

**PART 8****PROVISIONS GOVERNING INDUSTRIAL DISTRICTS****"L-I" Light Industrial District.**

The "L-I" Light Industrial District is intended to permit and encourage industrial development that shall be so located and designed as to constitute a harmonious and appropriate part of the physical development of the Borough, contribute to the soundness of the economic base of the Borough, provide opportunities for local employment close to residential areas, thus reducing travel to and from work, and otherwise further the purposes set forth in the initial paragraphs of this Chapter. The limitations on use, height and lot coverage are intended to provide for modern light industrial development in an urban environment. Residential and the general commercial use are considered not compatible and are prohibited, as well as any use which would substantially interfere with the development or continuation of the industrial uses and structures in the district.

**§801. USE.**

In this district, the land and structures may be erected, altered, enlarged and maintained for light industrial uses listed hereunder, provided:

- A. No explosive materials or processes are involved.
- B. No smoke, fumes, odor, dust, noise, vibration or glaring light is noticeable from outside any lot in this district.
- C. The use is not offensive by reason of emission of refuse matter or water-carried waste.
- D. There may be retail sale of products on the premises, when such sale is clearly incidental and essential to the permitted industrial use.
- E. Permitted Uses.
  - (1) Animal hospital.
  - (2) Automobile repair, major.
  - (3) Bakery.
  - (4) Bottling works.
  - (5) Building material yards or establishment.
  - (6) Cabinet making establishments and carpenter shops.
  - (7) Clothing factory.

## ZONING

- (8) Contractors' yard.
- (9) Dairy.
- (10) Dry cleaning plant.
- (11) Dyeing plant.
- (12) Fruit canning and packing establishment.
- (13) Ice plant.
- (14) Laundry.
- (15) Machine shop.
- (16) Milk distribution station.
- (17) Optical goods factory.
- (18) Paper box factory.
- (19) Pencil factory.
- (20) Printing, publication and engraving plant.
- (21) Research and development organization.
- (22) Sheet metal shop.
- (23) Steel fabrication.
- (24) Storage firm.
- (25) Trucking terminal.
- (26) Welding shop.
- (27) Wholesale business.
- (28) Any other compatible type manufacturing-light industrial as approved by the Zoning Hearing Board.
- (29) Accessory use of building customarily incidental to the above permitted uses and as regulated by this Chapter.
- (30) Special use exception as regulated under Part 13.

- F. Height. The maximum height of building hereafter erected or altered shall be three stories or 55 feet.
- G. Lot Area. The minimum lot size for light industrial uses shall be 1 acre with a minimum width at the building line of 100 feet.
- H. Buffer Areas. No building or structure shall be erected or enlarged unless the following yards are provided and maintained in connection with such building, structure or enlargement:
  - (1) Front Yard. Not less than 25 feet.
  - (2) Side Yard. Not less than 15 feet. When abutting a street, not less than 25 feet. When abutting an "R" district, not less than 50 feet.
  - (3) Rear Yard. No less than 15 feet. When abutting a street, not less than 25 feet. When abutting an "R" District, not less than 50 feet.
- I. Offstreet Parking and Loading Facilities. Off-street parking and loading facilities shall be provided as required.
- J. Planting Areas.
  - (1) Landscape development in an area of at least 5 feet in width along streets with the exception of approved entrances, which border uses in the L-I District shall be planted and maintained with trees and shrubbery to serve as a screen for parking and storage areas. Ornamental fence or wall may be used in lieu of landscaping.
  - (2) A planting screen, consisting of suitable shrubbery maintained at an 8 foot height by 8 foot width, shall be planted within a required buffer area which abuts an "R" District.

(Ord. 1/3/1994, §801)

## PART 9

### PROVISIONS GOVERNING CONSERVANCY DISTRICTS

#### "S" Conservancy District.

The "S" Conservancy District is intended to encourage the conservation of steep hillside land within the Borough, Where the economics of building and supplying public services and facilities argue against the more usual type of building development; and where only huge expenditures for grading the land will permit a change of zone and make building development feasible; to prohibit commercial and industrial uses of land and also residential use, except under special conditions relating to public service; and to discourage any use when its character or location within the district would create requirements and costs for public service, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs in areas of less steep topography.

