

Article 13: Administration and Enforcement

Section 1301: Statement of Intent

- (A) The purpose and objective of the provisions established under Article 13 of this Zoning Ordinance is to establish specific regulations and guidelines for the administration and enforcement of this Zoning Ordinance.
- (B) Where a conflict or discrepancy should arise concerning the procedural requirements specified by this Zoning Ordinance and the Pennsylvania Municipalities Planning Code, the Cumru Township Solicitor shall review the conflict or discrepancy and advise the Board of Commissioners, Planning Commission, Zoning Officer, Engineer and/or Zoning Hearing Board of the procedural requirements that should be followed.
- (C) The provisions established for administration and enforcement, as established under Article 13 of this Zoning Ordinance shall be subject to the interpretation of the Cumru Township Zoning Officer. Should a dispute arise concerning the interpretation of these regulations, the person aggrieved by the interpretation may file an appeal with the Zoning Hearing Board.
- (D) Where “Cumru Township” has been identified as the person authorized to review, issue and/or enforce the provisions of Article 13 of this Zoning Ordinance, such person may include the Cumru Township Zoning Officer, Code Enforcement Officer, Manager, Secretary, Engineer, Planner, Solicitor and/or other person that has been designated and authorized to conduct such tasks by the Cumru Township Board of Commissioners.

Section 1302: Zoning Permits, Certificates of Use and Occupancy, and Other Permits

- (A) The following general requirements shall apply to zoning permits, certificates of occupancy, as reviewed and issued by Cumru Township:
 - (1) Persons desiring to undertake any new construction, structural or site alteration, or changes in the use of a building or lot shall apply for a permit by filling out the appropriate application form and by submitting the required fee.
 - (2) Cumru Township shall either issue the appropriate permit or shall refuse the permit, indicating in writing the reason for refusal. Certain construction activities, alterations or land use activities may require approval of the Board of Commissioners and/or Zoning Hearing Board.
 - (3) If the permit is refused by Cumru Township, the applicant may appeal the decision to the designated board that has the authority to consider the appeal.
 - (4) After the permit has been received by the applicant, he may undertake the action that is specifically referenced on the approved permit application..
 - (5) Upon completion of such action, the applicant may apply to Cumru Township for an occupancy permit (where such a permit is required).
 - (6) If Cumru Township finds that the action of the applicant is in accordance with the zoning permit and any other required permit approvals, Cumru Township shall issue an occupancy permit allowing the premises to be occupied.
- (B) The following specific provision shall apply to an application for a zoning permit within Cumru Township:
 - (1) No person shall erect, alter, convert, move or add to any building, structure or sign, or alter the use of any land or structure, until Cumru Township issues a zoning permit to the person or applicant for said change or construction.
 - (2) Unless otherwise specified by this Zoning Ordinance, a zoning permit is not required for normal maintenance and repairs.

- (3) The following provisions shall apply to the types of procedural requirements for a use permitted by right, special exception or conditional use:
- (a) A zoning permit may be issued by Cumru Township for all uses permitted by right, subject to the provisions and requirements of the Zoning Ordinance.
 - (b) A zoning permit may be issued by Cumru Township for all uses permitted as part of a zoning variance application, which has been approved by the Zoning Hearing Board and subject to the provisions and requirements of the Zoning Ordinance.
 - (c) A zoning permit may be issued by Cumru Township for all uses permitted as part of a special exception application, which has been approved by the Zoning Hearing Board and subject to the provisions and requirements of the Zoning Ordinance.
 - (d) A zoning permit may be issued by Cumru Township for all uses permitted as part of a conditional use application, which has been approved by the Board of Commissioners and subject to the provisions and requirements of the Zoning Ordinance.
 - (e) A zoning permit may be issued by Cumru Township for all permitted accessory uses, subject to the provisions and requirements of the Zoning Ordinance.
- (4) Unless otherwise required by Cumru Township, all applications for a zoning permit shall be accompanied by two (2) complete sets of plans accurately drawn to scale indicating or illustrating the following information if applicable:
- (a) The actual dimensions and shape of the lot to be built upon shall be drawn to scale. If required by the Cumru Township Zoning Ordinance, the required information shall be prepared by a professional architect, engineer, planner or surveyor.
 - (b) The exact size and location on the lot of buildings, structures or signs existing and/or proposed extensions thereto shall be drawn to scale. If required by the Cumru Township Zoning Ordinance, the required information shall be prepared by a professional architect, engineer, planner or surveyor.
 - (c) The number of lots or dwelling units.
 - (d) Off-street parking spaces provided and/or loading facilities.
 - (e) Statement indicating the existing or proposed use.
 - (f) The detailed scale drawing of the structure, building, sign or other improvement, including the precise dimensions.
 - (g) An attested statement or agreement that the applicant is the owner of the premises on which the improvement will be conducted or that the applicant has obtained the consent of the owner or lessor of such premises to improve the property in accordance with the permit application.
 - (h) All other information necessary for Cumru Township to determine conformance with and provide for enforcement of this Zoning Ordinance.
- (5) Upon approval or disapproval of the zoning permit, Cumru Township shall return one (1) copy of the permit application and plans to the applicant. Cumru Township shall indicate that the permit has been approved or disapproved by signing the application. Where appropriate, conditions of approval should be specified on the zoning permit application. One (1) copy of such plans shall be retained by the Zoning Officer for his permanent records and one (1) copy shall be retained by Cumru Township.
- (6) Approval or denial of the requested zoning permit application shall be made within thirty (30) days from the date of application was considered complete by Cumru Township or as specifically referenced under other prevailing codes or ordinances adopted by Cumru Township.

