

SECTION 800 Non-conformities

Intent – Within Pottstown’s zoning districts there are various uses of land and structures that were legal before this Ordinance was adopted, but would be prohibited or restricted under this Ordinance. The Borough believes Pottstown would be better off without these non-conforming uses, so they are permitted only until such time as they are terminated by obsolescence, destruction, abandonment, or similar factors.

Meanwhile, this Ordinance is designed to restrict, rather than increase, these non-conformities and to eliminate them as soon as possible.

SECTION 801 Continuation of Use

A use or structure which is non-conforming, as defined in Section 800, at the time this Ordinance and subsequent amendments become law, may be continued except as otherwise set forth in these Sections.

SECTION 802 Regulation of Nonconforming Uses

Any nonconforming use, building or structure may be enlarged by not more than 10 percent of its floor and/or use area as it existed at the time of passage of this Ordinance; provided that the lot or lots were in single ownership and purchased prior to the enactment of this Ordinance. Any such enlargement shall conform to all regulations of the district where it is located. This provision may be used only once for each zoned lot.

SECTION 803 Repairs and Maintenance

1. Normal maintenance repairs and incidental alterations of a structure containing a non-conforming use are permitted provided they do not extend the area or volume of space occupied by the non-conforming use.
2. Residential non-conforming uses may be altered to improve interior livability, provided that no structural alterations shall be made which would increase the number of dwelling units or the bulk of the building.

SECTION 804 Restoration of Damaged Non-conforming Uses

1. Non-conforming structures damaged or destroyed by fire, explosion, accident or other calamity (as contrasted to deterioration because of time or neglect) may be constructed and used as before; provided, that:
 - A. The reconstruction building shall not exceed the dimensions of the damaged or destroyed building, including height, width, depth and volume.
 - B. Building construction shall be started within six months from the date the building was damaged or destroyed, and shall be carried out without interruption, and shall be completed within one year of the date the building was damaged or destroyed.
2. Non-conforming structures which have been condemned by the Pottstown Zoning Officer shall not be rebuilt or used except in conformance with this Chapter.

SECTION 805 Termination and Abandonment

1. When any non-conforming structure or use is replaced by a conforming use or by a use more nearly conforming with the regulations of the district in which it is located, the former non-conformity shall be considered abandoned immediately and cannot be revived.
2. Failure to exhaust all lawful means to appeal the denial of a permit to continue the prior use, a parallel use, or a less restrictive use, as defined by this Ordinance, within the time limits prescribed by law, shall constitute immediate and voluntary abandonment. The subject structure or use shall not be used thereafter except in conformity with the regulations of the district in which it is located.
3. Voluntary discontinuance of a non-conforming structure or use shall be considered an admission by its owner that such non-conformity no longer is considered to have value and thereafter dispenses with the need for its further protection, except as provided otherwise herein. In addition to the circumstances mentioned above, the following, alone or in combination, shall be held to be evidence of voluntary abandonment:
 - A. The removal of furniture, equipment and/or machinery and the leaving of the property to the elements.
 - B. Failure to apply for permits and licenses necessary for the continuance of such non-conforming building, structure or use.
 - C. Cessation of a non-conforming use for 12 consecutive months.

SECTION 806 Cessation of Use Excused

The following shall excuse a cessation of use:

1. War and the consequent restrictions imposed upon use by governmental authority, or the entry of the operator of the non-conforming use into the armed services.
2. Inability of the owner to find a tenant desirous of using the premises, despite active attempts to do so, for a purpose permissible as a non-conforming use. Should a letter of intent for the sale or rental of such non-conforming use of land be submitted to the Zoning Officer prior to the expiration of the 12 month limit, an additional 12 month grace period shall be given. Failure of the owner to submit such a letter shall be held to be voluntary abandonment as in Section 807 listed above. At the expiration of the second 12 month period, the use and any vested rights shall be considered abandoned voluntarily.

Zoning Hearing Board

SECTION 900 Zoning Hearing Board – Jurisdiction

The Pottstown Zoning Hearing Board is created by this Ordinance to help ensure it is administered fairly and equitably.

The board shall hear any appeals of determinations by the Zoning Officer. It may also grant relief in the form of a variance if the literal enforcement of this Ordinance causes undue hardship in certain situations. In some circumstances, the Zoning Hearing Board shall also hear challenges to the validity of this Ordinance and hear applications for Special Exceptions.

DETAILS For a detailed exposition of this Article, see the Zoning Appendix, Sections A900 through A910, pages A41 through A48.