#### §901. USE.

In this district, the land and structures may be used, and structures may be erected, altered, enlarged and maintained for the following uses only:

##### A. Permitted Uses.

- (1) Farming, general gardening and growing of trees and nursery stock; not including roadside displays or commercial signs.
- (2) One-family dwelling, when located on a street improved to Borough standards, provided connection with a public sewer is feasible, and the cost of offsite connections to such sewer and installation of streets and curbing is borne by the developer, or other sewerage disposal facilities in conformity with the requirements of the local public health authorities are installed.
- (3) Recreation area, when operated by a nonprofit organization.
- (4) Reforestation and public reservation, not involving sales or advertising on the premises.
- (5) Special uses exceptions as regulated under Part 13.

##### B. Height. The maximum height of buildings hereafter erected or altered shall be as follows:

- (1) One-Family Detached Dwelling. Thirty-five feet or 2 1/2 stories.
- (2) Accessory Building. Twenty feet.

## ZONING

- (3) Any Other Permitted Building. Thirty-five feet or 2 1/2 stories
- C. Lot Area. The minimum lot area for every building hereafter erected or altered shall be as follows:
  - (1) One-Family Detached Dwelling. A minimum of 12,000 square feet and a width at the building line of 75 feet.
- D. Yard Areas Setback. No building or structure shall be erected or enlarged unless the minimum yard areas and setbacks are provided as follows:
  - (1) Front Yard. Not less than 25 feet.
  - (2) Side Yard. Not less than 15 feet.
  - (3) Rear Yard. Not less than 15 feet.
- E. Percentage of Lot Coverage. All buildings, including accessory uses, shall cover not more than 20% of the area of the lot.
- F. Dwelling Standards. Every one-story dwelling unit hereafter erected or altered shall have a building area of not less than 850 square feet per dwelling unit. Every dwelling unit of more than one story hereafter erected or altered shall have a total floor area of not less than 1,000 square feet per dwelling unit.
- G. Off-Street Parking Facilities. Shall be provided as required or permitted.

(Ord. 1/3/1994, §901)

## PART 10

### PROVISIONS GOVERNING FLOODPLAIN DISTRICTS

#### §1001. "FP" FLOODPLAIN DISTRICT IDENTIFICATION.

1. The Floodplain District is intended to discourage development of any kind in those areas adjacent to the river. The recognition of a floodplain district on the zoning map serves to minimize loss of life and health and damage to public and private property due to recurring or severe flooding. Floodplain zones also provide notice to prospective developers that flooding may be expected in the area.
2. Floodplain zoning is based upon the following requirements (those elements or element which covers the largest surface area shall be used to determine the floodplain district):
  - A. Based on "Standard Project Flood" as delineated by the U.S. Army Corps of Engineers.
  - B. Based on floodprone areas by the U.S. Department of the Interior, Geological Survey.
  - C. Based on Federal Insurance Administration, "Flood Hazard Boundary Map."
3. Within the floodway itself, only open uses such as agriculture and parks are appropriate.<sup>1</sup> In the floodway fringe special standards to protect property and public health and safety are applied to the use of the land and to the construction of buildings.<sup>2</sup>
4. General Provisions. No structure or land shall hereafter be used and no structure shall be located, relocated, constructed, reconstructed, enlarged or structurally altered except in full compliance with the terms and provisions of this Chapter, and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this Chapter.
5. District Boundary Changes. The delineation of any of the floodplain districts may be revised by the Borough where natural or manmade changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, river basin commission or other qualified agency or individual documents the notification for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).

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<sup>1</sup> Floodway - the designated area of a floodplain required to carry and discharge flood waters of a given magnitude. For the purposes of this Chapter, the floodway shall be capable of accommodating a flood of the 100 year magnitude.

<sup>2</sup> Floodway Fringe - that portion of the floodplain outside the floodway.

