust proofing, and other similar uses; and performing state inspection and emission testing and performing repairs to pass inspections.

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.

AUTOMOBILE STORAGE YARD: (ALSO SEE JUNK OR SALVAGE YARD)

Includes the dismantling or wrecking of automobiles, motor vehicles, trailers, or parts thereof; the storage or accumulation of any junk; the storage of two or more junk vehicles; or two or more motor vehicles from which parts have been or are to be removed for reuse or sale shall constitute an AUTOMOBILE STORAGE YARD. The term shall not include the shredding of vehicles or industrial shredding.

BANK OR FINANCIAL INSTITUTION:

An establishment primarily involved with loans and monetary transactions with routine public interaction such as a bank or lending institution regulated by FIDC.

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 is five (5) feet or greater.

BEAUTY SALON OR BARBER SHOP:

An establishment primarily engaged in providing services generally involved in the care of the person including hair, nails, and tanning.

BED AND BREAKFAST:

An owner-occupied dwelling containing units which are rented on a nightly basis for periods of less than a week. Dining and other facilities shall not be open to the public, but shall be exclusively for the use of the residents and registered guests. Breakfast shall be the only meal served. Such rooms shall not have separate utilities, provisions for cooking or dormitories for sleeping and must be located within the principal structure.

BOROUGH:

The Borough of Ashley, Luzerne County, Pennsylvania

BOTTLE CLUB:

An establishment operated for profit or pecuniary gain which has a capacity for the assemblage of 10 or more persons and in which alcoholic liquors, alcohol or malt or brewed beverages are not legally sold but where alcoholic liquors, alcohol or malt or brewed beverages are either provided by the operator or agents or employees of the operator for consumption on the premises or are brought into or kept at the establishment by the patrons or persons assembling there for use and consumption. The term shall not include a license under the Act of April 12, 1951 (P.L. 90, No. 21) known as the "Liquor Code" or any organization as set forth in Section 6

of the Act of December 19, 1990 (P.L. 1200, No. 202) known as the "Solicitation of Funds for Charitable Purposes Act. Said Club shall not be operated in a manner in which it could also be classified as either a restaurant or a Sexual Oriented Business as so defined by this Ordinance.

BUFFER AREA:

A method of improvements designed to separate and substantially obstruct the view of two adjacent land uses or properties from one another. Unless specified otherwise, for the purpose of this Ordinance when a buffer area is required it shall be deemed to represent a solid fence or stone wall with cork fitting, eight (8) feet in height with two staggered rows of evergreen trees planted in front of the fence with the spacing distance between trees not less than eight feet or greater than ten (10) feet. Said trees shall be not less than eight (8) feet in height at the time of planting. A Buffer Area shall not be occupied by any building, parking, outdoor storage or any use other than open space and approved vegetative plantings.

BUILDING:

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

Building, Accessory: A subordinate structure on the same lot as the principal or main building or use occupied or devoted to a use incidental to the principal use.

Building Coverage: The total combined area of outside dimensions at ground level of the principal building and all accessory buildings and/or structures. Percentage of building area or coverage is calculated by dividing the maximum horizontal area in square feet of all principal and accessory buildings covered by a permanent roof on a lot by the total lot area of the lot upon which the buildings are located

Building Envelope: An area of a lot upon which development may occur. Excluding deed restrictions, covenants, easements or other site conditions, the governing minimum setbacks requirements for a given zoning district establishes the building envelope.

Building Height, Maximum: The vertical height from lowest grade to the highest midpoint elevation of a roof from its highest ridge to its lowest corresponding eave for gambrel, a-frame, shed, gable, hip, and salt box roofs; and the vertical height from lowest grade to the highest elevation of mansard, flat, and dome roofs, including any parapet. Lowest grade for purposes of calculating maximum building height means the elevation at the lowest exposed point of the building exterior or foundation.

SEE EXHIBIT A, LOCATED IN THE APPENDIX OF ARTICLE 2, FOR EXAMPLES OF MEASUREMENTS FOR HEIGHT OF BUILDINGS.

Building, Principal: A building in which is conducted the principal use of the lot on which it is located.

CAR WASH:

An area of land and/or a structure with machine-or-hand-operated facilities used principally for the interior and/or exterior cleaning, washing, polishing, or waxing of motor vehicles.

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.

CEMETERY:

Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including chapels, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

CHANGE OF USE:

Any use which differs from the last previously approved use of a building, structure or land.

CHURCH: (SEE PLACE OF WORSHIP)

CHECK CASHING BUSINESS

An establishment engaged primarily in the cashing of checks by individuals or the deferred deposit of personal checks whereby the check casher refrains from depositing a personal check written by a customer until a specific date; or the offering of a loan until a paycheck would be received by the person receiving the loan. This term does not include any of the following:

- a. A state or federally chartered bank, savings association, credit union, or industrial loan association.
- b. A retail store engaged primarily in selling or leasing items to retail customers and that cashes a check for a fee not routinely exceeding one percent of the check amount as a service to its customers incidental to the retail store principal use.
- c. A financial institution or bank as the term is defined under this ordinance.

CLEAR SIGHT TRIANGLE:

An area of unobstructed vision at street intersections, including driveways, 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.

COMMERCIAL USE:

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

COMMUNITY CENTER:

A use existing solely to provide social, and recreational programs and activities to the public or a designated group of persons in a community. This use does not include a group home or institutional group home.

CONDITIONAL USE:

A use permitted in a particular zoning district only upon verification that such use in a specified location will comply with the conditions and standards for the location of operation of such use as specified in the Zoning Ordinance and where authorization can only be granted by the Borough Council, preceded by a review and recommendation of the Borough Planning Commission and a public hearing.

CONSPICUOUS” OR “CONSPICUOUSLY:

Posting a notice or permit to make the public aware of the notice or permit, the intended work or use to be conducted on a property, or the date, time, place, and purpose of a hearing in a manner which a reasonable person would not believe they were trespassing while viewing it.

CONSTRUCTION:

The placement of materials and equipment in a defined area to be assembled, built, applied, or demolished in a temporary or permanent manner.

CONTINUING CARE FACILITY:

An age restricted facility designed, operated and maintained to provide housing and a continuum of age-related care needs from independent living, assisted living, and skilled nursing care.

CONTRACTOR’S STORAGE:

Any lot or structure, or part thereof, used to store materials used by a contractor in a construction trade such as the building, construction or installation of a street, or structure or the parts of a structure (electrical, plumbing etc.). This term includes construction contractors, excavators, paving contractors, landscapers, and other similar construction trades.

CONVENIENCE STORE:

Any retail establishment offering for sale prepackaged food products, household items, and other goods commonly associated with the same. The sale of gasoline or fuel products is only permitted when specified in this zoning ordinance as permitted a “convenience store with gas station.”

CONVENIENCE STORE WITH GAS SALES:

Any retail establishment offering for sale prepackaged food products, household items, and other goods commonly associated with the same, along with the retail sales of gasoline and related fuel products but excluding any type of automotive repairs.

CONVERSION OR CONVERTED

To change or adapt improved property to a use, occupancy, or purpose other than what was intended at its time of construction.

COUNTY:

Luzerne County, Pennsylvania.

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.

DANCE, GYMNASTIC, MARTIAL ARTS AND/OR YOGA STUDIO:

A building or portion of a building used as a place for a gymnast, dancer, or martial artist or for instructional classes in gymnastics, dance, or martial arts.

DAY CARE FACILITIES:

The provision of out-of-home care for children or adults for part of a 24-hour day, excluding the care provided by relatives.

- A. Adult Day Care Center: A facility licensed by the state providing care for the elderly and/or functionally impaired adults in a protective setting for a portion of a 24-hour day.
- B. Child Day Care Center: A premises in which child day care is provided simultaneously for seven (7) or more children who are not relatives of the provider of the child day care home, where such facility is subject to PA Department of Public Welfare supervision or licensing under the PA Public Welfare Code.
- C. Family Day Care Home: A premise in which child day care is provided at any one time to between four (4) to six (6) children who are not relatives of the provider of the child day care, where such facility is required to be registered with the PA Department of Public Welfare under the PA Public Welfare Code.
- D. Group Day Care Home: A State licensed facility in which care is provided for more than 6 but less than 12 children, at any one time, if care is provided in a facility where the childcare areas are being used as a family residence.

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 subject to appeal to the Court of Common Pleas of Luzerne County.

DEVELOPER:

A person or entity who has or who intends improve a parcel of land within the Borough.

DEVELOPMENT:

Any man-made improvements to improved or unimproved real estate. The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or structure, any mining, dredging, filling, grading, paving, excavation, drilling, land disturbance and any use or extension of the use of land shall be deemed to constitute a development.

DETERMINATION:

Final action by an officer, body or agency charged with the administration of any land use ordinance or applications thereunder, 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 may be appealed only to the boards designated as having jurisdiction for such appeal.

DETENTION FACILITY:

A publicly or quasi- publicly operated facility used to house and/or rehabilitate individuals detained, sentenced by, or under the jurisdiction of the criminal justice system, including but not limited to, jails, prisons, penitentiaries, reformatories, half-way houses and similar facilities.

DIMENSIONAL REGULATIONS OR REQUIREMENTS:

The measurements or dimensions applicable to a building, structure or use based upon the zoning district in which the lot is located. Dimensional regulations or requirements include minimum front, side and rear yard setbacks; minimum lot area; minimum lot width minimum floor area; maximum height; and maximum building coverage.

DISTRIBUTED ANTENNA SYSTEMS (DAS):

A network of spatially separated antenna sites connected to a common source that provides wireless service within a geographic area or structure.

DETERMINATION:

Final action by an officer, body or agency charged with the administration of any land use ordinance or applications thereunder, 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 may be appealed only to the boards designated as having jurisdiction for such appeal.

DRIVE-THROUGH COMMERCIAL USE:

An establishment that, by design of physical facilities or by service or packaging procedures, encourages or permit customers to receive a service or obtain a product that may be used or consumed in a motor vehicle on the premises or to be entertained while remaining in an automobile.

DRIVEWAY:

A privately owned and constructed vehicular access from an approved private or public road into a lot or parcel having a frontage on the road.

DWELLING:

One or more rooms, designed, occupied or intended for occupancy as separated living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

DWELLING TYPES:

- A. **SINGLE-FAMILY-** means a residential building containing one dwelling unit to

accommodate one family.

- B. **TWO- FAMILY** means a residential building containing two dwelling units each accommodating one family, and entirely separated from each other by vertical walls or horizontal floors, excluding possible common access to enter or exit the building or for access to a common cellar or basement. The term two-family includes twins (side by side-units connected by a common wall) and duplexes (up and down-one unit above the other).
- C. **MULTI-FAMILY-** means a residential building containing three or more dwelling units each accommodating one family. The term includes an apartment building, condominiums, townhouses, and rowhomes when each building contains more than two unit.
- D. **APARTMENT BUILDING-** means a multi-family residential unit constructed as single building containing three or more single-family residential dwelling units.
- E. **CONDOMINIUMS-** means a set of individual dwelling units or other areas of buildings, each owned by a person in fee simple, with such owner assigned a proportionate interest in the remainder of the real estate which is designated for common ownership, and which is created under the Pennsylvania Uniform Condominium Act of 1980 or the Pennsylvania Planned Community Act of 1996, as amended. The term is considered a multi-family dwelling unit or use for purposes of this zoning ordinance.
- F. **TOWNHOUSES-** means one dwelling unit that is attached to two or more dwelling units in a row, and with each dwelling unit being completely separated from and attached to each other by unpierced vertical fire-resistant walls and each having their own outside access with sidewalls being adjacent to each end unit.
- G. **ROWHOMES”-** means a series of dwelling units connected by common side walls and forming a continuous group.
- H. **GARDEN APARTMENT –** means a multi-family housing development containing one or more multi family structures not exceeding three stories
- I. **MANUFACTURED HOMES:**
 - A. A manufactured home (formerly known as a mobile home) is built to the Manufactured Home Construction and Safety Standards (HUD Code) and displays a red certification label on the exterior of each transportable section. Manufactured homes are built in the controlled environment of a manufacturing plant and are transported in one or more sections on a permanent chassis. A manufactured housing unit which is attached and anchored to a permanent foundation shall be deemed to be a single-family dwelling unit.
 - B. A modular home is a factory constructed home transported to a permanent location, constructed on a permanent foundation with its construction in compliance with the Uniform Construction Code (UCC) and any other applicable code requirements making it indistinguishable from a stick-built/site-constructed home.

“See Photographs of Dwelling Types”:

Single-Family Dwelling



Two-Family Dwelling (Twin)



Two-Family Dwelling (Duplex)



Multi-Family Dwelling (Apartment Building)



Multi-Family Dwelling (Townhouses or Rowhouses)



DWELLING UNIT:

One or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with separate toilet facilities and separate cooking facilities for exclusive use by the family residing therein.

EARTH DISTURBANCE ACTIVITY:

Any construction or other activity which disturbs the surface of the land including but not limited to excavations, embankments, land development, subdivision development, mineral extraction and the moving, depositing or storing of soil, rock or earth. Any construction or activity resulting in an earth disturbance shall be subject to the governing regulations of the Ashley Borough Storm Water Management Ordinance.

EASEMENT:

A legally recorded 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.

EMERGENCY SERVICES FACILITY:

A publicly owned building for the housing of fire, emergency medical or police equipment and for related activities.

ENTERTAINMENT FACILITIES:

Commercial establishments engaged in providing indoor entertainment for a fee or an Admission charge, including but not necessarily limited to a movie theater, live theater performances, an 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 thereunder.

ESSENTIAL PUBLIC SERVICES:

Includes public utility and municipal authority uses that are necessary for the preservation of the public health and safety and that are routine, customary and appropriate to the character of the area in which they are to be located. Essential services include the following and closely similar facilities: sanitary sewage lines, streets, water lines, electric distribution lines, stormwater management facilities, cable television lines, natural gas distribution lines, fire hydrants, streetlights, and traffic signals. Essential services do not include a central sewage treatment plant, a solid waste facility, communications towers and antennas, a power generating station, septic or sludge disposal, offices, storage of trucks or equipment or bulk storage of materials

EXCAVATION/EXTRACTION:

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.

EXOTIC ANIMALS:

Includes any animal of a species prohibited by federal law or regulation, or otherwise controlled by the Commonwealth of Pennsylvania. The terms include any animal, which is wild, fierce, dangerous, noxious, or naturally inclined to do harm, is native to a foreign country or of foreign origin or character and not native to the United States or introduced from abroad. This term specifically includes animals such as, but not limited to, venomous frogs, toads, and turtles, grizzly, brown, and black bears; lions, pumas, panthers, mountain lions, leopards, jaguars, ocelots, margays, tigers, bobcats, and wild cats; alligators, caimans, crocodiles, and gavials; wolf, fox, coyote, dingo or other offspring of domesticated dogs bred with a wolf, fox, coyote, dingo, and any dog which bites, inflicts injury, assaults or otherwise attacks a human being or other animal without provocation, or any dog deemed a dangerous dog under Pennsylvania Law; wild or domesticated swine, porcupines, and skunks; raccoons and civets; venomous and constricting snakes (boa constrictors, pythons, etc.) and venomous lizards; venomous spiders and scorpions, and weasels, martens, mink, wolverine, ferrets, badgers, otters, ermine, mongoose, excluding domesticated ferrets.

FACILITY:

A structure or place which is built, installed, or established to serve a particular purpose or use.

FARM ANIMALS:

Includes any animal commonly raised or kept in an agricultural, rather than an urban, environment including, but not limited to chickens, turkeys, pheasants, geese, ducks pigeons, pigs, sheep, goats, horses, cattle, llamas, emus, and ostriches.

FAMILY:

Any number of individuals related by blood, marriage or legal adoption, including foster children, occupying a dwelling unit as their domicile as a single nonprofit housekeeping unit. Unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first sentence of this definition.

A family does not include a group living in a rooming house or hotel, or fraternities, sororities, and clubs, halfway houses, or other forms of congregate living arrangements, including temporary or transitional housing except as otherwise provided herein.

FENCE:

A structure functioning as a boundary or barrier constructed of materials recognized by the fencing industry, excluding temporary fencing. Hedges shrubbery and/or similar vegetation shall not be deemed or considered to be a fence.

FLEA MARKET:

Retail sale uses where more than one vendor displays and sells general merchandise that is new or used on a regularly occurring basis, including indoor and outdoor displays of merchandise. The term flea market does not include wholesale sales establishments or rental services establishments, but may include personal services and retail sales establishments, food services, and auctions.

FLOOD PLAIN MANAGEMENT ORDINANCE

The governing Flood Plain Management Ordinance of Ashley Borough

FLOOR AREA, GROSS RESIDENTIAL:

The interior floor area of a dwelling, including stairways, halls, and closets but not including basements, porches, garages, breezeways, or carports.

FLOOR AREA, GROSS NONRESIDENTIAL:

Unless specified otherwise, it represent the sum of the gross horizontal areas of the several floors of a building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings but not including: (1) attic or basement storage space; (2) mechanical utility equipment areas; (3) stairs.

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:

The management of forests and timberlands when practiced 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 any one property line of a premises, where said property line abuts a legally accessible street right-of-way.

FUNERAL HOME:

A building or part thereof used for human funeral services. Such building may contain space and facilities for embalming and the performance of other services used in the preparation of the dead for burial, the performance of autopsies and other surgical procedures, the storage of caskets and other related funeral supplies and the storage of funeral vehicles. A crematorium may be included which shall be deemed as an accessory use.

GARAGE, PRIVATE RESIDENTIAL:

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

GARDEN CENTER:

A place of business where products and produce are sold to the general public. These centers may include a nursery and/or greenhouses, plants, nursery products and stock, potting soil, hardware, power equipment and machinery, hoes, rakes, shovels, and other garden and farm variety tools and utensils.

GAS STATION, LIMITED-SERVICE:

A facility limited to retail sales to the public of gasoline, motor oil, lubricants, motor fuels, travel aides, and minor automobile accessories. In addition, such a facility may provide minor vehicle servicing, minor repairs, and maintenance, excluding those services provided under the definition of "Automotive Repair Garage."

GLARE

The effect produced by light with an intensity sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

GOVERNING BODY:

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

GRADING:

Any stripping, gutting, filling, stockpiling of earth or land, including the land in its cut or filled condition.

GRAVEL (CRUSHED STONE):

A surface that is considered to be impervious when the intended use of the stone is for transportation purposes, parking areas, construction areas, trails, or if the gravel is compacted

at any time during or after its placement; landscaping stone is not considered as impervious area.

GREENHOUSE:

A building for the growing of flowers, plants, shrubs, trees and similar vegetation which are not necessarily transplanted outdoors on the same lot containing such greenhouse, but are sold directly from such lot at wholesale or retail.

GROSS FLOOR AREA:

The total floor area (measured in square feet) of all floors in a building measured by exterior wall dimensions, including stairwells and elevator shafts, but excluding the attic and basement. For example, a one-story building with exterior walls dimensions of 100' x 100' would have a gross floor area of 10,000 square feet.

GROUP RESIDENCE:

A dwelling unit which is shared under congregate living arrangements by 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 of their licensed agents, a governmental agency 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 term "Group Residence" shall not include:

- A. A Rooming House, Personal Care Home and/or an Assisted Living Facility
- B. A facility providing shelter and/or rehabilitative care or treatment of persons for alcoholism and/or an addiction to a controlled substance.
- C. A facility for persons released from or under the jurisdiction of a governmental bureau of corrections or similar institution.

HALFWAY HOUSE:

A State licensed facility, representing transitional housing, to provide residence to a person who would otherwise be incarcerated in a prison, wherein supervision, rehabilitation, and counseling are provided to mainstream residents back into society. For the purpose of this ordinance a convicted person shall include a person who has been released from a prison on parole or a person granted probation by a Court of jurisdiction.

HAZARDOUS SUBSTANCES:

Any 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.

- C. This definition shall be deemed to include substances that are radioactive material, medical waste, 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, corrosives, carcinogens, irritants, sensitizers, and other hazardous substances. This term also includes the list of extremely hazardous substances set forth in 29 Code of Federal Regulations Part 355 or any successor provisions.

HAZARDOUS SUBSTANCE FACILITY: A facility and/or use which utilizes, stores, transports and/or produces materials which are Hazardous Substances, as so defined by this ordinance.

HIGHWAY OCCUPANCY PERMIT:

A permit, issued by the state, county or local governmental permit depending on the ownership of the street, which, when issued, authorizes connection of a driveway to a street for access from the lot to that street.

HEALTH SPA/FITNESS CLUB:

An indoor facility where active exercise and related activities are performed utilizing weight control or muscle building equipment or apparatus for the purpose of physical fitness. Said facility may also include game courts, swimming facilities, saunas and massage rooms

HOME OFFICE:

Residences of clergymen, architects, landscape architects, professional engineers, professional planners, registered land surveyors, lawyers, real estate agents, financial consultants, artists, teachers, musicians, or persons in other recognized professions used to conduct their professions where the office use is incidental to the residential use of the premises. The following uses and/or services, including those which are similar in nature, are excluded from the classification as a Home Office: hair stylists, barbers, massage parlors, tanning salons, health spas, beauty spas, nutrition and weight management services manicure and pedicure services, animal grooming services, body piercing and body painting services.

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.

HOTEL (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.

HOOKAH:

A waterpipe, or a similar single or multi-stemmed instrument for vaporizing and smoking flavored tobacco products.

HOOKAH LOUNGE OR BAR:

An establishment where patrons smoke tobacco products from a hookah.

HUB HEIGHT:

The distance measured from the surface of the tower foundation to the height of the Wind Turbine hub, to which the blade is attached.

IMPACT ANALYSIS:

A study and/or report, which may be required at the discretion of the Borough Council or the Zoning Hearing Board prior to approval of a conditional use or a special exception use, as the case may be to determine the potential impact of the proposed use on activities, utilities, traffic generation and circulation, surrounding land uses, community facilities, environmental features, and the public health, safety and welfare and other factors which may be directly or potentially affected. The applicant shall be responsible for all costs related to any and all report and/or studies required by the Borough Council or the Zoning Hearing Board, as the case may be, under or within the context of the term "IMPACT ANALYSIS."

IMPERVIOUS SURFACE OR COVERAGE:

A permanent surface that prevents the infiltration of water into the ground. Impervious surfaces include, but are not limited to, streets, sidewalks, pavements, parking lots, driveways, roofs, stone patios. See definition of "Gravel (Crushed Stone)" for when gravel classifies as impervious area.

IMPERVIOUS MATERIAL:

Any material and/or development that substantially reduces or prevents the infiltration of stormwater into previously undeveloped land as further defined by the Ashley Borough Stormwater Management Ordinance.

IMPROVEMENTS:

Man-made physical additions, alterations, and/or changes which become part of, placed upon, or affixed to real estate.

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 or commonly recognized offensive conditions and having potential to produce noise, dust, glare, odors or vibration beyond its property line.

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. Further, "light industrial" shall mean uses such as the manufacture of electronic instruments, preparation of food products, pharmaceutical manufacturing, research and scientific laboratories, or the like. 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, including but not limited to the use of hazardous materials.

JUNK:

Includes any discarded or salvageable material or article, including scrap metal, paper,

machinery, equipment, rags, glass, appliances, furniture, rubber, motor vehicles, and any parts of motor vehicles.

JUNKED VEHICLE:

Any vehicle, including a trailer, which does not bear current license and inspection stickers or is incapable of being moved under its own power, or presents a hazard or danger to the public by virtue of its state or condition of disrepair. The following conditions, which are not exclusive, are examples of what may constitute a state or condition of disrepair to classify a vehicle to be a junked vehicle.

- a. rusted and/or jagged metal on or protruding from the body of a vehicle.
- b. deflated tires
- c. broken glass or windows on or in the vehicle.
- d. leaking of any fluids from the vehicle.
- e. unsecured and/or unlocked doors, hood or trunk.
- f. storage or placement of the vehicle on concrete blocks.
- g. harboring or rodents, insects or other pests.

JUNKYARD: (SEE ALSO AUTOMOBILE STORAGE 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 (2) 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, or a single nonresidential building on a lot or lots containing two (2) or more occupants.
- (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.
- (C) A subdivision of land.
- (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 that is intended to be a condominium, shall be exempt from classification as a land development.
- (F) The development of a mobile home park or the expansion of an existing mobile home park within the context of the definition of said term as contained within this Ordinance.

LAND DISTURBANCE:

Any activity, which exposes soils, alters topography and/or alters wooded vegetation, except for removal of a safety hazard, diseased trees, or invasive vegetation.

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.

LAUNDROMAT, SELF-SERVICE:

A business that provides home-type washing, drying, and/or ironing machines for hire to be used by customers on the premises.

LIBRARY:

A nonprofit facility open to the general public in which literary, musical, artistic, or reference materials such as but not limited to books, manuscripts, computers, recordings, or films are kept for use by or loaning to patrons of the facility but are not normally offered for sale.

LOT:

Includes any lot which exists as shown or described upon a plat or deed and recorded in the Office of the Record of Deeds of Luzerne County, Pennsylvania

LOT TYPES INCLUDE:

- a. **Corner Lot** - means a lot abutting on and at the intersection of two or more streets. The point of intersection of the streets lot lines is the corner.
- b. **Flag-Shaped Lot** - means a lot that relies upon a thin strip of land for street access whose frontage does not satisfy the minimum width requirements for the respective zoning district but has the required lot width away from the street frontage.
- c. **Interior Lot** - means a lot fronting only one street.
- d. **Through Lot** - means an interior lot having frontage on two parallel or approximately parallel streets with vehicular access solely from the street of lesser functional classification.

SEE EXHIBIT B, LOCATED IN THE APPENDIX OF ARTICLE 2, FOR EXAMPLES/ILLUSTRATIONS OF TYPES OF LOTS

LOT AREA:

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

LOT AREA, GROSS:

The area of land contained within the limits of the legally described property lines bounding the lot.

LOT, CORNER:

A lot abutting on and at the intersection of two (2) 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, FRONTAGE:

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

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 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 SHOP:

Any facility that uses machine tools, including but not limited to, lathes, milling machines, shapers, planers, drill presses, and jig borers for working with metals or other relatively hard materials, such as some polymers. Typically, machine shops make and repair all types of metal objects, from machine tools dies, and molds to mass-produced parts such as screws, pistons, or gears.

MANUFACTURED HOME PARK:

A parcel or contiguous parcels of land, which has been planned and improved for the placement of two (2) or more manufactured homes.

MANUFACTURED HOME SALES LOT:

An open lot, used for the outdoor display and/or sales of manufactured housing that may also include recreation vehicles, or travel trailers.

MESSAGE ESTABLISHMENT:

An establishment or business operated by a medical practitioner, chiropractor or professional

physical therapist licensed by the State which provides the services of massage and body manipulation, including exercises, heat and light treatments of the body, and all forms and methods of physiotherapy.

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.

MEDICAL CLINIC/CENTER:

A facility comprised of professional offices, for the examination and treatment of persons as outpatients by State-licensed physicians, dentists, chiropractors or other licensed medical specialists, in which said medical practitioners may or may not work in cooperative association. Said clinics may provide medical services customarily available at hospitals, excluding overnight care of patients and 24-hour emergency service. The term “Medical Clinic/Center” shall not include any type of **Substance Abuse Treatment Facility** as so defined in this Ordinance.

MEDICAL MARIJUANA:

Marijuana for certified medical use under the Pennsylvania Medical Marijuana Act, Pa Act 16 of 2016.

MEDICAL MARIJUANA DISPENSARY:

A person, including a partnership, association, corporation, trust, or other entity or any combination thereof, which holds a permit issued by the Pennsylvania Department of Health to dispense medical marijuana, in accordance with the Pennsylvania Medical Marijuana Act, Pa Act 16 of 2016.

MEDICAL MARIJUANA GROWER/PROCESSOR FACILITY: An indoor facility operated by a legal entity which holds a permit from the State Department of Health to grow and process medical marijuana.

METHADONE TREATMENT FACILITY:

A facility licensed by the Pennsylvania Department of Health to use the drug methadone in the treatment, maintenance or detoxification of persons.

MICRO-BREWERY:

A facility where malt or brewed beverages are produced, sold, distributed, or served on the premises. Food may be sold on premises as an accessory use.

MINERALS:

Any aggregate or mass of mineral matter, whether or not coherent. The term shall include, but it is not limited to, limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite and clay, anthracite and bituminous coal, coal refuse, peat, and crude oil and natural gas.

MINERAL EXTRACTION:

The removal from the surface or beneath the surface of land bulk mineral resources such as culm sand, gravel, topsoil, limestone, sandstone, coal, oil, gas, shale and iron ore using machinery. This use includes stockpiling, but not the movement of and replacement of topsoil

as part of construction activities.

MIXED USE STRUCTURE:

A structure which contains two or more distinctly separate uses such as a commercial use and a residential use. No residential uses are allowed on the first floor

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 buildings is designed, intended, or used primarily for the accommodations of automobile travelers and provides automobile parking conveniently located on the premises.

MOTOR VEHICLE:

An automobile, recreational vehicle, truck, bus, motorcycle, all-terrain vehicle, or similar means of transportation powered by an engine or other mechanized means and designed to operate and carry persons or cargo on public streets.

MUNICIPALLY OWNED BUILDINGS:

A building or structure providing a municipal service or function that is owned and operated by the Ashley Borough.

MUNICIPALITY:

Ashley Borough, Luzerne County, Pennsylvania.

MUNICIPALITIES PLANNING CODE (PA PMC)”

Means the Pennsylvania Municipalities Planning Code Act of 1968, P.L. 805, No. 247, as reenacted and amended.

NIGHT CLUB

A commercial establishment dispensing alcoholic beverages for consumption on the premises and in which dancing and live music are permitted, including the term “cabaret.” This term does not include any A Sexually Oriented Use as defined in this Ordinance

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 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 extend 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.

NONPROFIT SOCIAL HALL AND CIVIC ORGANIZATIONS

Buildings or facilities, normally owned and/or operated by a nonprofit or civic organization used by a recreational, civic, social, fraternal, religious, political or labor union association of persons for meetings and routine socializing and recreation that is limited to bona fide members and their occasional guests, and persons specifically invited to special celebrations, but which is not routinely open to members of the general public and which is not primarily operated as a for-profit business. Said facilities shall not be operated in a manner in which it could also be classified as a Sexual Oriented Business as so defined by this Ordinance.

NURSERY:

An establishment for the cultivation and propagation, display, storage, and sale (retail and wholesale) of large plants, shrubs, trees, and other materials used in indoor or outdoor plantings; and the contracting for installation and/or maintenance of landscape material as an accessory use. Outdoor display, storage and sales are permitted.

NURSING HOME

A long-term health care facility licensed by the Pennsylvania Department of Health that offers 24-hour room and board and health care services, including basic and skilled **nursing** care.

OFFICES:**Professional Office:**

An office (other than a service office) for the practice of professions, such as the offices of physicians, dentists, attorneys-at-law, architects, veterinarians, engineers, artists, musicians, teachers, and others who, through training, are qualified to perform services of a professional nature.

Service Office:

An office in which are offered services by real estate agents, travel agents, insurance agents, accountants, public stenographers, brokers, or others who, through training, are duly qualified to perform services of an executive nature as distinguished from a professional office.

OUTDOOR STORAGE, INCLUDING IT AS A PRINCIPAL USE

The placing, storing or keeping, in an unenclosed area, goods, materials, merchandise, equipment or vehicles which are related to the operation of a commercial use, excluding the storage of solid waste, hazardous substances, refuse, junk and junked vehicles.

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.

