
Borough of Fountain Hill Zoning Ordinance

Lehigh County, Pennsylvania

As Adopted by the Fountain Hill Borough Council on
September 8, 2008.

This Ordinance was prepared under the
direction of the Fountain Hill Borough Council and Planning Commission.

Ordinance Number 736

Community Planning and Zoning Consultant

Urban Research and Development Corporation
Bethlehem, Pennsylvania



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Zoning Map	Insert at End

USING THIS ORDINANCE: AN OVERVIEW

These two pages describe the most efficient way to use this Ordinance. These pages are general descriptions but are not part of the actual Ordinance.

Start by using the following parts of the Zoning Ordinance:

- Turn to the **Table of Contents** (before this section) or the **Index** (at the end of the document) to find the pages and sections that apply to your particular situation. You may wish to photocopy the Table of Contents to highlight the relevant sections.
- Consult the **Zoning Map** at the end of this Zoning Ordinance to determine the zoning district that includes your lot.
- Turn to Section 306, the **Table of Permitted Uses By Zoning District**, which indicates the uses permitted in each zoning district. Different uses are allowed in different ways:
 - a) As a permitted by right (the Zoning Officer may approve the zoning application if it meets the Zoning Ordinance), or
 - b) As a special exception use (the Zoning Hearing Board must approve the use, as described in Section 116).
- Turn to Section 307, the **Table of Lot and Setback Requirements By Zoning District**. This table states the required minimum size of each lot and the required minimum distance that buildings must be from streets and other lot lines in each zoning district.
- Regularly refer to the **Definitions** in Section 202 to determine the meaning of specific words.

If a lot is already being legally used for a particular purpose and that use is not permitted in the zoning district according to Section 306, that use is called a "**Non-Conforming Use**". In almost all cases, a lawful Non-Conforming Use can continue, can expand within limits, can change to another use within limits, and can be sold. See Section 806 -"Non-Conformities."

Certain specific uses must comply with **additional regulations**. The "principal uses" (which are the primary use of a property) are listed in alphabetical order in Section 402 and the "accessory uses" (which are secondary uses, such as low-intensity businesses in a home) are listed in alphabetical order in Section 403. For example, additional regulations are listed for sheds, garages and other structures typically found on a residential lot under "Residential Accessory Structures" in Section 403.

If your lot may be flood-prone, see the Borough's Floodplain Map and Floodplain Ordinance.

Turn to the following sections for regulations concerning parking, signs and buffer yards:

- Most uses must provide minimum numbers of off-street **Parking** spaces. The parking standards are listed in a table in Section 601.

- If **Signs** are proposed within public view, Article 7 must be met. This article lists the types, heights and sizes of signs that are permitted.
- Certain uses are required to provide an open **Buffer Yard** with **Evergreen Screening** to buffer nearby homes and adjacent residentially zoned land from nuisances. See Section 803.

The following additional considerations should be kept in mind when using this Ordinance:

- An applicant may apply to the Borough **Zoning Hearing Board** for a **Zoning Variance** if he/she is not able to comply with a provision of this Zoning Ordinance. An application fee is required to compensate the Borough for legal advertisements and other costs. See Section 111, which includes the standards that must be met under State law in order to be granted a variance. Generally, under the PA. Municipalities Planning Code, variances are not permitted unless an applicant proves a legal "Hardship".
- Generally, if one or more new lots will be created, or existing lot lines will be altered, or one or more new principal non-residential buildings are proposed, then the requirements and approval procedures of the Borough **Subdivision and Land Development Ordinance** will also apply. This is a separate ordinance available at Borough Offices.
- If there will be significant disturbance of the ground, it will be necessary to use certain measures to control **soil erosion**. In such case, contact the County Conservation District.
- Article 8, **General Regulations**, includes provisions that apply in all zoning districts.

Any questions concerning the Zoning Ordinance should be directed to the Borough's **Zoning Officer**. The Zoning Officer also administers applications for permits. The only determinations by the Zoning Officer that shall be official shall be a written determination after the Zoning Officer receives a duly submitted written official application.

