

ARTICLE VIII
ADMINISTRATION AND ENFORCEMENT

§ 345-27. Zoning Officer.

A Zoning Officer shall be appointed by the Borough Council to administer and enforce this chapter. The Zoning Officer shall meet any qualifications established by Borough Council and shall be able to demonstrate to the satisfaction of Borough Council a working knowledge of municipal zoning. The Zoning Officer shall not hold any elective office in the Borough. The Zoning Officer's duties shall include, but not be limited to, the matters set forth in this article.

- A. Code compliance. If the Zoning Officer shall find that any of the provisions of this chapter are being violated, he shall send an enforcement notice in writing, as set forth in Subsection E below, indicating the nature of the violation and ordering the action necessary to correct it. Such action may include ordering the discontinuance of unlawful use of land or structures, the removal of unlawful structures or unlawful additions and alterations, the discontinuance of any unlawful work being done, or such other action as is deemed necessary to correct the violation.
- B. Complaints regarding violations. Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Officer. The Zoning Officer shall record the complaint, investigate immediately, and take action thereon as provided in this chapter. Nothing herein shall prevent an aggrieved owner or tenant of real property to take further legal action as set forth in Subsection F below.
- C. Interpretation of ordinance provisions. The Zoning Officer shall administer this chapter in accordance with its literal terms and as set forth in § 345-11. The Zoning Officer shall not have the power to permit any construction or any use or change of use, which does not conform to this chapter.
- D. Inspection of premises. Within the provisions of State law the Zoning Officer shall have the right and authority at any reasonable hour, to enter any building, structure, premises, lot or land, whether already erected or in use, or under construction, for the purpose of determining whether or not the provisions of this chapter are being complied with.
- E. Notice of violation.
 - (1) If it appears to the Zoning Officer that a violation of this chapter has occurred, the Zoning Officer shall initiate enforcement proceedings by sending an enforcement notice as provided in this section.
 - (2) The enforcement notice shall be sent to the owner of record of the parcel in which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding the parcel, and to any other person requested in

writing by the owner of record.

- (3) An enforcement notice shall state at least the following:
- (a) The name of the owner of record and any other person against whom the Borough, through the Zoning Officer, intends to take action.
 - (b) The location of the property in violation.
 - (c) The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of this chapter.
 - (d) The date before which the steps for compliance must be commenced.
 - (e) The date before which the steps for compliance must be completed.
 - (f) That the recipient of the notice has the right to appeal to the Zoning Hearing Board within thirty (30) days next following the date of the notice.
 - (g) 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.

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

G. Civil enforcement proceedings. The Zoning Officer shall institute civil enforcement proceedings as a means of enforcement when acting within the scope of such Zoning Officer's employment, subject to the approval or direction of Borough Council in cases of equitable actions as set forth more particularly in Subsection F above.

§ 345-28. Building permits.

No building permit shall be issued for the erection, construction, reconstruction, structural alteration, or moving of any building, structure, or part thereof, unless the plans and intended use

indicate that such building or structure is designed and intended to conform in all respects to the provisions of this chapter or unless appropriate relief has been granted by the Zoning Hearing Board.

- A. Application for Building Permit. All procedures with respect to applications for and issuance of building permits shall be in conformity with the provision of the building permit ordinance. All such applications shall be accompanied by such other information as may be necessary to determine and provide for the enforcement of the chapter. The Zoning Officer may request such additional information as is reasonably necessary to exercise a proper judgment on the applicability of provisions of this chapter to the proposal submitted.
- B. Construction and use to be as provided in application and plans. A building permit issued on the basis of applications and plans submitted to the Zoning Officer shall authorize only the use, arrangement and construction set forth in the applications and plans. Substantial variations in use, arrangement and construction from the submitted applications and plans shall be deemed a violation of this chapter. Where substantial changes are desired once construction has begun and is not yet completed, a new building permit shall be required.
- C. Relationship to Zoning Hearing Board functions. Before issuing a building permit, the Zoning Officer shall obtain a written order from the Zoning Hearing Board that an application for a special exception use has met the standards and criteria for that use, as provided in § 345-36 of this chapter. In all matters where it exercises an appeal function, as provided in this chapter, the decisions and findings of the Zoning Hearing Board shall direct the actions of the Zoning Officer.
- D. Completion of Buildings for Which Permits Have Been Issued. Nothing in this chapter shall require any change in the plans, construction or designated use of a building or structure for which a lawful building permit has been issued prior to the effective date of this chapter, or any amendment thereto affecting such building or structure or the use thereof, provided that:
 - (1) The construction of such building or structure shall have been begun and diligently pursued within three (3) months from the date of such permit.
 - (2) The ground story framework, including the second tier of beams, shall have been completed within six (6) months from the date of such permit.
 - (3) The entire building or structure shall be completed according to such filed and approved plans upon which the issuance of such permit was based, within one (1) year from the effective date of this chapter or any such amendment thereto.
- E. Expiration of building permit. In the event that Subsections D(1), D(2) or D(3) are not complied with, such building permit shall be revoked by the Zoning Officer. Written

notice thereof shall be given to the persons affected, together with notice that further work shall not proceed unless and until a new building permit has been obtained.

§ 345-29. Fees.

Fees for building permit applications and for issuance of building permits shall be as provided by ordinance or resolution of Borough Council.

§ 345-30. Nonconforming uses, buildings or structures.

