

BLACK CREEK TOWNSHIP
LUZERNE COUNTY
PENNSYLVANIA

ZONING ORDINANCE

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BLACK CREEK TOWNSHIP ZONING ORDINANCE

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ARTICLE 1
GENERAL PROVISIONS

Section 101. Title. This Ordinance shall be known and may be cited as “The Black Creek Township Zoning Ordinance of 2012”.

Section 102. Purpose. This Ordinance is enacted for the following purposes:

(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, emergency management preparedness, airports and national defense facilities, the provisions of adequate light and air, access to incident solar energy, police protection, fire protection, vehicle parking and loading space, transportation, water, sewage, schools, recreational facilities, public grounds, the provision of a safe, reliable and adequate water supply for domestic, commercial, agricultural or industrial use, and other public requirements; as well as reservation of natural, scenic and historic values in the environment and preservation of forests, wetlands, aquifers and floodplains.

(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.

(3) To preserve prime agriculture and farmland considering topography, soil type and classification, and present use.

(4) To provide for the use of land within the Township for residential housing of various dwelling types encompassing all basic forms of housing, including single-family and two-family dwellings and a reasonable range of multifamily dwellings in various arrangements, mobile homes and mobile home parks, provided however, that this Ordinance shall not be deemed invalid for the failure to provide any other specified dwelling type.

(5) To accommodate reasonable overall community growth, including population and employment growth, and opportunities for development of a variety of residential dwelling types and nonresidential uses.

Section 103. Community Development Objectives. This Ordinance is intended to promote the public health, safety, morals, and welfare of the present and future residents of the Township by:

(1) Providing standards to control the amount of open space and impervious surfaces within a development and to control the intensity of development in areas of sensitive natural resources or natural features in order to reduce or eliminate adverse environmental impacts.

BLACK CREEK TOWNSHIP

ORDINANCE NO. 1/9/10 OF 2019

AN ORDINANCE AMENDING THE BLACK CREEK TOWNSHIP ZONING ORDINANCE OF 2013 TO INCLUDE AND REGULATE SMALL WIRELESS COMMUNICATION FACILITIES AND DESIGNATING AREAS WITHIN THE TOWNSHIP WHERE SMALL WIRELESS COMMUNICATION FACILITIES ARE PERMITTED BY SPECIAL EXCEPTION AND INCLUDING AND REGULATING VACATION HOME RENTALS AND DESIGNATING AREAS WITHIN THE TOWNSHIP WHERE VACATION SHORT TERM HOME RENTALS ARE PERMITTED

WHEREAS, the Board of Supervisors of Black Creek Township ("Board") adopted the Black Creek Township ("Township") Zoning Ordinance on or about April 2, 2013; and

WHEREAS, the Board of Supervisors desires to amend the Zoning Ordinance to accommodate and regulate necessary utility infrastructure for the provision of wireless communications facilities within the Township, to encourage the siting of wireless communications facilities in nonresidential areas on existing structures, to address the safety, visual and aesthetic aspects of wireless communications facilities, and to provide for public input in the process of siting wireless communications antenna towers; and

WHEREAS, the Board of Supervisors also desire to amend the Zoning Ordinance to accommodate and regulate vacation short term home rentals within the Township in light of the recent Supreme Court Decision in the matter of *Slice of Life v. Hamilton Township Zoning Hearing Board*, 180 A.3d 367 (Pa. 2018);

NOW, THEREFORE, the Township of Black Creek does enact, adopt and ordain as follows:

1. Article 1, General Provisions, Section 103, is amended to include the following

(19) Regulating small cell installations and wireless communications facilities to protect residential districts; schools, parks, churches, playgrounds, historic districts, sites, and structures; to preserve scenic areas; to minimize aesthetic impacts; to preserve the health and safety of residents; and to respect the need of wireless communications service providers to relay signals without electronic interference from other service providers' operations, while not unreasonably limiting competition among them.

(20) Protecting residential dwellings is of paramount importance, and that any local regulations of small cell installations and small wireless communications facilities must furnish all possible protection for residential areas, and further declares that the provisions of this chapter are to be interpreted to favor protection of residential dwellings.

(21) Encouraging consolidations, shared use and co-location of antenna and antenna-mounting structures over the construction of new facilities.

(22) Regulating small cell installations and wireless communication facilities in compliance with Federal Communications Commission ("FCC") regulations on wireless telecommunications providing that all local jurisdictions with various restrictions on the exercise of local aesthetic, zoning, public works, and fee restrictions when dealing with wireless installation siting applications; including modified requirements for the Township to approve or deny applications within certain periods of time.

(23) Ensuring that the installation, augmentation and relocation of small cell installations in the public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants with the rights, safety, privacy, property and security of residents of the Township.

(24) Regulating vacation short term home rentals since they are not considered a single-family use where the definition of family under the Zoning Ordinance defines a family as a common housekeeping unit.

2. Article 2, Definitions, Section 202-Definitions, is hereby amended to include the following additional terms and definitions:

For Small Cell Installations/Small Wireless Communication Facilities:

"ANSI" means the American National Standards Institute.

"Antenna" means a system of electrical conductors for radiating or receiving radio waves.

"Antenna, Wireless Communications" means any device, including the supporting structure and all related appurtenances, used for the transmission and reception of radio waves as part of wireless two-way communications.

"Co-Located Small Cell Installation" means a single telecommunication tower, pole, mast or other structure supporting one or more antennas, dishes, transmitters, repeaters, or similar devices owned or used by more than one public or private entity.

"Co-Location" means the mounting of wireless communications antennas used by two or more providers on the same antenna support structure, monopole, antenna tower, or other mounting structure.

"Exempted Telecommunications Facility" includes:

a. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the tenant occupying the residential parcel on which the radio or television antenna is located; with an antenna height not exceeding twenty-five feet;

- b. A ground or building mounted citizens band radio antenna including any mast, if the height (post and antenna) does not exceed thirty-five feet;
- c. A ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed thirty-five feet;
- d. A ground or building mounted receive-only radio or television satellite dish antenna, which does not exceed thirty-six inches in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel.
- e. All citizens band radio antenna or antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service which existed at the time of the adoption of this chapter.
- f. Mobile services providing public information coverage of news events of a temporary nature.
- g. Hand-held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar personal-use devices.
- h. Government owned and operated receive and/or transmit telemetry station antennas for supervisory control and data acquisition (SCADA) systems for water, flood alert, traffic control devices and signals, storm water, pump stations and/or irrigation systems, with heights not exceeding thirty-five feet.
- i. Township-owned and operated antennae used for emergency response services, public utilities, operations and maintenance if the height does not exceed seventy feet.
- j. Telecommunication facilities less than fifty feet in height, in compliance with the applicable sections of this chapter, located on a parcel owned by the Township and utilized for public and/or quasi-public uses where it is found by the Township Board to be compatible with the existing uses of the property and serving the public interest.
- k. Telecommunication facilities, including multiple antennas, in compliance with the applicable sections of this chapter, located on an industrial parcel and utilized for the sole use and purpose of a research and development tenant of said parcel, where it is found by the planning director to be aesthetically compatible with the existing and surrounding structures.
- l. Telecommunication facilities located on a structure recognized as a historic landmark.

"FCC" means the Federal Communications Commission.

“Frequency” means the number of sinusoidal cycles made by electromagnetic radiation in one second; usually expressed in units of hertz (Hz).

“Historic Buildings and Structures” means any locations designated by municipal, county, state or federal agencies as having significance as historic districts, sites or structures.

“Lessee” means any person, corporation, partnership or other entity entering into a lease for the purpose of constructing, operating or maintaining a small cell installation or co-located small cell installation in the Township

“Major Telecommunications Facility” means telecommunication towers or similar structures greater than 70 feet in height that include other accessory equipment such as transmitters, repeaters, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, as well as support structures, equipment buildings and parking areas.

“NIER (Nonionizing Electromagnetic Radiation)” means electromagnetic radiation of such frequency that the energy of the radiation does not dissociate electrons from their constituent atoms when an atom absorbs the electromagnetic radiation.

“Public Right Of Way” means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this Chapter shall include Public Utility Easements, but only to the extent the Township has the authority to permit use of the area for this purpose. The term does not include a federal interstate highway or other areas that are not within the legal jurisdiction, ownership or control of the Township.

“RF” means radio frequency.

“Small Wireless Communication Facility” or “Small Cell Installation” means any equipment for the receiving or transmitting of wireless signals for commercial purposes, such as cellular telephone services, personal communications services (PCS), fleet communications systems and similar commercial facilities, whether operated in support of another business activity or available for the transmission of signals on a sale or rental basis; and all equipment required for the operation and maintenance of so-called "small cell" radio-frequency microwave communications systems that transmit and/or receive signals. For purposes of this section, this term does not include "major telecommunications facilities," and "exempt telecommunications facilities".

“Support Structure” means any pole, telescoping mast, tower, tripod, or any other structure which supports a wireless communications antenna.

“Support Structure Height” means the vertical distance measured from the base of the support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the height.

2. Article 2, Definitions, Section 202-Definitions, is hereby amended to include the following additional term and definition:

"Vacation Short Term Home Rental" means any dwelling unit within a residential dwelling structure rented for the purpose of overnight lodging for a period of not less than one (1) day and not more than thirty (30) days.

3. Article 3-Uses Permitted in Districts, Section 310(1), "R-2" Multi-Family Zoning District, is hereby amended to include the following additional Permitted Use: Vacation Short Term Home Rental.

4. Article 3-Uses Permitted in Districts, Section 313(1)(A), "B-1" General Commercial Districts, is hereby amended to include the following additional Permitted Use: Vacation Short Term Home Rental.

5. Article 3-Uses Permitted in Districts, Section 313(2), "B-1" General Commercial Districts, is hereby amended to include the following additional use by special exception or as a "Use Requiring Board Approval": Small Cell Installation; Small Wireless Communication Facility.

6. Article 3-Uses Permitted in Districts, Section 314(2), "I-1" Industrial District, is hereby amended to include the following additional use by special exception or as a "Use Requiring Board Approval": Small Cell Installation; Small Wireless Communication Facility.

7. Article 6-Supplemental Regulations for Specific Uses, Section 602, is hereby amended to insert the following additional section part (44), SMALL CELL INSTALLATIONS/SMALL WIRELESS COMMUNICATION FACILITIES, which section or part shall read as follows:

A. PERMITTING AND LEASING PROCESS

1. Permit and Lease Required. No small cell installation or support structure shall be constructed, erected, modified, operated or maintained within the Township on any property including the public right-of-way, without the issuance of a permit and lease as required by this Ordinance.

2. Application Content. All permit and lease applications must include detailed site and engineering plans including:

- (a) Name and address of the property owner and the applicant.
- (b) Address, lot and block and/or parcel number of the property.
- (c) Name and address of person preparing the plan.
- (d) Size of the property and the location of all lot lines.
- (e) Approximate location of nearest residential structure.

- (f) Approximate location of nearest occupied structure.
- (g) Location of all structures on the property which is the subject of the application.
- (h) Location, size and height of all proposed and existing antennas and all appurtenant structures on the property.
- (i) Type, size and location of all proposed landscaping and fences.
- (j) A report by a Pennsylvania-registered and licensed professional engineer, documenting compliance with applicable structural standards and describing the general structural capacity of any proposed installation.
- (k) The number and type of antennas proposed.
- (l) A description of the proposed antennas and all related fixtures, structures, appurtenances and apparatus, including height above grade, materials, color and lighting.
- (m) A description of the antenna's function and purpose.
- (n) The make, model and manufacturer of any proposed structure and antenna.
- (o) The frequency, modulation and class of service.
- (p) Transmission and maximum effective radiated power.
- (q) Direction of maximum lobes and associated radiation and compliance with FCC regulations.

3. The Applicant shall also submit the following:

- (a) Detailed site and engineering plans.
- (b) Photographs of facility equipment.
- (c) Visual impact analysis with photo simulations.
- (d) Certification by a certified RF engineer demonstrating compliance with the FCC standards for radio frequency emissions as they relate to the general public, including aggregate emissions for all co-located equipment.

(e) Certification that the applicant has a right under state law to install facilities in the public right-of-way if that is the proposed location of the facilities.

(f) Written documentation demonstrating a good faith effort to locate the facility in the least intrusive location and screened to the greatest extent feasible.

(g) Documentation that owners of all properties within 500 feet of the application have been notified.

(h) Indemnification agreement to indemnify the Township in any proceeding to challenge approval of the facility.

(i) Indemnification agreement indemnifying and holding the Township, its elected officials, employees, agents and representatives harmless from any judgment, award, damage or loss, including court costs and attorney's fees, resulting from a successful legal action brought against the Township for loss of property value due to the construction or operation of a small wireless communication facility.

(j) A written description identifying the geographic service area for the subject installation, accompanied by a plan and maps showing anticipated future installations and modifications for the following two years, in addition to the master plan described by this section.

4. Compliance Bond. The Lessee shall be required to post a bond in the amount of \$50,000 for each small wireless communication facility, such bond to be held during the entire period of Lessee's operation of each small cell installation in the Township as a guarantee that no such installation, including any co-located equipment, exceeds or will exceed the allowable FCC limits for RF radiation exposure as determined by a qualified independent RF engineer.

5. Indemnification. Lessee shall provide an agreement in the form provided by the Township that Lessee agrees to defend, hold harmless and fully indemnify the Township, its officers, employees, agents, attorneys, and volunteers, from any claim, action or proceeding brought against the Township or its officers, employees, agents, or attorneys to attack, set aside, void, or annul any such approval of the Township. This indemnification agreement shall be in a form acceptable to the Township Solicitor and shall include, but not be limited to, damages, fees and/or costs awarded against the Township, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the Lessee, the Township and/or the parties initiating or bringing such proceeding. The agreement shall also include a provision obligating the Lessee to indemnify the Township for all of the Township's costs, fees and damages which the Township incurs in enforcing the indemnification provisions of this Section.

6. Annual Re-certification.

(a) Each year on July 1, the Lessee shall submit to the Township an affidavit which shall list all active small wireless communication facility it owns within the Township by location, certifying that (1) each active small wireless communication facility is covered by liability insurance in the amount of \$2,000,000 per installation, naming the Township as additional insured; (2) each active small wireless communication facility has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits.

(b) The Township shall have the right to employ a qualified RF engineer to conduct an annual random test of the Lessee's small wireless communication facility located within the Township to ensure their compliance with all FCC radio-frequency emission limits as they pertain to exposure to the general public. The cost of such tests shall be paid by the Lessee.

(c) In the event that such independent tests reveal that any small wireless communication facility or facilities owned or operated by Lessee or its sub-lessees, singularly or in the aggregate, is emitting RF radiation in excess of FCC exposure guidelines as they pertain to the general public, the Township shall notify the Lessee and all residents living within 1500 feet of the small cell installation(s) of the violation, and the Lessee shall have forty-eight (48) hours to bring the small wireless communication facility(s) into compliance. Failure to bring the small wireless communication facility into compliance shall result in the forfeiture of the bond, and the Township shall have the right to (1) terminate the lease and/or (2) require the removal of such facility(s), as the Township in its sole discretion may determine is in the public interest.

(d) The Lessee shall pay an annual re-certification fee per active small cell installation, with such fee to be set by the Township via Resolution.

(e) Any small wireless communication facility which is no longer in use shall be removed by the Lessee within 60 days of submission of the annual re-certification affidavit, at the Lessee's expense.

(f) Any small wireless communication facility which is not removed within 60 days after being listed as no longer in use in the annual re-certification affidavit shall be subject to fines of up to \$500.00 per day until such installation is removed.

(g) Where such annual re-certification has not been timely submitted, or equipment no longer in use has not been removed within the required 60-

day period, no further applications for small cell wireless installations will be accepted by the Township until such time as the annual re-certification has been submitted and all fees and fines paid.

7. Non-Permitted Installations. Any small cell installation constructed, erected, modified or enhanced prior to the issuance of a site-specific permit and lease from the Township shall be removed prior to the submission of an application. No consideration of any application for a small cell installation shall be made, and no time limitation for approval shall commence while such unauthorized installations remain.

B. LOCATION AND CONFIGURATION PREFERENCES

1. Siting Guidelines. The purpose of this section is to provide guidelines to applicants and the reviewing authority regarding the preferred locations and configurations for small cell installation in the Township, provided that nothing in this section shall be construed to permit a small cell installation in any location that is otherwise prohibited by this Ordinance.

2. Order of Preference - Configurations. The order of preference for the configuration of small cell installations in the Township, from most preferred to least preferred, is 1. Co-location with existing facilities 2. Mounted on an existing utility pole 3. Mounted on a new telecommunication monopole or tower

3. Order of preference - Location. The order of preference for the location of small cell installations in the Township, from most preferred to least preferred, is: 1. Industrial zone 2. Commercial zone 3. Mixed commercial and residential zone 4. Residential zone.

4. Small cell installations shall not be located on a structure or property that is listed on either the National or Pennsylvania Register of Historic Places or on property designated by the Township in an adopted plan as historically significant.

C. INSTALLATION SPECIFICATIONS

1. The Lessee must construct, install and operate the small cell installation in strict compliance with the plans and specifications included in the application.

2. Where feasible, as new technology becomes available, the Lessee shall replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required by the Township and the Zoning Board.

3. The Lessee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the Township. The Lessee shall notify the

Township of any changes to the information submitted within seven days of any change, including the name or legal status of the owner or operator.

4. At all times, all required notices and signs shall be posted on the site as required by the FCC and State Law, and as approved by the Township. The location and dimensions of a sign bearing the emergency contact name and telephone numbers shall be posted pursuant to the approved plans.

5. The Lessee shall maintain current at all times liability and property insurance for each small wireless communication facility and small cell installation in the Public Right of Way in the amount of \$2,000,000 (Two Million Dollars) naming the Township as an additional insured.

6. The proposed small cell installation shall have an adequate fall zone to minimize the possibility of damage or injury resulting from pole collapse or failure, ice fall or debris fall, and to avoid and minimize all other impacts upon adjoining properties.

7. Every effort shall be made to locate small cell installations no less than 1,500 feet away from the nearest other small cell installation, or within 250 feet of any permanent dwelling located in a residential zone.

8. Any single or co-located small cell installation equipment must be connected to an existing utility pole that can support its weight and the weight of any existing co-located equipment. All new wires needed to service the small cell installation must be located within the width of the existing utility pole so as to not exceed the diameter and height of the existing utility pole.

9. All equipment not to be installed on or inside the pole must be located underground, flush to the ground, within three (3) feet of the utility pole. Each installation is to have its own dedicated power source to be installed and metered separately.

D. SUPPLEMENTAL REQUIREMENTS

1. A small wireless communication facility site with a small wireless communication facility that is either not mounted on an existing structure or which is more than 15 feet higher than the structure on which it is mounted shall, in addition to all other applicable requirements, comply with the following:

(a) Service provider required. No zoning permit shall be issued for any new small wireless communication facility governed by this section until the applicant provides documentation to the Zoning Hearing Board that a service provider has contracted for the use of the facility. An applicant may apply for approval of the small wireless communication facility, and such approval may be granted by the Zoning Board, but the zoning permit shall not be issued until the required service provider documentation is provided.

(b) Location requirement and number. The applicant shall demonstrate to the satisfaction of the Zoning Board, using technological evidence, that the small wireless communication facility and support structure must go where it is proposed, in order to satisfy its function in the company's grid system. The number of small wireless communication facility to be installed at a site by an applicant may not exceed the current minimum necessary to ensure the adequacy of current service required by the Federal Communications Commission (FCC) license held by that applicant.

(c) Co-location; new tower. The Zoning Hearing Board may require the applicant to demonstrate that the applicant contacted, in writing, the owners of tall structures within a five-mile radius of the site proposed, asked for permission to install the small wireless communication facility on those structures, and was denied. This would include smokestacks, water towers, tall buildings, small wireless communication facility support structures of other cellular phone companies, other communications towers (fire, police, etc.) and other tall structures. The Zoning Hearing Board may deny the application to construct a new tower if the applicant has not made a good faith effort to mount the small wireless communication facility on an existing structure, thereby documenting that there exists no other support structure which can reasonably serve the needs of the owner of the proposed small wireless communication facility. A good faith effort shall demonstrate that one or more of the following reasons apply to a particular structure:

(1). The proposed equipment would exceed the structural capacity of the existing structure, and its reinforcement cannot be accomplished at a reasonable cost.

(2). The proposed equipment would cause radio frequency interference with other existing equipment for that existing structure, and the interference cannot be prevented at a reasonable cost.

(3). Such existing structures do not have adequate location, space, access or height to accommodate the proposed equipment or to enable it to provide service consistent with the provider's system requirements.

(4). Addition of the proposed equipment would result in electromagnetic radiation from such structure exceeding applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic radiation.

(5). A commercially reasonable agreement could not be reached with the owners of such structures.

(d) Small Wireless Communication Facility height; design.

(1) Minimum height. The applicant shall demonstrate that the small wireless communication facility is at the minimum height

required to function satisfactorily and can ultimately provide adequate height and support for eight service providers. The small wireless communication facility shall comply with any applicable airport hazard zoning ordinance.

(2) Stackable. The Zoning Hearing Board may require the tower to be designed and constructed to be stackable (structurally capable of being increased in height) so that additional antenna arrays can be accommodated in addition to the arrays on the original tower to facilitate future co-location.

(3) Visual impact; stealth design. The applicant shall provide to the Zoning Hearing Board graphic information that accurately portrays the visual impact of the proposed tower from various vantage points selected by the Zoning Hearing Board, such as but not limited to parks, designated historic sites or districts or designated scenic areas. This graphic information may be provided in the form of photographs or computer-generated images with the tower superimposed, as may be required by the Zoning Board. The Zoning Hearing Board may require the applicant to conduct a balloon test to confirm the visual impact. The Zoning Hearing Board may require stealth design or specific colors, consistent with applicable federal regulations, to ensure that the small wireless communication facility is compatible with the surrounding landscape.

(e) Setbacks. If a new small wireless communication facility support structure is constructed (as opposed to mounting the small wireless communication facility on an existing structure) or if the small wireless communication facility height exceeds the height of the existing structure on which it is mounted by more than 15 feet, the following minimum setbacks shall apply:

(1) Separate parcel. If the parcel on which the small wireless communication facility and support structure are located is a separate and distinct parcel, the distance between the base of the support structure and any adjoining property line shall not be less than the height of the small wireless communication facility structure plus 30 feet. The setback for equipment containers, other accessory structures, and guy wire anchors shall be a minimum of 30 feet.

(2) Lease, license or easement. If the land on which the small wireless communication facility and support structure is located is leased or is used by license or easement, the setback for any part of the small wireless communication facility, the support structure, equipment containers, other accessory structures and guy wire anchors shall be a minimum of 30 feet from the line of lease, license or easement. In any case, the distance between the base of the support structure and any adjoining property line (not lease, license or easement line) shall not be less than the height of the small wireless communication facility structure plus 30 feet.

(3) Residential dwellings. Support structures shall be separated from residential dwellings on adjacent or proximate properties by not less than two times the height of the structure.

(4) Setback reduction. The setbacks in Subsection e (1) and (2) and (3) above may be reduced to not less than 30 feet, provided the affected property owner provides to the applicant permission for the lesser setback. Such permission shall be in the form of a recorded agreement between the affected property owner and the applicant.

(f) Small wireless communication facility support structure safety. The applicant shall demonstrate that the proposed small wireless communication facility and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice or other debris, electromagnetic fields, or radio frequency interference. All support structures shall be fitted with anti-climbing devices, as approved by manufacturers. The applicant shall submit certification from a Pennsylvania-registered and licensed professional that a proposed small wireless communication facility and support structure will be designed and constructed in accordance with the current Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, published by the Electrical Industrial Association/ Telecommunications Industry Association, and applicable requirements of any applicable building code.

(g) Fencing. A fence, a minimum of eight feet in height and of a design to restrict unauthorized access, shall be installed around the small wireless communication facility support structure and other equipment.

(h) Landscaping. Existing vegetation on and around the site shall be preserved to the greatest extent possible.

(1) Landscaping installation and maintenance may be required to screen as much of the support structure as possible, the fence surrounding the support structure, any other ground level features (such as a building), and, in general, buffer the SMALL WIRELESS COMMUNICATION FACILITY and support structure site from neighboring properties and the sight lines from prominent viewing locations.

(2) The Zoning Hearing Board may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping.

(i) Access. Access to the small wireless communication facility and support structure shall be provided by means of a public street or easement to a public street in accord with a local or state highway occupancy permit, as applicable. The easement shall be a minimum of 20 feet in width and shall be improved to a width of at least 10 feet, with a dust-free, all-weather surface for its entire length. Access shall, if feasible, be provided along existing access points and drives.

2. Soil Erosion and Sedimentation Control; Stormwater Management- All earth disturbance shall comply with the soil erosion and sedimentation control requirements of the Luzerne Conservation District and the Pennsylvania Department of Environmental Protection; and, no approval shall be granted under this Ordinance until the Applicant provides a copy of the approved soil erosion and sedimentation control plan and any required permits. A stormwater management plan and storm water management facilities shall be provided in accord with the Township's current Stormwater Management Ordinance or requirements.

3. Fire Control Plan - The applicant shall provide a fire control plan including details about any fire suppression system proposed for any small wireless communication facility or similar item. The plan shall be provided to the applicable fire company for review and comment.

8. Article 6-Supplemental Regulations for Specific Uses, Section 602, is hereby amended to insert the following additional section part (45), VACATION SHORT TERM HOME RENTALS, which section or part shall read as follows:

A. The owner of the vacation short term home rental must comply with and then continuously maintain the rental in compliance with the property maintenance code as adopted by the Township.

B. The owner shall provide proof of general liability insurance in the minimum amount of three hundred thousand dollars (\$300,000.00) combined single limit.

C. The owner shall furnish to the Zoning Officer a 24-hour emergency contact phone number for a person who will be available to respond to complaints.

D. The rental must have a minimum of one off-street parking space for each bedroom. However, the maximum number of vehicles allowed at the rental shall be limited to the available number of off-street parking spaces provided on the same property as the rental.

E. The rental shall only be used for overnight lodging accommodations.

9. Repealer

All ordinances or parts of ordinances that are inconsistent herewith are hereby repealed to the extent of such inconsistency.

10. Severability

The provisions of this Ordinance are severable and if any word, clause, sentence, section or provision of this Ordinance is declared unconstitutional, invalid or unlawful, then the remaining words, clauses, sentences, sections and provisions shall remain in full force and effect.


II. Effective Date

This Ordinance shall take effect immediately upon the date of its enactment.

This Ordinance has been enacted, ordained, adopted and approved by the Black Creek Township Supervisors, on this 10 day of September 2019.

ATTESTED:

Black Creek Township Board of Supervisors



Bonnie Wagner
Secretary/Treasurer

Bonnie O'Dand
Chairperson

[Signature]
Secretary/Treasurer

[Signature]
Supervisor

PUBLIC NOTICE

The Black Creek Township Supervisors will hold a public hearing on Tuesday, September 10, 2019 at 2PM at the Municipal Building, 1980 Tomhicken Road, Rock Glen, PA 18246, for the purpose of considering an amendment to the Zoning Ordinance to include and regulate small wireless communication facilities and designing areas within the Township where small wireless communication facilities are permitted by special exception and including and regulating vacation home rentals and designing areas within the Township where vacation short term home rentals are permitted.

A copy of the proposed Ordinance is available for inspection at the Municipal Building and the Standard Speaker during normal business hours. The public hearing will be immediately followed by the regular meeting of the Supervisors at which time they intend to adopt the Ordinance.

**Donald G. Karpowich, Esquire
Black Creek Township Solicitor
85 Drasher Road
Drums, PA 18222**

Please publish the above ad in the September 3, 2019 edition of the Standard Speaker in the legal notices. **PLEASE SEND PROOF OF PUBLICATION AND INVOICE TO:**

Bonnie Wagner, Township Secretary
1980 Tomhicken Road
Rock Glen, PA 18246

- (2) Controlling and regulating the growth of the Township by providing for all types of residential, agricultural, commercial, and industrial uses in areas that have adequate community facilities, utilities and infrastructure taking into consideration existing circumstances and anticipated future development.
- (3) Preserving and maintaining environmental areas of exceptional quality and scenic beauty and environmentally sensitive areas from inappropriate development.
- (4) Lessening the danger and congestion of traffic on the roads, streets and highways within the Township, while at the same time discouraging development of a nature which utilizes heavy traffic either in number or size of vehicles on roadways, streets, or highways inadequate for such traffic.
- (5) Securing safety from fire, flood, panic and other dangers.
- (6) Identifying areas and the locating of facilities within the Township suitable for public and quasi-public uses, public and private recreation, and indoor and outdoor recreation.
- (7) Controlling development within the Township by implementing regulations which allow for the review of such things as soil types, topography, physical characteristics, the environment, access and utilities.
- (8) Reviewing and regulating the potential environmental impacts development will have upon the natural resources within the Township.
- (9) Regulating off-street parking, loading and unloading facilities in such a manner as to lessen traffic congestion in the streets; prohibit traffic hazards; and promote traffic safety.
- (10) While acknowledging that technical developments in the telecommunication field have provided new options for the expansion and delivery of communication services, the Township desires to encourage efficient and adequate wireless communication services while at the same time, protecting the health, safety and welfare of its residents by regulating the construction and placement of communications towers, antennas and accessory equipment buildings and structures.
- (11) Providing citizens with an environment free from excess sounds or noise that would otherwise jeopardize their health, welfare and safety; degrade their quality of life; and impede their quiet use and enjoyment of their property.
- (12) Implementing buffers to promote the public health, welfare and safety; filter pollutants such as nutrients and toxins; preserve the resilience of water resources; reduce soil erosion and sedimentation; stabilize stream banks; provide food and habitat for wildlife; improve air and water quality; provide scenic and recreational opportunity;

preserve energy; prevent loss of life or property from flooding; and work to alleviate excessive noise wherever possible.

(13) In order to preserve forests and the environmental and economic benefits that they provide, the Township wishes to regulate timber harvesting activities to encourage the owners of forest land to continue to use their land for forestry purposes, including the long-term production of timber, recreation, wildlife, historical and amenity values. The timber harvesting and land clearing regulations provided in this Ordinance are intended to further this policy by promoting good forest stewardship; protecting the rights of adjoining property owners; minimizing the potential for adverse environmental impacts; preserving historical and environmental sensitive areas; and avoiding unreasonable and unnecessary restrictions of the right to practice forestry. Because proper cutting practices vary depending on the site and on landowner objectives, it is not the intent of the timber harvesting provisions of this Ordinance to prescribe specific practices.

(14) Providing housing to comply with the Federal Fair Housing Act.

(15) Establishing locations within the Township for the extraction of minerals (mining, quarrying, oil and gas wells etc.) in such a manner as to not conflict with any state statute regulating the operations of those uses.

(16) Providing for the construction, operation and location of wind farms and stand-alone wind mills so as to protect the public health, safety and welfare of the community.

(17) Adopting an ordinance consistent with the Community Survey results mailed in November 2011 to all residents of Black Creek Township and considered by the Planning Commission and Governing Body.

(18) Adopting an ordinance consistent with the Pennsylvania Municipalities Planning Code, Act of 1968, P.L. 805, No. 247, as reenacted and amended.

Section 104. Interpretation of Ordinance Provisions. When interpreting the provisions of this Ordinance the following rules shall apply:

(1) In interpreting the language of the provisions of this Ordinance to determine the extent of the restriction upon the use of land, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the landowner and against any implied extension of the restriction.

(2) In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, welfare and morals.

(3) Except as limited under Section 104(1) above, in the event that any of the provisions of this Ordinance conflict with another provision of this Ordinance or any other local, state or federal ordinance, law, statute or regulation, the most restrictive shall apply.

(4) The provisions in the Black Creek Township Subdivision and Land Development Ordinance (SALDO) concerned with varying design standards shall not be considered to be in conflict with the provisions of this Ordinance.

(5) This Ordinance does not repeal, annul, modify, or in any way impair, interfere with, or supersede any private restriction placed upon property by covenant, deed, or other private agreement. The provisions of this Ordinance shall be separate from the private restriction.

Section 105. Repealer. The Black Creek Township Zoning Ordinance of 1976, as amended, including the Black Creek Township Zoning Map of 1976, is hereby repealed. All other ordinances, or parts thereof, which are inconsistent or in conflict with this Ordinance are also hereby repealed to the extent of any inconsistency or conflict.

Section 106. Severability. The provisions of this Ordinance shall be severable, and if any of its provisions shall be held to be unconstitutional, unlawful, ineffective, or invalid, the validity of any of the remaining provisions of this Ordinance shall not be affected. It is hereby declared to be the intention of the Black Creek Township Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, unlawful, ineffective or invalid provision not been included therein.

Section 107. Procedural Defects. Any allegation that this Ordinance or any amendment thereto has been enacted in a procedurally defective manner shall be appealed as provided by state law and must be filed no more than 30 days after the intended effective date of this Ordinance.

Section 108. Effective Date. This Ordinance shall become effective immediately upon its date of enactment as set forth in Section 109 below.

Section 109. Enactment. The Board of Supervisors of Black Creek Township, Luzerne County, Pennsylvania, by the authority of and pursuant to the provisions of the Pennsylvania Municipalities Planning Code, Act of 1968, P.L. 805, No. 247, as reenacted and amended, do hereby enact and ordain into an ordinance the "Black Creek Township Zoning Ordinance of 2012" this ____ day of _____, 2012.

ATTEST:

SECRETARY

**BLACK CREEK TOWNSHIP
SUPERVISORS:**

BY: _____
CHAIRPERSON

ARTICLE 2
DEFINITIONS

Section 201. Rules of Ordinance Construction. Unless the context clearly provides otherwise, the following words and terms shall be interpreted as follows:

- (1) Words used in the present tense shall include the future tense.
- (2) The word “person” includes a corporation, firm, company, partnership, trust, organization, association, sole proprietorship, or individual.
- (3) The words “used” or “occupied” as applied to any land, structure or building include the words intended, arranged, or designed to be used or occupied.
- (4) The word “building” includes “part thereof” and “structure”, and the word “structure” includes “part thereof” and “building”.
- (5) The word “lot” includes “plot”, “parcel” and “property”.
- (6) The word “shall” is always mandatory, the word “must” is always a mandatory condition, and the word “may” or “should” means something is recommended or encouraged.
- (7) The singular number includes the plural, and the plural the singular.
- (8) The masculine gender includes the feminine and neuter.
- (9) The word “street” includes “road”, “highway”, and “lane”.
- (10) The word "sale" includes "rental".
- (11) Words and phrases shall be presumed to be used in their ordinary context unless such word or phrase is defined or interpreted differently within Article 2, Section 202 below.
- (12) If a word is not defined in this Ordinance but is defined in the Black Creek Township Subdivision and Land Development Ordinance, as amended, the definition in the Subdivision and Land Development Ordinance shall apply.

Section 202. Definition of Terms. When used in this Ordinance, the following words, terms and phrases shall have the meaning indicated herein:

“Abandon” or “Abandonment” means the voluntary termination of a use or activity for a period in excess of one year without the intent to resume the use or activity.

“Abut” or “Abutting” means a lot having a common or shared lot line with a contiguous lot, or being separated by a street, waterway, right-of-way, or easement. This term includes the words “adjacent” and “adjoining” and vice versa.

“Access” means a way of gaining access to and from a property or providing ingress, egress, and regress to a property.

“Accessory Structure” means a structure not attached to, but located on the same lot as the principal structure, which is used to serve a purpose customarily incidental to and subordinate to the use of the principal structure. Residential accessory structures include such things as sheds, garages, carports, swimming pools and non-commercial satellite antenna dishes.

“Accessory Use” means a use customarily incidental and subordinate to the principal use or principal structure and located on the same lot as the principal use or structure.

“Active Solar Energy” (Photovoltaic or Thermal) means the capturing of the sun’s energy in order to store or convert it to thermal or electric power. In active solar energy systems, there is an active and intentional collection and redirection of energy that requires external mechanical power. Photovoltaic Solar Energy is used to transform the sun’s energy to generate electricity for both grid-tied and off-grid systems. Thermal Solar Energy is used to generate heat for hot water, cooking, heating, melting, steam engines, etc.

“Active System” means a solar heating or cooling system that requires external mechanical power.

“Adult Uses” includes adult bookstores, adult entertainment, adult movie theaters, and adult massage parlors.

“Adult Bookstore” means an establishment where 10% or more of the total retail floor area is occupied by books, magazines, periodicals, photographs, films, motion pictures, video cassettes, slides, instruments, devices, or paraphernalia that has a clear emphasis on depicting or describing explicit sexual activities or specified anatomical areas.

“Adult Entertainment” means live entertainment where persons performing expose specified anatomical areas or display, simulate or carryout explicit sexual activities.

“Adult Movie Theater” means a use where persons expose specified anatomical areas or display, simulate or carryout explicit sexual activities on film, motion pictures, videos, slides, or other forms of reproducing images that have an emphasis on depicting explicit sexual activities or specified anatomical areas.

“Adult Massage Parlor” means a private or semi-private establishment where a massage is performed for some form of consideration on a person with the use of one’s hand or a mechanical device. This term does not include any type of massage therapy or treatment performed by a licensed medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional licensed by the state, or any accessory use to a permitted athletic or health club, educational facility, or similar establishment.

“Agricultural Use” means the use of land for agricultural purposes, including farming crops or trees, dairying, pasturage, horticulture, floriculture, and animal and poultry husbandry, and the necessary accessory uses for farm homes and packing, treating or storing the product; provided, however that the operation of any accessory uses are secondary to that of normal agricultural activities, and provided further that the use does not include commercial poultry or hog farms, fur farms, or fertilizer plants. The term includes the keeping of horses, pigs, goats, sheep, chickens and other similar live stock and animals.

“Agri-tourism” means an activity or operation that is agriculturally based and brings in visitors to a farm or ranch, including buying produce direct from a farm stand, navigating a corn maze, picking fruit, feeding animals, staying at a B & B on a farm, or providing instruction on farming.

“Airport” means an area used for the landing and taking-off of motorized aircraft carrying either people or cargo, whether public or private.

“Alley” means a public or private way affording secondary means of access to abutting property .

“Alterations” includes any change, addition, extension, enlargement, replacement or movement of a building or structure.

“Animal Cemetery” means a place where four or more animals, either agricultural or domesticated, are buried or cremated. This term includes crematories, mortuaries and mausoleums.

“Animal Hospital” means a building or structure used for the treatment of domesticated animals by a veterinarian or other medical practitioner licensed by the state, with short-term boarding incidental to the treatment.

“Animal Kennel” means a place where six or more domesticated animals are kept, housed, boarded or trained or intended to be kept, housed, boarded or trained.

“Apartment Unit” means one or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit containing more than two dwelling units. An apartment unit is a multi-family dwelling unit.

“Applicant” means a landowner including his/her heirs, successors and assigns, or an authorized agent of the landowner, who has filed a zoning application with the Zoning Officer.

“Application” means a written form supplied by the Township for an approval, decision or permit including any accompanying site plan and additional information and materials that the Township requires the applicant to submit.

“Assisted Living Facilities, Nursing Homes or Personal Care Homes” means a coordinated and centrally managed rental housing licensed by the state where the resident or occupant stays overnight and receives specialized care. This use includes self-contained units designed to provide supportive services (such as meals, transportation, housekeeping, linen and organized social activities) and to accommodate relatively independent lifestyles. The term does not include adult care facilities where the person does not stay overnight and is only being cared for or supervised during daytime hours on a temporary basis.

“Associated Facility or Associated Facilities” means a land use whose principle purpose involves the distribution, processing, storage, handling, or other related and supporting activities necessary for a Special Utility, not including administrative activities or offices.

“Auto, Boat and Mobile or Manufactured Home Sales” includes the use of any building, structure or land, other than a street, for the outdoor or indoor display, sale or rental of motor vehicles, recreational vehicles, boats, motorcycles, trucks, farm equipment and machinery, trailers, mobile/modular homes or the like.

“Automobile Repair Garage” means a place where gasoline is sold or dispensed and where repairs, installations and improvements are made to motor vehicles, motorcycles, recreational vehicles or boats. This use includes the installation of parts and accessories; the performing of mechanical repairs, bodywork, painting, welding and the rebuilding of any motor vehicle, motorcycle, recreational vehicle, boat, or trailer. The term trailer as used in this definition refers to a device used to transport, pull or haul a vehicle.