SECTION 901 Zoning Hearing Board – Membership

1. The Pottstown Zoning Hearing Board shall consist of three residents of the Borough appointed by Pottstown Council.
2. The Zoning Officer shall serve as secretary of the Board.
3. Borough Council may appoint, by resolution, at least one, but no more than three, Borough residents to serve as alternate members of the Board. If for any reason the Zoning Hearing Board lacks a quorum, the Chairman of the Board shall appoint alternate members as needed to create a quorum. These members shall participate in all proceedings and discussions of the Board until the matter for which they were appointed is resolved.

SECTION 902 Applications

1. Applications to the Zoning Hearing Board may be made in the following matters:
 - A. Request for a variance to this Ordinance
 - B. An interpretation of a ruling of the Zoning Officer
 - C. Special exceptions, where provided for in this Ordinance
 - D. Appeals from enforcement notices
2. Variances may be requested by property owners or tenants, with the property owner's permission, for the property they own or rent. Appeals of a ruling of the Zoning Officer may be made by any affected resident or property owner, even if he does not own the property in question.
3. The application shall be made on a form prepared by the Zoning Hearing Board that will include:
 - A. The ownership of the property involved
 - B. The dimensions of the property
 - C. The reasons for the application
 - D. Supporting documentation
4. The Zoning Officer shall forward the application, which is subject to a fee set by Borough Council, to the Zoning Hearing Board.

SECTION 903 Time limitation

1. No person shall be allowed to file an appeal with the Board later than 30 days after an application for development, either preliminary or final, has been approved by an appropriate Borough officer or body.
2. All appeals from determinations adverse to the landowner shall be filed by the landowner within 30 days after notice of the determination is issued.
3. After a permit has been authorized by the Zoning Hearing Board, a permit must be applied for within 12 months or the authorization expires. If the application fails to comply with the conditions of the authorized permit within 12 months, the authorization expires.

SECTION 904 Hearings -- Notification

1. Within 60 days of an applicant's request, the Zoning Hearing Board shall conduct properly advertised public hearings, which includes:
 - A. Placing notices in a newspaper of general circulation.
 - B. Mailing a notice to the property owner, and, at the discretion of the Zoning Officer, to the occupant of every property within 300 feet of the lot in question.
 - C. Giving notice to the appellant, Zoning Officer, Planning Commission, and Borough Council.
 - D. Mailing a notice to every resident who has formally registered interest in the case.
 - E. Posting a notice conspicuously on the affected tract of land at least one week in advance of the hearing.

SECTION 905 Hearings -- Procedures

1. For the conduct of any hearing and making a decision, a quorum shall be not less than a majority of all members of the Board. If for some reason there are not enough members for a quorum, the chairman of the Zoning Hearing Board shall appoint one or more alternates to achieve a quorum.
2. The parties to any hearing shall be:
 - A. The Borough
 - B. The applicant
 - C. Any person affected by the application who has formally asked to appear in the matter
 - D. Any person, including civic organizations, permitted to appear by the Board
3. The parties shall have the right to be represented by counsel and shall be allowed to respond, to present evidence and argument, and to cross-examine adverse witnesses on all relevant issues.
4. Formal rules of evidence shall not apply, but evidence that is irrelevant, immaterial, or unduly repetitious may be excluded.
5. The chairman or acting chairman shall have the power to administer oaths and issue subpoenas and to compel the attendance of witnesses. This power extends to requiring the production of relevant documents and papers including witnesses and documents requested by the parties.

SECTION 905 Hearings – Procedures (continued)

6. The Board shall keep a stenographic record of the proceedings, the cost of which shall be shared equally by the applicant and the Board.
7. The Board shall not communicate with any party or representatives in connection with any issue involved, unless all parties are given a chance to participate. The Board shall not visit the site with any one party.
8. The Board shall issue a written decision within 45 days after the last hearing before the Board. If no decision is needed, written findings will be issued.
9. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based on the findings of fact. Conclusions based on this Ordinance or any other law shall include a reference to the appropriate provisions.
10. A decision or findings by the Board shall be by a majority of the members. A tie vote shall be deemed a denial of appeal.
11. When the Board fails to render a decision within the period required by this Ordinance, and/or fails to hold the required hearing within 60 days of the filing of the application, the decision shall be deemed to have been rendered in favor of the applicant, unless the applicant formally gives an extension.
12. A copy of the final decision, or if no decision is needed, the findings of fact, shall be mailed to the applicant after the decision is made. Other parties shall receive a brief notice of the decision, or findings, and a statement identifying the place where the full decision may be reviewed.

