

L M T  
Zoning Code  
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**ARTICLE 11 DRAFT**  
**MAY 17, 2019**

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# ARTICLE 11: PROCESS & PROCEDURES

**155-11.1 ZONING ADMINISTRATION**

- 11.1.1 Hereafter, no land shall be used or occupied, and no building or structure shall be erected, altered, used, or occupied, except in conformity with the regulations established in this Chapter.
- 11.1.2 Administrative processes and procedures for determining compliance with the provisions of this Chapter are established in this Article.
- 11.1.3 Advertising requirements for zoning text or map amendments, adoption of comprehensive plans or official maps, notice of conditional use and other public hearings, and all other matters regulated by PA Act 247, "The Municipalities Planning Code", shall be undertaken in conformance with said Act.
- 11.1.4 Staff Administration
- 11.1.4.a. The provisions of this Chapter shall be administered and enforced by the Zoning Officer, together with the aid of designated Code Enforcement Officials, the Board of Commissioners, and other municipal agencies, as may be appropriate. It shall be the duty of the local Zoning Officer and he/she shall have the power to:
- 11.1.4.a.i. Receive and examine all permit applications for the Township.
- 11.1.4.a.ii. Review applications for permits involving the erection or alteration of buildings or structures or changes of use in order to determine whether such construction or use is in accordance with the general requirements of this Chapter; all other applicable chapters; and the laws and regulations of the Commonwealth. Permits for construction of uses requiring a special exception or variance or appeals from the determination of the Zoning Officer shall be issued only upon order of the Zoning Hearing Board. Permits requiring conditional use approval by the governing body shall be issued only after receipt of approval from the Board of Commissioners.
- 11.1.4.a.iii. Conduct inspections and surveys of uses, structures, lots, and signs, to determine compliance or non-compliance with the terms of this Chapter. In carrying out such surveys, the local Zoning Officer or his representative may enter upon any land, but shall in all cases notify the property owner or other party in possession in advance of his intention to enter any dwelling house, unless he/she shall first have secured a search warrant.
- 11.1.4.a.iv. Issue stop, cease, and desist orders, and identify in writing conditions found to be in violation of the provisions of this Chapter. Such written orders shall be served personally or by certified mail upon persons, firms, or corporations deemed by the Zoning Officer to be violating the terms of this Chapter. It shall be unlawful for any person to violate any such order issued lawfully by the Zoning Officer, and any person violating any such order shall be in violation of this Chapter.
- 11.1.4.a.v. May revoke any order or zoning permit issued under a mistake of fact or contrary to the law of the provisions of this Chapter.
- 11.1.4.a.vi. Record and file in the municipal building all applications for zoning permits with accompanying plans and documents. All applications, plans, and documents shall be a public record.
- 11.1.4.a.vii. Maintain a map showing the current zoning classification of all land; which shall be posted at the Township Administration building.
- 11.1.4.a.viii. Be available to testify before the Zoning Hearing Board if called to testify by any party or if presenting evidence on behalf of the Township in an appeal from an enforcement notice.
- 11.1.4.a.ix. Keep a record of all plans and applications for permits and all permits issued, with notations as to special conditions attached thereto. All records shall be open for public inspection.

- 11.1.5 Permits required
- 11.1.5.a. A building and/or zoning permit shall be required as designated below. If any of the improvements listed below are located in the Floodplain District, they are also subject to compliance with the provisions of Article 155-7.3, Floodplain District.
- 11.1.5.b. No land use may be established or changed; no structure or building may be erected, constructed, reconstructed, structurally altered, razed or removed; and no building or structure may be used or occupied or the use changed until a building permit has been obtained.
- 11.1.5.c. In the instances where a building permit is required and applied for, zoning approval shall be prerequisite to the approval of the building permit. In those instances where no building permit is required, an application for a certificate of occupancy for a new or changed use of land or structure shall include an application for a zoning/change of use permit.
- 11.1.5.d. A zoning permit shall be required prior to performing any of the following improvements:
- 11.1.5.d.i. Temporary uses of land or structures.
  - 11.1.5.d.ii. Grading within the floodplain.
  - 11.1.5.d.iii. Any fence or wall within the floodplain.
  - 11.1.5.d.iv. The storage of any materials within the floodplain.
  - 11.1.5.d.v. Dredging of any waterway.
  - 11.1.5.d.vi. Ground-mounted array of solar panel.
  - 11.1.5.d.vii. Play structures or other recreational equipment located within the floodplain.
  - 11.1.5.d.viii. Revision or flood map amendment to floodplain.
  - 11.1.5.d.ix. Any change or increase in impervious surface on a lot.
  - 11.1.5.d.x. The installation of a shed or other accessory structures. less than 200 square feet.
  - 11.1.5.d.xi. A retaining wall outside the floodplain exceeding four feet above grade.
  - 11.1.5.d.xii. A fence outside the floodplain exceeding four feet and located in the required front yard setback.
- 11.1.5.e. In the case of a conditional use or use by special exception, the Zoning Officer shall refer the application to the Planning Commission and Board of Commissioners or to the Zoning Hearing Board, whichever is applicable, prior to issuing a zoning permit. Whenever the approval of a conditional use or use by special exception includes conditions attached to the approval, said conditions shall be incorporated into the zoning permit.
- 11.1.5.f. In the case of a permitted use, the Zoning Officer shall not issue the zoning permit unless and until all applicable regulations of this chapter have been met and, in the case of a use for which land development plan approval is required by the Township Subdivision and Land Development Code [Chapter 135], unless and until final approval of the land development plan has been granted. Whenever final approval of a land development plan is subject to conditions, those conditions shall be incorporated into the zoning permit.
- 11.1.5.g. Certificates of Occupancy
- 11.1.5.g.i. New buildings. No building hereafter erected shall be occupied or used in whole or part until a certificate of occupancy shall have been issued by the Director of Building and Planning certifying that such building conforms to the provisions of this chapter.
  - 11.1.5.g.ii. Buildings hereafter altered. No building hereafter so enlarged or so altered as to change its classification and no building hereafter altered for which a certificate of occupancy has not been heretofore issued shall be occupied or used in whole or in part until a certificate of occupancy approved by the Director of Building and Planning shall have been issued.

- 11.1.5.g.iii. Existing buildings. Nothing in this chapter shall prevent the continuance of the lawful use and occupancy of a lawful existing building, except as may be necessary for the safety of life or property. Upon written request from the owner, there shall be issued a certificate of occupancy for an existing building certifying, after verification by inspection of the Director of Building and Planning, the occupancy or use of such building. Whenever a property has been inspected by the Codes Administrator, a certificate of occupancy shall be issued, provided the building and/or use comply with the provisions of this chapter.
- 11.1.5.g.iv. Change of occupancy. No change of occupancy or use shall be made unless the Director of Building and Planning finds, upon inspection, that such building complies with the provisions of this chapter with respect to the proposed new occupancy and use and a certificate of occupancy is issued therefor.
- 11.1.5.g.v. Applications. Applications for certificates of occupancy shall be submitted in such form as the Director of Building and Planning may prescribe, shall contain such information as may be required by him and shall be verified by affidavit.
- 11.1.5.g.vi. Contents of certificate. In addition to the certification as to compliance with the provisions of this chapter, the certificate of occupancy shall state the purposes for which the building may be used and any special stipulations of the permit. A certificate of occupancy issued to the owner or agent of any building hereafter erected or altered in accordance with any variance or special exception granted by the Zoning Hearing Board shall include a description of such variance or special exception.
- 11.1.5.g.vii. Issuance and filing. A certificate of occupancy shall be issued within 10 days after application if the building at the time of application is certified as conforming to the provisions of this chapter. A record of all certificates shall be kept in the Township Building.
- 11.1.5.h. Application for permits
  - 11.1.5.h.i. Applications for permits shall be made in writing to the Director of Building and Planning on forms furnished by the Township. The Director of Building and Planning shall require that the application for a building permit and the accompanying plot plan, prepared by a registered engineer or land surveyor, shall contain all information necessary to enable him/her to ascertain whether the proposed building complies with the provisions of this chapter and any information required by conditions on a preliminary plan approval.
- 11.1.5.i. Application for preliminary opinion
  - 11.1.5.i.i. A landowner may submit plans and other materials describing a proposed use or development to the Zoning Officer for a preliminary opinion as to their compliance with the provisions of this chapter. Such plans and other materials shall not be required to meet the standards prescribed for tentative, preliminary or final plan 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.
  - 11.1.5.i.ii. If the Zoning Officer's preliminary opinion is that the use or development complies with the provisions of this chapter, notice thereof shall be published each week for two successive weeks in a newspaper of general circulation in the Township. Such notice shall include a general description of the proposed use or development and its location, by some readily identifiable directive, and the place and times where the plans and other materials may be examined by the public. Appeal from a favorable preliminary approval shall be to the Zoning Hearing Board, the time therefor to run from the date when the second notice thereof has been published.

