

ARTICLE I
Administration

§ 124-101. Applicability.

This chapter shall apply throughout East Petersburg Borough. Any activity regulated by this chapter shall only occur in such a way that conforms with the regulations of this chapter. See § 124-103A.

§ 124-102. Purposes and community development objectives.

This chapter is hereby adopted:

- A. In accordance with the requirements and purposes (including Sections 604 and 605 or their successor section(s), which are included by reference) of the Pennsylvania Municipalities Planning Code,² as amended;
- B. In accordance with goals and objectives of the Lancaster County Comprehensive Plan and the Growing Together Regional Comprehensive Plan, which are hereby included by reference;
- C. To carry out the following major objectives:
 - (1) To make sure that development carefully relates to natural features, and to avoid overly intense development of environmentally sensitive land;
 - (2) To avoid overextending groundwater supplies, and to encourage groundwater recharge, and to protect the quality of groundwater and surface waters;
 - (3) To promote traditional styles of development;
 - (4) To promote compatibility between land uses;
 - (5) To seek coordinated development and roads across municipal borders;
 - (6) To provide for a variety of residential densities and meet legal obligations to provide opportunities for all housing types;
 - (7) To direct higher-density development to areas that are physically suitable, accessible by major roads and that have the potential of central water and sewage services;
 - (8) To coordinate development with future central water and sewage service areas;
 - (9) To direct industrial development to locations that will minimize conflicts with homes;
 - (10) To direct commercial businesses to existing commercial areas, while avoiding new strip commercial areas that would cause traffic congestion and safety problems and conflicts with homes;

2. Editor's Note: See 53 P.S. §§ 10604 and 10605.

- (11) To promote new business development in appropriate areas that will provide additional tax revenue and job opportunities;
- (12) To promote public health, safety and general welfare;
- (13) To promote mixed-use development, where appropriate;
- (14) To promote compact forms of development, where appropriate;
- (15) To promote connectivity of streets and pedestrian paths; and
- (16) To promote pedestrian-friendly and bicycle-friendly patterns of development.

§ 124-103. Permits and certificates.

A. Applicability.

- (1) Any of the following activities or any other activity regulated by this chapter shall only be carried out in conformity with this chapter:
 - (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 lot lines; and/or
 - (d) Creation of a new use.
- (2) Zoning permit. A zoning permit indicates that a zoning application complies with this chapter to the best knowledge of the applicable Borough staff.
 - (a) A zoning permit is required to be issued prior to the start of any of the following activities:
 - [1] Erection, construction, movement, placement, relocation or expansion of a structure, building or sign;
 - [2] Change of the type of use or expansion of the use of a structure or area of land;
 - [3] Creation of a new use;
 - [4] Demolition of a building, or partial demolition of the exterior of a building;
 - [5] Site alterations or mineral extraction as defined by § 124-202.
 - [6] Excavation or grading in preparation for the construction of a building or a change in use of a property; and/or

[7] Construction or installation of any animal waste impoundment, lake, pond, dam or other water retention basin.

(b) The Borough may, at its option, issue combined or separate building permits and zoning permits and/or may utilize a single or separate applications for the permits.

(3) Certificate of use.

(a) It shall be unlawful to establish any new or replacement principal nonresidential use until a certificate of use for such building or use has been issued by the Borough staff. (Note: A certificate of occupancy may also be required in additional situations under the Construction Code,³ which is a separate ordinance.)

(b) The Borough staff may permit the zoning permit application to serve as the application for the certificate of use.

(c) The certificate of use shall only be issued by the Zoning Officer if the Zoning Officer determines that the activity complies with this chapter, to the best knowledge of the Zoning Officer. The Borough may also withhold issuance of the certificate until there is compliance with other Borough ordinances.

(d) The applicant shall keep a copy of the certificate of use available for inspection.

(e) Upon the request of an applicant, the Zoning Officer may issue a temporary certificate of use. Such temporary certificate may permit an activity to occur in all or part of a structure before the entire work covered by the permit has been completed.

[1] However, such temporary certificate shall only be issued if the applicant proves to the Zoning Officer that the activity or occupancy can occur safely without endangering public health or safety.

[2] The temporary certificate shall establish in writing a maximum time period under which it is valid. A six-month maximum time period shall apply if not otherwise specified.

[3] Failure to receive a permanent certificate of use within such time period shall be a violation of this chapter.

