

ARTICLE I

GENERAL PROVISIONS AND ADMINISTRATION

101. PURPOSE AND OBJECTIVES.

- A. This Ordinance is hereby adopted in accordance with:
1. The requirements of the Pennsylvania Municipalities Planning Code, as amended,
 2. The objectives and overall program of the Lower Nazareth Township Comprehensive Plan (as may be amended), and
 3. With consideration for the character of the Township, its various parts and the suitability of the various parts for particular uses and structures.
 4. All amendments to this Ordinance that may hereafter be adopted. All readers maintain the responsibility to procure the latest amendments to this Ordinance.
- B. This Ordinance is also designed:
1. To promote, protect and facilitate one or more of the following: the public health, safety, morals, general welfare, coordinated and practical community development, proper density of population, civil defense, disaster evacuation, airports and national defense facilities, the provisions of adequate light and air, police protection, vehicle parking and loading space, transportation, water, sewage, schools, public grounds and other public requirements;
 2. To prevent one or more of the following: overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers; and
 3. To preserve agricultural land and to protect environmentally sensitive areas considering topography, soil type and classification and present use.
- C. To assist in carrying out the goals and intent of the Constitution of the Commonwealth of Pennsylvania (especially Article I, Section 27), the PA. Floodplain Management Act, PA. Storm Water Management Act, PA. Dept. of Environmental Protection regulations on erosion and sedimentation control, PA. Dept. of Transportation regulations on highway access control and other relevant

Federal and State laws, regulations, official policies and relevant Court decisions.

102. APPLICATION.

- A. No building, structure or land shall be used, subdivided, occupied, erected, moved, enlarged or structurally altered unless in conformity with the regulations of this Ordinance.
- B. This Ordinance regulates:
 - 1. The location, height, bulk and size of buildings and other structures;
 - 2. The relation of such buildings or structures to roads and highways, their intersections and interchanges, to steep slopes and natural bodies of water, to public buildings and public grounds, to airports and heliports, to historic buildings and places, and to floodplains;
 - 3. Areas and dimensions of land and bodies of water to be occupied by uses and structures; the percentage of a lot that may be occupied, the size and use of yards, courts and other open spaces;
 - 4. The density and distribution of population and intensity of use; and
 - 5. The uses of land, buildings and structures for residents, trade, industry and other purposes.

103. PUBLIC UTILITY EXEMPTIONS. See Section 619 of the Municipalities Planning Code.

104. TOWNSHIP AND MUNICIPAL AUTHORITY EXEMPTION. The requirements of this Ordinance shall not apply to uses or structures owned by Lower Nazareth Township or for municipal authorities created solely by Lower Nazareth Township, for uses and structures that are intended for a legitimate governmental or public health and safety purpose.

105. INTERPRETATION.

- A. Minimum Requirements. The provisions of this Ordinance shall be interpreted as the minimum requirements for the promotion of the public health, safety and general welfare. Where a provision of this Ordinance differs or conflicts with any other provision of this Ordinance or a provision of any other ordinance or regulation or law, the more restrictive restriction upon uses and structures shall apply.
- B. Uses Not Specifically Regulated. Whenever a use clearly is not permitted by right, by condition or by special exception by this Ordinance anywhere in the Township, the use is prohibited in the Township, except that the applicant may apply to the Zoning Hearing Board. The Zoning Hearing Board may permit such a use if the

applicant proves the following to the satisfaction of the Zoning Hearing Board:

1. that the use would clearly be less offensive in impacts and nuisances than uses permitted in that district,
2. that the use would be compatible with permitted uses in that District,
3. that the proposed use would be compatible with the intent of the district,
4. that the use can meet the general criteria listed in Section 118 entitled "Standards for Decisions," and
5. that the use is not "specifically prohibited" in the District.

C. Sketches. Sketches in this Ordinance are for illustrative purposes only and are not regulatory.

D. Interpretation of Ordinance Text and Boundaries. The Zoning Officer shall apply the wording of this Ordinance and the location of all District boundaries to particular applications. In the case of uncertainty by the Zoning Officer, he/she shall request an interpretation of his/her specific uncertainty by the Zoning Hearing Board, with the applicant not liable for the application fee for that particular request. The Zoning Officer may also request an advisory opinion from the Township Solicitor or the Zoning Hearing Board Solicitor. See Section 111 and the Township fee schedule concerning appeals by an applicant.

E. Definitions. Words not specifically defined by this Ordinance shall be clarified through acceptance by the Zoning Hearing Board of definitions in standard reference dictionaries, recognized legal references and previous interpretations of the Board and courts of the Commonwealth.

106. SEVERABILITY. It is hereby declared to be the legislative intent that:

A. If a court of competent jurisdiction declares any provisions of this Ordinance to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this Ordinance shall continue to be separately and fully effective.

B. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section or part thereof irrespective of the fact that any one or more sections or parts thereof be declared invalid.