- (7) In denying a zoning permit application, Cumru Township shall inform the applicant of the reasons for denial and specify the provision(s) of the Zoning Ordinance and/or other prevailing codes or ordinances that have not been satisfied. Applicants shall be informed of their rights of appeal and provided with all necessary information to pursue such appeals.
- (8) Unless otherwise specified by Cumru Township, zoning permits shall expire within one (1) year from date of issuance, if the work described in any permit has not begun. If the work described in any zoning permit has begun, said permit shall expire after one (1) year, exclusive of any time required for administration and permitting, from date of issuance thereof, within which time said work shall be completed.

(C) The following specific provision shall apply to an application for a certificate of use and occupancy within Cumru Township:

- (1) A certificate of use and occupancy shall be required upon the completion of the work and improvements authorized as part of the zoning permit and/or building permit. It shall be unlawful to use and/or occupy any structure, building and/or portions thereof in any manner until a certificate of use and occupancy has been issued by Cumru Township.
- (2) The application for certificate of use and occupancy shall be submitted on such form as Cumru Township may prescribe.
- (3) Cumru Township shall inspect any structure, building, sign, improvements and/or land or portions thereof to determine compliance with the Zoning Ordinance and permit requirements. If satisfied that the completed work is in conformity with the Zoning Ordinance and permit requirements, a certificate of use and occupancy shall be issued.
- (4) Upon inspection, Cumru Township shall either grant or deny the certificate of use and occupancy in writing, within five (5) days from the date of application or last inspection.
- (5) In situations in which performance standards are imposed, no certificate of occupancy shall become permanent until after the use or facility is fully operating and only after, upon inspection by Cumru Township, it is determined that the facility is in compliance with the performance standards. After said inspection, Cumru Township shall notify the applicant that the facility is in full compliance with all performance standards and that the certificate of use and occupancy is permanent or that the facility does not comply and that the certificate of use and occupancy is still temporary. Unless otherwise specified, a temporary certificate of use and occupancy shall not be granted for more than ninety (90) days.
- (6) The certificate of use and occupancy shall be kept on the premises and shall be publicly displayed in a manner required by Cumru Township.

(D) The following specific provision shall apply to an application for a special use permit, seasonal permits and/or temporary permit within Cumru Township:

- (1) Where a special use, seasonal use or a temporary use are permitted by this Zoning Ordinance, Cumru Township may issue a special use permit, seasonal permit, or a temporary use permit to the applicant.
- (2) A seasonal, special use or temporary permit may be issued by Cumru Township for a use having a periodic, intermittent or short duration of time not exceeding sixty (60) cumulative days within a calendar year. Such uses may include: carnivals; circuses; bazaars; fairs; municipal and civic events; the sale of food, product and similar merchandise; the sale of trees, seasonal flowers or other seasonal items excluding fireworks; and other similar activities conducted by a nonprofit or charitable organization, provided that activities are conducted on the same premises as the use and location of the principal activity of the sponsor.

- (3) All business operations and uses conducted by peddlers, solicitors and transient merchants shall be subject to the provisions specified under Cumru Township Ordinance 683, as may be amended from time to time.
- (E) The owner of the premises occupied by a lawful nonconforming use or structure may secure a Certificate of Nonconforming Use or Structure from Cumru Township. Such certificate shall be authorized by Cumru Township and shall certify to the owner his right to continue such nonconforming use or structure.
- (F) Pursuant to the provisions established by Cumru Township, additional permits may be required by local, regional, county, state and federal agencies, which shall be issued prior to the commencement of any improvement or site activities.

Section 1303: Zoning Officer

- (A) The provisions of this Zoning Ordinance shall be enforced by an agent, to be appointed by the Board of Commissioners, who shall be known as the "Zoning Officer." The Zoning Officer shall not hold any elective office and shall continue to serve Cumru Township until such time as the Board of Commissioners declares otherwise.
- (B) The Zoning Officer is responsible to enforce the provisions of this Zoning Ordinance and shall have such duties and powers as are referenced by this Zoning Ordinance. The Zoning Officer's duties shall include, but are not limited to the following:
 - (1) Receive, examine and process permit applications for zoning, land use, buildings and signs.
 - (2) To issue permits for the construction, alteration, repair, extension, replacement, occupancy, and uses of land, which are in accordance with the regulations of this Zoning Ordinance.
 - (3) To record and file all applications for permits and accompanying plans and documents and keep them for public record.
 - (4) To inspect nonconforming uses, buildings and lots of records by examining them periodically, with the view of eliminating the nonconforming uses under the existing laws and regulations and to issue certificates of occupancy for them.
 - (5) Upon the request of the Board of Commissioners, Planning Commission or the Zoning Hearing Board, present to such bodies facts, records and any similar information on specific requests to assist such bodies in reaching their decisions.
 - (6) To be responsible for periodic updates to this Zoning Ordinance and the Zoning Map, which is filed with the Cumru Township Manager or Secretary, and to include any amendments thereto.
 - (7) To keep an official record of all business and activities, including complaints of a violation of any of the provisions of this Zoning Ordinance and of the action taken consequent to each such complaint.
 - (8) Issue permits for uses permitted by right, variance, special exception or conditional use, as specified by this Zoning Ordinance.
 - (9) Perform all other duties, as may be required for the administration of this Zoning Ordinance.
- (C) Any person, partnership or corporation who or which shall violate the provisions of this Zoning Ordinance shall be held accountable for their actions in accordance with the provisions specified by Cumru Township.
- (D) Should a dispute arise concerning the interpretation of this Zoning Ordinance by the Zoning Officer, the person aggrieved by the interpretation may file an appeal with the Zoning Hearing Board.

