

COUNTY OF



ALLEGHENY

January 26, 2023

John T. Vogel, Esq.
Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, PA 15222

RE: Ben Avon Heights Borough - Proposed Zoning Ordinance and Zoning Map Update
ACED File #: 22088-OR & 22089-OR
Mail Date: December 28, 2022
45 Day DL: February 13, 2023

Dear Atty. Vogel:

The Planning Division of Allegheny County Economic Development (ACED) has reviewed the aforementioned matter pursuant to the Pennsylvania Municipalities Planning Code (MPC). As a result, the County offers the following for your consideration.

GENERAL OVERVIEW

The proposed amendment is a complete update to the Ben Avon Heights Borough Zoning Ordinance and Zoning Map. Specifically, the proposed ordinance amendment includes the following: Article I: General Provisions; Article II: Definitions; Article III: District Regulations; Article IV: Express Standards and Criteria for Special Exceptions and Conditional Uses; Article V: Supplemental Regulations; Article VI: Parking; Article VII: Signs; Article VIII: Nonconforming Uses, Structures, and Lots; Article IX: Administration and Enforcement; Article X: Zoning Hearing Board; Tables; and Figures.

COMMENTS

Upon review of the ordinance, the following comments are offered for your consideration:

1. Page 1: With respect to Purpose and Findings and Community Development Objectives, we recommend that these items be reviewed in conjunction with the Comprehensive Plan to ensure consistency.
2. Page 5: With respect to the proposed Definitions, we recommend that they all be reviewed in conjunction with other ordinances to ensure consistency. In addition, as a general comment, it should be ensured that all definitions related to the Pennsylvania Municipalities Planning Code (MPC) be verbatim and not paraphrased.
3. Page 6: With respect to the definition of Alley, we recommend that the Borough be clear with respect to this definition as it relates to the distinction with the definition of Street, including

both public and private streets. For example, is there a minimum right-of-way width as it relates to frontage requirements?

4. Page 7: As a general comment with respect to the definition of Area, Site, we recommend that the Borough be clear as to what is included and excluded. For example, are contiguous properties separated by a street included under a single site area? Is anything not included in the site area such as the area within easements?
5. Page 7: With respect to the definition of Basement, we recommend that this definition be reviewed in conjunction with the building code to ensure consistency.
6. Page 7: With respect to the definition of Building, Front, we recommend that this definition be reviewed in conjunction with all similar definitions as they relate to yards and lot lines. In addition, as a general comment, we recommend that these related definitions be identified in renderings to ensure consistency across all of them.
7. Page 7: With respect to the definition of Carport, we recommend that the Borough be clear with respect to distinctions between carports, garages, and other accessory structures.
8. Page 8: As previously noted, regarding the definition of Determination and Development Plan we recommend that these definitions be reviewed in conjunction with the MPC to ensure consistency.
9. Page 10: With respect to the definition of Family, we recommend that the Solicitor review it in conjunction with applicable case law.
10. Page 11: Following up on our earlier point, we recommend that the definition of Floor Area, Gross (GFA) be reviewed in conjunction with the building code as well to ensure consistency. In addition, with respect to the definition of Floor Area, Net, we recommend that this definition be reviewed to ensure uniform application as to what is excluded.
11. Page 11: With respect to the definition of Height, Building, we recommend that renderings be contained within the ordinance showing how height is identified as it relates to different roof types.
12. Page 12: With respect to the definition of Home Occupation Business, we recommend that there is careful review of home occupations, including the uses that are permitted as home businesses. From experience, home based businesses are often the greatest issue with respect to neighbor complaints. As a result, they should be carefully evaluated as it relates to use, zoning district, hours of operation, number of employees, number of customers, and traffic.
13. Page 13: Following up on our previous comment with respect to the definitions of Lot Types and Lot Line Types, we recommend that all similar definitions be reviewed in conjunction with each other to ensure consistency and renderings included showing application of the definitions.
 - a. Page 18: With respect to the definitions of Setback Lines, we recommend that these definitions be part of this review.