## ZONING

### 6. District Provisions.

- A. All uses, activities and development occurring within any floodplain district shall be undertaken, only, in strict compliance with the provisions of this Chapter and with all other applicable codes and ordinances such as the Borough's Subdivision and Land Development Ordinance.
- B. Under no circumstances shall any use, activity and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch or any other drainage facility or system.
- C. Prior to any proposed alteration or relocation of any stream of any watercourse, stream, etc., within the Borough, a permit shall be obtained from the Department of Environmental ~~Resources~~ Protection, Dams and Encroachment Division. Further, notification of the proposal shall be given to all affected adjacent municipalities. Copies of such notifications shall be forwarded to both the Federal Insurance Administration and the Department of Community Affairs. [A.O.]
- D. Permitted Uses.
  - (1) Floodway. In the floodway no structural development shall be permitted except where the effect of such development on flood heights is fully offset by accompanying stream improvements which have been approved by all appropriate local and/or State authorities as required above.
  - (2) In the Floodway District the following uses and activities are permitted provided that they are in compliance with the provisions of the underlying district and are not prohibited by any other ordinance and provided that they do not require structures, fill or storage of materials and equipment.
    - (a) Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming and wild crop harvesting.
    - (b) Public and private recreational uses and activities such as parks, day camps, picnic grounds, golf courses, boat-launching and swimming areas, hiking and horseback riding trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges and hunting and fishing areas.
    - (c) Accessory residential uses such as yard areas, gardens, play areas and pervious parking areas.
    - (d) Accessory industrial and commercial uses such as yard areas, previous parking and loading areas, airport landing strips, etc.

- E. Uses Permitted by Special Exception. The following uses and activities may be permitted by special exception provided that they are in compliance with the provisions of the underlying district and are not prohibited by any other ordinance:
- (1) Structures accessory to the uses and activities in subsection (E), above.
  - (2) Utilities and public facilities and improvements such as railroads, streets, bridges, transmission lines, pipe lines, water and sewage treatment plants, and other similar or related uses.
  - (3) Water-related uses and activities such as marinas, docks, wharves, piers, etc.
  - (4) Extraction of sand, gravel and other materials.
  - (5) Temporary uses such as circuses, carnivals and similar activities.
  - (6) Storage of materials and equipment provided that they are not buoyant, corrosive, radioactive, flammable or explosive, and are not subject to major damage by flooding, or provided that such material and equipment is firmly anchored to prevent flotation or movement, and/or can be readily removed from the area within the time available after flooding warning.
  - (7) Other similar uses and activities provided they cause no increase in flood heights and/or velocities. All uses, activities and structural developments, shall be undertaken in strict compliance with the floodproofing provisions contained in all other applicable codes and ordinances.
7. Floodway Fringe. In the Floodway Fringe the development and/or use of land shall be permitted in accordance with the regulations of the underlying district provided that all such uses, activities and/or development shall be undertaken in strict compliance with the floodproofing and related provisions contained in all other applicable codes and ordinances.
8. Special Exceptions and Variances; Additional Factors to be Considered. In passing upon application for special exceptions and variances the Zoning Hearing Board shall consider all relevant factors and procedures specified in other Sections of this Chapter and:
- A. The danger of life and property due to increased flood heights or velocities caused by encroachments. No special exception shall be granted for any proposed use, development or activity that will cause any increase in flood levels during the 100 year flood.
  - B. The danger that materials may be swept on to other lands or downstream to the injury of others.



## ZONING

- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- E. The importance of the services provided by the proposed facility and the community.
- F. The requirements of the facility for a waterfront location.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- J. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- K. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.
- L. Such other factors which are relevant to the purposes of this Chapter.

The Zoning Hearing Board may refer any application and accompanying documentation pertaining to any request for a special exception or variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for protection and other related matters.