107. REPEALER. All other Township ordinances or resolutions or parts thereof that were adopted prior to this Ordinance and are clearly in direct conflict with this Ordinance are

hereby repealed, including the pre-existing Lower Nazareth Township Zoning Ordinance enacted November 15, 1995, as amended, but not including the repeal of any ordinances or amendments specifically referenced by this Ordinance and not including the repeal of the Lower Nazareth Township Floodplain Zoning Ordinance, as amended.

108. GENERAL PROCEDURE FOR PERMITS.

- A. Persons desiring to undertake activities regulated by this Ordinance shall apply to the Township Zoning Officer for a permit under this Ordinance by 1) filling out the appropriate application form, 2) by submitting the required fee at such time and 3) by submitting any additional required information (such as a site plan) as required by the Zoning Officer.
- B. The Zoning Officer shall either issue the permit under this Ordinance or shall refuse the Permit, indicating the reason for refusal. If specifically requested in writing by an applicant, reasons for a refusal shall then be stated in writing.
- C. Certain activities require review and/or approval of the Zoning Hearing Board and/or of the Board of Supervisors, and/or the recommendations of the Planning Commission.
- D. If refused a permit by the Zoning Officer, the applicant may appeal to the Zoning Hearing Board for further consideration.
- E. After the permit under this Ordinance has been received by the applicant, the applicant may undertake the action permitted by the permit under this Ordinance, within other Township Ordinances. However, it is recommended that applicants wait 30 days to begin construction if there is a possibility of an appeal by another party to have the permit revoked. Any commencement of construction or a use within this 30 day appeal period shall be at the risk of the applicant.
- F. A use and occupancy permit shall only be issued if the use is in compliance with this Ordinance.

109. PERMITS AND CERTIFICATES.

- A. Permits and Applicability.
 - 1. Any of the following activities or any other activity regulated by this Ordinance shall only be carried out in conformity with this Ordinance.
 - a. Erection, construction, movement, placement or extension of a structure, building or sign,
 - b. Change of the type of use or expansion of the use of a structure or area of land,

- c. Creation of a lot or alteration of existing lot,
- d. Grading or earthmoving activities
- e. Creation of a new use.

2. Types of Permits. The following types of permits are required for the following situations:

a. Zoning Permit. A Zoning Permit indicates that a zoning application complies with this Ordinance to the best knowledge of the applicable Township Staff. A Zoning Permit is required to be issued prior to the start of any of the following activities:

- 1) Erection, construction, movement, placement or expansion of a structure, building or sign, (See subsection "e." below about how Building and Zoning Permits may relate),
- 2) Change of the type of use or expansion of the use of a structure or area of land,
- 3) Creation of a new use,
- 4) Grading and/or
- 5) Demolition of a structure.

b. Building Permit. A Building Permit is required by the Township to authorize construction. The Permit indicates that the work complies with Township Ordinances to the best knowledge of the applicable Township Staff. No person shall perform construction operations of any kind unless a Building Permit is conspicuously displayed on the premises. An applicant is required to obtain a Building Permit prior to starting any of the following activities:

- 1) Erection, construction, reconstruction, movement, placement or extension of a structure or wall or freestanding sign,
- 2) Placement of an underground bulk fuel storage tank,
- 3) Development or grading within the 100 Year Floodplain as stated in the Township Floodplain Ordinance, and
- 4) Such other activities specified as needing a building permit by any other applicable Township ordinance.

c. Use and Occupancy Permit (also known as "Certificate of Occupancy" or "Occupancy Permit"). A Use and Occupancy permit is required upon completion of the construction or expansion of a principal building, construction and installation of a swimming pool as defined in Section 202, creation of a new use, any accessory structure over 500 sq. ft. or change in use of a structure or land. This permit indicates, to the best knowledge of the applicable Township Staff that the premises comply with the provisions of all Township Ordinances. A Use and Occupancy

Permit shall not be required for a simple change from one occupant to another, provided that the general type of use does not change.

- 1) The Zoning Officer may issue a Temporary Use and Occupancy Permit for a period not exceeding 6 months to allow for partial occupancy of a building pending its completion.
- d. Driveway Permit. A Township Driveway Permit is required for new driveways, resurfacing of existing driveways and work within a right-of-way of a Township-owned street. See Penn DOT requirements to determine if a highway occupancy permit is needed for work within the right-of-way of a State-owned street.
- e. Grading Permit. A Township Grading Permit is required for any grading or earthmoving which takes place within the Township. A Grading permit will not be required for new residential or commercial structures if a site plan showing all proposed grading work is submitted to the township for review at the time of permit application. Erosion and sediment controls must be shown on all grading plans and the zoning administrator may require the grading plan to be reviewed by the Northampton County Conservation District or successors and the Township Engineer.
- f. Format of Permits. All applications for Township permits shall be submitted to the designated Township staff-person. The Zoning Officer shall have the option, as an administrative matter, to determine the format of each type of permit and application. For example, the Township may establish for different types of activities:
- 1) that Zoning Permits, Building Permits, Driveway, Grading, and Use and Occupancy Permits and forms shall be separate from each other, and/or
 - 2) that each applicable portion(s) of a combined Zoning Permit, Building Permit, Driveway, Grading and/or Use and Occupancy Permit form shall serve for the purposes of this ordinance as the Zoning Permit, Building Permit, Driveway, Grading, and Use and Occupancy Permit, respectively.
- B. Repairs and Maintenance. Ordinary repairs and maintenance to existing structures that do not infringe upon a required setback may be made without a permit under this Ordinance. However, such work may require a permit under the Township Building Code.

