

Article F-I. Administration and Enforcement

§ 311.F-1. Administration.

There shall be a Code Enforcement Officer who shall be appointed by Borough Council and be responsible for the administration and enforcement of this chapter. The Code Enforcement Officer shall not hold any elected office in the Borough.

- A. Duties of Code Enforcement Officer. The duties of the Code Enforcement Officer shall include but not be limited to the following:
- (1) Enforce all provisions of this chapter and all amendments thereto.
 - (2) Receive, examine, record and file all applications and fees for building permits and issue building permits only for any structure or use which conforms to this chapter.
 - (3) Issue permits for uses and construction by special exception or variance, only after such uses or buildings are approved by the Zoning Hearing Board, in accordance with the provisions of this chapter. Permits requiring approval by Borough Council shall be issued only after receipt of an authorization from Borough Council.
 - (4) Receive all required fees.
 - (5) Regularly inspect all areas of the Borough to determine if there are any blatant violations of this chapter and to review the validity of any reported zoning violations.
 - (6) Issue all necessary stop orders, and order in writing correction of all conditions found to be in violation of this chapter. It shall be unlawful for any person to violate any such order lawfully issued by the Code Enforcement Officer, and any person violating such order shall be guilty of a violation of this chapter.
 - (7) Maintain, or cause to be maintained, a map or maps showing the current zoning classification of all land in the Borough.
 - (8) To identify and register all nonconforming uses, lots, structures and signs and keep filed a record of such nonconformities as a public record.
 - (9) Upon request of Borough Council, Planning Commission or Zoning Hearing Board, present facts, records and any similar information to such body on specific requests to assist these bodies in reaching their decisions.
- B. Appeal from decisions of Code Enforcement Officer. An appeal from a decision or action of the Code Enforcement Officer shall be made directly by a party in interest to the Zoning Hearing Board, and such appeal shall be made within 30 days after notice of the decision is made, or if no decision is made, 30 days after the date when a decision is deemed to have been made, in accordance with the Pennsylvania Municipalities Planning Code, as amended.
- C. Violations.

- (1) Complaints regarding violations. Whenever a violation of this chapter is alleged to have occurred, any person may file a written and signed complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Code Enforcement Officer who shall record such complaint promptly and immediately investigate and take action thereon as provided in this chapter.
- (2) Notification of violation. [Amended 8-15-1996 by Ord. No. 903]
 - (a) If it appears to the municipality that a violation of any zoning ordinance enacted under this act or prior enabling laws has occurred, the municipality shall initiate enforcement proceedings by sending an enforcement notice as provided in this section.
 - (b) An enforcement notice shall state at least the following:
 - [1] The name of the owner of record and any other person against whom the municipality intends to take action.
 - [2] The location of the property in violation.
 - [3] The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the chapter.
 - [4] That such violation shall be discontinued and/or the date before which the steps for compliance must be commenced and the date before which steps must be completed.
 - [5] That the recipient of the notice has the right to appeal the Zoning Hearing Board within a prescribed period of time in accordance with procedures set forth in the chapter.
 - [6] That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described, including but not limited to the discontinuance of such unlawful use, structure, building, sign and/or land involved in the violation.
- (3) Enforcement. No permit of any kind as provided for in this chapter shall be granted by the Code Enforcement Officer for any purpose except in compliance with the provisions of this chapter or a decision of the Zoning Hearing Board or courts of competent jurisdiction.
- (4) Enforcement remedies. [Amended 8-15-1996 by Ord. No. 903]
 - (a) In case any building, structure or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of this chapter, the Borough Council, or with the approval of the Borough Council, the Code Enforcement Officer, in addition to other remedies, may institute in the name of the Borough any appropriate action or proceeding to prevent, restrain, correct, or abate such building, structure or land or to prevent in or about such premises, any act, conduct, business or use constituting a violation.

- (b) Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this chapter or prior enabling laws shall, upon being found liable therefore in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by a municipality as a result thereof.
- (c) Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of the Zoning Chapter shall be paid over to the municipality.

§ 311.F-1. Permits.