9. Development Which May Endanger Human Life. In accordance with the Pennsylvania Floodplain Management Act, and the regulations adopted by the Department of Community Affairs as required by the Act, any new or substantially improved structure which:
- A. Will be used for the production or storage of any of the following dangerous materials or substances;
  - B. Will be used for any activity requiring the maintenance of a supply of more than 550 gallons, or other comparable volume, of any of the following dangerous materials or substances on the premises;
  - C. Will involve the production, storage or use of any amount of radioactive substances;

shall be prohibited from development within any identified floodplain area. The following list of materials and substances are considered dangerous to human life:

- A. Acetone.
- B. Ammonia.
- C. Benzene.
- D. Calcium carbide.
- E. Celluloid.
- F. Chlorine.
- G. Hydrochloric acid.
- H. Hydrocyanic acid.
- I. Magnesium.
- J. Nitric acid and oxides of nitrogen.
- K. Petroleum products (gasoline, fuel oil, etc.)
- L. Phosphorus.
- M. Potassium.
- N. Sodium.
- O. Sulphur and sulphur products.
- P. Pesticides (including insecticides, fungicides and rodenticide)
- Q. Radioactive substances, insofar as such substances are not otherwise regulated.

10. Activities Requiring Special Permits. The following activities shall be prohibited within any identified floodplain area unless a special permit has been issued by the Borough as provided in the Borough Floodplain Ordinance [Chapter 8]:

- A. Hospitals.
- B. Nursing homes.
- C. Jails or prisons.
- D. Mobile home parks.

Application requirements, review procedures and special technical requirements are contained within the Borough Floodplain Ordinance [Chapter 8] regarding the above-mentioned activities.

11. Existing Structures in Identified Floodplain Areas.

- A. Existing Structures. The provisions of this Chapter do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to any existing structure, the following provisions shall apply.
- B. Improvements. The following provisions shall apply whenever any improvement is made to an existing structure located within any identified floodplain area:
  - (1) Any modification, alteration, reconstruction or improvement, of any kind to an existing structure, to an extent or amount of 50% or more of its market value, shall constitute a substantial improvement and shall be undertaken only in full compliance with the provisions of this Chapter and the Borough Floodplain Ordinance [Chapter 8].

(Ord. 1/3/1994, §1001; as amended by A.O.

## PART 11

### ADMINISTRATION AND ENFORCEMENT

#### §1101. ZONING OFFICER.

1. Zoning Enforcement. A Zoning Officer shall be appointed by the East Conemaugh Borough Council to administer and enforce this Chapter. The Zoning Officer shall not hold any elective office in the Borough.
2. Duties and Powers of Zoning Officer. It shall be the duty of the Zoning Officer to enforce literally the provisions of this Chapter, as amended, and he shall have such duties and powers as are conferred on him by this Chapter and as are reasonably implied for that purpose. The Zoning Officer's duties shall include, but are not limited to, the following:
  - A. Receive applications for and issue zoning permits and sign permits.
  - B. Keep an official record of all business and activities, including complaints of a violation of any of the provisions of this Chapter and of the action taken consequent on each such complaint. All such records shall be open to public inspection. File copies of all applications received, permits issued, reports and inspections made in connection with any structure, building, sign and/or land shall be retained as long as they remain in existence.
  - C. Make inspections as required to fulfill his duties. He shall have the right to enter any building or structure or enter upon any land at any reasonable hour in the course of his duties.
  - D. Issue permits for special exception uses and for variances only after such uses and/or buildings have been approved by the Zoning Hearing Board in accordance with the regulations of this Chapter.
  - E. Be responsible for keeping this Chapter and the Zoning Map up to date so as to include all amendments thereto.
  - F. Institute civil enforcement proceedings as a means of enforcement.
3. Notice of Violations.
  - A. The Zoning Officer shall serve a notice of violation on any person, firm, corporation or partnership responsible for violating any of the provisions of this Chapter, or in violation of a detailed statement of a plan approved thereunder. Notice of violation shall be in writing, indicating the nature of the violation and action necessary to correct same. If the notice of violation is not complied with, the Zoning Officer shall order the discontinuance of such unlawful use of structure, building, sign and/or land.

## ZONING

- B. The violation notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive violation notices regarding that parcel, and to any other person requested in writing by the owner of record. The violation notice shall include at least the following information:
- (1) Name of the owner of record and any other person against whom the Borough intends to take action.
  - (2) Location of the property in violation.
  - (3) Specific violation(s) with a description of the requirements which have not been met, referring to applicable provisions of this Chapter.
  - (4) Date before which the steps for compliance must be commenced and the date before which the steps must be completed.
  - (5) Rights of appeal to the Zoning Hearing Board and prescribed appeal time period of the recipient according to this Chapter.
  - (6) Notice that failure to comply within the time period, unless extended by the Zoning Hearing Board, constitutes a violation, and possible sanctions clearly described.