- 11.1.5.i.iii. The application for preliminary opinion shall be accompanied by such documentation as the Zoning Officer shall prescribe and by payment of an application fee.
- 11.1.5.j. Permits issued in error
  - 11.1.5.j.i. Permits issued in error shall convey no rights to any party. Permits issued in error shall not confer any rights to construction or occupancy, and upon a finding that a permit has been so issued, it shall be revoked.
  - 11.1.5.j.ii. No approval shall be construed to authorize violation of any provisions of this Code, and such approval shall be valid only to the extent that the work authorized is lawful.
  - 11.1.5.j.iii. Issuance of a building permit based upon a site plan shall not prevent the Zoning Officer from thereafter requiring correction of errors in the plan.
- 11.1.5.k. No Approval Available if Code Enforcement Violations.
  - 11.1.5.k.i. No approval may be issued if the business, enterprise, occupation, trade, profession, property or activity is the subject of an ongoing Township enforcement procedure, or is the subject of a notice of violation of a state law or county ordinance where the business enterprise is located or is to be located, unless the subject of the application would cure the outstanding violation.
- 11.1.6. Conditional uses
  - 11.1.6.a. The Board of Commissioners shall have the power to approve or disapprove conditional uses when this Chapter specifically requires the obtaining of such approval.
  - 11.1.6.b. In granting a conditional use, the Board of Commissioners shall make findings of fact consistent with the provisions of this Chapter. The Board shall not approve a conditional use except in conformance with the conditions and standards outlined in this Chapter.
  - 11.1.6.c. The applicant shall have the burden of proving that the application complies with all the requirements and objectives of this Chapter, including those specifically set forth in [Article XXX \[Uses\]](#).
  - 11.1.6.d. Opponents shall have the burden of proving that the application does not comply with the general criteria of this Chapter.
  - 11.1.6.e. Where an applicant requires subdivision or land development approval in addition to conditional use approval, the applicant has the option to file those applications simultaneously, or to file the application for conditional use first, and file more complete land development plans later. Should the applicant file the applications simultaneously, and request simultaneous review, the applicant assumes the risk of cost of preparation of plans for both applications, and the cost of any modifications the Township may require in the review process. Approval of both conditional use and subdivision and land development shall be required before the issuance of any zoning permit.
  - 11.1.6.f. Application Requirements: Conditional use applications shall be governed by the following:
    - 11.1.6.f.i. The landowner shall make a written request to the Board of Commissioners. The request shall contain a statement reasonably informing the Township of the nature and conditions of the proposed use.
    - 11.1.6.f.ii. Applications for conditional use approval shall contain all data, information, and reports necessary for the Board of Commissioners to evaluate the proposal. The application shall be accompanied by site plans, building plans, impact statements, and other materials describing the use or development proposed. All information required by this Chapter shall accompany the application.
  - 11.1.6.g. For conditional uses concerning existing buildings, a site plan shall be submitted that includes the following:
    - 11.1.6.g.i. Name and address of establishment;
    - 11.1.6.g.ii. Name and address of owner;
    - 11.1.6.g.iii. North arrow;
    - 11.1.6.g.iv. Date of plan;

- 11.1.6.g.v. Roads and streets adjacent to property;
  - 11.1.6.g.vi. Location of all structures on the property (existing and proposed);
  - 11.1.6.g.vii. Zoning classification of the property;
  - 11.1.6.g.viii. Proposed hours of operation;
  - 11.1.6.g.ix. Existing and proposed parking;
  - 11.1.6.g.x. Existing and proposed trash receptacles and shielding devices;
  - 11.1.6.g.xi. Existing and proposed lighting, including proposed transformer and generators;
  - 11.1.6.g.xii. Existing and proposed methods of ingress and egress; and
  - 11.1.6.g.xiii. Existing and proposed fencing, walls, retaining walls, buffering and landscaping.
- 11.1.6.h. Fees.
- 11.1.6.h.i. The applicant for any hearing on a conditional use request before the Board of Commissioners shall at the time of making application pay to the Township a fee, in accordance with a fee schedule adopted by the Township.
- 11.1.6.i. Review Procedures:
- 11.1.6.i.i. The Board of Commissioners may attach such reasonable conditions and safeguards, other than those related to off-site transportation and road improvements, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of the Pennsylvania Municipalities Planning Code and the zoning ordinance.
  - 11.1.6.i.ii. The Board of Commissioners shall request an advisory opinion from the Township Planning Commission on any application for a conditional use; the Planning Commission is to submit a report of such advisory opinion prior to the close of the public hearing held by the Board of Commissioners on the application.
  - 11.1.6.i.iii. The Board of Commissioners may appoint one of its members or an independent attorney to be a hearing officer to conduct the public hearing and to recommend findings of fact and a decision to the Building and Planning Committee. If the parties and the Board of Commissioners agree prior to the presentation of any testimony, the decision of the hearing officer shall be final. Otherwise, the Building and Planning Committee, after consideration of the Planning Commission's recommendation, shall promptly recommend a final decision to the Board of Commissioners.
  - 11.1.6.i.iv. The Board of Commissioners shall hold a hearing upon the request, commencing not later than 60 days after the request is filed, unless the applicant requests or consents in writing to an extension of time.
  - 11.1.6.i.v. Hearing: The Board of Commissioners shall conduct hearings pursuant to public notice and shall send notice of the proposed conditional use hearing to contiguous property owners, and make decisions in accordance with the following:
    - 11.1.6.i.v.(1). The parties to the hearing shall be the Township, any person affected by the application who has made timely appearance of record, and any other person; including civic or community organizations permitted to appear by the Board of Commissioners. The Board may require that all persons who wish to be considered parties enter appearances in writing on forms provided for that purpose.
    - 11.1.6.i.v.(2). The chairman, acting chairman, or designee shall have the power to administer oaths of witnesses.
    - 11.1.6.i.v.(3). The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument, and cross-examine witnesses on all relevant issues.

- 11.1.6.i.v.(4). Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- 11.1.6.i.v.(5). The Township, at its discretion, may require a stenographic record of the proceedings, and such transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.
- 11.1.6.i.v.(6). The Board of Commissioners shall render a written decision on the application, and communicate it to the applicant in accordance with the Pennsylvania Municipalities Planning Code.
- 11.1.6.i.vi. Criteria for Conditional Use Approval. The Board of Commissioners shall grant a conditional use only if it finds adequate evidence that any proposed development plan submitted complies with all of the following general requirements as well as any specific requirements and standards listed herein for the proposed use. The Board shall require that any proposed use, and its location among other things:
  - 11.1.6.i.vi.(1). Meets all conditions of uses expressed in the use classification section of this Chapter.
  - 11.1.6.i.vi.(2). Does not conflict with the Township and County Comprehensive Plans and other plans adopted by the Township.
  - 11.1.6.i.vi.(3). Is consistent with the spirit, purposes, and intent of the applicable zoning district.
  - 11.1.6.i.vi.(4). Is in conformance with all applicable requirements of this Chapter and all municipal, state and federal codes applicable to the use or process in question.
  - 11.1.6.i.vi.(5). Is suitable for the property in question. This criterion shall consider issues such as traffic, vehicular and pedestrian circulation, location and design of parking areas, adjacent land use(s), and other impacts on the surrounding area. If the proposal is adjacent to a residential district, the scale of the use shall relate to and complement the surrounding area.
  - ~~11.1.6.i.vi.(6). Nuisance/Safety Analysis. The use shall not generate excessive noise, noxious odors, air pollution or lighting, or result in pedestrian conflict or other safety hazards to people or property. Artificial light shall be directed away from adjacent property and buildings. Artificial lighting shall be located to avoid shining into habitable room windows off site. Outdoor uses and accessory facilities shall only be permitted where the noise generated by the use will have a minimal impact on nearby residential uses and where hazards are contained on the site to the maximum extent possible.~~
  - ~~11.1.6.i.vi.(7). Traffic Impact. The existing road system must be able to accommodate the traffic generated by the proposed use in a safe and efficient manner. The Board of Commissioners may request a traffic impact study, as described in Traffic Impact Study section of the Subdivision and Land Development Ordinance, Chapter 135, Article XXXX.~~
  - 11.1.6.i.vi.(6). Public Utilities. All uses shall be capable of being served by public sewer. A use may be permitted to be served by an on-lot sanitary system, only if deemed acceptable by the Board of Commissioners and the adopted 537 Plan of the Township, upon recommendation of the Township Engineer. Sufficient water supply must be available to accommodate all the needs of the proposed use.

11.1.6.i.vi.(7). In all cases, the applicant's burden of proof shall include the burden of persuading the Board by credible evidence that the applicant has satisfied the criteria set forth in v.(1) of this subsection. In any case where the Board requests that the applicant produce evidence relating to the criteria set forth in v(6) of this subsection or where any other party opposing the application shall claim that an allowance of the application will have any of the effects listed in v (6) of this subsection, the applicant's burden of proof shall include the burden of persuading the Board by credible evidence that allowance of a conditional use will not be contrary to the public interest with respect to the criteria so placed in issue.

11.1.6.i.vii. Conditions. The Board of Commissioners may require adjustments to the proposal as a condition of approval.

#### 11.1.7 Additional Requirements for Conditional Uses

11.1.7.a. This section shall not apply to the following uses:

11.1.7.a.i. Uses regulated by Article 7.1; Historic resources overlay District; and

11.1.7.a.ii. Uses involving fewer than 24 residents/participants per day.

11.1.7.b. General information. Applicants shall submit with their application for data quantifying the anticipated intensity of the proposed use in terms measuring the amount and frequency of public access. Such data shall include, without limitation, the following:

11.1.7.b.i. Total number of participants, quantified by type (including but not limited to users/members, teachers, staff, volunteers, residents, students) and by their method and time of arrival and departure from the site.

11.1.7.b.ii. Age distribution of participants.

11.1.7.b.iii. Days and hours of operation, including normal periods of concentrated ingress and egress.

11.1.7.b.iv. Description and expected attendance at regularly scheduled events, including third-party and other uses of the property beyond those commonly associated with like uses of similar properties.

11.1.7.c. Spacing Requirements. Spacing requirements shall apply to the following residential uses; Alternative housing options for the elderly; Convent, monastery or similar residential religious facility; Student Home. No more than one such use shall be permitted:

11.1.7.c.i. Within the same block, defined as both sides of an uninterrupted road segment between two intersections; and

11.1.7.c.ii. Within 500 feet of another use regulated by this subsection and/or a non-conforming use, measured by the shortest distance between the lot on which the proposed use will be located and the lot or lots which contain the existing use.

11.1.7.d. Traffic impact study (TIS). The Director of Building and Planning shall require a traffic impact study if needed to assure compliance with this subsection. If required, the Township Engineer shall determine the scope of the study and the assumptions utilized.

11.1.7.d.i. The traffic generated by the proposed use, when combined with the current use, shall not result in a level of service lower than C, or, if the level of service is already C or below, shall not alter such level of service for adjacent streets and/or the nearest intersections thereof.

11.1.7.d.ii. The proposed use shall demonstrate that it does not create an unsafe traffic condition due to site obstructions at the points of ingress and egress.

11.1.7.d.iii. The Board of Commissioners may impose additional conditions to mitigate the adverse impact of traffic generated by the proposed use, such as requiring staggered starting and ending times, site circulation or enrollment/public access limits.