Ordinance No. 736

FOUNTAIN HILL BOROUGH ZONING ORDINANCE

TITLE; ENACTMENT; SEVERABILITY

1. **TITLE.** A New Ordinance: a) dividing the Borough of Fountain Hill into districts with varying regulations; b) permitting, prohibiting, regulating and determining the uses of land, watercourses and other bodies of water, the size, height, bulk, location, erection, construction, repair, expansion, razing, removal and use of structures, the areas and dimensions of land and bodies of water to be occupied by uses and structures, as well as yards and other open areas to be left unoccupied; c) establishing the maximum density and intensity of uses; d) providing for the administration and enforcement of this Ordinance in accordance with the Pennsylvania Municipalities Planning Code, including provisions for special exceptions and variances to be administered by a Zoning Hearing Board; and e) establishing provisions for the protection of certain natural features.
2. **SHORT TITLE.** This Ordinance shall be known and be cited as the "Fountain Hill Borough Zoning Ordinance" of 2008.
3. **SEVERABILITY.** It is hereby declared to be the legislative intent that if a court of competent jurisdiction declares any provisions of this Ordinance to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this Ordinance shall continue to be separately and fully effective. Borough Council hereby declares that it would have passed this Ordinance and each section or part thereof, other than any part declared invalid, if it had advance knowledge that any part would be declared invalid.
4. **PROCEDURAL DEFECTS IN ENACTMENT.** Any procedural challenge shall be filed in accordance with the Pennsylvania Municipalities Planning Code and other applicable law.
5. **REPEALER.** The pre-existing Borough of Fountain Hill Zoning Ordinance codified in the Fountain Hill Code of Ordinances, as Chapter 27, Zoning, as amended, is hereby expressly repealed; provided, further that nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired or liability incurred, or any permit issued or approval granted or any cause or causes of action arising prior to the enactment of this Ordinance. All ordinances and parts of ordinances and all resolutions and parts of resolutions which are inconsistent herewith by virtue of references to or incorporation of requirements contained in the pre-existing Zoning Ordinance as amended shall, as nearly as possible, be construed to reference this Ordinance.
6. **ENACTMENT.** Under the authority conferred by the Pennsylvania Municipalities Planning Code, as amended, Borough Council of Fountain Hill Borough hereby enacts and ordains into an Ordinance the attached document this date of September 8, 2008. This Ordinance shall become effective immediately from the date of passage of this Ordinance.

Date of Planning Commission Public Meeting: May 12, 2008.

Date of Borough Council Public Hearing: July 23, 2008.

DULY ENACTED AND ORDAINED on this 8TH day of September, 2008 by the Borough of Fountain Hill in lawful session duly assembled.

BY:

Lawrence Rapp
President of Council

ATTEST:

Randy Soriano
Executive Secretary

APPROVED:

Ned C. Fink
Mayor

September 8, 2008
DATE

(Original signature page in Borough files)

ARTICLE 1
ADMINISTRATION

101. **APPLICABILITY OF THIS ORDINANCE.** This Zoning Ordinance shall apply throughout the Borough of Fountain Hill. Any activity regulated by this Ordinance shall only occur in such a way that conforms with the regulations of this Ordinance. See Section 103.A.
102. **PURPOSES AND COMMUNITY DEVELOPMENT OBJECTIVES.** This Ordinance is hereby adopted in accordance with the following purposes, which shall serve as Community Development Objectives, in addition to the purposes provided for each district in Section 301:
- 102.A. The requirements and purposes of the Pennsylvania Municipalities Planning Code, as amended, including but not limited to Sections 604 and 605 or their successor section(s),
- 102.B. The goals and objectives of the Fountain Hill Comprehensive Plan
- 102.C. The following additional objectives:
1. Support the goals established in the Comprehensive Plan for the Lehigh Valley.
 2. Promote innovative residential design that encourages the creation of a sense of community for undeveloped parcels.
 3. Provide diverse housing opportunities.
 4. Encourage adaptive reuse and infill development.
 5. Protect sensitive and important natural features from indiscriminate development.
 6. Stimulate economic development and revitalization by attracting commercial uses (such as retail, service and specialty stores) to appropriate areas.
 7. Provide opportunities for home occupations of limited intensity.
 8. Promote the preservation of historic resources.
 9. Coordinate future land and roadway functions to maximize safe and efficient use of major roads.
 10. Coordinate road improvements with planned roadway functions, design standards and planned land uses.
 11. Assure that future development provides for access designs and planned locations that minimize traffic congestion and safety problems. Encourage needed improvements to be completed by developers.
 12. Promote alternative means of transportation, such as pedestrian movement, bicycles, public transit and carpooling.
 13. Seek to minimize the need for zoning variances for routine improvements.

103. **PERMITS AND CERTIFICATES.**

103.A. **Applicability.**

1. Any of the following activities or any other activity regulated by this Ordinance shall only be carried out in conformity with this Ordinance.
 - a. Erection, construction, movement, alteration, razing, demolition, removal, placement or extension of a structure, building or sign,
 - b. Change of the type of use or expansion of the use of a structure or area of land,
 - c. Creation of a lot or alteration of lot lines, and/or
 - d. Creation of a new use.