(Ord. 1/3/1994, §1101)

### §1102. ZONING PERMIT.

No building, structure or accessory use shall be erected, constructed, moved, added to or structurally altered, nor shall land be put to any use without a permit therefor, issued by the Zoning Officer. No such permit shall be issued except in conformity with the provisions of this Chapter, or upon written order from the Zoning Hearing Board in the form of an administrative review, special exception or variance as provided by this Chapter or by the Court.

- A. Form of Application. All applications shall be made in writing and shall be accompanied by two sets of plans showing at least the following information.
- (1) Actual dimensions and shape of the lot to be built upon.
  - (2) The exact size and location on the lot of buildings, structures or accessory uses existing and/or proposed extensions thereto.
  - (3) The number of dwelling units, if any, to be provided.
  - (4) Methods of sewage and solid waste disposal, plus information on quantity and quality of sewage involved and proposed method of treatment if required.

- (5) Parking spaces provided and/or loading facilities.
  - (6) Statement indicating the existing or proposed use.
  - (7) Type of building construction.
  - (8) Height of structure, building or accessory use.
  - (9) Actual construction cost.
  - (10) All other information necessary for such Zoning Officer to determine conformance with and provide for enforcement of this Chapter.
  - (11) One copy of the plans shall be returned to the applicant by the Zoning Officer after he shall have marked such copies either as approved or disapproved and attested to same by his signature on such copy.
  - (12) One copy of all such plans shall be retained by the Zoning Officer for his permanent records.
  - (13) Such approval and zoning permit shall be issued or refused within 30 days from date of application. In case of refusal, the applicant shall be informed of his rights of appeal. The application for a permit shall be submitted in such form as the Zoning Officer may prescribe.
- B. Expiration of Zoning Permit. The zoning permit shall expire within 90 days from date of issuance, if work described in any permit has not begun. If work described in any zoning permit has begun, said permit shall expire after 2 years from date of issuance thereof.

(Ord. 1/3/1994, §1102)

**§1103. CERTIFICATE OF USE AND OCCUPANCY.**

A certificate of use and occupancy shall be required upon the completion of the work contemplated. It shall be unlawful to use and/or occupy any structure, building and/or land portions thereof in any manner until a certificate of use and occupancy has been issued.

- A. Form of Application. The application for certificate of use and occupancy shall be submitted in such form as the Zoning Officer may prescribe.
- B. Issuance of Certificate of Use and Occupancy.
  - (1) The Zoning Officer shall inspect any structure, building, accessory use and/or land or portions thereof and shall determine the conformity therewith. If he is satisfied that the completed work is in conformity with

## ZONING

this Chapter and with the work listed in the zoning permit, he shall issue a certificate of use and occupancy.

- (2) A certificate of use and occupancy shall be granted or refused in writing, within 10 days from the date of application.

(Ord. 1/3/1994, §1103)

### §1104. SCHEDULE OF FEES.

1. Each application for a building permit shall be accompanied by cash, certified check or money order payable to East Conemaugh Borough in accordance with the schedule of fees as follows:

A. ~~Single and Two Family Residential and Accessory Uses.~~

<u>Construction Value</u>	<u>Fee</u>
\$ 5,000 or less	\$10.00
\$ 5,000 to \$25,000	\$20.00
\$25,000 to \$50,000	\$50.00
\$50,000 and over	\$75.00

B. ~~Multifamily, Commercial, Industrial and Accessory Uses. A minimum fee of \$10 plus \$1 additional fee per \$1,000 construction value to a maximum fee of \$1,000.~~

as established from time to time by Borough Council. [A.O.]

2. Payment of permit fees does not obligate the Zoning Officer or Borough to grant a permit to the applicant. All permits issued must be in conformance with the provisions of this Chapter; and in the event a permit is not issued, the application fee will be retained by the Borough of East Conemaugh and shall be credited to the General Fund.