- D. Requirement for permits. A permit shall be required prior to the erection or alteration of any building, structure or portion thereof, including signs; prior to the use or change in use of a building or land and prior to the change or extension of a nonconforming use or structure.
- E. Application for permits. Application for permits shall be made to the Borough Code Enforcement Officer on such forms as may be furnished by the Borough. Each application shall contain all information necessary to ascertain whether the proposed erection, alteration, use or change in use complies with the provisions of this chapter.
- F. Issuance of permits.
 - (1) No building or use permit shall be issued until the Code Enforcement Officer has certified that the proposed building or alteration and the proposed use of the property complies with the provisions of this chapter.
 - (2) Permits shall be granted or refused within 45 days after date of application. In case of refusal the applicant shall be informed of his right to appeal to the Zoning Hearing Board.
- G. Expiration of permits. Permits for the erection, razing, change, alteration or removal of a building shall be valid or effective for a period of not more than six months from the date of issuance thereof and shall thereafter be void, unless the work authorized by such permit shall have been substantially commenced within that period and continues with due diligence from that time forward. In no event shall a zoning permit be construed to authorize the development activities for more than a three-year period of time, after which time a new permit must be sought. If, however, the applicant has been delayed in proceeding with the work for which the permit was granted for reasons beyond his or her control and demonstrably not due to his or her own negligence, at the discretion of the Code Enforcement Officer the permit may be renewed without additional cost to the applicant.

§ 311.F-2. Certificate of occupancy.

- A. Upon completion of the erection or alteration of any building or portion thereof authorized by any permit obtained in compliance with this chapter, the holder of the permit shall notify the Code Enforcement Officer of completion. No permit shall be considered complete or permanently effective until the Code Enforcement Officer has issued a certificate of occupancy certifying that the work has been inspected and approved as being in conformity with the permit and the provisions of this chapter.
- B. Prior to the transfer of ownership, lease or use of property, a certificate of occupancy must be obtained from the Code Enforcement Officer.
- C. A certificate of occupancy shall be granted or refused within 15 days after the Code Enforcement Officer has been notified of completion of construction or within 15 days of application to occupy premises or land.

§ 311.F-3. Fees.

- A. Borough Council shall establish, by resolution, a schedule of fees, charges, expenses and collection procedures for building permits, certificates of occupancy, sign permits, special exceptions, variances, appeals, amendments and other matters pertaining to this chapter.
- B. A schedule of fees shall be posted in the office of the Code Enforcement Officer and may be altered or amended by Borough Council only.
- C. No action shall be taken on any application for any special exception, variance, appeal or other similar matter pertaining to this chapter until all application fees, charges and expenses have been paid in full.

Editor's Note: Former Subsection 2, Penalties, which immediately followed this subsection, was deleted 8-15-1996 by Ord. No. 903. See now § 311-98C.

Article F-II. Amendments

§ 311.F-4. Power to Amend

The regulations, restrictions, boundaries and requirements set forth in this chapter may be amended, supplemented, changed or repealed by Borough Council by amending this chapter in accordance with the provisions of Article VI of the Pennsylvania Municipalities Planning Code, as amended, and the terms of this article.

§ 311.F-5. Procedure for amendment.

- A. An ordinance amending, supplementing or changing the district boundaries (ZoningMap) or the regulations established herein may be initiated:
 - (1) By the Borough Council, upon its own initiative or upon recommendation of the Planning Commission.
 - (2) Upon a petition to Council signed by the owners of 50% or more of the frontage of any area, which shall be not less than the area contained between two streets, wherein a change of zoning regulations is being sought.
 - (3) By a landowner requesting an amendment or repeal. In the case of a curative amendment, the special requirements of the Pennsylvania Municipalities Planning Code shall apply.
- B. The Borough Council shall submit each proposed zoning amendment, other than one prepared by the Borough Planning Commission, to the Planning Commission at least 30 days prior to any hearing which is to be held on the proposed amendment to provide the Planning Commission with an opportunity to submit its recommendations prior to final action.
- C. Before voting on the enactment of an amendment, the Borough Council shall hold a public hearing thereon, pursuant to public notice. Notice of such hearing shall be published for two successive weeks in a newspaper of general circulation in the Borough and by mailing a notice thereof to the parties in interest and to every resident or association of residents of the Borough who shall have registered their names and addresses for this purpose with the Borough. The first publication shall be not more than 30 days or less than 14 days from the date of the hearing and shall state the time and place of the hearing and the nature of the proposed amendment.
- D. If, after any public hearing held upon an amendment, the proposed amendment is revised, or further revised, to include land previously not affected by it, the Borough Council shall hold another public hearing as required by law pursuant to public notice, before proceeding to vote on the amendment.
- E. As required by the Pennsylvania Municipalities Planning Code, at least 30 days prior to the public hearing on the amendment by the Borough, the Borough shall submit the proposed amendment to the County Planning Agency for recommendations. **[Amended 1-15-2004 by Ord. No. 984]**

Article F-III. Zoning Hearing Board

§ 311.F-6. Administration and procedure.

