

BOROUGH OF BEN AVON HEIGHTS
ZONING ORDINANCE
ORDINANCE No. _____

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Article I: General Provisions

Section 101: Title

- A. The official title of the Ordinance is the “Borough of Ben Avon Heights Zoning Ordinance.”

Section 102: Statutory Authority

- A. This Ordinance is adopted by virtue of the authority granted to the Borough of Ben Avon Heights (Borough) by the Commonwealth in the Pennsylvania Municipalities Planning Code (MPC).

Section 103: Interpretation

- A. In the event of conflicts between the provision of this Ordinance and any other Ordinance or regulation, the more restrictive provisions shall apply. In the interpretation and application, the provisions of this Ordinance shall be considered minimum requirements adopted for the promotion of the health, safety, and general welfare of the public. In interpreting the language of this Ordinance to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the Borough Council in favor of the property owner and against any implied extension of the restriction.

Section 104: Purpose and Findings

- A. These regulations are adopted in accordance with the MPC, community development objectives and the Borough’s Joint Comprehensive Plan. The purpose of this Ordinance is to promote, protect and facilitate any of the following:
 - 1. Public health, safety, morals, and general welfare.
 - 2. Coordinated and practical community development.
 - 3. Encourage appropriate redevelopment.
 - 4. Proper density of population.
 - 5. The provisions of adequate light and air.
 - 6. Lessen congestion on streets and roads.
 - 7. Secure safety from fire, panic, and other dangers.
 - 8. Prevent the overcrowding of land.
 - 9. Avoid an undue concentration of population.
 - 10. Facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public facilities.
 - 11. Preservation of natural, scenic, and historic properties.

12. Preservation of environmental features, including forest, wetlands, aquifers, prime agricultural land, steep slopes, and floodplains as deemed appropriate; and
13. Emergency management and preparedness.

Section 105: Community Development Objectives

- A. The community development objectives are adopted as a statement of legislative findings and may be used in evaluating any proposed additions or deletions to the Borough Zoning Ordinance.
- B. The general objective for the management of land use and growth in the Borough is to provide a pleasant, attractive, healthy, safe, and convenient environment for residential and recreational uses. The Joint Comprehensive Plan for the Boroughs of Avalon, Bellevue, Ben Avon, and Ben Avon Heights allows for Ben Avon Heights to remain predominantly residential and provides for commercial, industrial, and educational uses to be permitted in the Boroughs of Avalon, Bellevue, and Ben Avon. The objectives of keeping the Borough predominantly residential and recreational shall be pursued by the creation and implementation of land use plans to:
 1. Encourage sustainable development and the preservation of the natural environment.
 2. Increase property values and the economic base of the community.
 3. Provide for safe, adequate, and attractive housing.
 4. Provide the necessary infrastructure and vehicular and pedestrian transportation arteries.
 5. Provide for recreational facilities; and
 6. Provide for ongoing community planning and management of potential growth.
- C. Sustainable development and the preservation of the environment shall be pursued by:
 1. The elimination of visual and physical blight such as overhead utility lines, concentrations of signs of excessive size and proximity, large expanses of unbroken pavement, and dilapidated structures.
 2. The preservation of natural topography and wooded slopes, including the limiting of hillside development beyond a reasonable gradient, and the control of flood plains and water sheds.
 3. The prevention of excess erosion, hazardous rock and soil slippage, sedimentation and other soil and water management problems.
 4. The regulation and control of the design, construction, quality of materials, use, location, and maintenance of grading, excavation, and fill.
 5. The reclamation of derelict land; and

6. The acquisition by the Borough and the promotion of dedication of natural open space and wooded slopes to link the existing and proposed park sites and neighborhoods and to prevent ecological problems resulting from extensive cut and fill necessary to develop wooded slopes.
- D. The provision of safe, adequate, and attractive housing for the entire population of the community shall be pursued by:
1. Correlating residential density and housing type with topography, environmental conditions, and the capacity of existing and proposed utilities, streets, and community facilities.
 2. The removal of dilapidated housing, the rehabilitation of deteriorating housing, the maintenance of sound housing, and the development of new housing, where appropriate.
 3. The provision of residential areas with adequate recreational facilities; and
 4. The preservation of historical and cultural landmarks.
- E. The provision of recreational and community facilities shall be pursued by:
1. The creation of outdoor and/or indoor recreational facilities to accommodate the existing and future population.
 2. The promotion of acquisition or dedication of natural open space for park and recreational purposes as appropriate to meet the needs of Borough residents.
 3. The preservation of historical landmarks.
- F. The creation and implementation of land use plans shall seek to achieve the foregoing objectives and to:
1. Avoid incompatible land use and protect against the detrimental effect of incompatible land uses through planting, open space, and natural breaks in topography.
 2. Maintain the single-family residential development to prevent sprawl, conserve open space, and make full use of utilities and services in support of the joint comprehensive plan; and
 3. Provide site plan control.
- G. In accordance with the foregoing purposes and objectives, this Ordinance establishes regulations governing the following:
1. The height, number of stories, and size of buildings and other structures.
 2. The percentage of a lot that may be occupied.
 3. The size of yards, courts, and other open spaces.

4. Population density and intensity of use; and
5. The location and use of buildings, other structures, and land for business, industrial, residential, or other purposes.

Section 106: General Compliance

- A. No land shall be used or occupied, and no structures shall be designed, erected, altered, used, or occupied except in conformity with this Ordinance and in compliance with all standards, and upon performance of all conditions attached to any use approval, variance, appeal, rezoning, subdivision, and land development approval, planned residential approval, or site plan approved pursuant to all land use regulations of the Borough.
- B. No person, firm, or corporation and no officer or employee (either as owner or as participating principal, agent, servant, or employee of such owner) shall sell, rent, or lease, or offer or attempt to sell, rent, or lease, any land or structure upon the representation, falsely made and known to be false, that such land or structure may be used or occupied in a manner or for a use prohibited by this Ordinance.
- C. Every principal structure used for human occupancy shall have its own water and sewer service.
- D. The requirements of this Ordinance shall apply to all zoning districts, lots, structures, land developments, and subdivisions in the Borough.

Section 107: Applicability of Regulations to the Borough

- A. This Ordinance shall apply to existing or proposed uses or structures owned by the Borough.

Article II: Definitions

Section 201: Word Usage

- A. For the purposes of this Ordinance, the following rules of usage and interpretation shall apply, unless the context indicates otherwise. In the interpretation of this Ordinance, the provisions and rules of this Ordinance shall be observed and applied, except when the context clearly requires otherwise.
 - 1. Words in the present tense include the future.
 - 2. Words in the singular include the plural, and the plural the singular.
 - 3. The word "shall" be intended to be mandatory.
 - 4. The word "lot" shall include the word "plot" or "parcel."
 - 5. The word "person" includes a firm, company, corporation, partnership, trust, organization, or association, as well as an individual.
 - 6. A building or structure includes any part thereof.
 - 7. The word "and" indicates that all connected items, conditions, provisions, or events shall apply.
 - 8. The word "or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.
 - 9. The words "either", "or" indicate that the connected items, conditions, provisions, or events may apply singly but not in any combination.
 - 10. The word "Borough" means the Borough of Ben Avon Heights, Pennsylvania.
 - 11. The word "County" means the County of Allegheny, Pennsylvania.
 - 12. Any use of the gender specific words (his, hers, him, her) shall imply both genders.
 - 13. In case of any difference of meaning or implication between the text of this Ordinance and any caption, illustration or table, the text shall control.
 - 14. When a word or phrase is not specifically defined in this Ordinance, or referenced in another ordinance, then the common meaning of the word or phrase, or the definition contained in Webster's Dictionary, most current version, shall apply (current as of the adoption and publication date of this ordinance).

Section 202: General Definitions

When used in this Ordinance, the following words, terms, and phrases shall have the following meanings, unless expressly stated otherwise or unless the context clearly indicates otherwise.

ACCESSORY DWELLING UNIT— A separate and accessory dwelling space that is attached or unattached to the primary dwelling. Accessory dwelling units typically include living,

sleeping, eating, cooking, and sanitation facilities that are accessible from an exterior, separate entrance than the principal dwelling unit. Only units constructed and approved prior to the Adoption of this Zoning Ordinance shall be considered Legal Non-Conforming.

ACCESSORY STRUCTURE – A Structure, the use of which is customarily accessory to and incidental to that of the principal structure and which is located on the same lot.

ACCESSORY USE – A use customarily incidental and subordinate to the principal use and located on the same lot as the principal use.

ADJACENT PROPERTY – Property that is contiguous with the boundaries of any side of the subject property.

AISLE – The portion of the parking lot devoted to providing immediate access to the parking stalls. The recommended aisle width is dependent of the parking angle.

ALTERATIONS – As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one (1) location to another, or any change in use from that of one (1) zoning district classification to another.

ALTERATIONS, STRUCTURAL – Any change in the supporting members of a building, such as bearing walls, columns, beams, girders, or foundations.

ANTENNA – Any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. An antenna shall not include tower-based wireless communications facilities as defined in this Section of the Ordinance.

APARTMENT – A multi-family dwelling. See “Dwelling Types” in this Section of the Ordinance.

APPLICANT – A landowner or developer, as hereinafter defined, who has filed an application for development including his heirs, successors, and assigns.

APPLICATION FOR DEVELOPMENT – Every application, whether preliminary, tentative, or final, required to be filed and approved prior to start of construction or development including but not limited to an application for a building permit, for the approval of a subdivision plat or plan, or for the approval of a development plan.

ARCHITECT – An architect licensed by the Commonwealth of Pennsylvania. See “Licensed Professional.”

ARCHITECTURAL FOOTPRINT – The entire area of ground covered by the permitted structure including, but not limited to, covered porches and breezeways. The architectural footprint is exclusive of patios, decks, and exterior walkways.

AUTHORITY – A body politic and corporate created pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the “Municipality Authorities Act of 1945.”

BASEMENT – The Story of a structure which is partly or completely below grade plane,

BILLBOARDS – See the definition provided under “Signs” within this Ordinance.

BOARD – Anybody granted jurisdiction under a land use ordinance or by the MPC to render final adjudications.

BUFFER AREA/BUFFER ZONE/BUFFER YARD – A landscaped area of a certain depth specified by this Ordinance which shall be planted and maintained in trees, ground cover, shrubs, bushes, or other natural landscaping material or an existing natural or constructed natural barrier which duplicates the effect of the required buffer area.

BUILDING – A structure used for sheltering any use or occupancy.

BUILDING CODE – The Uniform Construction Code of Pennsylvania, as amended, as adopted by Ben Avon Heights Borough.

BUILDING FAÇADE – That portion of any exterior elevation on the building extending from finished grade to top of the parapet, wall, or eaves and the entire width of the building elevation.

BUILDING FRONT – The wall of the building where the principal entrance is located, usually fronting on a public street.

BUILDING PERMIT – A permit for activities regulated by the Uniform Construction Code as adopted by Ben Avon Heights Borough, including construction, alteration, repair, demolition, or an addition to a structure.

BUILDING, PRINCIPAL – The building or buildings on a lot in which the principal use or uses are conducted.

CARPORIT – An attached accessory structure used for the storage of motor vehicles which contains a roof but is not enclosed on all sides. An attached carport is an extension of the principal building and subject to the related building codes and zoning regulations of the permitted principal use. See also “Garage, Private.”

CARTWAY – That portion of a street intended for vehicular use.

COMMON OPEN SPACE – A parcel or parcels of land or an area of water, or a combination of land and water within a development site and designed and intended for the use or enjoyment of residents of a development, not including streets, off-street parking areas, and areas set aside for public facilities.

CONDITIONAL USE – See “Use” in this Section of the Ordinance.

CONSTRUCTION STANDARDS – The Ben Avon Heights Borough Standard Construction Details, as amended.

CONVERSION DWELLINGS – See “Dwelling Types” in this Section of the Ordinance.

COUNCIL – The Council of Ben Avon Heights Borough, Allegheny County, PA.

DARK SKY COMPLIANT LIGHT FIXTURE –Light fixtures that are designed to reduce light pollution, with the mission to minimize glare, reduce light trespass and eliminate night sky pollution. A fixture must be fully shielded and emit no light above the horizontal plane. There shall be no sag or drop lenses, side light panels, up-light panels, etc. Approved fixtures shall employ warm-toned (3000K and lower) white light sources or may employ amber light sources or filtered LED light source

DECK – An attached accessory structure to a dwelling or a pool, which is constructed of natural or synthetic wood, either on or above the ground, without a roof or awning, and with flooring that is not completely impervious, and which may include steps or railings.

DEDICATED OPEN SPACE or RECREATION LAND – A parcel of land integrated within a subdivision or land development that is dedicated, either publicly or privately, specifically for use as a park, open space, and/or active recreation area.

DENSITY – The number of dwelling units per acre.

DETERMINATION – The final action by an officer, body or agency charged with the administration of any land use ordinance or applications thereunder except the following: the governing body; the zoning hearing board (ZHB); the planning agency, only if and to the extent the planning agency is charged with final decision on preliminary or final plans under the Subdivision and Land Development Ordinance (SALDO) or Planned Residential Development (PRD) provisions. Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal.

DEVELOPMENT – See “Land Development”.

DEVELOPER – Any landowner, agent of such landowner, or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

DEVELOPMENT PLAN – The provisions for development, including a planned residential development, a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways, and parking facilities, common open space, and public facilities. The phrase “provisions of the development plan” when used in this Ordinance shall mean the written and graphic materials referred to in this definition.

DRIVEWAY, RESIDENTIAL – A private area which provides vehicular access to a parking space, garage, or dwelling.

DWELLING – A building that contains dwelling units, intended or designed to be used, rented, leased, let, or hired out to be occupied for living purposes. Each dwelling type designated below is provided for separately in the land use chart under “Dwelling Type.”

DWELLING TYPES:

CONVERSION DWELLING – A dwelling unit or units created from a larger existing residential dwelling, whether entirely from the existing structure or by building additions or combinations thereof. Conversion dwellings involve the creation of additional dwelling units in a structure from existing dwellings, not initially intended

or designed when the dwelling was initially constructed. Conversion dwellings are primarily intended to serve as rental units and are defined separately from Accessory Dwellings Units or Mother-in-law Suites which are primarily intended to house family members.

DUPLEX – A detached house designed for and occupied exclusively as not more than two (2) units, each living as an independent housekeeping unit and with no internal connectivity between units.

MOBILE HOME – A transportable, single-family dwelling intended for permanent occupancy, nonmedical office, or place of assembly, contained in one (1) or more sections, built on a permanent chassis, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used with or without a permanent foundation. The term does not include recreational vehicles or travel trailers.

MULTI-FAMILY – A residential building designed exclusively for occupancy by three (3) or more families living independently of each other and containing three (3) or more separate dwelling units but not including single-family, Duplex, Townhome or Quadruplex Dwellings.

QUADRUPLEX – A residential building, other than a townhome or garden apartment, containing only four (4) dwelling units in one (1) structure, each of which has two (2) walls exposed to the outside and each unit shares two (2) common walls with adjoining units which are placed at right angles to one another, rather than in a row, and which units have no other units above or below which share common floors/ceilings.

SINGLE FAMILY – A detached residential building that is the only principal structure on the lot, designed exclusively for occupancy by one (1) family, as defined herein, and containing one (1) dwelling unit.

TOWNHOME – A single-family dwelling unit constructed in a group of not less than three (3) but not more than six (6) attached units in which each unit share no more than one (1) common wall that extends from the foundation to the roof.

DWELLING UNIT – A single unit providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

ELECTRONIC NOTICE – Notice given by a municipality through the Internet of time and place of a public hearing and the nature of the matter to be considered at the hearing.

EMERGENCY – A condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the Rights-of-Way to be unusable and result in loss of the services provided.

ENFORCEMENT NOTICE – A notice as provided in §616.1 of the MPC, 53 P.S. §10616.1, sent by the Borough to the owner or occupant of record of a parcel on which a violation of this Ordinance 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 or occupant of record, the purpose of which is to initiate enforcement proceedings.

ENGINEER, PROFESSIONAL – A licensed professional engineer registered by the Commonwealth of Pennsylvania. See “Licensed Consultant.”

EPA – The United States Environmental Protection Agency (EPA) or any agency successor thereto.

ESSENTIAL SERVICES – The erection, construction, alteration or maintenance of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants, street signs, cable television or other telecommunications transmission lines provided by public or private entities, and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare. Essential services include water supply pump stations and water tanks. Essential services do not include operations and facilities associated with oil and gas development.

EXCAVATION – Any act by which earth, soil, sand, rock, or other natural mineral material is dug, removed, displaced, or otherwise relocated and shall include conditions resulting therefrom.

FAA – Federal Aviation Administration of the United States Department of Transportation.

FAMILY – An individual; two (2) or more persons related by blood, marriage, or adoption; or not more than three (3) unrelated persons living as a single housekeeping unit. A family may also include domestic servants and gratuitous guests. The foregoing restrictions do not apply to persons with disabilities as defined in the *Fair Housing Act, 42 USC §3601 et seq.*

FENCE – A free standing, accessory structure, including entrance and exit gates or openings, designed, and constructed for the purpose of enclosing space or separating parcels of land, screening, protection, confinement and/or privacy.

FILL – Any act by which earth is accumulated, dumped, transported, or removed to a new location and shall include the condition resulting therefrom.

FLAG – Any fabric containing distinctive colors, patterns, or symbols, used as a symbol of the United States of America, the Commonwealth of Pennsylvania, or the local municipality. A flag is not a sign.

FLOOR AREA, GROSS (GFA) – The floor area within the inside perimeter of the interior face of exterior walls of the structure under consideration.

FLOOR AREA, NET – The actual occupied area not including unoccupied accessory areas such as corridors, stairways, ramps, toilet rooms, mechanical rooms, and closets.

FRONTAGE – The length of a property line where the street address faces and that borders a public right-of-way which is open to vehicular traffic. See also “Street Frontage.”

FRONT PORCH ENCROACHMENT – An area of a property within a required front yard where a porch or deck can be built so long as it is not intended for occupancy.

GARAGE, ATTACHED RESIDENTIAL – An attached residential garage is an extension of a permitted residential dwelling.

GARAGE, PRIVATE – A detached accessory structure that is not accessible to the public. A private garage is designed for the storage of private vehicles and personal property of the occupants of the principal residential structure.

GAZEBO – A freestanding, accessory, roofed structure open on the sides.

GOLF COURSE – Any golf course, publicly or privately owned, on which the game of golf is played, including accessory uses and buildings customary thereto, but excluding golf driving ranges as defined herein.

GOVERNING BODY – The Council of Ben Avon Heights Borough.

GRADE – The elevation of the existing ground surface at the location of any proposed excavation or fill.

GRADE PLANE – A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet from the building between the building and a point 6 feet from the building.

