

BOROUGH OF HOMER CITY

Indiana County, Pennsylvania

ZONING ORDINANCE

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Part 1

Title, General Intent, Establishment of Controls

§101. Title, General Intent, Establishment of Controls.

1. Long Title. A Chapter to establish zoning regulations for the use of land and structures, area of lots, bulk of buildings and other structures, the density of populations, the provision of off-street parking and loading spaces and similar accessory regulations for Homer City Borough, Indiana County, Pennsylvania, and for such purposes to divide the Borough into zoning districts; and, further, to provide for administrative enforcement and amendment thereof, in accordance with the provisions of Act No. 247, Pennsylvania Municipalities Planning Code, as amended, and to repeal all ordinances in conflict herewith.

2. Short Title. This Chapter shall be known and may be cited as the "Zoning Ordinance of Homer City Borough, Indiana County, Pennsylvania."

3. Zoning Purposes. The provisions of this Chapter are designed to promote, protect and facilitate one (1) or more of the following: the public health, safety, morals, general welfare, coordinated and practical community development, proper density of populations, civil defense, disaster evacuation, airports and national defense facilities, the provision of adequate light and air, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, public grounds and other public requirements, as well as to prevent one (1) 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.

4. Community Development Objectives. This Chapter is adopted to promote an orderly plan of development according to the Homer City Borough Comprehensive Plan. Said comprehensive plan establishes policy in regard to land use, density of population, location and function of streets and other community facilities and utilities, among others. As such, when necessary, the material contained therein shall be utilized to establish policy in the interpretation of this Chapter.

5. Interpretation of Zoning Standards. In interpreting and applying the provisions of this Chapter, they shall be held to be the minimum requirements of the promotion of the public health, safety and welfare of the Borough.

6. Establishment of Controls.

A. Minimum and Uniform Regulations. The regulations set by this Chapter within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land.

B. For New Uses and Structures. In all districts, after the effective date of this Chapter, any new building or other structure on

any tract of land shall be constructed, developed and used only in accordance with the regulations specified for each district.

c. For Existing Uses and Structures.

(1) In all districts, after the effective date of this Chapter, any existing building or other structure, or any tract of **land which is not in conformity with the regulations for the** district in which it is located, shall be deemed as nonconforming and subject to the regulation of this Chapter.

(2) All existing uses that are in conformance after the effective date of this Chapter are subject to the requirements of this Chapter.

D. Type of Control. The following minimum and uniform regulations shall apply in the respective districts: use regulations, including uses by right, conditional uses and uses by special exception; area and **bulk regulations, including required front, side and rear yards; maximum** permitted height and allowable lot coverage, and floor area ratio requirements in those districts in which they apply; off-street parking and loading regulations; sign regulation; and special regulations dealing with open space, landscaping, storage, access and traffic control and lighting.

7. Establishment of Districts; Types of Districts. For the purpose of this Chapter, Horner City Borough in entirety is hereby divided into the following districts:

A. Floodplain District.

(1) FP Floodplain District.

B. Residential Districts.

(1) R-1 Low Density Residential District.

(2) R-2 Medium Density Residential District.

(3) R-P Planned Residential Development District.

C. Commercial Districts.

(1) C-1 General Commercial District.

D. Industrial District.

(1) I Light Industrial District.

E. Lot Sizes. Any lot, as well as the open spaces reserved on it, must equal or exceed the minimum sizes prescribed by this Chapter for the district in which the lot is located.

8. The Zoning Map.

A. Title. The map showing the division of the Borough into the designated zoning districts shall be known as the Homer City Borough Zoning Map. Said map and all the notations, references and other data shown thereon are hereby incorporated by reference into this Chapter as if all were fully described herein.

B. Adoption of Zoning Map. The Homer City Borough Zoning Map shall be kept on file with the Borough Secretary. If, and whenever, changes are made in boundaries or other matter included on said zoning map, such changes in the zoning map shall be made within thirty (30) days after any such amendment has been adopted by the Borough Council.

C. District Boundary Lines. The district boundary lines shall be as shown on the zoning map. District boundary lines are intended to coincide with lot lines, centerlines of streets, the limits of the Borough or as dimensioned on the map. In case of doubt or disagreement concerning the exact location of the boundary line, the determination of the Zoning Hearing Board, as provided in Part 8, shall prevail.

D. Title Boundary Tolerances. Where a district boundary line divides a lot held in single and separate ownership at the effective date of this Chapter, the use regulations applicable to the more restrictive district shall apply. The most restrictive district shall be the FP District, followed in descending order by R-1, R-2, C-11 C-2, I-1.

9. Annexed Land or Land Otherwise Acquired. All land annexed to the Borough after the effective date of this Chapter shall be automatically classified as an R-1 Low Density Residential District, and shall remain so classified until a zoning plan for the annexed area has been adopted by the Borough Council. The Planning Commission shall recommend to the Borough Council appropriate zoning for the annexed area within ninety (90) days of the effective date of such annexation or acquisition.

10. Separability. Should any Section or provision of this Chapter be declared by the courts to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the Chapter as a whole or the validity of any other Section or provision of the Chapter than the one (1) so declared.

(Ord. 445, 12/8/1997, §101)

§102. Definitions, Interpretations or Regulations.

1. Language Interpretations. For the purpose of this Chapter, certain words shall have the meaning assigned to them as follows:

A. Words used in the present tense include the future. The singular number includes the plural and the plural the singular.

B. The word "building" includes "structure" and any part thereof.

C. The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for" or "occupied for."

D. The word "person" includes an individual, corporation, partnership, incorporated association or any other entity of any kind and nature whatsoever.

E. The word "includes" or "including" shall not limit the term to the specified example, but is intended to extend its meaning to all other instances of like kind and character.

F. Words in the masculine gender shall include the feminine and the neuter gender.

G. The word "shall" is mandatory; the word "may" is permissive.

H. Words not defined in subsection (2) shall have the meaning given in Webster's New International Dictionary, unabridged, current edition.

2. General Standards. In addition to the specific standards and criteria listed for each use below, all applications for conditional uses and uses by special exception listed in each zoning district shall demonstrate compliance with all of the following general standards and criteria:

A. The use shall not endanger the public health, safety or welfare, nor deteriorate the environment, if it is located on the property where it is proposed.

B. The use shall comply with the performance standards of §604 of this Chapter.

C. The use shall comply with all applicable requirements of governing parking and loading, governing signs, screening and landscaping, §605 and storage.

D. Ingress, egress and traffic circulation on the property shall be designed to ensure safety and access by emergency vehicles and to minimize congestion and the impact on local streets.

E. Outdoor lighting, if proposed, shall be shielded and deflected away from residential properties and public streets.

F. For all uses which are subject to the requirements of the Americans with Disabilities (ADA) Act, the applicant shall certify that all applicable ADA requirements have been met in the design.

3. Standards for Specific Uses. In addition to the general standards and criteria for all conditional uses and uses by special exception listed above, an application for any of the following uses which are listed in any zoning district as conditional use or use by special exception shall comply with the applicable standards and criteria specified below for that use:

A. Bed and Breakfast Host Homes, subject to the following express standards and criteria:

(1) All applicable lot area, lot width, yard and building coverage requirements for single-family dwellings in this district shall be met.

(2) The site proposed for a bed and breakfast host home shall **be frontage on and direct vehicular access to an arterial or collector road** as defined by this Chapter.

(3) No bed and breakfast host home shall be established within two thousand (2,000) feet of another bed and breakfast host home.

(4) No more than three bedrooms shall be available for rental to guests.

(5) Off-street parking shall be provided in accordance with the requirements of this Chapter.

(6) **No exterior signs are permitted other than for the identification of the house name or the owner's name and are subject to the sign requirements of this Chapter.**

4. Definitions. The following words and phrases shall have the meaning given in this Section, as follows:

ACCESSIBILITY RAMP - an inclined passageway between different levels for persons with disabilities. To be ADA compliant, a ramp must have no greater slope than one to twelve (1:12).

ACCESSORY BUILDING - a subordinate building, the use of which is customarily incidental to that of the principal building and is used for an accessory use, located on the same lot.

ACCESSORY USE - a use conducted on the same lot as a principal use to which it is related; a use which is clearly incidental to and customarily found to be subordinate to a particular principal use.

ADVERTISING SIGN - see "sign" and "billboard".

ALLEY - see "street.u

ALTERATIONS, MINOR - minor alterations of property to include general maintenance or upkeep. This includes, but is not limited to painting, roofing (three hundred (300) square feet or less), siding (four hundred (400) square feet or less), replacing windows and doors up to two thousand five hundred dollars (\$2500.00), insulating, routine plumbing, heating and electrical work and does not require a building permit. Bona fide invoices may be required by the Code Enforcement Officer as proof of alterations less than two thousand five hundred dollars (\$2,500.00).

ALTERATIONS, STRUCTURAL - any change or rearrangement in the exterior structural configuration or enlargement, whether by extending

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on a side or by increasing in height. Example: whole house roofing or siding are viewed as major alterations.

APARTMENT - see "dwelling , multiple."

APARTMENT HOTEL - a building consisting of guest rooms, suites of rooms or dwelling units which are occupied more or less permanently, wherein the occupants are furnished so called hotel services, including dining room and maid service.

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

AREA OF BUILDING - see "lot coverage."

AUTOMOBILE BODY SHOP - any fully enclosed structure that is used for the repair or painting of bodies and fenders of motor vehicles.

AUTOMOBILE LAUNDRY or CAR WASHING FACILITY - a structure used for the purpose of cleaning or reconditioning the exterior and interior surfaces of automotive vehicles, but not including an incidental one bay washing facility in a gasoline service station, where washing facilities are purely incidental to the operation of said service station. A self-operated vehicular laundry and facility not requiring attendance or employees, regardless of capacity, is also considered to be an automobile laundry.

BASEMENT (or CELLAR) - an enclosed area partly or completely below grade. It shall be considered a building story if more than one-third (1/3) of the perimeter walls are five (5) feet or more above the average exterior grades.

BED AND BREAKFAST - a tourist home which may or may not be the principal residence of the operator where sleeping rooms are offered to transient overnight guests for compensation and where the only meal included with the overnight accommodations is breakfast. See subsection(3) (A) for specific standards.

BILLBOARD - a sign other than one (1) indicating a business conducted on the premises, a sign upon which advertising matter of any character is printed, posted or lettered. It may be either freestanding or attached to a surface of a building or other structure.

BOARD - any body granted jurisdiction under a land use ordinance or under this Chapter to render final adjudications.

BOCA APPEALS BOARD - a five (5) member board convened to hear appeals of the Code Enforcement Officer's decisions. It shall consist

of five (5) members appointed by Borough Council.

BOROUGH COUNCIL - all references to the Borough Council are to be the Homer City Borough Council.

BUFFER AREA - a strip of land which is planted and maintained in shrubs, bushes, trees, grass or other landscaping material and within which no structure or building is permitted except a wall or fence.

BUILDING - a structure or appendage to a structure which: is permanently affixed to the land; has one (1) or more floors or stories; and, is bounded by either lot lines or yards. A building shall not include such structures as billboards, fences, travel trailers of any kind or structures with interior surfaces not normally accessible to human use, such as gas tanks, grain elevators, coal bunkers or similar structures. A building may accommodate more than (1) family and have more than (1) dwelling unit and may be used for residential, commercial, public or industrial purposes.

BUILDING HEIGHT - see "height of building."

BUILDING SETBACK LINE - an established line within a property defining the minimum required distance between the face of any structure to be erected and an adjacent right-of-way or street line. This face as measured to the major portion of the structure includes sun parlors, foyers, bay windows, porches, projecting eaves, dormers, gutters, cantilevered joists and is contiguous with the front yard lines. However, if an existing building line has been previously established, the building setback line shall be based upon an overall depth as determined from existing structures located on lots or parcels to either side of the proposed building.

BUILDING SITE or LOT - a single parcel of land under one (1) ownership, occupied or intended to be occupied by a single principal building or single principal structure; a "building site" shall be synonymous with a "lot" or "parcel" of land.

BULK - the volume of building or structure indicating the total space enclosed by the exterior walls and roof. The term is used to describe the size of buildings or other structures and their relationship to each other, to open areas such as yards and to lot lines and includes: the size, height and floor area of a building or other structure; and, all open areas in yard space relating to buildings and other structures.

BUSINESS - includes the maintenance and operation of a private school, beauty parlor, private sanitarium, health institute clinic or hospital nursing home, lodging house, boarding house, professional office or any use constituting a commercial enterprise.

CARPORT - a partially enclosed accessory structure used for the purpose of parking an automobile. Such structure may be freestanding, but is normally attached to the primary structure on at least one (1) side.

CARWASH - a structure used for the purposes of cleaning or reconditioning the exterior and interior surfaces of automotive vehicles, but not including an incidental one bay washing facility in a gasoline service station, where washing facilities are purely incidental to the operation of said service station; a self-operated car wash and facility not requiring attendance or employee, regardless of capacity. Any car wash located in the Borough shall require appropriate paved, off-street parking spaces with a capacity sufficient to handle an equivalent number of vehicles equipment to the forty-five (45) minute capacity of the maximum hourly operation of the car washing facility.

CELLAR - see "basement."

CENTERLINE OF STREET - see "street centerline, "

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

COMMUNICATIONS RECEIVING DEVICE - ham radio operations.

CONDITIONAL USE - a use permitted in a particular zoning district by the Borough Council pursuant to the provisions of this Chapter and **Article VI of the Pennsylvania Municipalities Planning Code, 53 P.S. §10601 et seq.**

CONDOMINIUM APARTMENT - a multiple dwelling where each dwelling unit in the structure is individually owned, and the owner of each unit has an undivided interest in the common areas and facilities of the structure and surrounding grounds.

CONTINUATION - the permissible uninterrupted prolongation of legal use which is rendered nonconforming by this Chapter provided that it remains otherwise lawful.

CONVENIENCE STORE - a retail establishment which does not exceed five thousand (5,000) square feet in gross floor area and which offers a limited selection of grocery, household and personal items for quick purchase, and which may include the dispensing of gasoline.

CORNER LOT - a lot bounded on at least two (2) sides by streets. The owner or developer of a corner lot may specify which street line shall be the front lot line, unless front lines are established for abutting properties. On through lots, the front lot line shall be located on the side having principal access. The required setback on all side bounded by a street shall equal the building setback line of the district in which the corner lot is situated.

COVERAGE - see "lot coverage."

DECK - a platform or floor raised above the ground and supported by posts or attached to the existing structure through the use of a

ledge or a beam bolted to a wall. The platform is usually a frame with a wood surface.

DECISION - final adjudication of any board or other body granted **jurisdiction under any land use ordinance or this Chapter to do so**, either by reason of the grant of exclusive jurisdiction or by reason of appeals from determinations. All decisions shall be appealable to the court of common pleas of the county and judicial district wherein the Borough lies.

DEMOLITION - destruction of a structure or moving a structure off the property.

DETACHED HOUSE - a "detached house" is a single-family dwelling on a lot which has yard are on all four (4) sides.

DETERMINATION - final action by an officer, body or agency charged **with the administration of any land use ordinance or applications** thereunder, except the following:

- (1) The Borough Council.
- (2) The Zoning Hearing Board.

(3) The 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** or planned residential development ordinances. Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal.

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

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

DOG KENNEL - the keeping of three (3) or more dogs that are more than six (6) months old.

DRIVEWAY - a private strip of land, generally graded, intended for use as a means of vehicular or pedestrian access to an individual lot and/or providing access between street and a parking area or garage within a lot or property. Construction of which must follow the current PennDOT regulations for driveways.

DWELLING - any building which is designed for or occupied in whole or in part as the home, residence or sleeping place of one (1) or more

persons, either permanently or temporarily, but shall not include a basement or foundation. A dwelling may be any one (1) of the following:

A. SINGLE-FAMILY - a building designed for and occupied exclusively as a residence for one (1) family.

B. DUPLEX a building designed and occupied exclusively as a residence for two (2) families, with one (1) family living wholly or partly over the other, each having a separate entrance.

C. DOUBLE - a building designed and occupied exclusively as a residence for two (2) families in such a manner that each unit is surrounded on three (3) sides by yard area and so constructed that one (1) wall is on the side lot line and abuts the neighboring dwelling unit.

D. MULTIPLE - a building used or designed as a residence for three (3) or more families living independently of each other and doing their own cooking therein, including apartment houses, apartment hotels, flats and group houses, but not as a residence for transients.

E. GROUP HOME - a dwelling unit where room and board is provided to permanent residents who are mentally or physically handicapped persons of any age, excluding any adult or juvenile assigned by order of juvenile or criminal court, who are in need of supervision and specialized services, including staff who may or may not reside in the dwelling who provide health, social and/or rehabilitative services to the residents. The services shall be provided only by a governmental agency, its licensed or certified agents or any licensed or certified nonprofit social services corporation and the facility shall meet all minimum requirements of the sponsoring agency. A group home, as defined herein, shall only be permitted in an R-2 District.

DWELLING UNIT - one (1) or more rooms for living purposes together with separate cooking and sanitary facilities which is accessible from the outdoors either directly or through an entrance hall, shared with other dwelling units, and is used or intended to be used, by one (1) or more persons living together and maintaining a common household.

DWELLING UNIT DENSITY - the maximum number of dwelling units permitted per acre or per lot.

ENLARGEMENT an addition to the floor area of an existing building, an increase in size of another structure, or an increase in that portion of a tract of land occupied by an existing use.

ESSENTIAL SERVICES - the erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies_ or underground or overhead gas, electrical, steam or water transmission or distribution systems, collections, communication, supply or disposal systems.

FAMILY - one (1) or more individuals customarily and permanently living together as a single housekeeping unit and using certain rooms and housekeeping facilities in common but not more than four (4) persons unrelated by blood, marriage or family relationship.

FENCE - a barrier constructed of materials other than shrubbery and erected for the purpose of protection, confinement, enclosure or privacy.

FLOOR AREA - the sum of the gross habitable area of the floors of a building measured from the face of the interior walls.

FRONT YARD - see "yard, front."