“Automobile Service Station” means a place where gasoline or other petroleum products are sold and light automotive maintenance activities are performed such as oil changes, tune-ups, tire changing and other minor repairs.

“Basement” means a portion of a building that is partly or completely below grade or underground. A basement constitutes a story if the vertical distance from the average adjoining grade to the ceiling is five feet or greater.

“Bed and Breakfast” means an owner-occupied dwelling containing units which are rented on a nightly basis for periods of not more than two weeks. Dining and other facilities are not to be open to the public, but to be used exclusively for the residents and

registered guests. Such rooms are not to have separate utilities, provisions for cooking or dormitories for sleeping and are to be located within the principle structure.

“Black Creek Township Planning Commission” means the Planning Commission created by the Governing Body for Black Creek Township.

“Board” means anybody granted jurisdiction under this Ordinance or the provisions of the Pennsylvania Municipalities Planning Code, Act 247 as amended, to render final adjudications or decisions.

“Boarding House or Rooming House” means a building or structure or any portion thereof containing residential rooming units rented or leased for a minimum of five days, with the occupants of said units being non-transient, and utilizing the location as their domicile.

“Buffer Area or Buffer Yard” means a strip of land area intended to separate one use from another use, wherein no structure, building, parking area, loading space, or storage may be located.

“Building” means any roofed structure intended for shelter, housing or enclosure of persons, animals, or property.

Building, Accessory: means a subordinate structure on the same lot as the principal or main building or use occupied or devoted to a use incidental to the principal use.

Building Area or Coverage: means the total area of outside dimensions on a horizontal plane at ground level of the principal building and all accessory buildings.

Building Height: means the vertical distance of a building measured from the average elevation of the proposed finished grade within 10 feet of the structure to the highest point of the roof for flat roofs; to the deck line of mansard roofs and to the average height between eaves and the ridge for gable, hip and gambrel roofs.

Building Width: means the horizontal measurement between two vertical structural walls that are generally parallel of one building, measured in one direction that is most closely parallel to the required lot width. For an attached dwelling, the width shall be the width of each dwelling unit as measured from the center of each interior party wall and from the outside of an exterior wall. For a detached dwelling, the width shall be measured from the outside of exterior walls.

“Bulk Recycling Center” means a use involving bulk commercial collection, separation and/or processing of types of waste materials found in the typical household or

office for some productive reuse, but which does not involve the actual processing or recycling of hazardous or toxic substances, and which does not primarily involve the processing of non recycled solid waste, unless the use also meets the applicable requirements for a solid waste transfer facility. This definition shall not include a junkyard.

“Business Park” means an area organized and laid out in accordance with an overall plan for a community of businesses or commercial uses including the servicing of these entities which is designed to insure compatibility between the operations in the business park and the surrounding area through such devices as landscaping, architectural controls, design guidelines, setbacks and use requirements.

“Campground” means an area that is primarily recreational in nature that involves the use of sites leased for tents or recreational vehicles for transient and seasonal occupancy by persons recreating or traveling.

“Care Facilities, Child or Adult” means a use involving the supervised care for children or adults, either within a home or outside of a home, wherein the use is licensed or regulated by the state. This use does not include care of children or adults by their own relatives, care of not more than three children or two adults in addition to children or adults who are relatives of the caregiver provided that the use is not regulated or required to be licensed by the state or care of children or adults within a place of worship during regularly scheduled religious services.

“Carport” means any roofed accessory structure opened on one or more sides and used for the storage of private and personal motor vehicles.

“Car Wash” means a place where motor vehicles are cleaned, washed or waxed either by hand or by use of a machine.

“Cellar” means any portion of a building located partly underground and having more than one-half of its height below the average adjoining grade, no portion of which is to be counted as a story for the purposes of the maximum height regulations set forth in this Ordinance.

“Cemetery” means a place where humans are buried or cremated. This term includes crematories, mortuaries and mausoleums.

“Certificate of Zoning Compliance” means an official document issued by the Zoning Officer after he or she has inspected a structure, building, sign, land or land use for which a zoning permit is required to ascertain compliance with this Ordinance. This certificate authorizes the use or occupancy of land, buildings and structures.

“Change of Use” means any use, which differs from the previous use of a building, structure or land.

“Clear Sight Triangle” means an area of unobstructed vision at street intersections defined by lines of sight between points at a given distance from the “corner” so as not to interfere with traffic visibility across the corner.

“Club” means a building primarily used for non-profit social, educational, or recreational purposes. A club does not include any use where services or goods are sold primarily as a business or for a profit.

“Collector” means a device that collects solar radiation and converts it into heat.

“Commercial Use” means an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee. The sale of goods or services from a vehicle on a lot shall also be considered to be a commercial use.

“Common Open Space” means a parcel or parcels of land, or a combination of land and water, located within a development and designed and intended for the use or enjoyment of residents of that development, exclusive of streets, off-street parking areas and areas set aside for public facilities.

“Communications Antenna” means a device used for transmission or reception of radio, television, wireless telephone, pager, commercial mobile radio service or any other wireless communications signals, including without limitation, omni-directional or whip antennas, directional and panel antennas owned or operated by any person or entity licensed by the Federal Communications Commission (FCC) to operate such device. This definition does not include private residence mounted satellite dishes, or television antennas or amateur radio equipment including without limitation citizen band radio antennas.

“Communications Equipment Building” means an unmanned building or cabinet containing communications equipment required for the operation of communications antennas and covering an area on the ground not greater than 250 square feet.

“Communications Tower” means a structure other than a building, such as a monopole, self-supporting, or guyed tower, designed and used to support communication antennas.

“Communications Tower, Height” means the vertical distance measured from the ground level to the highest point on a communication tower, including antennas mounted on the tower.

“Community Center” means a use existing solely to provide religious, fraternal, social and recreational programs and activities to the public or a designated group of persons in a community.

“Concentrated Animal Feeding Operation” means an agricultural use regulated by the federal government involving the commercial keeping and handling of livestock

quantities with characteristics in any of the following three criteria: (1) the proposed agricultural operation exceeds any of the following animal type thresholds:

- 700 mature dairy cows;
- 1,000 veal calves;
- 1,000 cattle including but not limited to heifers, steers, bulls and cow-calf pairs;
- 2,500 swine of 55 lbs. or more;
- 10,000 swine under 55 lbs.;
- 500 horses;
- 10,000 sheep or lambs;
- 55,000 turkeys;
- 30,000 layers or broiler chickens using a liquid manure handling system;
- 125,000 broiler chickens not using a liquid manure handling system;
- 82,000 layer chickens not using a liquid manure handling system;
- 30,000 ducks not using a liquid manure handling system; and/or,
- 5,000 ducks using a liquid manure handling system.

(2) any agricultural operation that exceeds 1 million pounds of live weight of livestock or poultry; and (3) any agricultural operation that is a Concentrated Animal Operation that includes more than 300,000 pounds of live weight of livestock or poultry.

“Concentrated Animal Operation” means an agricultural use determined under Title 25, Chapter 83, Subchapter D, Section 83.262. of the Pennsylvania Department of Environmental Protection’s Nutrient Management Rules and Regulations involving the commercial keeping and handling of livestock and/or poultry quantities with densities exceeding 2,000 pounds per acre suitable for the application of manure on an annualized basis. Animal weights shall be determined using the criteria described in the definition of a “Concentrated Animal Feeding Operation”.

“Concentrating Solar” means something that uses mirrors to either focus sunlight on photovoltaic (PV) array or to heat water or other fluids to create steam that drives turbine generators. Concentrating solar is more complicated to build and manage, involves moving parts and is more often used in larger-scale, centralized systems at commercial energy plants that tend to serve upwards of tens of thousands of homes and businesses.

“Condominium” means a building, or group of buildings, in which units are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis. The common areas and facilities are maintained, operated and administered by an organized association.

“Convenience Store” means any retail establishment offering for sale prepackage food products, household items, and other goods commonly associated with the same, along with the retail sales of gasoline and related fuel products.

“County Planning Commission” means the Luzerne County Planning Commission.

“Daytime” means the timeframe between 7:00 a.m. to 6:00 p.m.

“Decision” means a final adjudication of any board or other body granted jurisdiction under any land use ordinance or the Pennsylvania Municipalities Planning Code, Act 247, as amended, either by reason of the grant of exclusive jurisdiction or by reason of appeals from determinations. All decisions are appealable to the Court of Common Pleas of Luzerne County and the judicial district wherein the municipality lies.

“Decommissioning” means the process of terminating operation and completely removing related buildings, structures, foundations, access roads, and equipment.

“Density” means the total number of dwelling units permitted on a lot.

“Determination” means a final action by an officer, body or agency charged with the administration of any land use ordinance or applications thereunder, except the governing body; zoning hearing board; or planning commission, only if and to the extent the planning commission is charged with final decision on preliminary or final plans under the subdivision and land development ordinance or planned residential development provisions. Determinations may be appealed only to the boards designated as having jurisdiction for such appeal.

“Developer” means any landowner, agent of such landowner, or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

“Development” means any man-made improvements to land such as the construction, reconstruction, conversion, alteration, relocation, or enlargement of any building or structure, including mining, dredging, filling, grading, paving, excavating, drilling, earth disturbance and any use of land.

“Domestic Animals or Domesticated Animals” means a dog, cat, rabbit, gerbil, lizard, parrot or other domestic animal normally or ordinarily kept in or permitted to be at large in the dwelling of its owner. This term does not include such animals as bears, goats, wolves, wolf-dog hybrids, cows, horses, venomous snakes, hogs, or sheep.

“Driveways” means every entrance or exit used by vehicular traffic to or from properties abutting a road. The term includes existing and proposed streets, lanes, alleys, courts and ways.

“Dwelling” means a building or structure used for residential purposes. This term does not include hotels, motels, boarding houses, rooming houses or other uses intended for transient occupancy.

“Dwelling Types” includes the following types of dwelling units:

Apartment, Townhouses or Multi-Family: means a residential building containing three or more dwelling units each accommodating one family.

Single-Family: means a residential building containing one dwelling unit to accommodate one family.

Two-Family: means a residential building containing two dwelling units each accommodating one family, and entirely separated from each other by vertical walls or horizontal floors, excluding possible common access to enter, or exit the building or for access to a common cellar or basement.

“Dwelling Unit” means a building or portion thereof arranged or designed so as to create an independent housekeeping establishment for occupancy by one family with separate bathroom, toilet and sanitary facilities and facilities for cooking and sleeping for exclusive use by the family residing therein.

“Easement” means a right of use over property of another, or an interest which one has in the land of another. This right may be limited or unlimited depending on the grant. For purposes of this Ordinance, an easement should be commonly referred to as and considered a “street”.

“Essential Services” means the erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies, of underground or overhead gas, electric, steam or water transmission systems, collection, communication, supply or disposal systems and their essential buildings, excluding Communications Towers, Communication Antennas and Special Utilities, as defined in this Ordinance, and including what is commonly known as Public Utility Facilities as well as what is defined in this Ordinance as Public Communications Transmission Towers.

“Explicit Sexual Activities” includes the fondling or erotic touching of human genitals, private parts, buttocks, anus, or breasts; simulated or actual sexual acts, such as intercourse, oral copulation, sodomy and masturbation.

“Facility Owner” means the entity or entities having an equity interest in the Solar Energy System, including their respective successors and assigns.

“Family” means one or more of the following: (1) persons related by blood, marriage or adoption; (2) children placed into or receiving foster care; and (3) unrelated persons not in excess of four, who are occupying a single dwelling unit as a common housekeeping unit. A family also expressly includes numbers of unrelated persons under a Group Home provided that the home is licensed.

“Fence or Wall” means a man-made structure constructed, erected or installed as a line of demarcation or barrier made of wood, chain-link metal with vinyl or plastic

inserts, vinyl, masonry, concrete or cinderblock. Any living material that is impenetrable shall be considered a fence and subject to fencing requirements.

"Floor Area, Total" means the total floor space within a building measured from the exterior faces of exterior walls and from the center lines of walls separating buildings. Floor area shall specifically include, but not be limited to fully enclosed porches and basement, cellar or attic space that is potentially habitable and has a minimum head clearance of at least 6.5 feet. Floor area shall not include unenclosed porches, decks or breezeways.

"Forestry and Timber Harvesting Activities" the following terms shall have the meanings given for the sections of this Ordinance that regulate and govern forestry and timber harvesting:

Basal Area: means the cross sectional area of a tree stem in square feet inclusive of bark. It is measured at breast height of four and one half feet. The basal area of a forest stand is the sum of the basal area of individual trees. It is usually expressed as basal area per acre.

Canopy: means the upper level of a forest, consisting of branches and leaves of taller trees. A canopy is complete or has 100% cover when the ground is hidden from above.

Clear Cutting: means the felling of substantially all of the trees in a stand or portion thereof.

Commercial Timber Production: means the cultivation, cutting, or removal of trees for sale or for processing into wood products such as lumber, veneer, paper, chips and wafer board.

DBH (diameter breast height): means tree diameter at four and one half feet above the ground as measured from the uphill side of the tree.

Felling: means the act of cutting a standing tree so that it falls to the ground.

Forestry: means managing and using for human benefit forestlands and natural resources that occur on and in association with forest lands, including trees, other plants, animals, soil and water. It includes, but is not limited to, the planting, cultivating, harvesting, transporting and selling of trees or other forest products for commercial purposes.

Forest Practices: means any activity conducted on or directly pertaining to forest land that is related to planting, growing, cultivating, harvesting, or processing timber or other forest products, including but not limited to: (1) Road and skid trail construction; (2) Harvesting, both intermediate and

final; (3) Pre-commercial timber stand improvement; (4) Regeneration; both natural and artificial; (5) Prevention and suppression of disease, insects, fire or other forest pests; (6) Salvage of trees; and (7) Control of competing vegetation.

Forest Technician: means any person who has an Associate Degree in Forestry from a school accredited by the Society of American Foresters.

Intermittent Stream: means a stream having a continuous bed and banks in which water flow normally occurs in the wetter parts of the year (October through April) or following major storm events.

Land Clearance or Land Use Change: means the conversion of forestland from forestry uses to residential, commercial, industrial or other uses that are inconsistent with long-term management of the land for commercial timber production.

Landing: means a place where logs, pulpwood or firewood are assembled for transportation to processing facilities.

Litter: means discarded items not normally occurring on the site such as tires, oil cans, equipment parts and other rubbish.

Lop: means to cut tops, slash and branches into smaller pieces to allow the material to settle close to the ground.

Operator: means an individual, partnership, company, firm, association, or corporation engaged in forest products harvesting, including the agents, subcontractors and employees thereof.

Landowner: means an individual, partnership, company, firm, association, authority or corporation that is in actual control of forest land whether such control is based on legal or equitable title or on any other interest entitling the holder to sell or otherwise dispose of any or all the timber on such land in any manner, and any agents thereof acting on their behalf, such as forestry consultants, who set up and administer timber harvesting.

Perennial Stream: means a stream having a continuous bed and banks in which water flow normally occurs year-round.

Pre-Commercial Timber Stand Improvement: means a forest practice such as thinning or pruning, which results in better growth, structure, species composition, or health for the residual stand but which does not yield a net income to the landowner, usually because trees cut are of poor quality, too small or otherwise of limited marketability or value.

Professional Forester: means a person who has a Bachelor of Science or higher degree from a school of forestry accredited by the Society of American Foresters.

Skidding: means dragging trees on the ground from the stump to the landing by any means.

Slash: means woody debris left in the woods after logging including logs, chunks, bark, branches, uprooted stumps, and broken or uprooted trees or shrubs.

Stand: means any area of forest vegetation whose site conditions, past history, and current species composition are sufficiently uniform to be managed as a unit.

Stand Prescription: means a description of the forest management treatments to be applied to a stand to achieve stated management objectives, how they are applied and the desired residual stand.

Stewardship: means the wise management and use of forest resources to ensure their health and productivity for future generations. It is based on the recognition that forests are renewable resources.

Stream: means any natural or artificial channel of conveyance for surface water with an annual or intermittent flow within defined bed and banks.

Timber Harvesting, Tree Harvesting, or Logging: means the process of cutting down trees and removing logs from the forest for the primary purpose of sale or commercial processing into wood products.

Top: means the upper portion of a felled tree that is un-merchantable because of small size, taper, or defect.

Uniform Construction Code (UCC): means the statewide building code adopted by The Pennsylvania General Assembly in 1999 applicable to new construction in all municipalities whether administered by the municipality, a third party or the Department of Labor and Industry. Applicable to residential and commercial buildings, The Code adopted The International Residential Code (IRC) and the International Building Code (IBC), by reference, as the construction standard applicable with the State floodplain construction. For coordination purposes, references to the above are made specifically to various sections of the IRC and the IBC.

Violation: means the failure of a structure or other development to be fully compliant with the applicable flood plain management regulations of

Foster Township as set forth in this Article. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR § 60.3(b) (5), (c) (4), (c) (10), (d) (3), (e) (4) or (e) (5) and within this Article is presumed to be in violation until such time as that documentation is provided.

Wetland: means areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions including swamps, marshes, bogs, and similar areas.

“Frontage” means a property line the length of which abuts a street or proposed street.

“Height” means the vertical distance measured from the average elevation of the proposed ground level along the front of the building to the highest point of a structure. For a building with a defined and pitched roof, an area equal to 20% of the building coverage may exceed the maximum height to provide for the roof peak, provided such 20% is not occupied by persons. A maximum of one story may be exposed in the rear of a building as compared to what is exposed in the front of a building.

“Garage, Private” means a building or structure for the private use of the owner or occupant of a principal building situated on the same lot for the storage of motor vehicles used or owned by the owner or occupant with no commercial facilities for mechanical service or repair.

“Governing Body” means the Board of Supervisors of Black Creek Township, Luzerne County, Pennsylvania.

“Grid-Tied Solar System” means a system in which solar power is connected to the power grid.

“Group Home” means a dwelling unit occupied by a maximum of six unrelated persons (excluding staff members) who function as a common household unit operated by a responsible individual, family or organization with a program to provide supportive living arrangements to persons with special needs due to age, infirmity, emotional, mental, developmental or physical disability or handicap. The term does not include a Medical Clinic.

“Hazardous Substances or Materials” includes any material or substance that is stored or used in quantities that may cause, or significantly contribute to, an increase in mortality or an increase in a serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. This term also

includes the list of extremely hazardous substances set forth in 29 Code of Federal Regulations Part 355 or any successor provisions.

“Heliport” means an area, either at ground level or elevated on a structure, licensed and approved for the loading, takeoff and landing of helicopters, and including accessory facilities such as parking, waiting or stand-by areas, fueling and maintenance.

“Highway Occupancy Permit” means either a state or local permit depending on the street, which when issued authorizes access from a parcel of land onto a State highway, or Township or County road/street. The issuing authority for a state highway is Penn Dot; a county road is Luzerne County Road and Bridge; and a township road is Black Creek Township.

“Home Occupation” means an occupation, profession, activity, or use that is clearly a customary, incidental, and secondary use of a residential dwelling unit or permitted accessory structure and which does not alter the residential characteristics of the neighborhood.

“Hospital” means a use involving the diagnosis, treatment or other medical care of humans that may include providing 24 hour emergency service; overnight care of patients; medical research and training; and rehabilitation to patients. This term does not include a medical use basically comprised of professional offices for the examination and treatment of persons as outpatients by physicians, dentists or other licensed medical specialists.

“Hotel or Motel” means a building offering transient lodging accommodations on a daily rate to the general public and providing additional services, such as restaurants, meeting rooms, and recreational facilities.

“Hybrid Solar Energy System” means a system that uses both active and passive methods in its operation.

“Impervious Surface or Coverage” means the covering of lot area by man-made structures. Impervious surfaces include buildings, structures, parking areas, streets, sidewalks, driveways and similar vehicular and pedestrian right-of-ways.

“Industrial, Heavy” means a use engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions. The terms also includes any industrial use where there are more than 25 employees or a total floor area of more than 40,000 square feet whether proposed initially or cumulatively.

“Industrial, Light” means a use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing,

fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing.

“Industrial Park” means an area organized and laid out in accordance with an overall plan for a community of industrial uses including the servicing of these entities which is designed to insure compatibility between the operations in the industrial park and the surrounding area through such devices as landscaping, architectural controls, design guidelines, setbacks and use requirements.

“Institutional Use” means a use or structure which provides educational or social services to more than three unrelated persons on a regular basis.

“Junk” means any discarded or salvageable material or article, including scrap metal, paper, machinery, equipment, rags, glass, appliances, furniture, rubber, motor vehicles, and any parts of motor vehicles.

“Junk Vehicle” includes any vehicle unable to move under its own power, and containing one or more physical defects or characteristics such as a broken windshield, missing or flat tires, missing body parts, body parts that are rusted or have sharp edges, exposed battery acid, leaking gasoline or fluids, and other defects, or characteristics which could threaten the public health, safety and welfare.

“Junk Yard, Automobile Dismantling Plant or Automobile Salvage Yards” includes the dismantling or wrecking of automobiles, motor vehicles, trailers, or parts thereof. The term also includes the storage or accumulation of any junk or of two or more motor vehicles, which are incapable of operating under their own power and from which parts have been or are to be removed for reuse or sale. The term includes automobile wrecking yards and automobile salvage yards.

“Landowner, Property Owner, or Owner” means the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he or she is authorized under the lease to exercise the rights of the landowner, or other person having a propriety or equitable interest in land.

“Leased Unit” means a building or a portion of a building or lot or a portion of a lot which is leased or rented within a subdivision or land development.

“Lot” means a designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit. A parcel under common ownership that is completely separated into two parts by a public street shall be considered to be one tract but two lots.

“Lot Area” means the area contained within the lot lines of a lot.

“Lot, Corner” means a lot abutting on and at the intersection of two or more streets.

“Lot, Interior” means a lot other than a corner lot.

“Lot Coverage” means the percentage multiplied by the lot area that will determine the permitted building coverage area.

“Lot Depth” means the average horizontal distance between the front and rear lot lines.

“Lot Line” means a line dividing one lot from another lot or from a street or alley. Whenever a property line borders a public street, the lot line shall be considered to be the existing street right-of-way line.

“Lot Line, Front” means a property line the length of which abuts a street or proposed street right-of-way line.

“Lot Line, Rear” means a line dividing one lot from another lot or from a street or alley right-of-way line and which is parallel to or within 45 degrees of being parallel to a front street right-of-way. In the case of a lot having no street frontage or a lot of an odd shape, only the lot line furthest from any street shall be considered a rear lot line.

“Lot Line, Side” means any lot other than a front or rear lot line.

“Lot of Record” means any lot which exists as shown or described upon a plat or deed and recorded in the Office of the Record of Deeds of Luzerne County, Pennsylvania.

“Lot Width” means the horizontal distance between side lot lines measured along the required front yard and set back line.

“Major Energy System” means a system that is not a minor energy system such as, but not limited to a Solar Farm.

“Manufactured Home” means a structure, transportable in one or more sections, which is built upon a chassis and is designed for permanent occupancy when placed on a foundation and connected to the required utilities. The term includes mobile homes, and trailers, but does not include recreational and other similar vehicles.

“Manufactured Home Park” means a parcel, or contiguous parcels of land, which has been planned and improved for the placement of two or more manufactured homes or mobile homes.

“Medical Clinic” means a use providing medical and health, or rehabilitative services to three or more unrelated persons. This term includes a methadone clinic, but

does not include a hospital, prison, institutional use, assisted living facility, care facility or group home.

“Mineral Extraction” means the removal from the surface or beneath the surface of land bulk mineral resources such as sand, gravel, topsoil, limestone, sandstone, coal, shale and iron ore using machinery. This use includes stockpiling, but not the movement of and replacement of topsoil as part of construction activities.

“Minor Energy System” means a system for the production of electrical energy that (a) uses as its fuel solar power (b) is located on the power beneficiary’s premises (c) is intended primarily to offset part or all of the beneficiary’s requirements for electricity and (d) is secondary to the beneficiary’s use of the premises for other lawful purpose(s).

“Mobile Home” means a transportable dwelling intended for permanent occupancy, contained in one unit, or in two or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation. The term includes manufactured homes, and trailers, but does not include recreational and other similar vehicles.

“Municipality” means Black Creek Township, Luzerne County, Pennsylvania.

“Net Metering” means an electricity policy for consumers who own renewable energy facilities, such as solar power, for selling electricity back to the grid.

“Night Club” means a commercial establishment dispensing alcoholic beverages for consumption on the premises and in which dancing is permitted, including the term “cabaret”. This term does not include any adult use.

“Nonconcentrating Solar” means a term that does not involve the use of mirrors or other means to directly focus the sun’s light.

“Nonconforming Lot” means a lot the area or dimension of which was lawful prior to the adoption or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption or amendment.

“Nonconforming Structure” means a structure or part of a structure manifestly not designed to comply with the applicable use or extent of use provisions in the zoning ordinance or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of such ordinance or amendment or prior to the application of such ordinance or amendment to its location by reason of annexation. Such nonconforming structures include nonconforming signs.

“Nonconforming Use” means a use, whether of land or a structure, which does not comply with the applicable use provisions in the zoning ordinance or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment to its location by reason of annexation.

“No-impact Home Based Business” means a business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves no customer, client or patient traffic, whether vehicular or pedestrian, pickup, delivery or removal functions to or from the premises, in excess of those normally associated with the residential use.

“Normal Maintenance and Repair” includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. “Normal Repair” means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction.

“Off Grid Solar System” means relying totally on an individual (stand alone) system of solar panels, charge controller, batteries, and inverter to generate electricity.

“Office” means a building or portion of a building, wherein services are performed involving administrative, professional, clerical or similar type of operations. This shall not include retail or industrial uses.

“Office, Professional” means an office for the practice of professions, such as the offices of physicians, dentists, attorneys-at-law, architects, veterinarians, engineers, artists, musicians, teachers and others who, through training, are qualified to perform services of a professional nature. The term includes Medical Clinics.

“Operator” means the entity responsible for the day-to-day operation and maintenance of a Solar Energy System or wind mill. For each gas well Operator means the person that is, or will be, actually in charge and in control of drilling, maintaining, operating, pumping or controlling any well. If the operator, as herein defined, is not the lessee under a gas lease, then such lessee shall also be deemed to be an operator. In the event that there is no gas lease relating to any premises affected by this ordinance, the owner of the fee simple mineral estate in the premises shall be deemed the operator.

“Paved Area” means an area covered by gravel and/or impervious surfaces other than areas covered by buildings, bicycle paths and pedestrian trails.

“Public Communications Transmission Tower” means a structure, owned and operated by a public utility electrical company regulated by the Pennsylvania Public Utility Commission (PUC), designed and used to support overhead electricity transmission lines.

“Parking” means off-street parking and aisles designated for vehicle movement unless otherwise stated.

“Parking Space, Off-Street” means an unobstructed space or area other than a street or alley that is located completely within the property lines of one’s property and permanently reserved and maintained for the parking of a motor vehicle.

“Passive Solar Energy” means energy used to convert sunlight into usable heat, cause air-movement for ventilation or cooling, or store heat for future use.

“Peak Watt” means the maximum rated output of a photovoltaic device, such as a solar cell or array, under standardized test conditions, usually 1000 watts per square meter (0.645 watts per square inch) of sunlight with other conditions, such as temperature specified. Typical rating conditions are 68°F (20°C), ambient air temperature, and 1 m/s (6.2 x 10⁻³ miles/sec.) wind speed.

“Permit” means a document issued by the Township Zoning Officer authorizing the applicant to undertake certain activities.

“Permit Granting Authority” means either the Zoning Hearing Board or Zoning Officer of Black Creek Township depending on the circumstances.

“Person” includes a corporation, firm, company, partnership, trust, organization, association, sole proprietorship or individual.

“Personal Services” includes any enterprise conducted for gain, which primarily offers services to the general public, such as a beauty or barbershop, shoe or watch repair and related activities.

“Photovoltaic Array” means a linked collection of photovoltaic modules, which are in turn made of multiple interconnected solar cells. The cells convert solar energy into direct current electricity via the photovoltaic effect. The power that one module can produce is seldom enough to meet requirements of a home or business, so the modules are linked together to form an array.

“Place of Worship” means a building used for religious services, including churches, synagogues, mosques, monasteries, seminaries and shrines. The term also includes accessory religious missions and other charitable events.

“Planned Residential Development” means an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, with a development plan which does not correspond in lot size, bulk or type of dwelling density, lot coverage and required open space to the regulations established in any one residential district created, from time to time, under the provisions of this Ordinance.

“Principal Use” means the main or primary use of land as distinguished from or opposed to a secondary or accessory use of land.

"Principal Structure or Building" means the building or structure in which the principal use of a lot is conducted. Any building or structure that is physically attached to a principal building or structure shall be considered part of that principal building or structure.

"Private" means something owned, operated and supported by private persons, rather than by government, and not available for public use.

"Public" means something owned, operated and supported by persons, the community or government for the use and benefit of the general public.

"Public Hearing" means a formal meeting held pursuant to public notice by the Governing Body or Zoning Hearing Board, which is intended to inform and obtain public comment prior to taking action in accordance with this Ordinance and the Pennsylvania Municipalities Planning Code, Act 247, as amended.

"Public Meeting" means a forum held pursuant to public notice under the Sunshine Act.

"Public Notice" means notice published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing.

"Public Utilities" see essential services.

"Public Uses" includes public schools, recreational uses and administrative, cultural and service buildings excluding public land, buildings and structures primarily devoted to the storage and maintenance of equipment and materials.

"PV Array" means a photovoltaic array.

"Quasi-Public" means entities that operate like (and are sometimes organized as) private organizations and are run by a board of directors or similar arrangement whose members are appointed by government entities.

"Recreation" means the offering of leisure-time activities to unrelated persons.

"Recreation, Commercial" means recreational facilities operated as a business and open to the public for a fee or admission.

"Recreation, Indoor" means a building or structure used principally for recreational activities, such as a bowling alley, billiard hall, roller skating or ice skating rink or similar facilities. This term does not include outdoor recreational activities, adult uses or restaurants/taverns.

“Recreation, Outdoor” means the use of land or structures for recreational activities such as golf, amusement parks, shooting ranges, campgrounds, race tracks and similar activities.

“Recreation, Private” means recreational facilities other than commercial or public, not operated for a profit, and only open to its members and their guests. This term includes common open areas or space used for permitted accessory recreational purposes within a private development or planned residential development, wherein the use is limited to residents of the development and their guests.

“Recreation, Public” means recreational facilities operated as a nonprofit enterprise by a governmental entity or a nonprofit organization, and open to the general public.

“Recreational Vehicle (RV)” means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

“Recycling Collection Center” means an area for collection and temporary storage of more than 500 pounds of common household materials for recycling, but that does not involve processing or recycling other than routine sorting, baling and weighing of materials. This term shall not include the indoor storage of less than 500 pounds of household recyclables and their customary collection, which is a permitted by right accessory use in all zoning districts, without additional regulations. A recycling collection center is also a permitted by right accessory use to a public or private primary or secondary school, a place of worship, or a Township-owned use.

“Related” means persons who are related by blood, marriage, adoption or formal foster relationship to result in one of the following relationships: brother, sister, parent, child, grandparent, great grandparent, grandchild, great grandchild, uncle, aunt, niece, nephew, sister-in-law, brother-in-law, mother-in-law, father-in-law, son-in-law, daughter-in-law or first cousin. The term specifically shall not include relationships such as second, third or more cousins.

“Restaurant” means an establishment whose principal business is the selling of unpackaged food to the customer in a ready-to-consume state, in individual servings, or in indispensable containers, and where the customer consumes these foods while seated at tables or counters located within a building. This use may include drive through facilities where permitted by this Ordinance.

“Right-of-Way” means an area or strip of land reserved for use as a street, railroad, public utility, private utility or other special uses.

“Road” means that portion of a road improved, designed or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder.

“Satellite Dish Antenna, Noncommercial” means a device incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, cone, horn, or cornucopia. The device is intended to be used to transmit or receive radio or electromagnetic waves between terrestrial and orbital based uses. This term includes satellite earth stations, television reception antenna, satellite microwave antennas and the like.

“Sewer, Central” means a sanitary sewage collection system, approved by the Pennsylvania Department of Environmental Protection, in which sewage is carried from a building on an individual lot by a system of pipes to a central treatment and disposal facility. This term includes a public sewer systems that are owned and operated by the municipality or municipal authority.

“Sewer, On-Lot” means a sanitary sewer service, approved by the Pennsylvania Department of Environmental Protection by way of a permit issued by the Sewage Enforcement Officer, which does not meet the definition of a “Central Sewer”.

“School” means any facility that provides a curriculum of elementary and secondary academic instruction, including kindergartens, elementary schools, junior high schools, and high schools. This term does not include care facilities (child or adult).

“Screening” means the method by which a view of one lot from another adjacent lot is shielded, concealed, or hidden. Screening techniques include fences, walls, hedges, shrubs, trees, natural forest, berms and other features, as provided for and required in this Ordinance.

“Self-Storage Facilities” means a building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual compartmentalized, and controlled access stalls or lockers which are leased to individuals for the storage of the individual’s personal property.

“Setback” means the required minimum horizontal distance between the building line and the related front, side or rear property line.

“Shopping Center” means a building or group of units within a single building, which is comprised of commercial, retail or service oriented businesses.

“Sign” means a structure or device designed or intended to advertise, identify or convey information to the public.

“Sign Area” includes the entire area within a continuous perimeter, wherein lettering, wording, numerals, designs and symbols are located, except for any structural supports that do not contain any lettering, wording, numerals, designs or symbols. Signs

may contain several signs provided that they share the same structure or structural supports with the total sign area being the area of a common geometric form that could encompass all signs. The sign area for a sign painted on a wall or building is the smallest rectangle that includes all of the letters, words, numbers, designs and symbols.

“Sign Construction Types” includes the following:

Ground Sign: A sign not supported by structures or supports or upon the ground not attached or dependent for support from any building.

Wall Sign: A sign attached, painted or affixed directly to the exterior wall of a principal structure, or dependent upon a principal building for support, which does not project more than two feet from the building structure.

Projecting Sign: A sign which is affixed to a building and extends beyond the line of such building more than two feet from the building structure.

“Sign Types” includes the following:

Sign, Billboard: A sign which communicates information concerning a subject, business, profession, activity, commodity, service, entertainment or development not related to, sold, offered, prepared or manufactured on the lot where the sign is located.

Sign, Business: A sign which communicates information concerning a business, profession, commodity, service, entertainment or development which is sold, offered, prepared, manufactured or conducted upon the zoning lot where the sign is located.

Sign, Construction: A temporary sign erected on property where construction is taking place, indicating the name of the person performing the construction, architectural, engineering, or inspection activities or services.

Sign, Directional or Informational: A sign containing no advertising material and limited to information and directions necessary for visitors entering or exiting a property, including signs marking entrances and exits, parking areas, circulation direction, restrooms and pick-up and delivery areas.

Signs, Event: A temporary sign advertising public or private not-for profit events such as picnics, carnivals, bazaars, game nights, arts and crafts and similar types of funding raising events.

Sign, Institutional: A sign which identifies a use pertaining to a school, church, hospital, governmental service or other institution of a similar public or semi-public nature.

Sign, Name Plate/Identification: A sign which communicates the name address of an occupant or a permitted home occupation upon the lot on which the sign is located.

Signs, Political: A temporary sign identifying one or more candidates running for a public office, which describes the office for which he or she is running, the party or the issues.

Sign, Real Estate: A temporary sign which advertises the sale, rental or development of the premises upon which the sign is located.

Signs, Shopping Center: A group of not less than five contiguous and different non-residential uses originally planned and developed as a single unit having a total floor area of not less than 20,000 square feet.

“Social Hall” means a building or portion thereof used for social gatherings, which is usually operated by a nonprofit or civic organization or association.

“Solar Access” means a building’s ability to receive the benefits of the sun’s rays without obstruction from neighboring buildings, structures, plants, and trees.

“Solar Array” means a ground mounted solar collection system consisting of a linked series of photovoltaic modules.

“Solar Collection System” means a panel or other solar energy device, the primary purpose of which is to provide for the collection, inversion, storage and distribution of solar energy for electricity generation, space heating, space cooling or water heating.

“Solar Easement” means an easement of direct sunlight which may be acquired over the land of another by express grant or covenant.

“Solar Energy” means radiant energy (direct, diffuse, and reflected) received from the sun.

“Solar Energy Device” (active and passive) means the equipment and requisite hardware that provide and are used for collecting, transferring, converting, storing, or using incident solar energy for water heating, space heating, cooling, generating electricity, or other applications that would otherwise require the use of conventional source of energy such as petroleum products, natural gas, manufactured gas, or electricity produced from a nonrenewable resource.

“Solar Energy System” means any solar collector or other solar energy device or any structural design feature whose primary purpose is to provide for the collection, storage and distribution of solar energy for space heating or cooling, for water heating or for electricity that may be mounted on a building or on the ground and is not the primary use of the property.

“Solar Farm or Farms” means a facility or area of land principally used to convert solar radiation to electricity. The term does not include devices or combinations or devices which rely upon direct sunlight as an energy source for a minor energy system.

“Solar Radiation (Solar Energy)” means electromagnetic radiation emitted by the sun.

“Solar Site Orientation” means situating a building to optimize exposure to the winter sun for passive heating and lighting, while reducing this exposure to the summer sun to minimize overheating.

“Solar Trees” means arrays that, as the name implies, mimic the look of trees, provide shade, and at night can function as street lights.

“Solar Water Heating” means using the sun directly to heat water in homes and swimming pools.

“Solid Waste Facilities” means any facility operated under the laws of the Commonwealth of Pennsylvania governing the management, processing, incinerating, treatment, storage, transfer or disposal of solid waste. Solid waste includes garbage, refuse, industrial, lunchroom or office waste or other material including solid, liquid, semisolid or contained in gaseous material, resulting from the operation of residential, municipal, commercial or institutional establishments and from community activities, excluding hazardous substances, material and waste. This term includes Solid Waste Landfills, Solid Waste Transfer Facilities, and Solid Waste-To-Energy Facilities.

“Special Exception” means a use only permitted in a particular zoning district by approval of the Zoning Hearing Board in accordance with the applicable provisions of this Ordinance. The use will find classification under the heading Special Exception Uses for the zoning district in which the property is located.

“Special Utility or Special Utilities” means electrical transmission lines exceeding one-hundred fifteen thousand volts or electrical substations.

“Specified Anatomical Areas” includes less than completely and opaquely covered human genitals, private parts, buttocks, anus, or female breasts below a point immediately above the top of the areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“Stand-Alone Wind Mill” means not more than one wind mill constructed primarily for residential, agricultural or for a single commercial or industrial building used to generate electricity for a principal structure for which it is intended to be accessory.

“Storage, Contractor” includes any lot or structure, or part thereof, used to store materials used by a contractor in a construction trade such as the building, construction or installation of a street, or structure. This term includes construction contractors, excavators, paving contractors, landscapers, and other similar construction trades.

“Storage, Outdoor” includes the placing, storing or keeping, in an unroofed and unenclosed area, goods, materials, merchandise, equipment or vehicles which are related to the operation of a commercial use, excluding the storage of solid waste, hazardous substances, refuse, junk and junked vehicles.

“Story” means that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, the space between such floor and the ceiling above. A basement shall be counted as a story if the ceiling equals or exceeds five feet of the finished ground surface adjoining the exterior walls of such story.

“Street” includes any right-of-way, avenue, boulevard, road, highway, alley, freeway, land, viaduct and any other ways used or intended to be used by vehicular or pedestrian traffic whether public or private or dedicated or undedicated.

“Structural Alterations” includes any change in the supporting members of a building or structure, such as bearing walls, columns, beams, or girders.

“Structure” means any man-made object, the use of which requires an ascertainable stationary location on land, whether or not it is affixed to the land.

“Temporary” means for the purpose of this Ordinance, a continuous period of time not to exceed six (6) months.

“Townhouse Unit” means a one family dwelling unit in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more fire resistant walls. A townhouse unit is a multi-family dwelling unit.

“Township” means the political subdivision or municipality of Black Creek Township, Luzerne County, Pennsylvania.