- A. Unlawful uses not to be construed as nonconforming. An unlawful building or structure, or unlawful use of a building, structure, lot or land existing at the effective date of the chapter shall not be deemed to be a nonconforming building, structure or use.
- B. Continuation of nonconforming uses. Any lawful use which occupies any building or structure, lot or land at the effective date of this chapter, or any amendment thereto, but does not comply with the use regulations of the district in which it is situated after the effective date of this chapter, or any amendment thereto, may be continued as a nonconforming use in the building or structure or upon the lot or land so occupied.
- C. Restoration.
 - (1) If a building or structure used by a nonconforming use is damaged it may be restored, reconstructed or used as before, provided that the floor area of such use, building or structure shall not exceed the floor area which existed prior to such damage, and that it be completed within one (1) year of such damage.
 - (2) A nonconforming building or structure that is devoted to a conforming use may be reconstructed, structurally altered, restored or repaired in whole or in part.
- D. Extension and expansion.
 - (1) A structure that is a permitted use in the zoning district in which it is located, but does not conform with the setback, yard, building height or other dimensional requirement of the zoning district, may be extended provided that the extension does not increase the existing nonconformity or create any new nonconformities.
 - (2) A building may be constructed on any lot which was lawful when constructed and which, prior to the effective date of this chapter, was in separate ownership and duly recorded by plan or deed, provided that all dimensional requirements are met other than the dimensions which render the lot a lawful prior nonconforming lot.
 - (3) Nonconforming uses may be expanded by special exception pursuant to §345-36 of this chapter upon a showing that:
 - (a) Such extension or enlargement shall be only upon the same lot or any

contiguous lot purchased by the owner before the effective date of this chapter.

- (b) Any increase may result in an area committed to such nonconforming use only twenty-five percent (25%) larger than that lawfully existing at the date the use first became nonconforming; provided, however, that upon a showing that such expansion is essential to the survival of the use, an increase of fifty percent (50%) may be allowed in excess of that lawfully existing at the date the use first became nonconforming.
 - (c) Such extension or enlargement will be no more detrimental in its effects upon the neighborhood with respect to: motor vehicle and pedestrian traffic; noise, smoke, dust, fumes, vapors, gases, heat, odor, glare or vibration; storage and waste disposal; appearance; and hours and manner of operation.
- (4) Extension along a nonconforming setback. If an existing building has a lawfully nonconforming building setback, additions may occur to increase the height above such setback or to extend other portions of the building out to the nonconforming side or rear setback line, provided that:
- (a) The structure shall not be extended beyond the existing nonconforming setback line.
 - (b) No additional nonconformity shall be created.
 - (c) The new nonconforming extension shall not be greater than 25 percent of the existing floor area.
 - (d) All other requirements of this chapter shall be met.
 - (e) Such addition shall be permitted for a non-residential building that abuts an existing primarily residential use.

E. Change of use.

- (1) A nonconforming use may be changed to a different nonconforming use, only if permitted as a Special Exception by the Zoning Hearing Board.
 - (a) Special Exception approval is not needed for a simple change within an existing building from one lawful nonconforming retail store use to another retail store use provided that the new use complies with any Zoning Hearing Board conditions that applied to the previous use and is not more objectionable in external effects than the previous use.

- (b) Where Special Exception approval is required for a change of a nonconforming use, the Board shall determine whether the applicant has provided sufficient proof to show that the proposed new use will be equal or less objectionable in external effects than the pre-existing nonconforming use with regard to:
 - [1] Traffic safety and generation (especially truck traffic).
 - [2] Noise, dust, fumes, vapors, gases, odor, glare, vibration, fire, hazardous substances and explosive hazards.
 - [3] Amount and character of outdoor storage.
 - [4] Late night and early morning hours of operation if the use would be close to dwellings.
 - [5] Compatibility with the character of the surrounding area.
- (2) Once changed to a conforming use, a structure or land shall not revert to a nonconforming use.
- F. Termination. A nonconforming use shall be deemed to have been terminated and shall not thereafter be reinstated:
 - (1) When it is changed to a conforming use.
 - (2) When it has been voluntarily discontinued for a period of twelve (12) consecutive months where such nonconforming use is in a building or structure not designed for such use, or is on a lot or land whereon there is no consequential building or structure devoted to such use.
- G. Repairs and maintenance. Normal maintenance and repairs of a building or other structure containing a nonconforming use is permitted, provided it does not extend the floor area occupied by the nonconforming use.
- H. Registry of nonconformities. The Zoning Officer shall identify, register and map all nonconforming lots, uses and structures created as a result of the adoption of this ordinance or created as a result of amendments thereto, and with each such case, the Zoning Officer shall indicate the reasons it was identified as a nonconformity.

§ 345-31. Violations and penalties.

- A. Enforcement remedies. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this chapter, as amended, shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough, pay a

judgment of not more than Five Hundred Dollars (\$500.00) plus all court costs, including reasonable attorneys fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the Pennsylvania Rules of Civil Procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating this 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 (5th) 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 attorneys' fees collected for the violation of this chapter shall be paid over to the Borough.

- B. Stay. The Court of Common Pleas of Lehigh County, Pennsylvania, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.
- C. No enlargement. Nothing contained in this section shall be construed or interpreted to grant to any person or entity, other than the Borough, the right to commence any action for enforcement pursuant to this section.

§ 345-32. Exemptions.

This chapter shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.