FRONT YARD LINE - see "yard line, front."

GARDEN APARTMENT - a garden type apartment is one (1) which is **generally located in a structure containing not less than three (3)** apartments and up to eighteen (18) apartments designed for rental of the individual apartment units; usually not exceeding three (3) stories in height; sometimes designed around courts or common green spaces; often having private balconies or patios; and, frequently exhibiting different facades and design features between structures in a garden apartment complex.

GARAGE - a building or structure in which one (1) or more motor vehicles are stored, but not for the repairs or maintenance thereof. A garage may take any one of the following forms and conform with all other applicable Borough ordinances:

(1) COMMUNITY - a single building or group of minor garages, one (1) story in height, arranged in a row or surrounding a common means of access for the use of adjacent property owners or residents of multiple dwellings.

(2) PRIVATE - an accessory structure which is either a one (1) story building or an integral part of a dwelling which is used for the storage of one (1) or more motor vehicles owned and used by the owner or tenants of the lot on which it is erected.

(3) PUBLIC - a building or part thereof other than a community garage or private garage for the storage of motor vehicles.

(4) DOUBLE - a private garage designed for the storage of two (2) motor vehicles and having one (1) interior party wall separating each car stall. Such interior wall normally rests on the property line when the double garage serves each prop_erty.

GASOLINE SERVICE STATION - an area of land, together with any structure thereon, used for the retail sale of motor fuel and lubricants and incidental services, such s lubrication and hand-washing of motor vehicles, and the sale, installation or minor repair of tires, batteries or other automobile accessories.

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GAZEBO - a small, detached pavilion that may have a raised platform.

GRADE - the mean elevation of the ground adjoining the building on all sides as referenced to the centerline of abutting streets at the midpoint of the street lot lines.

GRADE, FINISHED - the completed surfaces of lawns, walks and roads brought to grades as shown on approved plans or designs related thereto.

HALF STORY - a story with a cubic content of no more than fifty (50) percent of the first story (or ground story) of a building.

HEIGHT OF BUILDING - the vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs; to the deck line of mansard roofs; and to the mean height between eaves and ridge for gable, hip and gambrel roofs; provided that chimney, spires, towers, **mechanical penthouses, tanks and similar projections of the building not intended for human occupancy shall not be included in calculating the height. If there are two (2) or more separate roofs on a single building, the heights of such building shall be calculated from the highest roof.**

HEIGHT OF SIGN - the vertical distance measured from ground level to the highest point on the sign or its supporting structure.

HOME OCCUPATIONS - an occupation carried on in a dwelling unit, solely by the dweller therein, as a secondary use, but it shall not include: (1) the employment of more than one (1) assistant; (2) the use of equipment producing noticeable noise, odor or nuisance; (3) the display or storage for sale of goods. Nonilluminating signs or advertisement for the "home occupation" noting the name and nature of the service are permitted, but shall not be larger than two (2) square feet in area.

JUNKYARD - an area of land, with or without buildings, used for the storage, outside a completely enclosed building, of used and discarded materials including, but not limited to, water paper, rags, metal, building materials, house furnishings, machinery, vehicles or parts thereof, with or without the dismantling, processing salvage sale or other use or disposition of the same. The deposit or storage on a lot on which one (1) or more unlicensed or currently uninspected, wrecked or disabled vehicles, or the major part thereof, for ninety (90) days or more shall be deemed to constitute a "junkyard."

LAND DEVELOPMENT - any of the following activities:

(1) The improvement of one (1) lot or two (2) or more contiguous lots, tracts or parcels of land for any purpose involving:

(a) A group of two (2) or more residential or nonresidential buildings, whether proposed initially or cumulatively,

or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure.

(b) The division or allocation of land or space, whether initially or cumulatively, between or among two (2) or more **existing or prospective occupants** by means of, or for the purpose of, streets, common areas, leaseholds, condominiums, building groups or other features.

(2) A subdivision of land.

(3) **Land development does not include development which involves:**

(a) **The conversion of an existing single-family detached dwelling or single-family semi-detached dwelling into not more than three (3) residential units, unless such units are intended to be a condominium.**

(b) The addition of an accessory building, including farm building, on a lot or lots subordinate to an existing principal building.

(c) The addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park. For the purposes of this subsection, an amusement park is defined as a tract or area used principally as a location for permanent amusement structures or rides. This exclusion shall not apply to newly acquired acreage by an amusement park until initial plans for the expanded area have been approved by the proper authorities.

LOADING SPACE, OFF-STREET - a space, accessible from a street or way, in a building or on a lot, for the temporary use of vehicles while loading or unloading merchandise or materials.

LOADING STALL, OFF-STREET - a space, accessible from a street or way, in a building or on a lot, for the temporary use of vehicles, while loading or unloading merchandise or materials.

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

LOT AREA - the total area within the boundary lines of a single lot.

LOT COVERAGE - a percentage, which when multiplied by the lot area, will determine the maximum permitted building area and includes the aggregate of the maximum horizontal cross section areas of all buildings on a lot, including sun parlors, foyers, porches, breezeways, gutters, awnings, steps, walled patios, garages, carports, etc.

LOT LINE, FRONT - the line contiguous with the street line.

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LOT LINE, REAR - the line generally parallel to the front lot line, which defines the rear of the lot.

LOT LINE, SIDE - any lot line which is not front lot line or a rear lot line.

LOT WIDTH - the horizontal distance between side lot lines measured along the front building setback line.

MEDICAL FACILITIES - a facility for the examination and treatment of ill and afflicted human outpatients; provided, however, that patients are not kept overnight except under emergency conditions and includes doctors and dental offices and clinics.

MIXED USE or OCCUPANCY - the use of one (1) building for two (2) or more purposes.

MOBILE HOME - a transportable, single-family dwelling intended for permanent occupancy, contained in one (1) unit or in two (2) or more units designed to be joined into one (1) 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.

MOBILE HOME LOT - a parcel of land in a mobile home park, improved with the necessary utility connections and other appurtenances necessary for the erection thereon of a single mobile home.

MOTEL/HOTEL - a building, or a group of buildings, having units containing sleeping accommodations which are available for a temporary, rental occupancy by transients and providing sufficient off-street parking facilities adjacent or convenient thereto. A tourist home containing provisions or facilities for accommodation of more than two (2) transient occupants not normally quartered on the premises shall be considered as a motel/hotel facility under the provisions of this Chapter.

MULTIPLE FAMILY DWELLINGS - see "dwelling, multiple."

MUNICIPAL AUTHORITY - a body politic and corporate created pursuant to the Act of May 2, 1945 (P.L. 382, No. 164), known as the Municipalities Authority Act of 1945.

NONCONFORMING LOT - a lot the area or dimension of which was lawful prior to the adoption or amendment of this Chapter, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption or amendment.

NONCONFORMING SIGN - any lawful sign which does not conform to the applicable sign regulations of the district in which it is located, either on the effective date of this Chapter or as a result of subsequent amendments thereto.

NONCONFORMING STRUCTURE - a structure or part of a structure **manifestly not designed to comply with the use or extent of use** provisions of this Chapter or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of the Chapter or amendment or prior to the application of this Chapter or amendment to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs.

NONCONFORMING USE - a use, whether of land or of structure, which does not comply with the applicable use provisions in this Chapter or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of this Chapter or amendment, or prior to the application of this Chapter or amendment to its location by reason of annexation.

NURSING HOME - an establishment, licensed by the Commonwealth, engaged in providing inpatient nursing and health related personal care, utilizing, in whole or in part, licensed and/or registered nurses, excluding hospital services and excluding day-to-day personal care which is not health care by licensed or registered nurses and only permitted in an R-2 District.

OFFICE BUILDING - a building designed or primarily used for office purposes, no part of which is used for manufacturing or dwelling other than the living quarters for a watchman or custodian.

OPEN SPACE - common greens, parks, other recreation space generally open areas available to the public or yards or other open areas provided in connection with residential buildings occupied by more than two (2) families per lot which are intended for the sole use of the occupants of such building and their guests. Land covered with impermeable surface, except for recreation courts, such as basketball, is not open space. Land devoted to such uses as agriculture, parks, playgrounds, playing fields and other outdoor recreational uses, as well as all land covered by woods, lakes, ponds, rivers or streams and open lands devoted to public or community uses.

PARKING SPACE - an open or covered area with a dust free, all-weather surface (or space in a private garage or other structure) which shall be at least ten by twenty (10 x 20) feet in size for the storage of one (1) automobile, accessible from a public way and must conform to the setback requirements of the district in which it is situated.

PATIO an open area surfaced with masonry or pavement and adjoining a house.

PAVED AREA - a percentage, which when multiplied by the lot area, will determine the permitted ground area which may be covered with an impervious material.

PLANNED RESIDENTIAL DEVELOPMENT - an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units or combination of residential and nonresidential uses, the development plan for which does not correspond in lot size, bulk, type

of dwelling or use, density or intensity, lot coverage and required open space, to the regulations established in any one district created, from time to time, under the provisions of this Chapter.

PLANNING COMMISSION - Planning Commission of Homer City Borough.

PORCH - a covered entrance to a building commonly enclosed in part, projecting out from the main wall and having a separate roof.

PRIVATE - any facility or establishment limited to members of an organization or to other persons specifically invited or permitted where no advertisement or inducement has been made to the general public.

PROFESSIONAL OFFICE a room or rooms used for carrying on professional occupation, including medical doctors; engineers, architects, lawyers, accountants or similar professional services.

PUBLIC - of or pertaining to buildings, structures, uses or activities belonging to or affecting any duly authorized governmental body, available for common or general uses by all.

PUBLIC GROUNDS - includes:

(1) Parks, playgrounds, trails, paths and other recreational areas and other public areas.

(2) Sites for schools, sewage treatment, refuse disposal and other publicly owned or operated facilities.

(3) Publicly owned or operated scenic and historic sites.

PUBLIC HEARING - a formal meeting held pursuant to public notice by the Borough Council or Planning Commission, intended to inform and obtain public comment, prior to taking action in accordance with this Chapter.

PUBLIC MEETING - a forum held pursuant to notice under the Act of July 3, 1986 (P.L. 388, No. 84), known as the Sunshine Act, 53 P.S. §271 et seq.

PUBLIC NOTICE - notice published once each week for two (2) successive weeks in a newspaper of general circulation in the Borough. 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 thirty (30) days and the second publication shall not be less than seven (7) days from the date of the hearing.

REAR YARD - see "yard, rear."

REAR YARD LINE - see "yard line, rear."

REPORT - any letter, review, memorandum, compilation or similar writing made by any body, board, officer or consultant other than a

solicitor to any other body, board, officer or consultant for the purpose of assisting the recipient of such report in the rendering of any decision or determination. All reports shall be deemed recommendatory and advisory only and shall not be binding upon the recipient, board, officer, body or agency, nor shall any appeal lie therefrom. 'Any report issued, received or considered by the body, board, officer or agency rendering a determination or decision shall be made available for inspection to the applicant and all other parties to any proceeding upon request, and copies thereof shall be provided at cost of reproduction.

RESTAURANT - any building or use which serves food to the general public and which provides tables, chairs and/or counters for the consumption of food entirely within the walls of such building or use. The word "restaurant" does not include drive-in establishments which permit the consumption of food within motor vehicles.

SATELLITE DISH - a television receiving device.

SCHOOL - any building, group of buildings or grounds, or portions thereof, used for the purposes of educating individuals, meeting the requirements of the Commonwealth of Pennsylvania, but excluding any privately Operated school of trades, vocations, avocations or business.

SEMIPRIVATE churches, Sunday schools, parsonages and other related religious functions; colleges hospitals and other institutions of an educational, religious, charitable or philanthropic nature.

SETBACK - see "buildingsetback line.♦♦

SEXUALLY ORIENTED BUSINESS - an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

SHED - a slight structure built for storage.

SIDE YARD - see "yard, side."

SIDE YARD LINE - see "yard line, side."

SIGN - any cloth, card, paper, metal, painted glass, wooden, plastic, plaster, stone sign or other sign, device or structure of any character whatsoever, including statuary, placed for outdoor advertising purposes or for information or direction purposes on the ground or on any tree, wall, bush, rock, post, fence, building, trailer, vehicle or structure. The term "placed" shall include erecting, constructing, posting, painting, printing, tacking, nailing, gluing, sticking, carving or otherwise fastening, affixing or making visible in any manner whatsoever.

SITE PLAN - the site plan for the purpose of this Chapter shall be submitted on a surveyed plot diagram which was prepared by a professional engineer, architect or landscape architect, or a licensed surveyor. On this diagram, the plan shall show the proposed building and/or

structures to be constructed, altered or enlarged; the property upon which the improvements will be made, the owner of the property, the abutting owners and property lines, the exact size, shape and dimensions of the lot to be built upon, all adjacent streets or alleys, proposed parking arrangements, proposed facilities for lighting public and private utilities, existing and proposed landscape elements, existing and proposed access to the property and all customary incidentals such as north arrow, scale and any appropriate notations required to fully explain the plan.

SPECIAL EXCEPTION - a use permitted in a particular zoning district pursuant to the provisions of this Chapter and Articles VI and IX of the Pennsylvania Municipalities Planning Code, 53 P.S. §§10601 et seq., §10901 et seq.

STORY (OF A BUILDING) - that portion of a building, other than the basement (as defined), included between the surface of any floor and the surface of the floor next above it, or if there is not floor above it, then the space between the floor and the ceiling next above it.

STREET includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct or any other ways used or intended to be used by vehicular traffic or pedestrians, whether public or private.

STREET CENTERLINE - a line which is usually at an equal distance from both street lines, or right-of-way lines.

STREET LINE - see "lot line, front."

STRUCTURE - any manmade object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

TAVERN - a licensed business selling alcoholic beverages for consumption on the premises.

TELEPHONE EXCHANGE BUILDING - a building and its equipment erected and used for the purpose of facilitating transmission and exchange of telephone message between subscriptions and other business of the telephone company; but in a residential district not to include public business facilities, storage of materials, truck or repair facilities, or housing of repair crews.

TOWNHOUSE - a development consisting of a series of from three (3) to ten (10) attached dwelling units, separated from one another by continuous vertical walls without openings from basement to roof and having diversified architectural facades or treatment of materials with not more than four (4) of any ten (10) abutting units having the same architectural facades and treatment of materials and with not more than three (3) abutting units having the same front yard setback.

USE - any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained or

occupied, or any activity, occupation, business or operation carried on in a building or other structure on a tract of land.

(1) PRIMARY USE - the principal or dominant use.

(2) ACCESSORY USE - a subordinate use customarily incidental to and located upon the same lot occupied by the main use.

VARIANCE - relief granted pursuant to the provisions of this **Chapter and Articles VI and IX of the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et .§.§9;**

WATER SURVEY - an inventory of the source, quantity, yield and use of groundwater and surface water resources within the Borough.

YARD - an open space at grade between a yard line and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward.

YARD, FRONT - a "front yard" is the yard extending along the full length of the front lot line and being the minimum horizontal distance between the front lot line (or street line) and the front yard line (or the building or any projection thereof, other than steps).

YARD LINE - a "yard line" is a line drawn parallel to the corresponding lot lines at a distance specified for the required depth of yard in each respective case.

YARD LINE, FRONT - a "front yard line" bounds the front yard and is parallel to the front lot line.

YARD LINE, REAR - a "rear yard line" bounds the rear yard and is parallel to the rear lot line.

YARD LINE, SIDE - a "side yard line" bounds the side yard and is parallel to the side lot lines.

YARD, REAR - a "rear yard" is a yard extending the full length of the rear lot line and being the minimum horizontal distance between the rear lot line and the rear yard line (or the rear of the building or any projections, other than steps).

YARD, SIDE - a "side yard" is a yard extending along the side lot line from the required front yard to the required rear yard and being the minimum horizontal distance between the side lot line and the side yard line (or the side of the building or any projections, other than steps). Central air conditioning units for any structure shall be located closer than fifteen (15) feet from any property line.

ZONING HEARING BOARD - the Zoning Hearing Board of Homer City Borough.

ZONING

ZONING PERMIT - a permit required from the Zoning Officer to erect, construct, reconstruct or alter a building or land development to ensure conformance with this Chapter.

3. Interpretation of Regulations. The interpretation of the regulations of this Chapter is intended, in addition to the provisions of §§101(5) and 101(6), to be such that whenever these requirements are at variance with any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, as particularly refer to area and bulk regulations and impose higher standards, the most restrictive requirements shall govern.

(Ord. 445, 12/8/1997, §102)

Part 2

Floodplain District

(See also Chapter 8)

§201. Statement of Intent. In addition to the general goals listed in the preamble, the district established in these regulations is intended to achieve the following:

A. To prevent the erection of structures in areas susceptible to flooding.

B. To minimize danger to public health by promoting safe and sanitary drainage.

C. To promote the perpetuation of open space along streams and to preserve access to waterways.

(Ord. 445, 12/8/1997, §201)

§202. FP Floodplain District.

1. Designation of Area. Areas to be regulated by this Section are as indicated on the Zoning District Map of the Borough. The actual dimensions area as indicated on said map.

2. Use Regulations.

A. Uses by Right. In FP districts, land or premises shall be used by right for only one (1) or more of the following: parks, playgrounds, recreational uses or open space.

B. Accessory Uses. Only the following accessory uses shall be permitted: accessory uses customarily incidental to the above uses.

C. Conditional Uses. The following uses will be permitted as a conditional use when authorized by the Planning Commission and Borough Council, after due consideration of their compatibility with the floodplain area: parking areas.

D. Uses by Special Exception. None.

3. General Regulations.

A. Obstructions. The following shall not be placed or caused to be placed along or through any stream, streambed or waterway, or within twenty (20) feet of the edge thereof, within Horner City Borough: fences, any structures or other matter which may impede, retard or change the direction of the flow of water in such stream, that will catch or collect debris carried by such water or that is placed where the natural flow of the stream of flood waters would carry the same

downstream to the damage or detriment of either public or private property adjacent to said stream or waterway.