[4] The temporary certificate may be conditioned upon compliance with certain specific requirements within certain time periods.

[5] See also § 124-103G.

B. 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 itself be regulated

3. Editor's Note: See Ch. 39, Building Construction.

by this chapter. Examples of such work include replacement of a roof or porch that does not involve enclosure of space. (However, a construction permit under any Borough building code may be needed for such work.)

C. Types of uses.

- (1) Permitted-by-right uses. The Zoning Officer shall issue a permit under this chapter in response to an application for a use that is "permitted by right" if it meets all of the requirements of this chapter.
- (2) Special exception use or application requiring a variance. A permit under this chapter for a use requiring a special exception or variance shall be issued by the Zoning Officer only in response to a written approval by the Zoning Hearing Board following a hearing.
- (3) Conditional use. A use requiring zoning approval by the Borough Council under § 124-117.

D. Applications.

- (1) Submittal. All applications for a zoning permit or a decision by the Zoning Hearing Board shall be made in writing on a form provided by the Borough. Such completed application, with required fees, shall be submitted to a designated Borough staff person.
- (2) Site plan. The applicant shall submit a minimum of two copies of a site plan with the application if the application involves a new building, expansion of a building or addition of three or more parking spaces. The site plan shall be drawn to scale and show the following:
 - (a) Locations, dimensions and uses of existing and proposed structures, parking and loading areas, and locations of existing and proposed uses of areas of land, with existing features clearly distinguished from proposed features;
 - (b) Notes showing the dimensions of all buildings from lot lines and street rights-of-way;
 - (c) Locations of any watercourses and any one-hundred-year floodplain;
 - (d) Proposed lot areas, lot widths and other applicable dimensional requirements;
 - (e) Locations and widths of existing and proposed sidewalks; and
 - (f) A North arrow and scale.
- (3) Additional information. Any application under this chapter shall include the following information, unless the Zoning Officer determines such information is unnecessary to determine compliance with this chapter:
 - (a) The address of the lot;
 - (b) Name and address of the applicant and of the owner of the property if different from the applicant;

- (c) If the applicant is not the landowner of record, information shall be presented with the application, such as an agreement of sale or lease, to demonstrate that the applicant has the legal right to make the application;
 - (d) A current deed or evidence of equitable ownership, if the Zoning Officer believes there is a question about ownership by the applicant for the property;
 - (e) A description of the existing and proposed use(s) of the property, with the proposed use described in sufficient detail for the Zoning Officer to determine compliance with this chapter;
 - (f) All other applicable information listed on the official Borough application form;
 - (g) If the applicant is incorporated, the legal names and day telephone numbers of officers of the organization/corporation;
 - (h) Such additional information that the Zoning Officer may determine is reasonably necessary to determine compliance with this chapter; and
 - (i) A listing of all conditional uses, special exception approvals and/or variances which the applicant is requesting and/or a description with a date of any such approvals that were previously granted for this property that relate to this application.
- (4) Submittals to the Board. In addition to the information listed in Subsection D(3) above, an application requiring a site plan and action by the Zoning Hearing Board shall also include the following information, unless the Zoning Officer determines that such information is unnecessary to determine compliance with this chapter:
- (a) The present zoning district and major applicable lot requirements;
 - (b) For a nonresidential use:
 - [1] A description of the proposed nonresidential operations and storage in sufficient detail to indicate potential nuisances and hazards regarding noise, large truck traffic, glare, odors, dust, fire or toxic or explosive hazards or other significant public health and safety hazards.
 - [2] A list of the maximum hours of operation.
 - (c) The existing directions of stormwater flow (and any proposed revisions), and any proposed methods of stormwater management;
 - (d) A listing of any sections of this chapter for which a variance is being requested or another appeal being made, with the reasons for such request;
 - (e) Approximate locations of principal buildings and locations of streets and alleys and zoning district boundaries within 100 feet of the boundaries of the tract, and description of uses of adjoining properties (such as "drugstore" or "single-family detached dwelling");