(Ord. 1/3/1994, §1104; as amended by A.O.)

### §1105. REMEDIES.

In case any buildings or structures are erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this Chapter, the Borough Council or, with their approval the Zoning Officer, in addition to other remedies, may institute in the name of East Conemaugh Borough any appropriate action or proceedings or prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

(Ord. 1/3/1994, §1105)

**§1106. PENALTIES.**

Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Chapter shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough, pay a judgment not more than \$500 plus all court costs, including reasonable attorney fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district magistrate. If the defendant neither pays or timely appeals the judgment, the Borough may enforce the judgement pursuant to applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district magistrate determining that there was a good faith basis for the defendant to have believed there was no violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district magistrate 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 Chapter shall be paid over to the Borough. The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.

(Ord. 1/3/1994, §1106)

**§1107. AMENDMENTS AND CHANGES.**

1. Whenever it is deemed desirable in order to meet the public needs, promote the convenience and welfare of the public, conform with good zoning practice and the intent and purpose of this Chapter, and adhere to the guiding principles of the Comprehensive Master Plan, the East Conemaugh Borough Council may, by ordinance, after report thereon by the Planning Commission and subject to the procedure provided in this Section, amend, supplement or change the regulations, district boundaries or classifications of property, now or hereafter established by this Chapter.
2. Any amendment, supplement, special exception, reclassification, modification or change may be initiated by any of the following:
  - A. The Planning Commission may initiate action by filing a written report to the East Conemaugh Borough Council.
  - B. The East Conemaugh Borough Council may initiate action by filing a written request to the Planning Commission.
  - C. The owner or owners of 51% or more of frontage of the property, between two intersecting streets, proposed to be changed, may submit a notarized petition to the Borough Council.
3. Petition for Map Change, Amendment.



## ZONING

- A. Form and Consent. Petitions for change of district boundaries or reclassification of districts as shown on the Official Zoning Map shall be on forms supplied by the Planning Commission. A narrative description which: (1) defines the limits of the requested change by street name or recognizable physical feature; (2) states the specific reasons for the requested change; and (3) states the specific use, type of development and type of structure to be erected under the proposed change. A map and/or preliminary site plan of the area to be rezoned shall also be submitted to the Commission for reference and review by the Commission.
  - B. Preliminary Review by Planning Commission. After the facts presented and the date and information from the petition are reviewed and studied by the Planning Commission, the Commission shall, within 15 days after the regularly scheduled meeting, submit the petition with its preliminary recommendations to the East Conemaugh Borough Council. The preliminary report by the Planning Commission is not intended to establish final approval by the Commission but rather to serve as a means of providing a format for action and review by the East Conemaugh Borough Council.
4. Action by Borough.
- A. Subsequent to the introduction of the petition for zoning change and preliminary report by the Planning Commission to the Borough, the Borough shall fix a time for a public hearing, pursuant to public notice requirements.
  - B. Public notice shall include the time and place of the public hearing for consideration of the proposed amendment, supplement or change, stating when and where a copy of the proposal will be available for public inspection, and briefly describe the change proposed.
  - C. In addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by the Borough at points deemed sufficient by the Borough along the perimeter of the tract to notify potentially interested citizens. The affected tract or area shall be posted at least 1 week prior to the date of the hearing.
5. Borough Planning Commission Review. In the case of amendments not initiated by the Borough Planning Commission, the Planning Commission shall have been informed of the amendment at least 30 days prior to the hearing.
6. Cambria County Planning Commission Review. The Borough shall submit the proposed amendment to the Cambria County Planning Commission for recommendation at least 30 days prior to the public hearing.
7. Conduct of Public Hearing. The Borough or an examining officer appointed by the Borough shall be responsible for the conduct of the public hearing.
- A. The purpose of the public hearing is to receive relevant facts, data and other material desirable and necessary for a decision on the petition for change.

- B. The chief elected official of the Borough 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.
- C. 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.
- D. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.
- E. The Borough or the hearing officer, as the case may be, shall keep a record of the proceedings, either stenographically or by sound recording, and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.

If after the public hearing the proposed amendment is changed substantially, or is revised to utilize land previously not affected by it, the Borough shall hold another public hearing, pursuant to public notice requirements, prior to proceeding to vote on the amendment.