B. Fills. Fills along or changes to embankments, dams, channel changes, construction and excavations near all natural streams, water courses and water bodies, shall be in accordance with the standards of §2 of the Pennsylvania Act of June 25, 1913, P.L. 555, as amended by Act of May 6, 1957, No. 137, and Act of September 24, 1956, No. 278.

C. Procedure. Any person who proposes any change or addition to any existing water obstruction or a change in the course, current or cross section of any section of any stream or body of water shall first have obtained written approval from the Water and Power Resources Board as required by the Acts cited in subsection (3) (B), above.

(Ord. 445, 12/8/1997, §302)

Part 3

Residential Districts

§301. Statement of Intent. In addition to the general goals listed in the preamble and general intent, the district established in this Part are intended to achieve the following:

A. To provide sufficient space, appropriately located for residential development to meet the housing needs of the present and expected future population of the Borough within the range of house types and densities anticipated.

B. To assure light, air and privacy, as much as possible, by controlling the spacing and height of buildings and other structures.

C. To protect residential areas against hazards of fire, offensive noises, vibration, smoke, odors, glare or other objectionable influences.

D. To prevent congestion, as far as possible, by regulating the density of population and the bulk of buildings and by providing for sufficient off-street parking.

E. To protect residential neighborhoods, as much as possible, from heavy or through traffic.

F. To make possible provision of those public and private educational, recreational, health and similar facilities serving the needs of nearby residents, which perform most effectively in a residential environment and do not create objectionable influences.

G. To promote the most desirable use of land and direction of building development in accordance with a well considered plan to promote stable residential development, to protect the character of any district and its peculiar suitability for particular uses, to conserve the value of land and buildings and to protect the Borough tax revenues.

(Ord. 445, 12/8/1997, §301)

§302. R-1 Low Density Residential District. In addition to the general goals listed in §§101(3), 101(4) and 301, it is the purpose of this Section to permit continued residential development which is compatible with existing types of housing and lot sizes in the predominantly single-family sections of this Borough. It is further the purpose of this district to encourage additional single-family development in those sections of Homer City where lower densities are desirable.

A. Use Regulations.

(1) Uses by Right. In any R-1 District, land, buildings or premises shall be used by right only for one (1) or more of the following: one-family detached dwelling; two-family detached

dwelling; Borough recreational facilities and buildings; and essential services.

(2) Conditional Uses. The following conditional uses, all of which are classified as conditional uses, shall be permitted or denied in any R-1 District, after review and approval by the Borough Council. In the evaluation of each such use, the approval as to location, the approval of the site plan, the general and detailed character of the use or development and such other standards as may be required by the Planning Commission or the Borough Council shall be considered before approval:

(a) Churches or similar places of worship and related functions; public or private schools; community center (public, semipublic, or privately maintained); a permitted home occupation.

(b) Professional offices shall be permitted or denied after review and approval by the Borough Planning Commission and after review and approval by the Borough Council.

(3) Accessory Uses. Only the following accessory uses shall be permitted: customary residential accessory uses, accessory buildings, commodity garage (subject to §603 of this Chapter); privately owned swimming pools, provided they are located ten (10) feet from all property lines.

(4) Uses by Special Exception. The following uses shall be permitted as a special exception when authorized by the Zoning Hearing Board subject to Part 9 of this Chapter: essential services as defined in §102.

B. Area and Bulk Regulations. The following minimum regulations shall be observed:

Single-Family Detached, Two-Family, Duplex and SemiDetached Residential Structure.	
Lot size, single-family	6,000 sq. ft. minimum per dwelling unit
Lot size, (two-family, duplex and semidetached)	4,000 sq. ft. minimum per dwelling unit
Lot width	50 ft. minimum (existing lots of record may be developed if not less than 40 ft. in width)
Lot coverage	40% maximum
Building setback line	20 ft. minimum (see definition.)

Side yard (primary and accessory structures)	5 ft. minimum per side, 15 ft. aggregate
Height of principal building	30 ft. or 3 stories maximum
Height of accessory buildings	15 ft. or 1 story maximum depending upon aesthetics of the neighborhood
<p>Satellite Dish Antennas: Only one (1) satellite dish antenna shall be permitted on a residential lot. In all "R" zoning districts, satellite dish antennas shall not be permitted in any front or side yard. On any lot containing a single-family dwelling or two-family dwelling, the maximum diameter of any freestanding satellite dish antenna installed on any lot shall be twelve (12) feet and the maximum height of any such antenna shall be thirteen (13) feet. No part of any freestanding satellite dish antenna shall be located closer than five (5) feet to any property line.</p> <p>The maximum diameter of any satellite dish antenna installed on the roof of any single-family or two-family dwelling shall be two (2) feet. Any satellite dish antenna located on the roof of any garden apartment, midrise apartment or high rise apartment located in any zoning district or on any building located in the C, Commercial District shall have a maximum diameter of twelve (12) feet and a maximum height of fifteen (15) feet above the roof line when positioned vertically. The height above the roof line shall be measured from the highest point of the roof for flat roofs, the deck line for mansard roofs and the mean height between eaves and ridge for gable, hip or gambrel roofs.</p>	
Rear yard	30 ft. minimum (primary structures); 10 ft. minimum (accessory structures)
Public or Semipublic Uses	
Lot size	10,000 sq. ft. minimum
Side yards	10 ft. minimum each
Building setback line	20 ft. minimum (see definition.)
Rear yard	30 ft. minimum
Height of building	35 ft. or 3 stories
<p>On a corner lot, a side yard abutting a street shall be not less in width than the front yard required on the lot.</p>	

C. Off-Street Parking Standards and Requirements. As required by §603 of this Chapter.

(Ord. 445, 12/8/1997, §302)

§303. R-2 Medium Density Residential District. In addition to the general goals listed in §§101(3), 101(4) and 301, it is the purpose of this Section to permit residential development which provide for higher densities and apartment development while maintaining sufficient open areas so that dwellings may blend with the existing and proposed characteristics of the land. Further, these higher densities will be so delineated as to be located near major thoroughfares.

A. Use Regulations.

(1) Uses by Right. In any R-2 District, land, buildings or premises shall be used by right only for one (1) or more of the following: single-family and two-family dwellings; townhouses; garden apartments; condominium apartments; public garages.

(2) Conditional Uses. The following conditional uses, all of which are classified as conditional uses, shall be permitted or denied in any R-2 District, after review and approval by the Borough Council. In the evaluation of each such use, the approval as to location, the approval of the site plan, the general and detailed character of the use or development and such other standards as may be required by this Planning Commission or the Borough Council, shall be considered before approval:

(a) Churches or similar places of worship and related functions; apartment hotels, public or private schools; community center (public, semipublic or privately maintained) ; a permitted home occupation.

(b) Professional offices shall be permitted or denied after review and approval by the Borough Manager.

(c) Group homes for protected (age, sex, race, mental or physical handicap) populations as protected by the Federal Fair Housing Act, shall be permitted or denied after review and approval by the Borough Manager. Only one group home in each R-2 District is permitted.

(3) Accessory Uses. Only the following accessory uses shall be permitted: customary medium density residential accessory uses, accessory buildings, private garages; community garages (subject to §603 of this Chapter).

(4) Uses by Special Exception. The following uses shall be permitted as a special exception when authorized by the Zoning Hearing Board subject to Part 9 of this Chapter: essential services.

B. Area and Bulk Regulations. The following regulations shall be observed:

Single-Family Detached, Two-Family, Duplex and Semidetached Residential Structure.

Lot size, single-family	6,000 sq. ft. minimum per dwelling unit
Lot size, (two-family, duplex and semi-detached)	4,500 sq. ft. minimum per dwelling unit
Lot width	50 ft. minimum (existing lots of record may be developed if not less than 40 ft. in width)
Lot coverage	40% maximum
Building setback line	20 ft. minimum (See definition.)
Side yard (primary and accessory structures)	5 ft. minimum per side, 15 ft. aggregate
Height of principal building	30 ft. or 3 stories maximum
Height of accessory buildings	15 ft. or 1 story maximum
Rear yard	30 ft. minimum
Low Rise Residential Structures (Garden Apartments and Townhouses)	
Lot size	9,600 sq. ft. minimum
Lot width	75 ft. minimum
Building setback line	20 ft. minimum
Side yards	10 ft. minimum total
Rear yard	20 ft. minimum
Lot coverage	35% maximum of total lot area
Building height	35 ft. or 3 stories maximum
Paved area	40% maximum of total lot area
Public and Semi-Public Uses. The area and bulk regulations for permitted public and semipublic uses in the R-2 District shall be the same as in the R-1 District.	

C. Dwelling Unit Density. The following schedule shall be used to determine the minimum lot areas for multifamily structures:

Garden Apartments and Townhouses.	
For each one (1) bedroom unit	1,000 sq. ft.
For each two (2) bedroom unit	1,150 sq. ft.
For each three (3) bedroom unit or more	1,300 sq. ft.

The overall density shall not exceed forty-four (44) dwelling units per net residential acre.

D. General Provision for Garden Apartments and Townhouses.

(1) Garden apartments above the first floor may be provided with balconies with a maximum extension of eight (8) feet from the principal dwelling unit wall; however, no such extensions shall extend into any required side yard.

(2) A multifamily dwelling shall not exceed two (2) dwelling units in depth unless the additional dwelling units abut a court conforming to the following requirements:

(a) No court shall be, between two (2) opposite facing walls thereof, less than sixty (60) feet when the other dimension is ten (10) feet or more.

(b) No court abutting an interior lot side yard shall be less than ten (10) feet in width.

(c) No wing of a multifamily dwelling shall project into a required side yard.

(d) The transverse dimension of a projecting wing shall not be greater than the overall dimension of two (2) dwelling units.

(e) No front entrance shall open on a court that abuts a yard or on a yard, except either the yard or both together total not less than twenty-five (25) feet.

(f) An enclosed court shall be not less than sixty (60) feet in any dimension.

E. Off-Street Parking Standards and Requirements. As required by §603 of this Chapter.

F. Submission of Site Plan. (Shall be prepared by a registered engineer, architect, or landscape architect.) Any development proposal involving a multiple family dwelling in the R-2 District shall be subject to submission and review of a prepared site plan to the Homer City Borough Planning Commission and the Borough Council. A site plan shall indicate the following: an accurate drawing of the property involved; a plan of the proposed building or buildings; topography, proposed ingress, egress, and parking; tentative elevations of the proposed building(s); a description of the structure(s); all grading proposals; a breakdown of dwelling units by bedroom size; required building setbacks and yard areas; recreation areas; and, the owner and developer of the property.

G. Required Open Space or Recreation Areas. Any residential complex containing twenty (20) or more residential units shall provide

a minimum recreation area. The designated area shall be useful, shall not exceed an average of ten (10) percent grade and shall be reasonably useful for recreation and open space purposes.

(Ord. 445, 12/8/1997, §303)

§304. R-P Planned Residential Development Districts.

1. Statement of Intent. It is the purpose of this Section to establish regulations and controls for the use of land and structures, area of lots, bulk of buildings, amount and kind of open space land, the provision of off-street parking and other similar accessory regulations in the planned residential development districts in accordance with the provisions of Pennsylvania Act No. 247, as amended. In order that the purpose of this Chapter be furthered in an era of increasing urbanization and of growing demands for housing of all types and design, the following principles form the basis for this Section:

A. The purpose of the procedures, standards, controls and regulations of this Chapter is to provide a means whereby parcels of land in excess of three (3) acres can be designed and developed without regard to the normal lot size, building bulk and setback requirements of the typical zoning district. However, in this innovative type of development, minimum requirements are established to insure that each living unit has proper light and air, appropriate access to public ways and open space and is properly connected to public utilities.

B. To encourage innovations in residential development which will provide housing of greater variety in type, design and site planning incorporating the conservation of maximum open space ancillary to said dwellings.

C. To encourage a more efficient use of land and public service, and to reflect changes in the technology of land development so that economies secured may benefit the homeowner, the developer and the community.

D. To provide a procedure which can relate the type, design and layout of residential development to the particular site as well as the particular demand for housing existing at the time of development.

E. To insure that the increased flexibility of regulations over land development as authorized herein is carried out under such administrative standards and procedures as shall encourage the disposition of proposals for land development without undue delay, the following review powers are granted to the Planning Commission which acts as the designated planning agency of Horner City Borough:

(1) The Planning Commission shall review all planned residential developments pursuant to the provisions of this Chapter and shall make recommendations to the Borough Council for approval or disapproval, in writing.

(2) The Planning Commission shall insure that the applicant conforms to all requirements, standards, controls and regulations as are set forth in this Section.

(3) The Planning Commission and the applicant shall comply with all procedures as set forth in §304(2)(E) of this Chapter pertaining to application and hearings on tentative and final approval of a proposed planned residential development by the Borough Council.

F. Establishment of Controls The regulations set by this Section are minimum regulations within the Planned Residential Districts and shall apply uniformly to each classification or kind of lot and structure within the districts.

G. Other Articles of this Chapter. The Planned Residential Districts do not necessarily correspond in minimum lot size, building area, type of dwelling unit, density, lot coverage or required open space to any other residential district zoning regulations in the Borough.

2. Planned Residential District Regulations.

A. Use Regulations.

(1) Uses by right.

(2) Conditional Uses. In any Planned Residential District, land, buildings or premises shall be used only for one (1) or more of the following, as conditional uses defined in this Chapter: one-family detached dwellings, multiple and row dwellings, apartments, garden apartments and townhouses; churches or similar places of worship, and parish houses; public or private schools conducted primarily to serve the educational needs of the community when not conducted primarily for profit or gain; public parks, playgrounds, municipal recreation areas and open space reservations; private or semiprivate recreation areas when not operated for gain or profit; public buildings; signs when erected and maintained in accordance with provisions in §601; and convenience commercial uses not to exceed five (5) percent of the area.

(3) Accessory Uses. All accessory uses located on the same lot that are customarily incidental to any of the above permitted uses, including a private garage, shall be permitted.

B. Area and Bulk Regulations. The following regulations shall be observed (all of the following must be served by public sewer and water facilities):

(1) The average overall density for all types of combined dwelling units shall not exceed twenty (20) dwelling units per gross acre for the entire planned unit residential area. A minimum five thousand five hundred (5,500) square foot lot area shall be provided for all proposed single-family detached dwelling units.

A minimum one thousand five hundred forty (1,540) square foot lot area shall be provided for all townhouse, row or duplex dwelling units. A minimum of nine hundred (900) square feet of designated lot area shall be provided for each multifamily dwelling unit. A minimum of fifteen (15) percent open space lance (based on gross site) shall be maintained. Building coverage shall not exceed forty (40) percent of the gross site, partial site or lot areas being developed.

(a) Yard Controls. Yard controls shall be flexible for all types of dwelling units proposed, with the following minimum regulations being observed:

1) Single-Family Dwellings. Rear yards shall not be less than twenty (20) feet; side yards shall not be less than eight (8) feet each or a total of sixteen (16) feet per dwelling. Front yards shall not be less than shown for various topographic areas and slope areas:

Average Lot Slo2e	Minimum Front Yard
0 - 5%	25 feet
5% - 10%	20 feet
10% - 15%	15 feet
15% - 20%	15 feet
Over 20%	10 feet

2) All Dwellings Other Than Single-Family. A total of thirty (30) feet for combined front and rear yards with a minimum front or rear yard of ten (10) feet each; side yards for ends of structures shall not be less than the average height of structure or in no case less than thirty-five (35) feet.

(2) Open Space.

(a) The net difference between designated lots for building or dwelling purposes and net site acreage (gross site area less streets and rights-of-way) shall be proposed for residual open space to be maintained by a homeowners corporation and/or made available for dedication to the Borough. In any case, fifteen (15) percent of the gross site area shall be designated for public and/or private recreation and open space area.

(b) The amount, location and proposed use of all open space land within the site must be clearly shown and in no case shall the amount of open space land be less than four hundred (400) square feet per dwelling unit. Of the gross area of open space land, forty (40) percent must be suitable

for active recreational purposes and access to these open space lands must be convenient to all residents. For purposes of calculation, such areas as parking lots are not considered as open space land. In addition, land lying within ten (10) feet of any townhouse or multifamily dwelling shall not be considered as open space land.

(3) Supplemental Design Standards.

(a) Buildings shall be so designed as to avoid monotonous patterns of construction, or repetitive spaces or modules between buildings.

(b) Streets shall be so designed as to discourage through traffic on the site.

(c) Signs shall be permitted and are limited by §601 of this Chapter.

(d) The Planning Commission may require such additional standards as are applicable to the proposed site and any development thereon such as grading, parking, landscaping, etc.

(4) Buffer Area. If, within the planned residential development area, a proposal is made to construct single-family dwellings adjacent to multiple family dwellings of any type, landscaped buffer zones, with a minimum width of fifty (50) feet shall be provided between such differing types of dwelling units. Said buffers shall be densely landscaped to differentiate between differing housing types.

C. Height Regulations. No building shall be erected to a height in excess of thirty-five (35) feet, except as provided in §602 of this Chapter.

D. Off-Street Parking Regulations.

(1) Standards. As required by §603 of this Chapter.

(2) Requirements. As required by §603 of this Chapter.

E. Procedures.

(1) Introductory. The procedure for the consideration of planned unit residential developments, together with the site improvements relating thereto, shall be in accordance with the provisions of this Section.

(2) Establishment of Ownership of Open Spaces. The applicant must establish and assure the future ownership of the permanent open space land as well as indicating the provisions for the burden of maintenance and control of the open space, if said open space is held in private ownership. In addition, the Borough, at its

discretion, may at any time, and from time to time, accept the dedication of land or any interest therein for public use and maintenance. However, the Borough need not require, as a condition of the approval of the planned residential development, that the land set aside for common open space be dedicated or made available for public use.

(3) Outline of Procedure.

(a) Preapplication conference with the Planning Commission for consideration of basic site information and sketch plans and preparation of application.

(b) Planned residential development application to the Borough Planning Commission; applicant presents preliminary plans and statements of facts and purposes to Planning Commission.