1. Types of Uses.

- a. The Zoning Officer shall issue a permit under this Ordinance in response to an application for a use that is "permitted by right" if it meets all of the requirements of this Ordinance.
- b. Permitted By Right Use with Additional Requirements. A permit under this Ordinance for this type of use shall be issued by the Zoning Officer, provided that the Zoning Officer determines that the use meets all Township requirements, including any specific additional requirements listed for that use in Sections 1502 and 1503.
- c. Special Exception or Variances. A permit under this Ordinance for a use requiring a Special Exception or Variance shall be issued by the Zoning Officer only upon the written order of the Zoning Hearing Board after a hearing.
- d. Conditional Use. A permit under this Ordinance for a Conditional Use shall be issued by the Zoning Officer only upon the written order of the Board of Supervisors following a review by the Planning Commission.

2. Application.

- a. Any request for a decision, interpretation or variance by the Zoning Hearing Board or for a permit under this Ordinance shall be made in writing on a form provided by the Township. Such completed application, with any required fees, shall be submitted to a Township employee responsible for processing such a permit. The applicant is responsible to ensure that such an application is stamped by the responsible Township employee with the date of the official receipt.
- b. One (1) copy of a site plan and one (1) structural floor plan drawn to scale showing the location and dimensions of the lot area and of the proposed uses of buildings and/or land shall be required, unless the Zoning Officer determines that such a plan is unnecessary for determination of whether the proposal complies with this Ordinance. The Zoning Officer or the Zoning Hearing Board may require any additional information deemed necessary to properly evaluate the application for the purpose of determining its compliance with this Ordinance. See also the Site Plan Review requirements of Section 1411, if applicable.
- c. Other Laws. The Zoning Officer may withhold issuance of a permit under this ordinance if there is clear knowledge by him or her that such a use would violate another Township, State or Federal law or regulation.

- d. The Zoning Officer may submit a copy of any plan and application to any appropriate agencies and/or individuals (such as the Planning Commission or Township Engineer) for review and comment.
 - e. Ownership. No person other than a landowner or his specifically authorized agent or a tenant or lessee with written permission of the landowner shall submit a zoning appeal and permit application (see definition of "landowner" in Article II).
3. Issuance of Permit.
- a. At least 3 copies of the permit under this ordinance shall be made.
 - b. One copy of any permit required under this ordinance shall be kept conspicuously on the premises. Any Building Permit or Commercial Occupancy Permit shall be conspicuously displayed on the premises.
 - c. After the issuance of a permit under this Ordinance by the Zoning Officer, no changes of any kind shall be made to a zoning application without the written consent of the Zoning Officer and/or the Zoning Hearing Board, as applicable.
 - d. Penn DOT Permit. Where necessary for access onto a State road, neither a Township building permit nor a Township occupancy permit shall be issued unless a required PennDOT Highway Occupancy Permit has been issued.
 - e. Labor and Industry Approval. The Township may require that an applicant receive approval from the State Department of Labor and Industry, if applicable, prior to issuance of a building permit. Any required inspection by the Department of Labor and Industry is intended to occur prior to or at the same time as issuance of a Township Use and Occupancy Permit.
 - f. Department of Agriculture and Pennsylvania Department of Environmental Protection. The Township may require prior to issuance of a building permit that an applicant receive approval from the above agencies, is applicable. Any required inspection by these agencies is intended to occur prior to or at the same time as issuance of a Township Use and Occupancy Permit.
4. Revocation of Permits; Appeal of Permit or Approval.
- a. The Zoning Officer shall revoke, withhold or suspend a permit or

approval issued under the provisions of the Zoning Ordinance in case of one or more of the following:

- (1) any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based (Note: The Pennsylvania Criminal Code provides for penalties for providing false information to a municipal employee in the carrying out of his/her duties.),
- (2) upon violation of any condition lawfully imposed by the Zoning Hearing Board upon a special exception use or variance or by the Board of Supervisors upon a conditional use,
- (3) any work being accomplished or use of land or structures in such a way that does not comply with this Ordinance or an approved site plan or approved permit application,
- (4) for any other just cause set forth in this Ordinance, and/or
- (5) for violation of any applicable Township Building Code, Township Floodplain Ordinance or Subdivision and Land Development Ordinance.

b. Appeals. A party with legitimate standing, or as otherwise provided by the PA. Municipalities Planning Code, may appeal decisions under this Ordinance within the provisions of the PA. Municipalities Planning Code. These appeals include but are not limited to: a) appeal of a decision regarding the issuance of a permit by the Zoning Officer to the Zoning Hearing Board, or b) appeal of a conditional use or special exception use or variance decision to the County Court of Common Pleas. Any such appeal shall occur within the time period established in Sections 914.1 and 1002.A. (or their successor sections) of the PA. Municipalities Planning Code, as amended.