PARKING SPACE:

An unobstructed space or area other than a street or alley that is permanently reserved and maintained for the parking of one (1) motor vehicle.

PATIO:

A level surfaced area directly adjacent to a principal building constructed above the existing grade which has an average elevation of not more than 30 inches, and without walls or a roof.

PATIO (COVERED):

A roofed structure, which may be attached to the principal structure, open on three or more sides, excluding screening designed for outdoor recreational use. When attached to the principal structure is setback requirements applicable to the principal structure shall apply.

PAWN SHOP:

A commercial use that is regulated as a pawn shop by the Pennsylvania Department of Banking.

PERMITTED USE:

Any use which is specifically authorized in a particular zoning district.

PERSONAL CARE HOME:

A facility, as defined under current State licensing requirements, in which food, shelter and personal assistance or supervision are provided for a period exceeding twenty-four consecutive hours for more than three (3) adults who are not relatives of the operator of the facility and who require assistance or supervision in such matters as dressing, bathing, diet or medication prescribed for self-administration but who do not require hospitalization or care in a skilled nursing or intermediate care facility.

PERMANENT FOUNDATION:

A support for a building or structure, reaching below the frost line, consisting of a full poured concrete or masonry foundation or any other type which is permitted under the design standards of the Pennsylvania Uniform Construction Code, on which the building or structure is anchored and is intended to remain indefinitely.

PERSONAL SERVICES:

Any enterprise conducted for gain, which primarily offers services to the general public, such as shoe repair, valet service, watch repairing, hair stylists, barbers, tanning salons, beauty spas, manicure and pedicure services, animal grooming services and similar services.

PHARMACY:

A use in which the profession of pharmacy is practiced and where prescriptions are compounded and offered for sale, including the offering other retail goods in addition to prescription pharmaceuticals.

PHOTOCOPYING SERVICE:

A business that reproduces drawings, plans, maps, or other copy by means of blueprinting or photocopying.

PLACE OF WORSHIP:

A building or portion thereof used for religious services either on a permanent or periodic basis, including churches, synagogues, mosques and similar edifices.

PLANNING COMMISSION:

The Planning Commission of Ashley Borough.

PRINCIPAL USE:

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

PUBLIC:

Anything owned or operated by any department or branch of the federal government, state government, county government or municipal government.

PUBLIC BUILDING AND/OR FACILITY:

Any building and/or facility held, used or controlled exclusively for public purposes by any department or branch of government; federal, state, county, or municipal.

PUBLIC HEARING:

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

PUBLIC MEETING:

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 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 UTILITIES FACILITIES (ESSENTIAL):

Telephone, electric and cable television lines, equipment structures; water or gas pipes, mains, valves, or other structures, pumping stations; telephone exchanges and all other facilities, equipment and structures necessary for conducting a service by a public utility, under the jurisdiction of the Pennsylvania Public Utility Commission, in accordance with Section 619 of the Pennsylvania Municipalities Planning Code, Act 247, as amended

PUBLIC UTILITY TRANSMISSION TOWER:

A structure, owned and operated by a public utility electric company regulated by the Pennsylvania Public Utility Commission, designed and used to support overhead electricity transmission lines.

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 by a governmental entity and open to the general public.

RECREATIONAL VEHICLE: (RV)

A vehicle also referenced as an RV, designed primarily used for recreational purposes which includes living quarters and is equipped with wheels to facilitate movement from place to place. This may include a vehicle that is self-propelled, towed, or carried by another vehicle. Types of RVs include motorhomes, campervans, coaches, caravans (also known as travel trailers and camper trailers), fifth-wheel trailers, popup campers, and truck campers. A RECREATIONAL VEHICLE (RV) shall not be considered to be a Dwelling Unit, nor shall it be used as a residence.

RECYCLING COLLECTION CENTER:

A facility which is limited to the collection, separating and processing of used material prior to shipment to others who will use those materials to manufacture new products. Hazardous or toxic substances shall not be accepted, located and or stored at such a facility. This definition shall not include a junkyard.

REPORT:

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

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 non-disposable containers, and where the customer consumes these foods while seated at tables or counters located within the building.

RETAIL SALE ESTABLISHMENTS:

An establishment selling products as opposed to services or entertainment to the general public, including, but not limited to, examples such as an antique shop; appliance store; artist, music, and automotive parts store; beverage packaging store; building or plumbing supplies, crafts and hobby supplies; clothing store; dairy products store; dry goods and variety stores; florist; garden supplies; hardware store; newspapers, books and stationary products; office furniture, equipment and supplies; paintings and photography store; pet store; pharmacy; specialty gifts; sporting goods store; and other establishments selling related products

RETAIL ESTABLISHMENT, LARGE:

A building and/or use of property, whether located in a single building or combination of buildings which have a gross floor area in excess of 30,000 square feet in the aggregate. The

term gross floor within the context of this definition shall include both indoor and outdoor space, utilized for the retail display and sale of goods.

RIGHT-OF-WAY:

A defined and designated area for vehicular or pedestrian traffic, whether designated as a street, highway, thoroughfare, parkway, road, avenue, boulevard, lane, alley, which usually include cartways, shoulders, and sidewalks.

RIPARIAN LAND:

Land that is traversed or bounded by a natural watercourse.

ROOMING HOUSE:

A residential structure or portion thereof which contains rooms which are rented or leased, with the occupants of said units being non-transient, and utilizing said location as a legal place of residence. Any of the following features for a residential use shall be deemed to constitute a Rooming House:

- (1) individual room(s) that do not meet the definition of a dwelling unit are rented for habitation by a total of 2 or more persons who are not “related” to the owner of record of the property, or
- (2) includes any building or part of any building in which one or more persons share bathroom and toilet facilities and/or cooking facilities with other occupants of the building.
- (3) if individual units of living space not meeting the definition of a dwelling unit are separately rented to person(s) who are not “related” to the owner of record of the property. Individual leases shall be deemed to have a dwelling unit classified as a boarding house.

The term "Rooming House" shall specifically exclude the following terms:

Dwelling	Dwelling Unit
Motel and/or Hotel	Group Residence
Dormitory	Bed and Breakfast Facility
Short-Term Home Rental	Short-Term Transient Rental
Assisted Living facility	Any Type of Transitional Housing

ROOMING UNIT:

A room or rooms, in a Rooming House, forming a single habitable unit intended for living quarters but lacking separate bathroom and toilet facilities and/or cooking facilities for exclusive use by the occupant or occupants of the rooming unit.

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. A satellite dish antenna that does not exceed three (3) feet in

diameter and is attached to a building shall be exempt from securing zoning approval.

SCHOOL:

A facility that provides a curriculum of elementary and secondary academic instruction, including kindergartens, elementary schools, junior high schools, and high schools that are licensed by the State as such.

SCREENING:

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

SEATING CAPACITY:

The actual seating capacity of an area based upon the number of seats or one (1) seat per eighteen (18) inches of bench or pew length. For other areas where seats are not affixed, the seating capacity shall be determined by the applicable standards of the most recent Pennsylvania Uniform Construction Code.

SELF-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 customers' goods or wares. The units shall be used solely for dead storage of non-hazardous materials and no processing, manufacturing, sales, research and development, service or repair, or other storage activities shall occur.

SETBACK:

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

SEXUALLY ORIENTED USES:

Sexually Oriented Bookstore: An establishment that has as a substantial portion of its stock-in-trade and offers for sale, for any form of consideration, any one 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.

Sexually Oriented Entertainment: A nightclub, bar, tavern, restaurant, club 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 areolae; 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 a "Sexually Oriented Use".

SHOPPING CENTER:

A grouping of retail business and service uses on a single site with shared or common space including but not limited to parking and access.

SHORT-TERM HOME RENTAL:

Any dwelling unit rented for the purpose of overnight lodging for a period of not less than one day and not more than 30 days on more than one occasion to someone other than a family member of the landowner where the landowner resides in the dwelling unit during the rental, or more than a total of 183 days per year. The term does not include a hotel, motel or short-term transient rental.

SHORT-TERM TRANSIENT RENTAL:

Any dwelling unit rented for the purpose of overnight lodging for a period of not less than one day and not more than 30 days where the landowner does not reside in the dwelling unit during any rental, or resides in the dwelling unit less than a total of 183 days per year. The term does not include a hotel, motel or short-term rental.

SIGN:

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

SITE:

A plot or parcel of land or combination of contiguous lots or parcels of land.

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.

SOIL EROSION AND SEDIMENTATION CONTROL PLAN:

A plan that indicates necessary land treatment designed to effectively minimize soil erosion and sedimentation measures requiring approval by the Luzerne County Conservation District.

SOLAR ENERGY SYSTEM, ACCESSORY (ASES:)

An area of land or other area used for a solar collection system used to capture solar energy, convert it to electrical energy or thermal power and supply electrical or thermal power primarily for on-site use. An accessory solar energy system consists of one (1) or more free-standing ground, or roof mounted solar arrays or modules, or solar related equipment and is intended to primarily reduce on-site consumption of utility power or fuels.

SOLAR ENERGY SYSTEM, PRINCIPAL (PSES:)

An area of land or other area used for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power and supply electrical or thermal power primarily for off-site use. Principal solar energy systems consist of one (1) or more free-standing ground, or roof mounted solar collector devices, solar related equipment and other accessory structures and buildings including light reflectors, concentrators, and heat exchangers, substations, electrical infrastructure, transmission lines and other appurtenant structures.

SOLAR ARRAY:

A grouping of multiple solar modules with purpose of harvesting solar energy.

SOLAR CELL:

The smallest basic solar electric device which generates electricity when exposed to light.

SOLAR EASEMENT: - A right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

SOLAR ENERGY:

Radiant energy (direct, diffuse and/or reflective) received from the sun.

SOLAR MODULE:

A grouping of solar cells with the purpose of harvesting solar energy.

SOLAR PANEL:

That part or portion of a solar energy system containing one or more receptive cells or modules, the purpose of which is to convert solar energy for use in space heating or cooling, or water heating and/or for electricity for water heating and/or for electricity.

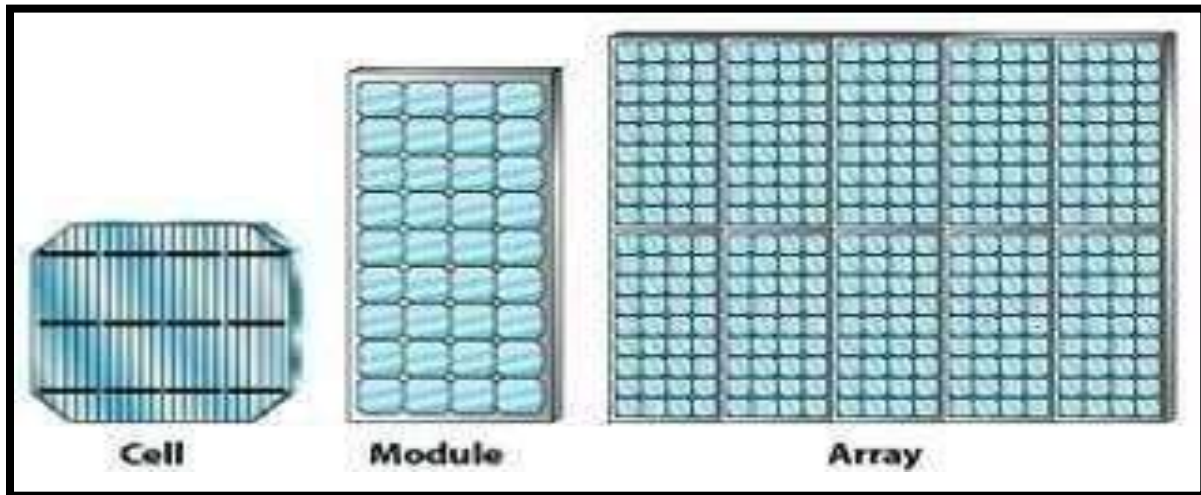
Roof solar panels

Stand-alone solar panels



SOLAR RELATED EQUIPMENT:

Items including a solar photovoltaic cell, module, panel, or array, or solar hot air or water collector device panels, lines, pumps, batteries, mounting brackets, framing and possibly foundations or other structures used for or intended to be used for collection of solar energy.



SOLID WASTE OR WASTE:

Any garbage, refuse 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 operated pursuant to the laws of the Commonwealth of Pennsylvania governing the management, processing, treatment, storage, transfer and/or disposal of solid waste, as so defined by this Ordinance.

SOLID WASTE TRANSFER FACILITY:

A type of solid waste disposal facility which receives and temporarily stores solid waste at a location other than the generation site, and which facilitates the bulk transfer of accumulated solid waste to a facility for further processing or disposal, and which may or may not involve the separation of recyclables from solid waste. Also see the definitions of each of these terms in Title 25 of Pennsylvania Department of Environmental Protection (DEP) regulations.

SPECIAL EXCEPTION:

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

STORMWATER MANAGEMENT ORDINANCE:

The governing Stormwater Management Ordinance for Ashley Borough.

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.

STREET TYPES:**Arterial Street:**

A street designed to carry large volumes of through-traffic for the connection of residential areas and for circulation outside residential areas. Access onto these streets is normally controlled by stop signs restricting on-coming traffic and traffic signals.

Collector Street:

A street designed to carry moderate volumes of traffic between local streets and arterial streets, and usually provides only limited vehicular access to abutting properties. Traffic on these streets are normally controlled by signs.

Local Street:

A street designed to carry low volumes of traffic and provide direct access from abutting properties to collector and arterial streets.

STRUCTURE:

Any man-made object, having an ascertainable stationary location on or in land or water, whether or not it is affixed to the land.

SUBDIVISION:

The division or redivision of a lot, tract or parcel of land by any means into two (2) or more lots, tracts, parcels or other divisions of land including changes in existing lot for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devise, transfer of ownership or building or lot development, provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

SUBDIVISION AND LAND DEVELOPMENT ORDINANCE:

The official and most recent version of the Ashley Borough Subdivision and Land Development Ordinance, as amended.

SUBSTANCE ABUSE TREATMENT:

Term "Substance Abuse Treatment" shall refer to a process approved and regulated by the Pennsylvania Department of Drug and Alcohol Programs provided at a Substance Abuse Treatment Facility with the intended purpose of the cessation of a person's use of addictive substances, such as drugs or alcohol.

SUBSTANCE ABUSE TREATMENT FACILITY:

A facility licensed by the Pennsylvania Department of Drug and Alcohol Programs which specializes in the evaluation and treatment of drug addiction and alcoholism. The services available at such a facility can be residential treatment, partial hospitalization treatment or outpatient treatment. For the purpose of this Ordinance a Substance Abuse Treatment Facility shall include the following terms as so defined within this Ordinance:

A Substance Abuse Detoxification Treatment Facility:

A Non-Hospital Drug Free Residential Substance Abuse Treatment Facility

A Partial Hospitalization Treatment Facility

Substance Abuse Detoxification Treatment Facility:

A facility licensed by the Pennsylvania Department of Drug and Alcohol Programs, which includes the overnight stay of patients, for the provision of medically supervised detoxification and treatment of persons who have been medically diagnosed as having a dependency on a controlled substance including but not limited to drugs and alcohol.

Non-Hospital Drug Free Residential Substance Abuse Treatment Facility:

A facility licensed by the Pennsylvania Department of Drug and Alcohol Programs, representing transitional housing, which includes the overnight stay of patients, which may include psychological, social, and behavioral, counseling and supportive services designed to assist a person being treated for a substance abuse disorder to allow their gradual reentry into the community. No Substance Abuse Detoxification Treatment shall be provided at this facility.

Partial Hospitalization Substance Abuse Treatment Facility:

A facility licensed by the Pennsylvania Department of Drug and Alcohol Programs, to provide persons with a substance abuse disorder who do not require 24-hour inpatient care, with a short-term intensive outpatient program for stabilization who do not require 24-hour inpatient care. No overnight stay of patients shall be permitted at such a facility.

SWIMMING POOL, PRIVATE NONCOMMERCIAL:

A water-filled enclosure, having a depth of twenty-four (24) inches or greater, permanently constructed or portable, designed to be used or intended to be used for swimming purposes by any family or persons residing on the premises or their guests. The use shall not be operated for financial gain and the use shall be considered an accessory use to the dwelling on the lot thereon.

SWIMMING POOL BARRIER: A permanent wall that surrounds an above-ground swimming pool and obstructs the access to the swimming pool. The wall may include the wall of the swimming pool or the wall of a building. Permanent for purposes of this definition means that it is not able to be removed, lifted, or relocated without the use of a tool.

TATTOO PARLOR/BODY-PIERCING STUDIO:

An establishment whose principal business activity is the practice of one or more of the following:

- (1) placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or

puncture the skin.

- (2) creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.

TAVERN:

A place where alcoholic beverages are served as a primary or substantial portion of the total trade, which may or may not include the sale of food and/or live entertainment.

TINY HOUSE:

A single-family residential structure not greater than 500 square feet of gross floor area that meets both the Recreational Vehicle Industry Association (RVIA) safety standards AND the PA Uniform Construction Code or manufactured housing (HUD) National Safety Standards. A tiny home that does not meet both the RVIA and UCC or HUD safety standards shall be considered a recreational vehicle as defined by this ordinance.



TRANSITIONAL HOUSING:

Temporary housing for persons who may or may not have traditional or permanent housing but are capable of living independently within a reasonable period of time. Such housing is designed to facilitate persons eligible for such housing into independent living arrangements outside the structure used to provide temporary housing, excluding transitional housing for persons recovering from a substance abuse addiction and persons released from judicial incarceration.

TRUCKING FACILITY:

A structure, building and/or land consisting of a storage area, management and dispatch office and loading and unloading facilities connected with receipt of delivery of freight shipped by truck.

TRUCK SERVICE CENTER, REPAIR AND STORAGE:

A use that primarily involves providing fuel and repairs to tractor-trailers, including incidental storage of tractor-trailers.

TURBINE HEIGHT:

The distance measured from the surface of the tower's foundation to the highest point of the

turbine rotor plane at its furthest vertical extension.

UNIFORM CONSTRUCTION CODE (UCC):

The version of the statewide building code adopted by the municipality, applicable to new construction in all municipalities whether administered by the municipality, a third party of the Department of Labor and Industry applicable to residential and commercial buildings, the Code adopted by the International Residential Code (IRC) and the International Building Code (IBC), by reference, as the construction standard applicable with the Commonwealth. For coordination purposes, references to the above are made specifically to various sections of the IRC and the IBC.

USE:

Any purpose for which a lot, building, or other structure or a tract of land may be designated, arranged, intended, maintained, or occupied, or any activity, occupation, business, or operation carried on or intended to be carried on in a building or other structure or on a tract of land.

VARIANCE:

A waiver granted by the Zoning Hearing Board from the terms and requirements of this Ordinance in accordance with Section 1410 of this Ordinance.

WAREHOUSING AND DISTRIBUTION:

A use engaged in storage, wholesale and distribution of manufactured products, supplies and equipment, excluding the bulk storage of materials that are inflammable, explosive, hazardous, or commonly recognized as offensive. This term does not include trucking facilities.

WATERCOURSE:

A permanent or intermittent stream, river, brook, creek, or channel or ditch for collection and conveyance of water, whether natural or man-made.

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. Any area meeting the official wetland definition of the U.S. Army Corps of Engineers or the Pennsylvania Department of Environmental Protection, as amended, shall be considered a wetland for the purposes of this Ordinance. In the event the definition of wetland accepted by the U.S. Army Corps of Engineers conflicts with the definition of a wetland accepted by the Pennsylvania Department of Environmental Protection, the more restrictive definition shall apply.

WELDING SHOP:

The use of land, or building, or structure where pieces of metal are welded.

WIND ENERGY CONVERSION SYSTEM (“WECS”):

A machine designed for the purpose of converting wind energy into electrical energy. (Commonly known as “wind turbine” or “windmill”). The term WECS shall be used interchangeably with the terms “wind turbine” or “windmill,” with said terms having the same meaning as a WIND ENERGY CONVERSION SYSTEM (“WECS”)

WIND ENERGY FACILITY: PRINCIPAL WIND ENERGY FACILITY (“PWEF”)

An electric generating facility, whose main purpose is to supply electricity, consisting, of one or more Wind Turbines primarily for off-site use.

WIND ENERGY CONVERSION SYSTEM (SMALL) - (“Small WECS”):

A wind energy conversion system that is incidental and subordinate to another use on the same parcel and supplies electrical power solely for on-site use, which is intended to primarily reduce consumption of utility power at that location and not for resale.

WIND TURBINE:

A wind energy conversion system that converts wind energy into electricity through the use of wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any.

SEE EXHIBIT C, LOCATED IN THE APPENDIX OF ARTICLE 2, FOR DIAGRAM OF A WIND TURBINE.

WIRELESS COMMUNICATIONS FACILITY (WCF).

A Facility for the provision of personal wireless services for commercial communications purposes as defined by the Telecommunications Act of 1996, and any amendments thereto, Such a facility, typically consists of one or more antennas or group of antennas, a tower or attachment support structure, transmission cables and other transmission equipment, and an equipment enclosure or cabinets.

ALSO SEE EXHIBIT D, LOCATED IN THE APPENDIX OF ARTICLE 2, FOR SPECIAL DEFINITIONS APPLICABLE TO WIRELESS COMMUNICATIONS FACILITIES.

Types of Wireless Communications Facilities include:

1. **TOWER-BASED WIRELESS COMMUNICATIONS FACILITY** (*Tower-Based WCF*)—any structure that is used for the primary purpose of supporting one or more *Antennas*, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, and the accompanying *Antenna* and *Accessory Equipment*.
2. **NON-TOWER WIRELESS COMMUNICATIONS FACILITY (NON-TOWER WCF)**—*Wireless Communications Facilities* that are *Collocated* on existing structures, such as, but not limited to buildings, water towers, electrical transmission towers, utility poles, light poles, traffic signal poles, flag poles and other similar structures that do not require the installation of a new tower.
3. **SMALL WIRELESS COMMUNICATIONS FACILITY**— a Wireless Communications Facility that meets the following criteria:
 - a. The *Wireless Support Structure* on which *Antenna* facilities are mounted—
 - (i) is 50 feet or less in height, or
 - (ii) is no more than 10 percent taller than other adjacent structures, or

(iii) is not extended to a height of more than 50 feet or by more than 10 percent above its height prior to the *Collocation* of any *WCF* as a result of the *Collocation* of new *Antenna* facilities; and

- b. Each *Antenna* associated with the deployment (excluding the *Accessory Equipment*) is no more than three cubic feet in volume; and
- c. All *Accessory Equipment* associated with the *Wireless Support Structure* including the wireless equipment associated with the *Antenna* and any pre-existing associated equipment on the *Wireless Support Structure*, is cumulatively no more than 28 cubic feet in volume.
- d. The *Wireless Communications Facility* does not require *Antenna* structure registration under 47 CFR Part 17.

Examples of Small Wireless Communications Facilities



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.

SEE EXHIBIT E, LOCATED IN THE APPENDIX OF ARTICLE 2, FOR DIAGRAM OF YARD AREAS

SEE EXHIBIT F, LOCATED IN THE APPENDIX OF ARTICLE 2, FOR DIAGRAM OF YARD AREAS BASED UPON LOT CONFIGURATIONS

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.

YARD, REQUIRED SETBACK:

The minimum open space between a lot line and the yard line within which no structure is permitted to be located except as otherwise provided for in this Zoning Ordinance.

ZONING DISTRICT:

A portion of Ashley Borough as 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.

EXHIBIT A

EXAMPLES FOR MEASUREMENT OF BUILDING HEIGHT

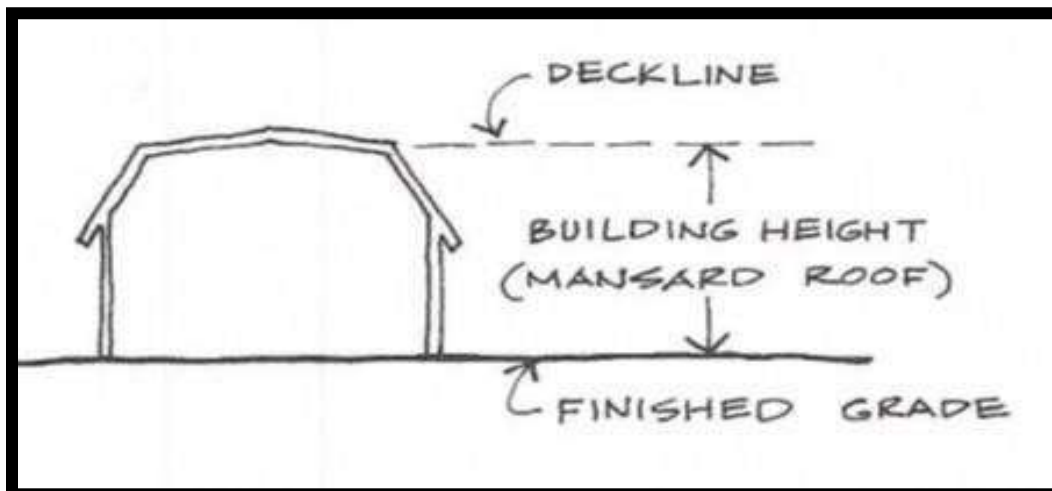
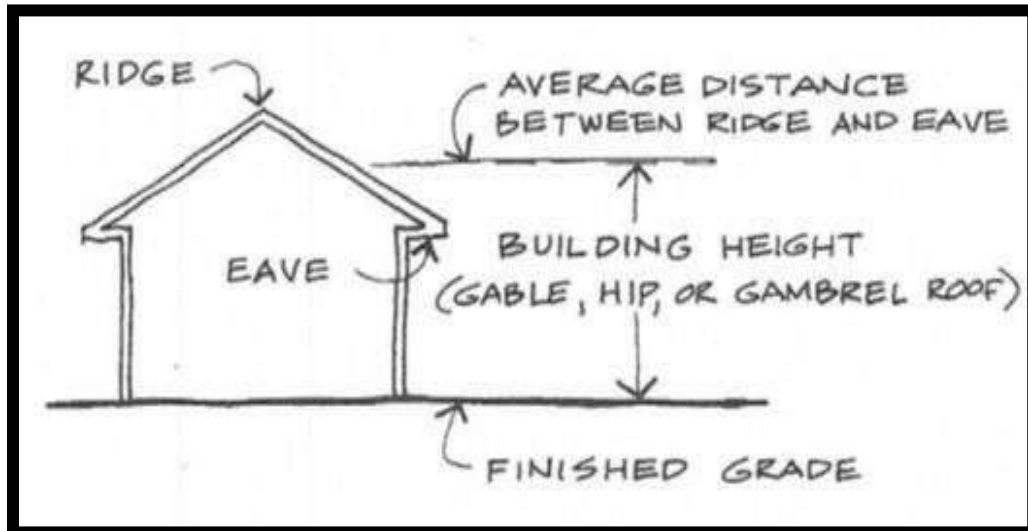
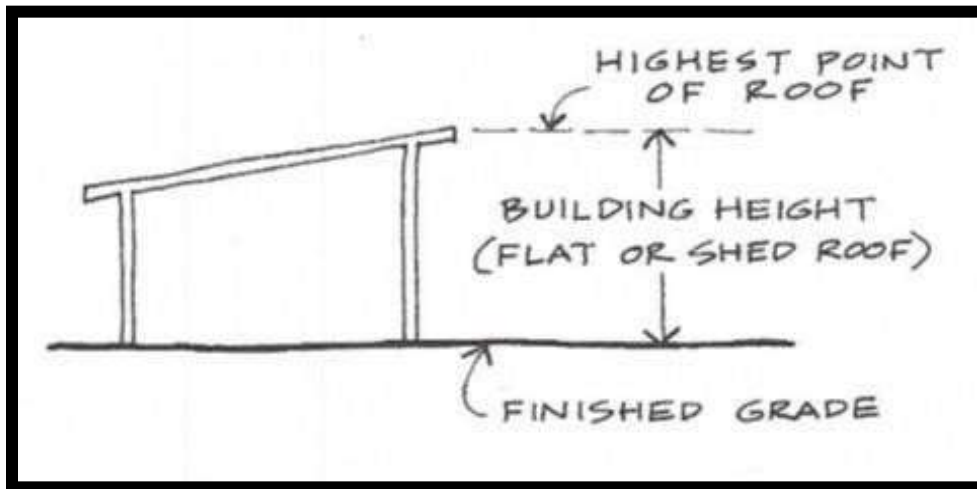


EXHIBIT B

EXAMPLES/ILLUSTRATIONS OF TYPES OF LOTS

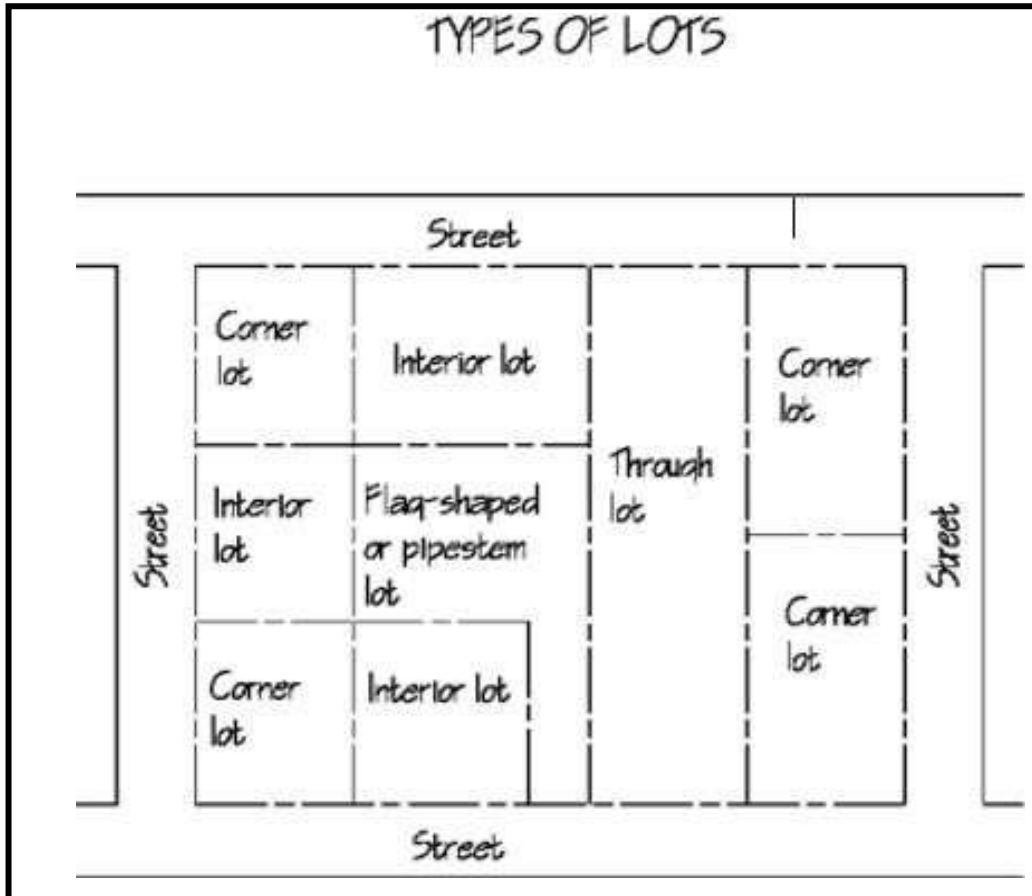


EXHIBIT C
WIND TURBINE DIAGRAM

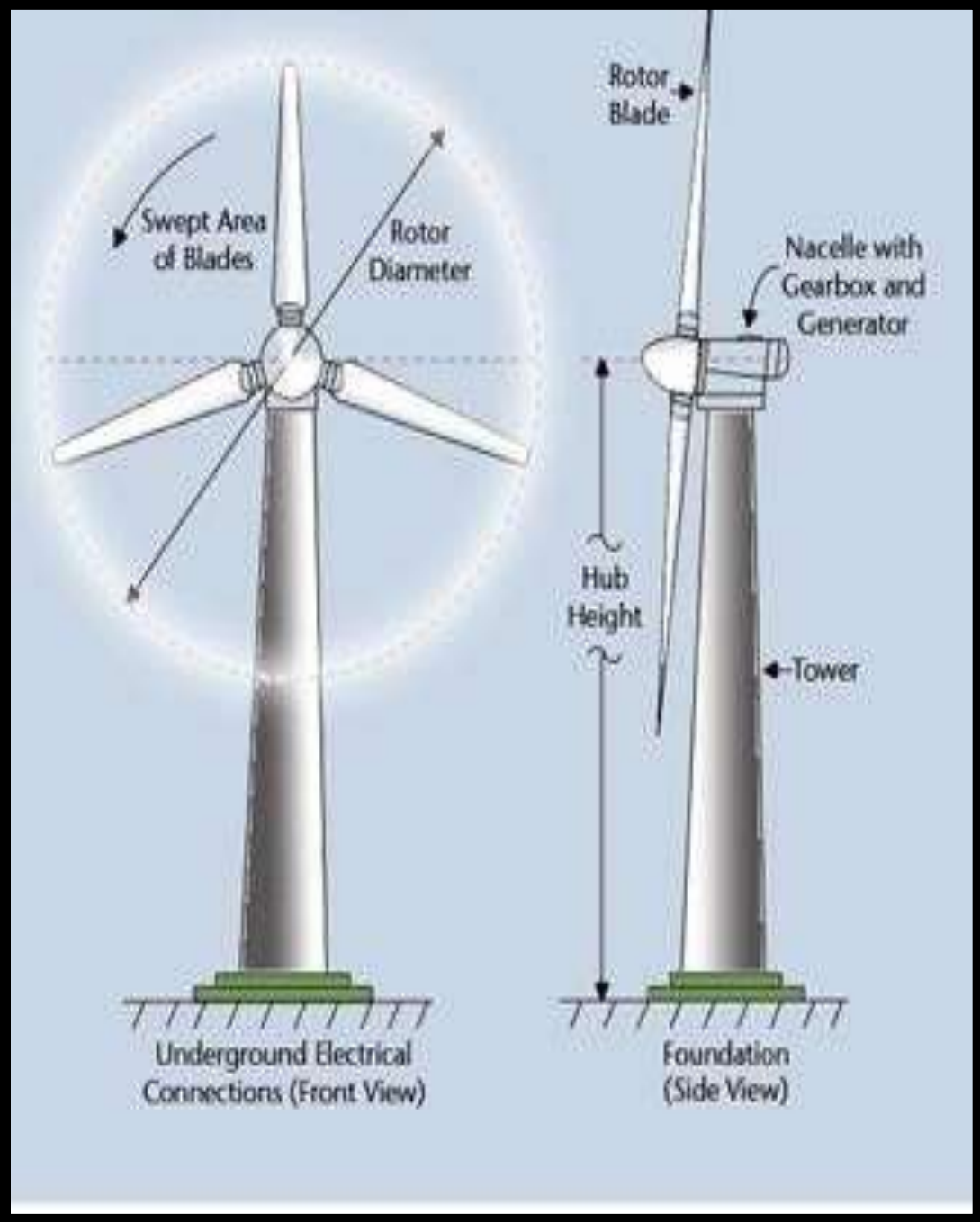


EXHIBIT D

DEFINITIONS APPLICABLE TO WIRELESS COMMUNICATION FACILITIES

- A. *Accessory Equipment*—any equipment serving or being used in conjunction with a *Wireless Communications Facility* or *Wireless Support Structure*, including but not limited to utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

- B. *Antenna* — an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of wireless service and any commingled information services.