(c) Tentative approval of the planned residential development application by the Borough Planning Commission and presentation to the Borough Council.

(d) Submission to Planning Commission of final planned residential development plans, including site plans showing detailed site improvements, furnishing evidence of the developers financial capacity to carry out the development and other installations connected with the development and the establishment of development phasing.

(e) Final approval by Borough Council of the planned residential development and the signing of subdivision site plan to be recorded.

(f) Conditional use approval takes effect and designated R-P and building permits issued after filing of detailed superstructure plans, if any, with the chief inspector. Detailed superstructure plans shall include preliminary architectural sketches showing site and building sections, typical building elevations and the proposed architectural character of the development.

(4) Applicant. The applicant must be the owner of the site, or if more than one (1) owner, all owners of the site must act jointly.

(5) Preapplication Conferences. Each applicant shall confer with the Borough Planning Commission in connection with the preparation of the planned residential development application and prior to the submission of such application. The purpose of pre-application conferences is to benefit the applicant by providing information and guidance before the applicant shall have entered into binding commitments or incurred any substantial expense in the preparation of plans, surveys and other data.

(6) Application. The planned residential development application shall consist of the following:

(a) Preliminary (or Tentative) Development Plan.

1) An applicant shall make formal application for the approval of a planned development to the Borough Council, a copy of which shall be forwarded to the Borough Planning Commission and the Indiana County Planning Commission within ten (10) days. The Borough Planning Commission shall be the responsible reviewing agency. However, the Borough Council shall make all final decisions regarding approval or disapproval of the preliminary and final development plans. Five (5) copies of all plans must be provided with the application.

2) A preliminary development plan must include both maps and a written statement, and must show enough of the area and surrounding the proposed planned development to demonstrate the relationship of the planned development to adjoining uses, both existing and proposed.

3) The maps which are part of the preliminary development plan must contain the following information for both existing and proposed uses:

a) The existing topographic character of the land at not less than two (2) foot contour intervals.

b) Existing and proposed land uses and the approximate location of buildings and other structures.

c) The character and approximate density of existing and proposed dwellings.

d) The approximate location of major thoroughfares.

e) Public uses, including parks, playgrounds, and other open spaces.

4) The preliminary development plan must include detailed proposals for each of the following items:

a) A map showing street systems, plot lines and plot designs.

b) Areas proposed to be conveyed, dedicated or reserved for parks, parkways, playgrounds,

school sites, public buildings and similar public and semipublic uses.

c) A plot plan with common open space, showing the approximate location of all buildings, structures and improvements and indicating the open spaces around buildings and structures.

d) A typical elevation and perspective drawing of proposed structures and improvements (except single-family residences) and any unusual accessory buildings. The drawings need not be the result of final architectural decisions and need not be in detail.

e) A development schedule indicating: (i) the approximate date when construction of the project can be expected to begin; (ii) the stages in which the project will be built and the approximate date when construction of each stage can be expected to begin; (iii) the anticipated rate of development; (iv) the approximate dates when the development of each of the stages in the development will be completed; and, (v) the area and location of common open space that will be provided at each stage.

f) Agreements, provisions or covenants which govern the use, maintenance and continued protection of the planned development and any of its common open areas.

g) The following plans and diagrams, insofar as the Planning Commission finds that the planned development created special problems of traffic, parking, landscaping or economic feasibility:

i. An off-street parking and grading plan.

ii. A circulation diagram indicating the proposed movement of vehicles, goods and pedestrians within the planned development and to and from existing thoroughfares. Any special engineering features and traffic regulation devices needed to facilitate or insure the safety of this circulation pattern must be shown.

iii. A generalized landscaping plan.

5) Water Supply. If water is to be provided by means other than by private wells owned and maintained by the individual owners of lots within the planned residential development, applicants shall present

evidence to the Borough Council that the planned residential development is to be supplied by a certified public utility, a bona fide cooperative association of lot owners or by a municipal corporation, authority or utility. A copy of a certificate of public convenience from the Pennsylvania Public Utility Commission or an application for such certificate, a cooperative agreement or a commitment or agreement to service the area in question, whichever is appropriate, shall be acceptable evidence.

6) The written statement to accompany the outline development plan must contain the following information:

a) An explanation of the character of the planned development and the manner in which it has been planned to take advantage of the planned development regulations.

b) A generalized statement of proposed financing for the entire planned unit area.

c) A statement of the present ownership of all of the land included within the planned development.

d) A general indication of the expected schedule of development.

e) Any expected development problems which might cause construction delays.

(b) Public Hearings.

1) Within sixty (60) days after the filing of any application for tentative approval of a planned residential development pursuant to this Chapter , a public hearing pursuant to public notice on said application shall be held by the Borough Council.

2) Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by rules of the Borough Council. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.

3) The parties to the hearing shall be the Borough of Homer City, any person affected by the application who has made timely appearance of record before the Borough Council and any other person, including civic or

community organizations permitted to appear by the Borough Council. The Borough Council shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Borough Council for that purpose.

4) The chairman, or acting chairman in the absence of the chairman, of the Borough Council 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.

5) 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.

6) Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.

7) The Borough Council shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Borough Council. The cost of the original transcript shall be paid by the Borough Council if the transcript is ordered by the Borough Council or shall be paid by the person appealing from the decision of the Borough Council 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.

8) The Borough Council shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved, except upon notice 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.

9) The Borough Council may continue the hearing from time to time, and 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 sixty (60) days after the date of the first public hearing.

(c) The Findings.

1) The Borough Council, within sixty (60) days following the conclusion of the public hearing, shall, by official written communication to the landowner, either:

a) Grant tentative approval of the development plan as submitted.

b) Grant tentative approval subject to specified conditions not included in the development plan as submitted.

c) Deny tentative approval to the development plan.

2) Failure to so act with said sixty (60) day period shall be deemed to be a grant of tentative approval of the development plan as submitted. In the event, however, that tentative approval is granted subject to conditions, the landowner may, within thirty (30) days after receiving a copy of the official written communication of the Borough Council notify such Borough Council of his refusal to accept all said conditions, in which case the Borough Council shall be deemed to have denied tentative approval of the development plan. In the event the landowner does not, within said period, notify the Borough Council of his 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 with particularity in what respects the development 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 development plan is or is not consistent with the comprehensive plan for the development of the Borough of Homer City.

b) The extent to which the development 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 development plan and the manner in which said design does or does not make adequate provision for public services, provide adequate control over 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 development 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 of the residents of the planned residential development in the integrity of the development plan.

4) In the event a development plan is granted tentative approval, with or without conditions, the Borough Council may set forth in the official written communication the time within which an application for final approval of the development plan shall be filed or, in the case of development plan which provides for development over a period of years, the periods of time within which applications for final approval of each part thereof shall be filed. Except upon the consent of the landowner, the time so established between grant of tentative approval and an application for final approval shall not be less than three (3) months and, in the case of development over a period of years, the time between applications for final approval of each part of a plan shall be not less than twelve (12) months.

(d) Status of Plan After Tentative Approval.

1) The official written communication shall be certified by the Borough Secretary and shall be filed in his office, and a certified copy shall be mailed to the landowner. 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 development plan shall not qualify a plat of the planned residential development for recording nor authorize development or the issuance of any building permits. A development plan which has been given tentative approval as submitted, to 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 the action of the Borough of Horner City pending an application or applications 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 development plan is given tentative approval and thereafter, but prior to final approval, the landowner shall elect to abandon said development plan and shall so notify the Borough Council 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 development plan for which final approval has not been given shall be subject to those 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 Borough Secretary.

(e) Approval of Final Development Plan. Within three (3) months following the approval of the preliminary development plan, the applicant shall file with the Borough Council and Planning Commission a final development plan containing the final form, the information required in the preliminary plan and any corrections thereto.

(7) Record of Final Plan. A development plan, or any part thereof, which has been given final approval shall be so certified without delay by the Borough Council and shall be filed of record forthwith in the office of the recorder of deeds before any development shall take place in accordance therewith. Upon the filing of record of the development plan, the zoning and subdivision regulations otherwise applicable to the land included in such plan shall cease to apply thereto. Pending completion within a reasonable time 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 development plan, or part thereof, as finally approved, shall be made except with the consent of the landowner.

(8) Fees for Planned Unit Residential Development Applications. At the time of filing an application for preliminary development plan approval, the applicant shall make payment to the Borough a fee established by the Borough Council by resolution for filing and review costs and to cover advertising costs. This fee shall also cover costs of reclassifying the subject area, after approval of all final plans, to the R-P Planned Residential Development District which shall be recorded on the Official Zoning Map of the Borough, within ten (10) days after final approval.

(Ord. 445, 12/8/1997, §304)

Part 4

Commercial District

§401. Statement of Intent. In addition to the general goals listed in the preamble and general intent, the district established in this regulation is intended to achieve the following:

A. To provide sufficient space in appropriate locations for the types of commercial and service establishments anticipated in the comprehensive plan.

B. To provide appropriate space for the requirements of present day merchandising, including the provision of off-street parking spaces, safe circulation of pedestrian and motor traffic in the zone district and in nearby areas.

C. To promote the most desirable use of and a pattern of building development in accord with a well considered plan, to promote stable commercial development, to strengthen the economic base of the Borough, to protect the character of the commercial areas and nearby districts, to conserve the value of land and buildings and to promote municipal **tax** revenues.

(Ord. 445, 12/8/1997, §401)

§402. General Commercial District. In addition to the general goals lists in §101(3) and (4) and §401, it is the purpose of this Section to provide for the orderly commercial development commonly associated with the business district of Homer City Borough.

A. Use Regulations.

(1) Uses by Right. In any C-1 District, land, buildings or premises shall be used by right for only one (1) or more of the following:

(a) General merchandise stores, including department, variety, discount, drug stores; apparel and accessories stores, including shoe, furrier, tailor and all other wearing apparel stores; furniture, home furnishings and equipment, including household appliance, electronics and repair, hardware, paint stores; eating establishments, including restaurants, lunch counters, delicatessens; State stores, taverns; telephone equipment and central office equipment building; specialty stores, including gift, antique, **news-**stands, tobacco, flower, sporting goods, hobby, books, jewelry, leather, luggage, music, stationery stores; retail food stores, including bakery, confectionery, candy, meat, grocery stores, convenience stores; governmental offices serving the public, including post office, business offices, professional offices, public utility offices; personal service shops including barber, beautician, and shoe repairs; finance

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institutions, including banks, credit union, insurance companies; parking lots; vehicular sales, leasing, washing; apartments, provided they do not exceed a density of one (1) dwelling unit per four hundred (400) square feet of lot area, have a minimum habitable floor area of eight hundred (800) square feet, have a separate entrance which does not require passing through any area devoted to office or retail use and provided they are not located on the street floor of any commercial building; private garages; public transportation terminals; funeral parlors; dance hall; and recreational.

(2) Accessory Uses. Only the following accessory uses may be permitted:

(a) Customary accessory uses in commercial districts.

(3) Uses By Special Exception. The following uses shall be permitted by special exception when authorized by the Zoning Hearing Board subject to Part 9 of this Chapter:

(a) Churches or similar places of worship; public schools; semipublic places, including clubs, fraternities and lodges; indoor recreational facilities, including theaters; and gasoline service stations.

(b) Nonconforming residential structures may be rebuilt if destroyed or partially destroyed by fire, explosion or other causes, or otherwise damaged, when authorized by the Zoning Hearing Board and the Planning Commission and subject to Part 9 of the Zoning Chapter.

B. Area and Bulk Regulations. The following regulations shall be observed:

Lot size	No minimum, except lots with dwelling units shall provide a minimum of four hundred (400)sq. ft. per dwelling unit
Lot width	40 ft. at building setback line.
Building setback line	5 ft. minimum.
Side yard	30 ft. plus the height of the building over 30 ft. when abutting a resident district (total street R.O.W., widths may be included in this distance). If not abutting a residential district, 10 ft. or average of 20 ft.
Rear yard	10 ft., 25 ft. where no rear access is available from a public street
Lot coverage	75% maximum primary buildings only.

Total lot coverage (including primary, accessory and paved area)	90%
Building height	35 ft. or 3 stories maximum
Public or Semipublic Uses	
Lot size	5,000 sq. ft. minimum
Side yards	10 ft. minimum each
Building setback line	25 ft. minimum
Rear yard	10 ft., 25 ft. where bno rear access is available from a public str et
Height of building	35 ft. or 3 stories

C. General Provisions. No merchandise shall be displayed, sold or otherwise made available within the street right-of-way.

D. Off-Street Parking Standards and Requirements. As required by §603(1) of this Chapter.

E. Off-Street Loading Regulations. As required by §603(2) of this Chapter.

F. Design and Performance Standards. As required by §§604 and 605 of this Chapter.

(Ord. 445, 12/8/1997, §402)

Part 5

Industrial Districts

§501. Statement of Intent. In addition to the general goals listed in the preamble, the district established in this regulation is intended to achieve the following:

A. To provide sufficient space, in appropriate locations, to meet the anticipated future needs for industrial activity

B. To insure that the land most suitable for industrial and related activities will be available and to protect residences by separating them from such activities

C. To protect industry against congestion by limiting the bulk of buildings in relation to the land around them and to one another, and by providing sufficient off-street parking and loading facilities for such developments.

D. To promote the most desirable use of land and direction of building development in accord with a well considered plan, to promote stable industry, to strengthen the economic base, to protect the character of particular industrial areas and their peculiar suitability to particular uses, to conserve the value of land and buildings and to protect local tax revenues.

(Ord. 445, 12/8/1997, §501)

§502 . I-1 Industrial District. In addition to the general goals listed in the preamble and §501, it is the purpose of this Section to provide industrial locations for plants which require a large area for their operations and which are normally undesirable adjacent to residential and commercial areas. Residential uses are not permitted in industrial zone areas.

A. Use Regulations.

(1) Uses by Right. Any production, manufacturing, assembly, processing, cleaning, testing, repair, storage or distribution of materials, goods, foodstuffs and products not involving a retail activity on the property; a freight terminal; essential services, all wholesale distribution or storage; all utilities and garages.

(2) Uses by Special Exception. Any onsite retail sales or onsite distribution of products related to the above permitted uses.

(3) Accessory Uses. Only the following accessory uses shall be permitted:

(a) Customary accessory uses in manufacturing or industrial districts. Adult arcade, adult bookstore, adult

business, adult entertainment, adult live theater, adult minimotion picture theater, adult motion picture theater, adult motel.

2. Area and Bulk Regulations. The following regulations shall be observed:

Lot size	10,000 sq. ft. minimum
Lot width	100 ft. minimum
Lot coverage	55% maximum
Setback	10 ft. minimum
Side yards	10 ft. minimum for each side
Rear yard	25 ft. minimum
Yards	Contiguous to Residential Districts, 40 ft. minimum. or a distance equal to the building height.
Maximum building height	60 ft. (See §602(4))
Tower and chimney location	100 ft. minimum from any lot line, or a distance equal to the structures height.

C. Off-Street Parking Regulations. As provided in §6 03(1) of this Chapter.

D. Loading Regulations. As provided in §602(5) of this Chapter.

E. Performance and Design Standards. The performance and design standards outline in §§604 and 605 of this Chapter shall apply to all industrial areas.

(Ord. 445, 12/8/1997, §502)

Part 6

Supplemental Regulations

§601. Sign Regulations.

1. Exempt Signs. The following signs shall be exempted from these regulations:

A. Directional, information or public service signs such as those advertising availability of rest room, fallout shelter, telephone or similar public convenience, and signs advertising meeting times and places of nonprofit service or charitable clubs or organizations may be erected or maintained provided that such signs do not advertise any commercial or industrial establishment activity or organization. Such signs shall not exceed two (2) square feet in area.

B. Signs of schools, colleges, churches, hospitals or of institutions of a similar nature relating exclusively to the identity, activities and services of such institutions, provided that such signs shall not exceed twenty (20) square feet in area and shall be limited to one (1) such sign for each separate use.

C. Nameplates not exceeding two (2) square feet in area.

2. Temporary Sign Regulations. The following shall be observed in all districts:

A. Temporary signs, including signs advertising land or premises available for purchase, development or occupancy, or announcements of special events or signs of mechanics or artisans shall be permitted; provided, that:

(1) Real estate signs shall not exceed six (6) square feet in area and not more than two (2) such signs shall be erected for any property held in single or separate ownership. Such signs shall be erected for any property held in single or separate ownership. Such signs must be removed by the person or persons erecting them upon completion of the sale or rental of the property.

(2) Other signs shall not exceed eighteen (18) square feet in area, shall be limited to one (1) per property and shall be removed immediately upon the completion of work. The site or building on which the sign was erected shall be restored to its original condition upon removal of such sign.

3. Business Signs. Business signs accessory to permitted commercial uses shall be allowed; provided, that:

A. All business signs shall advertise goods or service sold or produced on the premises on which the sign is located.

B. Signs erected on supports or suspended or projecting from a building, including a banner or flag, shall not exceed sixty (60) square feet per face, in area.

C. Signs erected by the fastening of a board or other prepainted or printed thereon letters, words or insignias, or by erecting or superimposing separate cutout letters on the walls of a building or the placing of said letters on a plane surface which projects from the walls of a building shall not have a total area in excess of two (2) square feet per front foot of the building or space within the building occupied, on which there are erected. Where there is a corner building, only one (1) side of the building shall be included in determining front feet of a building; but in no case may such a sign on the side(s) of a corner building be in excess of two (2) square feet times the lineal length of the longest side.

D. When individual letters are used separately on a plane surface, the spaces between said letters shall be included in computing the area of the sign.

E. Mounted signs shall be installed parallel to the supporting wall and project not more than twelve (12) inches from the face of any such wall.

F. A nonconforming sign on a nonconforming use may be continued, but the area of such sign, or signs, shall not be increased.

G. The aggregate total area of all signs on each commercial parcel shall be a maximum of sixty (60) square feet per face, per principal use or two (2) square feet per front foot of the building, whichever is less. Where more than one (1) principal use exists on a parcel, the aggregate or total sign area for all uses within the structure or building shall not exceed two (2) square feet per front foot of the parcel frontage.