11.1.7.e. Loading/queuing requirements. Loading/queuing requirements shall be provided on site in compliance with the following standards:

11.1.7.e.i. One loading/queuing space per 10 participants to be dropped off/picked



and standards in § 155-141.2). The Historical Commission (or the Board of Historical Architectural Review), at a regular or special meeting, shall review the application for conditional use and shall promptly forward its recommendations to the Director of Building and Planning for distribution to the Building and Planning Committee of the Board of Commissioners. In formulating its recommendations, the Historical Commission (or the Board of Historical Architectural Review) shall consider each of the criteria imposed by this section for the grant of conditional use approval.

- 11.1.8.e. The Building and Planning Committee and the Board of Commissioners shall act upon the application in accordance with the provisions of [section XX \(Conditional use application procedures and standards in § 155-141.2\)](#). The Building and Planning Committee may refer the application to a hearing officer to conduct any hearings and make recommendations to the Committee.
- 11.1.8.f. Any conditional use permit granted under this subsection shall expire within one year, unless one of the following conditions is met:
- 11.1.8.f.i. A building permit to perform the work has been issued.
  - 11.1.8.f.ii. An occupancy permit to allow such use has been issued.
- 11.1.8.g. Criteria for the grant of conditional use approval. Where a use is permitted in an Historic Resource Overlay District by conditional use, that use shall not be granted unless the following requirements have been satisfied in addition to those set forth in [section XX \(Conditional use application procedures and standards in § 155-141.2\)](#)
- 11.1.8.g.i. The applicant shall have the burden of demonstrating that approval of the application will not jeopardize the preservation of the Historic Resource(s) contained on the property subject to application. To sustain this burden the applicant shall present evidence demonstrating the following:
    - 11.1.8.g.i.(1). The exact location of the area in which the work is to be done.
    - 11.1.8.g.i.(2). The exterior changes to be made or the exterior character of the structure to be erected.
    - 11.1.8.g.i.(3). A list of the surrounding structures with their general exterior characteristics.
    - 11.1.8.g.i.(4). The effect of the proposed change upon the general historic and architectural nature of the property.
    - 11.1.8.g.i.(5). The appropriateness of exterior architectural features of structures involved with the proposed work.
    - 11.1.8.g.i.(6). The general design, arrangement, texture, material, scale, mass and color of any affected building, structure or site and the relation of such factors to similar features of other structures on the property.
    - 11.1.8.g.i.(7). That rehabilitation work will not destroy the distinguishing qualities or character of the historic resource and its environment.
    - 11.1.8.g.i.(8). In the event that replacement of contributing architectural features is necessary, the new material should, as closely as possible, match the material being replaced in kind. At a minimum, the composition, design, color, texture and other aesthetic qualities shall be sympathetic to and in character with the historic resource. In instances where original materials are either unavailable or their use economically infeasible, the Board may approve the use of materials which are aesthetically consistent with, even if not completely duplicative of, the character of the historic resource.
    - 11.1.8.g.i.(9). Distinctive stylistic features or examples of skilled craftsmanship shall be preserved.
    - 11.1.8.g.i.(10). Changes which may have taken place in the course of time are evidence of the history and development of the building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

- 11.1.8.g.i.(11). A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- 11.1.8.h. The most current version of the Secretary of the Interior's Standards for Rehabilitation of Historic Structures, as amended, shall be used as a guideline in carrying out any plans involving the rehabilitation, alteration or enlargement of historic resource(s).
- 11.1.8.i. Where plans involving the rehabilitation, alteration or enlargement of historic resource(s) will result in all or portions of any such resource(s) remaining unoccupied, such unoccupied resources shall be securely sealed and barred off and the utilities turned off for safety, in a manner not jeopardizing historical integrity, as per the most current construction techniques for historic structures.
- 11.1.8.j. A means to guarantee the permanent protection of the historical integrity of the subject resource(s), such as the establishment of conservation easement(s) or appropriate covenants in a form acceptable to the Township Solicitor, shall be provided.
- 11.1.8.k. The applicant shall have the burden of proving that the historical integrity of the resource has been provided for through the design of the building improvements as well as through implementation of buffering, landscaping, lighting, storage, access and traffic management, interior circulation, loading, parking, fencing, signage and all other land development features.
- 11.1.8.l. The applicant shall have the burden of proving that the grant of the application will not be destructive of the integrity of the historic resource or detrimentally affect the value of surrounding properties.
- 11.1.8.m. The applicant must comply with the parking requirements for the proposed use as set forth in "Article 8: Parking Standards". The Board of Commissioners may prohibit any additional parking between the right-of-way and the facade of the building if the Board finds such parking would negatively impact the historical integrity of the resource.
- 11.1.8.n. The applicant must comply with the requirements of this chapter with respect to signage. The Board of Commissioners may provide conditional approval on a reduction in the size of the signage if it finds that the permitted signage will obstruct views required to assure the safety of the public or to retain the historic nature of the property.
- 11.1.8.o. The Board of Commissioners may attach conditions to achieve the objectives set forth in this section and to promote the public health, safety and welfare, which conditions may relate to any aspect of the proposed use of the property, including but not limited to buffering, parking, signage, traffic volume and flow, hours of operation, noise and odor emission.
- 11.1.8.p. Where the Board of Commissioners waives any requirement which thereby increases the rate or volume of stormwater generated on the property, the additional rate and/or volume of runoff caused by such waiver shall be controlled for the one-hundred-year storm.
- 11.1.8.q. Fees.
- 11.1.8.q.i. The Board of Commissioners shall establish and revise, from time to time, a schedule of fees by resolution or ordinance, as well as a collection procedure, for all applications submitted under the provisions of this chapter. The schedule of fees shall be available to the public from the Zoning Officer or Township Secretary.
- 11.1.9 Landowner Curative Amendments.
- 11.1.9.a. A curative amendment may be filed by a landowner who desires to challenge, on substantive grounds, the validity of this chapter or the Zoning District Map or any provision thereof, which prohibits or restricts the use or development of land in which he/she has an interest.
- 11.1.9.b. Procedure. The landowner may submit a curative amendment to the Board of Commissioners with a written request that his challenge and proposed amendment be heard and decided as provided in the Pennsylvania Municipalities Planning Code, Act 247, as amended. As with other proposed amendments, the curative amendment shall be referred to the Township Planning Commission and the Montgomery County Planning

Commission at least 30 days before the hearing is conducted by the Board of Commissioners, pursuant to Pennsylvania Municipalities Planning Code, Section 908. Public notice shall be given in accordance with the applicable provisions of the Pennsylvania Municipalities Planning Code.

- 11.1.9.c. Evaluation of Merits of Curative Amendment. If the Board of Commissioners determines that a validity challenge has merit, the Board of Commissioners may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment which will cure the alleged defects. The Board of Commissioners shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:
- 11.1.9.c.i. The impact of the proposal upon roads, sewer facilities, water supplies, public schools and other public service facilities;
  - 11.1.9.c.ii. If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of protected persons otherwise unlawfully excluded by the challenged provisions of this chapter or Zoning District Map;
  - 11.1.9.c.iii. The suitability of the site for the intensity of the use proposed by the site's soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources and other natural features;
  - 11.1.9.c.iv. The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and
  - 11.1.9.c.v. The impact of the proposal on the preservation of open space and other land uses which are essential to public health and welfare.
- 11.1.9.d. Declaration of Invalidity by Court. If the Township does not accept a landowner's curative amendment brought in accordance with this section and a court subsequently rules the challenge has merit, the court's decision shall not result in a declaration of invalidity for this entire chapter but only for those provisions which specifically relate to the landowner's curative amendment challenge.
- 11.1.10 Municipal Curative Amendments.
- 11.1.10.a. If the Township determines that this chapter or any portion thereof is substantially invalid, it shall take the following actions:
  - 11.1.10.b. The Township shall declare, by formal action, its Zoning Code or portions thereof substantively invalid and propose to prepare a curative amendment to overcome such invalidity. Within 30 days following such declaration and proposal, the Board of Commissioners shall:
    - 11.1.10.b.i. By resolution, make specific findings setting forth the declared invalidity of the applicable sections of the Zoning Code, which may include:
      - 11.1.10.b.i.(1). References to specific uses which are either not permitted or not permitted in sufficient quantity;
      - 11.1.10.b.i.(2). Reference to a class of use or uses which require revision; or
      - 11.1.10.b.i.(3). Reference to the entire Chapter which requires revision.
    - 11.1.10.b.ii. Begin to prepare and consider a curative amendment to the Zoning Code to correct the declared invalidity.
  - 11.1.10.c. Within 180 days from the date of the declaration and proposal, the Township shall enact a curative amendment to validate, or reaffirm the validity of, its Zoning Code pursuant to the provisions required by Section 609 of the MPC in order to cure the declared invalidity of the Zoning Code.
  - 11.1.10.d. Upon the initiation of the procedures, as set forth in Subsection 11.1.9(b), the Board of Commissioners shall not be required to entertain or consider any landowner's curative amendment filed under Section 609.1 of the MPC, nor shall the Zoning Hearing Board be required to give a report requested under Section 909.1 or 916.1 of the MPC. Upon completion of the procedures as set forth in Subsections 11.1.9(b) and 11.1.9(c), no

rights to a cure pursuant to the provisions of Sections 609.1 and 916.1 of the MPC shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of the unamended Zoning Code for which there has been a curative amendment pursuant to this section.