GRADING – The act of altering the elevation or slope of the existing ground surface by excavation or fill material and shall include the conditions resulting therefrom.

HEARING – An administrative proceeding conducted by a board pursuant to §909.1 of the MPC.

HEIGHT, BUILDING – The vertical distance from the grade plane to the highest point of the structure.

HEIGHT OF STRUCTURE – For structures other than buildings or signs, the vertical distance measured from the average elevation of the finished grade around the structure to the highest point on the structure.

HISTORIC STRUCTURE – Means any structure that is:

- A. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Registry.
- B. Certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered Historic District or a district preliminarily determined by the Secretary to qualify as a registered Historic District.

- C. Individually listed on a state inventory of historic places in states with historic preservation programs that have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: by approved state program as determined by the Secretary of the Interior; or directly by the Secretary of the Interior in states without approved programs.

HOME OCCUPATION BUSINESS – Any use customarily carried on entirely within a dwelling, by the occupant thereof, which use is clearly incidental and subordinate to the use of the dwelling. Examples include, but are not limited to, professional services such as legal, financial, accounting or engineering, barber, and beauty shops, music, and tutoring instruction. Home occupations are limited to one student, customer, or client at a time. Home Occupation Businesses are different than No-Impact Home-Based Businesses. See also “No-Impact Home-Based Business.”

IMPERVIOUS SURFACE – As defined by the Ben Avon Heights Borough Stormwater Management Ordinance, Ordinance No. 341, adopted December 11, 2018.

INTERNAL DRIVEWAY SYSTEM – The portion of the parking lot devoted to providing access to individual parking lot aisles.

JOINT COMPREHENSIVE PLAN – The Joint Comprehensive Plan for the Boroughs of Avalon, Bellevue, Ben Avon, and Ben Avon Heights, adopted October 2017 by Borough Council. The Joint Comprehensive Plan is available on the Borough Website.

LAND DEVELOPMENT – Includes any of the following activities:

- A. The improvement of one (1) lot or two (2) or more contiguous lots, tracts, or parcels of land for any purpose involving:
 - 1. a group of two (2) or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
 - 2. the division or allocation of land or space, whether initially or cumulatively, between or among two (2) or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups, or other features.
- B. A subdivision of land.
- C. Land development shall not include:
 - 1. The conversion of an existing single-family detached dwelling or single-family semi-detached dwelling into not more than three (3) residential units unless such units are intended to be a condominium.
 - 2. The addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building.
 - 3. The addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park. For purposes of this Subsection, an amusement park is defined as a tract or area used principally as a location for permanent amusement structures or rides. This

exclusion shall not apply to newly acquired acreage by an amusement park until initial plans for the expanded area have been approved.

LANDOWNER – The legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land.

LANDSCAPE ARCHITECT – A landscape architect registered by the Commonwealth of Pennsylvania. See “Licensed Professional.”

LANDSCAPE PLAN – A plan prepared by a Licensed Landscape Architect identifying proposed landscape features, materials, and vegetation.

LEGAL NON-CONFORMING – Refers to uses and structures which were begun or constructed when the law allowed for them but have since become non-compliant due to a change in legislation.

LICENSED PROFESSIONAL – An individual licensed in the Commonwealth of Pennsylvania to perform professional services as defined by the Commonwealth of Pennsylvania.

LOADING SPACE OR BERTH – A space within the main building or on the same lot providing for the standing, loading, or unloading of vehicles.

LOGGING – The act of cutting and removing trees and all activities related thereto, for cordwood, lumber, for pulp or for any commercial purpose, excepting therefrom a landowner cutting his own property for his own use or the clearing for development of building sites less than one (1) acre. The terms “logging” and “timber harvesting” are used interchangeably.

LOT – A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed, or built upon as a unit.

LOT TYPES (also see “Figure 1” at the end of this Article):

LOT, CORNER – A lot at an intersection of two (2) or more streets.

LOT, INTERIOR – A lot other than a corner lot or through lot.

LOT, THROUGH OR MULTIPLE FRONTAGE – A lot having frontage on two (2) or more parallel or approximately parallel streets and which is not a corner lot.

LOT AREA – The total area within the boundary of the lot excluding any areas contained in a public street right-of-way (ROW).

LOT COVERAGE – That percentage of the lot area covered by all principal structures, accessory structures, and impervious surfaces.

LOT LINE – A line that denotes the boundary of a lot or parcel of land, as defined herein.

LOT LINE TYPES:

LOT LINE FRONT – A line measured along the ROW of any street frontage, whether public or private, between the side lot lines.

LOT LINE REAR – That lot line that is generally opposite the front lot line.

LOT LINE SIDE – Any lot line that is not a front lot line or rear lot line.

LOT, WIDTH – The horizontal distance between side lot lines, measured at the front setback line.

MAILED NOTICE – Notice given by a municipality by first class mail of the time and place of a public hearing and the nature of the matter to be considered at the hearing.

MEDIATION – A voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences, culminating in a written agreement which the parties themselves create and consider acceptable.

MIXED USE – A commercial use in combination with a residential use in a single principal structure.

MULTI-FAMILY DWELLING – See “Dwelling Types” in this Section of the Ordinance.

MUNICIPALITIES PLANNING CODE (MPC) – Act of 1968, P.L. 805, No. 247, as reenacted and amended (53 P.S. §10101 et seq.).

NO-IMPACT HOME-BASED BUSINESSES – A business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves no customer, client, or patient traffic, whether vehicular or pedestrian, pickup, delivery, or removal functions to or from the premises, more than those normally associated with residential use. The business or commercial activity must satisfy the following requirements:

1. The business activity shall be compatible with the residential use of the property and surrounding residential uses.
2. The business shall employ no employees other than family members residing in the dwelling.
3. There shall be no display or sale of retail goods and no stockpiling or inventory of a substantial nature.
4. There shall be no outside appearance of a business use, including, but not limited to parking, signs, or lights.
5. The business activity may not use any equipment or process which creates noise, vibration, glare, fumes, odors, or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.
6. The business activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood.
7. The business activity shall be conducted only within the dwelling and may not occupy more than twenty-five (25%) percent of the habitable floor area.

8. The business may not involve any illegal activity.

No-Impact Home-Based Businesses are different than Home Occupation Businesses. See “Home Occupation Business.”

NON-CONFORMING LOT – Any lot which does not comply with the applicable area and bulk provisions of this Ordinance or an amendment thereafter enacted, which lawfully existed prior to the enactment of this Ordinance or any subsequent amendment.

NON-CONFORMING STRUCTURE – A structure or part of a structure that does not comply with the applicable area and bulk provisions of this Ordinance or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of this Ordinance or an amendment thereto, or prior to the application of this Ordinance or amendment to its location by reason of annexation. Nonconforming signs are included in this definition.

NON-CONFORMING USE – A use, whether of land or of a structure, that does not comply with the applicable use provisions in this Ordinance or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of this Ordinance or an amendment thereto, or prior to the application of this Ordinance or amendment to its location by reason of annexation.

OBSTRUCTION – Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Article XIII of this Ordinance.

OCCUPANCY – The physical possession upon, on or within any lot or structure for a use.

OCCUPANCY PERMIT – A permit issued by the building inspector which certifies that the construction, reconstruction, alteration, remodeling, enlargement, movement, occupancy, or use of a building or structure, has been completed in accordance with the Zoning Permit and the Pennsylvania Uniform Construction Code and is ready for the approved occupancy.

OCCUPIABLE SPACE – A room or enclosed space designed for human occupancy in which individuals congregate and which is equipped with means of egress, and light, and ventilation and that meets the requirements for the approved use under this zoning ordinance and is compliant with the building code.

OPEN SPACE – Any public or private land used for recreation, resource protection, amenity and/or buffers, not including any area of a lot, any part of any existing future street right-of-way, easement of access or areas set aside for public or private utilities, stormwater facilities and easements.

OUTDOOR HYDRONIC HEATER – A fuel-burning device, also known as an “outdoor wood-fired boiler”, “outdoor wood-fired furnace”, and “outdoor wood-burning appliance”, designed:

1. to burn clean wood or other fuels specifically tested and listed for use by the manufacturer.
2. by the manufacturer specifically for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals (e.g., garages); and

3. to heat building space and/or water via distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture.

PARK, PUBLIC OR SEMIPUBLIC – A parcel of land owned by the Commonwealth of Pennsylvania, Allegheny County, and/or the Borough that is dedicated, either publicly or privately, specifically for outdoor use for open space and/or active or passive recreation purposes. A park shall also include a parcel of land owned by a homeowners' association or condominium association, as part of a Borough-approved subdivision, land development, and/or planned residential development that is dedicated, either publicly or privately, specifically for the use as a park, open space and/or active or passive recreation area. A park shall not include a commercial recreation facility, as defined herein.

PARKING LOT – Any lot, parcel, or yard used in whole or in part for the storage or parking of two (2) or more vehicles where such usage is not incidental to or in conjunction with a single-family or two-family dwelling.

PARKING PAD – A parking area in the front yard of a residential use that provides for a single car pull off area that must be no more than seven (7) feet by eighteen (18) feet and must be aligned so that the long dimension is parallel to the street and is adjacent to a curb cut in the street curb. The parking pad shall provide for parking such that no part of the vehicle so parked will encroach on the right-of-way more than two (2) feet.

PATIO – A structure accessory to a dwelling constructed on the ground from impervious material such as concrete, stones, bricks, blocks, or other paving material and which may or may not have a roof or awning.

PERSONS – Individuals, corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, corporations, and other entities established pursuant to statutes of the Commonwealth of Pennsylvania; if person does not include, or apply to, the Borough or to any department or agency of the Borough.

PHASE 2 OUTDOOR HYDRONIC HEATER – An outdoor hydronic heater that has been certified or qualified by the EPA as meeting a particulate matter emission limit of 0.32 pounds per million British Thermal Units (BTU) output and is labeled accordingly, with a white “hang” tag.

PLANNING COMMISSION – The Planning Commission of Ben Avon Heights Borough.

PLANNING AGENCY, COUNTY – Allegheny County Economic Development, Planning Division.

PLAT – The map or plan of a subdivision or land development, whether preliminary or final.

PORCH – A roofed or uncovered accessory structure without enclosing walls that is attached to or part of the principal building and which has direct access to and from the principal building.

PRINCIPAL STRUCTURE – The structure or building on a lot in which the principal use(s) are conducted.

PRINCIPAL USE – The primary or predominant use to which the property is or may be devoted, and to which all other uses on the premises are accessory.

PRIVATE RECREATION – An establishment operated by a profit-making corporation, partnership, or other business entity for the pursuit of sports and recreational activities, available to the public for a fee, where the principal use is conducted either indoors and outdoors, including, but not limited to such principal uses as fitness centers, swimming pools, sports courts or playing fields, golf courses, golf practicing facilities but not including any adult business. Private recreation may also include accessory gift shops and dining facilities for use by members of the facility. Services of meals and/or beverages, whether alcoholic or nonalcoholic, must be secondary to the principal use the facility.

PROFESSIONAL CONSULTANT – Persons who provided expert or professional advice, including, but not limited to, architects, attorneys, certified public accountants, engineers, geologists, land surveyors, landscape architects, or planners.

PUBLIC HEARING – A formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment, prior to acting in accordance with this Ordinance.

PUBLIC MEETING – A forum held pursuant to notice under 65 Pa. C.S. CH. 7 (Relating to open meetings).

PUBLIC NOTICE – A notice published once each week for two (2) successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the nature of the matter to be considered at the hearing. The first publication shall not be more than thirty (30) days and the second publication shall not be less than seven (7) days from the date of the hearing.

QUADRUPLEX DWELLING – See “Dwelling Types” in this Section of the Ordinance.

RECREATIONAL VEHICLE – A single-axle or multiple-axle structure mounted on wheels or otherwise capable of being made mobile, either with its own motive power or designed to be mounted on or drawn by an automotive vehicle, for the purpose of travel, camping, vacation and recreational use, including but not limited to: travel trailers, mobile homes, motor homes, tent trailers, boats, boat trailers, pickup campers, horse trailers, snow mobiles, jet skis, wave runners, motorcycles and all-terrain vehicles.

RESIDENTIAL LIVING AREA – A single unit providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

RIGHT-OF-WAY (ROW) – As defined in the Allegheny County SALDO.

SETBACK LINE – A line parallel to a lot line, defining the building setback required by this Ordinance.

SETBACK LINE, FRONT – The building setback line that is parallel to the front lot line, located at a distance as required by this Ordinance.

SETBACK LINE, REAR – The building setback line that is parallel to the rear lot line, located at a distance as required by this Ordinance.

SETBACK LINE, SIDE – The building setback line that is parallel to the side lot line, located at a distance equal to the side yard required by this Ordinance.

SHED – A detached, accessory structure which is incidental to a permitted residential structure. Sheds typically sit on a simple concrete slab, piers, or soil and are used to store household goods, tools, and/or equipment. Sheds shall include but are not limited to tool sheds, residential greenhouses, and pool equipment structures. All nonresidential detached storage structures are defined as storage buildings. See also “Storage Buildings.”

SHORT TERM RENTAL – A principal use other than a hotel or motel where lodging is provided for compensation generally for less than thirty (30) days. Rentals are generally facilitated by an online tool that allows for peer-to-peer lodging options where the lodging facilities are generally owned by private individuals. This use includes rentals commonly called by industry names including but not limited to Airbnb, HomeAway, Flip Key, World Escape, Uproots, etc. Within the Borough, short-term rentals are considered temporary rental units rented out for no more six (6) months to the same occupant(s). Short-term rentals are subject to the requirements for rental property registrations set forth in Borough Ordinance No. 316, adopted November 14, 2012.

SIGN – A name, identification, description, display, illustration, or device which is affixed or represented directly or indirectly upon a building, structure or land and which functions as an Accessory Use by directing attention to a product, place, activity, person, institution, or business. The following terms and definitions are associated with the sign regulations contained in this Ordinance.

A-FRAME – A portable sign comprised of two (2) separate panels or faces joined at the top and spread apart at the bottom to form the base on which the sign stands.

ADDRESS – The number or other designation assigned to a housing unit, business establishment, or other structure for all purposes of location, mail delivery, and emergency services.

ANIMATED OR MOVING – Any sign or part of a sign that changes physical position or light intensity by any movement or rotation or that gives the visual impression of such movement or rotation. Changeable copy signs as defined herein are not considered animated or moving signs.

AWNING, CANOPY – Any sign that is a part of or attached to an awning, canopy, or other fabric, plastic or structural protective cover over a door, entrance, window, or outdoor service area. A marquee is not a canopy.

BANNER – A sign or outside advertising display having the character, letters, illustrations, ornamentations, symbol, color, or visual representation applied to cloth, paper, vinyl, fabric, plastic, or like kind of malleable material with or without frame. National, state, or municipal flags, or the official flag of any institution or business, shall not be considered banners.

BILLBOARD – a permanently installed sign identifying/advertising and/or directing the public to a business, or merchandise, or service, or institution, or residential area, or entertainment which is located, sold, rented, leased, produced, manufactured, and/or furnished at a place other than the real property on which said sign is located.

CONSTRUCTION – A temporary sign announcing the name of contractors, mechanics, or artisans engaged in performing work on the premises and only during active construction activities.

DEVELOPMENT – A temporary sign erected during the period of construction and/or development of a property by the contractor and developer or their agent.

DIGITAL SIGN – A computer programmable sign capable of displaying words, numbers, symbols, figures, or picture images that can be altered or rearranged by remote or automatically without physically altering the face or surface of the sign. These signs typically utilize light-emitting diode, plasma, or liquid crystal display technology to produce the character and graphic of the display. Digital signs shall include static alphanumeric displays and electronic message boards.

DIRECTIONAL, INCIDENTAL – A sign generally informational, that has a purpose secondary to the use of the lot or site on which it is located, such as "No Parking," "Entrance," "Exit," "One Way," "Loading Only," "Telephone," and other similar directives, and provided that such sign does not exceed five (5) square feet. Directional, incidental sign shall be located only in conjunction with site drive entrances and/or internal traffic drive aisles.

ELECTRONIC MESSAGE BOARD – A type of digital sign which displays messages, such as time and temperature, in alternating light cycles.

FREESTANDING – Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or other structure.

GOVERNMENTAL – A sign, which is owned, installed, and maintained by the Borough or other governmental agency.

GROUND / MONUMENT – A freestanding sign, which is completely self-supporting, has its sign face or base on the ground and has no air space, columns, or supports visible between the ground and the bottom of the sign. It shall not be attached to a pole or pylon, nor raised by mounting on a man-made berm, wall, or similar structure. Pole/pylon signs that have pole covers which extend from the base of the sign face to the ground shall not be considered ground/monument signs.

HOME OCCUPATION IDENTIFICATION – A sign containing only the name and address of the occupant of the premises and their occupation. No logos or other advertising shall be permitted.

MARQUEE – An integral part of the building consisting of a roof which is supported by the building and may also be supported by columns or piers, and which includes porches, porticos, and porte-cocheres, but does not include canopies or awnings.

PANEL – The primary surface of a sign that carries the identifying/advertising message.

PENNANT – Any lightweight plastic, fabric, or other material, whether containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

POLE/PYLON SIGN – A freestanding sign erected on a pole, poles, pylon, or pylons, or other supporting structure where the bottom edge of a sign face is installed above the ground. Pole/pylon signs that have pole covers which extend from the base of the sign face to the ground shall not be considered ground/monument signs.

POLITICAL – A sign which indicates the name, cause or affiliation of a person seeking public or elected office or on which reference is made to an issue for which a public election or referendum is scheduled to be held.

PORTABLE – Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to A- or T-frames; sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public ROW, unless vehicle is used in the normal day-to-day operations of the business.

PUBLIC UTILITY – Signs in connection with the identification, operation, or protection of any public utility, on the same lot therewith, provided that the total sign area on anyone (1) street frontage does not exceed eight (8) square feet.

REAL ESTATE SIGN – A temporary sign advertising the real estate upon which the sign is located as being for rent, lease, or sale.

RESIDENTIAL – Any sign located in a district zoned for residential uses that contains no commercial message except advertising for goods or services legally offered on the premises where the sign is located, if offering such service at such location conforms to all requirements of this Ordinance.

RESIDENTIAL DEVELOPMENT IDENTIFICATION – Any sign used to identify the name of a residential development containing no commercial message and located at the principal entrances of such development.

SAFETY CONTROL – Public safety sign pursuant to federal, state, or local public safety regulations.

SIGN BASE – The support on which a sign face stands. The sign base shall not communicate any messages or include business identification.

SIGN FACE – The area or display surface, including the advertising surface and any framing, trim, or molding, used for the message on a single plane.

SIGN or SIGNBOARD – Any writing, printing, painting, display, emblem, drawing, graphic, electronic display, computerized display, or other device designed to be viewed by the public, designed, and intended for advertising, and the structure supporting the display.