5. Temporary Zoning Permit. See Section 1410.

B. Certificate of Nonconforming Use or Structure.

1. The Zoning Officer may, but is not required to, identify and register nonconforming uses and structures.
2. The owner of a lawful nonconforming structure or the premises occupied or formerly occupied by a lawful nonconforming use may secure a Certificate of Nonconforming Use or Structure from the Zoning Officer. Such Certificate shall state that land or a structure is legally nonconforming, to the best knowledge of the Zoning Officer.

110. ZONING OFFICER.

A. Appointment.

1. The Zoning Officer, and any Assistant Zoning Officer(s) shall be appointed by the Board of Supervisors and shall not hold any elective office within the Township.
2. The Zoning Officer or staff shall continue to serve the Township until such time as the Board of Supervisors declares otherwise.

B. Duties and Powers.

1. The Zoning Officer shall:
 - a. administer the Zoning Ordinance in accordance with its literal terms;
 - b. seek to identify and register nonconforming uses and nonconforming structures;
 - c. receive and examine all applications required under the terms of this Ordinance;
 - d. issue or refuse permits within this Ordinance;
 - e. receive complaints of violation of this Ordinance;
 - f. issue a written notice of violation to any person violating any provision of this Ordinance;
 - g. keep records of applications, permits, certificates, written decisions and interpretations issued, of variances granted by the Board, of complaints received, of inspections made, of reports rendered, and of notice or orders issued; and
 - h. make all required inspections and perform all other duties as called for in this Ordinance.
2. The Zoning Officer shall not have the power to permit any construction, use or change of use which does not conform to this Ordinance, or all other Ordinances of the Township.

111. ZONING HEARING BOARD AND VARIANCES.

A. Appointment.

1. The Zoning Hearing Board shall be continued and shall consist of 3 residents of the Township appointed by the Board of Supervisors.
2. Board members shall serve terms of 3 years, so fixed that the term of office of no more than one member expires each year.
3. Members of the Board shall hold no other office in the Township.

- B. Vacancies. The Board shall promptly notify the Board of Supervisors of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of a term.
- C. Removal of Members. See Section 905 of the Municipalities Planning Code.
- D. Organization.
 - 1. Officers. The Board shall elect officers from its own membership Officers who shall serve annual terms and may succeed themselves.
 - 2. Quorum. For the conduct of any hearing and taking of any action, a quorum shall be not less than a majority of all members of the Board, except for the following:
 - a. Hearing Officer. The Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Board, as provided by the Municipalities Planning Code.
 - 3. Rules. The Board may make, alter, and rescind rules and forms for its procedure, consistent with all applicable Township ordinances and State law.
- E. Zoning Hearing Board Functions. The Zoning Hearing Board shall be responsible for the following:
 - 1. Appeal of a Decision by the Zoning Officer.
 - a. The Board shall hear and decide appeals where it is alleged by the appellant (the landowner affected, any office or agency of the Township, or any person aggrieved) that the Zoning Officer has failed to follow prescribed procedures, or has misinterpreted or misapplied any valid provision of this Ordinance or any valid rule or regulation governing the action of the Zoning Officer.
 - b. All appeals which allege that the Zoning Officer has made an error shall be filed directly with the Township Secretary at the Township Building within 30 days of the Zoning Officer's alleged error, unless a different time limitation is provided under State law. This time limitation shall not apply to provisions for the revocation of a permit under Section 109.A.6.
 - c. Such appeals shall be in writing and shall explain fully the facts and parties in the case and shall clearly state the reasons or provisions of the

Ordinance on which the appeal is based.

2. Challenge to the Validity of the Ordinance or Map.

- a. The Board shall hear challenges to the validity of this Ordinance filed with the Board in writing by the landowner affected, any officer or agency of the Township, or any person aggrieved.
- b. After the conclusion of the hearing(s), the Board shall decide all questions and shall make findings on all relevant issues of fact, within the time limits of the Municipalities Planning Code as amended.

3. Variance.

- a. The Board shall hear requests for variances filed with the Board in writing by any landowner (or any tenant with the permission of such landowner).
- b. The Board may grant a variance only within the limitations of State law. The Municipalities Planning Code as amended provides that all of the following findings must be made, where relevant:
 - (i) There are unique physical circumstances or conditions (including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property) and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located;
 - (ii) Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and a variance is therefore necessary to enable the reasonable use of the property;
 - (iii) Such unnecessary hardship has not been created by the applicant;
 - (iv) 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
 - (v) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- c. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the

purposes of this Ordinance.