- C. *Collocation*—the mounting of one or more *WCFs*, including *Antennas*, on a pre-existing structure, or modifying a structure for the purpose of mounting or installing a *WCF* on that structure.

- D. *Equipment Compound*—an area surrounding or adjacent to a *Wireless Support Structure* within which base stations, power supplies, or *Accessory Equipment* are located.

- E. *FCC*—Federal Communications Commission.

- F. *Modification* or *Modify*—the improvement, upgrade or expansion of existing *Wireless Communications Facilities* or base stations on an existing *Wireless Support Structure* or the improvement, upgrade, or expansion of the *Wireless Communications Facilities* located within an existing *Equipment Compound*, if the improvement, upgrade, expansion or replacement does not *Substantially Change* the physical dimensions of the *Wireless Support Structure*.

- G. *Non-Tower Wireless Communications Facility (Non-Tower WCF)*—*Wireless Communications Facilities* that are *Collocated* on existing structures, such as, but not limited to buildings, water towers, electrical transmission towers, utility poles, light poles, traffic signal poles, flag poles and other similar structures that do not require the installation of a new tower.

- H. *Replacement of a Wireless Communications Facility (Replacement of a WCF)* -- the replacement of existing *Wireless Communications Facilities* on an existing *Wireless Support Structure* or within an existing *Equipment Compound* due to maintenance, repair or technological advancement with equipment composed of the same wind loading and structural loading that is substantially similar in size, weight and height as the *Wireless Communications Facilities* initially installed and that does not substantially change the physical dimensions of the existing *Wireless Support Structure*.

- I. *Small Wireless Communications Facility* – a *Wireless Communications Facility* that meets the following criteria:
- (1) The *Wireless Support Structure* on which *Antenna* facilities are mounted—
 - (i) is 50 feet or less in height, or
 - (ii) is no more than 10 percent taller than other adjacent structures, or
 - (iii) is not extended to a height of more than 50 feet or by more than 10 percent above its height prior to the *Collocation* of any *WCF* as a result of the *Collocation* of new *Antenna* facilities; and
 - (2) Each *Antenna* associated with the deployment (excluding the *Accessory Equipment*) is no more than three cubic feet in volume; and
 - (3) All *Accessory Equipment* associated with the *Wireless Support Structure* including the wireless equipment associated with the *Antenna* and any pre-existing associated equipment on the *Wireless Support Structure*, is cumulatively no more than 28 cubic feet in volume.
 - (4) The *Wireless Communications Facility* does not require *Antenna* structure registration under 47 CFR Part 17.
 - (5) The *Wireless Communications Facility* is not located on Tribal lands, as defined under 36 CFR 800.16(x); and
 - (6) The *Wireless Communications Facility* does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).
- J. *Stealth Technology* — Camouflaging methods applied to *Wireless Communications Facilities* and *Accessory Equipment* which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted *Antennas*, building-mounted *Antennas* painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.
- K. *Substantial Change* – A modification substantially changes the physical dimensions of a support structure if it meets any of the following criteria:
1. For support structures other than towers in the public rights-of-way, if it increases the original height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other existing

- towers or base stations, if it increases the original height of the structure by more than 10% or more than ten feet, whichever is greater. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances.
2. For support structures other than towers in the public rights-of-way, if it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other existing towers or base stations, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
 3. For any eligible support structure, if it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
 4. If it entails any excavation or deployment outside the current site.⁹
- L. *Technically Feasible* – By virtue of engineering or spectrum usage, the proposed placement for a small wireless facility or its design or site location can be implemented without a material reduction in the functionality of the *Small Wireless Communications Facility*.
- M. *Tower-Based Wireless Communications Facility (Tower-Based WCF)*—any structure that is used for the primary purpose of supporting one or more *Antennas*, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, and the accompanying *Antenna* and *Accessory Equipment*.
- N. *Wireless Communications Facility (WCF)*— an *Antenna* facility or a *Wireless Support Structure* that is used for the provision of wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.
- O. *Wireless Communications Facility Applicant (WCF Applicant)* -- Any person that applies for a *Wireless Communications Facility* building permit, zoning approval and/or permission to use the public ROW or other Borough-owned or third-party land or property.

P. *Wireless Support Structure*—a pole, tower, base station, or other building, whether or not it has an existing *Antenna* facility, which is used or to be used for the provision of wireless service (whether on its own or comingled with other types of services).

EXHIBIT E

DIAGRAM OF YARD AREAS

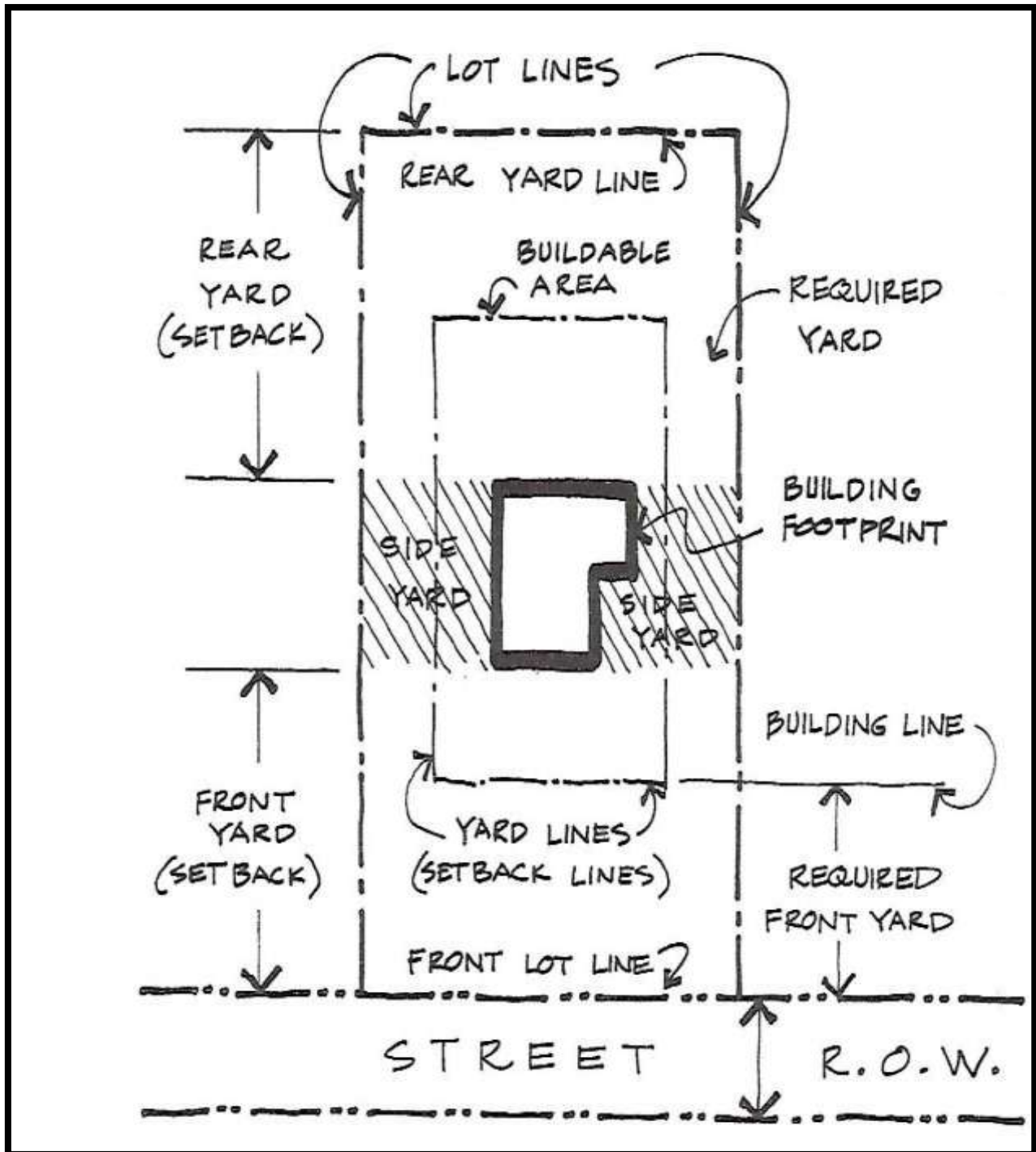


EXHIBIT F

DIAGRAMS OF YARD AREAS BY LOT CONGIGURATION

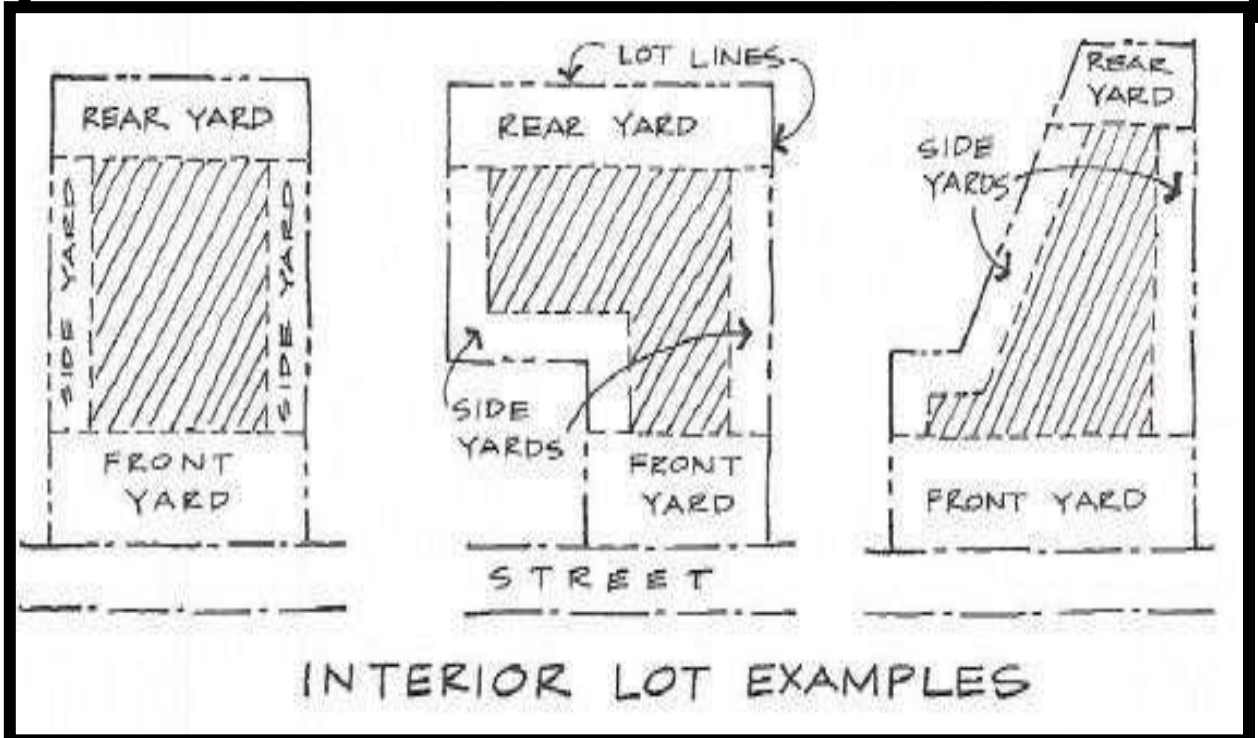
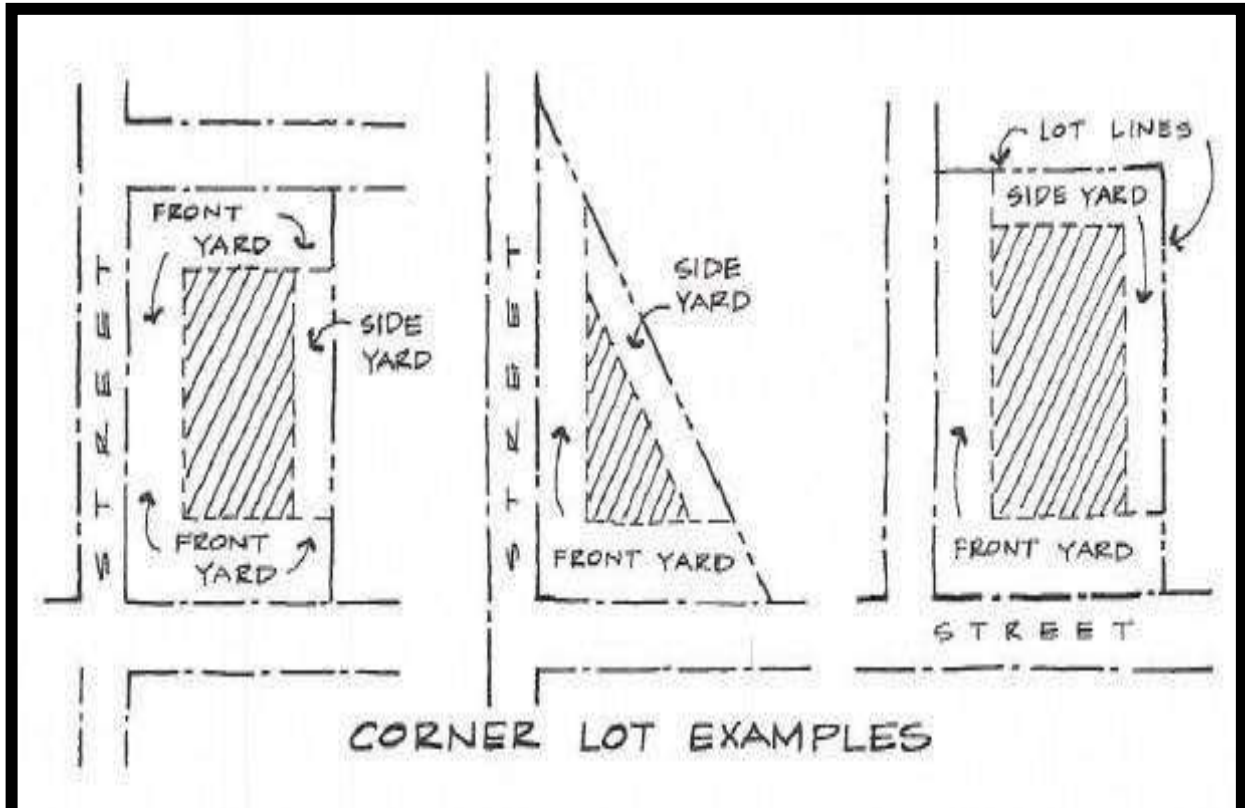
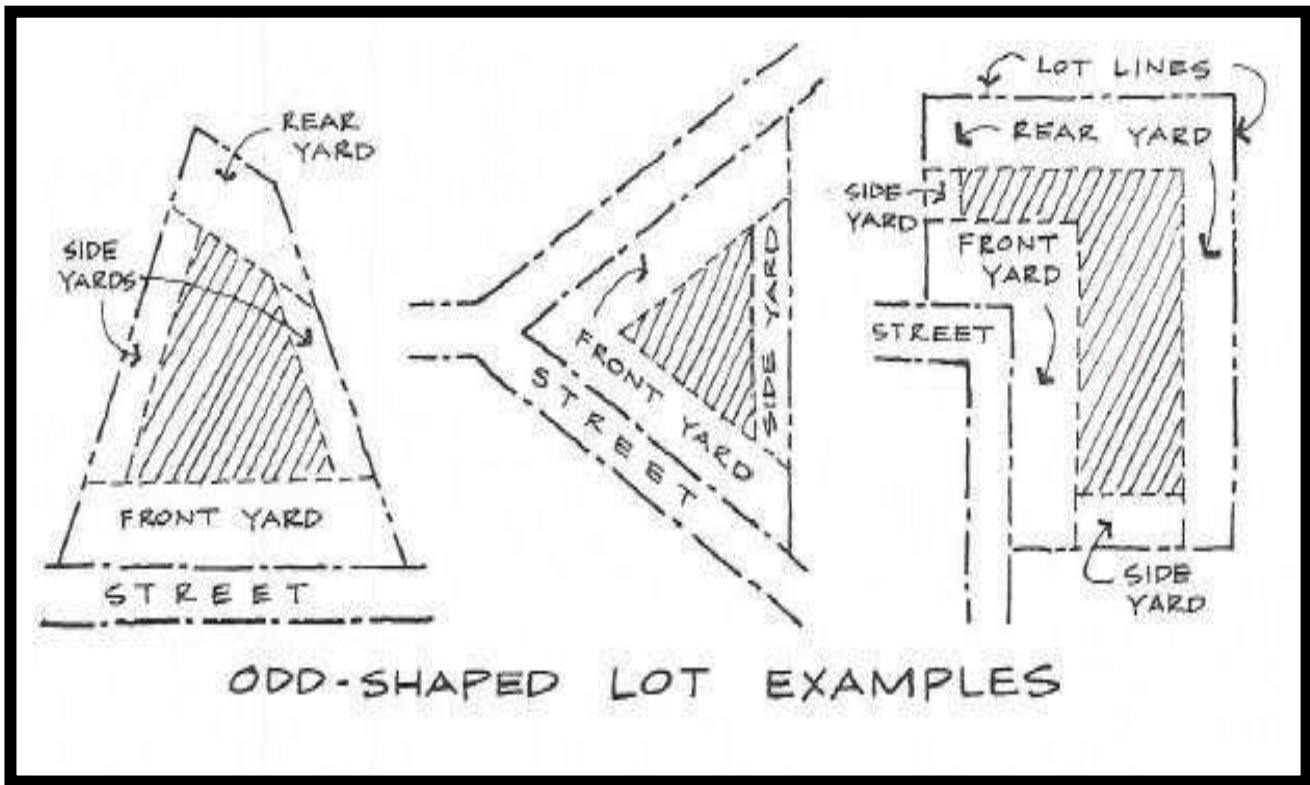


EXHIBIT F
DIAGRAMS OF YARD AREAS BY LOT CONGIGURATION



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**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 with 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 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 304 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.

304.1 TYPES OF RESIDENTIAL ACCESSORY STRUCTURES:

For residential lots, permitted accessory structures shall include but not be limited to noncommercial greenhouses, tool or lawn sheds, private garages or carports, private noncommercial swimming pools, gazebos, noncommercial satellite antenna dishes, accessory solar energy systems, small wind energy conversion systems outdoor wood burning furnaces and other similar accessory uses.

304.2 UNATTACHED ACCESSORY STRUCTURES

- A. Residential Accessory Structures: 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:
1. The maximum height shall not exceed twenty (20) feet.
 2. Unless stated otherwise, an accessory structure (excluding swimming pools) shall not be located less than three (3) feet from a side lot line or rear lot line: in cases where it abuts a street or alley a setback of five (5') feet shall be required.
 3. An accessory structure shall not be located less than five (5) feet from the principal structure.
 4. The maximum gross floor area of any accessory structure shall not exceed the 1,000 square feet, but in no case shall the maximum square foot area of any accessory structure exceed the square foot area of the footprint of the principal use.
 5. 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 all other applicable regulations contained within this Ordinance.
- B. Nonresidential Accessory Structures
1. When the principal use or structure is nonresidential, an unattached accessory structure shall comply with the front yard setback and side yard requirements applicable to the principal structure or use for the zoning district in which it is located.
 2. An unattached accessory structure to a nonresidential principal use and/or structure which is classified as a special exception use, shall be exempt from the otherwise applicable special exception use regulations when the proposed construction, establishment or use of the accessory structure does not exceed seven hundred fifty (750) square feet of gross floor area and complies with the required setback distances set forth above under Item 1.

3. An accessory structure shall not be located less than ten (10) feet from the principal structure.

304.3 OUTDOOR WOOD-FIRED BOILER

An Outdoor Wood-Fired Boiler, as defined in Article 2, shall be deemed to be an accessory residential structure permitted as a Special Exception Use, thereby requiring approval from the Ashley Zoning Hearing Board in accordance with the procedures set forth in Article 6 and also subject to the supplemental standards as set forth in Section 801.33 of this Ordinance. An Outdoor Wood-Fired Boiler shall only be used and/or connected as a heating source to a residential structure.

304.4 WIND ENERGY CONVERSION SYSTEM (SMALL)

A free-standing Small Wind Energy Conversion System, as defined in Article 2, shall be deemed to be an accessory structure permitted as a Special Exception Use, thereby requiring approval from the Ashley Zoning Hearing Board in accordance with the procedures set forth in Article 6 and also subject to the supplemental standards as set forth in Section 801.50 of this Ordinance.

A roof mounted Small Wind Energy Conversion System shall be permitted by right in all zoning districts, subject to not exceeding the maximum height requirement for the District in which it is located.

304.5 SOLAR ENERGY SYSTEMS, ACCESSORY

A free-standing Accessory Solar Energy System shall be deemed to be an accessory structure permitted as a conditional use in all zoning districts, thereby requiring approval from Borough Council in accordance with the procedures set forth in Article 7 and subject to the supplemental standards as set forth in Section 801.43 of this Ordinance.

A roof mounted Accessory Solar Energy System shall be permitted by right in all zoning districts, subject to not exceeding the maximum height requirement for the District in which it is located.

304.6 INSTALLATION AND USE OF ACCESSORY STRUCTURES

Accessory structures, including any related equipment, shall be installed and used in accordance with the manufacturer's written recommendations.

SECTION 305 CORNER LOT PROPERTY - ORIENTATION OF FRONT YARD

On a corner lot, the front yard area for the principal structure shall be based upon the mailing address for the subject property as established by the U.S. Postal System and/or Luzerne County 911. Other yard areas having road frontage shall be deemed to be side yard.

SECTION 306 NONCOMMERCIAL SATELLITE DISH ANTENNA

A freestanding non-commercial satellite dish or standard antenna including amateur television and radio antennas, shall be deemed an accessory use, permitted by right in all zoning districts. Granting approval for the establishment and/or construction of a satellite

dish antenna shall not restrict or imply to restrict the use or development of another zoning lot. The height of a noncommercial satellite dish antenna, including any supporting device, measured from ground level to its highest point of elevation, shall not exceed the maximum height restriction of the zoning district in which it is located. A ground-mounted satellite dish antenna must be located in the side or rear yard not less than 10 feet from a rear and/or side yard property line shall not exceed an overall diameter of 12 feet and an overall height of 15 feet.

A Noncommercial Satellite Dish Antenna when attached to a structure, with a diameter not greater than 36 inches, shall be exempt from securing zoning approval, subject to not exceeding the height limitation for the Zoning District in which it is located.

SECTION 307 PRIVATE NONCOMMERCIAL SWIMMING POOLS

A private noncommercial swimming pool capable of containing water to a depth of twenty-four (24) inches or greater shall be permitted as an accessory use in any zone subject to the following:

307.1 Yard Area and Setback Requirements

A private swimming pool, including spas and hot tubs shall be located in either a side yard or rear yard with a minimum side yard and rear yard setback of not less than five (5) feet from all property lines. The setback distance shall include the deck, pad, or apron around the pool.

307.2 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, but not greater than six (6) feet which includes an access gate secured with a lock. The gate providing access to the pool shall be locked when the pool is not in use or unattended.

The required fencing for an in-ground pool must be installed upon the completion of the excavation work for said pool.

The fence shall not have any openings, holes, or gaps larger than four (4) inches in any dimension, and if a picket fence is erected or maintained, the horizontal or vertical dimension of space between pickets shall not exceed four (4) inches. A dwelling house or accessory building may be used as part of the enclosure.

307.3 Above Ground Pools

A. Pools With Exterior Supports

An above ground pool which is manufactured, designed and erected with supporting devices around and/or within the outer wall or edge of a pool shall enclosed with a permanent fence not less than four (4) feet in height, but not greater than six (6) feet in height which includes a gate secured with a lock in accordance and subject to all the above requirements of Section 307.2, or in lieu of a fence, a barrier not less than four (4) feet in height, but not greater than six (6) feet in height is required. Said barrier may include the pool wall and any extension thereto.



If a ladder is used for access into the pool, it shall have a roll guard barrier, or its equivalent, with a lock to secure access when the pool is not in use or unattended.

ROLL GUARD BARRIER FOR ABOVE GROUND POOLS



If access to the pool is provided by a deck, there shall be a gate not less than four (4) feet in height, secured by a lock, upon the deck which prevents direct into the pool, when the pool is not in use or unattended.

B. Inflatable Pools without Exterior Supports

An above ground pool which may be inflated and used without supporting devices around and/or within the outer wall or edge of a pool shall be subject to the requirements set forth for an above ground pools

SECTION 308 LOTS DIVIDED BY ZONING BOUNDARIES

If a zoning district boundary line divides a lot which does not exceed 20,000 square feet in size and held in single and separate ownership prior to the effective date of this Ordinance, placing ninety (90%) 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 ten (10%) percent or less of the lot so divided.

SECTION 309 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 located in the rear yard or side yard, are not under roof, without walls or other forms 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, windowsills, stairways, balconies, canopies or other similar architectural features provided that any of the aforementioned features do not extend more than three (3) feet into any required setback.
- C. Porches and Decks: provided such porches or decks are not under roof, are located in the rear yard or side yard, and do not exceed four and one-half (4^{1/2}) feet in depth and five (5) feet in length as extended from the principal structure, including access stairs to porch or deck.
- D. Handicapped Ramps: The installation of a handicapped ramp in any zone, designed to provide access to handicapped persons, shall be exempt from meeting any applicable front yard or rear yard setback requirements, but shall have a minimum side yard setback of not less than five (5) feet.
- E. No projections shall be permitted within and/or over a public right-of-way.

SECTION 310 LIMITED EXEMPTIONS FROM YARD REQUIREMENTS:

310.1 EXISTING STRUCTURES

In all zoning districts any area of an existing structure already under roof can be enclosed and shall be exempt from meeting the front, side and/or rear yard requirements for enclosing the structure subject to not exceeding the extent of the existing roof and or footprint of the structure.

310.2 EXEMPTIONS UNDER PROPOSED SUBDIVISIONS

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

SECTION 311 SETBACK EXEMPTION FOR STRUCTURAL REPLACEMENTS

Any structural portion of a residential building, such as a deck, patio, porch or similar

feature which is need of repair to the point of replacement shall be exempt from complying with the applicable setback requirements when all of the following conditions exist:

- A. The use of the building represents a use permitted by right in the district in which it is located.
- B. There are no outstanding zoning or building code violations against the owner of the property.
- C. The structural replacement shall be at the exact same location and structural replacement shall be the same size and height, or less, than that which is being replaced.
- D. A photograph of the subject property, taken prior to the start of work, must be submitted to the Zoning Officer with a completed zoning permit application, along with any other information deemed necessary by the Zoning Officer to process the application.

SECTION 312 LAND DEVELOPMENT APPROVAL REQUIRED:

In addition to zoning approval, the improvement of one or more contiguous lots, involving a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenants, in addition to the applicable provisions of this Ordinance, shall also be governed by the applicable provisions of the Ashley Borough Subdivision and Land Development Ordinance.