- (f) Heights, locations, methods of illumination and intensity of exterior lighting and sign lighting;
 - (g) Name and address of person who prepared the site plan;
 - (h) Signed acknowledgment of the application by the applicant; and
 - (i) Such additional information required under applicable sections of this chapter.
- (5) Ownership. No person other than a landowner or his, her or its specifically authorized agent or a tenant or lessee with written permission of the landowner shall submit a zoning application (see definition of "landowner" in Article II).
- E. Issuance of permits.
- (1) At least one copy of each permit application and any other zoning approval shall be retained in Borough files.
 - (2) PennDOT permit. Where necessary for access onto a state road, a Borough zoning or building permit shall be automatically conditioned upon issuance of a PennDOT highway occupancy permit.
- F. Revocation of permits; appeal of permit or approval.
- (1) Revocation. The Zoning Officer shall revoke, withhold or suspend a permit or approval issued under the provisions of the Zoning Ordinance in case of one or more of the following:
 - (a) Any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based (Note: The Pennsylvania Criminal Code provides for penalties for providing false information to a municipal employee in the carrying out of his/her duties.);
 - (b) Upon violation of any condition lawfully imposed by the Zoning Hearing Board upon a special exception use or variance;
 - (c) Any work being accomplished or use of land or structures in such a way that does not comply with this chapter or an approved site plan or approved permit application; and/or
 - (d) For any other just cause set forth in this chapter.
 - (2) Appeals. A party with legitimate standing, or as otherwise provided by state law, may appeal decisions under this chapter within the provisions of the Pennsylvania Municipalities Planning Code. Any such appeal shall occur within the time period established in the Pennsylvania Municipalities Planning Code. (As of the adoption date of this chapter, such provisions were in Sections 914.1 and 1002-A.)⁴
- G. Zoning permit for temporary uses and structures.

4. Editor's Note: See 53 P.S. §§ 10914.1 and 11002-A.

- (1) A zoning permit for a temporary use or structure may be issued by the Zoning Officer for any of the following:
 - (a) A temporary permit may be issued for customary, routine and accessory short-term special events, provided that:
 - [1] Only a nonprofit organization or a permitted place of worship proposing a temporary use to clearly primarily serve a charitable, public service or religious purpose or a Borough-sponsored festival or Borough-sponsored special event shall be eligible to receive approval for commercial-type activities in a district where a commercial use would not otherwise be permitted;
 - [2] Such total events shall each be limited to a maximum of 10 total days per calendar year; and
 - [3] The applicant shall prove to the Borough that sufficient parking and traffic control will be available for the special event, without obstructing parking that is required to serve other uses on the site.
 - (b) A temporary permit may be issued for temporary storage and office trailers that are necessary to serve on-site construction, while such construction is actively under way under a valid Borough permit.
 - (c) In addition, christmas tree sales shall be allowed by right in the NC, HC and LI Districts. Fireworks displays shall be allowed where approved by Borough Council.
 - (d) The Borough may also authorize the use of sidewalks for sidewalk sales or outdoor cafes in a commercial district.
 - (e) The Borough may also approve the construction of a model home, which is used as a sales office in a development, provided that the building is converted to a dwelling when the development is complete. A modular sales office may be allowed by the Borough until the first dwelling is complete.
 - (f) Portable storage containers: see § 124-807.
- (2) Time period. The Zoning Officer shall state a reasonable maximum time period on the temporary permit. If no time limit is stated, then a seven-day maximum period shall apply. A temporary permit may be renewed for just cause.
- (3) Temporary retail sales.
 - (a) A lot shall only be used for temporary retail sales if all of the following conditions are met:
 - [1] The property shall be located within a zoning district that allows retail sales.
 - [2] No off-street parking spaces shall be obstructed by tents or structures that are required to serve permanent uses on the lot.

- [3] Any signs visible from a public street shall comply with this chapter.
- [4] If food or beverages are sold that are not prepackaged, the applicant shall prove compliance with state health regulations, including having on-site facilities for workers to wash their hands.
- [5] Any structure shall meet applicable minimum setbacks.
- [6] A zoning permit shall be required from the Borough, which shall be displayed while the activity is open for business.
- [7] The application may be rejected if the Zoning Officer has reason to believe that the activity would obstruct safe sight distances.
- [8] Any fireworks sales or storage shall only occur in a building that has met Borough construction code and firesafety inspections, and the operator of any fireworks sales use shall make any area or vehicle used for fireworks sales or storage available for regular inspection by local police and fire officials.