4. Special Exception.

- a. The Board shall hear and decide requests for all special exceptions filed with the Board in writing by any landowner (or any tenant with the permission of such landowner), as provided in this Ordinance and in accordance with such standards and criteria contained in this Ordinance.
- b. In granting a special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, as it may deem necessary to implement the purposes and intent of this Ordinance.

5. Hearings. The Board shall conduct hearings and make decisions in accordance with Section 112 and the Municipalities Planning Code.

6. Records and Reports. The Board shall keep full public records of its business and should submit an annual report of its activities to the Board of Supervisors.

7. Court Appeals.

- a. In the case of an appeal from the Board to the Court of Common Pleas, the Appellant shall make the return required by law, and should promptly notify the Township Zoning Hearing Board Solicitor of such appeal.
- b. Any decision of the Board not appealed within 30 days after notice thereof shall be final, except as may be permitted under State law.

8. Appeal by the Zoning Officer. See Section 105.D.

F. Applications to the Zoning Hearing Board.

1. All appeals from a decision of the Zoning Officer and applications to the Board shall be in writing on forms provided by the Township. The applicant is responsible to identify sections of the Ordinance that apply.
2. Every appeal or application shall include the following and be submitted with a total of 7 copies (which may include the original):
 - a. The name and address of the applicant, or appellant;
 - b. The name and address of the owner of the property to be affected by such proposed change or appeal (if not the same as above);
 - c. A brief description and location of the property to be affected by such

proposed change or appeal;

- d. A statement of the present zoning classification, existing structures and proposed use of the property in question;
- e. A statement of the section of this Ordinance under which the appeal is made and reasons why it should be granted, or a statement of the section of this Ordinance governing the situation in which the alleged erroneous ruling is being appealed and the reasons for this appeal; and
- f. Seven (7) copies of a plot plan of the property to be affected, indicating the location and size of the lot and the size and location of existing and intended improvements;
- g. Section 1411 requires a detailed site plan for certain uses.
- h. All other information listed on the official Township application form
- i. Information as deemed necessary by the zoning officer to assure compliance with all Township Ordinances.

G. Time Limitations: Persons Aggrieved. The time limitations for raising certain issues and filing certain proceedings with the Board shall be the following:

1.
 - a. No person shall be allowed to file any proceeding with the Board later than 30 days after any application for development, preliminary or final, has been approved by the appropriate Township officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he/she had no notice for which notice legally was required to have been sent, knowledge, or reason to believe that such approval had been given.
 - b. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest.
2. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan pursuant to a Planned Residential Development or from an adverse decision by a Zoning Officer on a challenge to the validity of this Ordinance or Zoning Map pursuant to the Municipalities Planning Code as amended shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

H. Stay of Proceedings. See the Municipalities Planning Code as amended.

I. Time Limitations on Permits and Variances.

1. If the variance is granted or the issuance of a permit is approved, or other action by the appellant is authorized, the necessary permit shall be secured by the applicant within 9 months after the date when the variance is finally granted or the issuance of a permit is finally approved or the other action by

the appellant is authorized; and the building or alteration, as the case may be, shall be begun within 12 months of the issuance of the permit.

2. If the applicant submits complete plans for a required site plan review or subdivision or land development approval or special exception or conditional use approval that is related to the variance or issuance of a permit under this ordinance within the 9 month period, the 12 month requirement of this subsection shall begin after such site plan review is completed or approval is granted, as applicable, by the Township. For good cause the Zoning Officer may, upon application in writing stating the reasons therefore, extend to 18 months the 9-month application period.
3. Should the appellant or applicant fail to obtain the necessary permits within the above time month period, or having obtained the permit should he/she fail to diligently commence substantial construction (as defined by the Township Building Code) there under within such time period, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn or abandoned his appeal or his application, and all provisions, variances and permits granted to him by the Board and/or Township staff shall be deemed automatically rescinded.
4. The work authorized by the Building and Zoning Permits shall begin within 180 days of issuance of the permit. Construction of a building shall be completed within 12 months after the beginning of construction of such building. Upon written request to the Zoning Administrator, this may be extended to 18 months by the Zoning Administrator upon just cause. If an applicant fails to obtain the necessary permits or begin construction within the above time periods, or allows interruptions in substantial construction of longer than 45 days (or up to 180 days upon approval of a written request for extension by the Zoning Administrator upon just cause), the Zoning Administrator may conclusively presume that the applicant has waived, withdrawn or abandoned approvals and permits under this Ordinance and may consider all such approvals and permits to have become null and void. The permittee must then re-apply for a new permit and pay all fees at the current fee schedule at the time of application as required by Lower Nazareth Township.

112. HEARINGS.

The Board shall conduct hearings and make decisions in accordance with the following:

- A. Notice of Hearings. Notice of all hearings of the Board shall be given as follows:
 1. Public notice shall be published, as defined by Section 107 of the Municipalities Planning Code. The notice shall state the time and place of

the hearing and the particular nature of the matter to be considered.

