



# MEDIA

## **HYBRID FORM-BASED CODE**

### **“D Section” of the Zoning Ordinance**

June 6, 2022 **DRAFT**

Changes are identified in red.

*This document has been updated to address changes needed to facilitate the creation of the Hybrid Form-Based Code. Changes are intended to impact only those areas that are covered by the hybrid form-based code (R1, R2, R3, R4 and Office District). Where changes to the ordinance are made in a zone outside of those areas, it is because there was a cross-reference to a section that will no longer exist when the form-based code is adopted. In those instances, the cross-referenced text has either been copied into the zone OR a new cross reference has been created.*

# Article D-I. TND-1 Traditional Neighborhood Development Overlay District: Baltimore Avenue

*[Added 7-19-2007 by Ord. No. 1031; amended 2-19-2015 by Ord. No. 1116]*

## § 311.D-1. Legislative intent.

The purpose of this article is to provide regulations and written and graphic design standards to:

- A. Address the purposes, objectives, and standards of Article VII-A, Traditional Neighborhood Development, of the Pennsylvania Municipalities Planning Code.<sup>1</sup>
- B. Provide written and graphic design standards to assist applicants in the preparation of proposals for traditional neighborhood development in accordance with Section 708-A of the Pennsylvania Municipalities Planning Code.<sup>2</sup>
- C. Improve the function and appearance of the Baltimore Avenue corridor as a means of implementing the Media Borough Comprehensive Plan.
- D. Place buildings consistently along Baltimore Avenue to help form the streetscape.
- E. Provide opportunities for infill development and redevelopment, consistent with existing buildings that are located close to sidewalks.
- F. Provide street walls to form the traditional neighborhood character of Media Borough.
- G. Provide for off-street parking at the rear or the side of buildings.
- H. Permit principal buildings at a height of 20 feet to 40 feet, except in gateway areas.
- I. Promote the use of effective and attractive signage.

## § 311.D-2. Applicability.

- A. Refer to Exhibit A dated May 30, 2007, revised December 17, 2014, for the location of TND-1 Traditional Neighborhood Development Overlay District, and for the location of Gateway Area 1 and Gateway Area 2, which Exhibit A is incorporated herein by reference and made a part hereof.<sup>3</sup>
- B. All new infill development and redevelopment within the TND-1 Traditional Neighborhood Development Overlay District shall be consistent with the Written and Graphic Design Standards in Exhibit B of this **Article D-I**, which Exhibit B is incorporated by reference and made a part hereof.<sup>4</sup>
- C. All new infill development and redevelopment shall also be consistent with the Development Strategy Plan, the Gateway Area 1 and Gateway Area 2 Development

Strategy Plan, and the Design Standards in the Subdivision and Land Development Ordinance, §§

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<sup>1</sup> See 53 P.S. § 10701-A et seq

<sup>2</sup> See 53 P.S. § 10701-A

<sup>3</sup> See Exhibit A is on file in the Borough offices.

<sup>4</sup> See Exhibit B is on file in the Borough offices.

257-18 through 257-21.

§ 311.D-3. Written and graphic design standards.

Written and graphic design standards applicable to all infill development and redevelopment within the TND-1 Traditional Neighborhood Development Overlay District shall be in accordance with Exhibit B.

§ 311.D-4. Design guidelines.

- A. See the following sections of Exhibit B for applicable design guidelines.<sup>5</sup>
  - (1) Z.1. Building location.
  - (2) Z.2. Infill buildings.
  - (3) Z.3. Street walls.
  - (4) Z.4. Parking location.
  - (5) Z.5. Building height.
  - (6) Z.6. Signage.
  - (7) Z.7. Townhouse buildings.
  - (8) Z.8. Multifamily buildings.
- B. Note: See Subdivision and Land Development Ordinance<sup>6</sup> for additional written and graphic design standards.

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<sup>5</sup> Exhibit B is on file in the Borough offices.

<sup>6</sup> See Ch. 257, Subdivision and Land Development.

## Article D-II. Historic Resources Overlay District

*[Added 11-20-2008 by Ord. No. 1051-2008]*

### § 311.D-5. Legislative intent; purpose.

- A. It is hereby declared, as a matter of public policy, that the preservation and protection of buildings, structures, sites and objects of historic and architectural merit are public necessities and are in the interests of the health, prosperity and welfare of all the citizens of Media Borough.
- B. The purposes of this article are:
  - (1) To identify and provide an opportunity to preserve historic resources which are important to the education, culture, traditions and economic and aesthetic values of all citizens of Media Borough;
  - (2) To maintain or improve historic resources which contribute to the character of Media Borough;
  - (3) To retain and enhance historic resources which contribute to the character of Media Borough;
  - (4) To ensure that new construction and subdivision of lots in Media Borough are compatible with existing historic resources;
  - (5) To encourage the restoration and rehabilitation of historic resources in Media Borough;
  - (6) To enhance the attractiveness of Media Borough, thereby supporting and promoting business, commerce, industry and tourism, as well as providing economic benefit to Media Borough;
  - (7) To foster civic pride in the historical, architectural, cultural and educational accomplishments of Media Borough;
  - (8) To promote the use of historic resources for the education, pleasure and welfare of all citizens of Media Borough;
  - (9) To encourage orderly and efficient development that recognizes the special value to Media Borough of its fragile, nonrenewable historic and cultural resources; and
  - (10) To encourage public participation in identifying and preserving historical, architectural and cultural resources through educational programs and general awareness campaigns.