2. Zoning Permit. A Zoning Permit indicates that a zoning application complies with this Ordinance to the best knowledge of the Zoning Officer.
 - a. A Zoning Permit is required to be issued prior to the start of any of the following activities:
 - 1) Erection, construction, movement, placement, razing, demolition, removal, alteration or expansion of a structure, building or sign,
 - 2) Change of the type of use or expansion of the use of a structure or area of land,
 - 3) Creation of a new use,
 - 4) Demolition of a building, and/or
 - 5) Other activity that is required to have a permit under Section 308 of this Ordinance.
 - b. The Borough may, at its option, issue combined or separate Building Permits and Zoning Permits and/or may utilize a single or separate applications for the permits.
 - c. The only determinations by the Zoning Officer that shall be official shall be a written determination after the Zoning Officer receives a duly submitted written official application.

3. Certificate of Use and Occupancy.
 - a. It shall be unlawful to use and/or occupy any structure, sign, land area or portion thereof for which a Zoning Permit is required until a certificate of use and occupancy for such activity has been issued by the Zoning Officer.
 - b. The Zoning Officer may permit the Zoning Permit application to serve as the application for the Certificate of Use and Occupancy.
 - c. The Certificate of Use and Occupancy shall only be issued by the Zoning Officer if the Zoning Officer determines that the activity complies with this Ordinance, to the best knowledge of the Zoning Officer. The Borough may also withhold issuance of the Certificate until there is compliance with other Borough ordinances.
 - d. The applicant shall keep a copy of the Certificate of Use and Occupancy available for inspection.
 - e. Upon the request of an applicant, the Zoning Officer may issue a temporary Certificate of Use and Occupancy. Such temporary Certificate may permit an activity to occur in all or part of a structure before the entire work covered by the Permit has been completed.
 - (1) However, such temporary Certificate shall only be issued if the applicant proves to the Zoning Officer that the activity or occupancy can occur safely without endangering public health or safety.
 - (2) The temporary Certificate shall establish in writing a maximum time period under which it is valid. A 6 month maximum time period shall apply if not otherwise specified.
 - (3) Failure to receive a permanent Certificate of Use and Occupancy within such time period shall be a violation of this Ordinance.
 - (4) The temporary Certificate may be conditioned upon compliance with certain specific requirements within certain time periods.
 - (5) See also Section 103.G.

103.C. Types of Uses.

1. Permitted by Right Uses. The Zoning Officer shall issue a permit under this Ordinance in response to an application for a use that is "permitted by right" if it meets all of the requirements of this Ordinance.

2. Special Exception Use or Application Requiring a Variance. A permit under this Ordinance for a use requiring a Special Exception or Variance shall be issued by the Zoning Officer only in response to a written approval by the Zoning Hearing Board following a hearing.

103.D. Applications.

1. Submittal. All applications for a Zoning Permit or a decision by the Zoning Hearing Board shall be made in writing on a form provided by the Borough. Such completed application, with required fees, shall be submitted to the Zoning Officer.
2. Site Plan. The applicant shall submit the minimum number of copies of a site plan, as required by the Zoning Officer, with the application if the application involves a new principal building, expansion of a principal building or addition of 3 or more parking spaces. The site plan shall be drawn to scale and show the following:
 - a. Locations, dimensions and uses of existing and proposed structures, parking and loading areas, and locations of existing and proposed uses of areas of land, with existing features clearly distinguished from proposed features,
 - b. Notes showing the dimensions of all buildings from lot lines and street rights-of-way,
 - c. Locations of any watercourses and any 100 year floodplain,
 - d. Proposed lot areas, lot widths and other applicable dimensional requirements,
 - e. Locations and widths of existing and proposed sidewalks.
3. Additional Information. Any application under this Ordinance shall include the following information, unless the Zoning Officer determines such information is unnecessary to determine compliance with this Ordinance:
 - a. The address of the lot,
 - b. Name and address of the applicant, and of the owner of the property if different from the applicant,
 - c. A description of the proposed use of the property,
 - d. All other applicable information listed on the official Borough application form, and
 - e. Such additional information that the Zoning Officer may determine is reasonably necessary to determine compliance with this Ordinance.
4. Submittals to the Board. In addition to the information listed in part 103.D.3 above, an application requiring a site plan and action by the Zoning Hearing Board shall also include the following information, unless the Zoning Officer determines that such information is unnecessary to determine compliance with this Ordinance:
 - a. The present zoning district and major applicable lot requirements,
 - b. For a non-residential use:
 - (1) A description of the proposed non-residential operations and storage in sufficient detail to indicate potential nuisances and hazards regarding noise, large truck traffic, glare, odors, dust, fire or toxic or explosive hazards or other significant public health and safety hazards,
 - (2) A list of the maximum hours of operation,
 - c. The existing directions of stormwater flow (and any proposed revisions), and any proposed methods of stormwater management,
 - d. A listing of any sections of this Ordinance being appealed, with the reasons for any appeal,