SUSPENDED – A sign which is suspended from a structure above into a vehicular or pedestrian access way, more than one (1) foot from the surface on which it is mounted, and is mounted usually, but not always, at right angles to the building.

TEMPORARY SIGN, GENERAL – Any sign, banner, pennant, valance, or advertising display constructed of cloth, canvas, light fabric, cardboard, wallboard, or other light material, with or without frame, displayed for a period not exceeding thirty-one (31) days. Temporary signs shall be permitted to advertise grand openings, distress sales, change in ownership; or temporary businesses which have been approved by the Planning Commission, Borough Council or ZHB.

TRAFFIC CONTROL SIGN – A sign regulating traffic.

WALL SIGN – Any sign painted, attached to, or affixed to a building or structure, attached flat against the wall surface, in such a way that only one face of a sign is visible.

WINDOW SIGN – Any sign, picture, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service that is temporarily affixed inside a window or upon the windowpanes glass and is visible from the exterior of the window.

SINGLE-FAMILY DWELLING – See “Dwelling Types” in this Section of the Ordinance.

SIGHT TRIANGLES - The triangular area formed by an invisible diagonal line at the corner of either two intersecting street right-of-way lines, the edge of street lines, the edge of a driveway or combination of two thereof within which no obstruction may be placed which would block the sight lines for vehicular traffic.

SITE AREA – The total area as determined by a survey prepared by a registered surveyor. The total site area may include multiple parcels. Also see “Lot Area” as defined in this Ordinance.

SOLAR COLLECTION SYSTEM – A solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for collection, inversion, storage, and distribution of solar energy for electricity generation or transfer of stored heat.

SOLAR ENERGY SYSTEM, SMALL – A solar collection system consisting of one (1) or more roof and/or ground mounted solar collector devices and solar related equipment and is intended to primarily reduce on-site consumption of utility power. A system is considered a small solar energy system only if it supplies electrical or thermal power solely for on-site use, except that when a property upon which the facility is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company.

SOLAR RELATED EQUIPMENT – Items including a solar photovoltaic cell, panel, or array, or solar hot air or water collector device panels, lines, pumps, batteries, mounting brackets, framing and possibly foundations used for or intended to be used for collection of solar energy.

SPECIAL EXCEPTION – See “Use by Special Exception” in this Section of the Ordinance.

SPORT COURTS – An outdoor asphalt or hardscape court (not including driveways or parking lots) designed for athletic purposes (i.e., basketball court, tennis court, etc.) surrounded by fencing or on a standalone structure or pad.

STEEP SLOPE – As defined in the Allegheny County SALDO.

STORAGE BUILDING – An accessory structure for storing goods and products incidental to a permitted, nonresidential, principal use.

STORMWATER MANAGEMENT ORDINANCE – The Ben Avon Heights Borough Stormwater Management Ordinance).

STORY – That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

STREET – Includes street, avenue, boulevard, road, highway, freeway, parkway, lane, and any other ways used or intended to be used by vehicular traffic or pedestrians whether public or private. The term shall not include the word “Driveway.”

TYPE OF STREETS: As defined in the Allegheny County SALDO.

STREET FRONTAGE – The length of a property line where the street address faces and that borders a public right-of-way which is open to vehicular traffic. See also “Frontage.”

STRUCTURE – Any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

SUBDIVISION – The division or redivision of a lot, tract or parcel of land by any means into two (2) or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten (10) acres, not involving any new street or easement of access or any residential dwelling, shall be exempted. .

SUBDIVISION AND LAND DEVELOPMENT ORDINANCE (SALDO) – Allegheny County’s Subdivision and Land Development Ordinance as adopted by Allegheny County Council (Ordinance No. 09-12-OR, as amended, adopted April 17, 2012).

SWIMMING POOL – A man-made enclosure, designed to impound water for the purpose of creating depth of water suitable for swimming, or other types of water recreation or therapy.

TEMPORARY USE OR STRUCTURE – Any use or structure that is an accessory to an existing principal use on a lot intended to be used for less than six (6) consecutive months and located outside of the right-of-way, including but not limited to construction or land sales trailers, tents, bleachers, air supported structures, seasonal displays, PODS, dumpsters, and similar structures. Structures intended to be used for more than six (6)

months shall be considered permanent and shall meet the use and structure requirements for principal or accessory use per this ordinance.

TIMBER HARVESTING – The act of cutting and removing trees and all activities related thereto, for cordwood, lumber, for pulp or for any commercial purpose, excepting therefrom a landowner cutting his own property for his own use or the clearing for development of building sites less than one (1) acre. The terms “logging” and “timber harvesting” are used interchangeably.

TOWNHOME – See “Dwelling Types” in this Section of the Ordinance.

TRAILER, SALES, OR CONSTRUCTION – A temporary structure to be used for the duration of the zoning and/or building permit to provide temporary offices for personal associated with the permitted land development.

TREE – Any object of natural growth.

USE – Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied, or any activity, occupation, business, or operation carried on in a building or other structure or on a tract of land.

TYPES OF USES:

CONDITIONAL USE – An authorized use which may be granted only by the Borough Council pursuant to express standards and criteria prescribed in this Ordinance, after review and recommendation by the Borough Planning Commission and a public hearing by Borough Council.

USE BY SPECIAL EXCEPTION – An authorized use in a particular zoning district pursuant to Articles III, IV and XII of this Ordinance which may be granted only by the Zoning Hearing Board (ZHB) in accordance with express standards and criteria.

VARIANCE – Relief granted by the Zoning Hearing Board pursuant to the provisions of Articles VI and IX of the MPC.

WBCA – Pennsylvania Wireless Broadband Collocation Act (53 P.S. §11702.1 et. seq.)

YARD, FRONT – A yard extending between side lot lines across the full lot width from the front lot line to a line parallel to the building front of the structure of the principal use of the lot (See Figure 1). For purposes of interpreting the requirements set forth in this Ordinance, the main front yard is where the street address is located.

YARD, REAR – A yard extending between the side lot lines across the full lot width from the rear lot line to a line parallel to the rear face of the structure of the principal use of the lot (See Figure 1).

YARD, SIDE – A yard extending from the front yard line to the rear yard line parallel to the side lot line (See Figure 1).

ZONING DISTRICT – An area in the Borough in which regulations under this Ordinance uniformly apply including overlay districts.

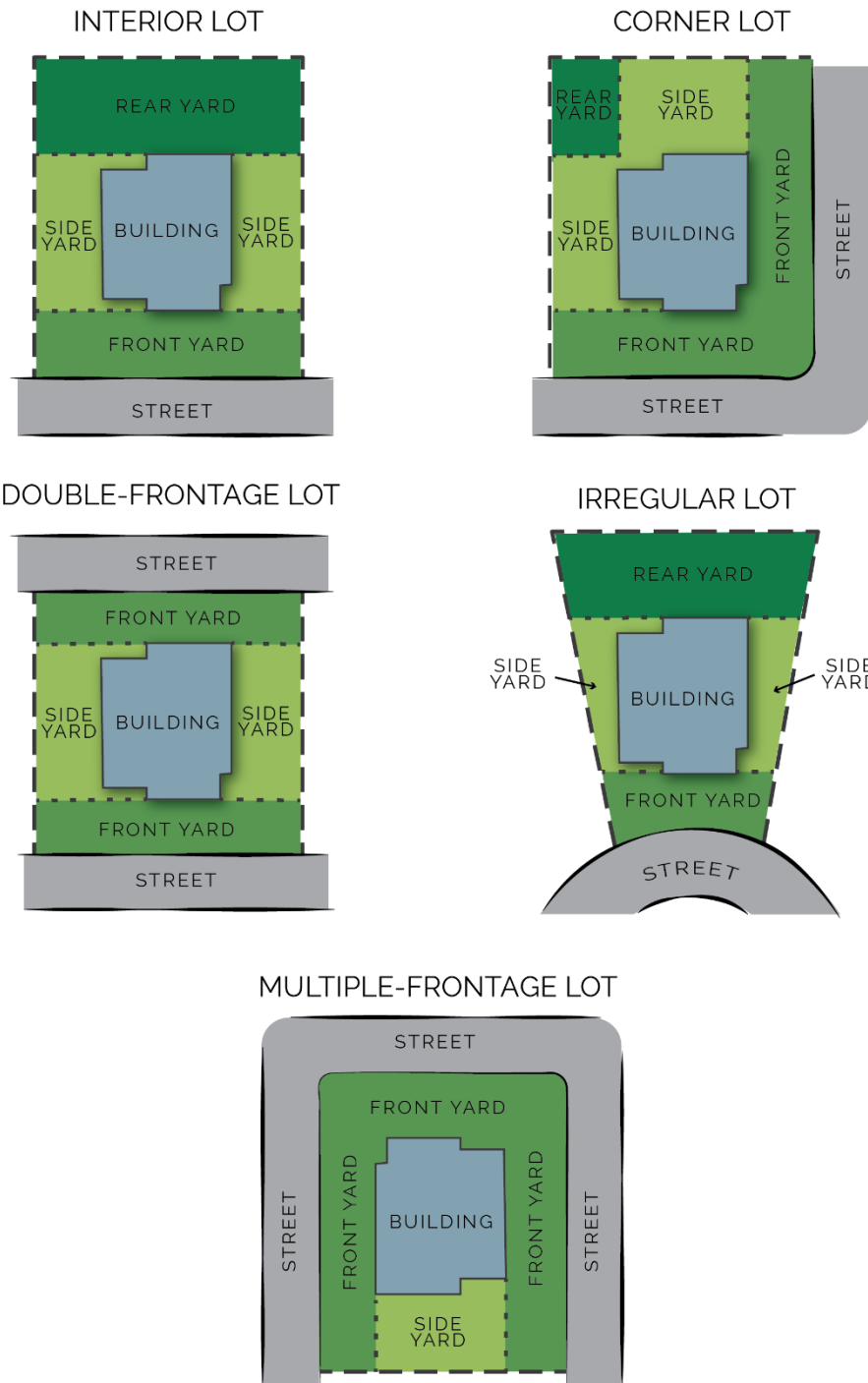
ZONING HEARING BOARD (ZHB) – The Zoning Hearing Board of Ben Avon Heights Borough, Allegheny County, Pennsylvania as defined by and appointed in accordance with the Pennsylvania MPC, Act 247 of 1968, as amended by Act 170 of 1998 (53 P.S. §10101 et seq., as may be amended from time to time).

ZONING MAP – The Official Map delineating the zoning districts of Ben Avon Heights Borough, Allegheny County, Pennsylvania, together with all amendments subsequently adopted.

ZONING OFFICER – The designated official or authorized representative appointed by the Borough Council whose duty it shall be to administer this Ordinance and as identified in §614 of the Pennsylvania MPC, Act 247 of 1968, as amended by Act 170 of 1998 (53 P.S. §10101 et seq., as may be amended from time to time).

ZONING PERMIT – A permit issued by the Zoning Officer which is required by this Chapter prior to the commencement of the construction, reconstruction, alteration, remodeling, enlargement, movement, occupancy, or use of a building, structure, or lot; the change in use of a building, structure, or lot; any change to, or enlargement or extension of a nonconforming use; and/or the construction, reconstruction, alteration, or movement of a retaining wall.

FIGURE 1 – YARD TYPE ILLUSTRATION



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Article III: District Regulations

Section 301: Establishment of Districts

- A. Base Zoning Districts establishes districts that divide the Borough into various residential, commercial, and conservation zones. Each district establishes uses that are a Permitted Use by Right (P), a Conditional Use (CU), or a Use by Special Exception (SE). A use permitted as of right is compatible with the other uses within the purpose of the district and therefore requires only administrative approval. Conditional Uses and Special Exceptions are those uses that may generate additional impacts and may warrant additional standards and additional approval processes to ensure their compatibility and compliance with these zoning requirements.

- B. The Borough of Ben Avon Heights is part of the Joint Multi-Municipal Comprehensive Plan that was completed in conjunction with Avalon, Bellevue, and Ben Avon Boroughs. The latest edition of the Borough Zoning Map and the Tri-Borough Zoning Map which highlight the various zoning districts throughout the area can be found via the respective municipal websites.

Section 302: Base Zoning Districts

- A. The Borough is divided into the following zoning districts as shown in the official zoning map attached hereto and incorporated herein. The following zoning districts are hereby established:

R	Single-Family Residential District
PR	Private Recreation District
CR	Community Recreation District
COS	Conservation & Open Space District

Section 303: Official Zoning Map

- A. The map(s) delineating the boundaries of the various zoning districts, together with all matters and things shown on such maps, are adopted, and approved, and collectively constitute the “official zoning map.” The official zoning map is incorporated by reference and made a part of this Ordinance. These map(s) are on file with the Borough office and are also available via the Borough website. The official zoning map carries the zoning district designations established in §302 of this Ordinance.

Section 304: Zoning District Boundaries

- A. When definite distances in feet are not shown on the zoning map, the following rules apply:
 - 1. Boundaries indicated as approximately following the right-of-way (ROW) or centerlines of streets or highways shall be construed to follow the centerlines of the existing street, highway, or ROW.

2. Boundaries indicated as approximately following recorded lot lines shall be construed as following such lot lines.
3. Boundaries indicated as approximately following Borough limits shall be construed as following the Borough boundary.
4. Whenever any street or other public way not subject to zoning regulations is vacated by official action of the Borough, the zoning district line adjoining each side of such street or other public way shall be automatically extended to the center of such vacation, and all areas so involved shall then be subject to all regulations of the extended districts; and
5. Where physical features existing on the ground vary from those shown on the official zoning maps, or in other circumstances where the zoning boundary is unclear, the Zoning Officer shall interpret the district boundaries. Appeals to such determination shall be made to the ZHB pursuant to this requirement of this Ordinance.
6. Where any land within the municipal boundaries of the Borough is shown on the Zoning Map with the color white, such as the land within a ROW or easement, the land shall be interpreted as being within the immediately adjacent zoning district with which the subject land shares the majority of its property line.

Section 305: Zoning District Allowable Uses

- A. No land, structure, building or development approval shall be issued unless the proposed development conforms to the regulations prescribed within the applicable zoning district and this Ordinance.
- B. Three (3) classifications of principal uses are established in this Ordinance. No principal use is permitted unless it is listed as a Permitted Use by Right (P), Conditional Use (CU), or Special Exception (SE) and identified in the table of authorized principal uses (Table 4). Uses permitted as principal uses or structures within each zoning district are those uses listed in the Table of Authorized Principal Uses (Table 4). The classification of uses include:
 1. Permitted Uses by Right (P) are those authorized uses for which a zoning approval will be issued by the Zoning Officer upon the Zoning Officer's review of the application for development if the application for development indicates compliance with this Ordinance.
 2. Conditional Uses (CU) are those authorized uses which are permitted by approval of the Council in accordance with this Ordinance and more specifically Article IV Express Standards and Criteria for Special Exceptions and Conditional Uses.
 3. Uses by Special Exception (SE) are those authorized uses which are permitted by approval of the ZHB in accordance with this Ordinance and more specifically Article IV Express Standards and Criteria for Special Exceptions and Conditional Uses.

- C. Uses Not Listed. It is the intent of this Ordinance to group same land uses into specific zoning districts. Uses not specifically listed in Table 4 are not permitted.
- D. In the Residential zoning district, there shall only be one (1) principal use and one (1) principal structure on a lot. Refer to the definitions of principal use and principal structure in Article II of this Ordinance.
- E. In all nonresidential zoning districts authorized by this Ordinance, two (2) or more nonresidential principal buildings can occupy the same lot and two (2) or more authorized nonresidential uses may occupy the same lot or building. Provided in all cases that all applicable requirements for each of the structures or uses can be met on the lot.
- F. In addition to the provisions for principal uses, accessory uses shall also be permitted in accordance with the provisions of this Ordinance. In all zoning districts, all accessory uses, and structures shall be located on the same lot with the principal structure and use to which they are accessory. Accessory uses regulations are set forth in Article III of this Ordinance.

Section 306: Bulk and Area Regulations for Uses

- A. Bulk and area regulations for uses are specified in the tables in each Section for the specific zoning district.

Section 307: R – Single-Family Residential District

- A. Purpose. The Single-Family Residential District is established to provide for residential and accessory activities consistent with the community development objectives of the Borough. The Single-Family Residential District consists of single-family housing type as identified in Table 1. The characteristic of this district is defined by single family homes centered on strong neighborhoods.
- B. Authorized Principal Uses: See §311 Table of Authorized Principal Uses (Table 4), for authorized principal uses and method of authorization in the district.
- C. Authorized Accessory Uses: See §312, Table of Authorized Accessory Uses (Table 5), for authorized accessory uses and method of authorization in the district.
- D. Area and bulk regulations: The area and bulk regulations within the Residential zoning district shall be subject to the standards identified in Table 1, except as they may be modified by the express standards and criteria for the specific permitted uses, conditional uses, or uses by special exception.
- E. Any existing principal structure or accessory structure that encroaches on the required front, side, and/or rear building setbacks shall be permitted to be rebuilt in the case of loss or damage through circumstances not in the control of the property owner.
- F. Off-street parking and loading. See Article VI of this Ordinance for off-street parking and loading requirements.
- G. No element of a principal use or accessory use shall encroach on the required setback unless specifically permitted under this ordinance.

TABLE 1 – R – SINGLE-FAMILY RESIDENTIAL DISTRICT BULK & AREA REGULATIONS

Bulk & Area Regulations R Zoning District	
Lot Size (minimum)	7,500 sq. ft.
Lot Width (minimum)	75 ft.
Height of Principal Structure (maximum)	35 ft.
Front Setback (minimum)	40 ft.
Side Setback (minimum)	10 ft.
Rear Setback (minimum)	15% of the depth of the lot
Lot Coverage (maximum)	35 percent
<p>Note: Refer to applicable accessory structure height, area, and setback requirements in this ordinance.</p>	

Section 308: PR – Private Recreation District

- A. Purpose. The Private Recreation District provides space for larger, privately-owned recreational facilities that can be used not only by Borough residents but also by residents of neighboring communities, subject to payment of a membership fee. The PR District offers a mix of indoor and outdoor recreational amenities including golf, fitness, tennis, swimming, paddle ball, and similar court sports.
- B. Authorized Principal Uses: See §311, Table of Authorized Principal Uses (Table 4), for authorized principal uses and method of authorization in the PR district.
- C. Authorized Accessory Uses: See §312, Table of Authorized Accessory Uses (Table 5), for authorized accessory uses and method of authorization in the PR district.
- D. Area and bulk regulations: The area and bulk regulations within the PR zoning district shall be subject to the standards identified in Table 2, except as they may be modified by the express standards and criteria for the specific permitted uses, conditional uses, or uses by special exception.
- E. Off-street parking and loading. See Article VI of this Ordinance for off-street parking and loading requirements.