**155-11.2 ZONING HEARING BOARD**

- 11.2.1 For rules and regulations of the Zoning Hearing Board, unless stated otherwise, the requirements of the PA Act 247: Municipalities Planning Code, "Article IX: Zoning Hearing Board" shall apply.
- 11.2.2 Jurisdiction
- 11.2.2.a. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
- 11.2.2.a.i. Appeals: to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Officer in the enforcement of this chapter, including:
- 11.2.2.a.i.(1). Challenges to the validity of a land use code raising procedural questions or alleged defects in the process of enactment or adoption, which challenges shall be raised by an appeal taken within 30 days after the effective date of the ordinance.
- 11.2.2.a.i.(2). 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 or the registration or refusal to register any nonconforming use, structure or lot.
- 11.2.2.a.i.(3). Appeals from a determination by the Township Engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard regulation or such provisions within a land use code.
- 11.2.2.a.i.(4). Appeals from the Zoning Officer's determination under Section 916.2 of the Pennsylvania Municipalities Planning Code (Act 247, as amended)
- 11.2.2.a.ii. Special exceptions: to hear and decide special exceptions to the terms of this chapter in such cases as are herein expressly provided for.
- 11.2.2.a.iii. Variances: to authorize upon appeal in accordance with the law, in specific cases, variances from the terms of this chapter.
- 11.2.2.a.iv. Rules of procedure: The Board may adopt rules of procedure in accordance with the several provisions of this chapter as to the manner of filing appeals or applications for special exceptions or variances from the terms of this chapter.
- 11.2.2.b. In exercising the above-mentioned powers, the Board may:
- 11.2.2.b.i. Reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination appealed from.
- 11.2.2.b.ii. Make such order, requirement, decision or determination as ought to be made.
- 11.2.2.b.iii. Impose appropriate conditions and safeguards.
- 11.2.2.c. Applications, hearings and decisions regarding variances and special exceptions in the Floodplain District shall be governed by the provisions of Article XXVII of this chapter as well as the provisions of this article. In the event that there is a conflict between the provisions of this article and Article XXVII, the provisions of Article XXVII shall take precedence and be controlling over the provisions of this article.

## 11.2.3 Membership

- 11.2.3.a. The Zoning Hearing Board shall consist of three members appointed by the Board of Commissioners as provided by law. The word "Board," when used in this article, shall mean the Zoning Hearing Board. The Board of Commissioners may also appoint up to two residents of the Township to serve as alternate members of the Board. Regular and alternate members shall each serve a three-year term of office and none shall hold any other elective or appointive office in the Township, nor be a Township employee.
- 11.2.3.b. The Chairman of the Board may designate alternate members of the Board to replace any absent or disqualified member, and if, by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Board shall designate as many alternate members of the Board to sit on the Board as may be needed to reach a quorum. Any alternate member of the Board shall continue to serve on the Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Board has made a final decision on the matter or case. Designation of an alternate pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among the alternates.
- 11.2.3.c. When seated, 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 regular Board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties of a regular Board member. Any alternate may participate in any proceeding or discussion of the Board but shall not be entitled to vote as a regular member of the Board nor be compensated unless designated as a voting alternate member.
- 11.2.3.d. Removal of members
- 11.2.3.d.i. Any Zoning Hearing Board member may be removed for malfeasance, misfeasance or nonfeasance in the office or for other just cause by a majority vote of the Board of Commissioners taken after the member has received 15 days' advance notice of the intent to take such vote. A hearing may be held in connection with the vote if the member shall request it in writing.
- 11.2.3.e. Organization of the board
- 11.2.3.e.i. Officers. The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves.
- 11.2.3.e.ii. Quorum. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Zoning Hearing Board, except when member(s) of the Zoning Hearing Board are disqualified to act in a particular matter, alternate members shall be appointed to provide a quorum.
- 11.2.3.e.iii. Hearing Officer. The Zoning Hearing Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf, and the parties may waive further action by the Zoning Hearing Board and accept the findings or decision of the hearing officer as final.
- 11.2.3.e.iv. Procedures. The Zoning Hearing Board may make, alter and rescind rules and forms for its procedure, consistent with the Code of the Township and laws of the Commonwealth of Pennsylvania.
- 11.2.3.e.v. Files and Annual Report. The Zoning Hearing Board shall keep full public records of its business and shall submit a report of its activities to the Board of Commissioners once a year.

## 11.2.4 Variances

11.2.4.a. The Board, upon application, shall have the power to authorize variances from the requirements of this chapter and to attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter. A variance may be granted if all of the following findings are made where relevant in a given case:

11.2.4.a.i. 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 this chapter in the neighborhood or district in which the property is located.

11.2.4.a.ii. That, because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

11.2.4.a.iii. That such unnecessary hardship has not been created by the appellant.

11.2.4.a.iv. That the variance, if authorized, will represent the minimum variance necessary to afford relief and will represent the least modification possible of the regulation in issue.

11.2.4.a.v. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public interest.

11.2.4.b. In determining whether the allowance of a variance is contrary to the public interest, the Board shall consider whether the application, if granted, will:

11.2.4.b.i. Adversely affect the public health, safety and welfare due to changes in traffic conditions drainage, air quality, noise levels, natural features of the land, neighborhood property values and neighborhood aesthetic characteristics.

11.2.4.b.ii. Does not conflict with the Lower Merion Township Comprehensive Plan.

11.2.4.b.iii. Provide the required parking required under "Article 8: Parking Standards" of this chapter.

11.2.4.b.iv. Adversely affect the logical, efficient and economical extension or provision of public services and facilities such as public water, sewers, refuse collection, police and fire protection and public schools.

11.2.4.b.v. Otherwise adversely affect the public health, safety, morals or welfare.

## 11.2.5 Uses by Special Exception

11.2.5.a. The Board shall have the power to hear and decide on applications for uses by special exception as authorized by this chapter, in harmony with its general purpose and intent, and in accordance with the standards set forth in Article 5, Uses. The Board shall approve a use by special exception only if it meets all applicable requirements of this chapter and the express standards and criteria set forth in Part 1.2.14. In granting a use by special exception, the Board may attach such reasonable safeguards or conditions, in addition to those expressed in this chapter, as it may deem necessary to properly implement this chapter and protect the public health, safety and welfare

- 11.2.5.b. An applicant for a special exception shall have the burden of establishing both:
- 11.2.5.b.i. That his application falls within the provision of this chapter which accords to the applicant the right to seek a special exception; and
- 11.2.5.b.ii. That allowance of the special exception will not be contrary to the public interest.
- 11.2.5.c. In determining whether the allowance of a special exception is contrary to the public interest, the Board shall consider whether the application, if granted, will:
- 11.2.5.c.i. Adversely affect the public health, safety and welfare due to changes in traffic conditions drainage, air quality, noise levels, natural features of the land, neighborhood property values and neighborhood aesthetic characteristics.
- 11.2.5.c.ii. Does not conflict with the Lower Merion Township Comprehensive Plan ~~and other plans adopted by the Township.~~
- 11.2.5.c.iii. Provide the required parking required under "Article 8: Parking Standards" of this chapter.
- 11.2.5.c.iv. Adversely affect the logical, efficient and economical extension or provision of public services and facilities such as public water, sewers, refuse collection, police and fire protection and public schools.
- 11.2.5.c.v. Otherwise adversely affect the public health, safety, morals or welfare.
- 11.2.5.d. The use by special exception must meet the performance standards of the zoning district in which the use is permitted if provided in Article 5: Uses.
- 11.2.5.d.i. When distance separation requirements are established, measurement shall be measured from property line to property line, except if noted otherwise.
- 11.2.5.e. In addition to any applicable requirements contained in Article 5: Uses ~~and the standards of Subsection 11.2.14(b) through Subsection 11.2.14(d) of this Article~~, the following additional standards shall be met by any applicant for a special exception in any residential district:
- 11.2.5.e.i. Applicant shall demonstrate that all of the required parking shall be installed outside of the front yard. In no case shall the front yard be paved for parking or circulation purposes with the exception of one driveway penetrating it to reach a required parking area. Any additional driveway(s) to reach a required parking area shall be permitted only if authorized by the Board as a part of the order granting the special exception.
- ~~11.2.5.e.ii. Buffer area of not less than 20 feet in width along the full length of each side and rear lot line shall be provided. No driveway or parking area shall be permitted within this required buffer area. The Zoning Hearing Board may waive the buffer requirement if it finds that the public health, safety and welfare would be adversely affected by the installation of the buffer.~~
- ~~11.2.5.e.iii. Artificial lighting shall be located to avoid shining into habitable room windows off site. Outdoor uses and accessory facilities shall only be permitted where the noise generated by the use will have a minimal impact on nearby residential uses and where hazards are contained on the site to the maximum extent possible.~~
- 11.2.5.f. Additional Restrictions Regulations for All Special Exceptions
- 11.2.5.f.i. This section shall not apply to the following: Uses involving fewer than 24 residents/participants per day.
- 11.2.5.f.ii. General information. Applicants shall submit with their application for data quantifying the anticipated intensity of the proposed use in terms measuring the amount and frequency of public access. Such data shall include, without limitation, the following:
- 11.2.5.f.ii.(1). Total number of participants, quantified by type (including but not limited to users/members, teachers, staff, volunteers, residents, students) and by their method and time of arrival and departure from the site.
- 11.2.5.f.ii.(2). Age distribution of participants.

- 11.2.5.f.ii.(3). Days and hours of operation, including normal periods of concentrated ingress and egress.
- 11.2.5.f.ii.(4). Description and expected attendance at regularly scheduled events, including third-party and other uses of the property beyond those commonly associated with like uses of similar properties.
- 11.2.5.f.iii. Spacing Requirements. Spacing requirements shall apply to the following residential uses; Alternative housing options for the elderly; Convent, monastery or similar residential religious facility; Student Home. No more than one such use shall be permitted:
- 11.2.5.f.iii.(1). Within the same block, defined as both sides of an uninterrupted road segment between two intersections; and
- 11.2.5.f.iii.(2). Within 500 feet of another use regulated by this subsection and/or a nonconforming use, measured by the shortest distance between the lot on which the proposed use will be located and the lot or lots which contain the existing use.
- 11.2.5.f.iv. Traffic impact study (TIS). The Director of Building and Planning shall require a traffic impact study if needed to assure compliance with this subsection. If required, the Township Engineer shall determine the scope of the study and the assumptions utilized.
- 11.2.5.f.iv.(1). The traffic generated by the proposed use, when combined with the current use, shall not result in a level of service lower than C, or, if the level of service is already C or below, shall not alter such level of service for adjacent streets and/or the nearest intersections thereof.
- 11.2.5.f.iv.(2). The proposed use shall demonstrate that it does not create an unsafe traffic condition due to site obstructions at the points of ingress and egress.
- 11.2.5.f.iv.(3). The Zoning Hearing Board may impose additional conditions to mitigate the adverse impact of traffic generated by the proposed use, such as requiring staggered starting and ending times, site circulation or enrollment/public access limits.
- 11.2.5.f.v. Loading/queuing requirements. Loading/queuing requirements shall be provided on site in compliance with the following standards:
- 11.2.5.f.v.(1). One loading/queuing space per 10 participants to be dropped off/picked up by automobile per hour at the maximum anticipated level of such activity.
- 11.2.5.f.v.(2). One oversized loading/queuing space per bus loading or discharging at the site at any one time.
- 11.2.5.f.v.(3). Only a new use or that portion of the property proposed for an expanded use shall be required to meet these loading/queuing standards.
- 11.2.5.f.vi. Lighting. Lighting shall be provided in compliance with Chapter 105: Noise and Exterior Lighting and with section "155-3.12 Ambience Standards":
- 11.2.5.f.vi.(1). Lighting shall be provided along all interior walkways and parking areas to be used after dusk.
- 11.2.5.f.vi.(2). Lighting for interior walkways shall be a maximum of 12 feet above finished grade.
- 11.2.5.f.vi.(3). Lighting for parking areas shall be a maximum of 12 feet above finished grade unless the applicant can demonstrate that taller lights are necessary for safety purposes.
- 11.2.5.f.vi.(4). The source of illumination for all light fixtures on the exterior of the building shall be screened from off-site view.