H. Signs shall not be painted directly on the surface of any building.

4. General Limitations. The following regulations shall be observed:

A. No sign shall be erected within or project into, the lines of a street right-of-way, except traffic signs and similar regulatory notices of a duly constituted governmental body.

B. No artificial light or reflecting device shall be used as a part of a sign where such light or device interferes with, competes for attention with, or may be mistaken for, a traffic signal.

C. Floodlighting shall be arranged so that the source of light is not visible from any point off the lot and that only the sign is directly illuminated thereby.

D. No sign shall be erected except on the property to which is related.

Part 6

Supplemental Regulations

§601. Sign Regulations.

1. Exempt Signs. The following signs shall be exempted from these regulations:

A. Directional, information or public service signs such as those advertising availability of rest room, fallout shelter, telephone or similar public convenience, and signs advertising meeting times and places of nonprofit service or charitable clubs or organizations may be erected or maintained provided that such signs do not advertise any commercial or industrial establishment activity or organization. Such signs shall not exceed two (2) square feet in area.

B. Signs of schools, colleges, churches, hospitals or of institutions of a similar nature relating exclusively to the identity, activities and services of such institutions, provided that such signs shall not exceed twenty (20) square feet in area and shall be limited to one (1) such sign for each separate use.

C. Nameplates not exceeding two (2) square feet in area.

2. Temporary Sign Regulations. The following shall be observed in all districts:

A. Temporary signs, including signs advertising land or premises available for purchase, development or occupancy, or announcements of special events or signs of mechanics or artisans shall be permitted; provided, that:

(1) Real estate signs shall not exceed six (6) square feet in area and not more than two (2) such signs shall be erected for any property held in single or separate ownership. Such signs shall be erected for any property held in single or separate ownership. Such signs must be removed by the person or persons erecting them upon completion of the sale or rental of the property.

(2) Other signs shall not exceed eighteen (18) square feet in area, shall be limited to one (1) per property and shall be removed immediately upon the completion of work. The site or building on which the sign was erected shall be restored to its original condition upon removal of such sign.

3. Business Signs. Business signs accessory to permitted commercial uses shall be allowed; provided, that:

A. All business signs shall advertise goods or service sold or produced on the premises on which the sign is located.

B. Signs erected on supports or suspended or projecting from a building, including a banner or flag, shall not exceed sixty (60) square feet per face, in area.

C. Signs erected by the fastening of a board or other prepainted or printed thereon letters, words or insignias, or by erecting or superimposing separate cutout letters on the walls of a building or the placing of said letters on a plane surface which projects from the wall of a building shall not have a total area in excess of two (2) square feet per front foot of the building or space within the building occupied, on which there are erected. Where there is a corner building, only one (1) side of the building shall be included in determining front feet of a building; but in no case may such a sign on the side(s) of a corner building be in excess of two (2) square feet times the lineal length of the longest side.

D. When individual letters are used separately on a plane surface, the spaces between said letters shall be included in computing the area of the sign.

E. Mounted signs shall be installed parallel to the supporting wall and project not more than twelve (12) inches from the face of any such wall.

F. A nonconforming sign on a nonconforming use may be continued, but the area of such sign, or signs, shall not be increased.

G. The aggregate total area of all signs on each commercial parcel shall be a maximum of sixty (60) square feet per face, per principal use or two (2) square feet per front foot of the building, whichever is less. Where more than one (1) principal use exists on a parcel, the aggregate or total sign area for all uses within the structure or building shall not exceed (2) square feet per front foot of the two parcel frontage.

H. Signs shall not be painted directly on the surface of any building.

4. General Limitations. The following regulations shall be observed:

A. No sign shall be erected within or project into, the lines of a street right-of-way, except traffic signs and similar regulatory notices of a duly constituted governmental body.

B. No artificial light or reflecting device shall be used as a part of a sign where such light or device interferes with, competes for attention with, or may be mistaken for, a traffic signal.

C. Floodlighting shall be arranged so that the source of light is not visible from any point off the lot and that only the sign is directly illuminated thereby.

D. No sign shall be erected except on the property to which is

related.

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E. Billboards are prohibited in all districts.

F. Flashing, moving, oscillating lights are expressly prohibited.

G. No sign shall be erected containing information on it which states or implies that a property may be used for any purpose not permitted under the provisions of this Chapter.

H. Every sign permitted must be constructed of durable material and kept in good condition and repair. Any sign which is allowed to become dilapidated shall be removed by the Borough at the expense of the owner or lessee of the property on which it is located.

I. Nonconforming signs once removed physically, may be replaced only with conforming signs; every sign erected shall also comply with the requirements for the zoning district in which said sign is erected.

J. No projected business sign shall be placed to face an abutting residential district except when authorized as a special exception.

K. If a use ceases for a period of six (6) months, signs advertising the ceased business, or businesses, must be removed. Such signs may be removed by the Borough at the expense of the owner or lessee of the property on which such sign is located.

5. Permit Procedure.

A. Approval from the Code Enforcement Officer to erect, alter, change or enlarge a business sign is required before a permit from the Borough Manager or his duly authorized representative shall be issued.

B. All requests for erection, alteration or enlargement of any business sign must be accompanied by a plan drawn to scale, showing the exact size, shape and dimensions of such sign and its proposed location or placement upon any structure or property.

C. The applicant shall present evidence that all requirements for bonding and insurance, as required by the Borough, have been met.

(Ord. 445, 12/8/1997, §601)

§602. General Regulations.

1. Visibility at Intersections.

A. A clear sight triangle shall be maintained at all intersections and points of entry on a public road, so that, measured along the centerline, there shall be a clear sight triangle of the following dimensions:

50 ft. R.O.W.	75 ft. visibility in both directions
40 ft. R.O.W.	60 ft.

30 ft. R.O.W.	45 ft.
20 ft. R.O.W.	30 ft.
10 ft. R.O.W.	20 ft.

B. No obstruction to view will be permitted in this area above the height of two and one-half (2 1/2) feet and below ten (10) feet. (Diagram at end of Part.)

2. Swimming Pools.

A. Open private swimming pools, whether set on or in the ground, are considered structures for the purpose of permits and regulations of all ordinances if they are constructed, used or maintained to provide recreational facilities for swimming, bathing or wading and capable of containing water to a depth of greater than eighteen (18) inches. For the purpose of this Chapter, they are not counted as floor area in computing the lot coverage. They shall not be located in any required setback area.

B. All swimming pools shall be at least ten (10) feet from any lot line. All in-ground pools shall be enclosed by a fence, wall or other substantial barrier not less than four (4) feet high, with a self-closing, self-latching gate and of such a character as to prevent reasonable access to the pool. Aboveground pools, the top which are at least four (4) feet above the ground and whose ladder or ladder to deck is not movable, shall also be required to be fenced. Aboveground pools at least four (4) feet above the ground whose ladder be retracted or moved when not in use will not require fencing.

C. No swimming pool shall be constructed in the Borough, except in accordance with a permit therefore previously secured from the Code Enforcement Officer or his duly authorized representative, upon written application accompanied by a plan showing the size, shape and location of the swimming pool and its enclosure and such other information as may be necessary to enable the Code Enforcement Officer to determine whether the pool complies with this Chapter.

3. Basketball and Tennis Courts.

A. Tennis courts or other paved playing surfaces accessory to a dwelling shall be located only in a side or rear yard and shall be no closer to the side or rear property line than twenty (20) feet. If lighting is proposed, the lighting shall be shielded so that it does not reflect on any adjoining property. All tennis courts shall be enclosed by a fence which is a minimum of ten (10) feet in height and maximum of twelve (12) feet in height and which shall contain openings equal to fifty (50) percent or more of the surface area of the fence.

B. The proposed paving shall be subject to review by the Borough Engineer to determine the need for stormwater management and to ensure that drainage onto adjoining properties will not result.

4. Driveways.

A. An individual private driveway, as defined herein, which serves one (1) single-family or one (1) two-family dwelling shall not be required to be paved; however, in lieu of paving, the driveway shall have a cover of slag or stone at least two (2) inches thick over a minimum four (4) inch stone base for a distance of thirty (30) feet from the right-of-way of the street. All common private driveways, as defined herein and all individual private driveways serving residential uses, other than a single-family or two-family dwelling, shall be paved in accordance with the Borough construction standards and /or the Pennsylvania Department of Transportation Design Manual, Part 2, Chapter 18. Concrete driveways shall have a joint at the public street right-of-way.

B. No driveway shall have a slope of more than fifteen (15) percent. Driveways may extend from the right-of-way line of the street to the cartway of the street, but shall not change the grade or contour of the street right-of-way, nor shall any person cut into, fill or in any way alter any gutter, curbing, drainage ditch or storm sewer within the right-of-way of a street or easement for the purpose of extending a driveway; or for any other purpose without first obtaining a permit therefor from the Borough. Driveways shall maintain the existing gutter line of the street and the roadway shoulder.

C. All private driveways constructed across any pavement shall be of a width not less than ten (10) feet and the curb shall be curved back to the street edge of the footwalk on a radius of one and one-half (1 1/2) feet. Before any private driveway may be constructed, whether across a sidewalk or not and before any curb cut may be made, a permit shall be obtained from the Borough office. All driveways shall be laid according to the specifications furnished by the Borough at the time the permit is granted and must be approved by the Code Enforcement Officer to ensure that the Borough specifications are met. The fee for a driveway or curb cut permit shall be five dollars (\$5.00) as set by the Borough Council.

D. All paved portions of the sidewalk must not be disturbed and the height and grade of same must remain the same as before the driveway was constructed. The balance of the pavement shall remain the same height and grade as before the construction of the driveway. Where the sidewalk and curb needs to be lowered, it shall be reconstructed in accordance with Borough standards and ADA (Americans with Disabilities Act) requirements.

5. Striping of Topsoil Excavation of Clay, Sand Gravel or Rock. The following shall apply in all districts:

A. **Topsoil or sod may be removed only under the following conditions:**

- (1) As a part of the construction or alteration of a building or the grading incidental to such building.

(2) In connection with normal lawn preparation and maintenance.

(3) In connection with the construction or alteration of a street or utility improvement.

6. Exception to Height Limitations. The height limitations of this Chapter shall not apply to church spires, belfries, monuments, chimneys, flag poles, residential television antennas.

7. Outdoor Storage Prohibition. Outdoor storage of any type shall not be permitted unless such storage is a part of the normal operations conducted on the premises, subject to design and performance standards for the prevailing zoning district. Junkyards, as defined by this Chapter, are expressly prohibited.

8. Accessory Building and Structures (Excluding Garages). An accessory building may be constructed within the rear yard if entirely separated from the primary structure and if located at least three (3) feet farther back from the front street line than the rear-most portion of the primary structure. In any case in which the rear portion of the lot abuts upon a road not exceeding twenty (20) feet in width, all parts of the accessory building must be at least ten (10) feet distant from the right-of-way line of such roadway. Accessory buildings shall not exceed one hundred fifty (150) square feet in area and one (1) story in height. Such accessory structures shall not be used for garage purposes. All plans for accessory buildings shall be submitted to the Code Enforcement Officer for approval prior to issuance of a building permit. Structures which are to be comprised of make-shift materials, or structures which are subject to extreme weathering and unsightly conditions, shall not be permitted.

9. Fences. No solid fence or wall or other obstruction (except a required retaining wall or a wall of a building permitted under the terms of this Chapter) over **six** (6) feet in height shall be erected within any of the required open spaces or yard spaces except by special exception. Fences that contain openings therein equal to fifty (50) percent or more of the area of said portion of the fence or wall shall be erected without special exception. All fences must be constructed of weather resistant material, finished side in view of the public, follow all setback requirements, except side yard (which is to be two (2) feet minimum) setback, have support posts cemented into the ground and, if located at a conspicuous place or intersection, must adhere to a clear sight triangle. All fences must be approved by the Code Enforcement Officer and the Zoning Officer to ensure that they meet the requirements of this Chapter. These provisions shall not apply to the required enclosing of outside storage areas in commercial districts as required by §605(3) of this Chapter. All fences shall be kept in good repair.

10. Parking and Storage of Vehicles in All Residential Districts. In any residential district, the following restrictions shall apply: the parking of any vehicle other than an automotive passenger vehicle, a station wagon, a pick-up truck or a panel truck in required front yards shall be prohibited. Parking of any other type of truck, except for temporary loading or unloading, shall be prohibited. Parking of recreational vehicles may be

temporarily permitted in residential districts, provided that such vehicles may be parked only behind the front building line and, where possible, only in the rear of dwellings. Tractor trailers are prohibited in all residential districts.

11. Communication Towers. All communication towers must be erected in the floodway zoning district. To ensure the safety of residents, these towers are restricted to two hundred (200) feet in height with no structure within five hundred (500) feet of the tower.

(Ord. 445, 12/8/1997, §602)

§603. Off-Street Parking and Loading Regulations.

1. Off-Street Parking Regulations.

A. Standards. Off-street parking space(s) with a proper and safe access shall be provided within a structure or in the open, to serve adequately, the uses on each lot within the district.

B. For purposes of computing car space, including stalls and driveways, parking space for one (1) vehicle shall be equal to at least three hundred twenty (320) square feet and shall have a stall of at least nine and one-half by twenty (9 1/2 x 20) feet in size. Parking spaces shall have an approved paved all-weather surface to provide safe and convenient access in all seasons.

C. Multifamily Standards. Off-street parking spaces for multifamily structures shall be provided. No surface parking spaces shall be located in the required front yard areas.

D. Requirements. Required off-street parking space(s) for construction, enlargement or change in use shall conform new to the following:

<u>Use</u>	<u>At Least One (1) Off-Street Parking s2ace for Each</u>
Residential	
Single-family residence	dwelling unit
Two-family or duplex structure	dwelling unit
Multifamily structure (more than two (2) units per structure)	1.33 dwelling units (in garden apartment areas, parking for service vehicles shall also be provided); no parking spaces shall be provided in required front yard)
Commercial Uses	
Food Market	one (1) for each 200 sq. ft. of floor area

Personal service establishment	100 sq. ft. of customer service area in addition to one (1) for each employee
Office building	500 sq. ft. of gross floor area, exclusive of the area used for storage, utilities, and building service area
Automobile laundry	Sufficient spaces to handle 45 rnins. of capacity of the maximum hourly operation of auto washing facility.
Medical and dental offices and clinics	Two (2) employees plus four (4) spaces per doctor.
Other commercial uses	400 square feet of floor area.
Other Uses, Including: Public and Serni:12ublic	
Private recreational facilities	1.5 members
Church	200 sq. ft. of main assembly area
Lodge, library, museum, meeting place, etc.	100 sq. ft. of floor area used for assembly in the building.
All Industrial Uses	One (1) for each two (2) employees.

2. Off-Street Loading: Regulations.

A. Standards. Off-street loading and unloading space(s) with proper and safe access from street or alley shall be provided on each lot where it is deemed by the Horner City Planning Commission that such facilities are necessary to adequately serve the uses within the district. Each loading and unloading space:

(1) Shall be at least fourteen (14) feet wide, sixty (60) feet long and shall have at least a fifteen (15) foot vertical clearance.

(2) Shall have an all-weather surface to provide safe and convenient access during all seasons.

(3) Shall not be constructed between the street right-of-way line and the building setback line.

B. Required off-street parking spaces (including aisles) shall not be used for loading/unloading purposes, except during hours when business operations are suspended.

C. Loading and unloading facilities shall be designed so that a truck or any portion thereof, need not park in, or effectively block in any manner, any public right-of-way.

D. No truck shall be allowed to stand in:

- (1) A right-of-way.
- (2) Automobile parking area (including aisles).
- (3) In any way block the effective flow of persons or vehicles.

E. Requirements. At least one (1) off-street loading space shall be provided for all commercial or industrial concerns in excess of three thousand five hundred (3,500) square feet of floor area. The number of loading and unloading spaces shall be left to the discretion of the developer; however, the standards of this Section shall be maintained, and the number of proposed spaces approved by the Planning Commission.

(Ord. 445, 12/8/1997, §603)

§604. Performance Standards for Commercial and Industrial Districts. The following regulations shall be observed in commercial and industrial districts when required by this Chapter:

A. Fire and Explosive Hazards. All activities and all storage of flammable and explosive materials at any point shall be provided with adequate safety devices against the hazards of fire and explosion and adequate firefighting and fire suppression equipment and devices as detailed and specified by the Department of Labor and Industry and the laws of the Commonwealth of Pennsylvania.

B. Radioactivity or Electrical Disturbances. There shall be no activities which emit radioactivity at any point. There shall be no electrical disturbance adversely affecting the operation at any point of any equipment other than that of the creator of the disturbance.

C. Smoke. There shall be no emission at any point from chimney or otherwise for longer than five (5) minutes in any hour of visible gray or visible smoke of any other color with a shade darker than No. 3 of the Standard Ringleman chart as issued by the U.S. Bureau of Mines.

D. Smoke, Ash, Dust, Furne Vapor, Gases and Other Forms of Air Pollution. There shall be no emission at any point from any chimney or otherwise which can cause any damage to health, to animals or vegetation or other forms of property; or which cause any excessive soiling at any point.

E. Liquid and Solid Wastes. There shall be no discharge at any point, into any private sewerage system or stream, or into the ground, of any materials in such a way or of such a nature or temperament as can contaminate or otherwise cause the emission of hazardous materials, except in accord with the standards of the Pennsylvania Department of Environmental Resources and the Borough Council.

F. Noise and Vibration. There shall be no vibration or noise level at Vibration, the greater than the average noise level property line occurring on adjacent streets.

G. Glare. No direct or sky reflected glare, whether from flood-lights or from high temperature process, shall be visible from adjoining public streets or adjacent lots when viewed by a person standing on ground level.

H. Odor. There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive on adjoining streets or adjacent lots.

I. Central Air Conditioning Units. Central air conditioning units shall be located to the rear or top of all structures and in no case shall be closer than fifteen (15) feet from any property line.

(Ord. 445, 12/8/1997, §604)

§605. Design Standards for Commercial and Industrial Districts.