TABLE 2 – PR – PRIVATE RECREATION DISTRICT BULK & AREA REGULATIONS

Bulk & Area Regulations PR Zoning District	
	All Nonresidential and Mixed Uses
Lot Size (minimum)	5 acres
Lot Width (minimum)	150 ft.
Height of Principal Structure (maximum)	50 ft.
Front Setback (minimum)	150 ft.
Side Setback (minimum)	100 ft.
Rear Setback (minimum)	100 ft.
Lot Coverage (maximum)	25 percent
Note: Refer to applicable accessory structure height, area, and setback requirements in this ordinance.	

Section 309: CR – Community Recreation District

- A. Purpose. The purpose of the Community Recreation District is to provide for existing and future outdoor recreational facilities that are primarily used and enjoyed by Borough residents as well as the public. Facilities located in the CR District include playgrounds, greenspace, and various sports courts.
- B. Authorized Principal Uses: See §311, Table of Authorized Principal Uses (Table 4), for authorized principal uses and method of authorization in the CR District.
- C. Authorized Accessory Uses: See §312, Table of Authorized Accessory Uses (Table 5), for authorized accessory uses and method of authorization in the CR District.
- D. Area and bulk regulations: The area and bulk regulations within the CR District shall be subject to the standards identified in Table 3, except as they may be modified by the express standards and criteria for the specific permitted uses, conditional uses, or uses by special exception.
- E. Off-street parking and loading. See Article VI of this Ordinance for off-street parking and loading requirements.

TABLE 3 – CR – COMMUNITY RECREATION DISTRICT BULK & AREA REGULATIONS

Bulk and Area Regulations Community Recreation District	
	All Other Nonresidential and Mixed Uses
Lot Size (minimum)	12,500 sq. ft.
Lot Width (minimum)	75 ft.
Height of Principal Structure (maximum)	25 ft.
Front Setback (minimum)	30 ft.
Side Setback (minimum)	20 ft.
Rear Setback (minimum)	20 ft.
Lot Coverage (maximum)	40 percent
Note: Refer to applicable accessory structure height, area, and setback requirements in this ordinance.	

Section 310: COS – Conservation and Open Space District

- A. Purpose. The purpose of the Conservation and Open Space District is to preserve open space within the Borough, to protect the Borough’s environmentally sensitive areas, and prohibits any land development. The parcels within the COS District are intended to remain as open space and greenspace to preserve the scenic qualities and resources and to provide contrasts to the existing built environment.

Section 311: Table of Authorized Principal Uses

- A. Table 4 establishes the authorized principal uses and the zoning districts where the principal use is authorized and method of authorization.

P – Permitted Use by Right

SE – Use by Special Exception (see General and Express Standards in Article IV)

CU – Conditional Use (see General and Express Standards in Article IV)

Note: Blank cells indicate that the use is not permitted in the corresponding district.

TABLE 4 – TABLE OF AUTHORIZED PRINCIPAL USES

Use	R	PR	CR
Single-Family Dwellings	P		
Essential Services	P	P	P
Park	P		P
Private Recreation		P	
Uses Not Listed	See §406		

Section 312: Accessory Uses and Structures

- A. Applicability: This Section applies to any subordinate use of a building or other structure, or use of land that is:
 - 1. Conducted on the same lot as the principal use to which it is related; and
 - 2. Clearly incidental to, and customarily found in connection with, the principal use or structure.
- B. Establishment of Accessory Uses:
 - 1. Accessory structures or uses shall not be constructed or established on a lot until construction of the principal structure is completed or the principal use is established.
 - 2. In no instance shall an accessory structure or use be established on a vacant lot.
 - 3. In no instance shall an accessory structure have a same or similar use as the principal use, unless constructed while permitted under previous ordinances and having zoning approval for such use.
 - 4. In no instance shall an accessory structure or use violate the setback requirements provided herein, unless a variance is granted by the Zoning Hearing Board.

Section 313: Table of Authorized Accessory Uses and Structures

- A. Accessory uses shall be permitted in accordance with Table 5:
 - P – Permitted Use by Right
 - SE – Use by Special Exception (see General and Express Standards in Article IV)
 - CU – Conditional Use (see General and Express Standards in Article IV)

Blank cells indicate that the use is not permitted in the corresponding district.
- B. All accessory structures and uses are also subject to the general standards listed in §314 and the supplemental regulations found in Article V of this Ordinance.

C. Standards related to the specific accessory structures and uses are found in §315 of this Ordinance.

TABLE 5 – TABLE OF AUTHORIZED ACCESSORY USES AND STRUCTURES

Use or Structure	R	PR	CR
Carport	P	P	
Deck	P		
Fence	P	P	P
Garage, private	P	P	
Gazebo	P	P	P
Hot Tubs and Outdoor Spas	P	P	
Loading Space/Berth		P	
No-Impact Home-based Business	P		
Patio	P	P	P
Porch	P	P	
Satellite Dish	P	P	
Shed	P		
Signs	Subject to Article VII		
Solar Energy System, Small	P	P	P
Storage Building		P	
Swimming Pool (Above Ground or In Ground)	P	P	P
Temporary Use or Structure	P	P	P
Tennis/Basketball/Sports Courts		P	P

Section 314: General Standards for all Accessory Uses and Structures

- A. Permitted Accessory Uses. Accessory uses and structures permitted by this Ordinance are listed in the Table of Authorized Accessory Uses and Structures (Table 5). Accessory uses and structures which are not specifically listed in the table shall not be permitted in the Borough. No Accessory structure or part thereof can be used as a dwelling.
- B. If an accessory structure or building is attached to the principal structure, then it shall be considered part of the principal structure and shall be subject to all requirements relating to the principal structure.
- C. Location of accessory structures and uses.
 - 1. Accessory structures and uses, except for authorized signs and fences, shall not be located in the required front yard of any lot in any zoning district.
 - 2. All permanent accessory structures shall be set back a minimum of five (5) feet from any side or rear property line except where specifically authorized elsewhere in this Ordinance based on the type of accessory use or structure.
- D. Accessory structures shall be counted towards the maximum lot coverage on a lot and in no case shall exceed the maximum lot coverage for the district in which it is located when considering all structures on the lot.

- E. Accessory uses shall not include the conduct of trade or business unless permitted in conjunction with an authorized principal use that permits trade or business.
- F. Not more than one (1) accessory structure by type shall be permitted on an individual lot.
- G. Accessory structures shall not exceed the height of the principal structure.
- H. Accessory buildings or uses shall not be constructed or established on a lot until the construction of the principal structure is completed or the principal use is established.

Section 315: Specific Standards for Accessory Uses and Structures

- A. Accessory Dwelling Units, Non-Conforming Legal Use.
 - 1. The minimum number of required parking spaces for a Legal Non-Conforming Accessory Dwelling Unit shall be added to the minimum number of required parking spaces for the principal use (see Table 11).
- B. Front Porch Encroachment. Front porch encroachments shall be permitted in all residential zoning districts for the construction of a front porch onto the front of an existing or new dwelling unit with the following criteria:
 - 1. The front porch encroachment may be used for a porch only. The porch shall have a roof structure over the top of the porch.
 - 2. No enclosure of the porch may be made at any time. Porch may not be converted to an occupiable space at any time.
 - 3. In all zoning districts, the maximum encroachment within the front yard shall be eight (8) feet.
 - 4. Any existing structure which is located less than ten (10) feet from the current setback line shall be permitted a maximum encroachment of half the distance between the setback line and the existing structure.
- C. Fences and Walls.
 - 1. Fences and Walls Accessory to Residential Use. The following fences and walls may be erected as an accessory structure to a residential use:
 - a. Front Yards.
 - 1) Decorative, ornamental fencing including brick masonry walls (excluding split rail, chain link, and any industrial type fencing) shall not be more than fifty (50%) percent opaque nor exceed four (4) feet in height. For purposes of properties with more than one front yard, this shall apply to the street address front yard or primary front yard.
 - 2) The height of the wall or fence shall not exceed the above height limits when measured to grade on either side of the wall or fence and shall consider all grade variations for conformance to this requirement.

- 3) In a front yard, a wall or fence shall not be erected within the road right-of-way width.
 - 4) A fence located in the building front of a house that is in line with the building front of said house shall be permitted, so long as it follows the house building setback and does not affect sight triangles.
 - 5) For corner lots, fences in both the primary front yard (where front door and street address faces) and secondary front yard(s) (not parallel to the building front but parallel to the street) shall meet the required front yard setback in the applicable zoning district in which the subject property is located.
- b. Side and Rear Yards.
 - 1) Brick masonry wall, not exceeding four (4) feet in height, with an additional two (2) feet of additional height which is 50% open.
 - 2) Fences may be opaque up to four (4) feet in height, with an additional two (2) feet of fence height which is 50% open.
 - 3) A fence or wall may be constructed and located up to the property line in the side and rear yards. If a fence or wall is located up to the property line, the Borough is not responsible for determining the location of the lot line. The owner of the subject property shall be responsible for determining the location of his/her lot lines and any claims which arise out of the erection of a fence or wall shall be the responsibility of the person who erected the fence or wall.
 - c. Barbed wire fences are prohibited in the Borough.
 - d. Exclusions: In the Private Recreation Zoning District Fences located at least 50 feet from any property setback line are excluded from the fencing requirements of this Section.
2. Fences and Walls Accessory to a Nonresidential Use. The following fences and walls may be erected as an accessory structure to a nonresidential use in any yard:
 - a. Brick masonry wall, not exceeding five (5) feet in height.
 - b. Fences with fifty (50%) percent or less of the surface area being opaque, not exceeding five (5) feet in height.
 - c. Fences with more than fifty (50%) percent of the surface area being opaque, not exceeding five (5) feet in height.
3. General Requirements for Fences and Walls.
 - a. No fence in any district shall be erected in such a manner as to obstruct visibility as a street or driveway intersection, in accordance with this Ordinance.
 - b. Fences for public or private tennis courts and similar outdoor recreational facilities may be erected up to ten (10) feet in height, if constructed of a black vinyl coated chain link fabric and black vinyl coated pole material.

- c. A retaining wall of any height may be erected along any property line or in any required yard where it is needed to prevent a landslide or other hazardous condition. The location and placement of retaining walls shall meet the requirements of the Allegheny County SALDO. Walls more than four (4) feet in height shall have a safety feature placed along the top of the wall such as a fence or railing erected along all areas that exceed four (4) feet. Landscaping including thick hedges or other plantings that are demonstrated to form an effective safety barrier must be approved by the Building Inspector and shall comply with all other applicable requirements herein.
- d. The owner of any fence or wall shall be responsible for maintaining it in good repair. If a fence or wall is not being properly maintained, the Zoning Office shall notify the Borough and shall give written notice to the owner to repair or remove the fence or wall within the time stipulated by the notice. Failure to comply with the order shall be considered a violation of this Ordinance.

D. Garage, private.

- 1. All detached private garages shall be setback in accordance with the side and rear setback requirements as stated in this Ordinance. No part of a detached garage shall encroach on the front yard or the line of the front elevation of the principal structure. No part of a detached garage shall encroach on any required setback line.
- 2. For garages less than fifteen (15) feet in height, the side and rear setback requirement shall be seven and a half (7.5) feet.
- 3. For garages greater than fifteen (15) feet in height, the side and rear setback requirement shall be fifteen (15) feet.
- 4. Garages may have only one occupiable space above the parking area and shall not be used as a dwelling unit
- 5. Finishes and architectural style of detached private garages shall be complementary of those of the principal structure.
- 6. The maximum size and height of detached private garages are listed in the Table of Detached Garage Size and Heights (Table 6).

TABLE 6 – DETACHED GARAGE SIZE AND HEIGHTS

Maximum Size and Height of Private Garages		
Lot size	Gross Floor Area	Height of Structure
All Residential Lots	720 sq. ft. (maximum)	Shall not exceed - 15 feet
All Residential Lots	720 sq. ft. to 875 sq. ft. (maximum)	Shall not exceed the height of the primary residence or 28 feet, whichever is less. Rear and side yard setbacks shall be increased by 7.5 feet to 15 Feet.

E. Home Occupational Business.

- 1. Home Occupational Businesses are prohibited in the Borough. Only No Impact Home-based Businesses are permitted in the R District.

F. Outdoor Hydronic Heater.

- 1. Outdoor Hydronic Heaters are prohibited in the Borough.

H. Satellite Dish Antennas.

- 1. Only one satellite dish antenna shall be permitted on a residential lot. The satellite dish antenna must be roof mounted only and is not permitted on the ground or in front yards.
- 2. In the R and PR Districts, the maximum diameter of any satellite dish antenna shall be two-and-a-half (2.5) feet.
- 3. A satellite dish antenna shall not be projected above the peak of a roof. No part of the roof mounted satellite dish shall be greater than three (3) feet from the roof's surface. The antenna shall be mounted in the most inconspicuous location possible and not visible from the public street.
- 4. A satellite dish antenna shall be permitted to be mounted on a flat roof so long as the satellite dish projects less than three (3) feet from the roof surface and is mounted in the most inconspicuous location possible and not visible from the public street.

I. Sheds.

- 1. Sheds are not to be treated as storage buildings.
- 2. The maximum size and height of sheds are listed in the Table of Shed Size and Heights (Table 7).

TABLE 7 – SHED SIZE & HEIGHTS

Maximum Size and Height of Sheds		
Lot size	Gross Floor Area	Height of Structure
All Residential Lots	100 sq. ft. (maximum)	10 ft.

J. Solar Energy System, Small – Roof Mounted.

1. Zoning approval is required for the construction of any solar-energy facility that is an accessory use on any site or lot.
2. Photovoltaic roof mounted solar panels are permitted on the primary structure of the property, the roof of an attached garage the roof of a detached garage, or on the roof of an accessory structure that meets all setback and zoning requirements.
3. The zoning permit application shall indicate the location of the proposed facility, including the percentage of roof coverage.
4. The applicant shall demonstrate through project planning and proposed mitigation that a proposed facility's impacts will be minimized for surrounding properties and the community. This may include, but not be limited to, information regarding site selection, facility design or appearance, buffering, and screening of any ground-mounted electrical and control equipment.
5. Noise from any solar-energy facility shall not exceed fifteen (15) decibels (dB) at the lot line, unless all affected adjacent property owners shall have executed a non-disturbance easement, covenant, or consent which has been recorded with the County. Methods for measuring and reporting acoustic emissions from the facility shall be equal to or exceed the minimum standards for precision described in *AWEA Standard 2.1 – 1989, titled "Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I: First Tier."*
6. Construction of any solar-energy facility shall comply with all applicable rules, laws, and regulations of the United States Federal Aviation Administration (FAA). Documentation of compliance shall be provided to the Borough.
7. To the extent applicable, all solar-energy facilities shall comply with the Pennsylvania Uniform Construction Code (UCC) and the regulations adopted by the Pennsylvania Department of Labor and Industry (PA L&I).
8. Solar-energy facilities shall not display advertising of any kind.
9. Transmission and power lines shall be placed underground or out of sight.
10. No facility shall be attached to a tree, or any other natural object or accessory structure not intended to support such a facility.

K. Storage Building.

1. Storage buildings are only permitted in the PR District.
2. The location of permitted storage buildings is governed by the same dimensional regulations as set forth for the principal use or principal structure or structures of the underlying zoning district.
3. No part of an accessory storage building shall be occupied as a residential living area.
4. The maximum size and height of storage buildings are listed in the Table of Storage Building Size and Heights (Table 8).

TABLE 8 – STORAGE BUILDING SIZE & HEIGHTS

Maximum Size and Height of Storage Buildings		
Lot size	Gross Floor Area	Height of Structure
Lots ≤ 1 Acre	675 sq. ft. (maximum)	15 ft.
Lots > 1 Acre ≤ 2 Acres	800 sq. ft. (maximum)	20 ft.
Lots > 2 Acres	1,000 sq. ft. (maximum)	20 ft.

L. Swimming Pools.

1. In residential areas, above ground pools and accessory decks attached to a pool shall be erected and must comply with the side and rear yard setback requirements. The pool shall not exceed four (4) feet in height and accessories cannot exceed eight (8) feet in height from the ground.
2. In-ground pools shall be enclosed by a fence, as required by the Borough’s Building Code, and shall comply with the applicable rear and side yard setback requirements.
3. Above-ground pools in all zoning districts having vertical barriers, as required by the Borough’s Building Code.
4. Only allowed in rear yard or a side yard provided it is not visible from the street, and not beyond front yard setback, and prohibited in front yard/s.
5. Outdoor Site Illumination Lighting, if any, shall be dark sky compliant light fixtures and shielded and/or reflected away from adjoining properties so that no direct beam of light, but only diffuse or reflected light, enters adjoining properties.

M. Decks.

1. Decks are permitted as an accessory structure and shall only be attached to the principal structure or to an above ground swimming pool. 2. Decks may not encroach into the required minimum side or rear setbacks, including associated stairs. Sport Courts.

- N. Sport Courts permitted in the PR District shall meet the following setback requirements:
- a. All sports courts shall be enclosed by a fence which is a minimum of ten (10) feet in height and a maximum of twelve (12) feet in height and which shall contain openings equal to 50% or more of the surface area of the fence.
 - b. Sport courts shall not be placed over utility lines or utility easements without the approval and permission of the utility owner.
 - c. Sport courts shall be located a minimum of 30 feet from any set back line and cannot be located between the primary structure and the street frontage.

O. Other Structures

Other structures not specifically described in this section, if approved by the Zoning Hearing Board shall meet all requirements of accessory structures. Other Structures shall not be permitted in the area between the primary structure and the frontage. Other structures may not exceed 10 feet in height and the rear and side setback shall be 15 feet.

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Article IV: Express Standards and Criteria for Special Exceptions and Conditional Uses

Section 401: Conditional Uses / Uses Not Listed

- A. It is the intent of this Ordinance to group similar or compatible land uses into specific zoning districts. Uses which are not specifically listed in the Tables of Authorized Principal Uses may be a permitted use if the proposed use is similar to a permitted use listed in the Tables of Authorized Uses (Principal). Similarly, uses which are not specifically listed in the Table of Authorized Principal Uses, may be a Conditional Use if the Principal Use is similar to the Conditional Use listed in the table of Authorized Principal Uses. The Borough belongs to the Joint Comprehensive Plan with the Boroughs of Avalon, Bellevue, and Ben Avon. In the event the use or a similar use not specifically listed in the Table of Authorized Principal Uses is found as a permitted or Conditional Use in the Tri-Borough Zoning Ordinance for the Boroughs of Avalon, Bellevue, and Ben Avon ("Tri-Borough Ordinance"), such proposed use will be denied as such use is available under the Tri-Borough Ordinance. Please refer to the Use Tables in the Tri-Borough Ordinance. If a use is still not listed under this or the Tri-Borough Ordinance, the proposed use will be subject to Article IV as a Conditional Use but only in the PR District.
- B. If a property owner or user asserts that a proposed use is not provided for in the Table of Authorized Uses (Principal and Accessory) the property owner or user shall file an application for a Conditional Use with the Borough. The Borough shall review and decide if the proposed use is similar to another Authorized Use contained in the Table of Authorized Uses (Principal and Accessory) or as a permitted or Conditional Use in the Tri-Borough Zoning Ordinance.
- C. If the Borough finds the use is similar to an existing use contained in the Table of Authorized Uses (Principal and Accessory), it may permit the use subject to the same conditions and requirements of that use including the district in which it may be located.
- D. In considering if a proposed use is similar to an existing Authorized Use contained in the Table of Authorized Uses (Principal and Accessory), and/or is not similar to a permitted or Conditional Use in the Tri-Borough Zoning Ordinance, the Borough is not limited to assertions of the applicant that the use is similar to a specific listed use, but instead may consider all Authorized Uses (Principal and Accessory) contained in the Tables of Authorized Uses, or permitted or Conditional Uses in the Tri-Borough Zoning Ordinance.
- E. If the Borough finds the use is similar to an existing use, all other provisions of this Ordinance and all codes and Ordinances of the Borough shall apply.