- e. Approximate locations of principal buildings and locations of streets and alleys and zoning district boundaries within 100 feet of the boundaries of the tract, and description of uses of adjoining properties (such as "drug store" or "single family detached dwelling"),
 - f. Heights, locations, methods of illumination and intensity of exterior lighting and sign lighting,
 - g. Name and address of person who prepared the site plan,
 - h. Signed acknowledgment of the site plan by the applicant, and
 - I. Such additional information required under applicable sections of this Ordinance.
5. Ownership. No person other than a landowner or their specifically authorized agent or a tenant or lessee with written permission of the landowner shall submit a zoning application (see definition of "landowner" in Article 2).

103.E. Issuance of Permits.

1. At least 1 copy of each permit application and any other zoning approval shall be retained in Borough files.
2. PennDOT Permit. Where necessary for access onto a State road, a Borough zoning or building permit shall be automatically conditioned upon issuance of a PennDOT Highway Occupancy Permit.

103.F. Revocation of Permits; Appeal of Permit or Approval.

1. Revocation. The Zoning Officer shall revoke, withhold or suspend a permit or approval issued under the provisions of the Zoning Ordinance in case of one or more of the following:
 - a. Any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based; (Note: The Pennsylvania Criminal Code provides for penalties for providing false information to a municipal employee in the carrying out of his/her duties.)
 - b. Upon violation of any condition lawfully imposed by the Zoning Hearing Board upon a special exception use or variance;
 - c. Any work being accomplished or use of land or structures in such a way that does not comply with this Ordinance or an approved site plan or approved permit application; and/or
 - d. For any other just cause set forth in this Ordinance.
2. Appeals. A party with legitimate standing, or as otherwise provided by State law, may appeal decisions under this Ordinance within the provisions of the Pennsylvania Municipalities Planning Code Any such appeal shall occur within the time period established in the Pennsylvania Municipalities Planning Code (As of the adoption date of this Ordinance, such provisions were in Sections 914.1 and 1002.A.).

103.G. Zoning Permit for Temporary Uses and Structures.

1. A Zoning Permit for a temporary use or structure may be issued by the Zoning Officer for any of the following:
 - a. Customary, routine and accessory short-term special events, provided that only a well-established nonprofit organization or a permitted place of worship proposing a temporary use to clearly primarily serve a charitable, public service or religious purpose

- shall be eligible to receive approval for commercial-type activities in a district where a commercial use would not otherwise be permitted;
 - b. Temporary storage and office trailers that are necessary to serve on-site construction, while such construction is actively underway;
 - c. Such other activities that the applicant proves are routine, customary and temporary.
2. Time Period. The Zoning Officer shall state a reasonable maximum time period on the temporary permit. If no time limit is stated, then a 6 month maximum period shall apply. A temporary permit may be renewed for just cause.
3. Portable Storage Containers.
- a. This section shall apply to a portable storage container that is kept outside of a building and which has a length greater than 10 feet and which is not currently attached to a motor vehicle or railroad.
 - b. The following regulations shall apply on a principally residential lot:
 - 1) A portable storage container shall not be kept on a principally residential lot for a total of more than 30 days per calendar year. A temporary zoning permit shall be required if the portable storage container is kept on the lot for more than 14 days.
 - 2) A maximum of one portable storage container shall be allowed per lot.
 - c. The following regulations shall apply on a lot that is not a principally residential lot:
 - 1) Any portable storage container that is kept on a lot for more than 30 days shall meet the setbacks that apply to a principal building, unless it is necessary to temporarily hold materials for on-site construction.
 - d. The following shall apply to any portable storage container:
 - 1) The portable storage container shall not obstruct safe sight distances at intersections.
 - 2) The portable storage container shall not obstruct travel lanes of a street or a public sidewalk.
 - 3) A portable storage container shall only be allowed to be placed within a street right-of-way if an encroachment permit is issued by the Borough. Such permit shall specify a maximum number of days during which the container may be placed within the right-of-way.
 - 4) A portable storage container shall only be used for temporary storage of household materials or materials necessary to conduct an on-site business. A portable storage container shall not be used to store explosive or toxic substances.
 - 5) A facility that stores portable storage containers that have been leased by others or are available for lease shall be considered a warehouse.
- 103.H. Compliance with Borough Subdivision and Land Development Ordinance. If an application under this Ordinance would also be regulated by the Borough Subdivision and Land Development Ordinance ("SALDO"), then any permit or approval under this Zoning Ordinance shall automatically be conditioned upon compliance with the SALDO. See the definitions of "Land Development" and "Subdivision" in the SALDO.
- 1. For example, if an applicant applies for a single family detached dwelling on a proposed new lot, the construction permit for such dwelling shall not be valid until after the lot is granted final subdivision approval and the lot is officially recorded by the County Recorder of Deeds.
 - 2. The SALDO requires Borough Planning Commission review and approval.