- 11.2.5.f.vii. Buffering. Landscaped buffer areas (including a wall, fence, suitable planting or combination if approved by the Township), incorporating a variety of deciduous and evergreen trees and shrubs shall be provided along all property lines in compliance with the following:
- 11.2.5.f.vii.(1). Buffer areas are as follows shall be in compliance with section "155-3.11 Landscape Standards".
- 11.2.5.f.vii.(1)a. A minimum of 20 feet in width along the side or rear property lines, but in no case, shall be less than the required setback.
- 11.2.5.f.vii.(1)b. Any existing improvements that project into the required buffer area may remain, provided that they were lawful when built.
- 11.2.5.f.vii.(2). 11.2.5.f.vii.(2) Buffer area plantings shall comply with § 101-9B through F, which may include existing, healthy trees and shrubs.
- 11.2.5.f.vii.(3). 11.2.5.f.vii.(3) The Zoning Hearing Board may modify the buffer requirements if the adjacent property is a nonresidential use.

- 11.2.6 Additional Requirements for Special Exceptions or Variances in the Floodplain District
- 11.2.6.a. Applicants shall provide the Zoning Hearing Board with a site plan at a scale of one inch equals 40 feet and a sectional profile at a scale of one inch equals four feet, showing present site conditions, proposed improvements, and the following information:
- 11.2.6.a.i. The proposed lowest floor elevation of any proposed building based upon North American Vertical Datum of 1988;
- 11.2.6.a.ii. The elevation of the base flood; and
- 11.2.6.a.iii. Detailed information concerning any proposed floodproofing measures and corresponding elevations.
- 11.2.6.b. Prior to the public hearing by the Zoning Hearing Board of an application for a variance or a special exception, the Secretary of the Zoning Hearing Board shall, over his signature, notify the applicant in writing that the issuance of a variance or special exception to construct a structure below the base flood level will result in increased premium rates for flood insurance and such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance and special exception actions as required in this section.
- 11.2.6.c. The Secretary of the Zoning Hearing Board shall maintain a record of all variance and special exception actions, including justification for their issuance, and the Township shall report any such variances and special exceptions issued in its annual report to the Federal Insurance Administrator.
- 11.2.6.d. All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the state and all other applicable codes and ordinances. The Zoning Officer shall require copies of all necessary permits from those governmental agencies from which approval is required by federal or state law.
- 11.2.6.e. The prohibitions, requirements and considerations in this subsection shall be applied by the Zoning Hearing Board in reviewing and adjudicating applications for variances in the Floodplain District.
- 11.2.6.f. Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- 11.2.6.g. Variances shall only be issued upon **compliance with the requirements of article 11.2.411.2.14** and the following:
- 11.2.6.g.i. A showing of good and sufficient cause.
- 11.2.6.g.ii. A determination that failure to grant the variance would result in exceptional hardship.
- 11.2.6.g.iii. A determination that grant of the variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense or create nuisances or cause fraud on or victimization of the public or conflict with any laws or statutes of the Commonwealth of Pennsylvania or the Code of the Township of Lower Merion or regulations of the Township of Lower Merion.
- 11.2.6.g.iv. Adherence to the anchoring and floodproofing requirements of this article.
- 11.2.6.h. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 11.2.7 Comparable Uses not Specifically Listed
- 11.2.7.a. Uses of the same general character as any of the uses authorized as permitted uses by right, conditional uses, or uses by special exception in the zoning district in which the property is located shall be allowed if it can be determined that the impact of the proposed use on the environment and adjacent streets and properties is equal to or less than any use specifically listed in the zoning district.
- 11.2.7.b. Determination shall consider the following characteristics of the proposed use:
- 11.2.7.b.i. The number of employees.
- 11.2.7.b.ii. The floor area of the building and the gross area of the lot devoted to the proposed use.
- 11.2.7.b.iii. The type of products, materials and equipment and/or processes involved

- in the proposed use.
- 11.2.7.b.iv. The traffic and environmental impacts and the ability of the proposed use to comply with the performance standards of § XXXXX of this chapter.
  - 11.2.7.b.v. For those uses included in the most-recent edition of the Standard Industrial Classification Manual published by the Office of Management and Budget, whether the proposed use shares the same SIC code or major group number as one or more uses that are specifically listed in the zoning district.
  - 11.2.7.b.vi. The proposed use shall comply with all applicable area and bulk regulations of the zoning district in which it is located.
  - 11.2.7.b.vii. The proposed use shall comply with any applicable standards and criteria specified in this Article for the most- nearly-comparable use by special exception or condition use listed in the zoning district in which the comparable use is proposed.
  - 11.2.7.b.viii. The proposed use shall be consistent with the purpose statement for the zoning district in which it is proposed and shall be consistent with the community development objectives of this chapter.
- 11.2.8 Burden of Proof
- 11.2.8.a. In all cases, the applicant's burden of proof shall include the duty of presenting credible evidence sufficient to persuade the Board that the applicant has satisfied the criteria set forth in Subsections 11.2.~~134~~ through 11.2.~~16~~ of this section. In any case where the Board requests that the applicant produce evidence relating to the criteria set forth in Subsections 11.2.~~134~~ through 11.2.~~16~~ or where any other party opposing the application shall claim that an allowance of the application will have any of the effects listed in Subsections 11.2.~~134~~ through 11.2.~~16~~, the applicant's burden of proof shall include the burden of presenting credible evidence sufficient to persuade the Board that allowance of a special exception or variance will not be contrary to the public interest with respect to the criteria so placed in issue.
- 11.2.9 Public hearings
- 11.2.9.a. Notice. Upon the filing with the Board of an appeal or an application for a special exception or a variance, the Board shall fix a reasonable time and place for a public hearing thereon and shall give notice thereof as follows:
    - 11.2.9.a.i. By publishing a notice thereof once a week for two successive weeks in a newspaper of general circulation in the Township.
    - 11.2.9.a.ii. By mailing due notice thereof to the parties in interest.
    - 11.2.9.a.iii. By mailing notice thereof to the Township Commissioner representing the ward in which the lot or building is located.
    - 11.2.9.a.iv. By mailing notice thereof to every resident or association of residents of the Township who shall have registered their names and addresses for this purpose with the Board.
    - 11.2.9.a.v. When the Board shall so order, by mailing notice thereof to the owner or owners, if their residence is known, or to the occupier or occupiers, of every lot on the same street within 500 feet of the lot or building in question, and of every lot not on the same street within 150 feet of the lot or building, provided that failure to give notice required by this subsection shall not invalidate any action taken by the Board.
  - 11.2.9.b. The notices herein required shall state the location of the building or the lot and the general nature of the question involved.
  - 11.2.9.c. Conduct of Hearing. The Board shall conduct hearings in accordance with the requirements of the PA Act 247: Municipalities Planning Code, "Article IX: Zoning Hearing Board"

### 11.2.10 Appeals and applications

- 11.2.10.a. Appeals to the Board may be taken by any person aggrieved or by any officer of the Township affected by any decision of the Zoning Officer or the Township Engineer. Such appeal shall be taken within a reasonable time, as specified by the Pennsylvania Municipalities Planning Code by filing with the officer from whom the appeal is taken and with the Board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- 11.2.10.b. Procedure. An appeal or an application for a special exception or variance from the terms of this chapter may be filed with the Secretary of the Zoning Hearing Board and shall state:
- 11.2.10.b.i. The name and address of the applicant.
  - 11.2.10.b.ii. The name and address of the owner of the real estate to be affected by the proposed exception or variance.
  - 11.2.10.b.iii. A brief description and location of the real estate to be affected by such proposed change.
  - 11.2.10.b.iv. A statement of the present zoning classification of the real estate in question, the improvements thereon and the present use thereof.
  - 11.2.10.b.v. A statement of the section of this chapter under which the variance or exception requested may be allowed, and reasons why it should be granted.
  - 11.2.10.b.vi. A reasonably accurate description of the present improvements and the additions intended to be made under this application, indicating the size of such proposed improvements, material and general construction thereof. In addition, there shall be attached a plot plan of the real estate to be affected, prepared by a registered engineer or land surveyor, indicating the location and size of the lot and the size of improvements now erected and proposed to be erected thereon.

### 11.2.11 Expiration of special exceptions and variances

- 11.2.11.a. Unless otherwise specified by the Board, a special exception or variance shall expire if the applicant fails to obtain a building permit within six months from the date of authorization thereof. If subdivision or land development approval is required to implement the special exception or variance, the six-month period shall begin to run on the date of the Board's approval or on the date final subdivision or land development approval is granted, whichever shall last occur, provided the subdivision or land development application is submitted within six months of the Zoning Hearing Board decision.
- 11.2.11.b. A use permitted by special exception or variance shall expire if the use authorized is abandoned. If such use permitted by special exception or variance is discontinued by nonuse, unlawful use or a change of use to one not authorized by the previously obtained special exception or variance or by this chapter as of right for a continuous period of six months or more, the abandonment of such use shall be presumed, and any subsequent use of such building or land shall be in conformity with the provisions of this chapter.