- (b) This Subsection "G(3)" shall not apply to activity under Subsection G(1)(a) above, a garage sale, sale of agricultural produce that was grown by the operator of the sales, and flower sales that do not involve any structure on a commercial property,

H. Compliance with Subdivision and Land Development Ordinance. If an application under this chapter would also be regulated by the Subdivision and Land Development Ordinance (SALDO), then any permit or approval under this chapter shall automatically be conditioned upon compliance with the SALDO. See the definitions of "land development" and "subdivision" in the SALDO. (Note: As of 2008, East Petersburg Borough was regulated by the Lancaster County SALDO, as administered by the Lancaster County Planning Commission.)⁵

- (1) For example, if an applicant applies for a single-family detached dwelling on a proposed new lot, the construction permit for such dwelling shall not be valid until after the lot is granted final subdivision approval and the lot is officially recorded by the County Recorder of Deeds.

§ 124-104. General procedure for permits.

- A. After receiving a proper application, the Zoning Officer shall either issue the applicable permit(s) or deny the application(s) as submitted, indicating one or more reasons.
- B. After the permit under this chapter has been issued, the applicant may undertake the action specified by the permit, in compliance with other Borough ordinances. However, it is recommended that applicants wait 30 days to begin construction if there is a possibility of an appeal by another party to have the permit revoked. Any commencement of

5. Editor's Note: See now Ch. 110, Subdivision and Land Development.

construction or a use within this thirty-day appeal period shall be at the risk of the applicant.

§ 124-105. Interpretation; uses not regulated.

- A. Minimum requirements. Where more than one provision of this chapter controls a particular matter, the provision that is more restrictive upon uses and structures shall apply. The provisions of this chapter are in addition to any other applicable Borough ordinance.
- B. Uses not specifically regulated. If a use clearly is not permitted by right, as a conditional use, or as a special exception use by this chapter within any zoning district, the use is prohibited, except that the Zoning Hearing Board may permit such use as a special exception use if the applicant specifically proves to the clear satisfaction of the Zoning Hearing Board that all of the following conditions would be met:
- (1) The proposed use would be no more intensive with respect to external impacts and nuisances than uses that are permitted in the district;
 - (2) The proposed use would be closely similar in impacts and character to uses permitted in that district, considering the standards in § 124-805F;
 - (3) The use would meet the standards that would apply under § 124-116 to a special exception use; and
 - (4) The use is not specifically prohibited in that district.
- C. Interpretation of ordinance text and boundaries.
- (1) The Zoning Officer shall literally apply the wording of this chapter and the location of all district boundaries to particular applications. In any case, the Zoning Officer may also request an advisory opinion from the Borough Solicitor to aid in the Zoning Officer's determination.
 - (2) If an applicant disagrees with the Zoning Officer's determination and believes that the ordinance should be interpreted in the applicant's favor, the applicant may appeal to the Zoning Hearing Board. See § 124-111.
 - (3) See § 124-304.
- D. Undefined terms/interpretation of definitions. See § 124-201.

§ 124-106. Enforcement; violations and penalties.

All of the enforcement, violations and penalty provisions of the Pennsylvania Municipalities Planning Code, as amended, are hereby incorporated into this chapter by reference. (Note: As of the adoption date of this chapter, these provisions were primarily in Sections 616.1, 617 and 617.2 of such Act.)⁶

6. Editor's Note: See 53 P.S. §§ 10616.1, 10617 and 10617.2.

- A. Violations. Any person who shall commit or who shall permit any of the following actions violates this chapter:
- (1) Failure to secure a zoning permit prior to any of the following: a change in use of land or structure, or the erection, construction or alteration of any structure or portion thereof, or the placement of a sign, or a change in the area of a use or the land coverage or setback of a use, or the excavation or grading of land to prepare for the erection, construction or alteration of any structure or portion thereof;
 - (2) Placement of false statements on or omitting relevant information from an application for a zoning permit;
 - (3) Undertaking any action in a manner which does not comply with a zoning permit;
 - (4) Violation of any condition imposed by a decision of the Zoning Hearing Board in granting a variance or special exception or other approval; or
 - (5) Violation of any condition imposed by a decision of the Borough Council in granting a conditional use or other approval; or
 - (6) Violation of any condition imposed by a decision of a court of competent jurisdiction, where such court has granted zoning approval with conditions.
- B. Enforcement notice. If the Borough has reason to believe that a violation of a provision of the Zoning Ordinance has occurred, the Borough shall initiate enforcement proceedings by sending an enforcement notice as provided in Section 616.1 of the Pennsylvania Municipalities Planning Code.⁷ Prior to sending an official enforcement notice, the Zoning Officer may, at his/her option, informally request compliance.
- C. Time limits. An official enforcement notice shall state the deadline to complete bringing the property into compliance with this chapter and shall state that the applicant has 30 days from the receipt of the notice to appeal to the Zoning Hearing Board.
- D. Causes of action; enforcement remedies. The causes of action and enforcement remedies provisions of the Pennsylvania Municipalities Planning Code, as amended, are hereby incorporated by reference. (Note: As of the adoption date of this chapter, such provisions were in Section 617 of such law.)⁸
- (1) Violations and penalties. Any person who has violated or permitted the violation of the provisions of this chapter shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than \$500 plus all court costs, including the reasonable attorney's fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or be payable until the date of the determination of a violation by the District Magistrate. 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.