1. Off-Street Parking Design Standards.

A. Parking spaces shall be clearly delineated by painted lines or markers.

B. Stalls shall be provided with bumper guards or wheel stops when necessary for safety or protection to adjacent structures or landscaped areas.

C. Surface drainage shall be connected to the existing or proposed drainage system.

D. All vehicular entrances and exits to parking areas shall be clearly designated for all conditions.

E. Short-term visitor parking spaces shall be differentiated from long-term employee spaces by suitable markings.

F. If spaces are used during evening hours, appropriate lighting shall be provided.

2. Screening.

A. A planted visual barrier or landscape screen shall be provided and maintained by the owner or lessee of a property between any commercial or industrial district and contiguous residentially zoned districts, except where natural or physical manmade barriers exist. This screen shall be composed of plants and trees arranged to form both a low level and a high level screen. The high level screen shall consist of trees planted with specimens no less than ten (10) feet in height and seven (7) feet in diameter and planted at intervals of not more than fifteen (15) feet. The low level screen shall consist of evergreens planted at an initial height of not less than two (2) feet and spaced at intervals of not more than four (4) feet. The low level screen shall be placed in alternating rows to produce a more effective barrier. All plants not surviving three (3) years after planting must be replaced.

B. Any existing business affected by these regulations at the time of passage of this Chapter shall not be required to comply with the above screening requirements, except in case of enlargement or major alteration of such business. Similarly, for any zoning district boundary change after the passage of this Chapter initiated by a residential developer abutting a commercial or industrially zoned property for which these regulations apply, these screening requirements shall not be imposed upon such property.

3. Storage. Any article or material stored temporarily outside an enclosed building as an incidental part of the primary operation shall be so screened by opaque ornamental fencing, walls or evergreen planting that it cannot be seen from adjoining public streets or adjacent lots when viewed by a person standing on the ground level. All organic rubbish or storage shall be contained in airtight vermin proof containers. Any outside storage not now enclosed shall be permanently enclosed or screened within three (3) years from the date of this Chapter.

4. Landscaping. Any part or portion of the site which is not used for buildings, other structures, loading or parking spaces and aisles, sidewalks and designated storage areas shall be planted with an all season ground cover and shall be landscaped with trees and shrubs in accordance with an overall landscape plan and shall be in keeping with natural surroundings. A replacement program for nonsurviving plants should be included.

5. Shopping Cart Storage. Any establishment which furnishes carts or mobile baskets as an adjunct to shopping shall provide definite areas within the required parking spaces areas for storage of said carts. Each designed storage area shall be clearly marked for storage of shopping carts.

6. Lighting. All parking areas, driveways and loading areas shall be provided with a lighting system which shall furnish a minimum of thirty-five (35) foot candles at any point during hours of operation, with lighting standards in parking areas being located not farther than one hundred (100) feet apart. All lighting shall be completely shielded from traffic on any public right-of-way and from any residential district.

7. Interior Circulation, Access and Traffic Control.

A. The interior circulation of traffic shall be designed so that no driveway or street providing parking spaces shall be used as a through street. If parking spaces are indicated by lines with angles other than ninety (90) degrees, then traffic lanes shall be restricted to one-way permitting head-in parking. No driveway or street used for interior circulation shall have traffic lanes less than ten (10) feet in width.

B. Areas provided for loading and unloading of delivery trucks and other vehicles, and for the servicing of shops by refuse collection, fuel and other service vehicles, shall be adequate in size and shall be so arranged that they may be used without blockage or interference with the use of accessways or automobile parking facilities.

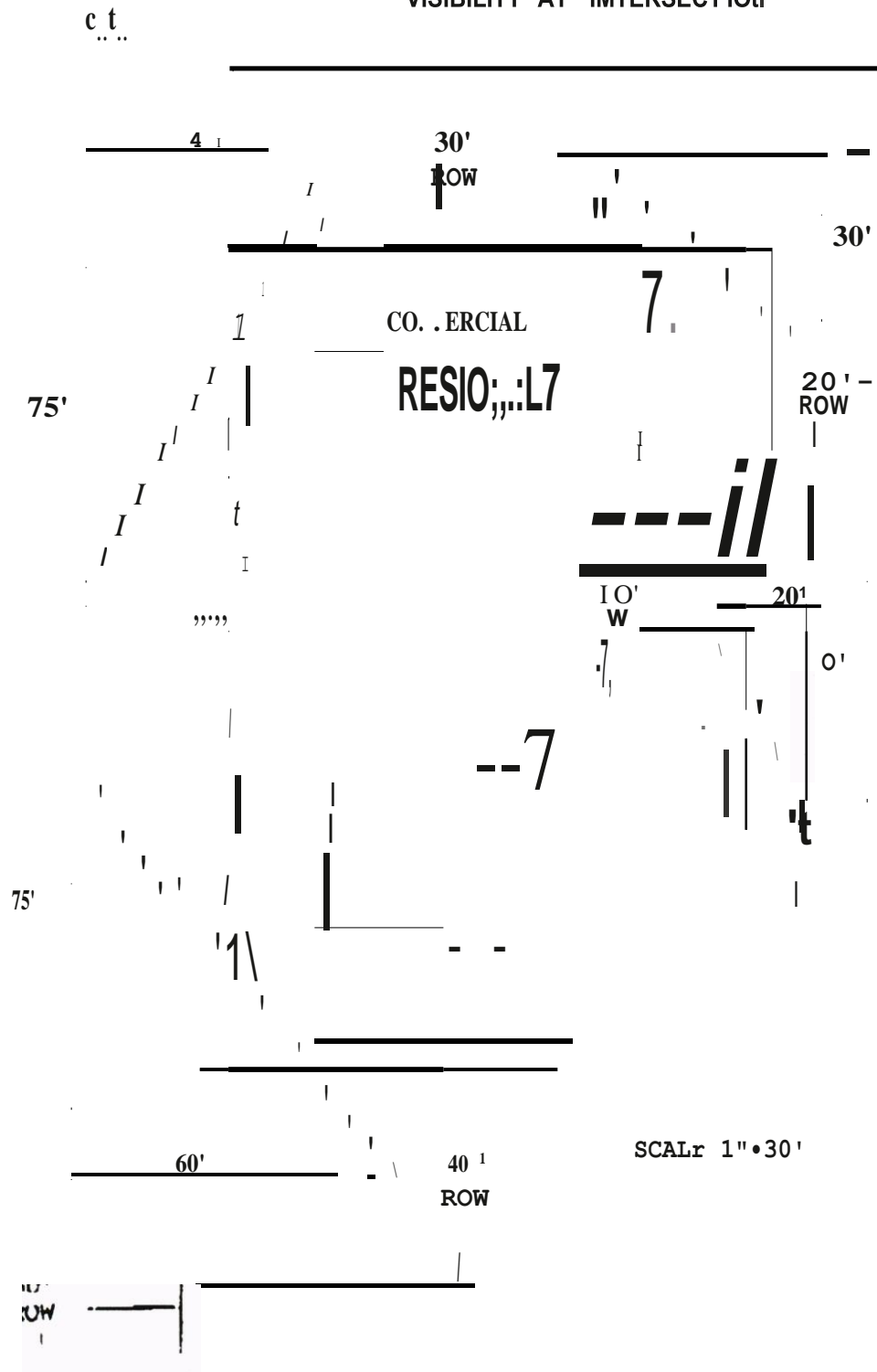
C. All accessways to any public street or highway shall be located at least seventy-five (75) feet from the intersection of any two (2) street lines and shall be designed in a manner conducive to safe ingress and egress as determined by the Planning Commission and the Borough Council. Where practicable, exits shall be located on minor rather than major streets or highways.

D. No design shall be approved which is likely to create substantial traffic hazards endangering the public safety. Safety requirements which may be imposed in such a review shall include traffic control devices, acceleration or deceleration lanes, turning lanes, traffic and lane markings and designs. The developer shall be responsible for the construction of any such traffic control devices.

8. Vehicles. Any movable structure, trailer, automobile, truck or parts of these items or any other items of similar nature, allowed to remain on the premises a longer time than that required to load, unload or otherwise discharge its normal functions, shall be considered subject to all regulations set forth in this Chapter for buildings and structures as defined herein.

(Ord. 445, 12/8/1997, §605)

VISIBILITY AT INTERSECTION



Part 7

Nonconforming Uses, Premises, Structures and
Lots

§701. Statement of Intent.

1. The zoning districts established by this Chapter are designed to guide future use of land in the Borough by encouraging the development of desirable residential and commercial areas with appropriate groupings of compatible and related uses, to the end of promoting and protecting the public health, safety, comfort, prosperity and other aspects of the general welfare.

2. To achieve this end, lawful existing uses which would be prohibited or restricted under the terms of this Chapter or future amendments, and which do not conform to the character and regulations of the zoning district in which they are located, shall be subject to certain limitations. The regulations set forth below are intended to provide a gradual remedy for the undesirable conditions resulting from indiscriminate mixing of uses and to afford a means whereby nonconforming uses can be gradually eliminated and re-established in more suitable locations within the Borough.

3. Similarly, buildings or other structures which do not comply with one (1) or more of the applicable district requirements as to lot width, minimum lot area and yard spaces, off-street parking, lot coverages or building height are deemed to be nonconforming.

4. Nonconforming uses and structures will generally be permitted to remain; the purpose of regulating them is to restrict further investment in uses or structures which are inappropriate to their location.

5. To avoid undue hardship, nothing in this Chapter shall be deemed to require a change in plans, construction or intended use of any building on which actual construction was lawfully begun prior to the effective date or amendment of this Chapter, and on which actual building construction has been diligently carried on.

(Ord. 445, 12/8/1997, §701)

§702. Nonconforming Use Regulations. (See definitions in §102 of this Chapter.)

1. Continuation. Lawful uses located either within a building or other structure, or part thereof or on the land, or in combination of both, which, at the effective date of this Chapter or subsequent amendment thereto, become nonconforming, may be continued so long as they remain otherwise lawful, including subsequent sales of the property.

2. Moving of Structure. No nonconforming building or structure shall be moved in whole or in part to another location on the lot unless every portion of said building or structure is made to conform to all the regulations of the district in which it is located.

ZONING

3. Discontinuance. If a nonconforming use of land or building ceases operations for a continuous period of more than one (1) year, then this shall be deemed to be an intent to abandon such use and any subsequent use of land shall conform to the regulations of this Chapter. This shall not apply to any single-family, two-family or double-family uses.

4 Change in Use.

A. The lawful use of a building existing at the time of the adoption of this Chapter may be continued, although such use does not conform to the provisions hereof, and such use may be extended throughout the building; provided, no structural alterations are made other than those ordered by an authorized public officer to assure safety of the building, structure or its occupants; and, provided further, that such extension does not displace any residence use in a residential district. If no structural alterations are made, a nonconforming use of the same or higher classification. If such a nonconforming use or a portion thereof is so discontinued or changed to a conforming use, any future use of such building, structure or portion thereof shall be in conformity with the provisions of this Chapter.

B. Whenever a use district shall be hereinafter changed, any existing nonconforming use in such changed district may be continued or changed to another nonconforming use of the same or higher classification provided that no structural alterations are made other than those ordered by an authorized public officer to assure the safety of the building, structure or its occupants or of an abutting building, structure or its occupants.

5. Damage or Destruction.

A. In the event that a nonconforming building or structure in any district is destroyed or partially destroyed by fire, explosion or other cause, or otherwise damaged to the extent of fifty (50) percent or more of either its assessed valuation (as determined from the assessment rolls effective at the date of damage or destruction) or the bulk of all buildings, structures and other improvements on the lot, such nonconforming uses shall terminate and the lot shall thereafter be used only for conforming uses.

B. In any case, whether conforming or nonconforming, the remains of any building so destroyed must be removed from the premises within six (6) calendar months so that the same is, or shall not remain, as a nuisance thereon and follow all environmental rules and regulations.

6. Expansion. A nonconforming use or building may be expanded up to twenty-five (25) percent of the floor area of the nonconforming building as it existed at the time of adoption of this Chapter. No such use shall be permitted to expand except in accordance with all lot and building regulations contained in this Chapter.

(Ord. 445, 12/8/1997, §702)

§703. Nonconforming Lawful Signs. Lawful signs in existence at the effective date of this Chapter or amendment thereto may be continued subject to the following regulations:

A. Moving. No conforming advertising sign, billboard, commercial advertising structure or statutory shall be moved to another portion on the building or lot on which it is located after the effective date of this Chapter or amendment thereto.

B. Structural Alterations. A nonconforming sign on a nonconforming use may be continued, but the area of such sign, or signs, shall not be increased and such sign, or signs, shall not be structurally altered.

C. Damage or Destruction. In the event that any nonconforming advertising sign, billboard, commercial advertising structure or statutory is damaged by any means to the extent of fifty (50) percent of its cost of replacement at the time of destruction, such sign shall not be restored or replaced.

D. Discontinuance of Signs. Whenever any use of building or structure or land, or of a combination of buildings, structures and land ceases, all signs accessory to such use shall be deemed to become nonconforming and shall be removed within six (6) calendar months.

(Ord. 445, 12/8/1997, §703)

§704. Registration of Nonconformity.

1. Registration of Nonconforming Uses, Buildings, Lots and Signs. In order to administer this Chapter, the Zoning Officer and the Code Enforcement Officer shall prepare, after the adoption of this Chapter, and over a reasonable period of time, a list of all nonconforming uses, lots and signs then in existence.

(Ord. 445, 12/8/1997, §704)

Part 8

Administrative Procedures

§801. Specific Intent. It is the purpose of these regulations to prescribe the procedures by which the administration of this Chapter shall take place. Nothing contained within this Part shall be interpreted as limiting the adoption of administrative regulations which do not supersede required stated procedures. (Ord. 445, 12/8/1997, §801)

§802. Appointment and Powers of Zoning Officer.

1. For the administration of this Chapter, a Zoning Officer, who shall not hold any elective office in the Borough of Horner City, shall be appointed by the Borough Council. The Zoning Officer also holds the office of Borough Manager. (Ord. 343 [Chapter 1, Part 2A])

2. The Zoning Officer shall meet the qualifications established by the Borough of Homer City and shall be able to demonstrate to the satisfaction of the Borough of Horner City a working knowledge of municipal zoning.

3. The Zoning Officer shall administer this Chapter in conjunction with the Zoning Hearing Board and shall not have the power to perrni t any construction or any use or change of use which does not conform to this Chapter.

4. The Zoning Officer is hereby authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his employment.

§803. Appointment and Powers of the Code Enforcement Officer.

1. For the administration of building codes and ordinances, a Code Enforcement Officer, who shall not hold any elective office in the Borough of Horner City, shall be appointed by the Borough Council.

2. The Code Enforcement Officer shall meet the qualifications established by the Borough of Horner City and possess the knowledge of the BOCA Building Codes.

3. The Code Enforcement Officer shall administer the building codes in accordance with its literal terms and shall have the power to permit any construction which conforms to the codes and ordinances.

4. The Code Enforcement Officer is hereby authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his employment.

(Ord. 445, 12 /8/1997, §802A)

§804. Enforcement Notice.

1. If it appears to the Borough of Homer City that a zoning or building violation of this Chapter has occurred, the Borough of Homer City shall initiate enforcement proceedings by sending an enforcement notice as provided in this Section.

2. The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel and to any other person requested in writing by the owner of record.

3. An enforcement notice shall state at least the following:

A. The name of the owner of record and any other person against whom the Borough of Horner City intends to take action.

B. The location 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 provisions of this Chapter.

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 a period of ten (10) days if the violation is zoning. Code enforcement appeals must be made to the BOCA Appeals Board.

F. That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board or the BOCA appeals board, constitutes a violation, with possible sanctions clearly described.

(Ord. 445, 12/8/1997, §803)

§805. Causes 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 Chapter, the Borough Council or, with the approval of the Borough Council, an officer of the Borough of Horner City, or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the Borough of Horner City at least thirty (30) days prior to the time the action is begun by serving a copy of the complaint on the Borough Council. No such action may be maintained until such notice has been given. (Ord. 445, 12/8/1997, §804)

§806. Enforcement Remedies.

1. Any person, partnership or corporation who or which has violated or permitted that violation of the provisions of this Chapter shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough of Homer City, pay a judgment of not more than five hundred (\$500.00) dollars plus all court costs, including reasonable attorney fees incurred by the Borough of Homer City 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 justice. If the defendant neither pays nor timely appeals the judgment, the Borough of Homer City may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating this Chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one (1) 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.

2. 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.

3. Nothing contained in this Section shall be construed and or interpreted to grant to any person or entity other than the Borough of Homer City the right to commence any action for enforcement pursuant to this Section.

4. District justices shall have initial jurisdiction over proceedings brought under this Section.

(Ord. 445, 12/8/1997, §805)

§807. Permits.

1. Zoning Permits.

A. Requirements. A zoning permit shall be required prior to development plans and building application to ensure that the building, structure or any portion thereof conforms to this Chapter. Any change in use of a building or land and prior to the change or extension of nonconforming use requires a zoning permit. A zoning permit is also required prior to the occupancy of any building in the commercial or industrial district as well as electrical service and main panel, major roofing (greater than three hundred (300) square feet), siding (greater than four hundred (400) square), decks that require four (4) steps or more to gain access, sheds, fencing and exterior stairs that have four (4) or more steps.

B. Application for Permits. Application for permits shall be made in writing to the Zoning Officer on such forms as may be furnished by the Borough. Such application shall state the use of the building and contain all information necessary for such official to ascertain whether the proposed action complies with this Chapter. Applications that

cannot be granted by the Zoning Officer must be presented to the Zoning Hearing Board or a conditional use is approved by Borough Council.

C. Issuance of Permits.

(1) No building or zoning permit shall be issued, except in conformity with the regulations of this Chapter or after written order from the Zoning Hearing Board or the courts.

(2) Permits shall be granted or refused within ten (10) days after date of application. In case of refusal, the applicant shall be informed of his right to appeal to the Zoning Hearing Board.