Section 1304: Zoning Hearing Board

- (A) The Cumru Township Board of Commissioners shall appoint three (3) residents and up to three (3) alternates to serve as members of the Zoning Hearing Board in accordance with the provisions of Cumru Township and Pennsylvania Municipalities Planning Code.
- (B) The following provisions shall apply to the establishment of the Cumru Township Zoning Hearing Board:
- (1) The members of the Zoning Hearing Board shall serve three (3) year terms and shall be so fixed that the term of office of one member shall expire each year.
 - (2) The Zoning Hearing Board shall promptly notify the Board of Commissioners of any vacancies, which may occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.
 - (3) The members of the Zoning Hearing Board shall not be an employee of Cumru Township and shall not hold any other office within Cumru Township.
 - (4) Any member of the Zoning Hearing Board may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Board of Commissioners taken after the member has received fifteen (15) days of advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.
- (C) The following provisions shall apply to the organization of the Cumru Township Zoning Hearing Board:
- (1) The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves.
 - (2) For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Board, but where two members are disqualified to act in a particular matter, the remaining member may act for the Zoning Hearing Board.
 - (3) The Zoning Hearing Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf, and the parties may waive further action by the Zoning Hearing Board, as provided by Cumru Township.
 - (4) The Zoning Hearing Board may appoint a solicitor or attorney to oversee the procedures of the hearing in accordance with the provisions established by of Cumru Township and the Pennsylvania Municipalities Planning Code.
 - (5) The Zoning Hearing Board may make, alter and rescind rules and forms for its procedure, consistent with the provisions of Cumru Township and laws of the Commonwealth of Pennsylvania.
 - (6) If requested by the Board of Commissioners, the Zoning Hearing Board shall submit an annual report of its activities to the Board of Commissioners.
- (D) The following provisions shall apply to expenditures and fees for the Cumru Township Zoning Hearing Board:
- (1) The members of the Zoning Hearing Board may receive compensation for the performance of their duties and services, which shall be established by the Board of Commissioners.
 - (2) Within the limits of funds appropriated by the Board of Commissioners, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services.
 - (3) The applicant before the Zoning Hearing Board shall deposit with the designated secretary or treasurer of Cumru Township such a sum of money as shall be deemed sufficient by the Zoning Hearing Board and established in a resolution to pay the cost of the expenses for the hearing. These costs may include compensation in accordance with the provisions of the Pennsylvania Municipalities Planning Code.

- (4) Funds deposited in excess of the actual cost of the requested hearing shall be returned to the applicant upon completion of the proceedings, and, in the event that the cost of the hearing exceeded the funds deposited, the applicant shall pay to the designated secretary or treasurer of Cumru Township the appropriate funds equal to such excess cost.

(E) The following provision shall apply to the general functions of the Cumru Township Zoning Hearing Board:

- (1) The Zoning Hearing Board shall act in strict accordance with the procedures specified within Cumru Township and the Pennsylvania Municipalities Planning Code.
- (2) The Zoning Hearing Board shall consider applications for variances, special exceptions, appeals concerning the interpretation of this Zoning Ordinance by the Zoning Officer, and other duties that are specified by Cumru Township.
- (3) All appeals and applications made to the Zoning Hearing Board shall be in writing, on forms prescribed by the Board of Commissioners or Zoning Hearing Board.
- (4) Every appeal or application shall refer to the specific provision of this Zoning Ordinance involved and shall exactly set forth the interpretation that is claimed, the grounds for any challenges to validity of this Zoning Ordinance, the use for which a special exception is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted.

(F) In all cases before the Zoning Hearing Board, the Board of Commissioners, Planning Commission and Zoning Officer may review and comment on the application prior to rendering a decision.

Section 1305: Public Hearings and Procedures

(A) The first hearing shall be commenced within sixty (60) days from the date of the applicant's request, unless the applicant has agreed, in writing, to an extension of time. Each subsequent hearing before the Zoning Hearing Board shall be held within forty-five (45) days of the prior hearing unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of his case in chief (the part of the hearing in which the applicant presents evidence to support his or her claim or defense) within one hundred (100) days of the first hearing. Upon the request of the applicant, the Zoning Hearing Board shall assure that the applicant receives at least seven hours of hearings within the one hundred (100) days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within one hundred (100) days of the first hearing, held after the completion of the applicant's case in chief. An applicant may, upon request, be granted additional hearings to complete his case in chief, provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent, on the record by the applicant and Cumru Township, be granted additional hearings to complete their opposition to the application, provided the applicant is granted an equal number of hearings for rebuttal.

(B) The Cumru Township Zoning Hearing Board shall give notice of the public hearing in accordance with as follows:

- (1) By publishing a notice once each week for two successive weeks in a newspaper of general circulation within Cumru Township. Such notice shall state the time and place of the public hearing and the particular nature of the matter to be considered at the hearing. The first publication shall be not more than 30 days and the second publication shall be not less than seven (7) days from the date of the hearing.
- (2) By mailing a notice thereof to the parties of interest at least fourteen (14) days prior to the public hearing.
- (3) By mailing or issuing a notice to the Cumru Township Manager, Zoning Officer, Secretary, Board of Commissioners, Planning Commission, Berks County Planning Commission (if requested) and to every person or organization who or which shall have registered with the Zoning Hearing Board for the purpose of receiving such notices.
- (4) The Zoning Hearing Board or Zoning Officer may mail notice of the hearing to the owner of every lot within five hundred (500) feet of the lot or building in question, provided that failure to give notice, either in part or in full, as stated by this subsection shall not invalidate any action by the Zoning Hearing Board.