7. Editor's Note: See 53 P.S. § 10616.1.

8. Editor's Note: See 53 P.S. § 10617.

unless a District Magistrate determining that there has been a violation further determines that there was a good faith basis for the person violating this chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the District Justice, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney's fees collected for the violation of this chapter shall be paid over to the Borough for the general use of the Borough. Imprisonment is not authorized under this chapter.

- (2) Remedies. In case any building, structure, sign or landscaping is erected, constructed, reconstructed, altered, repaired, converted or maintained; or any building, structure, sign or land is used; or any hedge, shrub, tree or other growth is maintained in violation of this chapter or of any of the regulations made pursuant thereto or any of the permits or certificates of use and occupancy issued under this chapter or any conditions imposed upon the grant of a special exception or variance by the Zoning Hearing Board or upon the grant of a conditional use, then, in addition to any other remedies provided by law, any appropriate action or proceeding may be instituted or taken to prevent or restrain such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use or to prevent any illegal act, conduct, business or use in and about such premises.

- E. Enforcement evidence. In any appeal of an enforcement notice to the Zoning Hearing Board, the Borough shall have the responsibility of presenting its evidence first.

§ 124-107. Fees.

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

§ 124-108. Amendments to chapter.

Within the requirements of the Pennsylvania Municipalities Planning Code, the Borough Council may amend or repeal any or all portions of this chapter on its own motion or after agreeing to hear a written request of any person, entity, landowner or the Planning Commission.

§ 124-109. Curative amendments.

The applicable provisions of the Pennsylvania Municipalities Planning Code shall apply. (Note: As of the adoption date of this chapter, these provisions were primarily in Sections 609.1, 609.2 and 916.1 of such Act.)⁹

9. Editor's Note: See 53 P.S. §§ 10609.1, 10609.2 and 10916.1.

§ 124-110. Zoning Officer.

- A. Appointment. The Zoning Officer(s) shall be appointed by the Borough Council. The Borough Council may designate other Borough staff persons to serve as Assistant Zoning Officer(s). Assistant Zoning Officers may serve with the same authority and duties as the Zoning Officer. The Zoning Officer shall not hold any elective office within the Borough but may hold other appointed offices.
- B. Duties and powers. The Zoning Officer's duties and powers shall include the following:
- (1) Administer the Zoning Ordinance in accordance with its literal terms, including to receive and examine all applications required under the terms of this chapter, and issue or refuse permits within the provisions of this chapter;
 - (2) Conduct inspections to determine compliance, and receive complaints of violation of this chapter;
 - (3) Keep records of applications, permits, certificates, written decisions, and variances granted by the Zoning Hearing Board and of enforcement orders, with all such records being the property of the Borough and being available for public inspection;
 - (4) Review proposed subdivisions and land developments for compliance with this chapter;
 - (5) Take enforcement actions as provided by the Pennsylvania Municipalities Planning Code, as amended;
 - (6) Maintain available records concerning nonconformities, provided that the Borough is not required to document every nonconformity; and
 - (7) Serve such other functions as are provided in this chapter.

§ 124-111. Zoning Hearing Board actions and variances.