104. **GENERAL PROCEDURE FOR PERMITS.**

104.A. After receiving a proper application, the Zoning Officer shall either: 1) issue the applicable permit(s) or 2) deny the application(s) as submitted, indicating one or more reasons.

104.B. After the permit under this Ordinance has been issued, the applicant may undertake the action specified by the permit, in compliance with other Borough Ordinances. However, it is recommended that applicants wait 30 days to begin construction if there is a possibility of an appeal by another party to have the permit revoked. Any commencement of construction or a use within this 30 day appeal period shall be at the risk of the applicant.

105. **INTERPRETATION AND USES NOT REGULATED.**

105.A. Minimum Requirements. Where more than one provision of this Ordinance controls a particular matter, the provision that is more restrictive upon uses and structures shall apply. The provisions of this Ordinance are in addition to any other applicable Borough Ordinance.

105.B. Uses Not Specifically Regulated. If a use clearly is not permitted by right, or as a special exception use by this Ordinance within any Zoning District, the use is prohibited, except that the Zoning Hearing Board may permit such use as a special exception use if the applicant specifically proves to the clear satisfaction of the Zoning Hearing Board that all of the following conditions would be met:

1. The proposed use would be less intensive in external impacts and nuisances than uses that are permitted in the District,
2. The proposed use would be closely similar in impacts and character to uses permitted in that District, considering the standards in Section 805.F.,
3. The use would meet the standards that would apply under Section 116.C. to a special exception use, and
4. The use is not specifically prohibited in that District.

105.C. Interpretation of Ordinance Text and Boundaries.

1. The Zoning Officer shall literally apply the wording of this Ordinance and the location of all District boundaries to particular applications. In any case, the Zoning Officer may also request an advisory opinion from the Borough Solicitor or the Zoning Hearing Board Solicitor to aid in the Zoning Officer's determination.
2. If an applicant disagrees with the Zoning Officer's determination and believes that the Ordinance should be interpreted in the applicant's favor, the applicant may appeal to the Zoning Hearing Board. See Section 111.

105.D. Undefined Terms/ Interpretation of Definitions. See Section 201.

105.E. Interpretation of Zoning Boundaries. See Section 304.

106. **ENFORCEMENT, VIOLATIONS AND PENALTIES.** All of the enforcement, violations and penalty provisions of the Pennsylvania Municipalities Planning Code, as amended, are hereby incorporated into this Ordinance by reference. (Note - As of the adoption date of this Ordinance, these provisions were primarily in Sections 616.1, 617 and 617.2 of such Act.)

106.A. Violations. Any person who shall commit or who shall permit any of the following actions violates this Ordinance:

1. Failure to secure a zoning permit prior to a change in use of land or structure, or the erection, construction or alteration of any structure or portion thereof, or the excavation of land to prepare for the erection, construction or alteration of any structure or portion thereof.
2. Placement of false statements on or omitting relevant information from an application for a zoning permit.
3. Undertaking any action in a manner which does not comply with a zoning permit.
4. Violation of any condition imposed by a decision of the Zoning Hearing Board in granting a variance or special exception or other approval.
5. Violation of any condition imposed by a decision of the Borough Council in granting a conditional use.

106.B. Causes of Action; Enforcement; Remedies.

1. Enforcement. If it appears to the Borough that a violation of this Zoning Ordinance has occurred, the Borough shall initiate enforcement proceedings by sending an enforcement notice. Prior to sending an official enforcement notice, the Zoning Officer may at his/her option informally request compliance.
2. Enforcement Notice. The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record. An enforcement notice shall state the following, at a minimum:
 - a. The name of the owner of record and any other person against whom the municipality 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 the Zoning Ordinance.
 - d. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
 - e. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a prescribed period of time in accordance with procedures set forth in the Ordinance.
 - f. 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.
3. Evidence; Fees. In any appeal of an enforcement notice to the Zoning Hearing Board, the Borough shall have the responsibility of presenting its evidence first. Any filing fees paid by a party to appeal an enforcement notice to the Zoning Hearing Board shall be returned to the appealing party by the Borough if the Zoning Hearing Board, or any court in a subsequent appeal, rules in the appealing party's favor.
4. Causes of Action. If the enforcement notice is not complied with, within the specified time period, the Zoning Officer shall notify Borough Council. With the consent of Borough Council, the Zoning Officer, Borough Solicitor or other officers of the Borough 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. (Note - Section 617 of the PA. Municipalities Planning Code also addresses actions by other parties.)