14. Page 15: Regarding Non-Conforming Lot, Non-Conforming Structure, and Non-Conforming Use, we recommend that the solicitor review these definitions in accordance with applicable case law and other provisions contained within the Zoning Ordinance related to nonconformities.
15. Page 18: With respect to the definitions of the various sign types, we recommend that there be renderings contained within the ordinance showing them.
16. Page 21: Regarding the definition of Site Area, we follow up on our earlier point that this definition should be reviewed in conjunction with similar definitions such as lot area to ensure consistency. In addition, it should be clear as to what is included and excluded with respect to making these area calculations.
17. Page 22: With respect to the definition of Storage Building, we recommend that this definition be reviewed in conjunction with other similar definitions as they relate to garages, sheds, and accessory buildings to ensure consistent application and understanding the distinction between them.
18. Page 22: With respect to the definition of Story, we recommend that this definition be reviewed in conjunction with the building code. In addition, the term cellar is used within this definition but only basement is defined in this section.
19. Page 22: As noted earlier, with respect to the definition of Street and similar definitions, we recommend a minimum standard be established (i.e. right-of-way width). Further, we also recommend that there be an understanding between the distinction between streets, private streets, access easements, and alleys.
20. Page 22: As a follow up to our earlier point, with respect to the definition of Street Frontage, we recommend that there be consistency with all associated definitions and renderings included.
21. Page 22: With respect to the definition of Temporary Use or Structure, we recommend careful evaluation to what defines "temporary." For example, it states that structures intended to be used for more than six months shall be considered permanent. What if a structure is removed after six months and then reinstalled? Perhaps there should be a requirement with respect to the number of times that a temporary use can take place or structure installed.
22. Page 23: With respect to the definition of Yard, Front and associated definitions, we follow up on our earlier point that there should be uniform consistency across all similar definitions. This includes renderings showing the application of all definitions, including how they are applied, how they relate to each other, and the distinction between them.
23. Page 26: It is recommended that all base zoning districts be reviewed in conjunction with the Comprehensive Plan as it relates to allowable uses.
24. Page 29: As a general comment, we recommend that all Bulk and Area Regulations be reviewed to ensure that nonconformities are minimized. For example, if any setbacks, lot coverage, or width requirements are changed, this could result in nonconformities. The municipality should make every effort to reduce nonconformities and this section should be carefully evaluated.

25. Page 32: The Table of Authorized Principal Uses should be evaluated to see if the uses are appropriate for the identified districts. In addition, it is a good opportunity for the municipality to expand upon this list to further identify specific uses. Currently, the list is limited and lacking in specificity.
26. Page 33: With respect to setbacks for accessory structures, there may be a benefit to increasing the setback requirement depending on the type of accessory structure.
27. Page 33: With respect to architectural easements, we are unclear with respect to the process and procedure as this section lacks specificity. It is recommended that this section be expanded upon as it relates to how easements are created, enforced, and administered.
28. Page 34: With respect to Fences and Walls, we recommend that a rendering be included showing fence types, specifically as it relates to opaque fences. In addition, it is recommended that language be clear with respect to permitted fencing on corner lots.
29. Page 36: With respect to Private Garages, we recommend that the municipality evaluate allowing garages up to a height of the primary residence or 28 feet, whichever is less. This height is significant for detached garages and it should be evaluated. We also recommend that the municipality consider allowing rear- or side-access garages on lots that have access from an alley or a secondary street, which the current setbacks do not appear to allow.
30. Page 40: We have concerns with respect to allowing uses not listed to be permitted by conditional use. As identified earlier, we recommend that a more exhaustive list of permitted uses be established. As currently written, a conditional use is a permitted use and this section runs the risk of having an undesirable use because it is not specifically identified.
31. Page 41: We have concern with respect to the administrative review for completeness within 14 days of filing of a conditional use application. It is our recommendation that the clock start upon submission of the conditional use application to avoid a procedural defect and an argument of deemed approval.
32. Page 42: As a general comment with respect to Expiration of Conditional Use Approval, we recommend that the municipality be clear with respect to the process and how extensions are granted. We recommend that this section be reviewed by the solicitor.
33. Page 51: With respect to Temporary Uses, we recommend that this section be carefully evaluated as to what defines "temporary." We often see situations where temporary becomes permanent and the municipality should be clear in this section. Specifically, not only as it relates to the length of time, but also the number of times that a temporary use can take place.
34. Page 52: With respect to Grading and Excavation, we recommend that these standards be placed in separate, stand-alone Grading and Excavation Ordinance.
35. Page 57: We follow up on our earlier point and recommend that the municipality consider a more exhaustive list of permitted uses by district. Further, these uses should have a specific parking standard by use in this section.