SECTION 313 EXEMPTIONS FROM HEIGHT REQUIREMENTS:

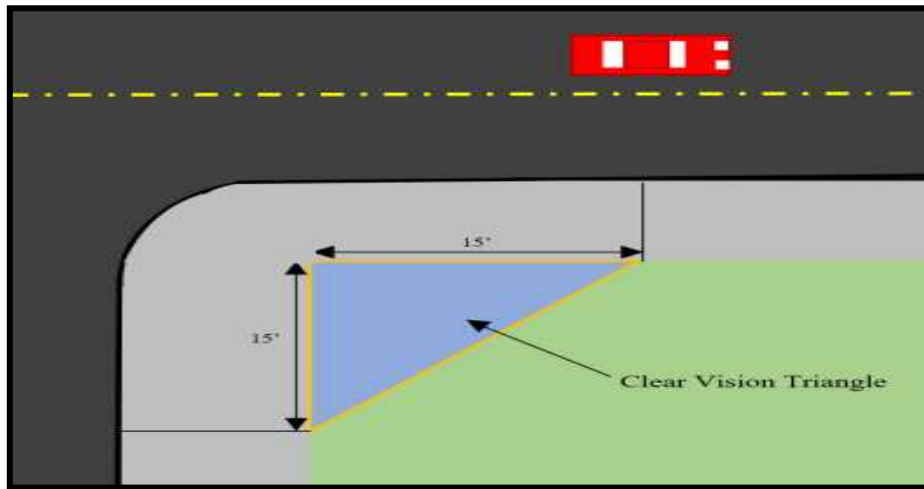
Height limitations in this Ordinance as so specified for each Zoning District shall not apply to church spires, belfries, cupolas and domes, monuments, water towers, wind energy conversion systems, wireless communication towers, chimneys, smokestacks, flag poles, radio towers, masts and aerials, accessory mechanical appurtenances usually located above the roof level or to parapet walls extending not more than four (4) feet above the roof line of the principal building, but may be subject any supplemental height regulation associated with a specific use.

SECTION 314 VISIBILITY AT INTERSECTIONS AND PRIVATE DRIVEWAYS

314.1 INTERSECTION OF STREETS

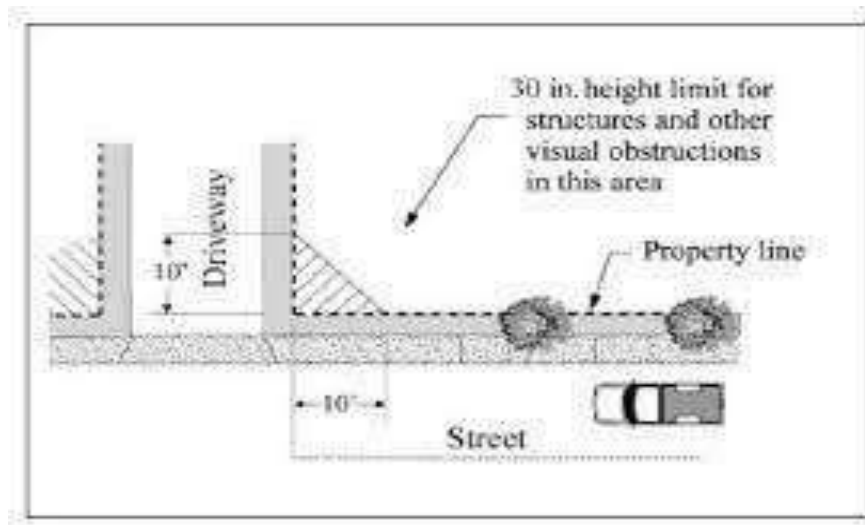
On any corner lot no visual obstruction, including but not limited to fences, structures and/or vegetation, exceeding a height of thirty (30) inches, excluding street signs, utility poles or traffic signs, shall be erected, planted and/or maintained within the triangle formed by a line projected between two points measured at a minimum distance of fifteen (15) feet from the point of intersection

of the two streets which border the side yard lot lines of the property which abut the public right-of-way



314.2. PRIVATE DRIVEWAYS

No visual obstruction including but not limited to fences, structures and/or vegetation, exceeding a height of thirty (30) inches, shall be erected or maintained within the triangles formed by a line projected between two points measured at a minimum distance of ten (10) feet from the outer edge of each side of the driveway in each direction to a depth of ten (10) feet along the centerline of the driveway.



SECTION 315 FENCES, WALLS AND DECORATIVE STONE COLUMNS

The posts and/or structural supports of a fence shall be located within the interior yard space to be enclosed. Height measurements for compliance with this Section shall be based upon the ground elevation directly below the fence. A fence shall not be subject to any setback distances, however, the applicant shall be responsible to having knowledge of the location of accurate property boundaries to ensure no portion of the fence, including but not limited to, the fence, posts and/or structural supports do not extend beyond the property boundary.

315.1 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.

315.2 NONRESIDENTIAL

Fences to be constructed within any commercial zoning district shall not exceed six (6) feet in height above the adjacent ground level. Fences to be constructed within any industrial district shall not exceed eight (8') feet in height above the adjacent ground level. 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.

315.3 FENCE POSTS

Fence posts shall only be erected on the interior side of the of the property on which the fence is erected.

315.4 EXEMPTIONS

The provisions of this Section shall not be applied to prevent the construction of a chain link in excess of six (6) feet in height, designed as an enclosure to a public park, a public playground or similar public outdoor recreational facility.

315.5 RETAINING WALLS

Retaining walls must comply with all requirements of the UCC. The use of retaining walls higher than six feet shall be permitted up to a maximum of 12 feet in height provided that:

- A. The proposed height of the retaining wall is necessary to facilitate an efficient use of the lot and to protect an important or sensitive natural or cultural feature on the lot.

- B. The applicant has submitted a written expert report from a professional engineer registered to practice within the Commonwealth of Pennsylvania. The expert report must conclude that the proposed retaining wall is designed and will be constructed to assure structural integrity and will in no way adversely affect any drainage pattern or underground utility lines nor interfere with any public rights-of-way.
- C. The applicant has provided sufficient separation and physical barriers between the proposed retaining wall and any pedestrian and vehicle movement areas to ensure adequate vehicle and pedestrian safety.
- D. That the base of the retaining wall is setback a horizontal distance at least equal to its height from each lot line.

315.6 DECORATIVE STONE COLUMNS

Decorative stone columns often used as a point of entrance to a property shall be subject to the height limitations provided for under Section 315.1 and Section 315.2. Decorative stone columns must also comply with all applicable requirements of the UCC



SECTION 316 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 a public utility corporation deemed necessary for the convenience or welfare of the in accordance with Section 619 of the Pennsylvania Municipalities Planning Code, Act 247, as amended.

SECTION 317 MANUFACTURED HOMES ON PERMANENT FOUNDATIONS

A manufactured home, when constructed and anchored to a permanent foundation, as defined in Article 2 of this Ordinance, shall be deemed to be a single-family residence.

SECTION 318 MANUFACTURED HOMES WITHOUT PERMANENT FOUNDATION

A manufactured home when not anchored to a permanent foundation shall be set on a concrete frost-free footer with skirting made of brick, block or concrete wall, and any towing tongues, wheels and axles shall be removed from the mobile home and the home

must be secured with a safety strap or cable to the concrete footer or steel cross support. The specifications of the footer and its depth shall be as required under the applicable UCC building code.

SECTION 319 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 require a Highway Occupancy Permit from PennDOT.

SECTION 320 STORMWATER MANAGEMENT

Any proposed development or use of property which results and/or requires a land disturbance shall be undertaken in compliance with all applicable Ordinances of Ashley Borough governing required stormwater management practices.

SECTION 321 FLOOD PLAIN MANAGEMENT ORDINANCE

Any improvements to structures or land located within a flood prone area as established by FEMA shall be in compliance with all applicable provisions and regulations of both this Ordinance and with all applicable Ordinances of Ashley Borough regulating the use and/or development of properties located within a flood prone area.

SECTION 322 RIPARIAN BUFFER

Excluding stormwater detention facilities, floodproofing structures and/or similar devices, a minimum setback of twenty-five (25) feet from any watercourse and/or wetlands, (as defined in Article 2) shall be required in all Zoning Districts for any form of development and/or improvements, unless a greater setback distance is required by a State or Federal Agency.

SECTION 323 KEEPING OF ANIMALS

Excluding pet stores, it shall be prohibited to keep, house and/or raise any exotic animal, as so defined in Article 2, within and/or upon any property within Ashley Borough. Farm animals, as so defined in Article 2 are only allowed upon properties Zoned C-1 (Conservation).

SECTION 324 OUTDOOR LIGHTING

324.1 All outdoor lighting on private or public residential, commercial, industrial, recreational or institutional property shall be directed, located, designed, fitted and maintained so as not to present:

- A. A hazard to drivers or pedestrians by impairing their ability to safely traverse (disabling glare).
- B. A nuisance by projecting or reflecting objectionable light and/or glare onto a neighboring use or property (nuisance glare).

324.2 An outdoor lighting plan shall be required with a zoning permit application for nonresidential development when outdoor lights are proposed or required. Outdoor lighting plans shall include a detailed grid of illumination levels, a calculation as to the average illumination levels, the number of lighting fixtures, the height and location of the mounting fixtures, including the underside of any canopies, details as to how lighting will be recessed and shielded as well as details of any building or canopy- mounted lighting to show compliance with this section.

SECTION 325 RECREATIONAL VEHICLE – PARKING

A maximum of one (1) uninhabited recreational vehicle in transportable condition may be stored or parked on a lot outside of an enclosed structure provided that the following are met:

- A. A Recreational Vehicle shall not be used as and/or considered to be a dwelling.
- B. The recreational vehicle must be owned by the occupants of the property upon which the recreational vehicle is located.
- C. The recreational vehicle shall not be stored in any yard abutting a street that would obstruct the clear-sight triangle or vehicle sight line.
- D. Recreational vehicles that have a height of eight feet (8') or more shall not be parked or stored in the front yard of any property in an R-district. Such vehicles may be parked or stored in R-districts in the side or rear yard of the property to which they are accessory, provided that the parking site of such vehicle meets the minimum side- and/or rear-yard setback requirement for a principal structure in the applicable zone district.

SECTION 326 SUPPLEMENTAL REQUIREMENTS

A use, provided for under any Zoning District within this Ordinance, shall, in addition to all other applicable provisions of this Ordinance, shall also be governed by supplemental regulations applicable to such use contained within Article 8 (Supplemental Regulations) of this Ordinance.

SECTION 327 USES NOT ADDRESSED WITHIN ORDINANCE

Whenever, in any district established under this Ordinance, a use is neither specifically permitted nor denied and an application is made by a landowner to the Zoning Officer for such use, the Zoning Officer shall refer the application to the Borough Council to hear and decide such request as a conditional use. The Borough Council shall have the authority to permit the use or deny the use in accordance with the standards governing conditional use applications. The proposed use may be permitted if only if it is determined to be similar to and compatible with permitted uses in the district and in no way is in conflict with the general purposes and intent of this Ordinance. The burden of proof shall be upon the applicant to demonstrate that the proposed use would meet the standards and criteria for a conditional use as contained in Article 7 of this Ordinance and would not be detrimental to the public health, safety and welfare and/or environmental features and characteristics of the site and/or surrounding areas.

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 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

ARTICLE 5
ZONING DISTRICT REGULATIONS

SECTION 501 **PERMITTED USES, CONDITIONAL USES, SPECIAL EXCEPTION USES AND NON-PERMITTED USES.**

- (1) **Permitted Uses.** The letter “P” designated under any of the zoning districts in the Use Table of this Ordinance indicates a permitted use in that district, which use is permitted by right within that zoning district, thereby not requiring approval of the Borough Council or Zoning Hearing Board approval, but only a determination by the Zoning Officer.

- (2) **Conditional Uses.** The letters “C” designated under any of the zoning districts in the Use Table of this Ordinance indicates a conditional use in that district, which use requires the Borough Council approval. The Borough Council may either approve or deny a conditional use in accordance with the provisions of this Ordinance. The Zoning Officer has no discretion to approve any permit where the use is classified as requiring a conditional use approval.

- (3) **Special Exception Uses.** The letters “SE” designated under any of the zoning districts in the Use Table of this Ordinance indicates a special exception use in that district, which use requires Zoning Hearing Board approval. The Zoning Hearing Board may either approve or deny a special exception use in accordance with the provisions of this Ordinance. The Zoning Officer has no discretion to approve any permit where the use is classified as requiring special exception approval.

- (4) **Non-Permitted Uses.** The letter “N” designated under any of the zoning districts in the Use Table of this Ordinance indicates a use not permitted in that particular district.

Symbol Key

- P- Permitted Use
- SE- Special Exception
- C – Conditional Use
- N- Non-Permitted Use

ASHLEY BOROUGH
USE TABLE

SECTION 502 - RESIDENTIAL USE TABLE

USES ¹	R-1	R-2	R-3	R-MHP	B-1	B-2	B-3	I-1	I-2	C-1
Single-Family Dwelling Units	P	P	P	P	P	P	N	N	N	P
Two-Family Dwelling Units	N	P	P	P	P	P	N	N	N	P
Multi Family Dwelling Units, including Garden Apartments	N	N	SE	N	N	N	N	N	N	N
Townhouses	P	P	P	N	N	N	N	N	N	N
Tiny House on Permanent Foundation (as defined in Article 2)	P	P	P	P	P	P	N	N	N	P
Short-Term Rental, both Home and Transient	N	N	C	C	N	N	N	N	N	N
Manufactured Home on Permanent Foundation	P	P	P	P	P	P	N	N	N	P

USES ¹	R-1	R-2	R-3	R-MHP	B-1	B-2	B-3	I-1	I-2	C-1
Manufactured Home without Permanent Foundation	N	N	N	P	N	N	N	N	N	P
Manufactured Home Park	N	N	N	C	N	N	N	N	N	N
Rooming House	N	N	C	N	N	N	C	N	N	N
Assisted Living Facility	N	N	N	N	N	N	SE	N	N	N
Bed and Breakfast	N	N	N	N	N	N	SE	N	N	N
Personal-Care Home	N	N	N	N	N	N	P	N	N	N
Recreational Facilities, Public	P	P	P	P	P	P	P	P	P	P
No Impact Home Based Business	P	P	P	P	P	P	P	P	P	P
Home Office	P	P	P	P	P	P	P	P	P	P
Home Occupation	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
Group Residence	P	P	P	P	P	P	P	N	N	N
Half-Way House	N	N	N	N	N	N	C	N	N	N
Dwellings Permitted on Upper Floors or Attached to a Commercial Use	N	N	N	N	P	P	P	N	N	N
Forestry	P	P	P	P	P	P	P	P	P	P
Accessory Residential Structures	P	P	P	P	P	P	P	P	P	P
MISCELLANEOUS USES	R-1	R-2	R-3	R-MHP	B-1	B-2	B-3	I-1	I-2	C-1
Outdoor Wood-Fired Boilers	N	N	N	N	N	N	N	N	N	C
Wind Energy Conversion System (Small)	N	N	N	N	N	N	SE	SE	SE	SE
Solar Energy System, Accessory (ASES)	P	P	P	P	P	P	P	P	P	P
Satellite Dish Antenna (Noncommercial)	P	P	P	P	P	P	P	P	P	P

¹ Uses may be subject to supplemental regulations contained in Article 3, Article 7 and/or Article 8.

SECTION 503 – NONRESIDENTIAL USE TABLE

NONRESIDENTIAL USES ¹	R-1	R-2	R-3	R-MHP	B-1	B-2	B-3	I-1	I-2	C-1
Agriculture Operation	N	N	N	N	N	N	N	N	N	P
Agritainment Enterprise	N	N	N	N	N	N	N	N	N	P
Animal Day Care	N	N	N	N	N	N	P	N	N	P
Animal Hospital	N	N	N	N	N	N	P	N	N	P
Animal Kennel	N	N	N	N	N	N	N	N	N	SE
Artist and Hobby Supplies (sale of)	N	N	N	N	P	P	P	N	N	N
Asphalt, Batch or Concrete Plant	N	N	N	N	N	N	N	N	C	N
Automotive Repair Garage (Major)	N	N	N	N	N	N	P	P	P	N
Automotive Repair Garage (Minor)	N	N	N	N	N	N	P	P	P	N
Automotive Sales	N	N	N	N	P	P	P	P	P	N
Automotive Supplies (sale of)	N	N	N	N	P	P	P	P	P	N
Automotive Storage Yard	N	N	N	N	N	N	N	N	C	N
Banks & Similar Financial Services	N	N	N	N	P	P	P	N	N	N
Bakery (Retail & Wholesale)	N	N	N	N	P	P	P	P	N	N
Beauty and Barber Shops	N	N	N	N	P	P	P	N	N	N
Bottle Club	N	N	N	N	N	N	C	N	N	N
Bulk Fuel Storage Facility	N	N	N	N	N	N	N	N	C	N
Car Wash and Auto Detailing	N	N	N	N	N	P	P	P	P	N
Cemetery	N	N	N	N	N	N	N	N	N	C
Check Cashing Business	N	N	N	N	N	N	N	SE	N	N
Clothing and Clothing Accessories (sale of)	N	N	N	N	P	P	P	P	N	N

NONRESIDENTIAL USES ¹	R-1	R-2	R-3	R-MHP	B-1	B-2	B-3	I-1	I-2	C-1
Commercial Greenhouses and Nurseries	N	N	N	N	N	N	P	P	N	N
Continuing Care Facility	N	N	N	N	N	N	SE	N	N	N
Contractors Office, Shops & Storage Yards	N	N	N	N	N	N	P	P	P	N
Convenience Store	N	N	N	N	P	P	P	P	P	N
Convenience Stores with Gas Sales	N	N	N	N	N	P	P	P	P	N
Day Care Facilities (Child & Adult)	N	N	N	N	P	P	P	N	N	N
Dance, Gymnastic, Martial Arts, or Yoga Studio	N	N	N	N	P	P	P	P	P	N
Detention Facility	N	N	N	N	N	N	C	N	N	N
Drive Through Commercial Uses	N	N	N	N	P	P	P	P	P	P
Emergency Services Facility	N	N	SE	SE	SE	SE	SE	SE	SE	SE
Entertainment Facilities	N	N	N	N	P	P	P	P	P	N
Equipment Sales and Repairs	N	N	N	N	P	P	P	P	P	N
Essential Public Services	SE	SE	SE	SE	SE	SE	SE	P	P	SE
Excavation/Extraction of Minerals	N	N	N	N	N	N	N	N	N	C
Flea Market	N	N	N	N	N	N	C	N	N	N
Food Processing Establishment	N	N	N	N	N	N	P	P	P	N
Food Products (sale of) includes grocery stores	N	N	N	N	N	N	P	P	P	P
Forestry (as defined in Article 2)	P	P	P	P	P	P	P	P	P	P
Funeral Home	N	N	N	N	N	P	P	N	N	N
Furniture or Office Supplies and Equipment	N	N	N	N	P	P	P	P	P	P
Golf Course (Public and Private)	N	N	N	N	N	N	N	N	N	C
Garden Center	N	N	N	N	N	N	P	P	P	P
Gas Station, Limited-Service	N	N	N	N	N	N	P	P	P	P
Greenhouse	N	N	N	N	P	P	P	P	P	P
Hazardous Substance Facility (as defined in Article 2)	N	N	N	N	N	N	N	N	C	N
Health Spa/Fitness Club	N	N	N	N	N	P	P	P	P	N
Home Improvements Store	N	N	N	N	N	N	P	P	P	P
Hookah Lounge or Bar	N	N	N	N	N	N	SE	SE	SE	N
Household Goods and Appliances	N	N	N	N	N	N	P	P	P	P
Industry, Heavy	N	N	N	N	N	N	N	N	C	N
Industry, Light	N	N	N	N	N	N	N	P	P	N
Junkyards	N	N	N	N	N	N	N	N	C	N
Laundromat, Self-Service	N	N	N	N	N	P	P	P	N	N
Library	N	N	N	N	SE	SE	SE	N	N	N
Lumber Yard	N	N	N	N	N	N	P	P	P	N
Machine Shop	N	N	N	N	N	N	N	N	P	N
Manufactured Home Sales Lot	N	N	N	N	N	N	P	P	N	N
Massage Establishment by Medical Practitioner (as defined in Article 2)	N	N	N	N	SE	SE	SE	N	N	N
Medical Clinic/Center ²	N	N	N	N	P	P	P	N	N	N
Medical Marijuana Growing Facility	N	N	N	N	N	N	N	C	C	N

NONRESIDENTIAL USES ¹	R-1	R-2	R-3	R-MHP	B-1	B-2	B-3	I-1	I-2	C-1
Medical Marijuana Dispensary	N	N	N	N	P	P	P	P	P	P
Methadone Treatment Facility	N	N	N	N	N	N	C	N	N	N
Micro-Brewery	N	N	N	N	N	N	P	P	N	N
Mineral Extraction	N	N	N	N	N	N	N	N	N	C
Mixed Use Structure	N	N	N	N	P	P	P	N	N	N
Motels and/or Hotels	N	N	N	N	N	N	C	N	N	N
Municipally Owned Building	P	P	P	P	P	P	P	P	P	P
Newspapers, Books and Stationery Supplies	N	N	N	N	P	P	P	N	N	N
Night Club	N	N	N	N	N	N	C	N	N	N
Nonprofit Social Hall And Civic Organizations	N	N	N	N	SE	SE	SE	N	N	N
Nursery	N	N	N	N	N	N	P	P	N	P
Nursing Home	N	N	N	N	N	SE	SE	N	N	N
Offices, Professional and Service	N	N	N	N	P	P	P	P	P	N
Outdoor Storage as a Principal Use	N	N	N	N	N	N	N	P	P	N
Pawn Shop	N	N	N	N	N	N	SE	N	N	N
Personal Services	N	N	N	N	P	P	P	P	P	N
Pharmacy	N	N	N	N	P	P	P	P	N	N
Photocopying Services	N	N	N	N	P	P	P	P	P	N
Commercial Photographic Studios	N	N	N	N	P	P	P	P	P	N
Place of Worship	N	SE	SE	N	SE	SE	SE	N	N	N
Public Utility Facilities, Essential	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
Recreational Facilities, Commercial	N	N	N	N	N	SE	SE	SE	SE	N
Recreational Facilities, Private	N	N	N	N	N	SE	SE	SE	SE	N
Recreational Facilities, Public	SE	SE	SE	SE	P	P	P	P	P	P
Recycling Collection Center	N	N	N	N	N	N	N	N	C	N
Repair Services, Miscellaneous	N	N	N	N	P	P	P	P	P	N
Restaurants	N	N	N	N	P	P	P	P	N	N
Restaurants with Live Entertainment	N	N	N	N	N	N	SE	N	N	N
Retail Sale Establishments (as defined in Article 2)	N	N	N	N	P	P	P	P	P	N
Retail Establishment, Large (as defined in Article 2)	N	N	N	N	N	N	C	C	C	N
School	N	N	N	N	N	N	C	N	N	N
Self-Storage Facility	N	N	N	N	N	P	P	P	P	N
Sexually Oriented Uses	N	N	N	N	N	N	N	C	N	N
Shopping Center	N	N	N	N	P	P	P	P	P	N
Solar Energy System, Accessory (ASES)	P	P	P	P	P	P	P	P	P	P
Solar Energy System, Principal (ASES)	N	N	N	N	N	N	C	C	C	C
Solid Waste Facility	N	N	N	N	N	N	N	N	C	N
Solid Waste Transfer Facility	N	N	N	N	N	N	N	N	C	N
Sporting Goods (sale of)	N	N	N	N	P	P	P	P	P	N
Substance Abuse Detoxification Treatment Facility	N	N	N	N	N	N	C	N	N	N

NONRESIDENTIAL USES ¹	R-1	R-2	R-3	R-MHP	B-1	B-2	B-3	I-1	I-2	C-1
Substance Abuse Treatment Facility, Non-Hospital Drug Free Residential	N	N	N	N	N	N	C	N	N	N
Substance Abuse Treatment Facility, Partial Hospitalization Treatment Facility	N	N	N	N	N	N	C	N	N	N
Tattoo Parlor/Body-Piercing Studio	N	N	N	N	P	P	P	P	P	N
Taverns	N	N	N	N	P	P	P	P	N	N
Taverns with Live Entertainment	N	N	N	N	N	N	C	N	N	N
Tire Retreading and Recapping	N	N	N	N	N	N	N	N	P	N
Trucking Facility	N	N	N	N	N	N	N	N	C	N
Truck Repair & Storage	N	N	N	N	N	N	N	N	C	N
Variety and Sundry Goods (sale of)	N	N	N	N	P	P	P	P	P	P
Warehouse and Distribution Facilities	N	N	N	N	N	N	P	P	P	N
Welding Shop	N	N	N	N	N	N	N	SE	N	N
Wind Energy Conversion System (Small)	N	N	N	N	SE	SE	SE	SE	SE	SE
Wind Energy Facility: Principal Wind Energy Facility	N	N	N	N	N	N	C	N	N	C
<i>Wireless Communications Facility (Types Listed Below)</i>										
Small Wireless Communications Facility	P	P	P	P	P	P	P	P	P	P
Tower-Based Wireless Communications Facility	N	N	N	N	N	N	C	C	C	C
Non-Tower-Based Wireless Communications Facility	N	N	N	N	SE	SE	SE	SE	SE	SE
Accessory Nonresidential Structures ¹	P	P	P	P	P	P	P	P	P	P

¹ Uses may also be subject to supplemental regulations contained in Article 3, Article 7 and/or Article 8.

² Excludes Substance Abuse Treatment Facilities and Methadone Treatment Facilities.

MISCELLANEOUS NONRESIDENTIAL USES ¹
Any nonresidential use permitted by right or by special exception excluding agricultural uses, and forestry shall be deemed a conditional use if it involves either of the following:
(a) the initial or cumulative earth disturbance activity or use of property which equals or exceeds 80,000 square feet of surface area. OR
the initial or cumulative construction, placement or installation of a building, structure and/or development which equals or exceeds 30,000 square feet

**SECTION 504
AREA, BULK, DENSITY AND HEIGHT REGULATIONS¹**

Zoning Districts	MINIMUM ²						MAXIMUM ²
	Lot Size ³	Width	Front Yard	Rear Yard	Side Yard Setback	Building Height	Lot Coverage
R-1	5,000	50	20	25	10	2½ Stories or 35 ft.	35%
R-2	4,000	40	20	20	8	2½ Stories or 35 ft.	45%
R-3	3,000 ⁴ 4,000 ⁵	40 ⁶ 75 ⁷	75	20	5	2½ Stories or 35 ft.	60%
R-MHP ⁵	10 acres ⁸ 4,000 ⁹	400 ¹⁰ 40 ¹¹	75 ¹⁰ 20 ¹¹	100 ¹⁰ 20 ¹¹	75 ¹⁰ 5 ¹¹	2 Stories or 25 ft. ¹⁰ 2½ Stories or 35 ft. ¹¹	65% 70%
B-1	None	None	10	15	5	2½ Stories or 35 ft.	55%
B-2	None	None	5	10	5	2½ Stories or 35 ft.	65%
B-3	10,000	100	20	30	15	2½ Stories or 35 ft.	65%
I-1	40,000	150	35	50	20	3 Stories or 45 ft.	50%
I-2	60,000	200	50	50	25	2½ Stories or 35 ft.	50%
C-1	40,000	150	50	50	20	2½ Stories or 35 ft.	15%

1. Above information not applicable to accessory structures: See Article 3.
2. Except as otherwise provided by supplemental provisions, and/or other requirements contained in this Ordinance.
3. Square Feet and Maximum Density Per Dwelling Unit
4. 3,000 sq. ft. for each dwelling for any type of multifamily residential structure.
5. 4,000 sq. ft. for a detached single-family dwelling or for two family dwelling.
6. 40 feet for lots requiring a minimum lot area of 3,000 sq. ft.
7. 75 feet for any type of multifamily residential structure.
8. 10 acres is required for the development of Manufactured Home Park with lots located therein for the placement of Manufactured Homes.
9. Required for each principal use and/or structure that is not a Manufactured Home.
10. Required for a Manufactured Home Park.
11. Required for a principal use and/or structure that is not a Manufactured Home.

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 of this Ordinance.

SECTION 602 GENERAL PROVISIONS

The authority for approving or denying applications for uses permitted as a conditional use shall be vested in the Ashley Borough Council with the Ashley 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, any studies and reports required within the context of an Impact Analysis, as so defined in Article 2 of this Ordinance, the respective zoning district in which the use is located, all other applicable regulations of this Ordinance, other ordinances of the Borough and all applicable State and/or Federal regulations.

SECTION 603 PLANS, INFORMATION AND PROCEDURES FOR CONDITIONAL USES

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 inch (1) equals fifty (50) feet for properties in excess of two (2) acres.

OR

One (1) inch equals twenty (20) feet for properties being two (2) acres or less.

Such plan shall, at minimum, indicate:

1. The location and size of all buildings and structures, both principal and accessory, both existing and proposed.
2. The location of all off-street parking areas and/or loading and unloading areas.
3. The location of all open space areas, including buffer areas and fencing, as applicable.
4. Traffic access to the site and internal traffic circulation including the width and pavement of traffic lanes, and aisle widths.

5. All streets, both public and private within two-hundred (200) feet of the site, including right-of-way and cartway widths.
6. Streams, ponds, watercourses, wetlands, or any other types of bodies of water, including natural or man-made drainage swales, located on the site or within two hundred (200) feet of the site.
7. Any areas of the property that are subject to flooding including but not limited to the boundaries of any FEMA designated 100 Year Flood Plains based upon the most recent Flood Insurance Rate Maps (FIRM) for the Borough.
8. 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, including the name and address of the owner or owners granting such easement.
9. The location of any residential structures which border the site on an adjoining lot and/or those within two hundred (200) feet of any property boundary line of the subject site.
10. The Map, Block and Lot Number of the subject parcel, as contained in the records of the Office of the Ashley County Recorder of Deeds.
11. A location map at a scale of not greater than one (1) inch equals two thousand (2,000) feet, indicating the relation of the site to its geographic proximity within the Borough.
12. In cases when a proposed use includes new construction and/or grading of the site, the applicant, in addition to compliance with any applicable Borough Stormwater Management Ordinance, shall provide upon the site plan the contours of the site at vertical intervals of:
 - not more than five (5) feet for land with an average natural slope of five (5%) percent or less.
 - not more than ten (10) feet for land with an average natural slope exceeding five (5%) percent.
 - not more than twenty (20) feet for land with an average natural slope exceeding fifteen (15%) percent.

Topography data shall be prepared by a professional land surveyor or professional engineer from an actual field survey of the site or from stereoscopic aerial photography and shall be coordinated with official U.S.G.S. benchmarks.
13. If applicable, the applicant shall submit a Soil Erosion and Sedimentation Plan and/or NPDES Permit for review and approval by the Ashley County Conservation District.

14. The applicant shall submit with the site plan, a narrative that outlines and fully describes all proposed uses or development of the site, along with all pertinent operational aspects, features and/or activities related to the proposed uses or development of the site.
 15. The applicant shall supply any other information required by the Ashley 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 the Planning Commission to submit any such recommendations as they may deem appropriate.
 - C. The public hearing shall be held and conducted in accordance with the same procedural guidelines, which govern the Zoning Hearing Board under Article 14 of this Ordinance. The term "Borough Council" shall replace the term "Zoning Hearing Board" in relevant passages of said Article.
 - D. The Borough Council shall convene a public hearing on a conditional use application within sixty (60) days from the date of 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 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.
 - E. The Borough Council shall render a final decision on a conditional use application, within forty-five (45) days following the conclusion of the last public hearing. If the Borough Council fails to render a final decision within forty-five (45) days following the conclusion of the last public 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 the Borough Council s fails to conduct or complete the required hearing as provided for under Section 1406 (D) of this Ordinance, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time.

When a decision has been rendered in favor of the applicant because of the failure of the Borough Council to meet or render a decision as hereinabove provided, the Borough Council shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by public notice. If the Borough Council s fails to provide such notice, the applicant may do so.

- F. The Borough Council may 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, and any additional conditions and safeguards deemed necessary to protect the public health, safety and general welfare.