- 11.2.12 Decisions
- 11.2.12.a. The Board shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing on the application before the Board. Such decision shall be noted in the minutes of the next meeting of the Zoning Hearing Board. Notice of such decision shall be given to all parties in interest immediately after its announcement. For the purposes of this section, parties in interest shall be limited to the applicant and any person who shall indicate by completing an appropriate form provided by the Board his/her desire to receive notice of the Board's decision.
- 11.2.12.b. Failure to render a decision. Where the Board fails to render a decision within the required forty-five-day period or fails to hold the required hearing within 60 days of the applicant's request for a 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.
- 11.2.12.c. When a decision has been rendered in favor of the applicant because of failure of the Board to meet or render a decision, the Board shall give public notice of the decision within 10 days from the last day it could have met to render a decision. If the Board shall fail to provide such notice, the applicant may do so. Nothing in this section shall prejudice the right of any party opposing the application to appeal the decision to the Court of Common Pleas.
- 11.2.13 Mediation
- 11.2.13.a. Parties to proceedings authorized in this Chapter may utilize mediation as an aid in completing such proceedings. In proceedings before the Zoning Hearing Board, in no case shall the Zoning Hearing Board initiate mediation or participate as a mediating party. Mediation shall supplement, not replace, those procedures in this Chapter once they have been formally initiated. Nothing in this subsection shall be interpreted as expanding or limiting municipal police powers or as modifying any principles of substantive law.
- 11.2.13.b. Participation in mediation shall be wholly voluntary. The appropriateness of mediation shall be determined by the particulars of each case and the willingness of the parties to negotiate. The municipality, in offering the mediation option, shall assure that in each case, the mediating parties, assisted by the mediator as appropriate, develop terms and conditions for:
- 11.2.13.b.i. Funding mediation, as authorized in the Pennsylvania Municipalities Planning Code and agreed to by the parties in mediation.
- 11.2.13.b.ii. Selecting a mediator who, at a minimum, shall have a working knowledge of municipal zoning and subdivision procedures and demonstrated skills in mediation.
- 11.2.13.b.iii. Completing mediation, including time limits for such completion.
- 11.2.13.b.iv. Suspending time limits otherwise authorized in this chapter or in the Pennsylvania Municipalities Planning Code (Act 247, as amended), provided there is written consent by the mediating parties, and by an applicant or Township decision-making body, if either is not a party to the mediation.
- 11.2.13.b.v. Identifying all parties and affording them the opportunity to participate.
- 11.2.13.b.vi. Subject to legal restraints, determining whether some or all of the mediation sessions shall be open or closed to the public.
- 11.2.13.b.vii. Assuring that mediated solutions are in writing and signed by the parties and become subject to review and approval by the appropriate decision making body pursuant to the authorized procedures set forth in this chapter.
- 11.2.13.c. No offers 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.

#### 11.2.14 Appeals to court

- 11.2.14.a. Any person aggrieved by any decision of the Board or any officer of the Township may, within 30 days after any decision of the Board, appeal to the Court of Common Pleas of Montgomery County by petition, duly verified, setting forth that such decision is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, specifying the grounds upon which he/she relies.

### 155-11.3 ZONING AMENDMENTS

#### 11.3.1 Power of amendment

- 11.3.1.a. The Board of Commissioners may from time to time amend, supplement, change, modify or repeal this chapter, or any part thereof, including the Zoning Maps, by proceeding in the manner prescribed in this article. No regulation, restriction or district boundary shall become effective, however, until after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. The provisions of this article requiring public hearings and notice thereof shall apply to all changes and amendments of this chapter.

#### 11.3.2 Petition of citizens for zoning change

- 11.3.2.a. Whenever the owners of 50% or more of any area wherein a change of zoning regulations is sought shall present to the Board of Commissioners a petition in the form prescribed by the Township, duly signed and acknowledged, requesting an amendment, supplement, change, modification or repeal of the regulations prescribed for, or of the Zoning Maps including, such area, the Board shall, except as hereinafter provided, hold a public hearing thereon and cause notice to be given in the manner set forth below. Whenever a petition to change the zoning classification of a property is filed and at the time of filing the property is under agreement of sale, both the seller and the purchaser must sign and acknowledge the petition. In addition, three certified copies of the agreement of sale shall be filed with the petition.

- 11.3.2.b. Three duly executed copies of the petition, together with copies of a map of the area in question attached thereto, shall be filed with the Director of Planning of the Township of Lower Merion, and at that time the filing fee hereinafter specified shall be paid by the petitioner. Any additional data in support of the petition which the petitioner desires to make available for the technical review of the Township Solicitor and the Planning Commission shall be filed in triplicate with the petition at the time it is filed.

- 11.3.2.c. Referral. Any proposed amendment presented to the Board of Commissioners without written findings and recommendations from the Township Planning Commission and the Montgomery County Planning Commission shall be referred to these agencies for review at least 30 days prior to the public hearing of the Board of Commissioners. The Board of Commissioners shall not hold a public hearing upon such amendments until the required reviews are received or the expiration of 30 days from the date of referral, whichever comes first.

#### 11.3.3 Times for public hearings; notice

- 11.3.3.a. No public hearings on proposed amendments will be held during the month of August.

- 11.3.3.b. The time and place of public hearings on proposed amendments will be fixed by the Board by vote at a regular or special meeting.

- 11.3.3.c. Notice. The Board will cause prompt notice of such public hearings to be given as follows:

- 11.3.3.c.i. By publishing notice of the time and place of the public hearing once a week for two successive weeks in an official paper or a paper of general circulation in the Township.

- 11.3.3.c.ii. By mailing a notice thereof to every resident or association of residents of the Township who shall have registered their names and addresses for this purpose with the Township Secretary.

- 11.3.3.c.iii. By posting a notice thereof on the property for which the change is sought.

- 11.3.3.c.iv. By mailing a notice thereof to every owner of property within 500 feet of the property(ies) involved.
  - 11.3.3.d. Such notice shall state the general nature of the proposed amendment as well as the time and place of the public hearing.
- 11.3.4 Procedure at public hearing
  - 11.3.4.a. At the time scheduled for the public hearing, the following procedure will be followed:
    - 11.3.4.a.i. Petitions will be heard in the order of their filing.
    - 11.3.4.a.ii. The presiding officer will announce the hearing.
    - 11.3.4.a.iii. The Director of Building & Planning will describe the location and boundaries of the area included in the petition or the area the classification of which is proposed to be changed by the Board of Commissioners. He/she will explain the differences between the district regulations existing and the district regulations as requested or proposed to be changed and will answer questions regarding the foregoing matters.
    - 11.3.4.a.iv. The petitioner or the attorney or representative may submit evidence in support of the petition. He/she may produce such testimony as he/she chooses but the presentation of the case must be completed within 30 minutes, except by special permission of the Board.
    - 11.3.4.a.v. Evidence in opposition to the petition will be received from any citizen or party in interest or his attorney or representative. Opposition testimony must be completed within 45 minutes, except by special permission of the Board.
    - 11.3.4.a.vi. In rebuttal, the petitioner or the attorney or representative may answer points raised by opponents of the requested amendment, but no new subject matter may be introduced and such rebuttal must be completed within 15 minutes, except by special permission of the Board.
    - 11.3.4.a.vii. Questions and comments by any citizen present or any civic association or other organization will be permitted at the conclusion of the foregoing testimony, when special permission is granted by the Board.
    - 11.3.4.a.viii. The Board will take the matter under advisement.
  - 11.3.4.b. After the conclusion of a public hearing on a requested amendment, no additional evidence will be received by the Board nor will any further communication, either written or oral, be considered by the Board, unless a further public hearing is scheduled.
- 11.3.5 Decision of Board of Commissioners
  - 11.3.5.a. The Board of Commissioners will, after considering the testimony and argument presented, either approve the granting of the petition, modify it or reject it completely. An ordinance approved and adopted by the Board shall take effect and be in force from and after its approval as required by law. If a petition for an amendment is declined, the Board will not entertain another petition covering the same or substantially the same area and requesting the same change in zoning classification for a period of one year, unless the Board concludes that there has been such a material change in the character and circumstances of the neighborhood that an earlier consideration is warranted.
  - 11.3.5.b. Standards for Text or Rezoning Amendments
    - 11.3.5.b.i. In deciding whether to adopt or deny any proposed amendment, or to adopt some modification of the Planning Commission's recommendation, the Board of Commissioners shall consider, among other factors, the following:
      - 11.3.5.b.i.(1). Whether the proposed amendment is consistent with the goals, objectives, and policies of the Comprehensive Plan, as adopted and amended from time to time;
      - 11.3.5.b.i.(2). Whether the proposed amendment is compatible with current and projected conditions and the overall character of development in the immediate vicinity of the subject property;

- 11.3.5.b.i.(3). Whether the proposed amendment is the most desirable use for which the land in the subject property is adapted; and
- 11.3.5.b.i.(4). Whether the proposed amendment will have an adverse effect on the value of properties throughout the jurisdiction.
- 11.3.5.c. Standards for Rezoning to an Institutional District:
  - 11.3.5.c.i. In order to evaluate the impact of rezoning a property to an institutional district, the Board of Commissioners may require submission of a Campus Plan with the rezoning request.
- 11.3.5.d. Standards for Rezoning from an Institutional District to a non-institutional zoning District:
  - 11.3.5.d.i. In order to evaluate the impact of rezoning an institutional property to another zoning district, the Board of Commissioners may require submission of a Tentative Sketch Plan with the rezoning request.
  - 11.3.5.d.ii. In deciding whether to adopt or deny any proposed amendment from an Institutional District to another district, or to adopt some modification of the Planning Commission's recommendation, the Board of Commissioners shall consider, among other factors, the following:
    - 11.3.5.d.ii.(1). Whether the property is no longer serviceable for any type of Institutional Use;
    - 11.3.5.d.ii.(2). Whether the proposed amendment shall preserve, maintain and designate existing historic resources and features, dedicate open space, steep slopes, floodplains and other environmentally sensitive land for conservation, and preserve scenic view sheds.
  - 11.3.5.d.iii. For institutional properties less than five acres:
    - 11.3.5.d.iii.(1). Whether the proposed amendment conforms to the regulations of the least restrictive Abutting residential Zone;
  - 11.3.5.d.iv. For institutional properties five acres or more:
    - 11.3.5.d.iv.(1). Whether the proposed amendment conforms to the regulations of the most restrictive Abutting residential Zone; and
    - 11.3.5.d.iv.(2). Whether new residential use occurs only within existing Buildings.