“Township Engineer” means the professional engineer licensed as such in the state of Pennsylvania, duly appointed by the Black Creek Township Supervisors.

“Township Solicitor” means the Solicitor duly appointed by the Black Creek Township Supervisors.

“Township Supervisors” means the Township Supervisors of the Township of Black Creek, Luzerne County, Pennsylvania.

“Tree Farm” means an area used for a type of farming involving the raising and/or harvesting of trees for commercial purposes.

“Trucking Facility” means the use of a structure, building or land, which consists of a storage area, management and dispatch office, and loading and unloading facilities connected with receipt or delivery of freight shipped by truck.

“Truck Service Center, Repair and Storage” means a use that primarily involves providing fuel and repairs to tractor-trailers, including incidental storage of tractor-trailers.

“Utility Corridor(s)” means a lineal transportation route utilized by one or more Special Utilities.

“Variance” means a waiver or modification of this Ordinance that may only be granted by the Zoning Hearing Board.

“Warehouse and Distribution” means one or more buildings or structures used primarily for storage, transfer and distribution of products, goods and materials. This term does not include trucking facilities.

“Water, Central” means a public or privately owned system, under the jurisdiction of the Pennsylvania Public Utility Commission, designed to transmit potable water from a common source to users, and in compliance with the governing standards of all applicable State agencies. Any water supply system not deemed central water is deemed to be an on-site water supply system.

“Wetlands” means those areas that are inundated or saturated by the surface or ground water at frequency or duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas. The term includes wetland areas listed in the State Water Plan, the United States Forest Service Wetlands Inventory of Pennsylvania, the Pennsylvania Coastal Zone Management Plan and any wetland area designated by a river basin commission.

“Wind Farm” means a facility where two or more wind mills are located and are used for the generation of electricity which is used on-site for commercial purposes or which is sold on the open market. This definition shall not include a stand-alone wind mill.

“Wind Mill” includes a machine that operates on the energy generated by a series of blades or slates rotated by the wind, or a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any. When used in the context of this Ordinance, Wind Mills shall include both a Stand-Alone Wind Mill and Wind Farm.

“Wind Mill Height” means the vertical distance measured from the surface of the tower foundation at grade to the highest point of the structure, including blades. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the height.

“Yard” means a prescribed open and unobstructed space or area on a lot that is located between a building or structure and the nearest lot line. A yard is also referred to as a setback.

Yard, Front: means a space or area extending the full width of the lot between a principal or accessory building or structure and the front lot line and measured perpendicular to the building or structure at the closest point to the front lot line. This area is bounded by the street line, front setback line and side property lines.

Yard, Rear: means a space or area extending the full width of the lot between the structure or building and the rear lot line and measured perpendicular to the building or structure at the closest point to the rear lot line. This area is bounded by the rear property line, rear setback line and side lot lines.

Yard, Sides: means a space or area extending from the front yard to the rear yard between a building or structure and the side lot line measured perpendicular from the side lot line to the closest point of the building or structure. This area is bounded by side property lines, and side, front and rear setback lines.

“Zoning District” means those portions of Black Creek Township depicted upon the Official Zoning Map, within which certain uniform regulations and requirements apply under the provisions of this Ordinance.

“Zoning Hearing Board” means the Black Creek Township Zoning Hearing Board of Luzerne County, Pennsylvania.

“Zoning Map” means the map containing the zoning districts of Black Creek Township, Luzerne County, Pennsylvania. This map is also referred to as the Official Zoning Map of Black Creek Township.

“Zoning Officer” means the person appointed by the Black Creek Township Board of Supervisors to administer and enforce the provisions of the Black Creek Township Zoning Ordinance, and any amendments thereto.

ARTICLE 3
ESTABLISHMENT OF ZONING DISTRICTS AND DISTRICT
REGULATIONS

Section 301. Zoning District Classifications. For the purposes of this Ordinance, the Township is hereby divided into the following zoning districts:

- (1) **“R-1”** SINGLE FAMILY RESIDENTIAL DISTRICT
- (2) **“R-2”** MULTI-FAMILY RESIDENTIAL DISTRICT
- (3) **“C-1”** CONSERVATION DISTRICT
- (4) **“A-1”** AGRICULTURAL DISTRICT
- (5) **“B-1”** GENERAL COMMERCIAL DISTRICT
- (6) **“I-1”** INDUSTRIAL DISTRICT

Section 302. Overlay Districts. For purposes of this Ordinance, the Township is hereby divided into the following overlay zoning districts:

- (1) **“PRD”** PLANNED RESIDENTIAL DEVELOPMENT OVERLAY DISTRICT
- (2) **“WTO”** WIND TURBINE OVERLAY DISTRICTS
- (3) **“SEO”** SOLAR ENERGY OVERLAY

Section 303. Zoning Map. Except for the overlay districts, the boundaries of the other zoning districts listed in Section 301 above are delineated on the official “Black Creek Township Zoning Map”, which together with all explanatory matter thereon, is hereby made a part of this Ordinance by reference thereto, together with all future notations, references and amendments.

Section 304. Purposes of Each Zoning District.

(1) Residential Districts. The purpose of these zoning districts are to provide for single-family, two-family, and multi-family dwelling units at low or medium densities in areas already developed in this manner and in areas where this type of housing development is desirable and harmonious.

(2) Conservation District. The purpose of this zoning district is to provide for the preservation and protection of natural areas and resources including, but not limited surface waters, environmentally sensitive soils, steep slopes, woodland and wildlife, while perpetuating the rural atmosphere, open spaces, and scenic beauty. Different types

ORDINANCE NO 2/10 of 2014

AN ORDINANCE OF BLACK CREEK TOWNSHIP, LUZERNE COUNTY, PENNSYLVANIA, AMENDING CHAPTER 14, SUBDIVISION AND LAND DEVELOPMENT, SECTION 304(B) AND (C), SUBMISSION OF PRELIMINARY PLAN; SECTION 306(E) AND (F), SUBMISSION OF FINAL PLAN; SECTION 502(K), PRELIMINARY PLAN REQUIREMENTS – TITLE REPORT; AND SECTION 502(P), PRELIMINARY PLAN REQUIREMENTS – ADDITIONAL APPROVALS, CERTIFICATES AND DOCUMENTS

An Ordinance of Black Creek Township amending Chapter 14, Subdivision and Land Development, Section 304(B) and (C), Submission of Preliminary Plan; Section 306(E) and (F), Submission of Final Plan; Section 502(K), Preliminary Plan Requirements – Title Report; and Section 502(P), Preliminary Plan Requirements – Additional Approvals, Certificates and Documents.

The Supervisors of Black Creek Township do hereby adopt the following amendments to the Code of Ordinances:

**Chapter 14
SUBDIVISION AND LAND DEVELOPMENT**

Section 304. Submission of Preliminary Plan.

B. **Seven (7) copies** of the preliminary plan and all other required documents and information shall be submitted to the Township Secretary together with the required fees established in accord with the terms of this ordinance. The Township Secretary shall note the date of tentative receipt of the application and fees. The said tentative date of receipt is subject to the review by the Township Secretary, Township Engineer and Supervisors to determine if all required materials and fees have been submitted by the applicant. The items required for a submission to be deemed complete are outlined in this Ordinance and the most current version of the Black Creek Township Subdivision and Land Development Application package. If the application is defective or incomplete, the applicant shall be notified in writing within fourteen (14) days of the tentative date of receipt and the application shall be null and void and shall be deemed withdrawn by the applicant. If no such notice is given to the applicant that the application is defective or incomplete, it shall be assumed that the project is complete and the application will be added to the agenda of the next regular meeting of the Township Planning Commission. If the Planning Commission accepts the application as complete at the regular meeting, the meeting date will be the official date of the acceptance of a complete submission and the commencement of the Pennsylvania Municipal Planning Code required 90-day review period.

C. The Township Secretary shall distribute the plans and documents submitted by the applicant as follows:

1. Three (3) copies of the plans and other required materials to the Township Planning Commission;
2. One (1) copy of plans and all materials to the Township Engineer;
3. One (1) copy of plans and all materials to the Board of Supervisors;
4. One (1) copy of plans and all materials for the Township files; and
5. One (1) copy of plans and all materials to the Solicitor of the Planning Commission.

Section 306. Submission of Final Plan.

E. Official submission of the final plan to the Township Secretary shall consist of:

1. One (1) copy of the application for review of final subdivision or land development plan.
2. Seven (7) copies of the final plans and supporting materials to enable proper distribution and review by the Township.
3. Copies of all applications made or notices provided to Federal, State and County agencies by or on behalf of the applicant for permits, certifications, approvals or waivers required sought for either subdivision or land development as proposed in the preliminary or final plan, including, but not limited to, applications or notices provided to the U.S. Army Corps of Engineers, U.S. Department of Agriculture Soil Conservation District, U.S. Environmental Protection Agency, Commonwealth of Pennsylvania Department of Environmental Protection (PA DEP) or Pennsylvania Department of Transportation (PA DOT), and Luzerne Conservation District.
4. Payment of application fees, if required, for plan review costs.

F. The seven (7) required copies of the final plans and all required supplementary data shall be submitted to the Township Secretary together with the required fees as prescribed by resolution of the Board. The Township Secretary shall note the date of receipt and shall then forward:

1. Three (3) copies of the plans and other required materials to the Township Planning Commission.
2. One (1) copy of plans and all materials to the Township Engineer.
3. One (1) copy of plans and all materials to the Board of Supervisors.

4. One (1) copy of plans and all materials for the Township files.
5. One (1) copy of plans and all materials to the Solicitor of the Planning Commission.
6. One (1) Mylar copy of all plans intended to be recorded must be supplied to the Township prior to final approval. The Mylar copy is not required at the time of the initial application since plan revisions will most likely be required.

Section 502. Preliminary Plan Requirements.

K. Title Report

At the request of the Township Planning Commission, the applicant shall provide a current title report prepared by a title insurance or title abstract company showing all easements and encumbrances of record regarding the property which is to be subdivided or developed.

P. Additional Approvals, Certificates and Documents

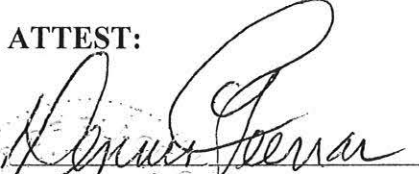
1. A statement duly acknowledged before an officer authorized to take acknowledgment of deeds and signed by the owner or owners of the property, to the effect that the owner or owners consent to the subdivision or land development shown on the plan.
2. Certification of the engineer, land surveyor, landscape architect or land planner who prepared the plan that the plans are in conformity with zoning, building, subdivision and other applicable Township ordinances and regulations. In any instance where such plans do not conform, evidence shall be presented that an exception or waiver has been authorized. Certification blocks must be contained on all applicable plans as deemed appropriate by the Township Engineer.
3. A Traffic Impact Study will be required to be submitted to and approved by the Township in conformance with the standards outlined in Section 626 if the project meets the requirements for a study as outlined in Section 626.1.
4. A copy of the wetland delineation report for the entire parcel prepared by a qualified professional. If a wetland delineation report was completed more than five years prior to the initial complete submission to the Township the report will not be accepted. A wetland delineation report is not required for minor subdivisions which do not involve the construction of improvements.
5. A copy of the water system design calculations and aquifer tests that is required for the project, if applicable.
6. A copy any pressure sewer system design calculations, if applicable.

These Amendments shall take effect immediately upon their adoption.

The remaining sections of the Ordinance, as amended, shall remain the same unchanged, except as otherwise provided herein.

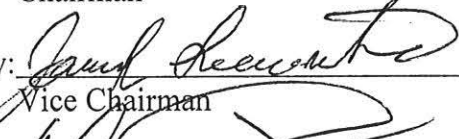
This Ordinance is hereby duly enacted and adopted this 3 day of June, 2014.


ATTEST:


Secretary

**BLACK CREEK
TOWNSHIP SUPERVISORS:**

By: 
Chairman

By: 
Vice Chairman

By: 
Supervisor

of development are permitted provided that there is sufficient area to promote and maintain the public health, welfare and safety and not interfere with the natural features of the district.

(3) General Commercial District. The purpose of this zoning district is to provide for the needed retail and service commercial businesses that supply goods and services to both the community and the region.

(4) Industrial District. The purpose of this zoning district is to provide for industrial uses and related activities which may be located within the Township as not to interfere with non-similar uses.

(5) Agricultural District. The purpose of this district is to provide for agricultural development and farming activities based upon topography, soil type, classification and existing uses.

(6) Planned Residential Development Overlay District. The purpose of this overlay district is to:

- A. Insure that the provisions of the Black Creek Township Zoning Ordinance, which are concerned with the uniform treatment of dwelling types, bulk, density and open space within each zoning district, shall not be applied to the improvement of land by other than lot-by-lot development in a manner which would distort the objectives of the Ordinance.
- B. Encourage innovations in residential development and renewal so that the growing demand for housing may be met by greater variety in type, design and layout of dwellings and by the conservation and more efficient use of open space ancillary to said dwellings.
- C. Provide greater opportunities for better housing and recreation for all who are or may become residents of the Township.
- D. Encourage a more efficient use of land and public services and to reflect changes in the technology of land development so that the economies so secured may insure the benefits of those who need housing.
- E. Encourage more flexible land development which will respect and conserve natural resources such as streams, floodplains, groundwater, wooded areas, and areas of unusual attractiveness in the natural environment.
- F. Provide a procedure which can regulate the type, design and layout of a

residential development to the particular site and particular demand for housing existing at the time of development in a manner consistent with the preservation of property values within existing residential areas, and to assure that the increased flexibility of regulations over land development established hereby is carried out pursuant to sound, expeditious and fair administrative standards and procedure.

(7) Wind Turbine Overlay District. The purpose of this zoning district is to provide for the construction and operation of Wind Farms subject to reasonable conditions that will protect the public health, safety and welfare.

(8) Solar Energy Overlay District. The purpose of this overlay district is to:

- A. To promote the safe, effective and efficient use of solar energy in order to reduce the consumption of fossil fuels in producing electricity.
- B. Preserve and protect public health, safety, welfare, and quality of life by minimizing the potential adverse impacts of a Solar Energy System.
- C. To establish standards and procedures by which the siting, design, engineering, installation, operation, and maintenance of a Solar Energy System shall be governed.

Section 305. Interpretation of Zoning District Boundaries. If uncertainty exists as to the boundary of any zoning district shown on the Black Creek Township Zoning Map, the Zoning Hearing Board shall determine the location of such boundary according to the following guidelines:

(1) Zoning district boundary lines are intended to follow or parallel the center line of streets, streams and railroads; and lot or property lines as they exist on a recorded deed or plan in the Luzerne County Recorder of Deeds Office at the time of adoption of this Ordinance, unless such zoning district boundary lines are fixed by dimensions as shown on the Zoning Map.

(2) Where a zoning district boundary is not fixed by dimensions and where it approximately follows lot lines and does not scale more than 10 feet there from, such lot lines shall be construed to be such boundaries unless specifically shown otherwise.

(3) If after applying the guidelines set forth above uncertainty still exists as to the boundary of any zoning district, the Zoning Officer shall determine the location of such boundary with the use of a survey of the property or area of land in question prepared by a registered surveyor the cost of which is to be paid by the person who is questioning or contesting the boundary location.

Section 306. Lots Divided by Zoning District Boundaries. If a zoning district boundary line divides a lot held in single and separate ownership prior to the effective date of this Ordinance, placing 75% or more of the lot area in a particular zoning district,

the location of such district boundary line may be construed to include the remaining 25% or less of the lot so divided.

Section 307. Zoning District Dimensional Regulations. Except as otherwise provided in this Ordinance or by state or local law or regulation, each building, structure and use shall be governed by the dimensional regulations listed in the following table:

Regulation By District	R-1 Single-Family Residential	R-2 Multi-Family Residential	C-1 Conservation	I-1 Industrial	B-1 General Commercial	A-1 Agricultural
Front Yard	35 feet	30 feet	50 feet	50 feet	35 feet	35 feet
Rear Yard	30 feet	25 feet	50 feet	100 feet	25 feet	50 feet
Each Side Yard	15 feet	10 feet	50 feet	75 feet	25 feet	25 feet
Minimum Lot Size	21,780 sq. ft. 43,560 sq.ft. ¹	12,000 sq. ft. 21,780 sq. ft. ¹	87,120 sq. ft.	217,800 sq. ft.	21,780 sq. ft. 43,560 sq. ft. ¹	65,340 sq. ft
Width	100 feet 125 feet ¹	75 feet 100 feet ¹	200 feet	250 feet	125 feet 150 feet ¹	150 feet
Depth	150 feet	125 feet	200 feet	250 feet	150 feet	200 feet
Maximum Height	35 feet	35 feet	35 feet	40 feet	40 feet	35 feet
Maximum Percentage of Impervious Coverage ²	25%	35%	15%	60%	70%	20%

¹ Public Sewer is not available

² Impervious coverage, for purposes of this Ordinance, shall be defined as “a surface that prevents the infiltration of water back into the ground”. Crushed stone of any type shall be considered an impervious surface if the stone is to be used for transportation or parking purposes. Any type of stone used for landscaping purposes shall not be considered impervious.

Section 308. Permitted Uses and Special Exception Uses.

(1) Permitted Uses. A use indicated or listed under any of the zoning districts or zoning overlay districts as a “Permitted Use” is a use permitted by right within that zoning district, thereby not necessitating Zoning Hearing Board approval, but only a determination by the Zoning Officer.

(2) Special Exception Uses. A use indicated or listed under any of the zoning or overlay districts as a “Special Exception Use” is a use for which the Zoning Hearing Board decides whether to permit or deny in accordance with this Ordinance and the

Zoning Officer has no discretion to approve any permit where the use is classified as requiring special exception approval.

Section 309. "R-1" Single-Family Residential District.

(1) Permitted Uses.

- A. Single-family dwelling units
- B. No-impact home based businesses
- C. Public utilities or essential services (excluding storage yards and buildings)
- D. Forestry and timber harvesting
- E. Customary accessory uses including private garages

(2) Special Exception Uses.

- A. Home occupations
- B. Public uses
- C. Public recreation
- D. Care facilities (child and adult) as per state guidelines
- E. Places of worship
- F. Schools
- G. Customary accessory uses

Section 310. "R-2" Multi-Family Zoning District.

(1) Permitted Uses.

- A. Single-family dwelling units
- B. Two-family dwelling units
- C. No-impact home based businesses
- D. Public utilities or essential services (excluding storage yards and buildings)
- E. Forestry and timber harvesting
- F. Customary accessory uses including private garages

(2) Special Exception Uses.

- A. Multi-family dwelling units (including apartments, condominiums and townhouses)
- B. Home occupations
- C. Public uses
- D. Public recreation
- E. Care facilities (child and adult) as per state guidelines
- F. Places of worship
- G. Private nonprofit social halls, clubs, or lodges

- H. Group homes
- I. Schools
- J. Customary accessory uses

Section 311. "C-1" Conservation District.

(1) Permitted Uses.

- A. Agricultural uses limited to farming on fifty (50) acres or less
- B. Bed and breakfast establishments
- C. No-impact home based businesses
- D. Forestry and timber harvesting including all tree farming
- E. Greenhouses and nurseries
- F. State game lands and state parks
- G. Single-family dwellings units
- H. Two-family dwelling units
- I. Social halls, hunting clubs and lodges with state approval
- J. Public utility facilities or and essential services (excluding storage yards)
- K. Customary accessory uses

(2) Special Exception Uses.

- A. Agricultural uses limited to farming on more than fifty (50) acres
- B. Home occupations
- C. Outdoor storage
- D. Cemeteries (including animal)
- E. Group homes
- F. Public or private recreation indoor or outdoor
- G. Commercial indoor recreation
- H. Animal kennels
- I. Care facilities (child and adult)
- J. Communications towers, antennae and equipment buildings
- K. Fish Hatcheries
- L. Manufactured or mobile home parks
- M. Manufactured or mobile homes
- N. Water Withdrawal
- O. Customary accessory uses

Section 312. "A-1" Agricultural District.

(1) Permitted Uses.

- A. Agricultural uses
- B. Greenhouses and nurseries

- C. Single-family dwelling units (including mobile homes on permanent foundations)
- D. No-impact home based businesses
- E. Sawmills
- F. Animal hospitals (without outdoor exercise runways)
- G. Public uses
- H. Forestry and timber harvesting
- I. Cemeteries
- J. Public utilities or essential services (excluding storage yards and buildings)
- K. Sale of agricultural products grown on the premises (including roadside stands)
- L. Customary accessory uses
- M. Schools

(2) Special Exception Uses.

- A. Home occupations
- B. Recreation (public, private and commercial)
- C. Animal kennels
- D. Animal hospitals (with outdoor exercise runways)
- E. Manufactured mobile home park
- F. Contractor's storage yard
- G. Agri-tourism
- H. Concentrated Animal Feeding Operation
- I. Concentrated Animal Operation
- J. Customary accessory uses

Section 313. "B-1" General Commercial District.

(1) Permitted Uses.

A. Retail business establishments:

- Agricultural products
- Artist, music, hobby supplies and crafts
- Automotive, boat and manufactured/mobile home sales
- Automotive parts store
- Beverage package store
- Building or plumbing supplies
- Convenience stores
- Dry goods and variety stores
- Food and drugs
- Garden Supplies
- Hardware and paint
- Household goods and appliance stores
- Newspapers, books and stationery

- Office furniture, equipment and supplies
- Pets and pet supplies
- Photo supplies
- Specialty and gift items
- Sporting goods

B. Customer service establishments:

- Appliance repair shops
- Assisted living facilities
- Automotive repair garage and sales
- Banks, credit unions and similar financial uses
- Bus and taxi passenger stations
- Car wash
- Care facilities
- Dry cleaning and laundry
- Funeral homes
- Automobile service stations
- Gymnasiums and physical health salons
- Health clubs and spas
- Hotels and motels
- Night clubs
- Personal services
- Offices (excluding professional offices)
- Public uses
- Public utility facilities and essential services (excluding storage yards)
- Restaurants
- Schools
- Taverns

C. Recreation and entertainment establishments:

- Commercial Indoor Recreational Facilities
- Nonprofit Social Halls, Clubs and Community Centers
- Private Recreational Facilities
- Public Recreational Facilities

- D. Forestry and timber harvesting
- E. Dwelling units attached/adjacent to a business
- F. Recycling Collection Center
- G. Customary accessory uses

(2) Special Exception Uses.

- A. Animal Hospitals
- B. Boarding or rooming houses and single family dwelling unit

- C. Cemeteries
- D. Communications towers, antennae and equipment buildings
- E. Dry cleaners
- F. Contractor's yard and shops
- G. Medical Clinics
- H. Hospitals with state approval
- I. Professional offices
- J. Outdoor storage
- K. Business Park
- L. Single-family dwelling units
- M. Two-family dwelling units
- N. Multi-family dwelling units (including apartments, condominiums and townhouses)
- O. Shopping Center
- P. Customary accessory uses

Section 314. "I-1" General Industrial District.

(1) Permitted Uses.

- A. Automotive repair garages
- B. Automotive sales
- C. Print shops
- D. Equipment sales and repairs
- E. Light industrial
- F. Lumberyards
- G. Contractors' storage yards, contractors' shops, contractors' store fronts and contractors' offices
- H. Outdoor storage
- I. Warehouse and distribution facilities
- J. Self-storage facilities
- K. Public utility facilities
- L. Public uses
- M. Automobile service stations and tire re-treading and recapping
- N. Forestry and timber harvesting
- O. Customary accessory uses
- P. Schools

(2) Special Exception Uses.

- A. Airport or Heliport
- B. Bulk Fuel Storage
- C. Commercial poultry or hog farms
- D. Communications towers, antennae and equipment buildings
- E. Fertilizer Plants
- F. Fur Farms

- G. Solid Waste Facilities
- H. Staging areas
- I. Transfer stations
- J. Automotive wrecking yards
- K. Junk yards
- L. Heavy industrial
- M. Sewage treatment facilities
- N. Trucking facilities
- O. Adult uses
- P. Research and testing facilities
- Q. Stone and monument works
- R. Outdoor Recreation – Private, commercial or public
- S. Mineral Extraction (Excluding gas wells)
- T. Prisons
- U. Medical Clinics
- V. Professional offices
- W. Bulk Recycling Center
- X. Industrial Park
- Y. Institutional Uses
- Z. Truck Service Center, Repair and Storage
- AA. Special Utilities
- BB. Any other use not provided for in this Ordinance
- CC. Customary accessory uses

Section 315. “PRD” Planned Residential Development Overlay District.

(1) Purpose – The purpose of this district is to provide a land use control device which combines elements of both zoning and subdivision regulations, and brings together mixed land development and open space within the same development. The basic concept is the establishment of a certain overall density for development, percentage of open space, and permission for the developer to develop with considerable flexibility provided specific criteria are met. It is an option to the conventional development permitted by the underlying Zoning District. Therefore, planned residential developments (with institutional, commercial, office and retail uses) are restricted to specific zoning districts. The intent of such a district is:

- A. To encourage innovations in residential and non-residential development for greater variety, efficient use of open space, and conservation of natural features/resources such as streams, flood plains, groundwater, woodlands, steep slopes, trails and rock outcrops.
- B. To provide greater opportunities for better housing and recreation in the Township.

C. To encourage a more efficient use of land and public services based on changes in the technology of land development so that economies may benefit those who need homes and neighborhood facilities.

D. To provide a process which can relate the type, design, and layout of residential and non-residential development to the particular site and demand for housing, in a manner consistent with the preservation of the increased flexibility of regulations overland development is carried out pursuant to sound, expeditious and fair administrative standards and procedures.

(2) Eligibility Requirements

A. Any application for tentative approval shall, at a minimum, meet the following requirements.

1. The proposed land area for the planned residential development shall comprise one or more contiguous parcels of land under single ownership.
2. The proposed planned residential development shall be served by a public or central sanitary sewer system.
3. The proposed planned residential development should, if at all feasible, be served by a public or central water system.
4. Planned residential developments shall be permitted in the A-1 and the C-1 Zoning Districts only as a Special Exception Use. Planned residential developments shall contain a minimum of twenty five (25) acres in the A-1 Zoning District and fifty (50) acres in the C-1 Zoning District.

(3) Land Use Control and Density Requirements

A. Residential Permitted Uses. All planned residential developments shall consist of single-family detached dwellings and at least two (2) of the following housing types:

1. Two-family dwellings (Twins);
2. Townhouses; and
3. Multiple-family dwellings (Apartments and Condominiums).

4. Customary accessory uses and buildings to the above shall be permitted in accordance with Sections 401 and 402 of this Ordinance.

5. Sales Offices shall be permitted as an accessory use to any residential development in excess of twenty five (25) lots or dwelling units. Any such sales office shall be housed in a building in keeping with the principal residential character of the property, and no more than one sales office shall be permitted without zoning approval.

Note: Each type of housing style shall constitute a minimum of twenty (20%) percent of the total number of housing units.

B. Non-Residential Permitted Uses. The following non-residential uses may be permitted in a planned residential development to the extent that they are designed and intended primarily to serve residents of the proposed Planned Residential Development and are compatible and harmoniously incorporated into the unitary design of the planned residential development. All planned residential developments must have at least two (2) separate non-residential buildings within the development:

1. Commercial uses such as retail shops or stores, service business and restaurants;
2. Professional or business office uses, including branch banks;
3. Private schools, nursery schools and day care centers, churches, community activity centers, nursing homes, and retirement homes;
4. Golf courses, ski lodges and slopes, hotels and motels; and
5. No-impact home based businesses.

C. Land Use Density. Within a planned residential development, density shall be regulated by the following standard:

1. Average gross residential density for a total planned residential development site shall not exceed twelve (12) dwelling units per acre for developments with a central water system and shall not exceed five (5) dwelling units per acre for developments without a central water system.
2. The percentage of a planned residential development site to be devoted to common open space shall be no less than twenty-five (25%) percent of the total site area. This includes both Class A and

Class B open space. See Black Creek Subdivision and Land Development Ordinance for design guidelines on Open Space.

3. The percentage of impervious area of a planned residential development site shall not exceed thirty (30%) percent of the total site area. See Black Creek Township Stormwater Management Ordinance for definition of impervious area.

4. Areas for designated commercial use shall not exceed the following:

- 20 to 100 acres – 10% of site area
- 100 to 150 acres – 8% of site area
- 150 to 200 acres – 7% of site area
- 200-250 acres and up – 6% of site area

Lot coverage of commercial buildings shall not exceed thirty (30%) percent of the land area designated for commercial use.

(4) Site Analysis Requirements

A. Natural Features Analysis. In order to determine which specific areas of the total Planned Residential Development site are best suited for high density development, and which areas should be preserved in their natural state as open space areas, the developer shall submit a Natural Features Analysis of the following subject categories.

1. Hydrology (Wetlands, Streams, Lakes, Floodplains);
2. Geology;
3. Soils;
4. Topography;
5. Vegetation and Woodlands;
6. Agricultural areas;
7. Endangered species and Historic Areas;
8. Walking/Historic Trails;
9. Rock Outcrops; and
10. Other significant natural site features

B. Community Impact Analysis. In order to determine the impact of the Planned Residential Development upon Black Creek Township, an analysis of the potential effects of the Planned Residential Development upon public facilities, police and fire protection, stormwater facilities, utilities, and roadway systems shall be required. Market analysis data which estimates potential market demand for various types of housing in the area of the proposed planned residential development site shall be presented as well. This Community Impact Analysis shall include a

projection of direct current, public costs and revenues to the Township associated with such a development compared to a conventional subdivision in the same area.

(5) Site Design Requirements

A. Residential Uses.

1. Dwelling unit structures shall be located and interspersed so as to promoted pedestrian and visual access to common open space.
2. Interior yards and/or structural spacing between dwelling unit structures shall be provided in accordance with the following minimums:

Front to Front	- 80 feet
Front to Side	- 40 feet
Front to Rear	- 60 feet
Side to Rear	- 40 feet
Side to Side	- 20 feet
Rear to Rear	- 60 feet
Corner to Corner	- 15 feet
3. Dwelling unit structures shall be located and arranged so as to promote privacy for residents within the Planned Residential Development and maintain privacy for residents adjacent to it. Structures shall be located within the Development so that there will be no adverse impact such as excluding natural light or invading the privacy of adjacent structures.
4. No building shall be erected to a height in excess of thirty-five (35) feet.
5. No structure shall be located within twenty (20) feet of the right-of-way of public roads or within thirty (30) feet of the edge of pavement of any road.

B. Commercial Uses.

1. All commercial uses shall be located in a single, concentrated area of the Planned Residential Development.
2. All commercial uses shall be located with direct access to a collector street as defined in the Black Creek Subdivision and Land Development Ordinance.

C. Common Open Space.

1. Common open space shall be designed as an integral part of the Planned Residential Development. A minimum of twenty (20%) percent of the total site area shall be designated as common open space.
2. Significant natural features such as woodland areas, large trees, natural watercourses and bodies of water, rock outcroppings, and scenic views shall be incorporated into common open space areas. See open space design guidelines in the Black Creek Subdivision and Land Development Ordinance.
3. The uses authorized for the common open space must be appropriate to the scale and character of the Planned Residential Development, considering its natural features, size, land use intensity, potential population, and the number and types of dwelling units to be developed.

D. Streets, Sanitary Sewer Facilities, Water Facilities, Stormwater Management Facilities, Soil Erosion and Sediment Control, Curbs, and Sidewalks, etc. shall be designed and improved in accordance with the requirements and standards set forth in the Black Creek Township Subdivision and Land Development Ordinance and the Black Creek Stormwater Management Ordinance. Performance and maintenance guarantees and subsequent release of guarantees for all required improvements shall be in accordance with the requirements and procedures of the Black Creek Township Subdivision and Land Development Ordinance.

E. Off-Street Parking and Loading Facilities. Off-street parking and loading facilities shall be in accordance with Sections 511 and 512 of this Chapter.

F. Other Utilities.

1. All streets, off-street parking areas, and areas of intensive pedestrian use shall be adequately lighted. All such lighting shall be designed and located so as to direct light away from adjacent residences and conform to the lighting requirements of the Subdivision and Land Development Ordinance.
2. Telephone, electric, and cable lines shall be installed underground.

G. Tree Conservation and Landscaping. See Section 401.D and Section 625 of the Black Creek Township Subdivision and Land Development Ordinance.

H. Provisions for Encouraging the Use of Renewable Energy Systems and Energy-Conserving Building Design – Regulation for height and setbacks for structures, buildings, other improvements; for height and location of vegetation, shall be adjusted, if found reasonable, to relate to renewable energy systems for their components and energy – conserving building design techniques, by the Township Board of Supervisors upon the recommendation of the Black Creek Township Planning Commission and the Township Engineer.

(6) Ownership, Maintenance, and Preservation of Common Open Space

See Section 707 of the Black Creek Subdivision and Land Development Ordinance for standards governing the ownership, maintenance and preservation of common open space.

(7) Development in Phases

A. A Planned Residential Development may be developed in phases if the following are met:

1. The phasing boundary lines and approximate duration of construction of each phase are clearly marked on the Tentative Plan.
2. At least fifteen (15%) percent of the dwelling units in the Tentative Plan are included in each phase.
3. At least forty (40%) percent of the dwelling units in any phase shall be completed before any commercial development shown in that phase shall be initiated.
4. Every subsequent phase is completed consistent with the Tentative Plan and of such size and location that they constitute economically sound units of development. In no event shall such phases contain less than fifteen (15%) percent of the dwelling units included in the tentative plan.
5. To encourage flexibility of housing density, design, and type in accord with the purposes of this Section 315, gross residential density may be varied from phase to phase. A gross residential density must offset a gross residential density in one phase, which exceeds the permitted average gross residential density for

the entire Planned Residential Development, in a subsequent phase, which is less than the permitted average gross residential density for the entire Planned Residential Development.

(8) Procedural Requirements for Tentative Approval

Note: Tentative Plan approval should not be confused with the Preliminary Plan approval of a Subdivision or Land Development. Tentative plan approval does not allow the Land Owner to construct site infrastructure. The requirements for the tentative plan listed below shall be considered the minimum requirements that are reasonably necessary for the Township to make an informed decision on the feasibility of the Planned Residential Development proposal and process the application in an expeditious manner.

A. The application for tentative approval shall be submitted by or on behalf of the landowner to the Township Secretary in accordance with all applicable Preliminary Plan submission requirements of the Black Creek Township Subdivision and Land Development Ordinance.

B. The application for tentative approval shall contain the following items at a minimum:

1. The proposed land use area within the Planned Residential Development distinguishing between types of residential, non-residential, and open space uses.
2. The land use density of each land use within the Planned Residential Development and the average gross residential density for the entire Planned Residential Development.
3. The use and the approximate height, bulk, and location of buildings and other structures.
4. The location, function, size, ownership, and manner of maintenance of the common open space.
5. The feasibility of proposals for water conveyance/supply, sanitary sewer conveyance/disposal and stormwater management.
6. The provisions for parking of vehicles and the location and width of proposed streets and public ways.
7. The feasibility of proposals for energy conservation and the effective utilization of renewable energy sources.
8. A natural features analysis and community impact analysis.

9. A statement by the landowner setting forth the reasons why a planned residential development would be in the public interest and would be consistent with the comprehensive plan for the development of the Township.

10. The substance of covenants, grant of easements, or other restrictions to be imposed upon the use of land, buildings, and structures including proposed grants and/or easements for common open space areas and public utilities, and the legal form of provisions thereof.

11. In the case of plans which call for development in phases, a schedule showing the approximate time within which applications for final approval of each phase of the Planned Residential Development are intended to be filed and the approximate number of dwelling units, types of dwelling units, and gross residential density for each type of dwelling unit planned for each phase. The schedule shall be updated annually on the anniversary of submission for tentative approval.

12. The plans shall be drawn at a scale no smaller than one (1) inch to one hundred (100) feet.

13. Copies of the tentative plan and supporting data included in the tentative approval application shall be submitted to the County Planning Commission for review and comment.

C. Public Hearings

1. Within sixty (60) days after the filing of an application for tentative approval of a Planned Residential Development pursuant to this Section, a public hearing pursuant to public notice on said application shall be held by the Board of Supervisors in the same manner as prescribed for hearings before the Zoning Hearing Board.

2. The Board of Supervisors may continue the hearing from time to time and where applicable, may refer the matter back to the Planning Commission for a report, provided, however, that in any event, the public hearing or hearings shall be concluded within one hundred twenty (120) days after the date of the first public hearing.

D. Findings

1. The Township shall, by official written communication to the landowner, within sixty (60) days following the conclusion of the public hearing provided for in this Section, either:

- (a) Grant tentative approval of the plan as submitted; or
- (b) Grant tentative approval subject to specified conditions not included in the plan as submitted; or
- (c) Deny tentative approval to the plan.

2. Failure to so act within said period shall be deemed to be a grant of tentative approval of the plan as submitted. In the event, however, that tentative approval is granted subject to conditions the landowner may, within sixty (60) days after receiving a copy of the official written communication of the Township notify such agency of refusal to accept all said conditions, in which case, the Township shall be deemed to have denied tentative approval of the development plan. In the event the applicant does not, within said period, notify the Township of the applicant's refusal to accept all said conditions, tentative approval of the development plan, with all said conditions, shall stand as granted.

3. The grant or denial of tentative approval by official written communication shall include not only conclusions but also findings of fact related to the specific proposal and shall set forth the reasons for the grant, with or without conditions, or for the denial, and said communication shall set forth the reasons the plan would or would not be in the public interest including but not limited to findings of fact and conclusions on the following:

- (a) In those respects in which the plan is or is not consistent with the Comprehensive Plan for the development of Luzerne County and/or Black Creek Township.
- (b) The extent to which the plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest.
- (c) The purpose, location and amount of the common open space in the Planned Residential Development, the reliability of the proposals for maintenance and conservation of the common open space, and the adequacy or inadequacy of the amount and purpose of the common open space as related to the proposed density and type of residential development.
- (d) The physical design of the plan and the manner in which said design does or does not make adequate

provisions for public services and vehicular traffic and further the amenities of light and air, recreation, and visual enjoyment.

(e) The relationship, beneficial or adverse, of the proposed Planned Residential Development to the neighborhood in which it is proposed to be established.

(f) In the case of a plan which proposes development over a period of years, the sufficiency of the terms and conditions intended to protect the interests of the public and the residents of the Planned Residential Development in the integrity of the Plan.

(g) The feasibility of proposals for energy conservation and the effective utilization of renewable energy sources.

4. In the event a Plan is granted tentative approval, with or without conditions, the Township shall set forth in the official written communication the time within which an application for final approval of the Plan shall be filed or, in the case of a Plan which provides for development over a period of years, the period of time within which applications for final approval of each part thereof shall be filed.

E. Status of Plan after Tentative Approval

1. The official written communication provided for above shall be certified by the Secretary of the Township and shall be filed in the Township office, and a certified copy shall be mailed to the applicant. Where tentative approval has been granted, it shall be deemed an amendment to the Zoning Map, effective upon final approval, and shall be noted on the Zoning Map.

2. Tentative approval of a Plan shall not qualify a plat of the Planned Residential Development for recording nor authorize site development or the issuance of any building permits. A Plan which has been given tentative approval with conditions which have been accepted by the landowner (and provided that the landowner has not defaulted nor violated any of the conditions of the tentative approval), shall not be modified or revoked nor otherwise impaired by action of the Township pending an application or applications for final approval, without the consent of the landowner, provided an application for final approval is filed or, in the case of development over a period of years, provided applications are filed, within the periods of time

specified in the official written communication granting tentative approval.

3. In the event that a Plan is given tentative approval and thereafter, but prior to final approval, the landowner shall elect to abandon said Plan and shall not notify the official review agency in writing, or in the event the landowner shall fail to file application or applications for final approval within the required period of time or times, as the case may be, the tentative approval shall be deemed to be revoked and all that portion of the area included in the plan for which final approval has not been given shall be subject to the local ordinances otherwise applicable thereto as they may be amended from time to time, and the same shall be noted on the Zoning Map and in the records of the Secretary of the Township.