2. Building Permits.

A. Requirements. A building permit shall be required prior to the erection, construction or alteration of any building, structure or any portion thereof, prior to the moving of a building into the Borough, from one place in the Borough to another. Routine maintenance of a property as defined is minor alterations, \$102, does not require a building permit. However, structural alterations in the amount of two thousand five hundred dollars (\$2,500.00) require an approved building permit as well as electrical and main panel, major roofing (greater than three hundred one (301) square feet), siding (greater than four hundred one (401) square feet), decks that require four (4) steps or more to gain access, sheds, fencing and exterior stairs that have four (4) or more steps.

B. Certified Survey.

(1) A certified survey shall be required for any application for building permit in and for the Borough of Homer City that requires approval of the Planning Commission of Homer City Borough and/or the Zoning Hearing Board of Homer City Borough. In addition, any accessory structure which reduces the side or rear yard clearance of the principal structure or is to be located on a property line shall require a certified survey.

(2) The Code Enforcement Officer shall be empowered to make a determination upon application for a building permit as to the applicability of the hereinabove required survey.

(3) Any and all applicants for a building permit within the Borough of Homer City shall acknowledge on said application that all the facts are true and correct and it shall be the responsibility of the Code Enforcement Officer and the Zoning Officer to approve said applications, even though said applications do not require the approval of the Planning Commission or the Zoning Hearing Board.

(4) Any applicant for a building permit that provides false information to the Code Enforcement Officer or the Zoning Officer, or it is determined that any false information is contained within the application and exhibits attached to said application, the Code

Enforcement Officer has the right to revoke the permit and to take any and all steps applicable for the cessation of construction and/or any and all other remedies deemed proper and authorized under this Chapter.

C. Stormwater Management.

(1) Without approval from the Code Enforcement Officer or Borough Engineer, no resident or business will be permitted to construct anything that would alter the natural drainage course on their property.

(2) Without approval from the Code Enforcement Officer or the Borough Engineer, no resident or business will be permitted to install any drainage ditches, pipes or structure within the Borough right-of-way.

(3) Without approval from the Code Enforcement Officer or the Borough Engineer, no resident or business will be permitted to alter water runoff from their property in a negligent manner that will create problems for downstream adjoining property owners. This includes driveways and parking lots.

D. Application for Permits. Application for permits shall be made in writing to the Zoning Officer and Code Enforcement Officer or his duly authorized representative on such forms as may be furnished by the Borough. Such application shall include building and usage and plot plan of a satisfactory nature, in duplicate, and shall contain all information necessary for such official to ascertain whether the proposed erection, alteration complies with the BOCA codes. No permit, except for occupancy, shall be considered complete or permanently effective until the Code Enforcement Officer has certified that the work performed meets all the requirements of applicable codes and ordinances.

E. Issuance of Permits.

(1) No building permit shall be issued except in conformity with the regulations of this Chapter, except after written order from the Zoning Hearing Board or the courts.

(2) Permits shall be granted or refused within ten (10) days after date of application. In case of refusal, the applicant shall be informed of his right to appeal to the Zoning Hearing Board.

F. Expiration of Permits. No permit for the erection, razing, change, alteration or removal of buildings shall be valid after one (1) year from the date of the issuance thereof. If the permittee shall be unable to complete the work within the specified period, he shall, prior to the expiration of the permit, present in writing to the Code Enforcement Officer, a request for an extension of time, setting forth therein the reasons for the requested extension. If the Code Enforcement Officer finds that the failure to complete the work under the permit was due to circumstances reasonably beyond the control of the permittee and that an extension of time to complete the work is

necessary and not contrary to the public interest, the permittee may be granted additional time, up to an additional one (1) year, for the completion of the work without additional cost to the permittee.

G. Certificate of Occupancy.

(1) Upon completion of the erection or alteration of any building or portion thereof authorized by any permit, and prior to occupancy or use, the holder of such permit shall notify the Code Enforcement Officer or his duly authorized representative of such completion. No permit shall be considered complete or permanently effective nor shall any building be occupied or lot used until said official has issued an occupancy permit certifying that the work has been inspected and approved as being in conformity with the permit and the provisions of this Chapter and other applicable ordinances.

(2) In commercial or industrial zoning districts in which performance standards are imposed, a safe occupancy permit shall be required, subject to §604 of this Chapter. No certificate of occupancy shall be permanent until thirty (30) days after the facility is fully operating, when, upon a reinspection by the Code Enforcement Officer or his duly authorized representative, it is determined that the facility is in compliance with all performance standards.

(3) Certificate of occupancy shall be granted or denied, within ten (10) days from the date of application.

H. Safe Occupancy Permit.

(1) A safe occupancy permit is required for existing structures and issued only after an inspection is done by the Code Enforcement Officer or a licensed professional and the structure or property meets the minimum requirements of the BOCA codes and this Chapter.

(2) The property shall be maintained in order to keep the permit. If found to be in violation, the permit can be revoked and another inspection must be done, at which time a new permit will be granted or denied.

(3) The cost of this permit is five dollars (\$5.00).

I. Remedies. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this Chapter or of any ordinance or other regulation made supplementing this Chapter, the proper authorities of the Borough, in addition to the other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alterations, repairs, conversion, maintenance or use, to restrain, correct or abate such violation or to prevent any illegal act, conduct, business or use in or about such premises.

(Ord. 445, 12/8/1997, §806)

§808. Schedule of Fees.

1. Determination. The Borough Council shall determine a schedule of fees, charges and expenses, as well as a collection procedure for special permits, variances, amendments and other matters pertaining to this Chapter. Said schedule of fees shall be posted in the Borough Office.

A. The Borough Council shall be empowered to re-evaluate the fee schedule and make necessary alterations to it. Such alterations shall not be considered an amendment to this Chapter and may be adopted at any public meeting of Council by resolution.

B. The required fees for zoning district amendments may vary according to advertising costs and thus shall be kept up-to-date by the Borough Council. All such fees shall be paid into the Borough treasury.

C. Fees for special exceptions, conditional use and variances shall be based upon local advertising costs with the applicant being billed after the Zoning Hearing Board has made a decision.

(Ord. 445, 12/8/1997, §807)

§809. Enactment of Zoning Ordinance Amendments.

1. The Borough Council may, from time to time, amend, supplement or repeal any of the regulations and provisions of this Chapter. The procedure for the preparation of a proposed zoning ordinance as set forth in §607 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10607, is hereby declared optional.

2. Before voting on the enactment of an amendment, the Borough Council shall hold a public hearing thereon, pursuant to public notice. In addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by the Borough of Homer City at points deemed sufficient by the Borough of Homer City along the perimeter of the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one (1) week prior to the date of the hearing.

3. In the case of an amendment other than that prepared by the Planning Commission, the Borough Council shall submit each such amendment to the Planning Commission at least thirty (30) days prior to the hearing on such proposed amendment to provide the Planning Commission an opportunity to submit recommendations.

4. If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised to include land previously not affected by it, the Borough Council shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment.

5. At least thirty (30) days prior to the public hearing on the amendment by the Borough Council, the Borough of Homer City shall submit the proposed amendment to the County planning agency for recommendations.

6. Within thirty (30) days after enactment, a copy of the amendment to this Chapter shall be forwarded to the County planning agency.

(Ord. 445, 12/8/1997, §808)

§810. Procedure for Landowner Curative Amendments.

1. A landowner who desires to challenge on substantive grounds the validity of this Chapter or the zoning map or any provision thereof, which prohibits or restricts the sue or development of land in which he has an interest, may submit a curative amendment to the Borough Council with a written request that his challenge and proposed amendment be heard and decided as provided in §916.1 of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P.S. §10916.1. The curative amendment and challenge shall be referred to the Planning Commission and the County planning agency as provided in §609 and notice of the hearing thereon shall be given as provided in §§610 and 916.1 of the MPC, 53 P.S. §§10609, 10610 and 10916.1.

2. The hearing shall be conducted in accordance with §908 of the MPC, 53 P.S. §10908, and all references therein to the Zoning Hearing Board shall, for purposes of this Section, be references to the Borough Council. If the Borough of Horner City does not accept a landowners curative amendment brought in accordance with this subsection and a court subsequently rules that the challenge has merit, the courts decision shall not result in a declaration of invalidity for this entire Chapter and zoning map, but only for those provisions which specifically relate to the landowners curative amendment and challenge.

3. The Borough Council, if it determines that a validity challenge has merit, may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment which will cure the challenged defects. The Borough Council shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:

A. The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.

B. If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of this Chapter or zoning map.

C. The suitability of the site for the intensity of use proposed by the site's soil, slopes, woodlands, wetlands, floodplains, aquifers, natural resources and other natural features.

D. The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts.

E. The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

(Ord. 445, 12/8/1997, §809)

§811. Procedure for Borough Curative Amendments.

1. If the Borough of Homer City determines that this Chapter, or any portion hereof, is substantially invalid, it shall take the following actions:

A. The Borough of Homer City shall declare by formal action, this Chapter or portions hereof substantially invalid and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days such declaration and proposal the Borough Council shall:

(1) By resolution make specific findings setting forth the declared invalidity of this Chapter which may include:

(a) References to specific uses which are either not permitted or not permitted in sufficient quantity.

(b) Reference to a class of use or uses which requires revision.

(c) Reference to this entire Chapter which requires revisions.

(2) Begin to prepare and consider a curative amendment to this Chapter to correct the declared invalidity.

2. Within one hundred eighty (180) days from the date of the declaration and proposal, the Borough of Homer City shall enact a curative amendment to validate or reaffirm the validity of this Chapter pursuant to the provisions of §609 of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P.S. §10609, in order to cure the declared invalidity of this Chapter.

3. Upon the initiation of the procedures as set forth in subsection (1), the Borough Council shall not be required to entertain or consider any landowner's curative amendment filed under §609.1 of the MPC, 53 P.S. §10609 .1, nor shall the Zoning Hearing Board be required to give a report requested under §§909.1 or 916.1 of the MPC, 53 P.S. §§10909.1, 10916.1, subsequent to the declaration and proposal based upon the grounds identical or substantially similar to those specified by the resolution required by subsection (1)(A). Upon completion of the procedures set forth in subsections (1) and (2), no rights to a cure pursuant to the provisions of §§609.1 and 916.1 of the MPC, 53 P.S. §§10609.1, 10916.1, shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of this Chapter for which there has been a curative amendment pursuant to this Section.

4. The Borough of Homer City, having utilized the procedures set forth in this Section, may not again utilize said procedure for a period of

thirty-six (36) months following the date of enactment of a curative amendment or reaffirmation of the validity of this Chapter; provided, however, if after the date of declaration and proposal there is a substantially new duty imposed upon the Borough of Horner City by virtue of a change in statute or by virtue of a Pennsylvania appellate court decision, the Borough of Horner City may utilize the provisions of this Section to propose a curative amendment to this Chapter to fulfill said duty to obligation.

(Ord. 445, 12/8/1997, §810)

Part 9

Zoning Hearing
Board

§901. Zoning Hearing Board.

1. There is hereby created for the Borough of Homer City a Zoning Hearing Board in accordance with the provisions of Article IX of the Pennsylvania Municipalities Planning Code, 53 P.S. §10901 et seq.

2. The membership of the Board shall consist of three (3) residents of the Borough of Homer City appointed by resolution by the Borough Council. The terms of office shall be for three (3) years and shall be so fixed that the term of office of one (1) member shall expire each year. The Board shall promptly notify the Borough Council 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 of Homer City.

3. 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 Council which appointed the member, taken after the member has received fifteen (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.

4. 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 not be less than a majority of all 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 as provided in this Chapter.

5. The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Borough of Homer City and **laws** of the Commonwealth. The Board shall keep full public records of its business, which records shall be the property of the Borough of Homer **City** and shall submit a report of its activities to the Borough Council **as** requested by the Borough Council.

6. Within the limits of funds appropriated by the Borough Council, 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 as may be fixed by the Borough Council, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the Borough Council.

(Ord. 445, 12/8/1997, §901)

§902. Jurisdiction.

1. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

A. Substantive challenges to the validity of any land use ordinance, except those brought before the Borough Council pursuant to §§609.1 and 916.1(a)(2) of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P.S. §§10609.1, 10916.1.

B. Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within thirty (30) days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the Borough of Horner City and a Zoning Hearing Board has not been previously established, the appeal raising procedural questions shall be taken directly to court.

C. 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 the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.

D. Appeals from a determination by the Borough Engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance.

E. Applications for variances from the terms of this Chapter and flood hazard ordinance or such provisions within a land use ordinance, pursuant to §910.2 of the MPC, 53 P.S. §10910 .2.

F. Applications for special exceptions under this Chapter or floodplain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to §912.1 of the MPC, 53 P.S. §10916.2.

G. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Chapter.

H. Appeals from the Zoning Officer's determination under §916.2 of the MPC, 53 P.S. §10916.2.

I. Appeals from the determination of the Zoning Officer or Borough Engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm-water management insofar as the same relate to development not involving applications under Article V or VII of the MPC, 53 P.S. §§10501 et seq., 10701 et seq.

2. The Borough Council shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

A. All applications for approvals of planned residential developments under Article VII of the MPC pursuant to the provisions of §702 of the MPC, 53 P.S. §10702.

B. All applications pursuant to §508 of the MPC, 53 P.S. §10508, for approval of subdivisions or land developments under Article V of the MPC, 53 P.S. §10501 et -

C. Applications for conditional use under the express provisions of this Chapter.

D. Applications for curative amendment to this Chapter or pursuant to §§609.1 and 916.1(a) of the MPC, 53 P.S. §§10609.1, 10916.1(a).

E. All petitions for amendments to land use ordinances, pursuant to the procedures set forth in §609 of the MPC, 53 P.S. §10609.

F. Appeals from the determination of the Zoning Officer or the Borough Engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and stormwater management insofar as the same relate to applications for land development under Articles V and VII of the MPC, 53 P.S. §§10501 et -, 10701 et - - Where such determination relates only to development not involving an Article V or VII application, the appeal from such determination of the Zoning Officer or the Borough Engineer shall be to the zoning arraying board pursuant to this Section. Where the applicable land use ordinance vests jurisdiction for final administration of subdivision and land development applications in the Planning Commission, all appeals from determinations under this subsection shall be to the Planning Commission and all appeals from the decision of the Planning Commission shall be to court.

(Ord. 445, 12/8/1997, §902)

§903. Variances.

1. The Zoning Hearing Board shall hear requests for variance 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 any 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:

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 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.

B. That because of such physical circumstances or conditions, there is no possibility that the property cane 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.

C. That such unnecessary hardship has not been created by the applicant.

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. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et .\$.g.

(Ord. 445, 12/8/1997, §903)

§904. Special Exceptions. Where the Borough Council, in this Chapter, has stated special exceptions to be granted or denied by the Zoning Hearing 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 and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et .\$.g.

(Ord. 445, 12/8/1997, §904)

§905. Conditional Uses. Where the Borough Council, in this Chapter, has stated conditional uses to be granted or denied by the Borough Council pursuant to express standards and criteria, the Borough Council shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria. In granting a conditional use, the Borough Council 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 and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et .\$.g. (Ord. 445, 12/8/1997, §905)

§906. Parties Appellant Before the Board. Appeals raising the substantive validity of any land use ordinance (except those to be brought before the Borough Council pursuant to the Pennsylvania Municipalities Code), procedural questions or alleged defects in the process of enactment or adoption of a land use ordinance; or from the determination of the Zoning Officer including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot; from a determination by the Borough Engineer or the Zoning Officer with

reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance; from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this

Chapter; from the determination of the Zoning Officer or Borough Engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and stormwater management insofar as the same relate to development not involving subdivision and land development or planned residential development, may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Borough of Homer City or any person aggrieved. Requests for a variance and for special exception may be filed with the Board by any landowner or any tenant with the permission of such landowner. (Ord. 445, 12/8/1997, §906)

§907. Time Limitations.

1. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for development, preliminary or final, has been approved by the Borough of Homer City if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had not notice, knowledge or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan or from an adverse decision by the Zoning Officer on a challenge to the validity of this Chapter or an amendment hereto or map or an amendment thereto shall preclude an appeal from a final approval, except in the case where the final submission substantially deviates from the approved tentative approval.

2. All appeals from determinations adverse to the landowner shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

(Ord. 445, 12 /8/1997, §907)

§908. Stay of Proceedings.

1. Upon filing of any appeal proceeding before the Zoning Hearing Board and during its pendency before the Board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or of any agency or body, and all official action thereunder, shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the Board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the court having jurisdiction of zoning appeals, on petition, after notice to the Zoning Officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the Board.

2. After the petition 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 applicant for a bond 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 a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such a waiver may be revoked by him if an appeal is taken from a final decision of the court.

3. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory.

4. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellate court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by the petitioner.

(Ord. 445, 12/8/1997, §908)

Part 10

The Planning Commission

§1001. Specific Intent. It is the purpose of this Part to cite those Parts and Sections of this Chapter that specifically refer to responsibilities of the Homer City Borough Planning Commission in the administration of this Chapter. Further, it is the purpose of §1002 to establish a site plan review procedure for the Planning Commission. (Ord. 445, 12/8/1997, §1001)

§1002. Administration and Procedure.

1. Appointment. The Planning Commission, consisting of five (5) members, shall be appointed by the Borough Council in the manner prescribed by law, as outlined in §202, Pennsylvania Act No. 247.

2. Rules of Procedure. The Planning Commission shall adopt such rules of procedure as are required in accordance with the provisions of other Borough ordinances and as necessary, to provide the required reviews and recommendations relative to this Chapter. The rules of procedure with regard to zoning matters shall be in accordance with the provisions of Act No. 247 and any other Borough ordinances pertinent to the review functions of the Homer City Borough Planning Commission.

3. Meetings. The Planning Commission shall meet monthly at a regularly prescribed date and meeting place and at other times as the Chairman may deem necessary. All meetings of the Planning Commission shall be open to the public. The Secretary of the Planning Commission shall keep minutes of all meetings.