5. **Violations and Penalties.** Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than five hundred dollars plus all court costs, including the reasonable attorney's fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or be 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 applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless a 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 Ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the District Justice, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney's fees collected for the violation of this Ordinance shall be paid over to the Borough. Imprisonment shall not be authorized by this Ordinance.

107. **FEES.** A Borough fee schedule for permits and applications may be established and amended by written resolution of Borough Council. No application or appeal shall be considered filed until all fees are paid.

108. **AMENDMENTS TO THIS ORDINANCE.** Within the requirements of the Pennsylvania Municipalities Planning Code, Borough Council may amend, or repeal any or all portions of this Ordinance on 1) its own motion or 2) after agreeing to hear a written request of any person, entity, landowner or the Planning Commission.

109. **CURATIVE AMENDMENTS.** A landowner or Borough Council may utilize the "curative amendment" provisions of the Pennsylvania Municipalities Planning Code. (Note: As of the adoption date of this Ordinance, these provisions were in Sections 609.1, 609.2 and 916.1 of such Act.)

110. **ZONING OFFICER.**

110.A. **Appointment.** The Zoning Officer shall be appointed by Borough Council. The Borough Council may designate other persons to serve as Assistant Zoning Officer(s). Assistant Zoning Officers may serve with the same authority and duties as the Zoning Officer. The Zoning Officer shall not hold any elective office within the Borough, but may hold other appointed offices.

110.B. **Duties and Powers.** The Zoning Officer's duties and powers shall include the following:

1. Administer the Zoning Ordinance in accordance with its literal terms, including to receive and examine all applications required under the terms of this Ordinance, and issue or refuse permits within the provisions of this Ordinance;
2. Conduct inspections to determine compliance, and receive complaints of violation of this Ordinance;
3. Keep records of applications, permits, certificates, written decisions, and variances granted by the Board, and of enforcement orders, with all such records being the property of the Borough and being available for public inspection;
4. Review proposed subdivisions and land developments for compliance with this Ordinance; and

5. Take enforcement actions as provided by the Pennsylvania Municipalities Planning Code, as amended.

111. ZONING HEARING BOARD ACTIONS AND VARIANCES.

- 111.A. Membership of Board. The Zoning Hearing Board shall consist of residents of the Borough appointed by Borough Council. The existing terms of office shall continue, with terms of office being 5 years, and with the terms being so fixed that the term of office of one member shall expire each year. Members of the Board shall hold no other office in the Borough.
 1. Alternate Members. Borough Council may appoint alternate members of the Zoning Hearing Board within the applicable provisions of the Pennsylvania Municipalities Planning Code. (Note: As of the adoption date of this Ordinance, such provisions were in Section 903(b) of such Act).
- 111.B. Vacancies. Appointments to fill vacancies shall be only for the unexpired portion of a term.
- 111.C. Organization. The applicable provisions of the Pennsylvania Municipalities Planning Code, as amended shall apply. (As of the adoption date of this Ordinance, these provisions were in Sections 906(a), (b) and (c) of such Act).
- 111.D. Zoning Hearing Board Jurisdiction and Functions. The Zoning Hearing Board shall be responsible for the following:
 1. Appeal of a Decision by the Zoning Officer.
 - a. The Board shall hear and decide appeals where it is alleged by an affected person, entity or Borough Council that the Zoning Officer has improperly acted under the requirements and procedures of this Ordinance.
 - b. See time limitations for appeals in Section 111.E.
 2. Challenge to the Validity of the Ordinance or Map. The applicable provisions of the Pennsylvania Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this Ordinance, these provisions were primarily in Sections 909.1 and 916 of such Act).
 3. Variance.
 - a. The Board shall hear requests for variances filed with the Zoning Officer in writing.
 - b. Standards. The Board may grant a variance only within the limitations of State law. (Note: As of the adoption date of this Ordinance, the Pennsylvania Municipalities Planning Code provided that all of the following findings must be made, where relevant:
 - i) *There are unique physical circumstances or conditions (including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property) and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located;*
 - ii) *Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and a variance is therefore necessary to enable the reasonable use of the property;*
 - iii) *Such unnecessary hardship has not been created by the appellant;*

to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest.

111.F. Stay of Proceedings. The Stay of Proceedings provisions of the Pennsylvania Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this Ordinance, such provisions were in Section 915.1 of such Act.)