Section 402: Conditional Use Procedure for Approval

- A. Procedure: The Borough Council shall consider the conditional use application and render its decision in accordance with the requirements of the MPC and this Ordinance and subject to the following:
 - 1. If a land development approval is required for the Conditional Use, the application for Conditional Use approval and the application for approval of a land development required by the Borough's adopted SALDO, which is Allegheny

County's SALDO, may be processed concurrently or separately at the discretion of the applicant, provided that all application requirements of both ordinances for a Conditional Use and the land development plan are met.

- B. Application Procedure. The applicant shall submit an application for development for approval of a Conditional Use to the Zoning Officer or designated staff person of the Borough. The application for development shall indicate the Section of this Ordinance under which the conditional use is sought and shall state the grounds upon which it is requested.
- C. Application Content. An application for approval of a Conditional Use shall include the following:
 - 1. One (1) copy of the application form provided by the Borough and completed by the applicant. If the applicant is other than the landowner, the landowner's authorization of the application and the nature of applicant's interest in the site shall accompany application.
 - 2. Five (5) paper copies and one (1) electronic copy of a site plan meeting the requirements for a preliminary plan for land development as set forth in the County SALDO and, in addition, demonstrating conformity with all requirements of this Ordinance.
 - 3. The Governing Body may charge fees for expenses related to the public hearing pursuant to Article IX of the MPC and as established by resolution of the Council.
- D. Administrative review and determination of complete application. Within fourteen (14) working days after a conditional use application is submitted, the Zoning Officer shall review the Conditional Use application for completeness of required submission items. Within said time, the Zoning Officer shall notify the applicant in writing if the Conditional Use application is incomplete, stating the deficiencies in the application, and returning the filing fee. The applicant may reapply, submitting the fee and missing material at any time. The applicant, however, may elect to proceed with the application despite the stated deficiencies and formally request in writing that the hearing be scheduled.
- E. The Zoning Officer shall submit the complete Conditional Use application to the Borough Planning Commission for review and recommendations. The Planning Commission shall review the application and make a written recommendation to the Council. If the proposed development is also a land development, the Planning Commission shall also make a recommendation under the provisions of the County SALDO.
- F. The Council shall hold a hearing, in accordance with Section 913.2 of the MPC, 53 P.S. 10913.2, as amended, and public notice shall be given as defined in this Ordinance and in accordance with Section 908(1) of the MPC, as amended. The hearing shall be commenced by the Council within sixty (60) days from the date of receipt of the applicant's completed application unless the applicant has agreed in writing to an extension of time.
- G. Conditions. In considering any Conditional Use, the Council may attach reasonable conditions and safeguards, in addition to those expressed in this Ordinance, as the Council deems necessary to implement the purposes of the MPC and this Ordinance. A

violation of such conditions and safeguards, when made a part of the terms under which the Conditional Use is granted, shall be deemed a violation of this Ordinance.

- H. Written Decision in Accordance with Section 908(10) of the MPC. The Council 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 Council. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons, therefore. 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 no later than the day following its date. To all other persons who have filed their name and address with the board not later than the last day of the hearing, the 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.
- I. Expiration. Conditional Use approval shall expire automatically without written notice to the applicant if no application for subdivision and land development, zoning approval for structures, zoning approval for occupancy and use or a grading or building permit to undertake the work described in the conditional use approval has been submitted within twelve (12) months of said approval, unless the Zoning Officer extends the conditional use approval upon written request of the applicant received prior to its expiration. The maximum extension permitted shall be one (1) twelve (12) month extension. The Zoning Officer may grant an extension for good cause shown by the applicant and provided that the extension will not be contrary to the purposes of this Ordinance.
- J. Effect on Prior Approvals. Conditional Use approval, granted prior to the effective date of this Ordinance, shall expire automatically without written notice to the developer if no application for subdivision and land development, zoning approval for structures, zoning approval for occupancy and use, or a grading or building permit to undertake the work described in the Conditional Use approval has been submitted within twelve (12) months of the effective date of this Ordinance or as specified in the approval, unless the Council, in its sole discretion, extends the conditional use approval upon written request of the applicant received prior to its expiration. The maximum extension permitted shall be one (1) twelve (12) month extension.
- K. All provisions of the County SALDO which are not specifically modified by the Council in approving a Conditional Use, shall apply to any conditional use involving subdivision and land development.
- L. Burden of Proof. In any application for Conditional Use, the applicant shall have the persuasion burden and presentation duty to show compliance with this Ordinance, and the applicant shall have the persuasion burden to show the applicant's request is not detrimental to the health, safety, and welfare of the neighborhood.

Section 403: Special Exceptions

- A. Purpose: Special Exception Use provisions apply to all uses identified as Special Exception Uses in the Tables of Authorized Uses (Principal and Accessory). The Special Exception Use approval process is designed to allow the ZHB to review and approve certain uses that may have additional impacts on the community and the environment beyond those typical for uses that are allowed by right. The intent is to allow certain

specified uses identified as Special Exception Uses in the Tables of Authorized Uses (Principal and Accessory) to be reviewed by the ZHB so that they may determine use compliance with this Ordinance and attach reasonable conditions and safeguards, in addition to the standards and criteria expressed in this Ordinance as the ZHB may deem necessary to implement the purposes of the Zoning Ordinance or MPC.

- B. Not all Special Exception Uses authorized in the Tables of Authorized Uses (Principal and Accessory) have express specific standards for the use identified in this Section. If express specific standards are not listed for a use identified as a Special Exception or Conditional Use in the Table of Authorized Uses (Principal and Accessory), the general standards for all Conditional Uses and Uses by Special Exceptions shall still apply. In addition, the Council may apply conditions identified in the Express Specific Standards for Specific uses, on these uses, upon a finding that the use is similar in nature to a specific use that is listed.
- C. If the Special Exception Use involves physical improvements that have not been substantially initiated within two (2) years of the date of approval or authorization approval of the special exception, the approval shall lapse.
 - 1. The Special Exception Use approval shall also lapse if, after starting construction, the construction is discontinued for a period of two (2) years.
 - 2. A Special Exception Use approval shall not lapse if, the special exception is associated with a current land development approval.

Section 404: Special Exception Procedure for Approval

- A. Procedure: The ZHB shall consider Use by Special Exception applications and render its decision in accordance with the requirements of the Pennsylvania MPC and this Ordinance and subject to the following:
 - 1. If land development approval is required for the Use by Special Exception, the application for approval of a land development required by the County SALDO shall be submitted to the Borough Planning Commission and Council following approval of the use by Special Exception by the ZHB.
 - 2. Application Procedure. The applicant shall apply for approval of a Special Exception Use to the Zoning Officer or designated staff person of the Borough. The application form shall indicate the Section of this Ordinance under which the Special Exception Use is sought and shall state the grounds upon which it is requested.
 - 3. Application Content. An application for approval of a Special Exception Use shall include the following:
 - a. One (1) copy of the application form provided by the Borough and completed by the applicant. If the applicant is other than the landowner, the landowner's authorization of the application and the nature of applicant's interest in the site shall accompany application.
 - b. Five (5) paper copies and one (1) electronic copy of a site plan meeting the requirements for a preliminary plan for land development as set forth in the

County SALDO and, in addition, demonstrating conformity with all requirements of this Ordinance.

- c. The Governing Body may charge fees for expenses related to the public hearing pursuant to Article IX of the MPC and as established by resolution of the Council.
4. Administrative review and determination of complete application: Within fourteen (14) working days after a Special Exception Use application is submitted, the Borough shall review the application for completeness of required submission items. Within said time, the Borough shall notify the applicant in writing if the application is incomplete and rejected, stating the deficiencies in the application, and returning the filing fee. The applicant may reapply, submitting the fee and missing material at any time.
5. A hearing pursuant to public notice, as defined herein, shall be commenced by the ZHB within sixty (60) days of submission of a complete and properly filed application. Said hearing shall be conducted in accordance with the procedures specified by this Ordinance and Section 908 of the MPC.
6. Burden of Proof: In proceedings involving a request for a Use by Special Exception, both the duty of initially presenting evidence and the burden of persuading the ZHB that the proposed use is authorized as a Use by Special Exception and satisfies the specific or objective requirements for the grant of a Use by Special Exception as set forth in this Ordinance rest upon the applicant. The applicant shall demonstrate that the request is not detrimental to the health, safety, and welfare of the neighborhood.
7. Conditions: In considering any Special Exception Use, the ZHB may attach reasonable conditions and safeguards, in addition to those expressed in this Ordinance, as the Board deems necessary to implement the purposes of the MPC and this Ordinance. A violation of such conditions and safeguards, when made a part of the terms under which the Special Exception Use is granted, shall be deemed a violation of this Ordinance, and upon finding of violation, shall require that the Special Exception use be discontinued until the violation is corrected.

Section 405: General Standards for all Conditional Uses and Special Exceptions

- A. When considering applications for Conditional Uses and Uses by Special Exceptions the following general standards for all Conditional Uses and Special Exception Uses shall be met:
 1. In accordance with the Comprehensive Plan the use shall be consistent with the spirit, purposes, and the intent of this Ordinance.
 2. Compliance with this Ordinance. The applicant shall establish by credible evidence that the application complies with all applicable requirements of this Ordinance. The applicant shall provide sufficient plans, studies, or other data to demonstrate compliance.

3. Compliance with other laws. The approval may be conditioned upon the applicant demonstrating compliance with other specific applicable local, state, and federal laws, regulations, and permits.
4. The application shall include proper site layout, internal circulation, parking, buffering, and all other elements of proper design as specified in this Ordinance.
5. The applicant shall establish that the traffic from the proposed use will be accommodated in a safe and efficient manner that will minimize hazards and congestion and provide adequate access arrangements after considering any improvements proposed to be made by the applicant as a condition on approval. Ingress, egress, and internal traffic circulation shall be designed to minimize congestion during peak usage of the facility.
6. The proposed use shall not substantially change the character of any surrounding residential neighborhood after considering any proposed conditions upon approval.
7. The proposed use shall not create a significant hazard to the public health safety, and welfare.
8. The proposed use shall be suitable for the property in question, and designed, constructed, operated, and maintained to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity.
9. Outdoor lighting, if any, shall be dark sky compliant and shielded and/or reflected away from adjoining properties so that no direct beam of light, but only diffuse or reflected light, enters adjoining properties.

Article V: Supplemental Regulations

Section 501: Performance Standards

- A. Vibrations. Except for vibrations emanating from construction or maintenance activities between 7:00 a.m. and 9:00 p.m., vibrations detectable without instruments on neighboring property in any district shall be prohibited. The prohibition on vibrations shall also be subject to any other separate ordinance adopted by the Borough.
- B. Glare. There shall be no direct or sky-reflected glare, whether from floodlights or from high-temperature processes (for example, combustion or welding), to be visible from within any district. All outdoor site lighting shall be dark sky compliant.
- C. Fire hazards. Any activity involving the use or storage of flammable or explosive materials shall be protected by adequate firefighting and fire-suppression equipment and by such safety devices as are normally used in the handling of any such material.
- D. Radioactivity or electrical disturbance. No activity shall emit dangerous radioactivity or electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance.
- E. Odors. No malodorous gas or matter shall be permitted which is discernible on any adjoining lot or property.
- F. Air pollution. There shall be no emission of smoke, ash, dust, fumes, vapors, or gases which violates applicable Federal, State, or County laws and regulations.
- G. Erosion. No erosion by wind or water shall be permitted that will carry objectionable substances onto neighboring properties.
- H. Determination of compliance with performance standards. During the review of an application for zoning approval, the applicant may be required to submit data and evidence documenting that the proposed activity, facility, or use will comply with the provisions of this Section. In reviewing such documentation, the Borough may seek the assistance of any public agency having jurisdiction or interest in the issues and the Borough may seek advice from a qualified technical expert. All costs of the expert's review and report shall be paid by the applicant. A negative report by the technical expert and the applicant's refusal or inability to make alterations to ensure compliance with this Section shall be a basis for denying approval of the application.

Section 502: Screening and Landscaping for Subdivisions and Land Developments

- A. Landscape Plan.
 - 1. A landscaping plan, with detailed drawings, must be submitted with a required subdivision or land development or in the case where subdivision and/or land development approval are not required prior to building permit application. The landscaping plan must contain and show the following information:

- a. All required buffer areas with proposed plantings (identifying each proposed tree, bush, or shrub) drawn to scale and identifying size of plantings.
- b. All required plantings (identifying each tree, bush, shrub, the use of sod or seeding, etc.) drawn to scale and identifying size of plantings.
- c. Any existing trees or vegetation which are to be preserved, accurately identifying their relative location.
- d. Any existing trees or vegetation which will be removed, accurately identifying their relative location.
- e. All areas of a lot not covered by building or impervious material shall be maintained as landscaped or natural areas.

B. Buffer Yards Required as Part of a Subdivision and/or Land Development:

1. Applicants shall demonstrate through the submission of a landscape plan that sufficient landscaping and buffering is provided to minimize impact to adjacent uses. When required a minimum of two deciduous trees and three evergreen trees shall be required for every 100 ft. of property line where buffering is required. In addition, five shrubs shall be provided for every 100 ft. of property line where buffering is required. Buffer yards are required to be a minimum of 10 ft. in width. The Borough encourages flexibility in design and will entertain alternative buffering plans where the applicant demonstrates the buffering plan is equal to or better than the requirements of this ordinance and meets the intent of this section. The use of decorative walls, decorative fences and landscape mounds are allowable to meet the requirements of this section.
2. Buffer areas required. Buffer areas are required under the following circumstances:
 - a. Along Public Roads. A landscape buffer will be required for all new nonresidential development, and which abut a public street. The buffer yard shall be provided for the entire length of the public street frontage.
 - b. Parking Lots and Loading Areas. A landscape buffer will be required around the perimeter of parking lots and loading areas in all zoning districts.
 - c. Adjacent Uses. Buffer yards are intended to minimize impacts of different uses on adjacent sites or properties. When new development is proposed buffer yards will be required along the perimeter of the site. Buffer yards in the R District may be relaxed or eliminated at the discretion of the Borough Council where a development does not propose an adjacent, more intensive land use.

C. General Provisions for Landscaping Plans for a Subdivision and/or Land Development:

1. Openings shall be permitted to cross a required buffer area. Plantings in required buffer areas shall be located to not obstruct visibility for traffic entering or leaving the site.
2. Maintenance Required. It shall be the responsibility of the owner/applicant to assure the continued growth of all required landscaping and/or to replace the same

in the event of frost, vandalism, disease, or other reasons for the discontinued growth of the required trees, shrubs, and bushes. Replacement shall be no later than the subsequent planting season.

3. Conflict between buffer areas and building setback requirements. When the width of a required buffer area conflicts with the minimum building setback requirements of this Ordinance the greater distance shall apply. The buffer area planting requirement shall be adhered to regardless of the setback requirement.
4. Storm water management facilities in buffer areas. Storm water management facilities and structures may be maintained within a buffer area, but the existence of such facilities or structures shall not be a basis for a failure to meet the planting requirements.
5. No vegetation classified as noxious or invasive by the Commonwealth of Pennsylvania or by the USDA shall be permitted or planted as new plantings.

D. Plant Sizes Required as part of a Subdivision and/or Land Development:

1. Deciduous Trees. All trees required to be planted shall be a minimum of two inches in diameter at a point one foot above the ground. All required trees shall be a minimum of six feet in height at time of planting measured from the ground adjacent to the planted tree to the top of the tree.
2. Evergreen Trees. All evergreen trees required to be planted shall be a minimum of 6 foot in height at the time of planting measured from the ground adjacent to the planted tree to the top of the tree.
3. Shrubs. All shrubs required to be planted shall be a minimum of 24 inches in height at planting.

Section 503: Residential Use Lighting Standards

Any lighting associated with residential properties and purposes shall be designed to reflect the lighting away from adjoining properties and shall not be directed onto neighboring properties.

Section 504: Nonresidential Use Lighting Standards

All exterior parking lots, driveways, vehicular access aisles, pedestrian access areas, sidewalks, pathways, and loading spaces shall be sufficiently illuminated to provide safe movements on site.

- A. Illumination shall be by sharp cut-off fixtures with flush-mounted lens cap, with the following exceptions.
1. Decorative street-lighting along streets (not including parking lot areas) are exempt from this requirement. However, streetlight poles for decorative street-lighting shall not exceed eighteen (18) feet in height, measured from finish grade to the top of the fixture.
 2. Decorative lighting along pedestrian walkways in front of buildings and in pedestrian plazas is exempt from this requirement. However, light poles for the

decorative lighting shall not exceed fifteen (15) feet in height, measured from finished grade to the top of the fixture.

- B. Fixtures (including those mounted on a building or other structure) shall be mounted parallel to the ground surface, with the following exceptions.
 - 1. Decorative street-lighting along streets, decorative lighting along pedestrian walkways in front of buildings, and decorative lighting in pedestrian plazas are exempt from this requirement.
 - 2. Lighting for the purpose of highlighting a structure or landscape feature shall be exempt from this requirement.
- C. Pole height shall be a maximum of eighteen (18) feet.
- D. Illumination shall not exceed one (1) footcandle at all property boundaries. The one (1) footcandle illumination shall be measured horizontally on the ground surface and vertically at a five (5) foot height at the property lines.
- E. All site lighting including architectural, landscape, and canopy lighting shall be from a concealed source that is not visible from the property boundaries or public street ROW. Lighting associated with a freestanding or building canopy shall be recessed into the canopy. Dark Sky design parameters shall be employed in all lighting installations for all uses in the Borough.