(9) Procedural Requirements for Final Approval

A. An application for final approval may be for all the land included in the development plan or, to the extent set forth in the tentative approval, a section thereof. Said application shall be made to the Township Secretary and within the time or times specified by the official written communication granting tentative approval. If the application for final approval is in compliance with the tentatively approved plan, a public hearing need not be held.

B. The application for final approval shall be in accordance with the design and improvement requirements for Preliminary and Final Plans contained in the Black Creek Township Subdivision and Land Development Ordinance, at a scale not smaller than one (1) inch to one hundred (100) feet. In addition, the following information shall be required:

1. Total acreage of development, land uses in each area, total number of dwelling units, number of each type of dwelling unit, average gross residential density, and gross residential density in each section.

2. Building coverage lines accurately locating all types of dwelling units, and non-residential structures, giving dimensions of the structures, distances between the structures, distances to street rights-of-way and parking areas, with distances accurate to the nearest foot.

3. Accurate dimensions of common open space areas specifically indicating those areas to be preserved in their natural state and those areas to be developed for active recreation. Where common

open space areas are to be developed, the location of structures in common open space areas shall be illustrated.

4. In the case of a Planned Residential Development proposed to be developed over a period of years, final plan requirements will apply only to the section for which final approval is being sought. However, the final plan presented for the section to be developed must be considered as it related to information regarding densities and types of dwelling units, location of common open space, sanitary sewer and water distribution systems, and street systems presented for the entire development in the application for tentative approval.

5. Architectural drawings illustrating exterior designs of each type of typical dwelling unit and non-residential structures to be constructed.

6. All covenants running with the land governing the reservation and maintenance of dedicated or undedicated open space land. These covenants shall be approved by the Township Solicitor as to their legal sufficiency.

7. Restrictions of all types, which will run with the land and become covenants in the deeds of lots shown on the final plan.

8. Such certificates of approval by authorities as have been required by the Township including certificates approving the water supply system and the sanitary sewer system.

C. Guarantee of Improvements. The guarantee of improvements (construction and completion) shall be as set forth in the Black Creek Township Subdivision and Land Development Ordinance.

D. Status after Application for Final Approval

1. In the event the application for final approval has been filed, together with all drawings, specifications and other documents in support thereof, as required by this Section and the official written communication of tentative approval, the Township shall, within forty-five (45) days of such filing, grant such Development Plan final approval.

2. In the event the Final Plan as submitted contains variations from the Plan given tentative approval, the Township may refuse to grant final approval and shall, within forty-five (45) days from the filing of the application for final approval, so advise the landowner in writing of said refusal, setting forth in said notice the reasons why one or more of said variations are not in the

public interest. In the event of such refusal, the landowner may re-file an application for final approval without the variations objected to.

3. File a written request with the Township Board of Supervisors to hold a public hearing on the application for final approval. If the landowner wishes to take this alternate action, the landowner may provided that it is done during the time for final approval, or within thirty (30) additional days if the time for applying for final approval shall already have passed at the time when the landowner was advised that the Final Plan was not in substantial compliance. In the event the landowner shall fail to take either of these alternate actions within said time, the landowner shall be deemed to have abandoned the Final Plan. Any such public hearing shall be held pursuant to public notice within thirty (30) days after request for the hearing is made by the landowner, and the hearing shall be conducted in the manner prescribed in this Section for public hearing on applications for tentative approval. Within thirty (30) days after the conclusion of the hearing, the Township shall, by official written communication, either grant final approval to the Plan or deny final approval. The grant or denial of final approval of the development plan shall, in cases arising under this Section, be in the form and contain the findings required for an application for tentative approval set forth in this Section.

4. A plan, or any part thereof, which has been given final approval shall be so certified without delay by the Governing Body and shall be filed or recorded within thirty (30) days after final approval has been granted in the office of the Luzerne County Recorder of Deeds before any development shall take place in accordance therewith. Upon the filing of record of the Plan, the zoning and subdivision regulations otherwise applicable to the land included in such plan shall cease to apply thereto. Pending completion within a period of two (2) years of said Planned Residential Development or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of said Plan, or part thereof, as finally approved, shall be made except with the consent of the landowner.

5. In the event that a Plan, or a section thereof, is given final approval and thereafter the landowner shall abandon such plan or the section thereof that has been finally approved, and shall so notify the Board of Supervisors, in writing; or, in the event the landowner shall fail to commence and carryout the Planned Residential Development or at that part thereof, within a period of two (2) years after final approval has been granted, no

development or further development shall take place on the property included in the Plan until after the said property is re-subdivided and is reclassified by enactment of an amendment to this Section in the manner prescribed for such amendments herein.

(10) Modification of Design Requirements – In review of a Planned Residential Development, the Township Board of Supervisors may waive or modify the area, yard, height, and other design requirements for the different types of development in the other Zoning Districts or this District if such modification will increase the amenities of the development without sacrificing public health, safety, and welfare requirements. The procedure and specific criteria required for modifications is outlined in Section 902 of the Black Creek Township Subdivision and Land Development Ordinance.

Section 316. "WTO" Wind Turbine Overlay Districts.

(1) Location. The specific locations of the Wind Turbine Overlay District can be found on the "Black Creek Township Wind Turbine Overlay District Map". The District is designated on the map as a cross-hatched area. The District is limited to the existing large parcels located on the ridge of Buck Mountain with the District boundary lines generally coinciding with the existing parcel boundary lines. Any dispute over the actual location of the District is to be handled by a determination of the Black Creek Township Zoning Officer.

(2) Uses by Special Exception or Uses Requiring Board Approval.

Stand-Alone Wind Mills (permitted by special exception in every zoning district).

Wind Farms (only in the locations described in Section 316(1)).

(3) Wind Mills and Wind Farms.

A. Location Requirement and Number. The applicant shall demonstrate to the satisfaction of the Zoning Hearing Board, using technological evidence, that the windmills must go where proposed in order to function to industry standards, including, but not limited to the standards of the American National Standards Institute.

B. Wind Mill Height Design. The applicant shall submit certificates of design compliance by the equipment manufacturers from Underwriter Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations. Also to the maximum extent possible with the Pennsylvania Uniform Construction Code.

1. Maximum Height. The applicant shall demonstrate that the

wind mills are constructed to a height no greater than the minimum required to function to industry standards. The wind mill height (including blades) for wind mills in a wind farm shall be no higher than 450 feet above the average grade of the land and for stand-alone wind mills no higher than 100 feet above the average grade of the land and when mounted to a roof no higher than the maximum height permitted for a principal structure in the zoning district in which the wind mill is located unless the applicant secures a variance from the Zoning Board and meets the criteria for the granting of a variance.

2. Blade Height. The minimum height between any wind mill blade and the ground may not be less than 30 feet except when mounted to a roof in which case the minimum height between the wind mill blade and the ground may not be less than 15 feet.
 3. Visual Impact. The applicant shall provide to the Zoning Board three dimensional graphic information that accurately portrays the visual impact of the proposed wind farm and individual or stand-alone wind mills from various vantage points selected by the Zoning Board, such as, but not limited to key roads and recreation areas. This graphic information may be provided in the form of photographs or computer-generated images with the wind mills superimposed, as may be required by the Zoning Board. The Zoning Board may also require the applicant to conduct a balloon test to confirm the visual impact. The Zoning Board may require specific colors, consistent with applicable federal regulations, to ensure that each wind mill is compatible with the surrounding landscape. The wind mill shall be a non-obtrusive color such as white, off-white or gray. The wind mill shall not display advertising, except for reasonable identification of the turbine manufacturer, facility owner and operator. On-site transmission and power lines between wind mills shall, to the maximum extent practicable, be placed underground.
- C. Controls and Brakes. Every wind mill shall be equipped with a redundant braking system. This includes both aerodynamic over speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over speed protection.
- D. Warnings. A clearly visible warning sign concerning voltage must

be placed at the base of all pad-mounted transformers and substations. Visible, reflective, color objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of 10 feet from the ground.

- E. Climb Prevention/Locks. Wind Mills shall not be climbable up to 15 feet above the average grade of the ground surface. Also, all access doors to wind mills and electrical equipment shall be locked or fenced to prevent entry by non-authorized persons.
- F. Setbacks. The following minimum setbacks shall apply.
 - 1. Separate Parcel. If the parcel on which the wind farm is a separate and distinct parcel, the required minimum lot size set forth in Section (G) below shall apply; and, in all cases, the lot shall be of such size that all required setbacks are satisfied. No wind mill shall be located closer to any property line than its height, including blades, plus 200 feet. The setback for equipment containers, other accessory structures, and any guy wire anchors shall be a minimum of 200 feet.
 - 2. Lease, License or Easement. If the land on which the wind farm is leased, or is used by license or easement, the setback for any wind mill, the support structure, equipment containers, other accessory structures, and guy wire anchors shall be a minimum of 200 feet from the line of lease, license or easement. In any case, no wind mill, including the blades, shall be located closer to any property line (including the lease, license or easement line) than its height plus 200 feet. If the land to construct the wind farm is to be leased a Subdivision Plan must be submitted to and approved by the Township creating the new parcel to be leased.
 - 3. Existing Residential Dwellings, Occupied Structures or other Wind Mills. Except for stand-alone wind mills, no wind mill in a wind farm shall be located less than 1,000 feet from any principal residential structure or occupied nonresidential structure whether public or private existing prior to the erection of the wind mill or any other wind mill existing or proposed.

No stand-alone wind mill shall be located less than 300 feet from any principal residential structure or occupied nonresidential structure whether public or private existing prior to the erection of the wind mill except where the wind mill is mounted to the roof of the structure.

4. Public Roads. No wind mill shall be placed closer to any public road than its height, including blades, plus 200 feet.
 5. Natural Resources, Waterways & Historic Sites. Except for stand-alone wind mills, no wind mill shall be located less than 1,000 feet from any Important Bird Area or migration corridor, National Wetland Inventory Wetland, Historic Site or lake, dam, stream, creek, ponds or public water supply sources or waterways. These areas shall be defined or designated by the Pennsylvania Department of Protection and/or as depicted on U.S.G.S. mapping.
- G. Minimum Lot Size, Width and Depth. The following minimum lot size requirements shall apply.
- a. Stand-Alone Wind Mills. A stand-alone wind mill shall be permitted on a lot not less than four acres in size, with a minimum lot width of 400 feet and a minimum lot depth of 400 feet.
 - b. Wind Farms. A wind farm shall be permitted on a lot of not less than 10 acres in size, with a minimum lot width of 660 feet and a minimum lot depth of 660 feet.
- H. Access, Travel Route and Road Bond for Wind Farms
1. Access to the wind farm shall be provided by means of a public street or easement to a public street. All access easements shall be a minimum of 25 feet in width and shall be improved to a width of not less than 12 feet with an improved, durable, dust-free, all weather surface. No access easement shall exceed a grade of 15% unless it can be proven to the Township Engineer that an unsafe situation is not being proposed, the road surface can be properly maintained by the applicant and emergency vehicles can negotiate the excessive slopes.
 2. The applicant shall provide a route of travel plan detailing which roads within the Township will be used to access the wind farm during construction and for any maintenance activities requiring the use of heavy trucks.
 3. The Zoning Board shall require a bond, letter of credit or other financial guarantee to ensure that any damage to Township roads caused by the construction or operation of the wind farm is repaired at the cost of the person causing such damage. The amount of the bond shall be based on the

extent of the operation, the Township roads used by the operation and the recommendation of the Township Engineer, and the term, form and amount of the bond shall be approved by the Township.

- I. Parking. If the wind farm site is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, the number of required parking spaces shall be equal to the number of people on the largest shift plus overflow spaces equal to 20 percent of the required spaces based on the employees but not less than two. For Stand-Alone Wind Mills, an applicant shall provide a minimum of one off-street parking space.
- J. Structure Safety. The applicant shall demonstrate that each wind mill is safe and the surrounding areas will not be negatively affected by structure failure, falling ice or other debris, electromagnetic fields, or radio frequency interference. All wind mills shall be fitted with anti-climbing devices, as approved by manufacturers. The applicant shall submit certification from a Pennsylvania Registered Professional Engineer that all wind mills will be designed and constructed in accord with accepted engineering practices and all requirements of any applicable construction code. Within 45 days of completion of construction and before initial operation, the owner and/or operator of a wind farm shall provide a certification from a Pennsylvania Registered Professional Engineer to the Township Zoning Officer that the wind farm and all structures comply with all applicable regulations. For a wind mill mounted to a roof, the applicant shall also demonstrate that the structural integrity of the structure is such that it can adequately support the system being considered.
- K. Wind Farm as a Second Principal Use. A wind farm shall be permitted on a property with an existing use subject to the following standards:
 - 1. The minimum lot area, width and depth, and minimum setbacks and maximum height required by this Ordinance for a wind farm and support structure shall apply; and, the land remaining for accommodation of the existing principal use(s) on the lot shall also continue to comply with the minimum lot area, density and other dimensional requirements for the principal use(s) for the zoning district in which the property is located.
 - 2. The vehicular access to the wind farm shall, whenever feasible, be provided along the circulation driveways of the existing use.

3. The applicant shall present documentation that the owner of the property has granted an easement filed of record or other legal interest for the land for the proposed wind farm and that vehicular access is provided to the wind farm.
- L. Licenses/Other Regulations. The applicant shall demonstrate that the required permits and licenses from the Federal Energy Regulatory Commission, the Pennsylvania Department of Environmental Protection, the Pennsylvania Public Utility Commission, and other agencies have been obtained for the wind farm. The applicant shall also document compliance with all applicable state and federal regulations by providing to the Township copies of all required documents, studies, and responses (e.g., National Environmental Policy Act, Pennsylvania Natural Diversity Inventory submission, Pennsylvania Historical and Museum Commission compliance, U.S. Fish and Wildlife Service, the Department of Conservation and Natural Resources and the PA Game Commission).
- M. Insurance. The applicant shall submit a certificate of insurance evidencing general liability coverage in the minimum amount of one million (\$1,000,000.00) dollars per occurrence and property damage coverage in the minimum amount of one million (\$1,000,000.00) dollars per occurrence covering the wind farm and all its facilities. The applicant shall provide the Township with proof of annual renewal prior to expiration.
- N. Decommissioning.
1. The owner or operator of the wind farm or stand-alone wind mill or then owner of the land on which the wind farm or stand-alone wind mill is located ("Owner(s)/Operator(s)/Landowner(s)") shall complete decommissioning within twelve (12) months after the end of the useful life. Upon request of the Owner(s)/Operator(s)/Landowner(s) or assigns, and for a good cause, the zoning officer may grant a reasonable extension of time. Each wind mill will be presumed to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months. All decommissioning expenses are the responsibility of the Owner(s)/Operator(s)/Landowner(s).
 2. Decommissioning shall include the removal of each wind mill, buildings, electrical components, and roads to a depth of sixty (60) inches, as well as any other associated facilities. Any foundation shall be removed to a minimum depth of sixty (60) inches below grade, or to the level of the bedrock if less than sixty (60) inches below grade. Following removal, the location of any remaining

wind turbine foundation shall be identified on a map as such and recorded with the deed to the property with the County Register of Deeds.

3. All access roads to the wind mill shall be removed, cleared, and graded by the Owner(s)/Operator(s)/Landowner(s), unless the Landowner(s) requests, in writing, a desire to maintain the access road. The Township will not be assumed to take ownership of any access road unless through official action of the Township Supervisors.

4. The site and any disturbed earth shall be stabilized, graded, and cleared of any debris by the Owner(s)/Operator(s)/Landowner(s) or their assigns. If the site is not to be used for agricultural practices following removal, the site shall be seeded to prevent soil erosion.

5. In addition to the Decommissioning Requirements listed previously, the wind mill shall also be subject to the following:

a. If the Owner(s)/Operator(s)/Landowner(s) fail to complete decommissioning within the period prescribed above, the zoning officer may designate a contractor to complete decommissioning with the expense thereof to be charged to the violator and/or to become a lien against the premises. The Township shall be authorized to use all means provided in law, including a municipal lien, to recover all costs of decommissioning. If the wind mill is not owned by the Landowner(s), a bond must be provided to the Township for the cost of decommissioning each wind mill.

6. In addition to the Decommissioning Requirements previously listed, wind mills with a nameplate capacity in excess of two hundred fifty (250) kilowatts or with a wind mill height (including blades) in excess of one hundred fifty (150) feet above the average grade of the land shall also be subject to the following:

a. An independent and certified professional engineer shall be retained by the Township to estimate the total cost of decommissioning ("Decommissioning Costs") with no regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment ("Net Decommission Costs"). When determining this amount, the Township may also require an annual escalator or increase based on the Federal Consumer Price Index (or equivalent or its successor). Said estimates shall be submitted to the Township Zoning Officer after the first year of operation and every fifth year thereafter. The engineer's fees shall be paid by the Owner(s)/Operator(s)/Landowner(s).

b. The Owner(s)/Operator(s)/Landowner(s) shall post and maintain Decommissioning Funds in an amount equal to or greater than Net Decommissioning Costs; provided that at no point shall Decommissioning Funds be less than one hundred percent (100%) of Decommissioning Costs. The Decommissioning Funds shall be posted and maintained with a bonding company or Federal or state chartered lending institution chosen by the Owner(s)/Operator(s)/Landowner(s) posting the financial security. The bonding company or lending institution must be authorized to conduct such business and be approved by the Township.

c. Decommissioning Funds shall be in the form of a performance bond made out to Black Creek Township.

d. A condition of the bond shall be notification by the bonding company to the Township Supervisors when the bond is about to expire or be terminated.

e. Failure to keep the bond in effect while a wind mill meeting the specifications in Section 6 of this subchapter detailed above is in place will be a violation of the special exception permit. If a lapse in the bond occurs, Black Creek Township may take action up to and including requiring ceasing operation of the wind mill until the bond is reposted.

f. The escrow agent shall release the Decommissioning Funds when the Owner(s)/Operator(s)/Landowner(s) has demonstrated and the Township concurs that decommissioning has been satisfactorily completed, or upon written approval of the Township in order to implement the decommissioning plan.

g. If the Owner(s)/Operator(s)/Landowner(s) fail to complete decommissioning within the periods addressed previously, then the Township may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the Township shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Township may take such action as necessary to implement the decommissioning plan.

- O. Noise and Shadow Flicker. The Applicant shall provide details on the noise generation of the types of wind mills proposed. The noise associated with the operation of a stand-alone wind mill shall not exceed 20 dBA (a-weighted sound level in decibels) when measured at the property line of the property upon which the

wind mill is installed. The noise associated with a wind mill in a wind farm (as opposed to noise during construction) shall not exceed 50 dBA (A-weighted sound level in decibels) when measured at the property line of the wind farm. Furthermore, the facility owner and operator shall make reasonable efforts to minimize shadow flicker to any Occupied Building.

- P. Communications Interference. The applicant shall document that the radio, television, telephone or reception of similar signals from nearby properties will not be disturbed or diminished by the installation of the wind mill.
- Q. Vibration. No vibration associated with the operation of a wind mill shall be permitted which is detectable without instruments at or beyond the property line; and no use shall generate any vibration which is capable of causing damage to buildings, structures, equipment alignment, or structural soundness.
- R. Noise, Communications Interference, and Vibration Complaint Response Plan. The Applicant shall provide to the Zoning Board a plan for how complaints about noise, communications interference and vibration will be addressed by the operator of a wind mill.
- S. Signs/Lighting/FAA and PA DOT Notice.
 - 1. No signs or lights shall be mounted on any windmill except as may be required by this Ordinance, the Federal Aviation Administration, or other governmental agency which has jurisdiction.
 - 2. No wind mill shall be artificially lighted, except as required by the Federal Aviation Administration or for security purposes approved as part of the zoning permit. No approved security light source shall be exposed to the eye except those covered by globes or diffusers so that the lights are fully shielded to project the light below the horizontal plane of the lowest point of the fixture. Other lighting shall be indirect or surrounded by a shade to hide visibility of the light source. No direct or sky-reflected glare, whether from overhead lighting or floodlights shall be permitted.
 - 3. The applicant shall provide a copy of the response to Notice of Proposed Construction or Alteration forms submitted to the FAA and PA DOT Bureau of Aviation; and, the wind farm and support structure shall comply with all Federal Aviation Administration (FAA) and the Pennsylvania Department of Transportation (PA DOT) requirements.

- T. Fencing. A fence shall be required around each wind mill support structure and other equipment unless the Applicant documents that the structures will otherwise be secured from public access. If required, the fence shall be a minimum of six feet in height with a locked gate to prevent public access.
- U. Landscaping
1. Existing vegetation on and around the site shall be preserved to the greatest extent possible.
 2. Landscaping installation and maintenance may be required to screen as much of each wind mill as possible, the fence surrounding the support structure, any other ground level features (such as a building), and, in general, buffer each wind mill and other structures from neighboring properties and the sight lines from prominent viewing locations. The applicant shall provide to the Zoning Board a landscaping plan at the time of the application to assist the Board with determining compliance with this section (U) of this Ordinance.
 3. The Zoning Board may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping.
- V. Soil Erosion and Sedimentation Control/Stormwater Management. All earth disturbance shall comply with the soil erosion and sedimentation control requirements of the Luzerne Conservation District and the Pennsylvania Department of Environmental Protection; and, no approval shall be granted under this Ordinance until the Applicant provides a copy of the approved soil erosion and sedimentation control plan and any required permits. A stormwater management plan and storm water management facilities shall be provided in accord with the Township's current Stormwater Management Ordinance or requirements. There are no impervious area exemptions to relieve the requirement of submitting a stormwater management plan for wind mills.
- W. Fire Control Plan. The applicant shall provide a fire control plan including details about any fire suppression system proposed for any wind mill. The plan shall be provided to the applicable fire company for review and comment.
- X. Maintenance/Identification: Notice of Problems. Wind farm maintenance and continued compliance with this Ordinance shall be monitored by the Zoning Officer with the assistance of the

Building Inspector on an annual basis with the performing of an inspection and the preparation of a report to the Township Supervisors. There shall be affixed to each wind mill and security fence in an accessible, visible place the name and mailing address of the owner(s) and a 24-hour emergency telephone number. This information shall be kept current by the owner(s). The Zoning Officer shall inform the owner(s) of any safety problems, maintenance problems or any matter relative to the wind farm in accordance with the enforcement requirements of this Ordinance, sent to the posted address. If the problem outlined in the letter from the Zoning Officer is not resolved within 30 days of receipt of notice, or within such other period as allowed in writing by the Zoning Officer, this shall constitute a violation of the Ordinance. An unresolved violation shall constitute grounds for revoking the wind mill permit.

- Y. Land Development Plan. The applicant shall submit a Land Development Plan to the Township for their review and approval for all wind farms. The Land Development Plan shall be developed in accordance with the most recent version of the Township Subdivision and Land Development Ordinance (SALDO) and shall be subject to all of its requirements, where applicable. In addition to the requirements of the SALDO, the Land Development Plan shall contain the following:
1. A narrative describing each proposed wind mill within the wind farm, including an overview of the project; project location; the approximate generating capacity of the wind farm; the approximate number, representative types and height or range of heights of each wind mill to be constructed within the wind farm, including their generating capacity, dimensions and respective manufactures, and a description of ancillary facilities.
 2. Evidence of agreement between the property owner and the facility owner or operator demonstrating that the facility owner or operator has the permission of the property owner to apply for necessary permits for construction and operation of the wind farm.
 3. Identification of the properties on which the proposed wind farm will be located, and the properties adjacent to where the wind farm will be located.
 4. The proposed location of each wind mill within the wind farm, property lines, setback lines, access roads, substations, electrical cabling from each wind mill within

the wind farm to the substations, ancillary equipment, buildings, and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.

5. Documents related to “Discontinued Use” including a schedule for the decommissioning and financial security.
6. Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Township to ensure compliance with this Ordinance.
7. The Township Engineer or a qualified third party engineer hired by the Township and paid by the Applicant, shall document road conditions prior to construction. The engineer shall document road conditions again 30 days after the construction is complete.

Z. Fees- A zoning permit and building permit for a wind mill is required. Wind mills within wind farms are also subject to annual inspections by the Township. The fees for these permits and inspections are established by resolution by the Township Board of Supervisors.

AA. The above sections addressing stand-alone wind mills also apply to wind mills mounted to the roof of a structure except as otherwise noted. A wind mill shall not be mounted to the roof of a two-family or multi-family dwelling without the written consent of the other owner(s) or unless the applicant secures a variance from the Zoning Board and meets the criteria for the granting of a variance.

Section 317. Solar Energy Overlay Districts.

(1) Permitted Uses. The following is permitted in all zoning districts in compliance with the provisions contained herein, and all applicable Solar Energy and Township regulations:

- A. Minor Energy System
 1. Uses as its fuel solar power.
 2. Is located in the power beneficiary’s premises.
 3. Is intended primarily to offset part or all of the beneficiary’s requirements for electricity.
 4. Is secondary to the beneficiary’s use of the premises for other lawful purpose(s).
 5. Is a residential use.

6. If not located on a rooftop then must meet the minimum setbacks of an accessory building of the zoning district in which it is located.

(2) Special Exceptions. The following is a special exception use in all C-1, I-1, B-1, and A-1 zoning districts, in compliance with the provisions contained herein, and all applicable solar energy regulations.

A. Major Energy System

1. A Solar System that is not a minor energy system, such as, but not limited to a solar farm.

(3) Permit Requirement and Application.

A. No Solar Energy, or addition to an existing Solar Energy System shall be constructed or located within Black Creek Township unless a permit has been issued to the Applicant of the Solar Energy Systems under this Ordinance. All applications for a Major Solar Energy System, shall be considered a Major Land Development, shall meet the requirements of this Ordinance and the Black Creek Township Subdivision and Land Development Ordinance (SALDO), and shall be reviewed by the Township Planning Commission and approved by the Supervisors.

B. The permit application or amended permit application shall be accompanied with a processing fee in the amount of one hundred (\$100.00) dollars and an escrow fee as specified in Section 319(18), below.

C. Any physical modification to an existing and permitted Solar Energy System that materially alters the equipment shall require a permit modification under this Ordinance. Like-kind replacements shall not require a permit modification.

(4) Design, Installation, Review Criteria, Certification and Compliance, and Decommissioning

A. Design Requirements

1. Solar collection systems shall not be located in the front yard between the principal structure and the public right-of-way, or private street. Corner lots shall have front yard requirement along all streets.
2. Height: Freestanding Collection systems shall not exceed twenty (20')

feet in height.

3. Size: Freestanding Collection systems on residential properties shall not exceed the greater of one-half (1/2) the footprint of the principal structure or six hundred (600) square feet, whichever is greater. The size of arrays for non-residential properties shall not exceed one-half (1/2) of the footprint of the principal structure except for rooftop systems.
4. Solar Collection Systems are permitted to be located on the roof or the exterior wall of a structure subject to the following:
 - i. Collection systems shall not extend more than twelve (12') feet above the roof line;
 - ii. Collection systems shall not exceed the maximum height permitted in the zoning district in which it is located; and
 - iii. Collection systems located on the roof or attached to a structure shall provide, as part of their permit application a structural certification.
5. Code Compliance: Solar Collection Systems shall comply with all applicable building and electrical codes.
6. Minor collection systems may be located on accessory structures subject to setback requirements of the current Township Zoning District.
7. Collection systems located on an agricultural assessed property shall be permitted to have additional collection systems for each building on the property. The size of the system shall be limited to the need of the building.

B. Installation

1. To the extent applicable, the Solar Energy System shall comply with the Pennsylvania Uniform Construction Code, Act 45 of 1999 as amended and the regulations adopted by the Department of Labor and Industry.
2. The design of the Solar Energy System shall conform to applicable industry standards.
3. Major Solar Energy Systems as defined by this Section shall use public right-of-ways or established utility corridors when reasonable. While a utility corridor may be used for more than one utility of purpose, each utility or use should be negotiated with the landowner as a separate

easement, right-of-way, or other agreement between the landowner and any other party and all owners of interest in the property. Nothing in this paragraph is intended to conflict with the right of eminent domain.

4. The construction and installation of Solar Energy Systems may necessitate the importation of fill material which may result in the displacement of native material. The incidental generation of earthen spoils resulting from the construction and/or installment of a Solar Energy System and the removal of said material from the development site shall meet all local and state requirements.

C. Review Criteria

1. Minor Energy Systems that meet the requirements of this ordinance and all other applicable construction codes will be issued a permit by the Zoning Officer.
2. Major Energy Systems are declared to be special exception uses and may be permitted upon application to and approval by the Zoning Hearing Board subject to the following review criteria.
The Zoning Hearing Board:
 - i. Shall determine that adequate measures have been undertaken by the proponent of the major energy system to reduce the risk of accidents caused by hazardous materials.
 - ii. As required by existing statutes, shall determine that the proposed Major Solar Energy System is essential or desirable to the public convenience and/or not detrimental or injurious to the public health or safety, or to the character of the surrounding neighborhood.
 - iii. Shall determine that the proposed Major Solar Energy System will not be reasonably detrimental to the economic welfare of the Township and/or that it will not create excessive public cost for public services by finding that (1) it will be adequately serviced by existing services such as highways, roads, police and fire protection, emergency response, and drainage structures, refuse disposal, water and sewers, or (2) that the applicant shall provide such services or facilities.
 - iv. Shall consider industry standards, available technology, and proposed design technology for solar energy in promulgating conditions of approval.
 - v. No permit will be issued nor can any construction begin until the applicant has met all the requirements of the Black Creek Township

Subdivision and Land Development Ordinance (SALDO).

D. Certification and Compliance

1. The Township must be notified of a change in ownership of a Major Energy System or a change in ownership of the property on which the Major Energy System is located.
2. The Township reserves the right to inspect any Major Energy System in order to ensure compliance with the Ordinance. Any cost associated with the inspections shall be paid by the owner/operator of the Major Energy System.
3. The Major Energy System Owner(s) or Operator(s) shall provide the the Township Zoning Officer with a copy of the yearly maintenance inspection.

E. Decommissioning.

1. The owner or operator of the Major Energy System or then owner of the land on which the Major Energy System is located ("Owner(s)/Operator(s)/Landowner(s)") shall complete decommissioning within twelve (12) months after the end of the useful life. Upon request of the Owner(s)/Operator(s)/Landowner(s) or assigns, and for a good cause, the zoning officer may grant a reasonable extension of time. The Major Energy System will be presumed to be at the end of its useful life if no electricity or other form of power is generated for a continuous period of twelve (12) months. All decommissioning expenses are the responsibility of the Owner(s)/Operator(s)/Landowner(s).
2. Decommissioning shall include the removal of panels, buildings, electrical components, and roads to a depth of sixty (60) inches, as well as any other associated facilities. Any foundation shall be removed to a minimum depth of sixty (60) inches below grade, or to the level of the bedrock if less than sixty (60) inches below grade. Following removal, the location of any remaining foundation shall be identified on a map as such and recorded with the deed to the property with the County Register of Deeds.
3. All access roads to the Major Energy System shall be removed, cleared, and graded by the Owner(s)/Operator(s)/Landowner(s), unless the Landowner(s) requests, in writing, a desire to maintain the access road. The Township will not be assumed to take ownership of any access road unless through official action of the Township Supervisors.
4. The site and any disturbed earth shall be stabilized, graded, and cleared of any debris by the Owner(s)/Operator(s)/Landowner(s) or their assigns.

If the site is not to be used for agricultural practices following removal, the site shall be seeded to prevent soil erosion.

5. In addition to the Decommissioning Requirements listed previously, the Major Energy System shall also be subject to the following:

a. If the Owner(s)/Operator(s)/Landowner(s) fail to complete decommissioning within the period prescribed above, the zoning officer may designate a contractor to complete decommissioning with the expense thereof to be charged to the violator and/or to become a lien against the premises. The Township shall be authorized to use all means provided in law, including a municipal lien, to recover all costs of decommissioning. If the Major Energy System is not owned by the Landowner(s), a bond must be provided to the Township for the cost of decommissioning the Major Energy System.

b. An independent and certified professional engineer shall be retained by the Township to estimate the total cost of decommissioning ("Decommissioning Costs") with no regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment ("Net Decommission Costs"). When determining this amount, the Township may also require an annual escalator or increase based on the Federal Consumer Price Index (or equivalent or its successor). Said estimates shall be submitted to the Township Zoning Officer after the first year of operation and every fifth year thereafter. The engineer's fees shall be paid by the Owner(s)/Operator(s)/Landowner(s).

c. The Owner(s)/Operator(s)/Landowner(s) shall post and maintain Decommissioning Funds in an amount equal to or greater than Net Decommissioning Costs; provided that at no point shall Decommissioning Funds be less than one hundred percent (100%) of Decommissioning Costs. The Decommissioning Funds shall be posted and maintained with a bonding company or Federal or state chartered lending institution chosen by the Owner(s)/Operator(s)/Landowner(s) posting the financial security. The bonding company or lending institution must be authorized to conduct such business and be approved by the Township.

d. Decommissioning Funds shall be in the form of a performance bond made out to Black Creek Township.

e. A condition of the bond shall be notification by the bond company to the Township Supervisors when the bond is about to expire or be terminated.

f. Failure to keep the bond in effect while a Major Energy System is in place will be a violation of the special exception permit. If a lapse in the bond occurs, Black Creek Township may take action up to and including requiring ceasing operation of the Major Energy System until the bond is reposted.

g. The escrow agent shall release the Decommissioning Funds when the Owner(s)/Operator(s)/Landowner(s) has demonstrated and the Township concurs that decommissioning has been satisfactorily completed, or upon written approval of the Township in order to implement the decommissioning plan.

h. If the Owner(s)/Operator(s)/Landowner(s) fail to complete decommissioning within the periods addressed previously, then the Township may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the Township shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Township may take such action as necessary to implement the decommissioning plan.

(5) Setbacks, Restrictions, and Easements

A. Minor Energy Systems

1. Shall be considered an accessory use in all zoning districts and shall be reviewed by the Zoning Officer.
2. Shall not be located in the front yard between the principal structure and the public right-of-way or private street.
3. On existing construction a system may be installed as long as it meets the requirement of this ordinance and all other applicable construction codes.
4. Upon request, the Zoning Hearing Board may grant variances of the setback or height requirements, provided that the variance will not present any undue hardships on the adjoining property.
5. The Zoning Hearing Board shall take into consideration the support or opposition of the adjacent property owners in granting variances of setback or height requirements
6. A property owner who has installed or intends to install a solar

collection system shall be responsible for negotiating with other property owners in the vicinity for any necessary solar easement with the Clerk of Court.

7. Shall not exceed one half of the footprint of the principal structure or six hundred (600) square feet, whichever is greater except for rooftop systems.
8. Shall conceal solar collector's structures, fixtures and piping where applicable.

B. Major Energy Systems

1. Shall be considered a "Special Exception Use" in all C-1, I-1, B-1, and A-1 zoning districts.
2. Must be a minimum of one thousand (1,000') feet from any zoning district boundary line other than C-1, I-1, B-1, and A-1 zoning districts as well as any property line of existing residential Public or Quasi-public use.
3. Shall not be located within five hundred (500') feet of a public or private road right-of-way, nor within one hundred (100') feet from all other property lines.
4. Upon request, the Zoning Hearing Board may grant a variance of the setback or height requirements, provided that the variance will not present any undue hardships on the adjoining property.
5. The Zoning Hearing Board shall take into consideration the support or opposition of adjacent property owners in granting variances of setback or height requirements.
6. A property owner who has installed or intends to install a solar collection system shall be responsible for negotiating with other property owners in the vicinity for any necessary solar easement and shall record the easement with the Clerk of Court.
7. Shall provide a fifty (50') foot planted buffer/screen along all property lines.
8. Shall conceal solar collector's supporting structures fixtures and piping where applicable.

(6) Site Plan and Safety Requirements

A. Minor Energy Systems

1. Drawing to scale to show the following:

- i. Lot boundary lines and setback lines;
- ii. Existing and proposed buildings, parking areas, utilities, street right of way, easements;
- iii. Existing adjoining;
- iv. Proposed energy system;
- v. Certification of ownership;
- vi. Copy of deed;
- vii. Scale and north arrow;

B. Major Energy Systems

1. Site Plan Drawing: All applications for a Major Solar Energy System special exception permit shall be accompanied by a detailed site plan map that is drawn to scale and dimensioned, displaying the following information:

- i. Existing property features to include the following: property lines, physical dimensions of the property, total parcel size, land use, zoning district, contours, set back lines, right-of-way, public and utility easements, public roads, access roads (including width), sidewalks, non-motorized pathways, large trees and all buildings. The site plan must also include the adjoining properties as well as the location of all structures and utilities within three hundred (300') feet of the property.
- ii. Location, size, and height of all proposed Major Solar Energy Systems, buildings, structures, ancillary equipment, underground utilities and their depth, security fencing, access roads (including width, composition, and maintenance plans), electrical sub-stations, and other above ground structures and utilities associated with the proposed Major Solar Energy System.
- iii. Additional details and information as required by the special exception requirements of Black Creek or as requested by the Zoning Officer or Township Supervisors.

2. Site Plan Documentation: The following documentation shall be included with the site plan:

- i. The contact information for the Owner(s) and Operator(s) of the Major Solar Energy System as well as contact information for all property on which the Major Solar Energy System is located.
- ii. A copy of the lease, or recorded document, with the landowner(s) if the applicant does not own the land for the proposed Major Solar Energy System. A statement from the landowner(s) of the leased site that he/she will abide by all applicable terms and conditions of the use permit, if approved.
- iii. Identification and location of the properties on which the proposed Major Solar Energy System will be located.
- iv. The proposed number, representative types and height of each component of the system to be constructed; including their manufacturer and model, product specifications including total rated capacity, and a description of any ancillary facilities.
- v. Engineering data where applicable concerning construction of the Major Solar Energy System and its components, which may include, but not limited to, soil boring data.
- vi. A certified registered engineer shall certify that the Major Solar Energy System meets or exceeds the manufacturer's construction and installation standards.
- vii. Anticipated construction schedule.
- viii. A copy of the maintenance and operation plan, including anticipated regular and unscheduled maintenance. Additionally, a description of the procedures that will be used to conduct maintenance, if applicable.
- ix. Documented compliance with applicable local, state and national regulations including, but not limited to, all applicable safety, construction, environmental, electrical and communications requirements.
- x. Proof of applicant's liability insurance.
- xi. Evidence that the utility company has been informed of the customer's intent to install an interconnected, customer-

owned generator and that such connection has been approved. Off-grid systems shall be exempt from this requirement.

- xii. Other relevant information as required by the Black Creek Township Subdivision and Land Development Ordinance to ensure compliance with the requirements of this Ordinance.
- xiii. Following the completion of construction, the applicant shall certify that all construction is completed pursuant to the special exception permit. Applicant shall provide an as-built plan as required by the Black Creek Township Subdivision and Land Development Ordinance.
- xiv. A written description of the anticipated life of the Major Solar Energy System; estimated cost of decommissioning; the method of ensuring that funds will be available for decommissioning and site restoration; and removal and restoration procedures and schedules that will be employed if the Major Solar Energy System becomes inoperative or non-functional.
- xv. The applicant shall submit a decommissioning plan that will be carried out at the end of the Major Solar Energy System's useful life, and shall describe any agreement with the landowner(s) regarding equipment removal upon termination of the lease.
- xvi. The Township reserves the right to review all maintenance plans and bonds under this Ordinance to ensure that all conditions of the permit are being followed.
- xvii. Signature of the Applicant.
- xviii. In addition to the Site Plan Requirements listed previously, the Major Solar Energy System shall be subject to the following:
 - a. A site grading, erosion control and stormwater drainage plan shall be submitted to the Luzerne Conservation District and Pennsylvania Department of Environmental Protection. These plans shall also be reviewed by the Township's engineering firm. The cost of this review will be the responsibility of the applicant.

- b. A statement indicating what hazardous materials will be used and stored on the site.
- c. A study assessing any potential impacts on the natural environment including, but not limited to, assessing the potential impact on endangered species, eagles, birds and/or wildlife, wetlands and fragile ecosystems. The study shall conform to state and federal wildlife agency recommendations based on local conditions.
- d. Use of Public Roads
 - 1) The Applicant shall identify all state and local public roads to be used within the Township to transfer equipment and parts for construction, operation or maintenance of the Major Solar Energy System.
 - 2) The Township's engineer or a qualified third party engineer hired by the Township and paid for by the Applicant, shall document road conditions prior to construction if applicable. The engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.
 - 3) The Township may require the Applicant to bond the road(s) in compliance with state regulations.
 - 4) Any road damage caused by the applicant or its contractors shall be promptly repaired at the Applicant's expense.
 - 5) The Applicant shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads to the satisfaction of the Township Solicitor.
- e. Access Driveway: Each Major Energy System shall require the construction of a private road to offer an adequate means by which the Township may readily access the site in the event of an emergency.