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 demonstrate its consistency with the Community Development Objectives of the Borough's Comprehensive Plan
- B. Public services and facilities such as streets, sewers, water, police, and fire protection shall be adequate for the proposed use and/or development.
- C. Existing streets and proposed access to the site shall be adequate regarding the width and pavement for emergency service vehicles.
- D. The proposed use shall not adversely affect the public health, safety and welfare due to changes in traffic conditions. Existing streets and proposed access to the site shall be adequate to accommodate anticipated traffic volumes in a manner that avoids undue traffic congestion, and provides for the safety and convenience of pedestrian and vehicular traffic. The proposed use shall not result in unsafe or dangerous traffic conditions.
- E. The proposed use shall be compatible with adjoining development and the character of the zoning district and neighborhood in which it is proposed to be located. The nature and intensity of the operation of the proposed use shall be considered regarding its compatibility or lack thereof.
- F. The proposed use shall not adversely affect neighborhood property values and aesthetic characteristics in the neighborhood where it is proposed to be located, nor hinder any existing uses and/or activities.
- G. The proposed use shall not adversely affect the public health, safety and welfare as related to drainage, air quality, noise and natural features of the land. 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 subject Zoning District.
- H. The submission of any reports and/or studies, required by the Borough Council within the context of the definition "Impact Analysis" as contained defined in 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 requiring such reports and/or studies.
- I. The proposed use and/or development shall not be injurious to the public interest.

In granting approval, the Borough Council 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.

In addition to all other requirements, an Environmental Impact Analysis, as defined in Article 2 shall be required for any use/development which is classified as a conditional use. The Borough Council, at its sole discretion, may exempt a use from the submission of an Environmental Impact Analysis, in whole or in part. Consideration of an exemption must be preceded by a written request submitted by the applicant natural and social environment which addresses the basis for the requested exemption. The purpose of the Environmental Impact Analysis is to disclose the consequences of a proposed action upon the natural environment of the Borough. 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 aesthetic quality of life throughout Ashley Borough and its environs. An Environmental Impact Analysis shall require a site plan which illustrates the applicable information for following items and/or a written response to the following items for said proposed use/development which is classified as a Conditional Use.

Expert Credentials. The qualifications of experts who provide information or testimony regarding compliance with technical standards of this Section shall be provided to the Borough Council. The Borough Council shall have the authority to determine the credibility of the testimony and reports of various experts and may weigh the value of the testimony and reports as a result.

605.01. 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.

605.02 SURFACE WATERS

- a. Distance of site from the nearest surface water and head waters of streams.
- b. Sources of runoff water.
- 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.

605.03 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 and type of vegetative cover on the site, including mature stands of trees of native vegetation.
- d. Extent of proposed and type of vegetative cover on the site.
- e. Area and extent of vegetative cover on the site to be removed on the site including mature stands of trees of native vegetation. Development activities that include removal of trees or vegetation that equal or exceed five (5) acres shall be require the submission of a Forestry Management Plan prepared by a qualified forester or forest technician, with a four year degree from and accredited college.

605.04 TOPOGRAPHY

- a. Maximum existing elevation of site.
- b. Minimum existing elevation of site.
- c. Maximum proposed elevation of site (if subject to any proposed alteration).
- d. Minimum proposed elevation of site (if subject to any proposed alteration).
- e. Description of the topography of the site and all proposed changes in topography.

605.05 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.

605.06 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.

605.07 SEWAGE SYSTEM

- a. Sewage disposal system (description and location on the site of system).

- b. Expected content of sewage effluents (human waste, pesticides, detergents, oils, heavy metals, and other chemicals).
- c. Projected daily volumes of sewage.
- d. Affected sewage treatment plant's present capacity and design capacity.

605.08 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.

605.09 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.

605.10 NOISE

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

605.11 WILDLIFE AND WILDLIFE HABITAT

- a. A written pre-construction inventory of wildlife and wildlife habitats on the proposed site and environs.
- b. A written assessment of direct and indirect impacts to wildlife and wildlife habitats.
- c. A description of the impacts on the environment and mitigating measures shall be provided for the following:
 - Existing plant species and effects thereon.
 - Existing animal species and effects thereon.
 - Existing wild fowl and other birds and effects thereon.

605.12 IMPACT OF PROPOSED USE/DEVELOPMENT

A description of the impacts on the environment and mitigating factors shall be provided for the following:

- a. Existing plant species and effects thereon.
- b. Existing animal species and effects thereon.
- c. Existing wild fowl and other birds and effects thereon.
- d. Effects of drainage and runoff.
- e. Effects on ground water quality.
- f. Effects on surface water quality.
- g. Effects on air quality.
- h. Effects on noise levels.
- i. Alternatives to proposed use/development, consistent with the zoning of the site.
- k. Projected amount and type of traffic to be generated and the effects of the same on public roads and highways.

605.13 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 mitigated as a resulting effect of the development.

605.14 OTHER GOVERNMENTAL JURISDICTION

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

605.14 REVIEW PROCEDURE OF ENVIRONMENTAL IMPACT ANALYSIS

- A. Upon receipt of an Environmental Impact Analysis, the Borough Council shall promptly forward the Environmental Impact Analysis to the Borough Planning Commission, and to any other agency, firm or individual which the Borough Council may desire for their consultation and input.
- B. The Planning Commission shall review the applicant's Environmental Impact Analysis and provide the Borough Council with its comments and recommendations within thirty (30) days from the date of its submission to the Planning Commission.

- C. The Borough Council shall have the discretion to retain the expertise of appropriate parties in their review of the Environmental Impact Analysis.

- D. In the event that any information, data, and/or "Impact Analysis" indicate a projected and/or potential adverse impact, the applicant shall fully mitigate such impact. A written plan addressing proposed mitigation measures shall be submitted by the applicant. A determination of a potential adverse impact which may result based upon the Environmental Impact Analysis or the Borough Council's review of the same shall constitute sufficient basis for the denial of a conditional use permit.

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ARTICLE 7
SPECIAL EXCEPTION

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 1404), 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 or special exception, shall be subject to supplemental regulations in addition to those of the district in which the use is located.

SECTION 802 SUPPLEMENTAL REGULATIONS

802.01 AGRITAINMENT ENTERPRISE

The following supplemental regulations shall be applicable for the proposed use of an agricultural property for Agritainment Enterprise.

A. A farm-based entertainment enterprise shall be located upon a property currently used for agricultural purposes.

B. Minimum Lot Size and Width

Lot Size: 10 acres
Lot Width: 200 Feet

C. Setback Distances

Activities (including parking areas) or structures, included for use as an Agritainment Enterprise shall comply with the following minimum setback distances.

Front Yard - 100 feet
Side Yard - 200 feet
Rear Yard - 200 feet

The above setback distances shall not apply to any existing structures upon the property utilized as a component of any activities offered within the context of an Agritainment Enterprise.

D. Ancillary Features

Ancillary features of a property used as an Agritainment Enterprise may include:

1. The use of a portion of the property for the temporary placement of campers, horse trailers and recreational vehicles as related to planned events upon the property.
2. The sale of both prepared food products and fresh farm produce and accessory products that support the specific Agritainment Enterprise such as leather tack products, saddles, boots, and western wear.

E. Maximum Lot Coverage

1. Maximum Building Coverage: 20%.
2. Maximum Impervious Surface: 30%.

F. Off Street Parking

The applicant must provide for sufficient off-street parking spaces and off-loading spaces for all uses and activities proposed to be operated as part of the Agritainment Enterprise, but in no case shall there be less than 50 defined parking street parking spaces that shall be either paved or gravel surface. The Board of Supervisors shall have sole discretion in rendering a decision on the need to provide additional parking for an Agritainment Enterprise based upon its planned operations.

G. Outdoor Lighting:

The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

F. Land Development Plan

An Agritainment Enterprise, subsequent to zoning approval, shall secure land development approval in accordance with governing regulations of the Ashley Borough Subdivision and Land Development Ordinance.

802.02 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 one hundred (100) feet from any property line. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.03 ANIMAL KENNEL

The minimum lot size shall be not less than five (5) acres. Any buildings, runways, fenced enclosures and similar structures shall be located not less than 150 feet from all property and street lines. Where the property abuts a zoning district having residences as a principal permitted use, all buildings runways, fenced enclosures, and similar structures shall be located not less than 200 feet from such property lines. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.04 APARTMENT BUILDING

The minimum lot size shall be not less than one acre. An apartment building as a multi-family dwelling shall be connected to sanitary sewers. The maximum height building for an apartment building height shall not exceed three stories or 40 feet. Maximum percentage of building coverage on a lot per dwelling unit, exclusive of

common or public open areas, shall be 30%. A lot area of 3,000 square feet shall be required for each dwelling unit. A minimum lot width of not less than 150 feet shall be required for apartment building. Fire escapes, when required, shall be located in the rear of the building and shall not be located on any side of the building that faces a street.

Service entrances, trash and garbage storage areas shall be enclosed, and screened from public view by a solid fence six (6') feet in height. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.05 ASSISTED LIVING FACILITIES, NURSING HOMES OR PERSONAL CARE HOMES

The minimum lot size shall be not less than three (3) acres. Said facility shall be connected to sanitary sewers. All buildings shall be located not less than 50 feet from any property line or street line. A minimum of 20% of the lot shall be designed, developed, used, and maintained for outdoor recreational activities limited to one or more of the following: garden areas, sitting areas, picnic areas and/or pedestrian walkways. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.06 AUTOMOBILE RELATED ACTIVITIES

- A. Major Automotive 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. All paint work shall be performed within a paint booth within the building. The paint booth shall meet the design criteria of Occupational Safety and Health Administration of the U.S. Department of Labor, with a ventilation system that directs fumes away from adjacent properties and buildings. Temporary outdoor parking of vehicles intended to be replaced is permitted in the side or rear yard areas only, and those vehicles shall be licensed and inspected at all times. Only vehicles to be repaired on the premises or picked up by the vehicle owner may be stored in the yard area. Storage of vehicles shall be permitted for no longer than 30 days. Service bays shall face the front yard property line whenever possible. 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. Outdoor trash dumpsters shall be concealed within an area surrounded by solid opaque fencing not less than six (6) feet in height. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

- B. Automotive Sales: The outdoor display of new or used automobiles, boats, recreational vehicles, motorcycles, manufactured homes, or mobile homes shall meet the required principal building setback requirements. 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. Outdoor trash dumpsters shall be concealed within an area surrounded by solid opaque fencing not less than six (6) feet in height. All exterior lighting shall be directed away from adjacent properties and shall utilize cutoff shields or otherwise be designed to conceal the light source from adjoining properties and streets.

- C. Car Wash: Appropriate drainage facilities for washing activities shall be provided wherein water from the car wash will not flow onto sidewalks, streets or adjoining properties. The site shall be sufficiently large to accommodate three (3) cars per stall waiting 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 Protection. 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 six (6') feet in height and well maintained along such boundary. Outdoor trash dumpsters shall be concealed within an area by a solid fence, not less than six (6) feet in height. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.
- D. Gas Station, (Also Includes Convenience Stores with Gasoline Sales): Where such use abuts on the rear or side lot line of a district having residences as a principal permitted use or a property being used for residential purposes, the following requirements shall apply to the side and rear yard property boundaries:
1. Construction of a solid wall or solid opaque fencing eight (8) feet in height, designed to conceal and screen the property from adjoining properties.
 2. Within a required rear yard or side yard setback, there shall be a landscaped planting strip not less than four (4) feet in depth, 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 six (6) feet high within three (3) years. The landscaped planting strip shall be maintained in good condition at all times, including the replacement of any shrubs or trees which are damaged, die or otherwise fail to grow.
 3. Outdoor trash dumpsters shall be concealed within an area surrounded by solid opaque fencing not less than six (6) feet in height.
 4. Gasoline pumps or other service appliances and canopies may be located in the required front yard subject to having a setback of not less than twenty-five (25) feet from the right-of-way line of the adjoining street. All repair services, 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.
 5. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

E. Automotive Storage Yards and/or Junkyards

All new Automotive Storage Yards and/or Junk Yards or the proposed expansion of an existing Automotive Storage Yards and/or Junk Yards, shall comply with the following:

1. 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 place for the breeding of rodents and vermin.
2. Burning of any materials shall be prohibited.
3. No oil, grease, tires, or gasoline shall be burned at any time.
4. No garbage, organic waste, rubbish, toxic materials, and hazardous materials shall be stored on such premises.
5. Whenever any motor vehicle shall be received on such premises as junk, all gasoline and oil shall be drained and removed said vehicle.
6. The storage of any combustible materials, such as gasoline, oil, or related items, shall be placed in fireproof containers and stored within fireproof sheds.
7. 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 and to facilitate access for firefighting purposes.
8. There shall be no stockpiling of motor vehicles, nor shall there be any junk piled higher than four (4') feet.
9. Fire lanes of a minimum width of twenty (20) feet in width shall be provided for every forty (40) linear feet of junk, which shall be kept open and unobstructed for proper access for fire-fighting equipment and safety purposes.
10. 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.
11. All junk yards shall be completely screened from view on all sides by a solid wall or substantial fence not less than eight (8') 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.
12. All premises shall, at all times, be maintained so as not to constitute a nuisance, or a menace to the health, safety, and welfare of the community or to the residents nearby, or a place for the breeding of rodents and vermin.
13. 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 8:00 P.M., local time.

14. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.07 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. Canopies over drive-through areas shall meet all yard setback requirements. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.08 BED AND BREAKFAST

A Bed and Breakfast shall be within an owner-occupied dwelling which are rented on a nightly basis for periods of normally not more than a week. There shall not be separate cooking facilities in any guestrooms. Dining and other facilities shall not be open to the public, but shall be exclusively for the use of the residents and registered guests. Two off street parking spaces shall be provided for each rental unit.

No signs, show windows or any type of display or advertising shall be visible from outside the premises, except for a single wall or freestanding sign, which shall not be internally illuminated, with a maximum sign area of four-square feet on each of two sides, if freestanding, and with a maximum height of eight (8) feet.

In a residential district, the exterior of the building shall not be changed in any way that would decrease its residential appearance and character, except for needed modifications for historic restoration, handicapped access, or fire safety.

The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.09 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 thousand (1,000') feet from any property line and shall be not less than two thousand (2,000') feet from any dwelling, school, church, or similar use. Cylinder filling rooms, pumps, compressors, and truck filling stations shall be located five hundred fifty (500') feet from all property lines. The property 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. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.10 CEMETERIES

The minimum lot area shall be five (5) acres, which may be on the same lot as a permitted place of worship. All structures, graves or places of permanent burial shall be set back not less than 50 feet from all property lines and street lines and shall not be located within any 100-year flood plain. The cemetery shall be enclosed by a fence, wall, or shrubbery at least three feet in height. The interior roads shall have a minimum width of 12 feet and shall be properly maintained with either gravel or paving. The applicant and/or owner must provide sufficient proof that an appropriate financial system is in place or will be implemented to guarantee perpetual maintenance of the cemetery.

802.11 CONTRACTORS' STORAGE YARDS AND/OR OUTDOOR STORAGE AS
A PRINCIPAL USE

Commercial and/or or industrial uses utilizing outdoor storage space of more than two thousand (2,000) square feet shall be located on a tract of land of not less than five (5) acres with a complete listing of all types of items to be stored therein. No hazardous substances, as so defined in Article 2 of this Ordinance, shall be permitted upon the site. Supplies stored outdoors shall be neatly arranged and no required yard areas shall be used for storage. There shall be a roadway 14 feet in width provided for every 40 linear feet of stored materials. The roadway shall be kept passable for fire-fighting equipment. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.12 DAY CARE FACILITIES

All day care facilities 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 and/or license is required by the laws of the Commonwealth.
- B. Noise and all other possible disturbing aspects connected 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 day care facilities shall have an outdoor recreation area which shall be completely enclosed with a fence six (6') feet in height.
- D. The applicant shall supply evidence that vehicular traffic congestion will be avoided in "pick-up and drop-off points" utilized in transporting individuals to and from the facility.
- E. One off-street parking space shall be required for each employee.
- F. One off-street parking space shall be required for each vehicle used by the establishment for the purpose of transporting persons attending the facility
- G. The provision of any outdoor lighting shall be designed and installed in

compliance with Section 324 of this Ordinance.

802.13 DETENTION FACILITY

The minimum lot size shall be 10 acres. All buildings must be setback not less than 500 feet from a property line. Where the detention facility abuts a zoning district where residences are a principal permitted use, or where an existing residential dwelling unit is located, a solid wall or substantial, attractive fence not less than ten feet in height shall be constructed and maintained in good condition along such boundary line, and a buffer area of not less than 300 feet in width must be landscaped and maintained in good condition at all times. No structures, parking, loading, storage of any kind, or any use shall be allowed within the buffer area. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.14 DRIVE THROUGH FACILITIES.

Any use providing a drive-through (i.e., bank, eating establishment, etc.) shall comply with the following requirements:

- A. The drive through lane or aisle shall be designed with adequate space for a minimum of four waiting vehicles per lane or aisle. There shall be a maximum of one lane or aisle per drive through window.
- B. Each drive through lane or aisle shall be clearly marked and designed so as to prevent traffic hazards and congestion while at the same time minimizing conflicts with pedestrian travel.
- C. Canopies situated over drive-through areas shall meet all setbacks requirements for the zoning district in which the property is located.

802.15 DWELLING OVER OR ATTACHED TO A BUSINESS

A dwelling unit over or attached to business establishments shall be designed as living quarters with private access, having adequate natural light and kitchen and bathroom facilities. Required residence parking and commercial parking must be provided for each use in accordance with the parking requirements of this Ordinance.

802.16 EMERGENCY SERVICES FACILITY

Such a facility shall have a setback distance of not less than twenty (20) feet from all property lines. Where any parking area abuts the side or rear property lines of an adjoining residential use, a solid wall or solid opaque fencing eight (8) feet. 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 six (6) feet high within three (3) years. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.17 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 fifty (50') 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. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.18 EXCAVATION OF MINERALS (as defined in Article 2)

Excavation and extraction of minerals, as defined in Article 2, shall be considered a temporary use, subject to the following requirements:

- A. Project Narrative: A written report shall be submitted by the applicant that includes the type of minerals proposed to be excavated, extracted, and/or removed from the site, the volume of such material and the maximum length of time associated with the proposed operation based upon the stated volume of material. Said narrative shall also describe normal, daily operational features performed upon the site, including but not limited to, proposed hours of operation, anticipated noise levels, and the type and volume of truck traffic to be generated with the proposed traffic routes to and from the site.
- B. Map: Submission of a map or maps at a scale of not greater than one (1") inch equals fifty (50') feet that outlines the entire property and the proposed area subject to excavation, extraction, and/or removal of minerals. Said map shall indicate existing contours prior to the start of work, and proposed final contours, including the proposed maximum depth of excavation at all points subject to excavation. Said map or maps shall also contain surface features showing the location of buildings, dwellings, places of worship, schools, railroads, highways, and public uses within a distance of five hundred (500) feet from the perimeter of the proposed use.
- C. Distance Provisions: The perimeter of any excavation under this Section shall not be nearer than five hundred (500) feet from any building, property line or street, except that owned by the applicant.
- D. Limitation on Land Area: At any given time, the active excavation/extraction areas shall not exceed ten (10) acres in area on any lot or tract of land. Additional areas may be approved on the completion and cessation of previous approvals.
- E. Compliance With State Requirements: Final and/or unconditional approval for excavation, extraction and/or minerals under the provisions of this Ordinance shall not be issued until the applicant documents that all required licenses and/or permits have been properly secured from the applicable State and /or Federal agencies, including but not limited to the Pennsylvania Department of Environmental Protection.
- F. Lighting: The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.19 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. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.20 FUNERAL HOME

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 not less than six (6') feet in height. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.21 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 applicable requirements and standards which govern off-street parking for a single-family dwelling shall also govern for a Group Residence; however, two (2) additional off-street parking spaces shall be provided and if there is any required staffing associated with the management and operation of a Group Residence.
- B. A Group Residence shall be operated and maintained in the character of a residential dwelling in harmony with and appropriate in appearance with the character of the general vicinity in which it is to be located.

802.22 HOME OCCUPATIONS

A home occupation shall be subject to the following regulations:

- A. The occupation shall be carried on entirely within the principal structure or an attached or unattached accessory structure provided that the accessory structure is located on the same lot as the principal structure.
- B. No display or advertisement of products or services may be visible from outside the building. Any storage of materials associated with the home occupation shall be within the building.
- C. A sign no larger than two square feet in surface area is permitted. The sign may only be lit with indirect lighting.
- D. No person other than a resident of the dwelling unit may conduct the home occupation. No more than one non-occupant may be employed to perform secretarial, clerical, or other

assistance.

- E. Not more than 30%, or 600 square feet, whichever is less, of the total floor area of the building wherein the home occupation is being conducted may be devoted to the home occupation.
- F. Each home occupation shall have 4 (four) off-street parking spaces in addition to the two spaces required for the dwelling unit.
- G. The home occupation may not disturb the peace, quiet and dignity of the neighborhood by electrical interferences, dust, noise, smoke, or traffic generated by the use.
- H. There shall be no retail sales of goods except those goods that are prepared or produced on the premises.
- I. There shall be no change in the residential character of the building wherein the home occupation is being conducted.
- J. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.23 INDUSTRIAL ACTIVITIES

All activities and uses permitted within the M-1 District 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 which side effects are deemed injurious to the public health, safety, and welfare by the United States Environmental Protection Agency (E.P.A.), 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 agencies. 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. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.24 LARGE RETAIL ESTABLISHMENT

When such an establishment abuts on the side or rear property line of a district having residences as a principal permitted use a setback distance of not less than fifty (50) feet shall be required. A Buffer Area as so defined in Article 2 shall be provided within the aforementioned setback distances of 50 feet. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance. Upward directed lighting is prohibited. Night lighting shall be provided for all pedestrian walkways. The maximum height of light poles in parking lots shall not exceed 18 feet.

802.25 MACHINE SHOPS.

Where the operation abuts a zoning district where residences are a principal permitted use, or where an existing residential dwelling unit is located, a solid wall or substantial,

attractive fence not less than eight feet in height shall be constructed and maintained in good condition along such boundary line, or a buffer yard of not less than 50 feet in width must be landscaped and maintained in good condition. All materials shall be stored within a completely enclosed building and outdoor storage of any kind is prohibited. All operations excluding pickups or deliveries shall be conducted within the enclosed building. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.26 MEDICAL MARIJUANA DISPENSARY

Such a facility shall require documentation of a state license. The facility shall be located not less than 1,000 feet from a school, day care or child-care facility, a public park and/or residential zoning district. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.27 MEDICAL MARIJUANA GROWERS/ PROCESSORS FACILITY

Such a facility shall require documentation of a state license. A minimum lot size of 1 acre shall be required. The facility shall be located not less than 1,000 feet from a school, day care or childcare facility, a public park and/or residential zoning district. The property on which the facility is located shall be surrounded by a fence not less than 8 feet in height and constructed with industry-standard materials. There shall be no odors, fumes smoke, dust, or any other noxious pollutants discharge from the facility which exceed Federal and Commonwealth regulations. There shall be no storage of any form of marijuana or its byproducts outside the facility. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.28 MEMBERSHIP CLUBS, INCLUDING NONPROFIT SOCIAL AND CIVIC ORGANIZATIONS:

Buildings utilized for such purposes shall not be less than twenty (20) feet from any property line . Where such use abuts any R District, the following requirements shall apply to the side and rear yard property boundaries:

- A. All structures shall be located not less than fifty (50) feet from any property line which abuts any R District. Construction of a solid wall or solid opaque fencing eight (8) feet in height, designed to conceal and screen the facility from adjoining properties.
- B. Within a required rear yard or side yard setback, there shall be a landscaped planting strip not less than four (4) feet in depth, 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 landscaped planting strip shall be maintained in good condition at all times , including the replacement of any shrubs or trees which are damaged, die or otherwise fail to grow.
- C. Outdoor trash dumpsters shall be concealed within an area surrounded by solid opaque fencing not less than six (6) feet in height.

- D. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.29 METHADONE TREATMENT FACILITY

- A. Such a facility shall provide documentation in the form of state licensing and/or a permit to operate such a facility.
- B. Such a facility shall not be established and operated closer than 1,000 feet to an existing residential district, school, public playground, public park, child care facility or church or place of worship.
- C. Any proposed methadone treatment facility shall include with its submission of a zoning permit application, an operational narrative which accurately describes the nature of medical services to be offered and the names of the medical practitioners providing said services. A licensed physician, an MD or a DO, shall be on duty at the facility during the methadone treatment facility's hours of operation
- D. Prior to occupancy, any existing structure proposed for adaptive reuse as a methadone treatment facility shall be brought into compliance with all current building codes and all other applicable Borough, County, State and Federal regulations.
- E. Any methadone treatment facility with direct access and/or frontage along a State Legislative Route shall include with its submission of a zoning permit application, a traffic impact analysis prepared by a professional licensed engineer with expertise in transportation and traffic planning. Such analysis shall address the following:
 - 1. The number of vehicle trips expected to be generated during an average weekday including both a.m. and p.m. peak hours of adjacent street traffic
 - 2. The number and types of vehicles, with an origin or destination at the subject site, the need for which is generated by said use.
 - 3. The routes, roadways, or streets to reach the methadone treatment facility.
 - 4. The impact of the levels-of service at intersections within one half (¹/₂) mile of said methadone treatment facility.
 - 5. Recommended traffic control devices designed to mitigate any documented adverse impact on adjacent roadways.
- F. Required Off-Street Parking for such a facility shall be provided in compliance with Article 10.
- G. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.30 MINERAL EXTRACTION WITH AN ASPHALT, BATCH OR CONCRETE PLANT

- A. The use, activity or any aspect of the operation shall be located not less than 1,500 feet from the nearest inhabited residence, place of worship, or any public recreational activity.
- Furthermore, the setback distance of the use, activity, or any aspect of the operation from surface water bodies, creeks, streams, wetlands, and floodplains shall comply with the State mandated requirements.
- B. Except for approved access drives (which shall be secured by locked gates, which may only be open during business hours), the premises shall be completely screened to protect public safety with an industrial type of gauge fence eight feet in height. Signs shall be conspicuously attached to the fence every 75 feet warning the public of the nature of the operation. A yard area not less than 50 feet in width shall also be maintained with natural vegetative ground cover along all exterior lot lines that are within 300 feet of an area of excavation. This yard shall include an earth berm with a minimum height of six feet and an average of one shade tree for each for each 50 feet of distance along the lot lines. The shade trees shall be planted outside of the required berm and fence. If substantial trees, vegetation, or forest exist within the required yard area, then new plantings in those area is not necessary provided that the existing trees, vegetation, or forest are well-kept, preserved, maintained and adequately serve the purpose for which the yard was to be created.
- C. The lot and operation thereon shall at all times be maintained so as not to constitute a public nuisance, or adversely impact the public health, safety or welfare. The days and hours of operation, including excavation, blasting, and relating trucking, may be limited by the Council taking into consideration the characteristics of the neighborhood.
- D. The site shall contain a minimum of two access drives, each of which shall be not less than 24 feet in width, and all of which shall be improved in accordance with the Ashley Borough Subdivision and Land Development Ordinance and connect to a public street sufficient in size to accommodate the proposed traffic expected to be generated by the use. Access drives shall be located so as to prevent public safety hazards, dust and noise.
- E. All applications shall include a plan that evidences the measures to be taken by the operator to prevent dust, dirt, stone, or other debris from escaping from the facility onto any public property/street, or private property of another.
- F. All applications shall include an estimated life expectancy for the proposed use; a plan for the future productive use of the property once the life of the project has terminated; a proposed cost to reclaim the property and implement the future use; and a financial guarantee for implementation of that use.
- G. All applications shall include the same information, written materials and plans that are to be submitted to the Pennsylvania Department of Environmental Protection, as part of the state permitting process.
- H. An asphalt, batch or concrete plant or processing operations shall constitute an industrial use and shall not be considered an accessory use, but a separate and distinct use that shall

require special exception approval when located on the same lot where the mineral extraction is taking place. Furthermore, if an asphalt, batch or concrete plant is proposed on a property in which mineral extraction is not taking place items A through G above shall still apply.

- I. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.31 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.

802.32 MOTELS AND HOTELS

A motel or hotel shall require a lot area, of not less than two (2) acres and a lot width of not less than two hundred (200') feet and shall contain at least 10 sleeping rooms not less than 324 square feet per sleeping room. The remaining floor area may be used for such uses as a restaurant, retail store, game room, ballroom, and banquet room provided that these uses are

primarily designed to serve the guests of the motel or hotel. All buildings and structures shall be not less than 60 feet from a front yard line, and not less than 35 feet from the side and rear lot lines. All areas not used for access, parking circulation, buildings, and services shall be completely and permanently landscaped and the entire site maintained in good condition. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.33 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.
- G. The business shall not involve any illegal activity.

802.34 OUTDOOR WOOD-FIRED BOILER

An Outdoor Wood-Fired Boiler shall comply with the following standards

- A. The property must have a lot area of not less than five (5) acres.
- B. A safe flue or chimney shall be provided which has a minimum termination height of fifteen (15) feet above the natural ground level upon which the outdoor wood-fired boiler is located and be provided with a spark arresting device designed and

approved for that purpose.

- C. A fan or blower attached to the appliance to increase the efficiency of the Outdoor Wood-Fired Boiler.
- D. An outdoor wood-fired boiler shall be located not less than three hundred (300) feet from any property line and not less than forty (40) feet to any principal structure or building located upon the property.
- E. The outdoor wood-fired boiler shall have an orange hang tag that signifies that it meets the EPA's standards for Phase 1 air emission levels of 0.60 pounds of fine particulates per million BTU heat input and qualifies for the EPS's voluntary program.
- F. All outdoor wood-fired boilers 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 more restrictive, in which case the manufacturer's instructions shall apply.
- G. The owner of the outdoor wood-fired boiler shall produce the manufacturer's instructions for all devices that do not conform to the requirements of this Section.
- H. All outdoor wood-fired boilers 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 May 1; and subject to meeting the requirements of this Section.
- I. No homemade outdoor wood-fired boilers will be allowed.
- J. Only natural clean wood may be burned in outdoor wood-fired boiler. Regardless of the manufacturer's instructions an outdoor wood-fired boiler shall not be used to burn any of the following materials:
 - Any material that does not meet the definition of clean wood.
 - Furniture
 - Garbage
 - Tires
 - Lawn clippings or yard waste
 - Wet or soggy wood
 - Material containing plastic
 - Material containing rubber
 - Waste petroleum products
 - Paints and paint thinners
 - Chemicals
 - Any hazardous waste
 - Coal
 - Glossy colored paper
 - Construction and demolition debris
 - Plywood
 - Particleboard

- Salt water driftwood
- Manure
- Animal carcasses
- Asphalt products

K. All storage of materials to be burnt in the outdoor wood-fired boiler shall be neatly stacked and/or stored under cover and free from insects (termites, ants, etc. .) or any type of disease carrying rodents.

L. 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.

802.35 PLACES OF WORSHIP:

A minimum lot area of one acre shall be required for the use. Religious instruction and educational rooms may be permitted within the principal building as accessory uses. A minimum lot area of three (3) acres shall be required when the use consists of one or more of the following accessory uses: primary or secondary school; day care center; and a single-family dwelling unit. Where the lot adjoins an existing residential dwelling unit, or is located within a residential zoning district, the parking area shall be screened along the side and rear lot lines with shrubbery or evergreen trees not less than four feet in height at the time of planting. The landscaped area shall be kept in good condition and continuously maintained. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.36 PUBLIC UTILITY FACILITIES (ESSENTIAL)

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. The provision of any outdoor lighting shall be designed and installed in Compliance with Section 324 of this Ordinance
- E. The location, design and operation of such facilities shall not adversely affect the character of any adjacent residential properties.