Section 505: Outdoor Storage

- A. Storage and display of materials outside a completely enclosed structure shall not be permitted.
- B. In all nonresidential zoning districts, all organic rubbish and discarded materials shall be contained in tight, vermin-proof dumpsters which shall be screened from public view by an opaque fence, masonry wall or dense, compact evergreen hedge which is at least six (6) feet in height. Containers shall not be permitted in the front yard.
- C. Storage of construction materials not associated with an active, on-site construction project or permit shall be prohibited.

Section 506: Utilities

All electrical, telephone, cable television, and other communication system service laterals on a lot or site shall be installed underground for new developments.

Section 507: Exterior Finishes

The exterior finish of any new buildings or additions, shall have a finished material such as brick, wood, siding, metal, glass, or any other finished facing materials approved by the Zoning Officer and shall extend to within an average of twelve (12) inches or one (1) foot of finished grade. Plain masonry block or poured concrete shall not be considered a finished product; nor shall either of these construction surfaces be considered as a finished product if painted.

Section 508: Screening of Roof Equipment

Mechanical equipment designed to be located on the roof of a structure/building must be screened with typical building materials. The screen must be designed to complement building designed and conceal this equipment from neighboring property owners and the public on adjacent roadways.

Section 509: Temporary Uses

- A. All Temporary Uses that exceed twelve (12) hours total which are permitted by this Ordinance shall be required to obtain a Zoning Permit from the Borough.
- B. Authorized Temporary Uses in the Single-Family Residential District.
 - 1. Private garage/yard sale/estate sale during daylight hours, from 8:00am to sundown, is permitted to occur only once every twelve (12) months.
 - 2. Temporary Storage Container or PODs associated with moving purposes and cannot be on site more than 14 days.
 - 3. Other temporary uses, as approved by the Borough Council.
- C. Authorized Temporary Uses in the Private Recreation District. A zoning permit is required for the following temporary uses in the Private Recreation or Community Recreation Districts:
 - 1. Temporary sales events.
 - 2. Temporary Storage Container or PODs. Time permitted for a POD shall be determined by the Zoning Officer or Borough Council.
 - 3. Other temporary uses, as approved by the Borough Council.
- D. Conditions of Approval for Temporary Uses.
 - 1. All permitted temporary uses shall be removed from the parcel as stipulated by the Zoning Officer or Borough Council.
 - 2. Adequate traffic and pedestrian access and off-street parking areas must be provided to the extent possible.
 - 3. The local Chief of Police and Fire Chief shall be notified in writing of the temporary use.
 - 4. The applicant shall own the land on which the temporary use is to be located, except for construction activities.
 - 5. The applicant shall be responsible for conducting the temporary use or activity in a safe manner within the conditions set forth by the Borough. This includes, but is not limited to, provisions for security, trash pick-up, and daily maintenance of the grounds.

6. The Zoning Officer may refer any application for a temporary use to the Borough Council for review and recommendation prior to issuance of the zoning permit.
 7. The provisions of this Section in no way shall be deemed to authorize the outdoor display or sale of automobiles, trailer, or equipment rentals, used furniture, appliances, plumbing or building materials, or similar display or sale in any district nor any commercial business.
- E. Temporary Construction Structures. Temporary structures and trailers used in conjunction with construction activity may not be moved onto a site until the building permit has been issued and must be removed within thirty (30) days after completion, ceasing, or interruption of construction. Permits for such temporary structures shall not exceed one (1) year.

Section 510: Grading and Excavation

- A. Earth movement shall result in finished grades that do not exceed two (2) horizontal to one (1) vertical unless a report prepared by a professional engineer stipulates that specific steeper slope in a particular location will not compromise the stability of the completed slope or areas above or below it or threaten adjacent streets or property.
- B. Topsoil and all vegetation existing on the area to be graded shall be removed prior to grading. Topsoil shall be stockpiled for later return to the new slope and protected from stormwater runoff.
- C. Graded slopes shall be planted with a fast-catching grass cover as soon as grading is completed and protected by burlap or equivalent covering until the grass is established.
- D. Where fill is used, it shall be clean fill and placed in layers not exceeding eight (8) inches in depth, thoroughly compacted, and keyed into undisturbed earth at the edges of the fill.
- E. Grading work performed on any lot within the Borough shall not adversely affect neighboring properties and shall not result in stormwater being diverted onto neighboring properties.
- F. Where a location outside of the Borough is used to dump excess cut or fill for an approved project, the off-site location shall also be a permitted construction site.

Section 511: Short-term Rental (Accessory or Principal)

- A. Accessory or principal use short-term rental units are prohibited in the Borough.
- B. Rental properties within the Borough must adhere to the requirements and regulations outlined in Borough Ordinance No. 316, adopted November 14, 2012, as amended, regarding registration of rental properties.

Article VI: Parking

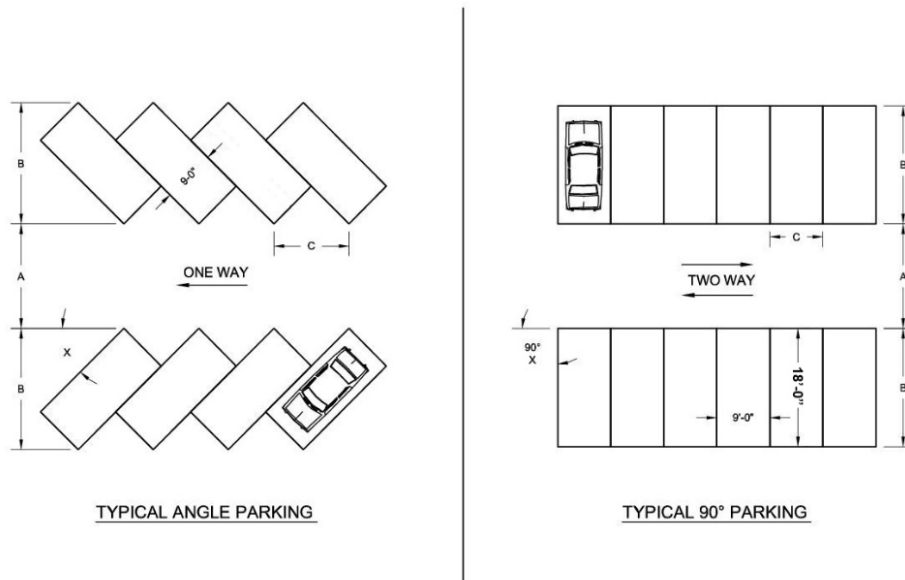
Section 601: Parking

- A. This Section sets minimum standards for off-street requirements for new construction and expansion of or changes to existing uses. The purpose of this Section is to ensure that uses have a minimum level of on street and off-street parking to avoid congestion on surrounding streets.
- B. The parking requirements in this section are in addition to the various regulations, requirements, and stipulations set forth in regard to on-street parking requirements and regulations, street cleaning, etc. which are set forth in Borough Ordinance No. 245 and Borough Ordinance No. 246, adopted December 9, 1986, as amended.

Section 602: Parking Dimensions

- A. Off-street parking spaces shall have a minimum dimension as established in **Figure 2**.
- B. The minimum width of aisles internal to a parking lot or structure shall be as prescribed in **Figure 2**, if aisles having two-way traffic are required to provide a width of twenty-four (24) feet regardless of angle of parking.

FIGURE 2 – PARKING DIMENSION STANDARDS



MINIMUM PARKING SPACES AND AISLE DIMENSIONS			
PARKING ANGLE (X)	A	B	C
30°	11'-0"	17'-9 1/2"	18'-0"
45°	13'-0"	20'-6"	12'-9"
60°	18'-0"	21'-10"	10'-4 1/2"
70°	19'-0"	21'-10 1/2"	9'-7"
80°	24'-0"	21'-3"	9'-1 1/2"
90°	24'-0"	18'-0"	9'-0"

NOTE: THE MAXIMUM PERMISSIBLE SLOPE OF ANY PARKING AREA SHALL BE FIVE (5%) PERCENT.

Section 603: Parking Lot Layout and Design Standards

- A. Internal driveway system. All off-street parking lots with greater than 200 parking spaces shall include a separate internal driveway system which connects individual aisles to a public ROW. The purpose of the internal driveway system is to facilitate pedestrian and vehicular circulation, creating an interconnected circulation network.
 - 1. Internal driveways shall be provided to permit on-site access to all parking and loading facilities and to permit emergency vehicle access.
 - 2. Internal driveway systems shall be designed to connect into adjacent properties, where practical. The Borough may require an easement be placed on the property to allow for future connection to the adjacent properties.
- B. Joint access to abutting parcels shall be provided wherever practical. This will result in the development of shared parking areas at vehicular access points.

- C. All parking areas containing three (3) or more parking spaces shall include a turnaround that is designed and located so that vehicles can enter and exit the parking area without backing onto a public ROW.
- D. Except as otherwise permitted, off-street parking facilities shall be located on the lots on which the use or structure for which they are provided is located.
- E. All vehicular turning movements and maneuvering must take place on site.
- F. The end of each parking bay shall have an end cap island of at least five (5) foot in width. The end cap island area shall not be used in meeting required minimum parking space or travel aisle dimensions.
- G. All off-street spaces shall be adequately marked as required by the Borough Construction Standards.
- H. All off-street spaces shall be constructed of an approved all-weather surface to provide safe and convenient access in all seasons. Said all weather surface shall be constructed only of concrete, asphalt or brick or other paved surface approved by the Borough Engineer. The construction of all such off-street loading spaces shall be subject to inspection and approval by the Borough Engineer, concerning the materials of construction and specification of construction, prior to, during and after the completion of construction of such off-street loading spaces.
- I. Parking Lot Landscaping. All off-street parking lots shall include landscaping as required by the County SALDO.
- J. Parking Lot Curbs. All off-street parking lots, including loading areas, service areas, and driveways, shall be curbed. All curbing shall be constructed only of concrete, asphalt or other material approved by the Borough Engineer.
- K. Parking Lot Lighting. All off-street parking lots shall include lighting as required by §503 of this Article.
- L. Off-street parking shall not be permitted in any required residential yard area except on a permitted driveway.
 - 1. Residential driveways are subject to the design and location standards established in the Ben Avon Heights Borough Construction Standards and the County SALDO.

Section 604: Accessible Parking Requirements

- A. Shall meet the standards of the most recently adopted Pennsylvania Uniform Construction Code (UCC), as may be amended from time to time.

Section 605: Single Family Parking Requirements

- A. In addition to the other standards of this Section, the following regulations shall apply to parking spaces in the R Zoning District:

1. All new residential dwelling units constructed in the Borough must provide off-street parking spaces as outlined in this Ordinance.
2. Parking spaces for all detached residential uses shall be located on the same lot as the use which they are intended to serve. Each required off-street parking space shall have direct access to a public ROW.
3. The term "parking space" shall include but is not limited to a driveway, and any other area provided for parking a vehicle. A Parking pad may be approved by the Borough where an on-site driveway is considered not feasible.
4. Each parking space provided, constructed, or maintained for parking of vehicle(s) pursuant to the provisions of this Ordinance must have a width not greater than fifty (50%) percent of the width of the front of the dwelling or building structure, or 20 feet, whichever is less, located on the same lot.
5. Parking on lawns is prohibited, except for temporary parking related to construction or moving activity on the property.

Section 606: Parking Ratios

- A. Applicability: The minimum parking ratio standards apply to all zoning districts except as may be modified in the provisions of this Ordinance.
- B. Table 9 establishes the minimum numbers of parking spaces required for the uses indicated. Parking requirements may be met by one (1) or more of a combination of the following methods:
 1. On-site parking. A use shall provide the minimum number of required spaces for all uses located on the lot or site pursuant to Table 9. Only spaces that are designed consistent with this Section are counted toward the minimum parking required. The following provision apply when providing the minimum number of required on-site parking spaces:
 - a. Required parking for single family dwellings may be set up as tandem parking and do not require separate access to each required space.
 - b. No part of a parking or loading space required for any building to comply with this Ordinance shall be included as part of a parking or loading space required for another building.
- C. Uses not identified: The Borough Planning Commission shall review and make a recommendation to Borough Council the parking requirement for uses that do not correspond to the categories listed in Table 9. In such instances, the applicant shall provide adequate information by which the proposal can be reviewed, which includes but may not necessarily be limited to the following:
 1. Type of uses.
 2. Number of employees.
 3. Building design capacity.
 4. Building occupancy load.

5. Square feet of sales area and service area.
 6. Parking spaces proposed on site.
 7. Number of accessible parking spaces.
 8. Parking spaces provided elsewhere.
 9. Hours of operation.
- D. Multiple uses: Where the application identifies accessory or multiple uses within a structure or multiple structures, the minimum standards shall apply to each use or the gross floor area of each structure.
- E. Fractional measurements: When units or measurements determining the number of required off-street parking spaces result in a fractional space, then such fraction shall be rounded up to require a full off-street parking space.
- F. Parking needs analysis: The number of off-street parking spaces and loading spaces required by Table 9 of this Ordinance may be reduced if a parking needs analysis demonstrates that the specified ratios in Table 9 exceed the total parking demand of all uses on the subject lot at anyone (1) time. The parking needs analysis is subject to the following conditions:
1. The parking needs analysis shall be signed and sealed by a licensed engineer.
 2. The parking needs analysis, in the form of a narrative, shall include all information outlined in §606.C of this Ordinance.
 3. The parking needs analysis shall be approved by Borough Council.
 4. The landowner or developer shall update the Borough-approved parking needs analysis upon any change in use of the subject lot.

TABLE 9 – PARKING RATIOS

LAND USE/ACTIVITY	MINIMUM VEHICLE SPACES
Single-family Dwelling	2 per dwelling unit
Essential Services	None
Park	Determined as per parking needs analysis
Private Recreation	1.5 per 500 square feet of gross floor area for indoor facilities and 1 per every 3 participants at maximum utilization for outdoor facilities
Uses Not Identified	Subject to §606.C

Section 607: Off-street Loading and Unloading

Intent. All new nonresidential buildings shall provide required off-street loading berths in accordance with this Ordinance. In all zoning districts, whenever a new construction is proposed, off-street loading berths shall be provided in accordance with the requirements of this Section.

- A. Off-street loading design.
 - 1. Size. Each loading berth shall be at least sixty-five (65) feet in length and twelve (12) feet in width with an overhead clearance of fourteen (14) feet. The area used for loading berths shall not be used to satisfy parking area requirements and shall not block any driveway used for circulation through the site.
 - 2. Access. Loading berths shall be designed to provide sufficient turnaround area so that vehicles are not required to back onto public streets and the design shall be subject to review and approval by the Borough Engineer. Loading berths shall have direct access to a driveway and shall be maintained free from obstruction.
 - 3. Location. All loading berths shall be located on the same lot with the principal use they are intended to serve. No loading berth shall be in a required front yard. Loading berths shall be located at least thirty (30) feet from the nearest point of intersection of any two (2) streets.
 - 4. Screening. Loading berths shall be screened when facing any residential use or residential zoning district.
 - 5. Surfacing. All loading berths shall have a paved, concrete, or bituminous surface, graded with positive drainage to dispose of surface water.
 - 6. Lighting. Any lighting used to illuminate loading berths shall be shielded from any adjoining residential use or zoning district and away from any street or highway.
- B. Off-street loading requirements. In all zoning districts, every use which requires the receipt or distribution, by tractor-trailer, of material or merchandise, shall provide off-street loading berths in accordance with the following requirements:
 - 1. Private recreational facilities and similar uses which receive deliveries by tractor-trailer shall provide the number of off-street berths as required in Table 11.

TABLE 10 - BERTHS REQUIRED (PRIVATE RECREATION BUILDINGS)

Gross Floor Area (square feet)	Number of Berths Required
Under 40,000	None
40,000 to 59,999	1
60,000 to 99,999	2
100,000 to 160,000	3
Over 160,000	4

2. Any other business that is expected to have deliveries from large vehicles not specifically identified herein may be required to provide loading berths in compliance with this Section at the discretion of the Borough.
3. In addition to required off-street parking and loading facilities, adequate storage areas for vehicles awaiting loading and unloading shall be provided. Under no circumstances shall vehicles be stored on or block access to a public ROW.

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Article VII: Signs

Section 701: Purpose

- A. Purpose. The intent of this Article is to provide for the use of signs as a means of identification while maintaining and enhancing the physical environment, aesthetic character, and public safety of the community. The purpose of this Article is:
 - 1. To require zoning approval for signs in all zoning districts subject to the standards and requirements of this Article.
 - 2. To prohibit signs not expressly permitted by this Article.

Section 702: Applicability

- A. The regulations contained in this Section shall apply to all signs in all zoning districts. No sign may be erected, placed, established, painted, created, altered, or maintained except in conformance with the standards, procedures, regulations, and requirements contained herein.
- B. Method of sign authorization and approval. For the purposes of this Ordinance, signs shall be authorized for approval pursuant to the following:
 - 1. Authorized signs are those for which a zoning approval has been issued by the Borough Council following a review of an application if the application indicates compliance with this Ordinance.
 - 2. Exempt uses are signs that are authorized but that are exempt from regulation under this Ordinance and do not require zoning approval.
 - 3. Prohibited signs are those not authorized by this Ordinance nor exempt from regulation.
- C. Accessory Uses. Signs shall be considered accessory uses on the lot or site they are located and subordinate to the principal use of the lot. Signs shall be subject to the General Standards of all Accessory Uses and Structures contained within Article III of this Ordinance in addition to the requirements of this Article.
- D. Alteration of Sign Face. The physical alteration of a sign face or supporting structure shall be considered the same as construction of a new sign which shall require zoning approval and conformity to all the requirements of this Article.
- E. Signs on Public Property. Any sign installed or placed on public property or within a public ROW, except in conformance with the requirements of this Article shall be forfeited and is subject to confiscation in addition to other remedies the Borough Council shall have pursuant to this Ordinance.
- F. Enforcement and Remedies. Enforcement and remedies of this Article shall be pursuant to the provisions of this Ordinance and any other enforcement or remedies pursuant to state and federal law.

Section 703: Types of Signs

- A. For the purposes of this Section, all signs shall be classified by the definitions provided in §202 of this Ordinance.