#### **155-11.4 ZONING ENFORCEMENT, PENALTIES, REMEDIES, CHARGES**

- 11.4.1 Designation of violations
  - 11.4.1.a. Failure to secure a building permit, zoning permit or Zoning Hearing Board certificate, when required, previous to the erection, construction, extension or addition to a building, or failure to secure a use registration permit, shall be a violation of this chapter.
- 11.4.2 Notice of violation
  - 11.4.2.a. When written notice of a violation of any of the provisions of this chapter has been served on the owner, agent, occupant, contractor or builder, such violation shall be discontinued immediately.

- 11.4.3 Violations and penalties
- 11.4.3.a. Any person, partnership or corporation who or which shall violate the provisions of this chapter, and the owner, general agent or contractor of a building or premises where such violation has been committed or shall exist, and the lessee or tenant of an entire building or premises where such violation has been committed or shall exist, and the owner, general agent, contractor, lessee or tenant of any part of a building or premises in which such violation has been committed or shall exist, and the general agent, architect, builder, contractor or any person who knowingly commits, takes part in or assists in any such violation shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than \$500 for each and every violation, and whenever such person shall have been notified by the Director of Building and Planning or Zoning Officer, by service of a summons in a prosecution or in any other way, that he/she is committing such violation of this chapter, each day that such violation is continued shall constitute a separate offense.
- 11.4.3.b. In default of payment of the fine, such person, the members of such partnership or the officers of such corporation shall be liable to injunction or court order.
- 11.4.3.c. Such fines or penalties shall be collected as like fines or penalties are now by law collected, and all fines collected for the violation of this chapter shall be paid over to the Township.
- 11.4.4 Additional remedies
- 11.4.4.a. In case any building is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building or land is used or any hedge, tree, shrub or other growth is maintained in violation of this chapter or of any regulations made pursuant hereto, the proper officer of the Township, in addition to other remedies, may institute in the name of the Township any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building or land or to prevent any illegal act, conduct, business or use in or about such premises.
- 11.4.5 Charges
- 11.4.5.a. Charges and fees for the following appeals, applications, petitions and certifications shall be paid as set forth in the Township Schedule of Fees, as adopted and amended from time to time by the Board of Commissioners:
- ~~11.4.5.b. Except for challenges to the validity of this chapter, as amended, or to the validity of Zoning Maps of the Township of Lower Merion, there shall be a charge, payable in advance in accordance with the Township's Fee Schedule, for each appeal or application to the Zoning Hearing Board involving the following. Such charges shall be made to cover advertising costs, the cost of mailing notices and stenographic charges for taking notes of testimony, provided that if more than 10 pages of testimony are taken in any case, the appellant or applicant shall reimburse the Township for the costs of any such additional testimony:~~
- ~~11.4.5.b.i. A dwelling.~~
- ~~11.4.5.b.ii. A private educational institution, hospital, religious or philanthropic use, sanatorium, nursing home skilled nursing facility, convalescent home for the aged or other building or use not otherwise enumerated in this section, with a fee for each postponement requested by the appellant or applicant.~~
- ~~11.4.5.b.iii. An apartment, commercial or industrial building, with a fee for each postponement requested by the appellant or applicant.~~
- ~~11.4.5.c. In the case of challenges to the validity of this chapter, as amended, or to the Zoning Maps of the Township of Lower Merion, there shall be a charge, payable in advance, for each appeal or application to the Zoning Hearing Board, with a fee for each postponement requested by the appellant or applicant, to cover advertising costs, the cost of mailing notices and stenographic charges for taking notes of testimony, provided that if more than 20 pages of testimony are taken in any case, the appellant or applicant shall reimburse the Township for the costs of such additional testimony:~~

~~11.4.5.d. Except for challenges to the validity of this chapter, as amended, or to the validity of the Zoning Maps of the Township of Lower Merion, a charge shall be made for each petition to the Board of Commissioners requesting a change or amendment to the Zoning Maps or to this chapter, as amended, in a manner which would change or amend the Zoning Maps, if granted. Such charge shall be payable in advance and shall consist of a basic minimum charge plus an additional charge for each dwelling unit permitted under the classification requested in excess of the number of dwelling units permitted under the existing classification for each 1,500 square feet of lot area in requested commercial districts and M Manufacturing and Industrial Districts, not exceeding, however, a specified maximum charge.~~

**155-11.5 NONCONFORMITIES**

- 11.5.1 Statement of intent. It is the intent of this section to provide for the continuance of lawful existing uses, structures, lots, and signs which would be prohibited or restricted under the terms of this Zoning Code as originally adopted on \_\_\_\_\_, referred to in this section as the "adoption date of this Chapter", or subsequent amendments thereto, and which, therefore, do not conform to the regulations of the zoning district in which they are located, but to subject such uses, structures, lots and signs to reasonable regulations and restrictions for the protection of the public health, safety and welfare.
- 11.5.2 Nonconforming uses: Continuance, discontinuance, and changes.
- 11.5.2.a. Continuance: The lawful use of a building or land existing on the adoption date of this Chapter or any amendment thereto may be continued although such use does not conform to the provisions of this Chapter.
- 11.5.2.b. Unlawful use. If a lawful nonconforming use of land or of a building ceases for any period of time and if a use is made thereof which is unlawful under the terms and conditions of this Chapter, the prior nonconforming use may not thereafter be continued, and subsequent use of such land or building shall be in conformity with the provisions of this Chapter.
- 11.5.2.c. Discontinuance. If a nonconforming use of land or of a building ceases or is discontinued for a continuous period of six months or more, subsequent use of such building or land shall be in conformity with the provisions of this Chapter.
- 11.5.2.d. Changes
- 11.5.2.d.i. A nonconforming use of a building or of land may be changed only to a use which is permitted in the zoning district in which the property is located.
- 11.5.2.d.ii. Once changed to a conforming use, no structure or land shall be permitted to revert to the previous nonconforming condition or use.
- 11.5.2.e. Restoration of a non-residential nonconforming use within a building. The nonconforming non-residential use in a building which has been damaged or destroyed by purpose, neglect or accidental cause may not be continued or transferred to any reconstructed portion of the building unless such damage or destruction occurred to an extent of not more than 75% of the habitable floor area, and:
- 11.5.2.e.i. The restored building does not exceed in height, area or volume the building damaged or destroyed; and
- 11.5.2.e.ii. Reconstruction is commenced within one year from the date the building was damaged or destroyed, unless the Zoning Hearing Board shall authorize as a special exception an extension of this time limit, and reconstruction shall be carried on without interruption.
- 11.5.2.f. Restoration. The nonconforming residential use in a building which has been damaged or destroyed by accidental cause may be reconstructed to the same footprint as existed prior to the accidental incident, subject to the following; \_
- 11.5.2.f.i. The reconstructed building does not exceed in height, area or volume the building damaged or destroyed; and
- 11.5.2.f.ii. Building reconstruction is commenced within one year from the date the building was damaged or destroyed, unless the Zoning Hearing Board shall authorize as a special exception an extension of this time limit, and reconstruction shall be carried on without interruption.
- 11.5.2.g. Maintenance: Nothing in this section shall prevent the strengthening or restoration to a safe condition of any walls, floor, foundation, or roof of a building occupied by a non-conforming use which building has been declared unsafe by the Township Building Code Official.

- 11.5.2.h. Extension or expansion. A building occupied by a nonconforming use and the nonconforming use within a building or on a lot as it existed in size and scope on the date it first became non-conforming may be expanded or extended, subject to the following:
- 11.5.2.h.i. Expansion within a building. A nonconforming use within an existing building may be expanded within the building provided the expansion does not exceed 25% of the building area devoted to the use on the date the use became nonconforming. The term "area devoted to the use" shall include the total floor area within the building devoted to the nonconforming use. This right of expansion shall be applied separately to each building on the lot.
- 11.5.2.h.ii. Expansion of an existing building. A building occupied by a nonconforming use may be expanded and occupied by that non-conforming use provided the expansion does not exceed 25% of the floor area devoted to the use on the date it first became nonconforming.
- 11.5.2.h.iii. Expansion to the exterior of a lot. If the exterior of a lot is used for a nonconforming use, the exterior lot area devoted to the nonconforming use may be expanded by no more than 10% of the area devoted to the use on the date it first became nonconforming.
- 11.5.2.h.iv. Any extension or expansion of a nonconforming use shall conform with the requirements of Article 3: General to Districts, Article 4: District Specific Standards, Article 7: Conservation and Preservation Overlays, Article 8: Parking Standards, and Article 9: Signs. (are there any other Articles that need to be referenced here?)

11.5.3 Dimensionally Nonconforming Buildings or Structures.

- 11.5.3.a. Buildings or Structures that are nonconforming to the dimensional requirements in this Chapter related to height, yard, setback, buffer, or floor and building area, shall be subject to the following:
- 11.5.3.a.i. Continuation. An existing dimensionally non-conforming building or structure lawfully constructed on the effective date of this Chapter or any amendment thereto by which it became nonconforming, or authorized by a building permit issued prior thereto, may be continued.
- 11.5.3.a.ii. Restoration.
- 11.5.3.a.ii.(1). A nonconforming non-residential building or structure which has been damaged or destroyed by purpose, neglect or accidental cause to an extent of not more than 75% of the floor area may be restored, provided that reconstruction shall be commenced within one year from the date the building or structure was damaged or destroyed, unless the Zoning Hearing Board shall authorize as a special exception an extension of this time limit, and reconstruction shall be carried on without interruption. Otherwise it may not be restored.
- 11.5.3.a.ii.(2). A nonconforming residential building, accessory building or accessory structure which has been damaged or destroyed by accidental cause may be reconstructed to the same footprint as existed prior to the accidental incident provided the building does not exceed in height, area or volume the building damaged or destroyed. Building reconstruction must be commenced within one year from the date the building was damaged or destroyed, unless the Zoning Hearing Board shall authorize as a special exception an extension of this time limit, and reconstruction shall be carried on without interruption.