2. Notice of such hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing. It is the responsibility of the applicant to ensure that such notice is posted and remains posted until after the hearing date.
3. Written notice shall be given to the Applicant and the Zoning Officer. Notice should be given to the Planning Commission, the Board of Supervisors and the owners of record of property abutting or within 200 feet of the lot lines of the subject property. Also, such notice shall be given to any other person or group (including civic or community organizations) who has made a written timely request for such notice. Any such notices should be mailed or delivered by a Township representative to the last address known to the Township. Such notice should be intended to be received at least 5 days prior to the hearing date.
4.
 - a. In any matter which relates to a property which lies within 300 feet of the boundary of another municipality, except boundaries separated by a non-intermittent river, and which the Township staff determines may have a significant impact on that municipality, the Township staff should transmit to the municipal clerk of this other municipality a copy of the official notice of the public hearing on such matters at least 7 days prior to the hearing date.
 - b. The other municipality shall have the right to appear and to be heard at the public hearing.
5. The Board of Supervisors may, by resolution, establish a reasonable fee schedule, based on cost, to be paid by the Applicant for any notice required by this Ordinance and by persons requesting any notice not required by Ordinance.

B. Parties.

1. The parties to a hearing shall be the Township, 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.
2. 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.

C. Oaths and Subpoenas. The chairperson of the Board or Hearing Officer shall have

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.

- D. Representation by Counsel. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.
- E. Evidence. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- F. Record. The Board or the hearing officer, as the case may be, shall keep a record of the proceedings as required by State law.
- G. Ex Parte Communications.
 - 1. The Board shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved, except upon notice and opportunity for all parties to participate.
 - 2. The Board shall not take notice of any communication, reports, staff memoranda, or other materials unless the parties are afforded an opportunity to contest the material so noticed, except for advice from the Board's solicitor.
 - 3. After the commencement of hearings, the Board shall not inspect the site or its surroundings with any party or his representative, unless all parties are given an opportunity to be present.
- H. Advisory Review by the Planning Commission. The Planning Commission may, at their option, provide an advisory review of any appeal or application to the Zoning Hearing Board. The Zoning Hearing Board may request an advisory review from the Planning Commission.
- I. Initiation of Hearings. A hearing required under this Ordinance shall be initiated within 60 days of the date of an applicant's request for a hearing, unless the applicant has agreed in writing to an extension of time. No request for a hearing by an applicant shall be accepted prior to submission of a duly filed application.
- J. Decision/Findings.
 - 1. The Board shall render a written decision or make written findings (when no decision is called for) on the application, within 45 days after the last hearing before the Board, unless the applicant has agreed in writing to an extension of time.

2. Where the application is contested or denied, the decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons therefore.
 3. Any conclusion based on any provision of the Municipalities Planning Code or of this Ordinance, or of any other ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in light of the facts found.
- K. Notice of Decision. A copy of the final decision or a copy of the findings (when no decision is called for), shall be delivered to the applicant personally or mailed to the applicant as required by the Municipalities Planning Code as amended.

113. APPEALS.

- A. In General. All appeals for securing review of this Ordinance or any decision, determination or order of the Board of Supervisors, its agencies or officers issued pursuant to this Ordinance, shall be in conformance with Article X-A of the Municipalities Planning Code.
- B. Procedural Defects in Enactment. Questions of an alleged defect in the process of enactment or adoption of this Ordinance shall be raised by an appeal taken directly from the action of the Board of Supervisors to the court filed not later than 60 days from the intended effective date of the Ordinance or map.
- C. To the Zoning Hearing Board. Appeals to the Board shall comply with Section 112, "Hearings."

114. AMENDMENTS.

- A. The Township may, on its own motion or upon petition of any person or entity, amend, supplement, change, modify, or repeal this Ordinance.
- B. Before voting on the enactment of an amendment, the Board of Supervisors shall hold a public hearing thereon, pursuant to public notice.
- C. Planning Commission. In the case of an amendment other than that prepared by or under the direction of the Planning Commission, the Board of Supervisors shall submit each such amendment to the Planning Commission at least 30 days prior to the hearing on such proposed amendment and permit the Commission an opportunity to submit recommendations.