SECTION 906 Variances

1. The Board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The Board may grant a variance, provided all of the following findings are made (where relevant) in a given case:
 - 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. That the unnecessary hardship is due to these conditions and not the circumstances or conditions created 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 this Ordinance, and that a variance is necessary to allow the reasonable use of the property.
 - C. That the hardship has not been created by the appellant or his predecessors.
 - D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor impair substantially or permanently the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

SECTION 906 Variances (continued)

- 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 involved.
2. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of the Pennsylvania Municipalities Planning Code and this Ordinance.

SECTION 907 Procedure to Obtain a Preliminary Opinion

1. In order not to delay unreasonably the time when a landowner may secure assurance that the Ordinance or map under which he proposes to build is free from challenge, and recognizing that the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the landowner may advance the date from which time any challenge to the Ordinance or map will be filed:
 - A. The landowner may submit plans and other materials describing his proposed use or development to the Zoning Officer for a preliminary opinion as to their compliance with the applicable ordinances and maps. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative, or final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed use or development, and provide a sufficient basis for a preliminary opinion as to its compliance.
 - B. If the Zoning Officer's preliminary opinion is that the use or development complies with the ordinance or map, notice thereof shall be published once each week for two successive weeks in a newspaper of general circulation in the Borough. Such notice shall include:
 1. A general description of the proposed use or development and its location
 2. The place and times where the plans and other materials may be examined by the public.
 - C. The favorable preliminary approval and the time specified in them for commencing a proceeding with the Board shall run from the time when the second notice thereof has been published.

SECTION 908 Validity of Ordinance – Substantive Questions

1. A landowner who, on substantive grounds, desires to challenge the validity of this Ordinance or any other ordinance or map or any provision of an ordinance that prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either:
 - A. To the Zoning Hearing Board
 - B. To Borough Council together with an amendment that will cure the alleged defect.

SECTION 909 Appeals to Court

Nothing in this Ordinance shall be construed to deny an appellant the right to proceed directly to court where appropriate under state law.

SECTION 1000 Appeals

Appeals to Court shall be in accordance with the Pennsylvania Municipalities Planning Code, Act 247, as amended.

SECTION 1100 Enforcement by Zoning Officer

A Zoning Officer, who shall hold no elective office in the Borough, shall be appointed by Council and may be removed at the will of Council. Council may designate an employee as the Officer's deputy who shall exercise all the powers of the Zoning Officer during his absence or temporary disability.

The provisions of this Ordinance shall be administered and enforced by the Zoning Officer in accordance with its literal terms. In no case shall a permit be granted for construction, use, or change of use that does not conform to this Ordinance. The Zoning Officer is authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of this Ordinance.

All appeals from decisions of the Zoning Officer shall be taken in the manner set forth in this Ordinance.

SECTION 1101 Right of Entry

In the discharge of his duties, the Zoning Officer shall have the authority to enter, at any reasonable hour, any structure or land in the Borough to enforce the provisions of this Ordinance.

SECTION 1102 Causes of Action

1. In case any building is proposed to be constructed or used in violation of this Ordinance, or if any land is proposed to be used in violation of this Ordinance, the appropriate action or private cause of action to prevent, restrain, correct, or abate such use may be taken by:
 - A. Borough Council
 - B. The Zoning Officer
 - C. Any other official of the Borough designated by Borough Council
 - D. Any aggrieved owner or tenant of real property who shows that his property or person will be affected substantially by the alleged violation
2. When any action is instituted by a land owner or tenant, notice of the action shall be given to Borough Council and the Zoning Officer at least 30 days prior to the time the action is begun by serving them a copy of the complaint. No action may be maintained until such notice been given.

SECTION 1103 Enforcement Notice

1. If it appears to the Zoning Officer that a violation of this Chapter has occurred, he shall initiate enforcement proceedings by sending an enforcement notice to:
 - A. The owner of record of the parcel on which violation has occurred.
 - B. To any person who has filed a written request to receive enforcement notices regarding that parcel.
 - C. To any other person requested in writing by the owner of record.
2. The notice shall be by certified letter or by delivery in person. If notice is given in person, the person serving the notice shall obtain a notarized affidavit stating the service was made at a place and time shown on the affidavit.

SECTION 1103 Enforcement Notice (Continued)

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 Zoning Officer intends to take action and the location of the property in violation.
 - B. The specific violation with a description of the requirements that have not been met, citing, in each instance, the applicable provisions of this Ordinance.
 - C. The date by which the steps for compliance must be commenced and the date by which the steps must be completed.
 - D. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a prescribed period in accordance with the procedures set forth in this Ordinance.
 - E. That failure to comply with the notice within time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly specified.