802.37 RECREATIONAL FACILITIES - (OUTDOORS AS A PRINCIPAL USE)

All such facilities, including private or commercial facilities, shall conform to the following

regulations:

- A. No outdoor recreation activity shall be conducted closer than one hundred (100') feet to any property line.
- B. A Buffer area, as defined in Article 2 shall surround the property except for access drives.
- C. Unless superseded by a PennDOT Highway Occupancy Permit, 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.
- E. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.38 RESTAURANTS AND/OR TAVERNS

A Restaurant and/or Tavern, with or without live entertainment, shall have minimum lot size of not less than two (2) acres. Outdoor trash dumpsters shall be concealed within an area surrounded by solid opaque fencing not less than six (6) feet in height. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.39 ROOMING HOUSE

The property 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 in accordance with the requirements set forth in Article 11.

802.40 SATELLITE DISH ANTENNA (NONCOMMERCIAL)

A freestanding noncommercial satellite dish antenna, as so defined in this Ordinance, shall be deemed an accessory use, permitted by right in all zoning districts. Granting approval for the establishment and/or construction of a satellite dish antenna shall not restrict or imply to restrict the use or development of another zoning lot. The height of a noncommercial satellite dish antenna, including any supporting device, measured from ground level to its highest point of elevation, shall not exceed the maximum height restriction of the zoning district in which it is located. The following supplemental provisions shall apply.

- A. Location on Lot
No satellite dish antenna shall be installed on a portable or moveable device.
- B. Number on Lot
Not more than one satellite dish antenna shall be permitted on a zoning lot.
- C. Size Limitations

The dimensions of a satellite dish antenna measured from its outermost edges cannot exceed twelve (12) feet in diameter.

D. Roof-Mounted

A roof-mounted satellite dish antenna having a diameter not greater than three (3) feet and installed in accordance with the manufacturer's specifications shall be exempted from securing zoning approval.

802.41 SELF-STORAGE FACILITY

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. The property shall be enclosed with fencing, 8 feet height, with a locked gate to prevent unauthorized access. The provision of any outdoor lighting shall be designed and installed in compliance With Section 324 of this Ordinance.

802.42 SEXUALLY ORIENTED BUSINESS

No Sexually Oriented Business, 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 zoning district in which residences are permitted as a principal permitted use.

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. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

802.43 SHORT-TERM HOME RENTAL AND/OR SHORT-TERM TRANSIENT RENTAL

A Short-Term Home Rental shall be required to be licensed under the Ashley Borough Short Term Rental Ordinance, Ordinance and operated in compliance with said Ordinance.

802.44 SOLAR ENERGY SYSTEMS, ACCESSORY (ASES)

A. PERMITTED AS AN ACCESSORY STRUCTURE

ASES shall be permitted as a use by right as an accessory structure in all zoning districts.

B. COMPLIANCE WITH INDUSTRY STANDARDS

The ASES layout, design, installation, and ongoing maintenance shall conform to applicable industry standards, such as those of the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM), Institute of Electrical and Electronics Engineers (IEEE), Solar Rating and Certification Corporation (SRCC), Electrical Testing Laboratory (ETL), Florida Solar Energy Center (FSEC) or other similar certifying organizations, and shall comply with the PA Uniform Construction Code, regulations adopted by the Pennsylvania Department of Labor and Industry, and with all other applicable fire and life safety requirements. The manufacturer specifications for the key components of the system shall be submitted as part of the permit application.

C. INSTALLERS

ASES installers must demonstrate they are listed as a certified installer on the PA Department of Environmental Protection's (DEP) approved solar installer list or that they meet the criteria to be a DEP approved installer by meeting or exceeding one of the following requirements:

1. Is certified by the North American Board of Certified Energy Practitioners (NABCEP) for PV installation.
2. Has completed an Interstate Renewable Energy Council (IREC) Institute for Sustainable Power Quality (ISPQ) accredited PV training program or a PV manufacturer's training program and successfully installed a minimum of three PV systems.
3. For residential applications, a registered home improvement contractor with the Attorney General's Office.

D. MAINTAIN IN GOOD WORKING ORDER

Upon completion of installation, the ASES shall be maintained in good working order in accordance with manufacturer's standards of and any other codes under which the ASES was constructed. Failure of the property owner to maintain the ASES in good working order is grounds for appropriate enforcement actions by Ashley Borough in accordance with all applicable ordinances.

E. UNDERGROUND REQUIREMENTS

All on-site utility, transmission lines, and plumbing shall be placed underground to the extent feasible.

F. SIGNAGE

The display of advertising is prohibited except for reasonable identification of the manufacturer of the system.

G. GLARE

1. All ASES shall be placed such that concentrated solar radiation or glare does not project onto nearby structures or roadways.
2. The applicant has the burden of proving that any glare produced does not have a significant adverse impact on neighboring or adjacent uses either through siting or mitigation.

H. SOLAR EASEMENTS

If a solar easement, intended to guarantee unobstructed solar access, is desired by the applicant and/or property owner for an ASES, such matter carried out as a civil agreement between or among all applicable parties. Ashley Borough shall not be a party to any agreement designed to provide a solar easement, nor shall Ashley Borough be responsible for ensuring the maintenance of any solar easement.

I. DECOMMISSIONING

1. Each ASES and all solar related equipment shall be removed within twelve (12) months of the date when the use has been discontinued or abandoned by the system owner and/or operator, or upon termination of the useful life of same.
2. The ASES shall be presumed to be discontinued or abandoned if no electricity is generated by such solar collector for a period of twelve (12) continuous months.
3. The ASES owner shall, at the request of Ashley Borough, provide information concerning the amount of energy generated by the ASES in the last 12 months.

J. ZONING PERMIT REQUIREMENTS

1. A Zoning Permit Application shall document compliance with this Ordinance and shall be accompanied by drawings showing the location of the system on the building or property, including property lines. The applicant shall be required to secure all applicable building permits required under the PA Uniform Construction Code. All Permits shall be kept on the premises where the ASES is constructed.
2. A new Zoning Permit shall be required if an ASES, whether new or pre-existing, is moved or otherwise altered, either intentionally or by natural forces, in a manner which causes the ASES not to be in conformity with this Ordinance.
3. The ASES must be properly maintained and be kept free from all hazards, including but not limited to, faulty wiring, loose fastenings, being in an unsafe condition or

detrimental to public health, safety, or general welfare. In the event of a violation of any of the foregoing provisions, the Zoning Officer shall give written notice specifying the violation to the owner of the ASES to conform or remove the ASES.

4. Prior to the issuance of a Zoning Permit, applicants must acknowledge in writing that the issuing of said permit for a solar energy system shall not and does not create in the property owner, its, his, her or their successors and assigns in title or, create in the property itself:
 - (a) the right to remain free of shadows and/or obstructions to solar energy caused by development of adjoining or other property or the growth of any trees or vegetation on such property; or
 - (b) the right to prohibit the development on or growth of any trees or vegetation on such property.
5. Routine maintenance or like kind replacements do not require a permit.

K. ROOF MOUNTED AND WALL MOUNTED ACCESSORY SOLAR ENERGY SYSTEMS

1. Location

A roof mounted or wall mounted ASES may be located on a principal or accessory building.

2. Setbacks

- (a) Wall mounted ASES shall comply with the setbacks for principal and accessory structures of the underlying zoning districts.
- (b) Solar panels shall not extend beyond any portion of the roof edge.

3. Height

ASES mounted on roofs or walls of any building shall be subject to the maximum height regulations specified for principal and accessory buildings within the underlying zoning district.

4. Code Compliance

For roof and wall mounted systems, the applicant shall provide evidence that the plans comply with the PA Uniform Construction Code and that the roof or wall is capable of holding the load imposed on the structure. Applications for roof mounted ASES shall be accompanied by engineer stamped plans that demonstrate the structural sufficiency of the roof to hold the weight of the ASES.

L. GROUND MOUNTED ACCESSORY SOLAR ENERGY SYSTEMS

1. Setbacks

- (a) The minimum yard setbacks from side and rear property lines shall comply with the required setbacks for a principal structure setback of the underlying zoning district.
- (b) Ground mounted ASES are prohibited in front yards, between the principal building and the public street, excluding front yard locations which are located not less than 200 feet from the front property line.

2. Height

Freestanding ground mounted ASES shall not exceed 20 feet in height above the ground elevation surrounding the systems.

3. Coverage

- (a) The surface area of the arrays of a ground mounted ASES, regardless of the mounted angle of any solar panels, shall be considered impervious and calculated in the lot coverage of the lot on which the system is located. ASE shall not exceed the maximum lot coverage requirements of the underlying zoning district.
- (b) If applicable, the applicant shall submit a Stormwater Management Plan that demonstrates compliance with the Ashley Borough stormwater management regulations.

4. Screening

Ground mounted ASES when located less than 50 feet from a property line shall be screened from any adjacent property that is residentially zoned or used for residential purposes. The screen shall consist of plant materials which provide a visual screen using two staggered rows of evergreen trees planted along the nearest side or rear yard boundary of ASES with the spacing distance between trees not less than eight feet or greater than ten (10) feet. Said trees shall be not less than six (6) feet in height at the time of planting. In lieu of a planting screen, a decorative fence meeting requirements of the zoning ordinance may be used if along such a boundary.

5. Safety/Warning Signage

Appropriate safety/warning signage concerning voltage shall be placed at ground mounted electrical devices, equipment, and structures. All electrical control devices associated with the ASES shall be locked to prevent unauthorized access or entry.

6. Location Restrictions

Ground-mounted ASES shall not be placed within any legal easement or right-of-way

location or be placed within any stormwater conveyance system or in any other manner that would alter or impede stormwater runoff from collecting in a constructed stormwater conveyance system.

802.45 SOLAR ENERGY SYSTEMS, PRINCIPAL (PSES)

REGULATIONS FOR PRINCIPAL SOLAR ENERGY SYSTEMS (PSES)

A. A PSES shall be permitted as a Conditional Use in the B-3, I-1, I-2 and C-1 Districts.

B. COMPLIANCE WITH INDUSTRY STANDARDS

The PSES layout, design and installation shall conform to applicable industry standards, such as those of the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM), , Institute of Electrical and Electronics Engineers (IEEE), Solar Rating and Certification Corporation (SRCC), Electrical Testing Laboratory (ETL), Florida Solar Energy Center (FSEC) or other similar certifying organizations, and shall comply with the PA Uniform Construction Code, regulations adopted by the Pennsylvania Department of Labor and Industry, and with all other applicable fire and life safety requirements. The manufacturer specifications for the key components of the system shall be submitted as part of the permit application.

C. INSTALLERS

PSES installers must demonstrate they are listed as a certified installer on the PA Department of Environmental Protection's (DEP) approved solar installer list or that they meet the criteria to be a DEP approved installer by meeting or exceeding one of the following requirements:

1. Is certified by the North American Board of Certified Energy Practitioners (NABCEP) for solar thermal installation.
2. Has completed an Interstate Renewable Energy Council (IREC) Institute for Sustainable Power Quality (ISPQ) accredited solar thermal training program or a solar collector's manufacturer's training program and successfully installed a minimum of three solar thermal systems.

D. MAINTAIN IN GOOD WORKING ORDER

Upon completion of installation, the PSES shall be maintained in good working order in accordance with manufacturer's standards and any other codes under which the PSES was constructed. Failure of the owner to maintain the PSES in good working order is grounds for appropriate enforcement actions by Ashley Borough in accordance with applicable ordinances.

E. UNDERGROUND REQUIREMENTS

All on-site transmission and plumbing lines shall be placed underground to the extent

feasible.

F. UTILITY NOTIFICATION

The owner of a PSES shall provide Ashley Borough with written confirmation that the public utility company to which the PSES will be connected has been informed of the customer's intent to install a grid connected system and approved of such connection.

G. SIGNAGE

No portion of the PSES shall contain or be used to display advertising. The manufacturer's name and equipment information or indication of ownership shall be allowed on any equipment of the PSES provided they comply with the prevailing sign regulations.

H. GLARE

1. All PSES shall be placed such that concentrated solar radiation or glare does not project onto nearby structures or roadways.
2. The applicant has the burden of proving that any glare produced does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation.

I. NOISE STUDY

A noise study shall be performed and included in the zoning/building permit application. The noise study shall be performed by an independent noise study expert and paid for by the applicant. Noise from a PSES shall not exceed 50dBA, as measured at the property line.

J. TREE AND LANDSCAPING REMOVAL

No trees or other landscaping otherwise required by the Borough ordinances or attached as a condition of approval of any plan, application, or permit may be removed for the installation or operation of a PSES.

H. CONTACT INFORMATION

The PSES owner and/or operator shall provide current contact information to the Borough which includes at minimum a phone number and identifies a responsible person for the Borough or public to contact regarding emergencies, inquiries and complaints throughout the life of the project. The PSES owner and/or operator shall give the Council a written plan outlining procedures on how complaints will be addressed. For the life of the project, the current contact information shall be conspicuously posted upon locations throughout the property

J. SOLAR EASEMENTS

1. Where a subdivision or land development proposes a PSES, solar easements may be provided. Said easements shall be in writing and shall be subject to the same conveyance and instrument recording requirements as other easements. Any such easements shall be appurtenant; shall run with the land benefited and burdened; and shall be defined and limited by conditions stated in the instrument of conveyance. Instruments creating a solar easement shall include but not be limited to:
 - (a) A description of the dimensions of the easement including vertical and horizontal angles measured in the degrees or the hours of the day, on specified dates, during which direct sunlight to a specified surface or structural design feature may not be obstructed.
 - (b) Restrictions on the placement of vegetation, structures, and other objects which may impair or obstruct the passage of sunlight through the easement.
 - (c) Enumerate terms and conditions, if any, under which the easement may be revised or terminated.
 - (d) Explain the compensation for the owner of the real property subject to the solar easement for maintaining the easement and for the owner of the real property benefiting from the solar easement in the event of interference with the easement.
2. If required, a PSES owner and/or operator must obtain any solar easements necessary to guarantee unobstructed solar access by separate civil agreement(s) with adjacent property owner(s).

K. DECOMMISSIONING

1. The PSES owner is required to notify [municipality] immediately upon cessation or abandonment of the operation. The PSES shall be presumed to be discontinued or abandoned if no electricity is generated by such system for a period of twelve (12) continuous months.
2. The PSES owner shall then have twelve (12) months in which to dismantle and remove the PSES including all solar related equipment or appurtenances related thereto, including but not limited to buildings, cabling, electrical components, roads, foundations, and other associated facilities from the property. The owner shall also restore the land to its original condition, including forestry plantings of the same type/variety and density as the original. If the owner fails to dismantle and/or remove the PSES and restore the land within the established time frames, Ashley Borough may complete the decommissioning and land restoration at the owner's expense.

3. At the time of issuance of the permit for the construction of the PSES, the owner shall provide financial security in the form and amount acceptable to Ashley Borough to secure the expense of dismantling and removing said PSES and restoration of the land to its original condition, including forestry plantings of the same type/variety and density as the original.

L. PERMIT REQUIREMENTS

1. A Zoning Permit Application shall document compliance with this Ordinance and shall be accompanied by drawings showing the location of the PSES on the property, including property lines. Permits shall be kept on the premises where the PSES is constructed.
2. PSES shall comply with Ashley Borough zoning and subdivision and land development requirements. The installation of PSES shall be in compliance with all applicable permit requirements, codes, and regulations.
3. The PSES owner and/or operator shall repair, maintain, and replace the PSES and related solar equipment during the term of the permit in a manner consistent with industry standards as needed to keep the PSES in good repair and operating condition.
4. Prior to the issuance of a zoning permit, PSES applicants must acknowledge in writing that the issuing of said permit shall not and does not create in the property owner, its, his, her or their successors and assigns in title or, create in the property itself : (a) the right to remain free of shadows and/or obstructions to solar energy caused by development of adjoining or other property or the growth of any trees or vegetation on such property; or (b) the right to prohibit the development on or growth of any trees or vegetation on such property.
5. Routine maintenance or like-kind replacements do not require a permit.

M. GROUND MOUNTED PRINCIPAL SOLAR SYSTEMS

1. Lot Size

A PSES shall require a lot size of not less than ten (10) acres.

2. Setbacks

A PSES shall be setback distance of not less than 100 feet to any property line

3. Height

Ground mounted PSES shall not exceed 20 feet in height.

4. Lot Coverage

The surface area of the arrays of a ground mounted PSES, regardless of the mounted angle of any solar panels, shall be considered impervious and calculated in the lot coverage of the lot on which the system is located. The PSES shall not exceed the maximum lot coverage requirements of the underlying zoning district.

5. The applicant shall submit a Stormwater Management Plan that demonstrates compliance with the Ashley Borough stormwater management regulations.

6. PSES owners are encouraged to use low maintenance and low growing vegetative surfaces under the system as a best management practice for storm water management.

802.46 SCHOOL

A school, whether public or private, primary, or secondary, shall have a minimum lot size of three (3) acres, and any outdoor recreational or play area shall be located not less than 150 feet from any residential lot line, or existing residential dwelling unit.

802.47 SUBSTANCE ABUSE TREATMENT FACILITY

1. Any type of Substance Abuse Treatment Facility as defined in Article 2 of this Ordinance shall require to be licensed by the Pennsylvania Department of Drug and Alcohol Programs.
2. Maximum Number of Beds: The maximum number of beds within any type of substance abuse treatment facility which allows overnight stay of patients shall be based upon the applicable regulations of the Pennsylvania Department Drug and Alcohol Program, but in no case shall such a facility be designed and/or used to accommodate more than 15 overnight patients.
3. Any type of substance abuse treatment facility shall provide a narrative that fully describes all services to be provided within the facility.
4. Any type of substance abuse treatment facility shall provide a floor plan of the facility showing the use of all areas within the facility with the dimensions and square feet of each room therein and its intended purpose and use.
5. Any type of substance abuse treatment facility shall provide its intended hours of operation.
6. Any type of substance abuse treatment facility shall provide a copy of on-site management plan, or its equivalent, as required by the Pennsylvania Department of Drug and Alcohol Programs, which includes emergency operations and persons responsible for implementation of stated measures and/or operations.
7. Any type of substance abuse treatment facility shall provide the maximum number of

employees employed by the facility including those indirectly employed under contracted services.

8. Insurance Coverage - No person shall operate a Non-Hospital Drug Free Residential Substance Abuse Treatment Facility unless they obtain and maintain the following liability insurance coverage:
 - a. Comprehensive general liability insurance coverage insuring the public against bodily injury or property damage arising out of or resulting from or incidental to the operation or use of the facility.
 - b. At a minimum , the policies shall provide coverage of not less than one million dollars (\$1,000,000.00) per occurrence and two million five hundred thousand dollars (\$2,500,000.00) per aggregate.
 - c. Coverage shall remain in full force during the entire time that the facility is permitted. Failure to provide such proof shall result in revocation of zoning approval.
9. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.
10. Off-street parking shall be provided at a ratio of one (1) vehicle parking space per each employee, including those via contracted services, plus one vehicle parking space for every two (2) beds. Off-street parking shall be subject to all other applicable provisions within the Ashley Borough Zoning Ordinance governing off-street parking.
11. A substance abuse treatment facility shall not be located less than one thousand (1,000) feet from any other substance abuse treatment facility, to an existing residential zoning district, to a school, to a public playground, to a public park, to a childcare facility or to church or place of worship.
12. If a substance abuse treatment facility is located within two hundred fifty (250) feet of a residential zoning district, all outdoor activity and/or seating areas shall be screened from public view and from the view of adjacent properties.

802.48 TOWNHOUSES

Townhouses shall be subject to the following provisions and all applicable provisions of the Ashley Borough Subdivision and Land Development Ordinance:

- A. Townhouse buildings shall contain no more than six single-family dwelling units. The maximum density for a townhouse development shall not exceed 12 dwelling units per gross acre.
- B. Minimum Lot Width shall be two hundred (200) feet.
- C. Maximum percentage of building coverage on a lot per dwelling unit, exclusive of common or public open areas, shall be forty (40%) percent.

- D. Minimum lot depth per dwelling unit shall be not less than one hundred (100) feet.
- E. Minimum lot area per dwelling unit shall be not less than 2,000 square feet.
- F. Minimum front yard setback shall be not less than thirty (30) feet.
- G. No side yard setbacks shall be required for attached interior townhouse units. A minimum side yard setback of not less than fifteen (15) feet shall be required only at the ends of the rows of Townhouses.
- H. Minimum rear yard setback shall be not less than thirty (30) feet.
- I. Minimum width of each dwelling unit shall be not less than twenty (20) feet.
- J. Maximum building height shall be 2 ½ stories or thirty-five (35) feet.
- K. Minimum distance between principal structures shall be not less than thirty (30) feet.
- L. Minimum front yard setback for off-street parking areas shall be not less than ten (10) feet.
- M. Minimum rear yard setbacks for off-street parking areas shall be not less than fifteen (15) feet.
- N. Two (2) off-street parking spaces shall be provided for each dwelling unit.
- O. No dwelling unit shall have its own driveway entering onto a public street.
- P. 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 not less than five (5) feet side and rear yard setbacks. Attached accessory structures shall have the same setbacks as required for principal structures.

802.49 TRUCKING FACILITIES, INCLUDING REPAIR AND STORAGE

The minimum lot size shall not be less than four (4) acres. Access drives shall be sufficient in width to accommodate the use, but in no event exceed 25 feet in width. Access drives must connect to a public street. Where the operation abuts a zoning district where residences are a principal permitted use, or where an existing residential dwelling unit is located, a solid wall or substantial, attractive fence not less than eight feet in height shall be constructed and maintained in good condition along such boundary line, and a buffer yard of not less than 100 feet in width must be landscaped and maintained in good condition.

No parking, loading, idling, storage of any kind, or trucking use shall be allowed within the buffer yard. No junked vehicles shall be stored upon the property. All truck idling in excess of fifteen (15) minutes shall be prohibited. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

All materials shall be stored within a completely enclosed building and outdoor storage of any kind is prohibited. Access drives shall be sufficient in width to accommodate the use, but in no event shall any access drive exceed 25 feet in width. No activities including off-street parking shall be allowed within 150 feet of a property line abutting a district having residences as a principal permitted use. A buffer yard of not less than 100 feet in must be landscaped and maintained in good condition. The provision of any outdoor lighting shall be designed and installed in compliance with Section 324 of this Ordinance.

A. DESIGN AND INSTALLATION1. Design Safety Certification

The design of a Small WECS shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturer from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.

2. All components of a small WECS shall be designed and constructed to be in compliance with pertinent provisions of the Pennsylvania Uniform Construction Code.

3. Controls and Brakes

A small WECS shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.

4. Electrical Components

a. All electrical components of a small WECS shall conform to relevant and applicable local, state, and national codes, and relevant and applicable international standards.

b. The maximum turbine power output shall be limited to 10 KW.

c. All on-site electrical wiring associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers, and lines.

d. A Small WECS shall not cause disruption or loss of radio, telephone, television, or similar signals, and shall be required to mitigate any harm caused by the operation of the system.

- e. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, or generator where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
- f. Anchor points for any guy wires for a small WECS shall be located within the property that the system is located on and not on or across any above ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

B. VISUAL APPEARANCE

1. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
2. A small WECS's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
3. A small WECS shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible, the system:
 - shall not project above the top of ridgelines.
 - shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.

C. LOT SIZE, SETBACK AND HEIGHT REQUIREMENTS:

1. A small free standing WECS shall be located on a lot with a minimum size of not less than two (2) acres.
2. The maximum turbine height for a small WECS that is installed as a free-standing structure shall be as follows:
 - 65 feet on parcels between two and five acres.
 - 80 feet on parcels of five or more acre.

A roof-mounted system shall not extend more than ten (10) feet above the structure or building on which it is mounted and shall not be subject to a minimum lot size otherwise applicable to a free-standing structure.

3. Setback requirements. A small WECS that is installed as a free-standing structure shall not be located closer to a property line than two and a half (2.5) times the turbine height as measure from the center of the base and/or concrete pad to which it is attached.
4. Only one small WECS per legal lot shall be allowed.

D. CLIMB PREVENTION/LOCKS

1. Towers shall be constructed to provide one of the following means of access control or other appropriate method of access:
 - Tower-climbing apparatus located no closer than 15 feet from the ground.
 - A locked anti-climb device installed on the tower.
2. A locked, protective fence at least six feet in height shall enclose the tower and electrical equipment to prevent entry by non-authorized persons.

E. NUISANCE ISSUES:

1. Audible sound from a Small WECS shall not exceed forty-five (45) dBA, as measured at the perimeter of any property boundary line upon the property which it is located. Methods for measuring and reporting acoustic emissions from the operations of a Small WECS shall be equal to or exceed the minimum standards for precision described in AWEA Standard 2.1 - 1989 titled *Procedures for the Measurement and Reporting of the Acoustic Emissions from Wind Turbine Generation Systems Volume I: First Tier*.
2. Reasonable efforts shall be made to preclude shadow flicker to any building off-site located upon a property not owned by the owner of the Small WECS.

F. ABANDONMENT

A Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property by and at the expense of the property owner.

802.52 WIND ENERGY FACILITY: PRINCIPAL (“PWEF”)

A. COMPLIANCE STANDARDS.

The design of the PWEF shall conform to applicable industry standards, including those of the American National Standards Institute (ANSI), Underwriters Laboratories (UL) Det Norske Veritas, Germanischer Lloyd Wind Energies, the American Society of Testing and Materials (ASTM), or other pertinent certifying organizations and comply with all applicable building and electrical codes of the Borough. The applicant shall submit certificate of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske

Veritas, Germanishcer Lloyd Wind Energies, or other similar certifying organizations. The manufacturer specifications shall be submitted with the zoning permit application.

1. To the extent applicable, the PWEF shall comply with the PA Uniform Construction Code.
2. All electrical components of the PWEF shall conform to relevant and applicable local, state, and national codes, and relevant and applicable international standards.

B. NOISE.

1. The audible sound from a wind turbine may not exceed 45 A weighted decibels and shall also not exceed 55 C-weighted decibels, as each is measured at the lot line of a property of a non-participating landowner within one mile or less from the nearest property line on which a wind turbine is located unless a written waiver is provided by the landowner. This requirement shall be a maximum noise level using a Lmax standard, and not based upon an average. Audible tones from electrical or mechanical components are prohibited. Measurements shall comply with ANSI/ASA S12.9 Part 3, Short Term Measurements with an Observer Present; S 12.100, Methods to Define and Measure the Residual Sound in Protected Natural and Quiet Residential Areas: and Computer Modeling shall comply with ANSI.ASA S12.6 (ISO9613-2) Attenuation of sound during propagation outdoors- Part 2 General method of Calculation.
2. The above maximum noise limits shall be reduced to 42 A-weighted and 52 C-weighted decibels between the hours of 10 p.m. and 7 a.m., local time. However, the noise limits shall not be reduced below 45 A-weighted decibels where the applicant provides evidence that the current continuous background sound level without the wind turbines would be higher than 42 A-weighted decibels. The continuous background sound level shall be determined per the methods of ANSI/ASA S12.9 Part3 and ANSI/ASA S12.100.
3. All required noise studies and testing shall be completed by a qualified independent professional having specialized expertise in noise analysis. The qualifications of the person conducting the analysis shall be included in the zoning permit application. ANSI standards shall be used for calibration of the noise meter.
4. With the zoning permit application, the applicant shall provide a written noise study that projects the maximum sound levels at the property line of the nearest five non-participating landowners, and that recommends measures that may be used to minimize noise impacts. The noise study shall document compliance with the A- and C-weighted decibels maximum level requirements of this subsection.
5. The applicant shall provide an independent written test of actual noise

produced by the project upon completion, and every two subsequent years after the project is completed, to document compliance with the noise standards in this subsection. If the project will involve more than 10 total wind turbines, then the noise study shall also be completed after each 10 wind turbines are put into service. If the testing finds that the noise levels in this section are being violated, then the owner of the wind turbines shall immediately take the wind turbines out of service until such modifications, replacements, or repairs are made to the wind turbines as are required or necessary to make them comply with the noise levels of this subsection.

6. In addition to the noise studies provided above, at any time when the zoning officer has reasonable cause to believe that the noise limits of this subsection is being violated the zoning officer may request that an independent third-party professional conduct tests to ascertain compliance with the noise limits. The facility operator shall assist with the tests.
7. If the Borough institutes an enforcement action because of a violation of the noise limits, and if the facility owner is found liable for the violation in a civil enforcement proceeding, then in addition to any other rights or remedies available to the Borough, the judgement shall require the facility owner to pay the Borough's costs and expenses to prove non-compliance with the noise requirements, including the tests to determine the noise levels. Such costs shall be paid within 30 days by the facility owner after the final judgement. In the event the facility owner does not pay such costs within 30 days, the Borough may pursue appropriate remedies at law or equity to recover such costs and expenses from the facility owner, including placing a municipal lien against the property upon which the project is located. Therefore, in any enforcement action, the landowner shall also be notified. By authorizing the facility owner to make application, the landowner consents to the ability of the Borough to place a lien against the land in the event of a violation.

C. VIBRATIONS.

Vibrations. A wind turbine shall not cause vibrations through the ground which are perceptible beyond the property line of the parcel on which it is located. Wind turbines may not cause airborne vibrations which are perceptible to people or structures.

D. ACCESSORY BUILDINGS, STRUCTURES, AND MECHANICAL EQUIPMENT

1. When an accessory building or structure is necessary, it shall comply with the principal building requirements of the zoning district in which it is located.
2. Accessory buildings, structures and equipment associated with PWEF shall be screened from any adjacent property that is residentially zoned or used for residential purposes under the buffering and screening requirements of this Ordinance. The buffer shall consist of plant materials which provide a visual screen. In lieu of a planting screen, a decorative fence or wall meeting the requirements of this ordinance may be used.

3. The design of accessory buildings and related structures shall, to the extent reasonable, use materials, colors, textures, screening, and landscaping that will blend into the natural setting and existing environment.

E. UNDERGROUND REQUIREMENTS.

On-site transmission and power lines between wind turbines shall be placed underground.

F. UTILITY NOTIFICATIONS.

The owner of a PWEF shall provide the Borough with written confirmation that the public utility to which the PWEF will be connected has been informed of the intent to install a grid connected system and approved of such connection.

G. SIGNAGE.

PWEF shall not display advertising, except for reasonable identification of the turbine manufacturer, facility owner operator.

H. LIGHTING.

PWEF shall not be artificially lit, except to the extent required by the Federal Aviation Administration, the Pennsylvania Department of Transportation Bureau of Aviation (BOA) or other applicable authority that regulates air safety.

I. COLOR.

1. PWEF shall be painted a non-reflective, flat color such as white, off grey, or grey unless required to be colored differently by FAA or BOA regulations.
2. The design of buildings and related structures shall, to the extent reasonable, use materials, colors, textures, screening, and landscaping that will blend the PWEF into the natural setting and existing environment.

J. BRAKING SYSTEM.

All PWEF shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation may not be considered a braking system for overspeed protection.