All private roads shall be constructed to the Township's private road standards.

C. Safety Requirements – Major Energy Systems

1. If the Major Energy System is connected to a public utility system for net metering purposes, it shall meet the requirements for interconnection and operation set forth in the public utility's then – current service regulations applicable to solar power generation facilities, and the connection shall be inspected by the appropriate public utility.
2. Security measures need to be in place to prevent unauthorized trespass and access. All access doors to electrical equipment shall be locked and/or fenced as appropriate, to prevent entry by non-authorized person(s).
3. All spent lubricants, cooling fluids, and any other hazardous materials shall be properly and safely removed in a timely manner, and disposed of in accordance with current DEP regulations.
4. Each Major Energy System shall have a minimum one sign, not to exceed two (2) square feet in area, posted on the security fence if applicable. The sign shall contain at least the following:
 - i. Warning high voltage
 - ii. Manufacturer and owner/operator's name
 - iii. Emergency contact numbers (list more than one number)
5. To the extent applicable, the Major Energy System shall comply with the Pennsylvania Uniform Construction Code 34 PA. Code

(7) Natural Resources and Historic Sites. Except for Minor Energy Systems, no Major Energy System shall be located less than one thousand (1000') feet from any Important Bird Area or migration corridor, National Wetland Inventory Wetland, Historic Site or lake, dam, ponds or public water supply sources.

(8) Solar Energy System, As A Second Principal Use. A Solar Energy System is permitted on a property with an existing use subject to the following standards:

- A. The minimum lot area, minimum setbacks and maximum height required by this Ordinance for the Solar Energy System and support structure shall apply; and, the land remaining for accommodation of the existing principal use(s) on the lot shall also continue to comply with the minimum lot area, density and other requirements.

- B. The vehicular access to a Major Energy System shall, whenever feasible, be provided along the circulation driveways of the existing use.
 - C. The applicant shall present documentation that the owner of the property has granted an easement filed of record or other legal interest for the land for the proposed Solar System and that vehicular access is provided to the facility.
- (9) Minimum Lot Size. The following minimum lot size requirements shall apply:
- A. Minor Energy System
 - 1. Minimum lot size as per Black Creek Township's Zoning Ordinance
 - B. Major Energy System
 - 1. Fifty (50) acres
- (10) Parking. If the Solar Energy System site is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, the number of required parking spaces shall be equal to the number of people on the largest shift plus overflow spaces equal to twenty (20%) percent of the required spaces based on the number of employees, but not less than two (2).
- (11) Licenses: Other Regulations. The Applicant shall demonstrate that the required permits and licenses from the Federal Energy Regulatory Commission, the Pennsylvania Department of Environmental Protection, the Pennsylvania Public Utility Commission, and other agencies have been obtained. The Applicant shall also document compliance with all applicable state and federal regulations by providing to the Township copies of all required documents, studies, and responses (e.g., National Environmental Policy Act, Pennsylvania Natural Diversity Inventory submission, Pennsylvania Historical and Museum Commission compliance, U.S. Fish and Wildlife Service, the Department of Conservation and Natural Resources and the PA Game Commission).
- (12) Liability Insurance. The Applicant for a Major Energy System shall submit a Certificate of Insurance evidencing general liability coverage in the minimum amount of one million (\$1,000,000.00) dollars per occurrence and property damage coverage in the minimum amount of one million (\$1,000,000.00) dollars per occurrence covering the Solar Energy System. The Applicant shall provide the Township with proof of annual renewal prior to expiration.
- (13) Landscaping. Existing vegetation on and around the site shall be preserved to the greatest extent possible without restricting Solar Access.

(14) Soil Erosion and Sedimentation Control; Stormwater Management. If applicable, all earth disturbances shall comply with the soil erosion and sedimentation control requirements of the Luzerne Conservation District and the Pennsylvania Department of Environmental Protection; and no approval shall be granted under this Ordinance until Applicant provides a copy of the approved soil erosion and sedimentation control plan and any required permits. A stormwater management plan and stormwater management facilities shall be provided for all major energy systems in accord with the Township's current Stormwater Management Requirements. There are no impervious area exemptions to relieve the requirement of submitting a stormwater management plan for Major Energy Systems.

(15) Fire Control/Local Emergency Services.

- A. The Applicant shall provide a project summary and fire control site plan including details about any fire suppression system proposed for any Major Energy System or structure. The plan shall be provided to the applicable fire company for review and comment.
- B. Upon request, the Applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the Major Energy System.

(16) Solar Access. A property owner who has installed or intends to install a solar collection system shall be responsible for negotiating with other property owners in the vicinity for any necessary solar easement and shall record the easement with the Clerk of the Court.

(17) Compatibility With Other Ordinance Requirements. Approvals issued pursuant to this Ordinance do not relieve the Applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act or ordinance.

(18) Fees.

Permit Application Processing Fee:	\$ 100.00
Escrow Fund Account (Major Energy Facility):	\$2,000.00

Applicant acknowledges that the money in escrow is for reimbursement at Black Creek Township's discretion for any and all engineering, legal or other expenses incurred by the Township exclusive of work performed by full-time Township staff members, in processing the application and plans. As soon as this escrow account decreases by fifty (50%) percent, the Applicant will be notified by the Township and shall make payment in the amount necessary to fully fund the account within thirty (30) days of notification. Prior to the final approval of any application, the Township will determine all costs incurred; and, to the extent that there has been an overpayment or an underpayment, there shall be a refund or supplemental payment, as indicated. Upon the recording of the Plan

with the Recorder of Deeds and payment of all Township engineering, legal and other expenses incurred by the Township, exclusive of work performed by full-time Township staff members, The Applicant may submit a written request to the Township Treasurer for a refund of the unused escrow funds. Money held in escrow will not be returned until all invoices from the Township Engineer and Solicitor have been received by the Township and paid by the Applicant. The Solicitor's and Engineer's invoices are submitted to the Township every thirty (30) days.

Disputes between the Applicant and the Township regarding fees shall be settled pursuant to §503(1) and §503(g) of the Pennsylvania Municipalities Planning Codes as amended.

(19) Remedies.

- A. It shall be unlawful for any person, firm or corporation to violate or fail to comply with or take any action which is contrary to the terms of this ordinance, or any permit issued under the ordinance, or cause another to violate or fail to comply, or take action which is contrary to the terms of the ordinance or any permit issued under this ordinance.
- B. The Zoning Officer determines that a violation of the Ordinance or the permit has occurred, the Zoning Officer shall provide written notice to any person, firm or corporation alleged to be in violation of this Ordinance or permit. If the alleged violation does not pose an immediate threat to public health or safety, the Township and parties shall engage in good faith negotiations to resolve the alleged violation. Such negotiations shall be conducted within thirty (30) days of the notice of violation.
- C. If after thirty (30) days of the notice of violation the Zoning Officer determines in its discretion, that the parties have not resolved the alleged violation, the Township may institute civil enforcement proceedings or any other remedy at law to ensure compliance with the Ordinance or permit.

ARTICLE 4
GENERAL REGULATIONS

Section 401. Attached Accessory Structures. Accessory structures which are attached to a principal structure shall be considered a part of the principal structure and shall comply with the same dimensional requirements including such things as minimum front, side and rear yard setbacks, lot coverage and other lot requirements applicable to the principal structure.

Section 402. Unattached Accessory Structures.

(1) Non-Residential. When the principal use or structure is nonresidential, an unattached accessory structure shall comply with the front yard setback and side yard setback requirements applicable to the principal structure or use for the zoning district in which it is located and shall not be less than 25 feet from any rear yard lot line.

(2) Residential. When the principal structure is residential, unattached accessory structures shall only be erected within the rear yard or side yard areas of the lot subject to the following requirements:

- A. Structures that are less than 1,000 square feet in total gross floor area:
 - i. Minimum:

Side Yard	10 feet
Rear Yard	10 feet
Setback from a Street	15 feet
 - ii. Maximum:

Number of Structures	2
Building Height	1 ½ stories or 15 feet
- B. Structures that are 1,000 square feet or more in total gross floor area:
 - i. Minimum:

Side Yard	15 feet
Rear Yard	15 feet
Setback from a Street	20 feet
 - ii. Maximum:

Number of Structures	2
Building Height	1 ½ stories or 25 feet

Section 403. Residential Units for Care of Relatives. The use of a separate residential dwelling unit within or attached to a single-family dwelling unit may not be

ORDINANCE NO 1 of 2014

AN ORDINANCE OF BLACK CREEK TOWNSHIP, LUZERNE COUNTY, PENNSYLVANIA, AMENDING CHAPTER 15, ZONING, SECTION 402, UNATTACHED ACCESSORY STRUCTURES, AND SECTION 504, ENLARGEMENT OR EXPANSION OF NONCONFORMING USES AND STRUCTURES

An Ordinance of Black Creek Township amending Chapter 15, Zoning, Section 402, Unattached Accessory Structures, and Section 504, Enlargement or Expansion of Nonconforming Uses and Structures.

The Supervisors of Black Creek Township do hereby adopt the following amendments to the Code of Ordinances:

**Chapter 15
ZONING**

Section 402. Unattached Accessory Structures.

(1) Non-Residential. When the principal use or structure is nonresidential, an unattached accessory structure shall comply with the front yard setback and side yard setback requirements applicable to the principal structure or use for the zoning district in which it is located and shall not be less than 25 feet from any rear yard lot line.

(2) Residential. When the principal structure is residential, unattached accessory structures shall only be erected within the rear yard or side yard areas of the lot subject to the following requirements:

A. Structures that are less than 1,000 square feet in total gross floor area:

i. Minimum:

Side Yard	10 feet
Rear Yard	10 feet
Setback from a Street	15 feet

ii. Maximum:

Number of Structures	2
Building Height	1 ½ stories or 15 feet

B. Structures that are 1,000 square feet or more in total gross floor area:

i. Minimum:

Side Yard	15 feet
Rear Yard	15 feet
Setback from a Street	20 feet

- ii. Maximum:
 - Number of Structures 2
 - Building Height 1 ½ stories or 25 feet

C. For lots in the "C-1" Conservation District and "A-1" Agricultural District in which the total lot area is 5 acres or greater, there shall be a maximum of three (3) accessory structures that are less than 1,000 square feet in total gross floor area and a maximum of (3) accessory structures that are 1,000 square feet or more in total gross floor area.

Section 504. Enlargement or Expansion of Nonconforming Uses and Structures.

A. Upon application for a special exception, the Zoning Hearing Board may approve the expansion or enlargement of a nonconforming use or structure provided that all of the following provisions are met:

(1) The expansion or enlargement must be confined to the lot on which it is located at the effective date of this Ordinance. No expansion or enlargement to an adjoining lot shall be permitted, even if such lot was in the same ownership at the effective date of this Ordinance.

(2) The enlargement will not replace a conforming use.

(3) The nonconforming structure or use, after enlargement, shall comply with all of the bulk, dimensional, parking and loading requirements applicable to the zoning district in which the structure or use is located.

(4) The total of all such enlargements or expansions shall not exceed an additional 35% of the floor area or land area as it existed at the time the structure or use first became nonconforming.

(5) The expansion may not create any new dimensional nonconformities or further increase existing dimensional nonconformities.

(6) The appearance of the structure must be harmonious with the neighborhood. This feature includes but is not limited to: landscaping, enclosure of principal and accessory uses, height control, sign control, architectural control and maintenance in good condition of all improvements, and open spaces.

(7) Buffers and screens consisting of fences, walls, plantings or open space shall be provided as may be necessary to adequately obstruct the view of neighboring properties.

(8) The general, specific and supplemental criteria for the granting of a special exception have been met.

B. (a) Expansion Not Within Setback Which Renders Structure Nonconforming

In the case of a structure in which the only nonconformity is that it does not meet a setback requirement, the landowner need only apply to the Zoning Officer for the expansion or enlargement of the nonconforming structure which expansion or enlargement, with the exception of the original setback nonconformity, complies with all of the requirements applicable to the zoning district in which the structure or use is located. The Zoning Officer rather than the Zoning Hearing Board may approve or deny the expansion or enlargement of the nonconforming structure. This paragraph shall not be construed to permit the landowner to apply to the Zoning Officer rather than the Zoning Hearing Board where the landowner seeks to expand or enlarge within the original setback with which the property did not conform.

(b) Expansion Within Setback Which Renders Structure Nonconforming

In the case of a structure in which the only nonconformity is that it does not meet a setback requirement and the landowner seeks to expand or enlarge within the original setback with which the property did not conform and where, with the exception of the original setback nonconformity and proposed expanded nonconformity within the same setback, the expansion or enlargement of the nonconforming structure complies with all of the requirements applicable to the zoning district in which the structure or use is located, the landowner need only apply to the Zoning Officer for same. The Zoning Officer rather than the Zoning Hearing Board may approve or deny the expansion or enlargement of the nonconforming structure. The Zoning Officer may approve same if he/she does not receive a written objection within thirty (30) days from the date notice is sent via U.S. First Class Mail to owners of abutting lots. If the Zoning Officer receives an objection within thirty (30) days, Zoning Hearing Board approval shall be required for expansion or enlargement of the nonconforming structure. This paragraph shall not be construed to permit the landowner to apply to the Zoning Officer rather than the Zoning Hearing Board where the landowner seeks to expand or enlarge within the original setback with which the property did not conform in the direction of the lot line used in calculating said setback thereby further reducing the distance between the building line and said lot line.

C. In the case of a structure which is used for a nonconforming use or where the proposed enlargement or expansion of the nonconforming structure does not meet the requirements of Section 504(B) above, any enlargement or expansion of a nonconforming structure shall require Zoning Hearing Board approval and meet the requirements of Section 504(A).

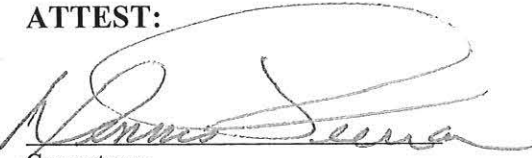
D. A second floor may be added directly above an existing first floor of a nonconforming structure provided that the other requirements of this Ordinance are met.

These Amendments shall take effect immediately upon their adoption.

The remaining sections of the Ordinance, as amended, shall remain the same unchanged, except as otherwise provided herein.


This Ordinance is hereby duly enacted and adopted this 6 day of May, 2014.


ATTEST:

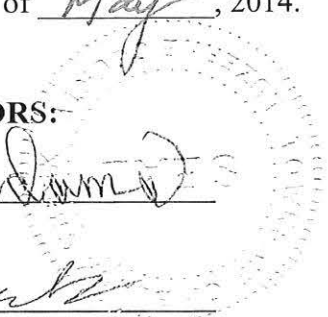

Secretary

**BLACK CREEK
TOWNSHIP SUPERVISORS:-**

By: 
Chairman

By: 
Vice Chairman

By: 
Supervisor



ORDINANCE NO. 5/7/2020

AN ORDINANCE TO VACATE DERRINGER STREET

WHEREAS, the Supervisors of the Township of Black Creek believe it to be in the best interests of the health, welfare and safety of the residents and property owners of the Township to Vacate and remove from the rolls of the Township roads and streets the cartway named Derringer Street; and

WHEREAS, the Township held a properly advertised public Hearing regarding the Vacation of Derringer Street on April 2, 2020; and

WHEREAS, the Township had previously been notified by PennDOT the Township would no longer receive liquid fuels money for Derringer Street; and

WHEREAS, at said public Hearing no voices were raised in opposition to the Vacation of Derringer Street.

NOW THEREFORE, the Supervisors of Black Creek Township declare the following:

THE TOWNSHIP CARTWAY KNOWN AS DERRINGER STREET (T329) BETWEEN TOP STREET AND TOMHICKEN ROAD AN APPROXIMATE DISTANCE OF 1.23 MILES IS HEREBY VACATED AND REMOVED FROM THE TOWNSHIP ROLLS OF STREETS AND ROADS.

ORDINANCE NO.

2 of 8/6/2020

1. AN ORDINANCE OF THE TOWNSHIP OF BLACK CREEK, LUZERNE COUNTY, PENNSYLVANIA, AMENDING SECTION 402 OF THE TOWNSHIP ZONING ORDINANCE RELATED TO THE HEIGHT AND AREA COVERAGE OF ACCESSORY STRUCTURES.

WHEREAS, the Supervisors of the Township of Black Creek believe it to be in the best interests of the health, welfare and safety of the residents and property owners of the Township to Amend Section 402 of the Township Zoning Ordinance; and

NOW THEREFORE, the Supervisors of Black Creek Township declare the following:

1. Subsection 402(2)(A)(ii) and 402(2)(B)(ii) shall be amended to read as follows:

The maximum height of any accessory structure, except one located on a farm, shall not exceed 20 feet or the height of the principal structure, whichever is less. The maximum area of any accessory structure, except one located on a farm, shall not exceed 1,500 square feet in area.

2. Subsection 402(C) shall read as follows:

The maximum height of any building shall be measured from the lowest average elevation of the proposed structure to the highest point, which includes the roof peak.

3. Subsection 402(D) shall read as follows:

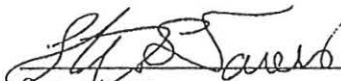
No accessory structure in any zoning district, except for farming, shall be permitted in a required side yard or front yard that encroaches past the defined front yard setback of any parcel or the principal structure.



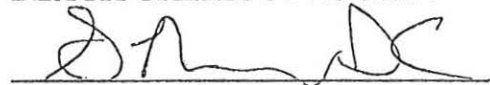
In all other manner not inconsistent herewith, Section 402 shall remain the same.

ENACTED AND ORDAINED this 6th day of August, 2020 by the
Supervisors of Black Creek Township, Luzerne County, Pennsylvania.

ATTEST:


Secretary

BLACK CREEK TOWNSHIP:



ORDINANCE NO. 3 of 12/3/2020

1. AN ORDINANCE OF THE TOWNSHIP OF BLACK CREEK, LUZERNE COUNTY, PENNSYLVANIA, AMENDING ARTICLE 2 AND SECTIONS 402, 406, 412, 425, 704 AND 706 OF THE TOWNSHIP ZONING ORDINANCE.

WHEREAS the Supervisors of the Township of Black Creek believe it to be in the best interests of the health, welfare and safety of the residents and property owners of the Township to Amend various Sections of the Township Zoning Ordinance; and

NOW THEREFORE, the Supervisors of Black Creek Township declare the following:

I.

ARTICLE 2
DEFINITIONS

“Cargo Containers” means standardized reusable vessels that were:

1. Originally designed for or used in the packing, shipping, movement or transportation of freight, articles, goods, or commodities; and/or
2. Originally designed for or capable of being mounted or moved by rail, truck, or ship by means of being mounted on a chassis or similar transport device. This definition includes the terms “transport containers” and “shipping containers”.

Clean fill- solid material used to level an area or bring an area to grade.

Construction/demolition waste - Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete and household items such as commodes, bath tubs and stoves/ovens etc... The term does not include the following if they are separate from other waste and are used as clean fill:

- (i) Uncontaminated soil, rock, stone, gravel, brick and block, concrete and used asphalt.
- (ii) Waste from land clearing, grubbing and excavation, including trees, brush, stumps, and vegetative material.
- (iii) Clean fill stored in piles must be kept 100ft from front and side lines and 50ft from back lines for a maximum of 90 days.

II.

Section 402. Unattached Accessory Structures.

(1) Non-Residential. When the principal use or structure is nonresidential, an unattached accessory structure shall comply with the front yard setback and side yard setback requirements applicable to the principal structure or use for the zoning district in which it is located and shall not be less than 25 feet from any rear yard lot line.

(2) Residential. When the principal structure is residential, unattached accessory structures shall only be erected within the rear yard or side yard areas of the lot subject to the following requirements:

A. Structures that are less than 1,000 square feet in total gross floor area:

i. Minimum:

Side Yard	10 feet
Rear Yard	10 feet
Setback from a Street	15 feet

ii. Maximum:

Number of Structures	2
Building Height	1 ½ stories or 15 feet

B. Structures that are 1,000 square feet or more in total gross floor area:

i. Minimum:

Side Yard	15 feet
Rear Yard	15 feet
Setback from a Street	20 feet

ii. Maximum:

Number of Structures	2
Building Height	1 ½ stories or 25 feet

(3) Cargo containers, railroad cars, truck vans, converted mobile homes, trailers, recreational vehicles, bus bodies, vehicles and similar prefabricated items and structures originally built for purposes other than the storage of goods and materials may not be used as accessory structures within the R-1, R-2 and C-1 Zoning Districts.

Such items and structures shall be permitted as accessory structures within all other zoning districts subject to the following requirements:

- A. Containers shall be placed in the rear yard of the property;
- B. Containers shall meet all guidelines for accessory structures; and
- C. Containers shall be screened from all roads and adjacent residences if visible from same.

Structures that are less than 1,000 square feet in total gross floor area:

- i. Minimum:
 - Side Yard 200 feet
 - Rear Yard 200 feet
 - Setback from a Street 200 feet
- ii. Maximum:
 - Number of Structures 2
 - Building Height 12 feet

Structures that are 1,000 square feet or more in total gross floor area:

- i. Minimum:
 - Side Yard 250 feet
 - Rear Yard 250 feet
 - Setback from a Street 250 feet
- ii. Maximum:
 - Number of Structures 2
 - Building Height 1 ½ stories or 25 feet

III.

Section 406. Structures Allowed in Yards and Open Areas. The following structures shall be permitted in required yards (setbacks) and shall not be subject to yard setback requirements or calculated as part of the maximum building coverage:

- (1) Lamp posts, walkways, sidewalks, driveways, retaining walls, fences, steps or landscaping.
- (2) Projecting architectural features such as bay windows, cornices, eaves, chimneys, windowsills, or other similar architectural features provided that any such structure does not extend more than three feet into any required yard setback.
- (3) Terraces, patios, outdoor fireplaces, outdoor furniture, or playground equipment provided that these structures are not under roof, without walls or other form of enclosure and are located not less than five feet to any lot line.
- (4) Stairways, balconies, or canopies provided that these types of structures are setback not less than three feet from any lot line.

(5) Noncommercial satellite dish antennas provided that they do not exceed fifteen feet in height when erected in a residential zoning district.

(6) Temporary construction trailers provided that they are used on the lot where construction is being conducted and only while construction is occurring, AND, in any event, shall not remain onsite for a period of longer than 90 days

(7) Handicap ramps.

(8) Non-traditional temporary storage units as set forth in Section 704(4).

IV.

Section 412. Fences and Walls. A fence or wall shall be permitted in any yard subject to the following requirements:

(1) Location. The posts or structural supports of a fence or wall may be located within the interior yard line to be enclosed so that the edge of the fence or wall is situated within or on the property line where it is being constructed. Walls and fences shall not be subject to any setback requirements.

(2) Height-Residential. Residential fences or walls shall have a maximum height of four feet in a front yard and six feet in height in any side or rear yards.

(3) Height-Non-residential. Fences or walls shall have a maximum height of six feet in a front yard and eight feet in height in any side or rear yards.

(4) Materials. All fences shall be constructed with industry recognized materials designed to provide a permanent enclosure. No fences or walls shall be constructed of pallets, tires, or junk. No barbed wire or other potentially injurious or hazardous material shall be used as fencing or attached to any wall or fence.

V.

Section 425. Construction/demolition waste.

Any and All construction debris/demolition waste piles must be removed from R-1, R-2, C-1, B-1 parcels within 90 days. This Section shall not apply to the A-1 or I-1 Zoning Districts. Additionally, any such waste must comply with DEP regulations.

- A. Construction debris pile setbacks:
 - i. Minimum:

Side Yard	100 feet
Rear Yard	50 feet
Setback from a Street	100 feet

VI.

Section 704. Temporary Permits. A zoning permit shall be required for all temporary uses of a structure or land. The Zoning Officer shall issue a zoning permit for any of the following:

- (1) Short-term special events provided that:
 - A. The total event is limited to no more than 14 days.
 - B. Although not otherwise permitted within the zoning district where the event is to be located, it does not adversely affect or interfere with the use and enjoyment of any other permitted use within that zoning district, nor does it prohibit quiet and peaceful enjoyment of adjoining or surrounding properties.
 - C. Sufficient parking and traffic control will be available for the duration of the event, without obstructing parking that is required to serve other uses.
- (2) Retail sales provided that:
 - A. The property is located within a zoning district that allows retail sales.
 - B. Any structure associated with the use meets the applicable dimensional regulations of the zoning district in which the structure is located.

- C. The proposed use and structures must not:
 - i. Obstruct safe sight distances.
 - ii. Interfere with vehicular and pedestrian travel and off-street parking spaces and loading facilities that are required to serve permanent permitted uses on the property where the retail sales are to take place.
 - iii. Violate any other local and state laws or regulations.

(3) Temporary Structures provided that:

- A. The structure is necessary to service on-site construction activities.
- B. The structure is removed upon completion of construction.
- C. The structure is not used for living quarters.
- D. The construction is a lawful activity for which a zoning permit has been issued.
- E. The structure meets the minimum setback requirements for an accessory structure for the zoning district in which the structure will be located.
- F. No more than two such structures are located on a lot.

(4) Non-traditional temporary storage units, including those commercially known as “PODS” or the enclosed portion or “container” of a box trailer with or without wheels, provided that:

- A. Units shall be located at least 15 feet from all streets.
- B. Units shall be permitted for a maximum period of 90 consecutive days in any one calendar year.

VII.

Section 706. Fees. The Board of Supervisors hereby adopts the following schedule of fees, charges and expenses for applications, permits, certificates, appeals to the Zoning Hearing Board, amendments to the Zoning Ordinance and Zoning Map, and any other matters relating to

the administration of this Ordinance. The Township fee schedule shall be available for public inspection and may be amended from time to time by resolution of the Board of Supervisors. No application or appeal shall be considered filed until all related fees, charges and expenses have been paid in full.

SCHEDULE OF ZONING FEES

(1) CERTIFICATE OF ZONING COMPLIANCE.....\$60.00

(2) ZONING APPLICATION FEE.....\$60.00

(3) ZONING PERMIT

1. Structures that are less than 1,000 square feet in total gross floor area and less than \$5,000.00 in total construction costs- \$25.00

2. Structures that are 1,000 square feet or more in total gross floor area or more than \$5,000.00 in total construction costs- .20 per square foot calculated by including all total floor area (finished or unfinished).

(4) APPLICATION OR APPEAL TO THE ZONING HEARING BOARD OR UCC APPEAL BOARD.....\$900.00

(5) APPLICATION FOR ZONING CHANGES OR CURATIVE AMENDMENT

1. \$500.00 plus the cost of advertising and stenographer transcript fees.
2. \$1,000.00 must be placed in an escrow account at the time of making application, which escrow will be applied toward the application fee and costs of the hearing. Any excess will be refunded to the applicant within sixty (60) days from the conclusion of the hearing.

(6) CERTIFICATE OF NON-CONFORMING USE.....\$100.00

(7) ZONING BOOKS AND MAPS

- 1. Zoning Book- \$25.00
- 2. Zoning Map- \$35.00
- 3. Subdivision and Land Development Book- \$25.00

(8) DEMOLITION PERMITS

- 1. Residential Principal Structures-\$85.00
- 2. Residential Accessory Structures-\$25.00
- 3. Commercial-\$250.00

(9) WINDMILLS

A zoning permit for a windmill is required; The zoning permit fee for each windmill shall be one thousand (\$1,000.00) dollars. A building permit for a wind mill is required, and the

building permit fee for each wind mill shall be calculated at \$3.00 per linear foot measured from the surface of the tower foundation at the average grade to the highest point of the structure, including blades. There shall also be an annual inspection required for wind farms and the fee for inspections shall be one thousand (\$1,000.00) dollars per windmill in a wind farm.

(10) FORESTRY/TIMBER HARVESTING ACTIVITIES

A zoning permit for forestry/timber harvesting activities is required. The zoning permit fee for such activities on lots less than five (5) acres in size shall be one hundred (\$100.00) dollars. The zoning permit fee for such activities on lots five (5) acres or more in size shall be five hundred (\$500.00) dollars.

IN ALL OTHER MANNER NOT INCONSISTENT HEREWITH, THE BLACKCREEK TOWNSHIP ZONING ORDINANCE WILL REMAIN UNCHANGED.

ENACTED AND ORDAINED this 3rd day of December, 2020 by the Supervisors of Black Creek Township, Luzerne County, Pennsylvania.

ATTEST:


Tracy Pluth
Secretary

BLACK CREEK TOWNSHIP:

SR DC

SR Vaneb

considered a second principal use, but shall constitute a permitted accessory use provided that all of the following criteria are met:

(1) Not more than two persons may occupy the separate accessory residential dwelling unit who must be relatives of the persons occupying the principal residential dwelling unit.

(2) At least one of the residents of the separate accessory residential dwelling unit must need accommodations because of illness, infirmity, age or disability.

(3) The separate accessory residential dwelling unit must be designed and constructed so that it may be reconverted into part of the principal residential dwelling unit within six months of the relatives no longer residing within the unit. This shall be a condition of any permit issued by the Zoning Officer.

(4) The separate accessory residential dwelling unit shall be attached to the principal residential dwelling unit in such a way as not to detract from the residential characteristics of the neighborhood. Attachments must consist of more than a breezeway and shall include walls, a roof and foundation.

(5) One additional off-street parking space shall be required for the separate accessory residential dwelling unit unless the applicant can prove to the satisfaction of the Zoning Officer that the residents of the separate accessory residential dwelling unit does not drive an automobile.

Section 404. Residential Accessory Structures in a Nonresidential Zone. In cases where a residential structure is a nonconforming use because it is located in a nonresidential zoning district, the proposed erection of an accessory residential structure shall be deemed exempt from classification as an expansion of a nonconforming use, but when unattached shall be subject to the regulations contained under Section 402(2) of this Ordinance.

Section 405. Swimming Pools. Swimming pools shall be located in either the rear yard or side yard of the property on which it is an accessory use. The swimming pool and accessory structures adjacent thereto, shall have a minimum setback of 10 feet from any rear or side yard lot line. All swimming pools, capable of containing water to a depth, at any point, in excess of 24 inches shall be enclosed in accordance with the following subsections:

(1) In-Ground Pools. The swimming pool, or the entire property on which the pool is located, shall be enclosed with a permanent fence not less than four feet in height, which includes a gate secured with a lock.

(2) Above Ground Pools. An above ground swimming pool shall be enclosed with a permanent fence not less than four feet in height which includes a gate secured with a lock, or in lieu of a fence, a barrier not less than four feet in height. The fence or

barrier may include the pool wall and any extension thereto which equals or exceeds a height of four feet. Access into a pool which includes a deck shall also be secured by a gate with a lock. Pools without access from a deck, shall include removable or locking retractable steps or any similar device which prohibits uncontrolled access into the pool when not in use. Shrubbery is not to be considered a barrier. Decks which are attached to the pool may not project into any required yard setback for the pool.

(3) Other Regulations. Swimming pools shall conform to all manufacturer recommendations and specifications and all other state and federal regulations.

Section 406. Structures Allowed in Yards and Open Areas. The following structures shall be permitted in required yards (setbacks) and shall not be subject to yard setback requirements or calculated as part of the maximum building coverage:

(1) Lamp posts, walkways, sidewalks, driveways, retaining walls, fences, steps or landscaping.

(2) Projecting architectural features such as bay windows, cornices, eaves, chimneys, window sills, or other similar architectural features provided that any such structure does not extend more than three feet into any required yard setback.

(3) Terraces, patios, outdoor fireplaces, outdoor furniture, or play ground equipment provided that these structures are not under roof, without walls or other form of enclosure and are located not less than five feet to any lot line.

(4) Stairways, balconies, or canopies provided that these types of structures are setback not less than three feet from any lot line.

(5) Noncommercial satellite dish antennas provided that they do not exceed fifteen feet in height when erected in a residential zoning district.

(6) Temporary construction trailers provided that they are used on the lot where construction is being conducted and only while construction is occurring.

(7) Handicap ramps.

Section 407. Exceptions to Height Limitations. The height limitations of this Ordinance shall not apply to the following structures or projections:

(1) Structures such as chimneys, flagpoles and water towers.

(2) Structures located on buildings above the roof level such as church steeples, water tanks, cupolas, skylights and other accessory mechanical appurtenances provided that such structures do not cover more than 25% of the roof on which they are located.

(3) Parapet walls or cornices used solely for ornamental purposes if not in excess of five feet.

Section 408. Exemption from Yard Requirement for the Enclosure of any Structure. In all zoning districts, any area of a pre-existing nonconforming roofed structure may be enclosed without meeting the yard setback requirements for the zoning district in which the property is located.

Section 409. Required Access. Every structure erected after the adoption of this Ordinance shall have access to or be located upon a lot adjacent to a public or private street.

Section 410. Visibility at Intersections Streets and Private Driveways. A clear-sight triangle shall be provided at all street and driveway intersections. Nothing shall be erected, placed or allowed to grow in a manner which obscures vision above the height of two and one-half feet and below 10 feet, measured from the centerline grade of intersecting streets and driveways.

(1) Street Intersections. At street intersections, an isosceles triangle shall be established for a distance of 20 feet at each side of the point of intersection of the street right-of-way lines.

(2) Driveway Intersections. At driveway intersections with streets, an isosceles triangle shall be established for a distance of 20 feet at each side of the point of intersection of the street right-of-way lines.

Section 411. Corner Lot Restriction. On a corner lot there shall be provided on each side thereof, adjacent to a street, a yard setback equal in depth to the required front yard setback of the zoning district in which the lot is located.

Section 412. Fences and Walls. A fence or wall shall be permitted in any yard subject to the following requirements:

(1) Location. The posts or structural supports of a fence or wall may be located within the interior yard line to be enclosed so that the edge of the fence or wall is situated within or on the property line where it is being constructed. Walls and fences shall not be subject to any setback requirements.

(2) Height-Residential. Residential fences or walls shall have a maximum height of four feet in a front yard and six feet in height in any side or rear yards.

(3) Height-Non-residential. Fences or walls shall have a maximum height of six feet in a front yard and eight feet in height in any side or rear yards.

(4) Materials. All fences shall be constructed with industry recognized materials designed to provide a permanent enclosure. No barbed wire or other potentially injurious or hazardous material shall be used as fencing or attached to any wall or fence.

Section 413. Exemption-Public Utilities. With the exception of storage yards, the provisions and regulations of this Ordinance shall not apply to any existing or proposed building or extension thereof, used or to be used by a public utility corporation, if upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of the party to the proceedings.

Section 414. On-Site Sewage Disposal. Any use or development of property which proposes to utilize on-lot sewage disposal shall secure approval from the Township's Sewage Enforcement Officer in accordance with the applicable governing standards of the Pennsylvania Department of Protection prior to the issuance of a zoning permit.

Section 415. Road or Highway Occupancy Permit. Zoning approval for any proposed use or the development of a property, which includes the construction or relocation of a driveway onto a township road, county road or state legislative route, or highway shall be conditioned upon the applicant or property owner obtaining a permit from the applicable governmental agency.

Section 416. Exemption from Certain Side Yard Setbacks. Any structure proposed to be subdivided, containing two or more units, residential or nonresidential, shall be exempted from the governing side yard setback requirements under the Zoning Ordinance relative only to the interior side yards. When a side yard of a proposed subdivision is directly attached to another unit within the structure, subdivision approval shall exempt the property from the necessity of obtaining a side yard variance from the Zoning Hearing Board for the creation of a zero side yard setback.

Section 417. Mobile Homes.

(1) Replacement of Non-conforming Mobile Homes. The removal of a mobile home as a nonconforming use upon a property with the intent to replace it with another mobile home may be permitted without Zoning Hearing Board approval provided that the new mobile home is in conformity with all applicable setbacks, area, and bulk requirements for the zoning district in which it is located and undergoes and satisfactorily passes an inspection by the Building Code Official. In addition, the replacement of the mobile home shall be done in accordance with the construction standards set forth in Section 417(2) below.

(2) Construction Standards. A mobile home shall be set on a concrete frost-free footer with skirting made of brick, block or concrete wall, and any towing tongues, wheels and axles shall be removed from the mobile home and the home must be secured with a safety strap or cable to the concrete footer or steel cross support. Only under these conditions shall a mobile home constitute a residence. The specifications of the footer and its depth shall be as proscribed under the applicable building code.

Section 418. Number of Principal Uses or Structures on a Lot. No more than one principal use or structure shall be permitted upon a lot which is less than ten (10) acres without first obtaining special exception approval from the Zoning Hearing Board. No more than two principal uses or structures shall be permitted upon a lot which is equal to or in excess of ten (10) acres without first obtaining special exception approval from the Zoning Hearing Board.

Section 419. Screens and Buffers.

(1) Screening and Buffering of Nonresidential Uses or Structures Adjoining a Residential District or Use. Except as otherwise provided for in this Ordinance, all nonresidential uses or structures that adjoin a residential district or use shall be screened by a fence or wall not less than six feet in height and a planting strip not less than 5 feet in depth, with shrubbery, plants or trees which are a minimum of three feet in height at the time of planting. The planting strip must be planted in such a manner as to screen the view of the nonresidential use or structure from the residential district or use. This area must then be suitably landscaped and perpetually maintained at all times.

(2) Buffers from Wetlands, Streams, and Waterways. All accessory and principal structures shall be setback not less than 25 feet from any wetland, and 50 feet from streams, waterways and water bodies.

Section 420. Outdoor Lighting. All outdoor lighting on private or public residential, commercial, industrial, recreational or institutional property shall be aimed, located, designed, fitted and maintained so as not to present a hazard to drivers or pedestrians by impairing their ability to safely traverse (disabling glare), and so as not to create a nuisance by projecting or reflecting objectionable light onto a neighboring use or property (nuisance glare).

Section 421. Composting. The composting of biodegradable vegetative material such as trees, shrubs, leaves and vegetable waste, which do not contain garbage or animal fats shall be permitted as an accessory use in all zoning districts provided that:

(1) The composting is conducted in such a manner as not to create any health, welfare or safety concerns.

(2) Any composting of manure shall be restricted to lots where:

- A. Agriculture is a use permitted by right.
- B. The lot size is a minimum of 5 acres.
- C. The setback from any adjoining street or property line is at least 200 feet.
- D. The composting comply with the published manure management standards of the Pennsylvania State University Cooperative Extension Service.

(3) No permit shall be required to compost.

Section 422. Non-Commercial Satellite Dishes and Standard Antennas. A non-commercial satellite dish or standard antenna including amateur television and radio antennas shall be permitted as an accessory use in all zoning districts provided that they are properly attached and secured to a structure at a height not to exceed five feet.

Section 423. Uses Not Listed or Addressed Within this Ordinance. A use not listed in any of the zoning districts shall be classified as a special exception use permitted in the I-1 Zoning District. The Zoning Hearing Board, in addition to the special exception criteria, shall require that the applicant also prove:

(1) The proposed use is less intensive than other principal permitted uses within the zoning district.

(2) The proposed use is similar and compatible to other principal permitted uses within the zoning district.

(3) The proposed use is not listed in any zoning district and is not similar to a use listed in any zoning district.

(4) The proposed use does not interfere or conflict with the general purposes, community development objectives or intent for which this Ordinance has been adopted.

(5) The proposed use meets the standards for a special exception use under Article 9, Section 910 of this Ordinance.

Section 424. Recreational Vehicles. Any recreational vehicle which is not licensed, registered and inspected shall not be permitted on any lot except where permitted by the regulations concerning Junk Yards, Automobile Dismantling Plants or Automobile Salvage Yards and the lot employs such use. If stored on property in which the permitted use is residential, the licensed, registered and inspected recreational vehicle shall be stored in a structure or within the rear yard.

ARTICLE 5
NONCONFORMITIES, SIGNS, PARKING AND LOADING AND ACCESS
DRIVES

NONCONFORMING LOTS, STRUCTURES AND USES

Section 501. Nonconforming Lots of Record.