4. Decisions Regarding Zoning Matters. Within thirty (30) days after any hearing regarding a zoning matter or unless a different time is required within this Chapter, the Planning Commission shall record its review, analysis and recommendations in written form, copies of which shall be forwarded to the appropriate body such as the Borough Council, the Zoning Hearing Board, or, in certain cases, to the Borough Secretary or Chief Inspector. The thirty (30) day period for a decision shall be computed from the day the Planning Commission received the subject matter requiring said decision. If any public hearings are required during the course of the hearing, the thirty (30) day period prescribed above shall be applicable only after the holding of a required public hearing in accordance with public notice required by Act No. 247 and this Chapter.

5. Limitations. The Planning Commission shall function as an advisory body and shall be restricted in its duties to applying the conditions, requirements, restrictions and standards imposed by the various Sections of this Chapter in keeping with its overall intent.

6. Appeals of Planning Commission Review and Recommendations. Any applicant or affected persons may, within ten (10) days of a decision of the Planning Commission under §1003, appeal to the Borough Council for review. Such review shall be conducted during a regularly scheduled meeting. The

Borough Council may affirm, reverse or modify the findings of the Planning Commission.

7. Activities. The Planning Commission may undertake special studies relating to the comprehensive plan and its implementation which it deems necessary. Public meetings may be undertaken for this purpose. Material may be gathered and printed. The Planning Commission may retain outside consulting assistance as it deems necessary. All appropriations of Borough funds for planning purposes shall first be approved by the Borough Council.

(Ord. 445, 12/8/1997, §1002)

§1003. Powers. The Planning Commission of the Homer City Borough shall have all powers prescribed by law. (See §209, Pennsylvania Act No. 247) These powers shall include:

A. Review of all special exception application in Commercial Districts prior to any final decision of the Zoning Hearing Board.

B. Review of all amendments to this Chapter as prescribed by §809 of this Chapter; and in accordance with the provisions of §609, Pennsylvania Act No. 247.

C. Be of assistance to the Zoning Hearing Board whenever requested and present to such body, facts, records and any other similar information on specific requests to guide such body in reaching its decision.

D. Review of all site plans in accordance with the procedures established by §1004 of this Chapter.

(Ord. 445, 12/8/1997, §1003)

§1004. Site Plan Review Procedure for All Proposed Development Within the Homer City Borough. (See §102 definition of "site plan.")

1. Purpose. In order to assure the satisfactory development of sites with any residential, commercial or industrial districts it shall be required that prior to the use or occupancy of such a lot, building site, parcel or property, a suitable site plan shall be submitted to the Homer City Borough Planning Commission for review prior to the issuance of a building permit to occupy or use the lot for the uses prescribed herein. For the purposes of site plan review, all commercial or industrial proposals regardless of size, configuration, nature or location, and all residential proposals consisting of more than a single dwelling unit shall be subject to the review of the Homer City Borough Planning Commission.

2. Submission Procedure. Such a plan should be submitted through the Borough Manager to the Planning Commission at least ten (10) days prior to its next scheduled meeting and shall consist of the following:

A. Four (4) black-on-white copies of a survey drawn to scale, prepared by a professional engineer, architect or landscape architect registered in the Commonwealth of Pennsylvania, showing the exact size, shape and dimensions of the lot to be built upon.

B. The exact size and location on the lot of all existing buildings and structures.

C. The exact size and location on the lot of the structure or building proposed to be erected, moved, repaired or altered.

D. All adjacent streets or alleys with traffic flow patterns.

E. The proposed parking facilities, including the size, arrangements and number of parking stalls and placement of lighting standards, if needed.

F. The movement of all vehicles and ingress and egress drives for all off-street parking and loading areas both front and rear, to insure the prevention of blockage of vehicles entering and leaving the site.

G. General location and nature of public and private utilities, including underground utilities and other community facilities and services (for nonresidential uses only).

H. General landscape plan, if required.

I. Preliminary architectural and engineering sketches showing plan levels, elevation and any other necessary information related to water runoff control, slope, contours, type of building construction, etc.

J. Areas to be utilized for the exterior storage of materials and type of architectural screen.

K. Such other information as may be required by the Borough Council or the Planning Commission.

3. Review by the Planning Commission. The review of the site plan shall be accomplished by the Planning Commission. Upon arrival of the site plan by the Planning Commission, said Commission shall authorize its Chairman to endorse the plan together with the date of such action.

4. Review by the Borough Council.

A. Upon approval of the site plan by the Planning Commission, the Plan shall then be submitted to the Borough Secretary for submission to the Borough Council at its regularly scheduled meeting.

B. If the Planning Commission disapproves the site plan, said Plan may be modified or changed for further review by the Planning Commission or the site plan shall be returned to the Borough Secretary for appeal to the Borough Council with all recommendations from the Planning Commission attached. The Borough Council may approve the site plan or request changes and modification, in which case the site plan must be resubmitted to the Planning Commission for their review and approval or disapproval.

5. Expiration of Permits. No permit for the erection, razing, change, alterations or removal of buildings in accordance with an approved site plan

shall be valid or effective after one (1) year from the date of issuance thereof and shall thereafter be void, unless the work authorized by such permit shall have been substantially commenced within one (1) year from the date of issuance and processed with due diligence.

(Ord. 445, 12/8/1997, §1004)

Part 11

Sexually Oriented
Businesses

§1101. Purpose and Intent. It is the purpose of this Part to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the Borough, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the Borough. The provisions of this Part have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Part to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Part to condone or legitimize the distribution of obscene material. (Ord. 443, 7/1/1997, §1)

§1102. Definitions.

ADULT ARCADE - any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE or ADULT VIDEO STORE - a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas."

B. Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult bookstore" or "adult video store." Such other business purposes will not serve to exempt such commercial establishment from being categorized as an "adult bookstore" or "adult video store" so long as one (1) of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified

anatomical areas."

ADULT CABARET - a nightclub, bar, restaurant or similar commercial establishment which regularly features:

- A. Persons who appear in the state of nudity.

B. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

C. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or specified anatomical areas."

ADULT MOTEL - a hotel, motel or similar commercial establishment which:

A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions.

B. Offers sleeping rooms for rent four (4) or more times in one (1) calendar day during five (5) or more calendar days in any continuous thirty (30) day period.

ADULT MOTION PICTURE THEATER - a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical activities."

ADULT THEATER a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities."

BOROUGH - the Borough of Horner City.

CHILD ORIENTED BUSINESS - a commercial establishment which, as one (1) of its principal business purposes, serves and/or sells to children and their families food, apparels, goods, services, play and/or entertainment.

ESCORT - a person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY - a person or business associate who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

NUDE MODEL STUDIO - any place where a person who appears in a

state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.

NUDITY or a STATE OF NUDITY - the appearance of a human bare buttock, anus, male genitals, female genitals or female breast.

PERMITTEE and/or LICENSEE - a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed on the application for a permit and/or license.

PERSON an individual, proprietorship, partnership, corporation, association or other legal entity.

SEMINUDE - a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER CENTER - a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex.

B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or seminude.

SEXUALLY ORIENTED BUSINESS - an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

SPECIFIED ANATOMICAL AREAS - the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

SPECIFIED SEXUAL ACTIVITIES - includes any of the following:

A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts.

B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy.

C. Masturbation, actual or simulated.

D. Excretory functions as part of or in connection with any of the activities set forth in subsections (A) through (C), above.

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS - the increase in floor areas occupied by the business by more than twenty-five (25) percent, as the floor areas exist on date of enactment of this Part.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS - includes any of the following:

A. The sale, lease or sublease of the business.

B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means.

C. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 443, 7/1/1997, §2)

§1103. Classification. Sexually oriented businesses are classified as follows:

- A. Adult arcades
- B. Adult bookstores or adult video stores.
- C. Adult cabarets.
- D. Adult motels.
- E. Adult motion picture theaters.
- F. Adult theaters.
- G. Escort agencies.
- H. Nude model studios
- I. Sexual encounter centers.

(Ord. 443, 7/1/1997, §3)

§1104. Permit Required.

1. Any person who operates a sexually oriented business without valid permit issued by the Borough is guilty of a violation of this Chapter.

2. An application for a permit to operate a sexually oriented business must be made on a form provided by the Zoning Officer or Code Enforcement Officer and/or Borough representative. The application must be accompanied by a sketch or diagram showing the floor plan and plot plan configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

3. The applicant must be qualified according to the provisions of this Chapter and the premises must be inspected and found to be in compliance with the building codes and all other Borough ordinances by the Code Enforcement Officer and/or designated Borough representative.

4. If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit as an applicant. If

a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10) percent or greater interest in the business must sign the application for permit as applicant. If a corporation is listed as owner of a sexually oriented business, or as the entity which wishes to operate such a business, each individual having a direct or indirect interest of ten (10) percent or greater in the corporation must sign the application for a permit as applicant.

5. The fact that a person possesses other types of Borough permits does not exempt the person from the requirement of obtaining a sexually oriented business permit.

(Ord. 443, 7/1/1997, §4)

§1105. Issuance of Permit.

1. The Zoning Officer, Code Enforcement Officer and/or designated Borough representative shall approve the issuance of a permit to an applicant within thirty (30) days after the receipt of an application unless he finds one or more of the following to be true:

A. An applicant is under eighteen (18) years of age.

B. An applicant or an applicant's spouse is overdue in his payment to the Borough of taxes, fees, fines or penalties assessed against him or imposed upon him in relation to a sexually oriented business.

C. An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the application form.

D. An applicant is residing with a person who has been denied a permit by the Borough to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

E. The premises to be used for the sexually oriented business have been reviewed and have been disapproved by either the Zoning Officer, Code Enforcement Officer and/or designated Borough representative as not being in compliance with applicable laws and ordinances.

F. The permit fee required by this Part has not been paid.

G. An applicant of the proposed establishment is in violation or is not in compliance with any of the provisions of this Part.

H. An individual applicant, or any individual holding a direct or indirect interest of more than ten (10) percent of a corporate applicant, or any of the officers and directors of a corporate applicant if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; or the manager or other person in charge of the operation of the applicant's business has, or have been, convicted of an offense involving sexual misconduct within

the Commonwealth of Pennsylvania including, but not limited to, prostitution, obscenity and possession of child pornography, or convicted of any offense in any jurisdiction other than the Commonwealth of Pennsylvania that would have constituted an offense involving sexual misconduct if committed within the Commonwealth of Pennsylvania. In order for approval to be denied pursuant to this subsection, the person or persons conviction or release in connection with the sexual misconduct offense must have occurred within two (2) years of the date of application in the event of a misdemeanor and within five (5) years of the date of application in the event of a felony.

2. The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

3. The Zoning Officer, Code Enforcement Officer and/or designated Borough representative shall complete their certification that the premises are in compliance, or not in compliance, within twenty (20) days of receipt of the application by the Borough. The certification shall be promptly presented to the Borough's representative.

(Ord. 443, 7/1/1997, §5)

§1106. Fees. The annual fee for a sexually oriented business permit is one thousand dollars (\$1,000.00). (Ord. 443, 7/1/1997, §6)

§1107. Inspection.

1. An applicant or permittee shall permit representatives of the Police Department, Zoning Officer, Code Enforcement Officer and/or designated Borough representative to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time that the sexually oriented business is occupied or open for business.

2. A person who operates a sexually oriented business, or his agent or employee, violates this Part if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

(Ord. 443, 7/1/1997, §7)

§1108. Expiration of Permit.

1. Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in §1105. Application for renewal should be made at least thirty (30) days before the expiration date and, when made fewer than thirty (30) days before the expiration date, the pendency of the application will not prevent the expiration of the permit.

2. If the Borough, through their representatives, denies renewal of a license, the applicant shall not be issued a permit for one (1) year from the date of denial, except that after ninety (90) days have elapsed since the

date of denial, the applicant may be granted a permit if the Zoning Officer, Code Enforcement Officer and/or designated Borough representative finds that the basis for denial of the renewal permit has been corrected or abated.

(Ord. 443, 7/1/1997, §8)

§1109. Suspension of Permit. The Borough, through its representatives, shall suspend a permit for a period not to exceed thirty (30) days if they determine that a permittee or an employee of a permittee has:

- A. Violated or is not in compliance with any Section of this Part.
- B. Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises.
- C. Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter.
- D. Knowingly permitted gambling by any person on the sexually oriented business premises.
- E. Failed to man manager's stations and/or maintain viewing rooms as set forth in §1113.

(Ord. 443, 7/1/1997, §9)

§1110. Revocation of Permit.

- 1. The Borough, through its representatives, shall revoke a permit if a cause of suspension set forth in §1109 occurs and the permit has been suspended within the preceding twelve (12) months.
- 2. The Borough, through its representatives, shall revoke a permit if they determine that:
 - A. A permittee or any of the persons specified in §1105(1)(H) is or has been convicted of the offenses specified in §1105(1)(H).
 - B. A permittee gave false or misleading information in the material submitted to the Borough during the application process.
 - C. A permittee or an employee of a permittee has knowingly allowed possession, use or sale of controlled substances on the premises.
 - D. A permittee or an employee of a permittee has knowingly allowed prostitution on the premises.
 - E. A permittee or an employee of a permittee knowingly operates the sexually oriented business during a period of time when the permittee's permit was suspended.
 - F. A permittee or an employee of a permittee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or

other explicit "sexual conduct" to occur in or on the permitted premises.

G. A permittee is delinquent in payment to the Borough or State of any taxes or fees relating to sexually oriented businesses.

3. When the Zoning Officer, Code Enforcement Officer and/or designated Borough representative revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date revocation became effective, except that if the revocation is pursuant to subsection(2)(A), above, the revocation shall be effective for two (2) years in the event of a misdemeanor or five (5) years in the case of a felony.

4. After denial of an application, or denial of a renewal of an application or suspension or revocation of a permit, the applicant or licensee or permittee shall have the right to appeal said action and to seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(Ord. 443, 7/1/1997, §10)

§1111. Transfer of Permit. A permittee shall not transfer his permit to another person. A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application. (Ord. 443, 7/1/1997, §11)

§1112. Location of Sexually Oriented Business.

1. A person is guilty of a violation of this Chapter if he operates or causes to be operated a sexually oriented business outside of the district in which a sexually oriented business is a permitted use. No sexually oriented business shall be located outside a district in which a sexually oriented business is a permitted use. Sexually oriented businesses as defined herein shall be permitted in the Industrial District as a special exception.

2. A person is guilty of a violation of this Chapter if he operates or causes to be operated a sexually oriented business within six hundred (600) feet of:

- A. A church.
- B. A public or private pre-elementary, elementary or secondary school.
- C. A public library.
- D. A child care facility or nursery school.
- E. A public park adjacent to any residential district.
- F. A child oriented business.

3. A person is guilty of a violation of this Chapter if he causes or permits the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within six hundred (600) feet of another sexually oriented business.

4. A person is guilty of a violation of this Chapter if he causes or permits the operation, establishment or maintenance of more than one (1) sexually oriented business in the same building, structure or portion thereof; or the increase of floor areas of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.

5. For the purpose of this Part, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, public or private pre-elementary, elementary or secondary school, public library, child care facility, child oriented business or nursery school; or to the nearest boundary of an affected public park.

6. For purposes of subsection (3) of this Section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

7. Any sexually oriented business lawfully operating on date of enactment of this Part that is in violation of subsections (1) through (6) of this Section shall be deemed a nonconforming use. Such nonconforming use shall not be increased, enlarged, extended or altered, except that the use may be changed to a conforming use. In the event that two (2) or more sexually oriented businesses are within six hundred (600) feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

8. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit, of a church, public or private pre-elementary, elementary or secondary school, public library, child care facility, child oriented business, nursery school or public park within six hundred (600) feet of the sexually oriented business. This provision applies only to the renewal of a valid permit, and does not apply when an application for permit is submitted after a permit has expired or has been revoked.

(Ord. 443, 7/1/1997, §12)

§1113. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

1. A person who operates, or causes to be operated, a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of fewer than one hundred fifty (150) square feet of floor

space, a film or video cassette, or other video or other image production or reproduction which depicts "specified sexual activities" or "specified anatomical area" shall comply with the following requirements:

A. The application for a permit to operate a sexually oriented business shall be accompanied by a floor plan and plot plan diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations, the location of all viewing rooms, partitions and doors, and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Borough, through its representatives, may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

B. The application shall be sworn to be true and correct by the applicant.

C. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Zoning Officer, Code Enforcement Officer and/or designated Borough representative.

D. It is the duty of the owners and operators of the premises to ensure that a least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

E. The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video reproduction or viewing equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

F. It shall be the duty of the owners and operators, and it shall also be the duty of any agents or employees present on the premises, to ensure that the view as is specified in subsection (E) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times, and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in

which patrons will not be permitted in the application filed pursuant to subsection (1)(A) of this Section.

G. No viewing room may be occupied by more than one (1) person at any time. No connections or openings to an adjoining viewing room shall be permitted.

H. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not fewer than one (1) foot candle as measured at the floor level.

I. It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

2. A person having a duty under subsection (1)(A) through (1)(I) is guilty of a violation of this Chapter if he knowingly fails to fulfill that duty.

(Ord. 443, 7/1/1997, §13)

§1114. Exemptions. It is a defense to prosecution under §§1105 and 1112 that a person appearing in a state of nudity did so in a modeling class operated:

A. By a proprietary school, licensed by the Commonwealth of Pennsylvania, or a college, junior college or university supported entirely or partly by taxation.

B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

C. In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing.

(2) Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.

(3) Where no more than one (1) nude model is on the premises at any one time.

(Ord. 443, 7/1/1997, §14)

§1115. Injunction. A person who operates, or causes to be operated, a sexually oriented business without a valid permit, or in violation of this Part, is subject to an action in equity or a suit for injunction, as well as citation for violation of this Chapter. (Ord. 443, 7/1/1997, §15)

Part 12

Zoning Map Changes

Subject

Amending Zoning Map by changing from Zoned R-2 District to a Zoned C-1 District that portion of North Main Street and Miller Avenue and Church Street in said Borough now Zoned R-2.