### § 311.D-6. Creation of Historic Resources Overlay District.

- A. There is hereby created a Historic Resource Overlay District, to be known as the "HR Overlay District," consisting of all properties on which an historic resource is located as designated on the Historic Resources Map and set forth on the Official Listing of Historic Resources by Classification, which overlay district shall be deemed an overlay on any zoning districts now or hereafter enacted to regulate the use of land in the Borough. The Historic Resources Map and the Official Listing of Historic Resources by Classification shall

be attached to this article as Appendix A<sup>7</sup> and made a part of this article.

- B. For any property located within the HR Overlay District, the requirements and opportunities contained in this article shall supersede any otherwise applicable requirements of the underlying zoning districts that are in conflict with the provisions of this article. Any otherwise applicable requirements of the underlying zoning district that are not in conflict with the provisions of this article shall remain in full force and effect as to any property located within the HR Overlay District.
- C. Should the Historic Resources Map be revised as a result of legislative or administrative action or judicial decision, the zoning requirements and other regulatory measures applicable to the property in question shall be those of the underlying zoning district without consideration of this article. Any revisions to the Historic Resources Map shall be attached and made part of this article.

#### § 311.D-7. Demolition permit required.

- A. No person shall undertake demolition on any historic resource within the HR Overlay District unless a demolition permit is first obtained from the Code Enforcement Officer.
- B. Except as may be provided below, the Code Enforcement Officer shall not issue a demolition permit until the Council first reviews and approves the application for the demolition permit.

#### § 311.D-8. Demolition permit application process.

- A. To obtain a demolition permit, an applicant must submit an application, in writing, on a form furnished by the Code Enforcement Officer for that purpose, together with the applicable fee(s). The fee for a demolition permit shall be based on the Borough fee schedule, which the Borough Council may adjust from time to time by resolution.
- B. The Contents of the demolition permit application are as follows:
  - (1) Date of filing of application;
  - (2) Name of applicant;
  - (3) Address of applicant;
  - (4) Address of historic resource proposed to be demolished and owner of record if different from applicant;
  - (5) Site plan showing all buildings, structures, objects and features of the property on which the historic resource is located and the location of adjoining public ways;
  - (6) Reasons for demolition;
  - (7) Method of demolition;
  - (8) Approximate date of commencement and completion of demolition;
  - (9) Projected uses of the site following demolition of the historic resource. Applicant must submit three copies of said application to the Code Enforcement Officer of Media Borough.

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<sup>7</sup> Appendix A is included at the end of this chapter. The Historic Resources Map is on file in the Borough offices.

- C. The demolition permit application shall be signed by the applicant and such signature shall constitute a certification by the signer that the information contained in the application is true and correct.
- D. Within 10 working days of receipt of an application for demolition permit, the Borough shall publish notice of the application in a daily or weekly newspaper of substantial circulation in the Borough and post the property that is the subject of the application with notice. The Code Enforcement Officer shall also forward a copy of the application for the demolition permit by regular mail to the Media Borough Planning Commission and the Borough HARB at their registered addresses. The required notice shall state the following: that unless written objection stating specific reasons thereof is filed with the Code Enforcement Officer within 30 days of the publication of the notice, the demolition permit will be issued after the expiration of such thirty-day period. The Media HARB, the Media Borough Planning Commission, the Media Historical Society or any persons aggrieved shall be entitled to file such a written objection.
- E. If within 30 days after publication of the notice no written objection to the issuance of the permit is filed with the Code Enforcement Officer, then the demolition permit shall be issued to the applicant.
- F. If within 30 days after publication of the notice an objection is filed with the Code Enforcement Officer, then the Code Enforcement Officer shall forward the demolition permit application, together with all attachments, to the Council for its review. The objection shall be in writing and shall state the specific reasons for the objection.
- G. Within 45 days after receipt by the Council of an application for a demolition permit to which application an objection has been filed, or such later period not to exceed an additional 60 days, as may be agreed to by the Council and the applicant, the Council shall hold a public meeting on the application and objections thereto and make a decision whether to approve or deny the application for issuance of the demolition permit. The person applying for the demolition permit, the objector, the Media HARB and the Media Borough Planning Commission shall be given a minimum of 10 days' advance written notice by mail of the time and place of the hearing. If a special hearing, being a hearing other than a regularly scheduled Council meeting, is required to meet the time frame for the public hearing required herein or is otherwise requested by the applicant, the applicant shall be responsible for payment of the required fee for such special hearing as provided for in the Borough fee schedule. Failure of the Council to make a determination within the required time period shall be deemed to constitute an approval of the application for the demolition permit.
- H. At any time after filing an objection to the issuance of the permit, the objector may withdraw the objection by giving written notice of such withdrawal to the Council and the Code Enforcement Officer and, upon receipt of such withdrawal, provided the initial thirty-day period after publication has expired, and provided there are no other objections which remain outstanding, the permit shall be issued and any pending public hearing on the permit shall be canceled.
- I. At the public hearing held on the application, the Council, the objector and the applicant

may agree to postpone the public hearing to a later date, such postponement not to exceed an additional 60 days from the date of that public hearing.