- 8. Mediation Option. The Borough may offer a mediation option as an aid in completing proceedings authorized by this Section. In exercising such an option, the Borough and mediating parties shall meet the stipulations and follow the procedures set forth in Article IX of the Pennsylvania Municipalities Planning Code.
- 9. Final Report by Planning Commission. Within 30 days following the public hearing, the Planning Commission shall review all material, data, testimony and facts submitted for consideration in the petition for change. The Commission shall make a final report on the petition for change setting forth in detail reasons wherein public necessity, convenience and general welfare do or do not justify the proposed change and determining that the change is or is not in accord with the general objectives of the Comprehensive Plan and/or good zoning practices and shall forward its findings and recommendations to the Borough.
- 10. Publication. Notice of the proposed enactment shall include the time and place of the meeting where passage will be considered, and a reference to the place where copies of the amendment may be examined without charge or obtained at cost. The Borough shall publish the proposed amendment once in a newspaper of general circulation in the Borough. Such notice shall state the time, place of the meeting and the particular nature of the matter to be considered at the meeting. The publication shall not be more than 60 days nor less than 7 days prior to passage. Publication of the proposed amendment shall include either the full text or the title and brief summary, prepared by the Borough Solicitor. If the full text is not included, a copy will be supplied to the newspaper at the time public notice is published, and an attested copy of the proposed ordinance will be filed at the Cambria County Law Library. If substantial changes are made to the amendment after this publication, the Borough, at least 10 days prior to enactment, shall readvertise a brief summary setting forth all provisions and changes,

## ZONING

according to the aforementioned notice requirements for enactment in a newspaper of general circulation in the Borough.

### 11. Final Action by the Borough.

- A. The passage of an ordinance amending, supplementing or changing the regulations, district boundaries or classification of property, now or hereafter established by this Chapter, shall require the affirmative vote of a majority of the members of the Borough Council.
- B. Any ordinance amending, supplementing or changing the regulations, district boundaries or classification of property hereinafter established by this Chapter, if not acted upon by the Borough within 60 days after the required public hearing, shall require a new public hearing as prescribed in this Section.
- C. Within 30 days after the enactment, the Borough shall forward a copy of the amendment to the Cambria County Planning Commission.

### 12. Fees. Any person other than the Borough or Borough Planning Commission requesting an amendment of this Chapter shall pay a fee ~~of one hundred dollars (\$100) at the time the request is filed with the Municipality~~ in an amount as established from time to time by resolution of the Borough Council. At the conclusion of the proceedings, the Borough may assess the applicant for the cost incurred by the Borough in the conduct of the proceedings. All fees shall be paid to the Borough to be deposited in the General Fund. No part of the fees shall be refunded to the applicant. [A.O.]

(Ord. 1/3/1994, §1107; as amended by A.O.)

### §1108. LANDOWNER CURATIVE AMENDMENT.

A landowner who desires to challenge the validity of this Chapter, map or any provision thereof, on substantial grounds, which prohibits or restricts the use or development of land in which he has an interest, may submit a curative amendment to the Borough with a written request that his challenge and proposed amendment be heard and decided. The Borough shall commence a public hearing within 60 days of the written request.

- A. Notification. The Borough Planning Commission and the Cambria County Planning Commission shall be notified of the proposed amendment at least 30 days prior to the public hearing.
- B. Publication. Publication requirements of §1107 of this Chapter shall apply.
- C. Public Hearings. The hearing shall be conducted in accordance with §1204 of this Chapter, and all references therein to the Zoning Hearing Board shall, for the purposes of this Section, refer to the Borough Council of the Borough of East Conemaugh.