- (5) The required notices by this section shall state the location of the lot or building that is the subject of the application, as well as the general nature of the request(s) being made by the applicant(s).
 - (6) The Board of Commissioners may establish reasonable fees to be paid by the applicant in accordance with the provisions of Cumru Township.
- (C) The Zoning Hearing Board shall conduct the hearings, or the Zoning Hearing Board may appoint any member or an independent attorney as a hearing officer. The decision or, where no decision is called for, the findings shall be made by the Board, but the parties may waive decision of findings by the Board and accept the decision or findings of the hearing officer as final.
 - (D) The parties to the hearing shall be Cumru Township, any person affected by the application who has made timely appearance or record before the Zoning Hearing Board and any other person, including civic or community organizations permitted to appear by the Zoning Hearing Board. The Zoning Hearing Board shall have power to require that all persons who wish to be considered parties enter appearances, in writing, on forms provided by the Board for that purpose.
 - (E) The Chairman or acting Chairman of the Zoning Hearing Board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and documents requested by the parties.
 - (F) The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.
 - (G) Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.
 - (H) The Zoning Hearing Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings, and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.
 - (I) The Zoning Hearing 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 material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.
 - (J) The Zoning Hearing 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 Zoning Hearing Board or hearing officer. Each decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons therefore. Conclusions based on any provisions of this Zoning Ordinance or of any act, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer and there has been no stipulation that his decision or findings are final, the Zoning Hearing Board shall make his report and recommendations available to the parties, and the parties shall be entitled to make written representations thereon to the Zoning Hearing Board prior to final decision or entry of findings, and the Zoning Hearing Board's decision shall be entered no later than 45 days after the decision of the hearing officer. Where the Zoning Hearing Board has power to render a decision and the Zoning Hearing Board or the hearing officer, as the case may be, fails to commence, conduct or complete the required hearing as required by this Zoning Ordinance, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. Nothing in this subsection shall prejudice the right of any party opposing the application to urge that such decision is erroneous.
 - (K) A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him by certified mail not later than the day following its date. To all other persons who have filed their names and addresses with the Board no later than the last day of the hearing, the Zoning Hearing Board shall provide by mail or otherwise brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

Section 1306: Zoning Variances

- (A) The Zoning Hearing Board shall hear requests for zoning variance applications, whereas it is alleged that the provisions of this Zoning Ordinance inflict unnecessary hardship upon the applicant. The zoning variance application shall be considered by the Zoning Hearing Board in accordance with the provisions specified by this Zoning Ordinance.
- (B) In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Zoning Ordinance and the Pennsylvania Municipalities Planning Code. The Zoning Hearing Board may, by rule, prescribe the form of application and may require a preliminary application to be issued and reviewed by the Zoning Officer.
- (C) In all cases before the Zoning Hearing Board, the Board of Commissioners, Planning Commission and Zoning Officer may review and comment on the zoning variance application prior to rendering a decision.
- (D) The Zoning Hearing Board may grant a variance provided that all the following findings are made where relevant in a given case:
 - (1) 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 condition, and not circumstances or conditions generally created by the provisions of this Zoning Ordinance in the neighborhood or district in which the property is located.
 - (2) 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 Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - (3) That such unnecessary hardship has not been created by the appellant.
 - (4) 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.
 - (5) That the variance as granted by the Zoning Hearing Board is the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- (E) Where the Zoning Hearing Board has jurisdiction over other zoning matters described under this Zoning Ordinance, the Zoning Hearing Board shall also hear all appeals, which an applicant may elect to bring before it with respect to any municipal ordinance or requirement pertaining to the same lot, parcel, property or development. In any such case, the Zoning Hearing Board shall have no power to pass upon the non-zoning related issues but shall take evidence and make a record in accordance with the procedures established by this Zoning Ordinance. At the conclusion of the hearing, the Zoning Hearing Board shall make findings on all relevant issues of fact, which shall become part of the record on appeal to the court.
- (F) The approval of a variance if authorized by the Zoning Hearing Board, which anticipates construction or modification of a structure, creation of new or revised lot lines or dimensional standards for a property or structure situated thereon, shall be valid and remain in effect for a term of one (1) year from the date of said approval and shall thereafter expire and be void, unless said construction, modification, new or revised lot lines or dimensional standards or change of use or occupancy be initiated within said one (1) year term or said term is expressly extended as part of the initial approval. In the event that the activity anticipated by the variance should not be initiated within one (1) year of the approval or such additional term as may be expressed in the approval, or should the activity which is the subject of the variance be discontinued, the premises or structure or structure situated thereon shall not thereafter be used except in conformity with the regulations of the district in which it is located.
- (G) For zoning variance applications, where compliance with the minimum dimensional requirements and/or maximum coverage requirements of this Zoning Ordinance are considered to be “de minimis” in terms of their impact, the Zoning Hearing Board may consider such application in accordance with state law.