- J. After the hearing when the Council reviews an application for a demolition permit, the Council shall consider the following factors, among other factors deemed appropriate by the Council, before reaching its decision on the application:
- (1) The purposes of this article.
  - (2) The historical, architectural or aesthetic significance of the historic resource, and the historic classification of that historic resource as determined pursuant to ~~§ 311-149~~ § 311.D-13 of this article.
  - (3) The design and compatibility of the proposed work with the character of its site, including the effect of the proposed work on neighboring structures.
  - (4) Whether the historic resource can be used for any purpose for which it is or may be reasonably adapted. To that end, the owner must demonstrate that the sale of the property and the alternative use of the historic resource is impracticable and that rental cannot provide a reasonable rate of return. The objector must also provide his/her or its recommendations for the continued use of the historic resource in question.
  - (5) Where an application for demolition is based on a demonstrated and proven economic hardship, the Council may lessen its requirements in order to account for the economic situation involved.
- K. Every decision of the Council shall be in writing and shall state the reasons for the decision. The decision shall contain the findings of fact that constitute the basis for the decision. The Council shall furnish the applicant and objector with a copy of the Council's decision, together with a copy of any recommendations the Council may have for changes necessary before the application will be reconsidered by the Council.
- (1) The Council may approve or deny the application for a demolition permit. In approving any application for a demolition permit, the Council may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Borough's ordinances.
  - (2) In cases where the Council approves of a demolition permit, the Council shall require that the historic resource be recorded, at the applicant's expense, according to the documentation standards of the Historic American Buildings Survey and the Historic American Engineering Record (HABS/HAER), with such written, drafted and photographic documentation being deposited with the Council and any other historical preservation agency or group which the Council deems necessary. In no case will the applicant be forced to spend more than an additional \$200 on this survey. Any additional expenses will be borne by the objecting party or the Borough if there is no objector.
  - (3) In the case of an economic hardship, the Council may prescribe a less stringent form of documentation.
  - (4) In cases where the Council approves the issuance of a demolition permit, the permit will be good for a six-month period, unless upon written request the Council

agrees to extend the time.

- L. In the case where a demolition permit is requested for a residential property under provisions of Act 157 of 2006, the Borough Code Enforcement Officer shall inform the Borough Council President, HARB Chairman and Planning Commission Chairman the same day that the request is filed. The Council President, after consulting with the above officials and polling the members of Borough Council, shall have the authority to respond, in writing, within five days to approve or deny the request, based on the criteria established by this article. This response shall be subject to ratification by Borough Council at its next scheduled public meeting under provisions established by this article.

#### § 311.D-9. Conditional uses and special exceptions.

- A. Conditional uses. In denying a demolition permit to an applicant, if the applicant can demonstrate the property cannot be economically used for its present function, the Borough Council will consider a request for conditional use of the property as follows:
- (1) In a residential district:
    - (a) An owner-occupied home office or personal service business or occupational use that would involve no more than one nonresident employee and one sign not exceeding six square feet in area and which shall otherwise comply with the requirements for signs located in the O- Office District as set forth in ~~§ 311-92B~~ § 311.E-37B of the Code of the Borough of Media.
    - (b) A bed-and-breakfast business.
    - (c) In an R-1 Residential District or an R-2 Residential District, conversion into a multifamily residential property of not more than three units. In an R-3 Residential District or an R-4 Residential District, the number of units shall not exceed five.
    - (d) A limited-scale day-care or educational use that would involve no more than one nonresident employee and one sign not exceeding six square feet in area and which shall otherwise comply with the requirements for signs located in the O-Office District as set forth in ~~§ 311-92B~~ § 311.E-37B of the Code of the Borough of Media.
    - (e) In an R-3 Residential District or an R-4 Residential District, a nonprofit organization office, day-care, funeral home or educational use.
  - (2) In an ROA (retail-office-apartment) or O (office) District:
    - (a) Owner-occupied single-family detached or semidetached home.
    - (b) A multifamily residential dwelling of not more than five units.
    - (c) A bed-and-breakfast business.
    - (d) A home office business as permitted in a residential district.
    - (e) A school or educational use.
    - (f) In an O-Office District, a small-scale retail or personal services business, provided that no more than 1,200 square feet of floor space shall be used for such retail or personal service business.
  - (3) In an HBO or Industrial District:



- (a) An owner-occupied single-family detached dwelling, semidetached dwelling, attached (townhouse) dwellings of not more than five units or a multifamily dwelling (apartments) of not more than six units.
  - (b) A bed-and-breakfast business.
  - (c) A home office business as permitted in a residential district.
- B. Special exception uses and bulk and area regulations.
- (1) The Zoning Hearing Board is authorized to grant special exceptions for the use of an historic resource property as a bed-and-breakfast and for the modifications to the area and bulk regulations or design standards allowable for an historic resource within the HR Overlay District for applications meeting the following criteria:  
**[Amended 7-20-2017 by Ord. No. 1126-2017]**
    - (a) In any dwelling used for a bed-and-breakfast, the owner or any immediate family member shall be in residence during operation of the establishment.
    - (b) Granting the special exception will have minimal detrimental effect on adjacent and nearby properties.
    - (c) Any proposed rehabilitation, alteration or enlargement of an historic resource should reflect the development objective of the underlying zoning district and be in substantial compliance with the Secretary of the United States Department of the Interior's standards for historic rehabilitation.
    - (d) The applicant shall demonstrate to the satisfaction of the Zoning Hearing Board that there is adequate parking for the bed-and-breakfast use. taking into account the number of bedroom units, the number of off-street parking spaces provided on the property and the availability of on-street parking spaces in the immediate vicinity of the property.
    - (e) The applicant shall demonstrate that there is at least one off-street parking space per bedroom unit plus one additional off-street parking space for the owner/manager of such bed-and-breakfast establishment on the same parcel.
    - (f) There shall be no more than one sign, which shall be a freestanding wall or monument sign with an area not to exceed four square feet; such sign shall be composed of stone, brick, wood or metal and not vinyl. Such sign shall not be internally lit.
  - (2) The Zoning Hearing Board, in granting a special exception, may propose modifications to applicable lot area, lot dimensions, yard requirements or any other applicable area and bulk regulation or design standard for plans affecting an historic resource. However, the permitted modifications shall be limited to the minimum necessary to adequately accommodate the proposed plans and will ensure that the resulting development is appropriate in context to the immediate neighborhood of the historic resource.
  - (3) In granting approval of a special exception, in addition to such other conditions as the Zoning Hearing Board may impose, the Zoning Hearing Board may require the establishment of facade easements or other means to guarantee permanent

protection of the historical integrity of the subject historic resource.

- (4) Except where clearly detrimental to historic integrity and where public health, safety and welfare are otherwise adequately provided for, all other applicable standards contained in this chapter shall be complied with to include requirements for landscaping, lighting, storage, access, traffic management and circulation, loading, parking and signs.

#### § 311.D-10. Performance of ordinary maintenance.

This article shall not be construed to prevent the ordinary maintenance or repair of any historic resource, where such work does not require a permit by law, and where the purpose and effect of such work is to correct any deterioration or decay of, or damage to, an historic resource and to restore the same to its condition prior to the occurrence of such deterioration, decay or damage.

#### § 311.D-11. Judicial review.

Any party to the hearing before the Council aggrieved by a decision of the Council may seek judicial review of that decision in any court of competent jurisdiction in accordance with the procedures and time limitations set forth in the Pennsylvania Municipalities Planning Code, as amended from time to time.

#### § 311.D-12. Violations and penalties; use of fines collected.

Failure to perform any action required by this article or performance of any action which is prohibited by this article shall constitute a violation hereof. Any person violating any of the provision of this article shall be subject to a fine of not more than \$1,000 for each offense, plus court costs, including reasonable attorney fees incurred as a result thereof. Each day that a violation continues shall constitute a separate violation. All fines collected shall be deposited into the Borough general fund. At the discretion of the Council, these funds may be used for historic preservation to further the achievement of the purposes described in § ~~311-141~~311.D-5.

#### § 311.D-13. Classification and addition of historic resources to Historic Resources Map and Official Listing of Historic Resources by Classification.

- A. The historic resources subject to this article and their respective classifications are set forth on the Historic Resources Map and the Official Listing of Historic Resources by Classification attached hereto as Appendix A<sup>8</sup> and made a part hereof. The Council may add and classify additional Historic Resources which it finds to be significant to the Borough to the HR Overlay District and the Historic Resources Map and the Official Listing of Historic Resources by Classification from time to time by enacting an ordinance amending Appendix A for such purposes. Any such additional historic resources shall be classified by Council in accordance with the following classifications.
  - (1) Class I Historic Resources: listed in the National Register of Historic Places as provided in the National Historic Preservation Act of 1966, 16 U.S.C. § 470 et seq.
  - (2) Class II Historic Resources: listed as or determined to be eligible for the National

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<sup>8</sup> Appendix A is included as an attachment to this chapter. The Historic Resources Map is on file in the Borough offices.