Section 704: Prohibited and Exempt Signs

- A. Exempt Signs: The following signs shall be exempt from these regulations:
1. Holiday decorations displayed for recognized state and federal holidays.
 2. Official notices authorized by a court, public body, or public safety official.
 3. Flags of a governmental organization.
 4. Signs authorized by the Borough such as street signs, safety control signs, and traffic control signs.
 5. Public notice / public warning signs.
 6. Auction, garage sale or yard sale signs, which are Temporary Signs.
 7. Address numbering.
 8. Construction sign (temporary, only during the period of active construction).
 9. Signs of any type placed on public or parks property by authorization of the Borough (Temporary or Permanent).
 10. Real estate signs which advertise the sale of the premises upon which the said sign is located provided that the sign only relates to the sale of the property on which it is displayed. No more than one (1) such sign may be placed upon any property in single and separate ownership and may face the street.
 11. Signs announcing candidacy for public office or for a vote on a public referendum placed on public property. Such signs shall not be installed on Borough-owned structures, planters, or fencing. Political signs are permitted between the Borough Park fence line and the right-of-way of adjacent State roads. Signs are not permitted within the fence or within the fence line and/or the legal boundary of the park unless signs erected by the Borough.
 12. Temporary Signs. A temporary sign not exceeding six (6) square feet in total gross area for each exposed face may be permitted for a period not to exceed five (5) days and shall be removed immediately after the termination of the activity, service, project, or sale, provided the sign is safely installed and is consistent with the area where it is to be located. There shall be no more than one (1) permit for temporary signs issued for the same premises within one (1) calendar year.
 13. Temporary yard signs that do not exceed four (4) square feet in total gross area and that promote community activities or events, children's names and/or sports teams, seasonal signs, and other similar signs are permitted on residential property.
- B. Prohibited Signs: The following signs shall not be permitted in any zoning district:
1. Animated, Self-Illuminated or Moving.
 2. Awning or Canopy.

3. Banner.
4. Billboards.
5. Commercial pennants (including “swooper flags”), non-governmental flags, or streamers.
6. Any sign containing information which states or implies that a property may be used for any purpose not permitted under the provisions of this Ordinance.
7. Signs that resemble traffic signals or any sort of traffic device.
8. Signs that exhibit obscene or pornographic statements, words, or images, and statements or words equating to terroristic threats.
9. Off-premises sign.
10. A-Frame Sandwich Board sign, unless promoting a school related event or community function. A-Frame signs supporting community or school events not exceeding three (3) feet by four (4) feet in size shall be permitted three (3) weeks prior to the event date and shall be removed within three (3) days after the event.
11. Digital sign.
12. Marquee sign.
13. Multi-face Sign.
14. Pole sign.
15. Roof sign.
16. Wall sign.
17. Wall plaques, Memorial or Historic Structure designation signs, except as approved by Borough Council.
18. Signs on trees, utility poles, and traffic devices.
19. Signs that are hazardous to public safety and/or are in the public ROW.

Section 705: Determining Sign Area and Height

A. The following shall control the computation of sign area and height:

1. Computation of Area of Single-faced Signs. The area of a sign face shall be computed by means of the smallest square or rectangle that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise meets zoning ordinance regulations and is clearly incidental to the display itself.
2. Computation of Height. The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of (1) existing grade prior to construction or (2) the newly established grade after construction, exclusive of any filling, berm, mounding, or excavating solely for the purpose of locating the sign. In cases in which the normal grade cannot reasonably

be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the zone lot, whichever is lower.

Section 706: Permitted Signs in the Residential District

- A. In the R Residential District, only the following exterior signs shall be permitted. No ground or pole signs shall be permitted.
 - 1. A nameplate not exceeding two (2) square feet in area containing the name of the resident, the address number, and/or street name.
- B. No sign shall be erected upon, or applied to, any roof.
- C. Signs shall be constructed in accordance with the provisions of this Ordinance and shall be kept in good condition and maintained so as not to create hazardous or threatening conditions to the health or safety of persons in the vicinity of said sign or cause a public nuisance.

Section 707: Permitted Signs in all Nonresidential Districts

- A. In the Borough's Private Recreation (PR) Districts, the following signs shall be permitted:
 - 1. Any sign permitted in the R Residential District and subject to any stated condition for said residential district. All other signs shall be approved by Borough Council.

Section 708: General Regulations

- A. All applications for permits for construction, installation, maintenance, repair and/or modification of signs of any type or nature shall be submitted for review and approval or denial by the Zoning Officer, prior to commencement of any activity or work by the applicant or the applicant's representative or delegate concerning installation, construction, or modification of such sign. The provisions of this Section and all its Subsections shall apply to, but are not limited to all replacement signs, new signs, changes or alterations to existing signs or signs which must be relocated for any reason.
- B. A site plan or sketch, drawn to scale, shall be submitted to the Zoning Officer and shall depict the lot and building upon which the proposed sign will be located, and shall show all other buildings and structures located on said lot and their relationship to said sign. The applicant shall also include a written description of the materials and manner of construction and mounting of the sign, a description of the information and visual material to be included on all surfaces of the sign, and one or more photographs of the proposed sign location from each approach from which the sign will be visible.
- C. Permit required. A permit shall be obtained from the Zoning Officer, subject to filing the permit application and supporting information described above in this Section and subject to payment of the required established fee, prior to the construction, alteration, modification or moving of any exterior sign. No exterior sign established before the effective date of this Ordinance, shall be (except when ordered by an authorized public officer as a safety measure) altered in any respect, or moved, unless it be made to conform with the provisions of this Ordinance.

- D. Signs not to constitute traffic hazard. No sign or other advertising structure as regulated by this Ordinance shall be erected in such a manner as to obstruct free and clear vision; or at any location where, by reason of the position, shape, or color, it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device; or which makes use of the words "Stop," "Look," "Drive-In," "Danger," or any other word, phrase, symbol, or character in such a manner as to interfere with, mislead, or confuse traffic.
- E. Material and construction. All signs shall be securely built, constructed, and erected in compliance with all regulations and requirements of the relevant building codes.
- F. Maintenance.
1. Any sign regulated by this Ordinance shall be maintained in the proper structural and aesthetic condition by the owner or tenant.
 2. If a sign no longer advertises a bona fide business or other activity conducted on the premises, it shall be taken down and removed by the owner, tenant, or by the entity having the beneficial use of the sign and the building within thirty (30) days of the termination of such business or other activity.
- G. Permit fees.
1. A permit shall be obtained for the installation of all signs not exempted by this Ordinance.
 2. The applicant shall pay a permit fee as specified by the Borough by Resolution.

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Article VIII: Nonconforming Uses, Structures, and Lots

Section 801: Purpose

The purpose of this Article is to regulate nonconforming uses, nonconforming buildings, and structures, nonconforming lots, and nonconforming signs. The zoning districts established by this Ordinance are designed to guide the future use of the Borough's land by encouraging the development of desirable residential, commercial, and other uses with appropriate groupings of compatible and related uses that promote and protect the public health, safety, and general welfare. The regulations of this Article are intended to restrict further investments that would make nonconformities more permanent in their location in inappropriate districts as well as to afford opportunities for creative use and reuse of those other nonconformities that contribute to a neighborhood.

Section 802: Nonconforming Use

- A. Continuation of nonconforming use. Any lawfully existing nonconforming use may be continued so long as it remains otherwise lawful, subject to the regulations contained in this Section. Ordinary repair and maintenance or replacement, and installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring, or plumbing, may be performed.
- B. Change of nonconforming use to conforming.
 - 1. Whenever any nonconforming use shall have been changed or altered to conform to the provisions of this Ordinance or its amendments, then such nonconforming use shall no longer be nonconforming to the extent to which it then conforms to this Ordinance or its amendments.
 - 2. The prior nonconforming use shall not be resumed; provided, however, that if a later amendment to this Ordinance should make the use as so changed or altered nonconforming with its provisions then such use as changed or altered shall become a new nonconforming use to the extent of such nonconformance or non-compliance.
- C. Expansion or extension of nonconforming use.
 - 1. No nonconforming use may be extended or expanded in any building or structure, or in or on the lot on which it is located, nor may any nonconforming use be moved to a different position upon the lot on which it is located, to alter the use or its location which existed at the time that the use became nonconforming.
 - 2. No such nonconforming use shall be enlarged or increased or extended to occupy a greater lot area than was occupied at the effective date of adoption or amendment of this Ordinance, unless the Zoning Hearing Board through Special Exception shall interpret that the enlargement or extension is necessary by the natural expansion and growth of trade of the nonconforming use. For the purposes of determining if an enlargement or expansion of nonconforming use meets this requirement, the applicant shall file an application for Special Exception pursuant to the requirements of Article IV of this Ordinance. The applicant must meet all the applicable requirements and criteria of Article IV in addition to providing evidence that the enlargement or extension is necessitated by the natural expansion of the nonconforming use.

3. Whenever a use district shall be hereafter changed by a duly adopted amendment to this Ordinance, then any existing legal, nonconforming use of such changed district may be continued, and such use may be extended throughout the structure.
- D. Abandonment or discontinuance of nonconforming uses.
1. The lawful use of the land existing at the time this Ordinance or any of its amendments was adopted, although such use does not conform to the provisions hereof, may be continued, but if such nonconforming use is abandoned for a period of one (1) year, any future use of said land shall conform to the provisions of this Ordinance.
 2. Any subsequent use shall conform to the applicable provisions of this Ordinance, or its amendments and the prior nonconforming use shall not be resumed, unless in accordance with the applicable provisions of this Ordinance or its amendments.
- E. Nonconforming accessory uses and structures. No use, structure or sign that is accessory to a principal nonconforming use shall continue after such principal use or structure has been abandoned or removed, unless it shall thereafter conform to all the regulations of the zoning district in which it is located.

Section 803: Nonconforming Buildings or Structures

- A. Continuation of nonconforming buildings or structures. Any nonconforming building or structure which is devoted to a use which is permitted in the zoning district in which it is located may be continued so long as it remains otherwise lawful, subject to the restrictions in this Section.
- B. Structural alteration of nonconforming buildings or structures. A lawful nonconforming use of a building or structure existing at the time of the adoption of this Ordinance, or an amendment hereto may be structurally altered. Such alteration shall not expand its nonconformity in areas not previously occupied by the nonconforming use unless meeting the requirements of expansion and extension of nonconforming uses as required in this Ordinance. No parking, yard, space, or bulk nonconformity may be created or increased.
- C. Changes to nonconforming buildings or structures to conforming.
1. Whenever any nonconforming building or structure shall have been changed or altered to conform to the provisions of this Ordinance or its amendments in effect at the time of such change or alteration, or whenever any amendment to this Ordinance shall make such building or structure conforming with the provisions of this Ordinance or its amendments, then such building or structure shall remain in conformance with the applicable provisions of this Ordinance or its amendments.
 2. If a later amendment to this Ordinance should make the building or structure as changed or altered nonconforming with its provisions, then the building or structure as changed or altered will become a non-conforming building or structure to the extent of such nonconformance or noncompliance.
- D. Damage or destruction of nonconforming buildings or structures.
1. When a building or structure is damaged or destroyed by any means not within the control of the owner, the owner shall be permitted to restore the building or structure to its prior state provided that the owner does not increase the

nonconformance and begins restoration/construction within one (1) year after the date the damage takes place.

2. In no event shall any damage or destruction to such a structure by any means within the control of the owner be repaired or restored, except in accordance with this Section.

E. Expansion or extension of nonconforming buildings or structures.

1. No nonconforming building or structure may be extended on the lot on which it is located, nor may any nonconforming building or structure be moved to a different position upon the lot on which it is located, except to a position in conformity with the current codes or unless otherwise specified herein.
2. Legal non-conforming residential structures may be expanded up to 100 square feet to allow for necessary accessibility improvements associated with the Americans with Disabilities Act (ADA).
3. Whenever a use district shall be hereafter changed by a duly adopted amendment to this Ordinance, then any existing legal, nonconforming structure of such changed district may be continued, and such use may be extended throughout the structure.
4. Structures that are nonconforming on the effective date of this Ordinance that already encroach on a required setback can extend that encroachment and not be considered an expansion of the nonconforming structure subject to the following:
 - a. The structure is only extended on a parallel plane of the existing nonconforming encroachment and does not extend any closer to a property line.
 - b. The extension is no more than twenty-five (25%) percent of the length of the side of the existing nonconforming structure on the side of the encroachment.

F. Repairs, renovation and modernization of nonconforming buildings or structures.

1. Repairs, renovations and modernization of nonconforming buildings or structures, such as renewal or replacement of outer surfaces, windows, addition of soundproofing materials, air conditioning and repair or replacement of structural parts or members of the building or structure shall be permitted notwithstanding other provisions of this Ordinance.
2. Such repairs, renovations, or modernizations are allowed provided they do not change or alter substantially the physical configuration of the nonconforming building or structure or change its position on the ground.
3. No increase in the size of or area covered by the nonconforming use or area of the use within the building or structure is allowed except as provided for in this Ordinance. The areas of nonconforming use within a building or structure may be rearranged in connection with such repairs, renovation, or modernization, provided that no enlargement or expansion of the nonconforming use occurs.

Section 804: Nonconforming Lots of Record

- A. In any district in which single-family dwellings are a use by right, notwithstanding the regulations imposed by any other provisions of this Ordinance, a single-family detached dwelling which complies with the yard, space, and bulk requirements of the district in which

it is located may be erected on a nonconforming lot adjacent to an improved street. Nothing in the requirements of this Ordinance relating to lot area per dwelling unit shall be held to prohibit the erection of a single-dwelling unit upon a lot having less than the required street frontage or the area of which is less than that prescribed as the lot area per dwelling unit, provided that such lot, at the time of the passage of this Ordinance, was held under separate ownership from any adjoining lots or provided that, at the time of the passage of this Ordinance, a recorded plan of lots or subdivision of property shows such lot to be a separate and distinct numbered lot.

- B. A nonconforming lot of record may be used for any “permitted use by right” in the district in which it is located if land development approval can be granted in accordance with the provisions of the Allegheny County SALDO.

Section 805: Registration of Non-Conformity

While administering and enforcing this Ordinance and reviewing applications for zoning certificates, temporary use permits, sign permits or variances, the Zoning Officer may register nonconforming uses, nonconforming structures, and nonconforming lots as they become known through the application and enforcement process. Registration and proof of nonconforming uses, structures and lots shall be the burden of the property owner.

Article IX: Administration and Enforcement

Section 901: Applicability

- A. It shall be unlawful to use or occupy any structure or lot or part thereof until zoning approval has been issued by the Borough. Further, no structure shall be erected, added to, or otherwise have any structural alterations made to it until zoning approval has been issued by the Borough. No zoning approval shall be issued until prior approvals and requirements of this Ordinance and the County's SALDO, have been complied with, including but not limited to Conditional Use, use by Special Exception and recording of the final plat of a subdivision or land development. Any zoning approval issued in conflict with the provisions of this Ordinance shall be null and void.
- B. Zoning approval shall state that the proposed use of the structure or lot conforms to the requirements of this Ordinance. Any change in use shall require zoning approval as set forth Article I of this Ordinance.

Section 902: Repairs and Maintenance

- A. Repairs and maintenance – Ordinary repairs and maintenance to existing structures that do not involve an expansion or change of a use or structure shall not by themselves be regulated by this Ordinance.

Section 903: Authorization of Types of Uses

- A. 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 the requirements of this Ordinance.
- B. 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 ZHB following a hearing.
- C. Conditional Use. A permit under this Ordinance for a use requiring Conditional Use approval shall be issued by the Zoning Officer only after the Borough Council grants Conditional Use approval.

Section 904: Required Permits

- A. Zoning permit. A permit issued indicating that a proposed use, building, or structure is in accordance with the provisions of the Zoning Ordinance or with an order of the Zoning Hearing Board. A zoning permit is needed to:
 - 1. Erect, reconstruct, move, structurally alter, or enlarge any principal or accessory structure or building.
 - 2. Use or occupy any vacant land.
 - 3. Change the use of a structure or land to a different use.
 - 4. Change a nonconforming use.
 - 5. Establish or operate a temporary use of land or building.

- B. Building permit. A permit indicating that a proposed construction, alteration, or reconstruction of a structure is in accordance with the provisions of the Borough's Building Code.
 - 1. Such a permit shall not be confused with a zoning permit or with an occupancy certificate as may be required under the terms of this Ordinance.
- C. Occupancy certificate. A certificate issued by the Borough Building Inspector upon completion of the construction of a structure or changes in use of structure or parcel of land, indicating that the premises comply with the provisions of this Ordinance and the Borough's Building Code.

Section 905: Procedure for Obtaining a Zoning Approval Permit

- A. Application submission. Applications for a zoning approval permit shall be submitted to the Zoning Officer on the forms prescribed by Borough and with the information required by this Ordinance.
 - 1. All fees shall be paid at the time the permit is issued.
 - 2. No application shall be accepted for formal review until all required items have been submitted.
 - 3. Upon submission, the Zoning Officer shall check the contents of the applications and notify the applicant of any deficiencies within seven (7) days.
- B. Application review/approval by Zoning Officer.
 - 1. The Zoning Officer shall approve or disapprove applications for zoning approval permits in accordance with the literal terms of this Ordinance, and no permit shall be issued for any structure or use in violation of any provision of this Ordinance except where a variance has been properly granted by the Zoning Hearing Board.
 - 2. If the application requires Conditional Use approval from the Borough Council or Use by Special Exception approval from the Zoning Hearing Board, said approvals shall be granted prior to issuance of a zoning approval permit by the Zoning Officer.
 - 3. If the application involves a subdivision or land development, as defined by the Allegheny County Subdivision and Land Development Ordinance (SALDO), the plan shall be reviewed, and the preliminary plans shall be approved in accordance with the procedures specified in such SALDO prior to issuance of a zoning approval permit by the Zoning Officer.
- C. Other governmental approvals. The Zoning Officer shall not issue any zoning approval permit until the applicant submits copies of any approvals and/or permits required from other governmental agencies. Such approvals or permits may include, but are not limited to, one (1) or more of the following:
 - 1. Confirmation from the sewer and water authority of sewer and water service or a permit from the Allegheny County Health Department for an on-lot system.
 - 2. PennDOT highway access permits
 - 3. County or Borough driveway access/curb cut permits.
 - 4. Pennsylvania Department of Environmental Protection erosion/sedimentation and/or obstruction permits.
 - 5. Reviews by Allegheny County Conservation District.

6. Reviews by Allegheny County Economic Development, Planning Division.

Section 906: Content of Application for a Zoning Permit

- A. When applying for a zoning approval permit, the applicant shall submit the following items to the Zoning Officer:
 1. A completed zoning permit application form.
 2. A scaled site plan which includes the following:
 - a. Name and address of the applicant and landowner (if other than applicant).
 - b. Address of the property and identification of zoning district in which it is located.
 - c. Subdivision name and lot number (if applicable).
 - d. County lot and block number.
 - e. Scale of the drawing (typical engineering units), north arrow, and a key to all symbols.
 - f. The location, dimensions and height of all existing and proposed structures or uses (including fences, walls, screens, lighting fixtures, signs, or other site improvements) and the type and location (distance in feet) of existing structures or uses on all abutting properties.
 - g. Distances (in feet) between all existing and proposed structures or uses on the property and from all structures or uses to all property lines.
 - h. All existing and proposed easements and/or ROW, showing locations, widths, and purposes.
 - i. The location, number, size, and method of calculation of any required off-street parking spaces (if applicable).
 - j. All points of ingress and egress to and from the property (e.g., driveways) along with proposed grades and sight distances.
 - k. Identification of any floodplain districts, areas of steep slopes, prior mining activity, landslide prone soils, fill areas, or airport impact zones which would be impacted by the proposed use.
 3. Stormwater management and erosion/sedimentation plans for the property if required by Borough's Stormwater Management Ordinance (if applicable).
 4. A landscaping plan showing required plantings (if applicable).
 5. Any other information required by the Zoning Officer to determine compliance with the provisions of this Ordinance.