K. SHADOW FLICKER.

1. The applicant shall provide an analysis with a map of the shadow flicker impacts of the project upon any non-participating landowner's property that will be impacted by this effect. The analysis shall be conducted by a qualified professional using generally accepted modeling methods and shall estimate the number of hours per year that a non-

participating landowner's property will be impacted by shadow flickering. No lot line of a non-participating landowner's property shall be affected by shadow flicker for a total of more than 20 hours per year, and no more than 30 minutes per day. Such analysis shall include recommendations for conditions to minimize the number of affected non-participating landowner's properties, the hours affected and the severity of the impacts from shadow flicker. This provision shall not apply to an affected property if a written and signed waiver is provided by the owner of said property.

2. A PWEF shall be designed in such a manner as to not cause shadow flicker on a roadway.

L. LOCATION.

No part of any PWEF shall extend over parking areas, access drives, driveways, or sidewalks. No blade or any component part of a PWEF shall extend beyond the boundaries of the zoning district in which it is located. Wind turbines shall be separated from each other by a minimum distance of five times the diameter of the rotors.

M. INSURANCE.

The PWEF owner or operator shall maintain a current general liability policy covering:

1. \$1,000,000.00 of personal or bodily injury to or death of any person.
2. \$3,000,000.00 for personal or bodily injury to or death of any number of persons arising from any one occurrence.
3. \$1,000,000.00 for any instance of property damage.
4. An umbrella liability insurance coverage shall also be maintained with coverage to be not less than \$3,000,000.00 for each occurrence and \$3,000,000.00 in the aggregate. Certificates of insurance for the above required coverage shall be provided to the municipality annually.

N. ICE THROW:

The potential ice throws or ice shedding for a PWEF shall not cross the property line on which a PWEF is located nor impinge on any right-of-way or overhead utility line.

O. Electronic Interference:

The facility owner and operator shall ensure that the design and operation of any PWEF avoids any disruption or loss of radio, telephone, television, cell, Internet, VOR signalization for aircraft, or similar signals, and shall mitigate any harm caused by the wind energy facility.

P. LOT SIZE:

For a tract of land to be eligible for a PWEF, it shall have a minimum lot size of three acres for each wind turbine.

Q. SETBACK DISTANCES.

1. Wind turbines shall be set back from the nearest occupied building or non-occupied building on the participating landowner's property a distance not less than the setback requirements for the zoning district in which it is located for a principal building or two times the turbine height, whichever is greater. The setback distances shall be measured horizontally from the center of the wind turbine base to the nearest point on the foundation of the occupied building or non-occupied building.
2. Wind turbines shall be set back from the nearest occupied building or non-occupied building located on a non-participating Landowner's property not less than five times the turbine height, or 1,500 feet, whichever is greater as measured horizontally from the center of the wind turbine base to the nearest point on the foundation of the occupied or non-occupied building.
3. All wind turbines shall be set back from the nearest property line not less than the setback requirements for a principal building in the zoning district in which it is located or two times the turbine height, whichever is greater. The setback distance shall be measured to the center of the wind turbine base.
4. All wind turbines shall be set back from the nearest public road a distance not less than the setback requirements for a principal building in the zoning district in which it is located or two times the turbine height, whichever is greater, as measured from the right-of-way line of the nearest public road to the center of the wind turbine base.
5. Each wind turbine shall be set back from above-ground power lines, public telephone lines and television cable lines a distance no less than two times its total height. The setback distance shall be measured from the center of the wind turbine base to the nearest point on such lines.
6. Wind turbines shall be set back at least 1,500 feet from important bird areas as identified by Pennsylvania Audubon and at least 500 feet from identified wetlands.
7. The base of any wind turbine shall be setback 500 feet from the centerline of a perennial waterway and 2,000 feet from the average water level of a public water supply reservoir.

R. HEIGHT.

The maximum wind turbine height may not exceed 450 feet and shall comply with all regulations imposed by the FAA.

S. VISUAL IMPACT AND ANALYSIS.

The applicant shall provide a visual analysis of the project. The analysis shall include a three-dimensional computer-generated surface model that accurately depicts the wind turbines in proper scale and location in relationship to the surrounding terrain from not less than 10 different locations within the Borough. The 10 locations shall include any combination of public roads and public and/or private properties that may experience the greatest visual impacts. The applicant shall also be required to conduct a subsequent balloon test at the 10 selected locations to confirm the visual impact of the three-dimensional computer-generated surface model. Public notice as defined under the PA MPC shall be required regarding the time and dates of balloon test.

T. PROPERTY VALUES:

The applicant shall submit an analysis by a qualified appraiser of the actual impacts upon residential property values of a similar set of wind turbines in a mostly rural community within the United States. Such analysis shall compare changes in property values of impacted dwellings to changes in property values of non-impacted dwellings over the same time-period. Properties within a one-mile radius of a wind farm shall be considered, as well as properties outside that radius. The study shall be completed by an appraiser who has an active MAI, SRA or SRPA certification from the appraisal institute. The appraiser must also have a Pennsylvania appraiser license.

U. WARNINGS.

1. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
2. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of 10 feet from the ground.

V. SAFETY AND SECURITY:

1. All access doors to wind turbines, including electrical equipment, outbuildings and all appurtenances thereto shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.
2. The minimum distance between the ground and any part of the wind rotor blade shall be 30 feet.
3. To limit climbing access, a six-foot high fence with a locking gate shall be placed around the PWEF.
4. Wind turbines' climbing apparatus shall be limited to no lower than 15 feet from the ground or the wind turbines' climbing apparatus shall be fully contained and locked within the tower structure.

W. USE OF PUBLIC STREETS.

1. The Applicant shall identify all public streets to be used within the Borough to transport equipment and parts for construction, operation, or maintenance of the PWEF.
2. The Borough Engineer or a qualified third-party engineer selected by the Borough and paid for by the applicant, shall document street conditions prior to construction. The documentation shall include photographs and video recordings of all approved travel routes to substantiate the report. The applicant shall ensure a Borough official designated by the Borough Council is present when photographs and video tapes are taken. Copies of the inspection report, photographs, and video tapes shall be submitted to the Borough. The engineer shall document road conditions again 30 days after construction is complete or as weather permits. The applicant is responsible for all repairs and remediation of any damaged streets resulting from the installation or subsequent maintenance of a wind energy facility. Such repairs and remediation shall be completed within 30 days from the time of damage unless a greater amount of time is approved by Borough Council.
3. Any street damage caused by the applicant, or its contractors shall be promptly repaired at the applicant's expense.
4. A bond shall be posted by the applicant to compensate the Borough for any damage to Borough streets in compliance with state regulations. An improvement and maintenance agreement shall also be entered into between the operator and the Borough in a form acceptable to the Borough solicitor to ensure that if any streets are damaged the operator shall be responsible for their replacement or repair.
5. The applicant shall demonstrate that it has appropriate financial security to ensure the prompt repair or replacement of damaged streets.
6. Every effort should be made to use existing logging roads. New deforestation and forest fragmentation must be kept to a minimum. Private entrance roads to PWEF shall be maintained in a mud-free condition.

X. LOCAL EMERGENCY SERVICE:

1. The applicant shall provide a copy of the project summary and site plan to local emergency services, including Borough designated emergency service providers.
2. The facility owner and operator shall abide by all applicable local, state, and federal fire code and emergency guidelines.
3. Upon request, the applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the PWEF.
4. The facility owner and operator shall maintain a phone number and identify a responsible person for emergency contact.

Y. SALDO:

All PWEF shall constitute a subdivision or land development.

Z. DECOMMISSIONING:

1. The facility owner and operator shall complete, at their own expense decommissioning of the PWEF or individual wind turbines, and all related improvements, within 12 twelve months after the end of the useful life of the facility or individual wind turbines, or when the use has been discontinued or abandoned by the facility owner and operator. The PWEF or individual wind turbines will be presumed to be at the end of its useful life, discontinued or abandoned if no electricity is generated for a continuous period of 12 months.
2. Decommissioning shall include removal of wind turbines, buildings, cabling, electrical components, streets, foundations to a depth of 36 inches, transmission lines and any other associated facilities.
3. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing and receives written approval from the Borough that the access roads, or other land surface areas not be restored.
4. An independent and certified professional engineer shall be retained to estimate the total cost of decommissioning (“Decommissioning Costs”) without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment (“Net Decommissioning Costs”). The estimates shall be submitted to the municipality after the first year of operation and every fifth year thereafter.
5. The facility owner or operator shall post and maintain decommissioning funds, representing a financial guarantee in an amount equal to net decommissioning costs, provided that at no point shall decommissioning funds be less than 110% of decommissioning costs. The decommissioning funds shall be posted and maintained with a bonding company or Federal or Commonwealth of Pennsylvania chartered lending institution chosen by the facility owner or operator and participating landowner posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within the Commonwealth of Pennsylvania and is approved by the Borough.
6. Decommissioning funds may be in the form of a performance bond, surety bond, irrevocable letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the Borough.
7. If the facility owner or operator fails to complete decommissioning within the six-month period, then the landowner shall have six months to complete decommissioning.
8. If neither the facility owner or operator, nor the landowner complete decommissioning within the periods prescribed above, then the Borough shall have the authority to take such measures as necessary to secure and utilize decommissioning funds to complete

decommissioning activities. The entry onto and submission of evidence of a participating landowner agreement to the Borough shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Borough may take such action as necessary to implement the decommissioning plan.

9. The escrow agent shall release the decommissioning funds when the facility owner or operator has demonstrated, and the Borough concurs that decommissioning has been satisfactorily completed, or upon written approval of the Borough.

802.53 WIRELESS COMMUNICATION FACILITIES (WCF)

General Requirements for All Wireless Communications Facilities.

STANDARD OF CARE

- (1) All *WCFs* shall meet or exceed all applicable standards and provisions of the FAA, the *FCC*, and any other agency of the state or federal government with the authority to regulate *Wireless Communications Facilities*, the latest National Electrical Safety Code (NESC), American National Standards Institute (ANSI) Code, and the structural standards of the American Association of State Highway and Transportation Officials or any other industry standard applicable to the structure. In case of conflict, the most stringent requirements shall prevail. All necessary certifications shall be obtained by the *WCF Applicant* and provided to the Borough.
- (2) If such standards or regulations are changed, the owner of the *WCF* shall bring such *WCF* into compliance with the revised standards within six (6) months of the effective date of such standards or regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring such facilities into compliance shall constitute grounds for the removal of the *WCF* at the owner's expense.
- (3) The *WCF Applicant* shall submit proof of compliance with all applicable federal and state standards, including but not limited to those established by the Federal Communications Commission, as part of any complete *WCF* application.

F. ENGINEER SIGNATURE. All plans and drawings included in an application for a *WCF* shall contain a seal and signature of a professional engineer, licensed in the Commonwealth of Pennsylvania and certifying compliance with all local, state, and federal laws and regulations applicable to the proposed *WCF*.

G. ELIGIBLE FACILITIES REQUESTS.

- (1) *WCF Applicants* proposing a Modification to an existing *WCF* shall be required only to obtain zoning approval permits from the Borough. In order to be considered for such permits, the *WCF Applicant* must submit permit applications to the Borough in accordance with the requirements of

the Borough's Zoning Ordinance. Such permit applications shall clearly state that the proposed Modification constitutes an Eligible Facilities Request pursuant to the requirements of 47 CFR §1.6100. The permit applications shall detail all dimensional changes being made to the WCF and Wireless Support Structure.

(2) Timing of Approval.

(a) Within thirty (30) calendar days of receipt of an application for the Modification of an existing WCF, the Borough Zoning Officer shall notify the WCF Applicant in writing of any information that may be required to complete such application.

(b) Within sixty (60) days of receipt of a complete and compliant application for the Modification of an existing WCF, the Borough Zoning Officer shall issue the required zoning permits authorizing construction of the WCF.

H. WIND AND ICE. All WCFs shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/TIA-222, as amended), or to the industry standard applicable to the structure.

I. NON-CONFORMING WIRELESS SUPPORT STRUCTURES. WCFs shall be permitted to Collocate upon existing non-conforming Wireless Support Structures. Collocation of WCFs upon existing Wireless Support Structures is encouraged even if the Wireless Support Structure is non-conforming as to use within a zoning district.

J. INSPECTIONS; REPORTS. Inspection reports shall be submitted to the Borough upon request to ensure structural integrity and compliance with applicable federal, state, and local codes and regulations.

K. PERMIT FEES. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a WCF, as well as related inspection, monitoring, and related costs. Such permit fees shall be established by the Borough fee schedule.

L. INDEMNIFICATION. Each person that owns or operates a WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the WCF. Each person that owns or operates a WCF shall defend any actions or proceedings against the Borough in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance, or removal of a WCF. The obligation to indemnify, hold harmless and defend shall include, but not

be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

M. NON-COMMERCIAL USAGE EXEMPTION. Borough residents utilizing satellite dishes, citizen and/or band radios, and Antennas for the purpose of maintaining television, phone, and/or internet connections at their residences shall be exempt from the regulations enumerated in this Section

N. HISTORIC BUILDINGS. No Non-Tower WCFs may be located within one hundred (100) feet of any property, or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, located within a historic district, or is included in the official historic structures list maintained by the Borough.

O. ABANDONMENT; REMOVAL. In the event that use of a WCF is to be discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. A WCF not operated for a period of twelve (12) months shall be considered abandoned. Discontinued or abandoned WCFs, or portions of WCFs, shall be removed as follows:

(1) All abandoned or unused WCFs and Accessory Equipment shall be removed within ninety (90) days of the cessation of operations at the site or receipt of notice that the WCF has been deemed abandoned by the Borough unless a time extension is approved by the Borough.

(2) If the WCF or Accessory Equipment is not removed within ninety (90) days of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and/or associated facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner of the WCF regardless of the owner's or operator's intent to operate the WCF in the future.

The Borough reserves the right to pursue all available remedies under the law to ensure removal of the WCF and restoration of the site at the expense of the owner. Any delay by the Borough in taking action shall not invalidate the Borough's right to take action.

(3) Where there are two or more users of a single *WCF*, this provision shall not become effective until all users have terminated use of the *WCF* for a period of twelve (12) months.

P. Maintenance. The following maintenance requirements shall apply:

(1) All *WCFs* shall be fully automated and unattended on a daily basis and shall be visited only for maintenance, repair or replacement.

(2) Such maintenance shall be performed to ensure the upkeep of the *WCF* in order to promote the safety and security of the Borough's residents and in

accordance with all applicable Borough, state and federal regulations.

- (3) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents. Maintenance logs will be provided to the Borough upon request.

Q. Timing of Approval. The following table details the applicable timeframe of approval for each type of WCF application:

Type of WCF/Application	Notice of Incompleteness	Final Decision
Eligible Facilities Request	30 calendar days from receipt of application.	60 calendar days.
<i>Small WCF (Collocated)</i>	10 calendar days from receipt of initial or supplemental application.	60 calendar days.
<i>Small WCF (New or Replacement Wireless Support Structure)</i>	10 calendar days from receipt of initial or supplemental application.	90 calendar days.
<i>Non-Tower WCF</i>	30 calendar days from receipt of application for initial notice; 10 calendar days from receipt of supplemental application for subsequent notices.	90 calendar days.
<i>Tower-Based WCF</i>	30 calendar days from receipt of application for initial notice; 10 calendar days from receipt of supplemental application for subsequent notices.	150 calendar days.

802.54

NON-TOWER- BASED WIRIELESS COMMUNICATIONS FACILITIES

Specific Requirements for Non-Tower Wireless Communications Facilities.

R. The following regulations shall apply to all Non-Tower WCFs that do not meet the definition of a Small WCF:

(1) DEVELOPMENT REGULATIONS.

- (a) The total height of any Non-Tower WCF shall not exceed fifteen (15) feet above the height of the Wireless Support Structure prior to the collocation of any WCFs.
- (b) In accordance with industry standards, all Non-Tower WCF applicants must submit documentation to the Borough showing that the proposed Non-Tower WCF is designed to be the minimum height technically feasible and justifying the total height of the Non-Tower WCF.

- (c) If the WCF Applicant proposes to locate the Accessory Equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district.
 - (d) A security fence not to exceed eight (8) feet in height shall surround any separate communications equipment building if such communications equipment building is located at ground level. Vehicular access to the communications equipment building shall not interfere with the parking or vehicular circulations on the site for the principal use.
- (2) DESIGN.
- (a) In order to assist in evaluating the visual impact, the WCF Applicant shall provide color photo simulations showing the proposed site of the Non-Tower WCF with a photo-realistic representation of the proposed WCF as it would appear viewed from the closest residential properties, adjacent roads and from other locations as required by the Borough.
 - (b) Non-Tower WCF shall employ Stealth Technology and be treated to match the Wireless Support Structure in order to minimize aesthetic impact. The application of the Stealth Technology utilized by the WCF Applicant shall be subject to the approval of the Borough.
 - (c) Non-Tower WCFs shall, to the extent technically feasible, incorporate architectural features, materials and colors which blend with surrounding buildings, structures, terrain, or landscape.
 - (d) Non-Tower WCFs and Accessory Equipment must be of a neutral color that is identical to or closely compatible with the Wireless Support Structure so as to make the WCF and Accessory Equipment as visually unobtrusive as possible. Roof-mounted Non-Tower WCFs shall match existing air- conditioning units, stairs, elevator towers or other background as nearly as possible.
- (3) PROHIBITED ON CERTAIN STRUCTURES. A *Non-Tower WCF* shall not be located on single- family detached residences, single-family attached residences, semi-detached residences, duplexes, or any residential accessory structure.
- (4) THIRD PARTY WIRELESS SUPPORT STRUCTURES. Where the *Non-Tower WCF* is proposed for *Collocation* on a *Wireless Support Structure* that is not owned by the *WCF Applicant*, the *WCF Applicant* shall present documentation to the Zoning Officer that the owner of the *Wireless Support Structure* has authorized *Collocation* of the proposed *Non-Tower WCF*.
- (5) RETENTION OF EXPERTS. The Borough may hire any consultant(s) and/or expert (s) necessary to assist the Borough in reviewing and evaluating the application for approval of the *WCF* at its sole discretion and once approved, in

reviewing and evaluating any potential violations of the terms and conditions of these *WCF* provisions . The *WCF* applicant and/or owner of the *WCF* shall reimburse the Borough for all costs of the Borough's consultant(s) in providing expert evaluation and consultation in connection with these activities. At the sole discretion of the Borough Zoning Officer, the establishment of a Professional Services Agreement may be required.

- (6) INSURANCE. Each person that owns or operates a *Non-Tower WCF* shall annually provide the Borough with 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 per occurrence covering the *Non-Tower WCF*.
- (7) SUBSTANTIAL CHANGE. Any *Substantial Change* to a *WCF* shall require notice to be provided to the Borough Zoning Officer, and possible supplemental permit approval as determined by the Borough Zoning Officer.

802.55

TOWER-BASED WIRIELESS COMMUNICATIONS FACILITIES

General and Specific Requirements for Tower-Based Wireless Communications Facilities.

- A. The following regulations shall apply to all *Tower-Based Wireless Communications Facilities* that do not meet the definition of a *Small WCF*.
 - (1) *Tower -Based WCFs* are permitted outside the public rights -of-way as a in the following zoning districts as a conditional use, subject to the requirements of this Section:
 - (a) B-3, HIGHWAY COMMERCIAL DISTRICT.
 - (b) I-1, LIGHT INDUSTRIAL DISTRICT
 - (c) I-2 HEAVY INDUSTRIAL DISTRICT
 - (d) C-1 CONSERVATION DISTRICT
 - (2) A *Tower-Based WCFs* are permitted outside the public rights-of-way as a special exception and at a height necessary to satisfy their function in the *WCF Applicant's* wireless communications system.
 - (a) It shall be incumbent upon the *WCF Applicant* for such approval as a conditional use to prove to the reasonable satisfaction of the Borough Council that the *WCF Applicant* cannot adequately extend or infill its communications system by the use of equipment installed on existing structures, such as utility poles or their appurtenances and other available structures. The *WCF Applicant* shall further demonstrate that the proposed *Tower-Based WCF* must be located where it is proposed in order to serve the *WCF Applicant's* service area and that no other viable, less-intrusive alternative location exists.

- (b) The conditional use application shall include a site plan, drawn to scale, showing property boundaries, power location, total height of the *Tower-Based WCF*, guy wires and anchors, existing structures, elevation drawings, typical design of proposed structures, parking, fences, landscaping, and existing uses on adjacent properties.
- (c) The conditional use application shall include aerial photographs of the area within a one- mile radius of the proposed *Tower-Based WCF* and identify all existing *WCFs* in that area.
- (d) The conditional use application shall be accompanied by a description of the type and manufacturer of the proposed transmission/radio equipment, the frequency range (megahertz band) assigned to the *WCF Applicant*, the power in watts at which the *WCF Applicant* transmits, and any relevant related tests conducted by the *WCF Applicant* in determining the need for the proposed site and installation.
- (e) The conditional use application shall include evidence that a significant gap in wireless coverage or capacity exists in the applicable area and that the type of *WCF* being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or nonexistence of a gap in wireless coverage shall be a factor in the Borough Council's decision on an application for approval of *Tower-Based WCF*.
- (f) Where the *Tower-Based WCF* is located on a property that is not owned by the *WCF Applicant*, the *WCF Applicant* shall present evidence to the Borough Council that the owner of the property has granted an easement or other property right, if necessary, for the proposed *WCF* and that vehicular access will be provided to the facility.
- (g) The conditional use application shall include a written certification by a structural engineer licensed in the Commonwealth of Pennsylvania of the proposed *WCF's* ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association and certify the proper construction of the foundation and the erection of the structure.
- (h) A conditional use application for a new Tower-Based WCF shall demonstrate that the proposed Tower-Based WCF cannot be accommodated on an existing Wireless Support Structure. The Borough Council may deny an application to construct a new Tower-Based WCF if the WCF Applicant has not made a good faith effort to mount the Antenna(s) on an existing Wireless Support Structure. The WCF Applicant shall demonstrate that it contacted the owners of all potentially feasible structures, buildings, and towers within a one (1) mile radius of the site proposed, sought permission to install an Antenna on those structures, buildings, and towers and was denied for one of the following reasons:

- [i] No existing support structure, building or other structure are located within the geographic area which meet the applicant's engineering requirements.
- [ii] Existing support structures, buildings or other structures are not of sufficient height to meet the applicant's engineering requirements.
- [iii] Existing support structures, buildings or other structures do not have the strength to support the applicant's equipment.
- [iv] The applicant's equipment would cause electromagnetic interference with equipment on the existing support structure, building or other structure.
- [v] Fees, costs, or contractual provisions required by the owner in order to share an existing location or to adapt for the applicants are unreasonable. Costs exceeding new construction for a support structure are presumed to be unreasonable.
- [vi] The applicant demonstrates that there are other limiting factors that render other locations unsuitable.
- [vii] The applicant demonstrates that an alternative technology that does not require the use of a support structure, such as cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is not suitable. Costs of alternative technology that exceed costs for the construction of a Wireless Support Structure and Antenna development shall not be presumed to render the technology unsuitable.

(3) DEVELOPMENT REGULATIONS.

- (a) Tower-Based WCFs shall not be located in, or within one hundred (100) feet of an area in which all utilities are located underground.
- (b) In no case shall a Tower-Based WCF be located within 200 feet of any adjacent residential zoning district or property used for residential purposes.
- (c) Combined with another use. A Tower-Based WCF may be permitted on a property with an existing use, or on a vacant parcel in combination with another use, except residential, subject to the following conditions:
 - [i] The existing use on the property may be any permitted use in the applicable district and need not be affiliated with the WCF.
 - [ii] Minimum lot area. The minimum lot shall be not less than one (1) acre to accommodate the Tower-Based WCF and Accessory

Equipment, any guy wires, the equipment building, security fence, and applicable screening.

(4) DESIGN REGULATIONS.

(a) Height. Any Tower-Based WCF shall be designed at the minimum functional height. The maximum total height of a Tower-Based WCF which is not located in the public ROW shall not exceed 120 feet, as measured vertically from the ground level to the highest point on the Tower-Based WCF, including Antennas and subsequent alterations.

(b) Visual Appearance and Land Use Compatibility.

[i] Tower-Based WCFs shall employ Stealth Technology which may include the Wireless Support Structure being painted a certain color as approved by Borough Council or utilizing a galvanized finish.

[ii] All Tower-Based WCFs and Accessory Equipment shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible.

[iii] The Borough Council shall consider whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district involved; encourage compatibility with the character and type of development existing in the area; prevent a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering and land development design and construction principles, practices and techniques.

(c) Anti-Climbing Device. If deemed necessary by the Borough Council, a Tower-Based WCF shall be equipped with an anti-climbing device, as approved by the manufacturer.

(d) Minimum Setbacks. The minimum distance between the base of a Tower-Based WCF and any adjoining property line or street Right-of-Way line shall equal 120% of the proposed WCF structure's height or the applicable principal building setback, whichever is greater.

(5) SURROUNDING ENVIRONS.

(a) The WCF Applicant shall ensure that the existing vegetation, trees, and shrubs located within proximity to the WCF structure shall be preserved to the maximum extent possible.

(b) The WCF Applicant shall submit a soil report to Borough Council

complying with the standards of Appendix I: Geotechnical Investigations, ANSI/TIA-222, as amended, to document and verify the design specifications of the foundation of the Tower-Based WCF, and anchors for guide wires, if used.

(6) FENCE/SCREEN.

- (a) A security fence having a height not to exceed eight (8) feet shall completely surround any Tower-Based WCF located outside the Public Rights-of-Way, as well as Accessory Equipment, guy wires, or any building housing Accessory Equipment.
- (b) Landscaping shall be required to screen as much of a newly constructed Tower-Based WCF as possible. The Borough Council may permit any combination of existing vegetation, topography, walls, decorative fences, or other features instead of landscaping, if, in the discretion of the Borough Council, they achieve the same degree of screening.

(7) ACCESSORY EQUIPMENT.

- (a) Accessory Equipment shall not intrude into the minimum setback requirements for the district in which the wireless communication facility is located or exceed a maximum height of 15 feet.
- (b) Ground-mounted Accessory Equipment associated or connected with a Tower-Based WCF shall not be located within fifty (50) feet of a lot in residential use.
- (c) Accessory Equipment associated, or connected, with a Tower-Based WCF shall be placed underground or screened from public view using Stealth Technology. All ground-mounted Accessory Equipment, utility buildings and accessory structures shall be architecturally designed to be concealed from public view to the maximum extent possible and be compatible with the architecture of surrounding buildings, structures, or landscape.
- (d) Either one single-story wireless communications equipment building not exceeding five hundred (500) square feet in area or its equivalent may be permitted for each unrelated company sharing Antenna space on the Tower-Based WCF.

- (8) Additional Antennas. As a condition of approval for all Tower-Based WCFs, the WCF Applicant shall provide the Borough Council with a written commitment that it will allow other service providers to Collocate Antennas on the Tower- Based WCF where technically and economically feasible. To the extent permissible under state and federal law, the owner of a Tower-Based WCF shall not install any additional Antennas without complying with the applicable requirements of this Section.

- (9) FCC LICENSE. Each person that owns or operates a Tower-Based WCF shall submit a copy of its current FCC license, including the name, address, and Emergency telephone number for the operator of the facility.
- (10) SIGNS. All Tower-Based WCFs shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an Emergency. The only other signage permitted on the WCF shall be those required by the FCC, or any other federal or state agency.
- (11) LIGHTING. No Tower-Based WCF shall be artificially lighted, except as required by law. If lighting is required, the WCF Applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. The WCF Applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities and to the Borough Council.
- (12) STORAGE. The storage of unused equipment, materials or supplies is prohibited on any *Tower-Based WCF* site.
- (13) REPAIR OF NON-CONFORMING *TOWER-BASED WCF*. Non-conforming *Tower-Based WCFs* which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored at their former location but must otherwise comply with the terms and conditions of this section. The *Collocation of Antennas* is permitted on non-conforming structures.
- (14) INSURANCE. Each person that owns or operates a *Tower-Based WCF* shall provide the Borough with a certificate of insurance evidencing general liability coverage in the minimum amount of \$5,000,000 per occurrence and property damage coverage in the minimum amount of \$5,000,000 per occurrence covering the *Tower-Based WCF*.
- (15) TIMING OF APPROVAL.
 - (a) Within thirty (30) calendar days of the date that an application for a Tower- Based WCF is filed with the Borough Zoning Officer, the Borough Zoning Officer shall notify the WCF Applicant in writing of any information that may be required to complete such application.
 - (b) Within one hundred fifty (150) days of receipt of a complete application for a Tower-Based WCF, the Borough Council shall make a decision to approve or deny the proposed Tower-Based WCF and the Borough Zoning Officer shall issue the required building and zoning permits authorizing construction of the WCF.

802.56

SMALL WIRELESS COMMUNICATIONS FACILITIES

Regulations Applicable to all Small Wireless Communications Facilities. The following regulations shall apply to Small Wireless Communications Facilities:

A. LOCATION AND DEVELOPMENT STANDARDS.

- (1) Small WCF are permitted by right from the Borough Zoning Officer in all zoning districts, subject to the requirements of this Section.
- (2) Small WCF in the public ROW requiring the installation of a new Wireless Support Structure shall not be located in front of any building entrance or exit.
- (3) All Small WCF shall comply with the applicable requirements of the Americans with Disabilities Act and all Borough requirements applicable to streets and sidewalks.

B. Time, Place and Manner. Once approved, the Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Small WCF in the ROW based on public safety, traffic management , physical burden on the ROW, and related considerations.

C. Obstruction . Small WCF and Accessory Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic , create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the ROW as determined by the Borough.

D. Graffiti. Any graffiti on a Small WCF, including the Wireless Support Structure and any Accessory Equipment, shall be removed at the sole expense of the owner within ten (10) calendar days of notification by the Borough.

E. Timing of Approval.

- (1) Within ten (10) calendar days of the date that an application for a Small WCF is filed with the Borough Zoning Officer, the Borough shall notify the WCF Applicant in writing of any information that may be required to complete such application. `
- (2) Within sixty (60) days of receipt of an application for Collocation of a Small WCF on a preexisting Wireless Support Structure , the Borough Zoning Officer shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.
- (3) Within ninety (90) days of receipt of an application for a Small WCF requiring the installation of a new or replacement Wireless Support Structure, the Borough Zoning Officer shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.

F. Relocation or Removal of Facilities. Within ninety (90) days following written notice from the Borough, or such longer period as the Borough determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a Small WCF in the ROW shall, at its own expense, temporarily or permanently

remove, relocate, change or alter the position of any WCF when the Borough, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

- (1) The construction, repair, maintenance or installation of any Borough or other public improvement in the right-of-way.
- (2) The operations of the Borough or other governmental entity in the Right-of-Way.
- (3) Vacation of a street or road or the release of a utility easement; or
- (4) An emergency that constitutes a clear and immediate danger to the health, welfare, or safety of the public as determined by the Borough.

G. Reimbursement for ROW Use. In addition to permit fees as described in this section, every Small WCF in the ROW is subject to the Borough's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Borough's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Borough. The owner of each Small WCF shall pay an annual fee to the Borough to compensate the Borough for the Borough's costs incurred in connection with the activities described above. Such fees shall comply with the applicable requirements of the Federal Communications Commission.

H. DESIGN STANDARDS. All Small WCF in the Borough shall comply with the following requirements

1. GENERAL STANDARDS FOR SMALL WIRELESS COMMUNICATIONS FACILITIES

- A. All Small WCFs shall be installed in and maintained in a workmanlike manner in compliance with the National Electric Safety Code, the National Electrical Code, the structural standards of the American Association of State Highway and Transportation Officials, and any other industry standard applicable to the WCF, as applicable.
- B. All Small WCFs shall comply with the Americans with Disabilities Act guidelines relating to streets and sidewalks.
- C. Wireless Support Structures installed or replaced in order to accommodate attached Small WCFs shall be a minimum of two (2) feet from any sidewalk path or trail and shall not obstruct vehicular, pedestrian, or cyclist traffic or sight lines.
- D. All Small WCFs shall comply with applicable federal and state standards regarding pedestrian access and movement.