- A. Membership of Board. The Zoning Hearing Board shall consist of three residents of the Borough appointed by the Borough Council. The existing terms of office shall continue, with terms of office being three years, and with the terms being so fixed that the term of office of one member shall expire each year. Members of the Board shall hold no other office in the Borough and shall not be employed by the Borough in another capacity.
- (1) Alternate members. The Borough Council may appoint alternate members of the Zoning Hearing Board within the applicable provisions of the Pennsylvania Municipalities Planning Code and who shall serve as provided in such law. (Note: As of the adoption date of this chapter, such provisions were in Section 903(b) of such Act.)¹⁰
 - (2) Expenditures. Within the maximum amount of funds appropriated by the Borough Council, the Zoning Hearing Board may employ or contract for secretaries, legal

10. Editor's Note: See 53 P.S. § 10903(b).

counsel, and other technical and clerical services. Members and alternate members may receive compensation, within limits established by the Borough Council, for the performance of their duties.

- B. Vacancies. Appointments to fill vacancies shall be only for the unexpired portion of a term.
- C. Organization. The applicable provisions of the Pennsylvania Municipalities Planning Code, as amended, shall apply. [As of the adoption date of this chapter, these provisions were in Section 906(a), (b) and (c) of such Act.]¹¹
- D. Zoning Hearing Board jurisdiction and functions. The Zoning Hearing Board shall be responsible for the following:
- (1) Appeal of a decision by the Zoning Officer.
 - (a) The Board shall hear and decide appeals where it is alleged by an affected person, entity or the Borough Council that the Zoning Officer has improperly acted under the requirements and procedures of this chapter.
 - (b) See time limitations for appeals in § 124-111E.
 - (2) Challenge to the validity of the chapter or map. The applicable provisions of the Pennsylvania Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this chapter, these provisions were primarily in Sections 909.1 and 916 of such Act.)¹²
 - (3) Variance.
 - (a) The Board shall hear requests for variances filed with the Borough staff in writing. The Borough Planning Commission should be provided with an opportunity to review a zoning variance application. However, action by the Zoning Hearing Board shall not be delayed by a Planning Commission review.
 - (b) Standards. The Board may grant a variance only within the limitations of state law. As of the adoption date of this chapter, the Municipalities Planning Code provided that all of the following findings must be made, where relevant:
 - [1] 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 chapter in the neighborhood or district in which the property is located;

11. Editor's Note: See 53 P.S. § 10903(b).

12. Editor's Note: See 53 P.S. §§ 10909.1 and 10916.1.

- [2] 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;
 - [3] Such unnecessary hardship has not been created by the appellant;
 - [4] 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
 - [5] 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 chapter.
- (4) Special exception.
- (a) The Board shall hear and decide requests for all special exceptions filed with the Borough staff in writing. The Board shall only permit a special exception that is authorized by this chapter. See § 124-116.
 - (b) The Borough Planning Commission should be provided with an opportunity to review a special exception application. However, action by the Zoning Hearing Board shall not be delayed by a Planning Commission review.
 - (c) Conditions. In granting a special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards, in addition to those expressed in the chapter, as it may deem necessary to implement the purposes and intent of this chapter.
- (5) Persons with disabilities. After the Zoning Officer receives a complete written application, the Zoning Hearing Board shall grant a special exception allowing modifications to specific requirements of this chapter that the applicant proves to the satisfaction of the Zoning Hearing Board are required under applicable federal law to provide a "reasonable accommodation" to serve persons who the applicant proves have "disabilities" as defined in and protected by such laws.
- (a) Such reasonable accommodations shall be requested in accordance with the U.S. Fair Housing Act Amendments and/or the Americans With Disabilities Act, as amended.
 - (b) If the applicant is requesting a reasonable accommodation under the United States Fair Housing Amendments Act of 1988 or the Americans With Disabilities Act, the applicant shall identify the disability which is protected by such statutes, the extent of the modification of the provisions of this chapter necessary for a reasonable accommodation, and the manner by which

the reasonable accommodation requested may be removed when such person(s) with a protected disability no longer will be present on the property.