Register of Historic Places as provided in the National Historic Preservation Act of 1966, 16 U.S.C. § 470 et seq., and listed in the Historic Resources Survey of Media Borough by the Delaware County Planning Commission, dated November 1990, or any subsequent survey or update conducted by the Delaware County Planning Commission.

- (3) Class III Historic Resources: listed in the Media Borough Historic Sites Survey prepared by the Delaware County Planning Department, dated November 1990, and recommended for the Register of the Pennsylvania State Bureau of Historic Preservation, Pennsylvania Historical and Museum Commission.
- (4) Class IV Historical Resources: properties listed in the Media Borough Historic Sites Survey prepared by the Media Borough Historic Sites Committee, dated November 1972, and recommended to the Media Borough Council for preservation, or properties designated and marked by the official Borough Council historic plaques because of the unique significance to the Borough of Media.
- (5) Class V Historic Resources: buildings, structures, sites or objects that are at least 50 years old and recommended for inclusion through adoption of a written resolution by the Media Borough HARB or the Media Historical Society.

B. Historic resources added to these classifications must meet one or any combination of the following criteria. The historic resource:

- (1) Has significant character, interest or value as an example of the development, heritage or cultural characteristics of the Borough, the county, the commonwealth or the United States.
- (2) Is the site of a resource associated with a significant historic event.
- (3) Exemplifies the cultural, political, economic, social or historical heritage of the community.
- (4) Embodies distinguishing characteristics of an architectural style or engineering specimen.
- (5) Is the work of a designer, architect, landscape architect or engineer whose individual work has significantly influenced the development of the Borough, the county, the commonwealth or the United States.
- (6) Contains elements of design, detail, materials or craftsmanship which represents a significant innovation.
- (7) Is the singular example of a design or use of material or style of architecture within the Borough.
- (8) Is part of the historic context of a square, park or other distinctive area which should be preserved according to a plan based on an historic, cultural or an architectural context.
- (9) Is a landmark; that is, an established and familiar visual feature which assists in defining the character of the neighborhood, community or Borough due to its unique location or singular physical characteristic.
- (10) Has yielded or is likely to yield information of importance to the history of the Borough, the county or the commonwealth.

- C. Properties shall be added to or removed from the HR Overlay District by means of an ordinance amending this article and adopted pursuant to the requirements of the Pennsylvania Municipalities Planning Code for amendments to zoning ordinances.

§ 311.D-14. Effect on other codes and ordinances; demolishing structures deemed imminent threats.

- A. Nothing contained herein shall be deemed to limit the authority of the Borough to enforce any provisions of any other codes or ordinances governing the maintenance or condition of properties within the Borough, including, without limitation, the Property Maintenance Code,<sup>9</sup> as the same may be in effect in the Borough from time to time.
- B. The Borough reserves the right to order or decree that any structure which the Borough finds to be an imminent threat to public safety to be demolished, and the Borough Council shall have the right to waive the requirements of this article for any property which the Borough Council deems to be an imminent danger to health, safety or welfare.

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<sup>9</sup> See Ch. 226, Property Maintenance.

## Article D-III. Light Retail-Office-Apartment Overlay District (L ROA)

[Added 10-21-2010 by Ord. No. 1077]

### § 311.D-15. Uses by right.

In the Light Retail-Office-Apartment Overlay District, land, buildings or premises shall be used by right only for one or more of the following uses:

- A. Retail store, including general merchandise store, hardware store, variety store, pharmacy or similar establishment.
- B. Gift shop or similar establishment.
- C. Apparel or accessory store.
- D. Personal service shop, including barber, beautician, shoe repair, tailor, and laundry, where actual cleaning and pressing are done off the premises, and related personal services.
- E. Municipal building or use.
- F. Mixed use, where offices and/or residential use are located above retail establishments or residential use above offices, subject to § ~~311-22D(6)~~311.C-12K.

*F. Editor's Note: The following requirements originally appeared in Article VA R-4 Residential District and pertained to multi-family units prior to the adoption of the Hybrid Form Based Code. Previously, this section pointed to § 311-22D(6), a section that did not exist. This cross reference was likely not updated when the R-3 and R-4 zones were split. This updates references 311.C-12K where that language now lives.*

### § 311.D-16. Bulk and area requirements.

The bulk and area requirements of the L ROA Overlay District shall be those of the underlying district.

## Article D-IV. Steep Slope Conservation Overlay District

[Added 6-21-2012 by Ord. No. 1094<sup>10</sup>]

### § 311.D-17. Purpose.

The purpose of this article is to expand upon the community development objectives associated with environmental protection. Further, the provisions of this article are designed to encourage the sensitive treatment of hillsides and the related soil and vegetation resources in an effort to minimize adverse environmental impacts. The following objectives serve to complement these specific purposes and the overall purpose of this article.