Section 907: Procedure for Obtaining a Building Permit

- A. Application submission. Application for a building permit shall be submitted to the Building Code Officer (BCO) on forms prescribed by the Borough and with the information required by the Borough Building Code. All fees shall be paid at the time the permit is issued.

Section 908: Procedures for Obtaining an Occupancy Permit

- A. Application submission.
1. Applications for an occupancy permit shall be submitted to the Building Code Officer (BCO) at least twenty (20) days prior to the proposed occupancy or use of the structure or lot.
 2. The application shall be on the form prescribed by Borough, signed by the applicant and landowner (if other than the applicant).
 3. The applicant shall submit evidence of the receipt of final approvals and/or permits required from Ben Avon Heights Borough or other government agencies, including but not limited to any of the following as applicable:
 - a. Borough zoning approval permit.
 - b. Borough building permit and approved final building inspection.
 - c. Borough or County Fire Marshal approval.
 - d. PennDOT, County or Borough approval of any street openings or driveway accesses which were authorized by permit.
 - e. County Health Department approval of plumbing systems.
 - f. Approval of connections to public sewer and water systems.
 - g. Pennsylvania Department of Environmental Protection approval of any dams, obstructions or erosion/sedimentation controls which were authorized by permit.
 - h. Any other required permits or approvals not specifically listed above.
 4. The applicant shall pay the required fee for the occupancy permit and any other outstanding fees.
- B. Inspection by Zoning Officer.
1. Within ten (10) days following the application for an occupancy permit or notification of completion of the work, the Zoning Officer and/or designated representatives shall inspect the subject structure or use. If the structure or use complies with all applicable provisions of this Ordinance and has been completed in accordance with approved plans, the occupancy permit shall be issued.
 2. If the subject structure or use does not comply, the Zoning Officer shall provide the applicant with a written list of the deficiencies and require corrective actions. The Zoning Officer shall re-inspect the subject property upon notification that the necessary work has been completed properly.

Section 909: Temporary Occupancy Permit

- A. A temporary occupancy permit may be issued by the Zoning Officer for no more than thirty (30) days for a part of a building or structure to be used on a temporary basis while work continues on the remainder of the building or structure.
- B. All conditions for temporary occupancy shall be stated on the permit.

Section 910: Revocation of Occupancy Permit

- A. The Zoning Officer may revoke or suspend an occupancy permit upon determining that a failure of compliance with any part of this Ordinance or any other applicable law or regulation exists.
- B. The revocation shall be in writing, in accordance with the requirements of this Ordinance, referring to the applicable ordinances violated and shall be sent by certified mail to the last known address of the permittee or landowner (if not permittee). Upon such revocation, any further use or occupancy of said land, structure or building without an approved permit shall be considered a violation of this Ordinance and subject to all enforcement remedies listed below.

Section 911: Liability Disclaimer

- A. The granting of a zoning permit or occupancy permit shall not constitute a representation, guarantee or warranty of any kind by Ben Avon Heights Borough, or by an official or employee thereof, of the structural integrity of a building or structure, the suitability or safety of subsurface soil conditions over which a building/structure is located, or the practicability or safety of any stormwater management structure or control technique or other environmental protection control, nor shall it create any liability upon or cause of action against Ben Avon Heights Borough, any official or employee for any damage that may result from a structure or use for which a permit has been issued.
- B. Permits issued pursuant to this Ordinance attest only to the conformance of a structure or use to the zoning requirements contained herein.

Section 912: Enforcement Penalties

- A. Users should be aware that the following Section is a summary of requirements of the PA Municipalities Planning Code (MPC), as reenacted and amended, and should refer to the MPC for the complete requirements under Pennsylvania Law.
- B. 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 as provided in this Section.
- C. 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.
- D. The enforcement notice shall state at least the following:
 - 1. The name of the owner of record and any other person against whom the Borough intends to act.
 - 2. The location of the property in violation.
 - 3. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of this Ordinance.
 - 4. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.

5. That the recipient of the notice has the right to appeal to the Borough ZHB within thirty (30) days of the mailing date of the notice in accordance with procedures set forth in this Ordinance.
6. That failure to comply with the notice within the time specified, unless extended by appeal to ZHB, constitutes a violation, and upon being found liable therefore in a civil enforcement proceeding, shall pay a fine of not more than \$500, plus all court costs, including reasonable attorney fees incurred by the Borough, or alternatively sentenced to pay a fine or not more than the maximum permitted under Pennsylvania law as the same may be from time to time amended and in effect as of the date of conviction. In default of payment of imposed fines, the offender may be imprisoned for a term not to exceed ninety (90) days.

Section 913: Causes of Action

- A. Users should be aware that the following Section is a summary of requirements of the MPC, as reenacted and amended, and should refer to the MPC for the complete requirements under Pennsylvania Law.
- B. In case any building, structure, landscaping, sign, or land is or is proposed to be erected, constructed, reconstructed, altered, repaired, converted, maintained or used in violation of this Ordinance, the Borough Council or, with the approval of the Borough Council, an officer of the Borough or any aggrieved owner or tenant of real property who shows that his property or person will be substantially effected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping, sign or land or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the Borough, by certified mail, at least thirty (30) days prior to the time the action is to begin by serving a copy of the complaint on the Borough Council. No such action may be maintained unless such notice has been given.
- C. Jurisdiction. Magisterial district judges shall have initial jurisdiction over proceedings brought under Section 1007 of this Article.

Section 914: Enforcement Remedies; Violations and Penalties

- A. Users should be aware that the following Section is a summary of requirements of the MPC, as reenacted and amended, and should refer to the MPC for the complete requirements under Pennsylvania Law.
- B. 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 therefore in a civil enforcement proceeding commenced by the Borough, pay a fine of not more than \$500, plus all court costs, including reasonable attorney fees incurred by the Borough as a result thereof, or alternatively, sentenced to pay a fine of not more than the maximum permitted under Pennsylvania law as the same may be from time to time amended and in effect as of the date of conviction. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the District Justice determining that

there has been a violation further determines that there was a good-faith basis for the person, partnership or corporation violating this Ordinance to have believed that there was no 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 fees collected for the violation of this Ordinance shall be paid to the Borough.

- C. The Court of Common Pleas of Allegheny County, upon petition, may grant an order or stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.
- D. Nothing contained in this Section shall be construed or interpreted to grant to any person or entity other than the Borough the right to commence any action for enforcement pursuant to this Section.

Section 915: Fees

- A. The Borough Council shall establish and revise, from time to time, a schedule of fees by resolution, as well as a collection procedure, for all applications submitted under the provisions of this Ordinance. The schedule of fees shall be available to the public from the Zoning Officer or Borough Secretary.

Section 916: Amendments

- A. Users should be aware that the following Section is a summary of requirements of the MPC, as reenacted and amended, and should refer to the MPC for the complete requirements under Pennsylvania Law.
- B. The regulations and provisions of this Ordinance may be amended from time to time, upon recommendation of the Planning Commission or the Borough Council, or by application of an effected party.
- C. Enactment of Amendments. Zoning amendments procedures shall adhere to the requirements of Section 609 of the MPC, 53 P.S. §10609, as amended.
- D. Public Hearing. The Borough Council shall hold a public hearing on a proposed amendment pursuant to public notice, and pursuant to mailed notice and electronic notice to an owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within the municipality who has made a timely request in accordance with Section 109 of the MPC before voting on enactment of an amendment. In addition, if the proposed amendment involves a Zoning Map change, notice of said public hearing shall be conspicuously posted by the Borough at points deemed sufficient by the Borough 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.
 - 1. In addition to the requirement that the notice be pasted, where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the municipality at least thirty (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 the municipality. The notice shall include the location, date, and time of the public hearing. A good faith effort and substantial compliance shall satisfy the requirements of this Section. This clause shall not apply when the rezoning constitutes a comprehensive rezoning.

- E. Planning Commission Review. In the case of an amendment other than that prepared by the Planning Commission, the Borough Council shall submit the amendment to the Planning Commission at least thirty (30) days prior to the hearing on the proposed amendment for recommendations.
- F. County Planning Review. The recommendation of the County planning agency shall be made to the Borough Council within forty-five (45) days and the proposed action shall not be taken until such recommendation is made. If, however, the County fails to act within forty-five (45) days, the Borough Council shall proceed without its recommendation.

Section 917: Planning Commission

- A. Membership. The Planning Commission shall consist of three (3) members who shall each be adult residents of the Borough and who shall serve without compensation.
- B. Appointment. The members of the Planning Commission shall be appointed by Borough Council. At least two (2) of the members appointed members shall be citizen members who shall not be officers or employees of the Borough.
- C. Terms. The terms of the members of the Planning Commission shall be four (4) years or until his/her successor is appointed. Such term shall begin the first meeting of Borough Council in January of the year of appointment.
- D. Conduct of Business. The Planning Commission shall:
 - a. Elect its own chairman and vice-chairman and create and fill such other offices as it may determine. Officers shall serve annual terms and may succeed themselves.
 - b. Make interim reports to the Borough Council as often as necessary or as requested by Borough Council.
 - c. Hold public hearings as required by law or as they deem necessary.
 - d. Keep a full record of its business and annually make a written report of its activities to Borough Council by March 1 of each year.
- E. Duties and Powers. The Planning Commission shall at the request of Borough Council have the power and shall be required to:
 - a. Prepare or amend a Joint Comprehensive Plan for the development of the Borough, as set forth in the MPC and present it to Borough Council.
 - b. Maintain and keep on file a record of its actions.
 - c. Perform duties as requested by Borough Council as outlined in the MPC, as amended.

Section 918: Zoning Officer

- F. Appointment. The Zoning Officer(s) shall be appointed by the Borough Council pursuant to qualifications that may be established by Council. The Zoning Officer shall not hold any elective office within the Borough.
- G. Duties and powers. The Zoning Officer's duties and powers shall include the following:
1. Administer this Ordinance in accordance with its 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 ZHB 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.
 5. Take enforcement actions as provided by the MPC.
 6. Maintain available records concerning nonconformities, provided that the Borough is not required to document every nonconformity.
 7. Serve such other functions as are provided in this Ordinance.

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Article X: Zoning Hearing Board

Section 1001: MPC Provisions

- A. Users should be aware that the following Sections are a summary of requirements of the PA Municipalities Planning Code (MPC), as reenacted and amended, and should refer to the MPC for the complete requirements under Pennsylvania Law.

Section 1002: Membership

- A. Appointment. The membership of the Zoning Hearing Board (ZHB) shall consist of three (3) residents of the Borough appointed by motion of the Borough Council. Their terms of office shall be three (3) years and shall be so fixed that the terms of office of one member shall expire each year. The ZHB shall promptly notify the Borough Council of any vacancies that occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the ZHB shall neither hold any other elected or appointed office in the Borough, including service as a Planning Commission member or as Zoning Officer, nor shall any member be an employee of the Borough.
- B. The Borough Council may appoint by resolution at least one (1) but no more than three (3) residents of the municipality to serve as alternate members of the Zoning Hearing Board. The term of office of an alternate member shall be three (3) years. Alternates shall hold no other elective or appointive office in the Borough including service as a member of the Planning Commission or as a Zoning Officer, nor shall any alternate be an employee of the Borough. Appointment to fill vacancies as alternates shall be only for the unexpired portion of that term. Any alternate may participate in proceedings or discussions of the Board but shall not be entitled to vote as a member of the Board nor be compensated unless designated as a voting alternate member pursuant to the following process:
 - 1. The Chairman of the Board may designate alternate members of the Board to replace any absent or disqualified member and if, by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Board shall designate as many alternate members of the Board to sit on the Board as may be needed to provide a quorum.
 - 2. Any alternate member of the board shall continue to serve on the Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Board has made a final decision on the matter or case.
 - 3. Designation of an alternate shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.
- C. Removal of members. Any member of the Board may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of the Council. No vote shall take place until such time as the member has received a fifteen (15) day 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.
- D. Compensation. Members of the Board may receive compensation for the performance of their duties, as may be fixed by the Borough Council, but in no case shall the rates of compensation exceed that paid to the Borough Council.

Section 1003: Organization

- A. Conduct of the Board. The ZHB shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. 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. Alternate members designated by the Chairman for a particular hearing or taking of action shall count toward the quorum. Alternates not designated as a voting alternate may participate in any Board discussion or proceeding. The Board may appoint a hearing officer from its own membership to conduct the hearing on its behalf, and the parties may waive further action by the Board and accept the decision or findings of the hearing officer as final, as provided in Section 908 of the MPC, as amended.
- B. Establishment of procedure. The ZHB may make, alter, and rescind rules and forms for its procedure, consistent with ordinances of the Borough and the laws of the Commonwealth. The Board shall maintain full public records of its business.

Section 1004: Expenditures; Fees

- A. Expenditures. Within the limits of funds appropriated by the Borough Council, the ZHB may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.
- B. Fees. An applicant before the ZHB shall deposit with the Zoning Officer the appropriate filing fee. Fees shall be established by resolution of the Borough Council.

Section 1005: Powers and Duties

The ZHB shall function in strict accordance with and pursuant to the MPC and shall have the following powers:

- A. Appeals from the Zoning Officer. The Zoning Hearing Board shall hear and decide appeals from any order, requirements, decision, or determination made by the Zoning Officer in the administration of this Ordinance. The Board shall hear and decide appeals where it is alleged by the appellant that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of a valid ordinance or map of the Borough or any valid rule or regulation covering the duties of the Zoning Officer.
- B. Special Exceptions. The Board shall hear and decide requests for special exceptions authorized by this Ordinance in accordance with the standards and criteria set forth in this Section and pursuant to the express standards and criteria of this Ordinance. The Board may attach such additional and reasonable conditions and safeguards as it may deem necessary.
- C. Variances. The Board shall hear requests for variances where it is alleged that the provisions of this Ordinance create unnecessary hardship on an applicant when applied to a tract of land. In granting a variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary. The Board may grant a variance provided the following findings are made where relevant in each case:
 - a. That there are unique physical circumstances or conditions, peculiar to the particular property, and that the unnecessary hardship is due to such conditions.

- b. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - c. That such unnecessary hardship has not been created by the appellant.
 - d. 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; and
 - e. That the variance will represent the minimum variance necessary that will afford relief.
- D. Validity of the Zoning Ordinance. The Board shall hear and make findings on challenges to the validity of any provision of this Ordinance with respect to substantive questions.
- E. Jurisdiction in the matters as granted by Section 909.1 of the MPC, 53 P.S. §10909.1, as amended.

Section 1006: Hearing Procedures

The ZHB shall conduct hearings and make decisions in accordance with the following requirements.

Filing appeals and requests to the ZHB - Requests for hearings before the ZHB shall be made as follows:

- A. An appeal to the ZHB may be filed by the landowner affected, any officer or agency of the Borough, or any person aggrieved. Such appeal shall be taken within the time as stipulated by the MPC by filing with the Zoning Officer a notice of appeal specifying the grounds thereof. The appropriate fee, established by Resolution of the Borough, shall be paid in advance for each appeal or application. Requests for a variance and special exception may be filed with the Board by any landowner, an agent of the landowner, or any tenant with the permission of such landowner.
- B. Notice – Public notice shall be given pursuant to this Ordinance and written notice shall be given to the applicant, Zoning Officer, those neighboring property owners within 300 feet of the subject parcel, and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by rules of the Board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.
- C. Timing – A hearing shall be held within sixty (60) days from the official application date requesting a hearing unless the applicant has agreed to an extension of time. The hearings shall be conducted by the Board, or the Board may appoint any member or an independent attorney as a hearing officer. The decision, or, when no decision is called for, the findings shall be made by the Board; however, the appellant or the applicant 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.

- D. Parties to the Hearing – The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Board, and any other person including civic, or community organizations permitted to appear by the Board. The 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. Powers of the Chairman – The Chairman, Acting Chairman, or presiding hearing officer shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.
- F. Rights of the Parties – The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond to present evidence and to argue and cross-examine adverse witnesses on all relevant issues.
- G. Exclusion of Evidence – Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded by the Board.
- H. Record of the Proceedings – A stenographic record of the proceedings shall be made by a court reporter. The appearance fee for the court reporter shall be shared equally by the applicant and the Board. Any party requesting the original transcript, or a copy of the transcript shall bear the cost of the same. Copies of graphic or written material received in evidence shall be made available to any party at cost.
- I. Communications – Once a formal application has been duly filed, the Board shall not communicate, directly or indirectly, with any party or his representative in connection with any issue involved except upon notice and opportunity for all parties to participate. Further, the Board shall not take notice of any communication unless the parties are afforded an opportunity to contest the material and shall not inspect the site or its surroundings with any party or his representative unless all parties are given an opportunity to be present.

Section 1007: Decisions

- A. The Board or the hearing officer shall render a written decision or when no decision is called for; make written findings on the application within forty-five (45) days after the last hearing before the 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 any act or of any 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 the decision or findings are final, the Board shall make their report and recommendations available to the parties within forty-five (45) days and the parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings, and the Board's decision shall be entered no

later than thirty (30) days after the report of the hearing officer. Except for challenges filed under Section 916.1 of the MPC, 53 P.S. §10916.1, as amended, where the Board fails to render the decision within the period required by this Subsection or fails to commence, conduct or complete the required hearing as provided in Section 1105.C. of this 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. When a decision has been rendered in favor of the applicant because of the failure of the Board to meet or render a decision as hereinabove provided, the Board shall give public notice of said decision within ten (10) days from the last day it could have met to render a decision. If the 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.

- B. 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 day following its date. To all other persons who have filed their name and address with the Board not later than the last day of the hearing, the 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 1008: Standards for Review of Variance Requests

- A. Required Findings – The ZHB may grant a variance to the provisions of this Ordinance, provided that the findings prescribed in Section 910.2 of the MPC, 53 P.S. §10910.2, as amended, are made where relevant in each case.
- B. Conditions – In granting any variance, the ZHB may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance.
- C. If the variance involves physical improvements that have not been substantially initiated within two (2) years of the date of approval or authorization approval of the variance, the approval shall lapse.
 - a. The variance approval shall also lapse if, after starting construction, the construction is discontinued for a period of two (2) years.
 - b. A variance approval shall not lapse if, the variance is associated with a current land development approval.

Section 1009: Standards for Review of Special Exception Requests

- A. The ZHB shall hear and decide all requests for special exceptions, as identified within this Section and Article IV of this Ordinance.

Section 1010: Appeals to Court

- A. The provisions for appeals to court that are stated in Article X-A of the MPC, as amended, shall apply.

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