Section 1307: Special Exceptions

- (A) The Zoning Hearing Board shall hear requests for special exception applications, as permitted under the provisions of this Zoning Ordinance. By so providing, the Zoning Hearing Board recognizes that certain uses may or may not be appropriate at every location within any specific district and, where it appears that a use permitted by special exception fails to comply with all of the definitional aspects thereof or would be contrary to the public health, safety, morals and/or welfare of the community at specific locations within a district, that the use would not be permitted there.
- (B) In granting any special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Zoning Ordinance and the Pennsylvania Municipalities Planning Code, as amended. The Zoning Hearing Board may, by rule, prescribe the form of application and may require a preliminary application to be issued and reviewed by the Zoning Officer.
- (C) As part of the submission requirements for a special exception application, a preliminary subdivision plan or preliminary land development plan shall be prepared and submitted to Cumru Township for review and consideration in accordance with the procedures and requirements specified by Cumru Township.
- (D) The Zoning Hearing Board shall consider the comments issued by the Cumru Township Board of Commissioners, Planning Commission, Engineer, Zoning Officer and/or other agencies that could assist the Zoning Hearing Board with the special exception application. All such comments shall be made either in writing and presented as evidence during the hearing or as part of sworn testimony at the public hearing.
- (E) The Zoning Hearing Board shall consider the following issues prior to rendering its decision on a special exception application:
 - (1) That such use is consistent with the Governor Mifflin Region Comprehensive Plan.
 - (2) That such use shall be one, which is specifically authorized as a special exception use within the zoning district wherein the applicant seeks a special exception.
 - (3) That the property is suitable for the use desired and that the proposed request is consistent with the goals, objectives and policies established by this Zoning Ordinance.
 - (4) That such special exception shall only be granted subject to any applicable condition and safeguards as required by this Zoning Ordinance.
 - (5) That such use shall not adversely affect the general character of the neighborhood and/or property values of the adjacent uses.
 - (6) That such use shall not adversely affect the health, safety and/or welfare of residents or property owners within the general neighborhood.
 - (7) That there will be no adverse effect of the proposed special exception upon the logical, efficient and economical extension of public facilities and services, including, public water, sanitary sewers, streets, police and fire protection, public schools, and all other similar facilities and services that are considered appropriate by the Zoning Hearing Board.
 - (8) That the proposed location of any residential or non-residential use is suitable with respect to probable effects upon highway traffic and assures adequate access arrangements in order to protect major streets and highways from undue congestion and hazard.
 - (9) Where applicable, the adequacy of sanitation and public safety provisions shall be considered, whereas, a letter or certificate of adequacy of sanitary sewage disposal and water supply from the municipal or governmental health agency with jurisdiction shall be considered and deemed advisable.

- (10) The Board may impose such conditions, in addition to those required, as are necessary to assure that the intent of the Zoning Ordinance is complied with, which conditions may include, but are not limited to, harmonious design of buildings, planting and its maintenance as a sight or sound screen, the minimizing of noxious, offensive or hazardous elements and adequate standards of parking and sanitation.
- (F) The approval of a special exception, if authorized by the Zoning Hearing Board, which anticipates construction or modification of a structure, creation of new or revised lot lines or dimensional standards for a property or structure situated thereon, shall be valid and remain in effect for a term of one (1) year from the date of said approval and shall thereafter expire and be void, unless said construction, modification, new or revised lot lines or dimensional standards or change of use or occupancy be initiated within said one (1) year term or said term is expressly extended as part of the initial approval. In the event that the activity anticipated by the special exception should not be initiated within one (1) year of the approval or such additional term as may be expressed in the approval or should the activity, which is the subject of the special exception be discontinued, the premises or structure situated thereon shall not thereafter be used except in conformity with the regulations of the district in which it is located. Pursuant to the provisions of the Pennsylvania Municipalities Planning Code, an extension of time may be granted by Cumru Township for a period of time considered appropriate by the applicant and Cumru Township.
- (G) As part of the special exception application, the Zoning Hearing Board may consider certain background studies, plans and/or reports that may be required as supplemental documentation to support the special exception application. The Zoning Hearing Board shall reserve the right to either, require, not require, or defer the submittal of certain background studies, plans and/or reports as part of the special exception application. If not required or deferred as part of the special exception application, the required background studies, plans and/or reports shall be appropriately considered by Cumru Township as part of the application for a subdivision plan, land development plan and/or permit.

Section 1308: Conditional Uses

- (A) The Board of Commissioners shall hear requests for conditional use applications, as permitted under the provisions of this Zoning Ordinance. By so providing, the Board of Commissioners recognize that certain uses may or may not be appropriate at every location within any specific district and, where it appears that a conditional use fails to comply with all of the definitional aspects thereof or would be contrary to the public health, safety, morals and/or welfare of the community at specific locations within a district, that the use would not be permitted there.
- (B) In granting any conditional use, the Board of Commissioners may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Zoning Ordinance.
- (C) As part of the submission requirements for a conditional use application, a preliminary subdivision plan or preliminary land development plan shall be prepared and submitted to Cumru Township for review and consideration in accordance with the procedures and requirements specified by Cumru Township.
- (D) Prior to the commencement of the conditional use hearing or during the proceedings of the conditional use hearing, the Board of Commissioners shall consider the comments of the Cumru Township Planning Commission, Zoning Officer, Engineer, the appointed professional consultants and/or other agencies that could assist the Board of Commissioners with the merits of the conditional use application. All such comments shall be made either in writing and presented as evidence during the hearing or as part of sworn testimony at the conditional use hearing.
- (E) All of the standards for conditional uses hereinafter set forth shall, where relevant, apply to all conditional uses within Cumru Township and are deemed definitional in character so that the failure to comply with any standards shall be deemed a failure to bring the applicant within that definitional aspect for which a conditional use may be granted; or, in the discretion of the Board of Commissioners, such failure to comply with the standards may be deemed a basis for the impositions of appropriate conditions to such grant. It is further the intention of the Board of Commissioners that the standards hereinafter described shall be deemed additional standards and shall in no way impair any other applicable standard described elsewhere in this Zoning Ordinance. Where there is a conflict between the standards set forth in this article and other standards elsewhere established by this Zoning Ordinance or other applicable ordinances, it is intended that the more stringent thereof shall apply, and it is not the intent of this article to abrogate or impair any other such standards or requirements.