- A. To conserve and protect slopes from harmful land disturbances such as excessive grading, landform alteration and extensive vegetation removal.
- B. To avoid potential hazards to property and the destruction of ecological balance which may be caused by increased runoff, flooding, soil erosion and sedimentation, blasting and ripping of rock, landslide and soil failure.
- C. To encourage the use of slopes for open space and other uses which are compatible with the preservation and protection of natural resources.
- D. To combine with other zoning requirements, as an overlay of the existing Zoning Ordinance as it may be amended from time to time, certain restrictions for slopes to promote the general health, safety and welfare of the residents of the Borough.
- E. To permit only those uses that are compatible with development of slope areas in order to avoid accelerated erosion, soil failure, accelerated seepage or other conditions which may create a danger to life and/or property.
- F. To promote the ecological balance among those natural system elements, such as wildlife, vegetation and aquatic life, that could be adversely affected by inappropriate development of steep slope areas.
- G. To prevent development that would cause excessive erosion and a resultant reduction in water-carrying capacity of the watercourses which flow through or around the Borough with the consequences of increased flood crests and flood hazards within the Borough and to both upstream and downstream municipalities.
- H. To protect individual and adjacent landowners in the Borough and/or other municipalities from the possible harmful effects of inappropriate grading and development on steep slope areas.
- I. To protect those individuals who choose, despite apparent dangers, to develop or occupy land with steep slopes.
- J. To promote the provision of safe and reliable accessways, parking areas and utility systems serving development on or around steep slopes areas, where more sensitive grading and siting is essential.

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<sup>10</sup> This ordinance also provided for the deletion of former § 257-16, Steep slopes, which as an amendment to Ord. No. 495 was previously repealed on 12-15-2011 by Ord. No. 1091.

- K. Pursuant to the Municipalities Planning Code, 53 P.S. § 10101 et seq., to assist in the implementation of pertinent state laws concerning erosion and sediment control practices, specifically Chapter 102 of the Clean Streams Law, P.L. 1978, and any subsequent amendments thereto and to implement Article 1, Section 27, of the Constitution of the Commonwealth of Pennsylvania, which declares the right of the Commonwealth's residents to clean air, pure water and to the preservation of the natural scenic, historic and aesthetic values of the environment.

#### § 311.D-18. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CONSTRUCTION — The erection, addition, alteration, demolition, disturbance or removal of any building, structure or geographic feature.

DISTURB — To remove, strip, relocate, grade, excavate, cover, fill or otherwise directly or indirectly alter or destroy existing vegetative ground cover.

PERMISSIBLE DISTURBED AREA — That area which has been delineated on an approved construction plan as being land which may be disturbed subsequent to the plan approval upon issuance of a soil erosion and sedimentation control permit.

PERSON — Natural person, partnership, corporation, unincorporated association or other organization or entity.

WOODED AREA — That area of land on which sufficient tree masses grow such that the branches of trees intertwine.

#### § 311.D-19. Land use in Steep Slopes Conservation District.

No person shall use or alter any land in a Slope Conservation District except in compliance with the requirements of this article.

#### § 311.D-20. Conflicts with other provisions.

This article is not intended to repeal, abrogate or impair any existing zoning or subdivision regulations or land development regulations, easements, covenants or deed restrictions, except that to the extent this article imposes greater restrictions, the provisions of this article shall prevail. Furthermore, nothing contained in this article shall repeal, alter or impair in any way the provisions of Chapter 251, Stormwater Management.

#### § 311.D-21. Slope Conservation Districts.

- A. The Slope Conservation District shall be comprised of areas of steep and very steep slopes as described in a topographic survey using elevation and distance based on an actual field survey by a registered engineer or surveyor and presented on a plan showing two-foot contour intervals with a horizontal scale of no more than 50 feet per inch. Such a topographic survey shall be required of any application for construction of a building or addition with a building footprint of 150 square feet in area.
- B. The steep slope areas shall be comprised of areas with a slope of 15% or more but less than 25% as based on a site survey, where such slope exists for five contiguous contour

intervals in any continuous horizontal distance of 50 feet based on a topographic survey showing two-foot contours (i.e., a difference of elevation over 7 1/2 vertical feet but less than 12 1/2 vertical feet over a distance of 50 horizontal feet).

- C. The very steep slope areas shall be comprised of areas with slopes of 25% or greater, where such slope exists for five contiguous contour intervals in any continuous horizontal distance of 50 feet based on a topographic survey showing two-foot contours (i.e., a difference in elevation of 12.5 vertical feet or greater over a distance of 50 horizontal feet).
- D. The Slope Conservation District Map shall be considered an overlay to the Borough Zoning Map. The following provisions shall apply in a Slope Conservation District:
  - (1) The district will have no effect on the permitted uses within the underlying zoning district, except where such uses are intended to be located within the boundaries of the Slope Conservation District, are in conflict with the use regulations set forth in ~~§ 311-159~~ **§ 311.D-23**, Permitted uses, in which case the latter shall apply.
  - (2) Should the Slope Conservation District boundaries be revised as a result of a legislative action or judicial decision, thereby removing lands from such district, the zoning requirements applicable to the land in question shall revert to the requirements of the underlying zoning district(s) without regard to the provisions of this article.
  - (3) Should the zoning classification(s) of any parcel or any part thereof within which the Slope Conservation District is an overlay be changed as a result of legislative action or judicial decision, such change(s) in classification shall have no effect on the boundaries of the Slope Conservation District.