- D. LVPC Review.
1. The Board of Supervisors or Planning Commission shall submit the proposed amendment to the LVPC for recommendations at least 30 days prior to the hearing on such proposed amendment.
 2. No action shall be taken by the Board of Supervisors until any LVPC comments are received, unless 30 days pass with out such comments being received.
- E. Changes After a Hearing. If, after any public hearing held upon an amendment, the proposed amendment is revised, or further revised, to include or exclude land previously not affected by it, the Board of Supervisors shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment.
- F. Application for Amendment.
1. Any request for amendment of the Zoning Ordinance (including supplement, change or repeal) by any person or entity (other than the Township Staff, Planning Commission, Board of Supervisors or committee appointed by the Board of Supervisors or under the direct oversight of such entity) shall include the following:
 - a. A statement of why the change would be in the best interests of the Township;
 - b. A statement of how the proposal will relate to the Township Comprehensive Plan;
 - c. A statement addressing any adverse effects on adjacent residences;
 - d. A statement addressing any major traffic access or congestion concerns;
 - e. A map showing the proposed boundaries of any proposed map changes, the existing and adjacent zoning and adjacent land uses; and
 - f. A statement explaining proposed extensions and major improvements needed of public water and sewer systems to serve the land area.
 2. Fees. See the Township Fee Schedule.
- G. Traffic Impact Report. The Planning Commission or the Board of Supervisors may require an applicant for a zoning amendment to fund a traffic impact study within the requirements of Section 1413. Such a study shall take into account the entire land area proposed for a change, with an emphasis on the net projected traffic increases of the proposed amendment compared to the existing zoning, based upon reasonable assumptions about the intensity and type of development.
- H. Notification of Proposed Zoning Map Amendment. At least 10 days prior to a hearing for a proposed change in a boundary or district on the official Zoning Map,

the applicant shall send or have delivered in person written notice of the proposed change and the hearing date to all owners of directly abutting property and all owners of land proposed to be affected. This requirement for notice shall not apply to a proposed amendment to the Zoning Map that was developed by or under the oversight of the Planning Commission, Board of Supervisors Township staff or a committee or commission appointed by the Board of Supervisors.

115. CURATIVE AMENDMENTS.

- A. A landowner who desires to challenge on substantive grounds the validity of this Ordinance which prohibits or restricts the use or development of land in which he has an interest, may submit a curative amendment to the Board of Supervisors with a written request that his challenge and proposed amendment be heard and decided as provided in the Municipalities Planning Code.
- B. For a curative amendment request, the applicant shall pay to the Township all fees required under the applicable Township fee schedule.

116. FILING FEES AND COSTS.

- A. The Board of Supervisors has established by resolution a schedule of fees and a collection procedure relating to all applications filed pertaining to this Ordinance.
- B. No application shall be considered filed until all fees are paid.
- C. This fee schedule may be based upon the type of application and the breath of the proposed development including acreage, numbers of lots and type of use, etc., to most accurately reflect the Township's actual costs.

117. ENFORCEMENT; VIOLATIONS AND PENALTIES; REMEDY.

- A. See Sections 616 and 617 of the Municipalities Planning Code as amended. Pursuant to Section 616.1.(c)(5), the period of time available for the recipient of an enforcement notice to appeal such notice to the Zoning Hearing Board is fifteen (15) days.

118. CONDITIONAL USE PROCESS.

- A. Purpose. Before a permit is granted for any use listed as a conditional use in this Ordinance, a Site Plan shall be reviewed by the Planning Commission and approved by the Township Board of Supervisors. This procedure is provided because of the considerable impact that these uses tend to have on a community.

B. Procedure.

1. Zoning Approval.

- a. The applicant shall make all reasonable efforts to ensure that a proposed use will be allowable under this Zoning Ordinance prior to a submission to the Planning Commission for a formal conditional use review.
- b. This submission to the Planning Commission shall not occur until any needed zoning variances or special exception approval is received.
- c. The applicant may request an informal review by the Planning Commission of a site plan prior to requesting variances or a special exception.

2. Submission. Seventeen (17) complete copies of any required site plan meeting the requirements of Section 1411 shall be submitted to the Township. The Zoning Officer shall refuse to accept an incomplete application which does not provide sufficient information to determine compliance with this Ordinance.

3. Effect. A conditional use approval by itself shall not relieve the applicant of any obligation under a Township Ordinance nor constitute a recommendation for a zoning variance.

4. Distribution. The Township shall distribute the copies of the site plan to the Planning Commission and the Board of Supervisors. A minimum of 1 copy shall be retained in the Township files. The Township Fire Services should be given an opportunity for a review of the application and site plan.

5. Zoning Officer Review. The Zoning Officer or his designee shall report in writing or in person to the Planning Commission or Board of Supervisors stating whether the proposal complies with this Ordinance. The Township staff, Planning Commission or Board of Supervisors may request a review by the Township Engineer.

6. Planning Commission. The Planning Commission shall review the conditional use application and submit a recommendation to the Board of Supervisors prior to action of the Board of Supervisors.

7. The Board of Supervisors shall not act to approve or deny a conditional use application until they have received the reports of the Zoning Officer and the Planning Commission, unless a period of 60 days has passed from the date of the application.

8. The Board of Supervisors shall review the submission for the proposed use and approve or disapprove the application within 60 days from the date of

the applicant's request for a hearing, unless the applicant has agreed to an extended review period. Approval may be made conditional upon the applicant's adoption of specified changes in the submission.

9. The decision of the Board of Supervisors shall be in writing and shall be communicated to the applicant personally or mailed to him at his last known address. This should occur not later than 15 days following the decision.
10. Subdivision and Land Developments. A conditional use review may and should be coordinated with any and all subdivision and land development reviews.