- (F) The Board of Commissioners shall consider the following general issues and site requirements prior to rendering its decision on a conditional use application:
- (1) That such use is consistent with the Governor Mifflin Region Comprehensive Plan.
 - (2) That the property is suitable for the use desired and that the proposed request is consistent with the goals, objectives and policies established by this Zoning Ordinance.
 - (3) The minimum and maximum dimensional requirements for the proposed use within the appropriate zoning district shall be held in compliance by the applicant.
 - (4) The applicant shall establish by a fair preponderance of credible evidence that the use intended at the location intended shall not be contrary to the public health, safety, morals and/or public welfare.
 - (5) The applicant shall provide evidence with supporting documentation that the capacity of the road system providing access to the property or lot in question has sufficient capacity to accommodate the use and that when the incremental increase in traffic attributable to the proposed use is superimposed upon the existing use of the road shall not lower the level of service of the roads or any portions thereof or any street intersections below a level of service "C".
 - (6) The applicant shall provide evidence with supporting documentation that the interior traffic circulation for the proposed use at the proposed location, including but not limited to acceleration and deceleration lanes where required at the proposed entrances to the location, shall be adequate to provide safe and convenient circulation for users of the facility, visitors to the facility, employees of the facility and all emergency vehicles that may require entrance thereon.
 - (7) The applicant shall provide evidence with supporting documentation the facility or use provides safe and convenient pedestrian access and internal circulation within the grounds of the facility and particularly for points of access from the facility to the parking areas.
 - (8) The applicant shall provide evidence with supporting documentation that adequate screening and buffering is provided between the lands in question and surrounding residential uses and residentially zoned districts to screen the facility from view and preclude any glare from lighting or noise from being ascertainable beyond the boundaries of the property.
 - (9) The applicant shall provide evidence with supporting documentation that the local fire departments have the abilities to provide adequate fire protection and emergency management services for the proposed use.
 - (10) The applicant shall provide evidence with supporting documentation that adequate water storage is available within the region for fire-fighting purposes, which shall include but not be limited to pumping at all hours, at a minimum of 25 pounds per square inch (psi) pressure, without impairing the uses of the water supply for ordinary purposes on the premises and shall be in compliance with all applicable governmental regulations.
 - (11) Where in the opinion of the Board of Commissioners, the use or facility may require supervision and protection, the applicant shall provide evidence with supporting documentation that additional security measures will be accounted for by the owner or site manager so the facility or use does not create a continuous burden on the emergency management services and providers.
 - (12) The applicant shall provide evidence with supporting documentation that the existing or proposed sanitary sewage disposal facilities have sufficient capacity for the proposed use. Where on-lot sewage disposal methods are permitted, the applicant shall consult with the Cumru Township Sewage Enforcement Officer to determine if on-lot sewage disposal is a viable option considering the proposed use, wastewater flow and site characteristics.
 - (13) The applicant shall provide evidence with supporting documentation that the existing or proposed municipal water supply facilities have sufficient capacity for the proposed use. Where water supply

methods are permitted, the applicant shall consult with a qualified hydrogeologist to determine if on-lot water supply is a viable option considering the proposed use, groundwater supply and site characteristics.

- (14) The applicant shall provide evidence with supporting documentation that there will be no increase in surface water runoff and erosion within the property or at the boundaries of the facility as a result of the site improvements, as specified by Cumru Township.
- (G) The following provisions shall apply for the public hearing procedures and administrative requirements for all conditional use applications within Cumru Township:
- (1) The Board of Commissioners shall schedule and hold a public hearing on the application pursuant to public notice within sixty (60) days from the date of receipt of the applicant's application. The request for a hearing shall be accompanied by a completed application on required form. The date for the scheduling of the first hearing may be extended by the applicant on the record or in writing addressed to the Board of Commissioners, in which event the date agreed upon by the applicant shall be considered timely for purposes of this subsection.
 - (2) As part of the conditional use hearing, the Board of Commissioners shall consider those comments issued by the Cumru Township Planning Commission, Zoning Officer, Engineer, the appointed professional consultants and all other agencies providing comments, as may be authorized by Cumru Township and the Pennsylvania Municipalities Planning Code.
 - (3) The Board of Commissioners shall conduct the hearing or the Board of Commissioners may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Board of Commissioners. However, the appellant or the applicant, as the case may be, in addition to Cumru Township, may waive decision or findings by the Board of Commissioners and accept the decision or findings of the hearing officer as final. All hearings must be completed no later than one hundred (100) days after the completion of the applicant's case-in-chief, unless extended for good cause upon application to the Court of Common Pleas.
 - (4) Any substantial revisions to the application or plan made by the applicant subsequent to filing of the application or plan or its review by the Planning Commission shall be subject to review and recommendation by the Planning Commission as specified by this Zoning Ordinance. In such event, the Zoning Officer shall secure from the applicant a written extension of the date within which the Board of Commissioners must hold a public hearing pursuant to the provisions of this Zoning Ordinance. If the applicant fails to execute the extension, the Board of Commissioners shall decide the conditional use application on the basis of the plan and application as originally filed.
 - (5) A stenographic record of the hearing shall be made by a certified court reporter, whose appearance fee shall be reimbursed through the application fee paid to Cumru Township as part of the initial application. The cost of the original transcript shall be paid by Cumru Township or by any party requesting an original transcript. In either case, the cost of additional copies shall be paid by the party or person requesting such copies.
 - (6) The Board of Commissioners shall render a written decision or, when no decision is called for, make written findings on the conditional use application within forty-five (45) days after the last hearing before the Board of Commissioners. Where the application is contested or denied, each decision shall be accompanied by findings of fact, reasons or conclusions based thereon. Any conclusions based upon this Zoning Ordinance, the Pennsylvania Municipalities Planning Code, or any rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. A copy of the decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him no later than the day following its date.
 - (7) If, after the conclusion of the public hearing(s), the application is amended or revised, the Board of Commissioners shall hold one or more public hearings thereon as may be necessary and shall issue a new decision thereon in conformance with the procedure established in this section. In the event that the Board of Commissioners fail to commence the public hearing within 60 days from the date of the applicant's request for a hearing or fail to complete the hearing no later than 100 days after the completion