- E. All Small WCFs shall be designed and constructed in an effort to minimize aesthetic impact to the extent Technically Feasible. All applications for a Small WCF shall identify all design features intended to minimize aesthetic impact.
- F. No Small WCFs shall extend beyond the boundaries of the rights-of-way unless approved on a case-by-case basis by the Borough Zoning Officer. If a Small WCF or any portion thereof is to be located on private property, the WCF Applicant shall provide to the Borough evidence that the owner of such private property has granted the WCF Applicant an easement or other right to construct the Small WCF.
- G. All Small WCFs shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association and Communications Industry Association (ANSI/TIA-222, as amended), or to the industry standard applicable to the structure.

2 ANTENNA STANDARDS

- A. Any Antenna associated with a Small WCF shall not exceed three (3) cubic feet in volume.
- B. All pole-top Antennas shall be flush-mounted as closely to the top of the Wireless Support Structure as Technically Feasible.
- C. All Antennas shall be of a design, style, and color that matches the Wireless Support Structure upon which they are attached.
- D. Any necessary pole-top extension shall be of the minimum height necessary to achieve separation from the existing pole attachments in accordance with the National Electric Safety Code and any other industry standard applicable to the WCF.
- E. Any Antenna mounted on a lateral standoff bracket shall protrude no more than necessary to meet clearances from the pole and existing pole attachments in accordance with the National Electric Safety Code and any other industry standard applicable to the WCF.
- F. If mounted on an existing Wireless Support Structure, no Antenna shall impair the function of said structure.
- G. Antenna placement shall not materially impair light, air, or views from adjacent windows.

3. ACCESSORY EQUIPMENT STANDARDS

- A. All Accessory Equipment associated with a Wireless Support Structure shall not

exceed twenty-eight (28) cubic feet in volume. Equipment utilized solely for mitigation of the aesthetic impact of the Small WCF or required for utility service shall not be included in the Accessory Equipment volume calculation.

- B. Accessory Equipment shall be mounted flush to the side of a Wireless Support Structure, or as near flush to the side of a Wireless Support Structure as Technically Feasible.
- C. Pole-mounted Accessory Equipment shall be mounted so as to provide a minimum of nine (9) feet vertical clearance from ground level.
- D. All Accessory Equipment shall be placed underground in residential districts.
- E. Accessory Equipment shall be of a color that matches the Wireless Support Structure upon which such Accessory Equipment is mounted.
- F. All Accessory Equipment shall be contained within a single equipment shroud or cabinet. Such equipment shroud or cabinet shall be of the smallest dimensions Technically Feasible.
- G. All Small WCFs shall post a sign with a maximum size of 1.5 square feet in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. The only other signage permitted shall be that required by the FCC or any other federal or state agency. All signage associated with a Small WCF shall be clearly shown in the application and shall be subject to approval by the Borough Zoning Officer.
- H. No Accessory Equipment shall feature any visible lighting, including flashing indicator lights, unless required by state or federal law.

4. WIRING STANDARDS

- A. Exposed wiring is prohibited on any Small WCF, Accessory Equipment, or Accessory Equipment enclosure.
- B. Transmission, fiber, power cables and any other wiring shall be contained within any Wireless Support Structure for which such concealment is Technically Feasible. If such wiring cannot be contained within the Wireless Support Structure, all wiring shall be contained within conduit or U-guard that is flush-mounted to the Wireless Support Structure.
- C. All wiring shall be installed tautly and without excessive slack or extra cable storage on the Wireless Support Structure.
- D. Any conduit or U-guard shall be of a color that matches the Wireless Support Structure to which the Small WCF is attached.
- E. Loops of extra wiring shall not be attached to any Wireless Support Structure.

5. WIRELESS SUPPORT STRUCTURE STANDARDS

1. Replacement Wireless Support Structures

- a. The maximum height of any proposed replacement Wireless Support Structure shall be: 1) no more than ten (10%) percent taller than the tallest existing Wireless Support Structure in the public rights-of-way within a two hundred fifty (250) foot radius of the proposed Small WCF; or 2) fifty (50) feet above ground level, whichever is less.
- b. Any replacement Wireless Support Structure shall be of comparable materials and design to the existing Wireless Support Structure being replaced except as otherwise required by the pole owner.
- c. Any replacement Wireless Support Structure shall be placed within a five (5) foot radius of the existing Wireless Support Structure being replaced.
- d. Any replacement Wireless Support Structure shall be designed to accommodate all uses that existed on the Wireless Support Structure being replaced. As part of an application for a Small WCF, the applicant shall provide documentation from a structural engineer licensed in the Commonwealth of Pennsylvania confirming that the replacement Wireless Support Structure, Small WCF, and prior existing uses shall be structurally sound.

2. NEW WIRELESS SUPPORT STRUCTURES

- a. The maximum height of any new Wireless Support Structure shall be: 1) no more than ten (10%) percent taller than the tallest existing Wireless Support Structure in the public rights-of-way within a two hundred fifty (250) foot radius of the proposed Small WCF; or 2) fifty (50) feet above ground level, whichever is less.
- b. Any new Wireless Support Structure shall be of comparable materials and design to adjacent Wireless Support Structures except as required by the pole owner.
- c. To the extent Technically Feasible, no new Wireless Support Structure shall be installed:
- d.
 - i. In the Front Façade Area of any residential structure.
 - ii. Within ten (10) feet of the edge of any driveway; or
 - iii. In the public rights-of-way directly opposite any driveway.
- e. DECORATIVE POLES:
 - i. Decorative Poles shall be required:

1. For the replacement of any existing Decorative Pole; and
2. In any zoning district where all utilities are required to be placed underground on a non-discriminatory basis.
 - ii. For any replacement Decorative Pole, the new Decorative Pole shall match the existing Decorative Pole in shape, design, color, and material to the extent Technically Feasible. The Borough shall have final approval of any such replacement Decorative Pole.

No Small WCF shall be permitted on an existing Decorative Pole unless the applicant provides documentation showing that such Decorative Pole is the only Technically Feasible location for placement and that no suitable alternative sites exist. The WCF Applicant shall provide documentation from a structural engineer that said *Decorative Pole* can support the additional loads.

ARTICLE 9

NONCONFORMING LOTS, USES, STRUCTURES AND BULDINGS

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.

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.

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
OFF-STREET PARKING**

SECTION 1001 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 1002 SIZE OF OFF-STREET PARKING SPACES

Each off-street parking space shall have an area of not less than one hundred and sixty-two (180) square feet, being ten (10) feet in width and twenty (20) feet in length, exclusive of access drives or aisles.

SECTION 1003 DIMENSIONS AND DESIGN

The dimension and design of off-street parking areas, including parking garages, shall comply with the following:

- A Stall width shall be not less than nine (9) feet.
- B Stall depth shall be not less than eighteen (18) feet.
- C The minimum width of aisles providing access to stalls, with one-way traffic, varying with the angle of parking shall be as follows:

<u>Angle of Parking</u>	<u>Minimum Aisle Width</u>
Parallel	Twelve (12) feet
30 degrees	Eleven (11) feet
45 degrees	Thirteen (13) feet
60 degrees	Eighteen (18) feet
90 degrees	Twenty (20) feet

- D The minimum width for aisles providing access to stalls with two-way traffic shall be twenty-four (24) feet.
- E Interior access ways and aisles shall be designed so as to prevent the blocking of vehicles entering or exiting the site.

SECTION 1004 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 1005 WIDTH OF ACCESS DRIVEWAYS

Unless superseded by a PennDOT Highway Occupancy Permit, the width of a driveway intended to provide access to or from a property shall comply with the following:

- a. A minimum of nine (9) feet for all single-family dwellings.
- b. A minimum of twelve (12) feet for one-way traffic for all uses other than single-family dwellings.
- c. A minimum of twenty (20) feet for two-way traffic for all uses other than single-family dwellings.
- d. A maximum of twenty (20) feet at the street lines in residential districts, and thirty (30) feet in all other districts.

SECTION 1006 NUMBER AND LOCATION OF ACCESS DRIVEWAYS

For the purpose of providing access to a property, driveways crossing a street line shall be forty (40) feet apart and shall be limited to two (2) along each front, rear or side lot line. On all corner properties, there shall be a minimum distance of thirty-five (35) feet from any driveway to the lot line fronting on the intersecting street unless a greater distance is required for a specific use as contained within Article 8, Supplemental Regulations.

Any street under the jurisdiction of the Pennsylvania Department of Transportation shall be governed by all applicable rules, regulations and standards of PennDOT.

SECTION 1007 EXISTING USES AND STRUCTURES

Buildings, 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 changes, 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 requirements applicable to the particular use and/or structure.

SECTION 1008 EXPANSION OF EXISTING USE

When an existing use of a building, structure or land is expanded, off-street parking and/or loading facilities shall be provided in accordance with the applicable provisions of this Ordinance for the net increase of expansion based upon land area and/or gross floor area of the subject use. Any existing use prior to its expansion, which does not conform to the required the number of off-street spaces that would otherwise be required, shall not be required to provide said spaces as a condition for zoning approval.

SECTION 1009 CHANGE OF USE

Whenever an existing use of a building, structure or land is changed to a different use,

off-street parking and/or loading facilities shall be provided in accordance with the previous use requirements and the applicable provisions of this Ordinance based upon the proposed change in use.

SECTION 1010 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 two hundred (200) feet to any lot line on which the principal structure is located.

SECTION 1011 DRAINAGE AND SURFACING OF OFF-STREET PARKING AREAS

Any off-street parking area for five (5) or more vehicles shall be graded for proper drainage and shall be surfaced so as to provide a pavement structure of bituminous asphalt, or concrete. Excluding points of ingress or regress, the parking area shall be curbed. All stormwater shall be contained within the boundaries of the property. Methods for containment may include:

- 1. The design and construction of catch basins to collect and discharge stormwater into a public storm sewer.
- 2. The design and construction of rain gardens or similar systems designed to retain all stormwater within the parking area for infiltration into the ground.
- 3. A combination of the above.

An off-street parking area for five (5) or more vehicles shall require a complete design and layout of the proposed parking area, sealed by a licensed professional engineer attesting that the subject design and construction of the parking area shall fully comply with the above provisions. Any engineering review costs incurred by Ashley Borough shall be reimbursed by the applicant.

SECTION 1012 SCREENING AND LANDSCAPING

A. SIDEYARDS AND REAR YARDS

The side and rear yards areas of properties that contain off-street parking for ten (10) or more vehicles and/or any off-street loading areas, shall be screened along such borders as provided herein:

1. A planting strip not less than five (5) feet in depth, containing ornamental grass, shrubbery, plants and/or a similar vegetative cover that are a minimum of three (3) feet in height at the time of planting.
2. Such borders shall also be screened by a substantial, tight fence, six (6) feet in height, or in lieu of a fence, an evergreen hedge not less than five (5) feet in height at the time of planting with a spacing distance of not greater than four (4) feet between each planting.

B. FRONT YARDS

The front yards areas of properties that contain off-street parking for ten (10) or more vehicles and/or any off-street loading areas, shall be screened along such borders as provided herein:

1. A planting strip not less than five (5) feet in depth shall be provided between the parking areas and the abutting street right-of-way except for the location of access drives to the property. Said planting strip shall contain ornamental grass, shrubbery, plants or a similar vegetative cover.
2. Said planting strip shall also contain one (1) shade tree for each forty (40) linear feet of planting strip. Said trees shall be not less than eight (8) feet in height at the time of planting.

C. INTERIOR LANDSCAPING

Off-street parking areas that contain twenty (20) or more parking spaces, in addition to the compliance with regulations contained under items A and B of this Section, shall provide interior landscaping to said parking area. Said landscaping shall be not less than five (5%) percent of the total area that is paved and utilized for parking and/ or loading. Interior landscaped areas shall contain ornamental grass, shrubbery, plants or a similar vegetative cover and a minimum of one (1) shade tree not less than eight (8') feet in height at the time of planting.

SECTION 1013 LIGHTING

Any lighting used to illuminate off-street parking or loading areas shall be designed and installed in compliance with Section 325 of this Ordinance.

SECTION 1014 DRIVEWAYS

- A. Residential: All driveways shall have a minimum setback distance of five (5) feet to any side yard or rear yard property line. Townhouses, with exception of end units, shall be excluded from this provision.
- B. Nonresidential Uses: All driveways shall have a minimum setback distance of ten (10) feet to any side yard or rear yard property line.

SECTION 1015 PARKING IN YARD AREAS

Required parking for residential properties shall be permitted within the required front, rear and/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 or rear yard. No vehicle shall be parked in a front yard area in a manner in which the vehicle extends beyond the boundary of the front property line or otherwise obstructs pedestrian traffic.

Any off-street parking areas for a nonresidential use shall be setback a minimum distance of not less than ten (10) feet to any front, side or rear yard property line. 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 property line.

SECTION 1016 FRACTIONAL SPACE

When required parking computation results in fractions, any fraction less than one-half ($1/2$) shall be disregarded and any fraction equal to or greater than one-half ($1/2$) shall be construed to require a full space.

SECTION 1017 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 1018 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:

RESIDENTIAL USES

- Single-Family Detached Dwelling: Two (2) spaces for each dwelling unit.
- Two-Family Structure: Two (2) spaces for each dwelling unit.
- Multi-Family Residential: Two (2) spaces for each dwelling unit in a multifamily dwelling structure containing not more than five (5) dwelling units. Two and one half ($2\frac{1}{2}$) spaces for each dwelling unit in a multifamily dwelling structure containing not more than five (5) dwelling units.
- Boarding House/Rooming House: Two (2) spaces for each rooming unit which is rented or leased, plus all other off-street parking spaces required for any other use or uses located within the structure.
- Bed and Breakfast: Three spaces and one and one-half (1.50) spaces for each guest rental room.

- Short-Term Home Rental: Two (2) spaces for each dwelling unit, plus Two (2) spaces for each bedroom.
- Home Occupation:
 - a. Four (4) spaces for any medical practitioner.
 - b. Two (2) spaces for all other home occupation.
- Group Residence: Four (4) spaces, plus one space for each person residing or eligible to reside in the facility based upon State licensing, who are not related operator of the facility.
- Personal Care Home: Four (4) spaces, plus one space for each person residing or eligible to reside in the facility based upon State licensing, who are not related operator of the facility.
- Half-Way House: One (1) space for each staff member based upon the maximum number of staff personnel working at any given time, plus 1.50 spaces for each person allowed to reside therein based upon State licensing of the facility.

NONRESIDENTIAL USES

- Animal Hospital: Five (5) spaces for every veterinarian.
- Auditorium of Similar Place of Assembly: One (1) space for every four (4) seats or one (1) space for every thirty (30) square feet of gross floor area if fixed seating is not provided.
- Automobile Sales: One (1) exterior space for every six hundred (600) square feet of gross interior floor space plus one (1) additional space per each five thousand (5,000) square feet of open sales or display area.
- Automotive Repairs: One (1) exterior space for every two hundred (200) square feet of gross interior floor area.
- Car Wash and Auto Detailing: One (1) space for each employee on the maximum working shift.
- 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 (12) feet of bench length, if fixed seating is not provided, one (1) space for every 30 square feet of gross floor area.
- 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, based upon the maximum capacity.

- Day Care Facility: One (1) space for each employee, plus one (1) space for every five (5) individuals served by the facility, based upon the maximum number of individuals which the facility is licensed to serve.
- Entertainment Facilities: One (1) space for every one hundred (100) square feet of gross floor area.
- Fast Food Restaurants: One (1) space for every eighty (80) square feet of service or dining area, with a minimum of five (5) 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.
- Funeral Homes and Crematories: Twenty (20) spaces for each viewing parlor.
- 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.
- Health Spa/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.
- Large Retail Establishment:
 - a. Five (5) spaces for each 1,000 square feet of gross floor area.
 - b. The number of off-street parking spaces shall not exceed 110% of the required minimum number of off-street parking spaces. The above requirement may be increased to 125% when porous pavement is used in areas of the parking lot that do not receive heavy traffic, such as parking stalls, cart areas and crosswalks.
- Manufacturing / Industrial Uses: One space for every 5,000 square feet of gross floor area; plus one space for every two employees on the maximum working shift.
- Medical or Dental Office or Clinic: Five (5) spaces for every doctor, dentist, chiropractor or other licensed medical practitioner.
- Methadone Treatment Facility: Five (5) spaces for every doctor, licensed medical practitioner, counselor and/or staff personnel employed at the facility, including those employed on a full-time or part time basis and/or by contractual arrangements with the facility.
- Motels and Hotels: One (1) space for each unit for guest accommodations plus one (1) space for each two (2) employees on the maximum working shift. Any such

facility which also serves food and/or beverages shall also comply with the parking requirements of a restaurant or tavern.

- Nonprofit Social Hall and Clubs: One (1) space for every two hundred (200) square feet of gross floor area.
- Nursing Home/Continuing Care Facility: One (1) space for every three (3) beds, based upon the maximum number of beds permitted under its State license, plus one (1) space each employee on the maximum working shift.
- Personal Services: One (1) space for every three hundred (300) square feet of gross floor area.
- 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 gross floor area when there is no fixed seating.
- Professional or Service Offices: One (1) space for every three hundred (300) square feet of gross floor area.
- Public Uses: One (1) space for every one hundred (100) square feet of gross floor space.
- 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.
- Recreational Facilities (Indoor): One space for every 100 square feet of gross floor area
- Recreational Facilities (Outdoor): 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 three thousand (3,000) 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.
- Restaurants and Taverns: One (1) space for every three (3) seats, plus two spaces for every three employees on the maximum working shift.
- Retail Businesses: One (1) space for every three hundred (300) square feet of gross floor area.
- Schools, Elementary and Secondary: One (1) space for each staff member, plus one space for every twenty (20) classroom seats, based upon the maximum capacity.
- Self-Service Coin-Operated Laundries and Dry Cleaners: Shall provide one (1) space for every two (2) washing or drying machines.

- 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.
- Sexually Oriented Businesses:
 - a. Sexually Oriented Bookstore: One (1) space for every one hundred (100) square feet of gross floor area, plus two additional (2) spaces for every three (3) employees based upon the maximum working shift.
 - b. Sexually Oriented Entertainment: One (1) space for every one hundred (100) square feet of gross floor area, plus:
 - one (1) additional space for every two (2) seats and/or, one (1) space for each fifty (50) square feet of floor area when there is no fixed seating.
 - two (2) additional spaces for every three (3) employees based upon the maximum working shift.
 - c. Massage Parlor: One (1) space for every one hundred (100) square feet of gross floor area, plus two (2) additional spaces for every three (3) employees based upon the maximum working shift.
- Shopping Center: Five (5) spaces for each one thousand (1,000) square feet of gross floor area.
- Substance Abuse Treatment Facility: One (1) space for every two (2) beds based upon State licensing regarding the maximum number of beds of the facility, plus five (5) spaces for every doctor, licensed medical practitioner, counselor and/or staff personnel employed at the facility, including those employed on a full-time or part time basis and/or by contractual arrangements with the facility.
- Substance Abuse Treatment Facility, Outpatient: Five (5) spaces for every doctor, licensed medical practitioner, counselor and/or staff personnel employed at the facility, including those employed on a full-time or part time basis and/or by contractual arrangements with the facility.
- Warehousing/Distribution Facility: One space for every 5,000 square feet of gross floor area; plus one space for every two employees on the maximum working shift.

SECTION 1019 PARKING FOR OTHER COMMERCIAL USES

Any commercial use or nonresidential use of a structure, building or land, not specifically listed within Section 1018 of this Ordinance shall provide one (1) off-street parking space for every two hundred (200) square feet of gross floor area or lot area.

SECTION 1020 OFF-STREET LOADING REQUIREMENTS

The following standards shall apply for the provision of off-street loading areas.

<u>Uses</u>	<u>Sq. Feet of Floor Area</u>	<u>Required Off-Street Loading Berths</u>
1. Schools	15,000 or more	1
2. Hospitals (in addition to space for ambulances)	10,000 - 30,000 For each additional 30,000 or fraction thereof	1 1 additional
3. Hotels & Offices	10,000 or more	1
4. Commercial,	10,000 - 25,000	1
5. Wholesale	25,000 - 40,000	2
Manufacturing	40,000 - 60,000	3
or Storage	60,000 - 100,000	4
	For each additional 50,000 or fraction thereof	1 additional

In no case shall a public right-of-way be used for the loading, unloading or storage of such vehicles.

SECTION 1021 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 commercial facility shall include any business whose operations are open to the general public. 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.

SECTION 1022 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 (9¹/₂) feet.
4. An off-street parking area shall be designed to provide convenient, accessible routes from the handicapped parking areas to an accessible building entrance and to public streets and sidewalks which adjoin 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 1023 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 a vehicle cannot obscure them.

SECTION 1024 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 1018 and/or Section 1019 of this Ordinance, the following table shall be used to determine the required number of handicapped accessible spaces.

<u>TOTAL NUMBER OF SPACES</u>	<u>REQUIRED NUMBER OF ACCESSIBLE SPACES</u>
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
501 TO 1000	2 PERCENT OF TOTAL

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ARTICLE 11
SIGN REGULATIONS

SECTION 1101 SIGNS

1101.1 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 1102 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 1103 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 1104 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 1105 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 1106 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 1107 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 (1) 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 1108 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 1109 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.

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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, subject to the consent and/or right of entry by the owner or tenant or by securing a search warrant issued by a Court of proper jurisdiction.
- (D) Issue permits as authorized by the Zoning Hearing Board or the Borough Council, pursuant to the requirements and applicable procedures of this Ordinance or by written order of a Court of proper jurisdiction.
- (E) Issue Certificates of Nonconformity to nonconforming uses and/or structures and to maintain a listing of such as required.
- (F) Issues of Certificates of Zoning Compliance indicating that the proposed activity/use and or development as listed upon an approved Zoning Permit Application and accompanying site plan has been completed in conformity and compliance with said approved Zoning Permit Application.
- (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 and/or the Borough Council 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 Zoning Hearing Board or the Borough Council is either required or requested shall be a prerequisite for any application being forwarded to either the Zoning Hearing Board or the Borough Council for consideration.

- (J) Participate in proceedings before the Zoning Hearing Board, Planning Commission or Borough Council and at their request, furnish such facts, records and similar information which may assist them in rendering decisions.
- (K) In the event of a violation of this Ordinance, provide written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct the violation. Such written notice may be served personally or by certified mail. Corrective action may include an order to cease and desist the illegal use and/or activity of land, buildings, signs, or structures; or to remove illegal buildings, structures, additions, signs, and/or structural alterations.
- (L) Render a Preliminary Opinion on a proposed development in accordance with Section 1205 of this Ordinance.

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, Planning Commission or Borough Council 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 approval from the Zoning Hearing Board in the form of a Special Exception, Variance or an Administrative Appeal, upon written approval from the Borough Council in the form of a Conditional Use Permit or as otherwise provided for by this Ordinance or from any Court of proper jurisdiction. Normal and routine maintenance and repairs to a structure shall be exempt from obtaining a zoning permit; however, a building permit shall be required. 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; however, a building permit shall be required.

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 which seek approval, involving new construction, additions, structural alterations, a change of use and/or any other form of improvements to a property shall be accompanied by two (2) 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, including the name of the public street and/or road.
- (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 (1) 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 (1) 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 properly completed zoning permit application shall be approved or denied within thirty (30) days from the date of receipt of a fully completed application and plans along with any additional information as required by the Zoning Officer. A zoning permit application shall not be deemed fully complete, until written responses are provided for all required information upon the application, it bears the signature of the owner, his authorized agent or equitable owner and 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

An approved zoning permit shall expire one (1) 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 (1) year period, the permit shall expire two (2) years from the date

of issuance. In such cases, should the applicant wish to pursue the work described within the expired permit, a new application shall be required with the payment of new fees.

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 POSTING OF PERMITS

Prior to the commencement of work at a property for which a zoning permit has been issued, the owner of the property shall have the zoning permit posted in an area publicly visible upon said property, signed by the Zoning Officer, stating the type of construction or activity which the permit was obtained.

SECTION 1204 ENFORCEMENT PROCEDURES

1204.1 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 violation notice has the right to appeal the violation notice and request a hearing on the same before the Zoning Hearing Board within thirty (30) days from the issuance of the violation notice. Section 1406 (M) shall govern the procedural process of any appeal of a 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.

1204.2 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 not less than 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.

1204.3 JURISDICTION

District Justices shall have initial jurisdiction over proceedings brought under Section 1204.1 of this Ordinance.

1204.4 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 civil enforcement proceedings commenced by Ashley Borough or the Zoning Officer, shall pay a judgment of not more than five-hundred (\$500.00) 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 attorney fees collected for the violation of this Ordinance 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 1205

PROCEDURE TO OBTAIN PRELIMINARY OPINION

In accordance with Section 916.2 of the Pennsylvania Municipalities Planning Code, the Zoning Officer, shall be authorized to render a preliminary opinion for pending applications of development. In order not to unreasonably delay the time when a landowner may secure assurance that the ordinance or map under which he proposes to build is free from challenge, and recognizing that the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the landowner may advance the date from which time for any challenge to the ordinance or map will run under Section 1413 of this Ordinance by the following procedure:

- A. The landowner may submit plans and other materials describing his proposed use or development to the zoning officer for a preliminary opinion as to their compliance with the applicable ordinances and maps. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed use or development and a sufficient basis for a preliminary opinion as to its compliance.

- B. If the Zoning Officer's preliminary opinion is that the use or development complies with the ordinance or map, notice thereof shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall include a general description of the proposed use or development and its location, by some readily identifiable directive, and the place and times where the plans and other materials may be examined by the public. The favorable preliminary approval under Section 1205 and the time therein specified for commencing a proceeding with the Zoning Hearing Board shall run from the time when the second notice thereof has been published. A favorable preliminary opinion shall in no way preclude landowner's responsibility to formally submit all required applications and gain approval of the same prior to the start of any activity related to the subject development.

SECTION 1206

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 Zoning Compliance, Certificates of Nonconformance, appeals to the Zoning Hearing Board, applications for Conditional Uses, Amendments to the Zoning Ordinance or Zoning Map, Issuance of a Preliminary Opinion 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 and applicable supporting documentation.

**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 public hearing.

the

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 INITIATED 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 public hearing.

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.

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ARTICLE 14
ZONING HEARING BOARD

SECTION 1401 MEMBERSHIP OF BOARD

The membership of the Zoning Hearing Board shall consist of five (5) residents of Ashley Borough appointed by the Ashley Borough Council by resolution. The terms of office for Board members shall be five (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 one (1) residents 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 for two (2) years.

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 (15) 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 Zoning Hearing 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 EXPENDITURES 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 of all hearings before the Board shall be conspicuously posted on the affected property not less than one week prior to the hearing.

Written notice of all hearings before the Board shall be conspicuously posted on the affected property by the owner at least one week prior to the hearing. The owner shall provide the Zoning Hearing Board with a notarized affidavit of posting.

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. 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.

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 Ashley 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 within two hundred (200) linear feet of 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.

5. Any party or person who has submitted a written request to receive notification on the subject property.
- C. The Borough Council may prescribe reasonable fees with respect to hearings before the Board in accordance with a Fee Schedule as set forth in Section 1207 of this Ordinance. Fees for said hearings may include compensation for the secretary, and if applicable, members of the Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the 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 the Board may appoint any member as a hearing officer. The decision, or where no decision is called for, the findings shall be made by the Board, 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 Council, 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.
- H. 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.
- I. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.
- J. 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.
- K. 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.
- L. The Board or the hearing officer, as the case may be, shall render a written decision or, if no decision is called for, provide written findings on the application within forty-five (45) 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 therefor. 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 (45) 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 (30) days after the report of the hearing officer. If the Board fails to commence, conduct or complete the required hearing as provided for under Section 1406 (D), 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 the failure of the Board to meet or render a decision as herein above provided, the Board shall give public notice of said decision within ten (10) days from the last day it could have met to render a decision in the same manner as provided under Section 1406 (A) and written notice of the decision shall be mailed to those parties identified under Section 1406(B). If the Board fails to provide such notice, the applicant may do so. 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.

- M. In any appeal of an enforcement notice under Section 1206.1 of 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.
- N. 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 1303.1 of this Ordinance.
- B. Appeals from the determination of the zoning officer, including but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order, the revocation of a zoning permitted/or building permit or the registration or refusal to register any nonconforming use, structure or lot.

- C. 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.
- D. Applications for variances, pursuant to Section 1409 of this Ordinance.
- E. Applications for special exceptions pursuant to Section 1410 of this Ordinance.
- F. 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/or stormwater management not related to development which is classified as a subdivision, land development, or a planned residential development.
- G. Appeals from the Zoning Officer's determination in rendering a Preliminary Opinion under Section 1205 of this Ordinance.

SECTION 1409 VARIANCES

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 1202 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 CRITERIA FOR GRANTING A VARIANCE

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 impairs 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.

Unless approved as part of the variance request, an applicant for a proposed use or development shall comply with any applicable standards and/or criteria as set forth in Article 9, Supplemental Regulations. 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 1202 of this Ordinance.
2. 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 CRITERIA 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. 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. The proposed use shall not jeopardize Community Development Objectives as set forth in this Ordinance and the Ashley Borough Comprehensive Plan, including any updates, revisions and/or amendments thereto.
2. Public services and facilities such as streets, sewers, water, police, and fire protection shall be adequate for the proposed use and/or development.
3. Existing streets and proposed access to the site shall be adequate regarding the

width and pavement for emergency service vehicles.

4. The proposed use shall not adversely affect the public health, safety and welfare due to changes in traffic conditions. Existing streets and proposed access to the site shall be adequate to accommodate anticipated traffic volumes in a manner that avoids undue traffic congestion and provides for the safety and convenience of pedestrian and vehicular traffic. The proposed use shall not result in unsafe or dangerous traffic conditions.
5. The proposed use shall be compatible with adjoining development and the character of the zoning district and neighborhood in which it is proposed to be located. The nature and intensity of the operation of the proposed use shall be considered regarding its compatibility or lack thereof.
6. The proposed use shall not adversely affect neighborhood property values and aesthetic characteristics in the neighborhood where it is proposed to be located.
7. The proposed use shall not adversely affect the public health, safety and welfare as related to drainage, air quality, noise and natural features of the land. 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 subject Zoning District.
8. The submission of any reports and/or studies, required by the Zoning Hearing Board within the context of the definition "Impact Analysis" as contained defined in 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 Zoning Hearing Board, in requiring such reports and/or studies.
9. The proposed use and/or development shall comply with any applicable standards and/or criteria as set forth in Article 8, Supplemental Regulations.
10. The proposed use and/or development shall not be injurious to the public interest.

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 PARTIES APPELLANT BEFORE THE BOARD

Appeal and/or applications for hearings before the Zoning Hearing Board pursuant to those matters contained within Section 1408 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 1412 TIME LIMITATIONS

1412.1

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.

1412.2

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 (30) days after the notice of the Board's determination is issued. Failure to do so within the prescribed thirty (30) day time period shall preclude any further appeal of the Board's decision.

SECTION 1413 STAY OF PROCEEDINGS

1413.1

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.

1413.2

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 appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court.

1413.3

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.

1413.4

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.