(1) Lots of Record. A structure may be built on a lot of record existing as of the effective date of this Ordinance even though the lot does not meet the minimum requirements for lot area or lot width as established for the zoning district in which the lot is located provided that the structure conforms to all other dimensional requirements for that zoning district including the minimum front, side and rear yard setbacks.

(2) Contiguous Lots of Record. If two or more contiguous lots of record in single ownership exist as of the effective date of this Ordinance and those lots do not meet the required minimum lot area or lot width, then the lots shall be considered to be an undivided parcel and no portion of that parcel shall be used or sold in a manner which further diminishes compliance with the dimensional requirements of the zoning district in which such parcel is located.

Section 502. Continuation of Nonconformities. Except as otherwise provided in this Ordinance, any lawful nonconforming use, structure or lot which fails to conform to the requirements of this Ordinance shall be permitted to continue.

Section 503. Change of Nonconforming Uses. Upon application for a special exception, the Zoning Hearing Board may approve the change from one nonconforming use to another nonconforming use provided that all of the following provisions are met:

- (1) No structural alterations are made.
- (2) The proposed use is less objectionable than the existing nonconforming use.
- (3) The proposed use is more compatible with the character of the neighborhood than the existing nonconforming use.
- (4) There is no increase in vehicular and pedestrian traffic and the proposed use will not cause any traffic problems, hazards, or congestion.
- (5) There is no increase in noise, smoke, dust, fumes, vapors, gases, heat, odor, glare, vibration, lighting or electrical disturbances.
- (6) There will be no increase threat to the public health, safety, welfare or morals.

ORDINANCE NO 1 of 2014

AN ORDINANCE OF BLACK CREEK TOWNSHIP, LUZERNE COUNTY, PENNSYLVANIA, AMENDING CHAPTER 15, ZONING, SECTION 402, UNATTACHED ACCESSORY STRUCTURES, AND SECTION 504, ENLARGEMENT OR EXPANSION OF NONCONFORMING USES AND STRUCTURES

An Ordinance of Black Creek Township amending Chapter 15, Zoning, Section 402, Unattached Accessory Structures, and Section 504, Enlargement or Expansion of Nonconforming Uses and Structures.

The Supervisors of Black Creek Township do hereby adopt the following amendments to the Code of Ordinances:

**Chapter 15
ZONING**

Section 402. Unattached Accessory Structures.

(1) Non-Residential. When the principal use or structure is nonresidential, an unattached accessory structure shall comply with the front yard setback and side yard setback requirements applicable to the principal structure or use for the zoning district in which it is located and shall not be less than 25 feet from any rear yard lot line.

(2) Residential. When the principal structure is residential, unattached accessory structures shall only be erected within the rear yard or side yard areas of the lot subject to the following requirements:

A. Structures that are less than 1,000 square feet in total gross floor area:

- i. Minimum:

Side Yard	10 feet
Rear Yard	10 feet
Setback from a Street	15 feet
- ii. Maximum:

Number of Structures	2
Building Height	1 ½ stories or 15 feet

B. Structures that are 1,000 square feet or more in total gross floor area:

- i. Minimum:

Side Yard	15 feet
Rear Yard	15 feet
Setback from a Street	20 feet

ii.	<u>Maximum:</u>	
	Number of Structures	2
	Building Height	1 ½ stories or 25 feet

C. For lots in the "C-1" Conservation District and "A-1" Agricultural District in which the total lot area is 5 acres or greater, there shall be a maximum of three (3) accessory structures that are less than 1,000 square feet in total gross floor area and a maximum of (3) accessory structures that are 1,000 square feet or more in total gross floor area.

Section 504. Enlargement or Expansion of Nonconforming Uses and Structures.

A. Upon application for a special exception, the Zoning Hearing Board may approve the expansion or enlargement of a nonconforming use or structure provided that all of the following provisions are met:

(1) The expansion or enlargement must be confined to the lot on which it is located at the effective date of this Ordinance. No expansion or enlargement to an adjoining lot shall be permitted, even if such lot was in the same ownership at the effective date of this Ordinance.

(2) The enlargement will not replace a conforming use.

(3) The nonconforming structure or use, after enlargement, shall comply with all of the bulk, dimensional, parking and loading requirements applicable to the zoning district in which the structure or use is located.

(4) The total of all such enlargements or expansions shall not exceed an additional 35% of the floor area or land area as it existed at the time the structure or use first became nonconforming.

(5) The expansion may not create any new dimensional nonconformities or further increase existing dimensional nonconformities.

(6) The appearance of the structure must be harmonious with the neighborhood. This feature includes but is not limited to: landscaping, enclosure of principal and accessory uses, height control, sign control, architectural control and maintenance in good condition of all improvements, and open spaces.

(7) Buffers and screens consisting of fences, walls, plantings or open space shall be provided as may be necessary to adequately obstruct the view of neighboring properties.

(8) The general, specific and supplemental criteria for the granting of a special exception have been met.

B. (a) Expansion Not Within Setback Which Renders Structure Nonconforming

In the case of a structure in which the only nonconformity is that it does not meet a setback requirement, the landowner need only apply to the Zoning Officer for the expansion or enlargement of the nonconforming structure which expansion or enlargement, with the exception of the original setback nonconformity, complies with all of the requirements applicable to the zoning district in which the structure or use is located. The Zoning Officer rather than the Zoning Hearing Board may approve or deny the expansion or enlargement of the nonconforming structure. This paragraph shall not be construed to permit the landowner to apply to the Zoning Officer rather than the Zoning Hearing Board where the landowner seeks to expand or enlarge within the original setback with which the property did not conform.

(b) Expansion Within Setback Which Renders Structure Nonconforming

In the case of a structure in which the only nonconformity is that it does not meet a setback requirement and the landowner seeks to expand or enlarge within the original setback with which the property did not conform and where, with the exception of the original setback nonconformity and proposed expanded nonconformity within the same setback, the expansion or enlargement of the nonconforming structure complies with all of the requirements applicable to the zoning district in which the structure or use is located, the landowner need only apply to the Zoning Officer for same. The Zoning Officer rather than the Zoning Hearing Board may approve or deny the expansion or enlargement of the nonconforming structure. The Zoning Officer may approve same if he/she does not receive a written objection within thirty (30) days from the date notice is sent via U.S. First Class Mail to owners of abutting lots. If the Zoning Officer receives an objection within thirty (30) days, Zoning Hearing Board approval shall be required for expansion or enlargement of the nonconforming structure. This paragraph shall not be construed to permit the landowner to apply to the Zoning Officer rather than the Zoning Hearing Board where the landowner seeks to expand or enlarge within the original setback with which the property did not conform in the direction of the lot line used in calculating said setback thereby further reducing the distance between the building line and said lot line.

C. In the case of a structure which is used for a nonconforming use or where the proposed enlargement or expansion of the nonconforming structure does not meet the requirements of Section 504(B) above, any enlargement or expansion of a nonconforming structure shall require Zoning Hearing Board approval and meet the requirements of Section 504(A).

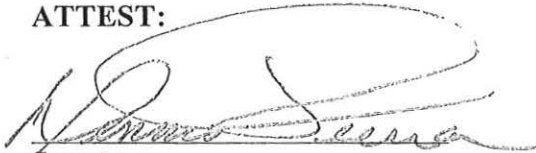
D. A second floor may be added directly above an existing first floor of a nonconforming structure provided that the other requirements of this Ordinance are met.

These Amendments shall take effect immediately upon their adoption.

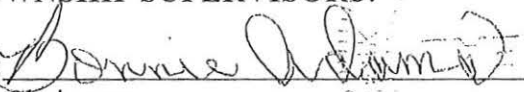
The remaining sections of the Ordinance, as amended, shall remain the same unchanged, except as otherwise provided herein.


This Ordinance is hereby duly enacted and adopted this 6 day of May, 2014.


ATTEST:

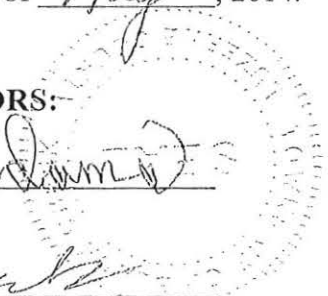

Secretary

**BLACK CREEK
TOWNSHIP SUPERVISORS:**

By: 
Chairman

By: 
Vice Chairman

By: 
Supervisor



(7) There will be no further depreciation in market value to other properties in the neighborhood.

(8) There is no public danger by the use of hazardous substances or explosive materials.

(9) There is no outdoor storage unless the existing nonconforming use had outdoor storage and only then will outdoor storage be permitted provided that the outdoor storage is not hazardous, entirely enclosed, and located in the rear yard.

(10) The general, specific and supplemental criteria for the granting of a special exception have been met.

(11) The nonconforming use shall not be changed to a nonconforming adult use.

(12) The hours of operation of the proposed use are not greater than the hours of operation of the existing nonconforming use.

Section 504. Enlargement or Expansion of Nonconforming Uses and Structures.

A. Upon application for a special exception, the Zoning Hearing Board may approve the expansion or enlargement of a nonconforming use or structure provided that all of the following provisions are met:

(1) The expansion or enlargement must be confined to the lot on which it is located at the effective date of this Ordinance. No expansion or enlargement to an adjoining lot shall be permitted, even if such lot was in the same ownership at the effective date of this Ordinance.

(2) The enlargement will not replace a conforming use.

(3) The nonconforming structure or use, after enlargement, shall comply with all of the bulk, dimensional, parking and loading requirements applicable to the zoning district in which the structure or use is located.

(4) The total of all such enlargements or expansions shall not exceed an additional 35% of the floor area or land area as it existed at the time the structure or use first became nonconforming.

(5) The expansion may not create any new dimensional nonconformities or further increase existing dimensional nonconformities.

(6) The appearance of the structure must be harmonious with the

neighborhood. This feature includes but is not limited to: landscaping, enclosure of principal and accessory uses, height control, sign control, architectural control and maintenance in good condition of all improvements, and open spaces.

(7) Buffers and screens consisting of fences, walls, plantings or open space shall be provided as may be necessary to adequately obstruct the view of neighboring properties.

(8) The general, specific and supplemental criteria for the granting of a special exception have been met.

B. The Zoning Officer shall permit a nonconforming structure to be enlarged or expanded provided:

(a) That such action will not increase the severity or amount of the nonconformity (such as the area of the building extending into the required yard) or create any new nonconformity and

(b) That any expanded area will comply with the applicable setbacks in that district and the other requirements of this Ordinance.

C. In the case of a structure which is used for a nonconforming use or where the proposed enlargement or expansion of the nonconforming structure does not meet the requirements of Section 504(B) above, any enlargement or expansion of a nonconforming structure shall require Zoning Hearing Board approval and meet the requirements of Section 504(A).

D. A second floor may be added directly above an existing first floor of a nonconforming structure provided that the other requirements of this Ordinance are met.

Section 505. Restoration of Nonconforming Uses and Structures. If any nonconforming use or structure is destroyed by reason of windstorm, fire, explosion or other similar act, or by any act of God or public enemy, the nonconformity shall be rebuilt, restored, repaired or reused provided it is done within the existing building envelope.

Section 506. Unsafe Nonconforming Structures. If a nonconforming structure becomes physically unsafe due to neglect or lack of maintenance and repairs, uninhabitable, or has been legally condemned pursuant to the provisions of the applicable property maintenance or building code, then the structure and its use shall be deemed terminated, and the use shall cease and the structure shall not thereafter be restored, repaired, rebuilt or used except in conformity with the provisions of this Ordinance.

Section 507. Abandonment.

- (1) A nonconforming use shall be terminated and not permitted to resume if that nonconforming use is abandoned.
- (2) A nonconforming use shall be considered abandoned when there occurs an intent by the owner of the nonconforming use to abandon that use, or cessation of the use or activity has been shown by an overt act, apparent act, or failure to act on the part of the user or owner of the nonconforming use for a period in excess of 12 months measured from the date of cessation or discontinuance. The use shall not thereafter be reinstated and the structure, if any, shall not be reoccupied or used except in conformity with this Ordinance.
- (3) A user and owner of a nonconformity shall file a written request with the Zoning Officer to discontinue a nonconformity for a period of more than 12 months whenever the user and owner of the nonconformity intends on resuming the nonconformity sometime after that 12 month period. The request must be renewed every 12 months. The request shall include the reasons for discontinuing the nonconformity and the anticipate date that such nonconformity will resume. The nonconformity shall be deemed abandoned for a failure to file such a written request with the Zoning Officer.

Section 508. Reversion. No nonconformity shall, if once changed to conform to this Ordinance or changed to another nonconformity, be changed back again to a nonconformity or the previous nonconformity.

Section 509. Registration of Nonconforming Uses, Structures and Lots.

- (1) The Zoning Officer may prepare and maintain an accurate list of all nonconformities.
- (2) The Zoning Officer or the property owner may initiate the process of registering a nonconformity.
- (3) The Zoning Officer shall issue a Certificate of Nonconformity where the Zoning Officer finds through credible and reliable evidence that the nonconformity, although not in compliance with all applicable requirements of the zoning district in which the property is located, is lawful.
- (4) All forms for the issuance of a Certificate of Nonconformity shall be supplied by the Zoning Officer, and any documents relied upon by the Zoning Officer in issuing the Certificate of Nonconformity shall be attached to the Certificate.
- (5) The fee for registering the Nonconformity shall be established by resolution of the Township Board of Supervisors.

(6) A user and owner of a nonconformity shall notify the Zoning Officer of any abandonment of a nonconformity in writing.

SIGN REGULATIONS

Section 510. Signs. Signs may be erected, constructed, placed or maintained only when in compliance with the provisions of this Section of the Ordinance. This section does not apply to interior signs which are not visible from the exterior of a structure. This section does not apply to signs located on private property which are not visible by the general public.

(1) General Provisions Applying to All Signs.

- A. Signs shall not contain moving parts or use flashing, sequential or intermittent illumination. The source of light shall be steady and stationary.
- B. No sign shall be constructed, placed, erected or maintained which either because of its illumination or location, poses a danger to vehicular or pedestrian traffic, or obstructs free ingress to or egress from any window, door, emergency exit, or fire escape.
- C. No sign other than an official traffic sign may be erected within the right-of-way line of any street, including sidewalks and walkways.
- D. Signs because of their design or location that may be confused with an official traffic sign or signal are prohibited.
- E. Signs with lighting must be constructed, placed, erected or maintained in accordance with Section 420 of this Ordinance.
- F. An existing sign related to a legally established nonconforming use shall be considered a nonconforming sign, which may be continued at its present dimensions and location, but shall not be enlarged or replaced without conforming to the dimensional requirements of this Ordinance. In all other instances, the provisions of this Ordinance governing non-conforming structures shall apply.
- G. All temporary signs erected for a special purpose, occasion, or event may be erected or maintained for a period not to exceed 60 days prior to the special purpose, occasion or event and shall be removed by the property owner or person erecting, placing or maintaining the sign within 10 days following the completion or conclusion of the purpose, occasion or event, or within 10 days following the date when the circumstances leading to their erection no longer apply.

- H. A sign shall be considered a structure for which a zoning permit shall be required prior to its erection, construction, installation or placement, or alteration.
- I. A wall sign shall not project over any public right-of-way nor extend more than two feet from the building or structure which is supporting it.
- J. In the event that the Pennsylvania Highway Beautification Program or another law or regulation has a more restrictive regulation governing signs, then the more restrictive regulation shall apply.

(2) Districts Permitted.

<u>Sign Type</u>	<u>Districts Permitted</u>
A. Business	B-1/C-1/I-1/PRD
B. Construction	All zoning districts
C. Billboard	I-1/B-1
D. Real Estate	All zoning districts
E. Name Plates/Identification	All zoning districts
F. Institutional	All zoning districts
G. Directional/Informational	All zoning districts
H. Subdivision/Development	All zoning districts
I. Special Event	All zoning districts
J. Political	All zoning districts
K. Non-advertising signs such as "posted"; "warning"; "private property"; "no trespassing"; and "beware of dog" may be erected at the discretion of property owners.	

(3) Dimensional Requirements. The construction, erection, reconstruction, alteration, placement or installation of permitted signs shall be governed by the following dimensional regulations:

A. Business:

Maximum Height:

Ground Sign: 25 feet

Wall Sign: 20 feet as measured from the base of the building wall.

Projecting Sign: No higher than the highest point of the roof or building where the sign is attached.

Maximum Number: One per zoning lot, or two with a corner lot with one facing each street.

Maximum Size/Area:

B-1- 32 square feet

I-1- 64 square feet

Minimum Setback:

Ground Signs: 15 feet measured from the front yard property line.

Location: On-site

B. Construction:

Maximum Height: 15 feet, as measured from the base of the sign or grade nearest adjacent street, whichever is higher.

Maximum Number: One per zoning lot, or two with a corner lot with one facing each street.

Maximum Size/Area:

R-1/C-1/PRD: 6 square feet

B-1/I-1: 32 square feet

Minimum Setback: Shall not extend over any lot line, or within 15 feet of any point of vehicular access from a zoning lot to a street.

Ground Signs: 15 feet measured from the front yard property line.

Location: On-site

C. Billboard:

Maximum Height: Not to project higher than 22 feet, as measured from the base of the sign or grade of the nearest adjacent street, whichever is lower.

Maximum Number: One per zoning lot, or two with a corner lot with one facing each street.

Maximum Size/Area: 300 square feet in surface area with only one exposed face.

Minimum Setback: The sign shall be located in accordance with the yard setback requirements for principal structures situated in the (I-1) Industrial Zoning District.

Location: Off Site

Additional Requirements:

- (i) Billboard signs shall not be located within 150 feet from any residential structure.
- (ii) There shall be a minimum spacing of 300 feet between all such signs.
- (iii) Such signs shall not be attached to a building or permitted to project from a building.
- (iv) Such a sign shall not be located within 150 feet of any street intersection.

D. Real Estate:

Maximum Height: 15 feet, as measured from the base of the sign or grade nearest adjacent street, whichever is higher.

Maximum Number: One per zoning lot, or two with a corner lot with one facing each street.

Maximum Size/Area:

R-1/C-1/PRD: Six square feet

B-1/I-1: 32 square feet

Minimum Setback: Shall not extend over any lot line, or within 15 feet of any point of vehicular access from a zoning lot to a street.

Location: On-site

E. Name Plates/Identification:

Maximum Number: One per approved zoning use

Maximum Height:

Ground Signs: 10 feet

Maximum Size/Area: 3 square feet

Minimum Setback:

Ground Signs: 5 feet from the front yard property line.

Location: On-site

F. Institutional:

Maximum Number: One for each principal building

Maximum Height: 35 feet, as measured from the base of the sign or building to which the sign is to be affixed or the grade to the nearest street, whichever is higher.

Maximum Size/Area: The gross surface area shall not exceed 32 square feet for each exposed face, or a gross surface aggregate of 64 square feet.

Minimum Setback:

Ground Signs: Shall not extend over any lot line, or within 15 feet of any point of vehicular access from a zoning lot to a street.

Location: On-Site

G. Directional/ Informational:

Maximum Number: One for each principal use.

Maximum Height: 10 feet, as measured from the base of the sign or building to which the sign is to be affixed or the grade of the nearest street, whichever is higher.

Maximum Size/Area: 6 square feet.

Minimum Setback:

Ground Signs: Shall not extend over any lot line, or within 15 feet of any point of vehicular access from a zoning lot to a street.

Location: On-site

H. Subdivision/Development:

Maximum Number: Not more than two for each point of vehicular access.

Maximum Height: No higher than seven feet, as measured from the base of the sign or grade of the nearest adjacent street, whichever is higher.

Maximum Size/Area: 20 square feet

Minimum Setback: Shall not extend over any lot line, or within 15 feet of any point of vehicular access from a zoning lot to a street.

Location: On-site

I. Special Event:

Maximum Height:

Ground Signs: 10 feet

Maximum Size/Area: 16 square feet

Additional Requirements: Such signs shall not be attached to trees or utility poles, or structures within any public right-of-way.

J. Political:

Maximum Size/Area: 20 square feet

Maximum Height:

Ground Signs: 10 feet

Maximum Size/Area: 20 square feet

Additional Requirements: Such signs shall not be attached to trees or utility poles, or structures within any public right-of-way.

K. Shopping Center:

Maximum Number: One per zoning lot

Maximum Height:

Ground Signs: 22 feet

Maximum Size/Area: 200 square feet

Location: On-site

Additional Requirements: This sign shall be permitted in addition to each individual business establishment having a business sign.

PARKING AND LOADING

Section 511. Off-Street Parking.

(1) Size of Off-Street Parking Spaces. Each off-street parking space shall have an area of not less than one hundred eighty (180) square feet, being nine (9) feet in width and twenty (20) feet in length, exclusive of access drives or aisles appurtenant to the space and giving access to it. The width of off-street parking spaces for uses with a

high customer turnover rate such as a convenience store or a fast food restaurant shall be increased to ten (10) feet.

(2) **Width of Driveway Aisles.** The minimum width of aisles providing access to the parking spaces, with one-way traffic, varying with the angle of parking, shall be:

Angle of Parking	Minimum Aisle Width
45 degrees	14 feet
60 degrees	18 feet
90 degrees	20 feet

The minimum width of aisles providing access to parking spaces with two-way traffic shall be twenty-four (24) feet.

3) **Required Spaces.** Any structure, building or use of land hereafter constructed, erected, converted, enlarged or placed into use shall comply with the minimum off-street parking spaces as provided herein. If any structure, building or use of land contains more than one of the following classified uses, then required parking for each specific use shall be provided. Parking spaces in carports, garages and driveways for single-family, two-family and townhouses can be counted towards the parking requirement.

<u>TYPE:</u>	<u>MINIMUM SPACE:</u>
<u>Single-family Structure:</u>	Two spaces for each dwelling unit.
<u>Two-family Structure:</u>	Two spaces for each dwelling unit.
<u>Multifamily Residential/ Apartments/Townhouses/ Condos:</u>	1.5 spaces for each dwelling unit plus 0.25 spaces per dwelling unit as a separate spillover parking area.
<u>Rooming or Boarding Homes:</u>	One space for each guest room.
<u>Home Occupation:</u>	One space for home occupation and one space for the non-resident employee, excluding those required for the dwelling unit.
<u>Churches/Places of Worship:</u>	One space for every three seats.
<u>Places of Public or Private Assembly:</u>	One space for every three seats.

<u>Schools, Elementary/Secondary:</u>	One space for each staff member, plus one space for every 20 classroom seats.
<u>College, Commercial, Business or Vocational Trade Schools:</u>	One space for each staff and/or faculty member, plus one space for every five classroom seats.
<u>Care Facilities:</u>	One space for each employee, plus one space for every five children or adults, based upon the maximum number of children which the facility is licensed to serve.
<u>Assisted Living Facilities:</u>	One space for every five beds, plus one space for each employee on the maximum working shift.
<u>Medical Offices or Clinics:</u>	One space for each 200 square feet of gross floor area.
<u>Social Halls, Clubs and Lodges:</u>	One space for every 100 square feet of gross floor area.
<u>Public Uses:</u>	One space for every 100 square feet of gross floor area.
<u>Public Utility Facilities:</u>	Two spaces per facility; if the facility includes maintenance and/or storage yards then the required number of spaces shall be one for each employee assigned to work at such facility.
<u>Recreational Facilities:</u>	One space for every 100 square feet of gross floor area
<u>Retail Businesses:</u>	One space for every 150 square feet of gross floor area.
<u>Restaurants (no bar/lounge):</u>	One space for every three seats, plus two spaces every three employees based upon the maximum working shift.
<u>Restaurants (with bar/lounge):</u>	One space for every two seats, plus two spaces every three employees based upon the maximum working shift.

<u>Fast Food (drive-thru):</u>	One space for every 100 square feet of gross floor area
<u>Fast Food (no drive-thru):</u>	One space for every 80 square feet of gross floor area
<u>Veterinary Clinic/Hospital:</u>	Five spaces for every veterinarian or doctor.
<u>Funeral Homes and Crematories:</u>	One space for every 100 square Feet of gross floor area.
<u>Professional Offices:</u>	One space for every employee.
<u>Motels and Hotels:</u>	One space for each unit for guest accommodations plus 1 space per full time employee on the largest shift.
<u>Bank Drive-In:</u>	One space for every 200 square feet of gross floor area.
<u>Bank Walk-In:</u>	One space for every 300 square feet of gross floor area.
<u>Automobile, Repair/Gasoline/Wash/Sales:</u>	One space for every 200 square feet of gross floor area, plus one space for each service or wash bay, gas pump.
<u>Other Commercial Uses/Buildings:</u>	One space for every 300 square feet of gross floor area.
<u>Warehousing:</u>	One space for every 2,000 square feet of gross floor area; plus one space for every two employees on the maximum working shift.
<u>Manufacturing / Industrial Uses:</u>	One space for every 1,000 square feet of gross floor area; plus one space for every two employees on the maximum working shift.

(4) Fractions of a Space. When the required off-street parking computation results in any fraction, the fraction shall be construed to require another additional off-street parking space.

(5) Location of Off-Street Parking Areas. Off-street parking spaces for any type of use shall be located on the same lot as the principal use for which the accessory off-street parking spaces are required. Off-street parking spaces may also be permitted on an adjoining lot held under the same ownership provided that the lot to be used for off-street parking and the lot on which the principal use is located are in the same zoning district; and the lot to be used for off-street parking shall be not less than 300 feet to any lot line on which the principal structure is located.

(6) Location and Layout of Off-Street Parking Spaces. Off-street parking areas shall be permitted in any yard area. If the parking area is located in a side or front yard, then the off-street parking spaces shall be located not less than five feet to the nearest point of the property line. Any non-residential off-street parking area when abutting a residentially used property shall be located not less than 15 feet from the residential property. All off-street parking areas shall be designed, constructed and used so that all vehicular maneuvering is contained within the lot and no vehicle shall be permitted to back into or out onto any public right-of-way.

(7) Paving of Off-Street Parking Areas. All required parking areas and parking spaces shall be paved with a concrete or bituminous paving material, or shall be surfaced so as to provide a durable and dustless surface.

(8) Handicap Parking Spaces. In addition to requirements of this Section, any person or business that owns, leases or operates a facility, which is open to the public or provides public accommodations including commercial facilities shall provide handicap parking spaces in accordance with state and federal laws and regulations.

Section 512. Off-Street Loading Spaces.

(1) Size of Off-Street Loading Spaces. Every off-street loading space shall be not less than 50 feet in depth, 12 feet in width and provide an overhead clearance of not less than 14 feet.

(2) Required Spaces. Off-street loading spaces must be provided for all commercial, industrial and other non-residential establishments and in no case shall a public right-of-way be used for the loading, unloading, or storage of any vehicles. Off-street loading spaces must be provided in accordance with the following schedule:

TYPE:

MINIMUM SPACE:

Commercial Establishments:

One space for every 10,000 square feet of gross floor area.

Industrial, Warehouse, Factory, Manufacturing:

One space for every 7,500 square feet of gross floor area.

Schools, Hospitals, Funeral Homes:

One for every 15,000 square feet of gross floor area.

(3) Location and Layout of Off-Street Loading Spaces. Off-street loading spaces shall not be permitted in any front yard area. All loading areas shall whenever possible be designed, constructed and used so that all vehicular maneuvering is contained within the lot and no vehicle shall be permitted to back into or out of the public right-of-way.

(4) Paving of Off-Street Loading Spaces. All off-street loading areas and spaces shall be paved with a concrete or bituminous paving material, or shall be surfaced so as to provide a durable and dustless surface.

Section 513. Access Drives.

(1) Size of Access Drives. There shall be adequate ingress or egress to all parking spaces and loading spaces by way of an access drive leading to the off-street parking and loading areas. Within ten feet of the street right-of-way line, access drive may not exceed 30 feet in width.

(2) Required Spaces. Access drives to off-street parking and loading areas shall be limited to well defined locations, unless otherwise provided under this Ordinance for a specific type of use. The number of access drives shall not exceed two for each zoning lot.

(3) Location and Layout of Off-Street Loading Spaces. Access drives shall be located and designed so as to prevent the blocking of vehicles entering or exiting the site; so as not to cross any street right-of-way; in such a manner that provides safe and adequate drainage; and to provide sight distances that do not obstruct one's vision.

(4) Paving of Access Drives. All access drives shall be paved with a concrete or bituminous paving material, or shall be surfaced so as to provide a durable and dustless surface.

ARTICLE 6
SUPPLEMENTAL REGULATIONS FOR SPECIFIC USES

Section 601. Applicability. This Article specifies certain uses, whether permitted by right, special exception or variance, that shall be subject to the following additional regulations and requirements besides those set forth elsewhere within this Ordinance.

Section 602. Specific Uses.

(1) Adult Use. No adult use shall be located less than 2,000 linear feet from any of the following:

- A. A residential zoning district, or existing residential dwelling unit.
- B. A place of worship.
- C. A public or quasi-public use or structure.
- D. School, day care center or child nursery.
- E. Another adult use.
 - 1. A 50 feet buffer yard shall be provided and the property (except for access drives) shall be screened by a wall or fence not less than eight feet in height and a planting strip not less than five feet in depth, with shrubbery, plants or evergreen trees which are a minimum of six feet in height at the time of planting. This area must then be suitably landscaped and maintained.
 - 2. No pornographic material, display or words shall be placed in view of persons who are not inside the establishment.

(2) Agricultural Uses.

A. Horse Stables and Riding Academies. The minimum lot size shall be two acres, and the maximum density shall be one horse per acre. No storing manure shall be located within 250 feet of any lot line. Manure shall be regularly collected and disposed of in such a manner so as to prevent odors and surface liquids from leaving the property.

B. Raising of livestock or Poultry. Minimum lot size for the raising of live stock or poultry shall be five acres, and the raising of more than 50 animals shall require a minimum lot size of 25 acres. In both cases, the minimum building and other impervious surface coverage shall not exceed 10%. Any structure or concentrated feeding or grazing area for the raising of 50 or less animals shall be located not less than

100 feet from a lot line, and 250 feet from any lot line of an existing residential dwelling unit, or residential zoning district. This section shall not be interpreted to permit an agricultural use in a residential district. Any structure or concentrated feeding or grazing area for the raising of more than 50 animals shall be located not less than 300 feet from a lot line, and 1,000 feet from any lot line of an existing residential dwelling unit, or residential zoning district. The setback distances set forth in this section may be increased by the Zoning Hearing Board after taking into consideration prevailing wind patterns. No animals, animal products, or animal waste/manure shall be permitted within the required yard areas. Manure storage facilities and concentrated feeding areas used for the keeping of livestock or poultry shall not be located within 250 feet of any stream, body of water, floodplain, water source, water well or open sinkhole. Any operation regulated under the Pennsylvania Nutrient Management Act shall provide evidence that the use will comply with the applicable provisions of the Act. Access drives shall be sufficient in size to accommodate the anticipated amount, type and size of vehicular traffic.

C. Retail Sales of Agricultural Products (including nurseries). The erection of temporary structures shall be permitted provided that they are disassembled at the end of each season when products are not being offered for sale. No area, temporary structure, stand, parking area or loading space utilized for the sale of agricultural products shall be located less than 50 feet to any existing residential dwelling unit, residentially zoned boundary line, and street right-of-way; and not less than 100 feet of any street intersection. The applicant shall prove that the all access drives have adequate sight distances based upon Pennsylvania Department of Transportation regulations and guidelines regardless of whether the access drive abuts a state highway.

(3) Animal Hospital. An animal hospital shall maintain all activities within a completely enclosed soundproof building, and no objectionable odors shall be vented outside the building. No animal hospital shall be located less than 35 feet from any property line.

(4) Animal Kennels. Any buildings, runways, fenced enclosures and similar structures shall be located not less than 100 feet from all property and street lines. Where the property abuts a zoning district having residences as a principal permitted use, all buildings, runways, fenced enclosures and similar structures shall be located not less than 200 feet from such property lines.

(5) Apartment Buildings And Townhouses (Multi-Family Dwelling Units). The building shall contain no more than six single-family dwelling units. Maximum building height shall be three stories or 35 feet. Maximum percentage of building coverage on a lot per dwelling unit, exclusive of common or public open areas, shall be 30%. A minimum of 30% of the total lot area shall be set aside and devoted as common open space to be developed for recreational purposes limited to use by the residents and their guests. A lot area of 2,500 square feet shall be required for each dwelling unit. A minimum lot width of not less than 150 feet shall be required. The minimum distance between principal structures shall be 30 feet. The exterior appearance of the building

shall be so constructed and maintained so as to retain the residential character of the neighborhood. Fire escapes, when required, shall be located in the rear of the building and shall not be located on any side of the building that faces a street. Service entrances, trash and garbage and drying yards shall be enclosed, and screened from public view.

(6) Airport or Heliport. A minimum lot size of 10 acres shall be required for a heliport, and 50 acres for an airport. The entire perimeter of the runway or landing/take-off area shall be enclosed by a fence not less than eight feet in height. The surface area of the runway or landing/take-off area shall be paved. The runway or landing/take-off area shall be located not less than 300 feet from all property lines. Where the property abuts either a zoning district having residences as a principal permitted use, or a property being used for residential purposes, then the runway or landing/take-off area shall be located not less than 500 feet from such property lines. Bulk fuel storage shall not be considered an accessory use, but shall be permitted in accordance with the provisions of this Ordinance that regulate such a use.

(7) Assisted Living Facilities, Nursing Homes Or Personal Care Centers. The minimum lot size shall be one acre. All buildings shall be located not less than 50 feet from any property line or street line. A minimum of 20% of the lot shall be designed, developed, used, and maintained for outdoor recreational activities limited to one or more of the following: garden areas, sitting areas, picnic areas and/or pedestrian walkways.

(8) Auto Related Activities.

A. Auto Repair Garage. Activities including the repair of automobiles, trucks, snowmobiles and motorcycles shall be conducted within a completely enclosed building where adequate measures shall be taken to minimize noise, vibrations, fumes and glare. All paint work shall be performed within a building, with a ventilation system that directs fumes away from adjacent properties and buildings. Temporary outdoor parking of vehicles intended to be replaced is permitted in the side or rear yard areas only, and those vehicles shall be licensed and inspected at all times. Storage of vehicles shall be permitted for no longer than 30 days. Service bays shall face the front yard property line whenever possible. Where the operation abuts on the side or rear yard property line of a property used for residential purposes, or zoned for such purposes, a substantial attractive fence six feet in height shall be constructed and maintained in good condition along such property line or lines.

B. Auto/Boat/Recreational Vehicles/Motorcycles, Manufactured Home or Mobile Home Sales. The outdoor display of new or used automobiles, boats, recreational vehicles, motorcycles, manufactured homes or mobile homes shall be not be located on any part of an existing or future street right-of-way or required parking area. The display area shall meet the required principal building setback requirements of the zoning district in which the property is so located. Where the sales operation abuts on the side or rear yard property line of a property used for residential purposes, or zoned for such purposes, a substantial attractive fence six feet in height shall be constructed and maintained in good condition along such property line or lines.

C. Auto Service Stations. This use shall include convenience stores and car washes. When a service station abuts on the rear or side lot line of a district having residences as a principal use or a property being used for residential purposes, a solid wall or substantial attractive fence being six feet in height shall be constructed and maintained in good condition along such boundary. Fuel pumps or other service appliances may be located in any yard provided that the pumps are not less than 25 feet from the existing street right-of-way and meet side yard principal building setbacks. All repairs, service, storage or similar activities in connection with the use shall be conducted within an enclosed building. In the event of washing activities or the operation of a car wash, appropriate drainage facilities for washing automobiles shall be provided, wherein water from the car wash will not flow onto sidewalks, streets or adjoining properties. The site shall be sufficiently large to accommodate three cars per awaiting washing during peak periods so that lines along streets are avoided.

(9) Bed and Breakfast. The use shall have a residential appearance and character. Except for a permitted identification sign, the use of any other type of signs, show windows or other displays for advertising shall be prohibited. The use shall be operated and/or managed by permanent residences of the property. There shall not be separate cooking facilities in any guestroom, and food shall only be prepared or served to overnight guests unless a restaurant is also a permitted use within the zoning district in which the property is located. No guests shall be permitted to stay for more than four weeks in any given year.

(10) Boarding or Rooming Houses. The minimum lot area shall be two acres and the minimum lot width shall be 200 feet. The maximum density for the use shall be six bedrooms per acre of land area and a boarding or rooming house shall serve no more than 20 persons. Each bedroom shall be limited to no more than two adults. Rooms shall be rented for a minimum of five days.

(11) Bulk Fuel Storage. Bulk fuel storage shall be located on a tract of land not less than ten acres. Storage tanks shall be located not less than 2,500 feet from any property line and shall be not less than 2,500 feet from any dwelling, school, church or similar use. Cylinder filling rooms, pumps, compressors and truck filling stations shall be located not less than 2,500 feet from all property lines. The tank storage area shall be fenced with a chain link fence at least six feet in height and properly locked. If the storage property abuts on the side or rear property line containing a residence, the fence shall be screened from view by a dense growth of evergreens at least five feet in height at the time of planting. Bulk fuel storage facilities shall be developed in full compliance with all applicable federal, state and insurance regulations.

(12) Business Park. The minimum lot size shall be 20 acres, and each principal building shall be located on a lot not less than five acres in area. All buildings must be setback not less than 60 feet from a property line and 150 feet from a street line. Where the park or development abuts a zoning district where residences are a principal permitted use, or where an existing residential dwelling unit is located, a solid wall or substantial,

attractive fence not less than eight feet in height shall be constructed and maintained in good condition along such boundary line, and a buffer yard of not less than 150 feet in width must be landscaped, and maintained in good condition at all times. No structures, parking, loading, storage of any kind, or any use shall be allowed within the buffer yard.

(13) Commercial Poultry, Hog Farms, Fur Farms, Concentrated Animal Operations, Concentrated Animal Feeding Operations, or Fertilizer Plants.

A. Any building, or area used for the housing, feeding, watering, or running of livestock or poultry shall be set back at least five hundred (500) feet from all property lines.

B. Any building, or area used for the housing, feeding, watering, or running of livestock or poultry shall be set back at least one hundred fifty (150) feet from all permanent surface waters, wetland areas, and wells that provide water for human consumption. A riparian forest buffer must also be maintained between the operation and any stream or creek a distance of 150 feet from the edge of the water. If natural forest does not exist to comply with the riparian buffer requirement, then a planting plan must be submitted and approved from the Zoning Board as part of the special exception approval.

C. All operations shall be required to submit a plan for control of erosion and sedimentation prepared by a Professional Engineer and consistent with the requirements of the Nutrient Management Act. This plan shall be required even if not required by the provisions of the Nutrient Management Act itself, and all operations and activities shall be conducted in accordance with such plans. If at any time, the nutrient management plan is amended, the applicant must submit written evidence to the Township of the plan approval.

D. The applicant shall furnish evidence from the Luzerne County Conservation District that the proposed use has an approved conservation plan. All subsequent operations and activities shall be conducted in accordance with the conservation plan. If, at any time, the conservation plan is amended, the applicant must again furnish evidence to the Township from the Luzerne County Conservation District that the amended plan has been approved.

E. The applicant shall submit, and abide by written qualified evidence describing those methods that will be employed to: 1. minimize odor on nearby properties in accordance with an approved odor management plan under PA Nutrient Management Act; and 2. dispose of dead animals according to the regulations of the Pennsylvania Department of Agriculture. In the event of a catastrophic event in which mass disposal is warranted the Pennsylvania Department of Agriculture can require whatever disposal methods are deemed appropriate to safeguard animal and public health; and 3. comply with the above-required nutrient management plan and conservation plan.

F. Any exhaust or ventilation fans used in the operation shall be directed away from adjoining property lines.

G. Any driveway or access drive providing for vehicular access to the proposed use shall maintain a fifty (50) foot wide radius for all turns and intersections, and be located not less than five hundred (500) feet from an adjoining property.

H. All buildings used for the housing of livestock shall be fitted with a solid concrete slab or slotted floor.

I. The property whereupon the concentrated animal feeding operation is located shall be graded such that runoff from the area of the operation is not discharged onto surrounding properties, public roads, or into any permanent surface water.

J. Such operations must demonstrate compliance with all State and Federal laws and regulations governing the specific operation.