of the applicant's case-in-chief, unless extended for good cause upon application to the Court of Common Pleas, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because the Board of Commissioners failed to commence the hearings, complete the hearings, or render a decision as required by this section, the Board of Commissioners shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this section. If the Board of Commissioners shall fail to provide such notice, the applicant may do so. Nothing in this section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

- (H) Nothing in this section shall be construed to relieve the applicant for a conditional use approval from obtaining all other required approvals mandated by Cumru Township as well as other pertinent laws, ordinances and regulations that have been adopted by local, state and federal agencies. This may include the submission of a subdivision plan and/or land development plan to be prepared by the applicant and submitted to Cumru Township for review and consideration.
- (I) Unless otherwise specified by the Board of Commissioners in its decision and order, a conditional use approval shall expire if the applicant does not secure a permit or, if no permit is required, then a use and occupancy permit, within twelve (12) months from the date of the written approval relating to the conditional use application, unless, the applicant makes written application to the Board of Commissioners for an extension of time, which shall be based upon reasonable cause shown. No formal hearing shall be required by the Board of Commissioners in the consideration of such application. Pursuant to the provisions of the Pennsylvania Municipalities Planning Code, an extension of time may be granted by Cumru Township for a period of time considered appropriate by the applicant and Cumru Township.
- (J) As part of the conditional use application, the Board of Commissioners may consider certain background studies, plans and/or reports that may be required as supplemental documentation to support the conditional use application. The Board of Commissioners shall reserve the right to either, require, not require, or defer the submittal of certain background studies, plans and/or reports as part of the conditional use application. If not required or deferred as part of the conditional use application, the required background studies, plans and/or reports shall be appropriately considered by Cumru Township as part of the application for a subdivision plan, land development plan and/or permit.

Section 1309: Amendments

- (A) The Board of Commissioners may from time to time amend, supplement, change, modify or repeal the contents of this Zoning Ordinance including the Zoning Map. Any amendment, supplement, reclassification or change may be initiated by the Board of Commissioners, Planning Commission, or by a petition to the Board of Commissioners from a property owner within Cumru Township. The Board of Commissioners, by resolution adopted at a stated or special meeting, shall fix the time and place of a public hearing on the proposed change, amendment or repeal and cause notice thereof to be given as follows:
 - (1) By publishing a notice once each week for two (2) successive weeks in a newspaper of general circulation in the Township. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall be not more than thirty (30) days or less than seven (7) days from the date of the hearing.
 - (2) The notice shall also set forth the principal provisions of the proposed change, amendment or repeal in reasonable detail and a reference to a place in Cumru Township where copies of the proposed change, amendment or repeal may be examined or purchased at a charge not exceeding the cost thereof. Full opportunity to be heard will be given to any citizen and all parties in interest attending such hearing.
 - (3) If the proposed amendment involves a Zoning Map change, notice of said public hearing shall be conspicuously posted by the authorized representatives of Cumru Township at points deemed sufficient along the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one (1) week prior to the date of the hearing. In addition to the requirement that notice be posted along

the property, if the proposed amendment involves a Zoning Map change, notice of the public hearing shall be mailed by Cumru Township at least 30 days prior to the date of the hearing by first class mail to the addresses to which real estate tax bills are sent for all real property located within the area being rezoned as evidenced by tax records within the possession of Cumru Township. The notice shall include the location, date and time of the public hearing.