- (c) Any modification approved under this section may be limited to the time period during which the persons with disabilities occupy or utilize the premises.
- (6) The Zoning Hearing Board shall also hear any other matters as set forth in the Pennsylvania Municipalities Planning Code, as amended. (Note: As of the adoption date of this chapter, such provisions were primarily within Section 909.1 of such law.)¹³
- E. Time limits for appeals. The applicable provisions of the Pennsylvania Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this chapter, these provisions were in Section 914.1 of such Act.)¹⁴
- F. Stay of proceedings. The stay of proceedings provisions of the Pennsylvania Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this chapter, such provisions were in Section 915.1 of such Act.)¹⁵
- G. Time limits on permits and approvals.
 - (1) After a variance is approved or other zoning approval (such as special exception or conditional use approval) is officially authorized, then any applicable zoning and building permits shall be secured by the applicant within 12 months after the date of such approval or authorization. The work authorized by zoning permits shall then be substantially completed within six months after the issuance of the zoning permit, unless a longer time period is provided under Borough construction permits or as provided in Subsection G(2) below.
 - (a) However, if a variance is approved to address a violation of this chapter, then the permit shall be acquired and the work completed within six months after the variance is approved, with no further time extension.
 - (2) Extension. In response to an applicant stating good cause in writing, the Zoning Officer may extend, in writing, the time limit for completion of work to a maximum total of 24 months after permits are issued.
 - (3) If an applicant fails to obtain the necessary permits or begin construction within the above time periods, or allows interruptions in substantial construction of longer than 12 months, the Zoning Officer shall conclusively presume that the applicant has waived, withdrawn or abandoned approvals, variances and permits under this chapter, and all such approvals, variances and permits shall be deemed automatically rescinded by the Borough.

13. Editor's Note: See 53 P.S. § 10909.1.

14. Editor's Note: See 53 P.S. § 10914.1.

15. Editor's Note: See 53 P.S. § 10915.1.

- H. Multiple applications. No more than one application for the same property shall be pending before the Zoning Hearing Board for special exception approval at any time.

§ 124-112. Zoning Hearing Board hearings and decisions.

The following requirements shall apply to procedures, hearings and decisions of the Zoning Hearing Board:

- A. Notice of hearings. Notice of all hearings of the Board shall be given as follows:
- (1) Ad. Public notice shall be published, as defined by Section 107 of the Pennsylvania Municipalities Planning Code.¹⁶ The notice shall state the time and place of the hearing and the particular nature of the matter to be considered.
 - (2) Posting. Notice of such hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing. The Borough staff shall post the property. It is the responsibility of the applicant to make sure that such notice remains posted until the hearing.
 - (3) Persons given notice. The Borough shall provide written notice to the applicant of the time and place of the hearing. The Borough should also provide notice to the President of the Borough Council and to the primary last known owner of each lot that is abutting or immediately across the street from the subject lot. Failure to provide such notice shall not be grounds for an appeal or delay. Also, such notice shall be given to any other person or group (including civic or community organizations) which has made a written timely request for such notice. Any such notices should be mailed or delivered to the last known address.
- B. Initiation of hearings. A hearing required under this chapter 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.
- C. Decision/findings.
- (1) The Board shall render a written decision on each application within 45 days after the last hearing on that application 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 for such conclusions.
 - (3) References shall be provided to the most pertinent section(s) of this chapter and/or the Pennsylvania Municipalities Planning Code.
- D. Notice of decision. 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 the date of the final decision. (Note: As of the adoption date of this

¹⁶ Editor's Note: See 53 P.S. § 10107.

chapter, such provisions were within Section 908(9) and (10) of such Act, including provisions regarding notice to other parties).¹⁷

E. See also Section 908 of the Pennsylvania Municipalities Planning Code.¹⁸

§ 124-113. Appeals to court.

The provisions for appeals to court that are stated in the Pennsylvania Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this chapter, these provisions were in Sections 1001-A, 1002-A, 1003-A, 1004-A, 1005-A and 1006-A of such Act.)¹⁹

§ 124-114. Limited public utility exemptions.

See the provisions of the Pennsylvania Municipalities Planning Code, as amended. (Note: As of the adoption date of this chapter, such provisions were within Section 619 of such Act.)²⁰

§ 124-115. Borough and municipal authority exemption.

This chapter shall not apply to uses or structures owned by East Petersburg Borough or by a municipal authority created solely by East Petersburg Borough for uses and structures that are intended for a public utility, stormwater, public recreation or public health and safety purpose.

§ 124-116. 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. Special exception procedure.
- (1) A site plan shall be submitted, which shall contain the information required in § 124-103D. If a fully engineered subdivision or land development plan will be required, it may be submitted separately, such as after a special exception is approved.
 - (2) The Zoning Officer should provide a review to the Zoning Hearing Board regarding the compliance of the application with this chapter.
 - (3) The Zoning Hearing Board shall follow the procedures provided in § 124-112.
 - (4) The Borough staff should offer a special exception application to the Borough Planning Commission for any advisory review that the Commission may wish to provide. However, the Zoning Hearing Board shall meet the time limits of state

17. Editor's Note: See 53 P.S. § 10908(9) and (10).

18. Editor's Note: See 53 P.S. § 10908.

19. Editor's Note: See 53 P.S. §§ 11001-A, 11002-A, 11003-A, 11004-A, 11005-A and 11006-A.

20. Editor's Note: See 53 P.S. § 10619.

law for a decision, regardless of whether the Borough Planning Commission has provided comments.