(14) Contractors' Storage Yards. Commercial or industrial uses utilizing outdoor storage space which exceeds an area of more than 2,000 square feet shall be located on a tract of land of not less than 25,000 square feet. Supplies stored outdoors shall be neatly arranged and no required yard areas shall be used for storage. There shall be a roadway 14 feet in width provided for in every 40 linear feet of stored materials. The roadway shall be kept passable for fire-fighting equipment. Where the operation abuts on the rear or side lot line of a district having residence as a principal permitted use, a solid wall or substantial fence being six feet in height shall be constructed and maintained in good condition along such boundary. Outside lighting shall be directed away from adjoining properties.

(15) Cemeteries. The minimum lot area shall be two acres, which may be on the same lot as a permitted place of worship. All structures, graves or places of permanent burial shall be set back not less than 50 feet from all property lines and street lines, and shall not be located within any 100-year flood plain. The cemetery shall be enclosed by a fence, wall or shrubbery at least three feet in height. The interior roads shall have a minimum width of 12 feet and shall be properly maintained with either gravel or paving. The applicant and/or owner must provide sufficient proof that an appropriate financial system is in place or will be implemented to guarantee perpetual maintenance of the cemetery.

(16) Child Care Facilities. All outdoor play areas shall be completely enclosed with a fence being six feet in height. Outdoor play activities shall be limited to the hours between 10:00 A.M. to 5:00 P.M. local time. The applicant and/or owner shall provide evidence that vehicular traffic congestion will be avoided in "pick-up and drop-off points" utilized in transporting children to and from the facility.

(17) Communication Antennas And Equipment Buildings. Building mounted communication antennas shall not be located on any single-family or two-family

dwelling units. Building mounted communication antennas shall be permitted to exceed the height limitations of the applicable zoning district by no more than 20 feet. Omni-directional or whip communication antennas shall not exceed 20 feet in height and seven inches in diameter. Directional or panel communication antennas shall not exceed five feet in height and three feet in width. Any applicant proposing communication antennas to be mounted on a building or structure shall submit: (a) evidence from a Pennsylvania registered professional engineer certifying that the proposed installation will not exceed the structural capacity of the building or other structure, considering wind and other loads associated with the antenna location; (b) detailed construction and elevation drawings indicating how the antennas will be mounted on the building or structure for review for compliance with the applicable building code; and (c) evidence of agreements and/or easements necessary to provide access to the building or structure on which the antennas are to be mounted so that installation and maintenance of the antennas and communication equipment building can be accomplished. Communication antennas shall comply with all applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic radiation. Communication antennas shall not cause radio frequency interference with other communication facilities located within Black Creek Township. A communication equipment building shall be subject to the height and setback requirements of the applicable zoning district for accessory structures. The owner or operator of communication antennas must be licensed by the Federal Communication Commission to operate such antennas.

(18) Communications Towers.

A. The applicant must be licensed by the Federal Communications Commission to operate a communication tower. The applicant must demonstrate that the proposed communication tower complies with all applicable standards established by the Federal Trade Commission governing human exposure to electromagnetic radiation, Federal Aviation Administration regulations, and Commonwealth Bureau of Aviation regulations. Any applicant proposing construction of a new communications tower shall first demonstrate that a good faith effort has been made to obtain permission to mount the communication's antenna on an existing building, structure, or communications tower. A good faith effort shall require that all owners of a potentially suitable structure within a two-mile radius of the communications tower site be contacted and that one or more of the following reasons for not selecting such structure apply: (1) The proposed antennas and related equipment would exceed the structural capacity of the existing structure and its reinforcement cannot be accomplished at a reasonable cost; (2) The proposed antennas and related equipment would cause radio frequency interference with other existing equipment for that existing structure and the interference cannot be prevented at a reasonable cost; (3) Such existing structures do not have adequate location, space, access or height to accommodate the proposed equipment or to perform its intended function; (4) Addition of the proposed antennas and related equipment would result in electromagnetic radiation from such structure exceeding applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic radiation; or (5) A commercially reasonable agreement could not be reached with the owners of such structures. Access shall be provided to the

communication tower and communication equipment building by means of a public street or easement to a public street. The easement shall be a minimum of 20 feet in width and shall be improved to a width of at least 10 feet with a dust free, all weather surface for its entire length. A communication tower may be located on a lot occupied by a principal structure and may occupy a leased parcel within a lot meeting the minimum lot size requirements for the zoning district. Land development shall not be required for a lease parcel on which a communication tower is proposed to be constructed provided that the communication equipment building is unmanned. However, a subdivision plan shall be required for a lease parcel on which a communication tower is proposed to be constructed. The applicant shall demonstrate that the proposed height of the communication tower is the minimum height necessary to perform its functions, but in no event shall a communication tower exceed 150 feet. However, a communication tower's height may be increased to 200 feet provided the required setbacks from adjoining property lines (not lease lines) are increased by one foot for each one foot of height in excess of 150 feet. The foundation and base of any communication tower located adjacent to any property being used for residential purposes, or adjacent to any property where the principal permitted use is residential, shall be setback from the property line (not lease line) at least 150 feet and shall be set back from any other property line (not lease line) at least 50 feet. The base of a communication tower shall be landscaped so as to screen the foundation and base and communications equipment building from abutting properties. The communications equipment building shall comply with the required setbacks and height requirements of the applicable zoning district for an accessory structure. The applicant shall submit certification from a Pennsylvania registered professional engineer that a proposed communications tower will be designed and constructed in accordance with the current structural standards for steel antenna towers and antenna supporting structures published by the Electrical Industrial Associations/Telecommunications Industry Association. The applicant shall also submit a copy of its current Federal Communications Commission license; the name, address and emergency telephone number for the operator of the communication tower; a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000.00 per occurrence and property damage coverage in the minimum amount of \$1,000,000.00 per occurrence covering the communication tower, communication antennas, communication equipment and communication building. Proof of said insurance to be submitted annually to the Black Creek Township Zoning Officer.

B. All guy wires associated with the guyed communication tower shall be clearly marked so as to be visible at all times and shall be included within a fenced enclosure. The site of a communication tower shall be secured by a fence with a minimum height of eight feet to limit accessibility by the general public. A minimum of one off-street parking space shall be provided within the fenced area. No lights or signs shall be mounted on a communication tower except as may be required by the Federal Communications Commission, Federal Aviation Administration, or all other governmental agency having jurisdiction. If a communication tower remains unused for a period of 12 consecutive months, the owner or operator shall dismantle and remove the communication tower within six months of the expiration of the 12 month period. The

owner or operator must provide a bond to the Township in a monetary amount sufficient to cover the costs of removal. The cost of removal shall be determined by the Township.

(19) Drive Through Facilities. Any use providing a drive-through (i.e. bank, eating establishment, etc.) shall comply with the following requirements:

A. The drive through lane or aisle shall be designed with adequate space for a minimum of four waiting vehicles per lane or aisle. There shall be a maximum of one lane or aisle per drive through window.

B. Each drive through lane or aisle shall be clearly marked and designed so as to prevent traffic hazards and congestion while at the same time minimizing conflicts with pedestrian travel.

C. Canopies situated over drive-through areas shall meet all setback requirements for the zoning district in which the property is located.

(20) Dwellings Above Or In Combination With Commercial Establishments. Such a dwelling must be attached to the commercial establishment and designed for living quarters. The dwelling must have its own heating, kitchen, and bathrooms facilities. The dwelling must also have a private access separate from the commercial establishment. Required residence parking and commercial parking must be provided for each use in accordance with the parking requirements of this Ordinance.

(21) Forestry/Timber Harvesting Activities.

A. Applicability. This Section applies to all timber harvesting and land clearing within Black Creek Township where the value of the trees, logs and/or other forest products removed exceeds \$1,000.00. It does not cover the cutting of trees for the personal use of the landowner, or for pre-commercial timber stand improvement.

B. Submission and Approval of Logging Plan.

1. Plan Approval Requirement. It shall be unlawful for any operator or landowner to conduct timber harvesting on more than five acres in the Township of Black Creek except as provided in an approved logging plan which is available at the harvest site at all time during the operation.
2. Plan submission, approval, and appeal. At least 30 business days before the operation is scheduled to begin, a landowner on whose land timber harvesting is to occur shall prepare and submit to the Township Zoning Officer a written plan or amendment in the form specified in this Section. Within 30 business days of the receipt of the plan or amendment, the Township Zoning Officer shall approve (with or without

conditions) or deny the plan. The landowner may appeal the decision of the Zoning Officer within 30 days of issuance to the Zoning Hearing Board.

3. Notification. The operator shall notify the Zoning Officer in writing at least two business days before operations commence and ten business days before operations are completed under an approved timber harvesting plan. The notification shall identify the operation, and, as applicable, shall specify the commencement or completion date.

C. Contents of Logging Plan.

1. Minimum Requirements: As a minimum, the logging plan shall include the following:
 - i. Design, construction, maintenance and retirement of the access system, including, haul roads, skid roads, skid trails, and log landings;
 - ii. Design, construction and maintenance of water control measures and structures such as culverts, broad-based dips, filter strips, and water bars;
 - iii. Design, construction and maintenance of stream and wetland crossings;
 - iv. A stand prescription for each stand located in the proposed harvest area; and
 - v. The general location of the proposed operation in relationship to municipal and state highways, including any access to those highways.
2. Map: Each logging plan shall include a site map containing the following information:
 - i. Site location and boundaries, including both the boundaries of the property on which the timber harvest will take place and the boundaries of the proposed harvest area within that property;
 - ii. Significant topographic features related to potential environmental problems;

- iii. Location of all earth disturbance activities such as roads, landings, and water control measures and structures;
- iv. Location of all crossings of waters of the Commonwealth; and
- v. The general location of the proposed operation to municipal and state highways, including any access to those highways.

- 3. Compliance with all State and Local Laws and Regulations: The plan shall address and comply with the requirements of all applicable State land local laws and regulations including, but not limited to erosion and sedimentation control; stream crossing and wetland protection; and storm water management. Any permits required by state and local agencies shall be attached to and become a part of the logging plan.

D. Forest Practices. The following requirements shall apply to all timber harvesting activities within Black Creek Township:

- 1. Felling or skidding on or across any public thoroughfares is prohibited with the express written consent of the Township, County or Pennsylvania Department of Transportation; whichever is responsible for the maintenance of the thoroughfare.
- 2. No tops or slash shall be left within 25 feet of any public thoroughfare or private roadway providing access to adjoining property.
- 3. All tops and slash between 25 feet and 50 feet from a public roadway or private roadway providing access to any adjoining property or within 25 feet of any adjoining property line shall be lopped to a maximum height of four feet above the ground level.
- 2. No tops or slash shall be left on or across the boundary of any property adjoining the operation without the consent of the owner.
- 3. Litter resulting from a timber harvesting operation shall be removed from the site before the operator vacates it.

4. A buffer strip of at least 50 feet must be maintained along any road, stream, or recognized recreational trail. Selective cutting only will be allowed in these zones except for salvage cuts.
5. Timber operations and related activities shall be conducted only between the hours of 7:00 A.M. and 7:00 P.M. unless authorized by the Zoning Hearing Board.
6. Soil carried or washed onto public streets during the operation shall be removed daily.
- b. Road Maintenance, Repair And Bonding. The landowner and the operator shall be responsible for repairing any damage to township, state, or county roads caused by traffic associated with the timber harvesting operation to the extent of the damage that is in excess of that caused by normal traffic. Pursuant to 67 Pennsylvania Code, Chapter 189, the Township may require the landowner or operator to furnish a bond to guarantee the repair of such damages.

(22) Group Home. Group Homes are permitted within a permitted residential dwelling unit provided that:

A. The maximum occupancy shall not exceed six unrelated persons, excluding paid professional staff members, who shall live on the premises and function as a common household unit.

B. The Group Home shall have adequately trained and licensed professional staff supervision for the number and type of residents.

C. Evidence of applicable Federal, State and County licensing or certifications shall be presented to the Zoning Officer with the permit application.

D. Written documentation must be provided at the time the permit application is made verifying that the Group Home complies with all applicable governmental standards and regulations.

E. The exterior appearance of the Group Home shall be residential in nature.

(23) Home Occupations. A home occupation shall be subject to the following provisions:

A. The occupation shall be carried on entirely within the principal structure or an attached or unattached accessory structure provided that the accessory structure is located on the same lot as the principal structure.

B. No display or advertisement of products or services may be visible from outside the building. Any storage of materials associated with the home occupation shall be within the building.

C. A sign no larger than two square feet in surface area is permitted. The sign may only be lit with indirect lighting.

D. No person other than a resident of the dwelling unit may conduct the home occupation. No more than one non-occupant may be employed to perform secretarial, clerical or other assistance.

E. Not more than 30%, or 600 square feet, whichever is less, of the total floor area of the building wherein the home occupation is being conducted may be devoted to the home occupation.

F. Each home occupation shall have off-street parking as indicated below, in addition to that one space required for the dwelling unit.

1. One space for the home occupation and one space for the non-resident employee, if applicable.
2. Three additional parking spaces for a physician, dentist, or other licensed medical practitioner.
3. Two additional parking spaces for a barber, beautician or other similar occupation.

G. Where the building or dwelling unit is service by on-lot sewage disposal system, the applicant must show that the existing sewage disposal system is adequate to service the home occupation.

H. The home occupation may not disturb the peace, quiet and dignity of the neighborhood by electrical interferences, dust, noise, smoke, or traffic generated by the use.

I. There shall be no retail sales of goods except those goods that are prepared or produced on the premises.

J. There shall be no change in the residential character of the building wherein the home occupation is being conducted.

(24) Industrial Park. The minimum lot size shall be 40 acres, and each principal building shall be located on a lot not less than ten acres in area. All buildings must be setback not less than 120 feet from a property line and 300 feet from a street line. Where the park or development abuts a zoning district where residences are a principal

permitted use, or where an existing residential dwelling unit is located, a solid wall or substantial, attractive fence not less than ten feet in height shall be constructed and maintained in good condition along such boundary line, and a buffer yard of not less than 300 feet in width must be landscaped, and maintained in good condition at all times. No structures, parking, loading, storage of any kind, or any use shall be allowed within the buffer yard.

(25) Junk Yards, Automobile Dismantling Plants And Automobile Salvage Yards. Junkyards shall comply with the following:

- A. Such premises shall at all times be maintained so as not to constitute a private or public nuisance, or adversely impact the public health, safety or welfare.
- B. Burning or incineration of any kind shall be prohibited.
- C. No garbage, organic waste, rubbish, toxic materials and hazardous materials and hazardous materials shall be stored on such premises.
- D. Whenever any motor vehicle shall be received on such premises as junk, all gasoline and oil shall be drained and removed from the vehicle.
- E. The storage of any combustible materials, such as gasoline, oil or related items, shall be placed in fireproof containers and stored within a fireproof building.
- F. The manner of storage and arrangement of junk and the drainage facilities on the site shall be such as to prevent the accumulation of stagnant water upon the premises, which is a place for the breeding of rodents, insects and vermin.
- G. Stockpiling of motor vehicles is prohibited.
- H. Outdoor storage of junk may not be piled higher than eight feet in height, and must be setback no less than 100 feet from any adjoining property line, street right-of-way, water way, 100 year floodplain, and drainage swale.
- I. The site shall contain a minimum of two access drives, each of which shall remain unobstructed at all times for emergency vehicles and be not less than 20 feet in width.
- J. The minimum lot size shall be 10 acres and the maximum lot size shall be 20 acres.
- K. Motor vehicles, parts and other junk shall be arranged in such a manner as to allow access drives no less than 12 feet in width for emergency vehicles. The access drives shall be kept open and unobstructed at all times.

L. Except for the required access drives, the premises shall be completely screened by a wall or fence not less than eight feet in height and a planting strip not less than five feet in depth, with shrubbery, plants or evergreen trees which are a minimum of six feet in height at the time of planting. This area must then be suitably landscaped and maintained.

(26) Medical Clinics.

A. A medical clinic shall have the minimum lot size required for the zoning district in which the lot is located, except that in no event shall the minimum lot be less than three acres, whether it is new construction or renovation of an existing structure.

B. A supervised recreational area shall be provided for the residents of any medical clinic.

C. The clinic must be supervised and secured in such a manner as to adequately protect the safety of the general public. The application must state the conditions that will cause persons to occupy the center and the manner in which the center will be supervised and secured.

D. A medical clinic shall not be established or located within 5,000 feet of any of the following uses:

1. A school or child care facility.
2. Public park, playground or similar recreational facility.
3. A residential dwelling unit.
4. A boundary of a zoning district where residential dwelling units are permitted as a principal use.
5. A place of worship.

E. The provisions specifically regulating methadone treatment facilities shall apply whether or not an occupancy permit or certificate of use has been issued to the owner or operator of a medical clinic for a location that is within 5,000 feet of an existing school or child care facility; public park, playground or similar recreational facility; a residential dwelling unit; a boundary of a residential zoning district; and a place of worship established prior to the proposed medical clinic.

(27) Mineral Extraction.

A. The use, activity or any aspect of the operation shall be located not

less than 1,000 feet from any street right-of-way and lot line; 1,500 feet from any 100 year floodplain, edge of a surface water body, creek, stream or wetland; and 4,000 feet from any residential zoning district, or lot line where a residential dwelling unit, place of worship, or public recreational activity is located.

B. Except for approved access drives (which shall be secured by locked gates, which may only be open during business hours), the premises shall be completely screened to protect public safety with an industrial type gauge fence eight feet in height. Signs shall be conspicuously attached to the fence every 75 feet warning the public of the nature of the operation. A yard area not less than 50 feet in width shall also be maintained with natural vegetative ground cover along all exterior lot lines that are within 300 feet of an area of excavation. This yard shall include an earth berm with a minimum height of six feet and an average of one shade tree for each for each 50 feet of distance along the lot lines. The shade trees shall be planted outside of the required berm and fence. If substantial trees, vegetation or forest exist within the required yard area, then new plantings in those area is not necessary provided that the existing trees, vegetation or forest are well-kept, preserved, maintained and adequately serve the purpose for which the yard was to be created.

C. The lot and operation thereon shall at all times be maintained so as not to constitute a private or public nuisance, or adversely impact the public health, safety or welfare. The days and hours of operation, including excavation, blasting and relating trucking, may be limited by the Zoning Hearing Board taking into consideration the characteristics of the neighborhood.

D. The site shall contain a minimum of two access drives, each of which shall be not less than 24 feet in width, and all of which shall be improved in accordance with the Black Creek Township Subdivision and Land Development Ordinance, and connect to a public street sufficient in size to accommodate the proposed traffic expected to be generated by the use. Access drives shall be located so as to prevent public safety hazards, dust and noise.

E. All applications shall include a plan that evidences the measures to be taken by the operator to prevent dust, dirt, stone or other debris from escaping from the facility onto any public property/street, or private property of another.

F. All applications shall include an estimated life expectancy for the proposed use; a plan for the future productive use of the property once the life of the project has terminated; a proposed cost to reclaim the property and implement the future use; and a financial guarantee for implementation of that use.

G. All applications shall include the same information, written materials and plans that are to be submitted to the Pennsylvania Department of Environmental Protection, as part of the state permitting process.

H. A batch plant or processing operations shall constitute an industrial

use and shall not be considered an accessory use, but a separate and distinct use that shall require special exception approval when located on the same lot where the mineral extraction is taking place provided that industrial uses are permitted uses by right within the zoning district in which the property is located.

(28) Mobile Home/Manufactured Home Parks. The minimum lot size shall be ten (10) acres, which must be under single ownership. The lot shall have a minimum width at the minimum building setback line of 200 feet. The maximum density shall be three homes or dwelling units per acre. Except for required access drives, the entire lot shall be completely enclosed by a buffer yard 75 feet in depth measured at right angles to the tract boundary lines and three feet in height at the time of planting. The buffer yard shall be planted and maintained with attractive evergreens and deciduous trees. Each home or dwelling unit and any attached or unattached accessory structures shall be setback not less than 35 feet from any other home or dwelling unit located within the park. A minimum of 30 percent of the total lot area shall be set aside and devoted as common open space to be developed for recreational purposes limited to use by the residents and their guests. Access drives or driveways to individual homes or dwelling units shall be from interior private streets, which shall include the installation of curbing and sidewalks. All homes or dwelling units shall be connected to a central water and central sewer system.

(29) Motels And Hotels. Any lot to be used for a motel or hotel shall be not less than two acres in area and shall contain at least 10 sleeping rooms not less than 1,000 square feet per sleeping room. Not less than 60 percent of the gross floor area shall be devoted to sleeping rooms. The remaining floor area may be used for such uses as a restaurant, retail store, game room, ballroom and banquet room provided that these uses are primarily designed to serve the guests of the motel or hotel. All buildings and structures shall be not less than 60 feet from a front yard line, and not less than 35 feet from the side and rear lot lines. All areas not used for access, parking circulation, buildings and services shall be completely and permanently landscaped and the entire site maintained in good condition.

(30) No-Impact Home Based Business. The business or activity must satisfy the following requirements:

A. The business activity shall be compatible with the residential use of the property and surrounding residential uses.

B. The business shall employ no employees other than family members residing within the dwelling unit.

C. There shall be no display or sale of retail goods and no stockpiling or inventory of a substantial nature.

D. There shall be no outside appearance of a business use, including, but not limited to parking, signs and lights.

E. The business activity may not use any equipment or process which creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.

F. The business activity may not generate any solid water or sewage discharge in volume or type, which is not normally associated with residential use in the neighborhood.

G. The business activity shall be conducted only within the dwelling unit (no accessory building or structure) and may not occupy more than 25% of the habitable floor area.

H. The business may not involve any illegal activity.

(31) Outdoor Storage. The use of a lot for outdoor storage shall require a minimum lot size of not less than one acre. No outdoor storage shall be permitted within the required front yard. Except for a gated and located entranceway, the storage area shall be completely enclosed from public view by means of a screened chain link fence not less than six in height. The applicant shall also include a complete listing of all material to be stored on the lot, which shall be updated annually and filed with the Zoning Officer.

(32) Place of Worship. A minimum lot area of one acre shall be required for the use. Religious instruction and educational rooms may be permitted within the principal building as accessory uses. A minimum lot area of two acres shall be required when the use consists of one or more of the following accessory uses: primary or secondary school; day care center; and a single-family dwelling unit. Where the lot adjoins an existing residential dwelling unit, or is located within a residential zoning district, the parking area shall be screened along the side and rear lot lines with shrubbery or evergreen trees not less than four feet in height at the time of planting. The buffer area shall be kept in good condition and continuously maintained.

(33) Prison. The minimum lot size shall be 20 acres, and each principal building shall be located on a lot not less than ten acres in area. All buildings must be setback not less than 120 feet from a property line and 300 feet from a street line. Where the prison abuts a zoning district where residences are a principal permitted use, or where an existing residential dwelling unit is located, a solid wall or substantial, attractive fence not less than ten feet in height shall be constructed and maintained in good condition along such boundary line, and a buffer yard of not less than 300 feet in width must be landscaped, and maintained in good condition at all times. No structures, parking, loading, storage of any kind, or any use shall be allowed within the buffer yard. All areas not used for access, parking circulation, buildings and services shall be completely and permanently landscaped and the entire site maintained in good condition.

(34) Public Utility Buildings and Structures.

A. Public utility facilities shall conform to the following additional requirement. In a zoning district where residential dwelling units are a principal permitted use, the facility shall not include the storage of vehicles or equipment used in the maintenance and service of any utility, and no equipment may be located on the lot that would cause noise, vibration, smoke, odor or have any adverse impacts upon the health, welfare and safety of the community. In all other zoning districts, access and parking shall be permitted for maintenance and servicing of such facilities only.

B. When the use includes the storage of equipment not to be located within a building, the equipment shall be enclosed by a chain link fence and locked gate not less than six feet in height, which fence and gate must consist of screening material that has openings or gaps no greater than four inches in any dimension.

C. When the facility is located within a residential area, it shall be designed in such a manner as to conform with the characteristics of the neighborhood.

(35) Recreation, Outdoor. Except for campgrounds, race tracks, target/shooting ranges, paintball areas/facilities or ATV parks, outdoor recreational facilities, whether public, private or commercial, shall conform to the following additional requirements:

A. The outdoor recreation activity shall be conducted no closer to any property line than the minimum required front yard for the zoning district in which the property is located, and shall be screened by a buffer area with a minimum of 10 feet in depth and six feet in height at the time of planting. The buffer area shall consist of planted trees or shrubs, and shall completely surround the activity except for permitted access drives. Parking areas shall not be located within any buffer area, as the buffer areas must be properly landscaped and maintained in good condition at all times. Natural forest or woods may be provided in lieu of a buffer area provided that the minimum depth of the forest or wood area is 50 feet and it is consistently thick enough to serve the purpose of a buffer area.

B. The minimum lot size for any outdoor recreational use shall be not less than three acres.

C. A restaurant/tavern, entertainment facility, or retail store shall be permitted accessory uses to an outdoor recreational use provided that those uses are allowed in the applicable zoning district, and only when all the requirements for those particular uses have also been met.

D. A campground, target or shooting range, paintball area/facility, race track and ATV park shall be subject to the following requirements:

1. Campground: For each one acre of lot area there shall be a maximum of four recreational vehicle or tent sites, or cabin sleeping capacity for 12 persons. Cluster development is permitted for this particular use provided that each campsite has a minimum of 1,500 square feet of land area. All buildings, structures, sites, parking areas and access drives shall be located not less than 150 feet from any lot lines. A swimming pool and retail sales store shall be permitted accessory uses provided they are primarily intended for use by the persons camping on the property. No person other than the owner and/or manager may be permitted to reside on the property for more than four months in any calendar year, and recreational vehicle shall be permitted to be stored on the property for more than six months in any calendar year. A campground shall include not less than one stoned or paved entrance road from a public street, with a minimum width of 24 feet. The minimum lot size shall be five acres.

2. Target or Shooting Range: A target or shooting range shall be no less than five thousand 5,000 feet from any property, and not less than 5,000 feet from any existing residential dwelling unit or street right-of-way. The range shall be screened by a buffer area not less than 500 feet in depth and ten feet in height at the time of planting. The buffer area shall consist of planted trees or shrubs, and shall completely surround the activity except for permitted access drives. Parking areas shall not be located within any buffer area, as the buffer areas must be properly landscaped and maintained in good condition at all times. Natural forest or woods may be provided in lieu of a buffer area provided that the minimum depth of the forest or wood area is 500 feet and it is consistently thick enough to serve the purpose of a buffer area. The minimum lot size for any outdoor recreational use shall be not less than three acres. Hours of operation shall be limited to daytime hours only, and any lighting shall be limited to the hours of operation only. The days of operation shall be limited to Monday through Saturday. The facility shall not conduct any approved operations at any other times and days.

3. Paintball Area/Facility: A paintball area/facility shall be no less than five thousand 5,000 feet from any lot line, and not less than 5,000 feet from any existing residential dwelling unit or street right-of-way. All enclosed accessory buildings for uses not associated with paintball such as

retail stores, concession stands and restrooms and parking areas shall be set back not less than 2,500 feet from any lot line. The paintball area/facility shall be screened by a buffer area not less than 500 feet in depth and ten feet in height at the time of planting. The buffer area shall consist of planted trees or shrubs, and shall completely surround the activity except for permitted access drives. Parking areas shall not be located within any buffer area, as the buffer areas must be properly landscaped and maintained in good condition at all times. Natural forest or woods may be provided in lieu of a buffer area provided that the minimum depth of the forest or wood area is 500 feet and it is consistently thick enough to serve the purpose of a buffer area. The minimum lot size for any outdoor recreational use shall be not less than three acres.

4. Race Track: All principal structures and areas of the race track that are used for racing, testing, repair, fueling or maintenance shall be setback a minimum of 5,000 feet from any lot line. All enclosed accessory buildings for uses not associated with racing such as retail stores, concession stands and restrooms and parking/loading areas shall be set back not less than 2,500 feet from any lot line. The minimum lot size for a race track shall be not less than 100 acres. Hours of operation shall be limited to daytime hours only, and any lighting shall be limited to the hours of operation only. The days of operation shall be limited to Monday through Saturday. The facility shall not conduct any approved operations at any other times and days.

5. ATV Park: All principal structures and areas of the race track that are used for racing, testing, repair, fueling or maintenance shall be setback a minimum of 5,000 feet from any lot line. All enclosed accessory buildings for uses not associated with racing such as retail stores, concession stands and restrooms and parking/loading areas shall be set back not less than 2,500 feet from any lot line. The minimum lot size for a race track shall be not less than 100 acres. Hours of operation shall be limited to daytime hours only, and any lighting shall be limited to the hours of operation only. The days of operation shall be limited to Monday through Saturday. The facility shall not conduct any approved operations at any other times and days.

(36) Sawmill. The processing of cut trees from a property other than the property where the trees are being processed shall be conducted within a completely

enclosed building that shall not exceed five thousand 5,000 square feet in total floor area. The building must be located not less than 500 feet from a lot line, and any timber storage shall be completely screened and enclosed by a chain link fence and properly locked gate not less than six feet in height, which fence and gate must consist of screening material that has openings or gaps no greater than four inches in any dimension.

(37) School. A school, whether public or private, primary or secondary, shall have a minimum lot size of three acres, and any outdoor recreational or play area shall be located not less than 150 feet from any residential lot line, or existing residential dwelling unit.

(38) Self-Storage Facilities. These facilities may consist of one or more buildings provided that the following requirements are met:

- A. All storage shall be contained within a completely enclosed building or buildings.
- B. There shall be a minimum separation between buildings of 25 feet for traffic circulation, parking and fire lane purposes.
- C. The maximum length of any building shall not exceed 300 feet.
- D. No activities including off-street parking shall be allowed within 20 feet of a property line abutting a district having residences as a principal permitted use.

(39) Shopping Center. The minimum lot size shall be 50 acres, and the minimum lot width shall be 1,000 feet. All buildings shall be setback no less than 250 feet from any property line and 300 feet from any street right of way line. Access drives shall connect to a public street. Except for the front yard property line, the side and rear yards shall contain a buffer yard not less than 300 feet in width and six feet in height at the time of planting when the property adjoins either a residential zoning district, or an existing residential dwelling unit. The buffer area shall be landscaped and maintained and may not be used for parking, loading or storage purposes. Each use located within the center shall comply with the parking requirements of this Ordinance for that particular use.

(40) Solid Waste Landfill (Including Solid Waste Transfer Facility And Solid Waste-To-Energy Facility). All solid waste storage, disposal, incineration or processing shall meet the following requirements:

- A. The use, activity or any aspect of the operation shall be located not less than 250 feet from any street right-of-way, lot line, 100 year floodplain, edge of a surface water body, creek, stream or wetland; and not less than 1,500 feet from any residential zoning district, or lot line where a residential dwelling unit, place of worship, or public recreational activity is located.

B. Burning and incineration is prohibited, except for an approved waste to energy facility.

C. The site shall contain a minimum of three access drives, each of which shall be not less than 24 feet in width, and all of which shall be improved in accordance with the Black Creek Township Subdivision and Land Development Ordinance, and connect to a public street sufficient in size to accommodate the proposed traffic expected to be generated by the use. One of the access drives shall be restricted to use by emergency vehicles only, and shall be clearly marked and identified as such. The application shall also be accompanied by a plan of the site that includes the location of access drives and proposed structures, and an emergency response plan to address potential safety concerns associated with the use.

D. The lot shall at all times be maintained so as not to constitute a private or public nuisance, or adversely impact the public health, safety or welfare.

E. A solid waste facility shall have a maximum lot size of 25 acres, whether developed initially or cumulatively, with a maximum total capacity to treat or dispose of waste being 500 tons per day.

F. Except for the required access drives (which shall be secured by locked gates, which may only be open during business hours) the premises shall be completely screened by a wall or fence not less than eight feet in height and a planting strip not less than five feet in depth, with shrubbery, plants or evergreen trees which are a minimum of six feet in height at the time of planting. This area must then be suitably landscaped and maintained. In addition, an attendant shall be present during all periods of operation or dumping to ensure that: (1) only authorized waste is accepted; (2) the access drives remain unobstructed; and (3) litter, garbage and rubbish is collected from the site and its surrounding on a regular daily basis prior to the closing of business on each day.

G. The days and hours of operation shall be limited to Monday through Friday from 7 a.m. to 5 p.m. and Saturday from 7 a.m. to 4:00 p.m. The facility shall not conduct any approved operations at any other times and days.

H. The operator shall take all necessary precautions to prevent litter, garbage and rubbish from scattering off site, and shall regularly monitor the site and its surroundings collecting litter, garbage and other rubbish that may have escaped from the facility or trucks.

I. Dangerous materials such as radioactive, hazardous or infectious waste may not be stored, processed, disposed of, or incinerated on site.

J. All loading and unloading of solid waste shall occur within an

enclosed building, and over an impervious surface drain to a holding tank that is then adequately treated. All solid waste processing and storage shall occur within an enclosed building or enclosed container.

K. All applications shall include an estimated life expectancy for the proposed use; a plan for the future productive use of the property once the life of the project has terminated; a proposed cost to reclaim the property and implement the future use; and a financial guarantee for implementation of that use.

L. All applications shall include the same information, written materials and plans that are to be submitted to the Pennsylvania Department of Environmental Protection, as part of the state permitting process.

(41) Trucking Facilities. The minimum lot size shall not be less than four acres. Access drives shall be sufficient in width to accommodate the use, but in no event exceed 25 feet in width. Access drives must connect to a public street. Where the operation abuts a zoning district where residences are a principal permitted use, or where an existing residential dwelling unit is located, a solid wall or substantial, attractive fence not less than eight feet in height shall be constructed and maintained in good condition along such boundary line, and a buffer yard of not less than 300 feet in width must be landscaped, and maintained in good condition. No parking, loading, idling, storage of any kind, or trucking use shall be allowed within the buffer yard. All truck idling in excess of fifteen (15) minutes shall be prohibited.

(42) Warehouse and Distribution Facilities. All materials shall be stored within a completely enclosed building and outdoor storage of any kind is prohibited. Access drives shall be sufficient in width to accommodate the use, but in no event shall any access drive exceed 25 feet in width. No activities including off-street parking shall be allowed within 150 feet of a property line abutting a district having residences as a principal permitted use. All truck idling in excess of fifteen (15) minutes shall be prohibited.

(43) Water (Ground and Spring) Withdrawal. The minimum lot size shall be 25 acres; any silos shall meet the height requirements of the zoning district in which the property is located; loading and unloading of trucks shall constitute a trucking facility for purposes of this Ordinance and shall meet the specific use requirements for a trucking facility; and a bottling or processing plant shall constitute an industrial use and shall not be considered an accessory use, but a separate and distinct use that shall require special exception approval when located on the same lot where the water withdrawal is taking place provided that industrial uses are permitted by right within the zoning district in which the property is located.

ARTICLE 7
ADMINISTRATION

Section 701. Zoning Officer.

(1) Appointment and Qualifications. The Zoning Officer shall be appointed by the Township Board of Supervisors. The Supervisors may designate others to assist the Zoning Officer, who will serve with the same authority and duties as the Zoning Officer. The Zoning Officer shall not hold any elective office within the Township, but may hold other appointed offices provided that those offices do not conflict with his or her duties as Zoning Officer. The Zoning Officer shall meet qualifications established by the Board of Supervisors, which shall at minimum include a working knowledge of municipal zoning.

(2) Duties And Powers of The Zoning Officer. The powers and duties of the Zoning Officer shall include but not be limited to the following:

A. Administering and enforcing the provisions of this Ordinance in accordance with its literal terms. In performing these duties the Zoning Officer shall not have the power to permit any construction, alteration or any use or change of use to land or structures, which does not conform to the applicable provisions of this Ordinance.

B. Receiving and reviewing all types of zoning applications and approve or deny zoning permits and certificates in accordance with the provisions of this Ordinance.

C. Keeping records of all applications, permits, certificates, complaints, enforcement actions, investigations, and decisions of the Zoning Hearing Board, with all such records being the property of the Township and being available for public inspection and copying pursuant to the Pennsylvania Right to Know Law and any ordinance, policy, rule or regulation of the Township.

D. Conducting property inspections.

E. Maintaining the Official Zoning Map and Zoning Ordinance, including all amendments thereto.

F. Notifying the Zoning Hearing Board of scheduled zoning hearings, including assisting the secretary in advertising the hearings.

G. Making certain that each property subject to a zoning hearing is conspicuously posted not less than seven days prior to the hearing.

H. Attending and participating in proceedings before the Zoning Hearing Board and furnish such facts, records and any other information that may be necessary to assist the Board in rendering its decisions.

ORDINANCE # 2 of 7/2/2020

PAVE CUT AND STREET EXCAVATIONS

AN ORDINANCE OF THE TOWNSHIP OF BLACK CREEK PROVIDING THAT IT SHALL BE UNLAWFUL FOR ANY PERSON TO OPEN OR TO MAKE ANY PAVE CUT OR EXCAVATION OF ANY KIND IN ANY OF THE STREETS IN THE TOWNSHIP OF BLACK CREEK WITHOUT FIRST SECURING A PERMIT AS HEREINAFTER PROVIDED.

NOW THEREFORE, THE TOWNSHIP OF BLACK CREEK, LUZERNE COUNTY, PENNSYLVANIA, ORDAINS AND ENACTS THE FOLLOWING:

1. This ordinance shall be known as the BLACK CREEK TOWNSHIP PAVE CUT AND STREET EXCAVATION ORDINANCE, and may be referred to as the same.
2. **DEFINITIONS AND INTERPRETATIONS**
The following words, when used in this part, shall have the meanings ascribed to them in this section, except in those instances where the context clearly states otherwise:
EXCAVATION - any activity within the right-of-way of any street, alley, or cartway which involves cutting, breaking, or disturbing the surface thereof. In this part, the term "opening" shall have essentially the same meaning as excavation.
STREET - any public street, avenue, road, square, alley, highway, right-of-way, or other public place located in the Township of Black Creek and established for the use of vehicles, but shall include State Highways.
PERSON - any natural person, partnership, firm, association, corporation, or municipal authority.
3. **PERMIT REQUIRED TO MAKE OPENING OR EXCAVATION**
It shall be unlawful for any person to open or to make any excavation of any kind in any of the streets in the Township of Black Creek without first securing a permit as hereinafter provided.
4. **APPLICATION FOR PERMIT**
Any person who shall desire to make any opening or excavation in any of the streets in the Township of Black Creek shall make application to the Township Secretary in writing for that purpose. Such application shall be made upon blanks to be furnished by the Township of Black Creek and shall set forth the name of the applicant, the exact location of the proposed opening or excavation, and the appropriate size or depth thereof, and shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinance of the Township of Black Creek and the laws of the Commonwealth in relation thereto, and that the applicant shall well and truly save, defend, and keep harmless the Township of Black Creek, and indemnify the Township of Black Creek against any and all actions, suits, demands, payments, costs, and charges for, or by reason of the proposed opening or excavation, and all damages to persons or property resulting in any manner or occurring in the prosecution of the work connected therewith,

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or thing relating thereto.

5. **PERMIT FEE**

Before any permit shall be issued to open or excavate any street in the Township of Black Creek, the applicant shall pay a permit fee in the amount fixed according to resolution. The fee by passage of this ordinance is set at \$100.0 (one hundred dollars). When application shall be made to open or excavate any longitudinal opening or excavation in excess of 10' (ten feet), before any permit shall be issued so to open or excavate, the applicant shall pay in addition to such minimum fee, an additional \$50.00 (fifty dollars) fee, for each 100' (one hundred feet) or fraction thereof to be opened or excavated upon such street.

6. **ISSUANCE OF PERMITS RESTRICTED**

Permits shall be issued only to persons furnishing public utility services or the owner or owners of the real property adjoining the location where such opening or excavation is to be made. In addition, all contractors performing such work shall also show proof of Liability Insurance, which also names the Township of Black Creek as an additional party insured.

7. **INFORMATION CONTAINED ON PERMIT**

Any permit issued hereunder shall specify the exact location where the opening or excavation is to be made, the approximate permitted size or depth thereof, and the time within which the work for which the permit is granted is to be completed.

8. **PERMIT APPROVAL**

A permit may be issued by the Board of Supervisors to the applicant after all the requirements have been filled. If the application is disapproved, written notice of disapproval together with reasons shall be given to the applicant.