1. Upon filing of any proceeding referred to in Section 111.E. and during its pendency before the Board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or of any agency or body and all official action thereunder shall be stayed unless the Zoning Officer or any other appropriate agency or body stay would cause imminent peril to life or property in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the court having jurisdiction of zoning appeals on petition after notice to the Zoning Officer or other appropriate agency or body.

111.G. Time Limits on Permits and Approvals.

1. Unless otherwise provided by the Zoning Hearing Board of Borough Council in a decision granting approval, after a variance is approved or other zoning approval is officially authorized, then any applicable zoning and building permits shall be secured by the applicant within 12 months after the date of such approval or authorization. The work authorized by such permits shall then be completed within 12 months after the issuance of the permits.
2. Extension. Unless otherwise provided by the Zoning Hearing Board of Borough Council in a decision granting approval, in response to an applicant stating good cause in writing, the Zoning Officer may extend in writing the time limit for completion of work to a maximum total of 36 months after permits are issued.
3. If an applicant fails to obtain the necessary permits or begin construction within the above time periods, or allows interruptions in substantial construction of longer than 12 months, the Zoning Officer may conclusively presume that the applicant has waived, withdrawn or abandoned approvals and permits under this Ordinance and may consider all such approvals and permits to have become null and void.

112. **BOARD HEARINGS AND DECISIONS.** The following requirements shall apply to procedures, hearings and decisions of the Zoning Hearing Board.

112.A. Upon receiving an application for a special exception, variance, appeal from alleged error of the Zoning Officer, challenge to the validity of this Ordinance or other appeal, the Board shall conduct a public hearing thereon within 60 days of applicant's request, unless applicant has agreed in writing or on the record to an extension of time. Hearings shall be held pursuant to public notice and further notice as follows:

1. The Board shall publish a public notice, in a newspaper of general circulation in the Borough for two successive weeks. The publications, the first of which shall be not more than 30 days or less than seven days from the date of the hearing, shall state the time and place of the hearing and the particular nature of the matter to be considered. Notice of the hearing shall also be conspicuously posted on the affected tract of land at least one week prior to the hearing.

2. The Board shall give notice in writing to the applicant, the Zoning Officer and property owners within 150 feet of the subject premises at least one week prior to the hearing. The applicant shall submit a list of property owners within the designated 150 feet. The Board shall have the power to require that all of the above persons or groups enter appearances in writing.
 3. In any matter which relates to a property which lies within 100 feet of the boundary of another incorporated political subdivision, the Borough Secretary shall forward a copy of the official notice of the public hearing on such matters to the other incorporated political subdivision not later than one week prior to the hearing. The other incorporated political subdivision shall have the right to appear and to be heard at the public hearing.
- 112.B. The hearings shall be held at the call of the Chairman and at such other times as the Board shall specify in its rules of procedure. The Chairman, or in his absence the Acting Chairman, or the Hearing Officer presiding, shall have power to administer oaths and to issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the Board, but the Board may appoint a Hearing Officer from its own membership to conduct any hearing on its behalf. The decision, or, where no decision is called for, the findings, shall be made by the Board; however, the appellant or the applicant, as the case may be, in addition to the Borough, may, prior to the decision of the hearing, waive decision or findings by the Board and accept the decision or findings of the Hearing Officer as final.
- 112.C. The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the 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 their appearances in writing on forms provided by the Zoning Hearing Board for that purpose.
- 112.D. 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.
- 112.E. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- 112.F. The Zoning Hearing Board or the Hearing Officer, as the case may be, shall keep a stenographic record of the proceedings. The cost of the stenographic appearance fee shall be shared equally by the applicant and the Zoning Hearing Board. The cost of the original transcript shall be paid by the Board if ordered by the Board or the Hearing Officer, or shall be paid by the person appealing from the decision of the Zoning Hearing Board if such appeal is made, and in either event, the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases, the party requesting the original transcript shall bear the cost thereof.
- 112.G. 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, and shall not take notice of any communications, reports, staff memoranda or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the 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.