- (5) Time limits. See Section 908 of the Pennsylvania Municipalities Planning Code.
- C. Consideration of special exception applications. When special exceptions are allowed by this chapter, the Zoning Hearing Board shall hear and decide requests for such special exceptions in accordance with standards established by this chapter, including the following:
- (1) Compliance with this chapter. The applicant shall establish by credible evidence that the application complies with all applicable requirements of this chapter. The applicant shall provide the Board with sufficient plans, studies or other data to demonstrate this compliance.
 - (2) Compliance with other laws. The approval may be conditioned upon the applicant later showing proof of compliance with other specific applicable Borough, state and federal laws, regulations and permits. Required permits or other proof of compliance may be required to be presented to the Borough prior to the issuance of any zoning permit, building permit, certification of occupancy and/or recording of an approved plan.
 - (3) Traffic. 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, after considering any improvements proposed to be made by the applicant as a condition on approval.
 - (4) Site planning. The application shall include proper site layout, internal circulation, parking, buffering, and all other elements of proper design as specified in this chapter.
 - (5) Neighborhood. The proposed use shall not substantially change the character of any surrounding residential neighborhood, after considering any proposed conditions upon approval such as limits upon hours of operation.
 - (6) Safety. The proposed use shall not create a significant hazard to the public health and safety, such as fire, toxic or explosive hazards.
 - (7) Natural features. The proposed use shall be suitable for the site, considering the disturbance of steep slopes, mature woodland, wetlands, floodplains, springs and other important natural features.
- D. Conditions. In granting a special exception, the Board may require such reasonable conditions and safeguards (in addition to those expressed in this chapter) as it determines are necessary to implement the purposes of this chapter. Conditions imposed by the Zoning Hearing Board shall automatically become conditions of the building permit issued pursuant thereto, and any failure to comply with said conditions shall be a violation of this chapter.

§ 124-117. Conditional use process.

- A. Purpose. The conditional use approval process is designed to allow the Borough Council to review and approve certain uses that could have significant impacts upon the community and the environment.
- B. Procedure. The Borough Council shall consider the conditional use application and render its decision in accordance with the requirements of the Pennsylvania Municipalities Planning Code.
- (1) Submittal. A site plan shall be submitted, which shall contain the information listed in § 124-103D. Detailed site engineering (such as stormwater calculations and profiles) are not required at the conditional use stage. If a fully engineered subdivision or land development plan will be required, it may be submitted separately, such as after a conditional use is approved, or an applicant may voluntarily choose to submit a subdivision or land development plan for review at the same time as a conditional use application.
 - (2) Reviews.
 - (a) The Zoning Officer should provide a review to the Council regarding the compliance of the application with this chapter.
 - (b) The Borough staff shall submit a conditional use application to the Planning Commission for any review that the Commission may wish to provide. However, the Borough Council shall meet the time limits for a decision, regardless of whether the Planning Commission has provided comments.
 - (3) The only uses that shall be approved as conditional uses shall be those listed as conditional uses in Article III.
 - (4) Time limit. Borough Council shall render a written decision on each conditional use application within 45 days after the last hearing on the application or as may be provided otherwise in Section 913.2 of the Pennsylvania Municipalities Planning Code.²¹ For a conditional use application, the same provisions shall apply for notice of persons that apply in § 124-112A(3).
- C. Consideration of conditional use application. The Borough Council shall determine whether the proposed conditional use would meet the applicable requirements of this chapter. The same standards shall apply to a conditional use as are listed in § 124-116C for a special exception use.
- D. Conditions. In approving conditional use applications, the Borough Council may attach conditions it considers necessary to protect the public welfare and meet the standards of this chapter. These conditions shall be enforceable by the Zoning Officer, and failure to comply with such conditions shall constitute a violation of this chapter and be subject to the penalties described in this chapter.

21. Editor's Note: See 53 P.S. § 10913.2.