36. Page 57: We recommend that the Planning Commission not make the final determination of parking for uses not identified. Since the Planning Commission is advisory, a traffic engineer could be consulted at the applicant's expense to provide this evaluation.
37. Page 63: We recommend that the municipality evaluate temporary signs. For example, many municipalities are inundated by temporary signs for flea markets, 5K races, and other events. As a result, it is recommended that there be more explicit standards identified here.
38. Page 65: We are unclear with respect to a permit being obtained from the Borough Council with respect to exterior signs. We recommend that there be more explicit standards and that these types of applications be handled administratively by the zoning officer. The administrative process by which the Borough Council would issue permits is not clear.
39. Page 65: As a follow up, if there are clear square footage and height requirements, types of permitted signs, and other specific standards, it would be helpful in allowing the zoning officer to review these applications.
40. Page 70: As it relates to Nonconforming Uses, Structures, and Lots, we recommend that the solicitor carefully review this section to ensure that it is in accordance with applicable case law.
41. Page 70: We expand upon this point as it relates to Nonconforming Uses and Expansions and Extensions of these uses. Specifically, as written, it states that Borough Council shall interpret if an expansion or extension if necessary. However, this section goes on to state that the applicant shall file an application for special exception. As a result, it is unclear with respect to the administrative process. It insinuates that a conditional use is required by Borough Council, but identifies a special exception which is before the Zoning Hearing Board. This should be clarified.
42. Page 72: We recommend that this section be stricken with respect to a determination being made by the zoning officer that there is no impact to immediately adjacent property. This language is ambiguous and potentially crosses over into civil issues between neighbors. We defer to the solicitor to review this section.
43. Page 75: We offer a general comment that Permitting and Required Permits and Authorization of Types and Uses shall be reviewed in conjunction with the provisions of the building code to ensure consistency. We also recommend that the solicitor review this section as well.
44. Page 76: We further add to this point with respect to the zoning officer reviewing applications within seven (7) days. Since building permits and zoning permits are often reviewed simultaneously, we recommend that there be consistency with the building code.
45. Page 79: We always offer a general comment that the solicitor should review the Enforcement Provisions carefully to ensure that it is consistent with the building code, case law, and the MPC.
46. Page 81: All language with respect to ordinance amendments and references to the MPC should be carefully evaluated to ensure that language is verbatim and not paraphrased.

47. Page 85: With respect to the Zoning Hearing Board, we follow up on this point that all sections should be verbatim with the MPC.
48. Finally, we recommend that the zoning map be reviewed in conjunction with the Comprehensive Plan and Table of Permitted Uses, which we recommend be expanded.
49. Procedurally, please be advised of the following Municipalities Planning Code (MPC) requirements related to zoning/subdivision and land development ordinance amendments:
 - a. **County Review Period: 45 days.** Since MPC §304 is applicable in Allegheny County, *the county review time is 45 days for all applications.* MPC §304(b) states that municipalities may not take any action on an application until the county's comments are received, or the 45-day review period has passed.
 - b. **Timing of Public Hearings: 30 days.** Other sections of the MPC apply in regard to the timing of public hearings. For proposed amendment to a zoning ordinance, for example, MPC §609(e) applies. Municipalities may not hold the public hearing less than 30 days from the date the application was submitted to the county for review. However, MPC 304(b) still applies in regard to when the municipality may *act* on the application.
 - c. **Timing of Public Hearings: 45 days.** If the application is for a proposed new or substantially revised zoning ordinance, SALDO, or comprehensive plan, the public hearing may not be held less than 45 days from the date the municipality forwards the application to the county planning agency for its review.
 - d. **Failure to Comply.** If the municipality does not follow the applicable procedures of the MPC when amending or adopting land use ordinances and comprehensive plans, or taking other actions authorized by the MPC, it can leave a municipality vulnerable to challenges. Municipalities should always be careful to comply with the MPC, and consider consulting their solicitor if they have questions about the required procedures. (See also MPC §108)

If the proposed amendment is adopted, please send a copy of the fully executed ordinance to the County, including the signed and dated signature pages, within 30 days of adoption as required by the MPC. If the proposed amendment is modified, please resubmit the ordinance for review and reference the ACED file number for this review in your request.

Feel free to direct any inquiries or comments to my attention.

Sincerely,



Matthew T. Trepal, AICP
Manager, Planning Division