SECTION 1104 Jurisdiction

District Justices shall have initial jurisdiction to determine the amount of judgments, damages or penalties from enforcement notices filed under this Ordinance.

SECTION 1105 Enforcement Remedies

1. Any person, partnership, or corporation who has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by the Borough.
2. No judgment shall be imposed until the date of the determination of a violation by the district justice. If the defendant neither pays nor appeals the judgment within the time prescribed by law, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure.
3. Each day a violation continues shall constitute a separate violation, unless the district justice determines that there was a good-faith basis for the person violating this Chapter to have believed that there was no such violation. In that case, only one such violation has been committed until the fifth day following the date of the determination of a violation by the district justice. After that, each day a violation continues shall constitute a separate violation. All judgments, costs, and reasonable attorney fees collected for the violation of this Ordinance shall be paid over to the Borough.
4. The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of violation and judgment.
5. Nothing contained in this Section shall be interpreted to grant to any person or entity other than the Borough the right to commence any action for enforcement under this Section.

SECTION 1106 Finances and Expenditures

1. Borough Council may set fees, by resolution or by ordinance, for applications or appeals.
2. Borough Council may prescribe reasonable fees with respect to the administration of this Ordinance and with respect to hearings before Borough Council and the Zoning Hearing Board. Fees for these hearings may include compensation for the secretary and members of the Zoning Hearing Board, notice and advertising costs, and necessary administrative overhead connected with the hearing.

SECTION 1107 Exemptions

These sections shall not apply to any existing or proposed building, or building extension, 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.

It shall be the responsibility of The Public Utility Commission to ensure that both the corporation and the Borough have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties, and otherwise exercise the rights of a party to the proceedings.

DETAILS

For details regarding enforcement of this Ordinance, see the Zoning Appendix, Sections A1100 through A1108, pages A50 through A52.

SECTION 1200 Amendments

Amendments may be prepared by the Planning Commission or by others. All amendments shall be submitted to Borough Council. In the event the amendment involves the rezoning of land, the applicant shall submit an application fee which shall be set by Borough Council from time to time by Resolution.

SECTION 1201 Landowner Curative Amendments

A landowner who desires to challenge on substantive grounds the validity of this Ordinance and map or any provision in this Ordinance that prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to Borough Council. The curative amendment should be accompanied by a written request that this challenge and proposed amendment be heard and decided as provided in the Zoning Appendix, Section A1201, page A54.

SECTION 1202 Municipal Curative Amendments

If Borough Council determines this Ordinance, or portions of this Ordinance, are substantively invalid, it shall declare this Ordinance or portions of this Ordinance invalid and shall enact a curative amendment.

DETAILS

For details about Amendment procedures, see the Zoning Appendix, Sections A1200 through A1203, pages A53 through A56.

SECTION 1300 Severability

1. This Ordinance, comprising various parts, sections, subsections, and clauses, are severable. If any part, sentence, paragraph, subsection, section, or clause is adjudged unconstitutional or invalid, the Borough hereby declares that the remainder of this Ordinance shall not be affected.
2. If any such part is adjudged unconstitutional or invalid as applied to a particular property or structure, it is provided hereby that the application of such portion of this Ordinance to any other property, building, or structures shall not be affected.
3. Whenever any condition or limitation is included in an order authorizing any grading permit, zoning permit, certificate of occupancy, conditional use, or site plan approval, it shall be presumed conclusively that the authorizing officer or body considered such condition or limitation necessary:
 - A. To carry out the spirit and purpose of this Ordinance, or
 - B. The requirement of one of its provisions, and
 - C. To protect the public health, safety, and welfare.
4. It shall further be presumed conclusively that the officer or body would not have granted the authorization to which the condition or limitation pertains, except in the belief that the condition or limitation was lawful.

SECTION 1301 Conflict With Other Laws

Whenever any provisions set forth in this Chapter are found to be in conflict with mandatory Commonwealth or Federal laws, such mandatory laws shall govern and this Ordinance shall be construed accordingly so that the conflict shall not affect the validity of this Ordinance.

SECTION 1302 Conflicts between Main Ordinance and Appendix

In the case of any conflict between the main provisions of this ordinance and the appendix, the stricter sections shall control.

SECTION 1303 Repealer

All Borough ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed, only to the extent of such inconsistency.