- A. Creation of the Zoning Hearing Board. A Zoning Hearing Board for the Borough of Media shall be appointed by the Borough Council and shall be authorized to administer all procedures charged to such Boards in accordance with the provisions of Article IX of the Pennsylvania Municipalities Planning Code, as amended. Hereinafter, as used in this article, the term "Board" shall refer to the Zoning Hearing Board, and the term "Planning Code" shall refer to the Pennsylvania Municipalities Planning Code.
- B. Membership of the Board. [Amended 2-20-2003 by Ord. No. 968]
 - (1) The Board shall consist of either three or five residents of the Borough appointed by resolution by the Borough Council. The terms of office of a three-member Board shall be three years and shall be so fixed that the term of office of one member shall expire each year. The terms of office of a five-member Board shall be five years and shall be so fixed that the term of office of one member of a five-member Board shall expire each year. If a three-member Board is changed to a five-member Board, the members of the existing three-member Board shall continue in office until their term of office would expire under prior law. The Borough shall appoint two additional members to the Board with terms scheduled to expire in accordance with the provisions of this section. The Board shall promptly notify the Borough of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other elected or appointed office in the Borough.
 - (2) The Borough may appoint by resolution at least one but no more than three residents of the Borough to serve as alternate members of the Board. The term of office of an alternate member shall be three years. When seated pursuant to the provisions of Section 906 of the Municipalities Planning Code,³⁰ an alternate shall be entitled to participate in all proceedings and discussions of the Board to the same and full extent as provided by law for Board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this act and as otherwise provided by law. Alternates shall hold no other appointed or elected office in the Borough, including membership on the Planning Commission and Zoning Officer. Any alternate may participate in any proceeding or discussion of the Board but shall not be entitled to vote as a member of the Board nor be compensated pursuant to Section 907 of the Municipalities Planning Code³¹ unless designated as a voting alternate member pursuant to Section 906 of the Municipalities Planning Code.
- C. Removal of members. Any member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority rule of Borough Council, taken after the member has received 15 days' advance written notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member requests it in writing.

D. Organization of the Board.

- (1) The Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than the majority of all members of the Board, but where a majority of members are disqualified to act in a particular matter, the remaining member may act for the Board. As provided for in the Planning Code, the 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 Board, as provided in Section 908 of the Planning Code.
- (2) The Board shall adopt rules and forms for its procedure in accordance with the provisions of this chapter. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman or, in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public.
- (3) The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicate such fact, and shall keep records of its examination and other official actions, all of which shall be immediately filed in the Office of the Borough Secretary and shall be a public record.
- (4) The Board shall submit a report of its activities to the Borough Council once a year.

E. Expenditures for services. Within the limits of funds appropriated by the Borough Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties, as may be fixed by the Borough Council but in no case shall it exceed the rate of compensation authorized to be paid to members of the Borough Council.

§ 311.F-7. Powers of the Zoning Hearing Board.

- A. Appeals from the Code Enforcement Officer. The Board shall hear and decide appeals where it is alleged that the Borough Code Enforcement Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of this chapter or the Zoning Map, or any valid rule or regulation governing the action of the Code Enforcement Officer.
- B. Applications. Applications for variances or special exceptions shall include as a minimum the following information:
 - (1) A sketch plan, at scale, showing the layout of the property, the proposed improvements and alterations thereto, and the relationship of the tract to adjacent properties.
 - (2) A reference to the section(s) of the chapter under which the variance or special exception is requested.