#### **§ 311.D-22. Contour map; boundaries.**

- A. Any application for construction in a Slope Conservation District shall include a contour map with two-foot contour intervals on a horizontal scale of no more than 50 feet to the inch. The map shall separately delineate slopes less than 15%, between 15% and less than 25%, and slopes greater than or equal to 25%. The contour information on such map shall be derived from actual field topographic surveys which shall be referenced in the application.
- B. The contour map described in Subsection A hereof shall be reviewed by the Borough Planning Commission and the Borough Engineer. The applicant shall be required to follow all regulations of this article for those areas which reflect steep- slope and very- steep-slope conditions.

#### **§ 311.D-23. Permitted uses.**

The following uses shall be permitted in Slope Conservation Districts:

- A. Areas of very steep slopes (25% or greater).
  - (1) Uses permitted by right:
    - (a) Agricultural uses that do not require cultivation, construction or the use of structures.
    - (b) Conservation and recreational uses not requiring construction or the use of



structures, such as parks; hiking and bridle paths; woodlands; nature sanctuaries, refuge and conservation areas; and other such noncommercial conservation and passive recreational activities.

- (c) Utility easements and rights-of-way.
  - (d) Yard setbacks required in the underlying zoning district, provided that no earthmoving activities occurs within the Slope Conservation District in connection with grading or construction activities for structures located outside the Slope Conservation District.
- (2) Uses permitted when authorized as a special exception.
- (a) Conservation and recreational uses, including those requiring construction or the use of structures.
  - (b) Cultivation and agricultural uses, including those requiring construction or the use of structures.
  - (c) Sealed water supply wells.
  - (d) Accessory uses and structures customarily incidental to uses described in Subsection A(1)(a) and (b) hereof.
  - (e) Road or access driveways to provide access to a permitted use if the Zoning Hearing Board determines no alternative alignment or location is feasible.
  - (f) Front, rear and side yard setbacks required by the underlying zoning district on any lot or tract where grading or construction activities for structures located outside the Slope Conservation District is necessary.
- (3) Prohibited uses and structures.
- (a) Cut and fill, other than in association with any uses identified in Subsection A(1) hereof and in Subsection A(2) when authorized as a special exception.
  - (b) Soil, rock or mineral extraction, other than in association with any used relating to Subsection A(1) hereof and in Subsection A(2) when authorized as a special exception.
  - (c) Removal of topsoil.
  - (d) On-lot sewage disposal systems.
  - (e) Dumps, junkyards and other outdoor storage of refuse material and discarded or abandoned vehicles.
  - (f) Stormwater management facilities, other than in association with any uses identified in Subsection A(1) hereof and in Subsection A(2) when authorized as a special exception.
- B. Areas of steep slope (15% to less than 25%).
- (1) Uses permitted by right in ~~§ 311-159A(1)~~ § 311.D-23A(1) of this article.
  - (2) Uses permitted when authorized as a special exception.
    - (a) Any use or structure identified in Subsection A(2) hereof.
    - (b) Sanitary sewer and sewage pumping stations.
    - (c) Accessory uses customarily incidental to any uses described in this

subsection; and accessory uses customarily incidental to any uses permitted in Subsection B(1) hereof.

- (d) Road or access driveways to provide access to a permitted use if the Zoning Hearing Board determines no alternative alignment or location is feasible.
- (3) Prohibited uses and structures.
  - (a) Cut and fill, other than in association with any uses related to Subsection B(1) and (2) hereof.
  - (b) Soil, rock and mineral extraction, other than in association with any uses related to Subsection B(1) and (2) hereof.
  - (c) Removal of topsoil.
  - (d) Dumps, junkyards or other outdoor storage of refuse materials and discarded or abandoned vehicles.

**§ 311.D-24. Disturbance of ground cover.**

- A. Permissible disturbed area. Except as provided in Subsection B hereof, no person shall directly or indirectly disturb vegetative ground cover on more than the following percentages of each classification of land within the Slope Conservation District of the property for which zoning relief or approvals as a special exception are required when taken as a whole:

Slope Classification	Maximum Permissible Disturbance Area
Very steep slope	5%
Steep slope	15%

The above-referenced allowable percentages of disturbance do not apply if the area of steep slope disturbance is less than 300 square feet or the area of very steep slope disturbance is less than 100 square feet.