- (B) The Board of Commissioners shall refer each petition or proposal for change or amendment, whether under this article or under another article, to the Planning Commission, who shall consider whether or not such proposed change or amendment would be, in the view of the Planning Commission, consistent with and desirable in furtherance of the Comprehensive Plan upon which this Zoning Ordinance is based, as the same may be modified from time to time. The Planning Commission shall transmit its recommendations and conclusions to the Board of Commissioners within thirty (30) days. The Board of Commissioners shall take such recommendations and conclusions into consideration in reaching its decision, but shall not be bound thereby.
- (C) The Board of Commissioners shall submit the proposed zoning amendment to the Berks County Planning Commission at least thirty (30) days prior to the hearing for its review and comments. The Board of Commissioners shall take such comments into consideration in reaching its decision, but shall not be bound thereby.
- (D) The public hearing shall be conducted in accordance with the appropriate provisions that are established by Cumru Township and the Pennsylvania Municipalities Planning Code.
- (E) If the zoning amendment is changed substantially or revised to include land previously not affected by it, the Board of Commissioners shall hold another public hearing, pursuant to public notice, before proceeding to vote on the zoning amendment.
- (F) If the zoning amendment is enacted by the Board of Commissioners, an endorsed copy of the zoning amendment shall be forwarded to the Berks County Planning Commission within thirty (30) day of enactment.

Section 1310: Curative Amendments

- (A) A landowner who desires to challenge on substantive grounds the validity of this Zoning Ordinance, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the Board of Commissioners with a written request that his challenge and proposed amendment be heard. All such landowner curative amendments shall be decided as provided in accordance with the appropriate provisions that are established by Cumru Township and the Pennsylvania Municipalities Planning Code.
- (B) Cumru Township by formal action, may declare this Zoning Ordinance or portions thereof substantively invalid and propose the preparation of a municipal curative amendment to overcome such invalidity. All such municipal curative amendments shall be decided as provided in accordance with the appropriate provisions that are established by Cumru Township and the Pennsylvania Municipalities Planning Code.
- (C) All landowner curative amendments and/or municipal curative amendments shall be referred to the Cumru Township Planning Commission and the Berks County Planning Commission at least thirty (30) days prior to the initial hearing date to provide both agencies with an opportunity to submit recommendations.
- (D) The advertisement, posting and scheduling of the public hearing shall be conducted in accordance with the appropriate provisions that are established by Cumru Township and the Pennsylvania Municipalities Planning Code.
- (E) If the landowner curative amendment and/or the municipal curative amendment is enacted by the Board of Commissioners, an endorsed copy of the amendment shall be forwarded to the Berks County Planning Commission within thirty (30) day of enactment.

Section 1311: Governor Mifflin Region Comprehensive Plan Implementation Agreement

- (A) The Cumru Township Zoning Ordinance has been adopted in accordance with: the requirements of Pennsylvania Municipalities Planning Code, as amended; with the goals, objectives and policies established within the Governor Mifflin Region Comprehensive Plan; and with consideration for the overall character of Cumru Township considering issues relative to growth, development, preservation and redevelopment.
- (B) As part of the provisions established within the Intergovernmental Agreement for the implementation efforts associated the Governor Mifflin Region Comprehensive Plan, Cumru Township has forwarded a complete copy of the Cumru Township Zoning Ordinance of 2009, to Brecknock Township, Kenhorst Borough, Mohnton Borough, Shillington Borough, the Governor Mifflin School District, and the Berks County Planning Commission for municipal and intergovernmental review under the provisions of the Pennsylvania Municipalities Planning Code.
- (C) The purpose statements and community development objectives should be utilized when considering amendments to the Cumru Township Zoning Ordinance of 2009. All future amendments to the Cumru Township Zoning Ordinance of 2009 should be generally consistent with the Governor Mifflin Region Comprehensive Plan. Prior to the adoption of any future amendments, Cumru Township should follow the procedural guidelines referenced in the Intergovernmental Agreement for the implementation efforts associated the Governor Mifflin Region Comprehensive Plan.

Section 1312: Appeals

- (A) All appeals concerning the review, application, interpretation and decisions authorized by this Zoning Ordinance shall be in accordance with the appropriate provisions that are established by Cumru Township and the Pennsylvania Municipalities Planning Code.
- (B) All appeals concerning an alleged error in the processing or enactment of any components of this Zoning Ordinance shall be raised by appeal taken directly from the action of the Board of Commissioners to the appropriate court, which shall not be filed later than thirty (30) days from the effective date of this Zoning Ordinance.

Section 1313: Filing Fees and Costs

- (A) The Board of Commissioners shall establish by resolution a schedule of fees, charges and expenses as well as the collection procedures for zoning permits, certificates of occupancy, special exceptions, variances and appeals and other matters pertaining to this Zoning Ordinance. The resolution or schedule of the fees shall be available for inspection in the office of the Cumru Township Zoning Officer.
- (B) The Board of Commissioners may alter or change the schedule of the fees by resolution in accordance the appropriate provisions established by Cumru Township and the Pennsylvania Municipalities Planning Code.

Section 1314: Violations, Penalties and Remedies

- (A) Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Zoning Ordinance shall, upon being found liable in a civil enforcement proceeding commenced by Cumru Township, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by Cumru Township 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, Cumru Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determines otherwise as prescribed by the Pennsylvania Municipalities Planning Code.
- (B) 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 the violation and judgment.

- (C) Nothing contained in this Zoning Ordinance shall be construed or interpreted to grant to any person or entity other than Cumru Township the right to commence any action for enforcement pursuant to this Zoning Ordinance.
- (D) In the event any building, structure or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained or used in violation of this Zoning Ordinance, or in case any land, building or structure for which a use and occupancy permit is required is conveyed or possession otherwise transferred to a bona fide purchaser or lessee without obtaining such certificate of occupancy and delivering the same to such bona fide purchaser or lessee at or prior to conveyance or transfer of possession, whichever first occurs, the Board of Commissioner, in addition to other remedies, may institute in the name of Cumru Township any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure or land or the conveyance thereof, or to prevent in or about such premises any act, conduct, business or use constituting a violation.