C. Approval of Conditional Uses.

1. The Township Supervisors shall approve any proposed conditional use if they find adequate evidence that the proposed use will meet:
 - a. All of the standards listed in Section 118.D.
 - b. Any specific standards for the proposed use listed in Article XV.
 - c. All other applicable sections of this Ordinance.
 - d. Be capable of meeting all applicable sections of the Subdivision and Land Development Ordinance and all other applicable Township Ordinances.
2. In granting a conditional use, the Board of Supervisors may require such reasonable conditions and safeguards (in addition to those expressed in this Ordinance) as it determines is necessary to implement the purposes of this Ordinance.

D. Standard for Decisions. Each conditional or special exception use shall comply with all of the following standards:

1. Other Laws. Not clearly in conflict with other Township Ordinances or State or Federal laws or regulations known to the Township.
2. Comprehensive Plan. Not significantly incompatible with the adopted Comprehensive Plan, as amended.
3. Traffic. Will not result in or significantly add to a significant traffic hazard or significant traffic congestion. See Section 1413 for possible traffic impact study requirement.
4. Safety. Will not create a significant public safety hazard, including fire, toxic or explosive hazards.

5. Storm Water Management. Will follow adequate and professionally accepted engineering methods to manage storm water. This shall not be a criteria of a decision under this Ordinance if the application clearly would be subject to a separate engineering review and an approval of storm water management by the Board of Supervisors under another Township Ordinance.
6. Neighborhood. Will not significantly negatively affect the desirable character of an existing residential neighborhood.
7. Design. Will involve adequate site design methods, including screening, setbacks and traffic control, to avoid significant negative influences on adjacent uses.
8. Performance Standards. Will not have a serious threat of future inability to comply with the performance standards of this Ordinance, as stated in Article XVI.

119. SPECIAL EXCEPTION USE PROCESS.

- A. Purpose. The Special Exception Process is designed to allow careful review of uses that have some potential of conflicts with adjacent uses or areas.
- B. Procedure.
 1. The Zoning Officer shall not grant a permit for a proposed special exception use until written approval of the Zoning Hearing Board is obtained.
 2. All applicants for a special exception use shall submit 8 sets of Site Plans for the proposed use to the Secretary to the Zoning Hearing Board as part of the application for a permit under this Ordinance. This maybe waived by the Zoning Officer for non-intensive home occupations and other uses not involving new construction nor additional off-street parking. Photographs of the existing site or buildings may also be requested to be presented by the applicant.
 3. All Site Plans shall contain the information required in Section 1411.
 4. The Township shall forward the application to the Zoning Hearing Board and its solicitor. A minimum of 1 copy shall be retained in the Township files.
 5. The Zoning Officer shall, prior to the next Zoning Hearing Board meeting where the application will be discussed, review the Plan to determine compliance with this Ordinance and report these findings to the Zoning

Hearing Board.

6. The Planning Commission may, at their option if they determine there will be substantial impacts on the community, review a proposed special exception use and submit an advisory recommendation to the Zoning Hearing Board. The intent of this section is to allow an additional review for proposed uses that would have Township-wide effects.
7. The Board shall not decide the case without reviewing any reports received from the Zoning Officer and Planning Commission. If the Zoning Officer and Planning Commission do not submit written reports, the Board may still hold the hearing and decide the request.
8. The Board shall hear and decide such request for a special exception use under the procedures of Article I and the Municipalities Planning Code.
9. The decision of the Board shall be in writing and shall be communicated to the applicant in accordance with Article I.
10. A site plan review by the Planning Commission and the Board of Supervisors may also be required. See Section 1411.
11. Any granting of a special exception shall not relieve the applicant of any other requirements of this Ordinance.

C. Approval of Special Exception Uses.

1. The Zoning Hearing Board shall approve any proposed special exception use if they find adequate evidence that any proposed use will meet:
 - a. All of the standards listed in Section 118.D.
 - b. All of the specific standards for the proposed use listed in Article XIV.
 - c. All other applicable requirements of this Ordinance.
2. In granting a special exception, the Board may require such reasonable conditions and safeguards (in addition to those expressed in this Ordinance) as it determines is necessary to implement the purposes of this Ordinance.

- D. Conditions imposed by the Zoning Hearing Board shall automatically become conditions of any permit issued pursuant thereto, and any failure to comply with said conditions shall be a violation of this ordinance.

120. LIABILITY.

- A. Neither the approval nor the granting of any building permit, floodplain permit, site

plan review, subdivision approval, land development approval, permit under this ordinance, erosion review, storm water runoff review, steep slope review or any other review or permit of this Ordinance, involving any land governed by the provisions of this Ordinance, by an officer, employee or agency of the Township, shall constitute a representation, guarantee or warranty of any kind by the Township, or its employees, officials or agencies, of the practicality or safety of any structure, use or subdivision, and shall create no liability upon, nor a cause of action against such public body, official nor employee for any damage that may result pursuant thereto.

- B. If the Zoning Officer mistakenly issues a permit under this Ordinance, the Township shall not be liable for any later lawful withdrawal of such permit for valid cause shown.