- C. Variances. The Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship on the applicant. In granting a variance the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Planning Code and this chapter.
- D. Special exception. The Board shall hear and decide requests for special exceptions authorized by this chapter in accordance with the standards and criteria set forth in § 311.F-11 Standards for Zoning Hearing Board Action below. The Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Planning Code and this chapter.
- E. Challenge to the validity of chapter or map. The Board shall conduct hearings and make decisions and findings in connection with challenges to the validity of any provision of the Zoning Chapter as authorized by Section 910 of the Planning Code.

§ 311.F-8. Hearings.

Requirements and procedures. The Board shall conduct hearings and make decisions in accordance with the following requirements:

- A. Upon the filing with the Board of an appeal, an application for a special exception, a variance from the terms of this chapter or a challenge, the Board shall fix a time and place for a public hearing thereon, subject to the provisions of the Planning Code, and shall give notice thereof in accordance with § 311.F-9 Notice Requirements of this chapter.
- B. The Board may establish reasonable fees, based on cost, to be paid by the applicant and by persons requesting any notice not required by this chapter.
- C. The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Board, and any other person, including civic or community organizations permitted to appear by the Board.
- D. The Chairman or acting Chairman of the Board, or the hearing officer presiding, shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.
- E. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and to cross-examine adverse witnesses on all relevant issues. At the hearings, any party may appear in person, or by agent, or by attorney.
- F. The Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate; shall not take notice of any communication, reports, staff memoranda or other materials unless the parties are afforded an opportunity to contest the material so noticed; and shall not inspect the site or its surroundings with any party or his representatives unless all parties are given an opportunity to be present.

§ 311.F-9. Notice requirements.

Notice of hearing. In any case where the Board shall hold a public hearing, the Board shall, at the minimum, give notice of such hearing as follows, which notice shall state the time and the place of the hearing and the particular nature of the matter to be considered at the hearing:

- A. By publishing a notice thereof once each week for two successive weeks in a newspaper of general circulation in the Borough, provided that the first publication shall be not more than 30 or less than 14 days from the date of the hearing.
- B. By mailing or delivering due notice thereof to the applicant and other parties in interest, who shall be at least those persons whose properties adjoin the property in question, or be within a two-hundred-foot radius of the property in question.
- C. By mailing or delivering notice thereof to Borough Council, the Borough Secretary and the Code Enforcement Officer.
- D. By conspicuously posting notice of said hearing on the affected tract of land.

§ 311.F-10. Notice of decisions.

- A. The following requirements shall be observed in the reporting of decisions of the Board:
 - (1) The Board or the hearing officer, as the case may be, 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 before the Board or hearing officer, subject to the requirements of the Planning Code. Where the Board has power to render a decision and the Board or the hearing officer, as the case may be, fails to render the same within the period required by the Planning Code, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing to an extension of time.
 - (2) A copy of the final decision, where such decision is called for, shall be delivered to the applicant personally or mailed to him not later than the day following its decision date. To all other persons who have filed their name and address with the Board not later than the last day of the hearing, the Board shall provide by mail or otherwise, a brief notice of the decision or findings and a statement of the place to which the full decision or findings may be examined.
- B. Decision of the Board shall include the following elements:
 - (1) Findings of fact, including a brief summary of relevant testimony and information entered during the proceedings of the Board.
 - (2) Citation by quotation or by reference to the specific sections of the local ordinances and/or the Planning Code, which are relevant to the case in question.
 - (3) Conclusions of the Board, enumerating the reasons why such conclusions are deemed appropriate in light of the facts found.
 - (4) Ruling of the Board, indicating in writing any stipulations or conditions attached to the ruling.

§ 311.F-11. Standards for Zoning Hearing Board action.

In any instance where the Zoning Hearing Board is required to consider a variance or special exception, the Board shall, among other things, consider the following standards:

A. Planning Code criteria for variances.

- (1) The Board shall hear requests for variances where it is alleged that the provisions of the chapter inflict unnecessary hardship on the applicant.
- (2) A variance from the terms of this chapter shall not be granted by the Board unless and until a written application for a variance is submitted by the applicant who shall have the burden of establishing:
 - (a) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning chapter in the neighborhood or district in which the property is located.
 - (b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning chapter and that the authorization of the variance is therefore necessary to enable the reasonable use of the property.
 - (c) That such unnecessary hardship has not been created by the applicant.
 - (d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
 - (e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- (3) In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Planning Code and this chapter.