- 112.H. 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. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons therefore. Conclusions based on any provisions of the Pennsylvania Municipalities Planning Code, this Ordinance, or of any other ordinance, 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 within 45 days, 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 30 days after the report of the Hearing Officer. Where the Board fails to render the decision within the period required by this subsection or fails to hold the required hearing within 60 days from the date of the applicant's request for a hearing, 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 of a failure of the Hearing Board to meet or render a decision as hereinabove provided, the Zoning Hearing Board shall give public notice of said decision within ten days from the last day it could have met to render a decision in the same manner as provided in subsection 112.A. If the Zoning Hearing Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.
- 112.I. 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 not later than the date following its date. To all other persons who have filed their name and address with the Zoning Hearing Board not later than the last day of the hearing, the Zoning Hearing Board shall provide, by mail or otherwise, a brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.
113. **APPEALS TO COURT.** The provisions for appeals to court that are stated in the Pennsylvania Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this Ordinance, these provisions were in Sections 1001-A, 1002-A, 1003-A, 1004-A, 1005-A and 1006-A of such Act.)
- A. Any person aggrieved by any decision of the Zoning Hearing Board or any taxpayer or the Borough elected officials may, within 30 days after such decision of the Board, appeal to the Court of Common Pleas of Lehigh County by petition duly verified, setting forth that such decision is illegal in whole or in part, specifying the ground of the illegality.
114. **LIMITED PUBLIC UTILITY EXEMPTIONS.** See the provisions of the Pennsylvania Municipalities Planning Code, as amended. (Note: As of the adoption date of this Ordinance, such provisions were within Section 619 of such Act.)
115. **LIMITED BOROUGH AND MUNICIPAL AUTHORITY EXEMPTION.** The minimum lot area, minimum lot width and minimum street frontage requirements of this Ordinance shall not apply to uses

or structures owned by Fountain Hill Borough or by a municipal authority created solely by Fountain Hill Borough for uses and structures that are intended for a valid public purpose.

116. SPECIAL EXCEPTION USE PROCESS.

116.A. Purpose. The Special Exception Process is designed to allow careful review of uses that have some potential of conflicts with adjacent uses or areas.

116.B. Special Exception Procedure.

1. See submission provisions in Section 103.
2. All Site Plans shall contain the information required in Section 103.D.
3. The Zoning Officer should provide a review to the Board regarding the compliance of the application with this Ordinance.
4. The Board shall follow the procedures provided in Section 112.

116.C. Consideration of Special Exception Applications. When special exception uses are provided for in this Ordinance, the Zoning Hearing Board shall hear and decide requests for such uses in accordance with stated standards and criteria for the use and the following standards. The burden of proof shall rest with the applicant.

1. Compliance with this Ordinance. The applicant shall establish by credible evidence compliance with all requirements upon the use that are established by this Ordinance. The applicant shall provide the Zoning Hearing Board with sufficient plans, studies or other data to demonstrate compliance with all applicable regulations.
2. Compliance with Other Requirements. Will not clearly be in conflict with other Borough Ordinances or State or Federal laws or regulations known to the Zoning Hearing Board. The Board may condition zoning approval upon future proof of compliance with another ordinance, law or regulation.
3. Transportation. The traffic generated by the subject of the application shall be accommodated in a safe and efficient manner, after considering any improvements that the applicant commits to complete or fund. The applicant shall show that the use will not result in or substantially add to a significant traffic hazard, significant traffic congestion or a significant pedestrian safety hazard.
4. Neighborhood. The proposed use shall not significantly negatively impact upon the desirable character of an adjacent established residential neighborhood, such as causing substantial amounts of heavy truck traffic to travel through a residential neighborhood, or a significant odor or noise nuisance or very late night/ early morning hours of operation, without proper safeguards.
5. Site Planning. The applicant shall establish by credible evidence that the proposed use will be properly designed with regard to internal circulation, driveway access, site layout, parking layout, buffering, and all other elements of proper site design.
6. Safety. The applicant shall establish by credible evidence that the proposed use will not create a significant hazard to the public health and safety, such as fire, toxic or explosive hazards.

7. Historic Impact. The application shall not have a negative impact upon historically significant buildings on the same lot, as viewed from a street.

116.D. Conditions. In granting a special exception, the Board may require such reasonable conditions and safeguards (in addition to those expressed in this Ordinance) as it determines are necessary to implement the purposes of this Ordinance. Conditions imposed by the Zoning Hearing Board shall automatically become conditions of the building permit issued pursuant thereto, and any failure to comply with said conditions shall be a violation of this ordinance.

117. **LIABILITY.**

117.A. Any review of activity within the floodplain, site plan review, subdivision or land development approval, erosion control review, wetland delineation review, storm water runoff review, review of activity on steep slopes, or any other review, approval or permit under this Ordinance by an officer, employee, board, commission, solicitor, consultant or agency of the Borough shall not constitute a representation, guarantee or warranty of any kind by the Borough, or its employees, officials, boards, solicitor(s), consultants or agencies of the practicality or safety of any structure, use or subdivision, and shall create no liability upon nor a cause of action against such entity or person for any damage that may result pursuant thereto.

117.B. If the Zoning Officer mistakenly issues a permit under this Ordinance, the Borough shall not be liable for any later lawful withdrawal of such permit.