- 11.5.3.a.iii. Extension or expansion. A building that is nonconforming to the setback requirements in this Chapter may be expanded or extended subject to the following limitations:
  - 11.5.3.a.iii.(1). The extension shall maintain any nonconforming setback and shall not extend closer to the street line or property line than the existing nonconforming building.
  - 11.5.3.a.iii.(2). The maximum height of any single story extension in the required setback shall not exceed 16 feet above ground level unless the extension is a minimum of 10 feet from the property line.
  - 11.5.3.a.iii.(3). If the extension is a minimum 10 feet from the property line, a second story shall be permitted with a maximum height of 30 feet.
  - 11.5.3.a.iii.(4). Any extension or expansion shall conform with the requirements of Article 3: General to Districts, Article 4: District Specific Standards, Article 7: Conservation and Preservation Overlays, Article 8: Parking Standards, and Article 9: Signs.
  - 11.5.3.a.iii.(5). The maximum length of the extension in the required setback shall be 20 feet.
  - 11.5.3.a.iii.(6). The maximum floor area of the extension permitted in a required setback is 400 square feet per floor.
  - 11.5.3.a.iii.(7). No portion of the extension may project into any other required setback.
- 11.5.4 Lots nonconforming as to area and width regulations
  - 11.5.4.a. No structure may be erected on any dimensionally nonconforming lot unless it was held on the date it became nonconforming in single and separate ownership and provided that all other requirements of the district in which the lot is situated are complied with.
  - 11.5.4.b. Where structures having less than the required front yard exist on a majority of nonconforming lots of record that share common side property lines, the required front yard on each nonconforming lot, whether or not improved, shall be reduced to the average front yard of all such structures in the same block and on the same side of the street.
- 11.5.5 Identification and registration of nonconforming uses and nonconforming buildings or structures. The Zoning Officer shall, upon request, identify and register nonconforming uses and nonconforming buildings or structures.
- 11.5.6 Nonconforming site improvements
  - 11.5.6.a. Where nonconforming site improvements exist, such as walls, or similar site improvements, such nonconformities may continue and the nonconforming site condition may be altered only as provided below.
    - 11.5.6.a.i. No change shall be made in any nonconforming site improvement which increases the nonconformity.
    - 11.5.6.a.ii. Where existing Off-street Parking facilities are nonconforming to the requirements of this Code or any other Township standards, the restoration or rehabilitation of an existing Building is permitted but shall not increase the degree of the existing parking nonconformity.
  - 11.5.6.b. Nonconforming impervious coverage. A lot or lots nonconforming to the impervious coverage provisions in this Chapter shall be subject to the following:
    - 11.5.6.b.i. Nonconforming impervious coverage levels may not be increased, unless otherwise permitted by the Zoning Code.

- 11.5.6.b.ii. When more than 75% of the impervious coverage is removed, or when the lot is subjected to redevelopment, the lot shall conform to the underlying impervious coverage provisions. This requirement does not apply to existing parking lots that are only being restriped or resurfaced.
- 11.5.6.c. Nonconforming fences. A fence nonconforming to the fence provisions in this Chapter shall be subject to the following:
  - 11.5.6.c.i. Nonconforming fences may only be replaced with conforming fences.
  - 11.5.6.c.ii. When more than 25% of a nonconforming fence is damaged, destroyed, or removed for any reason, the replacement fence must conform to the current fence regulations.
- 11.5.7 See Article 9 for nonconforming signs
- 11.5.8 Nonconforming wireless telecommunications - Refer to Chapter 140-12
- 11.5.9 Enclosure of existing porches
  - 11.5.9.a. An existing ground-level roofed porch located in a required, rear or side yard may be enclosed, provided that:
    - 11.5.9.a.i. The existing porch and roof were lawful when built.
    - 11.5.9.a.ii. An existing porch roof may be repaired or replaced but a roof shall not be constructed where one formerly did not exist. No porch shall extend beyond the existing porch or roof, whichever ground area covered is less.
  - 11.5.9.b. An existing ground-level roofed porch installed after 11-19-2014, located in a required front or side yard, cannot be enclosed. Any such extension or expansion shall conform with the requirements of Articles 9: Signs, 8: Parking Standards, Article 3: General to Districts, Article 4: District Specific Standards, and Article 7: Conservation and Preservation Overlays.
- 11.5.10 Nonconforming to Dimensional Standards.
  - 11.5.10.a. Buildings or Structures that are nonconforming to the setback requirements in this chapter shall be subject to the following:
    - 11.5.10.a.i. Continuation. An existing building lawfully located on the effective date of this chapter or any amendment thereto, or authorized by a building permit issued prior thereto, may be continued although such location does not conform to the provisions of this chapter.
    - 11.5.10.a.ii. Restoration. An existing building nonconforming to the required setbacks which has been damaged or destroyed by fire or other cause to an extent of not more than 75% of the Floor Area may be restored, provided that:
      - 11.5.10.a.ii.(1). The portion of the reconstructed building in a required setback shall not exceed in height, floor area and volume of the building destroyed or condemned.
      - 11.5.10.a.ii.(2). Building reconstruction shall be commenced within one year from the date the building was destroyed or condemned, unless the Zoning Hearing Board shall authorize as a special exception an extension of this time limit, and shall be carried on without interruption.
    - 11.5.10.a.iii. Extension or expansion. A building that is nonconforming to the setback requirements in this chapter may be expanded or extended subject to the following limitations:
      - 11.5.10.a.iii.(1). The extension shall maintain the nonconforming setback and shall not extend closer to the street line or property line than the existing nonconforming building.
      - 11.5.10.a.iii.(2). The maximum height of any single story extension in the required setback shall not exceed 16 feet unless the extension is a minimum of 10 feet from the property line.

- 11.5.10.a.iii.(3). ~~If the extension is a minimum 10 feet from the property line, a second story shall be permitted with a maximum height of 30 feet.~~
- 11.5.10.a.iii.(4). ~~Any such extension or expansion shall conform with the requirements of Articles 9: Signs, 8: Parking Standards, Article 3: General to Districts, Article 4: District Specific Standards, and Article 7: Conservation and Preservation Overlays.~~
- 11.5.10.a.iii.(5). ~~The maximum length of the extension in the required setback shall be 20 feet.~~
- 11.5.10.a.iii.(6). ~~The maximum floor area of the extension permitted in a required setback is 400 square feet per floor.~~
- 11.5.10.a.iii.(7). ~~Where an existing one-story building is nonconforming to the required setback, a vertical second story addition may be erected provided the footprint is no larger than the existing footprint below and the maximum building height is no more than 30 feet above grade.~~
- 11.5.10.a.iii.(8). ~~No portion of the extension may project into any other required setback.~~
- 11.5.10.a.iii.(9). ~~The provisions in 4 through 8 above shall apply to Semi-Detached Dwellings and Townhouse units. Lots nonconforming as to area and width regulations~~
- 11.5.11 ~~A building may be erected on any vacant lot held at the effective date of this chapter in single and separate ownership which is not of the required minimum area or width for the district in which such lot is situated, provided that all other requirements of the district in which the lot is situated are complied with.~~
- 11.5.11.a. ~~Where structures having less than the required front yard exist on a series of nonconforming lots of record that share common side property lines, the required front yard on each nonconforming lot, whether or not improved, shall be reduced to the average front yard of all such structures in the same block and on the same side of the street.~~
- 11.5.11.b. ~~A single-family dwelling may be expanded on any lot which is not of the required minimum lot area and which was held at the effective date of this chapter in single and separate ownership. The building area on the lot may exceed the maximum building area permitted in the zoning district in which the lot is situated by no more than 3%. All other requirements of the zoning district in which the lot is situated must be met.~~
- 11.5.12 ~~Identification and registration of nonconforming uses and nonconforming buildings or structures~~
- 11.5.12.a. ~~The Zoning Officer shall identify and register all nonconforming uses and nonconforming buildings or structures. Professional offices and home occupations maintained in residential districts shall be registered with the Township within six months of the effective date of this chapter. Failure to register the use shall give rise to a rebuttable presumption that the use was instituted and is being maintained in violation of the provisions of this chapter.~~
- 11.5.13 ~~Nonconforming site improvements~~
- 11.5.13.a. ~~Where nonconforming site improvements exist, such as fences, walls, or similar site improvements, such nonconformities may continue and the site may be altered only as provided below.~~
- 11.5.13.a.i. ~~No change shall be made in any nonconforming site improvement which increases the nonconformity.~~

- 11.5.13.a.ii. ~~Where existing Off-street Parking facilities are nonconforming to the requirements of this Code or any other Township standards, the restoration or rehabilitation of an existing Building or adaptive Use to any permitted Use in the Zone shall not require the provision of additional parking or on-site storm water retention or detention except to the extent required by applicable state or federal law. No modifications may be permitted which increase the degree of the existing nonconformity.~~
- 11.5.13.b. ~~Nonconforming impervious coverage surface. A lot or lots nonconforming to the impervious coverage surface provisions in this chapter shall be subject to the following:~~
- 11.5.13.b.i. ~~Nonconforming impervious coverage surface levels may not be increased, unless otherwise permitted by the Zoning Code.~~
- 11.5.13.b.ii. ~~When more than 75% of the impervious coverage surface is removed, or when the Lot is redeveloped the Lot shall conform to the underlying impervious surface provisions. This requirement does not apply to existing parking lots that are only being restriped or resurfaced.~~
- 11.5.14 ~~See Article 9 for nonconforming signs~~
- 11.5.15 Nonconforming wireless telecommunications – Refer to Chapter 140-12 (Bob Duncan working on this. May require Comprehensive Review of Wireless Telecommunications Facilities in the future. Not addressed with this initial project)**
- 11.5.16 ~~Enclosure of existing porches~~
- 11.5.16.a. ~~An existing ground-level roofed porch located in a required front, rear or side yard may be enclosed, provided that:~~
- 11.5.16.a.i. ~~The existing porch and roof were lawful when built.~~
- 11.5.16.a.ii. ~~An existing porch roof may be repaired or replaced but a roof shall not be constructed where one formerly did not exist. No porch shall extend beyond the existing porch or roof, whichever ground area covered is less.~~
- 11.5.16.b. ~~An existing ground-level roofed porch installed after 11-19-2014, located in a required front or side yard, cannot be enclosed.~~