B. Standards for review of special exceptions.

- (1) In any instance where the Board is required to consider a request for a special exception, the Board shall consider the following factors where appropriate:
 - (a) That the proposed use is appropriate for the site in question in terms of size, topography, natural features, drainage, sewage disposal, water supply, accessibility, and availability of public services, and that adequate provisions will be made to protect sensitive environmental features such as streams, lakes, wetlands, slopes and mature trees.

- (b) That the proposed use is compatible with the character of the surrounding neighborhood and will not interfere with or detract from legitimate uses and adjacent properties, and that adequate measures will be provided through building design, site layout, landscaping, planting and operational controls to minimize any adverse impacts caused by noise, lights, glare, odors, smoke, fumes, traffic, parking, loading and signing.
 - (c) That the proposed special exception will serve the best interest of the Borough, the convenience of the community, and the public health, safety and welfare.
 - (d) That the proposed use is consistent with the Media Borough Comprehensive Plan.
 - (e) That the proposed use promotes orderly development, proper population density, and the provision of adequate community facilities and services, including police and fire protection.
 - (f) That the proposed use is suitable in terms of its effect on highway safety and traffic circulation, and that access, on-site circulation and parking are adequate in view of anticipated traffic.
 - (g) That the proposed use will provide for adequate off-street parking, as required in Article XIII.
- (2) In cases where uses permitted by special exception are not accompanied by standards for such uses, the following standards shall apply:
- (a) In residential districts, the area and bulk regulations shall be not less than those for single-family detached dwellings in the applicable residential district.
 - (b) In nonresidential districts, the area and bulk regulations shall be not less than those for the use which requires the greatest dimensions in the applicable nonresidential districts.
 - (c) The Zoning Hearing Board may require more stringent but reasonable dimensional standards than those listed in Subsection B(2)(a) and (b) above, provided that the Board makes one or more of the following three determinations:
 - [1] That the required standards [as noted in Subsection B(2)(a) and (b) above] are clearly insufficient to accommodate the proposed building, facility or use, and that larger dimensional requirements would substantially alleviate that condition.
 - [2] That the required standards are clearly insufficient to provide adequate area for parking and loading, as required by Article XIII, and that larger dimensional requirements would substantially alleviate that condition.

[3] That the required standards are clearly insufficient in providing for lot areas and dimensions necessary to protect the adjacent area from the potential adverse impacts of the proposed use, such as noise, vibration, air pollution and similar impacts, and that larger dimensional requirements would substantially alleviate that condition.

- (3) Financial hardship shall not be construed as a basis for granting special exceptions.
- (4) In granting any special exception, the Board may attach reasonable conditions and safeguards in addition to those expressed in this chapter as it may deem necessary to implement the purposes of the Planning Code and the chapter, which conditions and safeguards may relate to, but not be limited to, screening, lighting, noise, safety, aesthetics and the minimization of noxious, offensive or hazardous elements. Each special exception shall be clearly authorized by a provision in this chapter and shall comply with the more specific standards relating to such special exception contained in sections of this chapter relating to uses by special exception.

§ 311.F-12. Standards of proof.

- A. For variances. An applicant for a variance shall have the burden of establishing both:
 - (1) That a literal enforcement of the provisions of this chapter will result in unnecessary hardship, as that term is defined by law, including court decisions; and
 - (2) That the allowance of the variance will not be contrary to the public interest.
- B. For special exceptions. An applicant for a special exception shall have the burden of establishing both:
 - (1) That his application falls within the provisions of this chapter which affords to the applicant the right to seek a special exception; and
 - (2) That the allowance of a special exception will not be contrary to the public interest.
- C. Evaluation of the impact of an application on the public interest. In determining whether the allowance of a special exception or variance is contrary to the public interest, the Board shall consider whether the application, if granted, will:
 - (1) Adversely affect the public health, safety and welfare due to changes in traffic conditions, drainage, air quality, noise levels, neighborhood property values, natural features and neighborhood aesthetic characteristics.
 - (2) Be in accordance with the Media Borough Comprehensive Plan.
 - (3) Provide required parking in accordance with Article XIII of this chapter.
 - (4) Adversely affect the logical, efficient and economical extension or provision of public services and facilities such as public water, sewers, refuse collection, police, fire protection and public schools.
 - (5) Otherwise adversely affect the public health, safety or welfare.