- D. Invalidation Limitation. If the Borough does not accept the landowner's curative amendment and a court subsequently rules that the challenge has merit, the court's decision shall not result in a declaration of invalidity for the entire Chapter or map, but only for those provisions which specifically relate to the landowner's curative amendment and challenge.
- E. Enactment Considerations. If it is determined that the challenge has merit, the Borough Council may accept the landowner's curative amendment, with or without revision, or may adopt an alternative amendment which cures the challenged defects. In addition to the curative amendments, plans and information submitted by the landowner, the Borough Council shall also consider the following:
- (1) The impact of the proposal on roads, sewer facilities, water supplies and other public facilities.
  - (2) The impact of residential proposals on regional housing needs and their effectiveness in providing housing units of the type available to and affordable by classes of persons otherwise excluded by the challenged provisions of the Chapter or map.
  - (3) Site suitability in relation to physiographic features.
  - (4) The impact of the proposed use on physiographic and environmental considerations.
  - (5) The impact of the proposed use on agricultural preservation, public health and public welfare considerations.

(Ord. 1/3/1994, §1108)

**§1109. BOROUGH CURATIVE AMENDMENTS.**

The Borough may determine that this Chapter or Sections thereof are substantially invalid. This determination shall declare by formal action the Sections substantially invalid and propose a curative amendment to overcome this invalidity.

- A. Within 30 days of this declaration and proposal the Borough shall:
- (1) By resolution make specific findings setting forth the declared invalidity which may include specific uses, classes of uses or references to the entire Chapter.
  - (2) Begin to prepare and consider a curative amendment to correct the declared invalidity.

## ZONING

- B. Within 180 days of the declaration and proposal, the Borough shall enact a curative amendment or validate, or reaffirm the validity of, this Chapter pursuant to the procedures outlined in §1107 of this Chapter.
- C. After using this procedure, the Borough may not again utilize this method for a 36-month period following the date of a curative amendment, or reaffirmation of this Chapter, unless a new duty or obligation is imposed on the Borough by a change in statute or Pennsylvania appellate court decision after the date of declaration and proposal. In this case, the Borough may use the provisions of this Section to fulfill said duty or obligation.
- D. Any other procedures or provisions as required by the Pennsylvania Municipalities Planning Code.

(Ord. 1/3/1994, §1109)

PART 12

ZONING HEARING BOARD

§1201. CREATION, ORGANIZATION AND EXPENDITURES.

1. Creation and Membership. There is hereby established a Zoning Hearing Board. The membership of the Board shall consist of three residents of the Borough appointed by the Borough Council of the Borough. Their terms of office shall be 3 years (or 5 years) and shall be so fixed that the term of office of one member shall expire each year. The Board shall promptly notify the Borough of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the Borough. The Borough Council of the Borough may appoint at least one but not more than three alternative members of the Board for a 3 year term of office.
2. Removal of Members. Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Borough 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.
3. Organization. The Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the Board but the Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Board. The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Borough and laws of the Commonwealth. The Board shall keep full public records of its business and shall submit a report of its activities to the Borough as requested by the Borough. If, by reason of absence or disqualification of a member, a quorum is not reached, the chairman of the Board shall designate the alternate member to sit on the Board to provide a quorum. The alternate member shall continue to serve on the Board in all proceedings involving the case of which the alternate was initially appointed until the Board has made a final determination of the matter or case.
4. Expenditures. Within the limits of funds appropriated by the Borough, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties. Alternate members of the Board may receive compensation for the performance of their duties. In no case shall the compensation paid to Board members and alternates exceed the rate of compensation paid to the Borough Council of the Borough.

(Ord. 1/3/1994, §1201)

§1202. FUNCTIONS.

The Zoning Hearing Board shall function in strict accordance with and pursuant to the Municipalities Planning Code and shall have all powers set forth therein including, but not limited to, the following:

- A. Variances. The Board shall hear requests for variances where it is alleged that the provisions of this Chapter inflict unnecessary hardship upon the applicant. The Board may by rule prescribe the form of application and may require preliminary application to the Zoning Officer. The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:
- (1) 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 the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Chapter in the neighborhood or district in which the property is located.
  - (2) 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 this Chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
  - (3) That such unnecessary hardship has not been created by the appellant.
  - (4) 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.
  - (5) 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.

In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of ~~this act~~ the Municipalities Planning Code and this Chapter. [A.O.]

- B. Special Exceptions. Where the Borough Council, in this Chapter, has stated special exceptions to be granted or denied by the Board pursuant to express standards and criteria, the Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of this Chapter.