9. **RESPONSIBILITY TO CONTACT UTILITIES**

The work authorized by the permit is subject to all the provisions of the Act of December 10, 1974, P.L. 852, NO. 287, 73 P.S. 177 et seq., as amended or supplemented from time to time. It shall be the permittee's responsibility to contact the utilities that have recorded their facilities in compliance with said Act. A list of utilities providing services in the Township of Black Creek and their office address may be obtained from the County Recorder of Deeds.

10. **REFILLING OF OPENING OR EXCAVATION; RESTORATION OF SURFACE;
RESPONSIBILITY FOR DEFECTS OCCURRING WITH 2 (TWO) YEARS**

Any person who shall open or excavate any street in the Township of Black Creek shall thoroughly and completely refill the opening or excavation with **2A MODIFIED STONE** in such a manner to prevent any settling thereafter, and shall restore the surface to the same condition as it was before the opening or excavation, or in the case of pavement areas, with at least **4" B.C.B.C. and 1 %" ID-** and such restoration shall be in accordance with the specifications of the Department of Transportation of the Commonwealth of Pennsylvania which are hereby adopted as the Township of Black Creek's specifications for restoration of surfaces of streets in the Township of Black Creek. As restored, the surface shall conform to the proper grade and be of the same surface covering as the part of the thoroughfare immediately adjoining the opening. Any openings in excess of 100' (one hundred feet) in the aggregate (all openings lengths added) in any street shall require the

permittee to fully overlay the streets entire width with an additional 1 1/2" (one and one half inches) ID-2 Wearing Surface as directed in the locations directed by the Board of Supervisors. This work may require the permittee to mill existing pavement as directed by the Board of Supervisors. If within 2 (two) years after the restoration of the surface, as herein provided, defects appear, therein resulting from detective backfilling or other workmanship by the applicant, the applicant shall reimburse the Township of Black Creek for the cost of all necessary repairs to the permanent

11. WORK; CHANGE RESPONSIBILITY OF PERMIT HOLDER FOR CERTAIN WORK; RIGHT OF TOWNSHIP OF BLACK CREEK TO DO CERTAINS THEREOF

All other work in connection with openings in any street, including excavation, protection, refilling, and temporary paving, shall be done by or for the person to whom or which the permit has been issued, at his or its expense, and all such work shall be subject to the provisions of this part and to the supervision and approval of the designated official, provided that the Board of Supervisors may, if they deem it necessary to the proper performance of work, require that cutting of the surface of streets and the backfilling of all excavations therein, shall be done by the Township of Black Creek, in which event the applicant shall pay the actual cost of the work performed by the Township.

12. REQUIREMENTS FOR WORK; CORRECTION OF UNSATISFACTORY WORK; COMPLETION OF INCOMPLETE WORK

- A. No opening or excavation in any street shall extend from the curb line into the highway a distance greater than 1' (one foot) beyond the center line of the street before being refilled and the surface of the highway restored to a condition safe and convenient for travel.
- B. No more than 500' (five hundred feet) longitudinally shall be opened in any street at any one time.
- C. The work of excavation shall be so conducted as not to interfere with the water mains, sewers, or their connections with the houses, or any other subsurface lines or constructions, until permission of the proper authorities in connection with such subsurface *lines* or constructions shall have been obtained.
- D. No tunneling shall be allowed without the express approval of the Township of Black Creek, permission endorsed upon the permit. The backfilling of a tunnel excavation shall be made only in the presence of an inspector designated by the Board of Supervisors, and shall be done only in a method approved by him.
- E. All openings or excavations shall be backfilled promptly with 2A MODIFIED STONE and thoroughly compacted in layers, each of which layers shall not exceed 8" (eight inches) in depth. Backfilling shall be placed to within 5 %" (five and one half inches) of the surface.
- F. A temporary paving of coldpatch premix, thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving and maintained for a period of 90 (ninety) days.
- G. On a concrete base street, such base shall be replaced with concrete and the minimum size of the opening or excavation shall be 16 (sixteen) square feet.
- H. During the making of any excavation in the street, every necessary and reasonable precaution shall be taken by the applicant and the parties making the same to keep the street in safe and passable condition both day and night by guards, barriers, lanterns, and other devices, and all excavating permits granted hereunder are granted under the subject to the express condition

that the person to whom the same is issued shall indemnify, save, and keep harmless the Township of Black Creek from any loss in damage, or otherwise whatsoever, which may or shall be occasioned at any time by the said excavation, or by any leak, explosion, or other any pipe, apparatus, conduit, or any other matter placed in the said excavation.

- I. The applicant shall notify the Board of Supervisors when the opening or excavation is ready for backfilling before any backfilling is done, when backfilling work is completed, when the temporary paving has been installed, and when the street has been permanently restored so that inspections may be made.
- J. In the event that any work performed by or for a permit holder shall, in the opinion of the Board of Supervisors, be unsatisfactory and the same shall not be corrected in accordance with their instructions within the time fixed, or in the event that the work for which the permit was granted is not completed within the time fixed by the Board of Supervisors, the Township of Black Creek may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost thereof, plus 20% (twenty percent) to the applicant.

13. EMERGENCY OPENINGS

In the case of any leak, explosion, or other accident in any subsurface pipe, line, construction, or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, construction, or apparatus, to commence an excavation to remedy such condition before securing a permit, provided that application for a permit shall be made immediately and not later than the next business day thereafter, and that all other provisions of this part are fully complied with. If any such emergency condition shall not be immediately attended to by the owner or person responsible for such pipe, line, construction, or apparatus, the Board of Supervisors shall proceed to do the work necessary and required by such emergency, and charge the owner or person responsible for such pipe, line, construction, or apparatus on the basis of cost plus 20% (twenty percent).

14. RESTRICTIONS REGARDING TREES AND SHRUBBERY

The permission herein granted does not confer upon the permittee or its contractors the right to cut, remove, or destroy trees or shrubbery within the legal right-of-way.

15. WORK NECESSITATING OPENING OR EXCAVATION TO BE DONE PRIOR TO STREET IMPROVEMENT AND NOT UNTIL 5 (FIVE) YEARS THEREAFTER

The Board of Supervisors shall give timely notice to all persons owning property abutting on any street within the Township of Black Creek about to be paved or improved, and to all public utility companies operating in the Township of Black Creek, and all such persons and utility companies shall make all water, gas, or sewer connections, as well as any repairs thereto which would necessitate excavation of the said street within 30 (thirty) days from the giving of such notice, unless such time is extended in writing for cause shown by the Board of Supervisors. New paving shall not be opened or excavated for a period of 5 (five) years after the completion thereof, except in case of emergency. If it is sought to excavate upon or open a sewer within 5 (five) years after the completion of the paving, the applicant shall make written application to the Board of Supervisors, and a permit for such opening shall be issued only after express approval of the Board of Supervisors.

16. **PERMITTEE RESPONSIBILITIES FOR FUTURE RELOCATION WORK**

If at any time in the future the roadway is widened or reconstructed, or the alignment or grades are changed, the permittee further agrees to change or relocate all or any part of the structures covered by this permit which interfere with the improvement of the roadway, at its own cost and expense.

17. **CONDITIONS FOR LAYING AND EXTENDING UTILITY LINES**

No new water, sewer, steam, or gas main, or electric, telephone, or other utility line shall hereafter be laid or constructed, and no such existing main or line shall be extended, in any of the streets of the Township of Black Creek, until the plan is filed and the exact location of such main or line has been approved by the Board of Supervisors. The Board of Supervisors will not approve the locating of any such main or line at a depth of less than 30" (thirty inches) from the surface of the street unless they are convinced that locating the same at a depth of more than 30" (thirty inches) from the surface is impossible or impractical.

18. **BOND REQUIRED**

No company, corporation, or association shall dig up any street or alley without first giving to the Township of Black Creek financial security in either the form of cash or an irrevocable letter of credit, as surety in the sum determined by the schedule of fees, as prepared annually by the Township Engineer, conditioned for the faithful performance of these provisions, and also for any and all damages, claims, demands, suits, costs, and counsel fees occasioned or arising from the digging up, opening, or closing of said streets and alleys. A bond may be substituted as financial security in certain circumstances if approved by the Board of Supervisors.

19. **PAYMENT FOR WORK DONE BY TOWNSHIP OF BLACK CREEK**

Payment for all work done by the Township of Black Creek under the provisions hereof, shall be made by the person made liable under the provisions hereof, **within 30 (thirty) days after a bill is sent** to such person by the Township of Black Creek. Upon failure to pay such charges within such time, the same shall be collectible by the Township of Black Creek by an action or in the manner provided by law for the collection of municipal claims.

20. **PENALTIES**

Any person, firm, or corporation who violates any provision of this Part shall, upon conviction thereof, be sentenced to pay a **fine of not more than \$500.00 (five hundred dollars) plus costs, and in default of payment of said fine and costs, imprisonment for a term not to exceed 30 (thirty) days.** Every day that a violation of this Part continues shall constitute a separate offense.

21. **APPLICABILITY**

The provisions of this part shall not apply to laying sidewalks or curbs.

22. **EFFECTIVE DATE**

This ordinance shall become effective upon passage.

23. **SEVERABILITY**

In the event any provision, section, sentence, clause, or part of this Ordinance shall be held to be

ENACTED AND ORDAINED this 2nd day of July, 2020 by the Black
Creek Township Council.

ATTEST:

M. D. Davis
Secretary

BLACK CREEK TOWNSHIP:

[Signature]
President

ORDINANCE NO. 1 of 8/6/2020

AN ORDINANCE OF THE TOWNSHIP OF BLACK CREEK, LUZERNE COUNTY, PENNSYLVANIA, AMENDING SECTION 706 OF THE TOWNSHIP ZONING ORDINANCE RELATED TO THE SCHEDULE OF ZONING FEES.

WHEREAS, the Supervisors of the Township of Black Creek believe it to be in the best interests of the health, welfare and safety of the residents and property owners of the Township to Amend Article 7, adding Section 706(3)(3) of the Township Zoning Ordinance; and

NOW THEREFORE, the Supervisors of Black Creek Township declare the following:

- 1. Article 7, Section 706(3)(3) shall read as follows:

For any projects that require a zoning permit or building permit, in accordance with Section 706, that are started without the required permit having been obtained, said permit cost shall be double that shown on the schedule of fees.

In all other manner not inconsistent herewith, Article 7 shall remain the same.

ENACTED AND ORDAINED this 6th day of August, 2020 by the Supervisors of Black Creek Township, Luzerne County, Pennsylvania.

ATTEST:

[Signature]
Secretary

BLACK CREEK TOWNSHIP:

[Signature]



[Signature]

ORDINANCE NO. 3 of 8/6/2020

AN ORDINANCE OF THE TOWNSHIP OF BLACK CREEK, LUZERNE COUNTY, PENNSYLVANIA, AMENDING THE TOWNSHIP ZONING ORDINANCE RELATED TO INDEMNIFY AND HOLD HARMLESS THE CODE ENFORCEMENT OFFICER AND OTHERS ENFORCING THE ORDINANCE FROM PERSONAL LIABILITY.

WHEREAS, the Supervisors of the Township of Black Creek believe it to be in the best interests of the health, welfare and safety of the residents and property owners of the Township to Amend Article 7, adding Section 701-3 of the Township Zoning Ordinance; and

NOW THEREFORE, the Supervisors of Black Creek Township declare the following:

1. Article 7, Section 701-3 shall read as follows:

The Zoning Officer, or any employee charged with the enforcement of this Chapter, while acting for the Township, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties. Any suit instituted against any officer or employee because of an act performed by him in the lawful discharge of his duties, shall be defended by the legal representative of the Township. In no case shall the Zoning Officer or any of his staff be liable for costs in any action, suit or proceeding that may be instituted in pursuance of the provisions of this Chapter when such suit or proceeding is related to the Zoning Officer or staff acting in an official capacity.

In all other manner not inconsistent herewith, Article 7 shall remain the same.

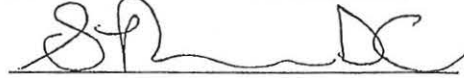


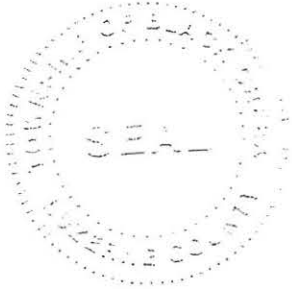
ENACTED AND ORDAINED this 6th day of August, 2020 by the
Supervisors of Black Creek Township, Luzerne County, Pennsylvania.

ATTEST:


Secretary

BLACK CREEK TOWNSHIP:





I. Reviewing subdivision and land development plans for compliance with the provisions of this Ordinance and providing a report to the Board of Supervisors and Planning Commission.

Section 702. Zoning Permits.

(1) Permit Required. A zoning permit shall be required prior to:

A. Erecting, constructing, moving, placing or expanding any building, structure, or sign.

B. Using, changing the use of, or expanding the use of any land, structure or building.

C. Demolishing, or making structural alterations to any building or structure.

(2) Filing with Zoning Officer/Form of Application. All applications for zoning permits shall be made in writing by the landowner, the authorized agent of the landowner, or any person having an equitable interest in the property with the permission of the landowner. All applications for a zoning permit shall be on a form provided by the Township and when completed shall be filed with the Zoning Officer along with the required fees. A zoning permit application shall include, but not be limited to the following information:

A. The name and address of the applicant, and the landowner if different than the applicant.

B. The address of the property and a description of its location.

C. The names and addresses of all adjoining landowners, including those located immediately across a street from the property subject to the application.

(3) Site Plan. Zoning permit applications shall be accompanied by two copies of a site plan drawn to scale and showing the following:

A. The actual dimensions and shape of the property to be built upon including existing and proposed access drives, roads and streets identifying them by name.

B. The location of any watercourses and floodplain areas.

C. The location and dimensions on the lot of all existing and proposed structures, buildings and signs, parking and loading facilities, with existing features being clearly distinguished from proposed features.

D. The exact size and location of existing and proposed uses of land, with existing uses being clearly distinguished from proposed uses.

E. The location of any existing and proposed wells and septic systems or public water and sewer lines.

(4) Time Period For Processing Application. All zoning permits shall be approved or denied by the Zoning Officer within 30 days from the date of receipt of a fully completed application. An application shall be deemed complete for purposes of this section when the application has been received by the Zoning Officer, fully completed and accompanied by a site plan and the applicable fee.

(5) Expiration of Zoning Permit. A zoning permit shall expire one year from the date of issuance, if the work described in the permit has not been completed. Once a permit has expired, the applicant or landowner must reapply for another zoning permit and the Zoning Officer may approve or deny the application under the provisions of the Ordinance in effect at the time of the new application.

(6) Revocation of Permits. The Zoning Officer may revoke, withdraw or suspend a permit or approval issued under the provisions of this Ordinance in the following instances:

A. When a permit was issued in error under the provisions of this Ordinance.

B. When the application or plan on which the permit or approval was based contains false statements, misrepresentations of fact, or misleading information.

C. When there exists a violation of any condition imposed by the Zoning Hearing Board as part of its written decision.

D. When just or good cause exists as set forth in this Ordinance.

Section 703. Zoning Certificate.

(1) Certificate Required. A zoning certificate shall be required prior to:

A. The use or occupancy of any new building or structure except for detached accessory residential structures less than 1,000 square feet in total floor area.

B. The change of use of any principal non-residential building or structure.

C. The use, occupancy or change of use of any land.

(2) Filing with Zoning Officer/Form of Application. All applications for zoning certificates shall be made in writing on forms prescribed by the Township and shall include all information necessary for the Zoning Officer to ascertain compliance with the provisions of this Ordinance.

(3) Time Limitation. All applications for zoning certificates shall be made by the landowner or an authorized agent for the landowner prior to occupying or using a structure, building or parcel of land for which a zoning certificate is required. Upon the making of an application for a zoning certificate, the Zoning Officer shall have 30 days from receipt of the application to approve or deny it. A zoning certificate may only be approved by the Zoning Officer when he or she has determined that the activity complies with the provisions of this Ordinance.

Section 704. Temporary Permits. A zoning permit shall be required for all temporary uses of a structure or land. The Zoning Officer shall issue a zoning permit for any of the following:

(1) Short-term special events provided that:

A. The total event is limited to no more than 14 days.

B. Although not otherwise permitted within the zoning district where the event is to be located, it does not adversely affect or interfere with the use and enjoyment of any other permitted use within that zoning district, nor does it prohibit quiet and peaceful enjoyment of adjoining or surrounding properties.

C. Sufficient parking and traffic control will be available for the duration of the event, without obstructing parking that is required to serve other uses.

(2) Retail sales provided that:

A. The property is located within a zoning district that allows retail sales.

B. Any structure associated with the use meets the applicable dimensional regulations of the zoning district in which the structure is located.

C. The proposed use and structures must not:

i. Obstruct safe sight distances.

ii. Interfere with vehicular and pedestrian travel and off-street parking spaces and loading facilities that are required to serve permanent permitted uses on the property where the retail sales are to take place.

iii. Violate any other local and state laws or regulations.

(3) Temporary Structures provided that:

- A. The structure is necessary to service on-site construction activities.
- B. The structure is removed upon completion of construction.
- C. The structure is not used for living quarters.
- D. The construction is a lawful activity for which a zoning permit has been issued.
- E. The structure meets the minimum setback requirements for an accessory structure for the zoning district in which the structure will be located.
- F. No more than two such structures are located on a lot.

Section 705. Enforcement Procedures.

(1) Enforcement Notice. If it appears to the Zoning Officer that a violation of this Ordinance has occurred, the Zoning Officer shall initiate enforcement proceedings by issuing an enforcement notice to the owner of record of the parcel of land on which the violation has occurred, to any person who has filed a written request to receive violation notices regarding the parcel of land, and to any other person requested in writing by the owner of record. The enforcement notice shall state at least the following:

- A. The name of the owner of record and any other person against whom the Township intends to take action.
- B. The location and address of the property in violation.
- C. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable sections of this Ordinance.
- D. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
- E. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within thirty (30) days from date of the issuance of the notice.
- F. That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with a description of the sanctions that will result if the violation is not corrected.

(2) In any appeal of an enforcement notice to the Zoning Hearing Board, the Township shall have the responsibility of presenting evidence first.

(3) Any filing fee paid by a party to appeal an enforcement notice to the Zoning Hearing Board shall be returned to the appealing party by the Township if the Zoning Hearing Board or any court in a subsequent appeal rules in the appealing party's favor.

(4) Private Cause of Action. In case any building, structure, landscaping or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of this Ordinance, the Board of Supervisors or, with the approval of the Board of Supervisors, an officer or agent of the Township, or any aggrieved owner or tenant of real property who shows that his or her property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceedings to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation of this Ordinance. When such action is instituted by a landowner or tenant, notice of that action shall be served upon the Township at least 30 days prior to the time the action is instituted by serving a copy of the complaint on the Governing Body. No action may be taken until such notice has been given.

(5) Jurisdiction/Enforcement Remedies.

A. Jurisdiction. The District Justice shall have initial jurisdiction over proceedings brought under this Section of the Ordinance.

B. Enforcement Remedies. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable thereof in a civil enforcement proceedings commenced by the Township or the Zoning Officer, shall pay a judgment of not more than \$500.00 dollars, plus all court costs, including reasonable attorney fees incurred by the Township as a result of said proceedings. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the District Justice determined that there has been a violation further determines that there has been a good faith basis for the person, partnership or corporation violating this Ordinance to have believed that there was no such violation. In such cases, there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the District Justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of this Ordinance shall be paid over to the Township.

C. The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem find pending a final adjudication of the violation and judgment.

D. Nothing contained in this Section shall be construed or interpreted to grant any person or entity other than the Township the right to commence any action for enforcement pursuant to this Section.

Section 706. Fees. The Board of Supervisors hereby adopts the following schedule of fees, charges and expenses for applications, permits, certificates, appeals to the Zoning Hearing Board, amendments to the Zoning Ordinance and Zoning Map, and any other matters relating to the administration of this Ordinance. The Township fee schedule shall be available for public inspection and may be amended from time to time by resolution of the Board of Supervisors. No application or appeal shall be considered filed until all related fees, charges and expenses have been paid in full.

SCHEDULE OF ZONING FEES

- (1) **CERTIFICATE OF ZONING COMPLIANCE.....\$60.00**
- (2) **ZONING APPLICATION FEE.....\$60.00**
- (3) **ZONING PERMIT**
 - 1. Structures that are less than 1,000 square feet in total gross floor area and less than \$5,000.00 in total construction costs- \$25.00
 - 2. Structures that are 1,000 square feet or more in total gross floor area or more than \$5,000.00 in total construction costs- .20 per square foot calculated by including all total floor area (finished or unfinished).
- (4) **APPLICATION OR APPEAL TO THE ZONING HEARING BOARD OR UCC APPEAL BOARD.....\$350.00**
- (5) **APPLICATION FOR ZONING CHANGES OR CURATIVE AMENDMENT**
 - 1. \$500.00 plus the cost of advertising and stenographer transcript fees.
 - 2. \$1,000.00 must be placed in an escrow account at the time of making application, which escrow will be applied toward the application fee and costs of the hearing. Any excess will be refunded to the applicant within sixty (60) days from the conclusion of the hearing.
- (6) **CERTIFICATE OF NON-CONFORMING USE.....\$100.00**
- (7) **ZONING BOOKS AND MAPS**

1. Zoning Book- \$25.00
2. Zoning Map- \$35.00
3. Subdivision and Land Development Book- \$25.00

(8) DEMOLITION PERMITS

1. Residential Principal Structures-\$85.00
2. Residential Accessory Structures-\$25.00
3. Commercial-\$250.00

(9) WIND MILLS

A zoning permit for a wind mill is required; The zoning permit fee for each wind mill shall be one thousand (\$1,000.00) dollars. A building permit for a wind mill is required, and the building permit fee for each wind mill shall be calculated at \$3.00 per linear foot measured from the surface of the tower foundation at the average grade to the highest point of the structure, including blades. There shall also be an annual inspection required for wind farms and the fee for inspections shall be one thousand (\$1,000.00) dollars per wind mill in a wind farm.

ARTICLE 8
AMENDMENTS

Section 801. Amendment Procedure.

(1) Amendments to the Zoning Ordinance and Zoning Map. The provisions of this Ordinance and the boundaries of the zoning districts as set forth upon the Zoning Map, may from time to time be amended by the Board of Supervisors in accordance with the provisions as set forth in the Pennsylvania Municipalities Planning Code, Act 247, as amended.

(2) Curative Amendments.

A. Initiated by Landowner. A landowner who desires to challenge on substantive grounds the validity of this Ordinance or the Zoning Map, or any provision thereof, which prohibits or restricts the use or development of land in which he or she has an interest, may submit a curative amendment to the Board of Supervisors with a written request that his or her challenge and proposed amendment to cure the alleged defect, be heard and decided by the Board of Supervisors in accordance with the provisions as set forth in the Pennsylvania Municipalities Planning Code, Act 247, as amended.

B. Initiated by Municipality. If the Board of Supervisors determines this Ordinance or the Official Zoning Map, or any portion thereof, is substantially invalid, it shall declare such by a formal action and propose to prepare a curative amendment to overcome such invalidity in accordance with the provisions as set forth in the Pennsylvania Municipalities Planning Code, Act 247, as amended.

ARTICLE 9
ZONING HEARING BOARD

Section 901. Membership of Board. The Zoning Hearing Board shall consist of five residents of Black Creek Township appointed by the Board of Supervisors. The existing terms of office shall continue, with terms of office being five years and so fixed that the term of office of one member shall expire each year. Members of the Zoning Board shall hold no other office in Black Creek Township.

Section 902. Alternate Members. The Board of Supervisors may appoint alternate members to the Zoning Board in accordance with the provisions as set forth in the Pennsylvania Municipalities Planning Code, Act 247, as amended.

Section 903. Removal of Members. Any Zoning Board member may be removed for malfeasance, misfeasance, or nonfeasance in office or for any other just cause by a majority vote of the Board of Supervisors, taken after the member has received 15 days advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

Section 904. Organization of Board.

(1) Election of Officers. The Zoning Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves.

(2) Quorum/Hearing Officer. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the Zoning Board. The Zoning Board, however, 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 Zoning Board. If by any reason of absence or disqualification of a member, a quorum is not reached, the chairman of the Zoning Board shall designate as many alternate members of the board to sit on the Zoning Board as may be needed to provide a quorum. Any alternate member of the Zoning Board shall continue to serve on the Zoning Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Zoning Board has made a final determination of the matter or case. Designation of an alternate pursuant to this section shall be made on a case by case basis in rotation according to declining seniority among all alternates.

(3) By-laws/Records. The Zoning Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Township and the laws of the Commonwealth. The Zoning Board shall keep full public records of its business, which records shall be the property of the Township, and the Board Chairperson or its Secretary shall submit an annual report of its activities to the Board of Supervisors.

Section 905. Expenditures For Services. Within the limits of appropriated funds, the Zoning Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.

Section 906. Hearings. The Zoning Board shall conduct hearings and render decisions in accordance with the following:

(1) Notice of Hearings. Public notice shall be given and written notice shall be given to the applicant, the zoning officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for the same. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing. The posting may be performed by the applicant provided that an affidavit of posting is submitted to the Zoning Board at the commencement of the hearing. No other written notices shall be required.

(2) Fees For Hearings. The governing body may prescribe reasonable fees with respect to hearings before the Zoning Board. Fees for said hearings may include compensation for the secretary and board members, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Board, expenses for engineering, architectural or other technical consultants or expert witness costs.

(3) Time Periods For Hearings. The first hearing before the Zoning Board or hearing officer shall be commenced within 60 days from the date of receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the Zoning Board or hearing officer shall be held within 45 days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of his, her or its case-in-chief within 100 days of the first hearing. Upon the request of the applicant, the Zoning Board or hearing officer shall assure that the applicant receives at least seven hours of hearings within the 100 days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within 100 days of the first hearing held after the completion of the applicant's case-in-chief. The applicant may, upon request, be granted additional hearings to complete his, her or its case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and the Township, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.

(4) Conduct of Hearings. The hearings shall be conducted by the Zoning Board or the Zoning Board may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Zoning Board; however, the appellant or the applicant, as the case may be, in addition

to the Township, may, prior to the decision of the hearing, waive decision or findings by the Zoning Board and accept the decision or findings of the hearing officer as final.

(5) Parties to the Hearings. The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person including civic or community organizations permitted to appear by the board. The Zoning Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Zoning Board for that purpose.

(6) Oaths/Subpoenas. The chairman or acting chairman of the Zoning Board or the hearing officer presiding 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.

(7) Right to Representation/Evidence/Argument. 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.

(8) Rules of Evidence. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(9) Stenographic Record and Transcript Fees. The Zoning Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Zoning Board. The cost of the original transcript shall be paid by the Zoning Board if the transcript is ordered by the Zoning Board or hearing officer or shall be paid by the person appealing from the decision of the Zoning Board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.

(10) Communications and Site Visits. The Zoning Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.

(11) Time Periods for Hearings, Decisions and Findings. The Zoning Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the Zoning Board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and

conclusions based thereon together with the reasons thereof. Conclusions based on any provisions of this Ordinance shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer and there has been no stipulation that his decision or findings are final, the Zoning Board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the Zoning Board prior to final decision or entry of findings, and the Zoning Board's decision shall be entered no later than 30 days after the report of the hearing officer. Except for substantive challenges to the validity of the Ordinance under Section 916 of the Pennsylvania Municipalities Planning Code, where the Zoning Board fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in subsection (3) above, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Zoning Board to meet or render a decision as hereinabove provided, the Zoning Board shall give public notice of said decision within 10 days from the last day it could have met to render a decision in the same manner as provided in subsection (1) of this section. If the Zoning Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

(12) Mailing, Copies and Notice of Decisions. 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, her or it not later than the day following its date. To all other persons who have filed their name and address with the Zoning Board not later than the last day of the hearing, the Zoning Board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

Section 907. Mediation Option.

(1) Parties to zoning hearing proceedings under this Article 9 may utilize mediation as an aid in completing such proceedings. In proceedings before the Zoning Board, in no case shall the Zoning Board initiate mediation or participate as a mediating party. Mediation shall supplement, not replace, the procedures in this Article 9 once they have been formally initiated. Nothing in this section shall be interpreted as expanding or limiting municipal police powers or as modifying any principles of substantive law.

(2) Participation in mediation shall be wholly voluntary. The appropriateness of mediation shall be determined by the particulars of each case and the willingness of the parties to negotiate. Any municipality offering the mediation option shall assure that, in each case, the mediating parties, assisted by the mediator as appropriate, develop terms and conditions for:

A. Funding mediation.

- B. Selecting a mediator who, at a minimum, shall have a working knowledge of municipal zoning and subdivision procedures and demonstrated skills in mediation.
- C. Completing mediation, including time limits for such completion.
- D. Suspending time limits otherwise authorized in this act, provided there is written consent by the mediating parties, and by an applicant or municipal decision making body if either is not a party to the mediation.
- E. Identifying all parties and affording them the opportunity to participate.
- F. Subject to legal restraints, determining whether some or all of the mediation sessions shall be open or closed to the public.
- G. Assuring that mediated solutions are in writing and signed by the parties, and become subject to review and approval by the appropriate decision making body pursuant to the authorized procedures set forth in the other sections of this act.

(3) No offers or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceedings.

Section 908. Jurisdiction of Zoning Hearing Board. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudication in the following matters:

- (1) Substantive challenges to the validity of any land use ordinance, except for those brought before the Board of Supervisors such as in the case of a landowner curative amendment.
- (2) Challenges to the validity of any land use ordinance, based upon procedural questions or alleged defects in the process of enactment or adoption. Challenges based upon procedural questions or alleged defects shall be raised by an appeal to the Zoning Board within 30 days after the effective date of the Ordinance subject to the appeal.
- (3) Appeals from the determination of the Zoning Officer, including but not limited to, the granting or denial of any permit, or failure to act on an application, the issuance of any cease and desist order, the revocation of a zoning permit or building permit or the registration or refusal to register any nonconforming use, structure or lot.
- (4) Appeals from a determination by the Zoning Officer with reference to the administration of any flood plain provision or regulation within any land use ordinance.

- (5) Applications for variances from the terms of this Ordinance.
- (6) Applications for special exceptions under this Ordinance.
- (7) Appeals from the determination of the Zoning Officer or municipal engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management not related to development which is classified as a subdivision, land development, or a planned residential development.

Section 909. Variances.

(1) Provisions for Granting Variances. The Zoning Board shall hear requests for variances if it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. All applications for variances shall be on forms proscribed by the Township and shall require preliminary application to the Zoning Officer. The Zoning Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

A. That 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 unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

B. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

C. That such unnecessary hardship has not been created by the appellant.

D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

E. That 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.

(2) Referral to Planning Commission. The Zoning Board prior to deciding a use variance application may refer that application to the Township Planning Commission for review and recommendation to the Board.

(3) Reasonable Conditions and Safeguards. In granting any variance, the Zoning Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code, Act 247, as amended.

Section 910. Special Exceptions.

(1) Provisions for Granting Special Exceptions. When special exceptions are allowed by this Ordinance, the Zoning Hearing Board shall hear and decide requests for such special exceptions in accordance with provisions of this Ordinance. All applications for special exceptions shall be on forms proscribed by the Township and shall require preliminary application to the Zoning Officer. The Zoning Board shall grant approval only upon the determination that all applicable standards, criteria and provisions within this Ordinance, including the following have been met:

A. Public services and facilities such as water supply, sewage disposal, storm drainage, and fire and police protection are adequate for the proposed use and development.

B. Existing and future streets and access to the subject property shall be adequate for emergency services while avoiding undue congestion, and providing for the safety and convenience of pedestrian and vehicular traffic.

C. The relationship of the proposed use and development to other uses and activities existing or planned in the vicinity shall be harmonious in terms of their location and site relative to the proposed operation, and the nature and intensity of the use.

D. The relationship of the proposed use and development to other activities existing or planned in the vicinity shall be harmonious in terms of the character and height of buildings, walls, and fences so that the use, development, and value of adjacent property is not impaired.

E. The proposed use and development shall not be more objectionable in its operations in terms of noise, fumes, odors, vibration, or lights than would be the operations of any permitted use in the zoning district.

F. The proposed use and development shall not be injurious to the public health, safety, welfare and morals.

G. That the specific standards set forth for each particular use for which a special exception may be granted have been met.

- (5) Applications for variances from the terms of this Ordinance.
- (6) Applications for special exceptions under this Ordinance.
- (7) Appeals from the determination of the Zoning Officer or municipal engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management not related to development which is classified as a subdivision, land development, or a planned residential development.

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A. That 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 unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

B. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

C. That such unnecessary hardship has not been created by the appellant.

D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

E. That 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.

(2) Referral to Planning Commission. The Zoning Board prior to deciding a use variance application may refer that application to the Township Planning Commission for review and recommendation to the Board.

(3) Reasonable Conditions and Safeguards. In granting any variance, the Zoning Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code, Act 247, as amended.

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A. Public services and facilities such as water supply, sewage disposal, storm drainage, and fire and police protection are adequate for the proposed use and development.

B. Existing and future streets and access to the subject property shall be adequate for emergency services while avoiding undue congestion, and providing for the safety and convenience of pedestrian and vehicular traffic.

C. The relationship of the proposed use and development to other uses and activities existing or planned in the vicinity shall be harmonious in terms of their location and site relative to the proposed operation, and the nature and intensity of the use.

D. The relationship of the proposed use and development to other activities existing or planned in the vicinity shall be harmonious in terms of the character and height of buildings, walls, and fences so that the use, development, and value of adjacent property is not impaired.

E. The proposed use and development shall not be more objectionable in its operations in terms of noise, fumes, odors, vibration, or lights than would be the operations of any permitted use in the zoning district.

F. The proposed use and development shall not be injurious to the public health, safety, welfare and morals.

G. That the specific standards set forth for each particular use for which a special exception may be granted have been met.

(2) Referral to Planning Commission. The Zoning Board prior to deciding a special exception application may refer that application to the Township Planning Commission for review and recommendation to the Board.

(3) Reasonable Conditions and Safeguards. In granting special exception approval, the Zoning Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania Municipalities Planning Code, Act 247, as amended.

Section 911. Initial Determination to be Made by the Zoning Officer. An application for a variance or special exception use shall not be submitted to or considered by the Zoning Hearing Board until the applicant has submitted a zoning permit application and site plan to the Zoning Officer and the Zoning Officer has denied the application.

Section 912. Appellant Before the Zoning Board. Appeals before the Zoning Hearing Board may be filed with the Zoning Board in writing by the affected landowner or by an aggrieved person or party. The Zoning Board shall not accept appeals or applications or proceed with any hearings from any tenant or equitable owner of a property without the express written consent of the landowner.

Section 913. Appeals To Court. The procedures set forth in Article X-A of the Pennsylvania Municipalities Planning Code, Act 247, as amended, shall constitute the exclusive mode for securing review of any decision rendered under this Ordinance.

(1) Jurisdiction and Venue on Appeal and Time for Appeal. All appeals from all land use decisions rendered pursuant to Article 9 shall be taken to the Court of Common Pleas of Luzerne County within 30 days from the date of mailing the decision, or in the case of a deemed decision, within 30 days after the date upon which notice of said deemed decision is given as set forth in section 906(11) above.

(2) Appeals to Court; Commencement; and Stay of Proceedings.

A. Land use appeals shall be entered as of course by the Prothonotary upon the filing of a land use appeal notice which concisely sets forth the grounds on which the appellant relies. The appeal notice need not be verified. The land use appeal notice shall be accompanied by a true copy thereof.

B. Upon filing of a land use appeal, the Prothonotary shall forthwith, as of course, send to the Township Board of Supervisors, Zoning Board or agency whose decision or action has been appealed, by registered or certified mail, the copy of the land use appeal notice, together with a writ of certiorari commanding the Township Board of Supervisors or Zoning Board, within 20 days after receipt thereof, to certify to the Court its entire record in the matter in which the land use appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and available to

the Township Board of Supervisors or Zoning Board at the time it received the writ of certiorari.

C. If the appellant is a person other than the landowner of the land directly involved in the decision or action appealed from, the appellant, within seven days after the land use appeal is filed, shall serve a true copy of the land use appeal notice by mailing said notice to the landowner or his attorney at his last known address. For identification of such landowner, the appellant may rely upon the record of the municipality and, in the event of good faith mistakes as to such identity, may make such service nunc pro tunc by leave of Court.

D. The filing of an appeal in Court under this section shall not stay the action appealed from, but the appellants may petition the Court for a stay. If the appellants are persons who are seeking to prevent a use or development of the land of another, whether or not a stay is sought by them, the landowner whose use or development is in question may petition the Court to order the appellants to post bond as a condition to proceeding with the appeal. After the petition for posting a bond is presented, the Court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the landowners to prove the appeal is frivolous. After consideration of all evidence presented, if the Court determines that the appeal is frivolous, it shall grant the petition for posting a bond. The right to petition the Court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him, her or it if an appeal is taken from a final decision of the Court. The question of the amount of the bond shall be within the sound discretion of the Court. An order denying a petition for bond shall be interlocutory. An order directing the respondent to the petition for posting a bond to post a bond shall be interlocutory. If an appeal is taken by a respondent to the petition for posting a bond from an order of the Court dismissing a land use appeal for refusal to post a bond, such responding party, upon motion of petitioner and, after hearing in the Court having jurisdiction of land use appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by petitioner.

(3) Intervention. Within the 30 days first following the filing of a land use appeal, if the appeal is from a board or agency of a municipality, the municipality and any owner or tenant of property directly involved in the action appealed from may intervene as of course by filing a notice of intervention, accompanied by proof of service of the same, upon each appellant or each appellant's counsel of record. All other intervention shall be governed by the Pennsylvania Rules of Civil Procedure

(4) Hearing and Argument of Land Use Appeal. If, upon motion, it is shown that proper consideration of the land use appeal requires the presentation of additional evidence, a judge of the Court may hold a hearing to receive additional evidence, may remand the case to the body, agency or officer whose decision or order has been brought up for review, or may refer the case to a referee to receive additional evidence, provided that appeals brought before the Court pursuant to section 916.1 of the Pennsylvania Municipalities Planning Code governing substantive challenges to the validity of this

Ordinance shall not be remanded for further hearings before anybody, agency or officer of the municipality. If the record below includes findings of fact made by the governing body, board or agency whose decision or action is brought up for review and the Court does not take additional evidence or appoint a referee to take additional evidence, the findings of the governing body, board or agency shall not be disturbed by the court if supported by substantial evidence. If the record does not include findings of fact or if additional evidence is taken by the Court or by a referee, the Court shall make its own findings of fact based on the record below as supplemented by the additional evidence, if any.

(5) Judicial Relief.

A. In a land use appeal, the Court shall have power to declare an ordinance or map invalid and set aside or modify any action, decision or order of the governing body, agency or officer of the municipality brought up on appeal.

B. If the Court finds that an ordinance or map, or a decision or order there under, which has been brought up for review unlawfully prevents or restricts a development or use which has been described by the landowner through plans and other materials submitted to the governing body, agency or officer of the municipality whose action or failure to act is in question on the appeal, it may order the described development or use approved as to all elements or it may order it approved as to some elements and refer other elements to the governing body, agency or officer having jurisdiction thereof for further proceedings, including the adoption of alternative restrictions, in accordance with the court's opinion and order.

C. Upon motion any of the parties or upon motion by the Court, the judge of the Court may hold a hearing or hearings to receive additional evidence or employ experts to aid the court to frame an appropriate order. If the Court employs an expert, the report or evidence of such expert shall be available to any party and he or she shall be subject to examination or cross-examination by any party. He or she shall be paid reasonable compensation for his or her services which may be assessed against any or all of the parties as determined by the Court. The Court shall retain jurisdiction of the appeal during the pendency of any such further proceedings and may, upon motion of the landowner, issue such supplementary orders as it deems necessary to protect the rights of the landowner as declared in its opinion and order.

D. The fact that the plans and other materials are not in a form or are not accompanied by other submissions which are required for final approval of the development or use in question or for the issuance of permits shall not prevent the court from granting the definitive relief authorized. The Court may act upon preliminary or sketch plans by framing its decree to take into account the need for further submissions before final approval is granted.