- B. The restrictions in Subsection A hereof shall not apply to disturbances of soil for agricultural or food production purposes.
- C. No person shall disturb vegetative ground cover in any Slope Conservation District without first having submitted to the Borough and having obtained the Borough's approval of a soil erosion and sedimentation control plan which satisfies the requirements of Chapter 251, Stormwater Management, of this Code. Any person permitted to disturb vegetative ground cover pursuant to this section shall keep the amount of disturbed vegetative ground cover to an absolute minimum, consistent with the objectives of other Borough ordinances and regulations.
- D. In no event shall the Borough give approval to disturb vegetative ground cover in any Slope Conservation District in an amount greater than the percentages set forth in Subsection A hereof or when located outside the permissible disturbed area.

**§ 311.D-25. Grading; earthmoving.**

- A. No person shall undertake grading, disturbing or earthmoving of land within a very steep slope district except as provided in this article. Grading or earthmoving within a steep slope district shall be permitted, provided that such grading or earthmoving does not create earth cuts or fills with a vertical dimension in excess of 10 feet, unless grading or earthmoving is a necessary element of any approved overall landscape plan for providing visual screening by earth berms or where it is required for the construction of retention ponds or similar environmental protection uses.
- B. Finished slopes of all earthmoving shall not exceed a slope of three horizontal to one vertical unless the applicant demonstrates that such slopes can be adequately stabilized and maintained as part of an application filed pursuant to ~~§ 311-162~~§ 311.D-26, Application for approval.

**§ 311.D-26. Application for approval.**

- A. All applications for approval for use of land which is included in whole or in part within the Slope Conservation District pursuant to this article shall include submission of the following materials and information:
  - (1) Location, dimension and elevation of the property.
  - (2) Existing and proposed uses and development including access drives.
  - (3) Existing and proposed contours at two-foot intervals.
  - (4) Location and boundaries of steep slopes and very steep slopes as described herein above.
- B. The following additional information shall be submitted as deemed necessary by the Borough Zoning Officer or the Borough Engineer for the evaluation of the impact of the proposal:
  - (1) Typical cross-sections and elevations of the property and proposed structures at intervals described on a horizontal scale of 50 feet per inch and a vertical scale of five feet per inch.
  - (2) A description of existing land cover characteristics of that portion of the property within the Slope Conservation District; such description shall indicate wooded areas, open non-wooded areas and the ground cover type in any areas with impervious surfaces. Proposed modifications to existing land cover shall also be indicated.
  - (3) Soil types of the land to be used for those portions of the land included within the Slope Conservation District; soil types shall be further qualified relative to the subsurface horizons of the soil. The applicant may be required to consult the United States Soil Conservation Service for its comments and submittal to the Borough.
  - (4) Photographs showing existing uses, vegetation and topography of areas within the Slope Conservation District.
  - (5) A report describing the slope, soil and vegetation characteristics of that portion of the property within the district. Such report shall also describe the proposed type and method of proposed construction, the type of foundation systems to be

employed, the proposals for landscaping, sewage disposal and water supply. Further, the report shall describe all sediment and soil control and stormwater management measures to be used as required by the Borough, the United States Soil Conservation District and the Pennsylvania Department of Environmental Resources and any and all additional engineering and conservation techniques designed to alleviate environmental impacts which may be created by proposed development activities.

- (6) Such information as may be sufficient to meet the information needs of the Borough of uses and slopes within 200 feet adjoining the property involved, as well as sufficient information to evaluate the integration of usage(s) within the Slope Conservation District with the underlying zoning district.

#### § 311.D-27. Approval of special exception.

- A. In determining whether to grant a special exception for a structure or use of land located in a Slope Conservation District, the Zoning Hearing Board shall take into consideration the factors set forth in **Article F-III**, ~~§ 311-109B~~**§ 311.F-11B** and the following:
  - (1) The relationship of the proposed use to the specific objective(s) set forth in ~~§ 311-153~~**§ 311.D-17**, Purpose.
  - (2) The standards set forth in other sections of this article.
  - (3) Whether abutting properties shall be adversely affected by possible runoff or erosion from the proposed use.
- B. No special exception for a structure or use of land in a Slope Conservation District shall be granted unless it has been demonstrated by the applicant that:
  - (1) The proposed use or structure is of proper engineering design and that the footings are designed to extend to stable soil and/or bedrock.
  - (2) Proposed on-lot sewage disposal facilities shall be designed and installed in conformance with all pertinent standards of the Borough and of the Department of Environmental Resources.
  - (3) Proposed nonagricultural displacement of soil shall be undertaken only for purposes consistent with the goals and objectives of this article and shall be executed in a manner that shall not cause excessive erosion or create other unstable conditions.
  - (4) Surface runoff of water shall not create unstable conditions, including erosion. Stormwater drainage facilities and/or systems shall be constructed where the proposed use shall or is likely to create conditions requiring such facilities.
  - (5) No other alternative location is feasible or practical for the proposed use.
  - (6) Earthmoving activities and vegetation removal shall be conducted only to the extent necessary to accommodate the proposed uses and structures and in the manner that shall limit as far as practical surface runoff, erosion or sedimentation or unstable soil conditions. Any and all reasonable mitigation techniques and procedures shall be utilized.