§ 311.F-13. Expiration of special exceptions and variances.

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.

Media Hybrid Form Based Code Update – June 6, 2022 **DRAFT**

Changes are identified in red.

§ 311.F-14. Appeals.

- A. Appeals before the Zoning Hearing Board and to Court. All appeals, applications or challenges which properly come before the Board in accordance with the requirements of the Planning Code, and all appeals to Court shall be subject to the time limitations and requirements of Article X and any other applicable provision of said Code. The proceedings set forth in Article X of the Planning Code shall constitute the exclusive mode for securing review of any ordinance, decision, determination or order of Borough Council, its agencies or officers. Appeal to Court shall be taken to the Court of Common Pleas of Delaware County.
- B. Parties appellant before Zoning Hearing Board. Appeals under Section 909 of the Planning Code and proceedings to challenge an ordinance under Section 910 may be filed with the Board in writing by the landowner affected, any office or agency of the Borough, or person aggrieved. Request for a variance under Section 912 and for a special exception under Section 913 may be filed with the Board by any landowner or any tenant with the permission of such landowner.
- C. Time limitations. No persons shall be allowed to file any proceedings with the Board later than 30 days after any application for development, preliminary or final, has been approved by the appropriate Borough Officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval he shall be bound by the knowledge of his predecessor in interest.
- D. Unified appeals. The Board shall hear unified appeals relating to any Borough ordinance which are brought before the Board in conjunction with a zoning matter over which the Board has jurisdiction in accordance with the requirements of Section 913.1 of the Planning Code.
- E. Stay of proceedings. Upon filing of any proceeding referred to in Section 914 of the Planning Code and during its pendency before the Board, all land development pursuant to any challenged ordinance, order or approval of the Code Enforcement Officer or of any agency or body, and all official action thereunder shall be stayed unless the Code Enforcement Officer or any other appropriate agency or body certifies to the Board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the Court having jurisdiction of zoning appeals on petition after notice of the Code Enforcement Officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Board by persons other than the applicant, the applicant may petition the Court having jurisdiction over zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the Board. The question of whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the Court, as prescribed in Section 916 of the Planning Code.

Article F-IV. Nonconforming Uses, Structures and Lots

§ 311.F-15. Legislative intent.

- A. Within the districts established by this chapter or amendments thereto, there exist certain uses, structures and lots which were lawful before this chapter was enacted or amended, but which do not conform to the provisions of this chapter or amendment thereto. These uses, structures or lots are referred to as nonconformities.
- B. The regulations governing existing nonconforming uses, structures and lots are set forth in this article and are intended to provide a gradual remedy for the undesirable conditions resulting from such nonconformities. While such nonconformities are generally permitted to continue, these regulations are intended to restrict further investment in such nonconformities and to bring about their gradual reduction.

§ 311.F-16. Continuation.

All structures, lots, uses of structures and uses of land that do not conform to the regulations of the district in which they are located after the effective date of this chapter or amendment thereto shall be regarded as nonconforming and may be continued so long as they remain otherwise lawful, including subsequent sales of property.

§ 311.F-17. Enlargement.

[Amended 5-20-2004 by Ord. No. 989; 5-15-2008 by Ord. No. 1047; 3-18-2010 by Ord. No. 1072]

- A. A nonconforming use or structure may be extended, enlarged or altered by special exception if:
 - (1) It is clear that such enlargement or extension is not materially detrimental to the surrounding area or the interest of the Borough.
 - (2) The proposed enlargement or extension only occurs on the tract where the nonconformity is currently located.
 - (3) The nonconforming structure, or the area devoted to the nonconforming use, shall not be increased by more than 25%.
 - (4) Any extension or enlargement of a building shall conform to the area, height, building coverage, impervious coverage and setback regulations of the district in which it is located.
 - (5) No more than one extension or enlargement to a nonconforming use or structure shall be granted.
- B. Any and all extensions and/or enlargements of a residential structure that is preexisting nonconforming as to the side yard setback shall be allowed to extend such nonconforming structure by right, provided that the following requirements are met to the satisfaction of the Borough:

- (1) A full and complete building permit application is provided by the owner of the property. The application shall include a to-scale plan of the property designating all setback dimensions, dimensions from existing structures to all property lines and dimensions from the existing building to all neighboring structures.
 - (2) The application shall be accompanied by a fee that covers the Borough's costs for processing the application, in addition to any other building permit fees that may be required, which fee shall be established from time to time by Council by resolution.
 - (3) The nonconforming structure shall not be increased by more than 25%, and the nonconforming structure shall extend no deeper into the side yard setback than the current nonconformance.
 - (4) The Borough shall then mail a letter notifying the immediate adjacent owners of property, including front, side and rear yards.
 - (5) It is demonstrated and clear to the Borough that such enlargement or extension is not materially detrimental to the surrounding area or the interest of the Borough.
 - (6) The application shall include an architectural rendering of the proposed extension or enlargement for review and approval by the Borough.
- C. The area of the nonconforming use or structure for this section shall be defined as the entire gross floor area(s) of the use or structure, which thereby includes the gross floor area(s) of multiple floors.

§ 311.F-18. Change of use.

Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to another equally restrictive or more restrictive nonconforming use only if permitted as a special exception and subject to the following conditions:

- A. The applicant shall show that the nonconforming use cannot be reasonably changed to a conforming use.
- B. The applicant shall show that the proposed change will be no more objectionable in external effects than the existing nonconforming use, or will be more appropriate than the existing nonconforming use with regard to:
 - (1) Traffic generation and congestion.
 - (2) Parking.
 - (3) Noise, smoke, dust, fumes, vapors, gases, heat, odor, glare or vibration.
 - (4) Outdoor storage.
 - (5) Sanitary sewage disposal.

§ 311.F-19. Enclosure.

Where a nonconforming use is conducted entirely on unenclosed premises, no structure to house or enclose such use, whether or not such structure would otherwise conform to zoning regulations, shall be permitted to be erected on the premises.

§ 311.F-20. Abandonment.

If a nonconforming use of a building or land is abandoned for six months or more, whereby the owner discontinues the use, the subsequent use of such a building or land shall conform with the regulations of the district in which it is located, unless another nonconforming use is approved by the Zoning Hearing Board. Such approved use shall be initiated within 90 days after the end of the six-month period.

§ 311.F-21. Restoration.

A nonconforming structure or a conforming structure devoted to a nonconforming use which has been destroyed by fire or other cause to an extent of not more than 50% of the value of the structure, or a nonconforming structure which has been legally condemned, may be reconstructed and used for the same nonconforming use, provided that:

- A. The reconstructed structure shall not exceed the height, area and volume of the building destroyed or condemned.
- B. Reconstruction of the structure shall commence within one year from the date the structure was destroyed or condemned, unless the Zoning Hearing Board shall authorize a special exception for an extension of this time limit.

§ 311.F-22. Repairs and maintenance.

- A. On any nonconforming structure or portion of a structure containing a nonconforming use work may be done in any period of six consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, provided that the cubic content existing when it became nonconforming shall not be increased.
- B. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by the Code Enforcement Officer to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.
- C. Nothing in this chapter shall be construed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by the Code Enforcement Officer or other official charged with protecting the public safety.

§ 311.F-23. Displacement.

No nonconforming use shall displace a conforming one.

§ 311.F-24. Nonconforming lots.

A lot held in single and separate ownership on the effective date of this chapter which does not contain the required minimum area or width may be used for the construction, alteration or reconstruction of a building, or may be otherwise used if the construction, alteration, reconstruction or other use is in compliance with the use, yard, setback and other pertinent provisions of this chapter.

§ 311.F-25. Reduction of lot area.

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Changes are identified in red.

No lot area shall be so reduced that the area of the lot or the dimensions of the open space shall be smaller than herein prescribed.

§ 311.F-26. Registration of nonconforming uses.

The Code Enforcement Officer shall prepare, or cause to be prepared, within three years after the effective date of this chapter, a complete list of all nonconforming uses, structures, lots and signs in the Borough.

§ 311.F-27. Ownership.

Whenever a lot is sold to a new owner, a previously lawful nonconforming use may be continued by the new owner.

§ 311.F-28. Violations.

A nonconforming structure altered or a nonconforming use created in violation of any previous provisions in this article shall be regarded as continuing in such violation and shall not enjoy the privilege of legal continuance conferred by ~~§ 311-114~~§ 311.F-16 upon other nonconforming structures and uses.